

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

2 LUIS HIDALGO, JR.,

3 Appellant,

4 vs.

5 THE STATE OF NEVADA,
6 Respondent.

Electronically Filed
Jul 25 2017 08:19 a.m.
Elizabeth A. Brown
Clerk of Supreme Court
Case No. 71458

7 **APPELLANT'S APPENDIX VOLUME XVII**

8 Appeal from Eighth Judicial District Court, Clark County

9 The Honorable Valerie Adair, District Judge

10 District Court Case No. 08C241394

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INDEX TO APPELLANT'S APPENDIX

<u>VOL.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>BATES NUMBERS</u>
II	Appendix of Exhibits Volume 1 to Supplemental Petition for Writ of Habeas Corpus	02/29/2016	PA0048-PA0254
III	Appendix of Exhibits Volume 2 to Supplemental Petition for Writ of Habeas Corpus	02/29/2016	PA0255-PA0501
IV	Appendix of Exhibits Volume 3 to Supplemental Petition for Writ of Habeas Corpus (through HID PA 00538)	02/29/2016	PA0502-PA0606
V	Appendix of Exhibits Volumes 3-4 to Supplemental Petition for Writ of Habeas Corpus (Transcript: Jury Trial Day 5)	02/29/2016	PA0607-PA0839
VI	Appendix of Exhibits Volume 4 to Supplemental Petition for Writ of Habeas Corpus (from HID PA 00765)	02/29/2016	PA0840-PA1024
VII	Appendix of Exhibits Volume 5 to Supplemental Petition for Writ of Habeas Corpus (Transcript: Jury Trial Day 7 pgs. 1-189)	02/29/2016	PA1025-PA1220
VIII	Appendix of Exhibits Volume 5 to Supplemental Petition for Writ of Habeas Corpus (Transcript: Jury Trial Day 7 pgs. 190-259)	02/29/2016	PA1221-PA1290
IX	Appendix of Exhibits Volume 6 to Supplemental Petition for Writ of Habeas Corpus	02/29/2016	PA1291-PA1457
X	Appendix of Exhibits Volume 7 to Supplemental Petition for Writ of Habeas Corpus	02/29/2016	PA1458-PA1649

<u>VOL.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>BATES NUMBERS</u>
XI	Appendix of Exhibits Volumes 8-9 to Supplemental Petition for Writ of Habeas Corpus (Transcript: Jury Trial Day 10 pgs. 1-218)	02/29/2016	PA1650-PA1874
XII	Appendix of Exhibits Volumes 8-9 to Supplemental Petition for Writ of Habeas Corpus (Transcript: Jury Trial Day 10 pgs. 319-341)	02/29/2016	PA1875-PA2004
XIII	Appendix of Exhibits Volumes 10-11 to Supplemental Petition for Writ of Habeas Corpus (Transcript: Jury Trial Day 11 pgs. 1-177)	02/29/2016	PA2005-PA2188
XIV	Appendix of Exhibits Volumes 10-11 to Supplemental Petition for Writ of Habeas Corpus (Transcript: Jury Trial Day 11 pgs. 178-318)	02/29/2016	PA2189-PA2336
XV	Appendix of Exhibits Volumes 12-13 to Supplemental Petition for Writ of Habeas Corpus (Transcript: Jury Trial Day 12 pgs. 1-229)	02/29/2016	PA2337-PA2574
XVI	Appendix of Exhibits Volumes 12-13 to Supplemental Petition for Writ of Habeas Corpus (Transcript: Jury Trial Day 12 pgs. 230-330)	02/29/2016	PA2575-PA2683
XVII	Appendix of Exhibits Volume 14 to Supplemental Petition for Writ of Habeas Corpus	02/29/2016	PA2684-PA2933
XVIII	Appendix of Exhibits Volumes 15-16 to Supplemental Petition for Writ of Habeas Corpus	02/29/2016	PA2934-PA3089

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<u>VOL.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>BATES NUMBERS</u>
XIX	Appendix of Exhibits Volume 17 to Supplemental Petition for Writ of Habeas Corpus	02/29/2016	PA3090-PA3232
XX	Appendix of Exhibits Volume 18 to Supplemental Petition for Writ of Habeas Corpus	02/29/2016	PA3233-PA3462
XXI	Appendix of Exhibits Volumes 19-20 to Supplemental Petition for Writ of Habeas Corpus	02/29/2016	PA3463-PA3703
XXII	Minute Order	08/15/2016	PA3811
XXII	Notice of Appeal	10/03/2016	PA3862-PA3864
XXII	Notice of Entry of Findings of Fact and Conclusions of Law and Order	09/19/2016	PA3812-PA3861
XXII	Register of Actions for District Court Case Number 08C241394	07/11/2017	PA3865-PA3883
XXII	Reply to State's Response to Supplemental Petition for Writ of Habeas Corpus	07/21/2016	PA3786-PA3798
XXII	State's Response to Supplemental Petition for Writ of Habeas Corpus	05/18/2016	PA3709-PA3785
XXII	Supplement to Supplemental Petition for Writ of Habeas Corpus	03/08/2016	PA3704-PA3708
I	Supplemental Petition for Writ of Habeas Corpus	02/29/2016	PA0001-PA0047
XXII	Transcript of Petition for Writ of Habeas Corpus Hearing	08/11/2016	PA3799-PA3810

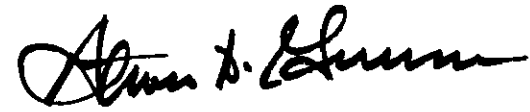
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EIGHTH JUDICIAL DISTRICT COURT

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

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

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

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

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

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

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

DATED this 29th day of February, 2016.

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CERTIFICATE OF SERVICE

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

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Attorneys for Respondent

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

ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED

NOV 24 2009

Alma L. Blum
CLERK OF COURT

12

STATE OF NEVADA,

Plaintiff,

vs.

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

Defendants.

CASE NO: C212667/2241394
DEPT NO: XXI

**Transcript of
Proceedings**

BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 13

THURSDAY, FEBRUARY 12, 2009

APPEARANCES:

FOR THE STATE:

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

FOR LUIS ALONSO HIDALGO, JR.:

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

FOR LUIS ALONSO HIDALGO, III:

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

RECORDED BY: JANIE OLSEN, COURT RECORDER

TRANSCRIBED BY: KARReporting and Transcription Services

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CLERK OF THE COURT

PA2691

HID PA02546

1 LAS VEGAS, NEVADA, THURSDAY, FEBRUARY 12, 2009, 9:18 A.M.

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

3 (Outside the presence of the jury.)

4 THE COURT: All right. Why don't we start with the
5 defense packet.

6 Mr. DiGiacomo.

7 MR. DIGIACOMO: Fine, Judge.

8 THE COURT: All right. The first instruction, if
9 one or more of the jurors are unclear or confused, I am
10 disinclined to give this instruction.

11 MR. DIGIACOMO: The State would agree with that.

12 THE COURT: Here's the problem, then you get a bunch
13 of questions, and there may be no, you know -- I mean, here's
14 my experience. If they're confused, they give us an
15 instruction -- a question anyway, but I don't want to get into
16 the position of having to supplement a bunch of the
17 instructions. And a lot of times when they ask for
18 clarification on the instructions, I just send back, The Court
19 is not at liberty to supplement the instructions. So that's
20 why I'm disinclined to give this one.

21 All right. Isn't the second one the stock one?

22 MR. DIGIACOMO: Yes, Judge, it's in ours.

23 THE COURT: Okay. The ones that I'm not giving, I'm
24 just going to give as a Court exhibit.

25 The third one is a stock?

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1 MR. DIGIACOMO: That's correct, Judge.

2 THE COURT: What about the fourth one?

3 MR. DIGIACOMO: I believe that I did two separate
4 ones in ours because there is an Information and there is an
5 Indictment and because there's two separate instructions
6 related to those, but the information contained is stock and
7 in ours. So it's going to be up to the Court's pleasure as to
8 which way you like to do it better.

9 THE COURT: Okay. We'll just hold this one then.
10 This one may be fine.

11 MR. ARRASCADA: Judge, actually that language is not
12 the same. This is the stock instruction that is the same.

13 THE COURT: Okay. This one's probably fine.

14 MR. ARRASCADA: Okay.

15 THE COURT: The penalty provided for law is not to
16 be considered. Do you have the stock one, The subject of
17 punishment is not to be considered? Why don't we just use
18 that one?

19 MR. ARRASCADA: The subject of punishment one?

20 THE COURT: Yeah. We'll just use that.

21 Two types of evidence, this one's a little bit --
22 unfortunately, I don't have the stocks in front of me. This
23 looks a little bit differently -- different, excuse me, than
24 the other State's one.

25 MR. ARRASCADA: It is, Judge. It's one that --

1 MR. DIGIACOMO: It's slightly, but it is the
2 standard. I mean, our stock one covers this information.

3 THE COURT: Any objection by the State to using the
4 defendant's one?

5 MR. DIGIACOMO: Well, there's more information in
6 the State's, so I want to at least have all the other
7 information that's in the State's --

8 THE COURT: Okay. I'll hold it until we get there.
9 Nothing counsel says, do we have one of the State's?

10 MR. DIGIACOMO: That's also in ours.

11 THE COURT: Okay.

12 MR. ARRASCADA: Judge, this is just a shorter more
13 accurate concise version.

14 THE COURT: I can see we're going to have to wait
15 for Mr. Pesci to get here so I have something to look at with
16 these.

17 MR. GENTILE: Yeah.

18 THE COURT: Why don't we go to some of the more
19 hotly contested ones?

20 MR. DIGIACOMO: There's Mr. Pesci.

21 MR. GENTILE: Well, how will we know that?

22 MS. ARMENI: Start backwards.

23 THE COURT: Well, the --

24 MR. DIGIACOMO: They haven't told us what they're
25 contesting of ours. I can probably guess from reading theirs.

1 THE COURT: Okay. All right. I don't know how to
2 do this because of the way it's arranged, frankly. Okay. The
3 two types of evidence that they want -- why is yours better
4 than the State's? Why do you want yours -- Mr. Arrascada?

5 MR. ARRASCADA: Court's indulgence.

6 Which one, Judge?

7 THE COURT: There are two types of evidence. Okay.
8 You have all your specials in the front.

9 I don't see that one in the State's instruction.

10 MS. ARMENI: It is.

11 MR. DIGIACOMO: It's right after the special, Judge.
12 It's the one that starts off, The evidence which you're to
13 consider in this case --

14 THE COURT: Oh, thank you.

15 MR. DIGIACOMO: -- consists of the testimony.

16 MR. PESCI: What if we just number them as is right
17 now at the beginning so we'll be able to reference them fast,
18 and then --

19 THE COURT: If you can do that -- that's a good
20 idea. All right.

21 MR. PESCI: We'll just number each one.

22 THE COURT: All right. We've already pulled out a
23 couple from the defendants' instructions so just follow along
24 with me.

25 Instruction -- we'll take out, If in these

1 instructions, because we've already got that in the State's.

2 If during this trial, is 1.

3 The penalty provided, is 2.

4 An Information and Indictment.

5 There are two types of evidence.

6 Nothing that counsel says.

7 It is the duty of an attorney, is 6.

8 7, good character.

9 8, You are the sole judges.

10 9, Although you are to consider. This is exactly
11 the same, isn't it?

12 MR. DIGIACOMO: Which one?

13 MR. ADAMS: Judge, you've got to give us a chance to
14 catch up or it's going to not --

15 MR. DIGIACOMO: A lot of these are all the same. I
16 mean, there's just a couple that are actually specifically
17 hotly contested.

18 THE COURT: Which is what I wanted.

19 MR. DIGIACOMO: We didn't get theirs until, again,
20 this morning. I mean, we e-mailed ours on Monday. We got a
21 packaged yesterday.

22 THE COURT: All right. Instruction No. 9 is the
23 common sense instruction in the defense packet. I'm pulling
24 that out because it's really the same as the State's.

25 So now No. 9 is, Every person charged with the

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1 commission of a crime.

2 10 is, In every crime. And basically you've
3 rewritten all of the stocks a little bit --

4 MR. ARRASCADA: Your Honor, what I did here is that
5 they have --

6 THE COURT: -- which I'm inclined to just give on
7 most of these just general ones the regular stocks that the
8 State has.

9 MR. ARRASCADA: Your Honor, one thing that's
10 significant in their stocks is they have as a -- one charge to
11 the jury the dual presumption of innocence and reasonable
12 doubt instruction on the same, and those should be two
13 separate instructions.

14 THE COURT: Okay. All right. A reasonable doubt is
15 one based on reason. This looks like it's exactly the same as
16 the State's.

17 MR. ARRASCADA: No, they have a presumption of
18 innocence --

19 THE COURT: Oh, I see.

20 MR. ARRASCADA: -- and they have reasonable doubt on
21 the same page.

22 THE COURT: All right. You want them given as two
23 instructions?

24 MR. ARRASCADA: Yes.

25 THE COURT: That's fine with me.

1 Intent may be proved by circumstantial evidence,
2 will be 12.

3 13, It is your duty as jurors.

4 14, A person who knowingly does any act. Actually,
5 you know --

6 MR. DIGIACOMO: Yeah, I mean, literally like
7 there's -- these are little sections of all of the State's
8 ones.

9 THE COURT: Right. I mean, basically I've never
10 been given a packet of instructions that has sort of rewritten
11 everything, and so --

12 MR. PESCI: I was just say numbering so we would
13 know how to reference --

14 THE COURT: -- I don't know an efficient way to do
15 this because, again, you've taken all of the basic, sort of
16 accepted, in the eighth, and I'm assuming in the second, stock
17 instructions and you've tweaked them a little bit. So
18 basically whereas normally we would go through and fight over
19 the specials, we now have to go through all of the stocks.

20 And I don't mind on some of the stocks, if you
21 think -- like, for example, one of them says, The presump --
22 unless proved innocent. A lot of people complain about that.
23 I'm happy to change that to not guilty. Little tweaks like
24 that, I think, are substantive and make sense to do and I
25 routinely, if requested, will change innocence to not guilty,

1 if that's something you want.

2 On these stocks, though --

3 MR. GENTILE: I don't know what you're talking
4 about.

5 THE COURT: Well, I'm just saying -- what they've
6 done, Dominic, is they've rewritten all of the sort of basic
7 instructions. And so we have to essentially either go through
8 all of the basic instructions, the common sense instructions
9 that we never even discuss in -- literally since I've been a
10 judge, hundreds of trials that I've done, and so I'm trying to
11 figure out how to do this in an efficient way that's not going
12 to take all day long.

13 MR. DIGIACOMO: Judge, can I suggest that we just
14 start going through 1, 2, 3, and then if they see something in
15 ours that they object to -- because like they all have three
16 versions of --

17 THE COURT: That's what I was going to do.

18 MR. DIGIACOMO: -- of the same statement in three
19 different instructions.

20 THE COURT: Let's do that.

21 MR. DIGIACOMO: And maybe we can just address that
22 one at a time.

23 MR. GENTILE: Can we -- wait. I have all of my
24 objections to their instructions highlighted on my computer
25 and --

1 THE COURT: Let's do that. Or I can just leave and
2 let you guys work it out, which is what I normally make you
3 guys do ahead of time, but --

4 MR. DIGIACOMO: I have no idea what they object to
5 yet. I mean, I will be more than willing to tell them what we
6 object to. I mean, a lot of these --

7 THE COURT: Mr. DiGiacomo, what do you think is the
8 most efficient way to settle the jury instructions given the
9 type of the packet that they've given to the Court?

10 MR. DIGIACOMO: Well, what I would think is that if
11 Mr. Gentile can get into his computer where he has his
12 objections, we could go through them, mark ours, and then --

13 THE COURT: That's better.

14 MR. DIGIACOMO: -- we'll see what the problems are
15 and then we can just go through and then if there's small
16 tweaks they want -- we don't usually care about small tweaks
17 either. We have them electronically.

18 THE COURT: Right. Okay. All right.

19 (Pause in proceedings)

20 THE COURT: Okay.

21 MR. ARRASCADA: On Instruction 4, the
22 Fourth Amendment, the third page where -- at the end of
23 Count 4, the language, It's the duty of the jury to apply the
24 rule of law as contained in these instructions to the facts of
25 the case and determine whether or not the defendant is guilty

1 of one or more of the offenses charged, that's redundant. The
2 instructions tell the jury to look at the instructions. They
3 don't need that there.

4 MR. GENTILE: Is that 3 or 4?

5 THE COURT: It's actually 3, for the record, he's
6 talking about.

7 MR. DIGIACOMO: That's on 3 and 4.

8 THE COURT: That's a standard instruction.
9 Sometimes people have it off of the instruction.

10 Does the State care if we take it off?

11 MR. PESCI: I think it's there for the fact that
12 there's more than one charge, and so it lets them understand
13 that they can find somebody guilty of one charge and not
14 another. And that's a clear point that they need to know.

15 THE COURT: I mean, I don't really see it as
16 objectionable. I'm going to leave it in.

17 All right. 4, the same thing.

18 5 --

19 MR. DIGIACOMO: This is the one where they had --

20 THE COURT: They had a change on this one. And what
21 did you want?

22 MR. DIGIACOMO: Actually, they didn't have a change.
23 There is --

24 THE COURT: An Information and an Indictment are a
25 formal method. It is not evidence of any kind against the

1 accused.

2 MR. DIGIACOMO: Isn't that on the top of our 3 and
3 4?

4 THE COURT: Yeah. I mean, I can add to 3 and 4, if
5 you want, It does not create any presumption or permit any
6 inference of guilt, if you want that added.

7 MR. ARRASCADA: That'd be great.

8 MS. ARMENI: Yes.

9 THE COURT: All right.

10 MR. DIGIACOMO: Okay. So --

11 THE COURT: Mr. DiGiacomo, are you adding that?

12 MR. DIGIACOMO: Yeah, let me just write it in and
13 then I'll type it up when we're done.

14 THE COURT: Okay. So everyone, then, is okay with
15 that, with the changes?

16 MR. ARRASCADA: Yes.

17 MR. DIGIACOMO: And should we -- to make this
18 conform, do they want that on the amended indictment, 1, 2?

19 THE COURT: I think they --

20 MR. GENTILE: Absolutely.

21 THE COURT: They want it on both instructions, 3 and
22 4.

23 MR. DIGIACOMO: Okay. Then we can do that.

24 THE COURT: Okay.

25 MR. DIGIACOMO: Okay. We can go on, Judge.

1 THE COURT: Okay. 5 is, In this case the defendants
2 are accused in an Information or Indictment alleging the open
3 charge of murder. Does anyone have a problem with 5?

4 MR. GENTILE: Excuse me, Your Honor.

5 MR. ARRASCADA: Court's indulgence. Your Honor, we
6 have a problem with Instruction No. 5.

7 THE COURT: And that would be?

8 MR. ARRASCADA: Well, under Freegen v State -- or
9 Freegen, I believe, it is, Your Honor, is defense -- what
10 they've proved is -- this isn't an open murder, this is a
11 first-degree murder, and we'd like the jury instructed only on
12 first-degree murder.

13 MR. DIGIACOMO: I'm sorry, but the Information and
14 the Indictment have theories of first, second, and
15 involuntary, and all the caselaw in the State of Nevada is
16 that when you charge the count of murder, it's all those --
17 all the elements of first, second, voluntary and involuntary,
18 but in order to get a voluntary instruction or an involuntary,
19 there must be some evidence.

20 MR. PESCI: The Court in Schuster v State said that,
21 I think, most recently.

22 MR. DIGIACOMO: Yes. I mean, Tedford -- there's a
23 number of them that says when you're charged with murder, it's
24 all the different various forms of murder.

25 MR. ARRASCADA: Your Honor, Freegen v State --

1 Freegen v State says that the defense can elect if the proof
2 is a first-degree murder and nothing else, and we submit that
3 that's all there is and, you know, it's a risk for our clients
4 and they want -- it's an all or nothing, and we want --

5 THE COURT: No, but it's also a risk for the State
6 because --

7 MR. DIGIACOMO: We proved a number of things. We
8 proved a conspiracy of battery, we proved a conspiracy of
9 battery with a deadly weapon, we proved --

10 THE COURT: Right. I think they're entitled to an
11 open murder charge, so I'm going to give that.

12 Any objection to 6, Murder is the unlawful killing?

13 MR. GENTILE: No.

14 THE COURT: Okay. 7, Malice aforethought, any
15 objection to that, or changes?

16 MR. GENTILE: No.

17 THE COURT: 8, Expressed malice, any changes or
18 objections?

19 MR. GENTILE: No.

20 THE COURT: All right. 9, Murder of the first
21 degree, any objections or changes?

22 MR. GENTILE: No.

23 THE COURT: All right. 10, The law does not
24 undertake to measure?

25 MR. DIGIACOMO: It's the rest of Biford.

1 MR. GENTILE: Right.

2 THE COURT: Any objection to that?

3 MR. GENTILE: No.

4 MR. ARRASCADA: No, Your Honor.

5 THE COURT: Okay. 11, Murder which is immediately
6 proceeded by lying in wait, any objections or changes?

7 MR. GENTILE: Well, I don't think there's a -- I
8 don't think the facts of this case fit that one.

9 MR. ARRASCADA: Exactly.

10 THE COURT: Well, yeah, it's a lying in wait because
11 they parked the van and called TJ Hadland on his cell phone, I
12 mean, and waited for him to basically sneak up on him and
13 shoot him, I mean, if you believe what Rontae Zone's testimony
14 is. So I think there is evidence of a lying in wait.

15 12, You don't have to agree on the principle of
16 guilt or theory of liability, any objection to that one?

17 MR. GENTILE: Hold on a minute. I think that that's
18 a -- here's the problem with that. There is a conspiracy
19 charge here and in that -- well, because of the way this is
20 drafted, in the second count, and I'm talking about the
21 indictment now, in the second count, there is -- there are
22 four alternative theories as to how there could be murder.
23 Within one of those theories there are three alternatives, and
24 I think that's theory three, that there could be a conspiracy
25 to commit battery, a conspiracy to commit battery with and a

1 conspiracy with -- battery with a deadly weapon.

2 THE COURT: Right.

3 MR. GENTILE: They do have to agree unanimously on
4 what the object of the conspiracy in paragraph three of Count
5 2 is, and so this is -- this particular instruction confuses
6 that.

7 THE COURT: Do you have an alternate instruction on
8 that point?

9 MR. GENTILE: I believe that we do, but --

10 MR. DIGIACOMO: I didn't see that. I mean, the rest
11 of the -- this just says as to principle of guilt and theory
12 of liability. The rest of the instructions are going to
13 explain to them, hey, if you're going to be a conspirator and
14 held for first-degree murder, this is what we have to prove.

15 THE COURT: Well, I don't mind amending this one to
16 make it more clear.

17 MR. GENTILE: Right.

18 THE COURT: Like, this is not how I want it written
19 because it doesn't -- it's more effect -- unless you find the
20 defendant guilty of murder under a conspiracy or -- however,
21 theory, then you must agree -- although, then that's wrong.

22 MR. DIGIACOMO: Yeah, because, I mean, their theory
23 is there should be one of these for second-degree murder as --

24 MR. GENTILE: We have a special verdict form and I
25 think that that will cover it.

1 THE COURT: Okay.

2 MR. GENTILE: Maybe we should show it to you.

3 Do you have it?

4 MS. ARMENI: She already has it.

5 THE COURT: I already have it.

6 MR. GENTILE: Okay.

7 THE COURT: Okay. So --

8 MR. GENTILE: Why don't we pull this --

9 THE COURT: 12 is okay unless we don't give the
10 special verdict form, then you want 12 modified; is that
11 right?

12 MR. GENTILE: 12 is not okay because of the special
13 verdict form. That's the problem.

14 MR. DIGIACOMO: Well, if there's a special verdict
15 form, we could argue the legality of their special verdict
16 form. There's a number of legal statements: One, they are
17 wrong; and, two, when you get to the rest of the instructions,
18 you'll see the difference between their verdict form and our
19 verdict form. Because if it's conspiracy to commit murder,
20 it's conspiracy to commit murder with the intent to kill. You
21 have to establish the intent to kill.

22 THE COURT: Right.

23 MR. DIGIACOMO: If it's the conspiracy to commit
24 battery, battery with a deadly, or battery with substantial
25 bodily harm, it's just conspiracy to commit a crime. Those

1 are the two crimes. They actually want to lay it out on
2 conspiracy to commit battery, conspiracy to commit battery
3 with a deadly weapon, conspiracy to --

4 THE COURT: Right. Because what's going to happen
5 then is you could really easily hang the jury on this because
6 some of them may think, no, they wanted a simple battery and
7 some of them may think, well, no, they wanted a battery with a
8 baseball bat and some of them may think, well --

9 MR. GENTILE: But, Your Honor --

10 THE COURT: -- they really wanted to hurt him, but
11 we're not sure if they wanted to use a baseball bat or
12 whatever.

13 MR. GENTILE: In which case -- look, here's what's
14 real. If they find them guilty of conspiracy to commit a
15 battery, then it leads directly to an involuntary because
16 battery is neither a felony nor the other condition.

17 THE COURT: Let's just argue through this.

18 MR. PESCI: Why don't we flag 12, come back to it,
19 because when we fight over that legal issue, it will resolve
20 what we're doing with 12.

21 THE COURT: Right. Well, that's what I initially
22 said, but that could impact a lot of the other instructions.

23 MR. DIGIACOMO: It could impact all the instructions
24 because there's --

25 THE COURT: So let's decide -- let's decide on this

1 point. I mean, the State's point is that no, if it's
2 foreseeable, if they conspire to commit a battery or a battery
3 was -- I'm not -- and a foreseeable outcome would be death,
4 for example, if you --

5 MR. DIGIACOMO: No, no, not even a foreseeable --
6 foreseeable outcome could be death, a foreseeable outcome
7 could be substantial bodily harm. That would get you to the
8 intent requirement for murder, and I've been asking them --
9 they did this brief -- I've been saying to them, give me the
10 law that says theoretically -- and it's not even the law in
11 Nevada -- theoretically if you're involved in just a simple
12 battery, you yourself, you push somebody down, they hit their
13 head, they die, that's an involuntary.

14 But when you ask somebody else to go and do
15 something, are you -- is it foreseeable that he may do more
16 than just a simple battery? And the answer to that question
17 is yes. Now you have sufficient intent for second-degree
18 murder. And so to say as a proposition that the conspiracy
19 law says -- I'm not sure that even simple battery law says
20 that because in the State of Nevada that's not true. I mean,
21 there's a lot of degrees of simple battery.

22 THE COURT: Why don't we do this? On the verdict
23 form, this, I think, might be okay.

24 MR. ADAMS: Whose verdict form, Judge?

25 THE COURT: I'm looking at the defenses' verdict

1 form.

2 If you find the defendant not guilty of conspiracy,
3 advise the bailiff and return to court, is fine. Guilty of
4 conspiracy -- okay. And then, If you find the defendant
5 guilty of conspiracy, then continue. We find the object of
6 the conspiracy to be conspiracy to commit battery and/or
7 battery causing substantial bodily harm and/or battery with
8 use of a deadly weapon or conspiracy to commit murder.

9 MR. DIGIACOMO: Well, two things. One, that's what
10 our -- basically what our verdict form says. We give an
11 instruction that says if you find one of these three things,
12 it's conspiracy to commit a crime, and you check off
13 conspiracy to commit a crime.

14 Two, the State -- and Green is very clear on this,
15 in the State of Nevada, you don't go from bottom up, you go
16 from top down. So their verdict form is backwards.

17 THE COURT: Right. But I'm saying why not do it
18 that way.

19 MR. DIGIACOMO: And that's exactly what we did on
20 our verdict form, Judge. If you look --

21 THE COURT: I mean, I don't have a problem unless we
22 need to argue about this. If the defense would rather have
23 the crimes enumerated of battery, battery causing substantial
24 bodily harm, and/or --

25 MR. DIGIACOMO: And that's how I originally had it.

1 THE COURT: -- battery with a deadly weapon, I don't
2 have a problem changing that from battery to commit a crime if
3 the defense requests that. The defense might prefer
4 conspiracy to commit a crime.

5 MR. GENTILE: Oh, no, absolutely not. As a matter
6 of fact, a conspiracy to commit a crime --

7 THE COURT: Right.

8 MR. GENTILE: -- we would object to.

9 THE COURT: Okay. Then let's amend the verdict
10 form, the State's verdict form, to say, instead of conspiracy
11 to commit a crime, we find the object of the conspiracy to be
12 conspiracy to commit battery and/or battery causing
13 substantial bodily harm and/or battery with use of a deadly
14 weapon.

15 MR. GENTILE: But they have to agree on which it is.

16 MR. DIGIACOMO: No, they do not. They simply do
17 not.

18 MR. GENTILE: No, they have to agree -- look, in
19 People versus Cox, which is a California reporter case, and
20 it's in my brief at page 36 -- and you won't find much caselaw
21 on this issue, but in this one, it says that because death
22 from a misdemeanor battery doesn't fit, you know, the
23 description of reasonable foreseeable consequence, you can't
24 find the murder from a simple battery. And battery is a
25 misdemeanor in Nevada.

1 Now, as a matter of fact, the irony there is that
2 the battery -- the punishment is what changes depending upon
3 how much damage that the battery does, obviously, but the
4 battery is the misdemeanor, and because our involuntary
5 statute would permit -- in fact, would require that nothing
6 greater than involuntary flow from a conspiracy to commit a
7 battery, simple battery, not the others, I grant you that,
8 then we're entitled to have the jury have a special verdict
9 form at least with respect to simple battery.

10 Now, they can lump the other two together. I would
11 agree with that. But on a simple battery, they can't.

12 THE COURT: Mr. DiGiacomo, what's the Nevada case
13 that says if you hire someone to commit -- or you procure
14 someone to commit a simple battery and it's foreseeable that a
15 possible outcome could be greater than that, that then it
16 could become a -- what do you have for that?

17 MR. DIGIACOMO: There isn't. But when you read Cox,
18 they're interpreting California law.

19 THE COURT: Right.

20 MR. DIGIACOMO: When you read State of Nevada versus
21 Contreras, a very recent case, and I actually pulled it up
22 here because --

23 THE COURT: Do you have it like on a hard copy that
24 I can look at?

25 MR. DIGIACOMO: Judge, unfortunately, I walked out

1 of my office, I brought all my hard copies, it wasn't in
2 there.

3 MR. GENTILE: I could print one.

4 THE COURT: You know what? I told my law clerk to
5 hang --

6 Would you go get Arlene?

7 Give me a minute and I'll go get Arlene and I'll
8 look at the two cases together because this, to me, is like
9 the biggest issue in the case. So we --

10 MR. DIGIACOMO: Right. It's the whole issue. And,
11 you know, just so that I -- I can tell you about Contreras,
12 because it's not directly on point at all, but --

13 THE COURT: Okay. Let me go get it physically along
14 with Cox so I have can have them together.

15 Would you give Arlene, my capable law clerk, the two
16 cites.

17 MR. GENTILE: Cox is --

18 MS. ARMENI: Cox is 23 Cal, 4th, 665.

19 MR. GENTILE: Or 97 Cal, Reporter 2d, 697.

20 Actually, are you using Pacific? Well, Pacific, I
21 can take you right to the pages on Pacific. It's 2 Pacific
22 3rd at pages 1195 to 1197.

23 THE CLERK: Go ahead. Is there another one?

24 MR. DIGIACOMO: Yeah, that's 118 Nevada 332.

25 THE CLERK: Okay.

1 (Pause in proceedings)

2 THE COURT: All right. I've got the cases.

3 Mr. DiGiacomo, did you want to make any argument?

4 MR. DIGIACOMO: Yes, Judge.

5 THE COURT: Go ahead. I'm all ears.

6 MR. DIGIACOMO: Judge, if you read Cox, what Cox
7 talks about, it's a case where somebody slaps somebody and
8 then somehow they died. They're not really clear exactly what
9 happened to the person after he slaps him, but they died. And
10 the entire holding in Cox has nothing to do with conspiracy
11 law. It has nothing to do with anything related to this case.

12 And here's the reason why: In Cox, the judge
13 instructed that a misdemeanor battery is inherently dangerous.
14 And what the California court said was --

15 THE COURT: Right. That it's not necessary.

16 MR. DIGIACOMO: -- it's not necessarily -- it
17 depends on what the circumstances are.

18 THE COURT: Right.

19 MR. DIGIACOMO: And based on the circumstances of
20 this case, a slap is not inherently dangerous. It was a wrong
21 instruction. Kick it back.

22 Now, in Contreras, which is the Nevada caselaw on
23 it -- or the only caselaw -- if you look up involuntary
24 manslaughter in the State of Nevada, there's practically
25 nothing that discusses it, and there's certainly nothing that

1 discusses the natural probable consequences because ultimately
2 that's a question for a jury. There is no legal argument that
3 is a matter of law conspiring to commit a battery by its
4 definition is only involuntary manslaughter. It depends on
5 the nature of the conspiracy. It depends on what you know
6 about the person that you are doing the conspiring with, what
7 words you utilize.

8 THE COURT: Here's, I think -- let me just cut to
9 the chase because here's where I think we see a problem -- I
10 see a problem. I accept all of that and I think you're right,
11 but the problem is, let's say some of the jurors think, well,
12 it's a misdemeanor battery, and some of the jurors think, no,
13 it was a battery with substantial bodily harm or battery with
14 a deadly weapon, okay, and they check that box. The jurors
15 who think it's just a simple battery need to go further than
16 that to say -- to say this is this. So the way the verdict
17 form is now written, it doesn't take you to that next step.

18 I guess what you're saying is that will be clear in
19 the instructions.

20 MR. DIGIACOMO: Yeah, and I'll get to that in just a
21 second --

22 THE COURT: But I --

23 MR. DIGIACOMO: -- just let me just finish as to the
24 legal argument, which is --

25 THE COURT: No, I agree that if you commit a

1 misdemeanor battery -- or conspire to do that, you could get
2 to -- you could get beyond that. The problem is I think you
3 need additional fact finding and inquiry, and the way the
4 verdict form is, you don't have that. So let me offer --

5 MR. DIGIACOMO: Okay. Because I was going to
6 address it in the instructions.

7 THE COURT: Yeah. But, I mean --

8 MR. DIGIACOMO: In the instructions, you clearly
9 address that --

10 THE COURT: Yeah, but like I just said, what if --
11 if you have it all on one line, what if, okay, half of them
12 think, well, it was just a misdemeanor battery, and half of
13 them think, no, it was a battery with the baseball bats or
14 whatever that they planned. How do we know, then -- how do we
15 make sure that they then go to that second level of inquiry
16 and do it --

17 MR. GENTILE: Exactly.

18 MR. DIGIACOMO: Because of the instructions on the
19 conspiracy --

20 THE COURT: Well, they might not -- here's what I'm
21 proposing, which I think is a brilliant idea --

22 MR. DIGIACOMO: Okay. I'm willing to accept any
23 brilliant idea.

24 THE COURT: -- which means -- which will mean, in my
25 experience, that will be universally frowned upon by the

1 lawyers. Here's what I'm proposing. Okay.

2 If you find the defendant guilty of conspiracy, then
3 continue or whatever. We find the object of the conspiracy to
4 be murder. We find the object of the conspiracy to be battery
5 causing substantial bodily harm and/or battery with a deadly
6 weapon. We find the object of the conspiracy to be battery.
7 Okay.

8 Then we have an instruction, battery is a lesser
9 included crime of battery with a deadly weapon and battery
10 with substantial bodily harm. So if you find -- if 12 -- just
11 that lesser included, you know, if 12 of you agree that it's
12 either battery or a battery -- you know, but if you can't,
13 then 12 of you have to agree that it's a battery. And then if
14 they think it's a battery, they're going to go -- well, I
15 don't know if that will work. Do you see what I'm saying?

16 MR. DIGIACOMO: I understand what you're saying, but
17 that doesn't solve the issue that the defense is complaining
18 about, I don't think.

19 MR. GENTILE: Yeah, it does.

20 MR. DIGIACOMO: And here's the reason why: One,
21 there's more than just --

22 MR. GENTILE: Well, you know what, it solves the
23 issue, so if he wants to tell you why it doesn't, I don't
24 adopt them.

25 MR. DIGIACOMO: Because I know what the next step is

1 going to be from the defense. And here's the problem with it.
2 I'm assuming you're not willing to give those instructions
3 underneath it because, one, there's more than just a
4 conspiracy theory here. There's aiding and abetting and
5 there's natural and probable consequences that stem from
6 aiding and abetting. There are a number of other theories of
7 liability. I don't care about necessarily the counts like how
8 it says that. That doesn't matter to me. But I don't know --
9 we're not going to instruct them once you make a finding on
10 conspiracy that that somehow in any way constrains or adopts
11 their verdict as to the murder.

12 THE COURT: Right. Well, I would take that line
13 out. But I'm just saying on the whole argument on the
14 conspiracy and whether or not they need to go to that second
15 step to then determining if it was a natural and foreseeable
16 consequence and blah, blah, blah, if it's only unanimous as to
17 a battery, then -- then I think they do need to take it that
18 next step because, otherwise, it's not -- they're not going to
19 do it right. I mean, there's no way -- when we're all
20 confused and arguing about it, there's no way the jury's going
21 to get back there and do it right, and then if some of them
22 think it's a battery, go into the natural and foreseeable as
23 to those four or five people that think it's a simple
24 battery -- do you know what I mean -- and be deliberating
25 separately from the other, you know, seven people who think

1 it's -- so that's the only way I can think to do it.

2 MR. DIGIACOMO: Yeah, I just don't -- as long as --
3 I mean, I don't care about that first part about what the
4 object of the conspiracy is.

5 THE COURT: Right.

6 MR. DIGIACOMO: But as long as there's no
7 instruction about, hey, once you get to this, you do something
8 different as to the murder. You don't. You still have to do
9 an analysis as to whether or not you can reach the natural and
10 probable consequences. And then how do we establish
11 unanimity? They don't have to be unanimous as to the battery,
12 the battery with a deadly, or battery with substantial --

13 THE COURT: Well, here's the --

14 MR. GENTILE: They do because it's a conspiracy.

15 THE COURT: Well, no, no. Here's the thing. Okay.
16 If some of them think that they conspired to commit murder and
17 some of them don't, they think it's only a misdemeanor
18 battery, everybody who conspired to -- who thinks it was a
19 murder, by definition, is going to have think it was a
20 battery. Anybody who thinks it's a battery with a
21 substantial -- or whatever, if some don't, they're
22 automatically going to drop to the battery.

23 MR. DIGIACOMO: So even though they -- if 11 of them
24 find battery with substantial or battery with a deadly and one
25 of them finds battery, you're saying the verdict form should

1 say conspiracy to commit battery and then there's going to be
2 no legal consequences to us later on from that? That's --

3 THE COURT: Well, because what I'm saying is --
4 well, yeah, because it has to be unanimous. I agree, it has
5 to be -- I'm not saying it's automatically involuntary.

6 MR. DIGIACOMO: But the crime is not conspiracy to
7 commit battery. The crime is conspiracy to commit a crime.
8 That is the crime. They can be unanimous as to that crime --

9 THE COURT: Well, wait. Except -- no, because what
10 if it was --

11 MR. GENTILE: Judge.

12 THE COURT: -- a conspiracy to commit petty larceny
13 and somebody died, you know, as you were doing your petty
14 larceny, you unscrewed something and threw it on the floor and
15 somebody stepped on it and slid away, so conspiracy -- you
16 know what, I -- that's a bad thing.

17 MR. DIGIACOMO: Yeah, I know, but it's still the
18 crime that they committed, the conspiracy to commit petty
19 larceny. It's still just conspiracy to commit a crime. It
20 doesn't matter what the crime is. The only -- unless it's
21 murder, kidnapping or robbery, it's just conspiracy to commit
22 a crime.

23 THE COURT: Right.

24 MR. GENTILE: No.

25 THE COURT: But then if it's a petty -- what I'm

1 saying is it's a different -- it's a different result. If you
2 conspire to commit battery with a deadly weapon and somebody
3 dies, it's a totally different thing than just conspiring to
4 commit any crime and somebody dies. So I think they're
5 entitled to have the two boxes for battery, the felony, and
6 then the simple misdemeanor and have the instruction that
7 battery is lesser letter included offense to battery with
8 substantial bodily harm and battery with a deadly weapon.

9 MR. DIGIACOMO: Okay. But --

10 THE COURT: And then you can also say, just like --
11 you know, if your verdict as to whether it was a battery with
12 substantial bodily harm or a battery with a deadly weapon on
13 the -- you know, on the conspiracy does not have to be
14 unanimous or something like that.

15 MR. GENTILE: What?

16 THE COURT: Meaning -- well, some can think it's a
17 battery with a deadly weapon and some can think it's a battery
18 with substantial bodily harm.

19 MR. GENTILE: Oh, yeah. You're right there.

20 THE COURT: That doesn't need to be unanimous --

21 MR. GENTILE: You're right. That's correct.

22 THE COURT: -- right? If six people think it's a
23 battery with substantial bodily harm and --

24 MR. DIGIACOMO: I'm not really disputing with the
25 Court. I'm just wondering why it is that -- I mean, there's

1 no different crime committed if it's a battery, a battery with
2 a deadly or battery with substantial --

3 MR. GENTILE: That's not true. One's a misdemeanor,
4 two are felonies.

5 MR. DIGIACOMO: They're both grosses, though.
6 They're all grosses.

7 THE COURT: Well, it gets to the next analysis.
8 That's why -- all right. I think that's fine to make the
9 change. So making that change -- is everybody cool with
10 Instruction No. 12?

11 MR. GENTILE: Yeah. I mean, we've got to see the
12 actual instruction.

13 MR. DIGIACOMO: Well, this is going to be the
14 instruction.

15 MR. GENTILE: Did you read the language?

16 THE COURT: No. Instruction No. 12 is, Although
17 your verdict must be unanimous, you do not have to agree on
18 the principle of guilt or theory of liability. It's just on
19 the murder and the first degree one.

20 MR. PESCI: Right. And this is dealing with lying
21 in wait --

22 THE COURT: I think that's right.

23 MR. GENTILE: Well, see, that's the problem because
24 when you get to the coconspirator aspect, if somebody thinks
25 that somebody is -- that the theory of liability -- that

1 somebody conspired to commit a battery, okay, they can't go
2 from conspiracy to commit a battery to first-degree murder.

3 MR. DIGIACOMO: Well, that's instructed later on.

4 MR. PESCI: Right. This is just the first-degree
5 murder.

6 MR. GENTILE: Well, why confuse them? And that's
7 the problem.

8 THE COURT: Well, I don't know. Let's go on and --
9 okay. I'll just sort of mark 12.

10 MR. GENTILE: Now, if you want to eliminate the
11 coconspirator language in this instruction, then we can deal
12 with it later.

13 MR. DIGIACOMO: No.

14 THE COURT: No, because some people may think he's
15 an aider and abettor and some people may think, well, he's
16 just a coconspirator; although, if he's an aider and abettor,
17 by definition, he's a coconspirator.

18 MR. GENTILE: No.

19 MR. DIGIACOMO: Not necessarily for Little Lou.

20 Little Lou theoretically could be an aider and abettor and not
21 a coconspirator.

22 THE COURT: Well, wouldn't he, though, have to be
23 conspiring with the people who actually committed the murder?
24 I mean, that's --

25 MR. DIGIACOMO: To a certain extent, he could be --

1 you're right. He could be --

2 THE COURT: I mean, he -- because since he didn't
3 commit the murder and he's not out there helping them, he, by
4 definition, would have had to have agreed if he's aiding and
5 abetting in the commission --

6 MR. GENTILE: Yeah, but an aider and abettor
7 actually has to do something.

8 THE COURT: No, no. But what I -- I know, but
9 that's what I'm saying. If he's an aider and abettor, then he
10 has to, in the facts of this case, have been a coconspirator.
11 Now, if he's a coconspirator, he doesn't have to have been an
12 aider and abettor.

13 MR. GENTILE: Right.

14 THE COURT: But in order to be an aider and a
15 better, he has to be a coconspirator. That's all I'm saying.
16 So you're not going to --

17 MR. DIGIACOMO: And -- all right. I'm just saying
18 the conspiracy requires knowledge of the agreement. Aiding
19 and abetting doesn't. He could be encouraging his dad, he
20 could be encouraging Deangelo Carroll to do something, not be
21 present for the agreement, not know that the agreement took
22 place, and he'd still be liable because he was encouraging
23 these two individuals.

24 THE COURT: All right. Well -- okay. 12, we're
25 kind of marking.

1 13 --

2 MR. GENTILE: Well, again, I will probably then want
3 to enter an objection on the record to the instruction.

4 THE COURT: We are on the record.

5 MR. GENTILE: Okay. Then I object to this
6 instruction.

7 THE COURT: Well, I'm going to go through and see --
8 and you haven't -- do you have an alternative instruction to
9 12?

10 MR. GENTILE: Yeah. We submitted it. That's our.

11 MR. DIGIACOMO: I didn't see --

12 THE COURT: Where is it?

13 MR. GENTILE: That's what was done -- hold on.
14 That's really our special verdict form. That's what tracks.
15 That's what my -- that's the reason that we even need a
16 special verdict form in this case.

17 THE COURT: Okay. Well, let's hold --

18 MR. GENTILE: They can't make the quantum leap from
19 finding somebody a conspirator under --

20 THE COURT: Yeah, a misdemeanor.

21 MR. GENTILE: -- Count 2, theory 3A, and make the
22 leap to first-degree, they can't do it.

23 MR. DIGIACOMO: To first degree, no.

24 MR. PESCI: No one's arguing that. It's the second.

25 MR. DIGIACOMO: No one's arguing that.

1 MR. PESCI: No one's arguing to first.

2 MR. DIGIACOMO: When you read the instruction, it
3 says in order to hold them liable under conspiracy theory for
4 first-degree murder, you're going to have to find that he
5 premeditated and deliberated the crime. It's -- that
6 instruction is in here, so --

7 MR. ARRASCADA: It's a specific intent crime.

8 MR. GENTILE: If you conspire -- look, here's --
9 here's -- and Mr. DiGiacomo had it for a second and then he
10 went right by it. Battery is a fact question in terms of was
11 it a simple battery --

12 THE COURT: Right. Right.

13 MR. GENTILE: -- or was it something greater than
14 that that they had planned. Okay. And if it was a simple
15 battery, then was it foreseeable, then it would grow to
16 something else. And that's something that the jury has to
17 agree on.

18 THE COURT: Right.

19 MR. GENTILE: But they have to agree on it
20 unanimously.

21 THE COURT: Right.

22 MR. GENTILE: Okay. And so we're getting away
23 from --

24 THE COURT: I have another brilliant idea --

25 MR. GENTILE: Okay.

1 THE COURT: -- which means nobody will like it.
2 Okay. When we get then to the next thing where, you know, you
3 find he conspired to commit murder or they find he conspired
4 to commit battery substantial harm and/or battery with a
5 deadly weapon or simple battery, and then the next question
6 is, you know, does the jury find that whatever you were just
7 saying, was a reasonable and foreseeable outcome of this --

8 MR. GENTILE: Right.

9 THE COURT: -- yes or no.

10 MR. DIGIACOMO: Judge, since when --

11 MR. GENTILE: Yeah, we do it --

12 MR. DIGIACOMO: Since when -- I mean, the law is the
13 general verdict form, so long as all the law contained in the
14 instructions are appropriate. Now we're going to ask the jury
15 to start making specific findings and it's going to be more
16 confusing than just reading the instructions and then they're
17 going to utilize the verdict form to start making legal
18 arguments about this is what the jury actually meant and you
19 can't hold my client liable under these theories because it's
20 so confusing. That's the whole problem here.

21 If we instruct them appropriate on the law, you give
22 them general verdict forms, they hit the general verdict
23 forms, we're not going to have all this post trial litigation
24 about, well, you wrote this wrong, you wrote this wrong.

25 THE COURT: [Inaudible] litigation anyway,

1 Mr. DiGiacomo.

2 MR. DIGIACOMO: Well, that's true, but I'm just
3 saying -- I'm just saying it's just creating full grounds for
4 a mistake to be made in the way that they check off these
5 boxes because it's going to get to a point where it's
6 impossible to understand. And now we're telling them, well,
7 look, under conspiracy -- but then also if it's -- but if you
8 find a different theory of liability, you could get somewhere
9 else even though you found the conspiracy.

10 MR. GENTILE: Yeah, that's the law. You're right.

11 MR. DIGIACOMO: So what you're saying is why even
12 have these. Let's throw away this instructions. We'll give
13 them one verdict form and tell them to go back --

14 MR. GENTILE: No.

15 THE COURT: Mr. DiGiacomo.

16 MR. GENTILE: You brought the indictment the way you
17 brought it.

18 THE COURT: As clever as that is, and frankly, I
19 know you never -- or maybe you did practice civil law --
20 special verdict forms are used --

21 MR. DIGIACOMO: True.

22 THE COURT: -- all the time and, in my experience,
23 they clarify complicated cases as opposed to making them more
24 confusing. So in my experience -- and, you know, obviously, a
25 lot of the instructions in civil cases are as complicated, if

1 not more complicated, than these. The jurors don't get, you
2 know, so confused and fill out the verdict forms incorrectly.
3 So I'm not worried about a danger of more confusion. And,
4 frankly, if it's requested by the defense on the verdict form,
5 unless it's filled out incorrectly, then they can't very well
6 object to the verdict form later if we're doing --

7 MR. DIGIACOMO: No, but it's going to be filled out
8 and then it's going to be a question of whether they
9 deliberated about it back there.

10 MR. PESCI: And, Judge, he's kind of mixing second
11 and first together. He complained about 12 because it says
12 that they can make the logic leap to first. That's not the
13 argument. That's not the law. It's that this gets you to
14 second, not first. We're not standing up and saying that
15 conspiring to commit battery gets you to first-degree murder.
16 We're not. That's not the law. That's not what we're asking.

17 MR. GENTILE: But this instruction --

18 MR. PESCI: It gets you to second-degree murder.

19 MR. GENTILE: -- allows for that.

20 MR. DIGIACOMO: No, it doesn't.

21 MR. PESCI: This one talks about first-degree murder
22 and lying in wait.

23 MR. DIGIACOMO: We could write a different one for
24 second-degree murder, but --

25 MR. PESCI: And it's specific as to Mr. H because

1 Little Lou's not facing that lying in wait analysis.

2 MR. GENTILE: We're not talking about a lying in
3 wait instruction. We're talking about No. 12.

4 MR. PESCI: That's in 12.

5 THE COURT: Well, 12, let's see what comes later and
6 maybe that explains 12.

7 13, does anyone have a problem with 13? That looks
8 fine to me.

9 MR. GENTILE: No.

10 THE COURT: 14, anyone will have a problem --

11 MS. ARMENI: Your Honor, we just ask that under the
12 last sentence --

13 THE COURT: Right.

14 MS. ARMENI: -- that there's another sentence that
15 says a simple battery is a misdemeanor.

16 MR. DIGIACOMO: That's fine.

17 THE COURT: Do you want a simple battery is a
18 misdemeanor or just battery --

19 MR. GENTILE: Battery is a misdemeanor.

20 MS. ARMENI: That's fine.

21 THE COURT: -- is a misdemeanor? Okay.

22 MR. DIGIACOMO: Okay.

23 THE COURT: 15, A conspiracy is an agreement. Does
24 anyone have a problem with 15?

25 MR. GENTILE: Wait, just a second.

1 MS. ARMENI: We don't have a disagreement, but we
2 wanted something added.

3 THE COURT: Okay.

4 MS. ARMENI: This would be the last sentence.
5 However, one cannot join the conspiracy after the completion
6 of the crime that was its object.

7 THE COURT: That's fine.

8 MR. DIGIACOMO: Yeah, that's right.

9 THE COURT: Would you say that again, Ms. Armeni?

10 MS. ARMENI: Sure. However, one cannot join the
11 conspiracy after the completion of the crime that was its
12 object.

13 MR. ARRASCADA: And, actually, Judge, we want to go
14 a step further. I believe their sentence, line 14 through 16,
15 should be stricken, that it does not end upon the completion
16 of the crime, the conspiracy continues until they've
17 successfully gotten away and concealed the crime. You've
18 already ruled on this, Judge --

19 MR. DIGIACOMO: Yes, you did. You did.

20 MR. ARRASCADA: -- and said there are two
21 conspiracies, and they can argue that the wire can show Little
22 Lou was part of the original conspiracy, yet --

23 THE COURT: They can -- here's what I ruled, and if
24 they go around this in argument, I want everybody to object
25 and they will be reprimanded. Here's what I ruled. The wire,

1 Little Lou's knowledge of the crime and his discussion can be
2 evidence of the conspiracy. You know, his interest in trying
3 to do away with the coconspirators can be evidence of Little
4 Lou's involvement and motive in the conspiracy. It is not
5 evidence of Mr. Hidalgo, Jr.'s involvement in the conspiracy
6 and cannot be argued by the State as evidence of Mr. Hidalgo's
7 involvement in the conspiracy.

8 MR. DIGIACOMO: Just the solicitation portions of
9 it. That's what you ruled.

10 THE COURT: Right. Just the solicitation part.

11 MR. DIGIACOMO: And we understand that and --

12 THE COURT: To me, that shows Little Lou's knowledge
13 of the crime and why is he so concerned about killing the
14 coconspirators if he wasn't involved in the crime in the first
15 place. Now, obviously you can argue --

16 MR. ARRASCADA: It's a jury question.

17 THE COURT: -- it's because he loved Anabel or he's
18 trying to protect his father or whatever you want to argue,
19 but to me that's a question --

20 MR. DIGIACOMO: Can Ms. Armeni just finish that so I
21 can type it?

22 MR. GENTILE: May I -- Your Honor, in our
23 instructions, I proposed this language and, frankly, I think
24 it really succinctly states the entire theory of defense as
25 argued by one more instruction of -- of my client, and this

1 would be the instruction.

2 A conspiracy begins when two or more persons enter
3 into an unlawful agreement. A conspiracy continues beyond the
4 accomplishment of its objective. However, a person cannot
5 become a member of a conspiracy after the object of the
6 conspiracy has been accomplished. If a person was not a
7 member of the conspiracy before its objective was accomplished
8 but assists the conspirators afterwards, he's an accessory
9 after the fact. That is an absolutely accurate statement of
10 the law and that is our theory of defense.

11 MR. PESCI: He says afterwards. Doesn't that
12 delineate after the beginning of it as opposed to after the
13 end of the conspiracy? They could get confused in thinking
14 that they joined in --

15 MR. GENTILE: I'd be happy to --

16 THE COURT: Right.

17 MR. GENTILE: No, it says before the objective was
18 accomplished.

19 MR. DIGIACOMO: Did I get the wrong one or -- is
20 that in one of your proposed, because I haven't seen it?

21 MR. GENTILE: Yeah. Yeah, it's right here.

22 MR. DIGIACOMO: The one you e-mailed me here didn't
23 have that one in it.

24 MR. GENTILE: It should have.

25 THE COURT: Is the State fine with that one?

1 MS. ARMENI: It did.

2 MR. DIGIACOMO: Well, hold on. Conspiracy begins
3 when two or more persons enter into an unlawful agreement.
4 Well, I'd ask that the next -- after a conspiracy begins with
5 two or more persons enter into an unlawful agreement --

6 THE COURT: Well, I think it should be for an
7 unlawful purpose because how are they going to know what an
8 unlawful agreement is?

9 MR. GENTILE: Okay. An agreement for an unlawful --
10 well, actually -- okay.

11 MR. DIGIACOMO: Into an agreement for an unlawful
12 purpose.

13 THE COURT: I think that's better.

14 MR. GENTILE: I'm fine with that.

15 THE COURT: Well, don't you want -- to me this is
16 helpful to the defense. To be guilty of conspiracy, a
17 defendant must intend to commit or to aid in the commission of
18 the specific crime agreed to.

19 MR. GENTILE: Right. Exactly.

20 THE COURT: You want that.

21 MR. DIGIACOMO: Oh, no, I thought --

22 MR. GENTILE: No, I'm not trying -- I'm not
23 objecting -- we're only talking about the last paragraph.

24 MR. DIGIACOMO: We're changing the last paragraph.

25 THE COURT: Oh, you want all of that added. Okay.

1 I'm fine with that.

2 MR. DIGIACOMO: Yeah. What I was going to say is a
3 conspiracy begins when two or more persons enter -- two or
4 more persons enter into an agreement for an unlawful purpose.
5 A conspiracy continues beyond the -- how about a conspiracy --
6 does not end upon the completion of the crime. Conspiracy
7 continues until the coconspirators have successfully gotten
8 away with the concealed crime.

9 MR. GENTILE: Okay. I can live with that.

10 MR. DIGIACOMO: Right. And then say, however, a
11 person cannot become a member of a conspiracy after the object
12 of the conspiracy has been accomplished. If a person is not a
13 member of the conspiracy before its objective was accomplished
14 but assists the coconspirators afterwards, he's an accessory
15 after the fact.

16 MR. GENTILE: I can live with that.

17 MR. DIGIACOMO: You can live with that, right?

18 MR. GENTILE: I can live with that.

19 THE COURT: All right. That's great. Okay.

20 16, Once a person joins a conspiracy -- don't mind
21 me.

22 MS. ARMENI: Dominic.

23 MR. GENTILE: I just lost one of my -- all right.
24 Great, so we'll take -- the last paragraph of No. 15 will
25 read --

1 MR. DIGIACOMO: We're going to fix it and then when
2 we print it out, we'll all read it.

3 MR. GENTILE: Okay. Good.

4 THE COURT: You know, if it was just me and the
5 defendants and Mr. Pesci, we'd probably have done the trial
6 two weeks ago and Ms. Armeni and Mr. --

7 MR. DIGIACOMO: Which one of them? Come on.

8 THE COURT: I pick Adams.

9 MR. ARRASCADA: What? Judge --

10 MR. PESCI: 16. Once a person --

11 (Off-record colloquy)

12 THE COURT: All right. 16, Once a person joins a
13 conspiracy, any objection to this one?

14 MR. GENTILE: No.

15 THE COURT: Okay. 17.

16 MR. DIGIACOMO: We do, but -- it's ours.

17 MR. GENTILE: It's yours.

18 THE COURT: 17, It is not necessary in proving a
19 conspiracy to show a meeting. This looks fine.

20 MR. GENTILE: Right.

21 THE COURT: 18, Every member of a criminal
22 conspiracy. Are we good --

23 MR. GENTILE: Wait, wait, wait. This is -- you
24 know, I've got to tell you something. Unless we're going to
25 define general and specific intent --

1 MR. DIGIACOMO: We are on the next one.

2 MR. GENTILE: Okay.

3 MR. DIGIACOMO: The next instruction will define
4 murder and there's actually, I think, three more ones that
5 specifically define what the heck we're talking about.

6 MR. GENTILE: All right. But the next one is the
7 one that I have a big objection on.

8 MR. PESCI: So as far as 18 --

9 MS. ARMENI: Are we okay with 18?

10 MR. GENTILE: Well, I think you need to take them
11 all together.

12 THE COURT: Okay. 18 --

13 MR. GENTILE: I don't think -- do we have an
14 instruction that defines specific intent?

15 THE COURT: I do not believe there is one in the
16 pack.

17 MR. DIGIACOMO: I don't think anyone offered one.

18 MR. GENTILE: Well, we will need to do that.

19 THE COURT: Okay. Do we have a suggestive one?
20 Because that's not part of the normal instructions.

21 MR. PESCI: We do define which ones are specific
22 versus general. We enumerate that.

23 MR. GENTILE: Right. But what good is that if you
24 don't tell them what it means?

25 THE COURT: So you want a specific intent crime

1 means blah, blah, blah; general intent crime means, blah,
2 blah, blah? That might actually be more confusing.

3 MR. PESCI: That can get very dangerous.

4 MR. GENTILE: Well, it can't be because if you're
5 going to tell them one is specific and one is general and
6 they're back there and they don't know the difference between
7 the two --

8 MR. PESCI: Well, it's just that these crimes are
9 specific, this defendant has to specifically intend that this
10 crime occurs in order to be found guilty.

11 MR. GENTILE: But the problem is that if you don't
12 tell them what specific intent is, if you don't define it --
13 hold on a second.

14 THE COURT: Well, I've got a brilliant idea, which
15 means nobody will like it again. Why don't we say on the
16 form, Murder in the first degree -- on Instruction 18, just
17 tell -- because, otherwise, it's like a law school exam.
18 They're going to get back in there, is this specific intent,
19 is this -- I would rather then just on 18 remind them again
20 murder is a specific intent crime, murder in the second degree
21 is a general intent crime, battery is a general intent crime,
22 blah, blah, blah.

23 MR. DIGIACOMO: That's what No. 19 says.

24 MR. GENTILE: Judge, in this case --

25 THE COURT: But let's put it on the same instruction

1 and then say it again in 19 that defines it more.

2 MR. ARRASCADA: Back to what Mr. Gentile said, what
3 is specific intent --

4 MR. GENTILE: Yeah, I mean --

5 MR. ARRASCADA: -- I mean, general intent?

6 THE COURT: Yeah, but why --

7 MR. GENTILE: When they're making that decision,
8 they have to decide whether -- a specific intent offense is
9 one that requires an intent to break that law, okay.

10 THE COURT: Right. I know what it is.

11 MR. GENTILE: A general intent -- well, but my point
12 is they don't know what it is. And so -- and I could see on
13 the facts of this case --

14 THE COURT: Here's another idea that nobody will
15 like. Let's put a specific intent crime is this, a general
16 intent crime is that, you and -- all on 18, You are instructed
17 that murder in the first degree is a specific intent crime.
18 You are instructed that murder in the second degree, you know,
19 battery with a deadly --

20 MR. DIGIACOMO: Battery with a deadly weapon,
21 battery --

22 THE COURT: Well, what do you want then?

23 MR. DIGIACOMO: What's the proposed language?

24 MR. GENTILE: I'm looking for it right now.

25 THE COURT: I think if we incorporate all of that,

1 it's fine. Then they won't be -- or just put your language
2 and just use 19 and 20 on the State's to then say it. Does it
3 say anywhere battery is a general intent crime?

4 MR. GENTILE: Here. Here we go.

5 MR. DIGIACOMO: It does. 21, Judge.

6 MR. GENTILE: Let's use -- let's use -- oh, here's a
7 good case. Bolden. Let's use Bolden. It says, Specific
8 intent is the intent to accomplish the precise act which the
9 law prohibits.

10 MR. PESCI: Except for Justice Rose's second degree
11 kidnapping was specific.

12 MR. GENTILE: Let's just put it in there.

13 MR. DIGIACOMO: Okay. But then -- the problem is
14 never defining specific intent. Define general intent, the
15 jury's going to understand.

16 MR. PESCI: Right.

17 MR. GENTILE: I'll get that for you in a second, but
18 specific intent is the intent to accomplish the precise act
19 which the law prohibits. All right. Now, I'll find one
20 for -- and that's Bolden --

21 MR. DIGIACOMO: I don't have a problem with that
22 definition.

23 THE COURT: All right.

24 MR. GENTILE: Okay.

25 THE COURT: I don't have a problem.

1 MR. PESCI: Can you read that again.

2 MR. GENTILE: Specific intent is the intent --

3 THE COURT: Is the intent to accomplish the precise
4 act which the law prohibits.

5 MR. GENTILE: Right, exactly. Now we'll define
6 general intent.

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

8 MR. GENTILE: And now general intent, we'll define
9 that in a second.

10 MR. DIGIACOMO: That's a problem with general
11 intent --

12 THE COURT: General intent is everything else.

13 MR. DIGIACOMO: Right. Literally you could almost
14 say it that way and that's almost the best way to describe it.

15 THE COURT: Have we found general intent yet?

16 MR. GENTILE: I'm looking for it right now.

17 Basically a general intent offense is any act that's committed
18 wilfully, but hold on, let's see if we can find a Nevada case.

19 Do we have a wilfully instruction?

20 THE COURT: Yeah, I'm sure there's something that
21 has that.

22 MR. PESCI: The Biford instruction has wilful.

23 THE COURT: Why don't we pass this one for right
24 now. I can ask my law clerk --

25 MR. GENTILE: You know what, Your Honor, it seems

1 like all other cases point to this general wilfully
2 instruction when they're talking about the general
3 instruction.

4 THE COURT: So what do you want --

5 MR. GENTILE: So any offense that's committed --

6 THE COURT: So a general intent --

7 MR. GENTILE: Do you know what, if you want to say a
8 general intent offense is anything else, I'm fine with that,
9 really. Are you okay with that?

10 MR. DIGIACOMO: I literally think that's true.

11 MR. GENTILE: Yeah, I think it's probably true.

12 THE COURT: All right. Is everybody fine with that,
13 a general intent offense is everything else?

14 MR. GENTILE: Yeah.

15 MR. DIGIACOMO: A general intent offense is one
16 which is -- does not require specific intent. It's true.

17 THE COURT: Is that --

18 MR. DIGIACOMO: Maybe the law professor back there
19 can give us a better one.

20 THE COURT: So do you want, A general intent offense
21 is one which does not require specific intent --

22 MR. GENTILE: Well, it has to be done knowingly and
23 wilfully, but does not require specific intent.

24 THE COURT: A general offense is everything else?

25 MR. GENTILE: Yeah, it can't be accidental. It's

1 got to be knowing and wilful.

2 MR. ARRASCADA: A general intent is -- yeah, knowing
3 and wilful.

4 THE COURT: All other offenses --

5 MR. DIGIACOMO: A general intent offense is one that
6 does not require specific intent, because in the definition it
7 says wilful and all of that other --

8 MR. GENTILE: Yeah, I'm okay with that. I'm okay
9 with that.

10 MR. DIGIACOMO: General intent offense is one that
11 does --

12 THE COURT: Which does not -- or one that does not.

13 MR. DIGIACOMO: It doesn't require specific intent.

14 THE COURT: Okay. All right. 19, are we good with
15 this?

16 MR. GENTILE: Now, hold on a second.

17 MR. ARRASCADA: Your Honor, lines 4 and 5 --

18 MR. DIGIACOMO: Oh, I'm sorry. Yeah, this is my old
19 one. It just needs to get cut.

20 MR. ARRASCADA: Where it says the and/or --

21 MR. DIGIACOMO: Yeah.

22 MR. ARRASCADA: -- that should all be -- line 5
23 should be stricken to line 6.

24 MR. DIGIACOMO: Sorry. I cut and pasted. You're
25 right. It's out.

1 THE COURT: Okay. That was --

2 MR. GENTILE: Hold on just a second.

3 THE COURT: I'm glad you caught that. I would have
4 caught it when I read it though.

5 MR. ARMENI: Can we add -- Marc, can you add
6 specific intent offense?

7 MR. DIGIACOMO: It's the first line.

8 THE COURT: So there should be a period after kill
9 on line 5 --

10 MR. DIGIACOMO: A specific intent, instead of --
11 specific intent crime, not offense crime. Okay.

12 THE COURT: All right. 20, then, is everybody good
13 with 20?

14 MR. GENTILE: I have -- I have a problem still with
15 19, second paragraph.

16 THE COURT: Okay.

17 MR. GENTILE: And here's why. We get back to, I
18 believe, a need to address the conspiracy to commit a simple
19 battery here. This says that a -- murder in the second degree
20 may be a general intent crime. That's true. As such,
21 defendant may be liable under conspiracy theory or aiding and
22 abetting theory for murder of the second degree for an act
23 committed by a coconspirator if the killing is one of the
24 reasonably foreseeable and probable and natural -- well, I
25 guess that's --

1 MR. DIGIACOMO: Consequences of the object of the
2 conspiracy --

3 THE COURT: It's right.

4 MR. GENTILE: That's an accurate statement of the
5 law.

6 THE COURT: Yeah, I mean, you can argue, you know,
7 it was a simple -- I mean, I don't think that's what you're
8 going to argue, but --

9 MR. DIGIACOMO: How do they know? You know, how do
10 they know Deangelo's going to go do this?

11 THE COURT: 20, Where two or more persons are
12 accused of committing a crime together, is everybody all right
13 with this, the aiding and abetting instruction?

14 MR. GENTILE: Okay.

15 THE COURT: All right. 21 is foreseeable general
16 intent crimes.

17 MR. GENTILE: Yeah, I think you've got to think --
18 well, hold on now. I highlighted this --

19 THE COURT: Well, we don't -- you haven't charged --
20 did you charge Little Lou with conspiracy to commit
21 second-degree -- solicitation?

22 MR. DIGIACOMO: No, I didn't -- you can't do --

23 THE COURT: Right. So then why do we even have --

24 MR. DIGIACOMO: The only reason I have that there is
25 because nowhere in here did it ever say solicitation to commit

1 murder is a specific intent crime and I didn't want the
2 jury -- because in every other crime we're talking about in
3 this case, we define that one's general intent, this one's
4 specific intent. There's no --

5 THE COURT: Okay.

6 MR. DIGIACOMO: -- he needs the actor in that case.

7 THE COURT: Right. That's why I'm saying, it's kind
8 of confusing to have it on this same one.

9 MR. DIGIACOMO: I'd be happy to -- I put it on there
10 for them so that somewhere in here it said it's a specific
11 intent crime.

12 THE COURT: Right. Do you guys care if it's on
13 here, defense, or would you rather just have first degree
14 murder is a specific intent crime and then in a separate
15 instruction solicitation to commit murder is a specific --

16 MR. ARRASCADA: We actually submitted a separate
17 solicitation instruction, Your Honor --

18 THE COURT: Okay.

19 MR. ARRASCADA: -- on the intent, so we would like
20 it struck.

21 MR. DIGIACOMO: All right. I'll strike it out.
22 Okay. I don't care.

23 THE COURT: Let's strike that and we'll make a note
24 that we still have to have a specific intent instruction on
25 solicitation.

1 Okay. We need to rewrite 22.

2 MR. GENTILE: All right. No. 22 is just wrong.

3 THE COURT: I said we need to rewrite it.

4 MR. GENTILE: Yeah, conspiracy to commit a crime has
5 got to be out of there.

6 MR. DIGIACOMO: I don't know how you're going to
7 rewrite that, but okay.

8 THE COURT: Well, okay --

9 MR. DIGIACOMO: Are we going to do a transition
10 instruction for every conspiracy? Because it's not. The
11 conspiracy's not a lesser -- they're not all lesser included
12 of each other.

13 MR. GENTILE: No, and we're not talking about that.

14 THE COURT: Okay. Here's what I would proposed --

15 MR. DIGIACOMO: Well, if you just take out crime and
16 put battery, battery with a deadly or battery with
17 substantial?

18 THE COURT: No. Why don't we just take out the
19 crime of conspiracy to commit murder includes the crime of
20 conspiracy to commit a crime, because if it's a conspiracy to
21 commit murder -- you know.

22 You may find the defendant guilty of conspiracy to
23 commit battery with a deadly weapon and/or battery with
24 substantial bodily harm if, right, you have found -- not found
25 beyond a reasonable doubt the defendant is guilty of

1 conspiracy to commit murder; and, two, all 12 of you are
2 convinced beyond a reasonable doubt that the defendant is
3 guilty of the crime of conspiracy to commit battery with a
4 deadly weapon or battery with substantial bodily harm.

5 And then you may do the same thing. You may find
6 the defendant guilty of conspiracy to commit battery: One, if
7 you have not found beyond a reasonable doubt that the
8 defendant is guilty of conspiracy to commit murder and/or
9 conspiracy to commit battery with a deadly weapon and/or
10 conspiracy with substantial bodily harm; and, two, all 12 of
11 you are convinced beyond a reasonable doubt that the defendant
12 is guilty of the crime of conspiracy to commit battery.

13 MR. GENTILE: That's perfect.

14 THE COURT: Thank you. And then if you are
15 convinced beyond a reasonable doubt that the crime of
16 conspiracy -- and then you must give the --

17 MR. DIGIACOMO: I understand what you're saying.

18 THE COURT: -- benefit of the doubt.

19 MR. DIGIACOMO: I object for the record, but I
20 understand.

21 THE COURT: All right. You'll make the changes
22 notwithstanding --

23 MR. DIGIACOMO: Yeah, my vehement objection, I
24 will --

25 THE COURT: I said [inaudible], but vehement is

1 better.

2 MR. GENTILE: 23 should go out because at this point
3 in time it's --

4 THE COURT: Right. 23 we'll pull.

5 24, Battery means any wilful and unlawful use of
6 force or violence upon a person.

7 MR. GENTILE: Why don't you address it?

8 MS. ARMENI: Your Honor, we separated them. We
9 thought that they should be battery -- simple battery should
10 be on one jury instruction. That's how we did it.

11 THE COURT: That's fine. Does the State have a
12 problem with making this three instructions?

13 MR. DIGIACOMO: Three or two?

14 MS. ARMENI: I think our exact wording was --

15 MR. PESCI: Just tell us where to cut it off on this
16 because it's probably easy to cut and paste.

17 MS. ARMENI: It was towards the back.

18 MR. GENTILE: You know what, let me make -- I think
19 we could save this one.

20 THE COURT: Yeah, this looks fine to me.

21 MR. GENTILE: I think you need to put in here
22 somewhere that battery is a misdemeanor, a battery which
23 occurs with a deadly weapon is a felony, a battery results in
24 substantial bodily harm is a felony.

25 MR. DIGIACOMO: You want to add one line that says a

1 simple battery is a misdemeanor?

2 MR. GENTILE: Well, I -- you want to use the word
3 simple?

4 THE COURT: Well, I would do it this way, battery
5 means any wilful and unlawful use of force. A battery which
6 occurs with a deadly weapon is a felony, a battery which
7 occurs with substantial bodily harm is a felony, substantial
8 bodily harm means a battery --

9 MR. DIGIACOMO: Without a deadly weapon or
10 substantial bodily harm is --

11 MR. GENTILE: Is a misdemeanor.

12 THE COURT: Is a misdemeanor.

13 MR. DIGIACOMO: -- a misdemeanor.

14 MR. GENTILE: Yeah, there you go.

15 (Off-record colloquy)

16 MR. PESCI: Are we on 25?

17 MR. ARRASCADA: Well, I'm thinking Mr. Arrascada
18 will want to weigh in on 25. Let's just pick 25 -- let's just
19 skip 25 until he gets back.

20 Move on to 26, Mere presence at the scene of a
21 crime.

22 MR. GENTILE: Yeah, that's fine.

23 THE COURT: That's fine.

24 27.

25 MR. PESCI: Mr. Adams, do you have any problem with

1 26?

2 MR. ADAMS: I don't know.

3 MR. DIGIACOMO: Yeah, I don't know why this
4 transition instruction wound up later than the first
5 transition instruction, but, hey, it's --

6 THE COURT: Okay. 27.

7 MR. DIGIACOMO: 27's your standard first to second
8 transition instruction. And 28 is your standard second to
9 involuntary instruction.

10 MR. GENTILE: I think you've got a typo on this
11 unless the one that I have has been cleared.

12 THE COURT: All right. Mr. Arrascada's back. Let's
13 go back to Instruction 25 --

14 MR. ARRASCADA: Thank you, Your Honor.

15 THE COURT: -- which is the solicitation to commit
16 murder instruction that the State has.

17 MR. ARRASCADA: Your Honor, that's a correct
18 statement of the law and then we have a second instruction
19 that addresses it being a specific intent crime to commit
20 murder.

21 THE COURT: Why don't we just incorporate the two
22 and say --

23 MR. DIGIACOMO: Yeah, but it has to be a specific
24 intent to kill because there's no element of premeditation and
25 deliberation, so it's just the specific intent to kill.

1 MR. ARRASCADA: It's a murder. Judge, I throw it
2 out to you this way, how do you solicit someone to commit a
3 second-degree murder? You don't. You have to -- you have to
4 solicit someone to commit first-degree murder.

5 MR. DIGIACOMO: No, it's an attempt murder.

6 MR. ARRASCADA: Now, there's other states that have
7 a second-degree murder solicitation law. We don't have that.
8 So your solicitation has to be to commit a first-degree
9 murder.

10 MR. DIGIACOMO: No, it --

11 MR. ARRASCADA: You have to have the actual intent
12 to have that committed.

13 MR. DIGIACOMO: We instruct that all the time.

14 THE COURT: Well, I think the solicitation to commit
15 murder is you must have the specific intent that a killing be
16 done.

17 MR. DIGIACOMO: Right. You don't have to have
18 premeditation, deliberation. Just like attempt murder, we
19 instruct premeditation, deliberation are not elements of --

20 THE COURT: So let's combine your instruction partly
21 with 25 --

22 MR. DIGIACOMO: Yeah, I was going to offer to say
23 solicitation to commit murder requires the specific intent to
24 kill.

25 MR. ARRASCADA: And we would ask that it be the

1 specific intent to commit first-degree murder.

2 THE COURT: Okay. I think it's the specific intent
3 to kill, so I'm going to direct Mr. DiGiacomo to make that
4 change on No. 25.

5 MR. DIGIACOMO: Okay.

6 THE COURT: 26 we said was okay.

7 27 is --

8 MR. DIGIACOMO: Hold on. Wasn't that 26 we just --

9 THE COURT: No.

10 MR. DIGIACOMO: No, that was 25.

11 THE COURT: 27. Any objection to 27?

12 MR. GENTILE: The one that I have, which is what
13 Mr. DiGiacomo sent me the other day, on line 3, which starts
14 with the word "committed murder", it's --

15 THE COURT: Right.

16 MR. GENTILE: -- mine says, You shall select the
17 degree murder.

18 THE COURT: Oh, mine says first-degree murder, so
19 it's fine.

20 MR. GENTILE: Okay.

21 MR. DIGIACOMO: As your verdict. I don't remember
22 changing it, but I must have.

23 THE COURT: 28, Crime of murder includes a --

24 MR. DIGIACOMO: Oh, no, this is the one that I said
25 you shall -- you shall select the degree of murder as your

1 verdict. You're right.

2 THE COURT: The crime of murder includes the crime
3 of involuntary manslaughter.

4 MR. GENTILE: What's that? What number?

5 MS. ARMENI: 28.

6 MR. DIGIACOMO: 28.

7 MR. GENTILE: I don't even have that.

8 THE COURT: It's the one if you're not convinced
9 it's a murder, then it's -- but you are convinced it's an
10 involuntary manslaughter.

11 MR. GENTILE: My No. 28 is, If you find of first or
12 second degree, then you have to make a determination as to
13 whether it was with a deadly weapon.

14 THE COURT: No.

15 MR. GENTILE: So I got it wrong. Okay.

16 THE COURT: All right. 27, You are instructed that
17 if you find the State has established that the defendant has
18 committed first-degree murder, are we good with that?

19 The only thing I don't like is on No. 28, line 10,
20 If you are convinced beyond a reasonable doubt that a crime
21 has been committed by the defendant.

22 MR. DIGIACOMO: I didn't know what to write in there
23 because --

24 THE COURT: Yeah, I don't like "crime."

25 MR. DIGIACOMO: But you have a reasonable doubt as

1 to whether such crime is murder or involuntary manslaughter.

2 THE COURT: Okay.

3 MR. DIGIACOMO: I mean, that's --

4 THE COURT: Yeah, I mean, I don't know what else to
5 put, but -- okay. Any problem with 28?

6 MR. ARRASCADA: No, Your Honor.

7 THE COURT: All right. 29 is the deadly weapon, You
8 must determine if a deadly weapon was used.

9 30 defines deadly weapon. I think that's fine.

10 31 is, Each may be liable for the deadly weapon.

11 MS. ARMENI: Hold on, Your Honor.

12 MR. GENTILE: The law changed on this, though,
13 that's the problem, so I want to see the second --

14 MR. DIGIACOMO: This is the new Brooks instruction.

15 MS. ARMENI: Our instruction is different.

16 MR. ARRASCADA: Judge, I think ours is a more
17 concise statement and clear for the jury.

18 THE COURT: What does your say?

19 MR. ARRASCADA: Mr. Gentile will read it. .

20 MR. GENTILE: It says, An unarmed defendant charged
21 as an aider or abettor or coconspirator cannot be held
22 criminally responsible for the use of a deadly weapon unless
23 he has actual or constructive control over the deadly weapon.
24 An unarmed defendant does not have constructive control over a
25 weapon unless the State proves he had knowledge the armed

1 defender was armed and he had the ability to exercise control
2 over the firearm. That comes right out of the case.

3 MR. DIGIACOMO: Now, that's the old one. This is
4 the new case right here. An unarmed defendant uses a deadly
5 weapon when the unarmed defender is liable to the offense,
6 another person liable to the defense is armed with and uses a
7 deadly weapon in the commission of the crime, and the unarmed
8 defender had knowledge of the use of the deadly weapon.

9 That's what Brooks says, the new instruction is.

10 THE COURT: I think you're right.

11 MR. GENTILE: We got it. Actually I submitted it in
12 my trial brief.

13 MR. DIGIACOMO: Isn't it Brooks?

14 MS. ARMENI: Yeah, I think it's Brooks.

15 MR. DIGIACOMO: I remember, because you were -- you
16 gave the Brooks instruction before Brooks came out.

17 MS. ARMENI: Yeah, Brooks, 659.

18 THE COURT: I did?

19 MR. DIGIACOMO: Yeah.

20 MR. ARRASCADA: It was brilliant.

21 MR. DIGIACOMO: What number is it?

22 MS. ARMENI: We took it out of Brooks, too. 659.

23 MR. DIGIACOMO: 659 what, P 2d?

24 MS. ARMENI: P 3d. It's 180, P 3d.

25 MR. DIGIACOMO: Oh, it's 180 P 3d?

1 MS. ARMENI: Yeah, 180 P 3d, 657. 659 is the direct
2 site.

3 MR. GENTILE: Just a second, please.

4 THE COURT: I like to take it directly from the case
5 because then I'm --

6 MS. ARMENI: I thought we did, but maybe we didn't.

7 THE COURT: -- you know, less likely of being
8 overturned.

9 MR. DIGIACOMO: There's two different ones.

10 MR. GENTILE: Let me pull up the case.

11 THE COURT: Here's the problem, as a coconspirator
12 that wasn't at the scene, there's no way he could have
13 exercised control over the deadly weapon. So by definition
14 you would not be able to have a conviction of murder with use
15 of a deadly weapon because -- if that's the instruction you
16 give. I mean, there's no evidence if that's the right
17 instruction that either one of them had control of the deadly
18 weapon.

19 MR. GENTILE: Actually, this was the instruction
20 that Brooks -- the one that we submitted is the instruction
21 that was proffered by Brooks and not given by the Court.

22 MR. DIGIACOMO: Right. But then -- you're right.
23 No, you're right, that's the instruction that was offered but
24 not given, but then they said that's not the one we're going
25 to give, either. Here's the one we're going to give, and

1 that's the one that I typed up.

2 MR. GENTILE: I don't think -- I'd have to go and
3 revisit Brooks, but I don't think the Court came back with it
4 as an instruction.

5 THE COURT: Will you go pull the Brooks case for me.
6 Do you guys have the site?

7 MS. ARMENI: Yes, it's 180 P 3d, 657.

8 THE COURT: All right. While he does that, let's
9 hold this instruction in abeyance, 31 in abeyance.

10 32 is the -- constitute a crime charged, joint
11 operation of an act and blah, blah, blah.

12 MR. GENTILE: No problem.

13 THE COURT: That one looks fine.

14 33, The defendant is presumed innocent, is the
15 standard reasonable doubt instruction.

16 MR. ARRASCADA: Your Honor, we wanted it separated.
17 You have two constitutional rights. You have a presumption of
18 innocence which should be one instruction and then the
19 reasonable doubt instruction should be on its own.

20 THE COURT: Any -- I don't care.

21 MR. DIGIACOMO: I don't care either. We're not
22 changing the language.

23 THE COURT: No.

24 MR. DIGIACOMO: The one thing that I did notice is
25 they went with the "unless," even though the statute says

1 "until" -- I don't really care. Do they want "unless" instead
2 of "until"?

3 THE COURT: Do you want unless or until? I don't
4 like to change the reasonable doubt at all because --

5 MR. DIGIACOMO: I don't either, but they also were
6 asking, well, until implies that you're going to get there as
7 opposed to unless.

8 THE COURT: Okay. Do you want unless?

9 MR. ARRASCADA: Unless, please.

10 THE COURT: Or unless and until?

11 MR. ARRASCADA: Unless.

12 THE COURT: Okay. Mr. DiGiacomo, you'll change
13 that.

14 MR. DIGIACOMO: I'll change that and add an
15 instruct --

16 THE COURT: And make it two instructions.

17 MR. DIGIACOMO: Yep.

18 THE COURT: 34 is guilt or innocence of others. Are
19 we all okay with this?

20 MS. ARMENI: Yes.

21 THE COURT: 35 is the subject of punishment.

22 36 is direct and circumstantial evidence. Are we
23 okay with that?

24 37 is slight evidence that a conspiracy existed.

25 MR. GENTILE: This is a confusing instruction.

1 Frankly -- this is the one that permits the use of the
2 hearsay?

3 THE COURT: Right.

4 MR. GENTILE: I -- well, let me think this through
5 for just one second.

6 MR. ARRASCADA: Judge, to address the top, line 2,
7 slight should be taken out. That's lessening their burden of
8 proof. It should be when there is evidence that a conspiracy
9 exists.

10 MR. PESCI: That's as to the concept of the
11 conspiracy of the law.

12 MR. GENTILE: But this is conspiracy law in an
13 evidentiary sense. This is in the conspiracy law in a
14 liability sense. And, frankly, I don't see any need for this
15 jury to -- I mean, it really -- it really -- how do I put it?
16 It really disfavors the defendant more to not have the
17 instruction. We're basically -- you have basically ruled that
18 they can consider this evidence. It is true that you make the
19 finding in terms of admissibility, okay.

20 Bergali [phonetic] and the cases in Nevada that
21 follow Bergali makes that clear. And so I really don't think
22 that this -- at this point in time it's a jury issue anymore.
23 The jury can consider that evidence, period.

24 MR. DIGIACOMO: One, he's wrong, but the jury has to
25 make a determination that there's evidence of a conspiracy.

1 They're required to do that before -- under, They can consider
2 these. You make the legal determination as to admissibility,
3 but ultimately the question is for this jury, one.

4 Two, juries have to be instructed on the use of the
5 hearsay language or the hearsay instruction, particularly in
6 this particular case, where there are certain things that
7 cannot be utilized for that purpose and the jury needs to be
8 instructed as to that.

9 THE COURT: Yeah, I'm inclined to give the
10 instruction.

11 MR. GENTILE: I object to the first two paragraphs.
12 I don't have a problem with respect to the third, although --

13 THE COURT: Okay. My only thought on the third
14 paragraph is after he's withdrawn from the conspiracy, how do
15 they know when that was?

16 MR. GENTILE: Right.

17 THE COURT: Should we put something in there like,
18 You are instructed that Deangelo Carroll withdrew from the
19 conspiracy once he was contacted by law enforcement or once he
20 agreed to work with law enforcement? Now --

21 MR. GENTILE: There's a different issue here, too,
22 and here's where the confusion is. Do you remember we get
23 back to Professor Friedland and the question of common ground?

24 THE COURT: Right, right.

25 MR. GENTILE: Deangelo Carroll's statements, while

1 they cannot be taken for the truth, they can be taken as
2 circumstantial evidence of what transpired before. And if you
3 give them this instruction without telling them that last
4 part, then -- there's too great of a danger that they won't
5 consider them at all. And they do provide circumstantial
6 evidence --

7 THE COURT: Let's just take out --

8 MR. DIGIACOMO: They don't provide circumstantial
9 evidence.

10 MR. GENTILE: Sure they do.

11 MR. DIGIACOMO: They provide context to the other
12 person. You can't say, hey, he said X is not offered for the
13 truth of the matter asserted, it is offered to prove that he
14 knew X.

15 THE COURT: No, no. What Mr. Gentile is saying is
16 when he's talking about the killing and stuff, I mean, it's a
17 same thing. It's not saying that that's true, but obviously
18 the listeners knew about it because they didn't say, What the
19 heck are you talking about. They adopted his statements and
20 didn't contradict his statements.

21 MR. DIGIACOMO: Certain of them are adopted. If
22 they wanted an adoptive admission instruction, I don't mind
23 adding an adoptive admission instruction because the adoptive
24 admission is very specific, which says that the person would
25 have objected to it or would have made some comment to it --

1 there's language --

2 THE COURT: No. Why don't we do this? Let's just
3 take out the third paragraph.

4 MR. GENTILE: Yes.

5 MR. DIGIACOMO: No. You can't take out the third
6 paragraph. That was the entire argument as to why it is you
7 wouldn't let us get into attacking his credibility. How can
8 you take out the entire paragraph that you agreed that that
9 was what the ruling was?

10 THE COURT: Well, because you're not going to argue
11 any of those things from the third -- from -- that were not
12 offered for the truth.

13 MR. DIGIACOMO: They stood up in their opening and
14 argued it.

15 MR. PESCI: Right. It was the first line --

16 MR. DIGIACOMO: The first thing out of their mouth
17 was that --

18 MR. PESCI: The first line in opening statement.
19 And the quote was, From the mouth of Deangelo Carroll comes
20 the best evidence in this case, straight from Mr. Adam's
21 mouth.

22 MR. DIGIACOMO: And that was the entire argument we
23 had and you eventually made that ruling and precluded us from
24 attacking the truth of the matter asserted by Deangelo
25 Carroll. So we have to tell this jury that they can't

1 consider --

2 MR. GENTILE: You did attack it. You had your
3 witness testify that there were certain lies that he provided
4 to them.

5 MR. DIGIACOMO: No, the Judge stopped us on that
6 when they approached the bench. And then you said you may
7 consider -- reconsider that from Marty Wildemann and then you
8 wouldn't let us --

9 THE COURT: No, no, no. Mr. DiGiacomo, you're
10 totally wrong, because what I said I would consider from Marty
11 Wildemann was based on the juror question that I still have
12 that was, What did he tell you that was corroborated, not what
13 lies did you tell him. I didn't sustain the lies objection.
14 I sustained, What did you corroborate.

15 MR. DIGIACOMO: Right. No, no.

16 THE COURT: Not, What lies did you tell him, because
17 I overruled the what lies did you tell him because I said no,
18 it's important to know why he's making certain statements that
19 he was briefed by the police, so I definitely did not sustain
20 that objection. You're wrong.

21 MR. DIGIACOMO: No, no. You allowed us to say what
22 lies you did tell him, but you didn't allow us to say, hey --
23 when they said, that's not a lie, you didn't allow us to go
24 back to Marty Wildemann and say, okay, what did he tell you in
25 that first statement that tells you --

1 THE COURT: That was corroborated, right.

2 Absolutely. I didn't let you do it.

3 MR. DIGIACOMO: -- that was corroborated and you
4 didn't let -- didn't let me do it.

5 THE COURT: I didn't let you do it. Right. We're
6 on the same page.

7 MR. DIGIACOMO: And then the jury asked the
8 question -- right. So that entire import of that question is,
9 is Deangelo Carroll telling the truth when he made that
10 statement. That's not a question for this jury. And you have
11 to instruct them that that's not a question for this jury.

12 MR. GENTILE: Your Honor, any surreptitious tape
13 recording, any surreptitious tape recording is circumstantial
14 evidence of things that occurred before when -- when that
15 recording is made in the course of an ongoing relationship
16 between the speakers, not just this case, any case. Now, I'm
17 not addressing the question of that specific part that relates
18 to Luis, III. That's not for me to do. But there's much in
19 this recording that Mr. Deangelo Carroll says that is
20 indicative of the common ground that exists during that
21 telephone -- during that --

22 THE COURT: I'm happy to do both, but, I mean,
23 I'm -- the statements of Deangelo Carroll after he has
24 withdrawn from the conspiracy were not offered and may not be
25 considered by you for the truth of a matter asserted, period.

1 MR. DIGIACOMO: Yeah, that's fine.

2 MR. ARRASCADA: Judge, may I be heard on this before
3 you do anything?

4 THE COURT: Sure.

5 MR. ARRASCADA: Number one, you've already ruled on
6 this and issued a limiting instruction to the jury on the
7 Deangelo Carroll issue. Number two, by putting this in there
8 regarding Deangelo Carroll, it's doing exactly what you don't
9 want jury instructions to do and that is to focus on one
10 thing, one event, one matter that Deangelo Carroll said. And
11 it's bringing an improper focus onto Deangelo Carroll.

12 THE COURT: Okay. Here's what we're going to do.
13 Statements made by a coconspirator after he has withdrawn from
14 a conspiracy are not offered and may not be considered by you
15 for the truth of the matter asserted. Statements made by a
16 coconspirator after -- well, that takes away the Deangelo
17 Carroll singling him out problem.

18 MR. GENTILE: Your Honor, it is true -- it is true
19 that they may not be taken in and of themselves for the truth
20 of the matter asserted. Okay. I would not quarrel with that
21 position. But they are circumstantial evidence of what
22 transpired before this recorded meeting. So the instruction
23 that you're giving is going to confuse this jury and make them
24 think they can't --

25 THE COURT: Okay. Why don't we say this, The

1 statements of a coconspirator after he has withdrawn from the
2 conspiracy were not offered and may not be considered by you
3 for the truth of the matter asserted. However, they may be
4 considered to give context to the statements made by the other
5 individuals who are speaking and as other circumstantial
6 evidence, or something like that.

7 MR. GENTILE: That would be fine.

8 MR. DIGIACOMO: Yeah, but other circumstantial
9 evidence, they're not going to be allowed to argue the truth
10 of what Deangelo Carroll's saying.

11 THE COURT: Of course not. Of course not. And if
12 they do, it's objectionable.

13 MR. ARRASCADA: Judge, we respect your order that
14 you made long ago.

15 THE COURT: Okay. So let's -- Mr. DiGiacomo, go
16 back to your chair. Go back to your chair.

17 MR. DIGIACOMO: Okay. And we didn't get a limiting
18 instruction when it happened --

19 THE COURT: Go back to your chair. .

20 MR. ADAMS: Judge, that's not what --

21 THE COURT: I need you to type the change I'm
22 making.

23 MR. ADAMS: Judge, that's not what you ruled
24 pretrial. Judge, that's not what you ruled pretrial. My
25 argument was pretrial and that's not also what you ruled when

1 we readdressed the issue at the bench. You said that we
2 could -- we could not argue the words explicitly from Deangelo
3 Carroll's mouth as the truth of the matter asserted, which we
4 disagreed with and put that on the record, but you said we
5 could argue it as an adoptive admission or other ways.

6 THE COURT: Right.

7 MR. ADAMS: We intend to do that.

8 THE COURT: That's fine. You can argue it for the
9 truth of the matter asserted. They were only offered to
10 give -- or they may be considered to give context to the
11 statements made by the other individuals, comma, as an
12 adoptive admission or as other circumstantial evidence.

13 MR. ADAMS: Right.

14 THE COURT: Is everybody fine with that?

15 MR. ADAMS: I'm fine with that.

16 MR. ARRASCADA: What about on the -- after he's
17 withdrawn from the conspiracy?

18 MR. DIGIACOMO: Is there an adoptive admission for
19 other --

20 THE COURT: Well, that's why I said the statements
21 of a coconspirator, not highlighting Deangelo Carroll.

22 MR. ARRASCADA: And then strike the after he has
23 withdrawn from the conspiracy?

24 THE COURT: No, because then it doesn't make any
25 sense. The statements of a coconspirator after he's withdrawn

1 from the conspiracy may not offer -- were not offered and may
2 not be considered by you for the truth of the matter asserted,
3 period. However, they may be considered to give context to
4 the statements made by the other individuals who are speaking
5 as adoptive admissions or as other circumstantial evidence.

6 MR. DIGIACOMO: Can we define adoptive admissions?

7 THE COURT: Sure.

8 MR. DIGIACOMO: Okay. I'll pull up the statute for
9 that.

10 THE COURT: Is everyone fine with that?

11 MR. ADAMS: Yes.

12 THE COURT: Because otherwise, if we don't put after
13 he's withdrawn from a conspiracy, we say you can consider
14 them, no, you can't consider them. It doesn't make any sense.

15 MR. ARRASCADA: Okay.

16 THE COURT: 38, the conviction, the accomplice
17 testimony instruction. Well, it's both. Brooks says, on --
18 with headnote 5, We conclude that an unarmed defender uses a
19 deadly weapon and therefore is subject to a sentence
20 enhancement when the unarmed defender is liable as a principle
21 for the offense that is sought to be enhanced. Another
22 principle to offense is armed with and uses a deadly weapon in
23 the commission of offense and the unarmed offender had
24 knowledge of the use of a deadly weapon. So it eliminates the
25 control instruction.

1 But then in its conclusion, it says that it was
2 error not to give the proposed instruction by Brooks which
3 includes the ability to control the deadly weapon. So it's
4 ambiguous.

5 MR. DIGIACOMO: 662, Judge, if you -- at the end it
6 says, Applying the clarifying test we adopt today --

7 THE COURT: Where is it?

8 MR. DIGIACOMO: 662, first paragraph. It's right
9 above --

10 THE COURT: I don't have it that way.

11 MR. DIGIACOMO: It's right above where paragraph
12 four is -- I mean, the little parens heading in four is in the
13 body.

14 THE COURT: Here the State presented evidence?

15 MR. DIGIACOMO: Yes. If you go to applying the
16 clarifying test we adopt today, on retrial the State must not
17 only prove -- and then that's the instruction.

18 MR. GENTILE: That's not the instruction. The
19 earlier part's the instruction. That's a directive to the
20 Court on remand.

21 MR. DIGIACOMO: Right. Here's the three things you
22 have to prove. That's the instruction.

23 THE COURT: Well, the State's instruction in Brooks
24 was clearly wrong.

25 MR. DIGIACOMO: Correct. The defense instruction

1 was wrong too.

2 THE COURT: But I think if you read the whole case,
3 between the two instructions, the Brooks instruction was more
4 correct than the State's instruction, which was totally wrong,
5 but it doesn't say that you have to give that instruction. It
6 says that they had to have known of the use, so I'm going to
7 go with the instruction that we've got because I think that
8 that more accurately reflects the holding.

9 All right. 38, accomplice testimony, do we have an
10 objection to this one?

11 MR. GENTILE: We have our own.

12 MS. ARMENI: We do, but it's more of 39.

13 THE COURT: Okay. So 38 we're okay with?

14 MR. GENTILE: 38, yeah.

15 MS. ARMENI: Yeah.

16 THE COURT: What about 39?

17 MS. ARMENI: All we did, Your Honor, is we combined
18 our jury instruction with their jury instruction.

19 MR. DIGIACOMO: Which ones?

20 MS. ARMENI: It's towards -- sorry. Ours aren't
21 numbered either. It starts with, An accomplice is defined as
22 one who's liable.

23 THE COURT: I found it. An accomplice is defined as
24 one who's liable to prosecution for the identical defense --
25 offense charged.

1 MR. DIGIACOMO: Yeah, well, that's our 38 and --

2 MS. ARMENI: It's definitely a lot of your 38. I
3 mixed our instruction with your 38 instruction.

4 THE COURT: I think this is -- their instruction is
5 clearer.

6 MR. DIGIACOMO: Well, it's not completely clear.

7 THE COURT: They've omitted important things,
8 however.

9 MR. DIGIACOMO: Some very important things.

10 THE COURT: Let's take -- okay. Let's take the
11 first paragraph of the defense instruction, the second
12 paragraph of the State's instruction --

13 MR. DIGIACOMO: The second paragraph of which one,
14 38?

15 THE COURT: However -- I'm going to give the whole
16 38.

17 MR. DIGIACOMO: Okay. Well, 38, we've already done
18 everything in the first paragraph of the defense instruction.

19 THE COURT: Yeah, you're right.

20 MS. ARMENI: Actually, I misspoke, Your Honor. It's
21 between 38 and 39 is what we did. We took a lot of 39.

22 THE COURT: All right. Why don't we do this.
23 Remove State's 38. Use the first paragraph of the defense's
24 in lieu of 38.

25 MR. DIGIACOMO: So we don't get the tends language?

1 THE COURT: No. I was going to put -- which
2 language do you want?

3 MR. DIGIACOMO: I mean, the very first paragraph is
4 it tends to connect the defendant with the commission of the
5 offense. Their first paragraph says Nevada law authorizes
6 commission [inaudible] unless he or she is corroborated --
7 which in and of itself -- I guess the tends to connect is
8 there.

9 THE COURT: Tends to connect. And then I was going
10 to put at the end from 39 on the State's paragraph, line 6
11 through 9, because I think you get -- you should have,
12 However, it is not necessary that the evidence of the
13 corroboration be sufficient in itself to establish every
14 element of the offense charged.

15 MR. DIGIACOMO: 6 through 8 where?

16 THE COURT: At the end of the defenses' instruction.
17 Then that should cover everything the State wants.

18 MR. DIGIACOMO: How about to -- must be some act or
19 fact related to the offense which, if believed by itself,
20 tends to -- okay. That's fine.

21 MS. ARMENI: That's there.

22 THE COURT: Are you all good with that?

23 MR. DIGIACOMO: Hold on. Well, the some act or fact
24 part isn't.

25 THE COURT: What do you object to?

1 MR. DIGIACOMO: Well, in their -- defense's first
2 paragraph, because it's -- I mean, it's just kind of a
3 generally, hey, it's got to be corroborated language, it
4 doesn't say, some act -- because one act or one fact alone can
5 tend to connect the defendant to the crime.

6 THE COURT: Yeah, but yours doesn't say that either.

7 MR. DIGIACOMO: Yes, it does.

8 THE COURT: Where?

9 MR. DIGIACOMO: I'm looking for it right now.

10 THE COURT: Oh, of your 39?

11 MR. DIGIACOMO: The first paragraph of our 39.

12 THE COURT: Well, let's just give State's 38 and 39
13 then because it's too hard to rewrite them.

14 All right. 40, The fact that a witness was given an
15 inducement, are we good with that?

16 MS. ARMENI: Yeah.

17 THE COURT: 41, The determination of whether someone
18 is an accomplice.

19 MR. GENTILE: That's fine.

20 THE COURT: 42, the accomplice corroboration rule,
21 are we good with that?

22 43 is, The credibility or believability of a
23 witness. Are we good with that?

24 MR. ARRASCADA: No.

25 MR. GENTILE: Your Honor, we have --

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1 MR. ARRASCADA: We have a different instruction.
2 We'd like to submit it.

3 MR. DIGIACOMO: On 43 or on 42? 43?

4 MR. ARRASCADA: The credibility instruction.

5 THE COURT: All right. What do you have? We didn't
6 talk about the Riley instruction on the accomplice testimony
7 that the defense wants.

8 MR. DIGIACOMO: Yeah. I thought we were going to
9 get to theirs eventually.

10 THE COURT: Well, I'm trying to kind of do them all
11 together.

12 MR. ARRASCADA: Your Honor, you're addressing the --
13 just the general credibility instruction, right?

14 THE COURT: Yeah.

15 MR. ARRASCADA: Okay. We have one about midway in
16 our packet. Do you want me to approach, Judge?

17 MR. DIGIACOMO: No. 8 in their package.

18 THE COURT: I have it.

19 MR. DIGIACOMO: Do you have a cite for this one?

20 THE COURT: You are the sole judges of the
21 credibility.

22 MR. DIGIACOMO: Yeah, but I'm just wondering if the
23 defense has a cite for all the language.

24 MS. ARMENI: If that's one of the stock ones, I
25 don't think --

1 MR. ARRASCADA: Your Honor, I believe this comes
2 from CALJIC --

3 MR. DIGIACOMO: Oh, California --

4 MR. ARRASCADA: -- jury instructions, criminal.
5 And, Your Honor, this case is key -- credibility, as the
6 Court's seeing, is crucial in this case. And this just lays
7 out more of what they can consider regarding credibility and I
8 think it's significant that they need to know these are all
9 legal things that they can look at regarding credibility.

10 THE COURT: Well, I don't have a problem with giving
11 the defense's instructions, but I think you also have to add,
12 If you believe that a witness has lied about any material fact
13 in the case, you may disregard the entire testimony of that
14 witness or any portion of his testimony which is not proved by
15 other evidence.

16 MR. ARRASCADA: That's the last sentence, Your
17 Honor, of ours.

18 THE COURT: Oh, okay.

19 MR. ARRASCADA: If the jury believes that any
20 witness has wilfully sworn falsely --

21 THE COURT: Well, I don't like the way you did it.

22 MR. ARRASCADA: Okay.

23 MR. DIGIACOMO: Disregard the -- no, that's not what
24 it says. You may -- yeah, I mean, their language is more --
25 you can --

1 THE COURT: No, okay. We'll have, Also, in
2 considering a discrepancy, you should consider whether such
3 discrepancy concerns an important fact or only a trivial
4 detail. That's fine. But then add, If you believe that a
5 witness, directly from the State's is better. Did you get
6 that?

7 MR. DIGIACOMO: What?

8 THE COURT: Well, using their proposed instruction,
9 deleting the last sentence and inserting the last paragraph of
10 the State's instruction.

11 MR. DIGIACOMO: Deleting the last sentence and
12 putting in, If you believe that a witness has lied about a
13 material fact?

14 THE COURT: Yeah.

15 The fact that a witness has been convicted of a
16 felony, we're fine with that, right, the expert witness
17 instruction?

18 MR. DIGIACOMO: Hold on. Can I have just two
19 seconds to add that so that I know what I'm doing when I'm
20 done?

21 THE COURT: Yeah.

22 MR. ARRASCADA: I'm sorry. Which number's the
23 convicted of a felony?

24 MS. ARMENI: 44.

25 MR. ARRASCADA: 44?

1 MS. ARMENI: Yes.

2 THE COURT: All right. 45, are we fine with the
3 expert witness instruction?

4 MR. ARRASCADA: Yes.

5 MR. DIGIACOMO: Actually, 44, do we have a witness
6 who was convicted of a felony? I guess Anabel is. Oh, no,
7 she's not convicted of it yet.

8 MR. GENTILE: No, but that goes to Deangelo
9 Carroll's credibility.

10 MR. DIGIACOMO: Do we have evidence he was convicted
11 of a felony?

12 THE COURT: Yeah, he was convicted of a robbery.

13 MR. GENTILE: Yeah, convicted of a robbery.
14 Remember Mike McGrath?

15 MR. DIGIACOMO: No, he was not convicted of a --
16 convicted of a robbery.

17 MR. GENTILE: Conspiracy to commit a robbery.

18 MR. DIGIACOMO: That's true. He was --

19 THE COURT: But it came out in the evidence that he
20 was convicted.

21 MR. DIGIACOMO: That's fine.

22 THE COURT: The common sense instruction, are we
23 fine with that?

24 Foreperson instruction.

25 And now, You'll listen to arguments of counsel.

1 MR. GENTILE: Okay. What do we have of ours that --

2 MS. ARMENI: I'm looking at it.

3 THE COURT: Okay. The important ones that you guys
4 have --

5 MR. GENTILE: Well, the accessory after the fact
6 instruction for sure, that's critical.

7 THE COURT: Okay.

8 MR. GENTILE: Because if they don't know the
9 definition of that that's...

10 MS. ARMENI: The accessory after the fact defense.

11 MR. DIGIACOMO: Isn't your instruction -- shouldn't
12 your instruction say -- because he didn't really testify he
13 was an accessory after the fact. Shouldn't your instruction
14 be, If you find he didn't have any knowledge before the
15 killing occurred, you must find him not guilty?

16 MR. GENTILE: Why would I want that?

17 MR. DIGIACOMO: Because he didn't have any knowledge
18 that TJ was going to be harmed prior to the killing. I guess
19 it's not just knowledge, but -- okay.

20 MR. GENTILE: I mean, if you want -- that's a great
21 instruction --

22 MR. DIGIACOMO: I know.

23 MR. GENTILE: -- but I don't have the burden of
24 proof on that. So if they're left with a reasonable doubt as
25 to whether he had knowledge --

1 THE COURT: All right. Let's go through -- excuse
2 me. Let's go through the defendants' specials that you want.

3 MR. GENTILE: All right. The first one is an
4 accessory after the --

5 Are our's numbered?

6 MR. DIGIACOMO: Yeah, are we going to go -- can we
7 now start flipping through and just tell me which ones you
8 guys want to --

9 MS. ARMENI: Wait, say that again. Sorry.

10 MR. DIGIACOMO: If you guys want to just start
11 flipping through these, because I haven't put them in here,
12 and then tell me --

13 MS. ARMENI: Well, Your Honor, can we have a second
14 just to mark ours, 1, 2, 3, 4 so we can --

15 MR. DIGIACOMO: I thought we did that.

16 THE COURT: Yeah, we stopped.

17 (Pause in proceedings)

18 THE COURT: Ms. Armeni, what I'm going to ask you to
19 do, because of the way that we did this, I just want you to
20 file the whole packet with the clerk and the proposed
21 instructions.

22 MS. ARMENI: Okay.

23 (Pause in proceedings)

24 THE COURT: All right. Which ones does the
25 defense -- a lot of these we've covered already, so just go

1 through them and when you get to one that you want to give an
2 addition to what we've already agreed upon for the State, just
3 tell us what it is.

4 MS. ARMENI: Okay. Our Instruction No. 9, there
5 isn't one about the character yet, Your Honor.

6 THE COURT: Which one is that, good character?

7 MS. ARMENI: It's No. --

8 THE COURT: Good character.

9 MS. ARMENI: Good character when considered in
10 connection with the other evidence. It's No. 9.

11 THE COURT: State?

12 MR. DIGIACOMO: Yeah, unfortunately for the defense,
13 the good character that this instruction replies to is that he
14 has a good character for not committing crime. That wasn't
15 admitted. The only thing that was admitted by any witness in
16 this case was he had a character for truthfulness, not for he
17 had a character not to commit crimes, because specifically you
18 precluded us from going into that subject matter, and then
19 they didn't offer it through any of their witnesses. Not a
20 single witness testified that his character was such that he
21 wouldn't commit a crime. That's the good character
22 instruction that they'd be entitled to.

23 THE COURT: So you want to withdraw it?

24 MR. DIGIACOMO: I just heard the defense in the back
25 say, isn't it true that neither of them have been arrested,

1 but they said that that wasn't offering his good character
2 when they did it because we thought it was. Now they're going
3 to argue it is? That can't be evidence of good character
4 because they disputed it when they offered it.

5 MR. GENTILE: It modifies the character of the proof
6 of it. It's one of the things to be considered.

7 THE COURT: Yeah, because character for truthfulness
8 can only be considered --

9 MR. GENTILE: No, I know. I didn't -- here's what
10 I'm trying to get at. We are entitled to an instruction that
11 in assessing the credibility they can take into consideration
12 evidence that's --

13 THE COURT: Of character for truthfulness.

14 MR. GENTILE: Right.

15 THE COURT: All right. Well, let's just do that
16 instruction.

17 Mr. DiGiacomo, please --

18 MR. DIGIACOMO: Well, can't we just add it to the
19 other credibility one?

20 MR. GENTILE: Yeah. Yeah. No, I'm okay with that.

21 THE COURT: Mr. DiGiacomo, return to your seat.

22 MR. DIGIACOMO: I know, I'm sorry. I'm a walker,
23 Judge. It's hard to sit here.

24 THE COURT: You're supposed to be making the notes
25 and making the changes.

1 MR. GENTILE: Yeah, I'm okay with that.

2 THE COURT: So that was instruction number what, the
3 credibility?

4 MR. DIGIACOMO: I'll tell you. It's way back here.

5 MR. GENTILE: Well, I don't know, because --

6 MR. PESCI: It's 43.

7 THE COURT: All right. So we're going to add to 43,
8 Evidence of character for truthfulness --

9 MR. GENTILE: Evidence of good character for
10 truthfulness.

11 THE COURT: Okay. Of good character for
12 truthfulness may be considered in assessing the veracity of a
13 witness.

14 MR. GENTILE: Don't use veracity.

15 THE COURT: I know. They won't -- the truthfulness
16 of a witness.

17 MR. GENTILE: Mm-hmm.

18 THE COURT: Okay.

19 MR. DIGIACOMO: Evidence of good character for
20 truthfulness may be considered in judging the credibility of a
21 witness.

22 MR. GENTILE: Right.

23 THE COURT: Okay. That's better.

24 Okay. What's the next one you guys want?

25 MR. GENTILE: We're getting there.

1 THE COURT: Do you guys want your intent
2 instruction?

3 MR. GENTILE: The specific intent, you mean?

4 MR. DIGIACOMO: I thought we did it --

5 THE COURT: Intent may be proved by circumstantial
6 evidence.

7 MS. ARMENI: I thought we had one similar.

8 THE COURT: Okay. That's fine. We may.

9 MS. ARMENI: We're looking at the aiding and
10 abetting right now.

11 MR. GENTILE: We have one, As a matter of law, one
12 cannot aid and abet a murder after it has been accomplished.

13 MR. DIGIACOMO: Well, yeah, I mean, I don't have a
14 problem with that, but where is it?

15 THE COURT: That's true. All right. Let's put that
16 in.

17 MR. DIGIACOMO: I'm just trying to --

18 THE COURT: All right. That's -- where shall we
19 insert that?

20 MR. DIGIACOMO: Right after the aiding and abetting
21 instruction.

22 THE COURT: Okay. Put that in there.

23 MR. DIGIACOMO: I'm just trying to find it here
24 because --

25 (Off-record colloquy)

1 MS. ARMENI: All right. So the next one is our
2 theory of defense, which is 31, along with the accessory after
3 the fact.

4 THE COURT: Which one is that? Oh, an --

5 MS. ARMENI: 31.

6 MR. GENTILE: An accessory after the fact is one who
7 after the commission of a felony harbors, conceals, or aids
8 such offender with intent that he may avoid or escape from
9 arrest, trial, conviction or punishment having knowledge that
10 is such offender has committed a felony or is liable for
11 arrest. One cannot be both an accessory after the fact and an
12 aider and abettor or conspirator for the completed offense.

13 THE COURT: I'm fine with that.

14 MR. DIGIACOMO: I'm fine with the first paragraph,
15 but the second paragraph is --

16 MR. GENTILE: The second part is our contention.
17 That's our theory of defense.

18 THE COURT: Well, that's your contention. You get
19 up and argue it.

20 MR. DIGIACOMO: Right. Why does he get to have --
21 say, hey, this is what my client testified to?

22 THE COURT: Well, because then also it's unfair to
23 Luis Hidalgo, III, who could also say, well, he was, you know,
24 trying to help cover it up or protect his father, if you don't
25 have --

1 MR. ARRASCADA: Maybe it should be the
2 defendant's --

3 THE COURT: No, it's coming out. Your theory of
4 defense doesn't come in on an instruction. So we'll add the
5 first paragraph.

6 MR. DIGIACOMO: Judge, just so that we can be
7 careful so that --

8 THE COURT: But we do have to make an adjustment in
9 the second paragraph.

10 MR. DIGIACOMO: I was going to do this, start at
11 line 10 and start off with, A defendant --

12 THE COURT: Is not required to establish that he was
13 an accessory after the fact beyond a reasonable doubt.

14 MR. DIGIACOMO: That if, along with all the other
15 evidence, it raises in the minds of the jury a reasonable
16 doubt the defendant was only an accessory after the fact, then
17 in that event, it would be your sworn duty -- no.

18 THE COURT: To return a verdict -- it would be your
19 duty to return a verdict of not guilty, period. Okay.

20 MR. DIGIACOMO: Verdict of not guilty.

21 THE COURT: And where shall we put this in the
22 stack?

23 MR. GENTILE: First, 15th and about 28th, and at the
24 end.

25 MR. DIGIACOMO: I guess right before we get to

1 constitute the crime charged. I don't know. Do you want to
2 do it right after the, Constitute the crime charged? Where do
3 you want to do it?

4 THE COURT: I don't care.

5 MS. ARMENI: Why don't you do it after all the
6 conspiracy and aider and abettor instructions?

7 MR. GENTILE: Yeah, that would be the best place for
8 it.

9 THE COURT: All right. Are you making that
10 insertion, Mr. DiGiacomo?

11 MR. DIGIACOMO: I'm trying to figure it out. Well,
12 that -- well, yeah, that's basically right before the
13 solicitation to commit murder instruction.

14 THE COURT: Okay. Once we print this out, we're
15 going to have to all sit together and renumber our packets.

16 MR. DIGIACOMO: Right. I'm going to retype the
17 whole thing and then e-mail it and we print one packet,
18 photocopy it, and --

19 THE COURT: I thought you were doing the retyping
20 right now.

21 MR. DIGIACOMO: No, I'm making notes to myself
22 because you're going too fast. I can't type a hundred miles
23 an hour, Judge.

24 THE COURT: Well, what is Mr. Pesci doing?

25 MR. PESCI: I'm trying to change my closing as

1 you're changing the language of the law.

2 MS. ARMENI: 34 would be our next one, Your Honor,
3 In deciding -- it's the --

4 THE COURT: Whether to believe testimony.

5 MS. ARMENI: -- greater care and caution for an
6 accomplice.

7 MR. DIGIACOMO: Hold on just a second. I was
8 running up that language because some --

9 THE COURT: It's the Riley one.

10 MR. DIGIACOMO: It is, but is it --

11 MS. ARMENI: Right. I have Riley --

12 MR. DIGIACOMO: -- completely the Riley one?

13 MS. ARMENI: I think so.

14 THE COURT: Yeah, if it's taken directly from the
15 case, I don't have a problem.

16 MR. DIGIACOMO: That's the only thing I want to
17 check it against. Is that the -- because I didn't see this
18 one earlier, so let me just --

19 THE COURT: Yeah. Like I said, I'm fine with this
20 if it's directly from the language of Riley.

21 MR. DIGIACOMO: Do you have the cite?

22 MS. ARMENI: No. Sorry.

23 THE COURT: Of Riley?

24 MR. DIGIACOMO: Is that 110 Nevada 638, that one?

25 MS. ARMENI: Oh, I have that cite. I thought you

1 meant a pinpoint --

2 THE COURT: There's no jump site on it.

3 MS. ARMENI: Yeah, that's what I meant.

4 MR. DIGIACOMO: Is it 110 Nevada 638?

5 THE COURT: Yes. That's what they have on their
6 thing.

7 MS. ARMENI: And I think it's about 653.

8 MR. DIGIACOMO: I'm at 653. The only thing it says
9 from Riley that I'm looking at is, An accomplice instruction
10 advises the jury that it should view a suspect incriminating
11 testimony given by those who are liable for -- to prosecution
12 [inaudible] identical charge as the defense is accused. All
13 this other language about interest in minimizing the
14 seriousness of the crime and the significance of accomplice's
15 own role in its commission, the fact that the accomplice
16 produced may not show the [inaudible] being an untrustworthy
17 person -- I actually really don't care because some of it is
18 helpful to me.

19 THE COURT: Okay. Well, if the State doesn't impose
20 it, let's just give the instruction as written.

21 And, Mr. DiGiacomo, if you would just insert that
22 then somewhere after the State's accomplice instruction.

23 MR. DIGIACOMO: Well, the only thing that I object
24 to is that the -- [inaudible] the testimony that supports the
25 prosecution's case by granting the accomplice immunity.

1 There's no evidence of immunity being provided to anybody --

2 MR. GENTILE: No, there's no --

3 MS. ARMENI: Okay. We can take that out.

4 MR. GENTILE: There's no immunity.

5 THE COURT: All right.

6 MR. DIGIACOMO: So an accomplice leniency --

7 THE COURT: All right. Take out immunity at "or"
8 and insert leniency.

9 All right. Then this will be inserted after the
10 State's accomplice instructions.

11 All right. Solicitation -- what's the next one the
12 defense cares about?

13 MS. ARMENI: Yeah, I think those would be
14 Mr. Arrascada's.

15 MR. GENTILE: Your Honor, I'm going to withdraw from
16 the courtroom.

17 MR. ARRASCADA: We've already addressed this, Your
18 Honor, and I think you made a combined instruction, but we'd
19 ask that our 35 and 36, solicitation to commit murder,
20 requires the asking of another to commit murder with the
21 specific intent that a first-degree murder be committed. And
22 we'd ask that that be instructed.

23 THE COURT: Okay. And I had already said that -- no
24 on that so...

25 MR. ARRASCADA: Correct.

1 THE COURT: Do we need a person who can -- okay.

2 What's the next one, the --

3 MS. ARMENI: It would be the 44. I believe they're
4 the last two instructions.

5 THE COURT: Okay.

6 MS. ARMENI: 44 and 45.

7 MR. DIGIACOMO: Yeah. 44 and 45 is --

8 THE COURT: Okay. If you believe that the State had
9 the ability to produce stronger and more satisfactory
10 evidence --

11 MR. DIGIACOMO: It's the missing person instruction,
12 missing witness instruction, Judge.

13 THE COURT: Is that the one we're talking about?

14 MR. DIGIACOMO: Yes. It's not the language itself
15 the State is objecting to. This is a federal jury
16 instruction. Every circuit that I could find says that if the
17 missing witness is a witness -- first of all, it has to be
18 within our custody. So the only person this could be would be
19 Kenneth Counts or Deangelo Carroll. It says that if -- first
20 of all, in order [inaudible] to be a witness, they had to
21 issue a subpoena, make them come to a courtroom, and then --
22 and if we somehow stop that, then they might be entitled to
23 it.

24 But then they said if it's a criminal defendant
25 facing -- invoking his own Fifth Amendment rights and the

1 State refused to give him immunity it is not the basis for a
2 missing witness instruction. So they're not entitled to it at
3 all in any manner.

4 THE COURT: Right. And with respect to Jayson
5 Taoipu, if that's the one --

6 MR. DIGIACOMO: He's unavailable to both of us.

7 THE COURT: -- he's unavailable to everybody.

8 MR. DIGIACOMO: Right.

9 THE COURT: So I don't think you're entitled to this
10 instruction.

11 Entrapment is an affirmative offense.

12 MR. DIGIACOMO: Defense.

13 THE COURT: I'm sorry. That's what I meant. Any
14 objection to this one?

15 MR. DIGIACOMO: Yes. And here's -- there's multiple
16 reasons why. One is it's an affirmative defense, which means
17 they have the duty of a preponderance of the evidence to get
18 there, but here's the even more important thing, because now
19 we're at jury instructions, the evidence in this case is
20 closed. The moment they assert an entrapment defense all
21 character evidence of the defendant is admissible, which would
22 tend to explain his predisposition to commit the crime.
23 They've repeatedly, repeatedly, repeatedly objected to
24 character evidence and said it's not relevant in this case,
25 it's not admissible in this case, and you've precluded us from

1 getting into anything -- and you've even excluded stuff
2 that --

3 THE COURT: The sword.

4 MR. DIGIACOMO: The sword, the brass knuckles, PK
5 Hadley, what he would have been able to testify as to prior
6 times this person has made threats to kill before. We got --

7 MS. ARMENI: No, we need more explanation.

8 MR. ARRASCADA: That's a complete
9 mischaracterization of his report, a 25-page report. It is a
10 creation.

11 MR. DIGIACOMO: It's not a creation. He says, I saw
12 him say this to Moose before. We're --

13 MR. ARRASCADA: Judge, we're not here to litigate PK
14 Hadley. He's wrong.

15 THE COURT: Well, the point is that if you were
16 going to assert an entrapment defense it would have opened the
17 door for the State for his predisposition which was excluded
18 based on the objections of the defense, including the sword
19 and the brass knuckles that we argued about here, that they
20 said, well, it shows his propensity maybe for violence or to
21 commit crimes. And I said no, it doesn't. You can show the
22 Social Security card that maybe has a little bit of the brass
23 knuckles for dominion and control but that you can't show the
24 brass knuckles. And I let the bottle in. And I even excluded
25 some of the pictures because to me it just made Mr. Hidalgo,

1 III, just looked incredibly mess and didn't really show any
2 evidence beyond that. And so I don't know how now you can
3 come in and say, well, you want to argue entrapment when the
4 State didn't have an opportunity to refute that.

5 MR. ARRASCADA: We'd ask that the instruction be
6 given.

7 THE COURT: All right. I don't think I can give it.
8 I might have given it had you indicated that was going to be
9 your defense, but there would have been different evidence
10 across the board. So I think we're all in agreement on the
11 jury instructions.

12 (Court recessed at 11:27 a.m. until 12:00 p.m.)

13 (Outside the presence of the jury.)

14 THE COURT: What I was thinking is probably,
15 depending on when their lunch gets here, I would read the
16 instructions, we'll take our lunch break and then just do all
17 the closings.

18 All right. Let's just go through and number these
19 together.

20 (Court numbers the instructions)

21 (Jury reconvened at 12:11 p.m.)

22 THE COURT: All right. Court is now back in
23 session. The record will reflect the presence of the State
24 through the deputy district attorneys, Mr. DiGiacomo and
25 Mr. Pesci, the presence of the defendant Mr. Hidalgo, Jr.,

1 along with Ms. Armeni and Mr. Gentile, the presence of the
2 defendant, Mr. Hidalgo, III, along with Mr. Arrascada and
3 Mr. Adams, the officers of the Court and the members of the
4 jury.

5 Good afternoon, ladies and gentlemen. Let me first
6 apologize for our tardy start this morning/afternoon. As I
7 told you yesterday, the evidence has all been presented in
8 this case. The next step is the instructions on the law which
9 I'm going to read to you in a moment, followed by the closing
10 arguments by the attorneys.

11 After I read to you the instructions on the law,
12 we'll be taking our lunch break and the Court has ordered
13 lunch for you in the back. We're not going to take a really
14 long lunch break and then we'll move into the closing
15 arguments.

16 It is important that I read these instructions
17 exactly as they are written. I am precluded from trying to
18 clarify or expound upon them in any way. There are a number
19 of instructions here. You will have several copies of these
20 instructions back in the jury deliberation room with you
21 should you wish to refer back to them. Sometimes I see people
22 trying to write down the instructions. If you want to refer
23 back to a particular instruction, every instruction is
24 numbered. It's probably easier just to write the number of
25 the instruction. But again, there will be a number of copies

1 back in the jury deliberation room with you that you can go
2 over when you begin your deliberations.

3 (Jury instructions read)

4 THE COURT: Ladies and gentlemen, that concludes the
5 instructions on the law. As I told you before, we're now
6 going to take a break for lunch because we've ordered in and
7 we won't need to take that long. We'll take about 30 minutes
8 or so, 35 minutes for the lunch break.

9 The case still has not been submitted to you, so the
10 prohibition on speaking about the case and doing anything
11 else, any research, reading about the case or anything like
12 that on the break still pertains, so I'm just reminding you of
13 the admonition.

14 Once again, notepads in your chairs and follow Jeff
15 from the rear of the courtroom.

16 (Jury recessed at 12:53 p.m.)

17 THE COURT: Can you guys get lunch in 35 minutes?

18 MR. DIGIACOMO: There's a couple of things that --

19 MR. PESCI: Judge, on Instruction 35, I think the
20 language needs to be switched from "until" to "unless."

21 THE COURT: I did that. There were a couple of
22 other changes and I saw Mr. DiGiacomo following along on the
23 computer. Did you make the changes contemporaneously when
24 I --

25 MR. DIGIACOMO: No. Actually, Judge, I wasn't

1 listening to a thing you said during that -- during the
2 reading of the instructions. Mr. Pesci was making notes. I
3 apologize.

4 THE COURT: I caught that one and made the
5 correction on the --

6 MR. PESCI: And then on 18, I wasn't sure, it
7 sounded like you said conspiracy and it should have been
8 coconspirator on one line on 18.

9 (Pause in proceedings)

10 THE COURT: I may have just said it quickly or --

11 MR. PESCI: I think that takes care of it.

12 MR. DIGIACOMO: Is that all of it?

13 THE COURT: There were like a couple of minor things
14 like a word was missing, "of," and I just inserted them and
15 then made a note on my thing so I --

16 MR. DIGIACOMO: Oh, yeah, like on 33, the unarmed
17 person is liable to the offense or of the offense, for the
18 offense.

19 THE COURT: Right.

20 MR. PESCI: So do we need to make some sort of
21 change here, or is --

22 MR. DIGIACOMO: Is the Court going to do it?
23 Because Ms. Weisner has those electronically --

24 THE COURT: Okay. I can give them to her.

25 MR. DIGIACOMO: -- so if you can take your notes

1 that you made and give them to her --

2 THE COURT: Yeah -- no, I'll give them to her.

3 That's fine.

4 MR. PESCI: Thank you very much, Judge.

5 THE COURT: All right.

6 MR. ADAMS: Judge, I do have two matters.

7 THE COURT: Oh.

8 MR. ADAMS: Either now or when we get back.

9 THE COURT: We can do it now.

10 MR. ADAMS: All right. First is yesterday we dealt
11 with -- and I'm not reopening the bats and bags issue as it
12 relates to Jayson Taoipu. We do request that any -- since we
13 were not allowed to put that in, that any testimony related to
14 bats and bags be stricken from the record. I think Rontae
15 Zone testified earlier about bats and bags and I think it's
16 improper that -- since we weren't allowed to put in the part
17 of the transcript which speaks directly to that point that the
18 State not be allowed to benefit and argue from that. So we
19 make the formal request of the Court under due process and
20 fair trial rights to strike any reference to bats and bags.

21 THE COURT: Okay. And then your second argument.

22 MR. ADAMS: The second argument issue is they were
23 messing around with their PowerPoint earlier and it popped up
24 in front me. They have a picture of Little Lou, his booking
25 photo, sandwiched between a couple of other people, co --

1 alleged coconspirators in the case. That booking photo was
2 not admitted into evidence, it's not evidence, and I ask that
3 that not be shown to the jury.

4 THE COURT: Okay. On the booking photo, we
5 approached the bench and Mr. Gentile indicated -- I said it
6 didn't need to be admitted as an exhibit because they're
7 sitting in the courtroom but that Mr. DiGiacomo would be
8 allowed to use it in his closing PowerPoint, and Mr. Gentile
9 indicated no objection. So that's that issue.

10 On the other issue --

11 MR. ADAMS: We object. Formally we objected.

12 THE COURT: Right. On the other issue, anything the
13 State wants to add?

14 MR. DIGIACOMO: There's no legal basis for the
15 request and I'll submit it, Judge.

16 THE COURT: All right. Yeah, the evidence is what
17 the evidence is and we don't need to revisit it, but I --

18 MR. ADAMS: No, I'm not trying to reopen your
19 ruling.

20 THE COURT: No, I understand. And so they are
21 allowed to comment on that.

22 MR. ADAMS: We'll proceed with one arm.

23 THE COURT: Anything that -- the one thing that we
24 did forget to do was to address the issue that was raised on
25 the house arrest bracelet by Mr. DiGiacomo -- sorry,

1 Mr. Gentile, which he -- I understand why he did it, because
2 it had been in response to a question of a juror, but then I
3 was concerned because it creates the inference that
4 Mr. Hidalgo, Jr. was given straight-out house arrest and he's
5 been wandering around in the hallways and everything, and it's
6 quite clear Luis Hidalgo, III is in custody because he hasn't
7 been seen in the hallways, he isn't using the bathroom, the
8 public bathroom on the breaks, and we have at least two
9 corrections officers in here. So I had neglected to put it --

10 MR. ADAMS: Judge, we have not -- we have not made
11 an objection to that and I think if we did now, it wouldn't be
12 timely.

13 THE COURT: Okay. Yeah. I mean, I just, you know,
14 had wanted it corrected on the record because it's not that
15 Mr. Hidalgo, Jr. had house arrest, it's that he posted
16 hundreds of thousand dollars' worth of bond and I said, okay,
17 even if you do that, you're still going to have to do house
18 arrest. And I think that that --

19 MR. GENTILE: You're not going to advise the jury
20 about the bail?

21 THE COURT: No. No one's requested me to, but --

22 MR. DIGIACOMO: We were concerned about that --

23 THE COURT: I was mainly concerned not only for the
24 defendant, but also because it created an improper inference,
25 in my view, against the Court, that I would --

1 MR. GENTILE: Well, Your Honor, I don't think
2 that's --

3 MR. DIGIACOMO: I think that -- I think that maybe
4 the implication was that he had two strokes and at some point
5 he --

6 THE COURT: All right. That was also the concern.
7 Then it sounded like in your questioning that the Court put
8 somebody on house arrest with no bond on a death penalty case.

9 MR. GENTILE: I would have never asked the question
10 if the juror --

11 THE COURT: No, I understand. I'm not faulting you.
12 That was my -- I was -- you know, I think that that inference
13 is out there, but it is what it is.

14 MR. ADAMS: So, Judge, are we overruled also on the
15 photograph and the PowerPoint issue?

16 THE COURT: Yes.

17 MR. ADAMS: Are we preserved on that, or do I need
18 to reraise the objection during argument?

19 THE COURT: No, no. Your objection is preserved.
20 Like I said, we addressed it at the bench when he sought to
21 introduce the exhibit. And I would just note on the record
22 that initially the Court had ruled, well, anyone who
23 testified, they've seen them, we don't need their pictures
24 admitted into evidence. So I pulled out Anabel Espindola and
25 the two defendants and then you or Mr. Arrascada actually

1 introduced the photograph of Anabel Espindola.

2 MR. ADAMS: I did.

3 MR. DIGIACOMO: Over our objection because you
4 didn't admit the others.

5 THE COURT: Right. And I let it come in. So -- all
6 right.

7 MR. ADAMS: Actually, I don't think the State
8 objected to that, Your Honor.

9 THE COURT: No. Then they did because the
10 defendants hadn't come in.

11 (Court recessed at 12:59 p.m. until 1:38 p.m.)

12 (In the presence of the jury.)

13 THE COURT: All right. Court is now back in
14 session. The record will reflect the presence of the State
15 through the deputy district attorneys, the presence of the
16 defendants, along with their attorneys, the officers of the
17 Court and the members of the jury.

18 Mr. Pesci, are you ready to make your closing
19 statement?

20 MR. PESCI: Yes, thank you, Your Honor.

21 STATE'S CLOSING ARGUMENT

22 MR. PESCI: Luis Hidalgo, III --

23 MR. ADAMS: Your Honor, I hate to do this, but we
24 object to this screen. This wasn't in either of the
25 transcripts admitted to the jury.

1 MR. PESCI: Right on queue. There's an argument
2 about TJ --

3 THE COURT: Well, wait a minute --

4 MR. ADAMS: Judge, I object to this --

5 THE COURT: Okay. I said wait a minute, Mr. Adams.

6 Ladies and gentlemen, once again, the defense is --
7 the State is going to tell you what they think they hear in
8 the tape. I'm sure the defense will tell you what they hear
9 in the tape. It's your collective hearing of what is in the
10 tape that controls in your deliberation. There are things
11 that are here on the screen that were not in the transcripts
12 that went to -- again, if you don't hear it and the State says
13 it's there, the defense says it's there, then disregard it.
14 Again, this isn't evidence. It's just argument.

15 All right. Go on, Mr. Pesci.

16 MR. PESCI: Thank you, Judge.

17 22:15, ladies and gentlemen, if you have a pencil,
18 you've got a pen, you've got something to write with, you want
19 to be sure what it says there, 22:15, that's where you go and
20 listen to it. But let's put it into context. Let's take
21 it -- let's assume it's their version of the transcripts.
22 Instead of TJ, and when you listen to it, the State tells you
23 that the evidence will show it says TJ, but let's take their
24 version of the transcript that --

25 MR. ADAMS: Objection. Personal submission, Your

1 Honor.

2 MR. PESCI: That --

3 THE COURT: All right. Overruled.

4 MR. PESCI: I told you -- Luis Hidalgo, III, I told
5 you to look at this compelling language that helps you
6 understand that it's TJ. Taken care of, taken care of. What
7 was the evidence that Rontae said? That Mr. H wanted him
8 taken care of. There is the language, ladies and gentlemen,
9 that tells you what this is all about and that, in fact, it's
10 TJ. Because what on earth else are they talking about if it's
11 not about the dead guy out at the lake?

12 If it's this or if it's TJ, it's the same thing.
13 It's talking about the murder. It's talking about the
14 killing.

15 (Playing tape)

16 MR. PESCI: He's all ready to close the doors and
17 everything and go into exile, whispered, after checking to see
18 if someone has a recording device. What reason does Little
19 Lou have to make that up about his father if it's not true?
20 What reason does he have to whisper it after checking for a
21 wire?

22 Anabel Espindola, on May 23rd, 2005, is not a
23 witness for the State of Nevada. She hasn't been arrested,
24 let alone charged, let alone taken a deal. When she's talking
25 right here, she hasn't done anything for the State. She's

1 worrying about herself, her mistress and her mistress' son.
2 And straight from Luis Hidalgo, III's mouth comes the evidence
3 about his father not going into hiding because he's afraid of
4 Deangelo or Deangelo's friend, the person he had outside the
5 club.

6 There's no mention of that because really, ladies
7 and gentlemen, if Mr. H is really afraid of Deangelo and he
8 really loves his son and his mistress, why is he sending them
9 to go meet with the very guy who constitutes the danger? Why
10 would he say, Anabel, get a recording device and go talk to
11 Deangelo, the guy who is the reason that he paid out the cash
12 because he's in fear? Why do that?

13 Well, this is some more evidence to help you
14 understand and put this all in context. Maybe we're being
15 under surveillance, surveilled, whatever that spelling is, but
16 there's really no issue as to the spelling of, Keep your mouth
17 shut, exclamation point, exclamation point.

18 And what you've been told is that was just a note to
19 Mr. H himself at a meeting. That wasn't really because he was
20 concerned about having committed a crime, just a meeting with
21 an attorney in which, if you believe the evidence, he sat and
22 for 90 percent of the time was a bump on a log. A note to
23 himself to help him to remember to shut up? He needs help to
24 remember that?

25 Where was this note found? This is really

1 important, very telling. It's found in Simone's, in Simone's
2 AutoPlaza, which going back, and we'll get to this again,
3 Rontae Zone testifies after the murder that Rontae, JJ, Jayson
4 and Deangelo go to Simone's, that when they're there, Deangelo
5 talks to Mr. H. And if he really paid out because he is
6 afraid, why is he talking to Deangelo? He talks to Mr. H.
7 Oh, now what happens next?

8 Rontae says that after -- after Mr. H talks to
9 Deangelo, Deangelo takes Rontae into the bathroom. See,
10 because surveillance from outside of Simone's is not going to
11 see what Deangelo tells Rontae in the bathroom, which is to
12 shut up.

13 Remember, Rontae told you that, Deangelo took him in
14 the bathroom at Simone's and said, Keep your mouth shut.
15 That's where the note was found. That's what this is all
16 about. This is all about taking care of TJ. The murder of
17 Timothy Hadland is what this is all about.

18 Murder, ladies and gentlemen, is the unlawful
19 killing of a human being with malice aforethought.. Well,
20 there's no doubt on earth that the killing of TJ Hadland was
21 unlawful. What is malice aforethought? He's out here all by
22 himself, lured out away from his girlfriend on a dark street
23 late at night, ambushed, shot twice in the head.

24 Malice, what is it? It's the intentional doing of a
25 wrongful act. This wasn't an accident. The gun didn't go off

1 by itself twice. You heard the testimony of Rontae. He came
2 around that van, put two in his head. Kenneth Counts shot him
3 twice in the head. He didn't even see it coming. He was
4 ambushed.

5 Malice -- don't confuse it with premeditation, and
6 we'll get into what premeditation is in a minute. Malice does
7 not imply deliberation or the lapse of any considerable time
8 between the malicious intent to injure another and the actual
9 doing. So there's not some time requirement for malice.

10 Now, there is murder of the first degree, there's
11 murder of the second degree, and we'll go through all of this.
12 For first-degree murder, there are three elements. You'll
13 hear us throw that word out sometimes. They're kind of like
14 ingredients in a recipe. You can't make the recipe if you
15 don't have all the ingredients. For this, for first-degree
16 murder, it has to be wilful, deliberate, and premeditated.

17 What is wilful? It's the intent to kill. And there
18 need be no appreciable time between the formulation of the
19 intent and the act of killing. Getting a gun, sneaking out of
20 a car and taking care of a person by shooting him twice in the
21 head for money paid out by -- oh, by the way, Mr. H, he told
22 you that himself, that he paid him. That is a wilful act.

23 Deliberation, the second element, the second
24 ingredient, the process of determining upon a course of action
25 to kill as a result of thought. I want TJ taken care of,

1 Mr. H. Little Lou, I told you to take care of TJ, to take
2 care of this. It's a process, a determination upon a course
3 of action, getting someone to do their bidding for them,
4 someone to dangle out in the wind when things get bad.

5 Premeditation, the third element, third ingredient,
6 it's a design, a determination to kill. I want him taken care
7 of. Premeditation need not be for a day, an hour, or even a
8 minute. There's not a specific time requirement. It can be
9 as instantaneous as successive thoughts of the mind. That's
10 not what we're worried about here. This is not some real
11 quick rash thing, someone just pulls out a gun and shoots.
12 There's a lot of planning. There was a lot of getting people
13 to do this, giving the order, carrying the order out.

14 Now, Mr. H is facing first-degree murder from being
15 either wilful, deliberate or premeditated. And there's
16 another way of getting to first-degree murder for Mr. H. Just
17 like you come into this box every day, you come in from the
18 left-hand side and you take your seat. You could come in from
19 this right-hand side sometimes if you are taken out the back.
20 As long as you all get in here, it doesn't matter if you came
21 from the left or the right. It's the same thing with murder,
22 first-degree murder, in this context.

23 We just talked about wilful, deliberate, and
24 premeditated, coming in from the left. Now we're talking
25 about the option from the right. Lying in wait.

1 What is lying in wait? It's a terminology that you
2 see in your instructions. It's defined as a waiting and
3 watching for an opportune time. Get him out at the lake away
4 from his wife, girlfriend, out on a deserted street, no street
5 lights, not many people around. Together with the concealment
6 by ambush, he didn't see it coming, or some other secret
7 design to take the other person by surprise. Not that you can
8 really describe a benefit to this situation, but at least TJ
9 didn't know it was coming. At least he didn't know. It was
10 so much a surprise, so much an ambush, he didn't even know
11 before it happened.

12 Lying in wait is the second part to this. To
13 constitute murder by lying in wait, in addition to what we
14 just talked about, there must be an intentional infliction
15 upon the person killed of bodily harm involving a high degree
16 of probability that it will result in death and shows a wanton
17 disregard for human life. Shooting someone in the head is
18 just that.

19 Now, there's second-degree murder. What's
20 second-degree murder? Second-degree murder is murder without
21 premeditation and deliberation. So if the thought process is
22 that there wasn't premeditation and deliberation, then it's
23 second-degree murder; or -- this is important -- or, this is
24 another way to second-degree murder, a killing which occurs in
25 the commission of an unlawful act which in its consequences

1 naturally tends to destroy the life of a human being.

2 Plan B, go put a beating on him. Out there
3 isolated, all alone, conspire with a group of people to get
4 him out there, discussion of baseball bats and garbage bags.
5 Plan B is what is second-degree murder. If you think that
6 really the only plan was to beat and the consequences
7 naturally tend to destroy, you get a bunch of people together
8 with the intent to go beat someone all by himself, and adding
9 to the mix is the concept of the baseball bags, trash bags,
10 that's your second-degree murder.

11 Plan A, if he's alone, kill him. That's the wilful
12 deliberate, premeditated. Lying in wait, Plan B,
13 second-degree murder.

14 In making this determination, you have to also
15 determine if a deadly weapon was used. Ladies and gentlemen,
16 the instruction -- the main point is the very end, you are
17 instructed that a firearm is a deadly weapon. This is really
18 not an issue. There are two holes, gunshot wounds of entry.
19 You heard from the doctor. In fact, you've seen the fragments
20 from the bullets recovered from his head. There's no doubt a
21 deadly weapon was used.

22 Now, this is an important part because the gun was
23 not found. The State is not required to have recovered the
24 weapon. It doesn't have to be found in order to be found
25 guilty of using a deadly weapon. It doesn't even have to be

1 brought to court. It just has to be shown that it was used.

2 There are different theories of criminal liability,
3 by conspiring or aiding and abetting, because the State's not
4 arguing that Luis Hidalgo, III physically pulled the trigger,
5 that Mr. H physically pulled the trigger. Kenneth Counts
6 pulled the trigger. The question is, under the law, are they
7 responsible for that killing? Yes, they were.

8 And so, conspiracy. Conspiracy's an agreement or
9 mutual understanding between two or more persons to commit a
10 crime. I want him taken care of. Even in the notes of
11 Mr. DePalma, the information given is that TJ has been talking
12 bad about the club. Mr. H, even on the stand, said, Well, I
13 may have said something to him to the effect of, Tell him to
14 stop running his mouth about the club. If it doesn't matter,
15 like he says, that someone's running their mouth about the
16 club, why tell him to do that? Why go talk to somebody who's
17 fired? And if he truly has no effect on the business by
18 running his mouth, what's the reason to have him talked to,
19 beaten, or killed? What's the reason? Because he is talking
20 crap about the club.

21 A crime is the agreement to do something unlawful.
22 It does not matter whether it was successful. The crime of
23 conspiracy to commit murder is when people agree to commit
24 murder. That's a separate crime from the murder itself.

25 So even if the murder didn't happen, someone can be

1 guilty of conspiring to commit murder because they made the
2 agreement to kill somebody, and the killing didn't happen.
3 But in this case the killing did happen.

4 Now, for conspiracy, you're instructed that if you
5 find that the State has established that the defendant, in
6 this case, the defendants, has committed conspiracy to commit
7 murder, you shall select conspiracy to commit murder. That's
8 that first count that we just talked about.

9 Now, for a conspiracy, it's not necessary to show a
10 meeting. We don't have to have video surveillance of them
11 hunkered down in the office where the direct order is given or
12 out on the floor when Deangelo was told by Mr. H or on the
13 phone or wherever it was that Little Lou said, I told you to
14 take care of TJ, to take care of this. We don't have to show
15 video of that. The formation, the evidence of a conspiracy
16 can be inferred. We can figure it out from all the
17 surrounding facts and circumstances. It comes to the
18 conclusion that there is a conspiracy.

19 An act can be done by direct evidence, it can be
20 done by circumstantial evidence. A person who knowingly does
21 any act to further the object of a conspiracy or otherwise
22 participates therein is criminally liable as a conspirator.
23 So the people who aren't pulling the trigger but they're doing
24 acts in furtherance of that conspiracy saying, I want this
25 person dead, giving the order, telling them, I told you to

1 take care of TJ, paying out afterwards, this is the evidence,
2 ladies and gentlemen, that shows the conspiracy and puts them
3 on the hook for the murder even though they didn't pull the
4 trigger.

5 It's almost as acceptable as direct proof and it's
6 usually established by inference. Well, we're going to get
7 through the inferences that we can establish later on from the
8 recordings.

9 Now, the conspiracy to commit a crime does not end
10 upon the completion of the crime. It's not over when TJ's
11 dead. The conspiracy continues until the coconspirators have
12 successfully gotten away and concealed the crime. The efforts
13 to conceal the crime afterwards show that the conspiracy is
14 still going. It's not over because TJ's dead. It continues
15 until they have successfully gotten away and concealed it.

16 They didn't successfully get away and conceal it.
17 And each member of the criminal conspiracy is liable,
18 responsible, for each act and bound by each declaration of
19 every other member. They're on the hook for what Deangelo's
20 doing, what Kenneth Counts is doing if the act or the
21 declaration is in the furtherance of the object of the
22 conspiracy. When Deangelo sets it up and does the lying in
23 wait and the ambush, and when Kenneth Counts gets out with
24 premeditation, deliberation and shoots him in the head twice
25 with a gun, they're responsible when the evidence is --

1 establishes that they're a part of the conspiracy to commit
2 that murder. Because under the law of conspiracy, the act of
3 one is the act of all. Every conspirator is legally
4 responsible for a specific intent crime.

5 Now, murder in the first degree is a specific intent
6 crime. Specifically, intent that you want that crime,
7 first-degree murder, to occur. Then there are general intent
8 crimes. And you're going to hear some -- you've already heard
9 this from the judge and you'll have the instructions with you
10 on the definition. Now, it's different. Under a conspiracy
11 for a general intent crime, the liability is different because
12 for conspiracy to commit first-degree murder, they
13 specifically have to have the intent that he is killed. Well,
14 it's very evident, I want him taken care of. I told you to
15 take care of him, and, in fact, the payment afterwards for
16 getting the job done.

17 But let's say in the analysis as to plan B to the --
18 just B, it's a little bit different, because for a general
19 intent crime, a conspirator's legally responsible for the
20 crime that follows, the things that come after, that battery
21 with substantial bodily harm, that battery with a deadly
22 weapon, getting together, getting him out there, baseball bats
23 and trash bags. The probable and natural consequences of the
24 object of the conspiracy by getting there, they are
25 responsible for that, even if it's past the original plan.

1 Because the probable and natural consequences of the object of
2 the conspiracy, even if it was not intended as part of the
3 original plan, and even if it was not -- if the conspirator
4 was not present at the time, because you run that risk when
5 you conspire with people to go out and beat somebody and to
6 beat them isolated all alone by a group of people with
7 discussions of baseball bats.

8 Now, even though the statements and acts may be made
9 or occur in the absence and without the knowledge of the
10 defendant, provided such statements were knowingly made and
11 done during the continuance of such conspiracy and in
12 furtherance of the same object, this is further showing that
13 Little Lou, Mr. H are responsible for the acts of Deangelo and
14 Kenneth Counts when it's in the furtherance of that
15 conspiracy. This holds true even if the statement was made by
16 the coconspirator prior to the time the defendant entered the
17 conspiracy or after he left the conspiracy so long as the
18 coconspirator was a member of the conspiracy at the time. You
19 heard in opening timing means everything, from the defense.
20 And we'll get into that.

21 Let's talk about the concept of withdraw from the
22 conspiracy. Once a person joins a conspiracy, that person
23 remains a member until he withdraws. A person can withdraw
24 from a conspiracy by taking some positive action which
25 disavowed or defeated the purpose of the conspiracy. Changing

1 from plan A to plan B is not withdrawal from the conspiracy.
2 That's not saying, Stop the presses, don't kill and don't
3 beat. It's just -- if it's believed that the argument was to
4 change from A, kill, to B, it goes from first degree to second
5 degree, this is not withdrawal from the conspiracy.

6 Now, that was a conspiracy analysis. You can also
7 be responsible under aiding and abetting. When two or more
8 persons are accused of committing a crime together, their
9 guilt may be established without proof that each person did
10 every act. Same concept, being responsible even for the acts
11 of somebody else if -- if there is aiding and abetting shown.

12 Now, if they either directly commit the act or abet
13 to help, whether present or not, who advise, who encourage its
14 commission with the intent that the crime occurred, just like
15 a conspiracy, aiding and abetting for a specific intent crime
16 of murder, they must aid and abet with the specific intent
17 that the first-degree murder occur. It's that same
18 requirement. And we've already gone over the evidence of the
19 specific intent. .

20 Now, a person aids and abets in the commission if he
21 knowingly and with criminal intent aids, promotes, encourages
22 or instigates by act or advice the commission of such crime
23 with the intention that such crime occur.

24 Now, you must be unanimous in your verdict. You
25 must all believe beyond a reasonable doubt that the crime was

1 charged. But if you take, for example, the first-degree
2 murder -- and we talked about the examples of wilful,
3 deliberate, premeditated or lying in wait -- some of you could
4 think it was wilful, deliberate and premeditated. Some of you
5 could think it was lying in wait. It doesn't matter as long
6 as you all agree that it's first-degree murder. That's what
7 this instruction is telling you.

8 General intent crimes, battery, battery with a
9 deadly weapon, battery with substantial bodily harm, that was
10 general intent. First-degree murder, specific intent.
11 Second-degree murder is general intent. Where several parties
12 join together in a common design to commit an unlawful act,
13 each is criminally responsible for the reasonable foreseeable
14 general intent crimes committed in the furtherance. This is,
15 getting to second-degree murder, general intent by aiding and
16 abetting for the concept of beating, the plan B version.
17 Battery with a deadly, the battery with substantial, the
18 battery in the context of this case, when you look at all the
19 surrounding facts, that's how they can be responsible for
20 second-degree murder of aiding and abetting.

21 Now, we talked about that first-degree murder is a
22 specific intent crime. Then the other crimes -- because these
23 are the crimes charged. These are the crimes, solicitation to
24 commit murder, that Little Lou, Luis Hidalgo, III is facing.
25 Mr. H is not facing solicitation to commit murder.

1 A person who counsels, hires, commands or otherwise
2 solicits in order to commit murder. If no criminal act is
3 committed as a result of the solicitation, he is guilty of
4 solicitation to commit murder.

5 Put rat poisoning, that's a solicitation to commit
6 the murder. The fact that the murder doesn't happen is not an
7 issue with being charged with and convicted of. In fact, if
8 the murder had happened of Jayson and Rontae, then there would
9 be a murder charge, there wouldn't be a solicitation to commit
10 a murder. So solicitation is the asking, it is the
11 encouraging, enticing, this is what he does to get them to
12 kill.

13 And why? Why on earth is there any reason to kill
14 Rontae or Jayson if, in fact, there was only a payment of
15 \$5,000 because of fear of what Deangelo or Deangelo's friend
16 could do? Why on earth would there be conversations,
17 whispered conversations, about killing these people, the very
18 witnesses? Why? Because it's a joke. It was just a joke.
19 He was just, you know, running his mouth as he checked for a
20 wire and whispered?

21 We've been through this. He's found out at the
22 lake. The police did their job. They work out at the scene.
23 They find his car. They find the phone with Deangelo's phone
24 number on it. The Palomino cards lead them back to the
25 Palomino. They get to the Palomino and they learn about the

1 people there, Mr. H. They learn about Anabel Espindola,
2 Little Lou, Luis Hidalgo, III. These are the owner, managers.

3 Then the police encounter Deangelo Carroll, an
4 employee, the go-between, between the orders and the
5 execution. And Deangelo Carroll has Jayson and Rontae with
6 him. You heard the evidence from Rontae about how Deangelo
7 talked to them about taking care of somebody, and you heard
8 how Kenneth Counts was picked up by Deangelo after getting
9 that order and Kenneth Counts went out there and took care of
10 TJ.

11 What did Rontae Zone tell you? That Mr. H wanted TJ
12 taken care of. But it wasn't just that. Rontae also told you
13 that Little Lou also wanted TJ taken care of. Rontae told you
14 that the information that he had was that Little Lou had said
15 bring baseball bags and garbage bags and that Rontae said that
16 Deangelo Carroll went and got Kenneth Counts.

17 (Playing tape)

18 MR. PESCI: What is that about if it's not about
19 this killing? What taking care of is it? What on earth is
20 there to be taken care of?

21 Rontae also says Kenneth Counts shot TJ twice in the
22 head without warning. And Kenneth Counts said -- Rontae said
23 Kenneth Counts used a .357 revolver to kill TJ. Remember, the
24 police found no casings out at the scene.

25 James Krylo came in, he took the stand, a firearm's

1 expert, and he told you that those fragments were consistent
2 with being shot by a revolver. And he said the revolver does
3 not expend the cartridge cases, those little anatomies of a
4 bullet there. That's why there aren't casings out there
5 because it's a revolver. And he said that those fragments are
6 consistent with a nominal .38, and a nominal .38 includes a
7 .357 caliber.

8 Rontae says KC's the shooter.

9 Kenneth Counts got paid. He got paid. Anabel says
10 that Mr. H told her to get \$5,000 which she said -- which she
11 did, and Deangelo took the money and gave it to Kenneth
12 Counts. Kenneth Counts was found hiding in a ceiling
13 underneath which were found, what, Palomino cards and cash.
14 And oh, by the way, the cash, the Palomino cards underneath
15 him where he's hiding, the payoff for taking care of TJ,
16 Deangelo's fingerprints show up on those cards, Kenneth
17 Counts' show up on those cards. Evidence corroborating Rontae
18 Zone.

19 Rontae says after being paid, Kenneth Counts left
20 the Palomino Club in a taxi. Gary McWhorter testified. He
21 came in here, the man in the wheelchair, and he told you that
22 he picked up an African-American male on the night that this
23 occurred and he drove him to the area of where? Kenneth
24 Counts' house. Remember his trip sheet, that he picked him up
25 at the Palomino and dropped him off on -- remember, he

1 specifically said he wrote down a different location because
2 the person got out not where they originally asked and walked
3 through the backyard, not right into his house. And, oh, by
4 the way, that backyard abuts Kenneth Counts' house, which you
5 remember hearing the testimony from the detectives, he ran
6 across the street to hide from them up there in the attic.
7 And the cash is found underneath him.

8 Rontae says Deangelo slashed the tires to the white
9 Chevy Astro van and dumped them in the trash. Detective
10 Wildemann told you they went out there, they found those
11 tires, and those tires were slashed.

12 Rontae says that Rontae and Jayson go with Deangelo
13 to Simone's Auto the day of the murder -- day after the
14 murder. Now, Rontae says that while at Simone's Deangelo goes
15 and talks with Mr. H. Mr. H was the guy in his 40s or 50s.
16 The picture which we used when Mr. H was on the stand of the
17 three generations, Little Lou, his dad and then, as they refer
18 to him, Pops, ladies and gentlemen, the man who looked like he
19 was in his 40s and 50s was not Pops, no disrespect to Pops.
20 Deangelo's referring to Mr. H. Deangelo, from the stand,
21 pointed out it was Mr. H.

22 After speaking with Mr. H, Deangelo pulls Rontae in
23 the bathroom and tells him to -- oh, look, keep your mouth
24 shut. And that's where that note's found, in Simone's.

25 Now, Anabel's testimony. A week before the murder

1 there was a problem with TJ. Little Lou and Mr. H were
2 talking about TJ getting kickbacks from cab drivers. Now, if
3 you don't believe Anabel, what did PK tell you, the
4 defendant's witness? PK was very assertive of the fact that,
5 one, he doesn't like Deangelo; and, two, TJ was skinny, and
6 that he brought it to their attention. It's not the State's
7 witness. That's the defense's witness. That Mr. H told them
8 they needed to watch TJ. Later Deangelo told them that TJ was
9 badmouthing the club. That's actually in the notes of
10 Mr. DePalma.

11 Anabel told Mr. H about that and Little Lou got mad.
12 Little Lou, You're not going to do anything. You're never
13 going to be like Rizzolo or Gilardi. They take care of
14 business. Little Lou had mentioned that Rizzolo had an
15 employee beat up -- had an employee beat up a customer.
16 Mr. H, per Anabel, says to just mind his own business.

17 Now, we go to May 19th. On that evening Mr. H and
18 Deangelo come into the office. Well, Mr. H brings Deangelo to
19 the office. They didn't work at Simone's. Remember, Anabel
20 testified she worked at Simone's most of the day, then her and
21 Mr. H would drive to the Palomino, and then at the Palomino
22 she's sitting in the office. Anabel could not hear the
23 conversation. Mr. H took Deangelo out of the office. Mr. H
24 and Deangelo leave the office and Mr. H later comes back with
25 PK. What happened that time with Rose's boyfriend? Take care

1 of or deal with Rose's boyfriend, that is the evidence from
2 Anabel, as Mr. H talked to Deangelo. Anabel found out and
3 Anabel shut it down.

4 So this time Mr. H takes Deangelo outside of the
5 office where Anabel's not going hear, where Anabel's not going
6 to shut it down. Mr. H told PK to have a seat and told Anabel
7 to go into the kitchenette with him, that Anabel and Mr. H
8 left PK and went into the back, meaning that kitchenette area
9 off of the office. Mr. H told Anabel to go into the back
10 room, go further back, call Deangelo and tell him to go to
11 plan B. Plan B was not a term that Mr. H had used with her
12 before. That's what you heard from Anabel.

13 Anabel followed Mr. H's order and then called
14 Deangelo and told him to go to plan B. You've heard all the
15 testimony about the phone records and about her trying to get
16 through. You heard Rontae say that they were having problems
17 on the phone, that Deangelo was on the phone and because of
18 the connection problems he was driving back and forth to try
19 to get that connection of the phone call. Anabel went back
20 into the office and told him that she had called. And then
21 Deangelo comes back to the club.

22 Deangelo comes back and Mr. H is watching TV.
23 Deangelo comes in the office, sits down and says, It's done.
24 He's downstairs.

25 Now, even Mr. H's testimony is consistent with

1 Anabel there, that Deangelo comes into the office, that he
2 announces, It's done. Now, from there, it parts company
3 because Mr. H's version is he was scared, scared of Deangelo,
4 Deangelo's friends that were outside, that he didn't know how
5 many there were. But he didn't get up and go look at the
6 surveillance and see. He just took the word of the employee,
7 if you believe him, that he thinks should have been fired a
8 long time ago and told Anabel to get the cash.

9 He says, Get 5. She says, 5 what? He gets angry
10 and says \$5,000. She gets it, brings it back, puts it down
11 and Deangelo takes it.

12 Then the night goes on. They leave and Mr. H turns
13 the TV on and he's watching the news and he says, Did he do
14 it, as he's looking on the news. Did he do it? And he's
15 nervous, she says. Now, when she wakes up the next morning,
16 that -- Mr. H is up, watching the news and she asked him if he
17 slept and he said no. Then the news comes of the death, of
18 the murder, of the body found out at the lake. And Mr. H
19 says, He did it.

20 And then they go to the Silverton. Now, he did not
21 want to go back to the house so they checked into the
22 Silverton. That's what Anabel says, that Mr. H didn't want to
23 go back there. This was before the recordings with Deangelo,
24 that Deangelo represents this fear, before the recordings.
25 They haven't even heard yet from Deangelo the concept of KC

1 threatening Deangelo. They haven't even heard it yet and
2 they're going to the Silverton.

3 Little Lou comes to the Silverton, tells Mr. H,
4 Don't worry, I've already talked to Deangelo. Deangelo says
5 he's not going to say anything. He's dealt with the police
6 before. And that they didn't even go back to the club. He
7 could bring him the paperwork, the daily logs, the work that
8 Anabel would have to do so as not to have to go back.

9 On Sunday Mr. H and Anabel meet with Mr. H's
10 attorney. Mr. H spoke with the attorney. Anabel and H were
11 told not to speak with Deangelo because he could be wired.
12 That was advice given to both of them, Mr. H and Anabel. And
13 he becomes increasingly upset, nervous and worried.
14 Completely distraught, she says, right now. I don't know what
15 I told him to do, she said he's saying to himself. He's
16 mumbling. I feel like killing myself, she says.

17 Apparently -- well, Anabel said she never saw him
18 like this before. Anabel then tells him -- tells you that she
19 said to him, Do you want me to go talk to him, to Deangelo?
20 This is after the advice by the attorney to not talk to him.
21 She's willing to help him out, to try to stop him from being
22 in this position and she says, Do you want me to, and he says,
23 Yes. Let her go out there and take the chance, just like
24 somebody else opens up the doors for him, just like somebody
25 else has to open up the safes for him, just like somebody else

1 has to unlock everything for him. Let the woman get out there
2 and do it for him.

3 Anabel and Mr. H discuss what would be said to
4 Deangelo. Mr. H told Anabel to tell Deangelo to resign from
5 the club and not to talk to anyone because if something
6 happened to Mr. H, then he couldn't help anyone. Anabel asks
7 Mark Quaid after that to call Deangelo to set it up and now we
8 get to the recordings.

9 He comes in on May the 23rd, the first time, goes
10 into Little Lou's room and begins.

11 (Playing tape)

12 MR. PESCI: Why the whispering? If you believe the
13 testimony, no crime has occurred, nothing more than just
14 trying to avoid gang retaliation. What's the whispering
15 about?

16 (Playing tape)

17 MR. PESCI: If somebody else now has the advice to
18 not talk to Deangelo because he might have a wire, because
19 Anabel's not in the wire, which is why we played the first
20 clip, Anabel's not in the room when Luis Hidalgo, III -- make
21 sure that there isn't a wire. Someone else now has that
22 information. Mr. H told you on his testimony he doesn't
23 remember the talk to his son the day after the murder, the day
24 after that and the day after that. But Little Lou realizes, I
25 should check for a wire, just magically.

1 (Playing tape)

2 MR. PESCI: If something happens to him, we all
3 lose, every one of us. What's going to happen to him? She
4 didn't say that the gang banging dangerous friend of Deangelo
5 Carroll comes back, he could shoot and kill us all. I'm
6 really concerned just like he is for my well being of the
7 person who did this.

8 (Playing tape)

9 MR. PESCI: If these guys are looking for money,
10 payoff to keep their mouth shut about the crime, nothing about
11 these guys coming back to do harm to me, to do harm to Little
12 Lou, to do harm to Mr. H, nothing about that. It's trying to
13 shut them up from going to see the cops.

14 And what is this history we have? Mr. H has been
15 extorted before.

16 THE COURT: I think we need a break. All right.

17 Ladies and gentlemen, we'll go ahead and take a
18 quick break, and once again, you're reminded of the
19 admonishment which, of course, is still in place not to
20 discuss anything relating to the case or do anything else
21 relating to the case on the break. If everyone will just go
22 through the double doors, notepads in your chairs. We'll see
23 you all back here at the 2:30.

24 (Court recessed at 2:24 p.m. until 2:32 p.m.)

25 (In the presence of the jury.)

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

3 And, Mr. Pesci, you may resume your closing
4 argument.

5 MR. PESCI: Thank you, Your Honor.

6 You heard the testimony almost a year to the day
7 that TJ was killed. Anabel and Mr. H went and made police
8 reports about being extorted, that there was a former employee
9 who was extorting them from money from the club and that went
10 to the attorney and the attorney says, Go make a police
11 report, go to the police when a crime has occurred. He
12 doesn't go to the police and it's not because of fear of gang
13 retaliation. It's because that would be walking right to the
14 police as the defendant.

15 (Playing tape)

16 MR. PESCI: You, Deangelo, and Lou are going to have
17 to stick together. Mr. H takes Deangelo out, gives the order.
18 Mr. H tells her after the fact, Go to plan B, because Mr. H
19 uses Deangelo to get Kenneth Counts to kill TJ. That's why
20 you, Deangelo, and Mr. H are going to have to stick together.

21 And she is not a State's witness on May the 23rd,
22 2005. She's not trying to get out from underneath a death
23 penalty, which, oh, by the way, when the deal went down wasn't
24 on the table. She's not doing any of that. She's whispering.
25 She doesn't set this up way in advance. She's whispering

1 because of the fact that Mr. H is on the hook with Deangelo
2 because he gave the order.

3 (Playing tape)

4 MR. PESCI: Beat up, not dead. Plan B, not plan A,
5 Deangelo, come on. Not, Holy cow, we had nothing to do with
6 this, we're being extorted by you for money, we're threatened
7 by this gang banger outside the door that no one saw on
8 surveillance. If it's plan B, it's second-degree murder.

9 (Playing tape)

10 MR. PESCI: He, Mr. H, is the only one, not that
11 he's going to get killed, that's a terrible thing, because
12 some gang banger's going to come do him in he's so afraid of.
13 He's going to lose the club because he's going to be arrested
14 for the murder. Why is everybody screwed when the heat comes
15 down? What heat? Is the heat Deangelo's friend? If they had
16 nothing to do with it, why would the club be lost? Why would
17 they want to take care of Deangelo's family? Mr. H told you
18 that he didn't like Deangelo, that he thought he should have
19 been fired. If he never gave the order, why would there need
20 to be the need to keep him quiet by taking care of his family?

21 (Playing tape)

22 MR. PESCI: Not a bad deal because you shouldn't
23 kill somebody, bad deal because you've got witnesses, you've
24 got people who can pinpoint you.

25 (Playing tape)

1 MR. PESCI: Have KC kill them too, t-o-o, also, in
2 addition to the killing of TJ. And so there's no confusion,
3 Little Lou tells us, We will put something in their food so
4 they die, rat poison or something. Is that a joke? Is that
5 funny? In the context that that's happening, in hushed tones
6 after Anabel's checked for a wire, after all that, this is a
7 joke, whispering? Under surveillance, keeping your mouth
8 shut, he's really a stand-up comic and this was all just a
9 joke?

10 (Playing tape)

11 MR. PESCI: We, we can take care of KC too. That's
12 Anabel. Big to do about how in the heck did she plead to a
13 crime, that her attorney's so bad for doing that. Do you see
14 in the evidence now stacking up on Anabel, not just Mr. H and
15 Little Lou? But let's focus on Little Lou right now.

16 Little Lou, We get KC last, because he is a part of
17 this event too. I told you to take care of TJ. We can get KC
18 last. Is it a joke now the second time, the joke about
19 killing -- not just Rontae, not just Jayson, but now Kenneth
20 Counts too?

21 (Playing tape)

22 MR. PESCI: Stick to your story. Why is there a
23 need of a story if Deangelo's friend just went crazy and
24 killed the guy for no reason and came in and extorted them?
25 Why would they have to stick to the story? The story is run

1 to the police, tell them what happened, give us help, because
2 it all depends on you, because Little Lou, Anabel, Mr. H know
3 that Deangelo is the conduit that gets to KC, that does the
4 killing on the behest of them.

5 (Playing tape)

6 MR. PESCI: Why would his dad be going into exile?
7 It's not because someone's going to come hurt him because then
8 they wouldn't all be screwed. They've got to get him back on
9 track. We --

10

11 (Playing tape)

12 MR. PESCI: -- do this all the time.

13 (Playing tape)

14 MR. PESCI: We keep our mouth shut. Anabel says
15 that Deangelo's in the room and so is Little Lou. Little Lou
16 doesn't say, you know what, you're crazy, Anabel, I had
17 nothing to do with this. You're crazy. I wasn't a part of
18 any order. I wasn't a part of any conspiracy. He's adopting
19 what she's saying. And doesn't his statement of, We'll get
20 them too, confirm that to you?

21 (Playing tape)

22 MR. PESCI: Any chance that this was just a joke has
23 been left behind because you guys smoke weed, right? After
24 you have given them the money and still start talking, they're
25 not going to expect rat poisoning. Set them up. Pay them the

1 cash. They'll be calmed down. They won't be expecting it
2 when you give them the rat poisoning. This is the clear
3 direct evidence of solicitation to commit murder, to kill
4 Jayson, to kill Rontae. The joke has left a long time ago.
5 Go buy rat poison.

6 (Playing tape)

7 MR. PESCI: Weed's not going to work. Well, let's
8 move on to the next way to do it, the Tanqueray bottle. A big
9 to do about the fact that the Tanqueray bottle doesn't have
10 Little Lou's fingerprints. Well, neither does the cash that
11 the defense and the State both say Anabel paid out. Anabel
12 got the cash, brought it, put it there. Her fingerprints
13 aren't on the cash. Just because her fingerprints aren't on
14 the cash doesn't mean she didn't do it, just like she said,
15 got the money that Mr. H ordered her to get and bring it out
16 and put it on the table and Deangelo took it. Mr. H said the
17 money was paid. How can that be true? There are no prints.
18 Sometimes there aren't prints on things, ladies and gentlemen.
19 And the fact that his fingerprints aren't on the Tanqueray
20 bottle doesn't mean that he didn't say what he just said
21 because you heard it yourself.

22 (Playing tape)

23 MR. PESCI: The last option of rat poison is not
24 going to work. You know what you've got to do. Make no
25 mistake about it, the clear intent is to have them killed

1 because they are the witnesses that implicate them in that
2 conspiracy, each one of them, to kill TJ.

3 (Playing tape)

4 MR. PESCI: There's the evidence of the conspiracy
5 straight from defendant's own mouth. It's not the State
6 creating this up out of nothing. It is straight from the
7 defendant's own mouth. How much time for a conspiracy? The
8 conspiracy that we're telling you here exists is confirmed by
9 Little Lou himself and he's willing to pay Deangelo thousands
10 of dollars so that a conspiracy doesn't blow backwards on him
11 and on his dad and on Anabel.

12 The wire from the 24th.

13 (Playing tape)

14 MR. PESCI: The days passed, Anabel's got some more
15 time to think about what she should or shouldn't be saying
16 when a guy who could be wired is talking to her. She says,
17 Talk to the guy, not kill him. Why would they send them talk
18 to him at all? He's just an insignificant employee that Mr. H
19 doesn't like and has no effect on the business by running his
20 mouth about the club. Why would they send them to talk to him
21 at all? Let's just assume for the sake of argument that
22 that's true, it was only to talk and Deangelo went so crazy
23 and his friend did. Why did they send him to go talk to an
24 insignificant employee who has no effect? Because he's fired.
25 And you heard his testimony, he can't [inaudible] it any way.

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(Playing tape)

MR. PESCI: I said to go to plan B, not -- I didn't say anything. I had nothing to do with it. I said, Go to plan B. There's no plan B without a plan A. And the plan A comes from the guy at the top. Remember the organizational chart? It goes up to him. Use your common sense, ladies and gentlemen. There's an instruction that at the end of the day you can use your common sense, and when you look at this at the end of the day, you've heard this, that Little Lou himself says to take care of him. You've seen this piece of evidence. Does it make any sense at all to remind himself to keep his mouth shut and that he might be under surveillance as he sat like a bump on a log in a meeting with an attorney? Why does he need to worry about being under surveillance if he did nothing wrong? Why does he have to go run to an attorney? Use your common sense, ladies and gentlemen. Use your common sense and the evidence that establishes that the defendants in this case are guilty as charged.

Thank you.

THE COURT: All right. Thank you, Mr. Pesci.

MR. GENTILE: We need a couple of minutes to set up.

THE COURT: Okay. Do we need to take a break?

MR. GENTILE: We could take maybe five, seven, eight, ten minutes.

THE COURT: All right. Ladies and gentlemen, we

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1 need to switch over the equipment for the defense's closing
2 argument, so we'll just take a quick break. We'll give you
3 until 2:55.

4 And once again, you're reminded of the admonishment
5 that, of course, is still in place. And if you'd put your
6 notepads in your chairs and follow Jeff through the double
7 doors.

8 (Court recessed at 2:50 p.m. until 3:12 p.m.)

9 (In the presence of the jury.)

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

12 And, Mr. Gentile, are you now ready to proceed?

13 MR. GENTILE: I am, Your Honor, thank you.

14 THE COURT: All right. Thank you.

15 DEFENDANT HIDALGO, JR'S CLOSING ARGUMENT

16 MR. GENTILE: Every time anybody sits through
17 something this long, there's certain high points, certain
18 things that you remember. I'm sure everybody in this jury box
19 is always going to remember Rontae Zone talking about how weed
20 makes him smarter. That's not something that you're ever
21 going to forget. Okay.

22 But I think that from a standpoint of a theme on how
23 to approach this, we have Mike McGrath to thank. Remember
24 when he said that last week? He said, We didn't believe we
25 had enough the first time so we sent him back in again, and

1 he's talking about Deangelo Carroll. And he was talking about
2 the first day that Deangelo Carroll came back and he tried to
3 make it sound like there was a plan for a murder and Anabel
4 Espindola shut him down, so they sent him back in.

5 But do you remember why they sent him in the first
6 time? They sent him in the first time because they wanted him
7 to get Luis Hidalgo, Jr. on tape. And when you get into the
8 jury room, you're going to get the exhibits. I hope you like
9 looking at photographs because that's mostly what it is. It's
10 mostly photographs. And I'm -- you know that Luis Hidalgo
11 Jr., my client, I call him Louie -- I have a hard time calling
12 him Mr. H. It's been very tough the last several weeks --
13 wasn't charged at all until after Anabel Espindola made her
14 deal, which was about a year ago, a year and a few days.

15 And so what I'd like to do over the next however
16 long, and it's time for you to get the case, you don't need to
17 be listening to the lawyers anymore, but what I'd like to do
18 is I'd like to give you a little structure in terms of the law
19 as it relates to how to approach the evaluation of what you
20 have heard, what you have seen over the last couple of weeks.

21 What wasn't enough? Rontae Zone wasn't enough.
22 They had Rontae Zone at that point in time and no tapes. They
23 had Jayson Taoipu who you didn't -- you don't have and they
24 had no tapes. And they had Deangelo Carroll who, of course,
25 was the person that they sent in with the digital recorder on

1 to get the recordings. So at that time after the second day,
2 after the 24th of May, they had these three people, they had
3 two audio tapes and they still didn't have enough.

4 And so you have to say to yourself, okay, that's
5 what they had then. It took 33 months before they charged
6 Mr. Hidalgo. What do they have now? They have Rontae Zone.
7 And you heard him, and you -- you are going to get an
8 instruction that deals with the reasonable doubt, what is a
9 reasonable doubt, and that instruction is going to tell you
10 how to reach within yourself in terms of the things that
11 happened to you in your life, important things, and use that
12 kind of approach to making a determination, if there's
13 something in evidence, if there's enough proof, okay, proof,
14 not evidence, proof, because it isn't evidence beyond a
15 reasonable doubt, it's proof beyond a reasonable doubt.

16 And they have Anabel Espindola. Now, you know
17 what's really interesting, Mr. Pesci got up here and he made a
18 very good presentation. There's no question about it. He is
19 an experienced trial lawyer and he had a great PowerPoint, but
20 I want to take you back a couple of weeks to when the last
21 time the State stood up in front of you and talked to you in
22 their opening statements, because at that time -- you heard
23 Mr. Pesci say today when he was talking about four people
24 driving out in a van, because that was what he said shows that
25 there was an intention to do substantial bodily harm. He just

1 said that a little while ago. At the opening statement a
2 couple of weeks ago, Mr. DiGiacomo said -- well, first he said
3 write it down on your notepads, which we're going to get the
4 note taking and perfect memory without being assisted by notes
5 sooner or later by this presentation, but he said to you, In
6 addition to what you will learn during the course of the time
7 period -- he was talking about a tape recording, what else
8 he's talking about is how do you know this guy KC that the
9 conspirators -- he's saying that the conspirators are upset
10 that he used someone else as opposed to doing it himself. So
11 there's been a lot of movement, a lot of change in the way the
12 State is approaching this from the time it started until now.

13 You'll remember in the opening statement
14 Mr. DiGiacomo said that there was a direct call involving
15 Deangelo Carroll and Luis Hidalgo, my client. You never saw
16 that call because it didn't happen.

17 So what I want you to do, if you will, is pay close
18 attention to the jury instructions. We're going to go through
19 them now. These instructions have developed over almost 1000
20 years. The approach to a trial is not something that started
21 last week. And I don't think -- I'm not sure, I don't
22 remember if any of you have ever sat before on a criminal
23 case, but the concept of reasonable doubt is sacred. A
24 person -- it is so easy, it is so easy for anyone to be in a
25 situation where they're subject to accusation and it is such a

1 wrong thing to jump to a conclusion, to speculate, to say
2 that, well, something must have happened. Clearly no question
3 about it, if Louie Hidalgo did not pay the money to Deangelo
4 Carroll at some time after midnight on the 20th of May, 2005,
5 he wouldn't be here. Okay.

6 He did something that was foolish and he told you
7 that, but he did it motivated by fear. And so what I want to
8 do now is I want to take you through the instructions in terms
9 of what the law is, in terms of what the State needs to prove,
10 and I'm going to demonstrate to you that there is no question
11 that there's a reasonable doubt with respect to whether Louie
12 Hidalgo ever joined any conspiracy to do any harm to TJ
13 Hadland. And we will demonstrate without a doubt that he is
14 not guilty of the charges in this case.

15 We started up with the theme of timing is everything
16 and we've kind of stayed with that theme throughout here. So
17 let's talk about conspiracy. The Judge has instructed you,
18 and you will get those instructions in writing, that you can't
19 join a conspiracy that has already ended. And if you don't,
20 you're not responsible for its results. Here's the
21 instruction. It's Instruction No. 15. I'm going to read it
22 to you and I know that you can read it yourselves, but I'm not
23 sure if that print is big enough for everybody. There is
24 another monitor up there, of course.

25 A conspiracy begins when two or more persons enter

1 into an agreement for an unlawful purpose. A conspiracy to
2 commit a crime does not end upon the completion of the crime.
3 The conspiracy continues until the coconspirators have
4 successfully gotten away and concealed the crime.

5 Now, you just heard that a little while ago. You
6 just saw it up here because Mr. Pesci had it up here. He only
7 had half of it, though. Okay. Now let's talk about the other
8 half.

9 However, a person cannot become a member of a
10 conspiracy after the object of the conspiracy has been
11 accomplished. In this case, what was the object of the
12 conspiracy? We all know. According to the way it was
13 charged, the object of the conspiracy was killing TJ Hadland.
14 The law is that if he did not agree to the death of TJ Hadland
15 and TJ Hadland died and then he learned about it and did
16 something afterwards, he is not a conspirator. If a person
17 was not a member of the conspiracy before its objective was
18 accomplished but assists the conspirators afterwards, he is an
19 accessory after the fact, not a conspirator.

20 Aiding and abetting, that's another theory that the
21 State has here with respect to trying to hook Louie Hidalgo
22 into liability for the death of TJ Hadland, aiding and
23 abetting.

24 What is it? What must you give to aid and what if
25 the crime has already occurred? Instruction No. 21, and you

1 know the Judge read them and it's not -- it's not easy to
2 the -- listen to a narrative and really grasp everything
3 that's being said, but you're going to have these back there
4 on paper and the Judge has instructed you that as a matter of
5 law one cannot aid and abet a murder after it's been
6 accomplished.

7 Instruction No. 26 goes directly to the heart of
8 what this case is about. It says that an accessory after the
9 fact is one who, after the commission of a felony, harbors,
10 conceals, or aids such offender with intent that he may avoid
11 or escape from arrest, trial, conviction or punishment, having
12 knowledge that such offender has committed a felony or is
13 liable to arrest. One cannot be both an accessory after the
14 fact and an aider and abettor or conspirator for the completed
15 offense.

16 The completed offense was the death of Timothy
17 Hadland. He died. He was murdered. There's no doubt about
18 it. That has never been contested here. What else hasn't
19 been contested? Without a doubt not even the State has even
20 suggested that Luis Hidalgo was in the van, at the scene, had
21 a gun, provided a gun, none of that. And that is important
22 because, as I said in the beginning and I'm saying now, in
23 this case, ladies and gentlemen, timing is everything for you
24 to come to the correct decision.

25 Instruction No. 26 says that the defendant is not

1 required to establish that he was an accessory after the fact
2 beyond a reasonable doubt. Well, that makes sense. We don't
3 have the burden of proof. I don't have to come in here and
4 prove to you that he was an accessory after the fact. All
5 right. It's that simple. And please keep that in mind,
6 particularly in a case that -- you know, there's a dynamic
7 that occurs when a defendant testifies. And what that dynamic
8 is is sometimes people -- you know, maybe you don't like the
9 way he looks, maybe you don't like certain affects that he's
10 got. And the key -- the thing to remember, and I'm pleading
11 that you do that, is that it isn't what he gets up there and
12 says. It's what the proof that the State has presented that
13 has to be taken into consideration.

14 But if along with all of the evidence this case it
15 raises in the minds of the jury a reasonable doubt as to
16 whether the defendant was only an accessory after the fact,
17 then in that event it will be your duty, your sworn duty to
18 return a verdict of not guilty. That is what these
19 proceedings are about. A defendant is presumed innocent until
20 the contrary is proved. This presumption places on the State
21 the burden of proving beyond a reasonable doubt every material
22 element of the crime charged and the defendant is the person
23 who committed the offense. And so right now still, this
24 moment, and when you go into that jury room, at that moment,
25 and until you make a determination that it's no longer there,

1 he's presumed innocent.

2 The other thing we talked about, and it's kind of
3 interesting because when I was listening to Mr. Pesci's
4 presentation, it's still all about the tapes and, worse yet,
5 his interpretation of what the things on the tapes mean. He
6 didn't talk much about his witnesses. Let's talk about his
7 witnesses. Rontae Zone, Anabel Espindola. And although he
8 didn't stand up on that stand and let us ask him questions and
9 demonstrate for you what that and only that could do, you
10 still have statements that people are reporting to you that
11 they say, if they're remembering it right, and in this
12 instance, for the most part, that's Rontae Zone and Anabel
13 Espindola, you're still having to consider some things that
14 Deangelo Carroll said without us having an opportunity to
15 confront him and cross-examine him, and so his credibility is
16 on the line as well.

17 Now, all of these people, all three of them are
18 accomplices. You're going to see an instruction in a second
19 and when we get to it, I'll articulate it.

20 Just because Rontae Zone was not prosecuted does not
21 mean he's not an accomplice. There are lots of reasons, lots
22 of reasons why law enforcement or the prosecution might choose
23 to not prosecute somebody. We'll go into those in a second.

24 But an accomplice is defined as one who is liable
25 for the prosecution for the identical offense charged against

1 the defendant on trial in the cause which the testimony of the
2 accomplice is given. In this case you have two accomplices.
3 One has admitted to being an accomplice, that's Anabel
4 Espindola. One has admitted that he's got to perform or he
5 might be charged, and that's Rontae Zone. That was the last
6 series of questions that were asked of him, and maybe you
7 remember them.

8 To be an accomplice, the person must have aided,
9 promoted, encouraged or instigated by act or advice the
10 commission of such offense with knowledge of the unlawful
11 purpose of the person who committed the offense.

12 Well, what did Zone tell you? He doesn't remember
13 when. He thinks it might have been on the 18th of May. He
14 also thinks that it might have been on the 20th of May. If it
15 was on the 20th of May, it was clearly too late. But on the
16 18th of May, he says to you that he hears Deangelo talking
17 about wanting to hurt somebody for snitching. Do you recall
18 that, snitching? He goes with him. He goes out to the lake.
19 Now, Deangelo's either the dumbest guy on the planet to be
20 hauling a bunch of witnesses with him for the purpose of
21 committing a murder or Zone was in on it or it wasn't supposed
22 to happen. Those are the only things that make sense. And
23 we're going to get to each of those.

24 But clearly if he had nothing to do with this
25 situation prior to going out to the lake and poor Mr. Hadland

1 was killed, what is he doing remaining with Deangelo Carroll
2 the next day, changing tires on the van? Does that really
3 sound like somebody's who's not an accomplice?

4 In determining whether an accomplice has been
5 corroborated -- now, you're going to need to have
6 corroboration. You have an instruction that talks about the
7 need, the legal requirement that accomplice testimony be
8 corroborated.

9 In Nevada we have a statute, and the Judge has
10 instructed you what that statute requires, but in Nevada
11 and -- not in every state, but in Nevada, the bottom line is
12 accomplices are simply not trusted. And as a matter of
13 legislative enactment and the instruction of the Court, you
14 have to approach it that way. In determining whether an
15 accomplice has been corroborated, you have to assume the
16 testimony of the accomplice has been removed from the case.
17 All right.

18 Remove Anabel Espindola and Rontae Zone and who said
19 anything? What's left? The tapes. More importantly, at the
20 time that he's on the tape, Deangelo Carroll's an accomplice.
21 So you've got accomplices on the tape. You've got Anabel
22 Espindola and Deangelo Carroll on the tapes. And then you've
23 got Anabel Espindola and Rontae Zone in court. And the law
24 requires you to set that aside --

25 MR. DIGIACOMO: Well, Judge, I'm going to object

1 because the tapes do not have to be set aside by law.

2 THE COURT: It's sustained. It's the testimony of
3 the witness.

4 MR. GENTILE: You must then determine whether there
5 is any remaining evidence which tends to connect the defendant
6 with the commission of the offense. Well, what do we know?
7 State's got tapes, but Luis Hidalgo's not on them. The State
8 has fingerprints, but not Luis Hidalgo's. They can't even
9 place Luis Hidalgo anywhere that comes in contact with this
10 offense.

11 You know, when Deangelo Carroll walked into
12 Simone's -- you're going to take this back there with you --
13 the testimony from Anabel Espindola is that he came through
14 the front door. The testimony is also that this is
15 Mr. Hidalgo's office. This is Anabel Espindola's office.
16 Ironically, you will see that as the exhibits are coded on
17 this exhibit itself, this is Exhibit C, when Simone's was
18 searched, take a look at this exhibit. What do you see taken
19 out of Luis Hidalgo's office? What do you see taken out of
20 Anabel Espindola's office?

21 But anyhow, he walks into this place, Carroll does,
22 he's all wired up. He's in there because he told McGrath and
23 Wildemann that he could get Mr. Hidalgo on tape. You've
24 listened to those tapes and you're going to listen to them a
25 lot more. And you can listen to them until the last breath

1 that you take on this planet, and guess what you're never
2 going to hear? Not only are you not going to hear Luis
3 Hidalgo's voice, you're not going to hear Deangelo Carroll
4 trying to talk to Luis Hidalgo. You're not going to hear him
5 say to Anabel Espindola, Look, I have to talk to Mr. H.
6 You're not going to hear him approach Mr. H and say to him,
7 Mr. H, I need to talk to you, so that at least Mr. H would be
8 heard on the tape saying, No way.

9 Now, what does that tell you? That tells you that
10 Deangelo Carroll, whose credibility has been, I think, dealt
11 with in this case, never intended to try to talk to Mr. H.

12 The police have told you that Luis Hidalgo, Jr. was
13 in Simone's. They had a surveillance set up two days in a
14 row. He was in Simone's. What would it have taken? If
15 Carroll really could do it, what would it have taken for him
16 to at least walk up to Mr. Hidalgo and try to talk to him?

17 And more importantly, why didn't he? He certainly
18 had no -- no concern about talking to Anabel Espindola. When
19 you listen to those tapes, you're going to hear on the first
20 one, just the first tape, the word "I" used by her 57 times.

21 Now, we had -- that thing about pronouns and my
22 cross-examination of her with respect to pronouns tells you
23 everything about her state of mind, tells you everything about
24 her role in this situation. And she is an accomplice. And so
25 what the law requires is that if there is not such independent

1 evidence which tends to connect the defendant with the
2 commission of the offense, the testimony of the accomplice is
3 not corroborated. And the offense we are talking about is the
4 offense of murder because we concede the accessory after the
5 fact.

6 And, you know, think about this for a second. He
7 didn't have to get up there and tell you that. He didn't have
8 to do that. He could have just sat right over there and they
9 wouldn't have been able to prove that he knew anything at all
10 about the payment of the money except through Anabel
11 Espindola. But he did. He got up on that stand.

12 And we're going to get to Jerry DePalma as compared
13 to Mr. Oram at some point in time, but let me ask you this:
14 It looks like every one of you has a notebook. Lots of notes
15 have been taken in this case. Are you saying that none of you
16 are as smart as Mr. Oram, none of you can remember only 13 or
17 14 days later absolutely everything that was said in an
18 important meeting? This is clearly an important meeting. I
19 submit to you that Mr. Oram has notes. I submit to you that
20 if Mr. Oram's notes were produced, it would have impeached
21 Anabel Espindola. And more importantly, it would have made
22 him complicit in the subornation of perjury. Because it makes
23 no sense that somebody would meet with a client 80 or 90 times
24 in a death penalty case, literally life and death, and handle
25 200 or 300 or 400 other cases during that time and be so

1 cavalier and arrogant as to think that they would have
2 independent recollection.

3 You know, you're supposed to approach this case and
4 your decision making process as you would important affairs in
5 your own life. Let's say you were going and you needed a
6 lawyer, and let's say you were smart enough to lawyer shop
7 instead of just going to the first guy and hiring him. All
8 right. And let's say during that first meeting you were in
9 with the lawyer and the lawyer -- you're talking to the lawyer
10 and the lawyer's making notes. You leave that office and
11 think, you know, the guy's pretty good, but maybe his price is
12 a little high.

13 So you go to the next lawyer and the lawyer tells
14 you, Listen, I'd love to have your case. I could do a great
15 job, but I don't take notes, and it might take two or three or
16 four years before this case is decided. Which one would you
17 hire? Don't you think you might want to be comfortable that
18 the guy's going to remember who you are and what it was that
19 you said and when you said it? That was the most ludicrous
20 testimony you will ever hear in a courtroom, no matter how
21 many times you come back.

22 The determination of whether someone is an
23 accomplice is left to the jury. This is the one that I was
24 telling you about a little while ago. It's your decision. Is
25 Rontae Zone an accomplice? And if Rontae Zone is an

1 accomplice, whether he's charged or not, he can be an
2 accomplice. Then you have to set his testimony aside as well.

3 Now, there's lots of other reasons, and we will go
4 through them, as to why Rontae Zone's testimony is not
5 something you'd want to rely upon, but if you make a
6 determination that he had enough time with the rest of that
7 crew to be considered an accomplice, then you have to ignore
8 his testimony too, and at that point in time you really have
9 nothing left.

10 In deciding whether to believe the testimony given
11 by an accomplice, and this applies to both Rontae, but Anabel
12 for sure, you should use greater care and caution than you do
13 when deciding whether to believe the testimony given by an
14 ordinary witness. I don't think he had any ordinary witnesses
15 in this case. Okay. But if you -- you did have other
16 witnesses. Because an accomplice is also subject to
17 prosecution for the same offense, an accomplice's testimony
18 may be strongly influenced by the hope or expectation that the
19 prosecution will reward testimony that supports the
20 prosecutor's case by granting the accomplice leniency.

21 For this reason, you should view with distrust
22 accomplice testimony that supports the prosecution's case.
23 Whether or not the accomplice testimony supports the
24 prosecution's case, you should bear in mind that the
25 accomplice's interest in minimizing the seriousness of the

1 crime and the significance of the accomplice's own role in its
2 commission, Mr. Zone, the fact that the accomplice's
3 participation in the crime may show the accomplice to be an
4 untrustworthy person and an accomplice's particular ability
5 because of inside knowledge about the details of the crime to
6 construct plausible falsehoods. And boy, oh, boy, did you get
7 that from Anabel Espindola.

8 In determining the credibility of any witness, an
9 ordinary witness, you could consider anything which tends in
10 reason to prove or disprove the truthfulness of his or her
11 testimony such as his or her conduct, attitude and manner
12 while testifying, whether the facts testified to by him or her
13 are inherently believable or unbelievable, like not taking
14 notes on a death penalty case, his or her ability to -- an
15 opportunity to hear or see that about which he or she
16 testified, his or her memory, his or her ability to relate
17 such matters, whether or not there was any bias, interest, or
18 other motive for him or her not to tell the truth.

19 Also, any statement previously made by him or her
20 that was consistent with his or her testimony; or, conversely,
21 any statement previously made by him or her that was
22 inconsistent with his or her testimony, any admission by him
23 or her that he or she did not tell the truth and the
24 reasonableness of his or her testimony considered in light of
25 all the evidence in the case.

1 Evidence of good character for truthfulness may be
2 considered in judging the credibility of a witness, and you
3 heard lots of that about Luis Hidalgo.

4 Now, let's -- you've seen the instruction. Let's
5 talk about what the facts in the case were. Rontae Zone. Is
6 there anything that I just read dealing with what to take into
7 consideration about judging somebody's credibility that this
8 guy didn't have? All right. We know that during the time
9 frame involved he admits to smoking dope all day long. Now,
10 he says it makes him smarter. You may want to believe that,
11 but I don't think so. Okay. I don't think you're going to
12 believe that.

13 You saw his demeanor, his mannerisms on the stand
14 when he was becoming confrontational with Paola Armeni. You
15 saw that. That's something you can take into consideration.
16 You know that this man is concerned that if he doesn't
17 perform, something bad might happen to him. He's got another
18 trial to testify in. He's got to testify in Deangelo
19 Carroll's trial.

20 Rontae Zone testified six times. He was
21 cross-examined by Ms. Armeni. He went over all kinds of
22 statements that he made on earlier occasions when he spoke
23 that were different from what he said in court today. Those
24 are called prior inconsistent statements. Now, the truth,
25 generally speaking, even without notes, is something that you

1 can remember. Okay. That's why it's so hard to lie because
2 you can't remember what you said. Okay. And there's nobody
3 in this room that hasn't told a lie in their life. We all
4 know that. So this man is not malignant, he's not inherently
5 evil. He's also not particularly bright even without smoking
6 dope.

7 And so I submit to you that -- you know, you've
8 heard me use the word foundation a lot and I use it in a very
9 technical sense because it really deals with what you have to
10 prove before you can prove the next thing, but foundation has
11 a lot of meanings and in this instance when I use the word
12 foundation this is not the person who you want to use as your
13 foundation in coming to a decision that involves Luis Hidalgo,
14 Jr.'s life. There is no way that you could rely upon it and
15 rest assured with it.

16 Anabel Espindola, well, we've just gone through the
17 accomplice instructions. This lady got on the stand and
18 talked about her involvement in this case, and frankly, if you
19 listen to it carefully, she didn't do anything. What did she
20 do? She contends that she didn't know -- that she got a phone
21 call, that Luis and his son were in the room, that she reports
22 to Luis that she gets this phone call, that there's this
23 blowup, but she has no idea what was discussed after that.

24 The next involvement that she gets with this is
25 she's over at the Palomino and she sees Deangelo Carroll leave

1 the room with Luis Hidalgo, Jr., according to her, so she
2 doesn't know what they talked about then. And then the next
3 thing that happens is she's told to go and make a phone call
4 by saying something like, Go to plan B, all right. And at the
5 time that she goes and makes this phone call, she doesn't know
6 anything about that -- that something bad is supposed to
7 happen to Hadland, but she has this tremendous visceral
8 sensitive response that somehow tells her -- gives her the
9 ability to connect those few things and say that a man 54
10 years old at the time who's never done anything bad to anybody
11 has suddenly become involved in killing a man or harming a man
12 that there's no motive for harming. Why is that important?

13 Well, you saw the accomplice instruction about
14 downplaying your own role and being on the inside so that you
15 can put together a plausible story because you know what
16 really happened and so you're trying to make it fit. This
17 lady lied to you. There's no way that you could take her
18 testimony in this courtroom, compare it with her statements on
19 those tapes, and say that she did not lie to you. There's no
20 way, if you're going to compare what's at risk for somebody
21 like OB Perez to come in here and perhaps incur the wrath of
22 the State of Nevada -- let's face it, she's weak. She told
23 you she's got a case pending. Okay. Now, you're not going to
24 find somebody to get a statement from someone in jail unless
25 they're in jail. All right.

1 So I'm going to say to you, you know that she was
2 not convicted of a felony, ignore the fact that maybe -- well,
3 not ignore it, don't ignore it. Yeah, she wrote some bad
4 checks. She's got to pay 900 bucks back. All right. But she
5 came in here and told you something that was not impeached by
6 the State. She told you that Anabel conceded that she was the
7 one who had Deangelo Carroll in motion to receive it. Anabel
8 was mad, had something wrong -- something that she was mad
9 at -- the guy who got killed, she never even said who he was.
10 She said the guy that got killed, Anabel had something against
11 the guy that got killed, and so did Deangelo Carroll, but she
12 doesn't know what it was.

13 That woman came in here at risk, at great risk to
14 herself, and she told you that. Anabel Espindola is at no
15 risk at all. Anabel Espindola is a puppet, a marionette on
16 the strand. She is looking for leniency. She is looking for
17 probation. She wants to go home. If that was not the case,
18 why did she spend the last year in jail instead of saying to
19 the Judge, Sentence me now? Why? Can you think of any
20 legitimate reason for that? The answer is because is she's
21 got to get help, and if it took another year, it beats the
22 heck out of the death penalty, which was what was hanging over
23 her head.

24 And Deangelo Carroll, you know, nobody believes
25 Deangelo Carroll. Even Rontae Zone doesn't believe Deangelo

1 Carroll. Did you hear anyone come into this courtroom and say
2 anything good about the guy, anything that would make you want
3 to trust the things that he is saying? And let's think about
4 it. You've got Anabel Espindola, an accomplice that you're
5 supposed to ignore, to start with. You've got Rontae Zone, a
6 guy who spends his life high, and an accomplice, and they are
7 saying to you that they heard Deangelo Carroll say a couple of
8 things.

9 Now, if Carroll is himself inherently untrustworthy
10 and if they, repeating what he said, are people who you can't
11 trust, then what do you have? What do you have? You have to
12 reach to believe any of it.

13 Motive. Motive. We've already gone over Rontae
14 Zone's motive. We've already gone over Anabel Espindola's
15 motive. And clearly Deangelo Carroll had a motive at the
16 time, if he said these things, if he said these things, he had
17 a motive at the time he said them. And I said if he said them
18 because you have to rely upon Zone to remember them and
19 accurately report them because he's the only one that you
20 heard from in that regard.

21 Bias, there she is. There is no question that this
22 woman at this point in time not only has a bias in favor of
23 the State but has a bias against Luis Hidalgo. There is no
24 question. She came up here. She said she still loves him.
25 Please save me from someone who loves me as much as she claims

1 to love Mr. Hidalgo. Please don't let that happen to you.
2 All right. This lady doesn't love him. She doesn't care at
3 all. And, you know, part of it -- and you heard the
4 testimony, part of it stems from the fact that she kept
5 sending women to Louie to help and then was jealous of them or
6 thought that he was cheating on her. You know, I don't get
7 it.

8 Prior felony convictions. Well, you know what, in
9 the big pictures of things, that's not such a big deal. If
10 that's the only thing that destroys the credibility of
11 Deangelo Carroll, then we don't have much going. It's just
12 that simple.

13 And prior inconsistent statements, well, you heard
14 lots of them about Zone, you heard lots of them from
15 Espindola. You know, let me ask you something, and this could
16 really be outcome defining in this case. She stood up there
17 and she swore that she spent no time with Jerry DePalma and
18 she swore a second time and a third time, because that's the
19 way I cross-examined her. None, zero time with Jerry DePalma.
20 She walked in. He said, You have to wait outside. She went
21 out in the parking lot and waited there. Okay.

22 Of course, Mr. DePalma came in, Mr. Dibble came in
23 and they told you about the meeting. And Mr. DePalma who's
24 obviously not as smart as Chris Oram, brought his notes and
25 they're in evidence and you're going to have them back there.

1 Now, why is that important? Well, you're going to see when
2 you go through these notes that there's some things but for
3 putting Jerry DePalma on the stand and Louie Hidalgo on the
4 stand would have never come into this case. And some of them
5 corroborate Anabel Espindola, such as she got a phone call
6 from Deangelo Carroll. But if you take a look at the big
7 picture in terms of what's on here, because this was the very
8 first recorded statement -- and it's really not a statement,
9 it's his notes, but it's really the very first, the oldest,
10 the most trustworthy document in this case time line wise
11 because it was created about 36 hours after Mr. Hadland was
12 killed. And I encourage you to take a look at this document.

13 You heard Mr. DePalma and Mr. Dibble corroborate
14 each other in terms of who did the talking. Take what's on
15 here, compare it to what's being said a few days later on that
16 first tape by the woman who is saying "I" 57 times, is it so
17 hard to believe that she spent 90 percent of the time in that
18 meeting talking? And is it really possible that she has
19 forgotten that? Is it really believable that she has
20 forgotten that, to say that it didn't happen at all? You
21 think that maybe she wanted to forget it? Do you think that
22 maybe she was taking a shot that DePalma was like Oram and
23 didn't make notes?

24 It's up to you, but you know what? Common sense.
25 Mr. Pesci encouraged you to use it, so do I, common sense.

1 Treat them like people that you would meet in your life and
2 make a decision as to whether you are willing to trust them
3 because it really does boil down to that when you're
4 fulfilling the role that you're fulfilling in this case. Are
5 you willing to trust them in your own life? If you are, you
6 fulfill your function here. If you're not, you fulfill your
7 function here. Just make sure that you treat them in terms of
8 their credibility the way you would treat them if you met them
9 in your own life knowing what you know about them now.

10 Zone, as I recall when he was talking about Deangelo
11 Carroll, bringing him into the police, I think his words were,
12 I didn't know which truth Deangelo wanted me to tell. Okay.
13 And he talked about the fact that after the event, after
14 Mr. Hadland was killed, the next day before Deangelo went to
15 the police -- because if you recall, Deangelo went to the
16 police on the evening, Friday evening, about 7:00 o'clock,
17 7:30, something like that. I think Detective Wildemann told
18 us that the interview ended pretty close to midnight and it
19 lasted a couple of hours, so it was later in the evening.

20 And Zone told us that that day after the event is
21 when Deangelo started talking to him about Mr. H and things
22 like that. So that didn't even come up until the day after
23 this homicide. He was putting the story in Zone. He saw it
24 coming.

25 Character for truthfulness. All right. Well,

1 again, I don't want to beat a dead horse. It's that simple.
2 Everybody who came in here, whoever met this guy who talked
3 about it, testified about him, said that he's not a
4 trustworthy person.

5 The opinion of others. Who is -- who is Luis
6 Hidalgo, Jr., and why is it important? Well, it's important
7 because we've all heard that a leopard doesn't change its
8 spots. It's a statement that we've all heard about, okay,
9 many of us abuse. People don't tend to change. 54-year-old
10 people don't tend to become murders because somebody talked
11 bad about their club or about their business. I mean, it just
12 doesn't happen, all right. It's going to take something a lot
13 stronger than that. And you sure don't have that in this
14 case. And so it just doesn't factor in. But who is he?

15 He's a family man, you know that. You know that he
16 spent a good deal of time as a younger man in law enforcement.
17 You know that -- you saw him, you heard him testify, you've
18 had enough time with him on the stand both on direct and
19 cross-examination to get a sense about the man. Bottom line
20 to it is that it's unexplainable. It makes no sense that he
21 would become involved in something like this. It makes no
22 sense at all.

23 Motive is important and they do not have any kind of
24 a genuine motive for him to want to do harm to TJ Hadland,
25 certainly not badmouthing the Palomino Club to cab drivers.

1 And you saw the kind of cash that was in the safe. You see
2 the size of the club. I mean, this is not a -- it's not a
3 small club. You know that there's a historic practice of
4 paying cabs and you heard Kevin Kelly come in, and I think
5 he's the next slide, actually, and you heard him say to you
6 that, you know, if you paid a cab driver -- and you heard
7 Louie say it to you, if you pay the cab drivers, it doesn't
8 matter, they're going to bring you the customer.

9 And where is a guy like TJ Hadland, who, again --
10 ladies and gentlemen, there is no reason that man should be
11 dead. It is a disaster. It is an awful thing that happened
12 here. All right. And we're not trying to suggest anything to
13 the contrary, but it would be a more awful thing to convict
14 Louie Hidalgo, Jr. of his murder or of conspiring. That's not
15 going to make Mr. Hadland come back to life and it's not going
16 to make anything better.

17 And the fact of the matter is that Kevin Kelly and
18 Louie Hidalgo, both of whom had been in that business, Kevin
19 has a very successful operation, he's not going to come in
20 here and tell a lie for somebody -- there's no percentage for
21 him. He's doesn't need to do that. And what did he tell you?
22 He said, you know, say anything you want to say, as long as
23 we're paying the cab drivers, they're going to bring us the
24 business. And so under the circumstances of this case, that
25 certainly is not a motive. It certainly is not a motive that

1 he says -- if it's true that TJ Hadland was reported --
2 because let's remember, we don't know that it's true at all
3 that he did actually did badmouth the club to a cab driver or
4 that he actually did say something bad about the club to
5 another club. We don't know that. There's been no proof of
6 that.

7 The only thing that's in this record about that is
8 that Deangelo Carroll said it to Louie Hidalgo and Anabel
9 Espindola claims that she got a phone call from Deangelo
10 Carroll and reported it to Louie Hidalgo. Now, Louie has told
11 you that he learned it from Deangelo. Okay. He did not learn
12 it from Anabel. The notes indicate that there was a phone
13 call to Anabel, DePalma's notes, but be that as it may, it
14 really doesn't matter because it's just simply not enough to
15 get a 54-year-old man who's got a successful business to go
16 out and want to do harm to this guy. There's just no
17 percentage in it.

18 Rontae Zone said it in this trial, said it before,
19 there were lots of cabs there. Mr. McWhorter, when he came in
20 here to testify, said that there was a queue of cabs. They
21 were -- they were in line. They had to wait to get the first
22 pickup. So, you know, it just doesn't make any sense that
23 that's the reason.

24 You know, I'm glad I'm at this slide right now
25 because -- I mean, at this slide. That's a safe full of

1 money. Up and down, it had 150 -- \$155,000. All right. And
2 that's when they searched it. And he testified -- Louie
3 Hidalgo testified it had 160,000 in it, you know, the week
4 before.

5 Look, I'm sure that if he could take back the
6 decision that he made, he might do it. He might want to do
7 it. But he was confronted with a situation and he was afraid.
8 And fear can be a very strong motivator and it was here. Was
9 it right? Well, it depends on how you look at it. It wasn't
10 legal, it wasn't lawful, but that doesn't mean it wasn't
11 right. He's got somebody in his office who just returned from
12 a murder that apparently clearly was not intended by the guy
13 that's in his office at this moment, and that man is telling
14 him -- and that's Deangelo Carroll -- that man is telling him
15 that outside the shooter is in the club outside, that he wants
16 the money or he's going to harm somebody.

17 Now, you could talk about ideal, you could talk
18 about what maybe should be done. We all know what should be
19 done, but that doesn't mean that what was done here amounted
20 to a conspiracy to commit a murder. And it didn't. He paid
21 the money.

22 Now, let's talk about a couple of facts that need to
23 get cleared up. Mr. Pesci showed you this note. It's
24 Exhibit 200-IA. You'll have it back there with you. This is
25 the one about, Keep your mouth shut. And he said to you that

1 it was found by the pool table. We all know that it was found
2 sitting on a magazine that itself was sitting on top of a
3 stool by a pool table. Let's go back to the Simone's diagram.
4 Mr. Pesci says that it must have had some connection with
5 Rontae Zone pulling -- being pulled into the bathroom at
6 Simone's and being told to shut up. But here's the problem
7 with that. If that happened, because we're still having to
8 rely on Rontae Zone's testimony that that happened, if that
9 happened, it happened on the 20th of May. This note was
10 seized on the 24th of May. That's when the search took place.
11 And so there can't be any connection.

12 Mr. Hidalgo stood up here, he testified, and he said
13 to you, Look, I have no idea how that note got where it was
14 found. And do you know what? That's very believable because
15 if there was something sinister about this note, why would he
16 leave it in a public area? Why would he leave it next to a
17 pool table on top of a magazine where anybody walking by could
18 see it? So the timing's off.

19 And there's another little thing that timing is
20 important about. Timing is everything in this case, and
21 that's these statements on the 23rd. If you take a look --
22 you heard Jerry DePalma's testimony that on the 21st Anabel
23 Espindola told him that Deangelo Carroll came in that night,
24 the night after the -- the night of the shooting, but
25 afterwards, and said to her that his home boy shot the guy.

1 All right. You heard Jerry say that. That's in the notes.
2 Just take a look at it.

3 Anabel, of course, denies that the meeting took
4 place, denies that she had any discussions with Deangelo
5 Carroll until the 23rd on tape. But if you listen to this
6 tape and you read it -- well, you won't read it, but you will
7 listen to it, it says -- this is Deangelo -- We were going to
8 call it quits and fucking -- and KC, fucking KC got mad, and I
9 told you, I told you he went fucking stupid and fucking shot
10 the dude.

11 When did he tell her? He told her in the office
12 that night when he came in after the shooting and said, I
13 fucked up, I fucked up. That's when he told her. He told
14 her, We went out there and we were getting high and this guy
15 went off and he shot the dude.

16 And you heard Mr. Hidalgo testify about what Anabel
17 did. She went, Oh, my God, Oh, my God, oh, my God, you
18 stupid, stupid man.

19 You heard Mr. Hidalgo testify as to what he did and
20 you will find that in Mr. DePalma's notes reported to
21 Mr. DePalma on the 21st of May. So clearly Ms. Espindola
22 knows a whole lot more and did a whole lot more with respect
23 to this event than she told you. She lied. And she's lying
24 because she's trying to make herself look like she didn't do
25 anything so that she could get probation, and there was only

1 one way for her to buy that, there was only one way for her to
2 buy that. She had to do something to create a case against
3 Louie Hidalgo because, ladies and gentlemen, she is the only
4 thing that's in this case that wasn't in it 45 months ago, she
5 got arrested.

6 So, you know, I really can't tell you why it
7 happened. And that's the good news for us because we don't
8 have that burden. We don't have to go out and prove that not
9 only is the State's theory wrong with respect to Louie
10 Hidalgo, but this is what did happen. But you have plenty of
11 information, plenty of information to take a look at this and
12 say whatever it was. This wasn't it. And that's really what
13 you're going to be left with here. It is not our burden.

14 Could it be this? Could it be that when Deangelo
15 came back when TJ wasn't there anymore after TJ was fired and
16 Deangelo came back and said to PK Hadley, Don't put me in with
17 TJ? Could it be that? TJ was still alive at that point in
18 time. PK told you and the prosecutor pointed it out to you
19 that PK had caught both of them, both TJ and Deangelo,
20 skimming money from the cab hustle. All right. So you've got
21 that in the record. Could that be it? Could it be that
22 Deangelo wanted to go out there and frighten that man so that
23 he wouldn't blow the whistle on Deangelo?

24 You know, they're making -- they make a -- and
25 here's the critical -- the State has made -- they're trying to

1 say on one hand that Louie Hidalgo, Jr. is a vicious murderer,
2 and on the other hand, they're saying that he needed somehow
3 Carroll to carry this out for him, to shut up these witnesses
4 later on, to try to put him into that too, that somehow that
5 that shows that he knew about the murder and that it was going
6 to take place -- that it was going to take place that night or
7 he knew about some harm coming to TJ Hadland? It doesn't
8 follow.

9 The smart move, if a guy really was a murderer, is
10 to kill Deangelo Carroll. The other guys don't know him. I
11 mean, if a guy's a killer, he's going to figure that out. The
12 only link to him is Deangelo Carroll, if that was a link. So
13 why would he be messing around with any of this other stuff?
14 It makes no sense.

15 There's another possibility. Can we make the
16 transition? I'm going to put a photo up. Okay. How do we
17 get this to work?

18 You know, while we're waiting for that to get
19 working, Paijik Karlson, you may not have caught it, but it's
20 probably in your notes, but Paijik Karlson said that when TJ
21 left her at the lake, he had about 50 or \$60 or 40 or \$50, I
22 forget what she said, but something like that, about 50 bucks
23 in his pocket. When the police found his body, he had \$6.

24 Now, that in and of itself suggests that perhaps
25 robbery, if it wasn't the motive for his killing, might have

1 been involved, but I submit to you --

2 (Pause in proceedings)

3 MR. GENTILE: -- that photograph, obviously when
4 poor Mr. Hadland was shot in the head, there was enough force
5 to knock his glasses not only off of him but at least 10 feet
6 away from him. All right. You will see it. It will be back
7 there, at least 10 feet away from him. Now, if there was that
8 kind of force to knock his glasses 10 feet away from him, what
9 the hell is that hat doing on his chest? Or does that look to
10 you like somebody placed it there? And is that not consistent
11 with a robbery?

12 It's time for you to take this case. When you take
13 this case and you follow the instructions and you set aside
14 the accomplice testimony and now you're looking for something
15 to connect Louie Hidalgo without the accomplice testimony,
16 what you're not going to find is any phone calls, you're not
17 going to find there's any chirps, what you're not going to
18 find is him on any type, what you're not going to find is any
19 effort on the part of Deangelo Carroll to actually get him on
20 tape. The bottom line is you're not going to find him on
21 anything except one thing.

22 What you're going to find is that he paid the \$5000,
23 but who proved that? He did. We brought that in. He got up
24 there. He testified. Jerry DePalma got up there, he
25 testified. I hope we didn't make a mistake doing that, but

1 you got the truth, and so I hope you embrace it. I hope you
2 recognize what the presumption of innocence really is. I hope
3 you recognize that the burden of proof has to be on the State
4 for this system to work. And if you do, you will come back
5 with a not guilty verdict as to the conspiracy and the murder,
6 flat out not guilty.

7 Thank you.

8 THE COURT: All right. Thank you, Mr. Gentile.

9 Do we need a break before we move into your closing?

10 MR. ADAMS: Yes, ma'am.

11 THE COURT: How long, about, to set up?

12 MR. ADAMS: Five minutes.

13 THE COURT: All right. Ladies and gentlemen, while
14 we switch over from Mr. Gentile to Mr. Adams, we're going to
15 take another five-minute break. And once again, the
16 admonition is still in place, so don't talk about the case or
17 do anything relating to the case. Notepads in your chairs and
18 through the double doors. We'll be back at 4:25.

19 (Court recessed at 4:21 p.m. until 4:31 p.m.)

20 (In the presence of the jury.)

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

23 And, Mr. Adams, are you ready to proceed with your
24 closing arguments?

25 MR. ADAMS: Yes, ma'am.

1 DEFENDANT HIDALGO, III CLOSING ARGUMENT

2 MR. ADAMS: May it please the Court --

3 Would you like me to wait on Mr. Pesci?

4 MR. DIGIACOMO: No, you can go right ahead. Go
5 ahead.

6 MR. ADAMS: Sometime right around the night on May
7 the 19th, early morning on May the 20th, Deangelo Carroll
8 pulled up to the club with a van full of people. He got out,
9 sweating, hair -- if you believe PK Hadley, hair ajar like Don
10 King. He came into the club and he said, I fucked up, PK, I
11 fucked up. And PK having no idea, no idea what he was talking
12 about said, Yeah, you did. You didn't get my pickup, yeah,
13 you did. And what happened at that point? What happened at
14 that point?

15 PK told us that Deangelo's next words were not the
16 following, they were not, Where's Little Louie? I fucked up.
17 We've seen Little Louie in the back.

18 Lou, stand up. I'm going to embarrass you.

19 This is Little Louie. And I told him I was going to
20 drag him all the way up there, but he told me he would not
21 come, so this is Little Lou Hidalgo.

22 Stop, please, I know you're nervous. It's okay.

23 In a few minutes, there's not much, if anything,
24 more I can do for him. And you'll decide what happens with
25 him. What we know from the evidence and what has been clear

1 and consistent from the beginning of the case, Little Lou
2 wasn't there, Little Lou didn't pay, and what's clear from the
3 State's witnesses is Little Lou didn't participate. He didn't
4 participate. He didn't plan. He didn't participate.

5 Anabel Espindola, star witness, Ms. Probation
6 Candidate, said there was a disagreement. We've heard the
7 tape. We'll talk more about the tape later. On the tape you
8 hear clearly the words of Deangelo Carroll and they mention --
9 Mr. DiGiacomo mentioned them in the State's opening argument
10 where he said, You had nothing to do with this, why are you
11 saying that. We'll talk more about that later. From the
12 mouth of their evidence, Little Lou had no involvement, no
13 planning, no participation.

14 MR. DIGIACOMO: Objection, Judge.

15 THE COURT: Well, all right for right now.

16 MR. DIGIACOMO: Thank you.

17 MR. ADAMS: I'd like to ask you to do something that
18 may be just about impossible to do at 4:30 in the afternoon
19 and the third week of a trial. And I'm going to ask you after
20 a long opening statement with lots of slides by the State, I'm
21 going to ask you to try to let me start with a clean slate.

22 When I was a little kid, for those of you who aren't
23 the oldest child in your family, you know what it's like to
24 have an oldest child. For those of you who are the oldest
25 child, you have no idea what those of us who are younger dealt

1 with. My sister and I would bicker and argue all the time --
2 MR. DIGIACOMO: Judge, it's --
3 I apologize, Mr. Adams.
4 I object.
5 MR. ADAMS: Judge, I'm making a point.
6 THE COURT: Right, but try to stay away from
7 personal reference.
8 MR. ADAMS: Sure.
9 There are some families with the oldest children who
10 argue with the middle child and a parent, a very fair parent,
11 can come in and say, Wait, wait, wait, let me get to the
12 bottom of this dispute. And they'll start talking to the
13 oldest sibling and the oldest sibling will tell them
14 everything that happened from the oldest sibling's point of
15 view. Then it gets to the younger kid's turn and they say,
16 Yeah, but dad, it went like this. And the dad said -- and
17 they cut you off. And they say, What about this question?
18 What about this question? And even the fairest parents at
19 some point figure out that's not really fair to the younger
20 one. You know, the ones who get to go first get their view
21 out and so many parents learn they'll wait to the end before
22 they start assessing and evaluating everything. It's hard to
23 do that after three works, but I'm going to try to ask you, as
24 best you can, late in the day to let us start with a clean
25 slate.

1 My -- well, I don't want to draw an objection. Some
2 people's grandfather's may have said in the past that the ears
3 can endure what the seat can absorb. Ears can endure what the
4 seat can absorb. And I think that's true in the courtroom.
5 And I know we're late and if you need to stand up some during
6 the argument, that's fine. I suspect more than one of you in
7 the back of your mind are going, how long is this guy going to
8 talk. Are we going to get to start deliberating today. And
9 what I can promise you is I could do this closing argument in
10 one minute, in one minute, and if the verdict came out against
11 me, I would never forget that. If it was one minute and we
12 got an acquittal, I'd be brilliant, I'd love it. But there's
13 so much in play here that I'm going to take my time to get
14 through it. But it could be done in one minute, easily.

15 Anabel Espindola said there was no disagreement.
16 Deangelo Carroll, you hear his words, cops sent him in to get
17 evidence. The woman from the jail, she said there was a
18 confession. The confession from Anabel Espindola did not
19 involve any involvement in the murder by Little Lou Hidalgo.
20 Mr. H, he took the stand. He said there was not even a
21 disagreement. There was no talk at all, no plan. Little Lou
22 had no involvement in anything. Wasn't in management
23 decisions. No evidence that he was involved in a murder or a
24 conspiracy which requires some sort of agreement.

25 As to the solicitation for murder charges, they

1 charged him with two apparently. There's also some comments
2 about doing something with Kenneth Counts on there. They
3 didn't charge with him that, but they charged him with two.
4 There was no evidence that he said anything before Deangelo
5 Carroll showed up and banged on his door, his room. He made
6 the rat poison comments. Anabel Espindola, who's known the
7 guy since he was eight years old, knows him well, said she'd
8 seen him in all sorts of moods, so she knows when he's serious
9 and she knows when he's stupid. And how'd she take those
10 comments? Stupid.

11 What happened after Deangelo Carroll left? Well, he
12 turned over a bottle of tequila he left with -- or gin that he
13 left with, but what else happened? Nothing. The next day he
14 shows back up with a wire. No more conversation. Why didn't
15 you poison those guys? I told you to get this done. That
16 didn't exist. You could acquit with a one-minute closing
17 argument. You have all the evidence you need, but it wouldn't
18 touch on things like Mr. Pesci raised about the wire. It
19 wouldn't touch on the Don Dibble note in the room. And I
20 don't know what all you guys may talk about back in the
21 deliberation room, so I'm going to take a little more time
22 with that.

23 As for the wire, Anabel Espindola said, she
24 testified, When I was in the room, we asked him about a wire.
25 Nobody frisked him. Little Lou didn't pat him down and do a

1 body search. He pulled his shirt up and said, Ms. Anabel, I'm
2 not wired. And right after that part on the tape, within 30
3 seconds of that, Anabel starts talking for the first time.
4 She's in the room. He pulls his shirt up and is wired.
5 Little Lou wasn't the bodyguard frisking anybody down.
6 There's no evidence of that. Mr. Pesci argued something that
7 there's no evidence to support.

8 The note by down Dibble in there, well, he knew --
9 he knew May 23rd and knew like May 24th when the search
10 warrant was done that his father wasn't acting normal. He
11 knew he was seldom withdrawn. He knew Anabel really well.
12 She, in that time -- we'll talk about the time line in a
13 minute -- she lost a day. She thought the meeting with the
14 lawyer occurred a day earlier and her explanation for that is
15 that she just doesn't know what happened to the time. Things
16 were so crazy then.

17 They went to see a lawyer, they got cards and they
18 came back and said, Don't talk to -- don't talk to Deangelo.
19 If anything -- and his father said, If anything happens to us,
20 call these guys. That's not his handwriting on the note.
21 That's not his handwriting with Don Dibble. It was on his
22 desk, big smoking gun, I guess.

23 I need to talk with you for a few minutes about some
24 of the law. And I think that's been done a lot with you
25 already and I'm just going to talk about a few principles that

1 I hope will help you and will guide you when you're back in
2 deliberations.

3 The first is the presumption of innocence. We've
4 all heard that in this country, that you're presumed innocent.
5 What does that mean? What does it really mean? It doesn't
6 mean that a bunch of guilty people should get acquitted
7 because of some principle. What it means is -- and you've
8 taken an oath to presume Little Lou innocent. You could listen
9 to every inference, every little fact and you could spin it,
10 you could twist it, you could turn it in some sinister way
11 that points to guilt. Nothing anyone can do to stop you at
12 this point. Or you can take every fact and look at it through
13 the lens of that presumption of innocence and say, does
14 this -- must this point towards guilt or is there another way
15 that this could point. If there's another way that this could
16 point, then that's what I need to do. I need to look at it as
17 if this man's really innocent. And if there's multiple
18 interpretations of a single piece of evidence, it is
19 consistent with your oath to give the interpretation that leads
20 you to acquittal.

21 The burden of proof in this case, as in every case,
22 is not on us, not on us. We don't have to prove a thing. And
23 maybe we haven't, but we certainly don't have to. The State
24 has to prove everything. They have to fill in all the holes.
25 Now, the Judge told you, and you'll get the instruction, you

1 can use your common sense and you absolutely can and we
2 welcome it. We welcome you especially to use your common
3 sense when you evaluate what the evidence means on that body
4 wire on May the 23rd. Please use your common sense on that.
5 Please use your common sense when you think about the prep
6 session that McGrath had with Deangelo Carroll before he went
7 into that room, what Deangelo Carroll was trying to get on
8 that tape. Please use your common sense for that.

9 But if the government asks you to use your common
10 sense, please think very carefully. Are they asking me really
11 to speculate? Are they asking me to fill in holes where maybe
12 there ought to be real evidence? Because if they're asking me
13 to do that, my common sense is going to say no. Common sense
14 can't be used to create evidence where there's gaps and holes
15 in the government's case.

16 I talked to you a moment ago about you've taken an
17 oath to follow the law as the Judge gives it and the
18 presumption of innocence, and I don't mean that to be -- well,
19 I guess I mean for that to be slightly heavy handed. I don't
20 mean for that to be too heavy handed. We've taken oaths as
21 lawyers, the Judge has taken oaths, and there's something that
22 we really need to search our soul when we think about how we
23 deal with evidence because you've taken an oath to follow the
24 law and all of a sudden they gave you 60 principles of law
25 this afternoon, and I know that's hard to process. You guys

1 have taken your job very seriously. We can all see that. We
2 thank you for it. You've run through a bunch of pens and a
3 bunch of pads and you've worked hard with the evidence and we
4 ask you to continue that for just a few more hours, please.

5 I'd like to talk to you now -- and maybe I'll skip
6 over some stuff as I -- as I can. I'd like to talk to you now
7 about the time line in the case and then I want to talk to you
8 about some things the government promised in their opening
9 statement that didn't get proved up in court. Then I want to
10 talk to you about specific charges. But I think to make the
11 talk about the specific charges to make the most sense and
12 perhaps be the most concise, it's important to go through a
13 little bit of the time line. So I've got time line all over
14 the place.

15 It's starts here with Defense Exhibit CC and it goes
16 to DD. Then I've got some stuff to add in, which is -- I told
17 Mr. DiGiacomo at the break, we do that where I'm from and
18 that's our PowerPoint, so I hope you forgive me. I've got
19 some things to add in to the time line over here and I suspect
20 you might not see everything so I may stop and I'll move it
21 around when we get to that point.

22 Before we get to CC, Defense Exhibit CC, which
23 starts with a call from PK to Anabel at 3:51 p.m. on the 19th,
24 the day Mr. Hadland was killed up by the lake, what happened
25 before then? Well, if we take a step back, we know

1 Mr. Hadland was let go from the club a week or two before.
2 And there apparently were some suspicions and I'm not trying
3 to say anything in front of -- his family had been so nice to
4 us, I'm not saying he was stealing. I don't have -- I don't
5 know -- I haven't heard any evidence in the courtroom that
6 that was true. I've heard suggestions of that. But he was
7 let go. That's clear. He left the club.

8 From the time he left the club up until this day, we
9 didn't hear a single witness who came in court who said TJ
10 Hadland was out badmouthing the club, none. Nobody said he
11 was out at other clubs badmouthing the club, not a single cab
12 driver came in and said, Boy, TJ came up to us in the cab line
13 and was saying, boy, never take anybody to the Palomino.
14 They'll cheat you out of your money you're owed. Nobody was
15 doing that. So in that time period, there's no motive that we
16 know of which was created.

17 At noon, and this is important, at noon on May the
18 19th, what happened? Rontae Zone said -- and you know, I
19 think -- does Rontae Zone wear a watch? I don't know if he
20 wears a watch, but he was pretty clear it was early in the
21 day. He said around noontime. They asked him, Was it
22 noontime? Yeah. What happened? He said, At noontime
23 Deangelo Carroll said to me and Jayson, he said, somebody
24 needs to be dealt with. Needs to be dealt with. Never said
25 somebody needs to be killed, never said Mr. Hadland needs to

1 be killed. He said somebody needs to be dealt with. How
2 come? Well, they're snitching, they're ratting, they're
3 talking. Snitch and rat and talk. It doesn't -- I don't know
4 what that means. It doesn't sound like somebody is griping,
5 bitching, and moaning about their old employer. It sounds
6 like something different, but we don't know.

7 Then he said Deangelo said something about bats and
8 bags, bats and bags. We know from the evidence no bat was
9 ever grabbed, no bag was ever gathered up. There was nothing
10 else about that at all. But they're saying sometime around
11 this time, bats and bags.

12 In cross-examination of Mr. Zone -- because early in
13 direct he said, yeah, and he said Little Louie said that, to
14 bring the bats and bags. In cross-examination, he said
15 Mr. Zone -- and he ended up talking with me, talking with you
16 all and he said -- or I'm sorry, talking with you in the
17 plural sense, he said that Little Lou's name in relation to
18 Mr. Hadland didn't even get mentioned until the 20th, until
19 the 20th, the same day Deangelo was coming up with the story
20 that he was going to work on in case the cops tracked him
21 down. Do you remember that? I mean, he said that pretty
22 clearly.

23 He said bats and bags was said, noontime, noontime
24 on the 19th Little Lou's name wasn't put by Deangelo, put with
25 Little Lou until the next day. That's going to be important,

1 I think, for you in a second.

2 Let's go back over here to some phone records.

3 Deangelo Carroll called Ms. Anabel Espindola at 4:58 p.m. She
4 also -- he also called her again at 7:27 p.m. 70-second call
5 and a 225-second call. Now, we've got a bunch of calls down
6 here, one with Kenneth Counts' phone to her. Her testimony
7 is, the best she remembers it, she talked to Deangelo twice on
8 the 19th, one earlier that had to deal with Mr. Hadland and
9 one later where she said, Go to plan B, get back here, twice.

10 She was pressed on that, I think, by every lawyer in
11 the building and she said, No, I only spoke to him twice.
12 Well, I don't know that it's super important which one of
13 these is supposedly Mr. Hadland's badmouthing the club, but it
14 does make a bit of a difference because there's two and a half
15 hours in between. This one's a longer call which suggests
16 maybe they talked more. This one is -- 70 is shorter. It
17 really looks as if -- because these certainly would be longer
18 than just leaving a message. This certainly looks as if they
19 talked twice early in the night. Maybe Anabel was wrong on
20 that fact.

21 At any rate, the government's theory is that one of
22 these two calls, probably the 4:58 one, was -- Hadland says --
23 Hadland's badmouthing the club, Ms. Anabel, what do you want
24 me to do? Why is that important? It's important because at
25 noontime Deangelo -- according to Rontae, Deangelo was already

1 coming up with a plan. He was already thinking ahead about,
2 got to do something with TJ. Why? Why? Their theory, and
3 they've maintained it, is that this call set it all in motion
4 and Little Lou being a hot-headed puck yapped at his old man,
5 yapped at him, ticked him off, made him so mad that Mr. H
6 would order the death of somebody. That's their theory. And
7 that somehow they got back together later and talked, made up
8 and said, Can you call Deangelo for me and get him over here?
9 Maybe ask him to bring some bats and bags. Of course, there's
10 no evidence of that.

11 Anabel says that there was an argument and then
12 Anabel says, I didn't see -- I was with Mr. H the rest of the
13 night, we were never apart, and Little Lou was nowhere around.
14 So where were they supposed to have this conversation about,
15 Call Deangelo, get him to come over to the club with bats and
16 bags? I think that's a pretty good question, a pretty fair
17 question, and it's a question that has not been answered by
18 any of the evidence presented by the State.

19 So we've got these calls. Little Lou calls at
20 7:42 p.m. There was a suggestion that was a call about bats
21 and bags, but Mr. Zone was really helpful on that point.
22 Mr. Zone testified on cross-examination again that, well,
23 gosh, sometime before we went out that night Deangelo said
24 that Little Lou called from work and said they talked about a
25 pickup and he had to go to work, not about bats and bags.

1 That fits perfectly, perfectly with the 9:00, 9:30 pickup to
2 get PK's McNealis Construction group into the club and the
3 limo. Little Lou was responsible for the pickups and he's got
4 a call to Deangelo's home at 7:42. That's their only call all
5 night.

6 And Rontae says Deangelo said he had to go by the
7 club because he got called by Little Lou to come to work, not
8 bats and bags. And that's it. It's one minute -- or one
9 minute and 18/10ths of another minute, so somewhere around one
10 minute and ten seconds or so, plenty of time to say, Yo,
11 you've got this pickup. Where are you? Are you coming in
12 tonight? Shouldn't you already be at the club? Is the limo
13 clean? You know, PK's going to be really hot tempered if this
14 thing gets screwed up again. Plenty of time for that
15 conversation.

16 And I'm going to -- since Little Lou is not involved
17 in any more of these calls -- and I didn't put every call in
18 the record. You'll have the full records. I didn't put every
19 call, but I put every one that seemed important for these
20 issues, so if there's one missing, please understand that I
21 was trying to do it in a way that would be helpful, the most
22 helpful for you in analyzing the evidence.

23 Anabel tries Deangelo at 8:13. Anabel tries
24 Deangelo at 8:15, 6-second call. Anabel talks to PK at 8:42.
25 You can bet your bottom dollar what that one was about. He's

1 going to screw this up. I've got those guys waiting. This is
2 going to make me look bad.

3 Deangelo chirps Timothy Hadland at 10:39. Now, at
4 this point, the evidence certainly suggests Little Lou wasn't
5 involved in any planning, but there's a lot of communication
6 between Anabel and a lot with Deangelo, and whatever Deangelo
7 was starting at noontime seemed to be coming true, coming to
8 fruition at 10:39 because within about an hour Mr. Hadland lay
9 shot and left for dead up by the lake.

10 There's a bunch more chirps, 25 seconds, 8 seconds,
11 12 seconds, 7.6 seconds to Mr. Hadland. DC chirps him again
12 at 10:54, 21 seconds, very consistent with Paijik Karlson
13 saying he was called about meeting up for some marijuana, very
14 consistent with Rontae saying he said he had a blunt for him.
15 It's very consistent testimony.

16 Let me try this, let me try putting these together
17 and see if this -- and if you really can't see, just sort of
18 waive and I'll bring it over. Then we get to around
19 11:00 o'clock and it really picks up. Anabel chirps Deangelo.
20 She chirps him again for 13 seconds at 11:08.

21 Then we get to Kenneth Counts. Kenneth Counts' cell
22 phone calls Anabel Espindola. Did you hear any evidence about
23 what that was about? I did not and I was listening very
24 closely for that. The suggestion is that somehow Deangelo's
25 little chirper was out of range. He must have turned while

1 driving the van and said, Yo, let me borrow your phone. I
2 need to call Anabel to talk about your envelope in case
3 something happens out here. That's great, but Kenneth Counts
4 didn't testify. Deangelo did not testify. Rontae Zone did
5 testify.

6 Rontae Zone said nothing was passed between Kenneth
7 Counts and anyone else in that van, anyone else except the
8 blunt. That was the only thing that was being passed around.
9 He was sitting right there. There was never a conversation
10 about changing over. What's that about? Well, maybe Deangelo
11 borrowed his cell phone and called Anabel. Maybe Kenneth
12 Counts called Anabel to talk about what the payout would be if
13 he went through with this.

14 She tried him back at 11:12:58. Deangelo chirps
15 Mr. Hadland at 11:13 for 13.6 seconds. Very consistent with
16 what Rontae was saying about, Hey, we're driving around out
17 here, we can't see you, keep having to go back and get more
18 cell service. And then we don't -- we don't hear from
19 Mr. Hadland again after this 11:13 call.

20 Anabel chirps Deangelo at 11:37. Deangelo calls her
21 right back, 21 seconds. Ms. Anabel, it's done. The first
22 gentleman who drove by, Ishmael Madrid, I believe was his
23 name, one of the very first witnesses -- it seemed like so
24 long ago now -- Mr. Madrid called in 9-1-1 around 11:44.
25 Sometime during this time, a sweating, a cocaine ingested --

1 and cocaine doesn't make you kill somebody, but we know
2 Deangelo Carroll told his wife he did cocaine that night. He
3 was driving Anabel's van back to the Palomino to get paid. He
4 wasn't asking for Little Lou Hidalgo, asking for Anabel.

5 5/20, May 20th, there's a chirp at 12:10. Those
6 chirpers are used -- the evidence was they're used so much,
7 you know, it's hard to know if that means they're still coming
8 to the club or already there. I don't know that that helps us
9 tighten down the time line any, but we know that Anabel was
10 gambling about 2:37, I think, was the testimony at the MGM.
11 She chirps Deangelo for 7.4 seconds at 2:53 a.m. right around
12 the time the carwash would have happened, clean that van, try
13 to get rid of whatever evidence might be there.

14 Anabel did testify she never talked to Deangelo
15 again after he left the office until he showed up on the
16 23rd with a wire. I believe that was her testimony. That's
17 my memory of it. She apparently was contradicted by the phone
18 records. Unless somebody else had her phone, running around
19 with her phone, she's chirping Deangelo at these calls which
20 are in the p.m. I think this one was in the a.m. I may have
21 mislabeled that. At any rate, there were these four calls,
22 which combined, aren't really long calls, but they were on the
23 day of the 20th.

24 A couple of things, backing up to the 19th, that
25 apparently I skipped over. We had testimony in here and the

1 time line's not real clear, sometime around 8:00 o'clock at
2 night, 8:00 to 9:00, Mr. Hidalgo was there. He was
3 reprimanding Arial because he had reports about the van being
4 trashed and reeking of smoke. PK was upset about his clients,
5 and that was sometime in that same ballpark, 8:00, 9:00,
6 10:00 o'clock at night. And we learned later from the tape --
7 or the CD from the jail call that sometime Deangelo went home
8 or went somewhere and did some cocaine.

9 Early morning hours, 12:00, 12:30, 1:00 o'clock,
10 Deangelo comes into the club, again, not looking for Little
11 Lou. He gets five grand. He leaves the club. We don't know
12 how he splits it up with Kenneth Counts. There was some
13 testimony about Kenneth Counts needing some money found --
14 when they found him in the attic, they went back and flipped
15 his house pretty good and they got some money back, but it
16 wasn't \$5,000. And I went through my notes and couldn't find
17 it. I think it was 2800, but I'm not positive on that, so
18 please trust your own memory. But there's some unaccounted
19 for money that Kenneth Counts could have had or Deangelo could
20 have taken a cut before he gave the rest out.

21 They go to the carwash and then they go home and go
22 to sleep. The next morning on the 20th they get up and handle
23 the tires. And it's interesting, they don't go to Simone's
24 where Mr. H would see them. They get a hundred-dollar bill
25 and they go somewhere else to cut the tires and try to get rid

1 of the evidence. And they go to the 7-Eleven, they go to the
2 I-Hop where Deangelo's picking up breakfast for everybody.
3 Then he goes to the barbershop where -- I don't know if he
4 looked like Don King before or not. I've seen Don King once.
5 He's a very distinctive looking man, but certainly when
6 Deangelo Carroll left the barbershop, he would not be mistaken
7 for Don King anymore. So we've seen his booking photo. He
8 was pretty cut.

9 Sometime during this late morning, early afternoon
10 of the 20th, Deangelo started coming up with a story, and we
11 heard that from Rontae. Rontae said, Yeah, he was telling me,
12 boy, here's what we tell the cops if the cops come. Here's
13 what we've got. He was scared and he was trying to create
14 some cover so he could not get arrested, wouldn't get put in
15 jail. That, that day, is when Little Lou was mentioned for
16 the first time.

17 Later that night the police come, they get Deangelo.
18 Apparently, there were multiple stories Deangelo told them.
19 They later went at 1:00 a.m. on the 21st and picked up Rontae.
20 Rontae came in and he said very candidly, I lied to them. I
21 told them some lies. Deangelo told me to tell the truth. I
22 didn't know, you know, kind of -- I didn't know which truth he
23 was talking about. So he started off telling some lies and he
24 said the detective scared him pretty good. And I said, They
25 cussed you? You know, I don't want to say it. We've heard

1 enough of that here. He said, Yeah, I mean, they did. They
2 cussed me and they did this, but I told them what I knew, as
3 best he knew it. As he said, he never spoke to Little Lou.
4 He had no firsthand knowledge. Any information linked back to
5 Little Lou, he said, came through Deangelo Carroll.

6 And I said, Rontae, how long have you known him?
7 Five or six -- well, I said, Mr. Zone, how long had you known
8 him? Five or six years. Know him pretty well? Yes. Living
9 with him, he and his -- the mother -- I can't remember her
10 name, Christa, maybe, the woman who was going to give birth to
11 his child, they moved in to Deangelo and his wife's house.
12 They were that close of friends. They were sharing an
13 apartment and they were spending that time together. And they
14 were coming up with a story on where to shift blame.

15 On the 21st Mr. Hidalgo and Anabel go to meet the
16 lawyer, Jerry DePalma. Mr. Don Dibble was there. Little Lou
17 was not there. Mr. Dibble testified he was shocked when he
18 found out a few days later Little Lou had been arrested. Had
19 no idea. It wasn't the subject of anything. The talk was
20 about paying money and how they messed up by paying money in
21 this fearful situation. Anabel did 90 percent of the talking.

22 Well, Anabel doesn't remember it that way. And
23 there's certainly been a suggestion out there that she's lying
24 through her teeth to you. It could be, it could be that she
25 was still -- that it was so confusing, I mean, really

1 confusing for her during this time. I suspect nobody's
2 sleeping very well after they find out a van they own is at a
3 murder scene that they didn't know was going to happen. And
4 there's a panic and there's fear and there's a lot of stuff
5 going on that I've never dealt with in my life. I don't know
6 how I'd react. I'd like to think I'd pick up the phone and
7 call the police. That's what I'd like to think. I don't know
8 what I'd do.

9 But what they did is they went to the lawyer on the
10 21st to try to say, Are we going to have a problem with our
11 license? We could have problems -- this Deangelo went off.
12 These people were in the van. We paid money. What are we
13 going to do? But the important thing for me, the important
14 thing for John and Little Lou is that he was not there. He
15 was not part of the top management circle of the club. You
16 know, he's the son, the young son. He's got a good job at
17 club, but he's not there getting lawyered up or getting the
18 advice on, How do we protect the license, what do we do as
19 damage control. He's just -- he wasn't that -- in that
20 echelon of management.

21 5/22, Mr. Gentile had come back into town.
22 Mr. Hidalgo's lawyer, either opponent or his personal lawyer,
23 depending on which case it was, I guess, and they came and met
24 and again Little Lou wasn't brought to that meeting. And
25 again, nobody knew there was a need to bring him.

1 Silverton, later in that day. Anabel said this is
2 when Little Lou said something about, Don't worry about
3 Deangelo. If you look at the cell phone records, Deangelo had
4 been calling Little Lou. Little Lou called him multiple
5 times, multiple times the night he was arrested. Deangelo
6 wasn't at work and Lou was chirping him. There's a number,
7 and Mr. DiGiacomo may very well have those in his rebuttal
8 argument. I don't -- I don't recall off the top of my head
9 how many there were. There were a number of calls between
10 7:30 a.m. and about 1:00 in the morning from Little Lou to
11 Deangelo that weren't answered.

12 There were other calls later that were talked about,
13 and Deangelo was out and about coming around. He didn't work
14 his shift, but he certainly wasn't in hiding and the police
15 didn't have him, you know, not at home at all. There's no
16 evidence of that.

17 So then we get to the 23rd, which is the big day.
18 McGrath putting the wire on him so it's concealed so only
19 Deangelo knows it's there, and he works with him on lies to
20 tell, lies to tell. This is how we need to get information.
21 And who did McGrath say they were trying to get information
22 on? Anabel, Mr. H. Anabel and Mr. H. Didn't say Little Lou.
23 And they sent him in, prepped him with lies, and the lies were
24 these two guys are going to snitch and Kenneth Counts is
25 threatening to kill him. Said, That will get him talking,

1 that will get us some evidence. Go.

2 And boy, you know, they were really concerned about
3 Deangelo Carroll and his well being because they had the old
4 exit strategy for him, run like mad and waive at the door, you
5 know, and McGrath, in full candor, said, well, what was your
6 concern? And I think -- I believe he said, My concern was if
7 something happened to him, we wouldn't be able to get the
8 evidence. You know, he was not the biggest fan in the world
9 of Deangelo Carroll and he said he didn't find him
10 trustworthy.

11 But at any rate, he sent him in wired up and there's
12 talk about the rat poisoning. I told you, we told you in
13 opening statement that that tape is critical. The tape and
14 the phone records are critical. There's certainly parts of
15 that CD that we wish weren't on there, absolutely, but the CD
16 speaks for itself. And on that CD there are no questions from
17 Deangelo Carroll about, Why'd you ask me to bring those bats
18 and bags? That's not on there. Why'd you get me into this?
19 Why did you tell me to go meet up with your father about doing
20 this? Those questions aren't on there. Why not?

21 He's going there to get evidence for the police in a
22 murder investigation. Why aren't those questions on there?
23 Because McGrath didn't know to prep him to get that sort of
24 information. The other officer -- and he's the one officer
25 not from Metro who's at one of the other police departments

1 who was part of the team that was working with the FBI, and he
2 said they were there and he remembers having the photos of
3 Mr. H and Anabel. Doesn't remember having any about Little
4 Lou. He said he might have, but doesn't remember. It's
5 pretty doggone clear from all the evidence Little Lou was not
6 a suspect, was not anybody's target until his mouth made him a
7 target. But when you listen to the whole tape, not just the
8 rat poison, when you listen to the whole tape, they want to
9 tell you this stuff about TJ and I'm going to talk about that
10 in a few minutes in a little bit of depth -- they want you --
11 or to listen to parts of it. I want you -- or ask you to
12 listen to it all.

13 What would you expect Little Lou Hidalgo to say if
14 he'd been at the center of this thing? What would you expect
15 to hear on that tape on May 23rd if he had called Deangelo
16 Carroll and said, Bring bats and bags, we've got to go take --
17 you've got to take care of Hadland for my old man? You
18 haven't known him, by listening to the tape, looking at him in
19 court, hadn't known him to be a really shy shrinking violet
20 type. I suspect you would find -- you may find when you
21 review this evidence and the whole tape that you'd find a lot
22 of comments that would be there if you really thought Lou
23 Hidalgo had been involved with this thing before then.

24 On the 24th -- and the rat poison comments, there's
25 no doubt about that. I can't run from it if -- I could, but I

1 can't. We get to the 24th. They come back -- Deangelo comes
2 back to the club. He's -- or back to Simone's. He's again
3 wearing a body wire. He comes in and there's additional talk
4 and then the wire's taken off. And Anabel doesn't know how
5 that wire was taken off. Deangelo wasn't here to tell you how
6 the wire was taken off. The wire's taken off.

7 The first five or six minutes you hear on there,
8 there's no part about, Man, I told you yesterday, what do you
9 mean those guys got on the bus? I told you to deal with those
10 guys. I told you to get rat poison. There wasn't those
11 follow-up kind of talks. And if he was serious, if he was
12 serious, wouldn't you have expected something more the very
13 next day, something more?

14 We can skip ahead. They're arrested shortly after
15 that. Everybody talked about Little Lou was always on time,
16 always up in that club like he was supposed to, got the
17 popcorn going, got the bar stocked, got all his jobs done. He
18 didn't that day. People were lined up -- the dancers were
19 lined up outside the club and couldn't get in because he'd
20 been pulled over and arrested.

21 On July the 6th, Anabel Espindola had a death notice
22 filed on her by these prosecutors. It's kind of interesting
23 these prosecutors -- Mr. DiGiacomo said in opening statement
24 she's, worse case scenario, probably only guilty of murder
25 two. They knocked that down. Well, that's not death penalty

1 eligible. She was death penalty eligible --

2 MR. DIGIACOMO: Objection to this argument, Judge.

3 THE COURT: Overruled.

4 MR. ADAMS: She was death penalty eligible in their
5 eyes on July the 6th, 2005 and remained that way until the day
6 she pled. And they said, Well, she wasn't under the
7 penalty -- the death penalty wasn't hanging over her head that
8 day. But, boy, that testimony was clear, they'd come into
9 court the very day before she went back to cut her deal
10 saying, We're going to file a new death notice, we're going to
11 move ahead with this. She didn't have any guarantee she
12 wouldn't be executed until that plea was entered. That
13 started February 6th.

14 Then we get down to sometime around May of '07 when
15 she and OB Perez became pretty close, and OB Perez testified
16 she was in jail, heard her sobs, went in and talked to her.
17 And she said Deangelo had this thing going on with TJ. I had
18 this thing with TJ. I told him to handle it. He wasn't
19 supposed to die. Nothing, nothing about Little Lou being
20 involved, nothing.

21 They cross-examined. You know, they're the State.
22 They have resources. They have investigators. They've got
23 investigators sitting here the entire trial. Nobody came up
24 with any evidence that OB Perez has been, you know, secretly
25 writing Little Lou Hidalgo. They're in love. I mean, there's

1 nothing like that. There's nothing to suggest that she is
2 inviting trouble into her life to somehow help Little Lou
3 Hidalgo, but she did. Anabel was involved, according to
4 Anabel, with Deangelo in something and Mr. Hadland was not
5 supposed to end up dead. And Little Lou wasn't involved in
6 it. She pled last year.

7 I'd like to talk to you for a couple of minutes
8 about the government's opening statement. And I'm saying this
9 not to -- because truly, you know, we lawyers argue and fuss
10 and bicker with each other, but at the end of the day we go
11 home. At the end of the day this isn't a game between
12 lawyers. It's not about jousting between lawyers. There's a
13 lot on the line. Mr. Hadland's daughter left but is -- her
14 mother, Jennifer's mother, is here, Timothy's ex-girlfriend.
15 It's important to them. It's important to them not to convict
16 anybody. It's important to them for justice to be done and
17 you know how important it is to this side of the room that
18 justice be done.

19 So my next comments about what they promised in
20 opening statement is not to get into some sort of lawyer
21 jousting thing because obviously we are prone to do that, but
22 this really is about what they promised versus what the proof
23 was. And maybe to get you to think, why didn't the proof come
24 in like they promised? Why? If they feel so good about their
25 case, why'd they oversell it in the opening statement?

1 And I'd like to talk to you first about this --
2 Mr. DiGiacomo said, Well, Deangelo Carroll kept looping around
3 the guard shack on the way out to the lake. He passed by it a
4 couple of times. Rontae Zone said there was never a guard
5 shack, doesn't remember a guard shack. He said -- you'll hear
6 testimony from this witness stand that Dr. Stertzner, the
7 original owner who sold the club to Mr. Hidalgo on basically a
8 rent-to-own kind of deal, a personal loan to him, said he gets
9 \$10,000 a month from the Palomino. Anabel Espindola testified
10 it was \$10,000 a week.

11 Now, I started with two very petty minor points and
12 I concede that to you. It's not -- those two points aren't
13 significant in this case, but perhaps they reflect the quality
14 of the evidence, the consistency of the evidence.

15 Mr. DiGiacomo's a smart guy. He's going to say it in a way
16 that he knows it to be true and expects it to be true, which
17 leads me to suspect perhaps the witness changed her story.

18 MR. DIGIACOMO: Objection, Judge, as to what I know
19 or don't know.

20 THE COURT: Sustained.

21 MR. ADAMS: That's an --

22 MR. DIGIACOMO: That's not a proper one. It's not
23 what I know.

24 MR. ADAMS: All right. I'll move on.

25 THE COURT: All right.

1 MR. ADAMS: Mr. DiGiacomo said -- and I'll move on
2 to a couple of more important things. Mr. DiGiacomo told
3 you -- I have his opening statement here. He told you, You
4 keep following those, meaning the phone records, and you'll
5 see that at 12:24 Mr. H called Anabel and Anabel calls Little
6 Lou. And interestingly, and this is May the 20th, right after
7 the meeting, the payment of money, interestingly, at 1:48 a.m.
8 Mr. H direct connects with Deangelo Carroll. The evidence,
9 the phone records, show that never happened.

10 Deangelo Carroll used KC -- he told us Deangelo
11 Carroll used KC's phone to call Anabel Espindola. Not
12 according to Kenneth Counts, not according to Deangelo
13 Carroll, not according to Rontae Zone who said no phone was
14 passed and not according to Anabel. I mean, she tried to call
15 that number back. She didn't say, Yeah, it was some un --
16 strange number. I didn't know who it was. I called him right
17 back, tried to talk to him again. We weren't done with our
18 little plan B conversation. Somewhere on here, there it is,
19 after an 84-second call, I tried to call right back. They
20 didn't get that information.

21 They told you in their opening statement that you'll
22 hear on the tape, and we'll make a big deal out of the fact
23 that Deangelo Carroll said on that body wire Little Lou had
24 nothing to do with this. Mr. DiGiacomo went on to say, You'll
25 learn Deangelo Carroll knows nothing about conspiracy law. I

1 thought that point good. We get to hear from Deangelo
2 Carroll, find out how much he knows about conspiracy law and
3 also how much he can help and tell the truth about Little Lou.
4 We did not hear that. And now they're asking you to believe
5 us, believe us. When you the tape the first time, you didn't
6 have a transcript, and I was watching -- as you guys were
7 listening very intently, I was watching you very intently.
8 And I hope that's okay. You can watch Little Lou very
9 intently all you want and I'm happy for you to.

10 I was watching you intently and about halfway
11 through that 34 minute and 56-second tape, I thought every one
12 of you would be snoring because it's hard to listen, it's hard
13 to make sense of it. It's a lot easier when the transcript's
14 up. You know, once you had the transcript, boy, everybody was
15 awake and could follow along with all the language. That's
16 how we all process information. But when we're trying to
17 listen to that the first time, did any of you hear TJ? Any of
18 you?

19 When you had the State's transcript, I bet none of
20 you heard TJ then either because, as you recall, at 22:15, it
21 was not in the State's transcript. And when you were forced
22 to listen to it a third time with the defense's almost
23 identical transcript, you didn't see it there either. They
24 started off this case, Mr. DiGiacomo's first sentence out of
25 his mouth was, I told you you should have taken care of TJ.

1 Second sentence, Those are the words of Luis, Little Luis
2 Hidalgo, III, the son, on May 23rd, 2005. He talks about it
3 later. The next time you do something stupid like that, I
4 told you, you should have taken care of TJ. And then
5 Mr.Adams, Objection to that, Your Honor. That was not in the
6 transcript.

7 The Court, That's sustained. Sustained.

8 MR. DIGIACOMO: Objection, Judge. He can't read the
9 objections.

10 THE COURT: Right. Well, if it's objected to and
11 it's sustained, they're not supposed to consider it.

12 MR. DIGIACOMO: Right.

13 MR. ADAMS: Well, you heard the CD now multiple
14 times. You heard them play it a few more times. What is not
15 on there, even when they're putting it on the screen, is, I
16 told you to take care of TJ, to go up to the lake, to kill
17 him, to do this or that. That's not on there. Even the
18 inference they're trying to argue is not -- is not an
19 inference that points automatically towards guilt. But it's
20 important or else we wouldn't be spending this much time
21 talking about it. But you didn't hear -- I'm confident you
22 did not hear it the first time.

23 And I promise you you did not hear it when you were
24 reviewing their transcript or our transcript. And now their
25 case is such that it depends on you to find TJ's initials

1 mentioned in that tape -- on that tape when their court
2 reporter couldn't find it. That's their case, ladies and
3 gentlemen, a case that was perhaps overpromised in opening
4 statement and didn't come through like they told you it would.

5 I'd like to talk to you now, and I think I have
6 about ten minutes left with you, for those of you who might be
7 thinking of the rest room or other more interesting things in
8 life. In about ten minutes, I'll be done, and I don't know
9 how long you're going to work tonight, but I sure hope you, at
10 least, handle our part of the case as soon as you can.

11 I'd like to talk to you about the conspiracy to
12 murder Mr. Hadland. And somewhere up here I have the
13 actual --

14 Andy, I think I forgot you again, didn't I? Could
15 you please play --

16 I skipped over this, but it's a part of the tape
17 that we'd like you to focus on that actually was in the
18 transcript.

19 Could you play that part for me, please, Andy.

20 (Playing tape)

21 MR. ADAMS: Well, at least according to the
22 transcript, that wasn't the clearest version, but it's at
23 13:26 to about 13:34 on the CD that -- if it's the full CD of
24 34 minutes and 56 seconds, 13:26. I'd like to talk to you
25 first about the first charge in the Information.

1 I think that's about as big as I can get that one.

2 Louie Hidalgo, along with coconspirators Kenneth
3 Counts, Anabel Espindola, Deangelo Rashaun Carroll and Jayson
4 Taoipu, on or around May the 19th, on or around, not exactly
5 sure about when this supposed meeting takes place, but on or
6 around, in the ballpark, they meet with each other and/or
7 Louie Hidalgo, Jr. and between themselves -- this is a little
8 confusing, isn't it?

9 Now, in the opening statement Mr. DiGiacomo told us
10 several times that this is a very complex case. Perhaps it's
11 really a very simple case. It is a very long case. Perhaps
12 it's a long case because of the holes in the evidence. But
13 this says, These people, maybe along with Mr. Hidalgo, between
14 themselves conspire and agree to commit a crime; to wit, the
15 murder of Timothy J. Hadland.

16 Ladies and gentlemen, where, where in any of the
17 evidence where is an agreement, any agreement, any agreement
18 at all that Little Lou Hidalgo entered into related to
19 Mr. Hadland? Where is that? Somewhere on here -- and it gets
20 smaller because I really wanted it on one sheet. We'll go
21 through these later. When was there an agreement? What was
22 the agreement? When did Little Lou talk to Mr. Counts? When
23 did he talk to Anabel Espindola? Anabel Espindola is the only
24 person who talks about any kind of agreement. And I told you
25 this line in opening and I thought for sure it was going to

1 get a laugh and it got nothing. So I'll try it again.
2 Hopefully you're a -- maybe we've spent a little more time
3 together.

4 There's nothing but disagreement, nothing but
5 disagreement, according to Anabel Espindola. She said there
6 was an argument, a fight, not an agreement. I mean, an
7 agreement is, Hey, dad, want to do something about this? Yes,
8 son, what are your ideas? I don't know, let's go through the
9 possibilities. We could do nothing. We could beat him. We
10 could beat him up real bad and try to hospitalize him. We
11 could kill him. What do you think, dad? Oh, son, I think the
12 only way to handle this is to kill him. Good. Let's agree to
13 it.

14 I mean, that never happened. And I'm being a
15 little -- you know, a little over the top on how I describe
16 what is necessary for an agreement, but the truth of the
17 matter is there's no evidence of any agreement, none. It
18 doesn't exist in this case. I suspect they will argue once I
19 sit down that, boy, use your common sense, this never would
20 have happened, there had to have been an agreement. Almost
21 like the Salem witch trials. You know, boy, they must be
22 witches because they can't prove they're not.

23 How are we supposed to come into court and prove
24 there was never an agreement? How? I mean, Anabel said there
25 was an argument. She said she was with Mr. Hidalgo the rest

1 of the day, father and son were never together, and then they
2 see Deangelo after it happened. Where in this time line of
3 their witness is there room, is there space, is there an inch
4 for any agreement? It's not there.

5 And certainly the bats and bags comments, super
6 questionable. When was this bats and bags thing supposed to
7 have happen? For that to have happened, for that to have made
8 sense, Rontae Zone would have to be lying. I don't think
9 they're going to say Rontae's lying. Rontae would have to be
10 lying. And Mr. H would have had to have a conversation with
11 Little Lou about, Get Deangelo to the club with bats and bags,
12 sometime around 7:00, 8:00 o'clock at night, and Anabel would
13 have to be lying because she said they were together. Their
14 two star witnesses would have to be lying for there to be a
15 conspiracy. Not really the best way to build a conspiracy
16 case, it seems to me.

17 Actually, before I move on to the next charge, I'd
18 like to talk to you for a second kind of generally about how
19 to view this. We talked earlier about if there's more than
20 one way to view the evidence. I think this is a pretty easy
21 charge, the easiest. They charged it first. I was happy to
22 start with it first in talking to you. Let me tell you this,
23 in all fairness. If you think they've proven Little Lou
24 Hidalgo had an agreement with any or all of those people,
25 you've got a duty, you've taken an oath, you've got to convict

1 him. You've got to convict his butt of that, no doubt about
2 it. And I say that in full confidence that you're not going
3 to find an agreement.

4 We believe -- we -- our position is he's been proved
5 innocent of that charge. And like the Judge instructs, if
6 they don't meet their burden of proof, we're entitled to an
7 acquittal on that charge. Some of you may go back and say,
8 yeah, but what if, couldn't he have -- what if he did this,
9 what if his dad texted him or something, and we don't have
10 text records, it's fair game. Turn to your neighbor and say,
11 whoa, remember the government has the burden of proof. If
12 there's a text record, and there's no testimony about nothing
13 to suggest there is, if there is, the government's got to
14 bring that to us. We can use our common sense, but we can't
15 pull up a backhoe and try to fill in these holes in their
16 case. That's not right. We took an oath not to do that.

17 This is this first part of the murder charge, and
18 I'll deal with the second one first. They have charged Little
19 Lou under 22 theories where they think it makes him guilty of
20 murder. The second one -- and I know it's small print, but
21 you'll have this document with you in the back. The second
22 one is guilty by conspiring to commit the crime of battery
23 and/or battery with use of a deadly weapon, and/or battery
24 resulting in substantial bodily injury, and/or murder and/or
25 to kill Mr. Hadland. A complex case or a really simple case.

1 There's no evidence of any agreement. We just talked about
2 that. I'm not going to run back through that, but there's
3 none.

4 The first theory that they have really, I think, is
5 what they believe their case is now, aiding and abetting by
6 the commission of the crime directly, indirectly, aiding and
7 abetting -- aiding, we know what it means, abetting means
8 assisting. Aiding and assisting and to wit -- or otherwise
9 procuring. I should have circled procuring. Procuring's
10 maybe not a word you use every day. Maybe you have friends in
11 the military, some people have been procurement officers in
12 the military or procurement positions in businesses. Those
13 are people that get stuff, you know, like in Mash, Radar
14 O'Riley would have been a procurement person, you know, he
15 gets things. Procure.

16 So he either aided and abetted by procuring Luis
17 Hidalgo, III and/or Luis Hidalgo, Jr. Well, this is a big
18 deal. And makes Little Lou guilty or makes Little Lou
19 innocent. Right? I mean, he has to be involved in this.
20 Little Lou, III and/or Mr. Hidalgo procured defendant Deangelo
21 Carroll to beat and/or kill Timothy J. Hadland; thereafter,
22 Carroll did all this stuff.

23 Well, there are two ways that they can try to argue
24 they've proved that to you. One way is the bats and bags
25 call, 7:42, had to be the bats and bags call. Zone must be

1 wrong. It could've happened at noontime. Zone has to be
2 wrong, smoking pot all day. Their witness. Reasonable doubt
3 right there. Zone said the call's at noontime. The 7:42 call
4 is about coming back to work.

5 The other way, the other horse they can try to ride
6 to prove this murder case to you is that somehow what Anabel
7 said about arguing with the dad, making the dad so mad that he
8 stewed and he simmered and later he called Deangelo Carroll
9 about doing a hit. That's the other way to do it. How is
10 that aiding? How is that assisting? I mean, even if that's
11 true, even if that, by random flight of fancy, is truthful,
12 how is that aiding or assisting? Is that driving him over to
13 meet with Deangelo? I mean, there's not an a -- there's not a
14 meeting of the minds.

15 And what else does Anabel tell us? Anabel says, her
16 version to get the deal, her version to have a shot at
17 probation, her version is that there was talk about Rizzolo
18 and Gilardi and that one of these two gentlemen had a customer
19 beat up. They know how to handle their business. And
20 because -- if that comment were made, does that mean that
21 Little Lou Hidalgo must have, in his heart, wanted Timothy
22 Hadland dead? And that's what they're trying to get. Two
23 plus two doesn't equal 25. I mean, it just doesn't.

24 The solicitation for murder, we all know about free
25 speech in this country, and usually it's free political

1 speech. Certainly any of you could go across to the park, say
2 whatever you want about the government, and one of the
3 things -- and I think a lot of us, after 9-1-1 and the years
4 after that, have thought a lot about really what it means to
5 be an American. And one of the things that makes us different
6 is we do believe in free speech. And sometimes that speech is
7 abused, sometimes it's offensive, sometimes people don't like
8 it when people are burning flags and that type of stuff. But
9 free speech is protected and it always has been.

10 John Adams, no relation, when he was president in
11 1800, he was going up to New Hampshire to dedicate a cannon, a
12 new cannon that was in some courthouse, and somebody yelled
13 out when he was about to dedicate it, I hope it burns your
14 britches off. That guy was prosecuted. The judge who
15 presided over that trial was almost impeached by the U.S.
16 Senate because we protect the right to say disagreeable
17 things. That's in public parks and that's also in private
18 bedrooms.

19 MR. DIGIACOMO: I apologize, Judge, but at some
20 point that is jury nullification. I object.

21 MR. ADAMS: There's no jury nullification. I'll --
22 I'm moving on, but --

23 THE COURT: All right.

24 MR. ADAMS: -- that's certainly not jury
25 nullification, Your Honor.

1 Why is that important? Well, you can have a
2 solicitation to murder without any further act. You can.
3 Your words alone can do it. What do you think of when you
4 hear solicitation of murder? If you watch enough cable TV,
5 you might think of some diner out in the desert somewhere,
6 nobody's there, a couple of people at the bar, and somebody
7 who doesn't smoke cigarettes, chain smoking with nervous hands
8 waiting to meet some guy who shows up in all leather who walks
9 in and they never show the face. He's an undercover police
10 officer and he walks in and they sit down and this guy either
11 has pictures of his spouse or he has pictures of his business
12 partner. And in either one of those situations, those
13 partnerships are ending. And it's about money and here's the
14 schedule, here's the bag of money. I want you to do it
15 Thursday at 2:00 p.m., and then they arrest the guy for
16 solicitation of murder. That's when you have a real good idea
17 of the intent. When it's something like that, you have a real
18 good idea that somebody really wants somebody dead.
19 Unfortunately, they found an undercover officer, not a hit
20 man.

21 This is a situation where a guy -- you can hear him
22 hacking on the tape, a guy who's sick, who's in his bedroom,
23 and it's not his bedroom because he's a near do-well. He's
24 got a rental -- he's got a house. He's renting it out. You
25 heard that testimony. He's living at Simone's trying to save

1 money, trying to get ahead. He's living there and who knocks
2 on his door? Deangelo Carroll. And why is that important?
3 Because Little Lou didn't get out of his bed to go find
4 Deangelo Carroll with a bottle of gin to say, Kill these guys.
5 I found out at the Silverton. I found out that my old man
6 might be in trouble. Anabel might be in trouble. I love
7 these people. We've got to not let anything happen to them.
8 We can't have the business license in trouble or whatever. He
9 didn't go looking for Deangelo to fix the problem. Deangelo
10 came to him.

11 If Little Lou wanted those two guys dead, or let's
12 say Little Lou wanted those three guys dead, including Kenneth
13 Counts, don't you think he would have left his bedroom to try
14 to make that happen, try to find Deangelo, say, You've got to
15 take care of this problem?

16 What happened after he left? Nothing. Nothing.
17 Nothing at all. Little Lou was arrested the next day 24, 26,
18 28 hours later the afternoon of the 24th. There was another
19 conversation with Deangelo that was wired, not another
20 conversation about harming anybody. Wouldn't you expect that?
21 This is not the same thing as the guy out in the desert with
22 the bag of money and all the pictures.

23 Now, they want to say, Well, on this tape he's
24 talking about \$25,000. Well, you've got in evidence \$10,100
25 of U.S. Savings Bonds by Little Lou in his room in a booklet

1 all organized. He didn't hand that to Deangelo and say, Here,
2 man, let me pay you in advance. He didn't do that. He was
3 talking about if you get arrested -- or Anabel was actually
4 talking about, You need a lawyer. If you get arrested, stick
5 to your story. And basically he was saying, If that happens,
6 I'll take care of your wife. I mean, what are you talking
7 about, conspiracy, a year? I mean, come on, man, I'll do
8 these savings bonds things for you. I'll say in -- do you
9 think if Deangelo would have gone to jail for a year, he'd
10 have gotten out and had \$25,000? Very unlikely.

11 If that had really been a plan perhaps those \$10,000
12 right there would have been given to him. They weren't. It
13 was a kid who ran his mouth and didn't think. And how do we
14 know that? Anabel Espindola's known the little guy since he
15 was eight years old. They were there together every day.
16 They were working together. He was living at Simone's. She
17 was running Simone's as part owner. He was an assistant
18 manager. It sounds like the job -- you know, he had -- you
19 know, he's a younger guy whose father owns a club. He was
20 working hard, but he wasn't upper management. He is, I guess,
21 on the letterhead, but he was stocking the bar and that sort
22 of stuff. She was the general manager there. She'd been very
23 involved in this young man's life. They have terms of
24 endearment for each other.

25 He wrote her. They introduced into evidence a

1 couple of letters Little Lou wrote to her before Christmas
2 this year asking about her mother. You have that in evidence.
3 Her mother -- she said her mother's been sick for a long time.
4 Little Lou wrote -- knew she was going to be a witness against
5 the father. Didn't write a threatening letter. He wrote a
6 letter of concern about the mother. I mean, their
7 relationship goes a long way back. Anabel Espindola who --
8 has every reason in the world to make these guys happy.

9 I think Mr. Arrascada said, Was she upset or you've
10 known him when he's happy, sad, mad, glad, you know, he
11 started a rhyme and he said, Well, look, let's just cut to it.
12 You know him when he's serious? Yes. You know him when he's
13 just stupid? Yes. Was he just stupid when he said that?
14 Yes. And was he just stupid because you thought you'd handled
15 the problem? Absolutely. I was paying money to Deangelo,
16 problem solved. You know, Lou was yapping. Those guys didn't
17 get hurt, thank God, but when you evaluate all of this, all of
18 you, all of you said in jury selection that you've heard
19 people say these kind of things.

20 They haven't all been taped and on wires and been
21 presented in court, but you've all heard people say that. And
22 you said, Well, I need to know the person. Well, what if you
23 didn't know the person? Well, I'd either get to know the
24 person or you need to hear from people that knew the person.
25 Anabel Espindola, State's star witness number one, knows the

1 person. It was stupid.

2 I want to talk to you for a second about strip clubs
3 and then I want to just leave you with a couple of thoughts
4 and then I'll be done. I think I've gone a lot longer -- I've
5 gone -- I feel like I've gone a lot shorter than you do. I
6 know that, but I'm about done.

7 In this country, at least in parts of this country
8 and in my part of the country, the last 40 years or so, we've
9 really believed in equal education. Every kid has a right to
10 quality education. And that's important because I remember in
11 high school we went on a field trip to another school. It was
12 a school in Cave Springs, Georgia. Cave Springs is a little
13 town where Mike Glen of -- the Stinger, for any of you who
14 watch basketball, old Hawk player, played at Auburn, greatest
15 Auburn player before Charles Barkley came along. The Stinger
16 was there and there's a Georgia School for the Deaf and we
17 went out there. And it was just amazing to me that these kids
18 were getting a great education.

19 That was important to me because I left and said,
20 you know, that's fair. It doesn't cost the same, but we're
21 all entitled to an equal chance in this country. And I went
22 off to law school finally later, had no idea I'd end up being
23 a lawyer. I went to law school in Washington, D.C., and it
24 was wonderful living up by Capital Hill. You'd walk by the
25 Supreme Court building. It's right across the street from the

1 U.S. capital, etched up in the marble on the Supreme Court
2 building is equal justice under law. And that's meant a lot
3 to me. It's a principle worth fighting for, fighting for in
4 the courtroom, fighting for in a career.

5 And a lot of times that's about fairness between
6 rich and poor. That's not really the case here in this
7 courtroom. In this courtroom, it's about can a kid who's a
8 manager in a strip club get the same shake as a kid who was
9 running a body shop. My dad didn't shove me in the strip club
10 business at 20. I might have been very happy to be there, but
11 he didn't. Little Lou was working there. It was an honest
12 job. It was paying the bills. He was building a life. He
13 was not -- on the 19th of May or on the 23rd of May, he wasn't
14 trying to end lives. That's the evidence in this case.

15 He wasn't present. He didn't pay. He didn't
16 participate. Since May 24th, 2005, three years and almost
17 nine months ago, Little Lou's been waiting for lawyers to quit
18 talking about his situation and have you guys, not people of
19 common sense, but I think the 12 of you, 14 of you together,
20 people with uncommon sense to decide was there an agreement,
21 was he involved? I think the answer's clear and we hope, we
22 pray that at the end of this you give him another shot.

23 Thank you.

24 THE COURT: All right. Thank you, Mr. Adams.

25 Mr. DiGiacomo.

1 MR. DIGIACOMO: Thank you, Judge. Judge, if we
2 could just take down the pieces.

3 MR. ADAMS: Would you like me to take them all down?

4 MR. DIGIACOMO: Yeah, just take them all down.

5 STATE'S CLOSING ARGUMENTS

6 MR. DIGIACOMO: The one thing I will promise to you
7 is this is going to be significantly shorter because every
8 given trial, every trial that's done in the State of Nevada
9 and the country, civil, criminal, doesn't matter, it's about
10 one thing. It's about the truth. That's it. That's -- at
11 the end of the day when you go back to that room, the only
12 thing the State of Nevada cares about is finding the truth.
13 But I'm going to dispute a few things that were said by
14 counsel, and the last one I just can't resist talking about.

15 This case isn't about rich and poor? It is. All
16 the poor people did this and the rich people who were the
17 puppet masters are going to walk away from it. No doubt this
18 case is about rich and poor. Let's talk about what was said
19 by Mr. Gentile early on. I'd like to address Little Lou for a
20 little bit too, but one thing he said was, What wasn't enough?
21 And then he said, What do they have now?

22 And Mr. Gentile tried to, at the end of his
23 argument, kind of mute this, but Wednesday, this is a
24 corroboration case; Thursday, there isn't a corroboration case
25 because when you read all those instructions, they say one

1 fact or act which tends to connect you to a crime. Their own
2 client, Mr. H, says, I paid the money. This isn't a
3 corroboration case the moment those words came out of his
4 mouth. That's it, end of the day. In fact, at the end of
5 this case, I'm going to explain that you can set aside -- you
6 don't even need Anabel Espindola right now to determine that
7 man's guilt, at all, no way, no how.

8 And the other thing as it relates to Little Lou
9 Hidalgo is the only evidence, exculpatory evidence, that
10 they -- and I've used exculpatory before -- the only evidence
11 that exonerates this individual is a statement by a person
12 that they tell you never to believe. And it's the exact same
13 defense that Mr. H has. Don't ever believe Deangelo Carroll.
14 And, hey, we're prosecuting him. Good. Don't ever believe a
15 word he says.

16 But if you're going to listen to the wire and you're
17 going to follow the law, you can't listen to what he says
18 because the law tells you that the statements made by someone
19 after he's withdrawn from the conspiracy, ie: Deangelo Carroll
20 wearing a wire, can't be offered against the defendants for
21 the truth of the matter asserted. It's only the statements of
22 Anabel and Little Lou that are relevant.

23 So let's look at what you hear Little Lou saying
24 before Deangelo made the statement and what you hear him say
25 after the statement. There is zero context to the statement

1 whatsoever. When you listen, I don't care how close you get
2 your ear to that speaker, I don't care how far you turn it up,
3 ask for headphones, I don't know what you do, you cannot hear
4 what Little Lou says that prompts the response from Deangelo
5 Carroll.

6 And that statement that Deangelo Carroll, was it --
7 You had nothing to do with this whole situation with TJ, you
8 have no idea in what reference that is. And when you combine
9 that with the fact that the moment they walk in the door he's
10 whispering, which tells you what? That on May 23rd, the
11 moment that Deangelo Carroll walked through the door, this man
12 knew about the murder. And they keep calling him kid and the
13 little guy and all -- he's a 27-year-old man. At what point
14 do you take some responsibility in your life?

15 He knew the moment they walked through the door that
16 a crime was committed. And how could he possibly have known?
17 They went over the phone records. I noticed they wanted to
18 skip some really important stuff. They did May 19th up until
19 right around the murder time and then they started up on
20 May 20th and they skipped the part with all the communications
21 between Mr. H and Little Lou and then Little Lou with Deangelo
22 Carroll. Go back and look at those and ask yourself, what?

23 The only person who has contact with Deangelo
24 Carroll after he leaves the police department on those cell
25 phone records is Little Lou. He's the only person. And you

1 remember what the detective said? The only person we told
2 about flyers being on the ground, and you heard about how dark
3 it was out there. They had no idea they left the Palomino
4 flyers out there. They would have picked them back up. The
5 only person we told was Deangelo Carroll. And it's clear by
6 the time of those recordings that the coconspirators know
7 about the flyers. And the only person who had contact with
8 Deangelo Carroll after that is Little Lou. That's it.

9 MR. ADAMS: Objection, Your Honor. There are a
10 number of calls from Anabel Espindola.

11 MR. DIGIACOMO: Not after -- you can go back to
12 those records.

13 THE COURT: All right. And again, ladies and
14 gentlemen, the records -- it's your interpretation of the
15 records that count.

16 MR. DIGIACOMO: After Deangelo Carroll leaves that
17 interview room, find yourself the calls between Deangelo
18 Carroll and Anabel Espindola. Those calls that you see are
19 right around the time period on the 20th right around the time
20 period when Mr. H gets the call saying, I want to talk to
21 Deangelo Carroll -- or the police want to talk to Deangelo
22 Carroll. Right? We need you to come down to the club and
23 talk to us.

24 And when we get to Mr. H, I want you to pay close
25 attention to those cell records. We haven't pulled that chart

1 out, and you can utilize that chart, but you find the time
2 when Mr. H and Anabel aren't at the same place at the same
3 time when anything relevant and important happens in this
4 case. Ask yourself how it's possible that Mr. H and Anabel
5 are in the building together when the phone call comes from
6 Marty Wildemann. They're still in the building together when
7 Anabel's crossing back and forth with Deangelo -- Anabel's
8 phone, because I know we keep talking about Anabel -- Anabel's
9 phone, his mistress of 18 years, crossing back and forth with
10 Deangelo Carroll. And then, and only then, after those phone
11 calls are over, will you see Mr. H drive northbound on I-15
12 and wind up at the Palomino Club.

13 And then the very first thing he does is cover up
14 for Deangelo Carroll. That's it. That's the first thing he
15 does. He won't admit it on the stand. And while we talk
16 about that, I know they put the accomplice instruction up
17 there and, wow, when you read that accomplice instruction, oh,
18 my God, you should never, ever, ever believe an accomplice.
19 They have so much motivation to lie. That was basically the
20 argument.

21 But look at that instruction and say to yourself,
22 isn't that the same motivation that the defendant has? With
23 the exception of the part where he wants leniency from me, now
24 he wants leniency from you. So when you analyze the
25 defendant's testimony, don't you have to analyze it under the

1 same analysis you do of Anabel Espindola? Absolutely.

2 MR. GENTILE: Your Honor, I object to that. That is
3 not the state of the law.

4 THE COURT: All right. Well, that's sustained as to
5 the state of the law, but he certainly can argue what the
6 motivation would be and et cetera.

7 So go on, Mr. DiGiacomo.

8 MR. DIGIACOMO: Thank you.

9 Mr. Gentile made an argument to you about, They
10 don't have my guy on the tape, but he's the first guy to admit
11 to you that before the tape occurs he told his client not to
12 talk to Deangelo Carroll. He wants you to benefit from the
13 fact that he gave him good legal advice. Anabel Espindola,
14 had she not loved Mr. H, wouldn't be sitting in that chair
15 either. Had anybody -- if Little Lou had listened to his
16 father when he got Don Dibble's card wouldn't be sitting in
17 that chair right now because you wouldn't have those wires.

18 And the funny thing about it is they want to talk to
19 you about the witnesses in this case. They ignore the wires.
20 And most importantly, they ignore the testimony of Mr. H.
21 Mr. M claims, and this is the instruction -- well, I guess it
22 was Mr. Gentile that said it to you, he's an accessory after
23 the fact. Not if you read how accessory after the fact was
24 defined. He was extorted, according to him, but he didn't do
25 anything to help them conceal the crime, according to his

1 testimony. He's not an accessory after the fact.

2 I talked about this already a little. I wrote this
3 down, though. Mr. Gentile said, You can't place Mr. H
4 anywhere in any relevant period of time. Well, we can. We
5 can place him with Anabel Espindola on those phone records at
6 every critical juncture in the case. You won't be able to
7 place him anywhere else than with Anabel Espindola.

8 There were a number of things they talked about
9 during the course of their argument that said -- that I said
10 certain things in opening statement that didn't come true.
11 And I guess, you know, one of things I thought we agreed
12 during trial was there was a mistake on there. Mr. H didn't
13 call. It was Little Lou, not that I necessarily think that
14 that helps them in any manner whatsoever.

15 But then they said, You're not going to hear any
16 evidence the coconspirators were upset that they used KC. And
17 I want you to think back to that because I want you to listen
18 to the wires. And I know it's brutal listening to those
19 wires, and all of us in this room have listened to those wires
20 hundreds of times, thousands of times probably, and without
21 the transcript, it is a painstaking and brutal experience, and
22 while I understand and I reflect that this is about equal and
23 exact justice and I appreciate the defense counsel telling the
24 family of Mr. Hadland that they feel bad for them, they're
25 entitled to justice too. Mr. Hadland is entitled to justice

1 too. Go back in that room and listen to the evidence and ask
2 yourself -- when you listen to that evidence, the first thing
3 you ask yourself is, Well, was there a conspiracy? And you
4 can't answer that question any differently, right? There has
5 to be a conspiracy.

6 Now, they're claiming, I think, although at times I
7 think they're saying there's not a conspiracy as it relates to
8 Anabel Espindola, like she's not innocent, but she's not
9 guilty, she's just innocent and put in a bad situation so she
10 pled guilty anyway. There's times when I kind of hear that
11 argument from the defense, but the fact of the matter is she's
12 guilty. There's a train coming to send her to prison had she
13 gone to trial because when you listen to that evidence -- and
14 there's no question she conspired with somebody, no doubt
15 about it. There is no question that there is a conspiracy.

16 The question then becomes who is involved in the
17 conspiracy? And what they want you to do, and it's funny
18 because Mr. H -- Mr. H's lawyer wants you to not believe
19 Rontae and I think Mr. Hidalgo -- or Little Lou's lawyer wants
20 you to believe Rontae. One thing that Rontae has been
21 consistent about the entire time and nobody can impeach him
22 with is that the day of the 19th, the very first thing that
23 happens is Little Lou is saying that Mr. H wants somebody
24 dealt with.

25 MR. GENTILE: Objection. Objection. Deangelo

1 Carroll is saying that.

2 MR. DIGIACOMO: Deangelo Carroll --

3 THE COURT: All right. That's sustained. Rontae
4 testified that Deangelo Carroll said it.

5 MR. DIGIACOMO: Correct, right.

6 So Deangelo Carroll, this guy that you can't ever
7 believe, that is so -- thinks himself so far in advance, yeah,
8 okay, I have the ability -- or I'm going to right now tell
9 Rontae, if he's telling the truth, and if he's lying, then
10 they made it up later on and the rest of the defendants in
11 here are just so stupid as to get -- falling into the middle
12 of this during a wire. He has the forethought ahead of time
13 to not mention Anabel. He says, Look -- and when Rontae first
14 comes in and gives his statement to the police, he's got to
15 not mention Anabel.

16 Anabel's name -- when they said Little Lou wasn't a
17 suspect early on in the case, what are you talking about? Of
18 course Little Lou was a suspect. Is he the top of the food
19 chain? No. And we'll talk just a moment about Mr. H's
20 testimony was brutal for his son. Brutal. If he doesn't talk
21 to his son in that time period, then his son's involved in a
22 conspiracy without him. How does a father do that to a son?

23 So after you have the testimony of Rontae that says
24 Little Lou wants -- or Little Lou says Mr. H wants a person
25 dealt with, you have the testimony of Anabel Espindola. You

1 could completely reject the testimony whatsoever. I would
2 submit to you that your duty requires you to look at it. And
3 when you look at it, here's the thing you need to ask
4 yourself: Why? Why is she minimizing? Neither Mr. Pesci or
5 I are going to stand up here and tell you that Anabel
6 Espindola is telling the full truth. It can't be possible.
7 She hears on the phone, because on May 24th you've got to know
8 she hears from Deangelo Carroll. If he's alone, kill him. If
9 he's with somebody else, just beat him. Why won't she admit
10 that?

11 Because as we're going to get to, she has the
12 perfect, perfect defense to first-degree murder. And the
13 reason she has a perfect defense to first-degree murder is
14 because when you listen to the May 24th, 2005 wire, you will
15 know that beyond any doubt that's the first time she knows
16 about it. What she won't admit is that she heard Deangelo
17 Carroll's statement. She told him to go to plan B anyways and
18 then thereafter she was involved in the coverup. Once she
19 said plan B and the killing occurred, she's on the hook for
20 second-degree murder, no doubt, end of story for her. None of
21 us is standing up here and telling you that.

22 But then the question becomes, do we just go to
23 trial and convict Anabel Espindola or do you get the guy who's
24 been using her as a puppet, the puppet master? I heard the
25 word puppet being used, the family man who had his -- who has

1 a strip club and a mistress for 18 years, the family man, that
2 guy. The guy who wants to write her a Christmas card uses a
3 woman to write the Christmas card so it can't be traced back
4 to him. The guy who doesn't do anything for himself. The
5 bump on the log during the interview with Jerome DePalma. The
6 bump on the log who was taking notes that nobody noticed.

7 Did you hear Mr. Dibble say, No, he wasn't talking,
8 he was sitting there writing things down? Where did that --
9 when did that happen? I didn't hear Mr. Dibble say that. Did
10 you hear Jerome DePalma say he was doing anything other than
11 sitting there looking down at his feet? Did you hear him say
12 he was taking notes as Anabel was doing the talking? And then
13 you saw the demeanor of the guy on the stand. You think that
14 guys sits in a room and doesn't talk, ever, at any point in
15 time? He's a bump on a log. That's it.

16 Oh, and, oh, by the way, I am scared to death of
17 Kenneth Counts, but I don't tell my son. You don't tell your
18 son? You don't tell your son you're scared -- that's the
19 reason you're scared? No, I don't. Why won't he admit that?
20 Why won't he admit that? And it comes back to the
21 May 24th wire. And I'm going to get to that at the very end.

22 So what else do you have after that? Nobody
23 disputes the facts of what when on out there. I don't think
24 anybody says that Kenneth Counts is not the shooter. What
25 else do you know? Well, they said, well -- Anabel's the one

1 that said TJ was out at the lake. Really? Look at the phone
2 records. When does she have the ability to find out that TJ
3 was out at the lake? Is that anything even remotely
4 reasonable to make a conclusion? Here's what happened.
5 Little Lou and Deangelo are talking about this, they're mad
6 about TJ's behavior. Deangelo calls Anabel and Anabel tells
7 Mr. H in front of Little Lou and Little Lou is the one who's
8 mouthing off to his dad. Obviously he knew about it
9 beforehand because he said to him, You won't do anything about
10 it.

11 There has clearly been discussions about TJ earlier
12 than that between Little Lou and his father. It's the first
13 time Anabel heard it, but obviously Little Lou's mouthing off,
14 encouraging, as the law requires, Deangelo Carroll,
15 encouraging his father. And ultimately, whether or not he's
16 aware or not --

17 MR. ARRASCADA: Judge, I have to object to this.
18 This is not inferences from the evidence, but it's just gross
19 speculation by the prosecutor.

20 THE COURT: Overruled.

21 MR. DIGIACOMO: Thank you.

22 It is patently clear that by that night the order is
23 issued by somebody, and it isn't Anabel Espindola. The
24 question is, can you determine it's Mr. H? And here's what
25 you have to ask yourself: If Mr. H paid the money because he

1 was scared, you have to believe Deangelo Carroll. I know
2 Mr. Pesci's cross-examination of Mr. H was short, but how do
3 you get around that fact? Here's a man who doesn't believe a
4 word Deangelo Carroll says. He's a complete screwup. He
5 doesn't do anything right. And Deangelo Carroll walks into
6 his office and says, Hi, Mr. Rich Guy, who has \$155,000 in a
7 club that apparently has no security whatsoever, apparently
8 anybody can walk in there and rob them of \$155,000, and I know
9 you have multiple guns up here, you have a CCW, you have a
10 Glock, I just killed the guy for you and there's somebody
11 downstairs and he wants the money and Mr. H, the savvy
12 businessman, owner that runs the club doesn't have the
13 audacity to walk around to at least the cameras to look to see
14 if there's some other guy downstairs? Are you kidding me?
15 Are you kidding me?

16 And then the reason that he doesn't tell his son is
17 because -- or the reason he testifies that he doesn't tell his
18 son is because it's clear his son doesn't know anything about
19 Kenneth Counts trying to hurt anybody.

20 So I'm going to close this case and hope that you
21 people go back there and actually look at the evidence. I
22 hope you listen to the wires. I hope you consider the
23 evidence and just do this, take the phone records, place them
24 next to the recordings, and look at what Mr. H says and ask
25 yourself, can this guy be telling the truth, because if he

1 paid the money because he was scared, that's one thing. If he
2 paid it for any other reason, it's because he's involved in a
3 murder.

4 Can you stick this on me, Janie?

5 THE COURT RECORDER: Sure. It's on.

6 MR. DIGIACOMO: There it is.

7 (Playing tape)

8 MR. DIGIACOMO: That's May 24th, Anabel Espindola.

9 What is she saying? What is she saying? I tried to call you.
10 Remember -- earlier in the conversation, Deangelo says,
11 Remember, I told you if he's alone, I should kill him. And
12 what was the answer to that? I didn't say yeah. She doesn't
13 say, no, you never told me that. She says, I didn't say yeah.
14 And if he's with somebody else, I should just beat him up?
15 And what was the response to that? I said plan B, Deangelo.
16 I said, Fucking no. And he goes, You didn't say no. And she
17 says, Well, I tried to call you. As soon as I found out where
18 you were, I tried to call you and I couldn't get ahold of you.

19 That's not accomplice testimony. That is a
20 coconspirator testimony. That's coconspirator statements.
21 How is it that she knew before that moment that I had spoken
22 and I knew where you were? Ask yourself that question. And
23 if you can say to yourself that means something other than, I
24 figured it out when you were talking to me on the phone and I
25 told you to go to plan B, just like Mr. H told me to, if you

1 could come up with an explanation better than that that
2 involves her being guilty -- or involves her giving the order
3 and nobody else knowing about it, ask yourself how you can
4 come to that conclusion. How is it that on the first wire she
5 tells -- and they say she uses "I" 57 times. Yeah, but it's
6 20 minutes before she says any "I" that she's worried about
7 for her. It's always Louie and you have to stick together,
8 you and Louie, you and Louie, you and Lou.

9 Two things: That one section of the wire and the
10 other times that they kind of talked about, you know, KC F'd
11 up, why did KC F up? What went wrong? And if you listen to
12 it all, beginning to end, beginning to end, it's because it
13 should have been plan B. His wife was out there. There's
14 eyes on your ass, as to quote Anabel. They should have gone
15 to plan B. And he says, I know, but KC F'd up and just did
16 plan A. That's it. It's that simple.

17 And then ask yourself this: The reason Mr. H had to
18 say he didn't tell his son that he loves, that he believed
19 they'd be in danger from Kenneth Counts is this.

20 (Playing tape)

21 MR. DIGIACOMO: That's why Mr. H had to testify the
22 way he did because if he got up there and said, Yeah, I told
23 my son that Kenneth Counts was going to kill us all or
24 Deangelo's homey or whatever it is, then his son would have
25 been caught on the wire on May 24th worried still about

1 snitching, and that isn't the only example of it. When you
2 listen to that wire, every time that there is a mention about
3 something related to people involved in this case, every time
4 the concern of the coconspirators is to go to the cops. How
5 on earth could the reason for paying the money be anything
6 other than because of the concern about going to the cops?
7 And you're not concerned about going to the cops, you're not
8 worried about surveillance, you're not running to your lawyer
9 if you're not guilty.

10 Thank you.

11 THE COURT: Thank you. The clerk will now swear the
12 officer to take charge of the jury.

13 (Officer sworn)

14 THE COURT: All right. Ladies and gentlemen, in a
15 moment, I'm going to have all 14 of you get your personal
16 belonging as well as your notepads and follow Jeff through the
17 rear door.

18 As you may know, a criminal jury is composed of 12
19 members. Two of you are the alternates who are seated in
20 predesignated alternate seats. Those are chairs 7 and 15. So
21 our alternates are Mr. Patterson and Ms. Lenahan.

22 Before you leave, though, to the alternates, before
23 you leave, please give phone numbers where we can reach you
24 tonight as well as tomorrow and so forth because if, God
25 forbid, one of the 12 jurors becomes ill or something happens

1 before they can fulfill their duty of reaching a verdict, we
2 will call in an alternate.

3 So the prohibition on speaking about the case still
4 pertains to the alternates until you learn that a verdict has
5 been reached and we'll take your numbers. But again, before
6 you leave tonight, please give phone numbers to Jeff where we
7 can contact you if we need to call one of the alternates in.

8 Having said that, I'm going to have all 14 of you
9 collect your belongings and your notepads and follow Jeff
10 through the rear of the courtroom.

11 (Jury recessed for deliberation at 6:11 p.m.)

12 THE COURT: One of the jurors had an appointment at
13 6:00, which she probably has now missed, so they were going to
14 leave and come back, but I don't know now if they're going to
15 want to deliberate or what. We're not planning on ordering
16 dinner, so that may have some determinative effect on their --
17 I'm going to let them do what they want, though, because -- I
18 hope they come back tomorrow but...

19 MR. GENTILE: I'm not feeling well. My voice is
20 gone, my -- I've got chills.

21 THE COURT: Well, leave numbers -- don't -- why
22 don't you do this. Don't leave the courtroom yet because as
23 soon as Jeff gets them in the room, I'm going to find out what
24 they want to do and we can, you know, let you -- so everybody
25 just wait.

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(Court adjourned at 6:12 p.m.)

-oOo-

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


KIMBERLY LAWSON
TRANSCRIBER