

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEANGELO CARROLL,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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Elizabeth A. Brown
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Supreme Court Case No. 78081

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1 MR. ERICSSON: Exactly. And that is what, to a lay
2 jury, I think the confusion is. An alternative that I think
3 would be accurate would be to say -- they want to keep that
4 first line in is, A killing which has been proven beyond a
5 reasonable doubt to be murder and which is -- and then add the
6 rest of it.

7 MR. DiGIACOMO: Well, that's not true either.
8 Judge, think about this --

9 THE COURT: Right, because then you're putting the
10 cart before the horse.

11 MR. DiGIACOMO: Yeah.

12 THE COURT: You're saying, well, we have to prove
13 the murder, that it's a first-degree murder, but we can't use
14 lying in wait to prove it. That's kind of what that says.

15 MR. DiGIACOMO: Yes. The definition of the term
16 lying in wait is defined as a waiting and a watching for an
17 opportune time to act together with a concealment by ambush or
18 some other secret design to take the other person by surprise.
19 That's the first part of lying in wait.

20 The lying in wait doesn't have to be for any
21 particular time or duration but it's equivalent to
22 premeditation and deliberation. To constitute murder by means
23 of lying and wait, there must be an addition to the aforesaid
24 conduct by the defendant, an intentional infliction upon the
25 person killed of bodily harm involving a high degree of

1 probably that it will result in death and in which shows a
2 wanton disregard for human life.

3 So the first sentence, Murder which is immediately
4 preceded by lying in wait is murder of the first degree, could
5 be a killing which is preceded by -- immediately preceded by
6 lying in wait is murder of the first degree. It's irrelevant
7 because lying in wait is defined as having the intent to
8 substantially harm and/or wanton disregard for human life.

9 THE COURT: No --

10 MR. DiGIACOMO: Or -- and --

11 THE COURT: That's when -- that's not any lying in
12 wait, though. That's just -- oh, I see what you're saying.

13 MR. DiGIACOMO: Right.

14 THE COURT: You're looking at the second sentence.

15 MR. DiGIACOMO: Right. You have to have the
16 lying --

17 THE COURT: The lying in wait need not continue for
18 any particular period of time such that -- oh, I think that
19 makes it more confusing, though. I don't like that.

20 MR. PESCI: The second sentence is what makes it.

21 THE COURT: Well, then it's better to make it the
22 way it is, I think, than a killing.

23 MR. DiGIACOMO: Right. No, I agree.

24 THE COURT: I think that's more ambiguous than --

25 MR. DiGIACOMO: But, I mean, I'm just saying like

1 murder doesn't put the cart before the horse because
2 theoretically any killing which is preceded by a --

3 THE COURT: Here's the problem: Your instructions
4 don't have it as murder of the first degree so they don't know
5 then, well, is a lying in wait murder murder of the second
6 degree or some other kind of murder. So you have to have
7 murder of the first degree by lying in wait because otherwise
8 they're not going to know. They're going to say, oh, well, it
9 was lying in wait murder, that must be second-degree murder or
10 something else. And I'm assuming we've got second degree on
11 our verdict form, so that's ambiguous, I think.

12 MR. ERICSSON: Well --

13 THE COURT: So, I mean, they have to be able to tell
14 them this is murder of the first degree, not murder of the
15 second degree or some other murder if that's their theory or
16 one of their theories.

17 MR. ERICSSON: But again, getting back to, I think,
18 what --

19 THE COURT: Do you see what I'm saying? Because
20 otherwise the jury's not going to know what kind of murder it
21 is.

22 MR. ERICSSON: Well, if we need to add the phase,
23 murder in the first degree, that certainly can be added, but
24 the instruction presented by the State, the first line does
25 not include the full state of the law and it is confusing.

1 Base -- murder which is immediately preceded by lying in wait
2 is murder of the first degree. That is not -- without
3 coupling the requirements of the later paragraph three, that
4 first line is not accurate and it needs to incorporate that.

5 MR. DiGIACOMO: The first line's the statute.
6 Murder which is murder of the first degree is any type of
7 murder which is premeditated, deliberate or -- wilful,
8 premeditated, deliberate or by means of lying in wait or by
9 this -- I mean, the first line is just the statute.
10 Afterwards you define what the lying in wait is and require
11 that the lying in wait be -- involved the intentional
12 infliction upon the person killed, the bodily harm involving
13 the high degree of likelihood. That is an absolute correct
14 statement of the law. The first line is the statute. The
15 rest of it just qualifies what the jury needs to know.

16 THE COURT: I think if you read it in its totality,
17 it's clear what they're saying. I mean, like I said, you
18 can't take out that murder is murder of the first degree if
19 it's preceded by lying in wait because then, as I said, the
20 jury isn't going to know what it is. So I think -- I don't
21 know how you can make this better. Like I said, I think
22 they're entitled to have clearly that murder in the first
23 degree is -- can be murder by lying in wait. You know, we
24 would say what I just said, murder in the first degree can be
25 constituted by murder by lying in wait. I think that's worse

1 than the stature and my preference is if we can use the
2 language of the statute, we're better off using the language
3 of the statute than trying to tweak it because then --

4 MR. DiGIACOMO: That will cause us some trouble.

5 THE COURT: We may not be right. So, you know, if
6 you want to think on that and come up with something else, but
7 so far everything we've suggested hasn't, in my view, been as
8 good as what this says. And like I said, if you read the
9 totality of the whole instruction -- I mean, if you look at
10 the third paragraph, To constitute murder by means of lying in
11 wait, there must be an addition to the conduct lying in wait,
12 the -- an intentional infliction.

13 MR. PESCI: Judge, if I could --

14 THE COURT: Yeah.

15 MR. PESCI: I was going to say with your permission
16 if I could add -- we're not going to argue the first sentence
17 and say that's lying in wait.

18 THE COURT: Right.

19 MR. PESCI: We're going to utilize the second
20 paragraph which explains how it is lying in wait. So if
21 that's the concern that our argument will be that, we can tell
22 you now that's not what we're going to argue.

23 THE COURT: Yeah, I just don't think that it's
24 ambiguous so that the jury will get back there and think that,
25 oh, well, there's not this other requirement that they

1 intended, you know, to either cause, you know, great harm or
2 killing or it has to be -- I mean, I think -- and again, we
3 tell them not only is it in one instruction, but we tell them
4 you have to read all the instructions together. So I think
5 we're okay.

6 Other defense proposed or objections.

7 MR. ERICSSON: And, Your Honor, the other thing we
8 didn't talk about that instruction on our proposed is the
9 changes to the last paragraph which goes -- it more clearly
10 articulates the --

11 THE COURT: All right. Yes.

12 MR. ERICSSON: -- which we believe more accurately
13 articulates the Supreme Court's decision in Sharman, Bolden
14 dealing with the mens rea requirements, and we're wanting to
15 add the language that the defendant must intend to commit acts
16 that are likely to cause death and show a wanton disregard for
17 human life, again, just making it clear to the jury that they
18 have to find this defendant, not some other person, that this
19 defendant had that mens rea in order to be found guilty under
20 this theory of liability.

21 MR. DiGIACOMO: Right. My first thing is: One, he
22 changes the definition about the intentional infliction upon
23 the person killed with bodily harm involving a high degree of
24 probability which will result in death and which shows a
25 wanton disregard for human life, but two things I would say.

1 He doesn't have to intend to commit the act. He just has to
2 intend that the acts be committed --

3 THE COURT: Right.

4 MR. DiGIACOMO: -- first of all. Second of all,
5 there's two different --

6 THE COURT: Yeah, I was going to say the same thing.
7 It creates -- this means the intent -- this defendant had to
8 intend to commit the acts, which isn't the state of the law,
9 so that means -- if you read this literally, that means the
10 defendant had to lie in wait with his specific intent that he
11 shoot or bludgeon or whatever he was going to do, the victim,
12 not that he's lying in wait with his accomplice with the
13 intention the accomplice will shoot or do whatever to the
14 victim.

15 MR. DiGIACOMO: And it's pled in the alternative, by
16 the way.

17 MR. ERICSSON: This language is -- and I've cited it
18 on the second page there of the Coleman V State decision, 116
19 Nevada 687, and I'm quoting from the Court's decision where it
20 is quoting --

21 THE COURT: Yeah, but that might just be specific to
22 that particular case, meaning in that particular case the
23 defendant who was lying in wait is the same defendant that,
24 you know, pulled the trigger or did the stabbing or whatever
25 caused the death.

1 MR. PESCI: Is it Chapman?

2 MR. DiGIACOMO: Well, it's Coleman, but --

3 THE COURT: It's Coleman, 116 Nevada 678.

4 MR. DiGIACOMO: Yeah, first-degree murder in the
5 death of his live-in girlfriend's three-year-old son was
6 sentenced to death. This case, while they addressed first
7 degree murder, they're not giving us lying in wait
8 instructions.

9 MR. ERICSSON: No, no, but they are talking about
10 the specific instructions. This one where we had the lying in
11 wait is first-degree murder. This Coleman case talks about
12 child abuse striking it into first-degree murder where it
13 lowers the wilful and other requirements normally for
14 first-degree murder. So it's that same line of cases where
15 the State had argued that you could lower the burden under
16 the -- similar to the felony murder argument, that you don't
17 have to show the mens rea. And Coleman says that under the
18 statute that is applying the child abuse or --

19 THE COURT: Lying in wait.

20 MR. ERICSSON: -- in our case, the lying in wait
21 that there has to be a showing of intent.

22 THE COURT: Which they have in their instruction and
23 your instruction creates the obligation that this -- if you
24 read it, it says the defendant had to have the mens rea that
25 he do the killing, not the mens rea that somebody else be

1 there to do the killing.

2 Now, my understanding is that's not the state of the
3 law, that he has to intend, oh, I'm going to kill this guy,
4 oh, and then somebody else does it. I mean, that's what your
5 instruction says.

6 MR. DiGIACOMO: And for the record, in Coleman, the
7 issue in Coleman was that we used to not instruct on malice in
8 child abuse cases. Not only are we instructing in malice in
9 this particular case, and then they changed the statute so we
10 no longer have to, but back then in Coleman you had -- they
11 said you have to instruct on malice. The definition -- or one
12 of the definitions of malice is included in the lying in wait
13 which is intentional infliction upon the person killed of
14 bodily harm and bodily -- high degree of probability of death.
15 That is malice.

16 So Coleman has nothing -- I don't think Coleman
17 applies necessarily in this situation at all.

18 THE COURT: I think the instruction as offered by
19 the State is an accurate statement of the law. The
20 instruction offered by the defense, if read again, literally
21 is an inaccurate statement of the law regarding lying in wait
22 because, again, it creates a different obligation.

23 MR. ERICSSON: And if it requires adding in there a
24 coconspirator -- that's what you're getting to --

25 THE COURT: Right.

1 MR. ERICSSON: -- is the language that are in other
2 instructions that --

3 THE COURT: He has to have intended to commit the
4 act.

5 MR. ERICSSON: Pardon me?

6 THE COURT: Right. The language that suggests that
7 person had to have intended to commit the act, which is wrong.
8 That's the language I think is wrong. We're saying the same
9 thing. I was just trying to enunciate it again, but
10 apparently not clarifying it.

11 I don't think that -- I mean, again, I think the
12 State's instruction's fine.

13 All right. Any other objections that we need to
14 address?

15 MR. ERICSSON: Yes, Your Honor. On the -- the
16 language of the fifth amended information --

17 MR. DiGIACOMO: Which apparently has now been filed.

18 THE COURT: Right. It hasn't been filed?

19 MR. DiGIACOMO: It has apparently.

20 THE COURT: It has.

21 MR. ERICSSON: And it's just the -- page 3, the last
22 part of the last sentence, which -- starting at line 2 on
23 page 3 where each and every coconspirator's responsible not
24 only for the specific crime intended but also for the natural
25 and foreseeable general intent crimes, each and every

1 coconspirator, during the course of the conspiracy, we believe
2 that that is confusing with the state of the law.

3 They're going to have to go through the general --
4 those instructions that deal with that, but it is very easy
5 to -- for a jury to confuse the burden of proof that has to be
6 shown as to the intent, the frame of mind of the defendant in
7 this case.

8 MR. DiGIACOMO: Judge, we could have gone with the
9 original information, but the original information was pled
10 through Bolden and it said he's responsible for every crime of
11 every coconspirator that's a natural foreseeable consequence
12 of the conspiracy. So in the amended, to make it clear, he's
13 only responsible for the specific intent crimes which he
14 intended as well as the general intent crimes that show
15 natural foreseeable consequences, which is what Bolden and
16 Sharman say. So that's the only reason for that language in
17 there.

18 But it's the information which you're going to tell
19 this jury is but a method of charging and merely an allegation
20 and so the actual instructions themselves on conspiracy in
21 Sharman and Bolden are all appropriate statements of the law
22 and I actually think two, three, four is the --

23 THE COURT: When do I tell them that?

24 MR. DiGIACOMO: -- a good appropriate statement of
25 the law.

1 What?

2 THE COURT: When do I tell them that?

3 MR. DiGIACOMO: What?

4 THE COURT: Oh, an information is just --

5 MR. DiGIACOMO: Yeah, it's the very first line of
6 the -- of Instruction No. 2 or 3, which one says, An
7 information is but a formal method and is not any evidence of
8 guilt.

9 THE COURT: Right. That's the first line. Right.
10 Right. Right.

11 MR. DiGIACOMO: It's just a notice pleading. This
12 puts them on notice of our theory of liability. We can file
13 it at any time. We filed this just to clean up the record to
14 make sure that there was no -- I didn't want to put the
15 information in there that had a misstatement of the law so
16 I --

17 THE COURT: Right.

18 MR. DiGIACOMO: -- put a clean one in there to have
19 a correct --

20 THE COURT: Yeah. I mean, it's clear to me. It
21 says not only for the specific crime intended, general intent
22 crimes.

23 MR. ERICSSON: It's just our position that that adds
24 unnecessary confusion in this particular document, that the
25 details are spelled out in the instructions.

1 MR. DiGIACOMO: By the way, that language is all in
2 there in response to a reversal that he got post Bolden for an
3 information that was pre-Bolden and they said that the
4 information should have the appropriate language tracking
5 Bolden and Sharman. And so that's -- it's an unpublished
6 opinion, but it happened to Mr. Pesci. He's had to try that
7 case --

8 How many times now?

9 So it's the reason why we now put the proper
10 statement in the information.

11 THE COURT: Okay. Other objections?

12 MR. ERICSSON: I'm looking at my notes here.

13 THE COURT: I'm sorry.

14 MR. ERICSSON: I'm just looking at notes on
15 instructions that have been given in Hidalgo.

16 MR. DiGIACOMO: Are you guys going to ask for the
17 institutional right not to testify, yadee-yada-yada?

18 MR. BUNIN: Oh, yeah, I think we should put that in
19 there.

20 MR. DiGIACOMO: If you think you should, I'll have
21 one --

22 THE COURT: Oh, you don't have one?

23 MR. DiGIACOMO: I have one in here. I don't have --

24 THE COURT: I mean, you didn't put it in the packet?

25 MR. BUNIN: I think I prefer to use it. I do want

1 to use it.

2 THE COURT: Okay. Just make sure we all remember to
3 include it.

4 And then are we -- is everyone good with the verdict
5 form?

6 MR. DiGIACOMO: The State is.

7 Dan and Tom, if we give this one, is -- are you all
8 right with it? It is a constitutional right of a defendant in
9 a criminal trial that he may not be compelled to testify;
10 thus, the decision --

11 THE COURT: Thus, the decision on whether or not to
12 testify --

13 MR. DiGIACOMO: -- the decision as to whether or not
14 he should testify is left to the defendant on the advice and
15 counsel of his attorney. You must not draw any inference of
16 guilt from the fact that he does not testify, nor should the
17 fact be discussed by you or enter into your deliberations in
18 any way.

19 Is that the one you guys want?

20 THE COURT: That's the one I like.

21 MR. DiGIACOMO: Do you want me to put in there
22 reasonable doubt somewhere around there?

23 THE COURT: I think that's where it should go.

24 Any other objections or anything else we need to
25 address on the record?

1 MR. ERICSSON: Not that I'm aware of, Your Honor.

2 MR. DiGIACOMO: Not from the State, Judge. If you
3 want, I can number these and then e-mail them to Penny and
4 then she can just print them and then we'll copy them for
5 everybody.

6 THE COURT: I was going to suggest that. We would
7 number them today, but since we're missing one, we -- it's
8 stupid to just number half of them.

9 MR. DiGIACOMO: Well, I'll just sit here and do it
10 right now and just e-mail them.

11 THE COURT: Oh.

12 MR. BUNIN: One more thing on the record, I guess.
13 My client has been telling me, and he wanted me to address
14 this with Your Honor, that Juror No. 1 -- he said during most
15 of the testimony, direct testimony of Detective McGrath, was
16 asleep. I didn't realize it. I didn't notice it.

17 THE COURT: I didn't notice it either.

18 MR. BUNIN: I did notice that Alternate No. 2 was
19 asleep yesterday for what I noticed for about five or ten
20 minutes.

21 THE COURT: He wasn't asleep. He keeps closing his
22 eyes because I noticed it for a few minutes and then I called
23 over to Jeff to make sure and then he opened his eyes right
24 away. So he was closing and opening his eyes.

25 MR. BUNIN: Okay.

1 THE COURT: And then Juror No. 1, she seemed pretty
2 alert to me, so I never noticed her dozing off at all.

3 MR. PESCI: I've been watching the whole time
4 [inaudible] and I haven't seen anybody doze off. Alternate
5 No. 2's eyes were closed, but that was it.

6 THE COURT: So has Juror No. 7's eyes have closed,
7 but I've been watching him and he always -- you know, they
8 close them for a few minutes, but I didn't see one. I mean, I
9 didn't notice specifically during Detective McGrath's
10 testimony. I will say that I've looked over at her in other
11 points of the trial and she didn't appear to be sleeping so...

12 MR. BUNIN: All right.

13 MR. ERICSSON: Your Honor, can we address scheduling
14 for next week, because we've got a couple of experts that
15 we're trying to juggle there?

16 THE COURT: We're not doing the penalty phase next
17 week.

18 MR. ERICSSON: Oh, we're not. Okay.

19 MR. BUNIN: The Wednesday after Memorial Day is when
20 we would start?

21 THE COURT: Right, because we'll only have one day
22 to start it and we're not going to --

23 MR. DiGIACOMO: Judge, Mr. Pesci may be doing that
24 by himself. I've been pulled.

25 THE COURT: Really? By who?

1 MR. DiGIACOMO: Ms. Weckerly. I start a trial with
2 her and she's my boss so --

3 THE COURT: It's not going to get moved?

4 MR. DiGIACOMO: -- I said she can pick the jury and
5 I can come here and do my penalty, and I won't tell you
6 exactly what she said, but I don't think that's happening.

7 MR. PESCI: What date is that, by the way?

8 MR. DiGIACOMO: That's the 2nd, June 2nd.

9 MR. PESCI: That's a problem because I've got a
10 trial starting on the 1st.

11 MR. DiGIACOMO: We'll work it out. Where there's a
12 will, there's a way.

13 MR. PESCI: We'll get it figured out.

14 THE COURT: All right. Anything else we need to put
15 on the record?

16 MR. ERICSSON: So 10:30 on Monday?

17 MR. DiGIACOMO: In about five more minutes we should
18 have these instructions to Penny.

19 (Court recessed at 4:33 p.m. until the following
20 day, Monday, May 24, 2010, at 10:30 a.m.)

21

22

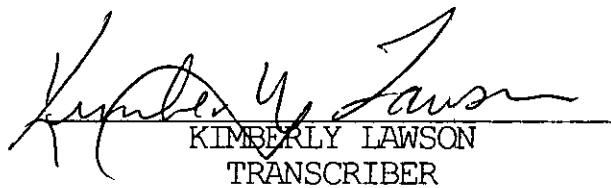
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ATTEST: I hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.


KIMBERLY LAWSON
TRANSCRIBER

ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA

DISTRICT COURT
CLARK COUNTY, NEVADA
CLERK OF THE COURT

MAY 25 2010

BY Denise Husted
DENISE HUSTED, DEPUTY

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO: C212667
)	DEPT NO: XXI
vs.)	
)	
DEANGELO RESHAWN CARROLL)	Transcript of
)	Proceedings
Defendant.)	
_____)	

BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 6

MONDAY, MAY, 24, 2010

APPEARANCES:

FOR THE STATE:	MARC DiGIACOMO, ESQ. Chief Deputy District Attorney GIANCARLO PESCI, ESQ. Chief Deputy District Attorney
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FOR THE DEFENDANT:	DANIEL M. BUNIN, ESQ. THOMAS A. ERICSSON, ESQ
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RECORDED BY JANIE OLSEN, COURT RECORDER
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AA 1328

1 LAS VEGAS, NEVADA, MONDAY, MAY 24, 2010, 10:35 A.M.

2 (Court was called to order.)

3 (Outside the presence of the jury.)

4 MR. BUNIN: Before we bring them in, there's one
5 thing I'll need to do, okay?

6 THE COURT: It's what?

7 MR. BUNIN: Just letting you know before we bring
8 them in, there's one thing I want to do on the record.

9 THE COURT: Okay. Can we start -- I mean, it's
10 10:30.

11 MR. BUNIN: I'm sorry.

12 THE COURT: It's not your fault.

13 THE MARSHAL: Are we ready to begin?

14 THE COURT: No, I need the people all here. It's
15 after 10:30, so I need the defendant out here in his chair and
16 I need Mr. Ericsson out here.

17 And before I bring the jurors in, Mr. Bunin, you
18 indicated there was something we need to put on the record.

19 MR. BUNIN: Yes. You know, I'm actually
20 concerned --

21 THE CLERK: You need to wait for a second because
22 I'm doing something for the Judge, and I can't write --

23 THE COURT: All right, yes.

24 MR. BUNIN: I want to make sure my instructions are
25 right, but I think there's two of them that we left in here

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1 that absolutely didn't apply to this case, and I want to make
2 sure that I'm on the same page as everybody.

3 Is Instruction 38 the flight instruction?

4 MR. DIGIACOMO: Yes.

5 MR. BUNIN: There's no evidence of flight in this
6 case. I don't know why the instruction would be in there. He
7 didn't run from the police. The only evidence they put on is
8 that the first time they saw him, Deangelo voluntarily spoke
9 to them, so I don't know why this instruction would be in
10 here. And I'm sorry I didn't notice it on Friday.

11 THE COURT: What's the relevance of flight?

12 MR. DIGIACOMO: The flight instruction actually says
13 if somebody flees after committing a crime, which his defense
14 is, I didn't want this to happen, he takes this guy, he flees
15 from the scene with this guy, and he takes him to go get paid.
16 They didn't object to it. It's clearly evidence of flight. I
17 mean, he doesn't remain at the scene like, oh, my, God, my
18 friend's dead, so it's clearly an indication of his
19 consciousness of guilt.

20 MR. BUNIN: Taking him to go get paid is not
21 evidence of flight.

22 THE COURT: Well, I think -- I mean --

23 MR. BUNIN: There's no --

24 THE COURT: Typically, I think, flight, you know, if
25 they're apprehended by the police or they leave town or they

1 quit their job and go into hiding, but technically, I mean, I
2 guess, Mr. DiGiacomo, has a point. He could argue that if
3 this really was a mistake or some kind of horrible accident,
4 then he could have stayed, he could have called 9-1-1 and
5 said, oh, my God, my friend just got shot. So to the extent
6 they want to make that their theory, I mean, it does, I think,
7 fit.

8 MR. BUNIN: But, you know, the evidence they put on
9 says that KC shoots, starts yelling, gets in the car,
10 threatening people, telling them, Get me out of this area, and
11 then Deangelo drives off at that point. That's the evidence
12 they put on with their witnesses.

13 THE COURT: Well, except --

14 MR. BUNIN: There's literally no evidence of flight.
15 Nobody runs from the police. And their witness said that he
16 voluntarily speaks to the detective the first time they see
17 him when he goes to the club the very next day. You know, the
18 flight instruction is obviously a prejudicial instruction and
19 it belongs in other cases, but there's just no facts in this
20 case to even imply that he ran from anyone.

21 THE COURT: Well, and if that's the case, in the
22 jury's mind, then they'll disregard it. I mean, we tell them
23 right now, just because we're giving you an instruction
24 doesn't mean that, you know, we're accepting any theory.

25 Like I said, I mean, I think technically that he --

1 I mean, the defense is, of course, he was being threatened by
2 KC, of course he's not going to stay and call 9-1-1 or try to
3 render assistance because it's obvious, you know, the victim
4 has already passed away at that point in time. But that's all
5 defense argument. So I think that there's enough to give a
6 flight instruction, again, you know --

7 MR. BUNIN: The second one is Instruction 44, and
8 it's the fact that a witness has been convicted of a felony
9 instruction. I don't know why it would belong in this trial.
10 I don't want them to imply in some way or another even though
11 Deangelo didn't testify that that's who they're talking about
12 when they showed his tape for two and a half hours and --

13 THE COURT: Who was --

14 MR. DIGIACOMO: I apologize, Judge. I put that in
15 there with the belief that they were calling certain
16 witnesses --

17 THE COURT: Okay. Let's take that one out.

18 MR. DIGIACOMO: -- and I never did take it out.

19 THE COURT: All right. So 45 becomes 44.

20 All right. Mr. Bunin, anything else we need to --

21 MR. BUNIN: No, Your Honor.

22 MR. DIGIACOMO: Judge, do we formally settle the
23 instructions on the record?

24 THE COURT: I believe we did.

25 MR. DIGIACOMO: Okay. I just didn't recall on

1 Friday.

2 THE COURT: All right. And for the record -- yeah,
3 we did everything else on the record.

4 And, Mr. Bunin, those are the only two in the packet
5 that you objected to other ones that you wanted modified or
6 slightly rewritten that the Court either adopted some of your
7 suggestions or rejected your suggestions. In either event,
8 the ones that you had proposed, the alternate instructions,
9 have been made Court's exhibits and are a part of the record.

10 So for the record, again, everything else other than
11 the one regarding flight, you're not objecting to any of those
12 other than what's already on the record?

13 MR. BUNIN: That's correct.

14 THE COURT: All right. Anything else we need to do
15 before we get the jury? All right. Would you just let Jeff
16 know to bring them in?

17 (Jury reconvened at 10:41 a.m.)

18 THE COURT: All right. Court is now back in
19 session. The record will reflect the presence of the State
20 through the deputy district attorneys, the presence of the
21 defendant, along with his counsel, the officers of the Court
22 and the members of jury.

23 Good morning, ladies and gentlemen. As I told you
24 before we took our weekend recess, the presentation of the
25 evidence has been concluded. In a moment I'm going to read to

1 you the instructions on the law, which will be followed by the
2 closing arguments from the lawyers. Because the State has the
3 burden of proof in this particular case, as in all criminal
4 cases, of course, they have the opportunity to both open and
5 close the closing arguments.

6 It is important that I read these instructions
7 exactly as they are written. I am precluded from trying to
8 explain them or clarify them in my own words, so I will read
9 them exactly as they're written. I cannot supplement them by
10 trying to offer any kind of elucidation as to what they mean.

11 Additionally, you will have a number of copies of
12 these written instructions back in the jury deliberation room
13 with you when you deliberate, so should you wish to refer to
14 the instructions, you will have an opportunity to do that
15 during your deliberations.

16 Additionally, each instruction is numbered.
17 Sometimes I see jurors trying to write down the instructions.
18 It's obviously easier if you just write down the number for
19 those instructions that you want to make particular note of or
20 remind yourself to refer back to in the jury deliberation
21 room.

22 All right. Instruction No. 1, Members of the jury,
23 it is now my duty as judge to instruct you in the law that
24 applies to this case. It is your duty as jurors to follow
25 these instructions and to apply the rules of law to the facts

1 as you find them from the evidence.

2 You must not be concerned with the wisdom of any
3 rule of law stated in these instructions. Regardless of any
4 opinion you may have as to what the law ought to be, it would
5 be a violation of your oath to base a verdict upon any other
6 view of the law than that given in the instructions of the
7 Court.

8 No. 2, If, in these instructions, any rule,
9 direction or idea is repeated or stated in different ways, no
10 emphasis thereon is intended by me and none may be inferred by
11 you. For that reason, you are not to single out any certain
12 sentence or any individual point or instruction and ignore the
13 others, but you are to consider all the instructions as a
14 whole and regard each in the light of all the others.

15 The order in which the instructions are given has no
16 significance as to their relative importance.

17 No. 3, An Information is but a formal method of
18 accusing a person of a crime and is not of itself any evidence
19 of his guilt and does not create any presumption or permit any
20 inference of guilt.

21 In this case, it is charged in an Information that
22 on or about the 19th day of May, 2005, the defendant, Deangelo
23 Reshawn Carroll, having committed the crimes of conspiracy to
24 commit murder, felony, NRS 200.010, 200.030, 193, 165; murder
25 with use of a deadly weapon, felony, NRS 200.010, 200.030,

1 193.165; within the County of Clark, State of Nevada, contrary
2 to the form, force and effect of statutes in such cases made
3 and provided, and against the peace and dignity of the State
4 of Nevada.

5 Count 1, conspiracy to commit murder. Defendant,
6 Deangelo Reshawn Carroll, along with coconspirators Kenneth
7 Jay Counts, Anabel Espindola, Luis Alonso Hidalgo, III, and
8 Jayson Taoipu did, on or about May 19, 2005, then and there
9 meet with each other and/or Luis Hidalgo, Jr. and between
10 themselves and each of them with the other wilfully,
11 unlawfully, and feloniously conspire and agree to commit a
12 crime, to-wit: The murder of Timothy Jay Hadland, and in
13 furtherance of said conspiracy, the defendants and/or their
14 coconspirators did commit the act as set forth in Count 2,
15 said acts being incorporated by this reference as though fully
16 set forth herein.

17 Count 2, murder with use of a deadly weapon.
18 Defendant, Deangelo Reshawn Carroll, along with coconspirators
19 Kenneth Jay Counts, Anabel Espindola, Luis Alonso Hidalgo,
20 III, and Jayson Taoipu did, on or about May 19, 2005, then and
21 there wilfully, feloniously, without authority of law, and
22 with premeditation and deliberation, and with malice
23 aforethought, kill Timothy Jay Hadland, a human being, by
24 shooting at and into the body and/or head of said Timothy Jay
25 Hadland, with a deadly weapon, to-wit: A firearm, the

1 defendant being liable under one or more of the following
2 theories of criminal liability, to-wit: One, by directly or
3 indirectly committing the acts with premeditation and
4 deliberation and/or lying in wait; and/or two, by aiding and
5 abetting the commission of the crime by, directly or
6 indirectly, counseling, encouraging, hiring, commanding,
7 inducing or otherwise procuring each other to commit the
8 crime, to-wit: By defendant Luis Hidalgo, III and/or Luis
9 Hidalgo, Jr. procuring defendant Deangelo Carroll to beat
10 and/or kill Timothy Jay Hadland; thereafter, defendant
11 Deangelo Carroll procuring Kenneth Counts and/or Jayson Taoipu
12 to shoot Timothy Hadland; thereafter, Deangelo Carroll and
13 Kenneth Counts and Jayson Taoipu did drive to location in the
14 same vehicle; thereafter, defendant Deangelo Carroll calling
15 victim Timothy Jay Hadland to the scene; thereafter, by
16 Kenneth Counts shooting Timothy Jay Hadland; and/or three, by
17 conspiring to commit the crime of battery and/or battery with
18 use of a deadly weapon and/or to kill Timothy Jay Hadland
19 whereby each and every coconspirator is responsible for not
20 only the specific crime intended but also for the natural and
21 foreseeable general intent crimes of each and every
22 coconspirator during the course and in furtherance of the
23 conspiracy.

24 It is the duty of the jury to apply the rules of law
25 contained in these instructions to the facts of the case and

1 determine whether or not the defendant is guilty of one or
2 more of the offenses charged.

3 No. 4, in this case the defendant is accused in an
4 Information alleging an open charge of murder. This charge
5 includes and encompasses murder of the first degree, murder of
6 the second degree and involuntary manslaughter.

7 No. 5, murder is the unlawful killing of a human
8 being with malice aforethought, either expressed or implied.
9 The unlawful killing may be effected by any of the various
10 means by which death may be occasioned.

11 No. 6, malice aforethought means the intentional
12 doing of a wrongful act without legal cause or excuse or what
13 the law considers adequate provocation. The condition of mind
14 described as malice aforethought may arise from anger, hatred,
15 revenge or from a particular ill will, spite or grudge toward
16 the person killed. It may also arise from any unjustifiable
17 or unlawful motive or purpose to injure another, proceeding
18 from a heart fatally bent on mischief or with deckless --
19 excuse me, reckless disregard of consequences and social duty.

20 Malice aforethought does not imply deliberation or
21 the lapse of any considerable time between the malicious
22 intention to injure another and the actual execution of the
23 intent but denotes an unlawful purpose and design as opposed
24 to accident and mischance.

25 No. 7, express malice is that deliberate intention

1 unlawfully to take away the life of a fellow creature which is
2 manifested by external circumstances capable of proof.

3 Malice may be implied when no considerable
4 provocation appears or when all the circumstances of the
5 killing show an abandoned and malignant heart.

6 No. 8, murder of the first degree is murder which is
7 perpetuate -- perpetrated, excuse me, by means of any kind of
8 wilful, deliberate and premeditated killing. All three
9 elements, wilfulness, deliberation and premeditation, must be
10 proven beyond a reasonable doubt before an accused can be
11 convicted of first-degree murder.

12 Wilfulness is the intent to kill. There need be no
13 appreciable space of time between formation of the intent to
14 kill and the act of killing.

15 Deliberation is the process of determining upon a
16 course of action to kill as a result of thought, including
17 weighing the reasons for and against the action and
18 considering the consequences of the action.

19 A deliberate determination may be arrived at in a
20 short period of time but in all cases the determination must
21 not be formed in passion, or if formed in passion, it must be
22 carried out after there has been time for the passion to
23 subside and deliberation to occur. A mere unconsidered and
24 rash impulse is not deliberate even though it includes the
25 intent to kill.

1 Premeditation is a design, a determination to kill
2 distinctly formed in the mind by the time of the killing.

3 Premeditation need not be for a day, an hour or even
4 a minute. It may be as instantaneous as successive thoughts
5 of the mind. For if the jury believes from the evidence that
6 the act constituting the killing has been preceded by and has
7 been the result of premeditation, no matter how rapidly the
8 act follows the premeditation, it is premeditated.

9 No. 9, the law does not undertake to measure in
10 units of time the length of the period during which the
11 thought must be pondered before it can ripen into an intent to
12 kill which is truly deliberate and premeditated. The time
13 will vary with different individuals and under varying
14 circumstances.

15 The true test is not duration of time but rather the
16 extent of the reflection. A cold, calculated judgment and
17 decision may be arrived at in a short period of time, but a
18 mere unconsidered and rash impulse, even though it includes an
19 intent to kill, is not deliberation and premeditation as will
20 fix an unlawful killing as murder of the first degree.

21 No. 10, murder which is immediately preceded by
22 lying in wait is murder of the first degree.

23 The term, lying in the wait, is defined as a waiting
24 and watching for an opportune time to act, together with a
25 concealment by ambush or some other secret design to take the

1 other person by surprise. The lying in wait need not continue
2 for any particular period of time provided that its duration
3 is such as to show a state of mind equivalent to premeditation
4 or deliberation.

5 To constitute murder by means of lying in wait there
6 must be, in addition to the aforesaid conduct by the
7 defendant, an intentional infliction upon the person killed of
8 bodily harm involving a high degree of probability that it
9 will result in death and which shows a wonton disregard for
10 human life.

11 No. 11, although your verdict must be unanimous as
12 to the charge, you do not have to agree on the principle of
13 guilt or theory of liability. Therefore, even if you cannot
14 agree on whether the facts establish wilful, premeditated and
15 deliberate murder or lying in wait or liability as a
16 principle, an aider and abettor, or as a coconspirator, so
17 long as all of you agree that the evidence establishes beyond
18 a reasonable doubt defendant's guilt of murder in the first
19 degree, your verdict shall be murder of the first degree.

20 No. 12, all murder which is not murder of the first
21 degree is murder of the second degree. Murder of the second
22 degree is: One, murder with malice aforethought, but without
23 the added mixture of premeditation and deliberation; or, two,
24 an involuntary killing which occurs in the commission of an
25 unlawful act which, in its consequences, naturally tends to

1 destroy the life of human being; or, three, an involuntary
2 killing which is committed in the prosecution of a felonious
3 intent.

4 No. 13, involuntary manslaughter is the killing of a
5 human being without any intent to do so in the commission of
6 an unlawful act or a lawful act which probably might produce
7 such a consequences -- consequence in an unlawful manner but
8 where the involuntary killing occurs in the commission of an
9 unlawful act which, in its consequences, naturally tends to
10 destroy the life of a human being or is committed in the
11 prosecution of a felonious intent, the offense is murder.

12 By definition, involuntary manslaughter does not
13 include the use of a deadly weapon in conscious furtherance of
14 a crime.

15 Battery resulting in substantial bodily harm and
16 battery with use of a deadly weapon are felonies. A battery
17 is a misdemeanor.

18 No. 14, a conspiracy is an agreement between two or
19 more persons for an unlawful purpose. To be guilty of
20 conspiracy, a defendant must intend to commit or to aid in the
21 commission of the specific crime agreed to. The crime is the
22 agreement to do something unlawful. It does not matter
23 whether it was successful or not.

24 A person who knowingly does any act to further the
25 object of conspiracy or otherwise participates therein is

1 criminally liable as a conspirator. However, mere knowledge
2 or approval of or acquiescence in the object and purpose of a
3 conspiracy without an agreement to cooperate in achieving such
4 object or purpose does not make one a party to conspiracy.

5 Conspiracy is seldom susceptible of direct proof and
6 is usually established by inference from the conduct of the
7 parties. In particular, a conspiracy may be supported by a
8 coordinated series of acts in furtherance of the underlying
9 offense sufficient to infer the existence of an agreement.

10 A conspiracy begins when two or more persons enter
11 into agreement for an awful purpose. A conspiracy to commit a
12 crime does not end upon the completion of the crime. The
13 conspiracy continues until the coconspirators have
14 successfully gotten away and concealed the crime.

15 No. 15, once a person joins a conspiracy, that
16 person remains a member until he withdraws from it. A person
17 can withdraw from a conspiracy by taking some positive action
18 which disavowed or defeated the purpose of the conspiracy
19 before the object or purpose was completed. It is not enough
20 if the evidence shows that the defendant merely ceased his own
21 activities in furtherance of the conspiracy.

22 The State has the burden of proving beyond a
23 reasonable doubt that the defendant did not withdraw from the
24 conspiracy.

25 No. 16, it is not necessary in proving a conspiracy

1 to show a meeting of the alleged conspirators in the making of
2 an express or formal agreement. The formation and existence
3 of a conspiracy may be inferred from all the circumstances
4 tending to show the common intent and may be proved in the
5 same way as any other fact may be proved, either by direct
6 testimony of the fact or by circumstantial evidence or by both
7 direct and circumstantial evidence.

8 No. 17, each member of a criminal conspiracy is
9 liable for each act and bound by each declaration of every
10 other member of the conspiracy if the act or the declaration
11 is in furtherance of the object of the conspiracy.

12 The act of one conspirator pursuant to or in
13 furtherance of the common design of the conspiracy is the act
14 of all conspirators. Every conspirator is legally responsible
15 for a specific intent crime of a coconspirator so long as the
16 specific intent crime was intended by the defendant. A
17 conspirator is also legally responsible for a general intent
18 crime that follows as one of the probable and natural
19 consequence of the object of the conspiracy even if it was not
20 intended as part of the original plan and even if he was not
21 present at the time of the commission of such act.

22 Specific intent is the intent to accomplish the
23 precise act which the law prohibits. A general intent crime
24 is one that does not require specific intent.

25 No. 18, murder in the first degree is a specific

1 intent crime. Defendant cannot be liable under conspiracy
2 and/or aiding and abetting theory for first-degree murder for
3 acts committed by a coconspirator unless defendant also had
4 had a premeditated and deliberate specific intent to kill or
5 to lie in wait.

6 Murder in the second degree may be a general intent
7 crime. As such, defendant may be liable under conspiracy
8 theory or aiding and abetting for murder of the second degree
9 for acts committed by a coconspirator if the killing is one of
10 the reasonably foreseeable, probable and natural consequences
11 of the object of the conspiracy or the aiding and abetting.

12 No. 19, where two or more persons are accused of
13 committing a crime together, their guilt may be established
14 without proof that each person did every act constituting the
15 offense charged.

16 All persons concerned in the commission of a crime
17 who either directly and actively commit the act constituting
18 the offense or who knowingly and with criminal intent aid and
19 abet in its commission or, whether present or not, who advise
20 and encourage its commission with the intent that the crime be
21 committed are regarded by the law as principals in the crime
22 thus committed and are equally guilty thereof.

23 A person aids and abets the commission of a crime if
24 he knowingly and with criminal intent aids, promotes,
25 encourages or instigates by act or advice or by act and advice

1 the commission of such crime with the intention that the crime
2 be committed.

3 The State is not required to prove precisely which
4 defendant actually committed the crime and which defendant
5 aided and abetted.

6 No. 20, where several parties join together in a
7 common design to commit any lawful act, each is criminally
8 responsible for the reasonably foreseeable general intent
9 crimes committed in furtherance of the common design. In
10 contemplation of law as it relates to general intent crimes,
11 the act of one is the act of all. Battery, battery resulting
12 in substantial bodily harm and battery with a deadly weapon
13 are general intent crimes. Second-degree murder can be a
14 general intent crime.

15 Additionally, a coconspirator is guilty of the
16 offenses he specifically intended to be committed.
17 First-degree murder is a specific intent crime.

18 No. 21, you're instructed that if you find that the
19 State has established that the defendant has committed
20 conspiracy to commit murder, you shall select conspiracy to
21 commit murder as your verdict. You may find the defendant
22 guilty of conspiracy to commit a battery with a deadly weapon
23 and/or battery resulting in substantial bodily harm, if: One,
24 you have not found beyond a reasonable doubt that the
25 defendant is guilty of conspiracy to commit murder; and, two,

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

5 If you are convinced beyond a reasonable doubt that
6 the crime of conspiracy has been committed by the defendant
7 but you have a reasonable doubt whether such conspiracy was to
8 commit murder or battery with a deadly weapon or battery
9 resulting in substantial bodily harm, you must give the
10 defendant the benefit of that doubt and return a verdict of
11 conspiracy to commit a battery with a deadly weapon and/or
12 battery resulting in substantial bodily harm.

13 No. 22, you are instructed that if you find that the
14 State has established that the defendant has committed
15 conspiracy to commit battery with a deadly weapon and/or
16 battery resulting in substantial bodily harm, you shall select
17 conspiracy to commit battery with a deadly weapon and/or
18 battery resulting in substantial bodily harm as your verdict.

19 You may find the defendant guilty of conspiracy to
20 commit a battery if: One, you have not found beyond a
21 reasonable doubt that the defendant is guilty of conspiracy to
22 commit battery with deadly weapon and/or battery resulting in
23 substantial bodily harm; and, two, all 12 of you are convinced
24 beyond a reasonable doubt that the defendant is guilty of the
25 crime of conspiracy to commit a battery.

1 If you are convinced beyond a reasonable doubt that
2 the crime of conspiracy has been committed by the defendant
3 but you have a reasonable doubt whether such conspiracy was to
4 commit battery with a deadly weapon or battery resulting in
5 substantial bodily harm or battery, you must give the
6 defendant the benefit of that doubt and return a verdict of
7 conspiracy to commit a battery.

8 No. 23, battery means any wilful and unlawful use of
9 force or violence upon the person of another.

10 A battery which occurs with a deadly weapon is a
11 felony.

12 A battery which results in a substantial bodily harm
13 is a felony.

14 Substantial bodily harm means: One, bodily injury
15 which creates a substantial risk of death or which causes
16 serious, permanent disfigurement or protracted loss or
17 impairment of the function of any bodily member or organ; or,
18 two, prolonged physical pain.

19 A battery which occurs without a deadly weapon or
20 does not result in substantial bodily harm is a misdemeanor.

21 No. 24, mere presence at the scene of a crime and
22 knowledge that a crime is being committed are not sufficient
23 to establish that the defendant aided and abetted the crime,
24 unless you find beyond a reasonable doubt that the defendant
25 is a participant and not merely a knowing spectator. However,

1 the presence of one at the commission of a crime of another is
2 evidence which can be considered in determining whether or not
3 he is guilty of aiding or abetting, as well as the defendant's
4 presence, companionship and conduct before, during and after
5 the participation in the criminal act.

6 No. 25, you are instructed that if you find that the
7 State has established that the defendant has committed
8 first-degree murder, you shall select first-degree murder as
9 your verdict. The crime of first-degree murder includes the
10 crime of second-degree murder. You may find the defendant
11 guilty of second-degree murder if: One, you have not found
12 beyond a reasonable doubt that the defendant is guilty of
13 murder of the first degree; and, two, all 12 of you are
14 convinced beyond a reasonable doubt the defendant is guilty of
15 the crime of second-degree murder.

16 If you are convinced beyond a reasonable doubt that
17 the crime of murder has been committed by the defendant but
18 you have a reasonable doubt whether such murder was of the
19 first or of the second degree, you must give the defendant the
20 benefit of that doubt and return a verdict of murder of the
21 second degree.

22 No. 26, you are instructed that if you find that the
23 State has established that the defendant has committed murder,
24 you shall select the degree -- I think this should be
25 second-degree murder as your verdict. The crime of murder --

1 oh, I'm sorry. The degree of murder as your verdict. The
2 crime of murder includes the crime of involuntary
3 manslaughter. You may find the defendant guilty of
4 involuntary manslaughter murder if: One, you have not found
5 beyond a reasonable doubt that the defendant is guilty of
6 murder; and, two, all 12 of you are convinced beyond a
7 reasonable doubt the defendant is guilty of the crime of
8 involuntary manslaughter.

9 If you are convinced beyond a reasonable doubt that
10 a crime has been committed by the defendant but you have a
11 reasonable doubt whether such crime was murder or involuntary
12 manslaughter, you must give the defendant the benefit of that
13 doubt and return a verdict of involuntary manslaughter.

14 No. 27, you are instructed that if you find a
15 defendant guilty of murder of the first degree or murder of
16 the second degree, you must also determine whether or not a
17 deadly weapon was used in the commission of this crime.

18 No. 28, deadly weapon means any instrument which, if
19 used in the ordinary manner contemplated by its design and
20 construction will or is likely to cause substantial bodily
21 harm or death, or any weapon, device, instrument, material or
22 substance which, under the circumstances in which it is used,
23 attempted to be used or threatened to be used is readily
24 capable of causing substantial bodily harm or death.

25 You are instructed that a firearm is a deadly

1 weapon.

2 No. 29, if more than one person commits a crime and
3 one of them uses a deadly weapon in the commission of that
4 crime, each may be convicted of using the deadly weapon even
5 though he did not personally himself use the weapon.

6 An unarmed offender uses a deadly weapon when the
7 unarmed offender is liable for the offense, another person --
8 liable to the offenses armed with and uses a deadly weapon in
9 the commission of the offense and the unarmed offender had
10 knowledge of the use of the deadly weapon.

11 No. 30, to constitute the crime charged, there must
12 exist a union or joint operation of an act forbidden by law
13 and an intent to do the act.

14 The intent with which an act is done is shown by the
15 facts and circumstances surrounding the case.

16 Do not confuse intent with motive. Motive is what
17 prompts a person to act. Intent refers only to the state of
18 mind with which the act is done.

19 Motive is not an element of the crime charged and
20 the State is not required to prove a motive on the part of the
21 defendant in order to convict. However, you may consider
22 evidence of motive or lack of motive as a circumstance in the
23 case.

24 No. 31, the defendant is presumed innocent until the
25 contrary is proved. This presumption places upon the State

1 the burden of proving beyond a reasonable doubt every material
2 element of the crime charged and that the defendant is the
3 person who committed the offense.

4 No. 32, a reasonable doubt is one based on reason.
5 It is not mere possible doubt but is such a doubt as would
6 govern or control a person in the more weighty affairs of
7 life. If the minds of the jurors, after the entire comparison
8 and consideration of all the evidence, are in such a condition
9 that they can say that they feel an abiding conviction of the
10 truth of the charge, there is not a reasonable doubt. Doubt
11 to be reasonable must be actual, not mere possibility or
12 speculation.

13 If you have a reasonable doubt as to the guilt of
14 the defendant, he is entitled to a verdict of not guilty.

15 No. 33, it is the constitutional right of a
16 defendant in a criminal trial that he may not be compelled to
17 testify. Thus, the decision as to whether or not -- as to
18 whether he should testify is left to the defendant on the
19 advice and counsel of his attorney. You must not draw any
20 inference of guilt from the fact that he does not testify, nor
21 should this fact be discussed by you or enter into your
22 deliberations in any way.

23 No. 34, you are here to determine the guilt or
24 innocence of the defendant from the evidence in the case. You
25 are not called upon to return a verdict as to the guilt or

1 innocence of any other person. So if the evidence in the case
2 convinces you beyond a reasonable doubt of the guilt of the
3 defendant, you should so find, even though you may believe one
4 or more persons are also guilty.

5 No. 35, in arriving at a verdict in this case as to
6 whether the defendant is guilty or not guilty, the subject of
7 penalty or punishment is not to be discussed or considered by
8 you and should in no way influence your verdict. If your
9 verdict is murder in the first degree, you will, at a later
10 hearing, determine the issue of punishment.

11 No. 36, the evidence which you are to consider in
12 this case consists of the testimony of the witnesses, the
13 exhibits and any facts admitted or agreed to by counsel.

14 There are two types of evidence: Direct and
15 circumstantial. Direct evidence is the testimony of a person
16 who claims to have personal knowledge of the commission of the
17 crime which has been charged, such as an eyewitness.

18 Circumstantial evidence is the proof of a chain of facts and
19 circumstances which tend to show the defendant is guilty or
20 not guilty. The law makes no distinction between the weight
21 to be given either direct or circumstantial evidence;
22 therefore, all of the evidence in the case, including the
23 circumstantial evidence, should be considered by you in
24 arriving at your verdict.

25 Statements, arguments and opinions of counsel are

1 not evidence in the case; however, if the attorneys stipulate
2 to the existence of a fact, you must accept the stipulation as
3 evidence and regard that fact as proved.

4 You must not speculate to be true any insinuations
5 suggested by a question asked a witness. A question is not
6 evidence and may be considered only as it supplies meaning to
7 the answer.

8 You must disregard any evidence to which an
9 objection was sustained by the Court and any evidence ordered
10 stricken by the Court.

11 Anything you may have seen or heard outside the
12 court is not evidence and must also be disregarded.

13 No. 37, whenever there is slight evidence that a
14 conspiracy existed and that the defendant was one of the
15 members of the conspiracy, then the statements and acts by any
16 person likewise a member may be considered by the jury as
17 evidence in the case as to the defendant found to have been a
18 member, even though the statements and acts may have occurred
19 in the absence and without the knowledge of the defendant,
20 provided such statements and acts were knowingly made and done
21 during the continuance of such conspiracy and in furtherance
22 of some object or purpose of the conspiracy.

23 This holds true even if the statement was made by
24 the coconspirator prior to the time the defendant entered or
25 withdrew from the conspiracy, so long as the coconspirator was

1 a member of the conspiracy at the time.

2 An adoptive admission is a statement in which a
3 listener has manifested his adoption or belief in its truth.

4 No. 38, the flight of a person immediately after the
5 commission of a crime or after he is accused of a crime is not
6 sufficient in itself to establish his guilt but is a fact
7 which, if proved, may be considered by you in light of all
8 other proved facts in deciding the question of his guilt or
9 innocence. Whether or not evidence of flight shows the
10 consciousness of guilt and the significance to be attached to
11 such a circumstance are matters for your deliberations.

12 No. 39, the conviction shall not be had on the
13 testimony of an accomplice unless he is corroborated by other
14 evidence which in itself and without the aid of the testimony
15 of the accomplice tends to connect the defendant with the
16 commission of the offense, and the corroboration shall not be
17 sufficient if it merely shows the commission of the offense or
18 the circumstances thereof.

19 An accomplice is hereby defined as one who is liable
20 for prosecution for the identical offense charged against the
21 defendant on trial in the cause in which the testimony of the
22 accomplice is given.

23 To be an accomplice, the person must have aided,
24 promoted, encouraged or instigated by act or advice the
25 commission of such offense with knowledge of the unlawful

1 purpose of the person who committed the offense.

2 No. 40, to corroborate the testimony of an
3 accomplice, there must be evidence of some act or fact related
4 to the offense which, if believed by itself and without any
5 aid, interpretation or direction from the testimony of the
6 accomplice, tends to connect the defendant with the commission
7 of the offense charged.

8 However, it is not necessary that the evidence of
9 the corroboration be sufficient in itself to establish every
10 element of the offense charged or that it corroborate every
11 fact to which the accomplice testifies.

12 In determining whether an accomplice has been
13 corroborated, you must first assume the testimony of the
14 accomplice has been removed from the case. You must then
15 determine whether there is any remaining evidence which tends
16 to connect the defendant with the commission of the offense.

17 If there is not such independent evidence which
18 tends to connect the defendant with the commission of the
19 offense, the testimony of the accomplice is not corroborated.

20 No. 41, the determination of whether someone is an
21 accomplice is left to the jury to decide, unless the witness'
22 own statement leaves no doubt that he is subject to
23 prosecution for the charged crime.

24 No. 42, the accomplice corroboration rule is a
25 separate and distinct legal requirement for the statements of

1 a coconspirator made in the course of and in furtherance of a
2 conspiracy. When an accomplice testifies, their testimony
3 must be corroborated. The other evidence in the case,
4 including coconspirator statements in the course and in
5 furtherance of the conspiracy, may be evidence utilized to
6 establish the corroboration.

7 No. 43, the credibility or believability of a
8 witness should be determined by his manner upon the stand, his
9 relationship to the parties, his fears, motives, interests or
10 feelings, his opportunity to have observed the matter to which
11 he testified, the reasonableness of his statements and the
12 strength or weakness of his recollections.

13 If you believe that a witness has lied about any
14 material facts in the case, you may disregard the entire
15 testimony of that witness or any portion of his testimony
16 which is not proved by other evidence.

17 No. 44, a witness who has special knowledge, skill,
18 experience, training or education in a particular science,
19 profession or occupation is an expert witness. An expert
20 witness may give his opinion as to any matter in which he is
21 skilled.

22 You should consider such expert opinion and weigh
23 the reasons, if any, given for it. You are not bound,
24 however, by such an opinion. Give it the weight to which you
25 deem it entitled, whether that be great or slight, and you may

1 reject it if, in your judgment, the reasons given for it are
2 unsound.

3 No. 45, although you are to consider only the
4 evidence in the case in reaching a verdict, you must bring to
5 the consideration of the evidence your everyday common sense
6 and judgment as reasonable men and women. Thus, you are not
7 limited solely to what you see and hear as the witnesses
8 testify. You may draw reasonable inferences from the evidence
9 which you feel are justified in the light of common
10 experience, keeping in mind that such inferences should not be
11 based on speculation or guess.

12 A verdict may never be influenced by sympathy,
13 prejudice or public opinion. Your decision should be the
14 product of sincere judgment and sound discretion in accordance
15 with these rules of law.

16 No. 46, when you retire to consider your verdict,
17 you must select one of your number to act as foreperson who
18 will preside over your deliberation and will be your
19 spokesperson here in court.

20 During your deliberation, you will have all the
21 exhibits which were admitted into evidence, these written
22 instructions and forms of verdict which have been prepared for
23 your convenience.

24 Your verdict must be unanimous. As soon as you have
25 agreed upon a verdict, have it signed and dated by your

1 foreperson and then return with it to this room.

2 No. 47, now you will listen to the arguments of
3 counsel who will endeavor to aid you to reach a proper verdict
4 by refreshing in your minds the evidence and by showing the
5 application thereof to the law, but whatever counsel may say,
6 you will bear in mind that it is your duty to be governed in
7 your deliberation by the evidence as you understand it and
8 remember it to be and by the law as given you -- given to you
9 in these instructions for the sole, fixed and steadfast
10 purpose of doing equal and exact justice between the defendant
11 and the State of Nevada.

12 Ladies and gentlemen, that concludes the
13 instructions on the law.

14 Is the State ready to proceed?

15 MR. PESCI: Yes, Your Honor.

16 THE COURT: All right.

17 MR. PESCI: Thank you.

18 STATE'S CLOSING ARGUMENT

19 MR. PESCI: Ladies and gentlemen, this was a hit.
20 And this was a hit not because I'm telling you that. You know
21 this was a hit because that's what the evidence told you, and
22 most of all:

23 (Audio played)

24 MR. PESCI: You knew it was a hit because he told
25 you so. You have the evidence directly from the defendant's

1 mouth that this was, in fact, a hit. Make no mistake about
2 it, there was talk about a beating, and we're going to get
3 into that, but at the end of the day, it was a hit.

4 And keep this in mind: When you're thinking about
5 whether it was a beating or a hit, if it truly was just a
6 beating, a simple battery, the kind of beating where you're
7 sending a message, how come it wasn't at the campsite? How
8 come it was at a location where he was all alone? If it was
9 just a beating where no one is really going to get hurt to the
10 degree where it's lying in wait and murder, it could have
11 happened with Paijit there.

12 Remember the two plans. Keep that in your mind, in
13 the back of your head, because the location of where this
14 happened was chosen by him, the defendant.

15 (Audio played)

16 MR. PESCI: At first he wanted us to beat him up.
17 Then he said he wanted TJ knocked off. That's the definition
18 of taken care of, ladies and gentlemen, the hit that we just
19 talked about and the defendant told you a minute ago. This
20 isn't a simple battery. This isn't a beating. This is a
21 killing.

22 (Audio played)

23 MR. PESCI: Do whatever it takes that's necessary to
24 take him out, out at North Shore Road, not at the campsite.
25 If it's a battery, a simple battery, it's at the campsite

1 because, remember, if he's alone, do him; if he's with
2 somebody, beat him.

3 Hurt bad, keep that in mind when we go into
4 discussion about lying in wait. Do whatever it takes that's
5 necessary.

6 Now, murder. Murder's the unlawful killing of a
7 human being with malice aforethought. That's the definition
8 of murder. Her Honor has gone through all these instructions.
9 You'll have a packet with you, so when you go back in there
10 you'll be able to look all these up.

11 Clearly there's been a killing and it's unlawful.
12 It's a human being. Even though TJ was left like road kill on
13 the street, he was, in fact, a human being.

14 You saw the evidence, the way they came up on his
15 body, and he was found there by Ismael Madrid and then when
16 Officer Lafreniere got there and handed it over to the
17 homicide detectives and the investigation went forward. Two
18 shots to the head, a double tap to the head, a hit. It's the
19 intentional doing of a wrongful act. That's what malice -- a
20 minute ago we just talked about an unlawful killing of a human
21 being with malice aforethought.

22 What is malice? It's the intentional doing of a
23 wrongful act without legal cause, meaning some justification
24 or excuse for what the law considers provocation. There's no
25 excuse for this killing. This wasn't self-defense. He didn't

1 even see it coming. Now, don't confuse malice with what we're
2 going to talk about a little bit later on. It does not imply
3 deliberation or a lapse of any considerable time between a
4 malicious intent to injure another in the actual execution of
5 the intent. It denotes an lawful purpose. It's not the
6 premeditation. We'll get to that.

7 Now, there are degrees of murder. There's
8 first-degree murder, and first-degree murder, in order for it
9 to exist, there's three things that have to be there. It's
10 like making a cake. If you don't have the eggs, if you don't
11 have the flour, if you don't have those necessary elements,
12 you can't make a cake. For murder of the first degree, you
13 have to have wilful, deliberate and a premeditated act.

14 So let's go through each one of those. What is
15 wilful? What is the definition? It's the intent to kill.
16 Can it be clearer than, I want him taken out, I want a hit,
17 and then the actual utilization of a firearm, the two shots to
18 the head? That's clearly an intent to kill.

19 And there need be no appreciable space of time
20 between the formation of the intent to kill and the act, but
21 there's plenty of time in this case because the conversation
22 and the formation of this intent happens back at the Palomino
23 and it takes literally hours for this to be carried out
24 because the defendant has to lure the defendant away from
25 witnesses to an isolated location. There's lots of time.

1 And what is the second element? Deliberation. It's
2 the process of determining upon a course of action to kill.
3 There is a course of action. Mr. H gives the order. Deangelo
4 procures, obtains, goes and gets the shooter, and then
5 Deangelo lures the victim to the isolated location, delivers
6 the shooter there, and then distracts the victim, his friend,
7 so that Kenneth Counts can creep outside and shoot him.
8 That's a process of determining upon a course of action to
9 kill.

10 And lastly, premeditation. It's a design with a
11 determination to kill. There's clearly a determination, take
12 him out. Take care of him. Now, premeditation may not be for
13 a day, an hour or even a minute. It may be as instantaneous
14 as successive thoughts of the mind. That's how fast
15 premeditation can occur. And we've just discussed about how
16 there's way more time of successive thoughts of the mind.
17 There's all kinds of premeditation.

18 An order was given. The shooter was selected by
19 Deangelo Carroll. The trap was set by Deangelo Carroll and
20 the plan was executed. There's the wilful, deliberate,
21 premeditated murder, ladies and gentlemen. That's
22 first-degree murder.

23 But there's another way for you to determine that
24 this is first-degree murder. Now, you've all come from
25 wherever you live in the valley to this courthouse every day.

1 Maybe some of you took I15, maybe some of you took 95, surface
2 streets, who knows. But you all got here every day for trial.
3 This is the same thing with first-degree murder. Some of you
4 can think it's wilful, deliberate and premeditated and come to
5 the conclusion of first-degree murder, just like driving here
6 in your different ways, or some of you can think that it's
7 lying in wait. It's another theory. It's another way of
8 getting here to the courthouse. It's another way of getting
9 to first-degree murder. And we're going to talk about lying
10 in wait.

11 It's a terminology that's spelled out here in this
12 instruction. The term lying in wait is defined as a waiting
13 and watching for an opportune time. Away from Paijit, away
14 from witnesses, away from street lights even. To act together
15 with a concealment by ambush or some other secret design to
16 take the other person by surprise.

17 TJ never knew what was coming. He thought his
18 friend called him out there so they could get together and
19 smoke some weed. Deangelo knew exactly who he had in the car
20 with him. He knew the order that had been given and he
21 executed that order. And by doing so, this is, in fact, lying
22 in wait. How much more secret could it get? Deangelo was the
23 one that places the phone call to TJ to get him away from the
24 campsite and chooses the location to meet.

25 In addition, for lying in wait, there has to be an

1 intentional infliction upon the person killed of bodily harm
2 involving a high degree of probability that it will result in
3 death. This is more -- for lying in wait, it has to be more
4 than a simple battery. We've already talked about how we know
5 it's more than a simple battery. We're going to go through
6 that again.

7 But this is the kind of injury, where it says a
8 degree of probability, a high degree of probability of death,
9 and that shows a disregard, a wanton disregard for human life.
10 Clearly setting this up out in the middle of nowhere, bringing
11 people that actually shot and killed, not the bat and the
12 trash bags, but we'll go through that analysis in a minute.
13 Somebody with a gun shooting a person twice in the head is a
14 high degree of probability that death will occur and clearly
15 it is a wanton disregard for human life.

16 Well, let's say you think that it's a beating, it's
17 the battery. Well, let's talk about that. What kind of
18 battery is this? Little Lou calls Deangelo, from what
19 Deangelo tells the police, and says, Bring two garbage bags
20 and a baseball bat. A baseball bat, that's not a simple
21 battery. That's not the kind of thing where you're going to
22 smack somebody around and send them a message. What do you
23 need trash bags for if you're going to use a baseball bat?

24 (Audio played)

25 MR. PESCI: So even with these two plans, and you've

1 heard from the recording Anabel talking about plan B, so let's
2 keep in your mind plan A, kill; plan B, beat. All right. If
3 plan B is beat, and if you think that truly Deangelo thought
4 this was only going to be a beating, what kind of a beating
5 was it? He just told you what kind of a beating it was. One
6 in which the owner, the owner's son wanted a baseball bat and
7 trash cans -- trash bags utilized. Bring two black bags and a
8 baseball bat.

9 (Audio played)

10 MR. PESCI: What kind of a beating are we talking
11 about? He just said, pop a noodle. That's what the baseball
12 bats all about, pop the noodle, his head, crack it open. Even
13 if you think it's plan B, even if you think it's a beating,
14 it's the beating of the degree of which there's a high degree
15 of probability of death and disregard for life. So even in
16 the best case scenario for the defendant that it was just
17 supposed to be a beating, it's still first-degree murder,
18 lying in wait.

19 (Audio played)

20 MR. PESCI: Went and got KC and KC did it, did it
21 being the beating or the shooting, whichever way you want to
22 look at it, but it is him being taken out. He understood, he
23 just said, that it was more than just a beating. And then he
24 goes on to say that they got KC, and KC did it, meaning took
25 him out. Not, oh, he went crazy and he did his own thing and

1 decided to shoot him and I had no idea that was going to
2 happen. He said KC did it.

3 Again, this is his testimony where he stated, he
4 just said find somebody and get it done. I don't care what
5 you all do, just make sure it's done tonight.

6 Back to the lying in wait, that other theory, that
7 other way for you to get here to court each day, it's the
8 discussions of garbage bags, baseball bat, knocking him out,
9 hurt real bad, tell the dude to do whatever he felt was
10 necessary to take TJ out. This was way more than a beating.

11 And, in fact, you know this because Deangelo tells
12 the police about KC. Where's he from? From California. The
13 defendant says okay. The defendant says, he's a bluff from
14 California and, you know, I'm saying, dude -- dude don't play.

15 This defendant chose the person that doesn't play.
16 This defendant delivered the person that doesn't play to TJ,
17 knowing full well that KC doesn't play. He can't rely on this
18 concept that he never thought this was going to happen because
19 he himself told the police that KC doesn't play, he doesn't
20 mess around.

21 And then he goes on and explains even more about the
22 conversation he had with KC and he says, I told him that my
23 boss would pay him before, that my boss was willing to pay him
24 to go take care of some people because he does stuff like
25 that, and KC was like, as long as the money's right, then

1 he'll do it.

2 The defendant telling the police, in essence, he
3 knew in advance what KC was willing and able to do, as long as
4 the money's right.

5 We talked about the high degree of probability that
6 death will ensue and the wanton disregard for life. They're
7 both there. He's a first-degree murderer from wilful,
8 deliberate and premeditated avenue and also from lying in
9 wait.

10 So let's look at second-degree murder, because as
11 the Judge explained, first-degree murder -- open murder as
12 first degree and second degree.

13 Second degree is murder without the add mixture,
14 without the presence of premeditation and deliberation. So if
15 you think this was a killing and there wasn't premeditation,
16 then it's second-degree murder. We've gone through the
17 premeditation. Or it's an involuntary killing which occurs in
18 the commission of an unlawful act which in its consequences
19 naturally tends to destroy the life of a human being. There's
20 nothing involuntary about this killing.

21 And even if there's some stretch of the imagination
22 that you might think that there was, clearly, clearly, as we
23 talked about lying in wait, lying in wait takes it out of
24 second-degree murder. Lying in wait makes this not possible.
25 If this had just happened, this explanation number two

1 happened without selecting the location, without taking away
2 from the victim, without knowing who the person who doesn't
3 play who's coming to the location and what was going to be
4 done, it's not second degree. Plan A is to kill; plan B is to
5 beat.

6 Now, whether you determine first or second-degree
7 murder, you have to also determine that there -- if there was
8 a deadly weapon used. There's an instruction, a big long
9 instruction, what is a deadly weapon. Focus at the very end.
10 You're instructed that a firearm is a deadly weapon. There
11 you go. It's a deadly weapon. And you know it's a deadly
12 weapon from the way it killed TJ. Clearly it's a deadly
13 weapon. So whatever your verdict is, deadly weapon is a part
14 of your verdict because it was utilized.

15 Don't misunderstand or don't think that we have to
16 actually find the deadly weapon. You heard from Mr. Krylo,
17 the firearm's expert, that he looked at some weapons, and
18 you'll remember those were recovered in some of the other
19 searches, that didn't match that particular gun. We don't
20 have to bring to court the actual murder weapon in order for
21 you to determine that a deadly weapon was, in fact, utilized.

22 Now, you can also be responsible even though you're
23 not the person who pulls the trigger. Deangelo Carroll's a
24 first-degree murderer even though he didn't pull the trigger.
25 And there's a couple of different avenues, a couple of

1 different ways to get to that conclusion. One is via
2 conspiracy and the other is aiding and abetting. So we'll go
3 through conspiracy and then aiding and abetting.

4 Now, he's actually charged with a count of
5 conspiracy to commit murder. A conspiracy's an agreement or a
6 mutual understanding between two or more persons to commit a
7 crime. The defendant himself tells you that, that he met with
8 Mr. H, and Mr. H said he wanted him taken care of; that he,
9 Deangelo, was a part of that conspiracy; that he, Deangelo,
10 went and got Kenneth Counts and then drove him out there.
11 That's the conspiracy right there. That's the agreement.

12 Now, the crime is the agreement to do something
13 unlawful. It does not matter whether he was successful or
14 not. So let's say that Deangelo and Mr. H conspired to kill
15 TJ and then something goes wrong out at the lake. Conspiracy
16 to commit murder has already happened. It doesn't matter that
17 the murder didn't actually occur. The crime of conspiracy is
18 the planning, the discussing of that act. So he's guilty of
19 the conspiracy to commit murder. And in this case, the murder
20 actual occurred, so you don't even have to think about it in
21 that sense.

22 Now, it's not necessary to show a meeting between
23 the two parties, but in this case you've been told by the
24 defendant that there was a beating, that he had the
25 conversation between him and Mr. H, him and Little Lou, and

1 you can infer a formation or this conspiracy from evidence,
2 direct and circumstantial, and think about that. In a minute
3 we're going to go into the recordings that happened after the
4 fact. There's circumstantial and direct evidence there that
5 infers the earlier conspiracy.

6 In fact, you're going to hear it, and you've already
7 heard it, where Little Lou actually asks the question of
8 Deangelo, how much time does a conspiracy run? How could you
9 be asking how much time a conspiracy runs if you're not a part
10 of that conspiracy? Why would you even be worried about it?

11 Now, for a conspiracy, a person who knowingly does
12 any act to further the object of the conspiracy or otherwise
13 participates therein is criminally liable. So even though he
14 did not pull the trigger, he's responsible, as long as he
15 intends that the murder occur. And clearly he did because he
16 knew who the person was he was bringing there.

17 And you remember they asked Rontae Zone, well, what
18 did you do after this happened? I mean, did you say
19 something? Did you think, wow, I can't believe this happened?
20 Did you say something to the other people in the car? They
21 were cross-examining him about that. And then when we got
22 back and asked more questions of Rontae, I asked him, did
23 Deangelo say, oh, I can't believe this happened? Did Deangelo
24 turn to KC and say, what are you doing, that wasn't the plan?
25 None of that. Because Deangelo knew what the plan was all

1 along, to shoot and kill.

2 Now, a conspiracy doesn't end with the crime, the
3 actual killing, so the drive back to the Palomino, the payment
4 at the Palomino, this is all still a part of the -- trying to
5 hide it and cover it up. The conspiracy continues.

6 Now, each member of the conspiracy's liable for each
7 act and bound by each declaration of every other member of the
8 conspiracy if the act or the declaration is in furtherance of
9 the object of the conspiracy. So when KC gets out, creeps
10 around and shoots him, that is furthering the conspiracy.
11 Deangelo's responsible with his distract, by keeping his
12 attention so he doesn't see him coming, by calling him out
13 there, by delivering him to that location for that when he
14 intends that that killing occurs. Because within conspiracy,
15 the act of one is the act of all. They're responsible for
16 those specific crimes that they intend to occur.

17 First degree murder is a specific intent crime. He
18 had the specific intent for that murder to occur.

19 Now, there is also general intent crimes. You've
20 heard a little bit about battery, battery with a deadly
21 weapon, battery resulting in substantial bodily harm. Those
22 are general intent crimes. They're short of the specific
23 intent that there must exist for first-degree murder. So
24 Deangelo's responsible for things that occur for a conspiracy
25 to beat when it's a general intent crime. Those beatings are

1 general intent crimes. The reasonable foreseeable
2 consequences of what occurs from that beating he's responsible
3 for. So even if you think he only thought it was a beating,
4 he knew what kind of beating it was going to be. He knew who
5 was going to be administering the beating and he knew and was
6 responsible for the foreseeable consequences.

7 So let's say -- let's say KC got out with a baseball
8 bat and cocked him upside the head two times and TJ ends up
9 dying from that. Deangelo's still responsible under that
10 theory.

11 Now, what do you have to do to withdraw from a
12 conspiracy? Is there somehow, some way that he withdrew from
13 this? Once a person joins a conspiracy, that person remains a
14 member until he withdraws from it. Now, how do you withdraw
15 from it? A person can withdraw from a conspiracy by taking
16 some positive action which disavows or defeats the person of
17 the conspiracy. Hey, TJ, don't meet me. KC, don't get out,
18 don't shoot him. Call the police, hey, police, I'm going out
19 here, I can't do anything about this, I can't stop this train
20 at this point, but there's going to be this thing that happens
21 out at North Shore, come stop it. None of that. Now, that's
22 under conspiracy.

23 Then there's aiding and abetting, another means by
24 which he's responsible for the killing, even though he didn't
25 pull the trigger. When two or more persons are accused of

1 committing a crime, their guilt may be established by proof
2 that each person did every act, because they don't have to do
3 every single act.

4 Now, he can either directly aid and abet in that
5 crime or he can also be present but he has done things in
6 furtherance of them. He's done things to help move it along,
7 whether present or not, to advise and encourage in his
8 commission with the intent the crime be committed. The same
9 thing with conspiracy, for a specific intent crime, murder,
10 there has to be the intent. Even though he's not the shooter,
11 for him to be responsible, he has to have a specific intent
12 that the murder occurred, which we've already established he
13 does.

14 Now, what does it really mean to aid and abet? To
15 knowingly and with criminal intent aids, promotes, encourages
16 or instigates an act or advice in the commission of a crime.
17 Call the victim out there. You see, why -- but for Deangelo
18 Carroll, TJ's still alive. Because Mr. H didn't know how to
19 get ahold of him. KC Counts didn't even know he existed. But
20 for Deangelo Carroll making the phone call, TJ's alive. But
21 for Deangelo choosing the isolated location, choosing the
22 shooter who doesn't play and driving the shooter to the
23 location and distracting his friend, this doesn't even happen.
24 Those are all the acts that he did to aid, promote, encourage
25 this murder, and that's how he's responsible for aiding and

1 abetting.

2 We talked about a minute ago although your verdict
3 must be unanimous as to the charges, you do not have to agree
4 on the principle of guilt. So some of you can think it's the
5 premeditated, deliberated -- wilful or premeditated. Some can
6 think it's lying in wait. As long as you all get to the
7 conclusion that it's first-degree murder, it doesn't matter
8 which of those avenues you choose.

9 What's the evidence? What is it that you were
10 presented with? He's found out there on the road. The police
11 start to investigate. They find his car. They find a
12 pneumatic tube. They find a cell phone and the Palomino
13 cards. And the cell phone ties to Deangelo. Deangelo, they
14 find out, works at the Palomino. The Palomino cards confirm
15 his connection. They go to the Palomino.

16 At the Palomino, you have the people who were there,
17 Mr. H, Luis Hidalgo, II, Little Lou, Luis Hidalgo, III, and
18 Anabel Espindola, the owner that kind of manages. So when
19 Deangelo's talking about Little Lou, it's this person here.
20 When he's talking about Mr. H, it's here. And Ms. Anabel's
21 the one down here at the bottom.

22 Deangelo is the conduit. He is the means by which
23 this all happens. The order comes from the Palomino, goes
24 through Deangelo, and from Deangelo it goes on to these
25 individuals who are with him, Jayson Taoipu, Rontae Zone. He

1 takes those guys with him to go promote.

2 Now, remember, you heard that Jayson was supposed to
3 shoot and Deangelo says that KC says, why didn't you shoot, to
4 Jayson. Well, if this was just a beating and not a killing,
5 why would KC be concerned if Jayson didn't shoot? He was
6 concerned because Jayson was supposed to shoot because the
7 plan was to kill. And that's the shooter that this defendant
8 selected and utilized.

9 Kenneth Counts did, in fact, take care of TJ. And
10 that "taken care of," the translation that you need to know is
11 right on your screen, shot and kill.

12 What did Rontae say? Rontae says Deangelo Carroll
13 told him that Mr. H wanted TJ taken care of. What did the
14 defendant say in his statements? Deangelo got Kenneth Counts
15 to take care of TJ. The defendant corroborates what Rontae
16 says.

17 Well, what did Deangelo say in his statement? So he
18 went and got KC, which I know KC from when I lived at my mom's
19 house. So this is the whole conversation about him being
20 knocked out, beat up, knocked off. And he went and got KC to
21 do it.

22 Now, what do the recordings tell you about this
23 whole plan and what the intent of the plan was?

24 (Audio played)

25 MR. PESCI: This is on May 23rd at Simone's

1 Autoplaza. The three people that are in the room -- that's
2 Little Lou saying, I told you you should take care of TJ. The
3 direct order couldn't be clearer. He was supposed to do it
4 himself, but he went and got KC.

5 What does Rontae say? Kenneth shot TJ twice in the
6 head. And then Rontae tells you that detective -- I'm sorry,
7 Rontae told the detective that Kenneth Counts used a .357
8 revolver to kill TJ.

9 What did Mr. Krylo tell you? That the bullet
10 fragments recovered from TJ's body were indicative of a
11 revolver. He couldn't definitively say that, but he said it's
12 more likely a revolver and that the type of bullet is within
13 this family that a .357 would come from.

14 What did Deangelo say to police? KC shot TJ twice
15 in the head, corroborates Rontae. What kind of gun did KC
16 use? Well, don't just listen to Rontae. Listen to the
17 defendant. KC had -- it was a chrome .357 with a black
18 handle. It was a long extended barrel with pistol grip
19 handle.

20 You know Rontae's right from what Deangelo says.
21 You know that there were no casings found out there and you
22 heard that a revolver doesn't expend casings. They both tell
23 you, the defendant and Rontae, that Kenneth was the shooter.

24 Rontae said that Kenneth Counts was paid for killing
25 TJ. That was Rontae's testimony. Deangelo says that Mr. H

1 told Anabel to give Deangelo the money and Deangelo gave it to
2 Kenneth Counts, corroborating what Rontae said.

3 Kenneth Counts was found -- remember, he's at --
4 they go to do a search warrant at his house. He runs across
5 the street and hides in another house up in the ceiling and
6 they have to cut a hole in it to get him to get out, and on
7 the ground are those Palomino cards, a cigar box and cash.
8 And what do you have there? Kenneth Counts was found there
9 with the cards underneath that hole. The Palomino cards had
10 Deangelo's fingerprints and Kenneth Counts' fingerprints.
11 Deangelo Carroll's fingerprints were on Palomino cards inside
12 the second house, the house from which Kenneth ran out of, he
13 left his house and went and ran to. That's where he was
14 hiding. That's where the cards with his fingerprints were.

15 And those are those Palomino cards, the cash, and,
16 in fact, you saw how the fingerprint expert, Fred Boyd,
17 testified he looked at that photo, that these were the items
18 that he was able to make those identifications on.

19 Rontae says KC was paid and left the Palomino Club
20 in a taxi. Deangelo told police that KC was paid, left in a
21 taxi, corroborating Rontae. What's even more, you had the
22 gentleman come in, the taxi driver, Gary McWhorter, testified
23 that he picked up an individual fitting Kenneth Counts'
24 description and, you know, if you're concerned that maybe, in
25 fact, it wasn't Kenneth Counts, what did Mr. McWhorter say?

1 That originally on the trip sheet he wouldn't give an exact
2 location, that he had to have it in order to drive him there
3 and that he ended up writing down two addresses because the
4 address that originally Kenneth Counts gave to Mr. McWhorter
5 was not the address at which he got out.

6 Plus, Kenneth Counts would try to hide where he was,
7 where he actually lived, because he was dropped off in this
8 area and he went -- you heard testimony from Mr. McWhorter
9 he's dropped off and then walks through the yard, disappearing
10 from his sight. But if you go through that area, this is, in
11 fact, where the execution of the warrant was and the other
12 house was where Kenneth lived.

13 Rontae said Deangelo slashed the tires to the white
14 Chevy Astro van and dumped them in the trash. That's what
15 Rontae testified to. What did Deangelo say to the police?
16 Deangelo told the police he had changed the tires on the car
17 and dumped them in -- by the trash.

18 What did Detective Wildemann testify? That he found
19 those tires in the trash and they were, in fact, as he
20 described it, sliced. That's corroborating Rontae,
21 corroborating Deangelo, and Deangelo corroborating Rontae.

22 Rontae said that he and Jay Jay went with Deangelo
23 to Simone's Auto the day after the murder. Deangelo says the
24 same thing, that they went there the day after. Rontae says
25 that after speaking with Mr. H Deangelo talked to Rontae in

1 the bathroom and told Rontae to keep his mouth shut.
2 Curiously found inside Simone's Autoplaza is a note which has
3 written on it, maybe we are being under surveil, keep your
4 mouth shut. The actual physical evidence corroborating what
5 Rontae said, what Rontae said Deangelo said, and what Deangelo
6 told the police they said.

7 Now, let's listen to the recordings and see how that
8 further corroborates all the evidence. We know the first
9 day's the 23rd that he goes in with a recording device and
10 that originally it's Little Lou that he interacts with.

11 (Audio played)

12 MR. PESCI: Why are they whispering? Why worry
13 about whispering if there was no order from the Palomino, from
14 the owner, from the manager that Deangelo was an integral
15 part?

16 (Audio played)

17 MR. PESCI: Why check for a wire in hushed tones if
18 there was no order to kill TJ? What would be the need to do
19 that?

20 (Audio played)

21 MR. PESCI: Now, when Anabel says Luis, she's not
22 talking about Little Lou. She's talking about Mr. H. So one,
23 two, three are in the room talking about Luis. This is the
24 "we." Every one of us loses. Why would they lose if they
25 weren't a part of this conspiracy to murder him?

1 (Audio played)

2 MR. PESCI: Why would Anabel be willing to pay money
3 out of her own pocket if KC just went off on his own and did
4 something crazy that was never a part of any plan? Why would
5 she part with her own money if it wasn't, in fact, the
6 original plan?

7 (Audio played)

8 MR. PESCI: Deangelo and Louie have to stick
9 together because Deangelo and Louie are the people who created
10 the order, executed the order, produced the individual to
11 actually do the order. Those two have to stick together
12 because of the fact that there is this crime, this conspiracy,
13 this plan A.

14 (Audio played)

15 MR. PESCI: Okay. May 23rd, 2005, Anabel Espindola
16 says, what we really wanted was for him to be beat up. Now,
17 this is after they checked for a wire, and this is after
18 they're all whispering and they're concerned they're under
19 surveillance. So she's not saying, oh, no, yeah, we really
20 intended to kill. She's backing off from that, but she
21 clearly shows that there was an intent to do something to TJ.
22 She says, what we really wanted was him just beat up. And we
23 talked about earlier the kind of beating that this was, it's
24 still first-degree murder because of lying in wait. So even
25 if somehow, some way this was really just a beating, it's

1 still first-degree murder.

2 What -- what do you know from Anabel? What we
3 really wanted was for him to be beat up. It wasn't -- there
4 was never any other conversation. There wasn't any other
5 plan. You can infer, this is the direct versus circumstantial
6 evidence, the existence of Plan A.

7 (Audio played)

8 MR. PESCI: Why would Luis, Mr. H, take care of
9 somebody if Luis, Mr. H, never gave the order? And why would
10 Deangelo have to stay strong?

11 (Audio played)

12 MR. PESCI: Could you have KC kill them too, meaning
13 also, in addition, clearly indicating the prior intent and the
14 formation of an intent to kill TJ. Well, can you have KC take
15 out those witnesses too?

16 (Audio played)

17 MR. PESCI: Little Lou says, utilize KC to kill the
18 witnesses Rontae and Jay Jay and then says, we can get KC
19 last. Take out the original shooter and the shooter will take
20 out the other witnesses so then nobody's left.

21 (Audio played)

22 MR. PESCI: Total depend on Deangelo? Stick to your
23 story?

24 Ladies and gentlemen, the truth is not a story.
25 It's the truth. You don't have to stick to a story, and

1 that's all going to depend on you based on the story you have
2 to stick to, further evidence of the existence of that plan
3 and that plan to kill.

4 (Audio played)

5 MR. PESCI: If we hold our ground and we don't say a
6 thing. Mr. H, even considering all of this, is so worried
7 that he's about to leave the business and take off, go in
8 exile. Why would you go in exile for something you didn't do?

9 (Audio played)

10 MR. PESCI: Again, Little Lou telling Deangelo, I
11 told you to take care of it.

12 (Audio played)

13 MR. PESCI: To be the members of this conspiracy, we
14 need to keep our mouths shut, and if we have to communicate,
15 we're going to use a prepaid phone because we're whispering in
16 a room checking for recording devices because, in fact,
17 they're all parties to this conspiracy to commit murder.

18 (Audio played)

19 MR. PESCI: Go buy rat poison. Put rat poison in
20 the marijuana, talking about Rontae and Jayson, what's to be
21 done to these individuals who are witnesses and can testify,
22 just like Rontae did.

23 (Audio played)

24 MR. PESCI: So if the marijuana doesn't work, then
25 you go with putting in some poison in a Tanqueray bottle.

1 Remember, there was some liquor bottles inside the room,
2 brought one here to court, further evidence to corroborate
3 that as they're sitting in that very room saying, take the
4 liquor bottle, put poison in it.

5 (Audio played)

6 MR. PESCI: Anabel says, rat poison's not going to
7 work.

8 What's the defendant told by Little Lou? You know
9 what to do, just like he knew what to take care of meant.

10 (Audio played)

11 MR. PESCI: There is direct evidence of a conspiracy
12 by a coconspirator's own mouth, direct evidence. How much
13 time is a conspiracy? That's what Little Lou's asking
14 Deangelo. And then his coconspirator, Little Lou, is willing
15 to pay thousands of dollars to keep Deangelo happy because
16 they're all a party to this crime.

17 This is the second wire, much shorter. The second
18 wire, what have we got?

19 (Audio played)

20 MR. PESCI: The days passed and she's changed her
21 story from beat, because remember the recording we heard just
22 a few minutes ago where she said it was to beat him, now it's
23 to talk. There's been more time to worry about what it is
24 that Deangelo could do or what evidence could be gathered.
25 That's why they're checking for recording devices and

1 whispering and writing messages about keeping their mouths
2 shut. So she's changed from, we told you to beat him, to now
3 it's, oh, in fact, just talk to him.

4 (Audio played)

5 MR. PESCI: There it is again straight from a
6 coconspirator's mouth, the existence of Plan A, because she's
7 saying that she told him to go to Plan B. There is no Plan B
8 without Plan A. Plan A is to kill.

9 Now, use your common sense, ladies and gentlemen.
10 At the end of the day, you'll go back there, and there's an
11 instruction that literally tells you use your common sense.
12 When you use your common sense, it's very clear what, in fact,
13 happened here. The defendant conspired to commit TJ and that
14 he was, in fact, responsible for the killing of TJ.

15 Keep this in mind when you're doing --

16 (Audio played)

17 MR. PESCI: Okay. This is May 20th. This is before
18 the recordings. This is before Deangelo goes into Simone's to
19 get those recordings that we just listened to. What did
20 Deangelo say right there? Deangelo said, before any
21 recordings even come into existence, because he hasn't even
22 done it yet, Deangelo says that he goes and tells him that it
23 happened, and Mr. H is like -- and he was all, like, man, I
24 just wanted him hurt. I was like, that ain't what you said.

25 May 20th Deangelo is telling Mr. H, who's trying to

1 back away from it, that's not what you said. That's not a
2 script that he was given by police when he went in for the
3 recording. Remember, there's this conversation or this idea
4 that somehow when Deangelo goes in on the recordings and he
5 gets that statement out, oh, wait a minute, Anabel, wait a
6 minute, Mr. H, Little Lou, you said take him out, like that
7 was somehow the promptings that the police had told Deangelo
8 to use to get from the people inside.

9 No, ladies and gentlemen, because on May 20th, days
10 before the recording's even happened, Deangelo, telling the
11 police what actually happened, says that. It's not a script.
12 It's not made up. It's not been fed to him by the police.
13 You know that from listening to it from his own statement
14 before the recordings even occur.

15 (Audio played)

16 MR. PESCI: This is how you know that the recordings
17 are accurate. This is how you know that when, on the
18 recording Deangelo speaks to them and they say that, it's, in
19 fact, what they said because he's telling this to the police
20 before the recordings even occur. So don't fall into the trap
21 of thinking that everything that's incriminating that comes
22 out of those recordings was just spoon fed through Deangelo by
23 the cops. It is actually what happened.

24 At the end of the day, ladies and gentlemen, any way
25 he tries to get out of it, the evidence is as follows:

1 (Audio played)

2 MR. PESCI: It was a hit. It was a killing. He's
3 guilty of conspiracy to commit murder, first-degree murder
4 with use of a deadly weapon.

5 THE COURT: All right. Thank you, Mr. Pesci.

6 Why don't we just take a quick five or ten-minute
7 break before we move into the defense's closing statement.

8 And once again, ladies and gentlemen, during this
9 break, please don't discuss the case or do anything relating
10 to the case.

11 Notepads in your chairs and follow Officer Wooten
12 through the double doors.

13 (Court recessed at 12:06 p.m. until 12:15 p.m.)

14 (In the presence of the jury.)

15 THE COURT: All right. Court is now back in
16 session. The record will reflect the presence of the State,
17 the defendant and his counsel, officers of the Court and the
18 members of the jury.

19 Mr. Bunin, are you ready to proceed with your
20 closing statement?

21 MR. BUNIN: I am, Your Honor. Thank you.

22 THE COURT: All right. Thank you.

23 DEFENDANT'S CLOSING ARGUMENT

24 MR. BUNIN: Now that we've heard all the evidence in
25 this case, what I want you to do is focus on three things,

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1 because now that you've heard it all, you've really only heard
2 three things that are important to you. You've heard three
3 things that if you focus on them, you'll see that when you get
4 your verdict forms, you're going to easily be able to
5 eliminate a lot of your options.

6 As you go back for your deliberations, keep these
7 three things in mind as you analyze each witness you've heard
8 and as you analyze each piece of evidence presented by the
9 prosecution in this case.

10 Now, these three things are: Specific intent, what
11 specifically was in Deangelo Carroll's mind on the night of
12 May 19th, 2005. If that has not been proven to you beyond a
13 reasonable doubt, there are many options you the eliminate.
14 So one is specific intent.

15 Two is corroboration. What parts of the statements,
16 what part of the evidence the prosecution presented were
17 corroborated? What corroboration is there specifically of
18 what was in Deangelo Carroll's mind? So one is specific
19 intent. Two is corroboration.

20 And three is something we talked about during jury
21 selection, credibility. Because credibility certainly comes
22 into play too so I'm going to have to talk about that.

23 Specific intent, corroboration, credibility. As you
24 go through everything, please keep these three things in mind.
25 And I'm going to go through all of them with you and tell you

1 exactly what I mean.

2 This is a statement that's absolutely correct and it
3 will be easy for you. If the prosecution did not prove beyond
4 a reasonable doubt that Deangelo had the specific intent to
5 kill, you cannot convict him of first-degree murder. There
6 are other options and we're going to talk about it.

7 If the prosecution did not prove beyond a reasonable
8 doubt, if you don't know beyond a reasonable doubt pursuant to
9 these instructions what was in Deangelo's head, if the
10 prosecution did not prove beyond a reasonable doubt exactly
11 what Deangelo was thinking, then this statement is correct,
12 you cannot convict him of first-degree murder. There are
13 other options and we're going to talk about it.

14 Specific intent, that's what we're going to focus
15 on. We're going to focus on this prosecution case. The case
16 is about those three things, but it's tragically about
17 something else and the defense does not discount this. This
18 case is about Timothy Hadland. He should not have died. So I
19 want to be clear as I go through what the defense has to tell
20 you based on the evidence the prosecution presented in this
21 case, the defense is not here to mislead you. We're not here
22 to whitewash anything. The defense has never denied Timothy
23 Hadland was murdered. It absolutely was murder. But he was
24 not murdered by Deangelo Carroll. He was murdered by Kenneth
25 Counts.

1 In fact, Mr. Ericsson, in his opening statement told
2 you something that's pretty interesting and it's exactly true,
3 that the prosecution and the defense agree on an awful lot of
4 facts in this case. We agree on most of what was presented to
5 you. What's the main one? The main thing the prosecution and
6 the defense agree on is not in dispute. Kenneth Counts shot
7 and killed Timothy Hadland. Absolutely agreed on by both
8 parties.

9 What's another thing we agree on? Deangelo Carroll
10 did not shoot Timothy Hadland or anybody else. The
11 prosecution agrees, the defense agrees. Absolutely
12 Mr. Ericsson told you we agree on these things in his opening
13 and that's the evidence that you ended up hearing. Kenneth
14 Counts committed murder and that's for another jury to decide,
15 but he should be held accountable for it. Deangelo Carroll
16 should be held accountable for what he did, but it is not
17 murder.

18 In fact, we're not saying to you, oh, Deangelo
19 Carroll wasn't on the mountain that night. We're not saying
20 to you Deangelo wasn't up at Lake Mead, Deangelo Carroll
21 wasn't there. We're not saying, oh, I just -- I didn't know
22 anything. We're not saying, like their star witness that they
23 called, Rontae Zone, oh, I didn't really do anything, I was
24 just along for the ride, it's not what the defense is saying
25 to you. Keep this in mind as I go through this evidence

1 because I really want you to pay attention to specific intent.

2 I'm going to say something that's absolutely true.

3 This is the defense. Deangelo Carroll is not innocent. He'll

4 take responsibility for what he did. What he did was not

5 murder. In fact, some of the witnesses in this case,

6 Detective Wildemann, other detectives said, look, a crime is

7 committed, multiple defendants can be involved in a crime, but

8 they're not all guilty of the same things. Some people can be

9 guilty of some things, other people can be guilty of other

10 things. We all agree Kenneth Counts is guilty of murder. But

11 the prosecution, as I go through this, you're going to see

12 came nowhere close to showing you beyond a reasonable doubt

13 what was in Deangelo Carroll's head. They don't show you his

14 specific intent.

15 And if you don't know Deangelo's specific intent,

16 there's a whole bunch of instructions you have, I'm going to

17 go through them with you, to tell you exactly what you must

18 do. These instructions I'm going to read to you don't use the

19 word may, don't use the word can. They tell you what you must

20 do, which is find him guilty of things other than first-degree

21 murder.

22 First-degree murder is a specific intent crime. If

23 the prosecution did not prove beyond a reasonable doubt

24 Deangelo's specific intent, you cannot find him guilty of

25 first-degree murder. And also, he didn't commit first-degree

1 murder.

2 In fact, they present evidence through a tape that
3 they just played for you again, part of it, of a scheme to
4 batter. Now, they don't focus on this scheme to batter. They
5 focus on one snippet of something that Deangelo says during a
6 statement to police, and we're going to talk about all that,
7 but what they didn't mention once in their closing argument
8 or, for that matter, in their opening is that over and over
9 again, over and over again Deangelo says that he, Deangelo,
10 never meant for Timothy to get killed. Yes, he says Mr. H may
11 have wanted him to get killed. Yes, he says Mr. H may have
12 wanted it to be a beating. There might be some inconsistent
13 statements, but Deangelo makes it clear over and over again he
14 never meant for him to get killed. I know there were
15 inconsistent statements, but Deangelo says this.

16 Anabel, on the tape with that the prosecution
17 presents to you, she's not presented as a witness but they
18 present a tape of her words, and what she says is this was
19 supposed to be a beating, and I'm going to get into that with
20 you a little bit later.

21 Deangelo should be convicted of what he did. He
22 conspired to batter a man. He conspired to hurt somebody. It
23 turned into something worse and that's manslaughter. That's
24 exactly what Deangelo Carroll should be convicted of. He
25 should pay for what he did and you have options in here we're

1 going to go through, but this is manslaughter.

2 In fact, the law can't be more clear. You have all
3 these instructions and I'm going to go through them with you,
4 but the law is absolutely clear, and the Judge just read them
5 off to you, not all killings are murder, period. That's
6 absolutely correct. Not every time somebody is killed is it
7 murder. That's number one.

8 Number two, not all murders are first degree.
9 There's more than one type of murder. The law, the courts,
10 Judge Adair, nobody is emphasizing one choice over another.
11 Nobody's saying to you, look, you have these choices but,
12 wink, nudge, one's the right choice. Every instruction read
13 to you is equally important in the law, every single one.
14 There's no one instruction that's not -- that's more important
15 than another. No one definition of what a killing is is
16 preferred over the other.

17 The only thing you have to do as a jury is determine
18 beyond a reasonable doubt did the prosecution prove each and
19 every element of the crime, and you have to look at what they
20 proved and what they didn't prove and you have to pick and
21 choose based on the instructions given to you by Judge Adair.

22 In other words, if they didn't prove beyond a
23 reasonable doubt -- if they didn't prove beyond a reasonable
24 doubt what was in Deangelo Carroll's head, then you cannot
25 convict him of first-degree murder because that is a specific

1 intent crime.

2 Now, I'm going to go through some of the witnesses
3 with you that they called, some of the evidence that they
4 presented. And I know the trial might have seemed long, but
5 it was actually a fairly short trial, and I'll tell you part
6 of the reasons why it was pretty short. It's because the
7 defense chose to not cross-examine or to barely cross-examine
8 many of the witnesses. Why? Because the witnesses we didn't
9 spend any time on have nothing to do with Deangelo's specific
10 intent, what was in his head. They don't corroborate anything
11 that has to do with Deangelo's specific intent. They have
12 nothing to do with specific intent, corroboration or
13 credibility. So they were essentially a waste of time. You
14 know, these witnesses -- just to make that clear, these
15 witnesses were crime scene analysts, fingerprint people,
16 ballistics people, the cab driver, the Nextel Sprint person,
17 these were people that were all there telling you, look,
18 Deangelo is among this group of people. Deangelo is over at
19 the Lake. The defense has never denied it. But they tell you
20 nothing about Deangelo's state of mind. So that's what you
21 should focus on.

22 Without knowing what's in his head, without knowing
23 his specific intent, he cannot be convicted of a specific
24 intent crime. You have an instruction that says first-degree
25 murder is a specific intent crime. That is an absolutely true

1 statement. There's no other definition that says that's not
2 true. If you don't know his specific intent, he cannot be
3 convicted of first-degree murder.

4 Now, the defense did spend time cross-examining
5 certain witnesses, and there were a few of them. There was
6 Rontae Zone, Detective Wildemann, and Detective McGrath.
7 That's where we spent some time. Because the evidence that
8 the prosecution attempted to bring out from these witnesses
9 were supposed to show you Deangelo's specific intent, and what
10 they're trying to prove to you is Deangelo's specific intent
11 of kill, that we -- the prosecution is saying, we showed you
12 beyond a reasonable doubt Deangelo intended to kill and
13 nothing else. He intended to kill. There was no other
14 option.

15 That's not what they showed. Both from evidence
16 that came out on cross and direct examination, as I go through
17 these witnesses, I want you to listen carefully and see if you
18 can conclude beyond a reasonable doubt what was in Deangelo
19 Carroll's head.

20 In fact, some evidence, at least some, from all
21 three of these witnesses specifically corroborated Deangelo's
22 specific intent to commit a battery, at least some evidence
23 from all these witnesses. Maybe at least some evidence from
24 all these witnesses corroborated other things the prosecution
25 just talked about too. I'm going to talk about that, how

1 evidence from all three of these witnesses comes out all
2 different directions and all the prosecution witnesses
3 absolutely unequivocally agree that you heard evidence that
4 corroborated that Deangelo intended to batter and not to kill.

5 And in the end when you get evidence like that, you
6 have a prosecution that didn't prove anything beyond a
7 reasonable doubt. All they did was throw a bunch of
8 information at you and it all stuck in different areas of the
9 board but they don't prove anything beyond a reasonable doubt.
10 They just proved different versions of a statement given by
11 Deangelo Carroll. And I'll explain what I mean by all that as
12 I go through all these witnesses.

13 But keep in mind all of these witnesses, all of
14 them, you're going to hear corroborating evidence that
15 Deangelo intended to batter and not to kill.

16 Now, certainly Rontae's testimony has little to do
17 with corroboration. It still has to do with corroboration,
18 but it has an awful lot to do with credibility too. I'm going
19 to start with him. He'll be my first. But overall, his
20 testimony -- I don't know -- even know what words to use --
21 was shameful, disrespectful. It was a joke. And the
22 prosecution chose to call this witness for you. They chose to
23 call him as a witness and present their star witness. It was
24 the only witness they have that was at the scene. This first
25 significant witness of the trial doesn't tell you anything

1 about Deangelo's head. It was Rontae Zone and this was
2 something they chose to put on the stand and swear under oath
3 and talk to you. Let's talk about what he says.

4 Before -- there's an instruction that I want you to
5 take a look at when you're in the back. You're obviously
6 supposed to take a look at them all, but I'm going to
7 highlight this one, so if you'll remember this particular one.
8 It's Instruction No. 43. 43 will deal with credibility.

9 43 tells you what to do when you get a witness
10 that's absolutely incredible. It says, The credibility or
11 believability of a witness should be determined by his manner
12 upon the stand, his relationship to the parties, his fears,
13 motives, interests or feelings, his opportunity to observe the
14 matters in which he's testifying, the reasonableness of his
15 statements and the strength or weakness of his recollection.
16 But here's the best part of it. If you believe that a witness
17 has lied, if you believe a witness has lied about any material
18 fact in the case, you may disregard the entire testimony of
19 that witness or any portion of his testimony which was not
20 proved by other evidence. But it says or. In other words, if
21 you think a person has lied about any material fact in this
22 case, you absolutely can disregard his entire testimony.
23 That's what this says to you and I have never seen a better
24 instruction that applies to a person like Rontae Zone.

25 Let's look at Rontae. Again, it's the first witness

1 the prosecution called beyond just background, CSA, people
2 saying, you know, what occurred at the scene. Through this
3 witness, somehow they're going to attempt to tell you what's
4 in Deangelo's mind, because if they can't tell you what's in
5 Deangelo's mind, you must vote not guilty on first-degree
6 murder.

7 Aside from the credibility instructions, there are
8 Instructions 39 to 42 that deal with an accomplice, somebody
9 who may be an accomplice. Now, I'm not going to read all of
10 those to you right now, but I'm going to read one of them
11 because it's like one line. Because the first thing you have
12 to determine when looking at Rontae Zone is, is he an
13 accomplice. Well, Instruction 41 says -- there it is -- now,
14 says the determination of whether someone is an accomplice is
15 not -- is left for the jury to decide unless the witness' own
16 statement leaves no doubt that he is subject to prosecution
17 for the charged crime. So unless the witness leaves no doubt
18 that he's subject to prosecution. Well, let's see what Rontae
19 Zone said. The first thing Rontae Zone said -- this is the
20 first time I'm going to do this, but I want to read it exactly
21 just so you have word for word what Rontae Zone said.

22 My question to Rontae Zone, think about accomplice
23 testimony. Is he subject to prosecution?

24 My question: You're testifying here so you don't
25 get charged with a crime?

1 Answer: Correct.

2 Question: You're testifying because if you didn't
3 testify you'd be on the run?

4 Answer from Rontae: Correct.

5 My question: If you didn't testify, you'd be in the
6 mix of this murder?

7 Answer: Correct.

8 My question: So by testifying, you won't get
9 charged with murder?

10 Answer: Correct.

11 So like the Instruction No. 41 tells you, Rontae
12 Zone tells you, I'm subject to prosecution for all this stuff
13 and that's why I'm testifying. Rontae Zone's an accomplice.

14 You have accomplice instructions that you can
15 review. I also want you to review it with the credibility
16 instruction that I just talked about because in the end I
17 think you're going to see you can disregard this person's
18 entire testimony.

19 Now, remember, during jury selection I said to a
20 bunch of you and probably most people that aren't here
21 anymore, I said, how do you judge a person's credibility when
22 they're on the stand, because it's a hard thing to do, to sit
23 and look at somebody, and are you comfortable doing something
24 like this. And here's a lot of the answers some of you gave.
25 I think some of you here gave this answer.

1 You look at a person's demeanor. You look at their
2 consistency of statements. You look at their incentive to
3 lie. You listen for their ability to remember, maybe due to
4 drug use. We also -- you know, we already discussed incentive
5 to testify. He just said, Yes, I'm here testifying because I
6 don't want to be charged with murder. I'm here testifying
7 because I don't want to face the death penalty. I don't think
8 there's a bigger incentive to testify. That's number one.

9 But number two, let's look at his demeanor. What
10 was his attitude when he was on the stand? You got to see
11 Rontae Zone. Was he combative? Did he calmly and
12 legitimately answer questions, or did he try to fight? Did he
13 try to go around some of his answers and not really answer
14 questions? Here's some of the things he said. I'm not going
15 to go through all of Rontae Zone because he's a waste of time,
16 but let's go through some of it.

17 He said: I smoke pot all day, every day. He said,
18 I smoked a blunt the day that he testify -- the day of the
19 incident. He said he smoked a blunt the day he testified, by
20 the way. That was Wednesday of last week. So he gets up in
21 the morning, he takes a cigar, he hollows it out, he fills it
22 with pot. He smokes the entire blunt and then he comes over
23 to court to testify for the prosecution. That's what Rontae
24 Zone said Wednesday of last week.

25 So he testifies, I would submit to you, high, but he

1 had a blunt that morning and testified in the afternoon. He
2 testified that he smoked pot all day the day of the incident
3 in question. He testifies that he smoked a blunt on the van
4 on the drive to Lake Mead. He testifies, I was high at the
5 time of the incident. This is prosecution witness Rontae
6 Zone.

7 And then I said, Rontae, you believe pot makes you
8 smarter, don't you? And he said, I never said that. So like
9 I had to do many times, I pulled out transcripts of a
10 different time he testified under oath just like he was under
11 oath last week and I said, Don't you remember being asked the
12 exact same question and didn't you say at that other
13 particular hearing, yes, pot makes me smarter? And then he
14 said, Fine, it says it on the sheet of paper. Rontae lies
15 under oath.

16 Rontae takes an oath last week and he says one
17 thing. He takes an oath last year at a different trial and he
18 says another thing on the exact same question. He lies under
19 oath. Two statements, completely opposite, they both can't be
20 true.

21 Is Rontae Zone the type of guy that's willing to lie
22 under oath? Does Rontae Zone respect the oath that he swore
23 when he sat down and said, I swear I'm going to tell the
24 truth, jury, please believe me, I swear I'm about to tell you
25 the truth? Does that mean anything to him as a prosecution

1 witness? Of course not. Look at what he said.

2 At first he testified under oath last week that, I
3 did not lie to the police in order to protect myself. That's
4 what he said last week. And then I had to get up and show him
5 his testimony from the last time he testified under oath and
6 he said, You know what, I did lie to the police to protect
7 myself. Two statements, both can't be truth, both under oath.

8 I showed him under oath how he -- last week how he
9 said, Yes, we went out promoting, Deangelo and I went out
10 promoting the day of the incident. But the last time he
11 testified, he absolutely unequivocally said, No, we didn't go
12 promoting the day of the incident.

13 Without going through all of them, there's about
14 five more where he said one thing under oath last week and I
15 had to get up and show him a statement of word for word the
16 exact question because, frankly, I purposefully asked him word
17 for word the same question so if he answered it wrong, I could
18 show him he said something different the time before. And he
19 said it the exact opposite the time before. I could show you
20 a half dozen times where he flat out lied under oath.

21 So then maybe a little flustered, I said, You know
22 what, Rontae, word for word my next question was, As long as
23 you don't get charged with murder, you don't care what answer
24 you give in court, do you? And his answer, Why should I? I
25 said, As long as you don't get charged with murder, you don't

1 care what you say in court? And Rontae says, Why should I?

2 The prosecution puts this witness on the stand in a
3 murder case to try to convince you of anything. It's a joke.
4 The prosecution wants you to use Rontae Zone's testimony to
5 somehow convict Deangelo Carroll or anybody else of anything.
6 Why should I? That's Rontae Zone. As long as he's not
7 charged with murder, he doesn't care what he says in court,
8 his words. We have to waste time on this guy.

9 Now, it's not really that surprising Rontae Zone
10 answered that way, is it, because what else did he say? I
11 said, Rontae, you don't even have any written agreement to
12 tell the truth for the prosecution, do you? His answer, No, I
13 don't have a written agreement to tell the truth. I said,
14 Rontae, in the past, you were told by prosecutors that if you
15 do the right thing, you won't get charged with murder. He
16 said, Yep, that's what I was told. I said, Rontae, in the
17 past you were told by detectives that if you, quote, do the
18 right thing, you won't get charged with murder. Rontae said,
19 Yep, that's what detectives told me.

20 And then Rontae comes to court last week and I guess
21 he does the right thing, at least in Rontae's mind. He says
22 whatever he needs to say to not get charged with a crime.

23 The prosecution has to prove beyond a reasonable
24 doubt. That's a difficult standard. That's in the
25 instructions. You'll read it and see what it means. And they

1 use somebody like Rontae Zone. Why would they do that? This
2 is their star witness. It's the only guy that's there. This
3 is the only person they call that knows Deangelo Carroll. Why
4 would they call a Rontae Zone? Because they have no case.
5 They have no case to show you specific intent.

6 The prosecution has -- they have no evidence to show
7 you what's in Deangelo's head, so in desperation you call a
8 Rontae Zone. In fact, Rontae Zone testified seven times for
9 the prosecution now. Rontae Zone testified that he was shown
10 transcripts by the prosecution so he could remember what he
11 said, not at this trial, but at other trials. They know this
12 witness. They called this witness. This witness was an
13 insult. It was an absolute insult with everything that has to
14 do with our justice system. And he admitted it. I'll say
15 anything I -- why should I? Why should I care? I'll say
16 anything in court.

17 And this witness is supposed to corroborate
18 something. Well, remember the defense is telling you that
19 nothing is relevant in this trial unless it deals with
20 specific intent and then corroboration about specific intent
21 and credibility. Now, first-degree murder is a specific
22 intent crime. The prosecution is trying to show specific
23 intent through this witness and other witnesses, and we'll
24 talk about that too. But if somehow you choose to take
25 anything seriously that Rontae Zone said, well, I guess I'll

1 go through a little of it because the prosecution just stood
2 there and said take seriously what Rontae Zone said and they
3 showed you some statements of Rontae Zone so they're
4 corroborated so they're believable. If they're corroborated,
5 you should believe Rontae Zone. That was just part of the
6 closing argument of the prosecution. So let's talk about some
7 of the stuff that Rontae Zone says that they didn't talk about
8 in their closing argument.

9 Why? Why would I talk about it? Because it has to
10 do with specific intent. He corroborates specific intent not
11 to kill, to batter. So if you're going to take anything this
12 person says seriously, don't just pick and choose. Don't
13 say -- don't let the prosecution say, hey, he says stuff that
14 corroborates what we need him to corroborate; therefore, it
15 must be true, even though he may have said stuff that the
16 defense needs to corroborate, so please ignore that. Don't
17 let the prosecution get away with that and don't stand there
18 and think, hey, defense, aren't you doing the same thing,
19 aren't you saying just listen to when he corroborates the
20 defense? We're not. I'm going to talk about that in detail
21 with you.

22 If you get corroboration of two different stories,
23 if two stories are corroborated, if two statements are
24 corroborated, what don't you have? Sorry. What do you have?
25 If two stories are corroborated, you have reasonable doubt.

1 The prosecution's job is to prove one story, and one story
2 only, beyond a reasonable doubt, not two. They just stood up
3 and said, listen to Rontae on the stuff that we -- that we
4 think is true, and didn't mention that he corroborates other
5 things. So let's go through some of that because they raised
6 reasonable doubt.

7 What does Rontae say about what's in Deangelo's
8 head? Rontae says that Deangelo used the words dealt with
9 only. Rontae says there was no plan discussed whatsoever on
10 the way to Lake Mead. Rontae says he never, ever saw KC, saw
11 Kenneth Counts with a gun until right before Kenneth Counts
12 shot, corroborated by other evidence on the prosecution.
13 Rontae never saw KC with a gun when he -- before he got in the
14 van or while they were driving up. Rontae did not know KC had
15 a gun, again, until right before the shooting. Rontae did not
16 know what the plan was, if anything, once they got up there.
17 Rontae did not know if KC ignored the plan and went off on his
18 own and shot. That's what Rontae testified to.

19 Deangelo Carroll did not shoot Timothy Hadland.
20 That's what Rontae Zone said. Kenneth Counts shot Timothy
21 Hadland. That's what Rontae Zone said. Deangelo Carroll
22 didn't even carry a gun. That's what Rontae Zone said.
23 Deangelo Carroll looked shocked, was in shock when Kenneth
24 Counts shot Timothy Hadland. That's what Rontae Zone said,
25 also corroborated by other evidence in this case.

1 The prosecution tells you, look, Rontae corroborated
2 what we need him to corroborate but please ignore the fact
3 that he corroborated things that tend not to prove our case
4 that not show reasonable doubt. That's what the prosecution
5 just did in their closing when they talked about Rontae Zone.
6 If you believe somehow anything this prosecution witness said,
7 if you choose not to completely ignore him because of the
8 Instruction 43 that I told you to look at which tells you
9 you're allowed to ignore Rontae Zone, funny, don't ignore him,
10 but please don't ignore half of what he said.

11 Don't let the prosecution with any witness get up
12 here and say, hey, the specific intent to kill was
13 corroborated, but ignore the fact the specific intent to
14 batter was also corroborated. Keep this in mind when you get
15 into the jury room. We're going to talk about this several
16 times.

17 If the prosecution's evidence corroborates more than
18 one version of events, then they create reasonable doubt. If
19 the prosecution has to prove one event beyond a reasonable
20 doubt and if their witness corroborates both, you have
21 reasonable doubt. You have instructions that tell you what to
22 do in that situation. I'm going to talk about it in detail
23 later, but I'm going to hit one or two right now because
24 they're important.

25 One is Instruction No. 21. It tells you what to do

1 when you're getting stories from both sides. It's the last
2 paragraph in Instruction 21. It says, If you're convinced
3 beyond a reasonable doubt that the crime of conspiracy has
4 been committed by defendant but you have a reasonable doubt
5 whether such conspiracy was to commit murder or battery with a
6 deadly weapon or battery resulting in substantial bodily harm;
7 in other words, the prosecution presents evidence that it
8 could have been conspiracy to murder. The prosecution
9 presents evidence that it could have been a conspiracy to
10 batter. Well, now you don't know. Nothing's been proven
11 beyond a reasonable doubt. So the only thing you're sure of
12 is there's a conspiracy, but you don't know what was in
13 Deangelo's head. You don't know which conspiracy it was.

14 So what do you do according to this instruction?
15 Let's see what it says. You must, not may, not can, not
16 should, you must give the defendant the benefit of the doubt
17 and return a verdict of conspiracy to commit battery with a
18 deadly weapon or battery resulting in substantial bodily harm,
19 must.

20 The next instruction is 22. It's just as important.
21 If you were convinced beyond a reasonable doubt that the crime
22 of conspiracy has been committed by defendant but you have a
23 reasonable doubt whether such conspiracy was battery with a
24 deadly weapon, battery with substantial bodily harm or
25 battery, in other words, the prosecution convinces you there

1 is a conspiracy, you had to pick battery because they didn't
2 convince you beyond a reasonable doubt what the conspiracy
3 was, the next question is, did they show for sure it was
4 intended to be substantial bodily harm, did they show for sure
5 it was intent to be with a weapon, or did they just show for
6 sure it was intent to be battery, or did they not show any of
7 them for sure. Because they presented evidence as to all
8 three.

9 What happens when you get evidence as to all three?
10 When you have a reasonable doubt as to all three but you know
11 there was a conspiracy, the next line, you must, not may, not
12 can, not should, you must give the defendant the benefit of
13 that doubt and return a verdict of conspiracy to commit
14 battery.

15 And the last instruction for now, which is a little
16 harder and a little wild, is 26. I want you to look at it
17 carefully. If you are convinced beyond a reasonable doubt
18 that a crime has been committed by the defendant but you have
19 reasonable doubt whether such crime was murder or involuntary
20 manslaughter, in other words, the prosecution's evidence shows
21 corroboration could have been a murder, the prosecution's
22 evidence shows corroboration -- this could have been a
23 manslaughter because if Deangelo only intended this to be a
24 battery, just a battery, and he died as a result of somebody
25 going off the plan, that's manslaughter. If there's evidence

1 of both and you're not sure which beyond a reasonable doubt,
2 well, the instruction tells you what to do. You must, not
3 can, not should, not may, but you must give the defendant the
4 benefit of the doubt and return a verdict of involuntary
5 manslaughter.

6 These instructions -- there's not one that's more
7 important than another. These are the ones that govern the
8 rule of the case. This is how you're instructed by Judge
9 Adair. And in a situation where the prosecution doesn't prove
10 Deangelo's specific intent beyond a reasonable doubt, it tells
11 you what you must do. You must find guilty of conspiracy to
12 commit battery, you must find guilty of involuntary
13 manslaughter.

14 I've wasted way too much time on Rontae Zone, so I'm
15 going to end it with the last question I asked him and the
16 last thing he said, not that I really need to go into any more
17 overkill on Rontae Zone, but it's so ridiculous, I can't help
18 myself. So here's what he said. My question is, You actually
19 don't care what happens to Deangelo, you're here so you don't
20 get charged with murder, right?

21 Answer: Correct.

22 That's Rontae Zone. That's a witness the
23 prosecution chose to show you. And you can go back there and
24 think about why this prosecution needed to bring in this
25 witness. It's because they don't have evidence of Deangelo's

1 specific intent. They know it. They didn't prove it. They
2 can't prove it, so they have to call a guy like Rontae Zone.

3 Let's talk about two witnesses, the only other two
4 witnesses that testified about anything related to specific
5 intent. They'll talk about corroboration of specific intent.
6 We don't need to talk nearly as much about credibility because
7 they're much more credible witnesses, and that's Detective
8 Wildemann and Detective McGrath. These are the only two other
9 witnesses the prosecution presented that have anything to do
10 with specific intent and talk anything about corroboration as
11 to what Deangelo's specific intent was. So let's look at
12 them.

13 Well, both of them said that it's their job to
14 determine what the truth is, if that's possible to determine.
15 They said they're not on one side or another. We have no
16 stake in this. It's our job to determine the truth, if we can
17 do it. They said they want to make sure that the right people
18 are charged with the right thing. They want to make sure the
19 truth comes out and they can present that evidence to the
20 prosecution and the prosecutor can decide how to charge
21 people.

22 The witnesses agree -- well, these detectives, that
23 in some cases where there are multiple people charged on the
24 same crimes, not all of them are culpable for the same thing.
25 Some should have been charged for some things, others should

1 have been charged with other things. Kenneth Counts should
2 have been charged with murder. It has nothing to do with this
3 jury. Kenneth Counts committed murder. The prosecution
4 agrees and the defense agree. Deangelo Carroll should never
5 have been charged with murder.

6 The detective said that a good way, one way to
7 gather evidence is by talking to witnesses. The detective
8 said that you have to use your judgment to determine what
9 parts you hear are truthful, what parts might not be truthful,
10 and they all agreed that the truth is, in the end, you can't
11 know. Somebody's statement alone is just not enough. You
12 can't know. So you want to get corroborating evidence.
13 That's what they said.

14 In fact, they admit, like all of us in this room,
15 they're not witnesses to what occurred. They don't know what
16 happened. They just know what they learned by gathering the
17 evidence and talking to the witnesses. They don't know the
18 truth. They just do their best.

19 Sometimes you get inconsistent stories when you talk
20 to a witness. That's what they said. Absolutely they did in
21 this case. The defense isn't denying it. Ideally you compare
22 different versions of what's said to other evidence in the
23 case in an effort to corroborate a statement, so that's why
24 I'm talking so much about corroboration and specific intent.

25 Now, here the detectives met Deangelo Carroll at the

1 Palomino Club the day after this occurred on May 20th, 2005.
2 Deangelo, according to their testimony, volunteered to talk to
3 them. And I'm going to make maybe a small point here about
4 how exactly they chose to interrogate or interview, whichever
5 word you want to use, but I don't think it's a significant
6 point. There's a more important point that I'm going to make
7 in a minute about why Deangelo maybe said different versions,
8 but I think this has at least something to do with it, but the
9 next part's probably a little more important.

10 But they agree that they can interview you in a
11 comfortable environment, at the club, at your house, like they
12 did with other witnesses. They agreed they interviewed other
13 witnesses in the Palomino Club and they recorded -- they audio
14 recorded what they had to say. But instead, they chose to
15 take Deangelo, put him in a police car, drive with two
16 detectives, go to the homicide office, go to the interrogation
17 room or the interview room, which you saw on film. It's a
18 small room. There's a table in it. Deangelo is behind the
19 table, between the table and the door. The prosecutors are
20 between Deangelo and the door. Although reluctantly, the
21 detectives admitted this can be an intimidating situation,
22 although they really were more reluctant to admit that their
23 purpose was to intimidate. I submit to you that it was, and
24 that's not necessarily a bad thing. You know, they're doing
25 their jobs. But in that situation, you can get into a

1 situation where there's confusion in the room.

2 Like I think it's pretty clear that no reasonable
3 person in Deangelo's situation would think he can leave. In
4 fact, he didn't even have his own car. He would have no way
5 to get anywhere if he wanted to leave. But the detectives
6 agreed a person absolutely would feel nervous, scared,
7 intimidated, confused maybe when they're in a room in that
8 situation. And everybody agreed that Detective Vaccaro used
9 tactics that are certainly more aggressive than the tactics of
10 Detective McGrath and Wildemann, and he used these tactics in
11 a way that certainly are intended to maybe make you feel a
12 little nervous. This is the testimony that came out.

13 I think these are minor points, but I think they're
14 worth making. I'm going to talk about the more significant
15 ones in a minute.

16 Also, a probably more minor point, but they chose
17 not to read him his Miranda rights. I think there's a little
18 bit of credibility issue when it came to Detective McGrath on
19 this one point because these are good detectives trying to do
20 a good job for the city, but I think when you look at their
21 overall testimony, maybe they're trying to help the
22 prosecution a little bit sometimes when they answer their
23 questions. In fact, what I said to Detective McGrath, I said,
24 The reason you didn't read him his Miranda rights is because
25 you're concerned he might not answer your questions if you

1 read Miranda rights? He goes, No. I didn't read him his
2 Miranda rights because he's not in custody. You don't read
3 Miranda rights if you're not in custody. I said, Oh, well,
4 was he ever in custody that night? Detective McGrath then
5 said no. I said, But you read him his Miranda rights at some
6 point during the interview.

7 So all I'm saying is maybe there's a little bit of
8 bias when it came to the testimony, but I'm really not
9 knocking these detectives. They're trying to do the best they
10 can do. But he agreed -- he and the other detectives all
11 agreed that they're very educated, very well trained, very
12 experienced in interrogation tactics, and in a situation like
13 this, they're very good at maybe getting people to say things,
14 many different things trying to make excuses for themselves,
15 say things that aren't true, say things that aren't true and
16 then you start weeding it out. I mean, some people --
17 sometimes people make statements and confessions that simply
18 aren't true. Sometimes they make statements that are true.

19 And, in fact, the prosecution read you an
20 instruction, it's 46, about you don't leave your common sense
21 at the door when you're a juror. You just don't leave your
22 common sense at the door is basically what it says. Use your
23 common sense. Of course, sometimes people are going to make
24 mistakes, they're going to get confused, they're going to be
25 manipulated, they're going to say things wrong.

1 So what happens? These prosecutors -- the
2 detectives said, look, we get statements from somebody.
3 Sometimes we get multiple statements from somebody, like they
4 did here, so you want to try to find corroborating evidence to
5 see which parts are correct and which ones are not correct.

6 Now, here's the more important one because I'm not
7 whitewashing this. I'm not going to try to mislead. The
8 defense does not want to deceive about why Deangelo also gave
9 some statements that were not consistent in this confession to
10 the police officer during this interrogation. Certainly the
11 entirety of the situation, everything I just discussed, how he
12 was there, why he was there, how they were talking to him has
13 something to do with some of the confusion, but other parts of
14 it were not confusion.

15 There's something else and there's something that we
16 have never denied, and I've already said it once so I'm going
17 to say it again because I want to be clear about why Deangelo
18 gave a couple of different statements, at least part of the
19 reason, because he's not innocent. Deangelo's not innocent in
20 this. He's not. So what does Deangelo do?

21 Well, he does what the prosecution witnesses do,
22 Rontae Zone. He says things to the police that aren't true in
23 order to protect himself, just like somebody that they put on
24 the stand, had him raise his right hand and swear under oath
25 to tell you the truth, somebody that they trust to get on the

1 stand and tell the truth. Deangelo does the same thing as
2 their witness. He knows he's not innocent, just like Rontae
3 Zone knows he's not. So he tries to cover some tracks and
4 make some excuses.

5 He gets manipulated. He is in a situation with
6 experienced and more intelligent and more educated and
7 extremely well trained detectives and he makes a lot of
8 statements that are all over the place because Deangelo wants
9 to protect himself. He's not innocent. He committed a crime.
10 His crime is conspiracy with battery. His crime is
11 manslaughter. He should pay for it and we're going to talk
12 about why those are his crimes.

13 This is what -- but he knew. At this point Deangelo
14 knew that he conspired to commit a battery. He also knew, as
15 a result of this, somebody died. So when he spoke to these
16 detectives, he knew he was in serious trouble because of what
17 KC did, because KC didn't follow the plan. He committed the
18 crime no matter what KC did, but it turned into something
19 worse; plus, KC went off on his own and shot this person.

20 In fact, in the recorded statement that Deangelo
21 makes, the recorded statement that they play for you, the
22 recorded statement that Deangelo makes for the detectives and
23 for the prosecution while cooperating with them, helping them
24 get evidence and corroborating Deangelo's statement that this
25 was supposed to be a battery, in that part of the statement,

1 he actually makes it clear. He says -- page 9, 15 to 18, and
2 it just kind of shows you what was in Deangelo's head before
3 he ever spoke to the police.

4 Deangelo says, Look -- Deangelo says, They are going
5 to fucking work deals for themselves. They're going to get me
6 for sure because I was driving. They're going to get KC
7 because he was the trigger man. They're not going to do
8 anything else to the other guys because they're fucking
9 snitches, talking about Rontae Zone, who was. Deangelo was
10 right on all counts. Deangelo knew when he talked to the
11 police he was in serious trouble. He conspired to commit a
12 battery. He drove this person up to the lake to commit a
13 battery. This person went off on his own and killed somebody.
14 Deangelo knew he was in serious trouble. So I don't want you
15 to think when I'm saying look at all aspects of the
16 interrogation to figure out why different statements were
17 made, I'm not whitewashing the fact that Deangelo's not
18 innocent here. Just like their witness Rontae Zone, Deangelo
19 tried to protect himself. Please keep that in mind when I
20 talk about these witnesses.

21 But what happens? Well, all of the detectives
22 testified that they used their skills to the best of their
23 ability to maybe then try to bring out some truth. And after
24 a two and a half hour interrogation, these experienced and
25 skilled detectives end up bringing out one pretty clear

1 version of events. After using all of their skills and all of
2 their techniques, something does come out. Not only do they
3 get to the truth, but, in fact, much of the statement I'm
4 about to talk about is corroborated by other evidence that the
5 prosecution gives you. It's corroborated.

6 So after Detectives Wildemann and McGrath use all of
7 their skills and they bring in Detective Vaccaro, who is their
8 supervising detective, and he uses more aggressive tactics and
9 he gets a version -- he gets a consistent version that
10 Deangelo, through the time throughout, and ended very clearly
11 that this was only supposed to be a battery. He pins him down
12 to this. When the interrogation's finally near the end, this
13 is what he says. A couple of things that are corroborated.

14 Number one, Deangelo says, Look, early on when you
15 guys were speaking to me, I lied because I was trying to tell
16 the story that Anabel and Little Lou told me to tell you.
17 Well, that's corroborated. On the tape that Deangelo made for
18 the police that the prosecution just played for you, they say,
19 Stick to your story. This is the story that they tell
20 Deangelo to try to tell. He tries to stick to his story. He
21 blows it. But he explains to the police, This is why I told
22 the first version. These guys told me to tell it.

23 That statement that Deangelo makes to the police is
24 true and is corroborated on that tape and, in fact, the
25 detectives both testified that Deangelo corroborates the fact

1 that he tries to tell a story that Anabel and Little Lou told
2 him to tell. That's number one.

3 Deangelo asks during the interrogation to call
4 Rontae and tell him to tell everything because it will prove
5 what he's saying is true, that this is supposed to be a
6 battery. That's corroborating. That's what Deangelo said.
7 Detective McGrath corroborates the fact that Deangelo said to
8 Rontae, right before Rontae spoke with the police, Tell the
9 truth or we're all going to jail. Detective McGrath says,
10 Yes, that's exactly what Deangelo Carroll said. It
11 corroborates that Deangelo knew the truth but saw some
12 problems because Deangelo knew this was only supposed to be a
13 battery. It was KC that went off and did the shooting.

14 Deangelo says over and over, after Detective Vaccaro
15 starts interrogating Deangelo, that he never told KC that H
16 said he wanted Timothy killed. Deangelo says several times,
17 Look, Mr. H might have said this is supposed to be a killing,
18 but I never told that to KC. He says that several times.
19 Then that statement is corroborated on the tape that Deangelo
20 makes for the police and for the prosecution.

21 In fact, a witness of the prosecution, the detective
22 who testified, agreed that Deangelo corroborates the statement
23 that he never told KC that H wanted Timothy Hadland dead.
24 This is corroborated by prosecution -- witnesses of the
25 prosecution evidence. He says over and over again he never

1 meant for Timothy to get shot. He just meant for him to get
2 beat up. Deangelo says this over and over again. Even when
3 Deangelo's saying, in some parts of this, yes, Mr. H may have
4 wanted this to be a killing, but I never meant for him to get
5 shot, I don't care what H wanted, I never meant for him to get
6 killed, he makes it clear, I didn't mean for that to happen.
7 H may have. I didn't mean to. And I didn't tell KC to do it.

8 Why is this important? Because through their
9 witnesses and through other evidence the prosecution puts in,
10 their corroborate this. They corroborate it. The detectives
11 testified, yes, it was corroborated on the tape. The tape
12 itself corroborates it when it shows you that the Deangelo --
13 that Anabel says on the tape this was only supposed to be a
14 beating, not a killing. This was only supposed to be a
15 battery. The prosecution presents you evidence corroborating
16 Deangelo's state of mind that this was only supposed to be a
17 battery and nothing more.

18 Deangelo says to the police, I never saw a gun until
19 Timothy got shot. Well, I guess that's corroborated by
20 Rontae, if you want to believe anything Rontae says, but it's
21 corroborated by other prosecution evidence. Deangelo says
22 there's no conversation in the car whatsoever about what KC
23 was going to do or what any plan was. That's corroborated by
24 other evidence that the prosecution presented to you. He
25 again says I never told KC that H wanted Timothy killed. This

1 is a consistent statement that Deangelo makes that is
2 corroborated by other evidence that the prosecution presents
3 to you. And over and over, he continues to say, I never meant
4 for this person to get killed.

5 What was in Deangelo Carroll's head? All you're
6 concerned about when you look at first-degree murder is
7 specific intent. It's a specific intent crime. You must know
8 beyond a reasonable doubt what was in Deangelo's head.

9 Deangelo says to the police, I never meant for this
10 person to get killed, over and over, and then they present you
11 other evidence beyond Deangelo's statement through witnesses
12 and a separate tape that corroborates that Deangelo didn't
13 mean and Anabel didn't mean and nobody meant, except maybe KC,
14 for Timothy Hadland to get killed, all presented to you by the
15 prosecution.

16 And then very significantly, because the prosecution
17 tried to make a similar argument about, look, you saw
18 statements that's even more credible than anything on these
19 tapes because it's referring to a statement that Deangelo made
20 before he ever spoke to the police and before he ever made the
21 tape for the police. Well, here's another one, one that they
22 didn't tell you about in their closing argument. Deangelo
23 says to Ana -- to the police, I already told Anabel. So
24 before he spoke to the police the next day, Deangelo says to
25 the police, I already told Anabel KC just flipped out and shot

1 him.

2 So the first time Deangelo's interviewed, he says, I
3 already told this to detectives, KC just flipped out -- I
4 mean, I already told this to Anabel, KC just flipped out and
5 shot this guy.

6 Then, after he cooperates with the police, he goes
7 and talks to Anabel and he says to Anabel, I told you KC just
8 went stupid and flipped out and shot this guy. I told you.
9 In other words -- and Detective Wildemann testified to this --
10 that statement corroborates the fact that Deangelo, before he
11 ever talked to the police and before he ever made this tape to
12 the police, he had already told Anabel KC flipped out and shot
13 this guy.

14 And then when he talks to Anabel, he says, I told
15 you -- he was referring back to a prior conversation, I
16 already told you what happened. And does Anabel say, You
17 never told me that? She doesn't at all. She doesn't at all.
18 Deangelo does exactly what he tells the police he's going to
19 do. He corroborates the fact that this was always supposed to
20 be a beating and KC went off on his own and shot this guy.

21 Well, remember, these are prosecution witnesses
22 testifying, a detective saying, yes, he corroborated the fact
23 that he spoke to Anabel in advance. Yes, he corroborated the
24 fact that he said to Anabel this was only supposed to be a
25 beating. Yes, he corroborates the fact that it was only

1 supposed to be a beating because Anabel repeats, what are you
2 talking about, this was only supposed to be a beating.

3 The prosecution presents evidence to you that this
4 was supposed to be a beating. And they also present evidence
5 to other things, but they present corroborating evidence to
6 you about what's in Deangelo's head, it's supposed to be a
7 beating.

8 In fact, remember the opening statement of the
9 prosecution where they played a couple of little three to five
10 minute snippets of Deangelo Carroll's statement to the police?
11 And in those snippets, he's saying some pretty damn good
12 things that certainly are the prosecution's case, but what
13 they don't tell you is that after a two and a half hour
14 interrogation Deangelo said all of the things that I just said
15 to you over and over again. In the opening, they've got these
16 little snippets of a guy saying it's supposed to be a hit, but
17 what they don't tell you is that an hour later, after three
18 detectives use all their best interrogations tactics on and on
19 and on, Deangelo consistently continues to say, H made a
20 comment it was supposed to be a hit. I never wanted it to be
21 a hit. For me, it was supposed to be a battery. I never told
22 KC it was supposed to be -- it wasn't a battery. The guy went
23 off and did this on his own. You didn't get that from the
24 prosecution witness.

25 They also didn't tell you in their opening what the

1 detectives in the end, after Deangelo gets down to one clear
2 version of events, confusion calms down, fear calms down, the
3 tactics are absolutely working that these detectives are
4 using, they don't tell you that Deangelo over and over again
5 says it was just supposed to be a beating. Then the
6 detectives say, How are you going to prove it? They don't
7 mention that in their statement.

8 There's something else they don't mention, or in
9 their close, that Deangelo gives two answers as to how he's
10 going to prove it. One, he says, Test my hands. I didn't
11 shoot anybody. Test my hands. And, in fact, they could have
12 tested his hands. The detectives on the stand make some
13 excuses as to why they didn't test his hands, but they
14 certainly could have. Maybe they were concerned by testing
15 his hands they would tend to prove his innocence, not his
16 guilt, but they didn't test his hands.

17 But here's another reason they didn't test his
18 hands, and again, it's because of something Mr. Ericsson said
19 in his opening statement, that the prosecution and the defense
20 agree on many things. One of them is that Deangelo Carroll
21 never shot anybody. So, of course, his hands wouldn't have
22 showed anything other than Deangelo didn't shoot anybody.

23 But what's more important about that statement?
24 What's something else that the prosecution and the defense now
25 agree on? What's something else that we agree on? That

1 Deangelo Carroll was truthful in his initial response to, how
2 are you going to prove this was -- you just attempted a
3 battery? How are you going to prove you didn't do this? His
4 first and distinctive answer, the prosecution and defense
5 agree, is the truth, Test my hands. I didn't shoot anybody.

6 And then immediately he gives another answer. What
7 does he say? He says, I'll wear a wire to prove it. I'll put
8 on a wire and I'll prove to you everything I just said to you
9 is true, everything. So what does Deangelo offer to do?

10 Just to be clear, because it was not something that
11 was ever made clear by the prosecution early on, he says, For
12 you to prove my statement certainly, but for you, I will put
13 on a wire, I will talk to coconspirators, I will make a tape
14 for you, I'll make a tape for the prosecution. Whatever
15 happens, happens, but I'll do this. Deangelo Carroll
16 cooperated with the police. Deangelo Carroll helped with the
17 investigation. Yes, certainly to prove his statement, part of
18 the motive, absolutely. Deangelo wants to make sure the
19 police know exactly what he did. He conspired to batter and
20 he committed manslaughter. Deangelo may not have understood
21 the law, but that's exactly what occurred. He knew he did
22 wrong. He knew he'd have to pay. Sure. Sure, he has a
23 motive to help. But there's other things that occurred, like
24 it or not, because of Deangelo's help.

25 He got corroborating evidence about this fact that

1 he intended for this to be a battery. He got the police
2 valuable information that they used. What do I mean? Well,
3 Detective McGrath testified that without Deangelo Carroll they
4 never would have had the extra charges on Little Lou for
5 conspiring to kill witnesses, the whole thing with the rat
6 poison. You know, they're playing these statements as if
7 they're against Deangelo Carroll. Deangelo Carroll brought
8 these statements out for the prosecutors, for the detectives
9 and gave them the tapes. Here, see? See, everything I told
10 you is true about these guys. See, my version, what I told
11 you, what I'm telling you about, that I intended to commit a
12 battery, it's true. Here, here are the tapes. See, I proved
13 it to you. Let's talk about those -- all these tapes.

14 Some of these were probably already shown to you by
15 the prosecution, but, you know, first Detective McGrath says
16 to Deangelo -- well, he testified on the stand that, I didn't
17 tell Deangelo what to say when I went and made these tapes. I
18 don't know if that's exactly right. But Detective McGrath
19 says, look, I just told Deangelo to go in the room and he says
20 Deangelo knew what he was going to have to do to prove his
21 statement to me that this was supposed to be a battery.
22 That's Detective McGrath's testimony. Deangelo knew what he
23 needed to say to prove this was going to be a battery.

24 So Deangelo goes in the room and he talks to Anabel
25 whose statements are presented to you by the prosecution.

1 They don't call her as a witness. They choose to present
2 evidence from Anabel. Her statement from this tape, that's
3 what they present to you. What does Anabel say? Because the
4 prosecution, you know, makes this choice to just give you
5 Anabel's statement, and Anabel's statements corroborate what
6 Deangelo is saying about this was supposed to be a battery.
7 In fact, this was undisputed. Anabel was recorded for the
8 police by Deangelo. Anabel did not know she was being
9 recorded. That's not disputed. She was concerned about being
10 recorded. That's certainly not in dispute either. But once
11 she made it -- once she was comfortable that she was not being
12 recorded, this is a person that spoke honestly.

13 Anabel, on tape, not knowing that she's being taped
14 by Deangelo, is making statements that the prosecution wanted
15 you to take seriously, and you should. These are very
16 important statements and they absolutely create reasonable
17 doubt. In fact, let's look at the first one.

18 Specifically Deangelo, using his own tactics,
19 according to Detective McGrath, to get -- to corroborate the
20 fact that this was supposed to be a battery and a battery
21 only, so what did Deangelo say to Anabel? He says, Hey,
22 what's done is done. He wanted it fucking taken care of and
23 we took care of it.

24 Now, remember, Deangelo is using these words with a
25 purpose, to get out -- he says, Look, it's only supposed to be

1 a batter, and he goes in, tells the police and says what he
2 needs to say to make sure he can prove to the police, just
3 like they ask him, how are you going to prove this is supposed
4 to be a battery. So Deangelo says, What's done is done. You
5 wanted him taken care of and we took care of him.

6 So what does Anabel do, the person who doesn't know
7 she's being taped? She defines what taking care of means for
8 you, because she has no idea she's being taped. Deangelo
9 makes the statement knowing it's going to rile up Anabel
10 because Deangelo knows what taken care of meant. It meant a
11 battery. How do we know? What's Anabel say?

12 Next line. Why are you saying this shit? What we
13 really wanted was him fucking beat up, if anything. We didn't
14 want him fucking dead. This was the first day, the first
15 tapes. The police say to Deangelo, How are you going to prove
16 what you're telling me is true? The first thing he says is,
17 Test my hands, I didn't shoot anybody. The prosecution agrees
18 he's telling the truth. And then he immediately says, Put a
19 tape on me. I'll prove to you that this was just supposed to
20 be a beating.

21 So Deangelo beeps her. You told him we wanted to
22 fucking take care of him -- took care of him. She says, What
23 are you talking about? Why are you saying this shit? We
24 wanted him beat up, if anything. We didn't want him fucking
25 dead.

1 The police say, How are you going to prove it?

2 Deangelo proved it. That's a truthful statement.

3 Now, the next thing -- in fact, the words taken care
4 of are now defined of. Taken care of means beat up. Anabel
5 defines it for you on the tape where she doesn't know she's
6 being taped. And Deangelo, without telling her what to say,
7 simply says, We took care of him. What else is said to that?
8 Trying to prove to the police that taken care of meant beat
9 up. He doesn't. And the prosecution presents to you this
10 evidence. They gave it to you, not the defense, they did.

11 Now, the prosecution tries over and over again to
12 corroborate a version of events where Deangelo intended to
13 kill. And they, you know, call Rontae Zone, and he gives his
14 statement. They choose not to call Anabel. They just choose
15 to present her statement on the tape as the prosecution
16 evidence tells you what taken care of means. It means beat
17 up. And I want you to keep that in mind. It's their
18 evidence, not anybody else's.

19 What does that make this? This is manslaughter as
20 to Deangelo. It's murder as to KC. And as to others, it's
21 for other juries to decide. Your focus is on Deangelo and
22 Deangelo only. For Deangelo, this is manslaughter. It's a
23 crime. It's a serious crime. It's a crime where a man dies,
24 and he has to pay for it. And that's what this jury should
25 do, make Deangelo pay for what he did, not for things the

1 prosecution wants to prove but can't prove.

2 Now, there's another thing said by Deangelo that I
3 talked about a minute ago, so I want to -- it's so important,
4 I want to clarify it one last time. So this is what's said.
5 Deangelo, on the same tape, when again he's trying to prove
6 what he said to the police is true, in other words, this is
7 what I mentioned earlier, Deangelo says to the police, I
8 already told Anabel KC went crazy and did this on his own. I
9 already said this.

10 Now, if that's true, that means before Deangelo ever
11 spoke to police on May 20th and before he ever made these
12 secret tapes on May 23rd and May 24th, he had already spoken
13 to Anabel, and with nobody listening in and with no police
14 influence, said, KC went crazy and did this on his own. If
15 that's the case, this was supposed to be a beating and nothing
16 more. This was supposed to be a battery.

17 So what does Deangelo say? Read it. He says, How
18 are we going to call it quits? Fucking KC got -- fucking KC
19 fucking got mad and fucking -- I told you he was fucking
20 stupid -- went fucking stupid and fucking shot the dude, not
21 really -- nothing we could fucking do about it. I told you he
22 went stupid and shot the dude. There was nothing we could do
23 about it.

24 In other words, he goes in and corroborates exactly
25 what he said to the police officer, that he had already,

1 before he even knew that the police knew his name, told
2 Anabel, hey, this guy went off on his own and didn't follow
3 the plan. This was supposed to be a battery, yes. Well, KC
4 didn't do it and here we are. We're in trouble. He had
5 already said it.

6 Just like the prosecution in their closing argument
7 showed you a statement and said that statement was made before
8 anybody ever spoke to police, that's the most credible
9 statement out there, I agree. That's a credible statement.

10 In fact, what does Anabel say? Does she immediately
11 go? You can look at the tape. You have the transcript. Does
12 she go, You never told me that? Huh-hu, nope. That's not
13 what Anabel does. She just goes right on with the
14 conversation because that's something Deangelo already told
15 her. He had already told her in advance KC went crazy, KC
16 shot the dude, there was nothing we could do about it. That's
17 not why they went up there. They didn't go up there to do
18 that. They made a dumb decision, like a decision to batter
19 somebody. Sometimes stuff like this happens and when it does,
20 well, now you're in more trouble than conspiracy to commit
21 battery. Now you're also in trouble for manslaughter. It's a
22 crime. It's a serious crime.

23 Now, one last thing that the detective testified --
24 the detectives, on all these things I just talked about,
25 agreed that Deangelo corroborated his statement that this was

1 supposed to be a battery by wearing a recording and doing it
2 in the exact way that I just said. Every one of these
3 witnesses, their witnesses testified, yes, it was
4 corroborated. And he also corroborated it on this portion of
5 the tape that he was told to tell a particular lie. I'm not
6 going to read it to you again, but he was told to tell a lie.
7 He tried to do it. He failed. And then he ended up telling
8 the truth once the detectives were done interrogating him.

9 So in the end, the testimony of Detectives Wildemann
10 and McGrath do more to create reasonable doubt than to prove
11 it for the prosecution when it comes to first-degree murder.

12 The prosecution's case, in fact, doesn't anymore
13 prove Deangelo intended to commit a battery than prove
14 anything else. The prosecution's case creates reasonable
15 doubt. Their witnesses agree, when I cross-examined them,
16 that Deangelo corroborated, absolutely corroborated the
17 statement he made where it was never supposed to be a killing,
18 at least not in Deangelo's mind.

19 Specific intent, the intent to kill, that's what the
20 prosecution has to prove.

21 Now, I know Deangelo made inconsistent statements.
22 I mentioned this earlier. I know that the prosecution can
23 say, okay, fine, he corroborated all those things. I know we
24 didn't mention that he did, by the way, but he corroborated
25 all those things, but he corroborated stuff for us too, stuff

1 we're trying to prove. I know that's true. The defense is
2 not here denying it. The statement's all over the place, the
3 corroboration elements are over the place.

4 In fact, Mr. DiGiacomo made that point very well for
5 the defense when he did redirect examination on Detective
6 McGrath. He got up and said, Well, in this part and this part
7 and this part, doesn't he corroborate this version of events,
8 the version that the prosecution is telling you is true? And
9 Detective McGrath beautifully said, Yes, he did.

10 But on my cross, he had just finished saying four
11 different times that he also corroborates the version of
12 events where it's supposed to be a battery, and my point that
13 Mr. DiGiacomo made for me is that the prosecution witness
14 corroborated both stories, telling different versions. And
15 the prosecution's corroborating both and this is where the
16 burden of the State, the burden of the prosecution becomes so
17 important.

18 The prosecution has the burden. You're instructed
19 as to this. They're the sole party of the burden. They, and
20 they alone, have to show beyond a reasonable doubt not two
21 stories that are corroborated, but one, one story and one
22 story only. And if they don't show beyond a reasonable doubt
23 one version and one version only -- you have a bunch of
24 instructions that I read that use the word must -- you must
25 find guilty of conspiracy to commit battery, you must find

1 guilty of manslaughter.

2 Now, I already ran through some of those
3 instructions with you, you know, the instructions that talked
4 about if the prosecution -- if you believe the things about a
5 conspiracy, you don't know if it was a conspiracy to murder or
6 intent to commit battery, you must pick battery.

7 The other instruction was if you know that there was
8 a killing but you don't know if it was murder or you don't
9 know if it was manslaughter, based on the evidence presented,
10 you must pick manslaughter. Those are the instructions given
11 to you. They are 21, 22 and 26. Those are the instructions,
12 without me going through them again. So please look at them
13 very carefully because when you see what these instructions
14 are talking about, they all talk about Deangelo's specific
15 intent and nothing more. I'm going to get to that again in a
16 second, but just in the interest of trying to get to the end
17 of it, I'm not going to go through those instructions again
18 with you.

19 And I know I have been speaking a long time, but the
20 defense has one shot to get up here and go through all this
21 evidence with you, and one only. The prosecution has two.
22 They get up twice. You already heard the closing argument by
23 Mr. Pesci. Now you're going to hear a rebuttal by
24 Mr. DiGiacomo. It's because the State has the sole burden of
25 proving their case, so they get to go first and they get to go

1 last. But unlike the prosecution, I have to cover everything
2 in one shot. They can do it in two different statements, so I
3 have to take a little bit longer than them, and I apologize
4 for that.

5 Also, I don't get to get back up here and say, hey,
6 don't let them equivocate. Don't let them shift sideways when
7 they talk about the credibility of Rontae Zone. Don't let
8 them shift sideways when they try to explain why their
9 versions of events should be believed that are corroborated
10 but the other version of events that are corroborated should
11 be ignored. I can't get back up and talk about that, so
12 please listen for it when you hear the final rebuttal.

13 So specific intent, specific intent is something
14 that I continue to focus on, so I'm going to talk about just a
15 couple more instructions. These are extremely important, and
16 these again make it easy for you.

17 Specific intent, Instruction No. 18. Instruction
18 18, when you read it, takes care of a whole bunch of options.
19 You can easily resolve the case. Murder in the first degree
20 is a specific intent crime. Defendant cannot be liable under
21 conspiracy or aiding and abetting for first-degree murder for
22 acts committed by a coconspirator unless defendant also had a
23 premeditated and deliberate specific intent to kill or lying
24 in wait -- and we'll talk about lying in wait in a minute --
25 unless defendant had a premeditated and deliberate specific

1 intent to kill.

2 So under a direct theory, who did it? The
3 prosecution's telling you Deangelo didn't do it. Ignore that
4 part. They're telling you he did it either under a conspiracy
5 theory or an aiding and abetting theory. This says, 18,
6 murder is a specific intent crime. So he cannot be convicted
7 of first-degree murder if somebody else did it unless they
8 also prove to you beyond a reasonable doubt that Deangelo's
9 specific intent was to kill, to kill.

10 This instruction resolves first-degree murder for
11 you. There is none. They never showed what's in Deangelo's
12 head beyond a reasonable doubt. In fact, they did more to
13 show what's in his head as it pertains to battery than it does
14 as it pertains to killing. They showed both sides. When they
15 showed both, they didn't prove anything beyond a reasonable
16 doubt.

17 Now, there's another instruction that's very
18 important that I want you to look at. This is Instruction
19 No. 10. It's the lying in wait instruction. [Inaudible].
20 Lying in wait talks about another theory of first-degree
21 murder. In every circumstance, first-degree murder is a
22 specific intent crime. You cannot convict anyone of
23 first-degree murder unless they specifically -- unless you
24 know what they specifically intended in their head before a
25 killing. If you don't know, then your instruction says you

1 must, must choose something else. You cannot pick
2 first-degree murder.

3 Lying in wait says -- look, there's two paragraphs.
4 The first talks about sitting somewhere to consider yourself
5 [inaudible] and secret design to take somebody by surprise.
6 Well, yes, the defense doesn't deny that Deangelo went up to
7 the mountain and conspired to batter. And in order to
8 [inaudible], it's a battery. So the first half of that
9 definition is easy. The defense isn't denying these things.
10 I'm not telling you to ignore some facts and just focus on
11 others.

12 But the second part is just as easy as any other
13 specific intent crime because the prosecution never proved
14 what's in Deangelo's head. To constitute murder by means of
15 lying in wait, there must be, in addition to the [inaudible]
16 said conduct by defendant, an intentional infliction upon the
17 person killed of bodily harm involving a high degree of
18 probability that it will result in death. So an intentional
19 infliction of harm involving a high degree of probability that
20 it will result in death.

21 So did the State prove beyond a reasonable doubt
22 that Deangelo not only intended to commit some sort of
23 battery, some form of battery, but he specifically intended to
24 be of such high degree that there's a substantial chance that
25 there'll be death? Well, we can take care of this pretty

1 easily. The evidence of that was absolutely none. They point
2 to Deangelo saying, H said hurt him bad. They point to
3 somebody else saying, We wanted him hurt. They point to a lot
4 of other evidence that says, We told you to beat him up, if
5 that. We told you to talk to him, if that.

6 The prosecution's evidence is all over the place.
7 Don't let them circle two words, hurt bad, and say, well,
8 there it is, beyond a reasonable doubt, Deangelo knew that
9 this was going to be a beating that was so bad that it would
10 logically only lead to some sort of killing. Read this
11 instruction and follow the instruction. Unless they prove
12 beyond a reasonable doubt Deangelo's specific intent, if you
13 knew -- only if you know exactly what was in his head beyond a
14 reasonable doubt can you convict of first-degree murder under
15 any theory, including lying in wait. That's absolutely the
16 law in this case. And if you do not believe they've proven to
17 you beyond a reasonable doubt Deangelo's specific intent, you
18 cannot convict him of first-degree murder.

19 Now, the first-degree murder instruction was put up
20 by the prosecution. It's Instruction No. 8, but I disposed of
21 all these arguments already, so I promise I'm winding down
22 because all of these have to do with specific intent. It says
23 you must prove a murder that is perpetrated by means of any
24 kind of wilful, deliberate and premeditated killing, all three
25 elements, all three, wilfulness, deliberation and

1 premeditation. All three have to be proven beyond a
2 reasonable doubt before an accused can be convicted of
3 first-degree murder. So I've made my point over and over
4 about specific intent.

5 All three of those elements have to be met, all
6 three of those elements have to be proven beyond a reasonable
7 doubt. It says that unless you knew he specifically intended
8 to kill, there is no first-degree murder. That's what these
9 elements say. That's what wilfulness means. That's what
10 deliberation means. His specific intent to cause a killing,
11 unless they prove that beyond a reasonable doubt, you can't
12 have first-degree murder. So I've already talked about these
13 they things.

14 Second-degree murder, in definition No. 12, I'm not
15 going to spend a lot -- much time on either, because this is a
16 manslaughter case. Second-degree murder is something that you
17 should look at. Like all the other instructions, they're all
18 equally important. All murder which is not murder in the
19 first degree is second degree. Murder with malice
20 aforethought but without the mixture of premeditation and
21 deliberation is second-degree murder or an involuntary killing
22 which occurs in the commission of an unlawful act which, as a
23 consequence, naturally tends to destroy the life of a human
24 being or an involuntary killing which was committed in the
25 prosecution of a felonious intent.

1 There's a definition of malice, Instruction No. 7.
2 There's two types of malice, expressed and implied. Express
3 is intent to kill. So without intent to kill, there's no
4 expressed malice. Implied malice is a similar concept. Take
5 a look at it and go through it. It doesn't particularly
6 apply.

7 What you're going to look at is whether or not
8 Deangelo's intent was felonious or whether Deangelo's intent
9 caused something that naturally tends to kill. In other
10 words, if Deangelo intended a battery, is that something that
11 you would say, well, people naturally tend to die from a
12 battery? Of course not. From a battery, from somebody --
13 what's supposed to be somebody getting beat up, that doesn't
14 naturally lead towards death.

15 But you're also going to look at whether or not his
16 intent was felonious and there are definitions in there of
17 what a felony is. There's three battery options given. There
18 is battery with substantial bodily harm. Did Deangelo intend
19 the battery beyond a reasonable doubt to be so bad that there
20 was intentional bodily harm? Did Deangelo intend the battery
21 to be so bad that there would be a disfigurement or some
22 long-term pain or something along those lines, or did Deangelo
23 intend there to be a weapon used? Those are both felonies.
24 Or did they just show that Deangelo intended that there be a
25 battery? That's Instruction 26 that I talked about earlier.

1 If the prosecutors didn't prove beyond a reasonable
2 doubt that he conspired to do any one of them -- in other
3 words, if they present evidence that leads you all over the
4 place, you must find him guilty of conspiracy to commit
5 battery, which is all the evidence there was in this case.
6 There's no details as to anything beyond conspiracy to commit
7 battery.

8 The manslaughter definition absolutely applies.
9 There's Instruction No. 13 and it says involuntary
10 manslaughter is the killing of a human being without any
11 intent to do so in the commission of an unlawful act or lawful
12 act which probably might produce such consequence in an
13 unlawful manner. It talks about if you intended to commit a
14 felony, just like in the second-degree murder definition, and
15 then somebody dies as a natural consequence, that could be
16 second-degree murder. But that's a general intent crime, not
17 a specific intent crime.

18 But it also says if you do an unlawful act where you
19 did not intend to kill but somebody dies, that is absolutely
20 manslaughter. Beyond a reasonable doubt, Deangelo's goal was
21 to hurt somebody, to commit a battery. That's what you know
22 beyond a reasonable doubt. And that definition makes it
23 absolutely clear. It's manslaughter.

24 KC's goal was to murder. He pulled out a gun and
25 shot a man twice in the head. He killed him. But no evidence

1 was presented, none, that Deangelo intended to kill.

2 A little corroboration was presented that H maybe
3 intended to kill. A lot of corroboration was presented that
4 Deangelo didn't want Timothy dead or shot, but no evidence was
5 presented that Deangelo wanted Timothy dead, that Deangelo
6 intended to kill.

7 Don't give in to two two-minute snippets of a two
8 and a half hour statement. Listen to what was corroborated in
9 the second statement. Look at how Deangelo answered the
10 police's question, how are you going to prove what you're
11 saying, by proving it, by showing it was supposed to be a
12 battery.

13 Every one of the prosecution witnesses agree nobody
14 knew KC had a gun. Every one of the prosecution witnesses
15 corroborated the fact that nobody new KC had a gun that night.
16 Even Rontae does.

17 Also, all the prosecution witnesses confirm or
18 corroborate that Deangelo was told to bring baseball bats and
19 garbage bags, and then all the witnesses corroborate that
20 Deangelo did not bring baseball bats and garbage bags. Zero
21 evidence, none was presented, none.

22 The prosecution says, you know, they were going to
23 pop his noodle with these bats and this is obviously one
24 that's so bad that it arises to the level of lying in wait,
25 and knew the guy was going to die, even if they didn't intend

1 to kill him, but they forget to mention to you that no
2 prosecution witness offered any evidence that Deangelo
3 listened to what he was told.

4 Everybody agrees someone calls, maybe Little Lou,
5 and says, Bring baseball bats and garbage bags, but Deangelo
6 had his own plan. He didn't intend to kill. He didn't. He
7 didn't bring baseball bats. Every single bit of evidence
8 presented to you by the prosecution confirms he didn't bring
9 baseball bats. No evidence shows that he did, or garbage
10 bags. Every bit of evidence by the prosecution shows that
11 nobody saw a gun on KC, no one.

12 So when you talk about these options of, did he
13 prove that he conspired to cause substantial bodily harm,
14 well, he chose not to bring the bats. When they talk about
15 the options of, did Deangelo conspire to do battery with a
16 weapon, well, Deangelo didn't bring a weapon. He chose not to
17 bring it and nobody knew that KC had a weapon.

18 So what are you left with? Conspiracy to commit
19 battery and battery only. And that's what the prosecution
20 evidence shows. They literally presented no evidence of
21 anything else. If you can't show beyond a reasonable doubt
22 whether it was battery with substantial harm or battery with a
23 weapon or battery, you must convict of conspiracy to commit
24 battery. That's what that statute says.

25 In fact, even a deadly weapon, you know, of course a

1 deadly weapon was used in the commission of this case, but
2 you're to pick whether or not Deangelo used a deadly weapon.
3 One of your options are first-degree murder with use of a
4 deadly weapon, another one is first-degree murder, another is
5 second-degree murder, another is second with use of a deadly
6 weapon. I'm hoping you're just going to pick manslaughter and
7 we don't have to worry about a deadly weapon, but if you do
8 look at other options, deadly weapon is one of your choices.

9 In fact, the prosecution never proved beyond a
10 reasonable doubt that Deangelo knew two things, two things
11 that he has to know, that a deadly weapon was even brought up
12 there, one; and that, two, it was going to be used. He had to
13 have knowledge of the use of a deadly weapon. That's
14 Instruction No. 29, or you cannot convict Deangelo of use of a
15 deadly weapon.

16 So if the prosecution did not prove beyond a
17 reasonable doubt that Deangelo knew that, one, KC had a gun;
18 and, two, KC was going to use it, beyond a reasonable doubt,
19 you must find not guilty on the with a deadly weapon portion
20 in your verdict form.

21 And then, of course, all the prosecution evidence
22 was the same. Rontae said he never saw a weapon on KC.
23 Deangelo said he didn't know KC had a weapon. Deangelo said
24 to Anabel he didn't know KC had a weapon when he brought him.
25 Deangelo said to police he didn't know KC had a weapon.

1 Deangelo says over and over it was supposed to be a beating
2 and not a killing, so even if he knew there was a weapon, even
3 if you think he knew KC always carried a weapon, if it was
4 just supposed to be a beating, he has to know beyond a
5 reasonable doubt that KC was going to use the weapon too. So
6 even on this section the prosecution's not proving beyond a
7 reasonable doubt as to Deangelo that a deadly weapon was used.

8 Now, the last thing I want to say before I wrap up,
9 because again, you know, the prosecution's about to get back
10 up here and they're going to talk to you one more time and
11 then make whatever final arguments they think they need to
12 make at this point, but I can't get back up and comment on it,
13 so here's what I want to leave you with. This is what I want
14 you to really think about because this is the crux of the
15 case, and it all deals with what I said, specific intent,
16 corroboration.

17 I know Deangelo gave conflicting versions of events.
18 Unlike the prosecution, I'm telling you that he gave two
19 versions of events. I'm not harping on three lines of a two
20 and a half hour hearing. I'm talking about the entire
21 meeting. We know he gave conflicting versions of events, but
22 don't let the prosecution pick and choose the parts that they
23 like and say, see, we corroborated it, therefore, it's beyond
24 a reasonable doubt. Don't let them say, hey, any evidence
25 that you heard that happens to help the prosecution, please

1 take it into consideration, and any evidence that we presented
2 to you that happens to help the defense, please ignore it.
3 Don't let them do that in any form of any good fancy argument.
4 Don't let them do it. It's disingenuous.

5 Hold them to the choices that they made with the
6 witnesses that they called and the evidence that they
7 presented and the way that they chose to present it. Hold
8 them to this. And if you're thinking, like I said earlier, if
9 you're thinking -- aren't you doing the same thing, defense,
10 aren't you saying there's two versions of events and please
11 just take my events seriously? That's where I want to be
12 clear. That's not what I'm doing. That's not. The defense
13 has no burden, the prosecution does. We have none.

14 If the defense presents to you two versions of
15 events that are corroborated, and all of their witnesses agree
16 that it was corroborated, all of them, if they present
17 evidence of two versions of events that are corroborated, then
18 they have not met their burden. They have to show one thing
19 beyond a reasonable doubt, Deangelo's specific intent. That's
20 what they have to show. But if they say, here's evidence that
21 specific intent was to kill, here's evidence that it was to
22 beat really bad, here's evidence that it was to beat, here's
23 evidence that it was to commit a minor battery and so forth,
24 they've proven nothing, absolutely nothing. So it's
25 disingenuous to say only look at the parts that help us and

1 ignore the stuff that doesn't. The defense isn't doing that.
2 The prosecution has a burden and the defense has none at all.

3 If they've corroborated two versions of an event,
4 you must give Deangelo the benefit of the doubt. Look at
5 instruction. You must give the benefit of the doubt and
6 convict him of conspiracy to commit battery. That's what he
7 did. You must give him the benefit of the doubt and convict
8 him of manslaughter. That's what he did. No matter what they
9 argue, their evidence is what shows you this. Their evidence
10 leads to this.

11 Instructions 22 and 26, they use the word must, and
12 I know you're going to go back and look at it, not can, not
13 should, you must find guilty of these if it has not been
14 proven beyond a reasonable doubt which version of events is
15 true.

16 now, in the end, I know I stood here for a long
17 time, but this case is about three things, specific intent --
18 really that's all it's about -- corroboration and credibility.
19 What corroboration was there, what's this Deangelo's head.
20 When you deliberate, please think about any piece of evidence
21 that you look at and say, does this tend to prove beyond a
22 reasonable doubt that Deangelo intended anything? Did they
23 ever get into Deangelo's head and tell you what he intended?
24 Did they really ever do it? Did Deangelo show you
25 corroborating evidence through their evidence that maybe it

1 wasn't supposed to be a killing? Is there room for reasonable
2 doubt? Of course there is.

3 Ask why the prosecution called Rontae Zone when you
4 go back there and talk about Rontae Zone. Please ask why,
5 because there's no case for what's in Deangelo's head, so you
6 have to put on somebody like that and hope it doesn't
7 backfire.

8 You can think about why Anabel wasn't called. I'm
9 not going to speculate as to what she would have said, except
10 we know exactly what she would have said from the tape.
11 Beyond that, I'm not going to speculate. But you can think
12 about what they choose to tell you, what they chose not to
13 tell you, when they chose to tell it to you, and how. But
14 they did chose to present to you Anabel Espindola,
15 coconspirator, all on tape, and they chose to present it to
16 you with Deangelo making this tape for the police, cooperating
17 and saying that -- maybe a personal, selfish motive -- I will
18 prove to you what I just said is true. Hey, Anabel we took
19 care of him. What are you mad at? And Anabel says, It was
20 supposed to be -- what are you talking about? It was supposed
21 to be a beating, not a killing. That's the evidence they
22 presented to you.

23 What was in Deangelo's head? If look at the
24 prosecution's case, you have no idea. First-degree murder is
25 a specific intent crime. The State has not proven beyond a

1 reasonable doubt what Deangelo's specific intent was as it
2 applies to a killing, as it applies to lying in wait, you must
3 find him not guilty of first-degree murder.

4 Deangelo is guilty. He absolutely is guilty of
5 something, and that's what we're asking you to do. Find him
6 guilty of what he should have been charged with in the first
7 place. He conspired to commit battery, commit a manslaughter.
8 That's what your instructions tell you you must do. This is
9 justice in this case. Other defendants will get their own
10 justice, but as to Deangelo Carroll, that's justice. That's
11 what he did.

12 Thank you.

13 THE COURT: All right. Thank you, Mr. Bunin.

14 Mr. DiGiacomo.

15 MR. DIGIACOMO: Thank you.

16 STATE'S REBUTTAL ARGUMENT

17 MR. DIGIACOMO: You know, every trial is about the
18 truth, right? Just like the detective says, it's about the
19 truth. Five years and five days later, Timothy Hadland,
20 justice for Timothy Hadland, justice for executing your
21 friend, is involuntary manslaughter. Well, first of all,
22 Mr. Bunin, in his argument to you, I know he read you a couple
23 of lines from the jury instructions, he kind of skipped over
24 the law as it relates to involuntary manslaughter.

25 Because even if you were to believe absolutely

1 everything Mr. Bunin told you, absolutely every single word he
2 told you, you missed the law. See, because when you commit a
3 conspiracy to commit battery, the law tells you the exact same
4 thing that Mr. Bunin did, because I wrote it down, and he
5 went, well, something he said is true. Sometimes stuff like
6 this happens, right? That's what he said. Hey, he meant to
7 commit a battery and sometimes stuff like this happens. Well,
8 the law says if you conspire to commit a battery and it's a
9 natural and probable or foreseeable -- that someone's going to
10 die, you're already guilty of second-degree murder.

11 Don't make this a contest. They get up and say
12 involuntary. We get up and say first-degree murder. You guys
13 negotiate down the middle somewhere, second-degree murder.

14 As a matter of legal analysis alone, he can be
15 guilty of nothing less than second-degree murder. But it
16 would be a travesty of justice if you did anything less than
17 the truth, the absolute truth.

18 Now, let's talk about what that truth is. I mean,
19 because I'm standing up here five years and four days or five
20 days later and I'm thinking to myself, oh, my God, I've got an
21 hour confession from the defendant. And the defense
22 attorney's arguing involuntary manslaughter. I've got a guy
23 lying on the side of the road where the first shot entered the
24 side of his face and came up to the side of his head just like
25 he was standing this way facing the driver. And then the

1 second shot is angled sharply from his ear up to the top of
2 his head as he put the cu de gra to his head.

3 And you say to yourself, oh, that's involuntary
4 manslaughter because, hey, he didn't know. He didn't know
5 that Kenneth Counts might do the shooting, despite the fact
6 that he talked about it for an hour. He talked about it for
7 an hour. How many criminal defendants -- let me rephrase
8 that. He says, believe my client is lying to the police when
9 he says, they ordered me to kill him, so I killed him. What's
10 his motivation for saying, yes, I'm guilty of first-degree
11 murder to the police? Why does he falsely say that? Were
12 they beating him with rubber hoses? Were they pulling out his
13 fingernails at the time?

14 Detective Wildemann is sitting there having a
15 conversation like you would have with somebody across your
16 desk. It is a calm, cool, collected conversation. So let's
17 talk about why it is Deangelo did what he did and then let's
18 talk about there's not a single shred of corroboration of a
19 battery. When Mr. Bunin says things to you, don't take what
20 he says. In fact, don't take what I say, and don't take what
21 Mr. Pesci says. Watch the tape, listen to the wires, go over
22 the evidence and I challenge you to find a single shred of
23 evidence that says that this case was going to be a beating.

24 And when you get to that point, you're not going to
25 find a single shred of evidence. You will hear Anabel say, we

1 just wanted him beat, but Mr. Carroll, in his entire statement
2 to the police, every time says they wanted him killed. What
3 he says at one point, which is an hour and 48 minutes in, by
4 the way, after he's agreed three times to wear a wire to prove
5 it's a murder for hire, by the way, not, I'm wearing a wire to
6 prove that I thought it was supposed to be a beating. He
7 says, I'm going to wear a wire to prove this is a murder for
8 hire. And then later -- and we'll talk about why he gets
9 there later. He says, I just meant it to be a beating.

10 But then when Detective Wildemann confronts him
11 about, what do you mean it was just a beating, you told me for
12 an hour and a half that this was supposed to be a killing, you
13 kept saying this is a killing, this is a killing, this is a
14 killing, do you know what he says? Not, well, you know, KC
15 went crazy. He goes well, no, actually I only wanted it to be
16 a beating, but when I told Kenneth Counts, the black keystone
17 gangster who will pop somebody's noodle if the money is right,
18 a guy who just, quote, don't give a fuck, that guy, I said,
19 Mr. H wants somebody dealt with, taken care of.

20 And go through the entire two hours and 34 minutes.
21 Find yourself where in there Deangelo Carroll says, well, I
22 told KC it was supposed to be a beating and he went crazy.
23 Find in there in a single spot he says it. At one point he
24 minimizes his behavior and he says, I only wanted it to be a
25 beating, but this isn't about motive, what he wanted. It's

1 about what he did, what he knew, what he intended. He knew
2 Timothy Hadland was going to be killed. Whether he wanted to
3 do it or not do it, go back to the evidence.

4 Let's talk about Rontae Zone. Look, I wish I could
5 pick my witnesses. I wish to God, Mother Theresa decided to
6 get into a car with three other thugs to go out and commit a
7 homicide. It doesn't happen very often. I don't get to
8 choose them. Rontae Zone isn't my friend. Rontae Zone is his
9 friend. And before we beat up on Rontae Zone too much or beat
10 up on us for calling him, let's talk about a few things that
11 we know about Rontae Zone.

12 They seem to imply that Mr. Pesci and myself should
13 have charged Rontae Zone with murder or something else but
14 Deangelo Carroll, he's innocent, was the words I heard. Okay.
15 Go back to your instruction for a second and let's talk about
16 Rontae Zone.

17 Look, Rontae Zone says, I was a knowing spectator,
18 right? That's what he says. I knew it was going to happen, I
19 didn't want to help, didn't really want to go, but I went
20 anyways. I watched it happened. That's his story. Now, as a
21 prosecutor, that may be wrong, that may not be true. They're
22 suggesting I should prosecute him when I have an hour and a
23 half confession of a guy that says it was a killing and
24 they're up here arguing he's innocent.

25 What does Deangelo Carroll say to the police?

1 Rontae Zone had nothing to do with it. But I'm not telling
2 you you should buy what Rontae Zone said on the stand. What I
3 would suggest to you is what he said to the police when he had
4 no time to manufacture a story with Mr. Carroli might be
5 something that's relevant for you to look at, right? Because
6 if the only thing he heard from Mr. Carroll was, you tell the
7 truth or we're all going to jail, and then he gets driven down
8 to the police station, what does he tell the police? Mr. H
9 wanted the guy dealt with. It was going to be a murder. TJ
10 was going to be shot. It wasn't a beating. It wasn't a
11 robbery.

12 Jay Jay had a 22. Deangelo Carroll gave Jay Jay the
13 22.

14 What else does he say? That they drove back to the
15 Palomino Club, that Kenneth Counts got paid \$6,000, but I got
16 nothing, Jayson got nothing. What does Mr. Carroll say? He's
17 got nothing. If this was just a beating, why is it that the
18 story out of Rontae Zone's mouth -- why does he say it's a
19 murder for hire within moments of the cops first contacting
20 him? I'm not telling you that what Rontae did from the stand
21 was not despicable from every reasonable human being's point
22 of view, but that's not the reason he gets called. He gets
23 called because he couldn't have manufactured what he told the
24 police that day that perfectly matches the story that Deangelo
25 Carroll tells the police during that hour and a half, that

1 hour and 48 minutes before he finally goes, oh, wait, wait, I
2 didn't mean for him to die. That's the reason that Rontae
3 Zone gets call. Okay.

4 Well, what else do you have? Well, we've already
5 talked about you have the two shots. You have the car exactly
6 in position where the car should be. You have the sliding
7 door open. You have Mr. Carroll speaking to the person when
8 he gets shot, right? All of that corroborates the hour and 48
9 minutes before that he's talking about.

10 What else do you know? Mr. Carroll says this --
11 okay. Let me start over. Mr. Carroll says, I had nothing to
12 do with this, the story that allegedly Anabel and Mr. H
13 provided him. I had nothing to do with this. I was making
14 these phone calls on my deck. My son was sick. I had nothing
15 to do with it.

16 Now, you've got to remember, though, the next
17 statement he says to him is, okay, well, we're kind of
18 smelling that maybe you're not telling us the truth, and then
19 he says, okay, fine, I drove out there, but I never got a hold
20 of him. So then they say, okay, well, that can't totally be
21 true. Okay, fine, you know, it was a robbery. KC did it. So
22 he's going to accuse KC of first-degree murder, capital
23 murder. He was going to do a robbery, but then, you know, I
24 didn't want him to, but he just killed the guy.

25 And then listen at the very end of his statement

1 because I don't want you to walk back there and just go, hey,
2 he confessed, let's hit him for first-degree murder, let's
3 move on. Actually, I want you to do a little search for the
4 truth. What really happened? Because listening to what he
5 says at the end of the first hour -- it's about 40-some odd
6 minutes in, 49 minutes or so in, they say, we got to take the
7 van. And he says, well, I don't want anybody at work to know
8 that I've told you guys anything. And they say, hey, look,
9 I'm sorry, but we've got to take the van. I'm sorry. And
10 then they leave the room and it's 20 minutes.

11 And what's Deangelo Carroll thinking at that point,
12 right? And I think there was some, you know, the elephant in
13 the room. Why is Deangelo Carroll charged with murder when he
14 was helping the police? Well, he committed murder, right.
15 You know, TJ Hadland doesn't get justice because he happened
16 to confess. That's the way it works? No. But he's sitting
17 in his room and he's thinking. And he's thinking and he's
18 thinking and the cops walk back in the room and there wasn't
19 any pressure by the cops at that point. They walked back in
20 the room and they say, hey, we're going to talk a little bit
21 more. And he goes, well, there's a lot more to tell you. And
22 they say, well, yeah, we know you are. And they're still
23 thinking about the -- KC and it's a robbery gone bad and all
24 this other stuff. And what does he say?

25 Without prompting, it was a hit. Mr. H committed a

1 hit. Jay Jay, Rontae, he had nothing to do with it. What's
2 he thinking in his mind at this point, right? He's thinking,
3 uh-oh, they go take the van, they're going to realize that
4 they're implicated and now I've got to be the first guy to the
5 trough. That's what he's thinking.

6 And then he tells his story and then he's acting
7 like, oh, well, you know -- he doesn't really act like he's
8 really upset his friend's dead, but he says it on other
9 occasions. First he says, and I will suggest to you that this
10 isn't the truth, he says the first contact he has, the first
11 time he -- that there's any conspiracy is Little Lou calling
12 him. Now, he says it's on a walkie-talkie. You know from the
13 records it's not. He is in his living room. It is on a
14 phone. It's on a phone line. And he says, bring baseball
15 bats and garbage bags.

16 And Mr. Bunin got up here and said every witness
17 corroborates that. Actually, I can't think of a single
18 witness that corroborates that. Rontae Zone said that
19 didn't -- he doesn't know anything about baseball bats and
20 garbage bags and other witnesses we called don't know anything
21 about baseball bats and garbage bags, but that's the first
22 thing that was said, according to Mr. Carroll.

23 What do you know that's kind of a little strange?
24 You know that Rontae and Jayson are with Deangelo Carroll from
25 the moment that they start working between 5:00 and 6:00 at

1 night at the Palomino Club. You know it's daytime. You know
2 that Deangelo Carroll has talked to Jayson and Rontae about
3 dealing with a guy and you know he's provided a .22 caliber
4 gun to Jayson Taoipu. And, weird, you know that Deangelo
5 Carroll earlier that day, like he tells the police, has
6 already seen Kenneth Counts.

7 And he didn't go over there in the white van and he
8 didn't go over there with Rontae Zone. According to
9 Mr. Carroll, he goes to see Kenneth Counts with Jayson Taoipu
10 being driven by his uncle's girlfriend Felicia and he says to
11 him, my boss wants somebody handled. He just got lucky that
12 at 7:42 that night he gets a phone call going, hey,
13 somebody -- I want somebody handled? What, he just got lucky
14 earlier in the day that he did that? It corroborates not just
15 Rontae Zone, that the conversation happens earlier, but it
16 also indicates that even when he's talking to the police after
17 this initial interview, he's not being fully truthful to you.

18 And then you go back and look at the phone records.
19 He's calling Anabel early in the afternoon, 2:00, 3:00 in the
20 afternoon. He's calling Anabel again from his home phone.
21 It's not them calling him. It's him calling them and having
22 the conversation. This story of, we wanted TJ hurt, okay,
23 within five minutes I walk out of the club, I go get Kenneth
24 Counts and I drive out there to kill him, that's not the whole
25 truth. Look at the statement and ask yourself what really

1 happened.

2 What else do you know? You know that Little Lou
3 wants this guy done and you hear on the wire, he says, I told
4 you to take care of TJ, and then you went off and got KC.
5 What were you thinking? I told you. That was your job to go
6 do that, right?

7 Well, what else does he say? Mr. Carroll says, I go
8 in without Jayson and Rontae to the Palomino Club, and he's
9 consistent on the story every time. At first he wanted him
10 hurt real bad and then he told me, Do what it takes to knock
11 him off, kill him. That's his story. And even later on when
12 the entire statement is over, he never deviates from that.
13 The order is to kill. That's it. That's all he says.

14 What else do you know? Despite what Mr. Bunin said,
15 you can count four separate times before a minute and 48 where
16 he acknowledges that he tells KC the order is a killing, four
17 separate times. So let me get this straight. Deangelo
18 Carroll, who's just an innocent guy, is going to manufacture a
19 capital murder case against Little Lou, Anabel Espindola, KC
20 Counts. He doesn't really implicate Jayson and Rontae. But
21 you know what? He's really kind of innocent.

22 What does he say? He says, I didn't want to do it.
23 I didn't want it on my conscience so I went and got KC, one
24 time. He says another time that he wanted him knocked off and
25 he told me to tell dude whatever it is he needed to do to take

1 him out. So I went and got KC. He says it four separate
2 times. And they ask him -- and I would dispute with some of
3 the suggestion in this case that Detective Vaccaro gets him to
4 change his story. Actually, Detective Vaccaro comes in the
5 room, he says, how am I going to prove it. He says, I'll wear
6 a wire. And what he offers to wear a wire for is that Kenneth
7 Counts said, quote, I pop a -- and the word's noodle, if the
8 money was right. It's still a killing at that point.

9 It's not until Detective Vaccaro says this, this
10 only, that causes him to change his mind: So you're telling
11 me that you loaded up a car with four thugs and you knew your
12 friend was going to get killed out there and you lured your
13 friend out there to that location and you drove the guys out
14 there to kill? And at that moment you could see the look on
15 Deangelo Carroll's face. Uh-oh, I'm no trouble. And then he
16 starts trying to minimize his behavior, but even at the end of
17 it, he even acknowledges he never told Kenneth Counts to beat
18 him.

19 So then let's talk about the wires. Look, the
20 suggestion from the defense was that there was something wrong
21 with what the police were doing. Okay. Deangelo Carroll has
22 just accused a business owner and two managers of a
23 business -- you may not like the business, but it's a
24 business -- of being involved in a capital murder for hire.
25 That's what he's just done.

1 Now, the police could say, you know what, we're not
2 going to go and investigate this any farther. We're just
3 going to throw you in jail and we're just going to prosecute
4 you for it, or they can do their job, which is to determine
5 the truth. So when Mr. Carroll offers to wear the wire, what
6 are they supposed to say, no, I'm sorry, you're going to be a
7 defendant in this case so we're not going to put a wire on
8 you? No, they do what any reasonable person does in
9 investigating a case. They put a recording device on him and
10 they send him in the room.

11 And Mr. Bunin repeatedly says that those recordings
12 somehow prove that it's a beating. Really? Well, if that
13 were true, why didn't Deangelo Carroll walk in and say, hey,
14 you guys wanted this guy beat, I know KC went nuts, but look,
15 we've got problems. That's not what he says. He says, You
16 wanted him done, we did him. Now you're going to have to pay
17 the consequences.

18 And Anabel's reaction is exactly what her reaction
19 was when he told the police her action was. When he came back
20 to that Palomino in his statement, and this never changes in
21 his entire statement, he says, hey, KC shot, dude. Mr. H
22 said, I just want him beat, and Deangelo Carroll says, that's
23 not what you said. And Anabel doesn't want to pay the money
24 and they order Anabel to go get the money.

25 Look, when she says on that recording, we just

1 wanted him beat, whether or not Anabel thought it was going to
2 be a killing or not isn't really a question for this jury, but
3 it's consistent with exactly what he said in his statement
4 which is, that's not what you said. That in no way
5 corroborates Deangelo Carroll.

6 And when they talk about, well, KC just went off on
7 his own, find in there where he says, well, we were just going
8 to beat the guy but then KC went nuts and he shot him. That's
9 not what it says on the wire. Listen to the wire. He says,
10 we were going to call it quits and KC went nuts and still shot
11 the dude. He didn't say anything about a beating on there at
12 all.

13 And listen to the rest of the recording of Anabel
14 saying, not, we wanted a beat. Anabel was talking about, how
15 could you be so stupid, you have that many eyes on your ass.
16 And, you know, why would you do that?

17 But most importantly is on the 24th because the
18 24th -- Mr. Bunin didn't even ask about it or didn't even talk
19 about it. How is that possible if Deangelo Carroll's mind set
20 was I just wanted a beating? Because what does he say to
21 Anabel? Remember in his statement what he told the police
22 was, Anabel called me when we were halfway out there and she
23 said -- well, he says two things. First, in his first part of
24 the statement, he says, after it was over, Anabel called me
25 and said she just wanted him beat, but it was too late.

1 Remember that, when he says that to you -- or says that to the
2 detectives?

3 And then later on when they're pinning him down on
4 specifics, he says, I received a phone call from Anabel
5 Espindola and she says, if he's alone, do him. If he's with
6 anybody else, fuck him up and fuck up whoever he's with.
7 That's what he says.

8 Now, go to the phone records and look at the phone
9 records because the other thing he says is, you'll find that
10 there's a borrowed cell phone call between myself and Anabel
11 Espindola. Remember that? And his walkie-talkie doesn't
12 work? And then you have Kenneth Counts' cell phone shortly
13 before the murder making a phone call in to Anabel.

14 And remember what happens on the wire afterwards,
15 right. It's not Deangelo saying -- or it's not Anabel saying,
16 if he's with somebody -- or if he's alone, kill him. If he's
17 with somebody, just beat him up. You learn from those wires
18 it's actually Deangelo Carroll relaying that to Anabel. So
19 what you're saying is if he's alone, you still want me to kill
20 him? Her response to that is not, what are you talking about?
21 Her response is -- and he says, you said yeah, and she says, I
22 did not say yeah. Deangelo, I told you to go to plan B, and
23 Deangelo starts pushing on. Yeah, and you said if he was with
24 somebody else, I should just beat him. Deangelo, I told you
25 to go to plan B. I tried to call you and tell you no. I told

1 you no.

2 And then you go to the phone records and you can see
3 exactly what happened in this case. He got the order to kill
4 which was if he's alone, kill him, and he did everything in
5 his power to make sure he was alone. And he collected Kenneth
6 Counts and he drove out there and he killed him.

7 And they want you to say justice for Timothy Hadland
8 is somehow an involuntary manslaughter like he pushed TJ and
9 he hit his head on the curb or he left a firearm around and
10 some kid picked it up and shot himself.

11 MR. BUNIN: I object to that. That's an improper --

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

13 MR. DIGIACOMO: Okay. He wants you to believe that
14 somehow it's just an accident. Oops, sorry, TJ.

15 MR. BUNIN: I object again too, Your Honor.
16 That's -- I know he's just making argument now, but that's
17 absolutely improper. It's not what was argued.

18 MR. DIGIACOMO: That's what involuntary is. It's an
19 accident.

20 MR. BUNIN: Now, that's absolutely out of line.

21 THE COURT: All right.

22 MR. BUNIN: I don't know if we need to approach, but
23 something -- I don't know if we need to have a separate
24 instruction now.

25 THE COURT: Already. No, I don't think we need a

1 separate instruction.

2 And, ladies and gentlemen, of course, you're
3 reminded this is just Mr. DiGiacomo's commentary on what he
4 thinks Mr. Bunin argued or what he remembers. It's your
5 collective recollection of what Mr. Bunin said and what
6 Mr. Bunin's argument is that should control when you think
7 about this. But, of course, neither argument -- or no one's
8 argument is evidence. It's, you know, the testimony and the
9 exhibits.

10 Go on, Mr. DiGiacomo.

11 MR. DIGIACOMO: Thank you.

12 That's involuntary manslaughter. It's an accident
13 that happened in an unlawful manner. That's what he wants you
14 to convict him of.

15 Ladies and gentlemen, I don't want you to just go
16 back there and look at the tape and say, oh, he confessed so
17 he must be guilty. I think it's your duty to go back there
18 and look at the evidence. Go back there, go through the wire
19 recording, go through the physical evidence. Ask yourself how
20 he can't be guilty of a deadly weapon when you know he gave
21 Jay Jay a .22. Ask yourself how he can be less than guilty of
22 first-degree murder when he acknowledges and everybody
23 acknowledges that the order was a killing. That's your duty.

24 And I submit to you that if the group of 12 of you
25 go back to that room and actually look at the evidence in this

1 case, actually focus on the evidence, not what we're saying,
2 look at what the evidence is, that you'll be able to determine
3 the truth because there's at least one person in this room
4 that knows that he intended to kill Timothy Hadland, and I
5 submit to you that if you're doing your job, you'll come back
6 here and you'll tell him that you know too.

7 Thank you.

8 THE COURT: All right. Thank you. The clerk will
9 now charge the officer to take charge of the jury.

10 (Officer sworn)

11 THE COURT: All right. Ladies and gentlemen, in a
12 minute, I'm going to have all 15 of you collect your
13 belongings as well as your notepads and follow Officer Wooten
14 through the rear of the courtroom.

15 As you may already have ascertained, a jury,
16 criminal jury, is composed of 12 members. There are 15 of
17 you. Three of you are the alternates. The alternates were
18 predesignated as Jurors 13, 14, and 15.

19 Ms. Sorto-De-McGough, Mr. Rettinger, and
20 Ms. Rinaldi. I'd like all three of you to also exit the
21 courtroom and provide phone numbers where you could be
22 reached. If, God forbid, one of the regular jurors is not
23 able to fulfill their jury function, you will be called back.
24 For that reason, let me just state that the prohibition on
25 discussing the case or reading anything relating to any

1 subject matter with respect to the case or doing any
2 independent research obviously still pertains and pertains
3 until you've received a phone call from the marshal indicating
4 that your service as a juror has been discharged. So until
5 that time, obviously you are still considered a potential
6 member of the jury and therefore that prohibition still
7 applies.

8 Lunch is in the back for the members of the jury.
9 Obviously the alternates are also welcome to have lunch. The
10 jury cannot begin deliberating until only the 12 of you are in
11 the jury room without the presence of the alternate or any
12 Court staff or anything like that.

13 Having said that, I'd like all of you, once again,
14 to collect your belongings and follow Jeff through the rear
15 door.

16 (Jury recessed to deliberate at 2:08 p.m.)

17 THE COURT: Lawyers, phone numbers where you can be
18 reached.

19 The -- it may still be wrong, but I thought you were
20 suggesting those were like the only ways you could get to an
21 involuntary. That's why I sustained the objection. Response
22 to your snotty comment?

23 MR. DIGIACOMO: What -- well, I was stunned when you
24 said sustained.

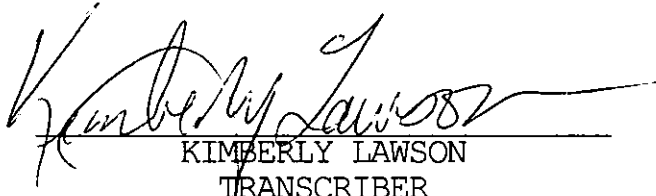
25 THE COURT: That's why I wasn't saying it wasn't

1 involuntary -- right or wrong, that was my rationale. That --
2 it sounded like that was the only things.

3 (Court recessed at 2:09 p.m.)
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ATTEST: I hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.


KIMBERLY LAWSON
TRANSCRIBER

1 INST

2 FILED IN OPEN COURT
3 STEVEN D. OLIVERSON
4 CLERK OF THE COURT

MAY 23 2011 2:05 PM

5 DISTRICT COURT BY, Denise Husted
6 CLARK COUNTY, NEVADA DENISE HUSTED, DEPUTY

7
8 THE STATE OF NEVADA,)

9 Plaintiff,)

10 -vs-)

11 DEANGELO RESHAWN CARROLL,)

12 Defendant.)

CASE NO: C212667

DEPT NO: XXI

13 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. I)

14 MEMBERS OF THE JURY:

15 It is now my duty as judge to instruct you in the law that applies to this case. It is
16 your duty as jurors to follow these instructions and to apply the rules of law to the facts as
17 you find them from the evidence.

18 You must not be concerned with the wisdom of any rule of law stated in these
19 instructions. Regardless of any opinion you may have as to what the law ought to be, it
20 would be a violation of your oath to base a verdict upon any other view of the law than that
21 given in the instructions of the Court.
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If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

An Information is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt and does not create any presumption or permit any inference of guilt.

In this case, it is charged in an Information that on or about the 19th day of May, 2005, the Defendant, DEANGELO RESHAWN CARROLL, having committed the crimes of CONSPIRACY TO COMMIT MURDER (Felony - NRS 200.010, 200.030, 193.165); MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030, 193.165), within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

COUNT 1 - CONSPIRACY TO COMMIT MURDER

Defendant DEANGELO RESHAWN CARROLL, along with co-conspirators KENNETH JAY COUNTS, ANABEL ESPINDOLA, LUIS ALONSO HIDALGO, III and JAYSON TAOIPU did, on or about May 19, 2005, then and there meet with each other and/or Luis Hildago, Jr. and between themselves, and each of them with the other, wilfully, unlawfully, and feloniously conspire and agree to commit a crime, to-wit: the murder of TIMOTHY JAY HADLAND, and in furtherance of said conspiracy, the Defendants and/or their co-conspirators, did commit the act as set forth in Count 2, said acts being incorporated by this reference as though fully set forth herein.

COUNT 2 - MURDER WITH USE OF A DEADLY WEAPON

Defendant DEANGELO RESHAWN CARROLL, along with co-conspirators KENNETH JAY COUNTS, ANABEL ESPINDOLA, LUIS ALONSO HIDALGO, III and JAYSON TAOIPU did, on or about May 19, 2005, then and there wilfully, feloniously, without authority of law, and with premeditation and deliberation, and with malice aforethought, kill TIMOTHY JAY HADLAND, a human being, by shooting at and into the body and/or head of said TIMOTHY JAY HADLAND, with a deadly weapon, to-wit: a firearm, the Defendant being liable under one or more of the following theories of criminal

1 liability, to-wit: (1) by directly or indirectly committing the acts with premeditation and
2 deliberation and/or lying in wait; and/or (2) by aiding and abetting the commission of the
3 crime by, directly or indirectly, counseling, encouraging, hiring, commanding, inducing or
4 otherwise procuring each other to commit the crime, to-wit: by DEFENDANT Luis
5 Hidalgo, III and/or Luis Hidalgo, Jr., procuring Defendant DEANGELO CARROLL to beat
6 and/or kill TIMOTHY JAY HADLAND; thereafter, Defendant DEANGELO CARROLL
7 procuring KENNETH COUNTS and/or JAYSON TAOIPU to shoot TIMOTHY
8 HADLAND; thereafter, Defendant DEANGELO CARROLL and KENNETH COUNTS and
9 JAYSON TAOIPU did drive to the location in the same vehicle; thereafter, Defendant
10 DEANGELO CARROLL calling victim TIMOTHY JAY HADLAND to the scene;
11 thereafter, by KENNETH COUNTS shooting TIMOTHY JAY HADLAND; and/or (3) by
12 conspiring to commit the crime of battery and/or battery with use of a deadly weapon and/or
13 to kill TIMOTHY JAY HADLAND whereby each and every co-conspirator is responsible
14 for not only the specific crime intended, but also for the natural and foreseeable general intent
15 crimes of each and every co-conspirator during the course and in furtherance of the
16 conspiracy.

17 It is the duty of the jury to apply the rules of law contained in these instructions to the
18 facts of the case and determine whether or not the Defendant is guilty of one or more of the
19 offenses charged.
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INSTRUCTION NO. __4__

In this case the Defendant is accused in an Information alleging an open charge of murder. This charge includes and encompasses murder of the first degree, murder of the second degree and involuntary manslaughter.

INSTRUCTION NO. ____5____

Murder is the unlawful killing of a human being, with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

Malice aforethought means the intentional doing of a wrongful act without legal cause or excuse or what the law considers adequate provocation. The condition of mind described as malice aforethought may arise, from anger, hatred, revenge, or from particular ill will, spite or grudge toward the person killed. It may also arise from any unjustifiable or unlawful motive or purpose to injure another, proceeding from a heart fatally bent on mischief or with reckless disregard of consequences and social duty. Malice aforethought does not imply deliberation or the lapse of any considerable time between the malicious intention to injure another and the actual execution of the intent but denotes an unlawful purpose and design as opposed to accident and mischance.

Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof.

Malice may be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.

Murder of the first degree is murder which is perpetrated by means of any kind of willful, deliberate, and premeditated killing. All three elements--willfulness, deliberation, and premeditation--must be proven beyond a reasonable doubt before an accused can be convicted of first-degree murder.

Willfulness is the intent to kill. There need be no appreciable space of time between formation of the intent to kill and the act of killing.

Deliberation is the process of determining upon a course of action to kill as a result of thought, including weighing the reasons for and against the action and considering the consequences of the action.

A deliberate determination may be arrived at in a short period of time. But in all cases the determination must not be formed in passion, or if formed in passion, it must be carried out after there has been time for the passion to subside and deliberation to occur. A mere unconsidered and rash impulse is not deliberate, even though it includes the intent to kill.

Premeditation is a design, a determination to kill, distinctly formed in the mind by the time of the killing.

Premeditation need not be for a day, an hour, or even a minute. It may be as instantaneous as successive thoughts of the mind. For if the jury believes from the evidence that the act constituting the killing has been preceded by and has been the result of premeditation, no matter how rapidly the act follows the premeditation, it is premeditated.

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2 The law does not undertake to measure in units of time the length of the period during
3 which the thought must be pondered before it can ripen into an intent to kill which is truly
4 deliberate and premeditated. The time will vary with different individuals and under varying
5 circumstances.

6 The true test is not the duration of time, but rather the extent of the reflection. A cold,
7 calculated judgment and decision may be arrived at in a short period of time, but a mere
8 unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation
9 and premeditation as will fix an unlawful killing as murder of the first degree.
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Murder which is immediately preceded by lying in wait is murder of the first degree.

The term "lying in wait" is defined as a waiting and watching for an opportune time to act, together with a concealment by ambush or some other secret design to take the other person by surprise. The lying in wait need not continue for any particular period of time provided that its duration is such as to show a state of mind equivalent to premeditation or deliberation.

To constitute murder by means of lying in wait there must be, in addition to the aforesaid conduct by the defendant, an intentional infliction upon the person killed of bodily harm involving a high degree of probability that it will result in death and which shows a wanton disregard for human life.

Although your verdict must be unanimous as to the charge, you do not have to agree on the principle of guilt or theory of liability. Therefore, even if you cannot agree on whether the facts establish wilfull, premeditated and deliberate murder, or lying in wait, or liability as a principle, an aider and abettor or as a co-conspirator, so long as all of you agree that the evidence establishes beyond a reasonable doubt Defendant's guilt of murder in the first degree, your verdict shall be Murder of the First Degree.

All murder which is not Murder of the First Degree is Murder of the Second Degree.

Murder of the Second Degree is:

1. Murder with malice aforethought, but without the admixture of premeditation and deliberation, or

2. An involuntary killing which occurs in the commission of an unlawful act, which, in its consequences, naturally tends to destroy the life of a human being; or

3. An involuntary killing which is committed in the prosecution of a felonious intent.

Involuntary Manslaughter is the killing of a human being, without any intent to do so, in the commission of an unlawful act or a lawful act which probably might produce such a consequence in an unlawful manner; but where the involuntary killing occurs in the commission of an unlawful act, which, in its consequences, naturally tends to destroy the life of a human being, or is committed in the prosecution of a felonious intent, the offense is Murder.

By definition, involuntary manslaughter does not include the use of a deadly weapon in conscious furtherance of a crime.

Battery Resulting In Substantial Bodily Harm and Battery With Use of a Deadly Weapon are felonies. A Battery is a misdemeanor.

A conspiracy is an agreement between two or more persons for an unlawful purpose. To be guilty of conspiracy, a defendant must intend to commit, or to aid in the commission of, the specific crime agreed to. The crime is the agreement to do something unlawful; it does not matter whether it was successful or not.

A person who knowingly does any act to further the object of a conspiracy, or otherwise participates therein, is criminally liable as a conspirator. However, mere knowledge or approval of, or acquiescence in, the object and purpose of a conspiracy without an agreement to cooperate in achieving such object or purpose does not make one a party to conspiracy. Conspiracy is seldom susceptible of direct proof and is usually established by inference from the conduct of the parties. In particular, a conspiracy may be supported by a coordinated series of acts, in furtherance of the underlying offense, sufficient to infer the existence of an agreement.

A conspiracy begins when two or more persons enter into an agreement for an unlawful purpose. A conspiracy to commit a crime does not end upon the completion of the crime. The conspiracy continues until the co-conspirators have successfully gotten away and concealed the crime.

Once a person joins a conspiracy, that person remains a member until he withdraws from it. A person can withdraw from a conspiracy by taking some positive action which disavowed or defeated the purpose of the conspiracy before the object or purpose was completed. It is not enough if the evidence shows that the defendant merely ceased his own activities in furtherance of the conspiracy.

The state has the burden of proving beyond a reasonable doubt the defendant did not withdraw from the conspiracy.

It is not necessary in proving a conspiracy to show a meeting of the alleged conspirators or the making of an express or formal agreement. The formation and existence of a conspiracy may be inferred from all circumstances tending to show the common intent and may be proved in the same way as any other fact may be proved, either by direct testimony of the fact or by circumstantial evidence, or by both direct and circumstantial evidence.

Each member of a criminal conspiracy is liable for each act and bound by each declaration of every other member of the conspiracy if the act or the declaration is in furtherance of the object of the conspiracy.

The act of one conspirator pursuant to or in furtherance of the common design of the conspiracy is the act of all conspirators. Every conspirator is legally responsible for a specific intent crime of a co-conspirator so long as the specific intent crime was intended by the Defendant. A conspirator is also legally responsible for a general intent crime that follows as one of the probable and natural consequence of the object of the conspiracy even if it was not intended as part of the original plan and even if he was not present at the time of the commission of such act.

Specific intent is the intent to accomplish the precise act which the law prohibits. A general intent crime is one that does not require specific intent.

Murder in the First Degree is a specific intent crime. Defendant can not be liable under conspiracy and/or aiding and abetting theory for First Degree Murder for acts committed by a co-conspirator, unless, Defendant also had a premeditated and deliberate specific intent to kill or to lie in wait.

Murder in the Second Degree may be a general intent crime. As such, Defendant may be may liable under conspiracy theory or aiding and abetting theory for Murder of the Second Degree for acts committed by a co-conspirator if the killing is a one of the reasonably foreseeable probable and natural consequences of the object of the conspiracy or the aiding and abetting.

Where two or more persons are accused of committing a crime together, their guilt may be established without proof that each personally did every act constituting the offense charged.

All persons concerned in the commission of a crime who either directly and actively commit the act constituting the offense or who knowingly and with criminal intent aid and abet in its commission or, whether present or not, who advise and encourage its commission, with the intent that the crime be committed, are regarded by the law as principals in the crime thus committed and are equally guilty thereof.

A person aids and abets the commission of a crime if he knowingly and with criminal intent aids, promotes, encourages or instigates by act or advice, or by act and advice, the commission of such crime with the intention that the crime be committed.

The State is not required to prove precisely which defendant actually committed the crime and which defendant aided and abetted.

Where several parties join together in a common design to commit any lawful act, each is criminally responsible for the reasonably foreseeable general intent crimes committed furtherance of the common design. In contemplation of law, as it relates to general intent crimes, the act of one is the act of all. Battery, Battery Resulting In Substantial Bodily Harm and Battery With A Deadly Weapon are general intent crimes. Second Degree Murder can be a general intent crime.

Additionally, a co-conspirator is guilty of the offenses he specifically intended to be committed. First Degree Murder is a specific intent crime.

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2 You are instructed that if you find that the State has established that the defendant has
3 committed conspiracy to commit murder you shall select conspiracy to commit murder as
4 your verdict. You may find the defendant guilty of conspiracy to commit a Battery With a
5 Deadly Weapon and/or Battery Resulting in Substantial Bodily Harm if:

6 1. You have not found, beyond a reasonable doubt, that the defendant is guilty of
7 conspiracy to commit murder, and

8 2. All twelve of you are convinced beyond a reasonable doubt the defendant is guilty
9 of the crime of conspiracy to commit a Battery With a Deadly Weapon and/or Battery
10 Resulting in Substantial Bodily Harm.

11 If you are convinced beyond a reasonable doubt that the crime of conspiracy has been
12 committed by the defendant, but you have a reasonable doubt whether such conspiracy was
13 to commit murder or battery with a deadly weapon, or battery resulting in substantial bodily
14 harm, you must give the defendant the benefit of that doubt and return a verdict of
15 conspiracy to commit a Battery With a Deadly Weapon and/or Battery Resulting in
16 Substantial Bodily Harm.

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2 You are instructed that if you find that the State has established that the defendant has
3 committed conspiracy to commit Battery With a Deadly Weapon and/or Battery Resulting in
4 Substantial Bodily Harm you shall select conspiracy to commit Battery With a Deadly
5 Weapon and/or Battery Resulting in Substantial Bodily Harm as your verdict. You may find
6 the defendant guilty of conspiracy to commit a Battery if:

7 1. You have not found, beyond a reasonable doubt, that the defendant is guilty of
8 conspiracy to commit Battery With a Deadly Weapon and/or Battery Resulting in Substantial
9 Bodily Harm, and

10 2. All twelve of you are convinced beyond a reasonable doubt the defendant is guilty
11 of the crime of conspiracy to commit a Battery.

12 If you are convinced beyond a reasonable doubt that the crime of conspiracy has been
13 committed by the defendant, but you have a reasonable doubt whether such conspiracy was
14 to commit battery with a deadly weapon, or battery resulting in substantial bodily harm, or
15 battery you must give the defendant the benefit of that doubt and return a verdict of
16 conspiracy to commit a Battery.

Battery means any willful and unlawful use of force or violence upon the person of another.

A battery which occurs with a deadly weapon is a felony.

A battery which results in substantial bodily harm is a felony.

"Substantial bodily harm" means:

1. Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ; or

2. Prolonged physical pain.

A battery which occurs without a deadly weapon or does not result in substantial bodily harm is a misdemeanor.

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2 Mere presence at the scene of the crime and knowledge that a crime is being
3 committed are not sufficient to establish that the defendant aided and abetted the crime,
4 unless you find beyond a reasonable doubt that the defendant is a participant and not merely
5 a knowing spectator. However, the presence of one at the commission of a crime of another
6 is evidence which can be considered in determining whether or not he is guilty of aiding or
7 abetting, as well as the defendant's presence, companionship, and conduct before, during and
8 after the participation in the criminal act.
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2 You are instructed that if you find that the State has established that the defendant has
3 committed first degree murder you shall select first degree murder as your verdict. The crime
4 of first degree murder includes the crime of second degree murder. You may find the
5 defendant guilty of second degree murder if:

6 1. You have not found, beyond a reasonable doubt, that the defendant is guilty of
7 murder of the first degree, and

8 2. All twelve of you are convinced beyond a reasonable doubt the defendant is guilty
9 of the crime of second degree murder.

10 If you are convinced beyond a reasonable doubt that the crime of murder has been
11 committed by the defendant, but you have a reasonable doubt whether such murder was of
12 the first or of the second degree, you must give the defendant the benefit of that doubt and
13 return a verdict of murder of the second degree.

You are instructed that if you find that the State has established that the defendant has committed murder you shall select the degree murder as your verdict. The crime of murder includes the crime of involuntary manslaughter. You may find the defendant guilty of involuntary manslaughter murder if:

1. You have not found, beyond a reasonable doubt, that the defendant is guilty of murder, and

2. All twelve of you are convinced beyond a reasonable doubt the defendant is guilty of the crime of involuntary manslaughter.

If you are convinced beyond a reasonable doubt that a crime has been committed by the defendant, but you have a reasonable doubt whether such crime was murder or involuntary manslaughter, you must give the defendant the benefit of that doubt and return a verdict of involuntary manslaughter.

INSTRUCTION NO. __27__

You are instructed that if you find a defendant guilty of Murder of the First Degree, or Murder of the Second Degree, you must also determine whether or not a deadly weapon was used in the commission of this crime.

"Deadly weapon" means any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death; or, any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.

You are instructed that a firearm is a deadly weapon.

If more than one person commits a crime, and one of them uses a deadly weapon in the commission of that crime, each may be convicted of using the deadly weapon even though he did not personally himself use the weapon.

An unarmed offender "uses" a deadly weapon when the unarmed offender is liable the offense, another person liable to the offense is armed with and uses a deadly weapon in the commission of the offense, and the unarmed offender had knowledge of the use of the deadly weapon.

To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

The Defendant is presumed innocent until the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every material element of the crime charged and that the Defendant is the person who committed the offense.

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2 A reasonable doubt is one based on reason. It is not mere possible doubt but is such a
3 doubt as would govern or control a person in the more weighty affairs of life. If the minds of
4 the jurors, after the entire comparison and consideration of all the evidence, are in such a
5 condition that they can say they feel an abiding conviction of the truth of the charge, there is
6 not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or
7 speculation.

8 If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a
9 verdict of not guilty.
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It is a constitutional right of a defendant in a criminal trial that he may not be compelled to testify. Thus, the decision as to whether he should testify is left to the defendant on the advice and counsel of his attorney. You must not draw any inference of guilt from the fact that he does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

INSTRUCTION NO. __34__

You are here to determine the guilt or innocence of the Defendant from the evidence in the case. You are not called upon to return a verdict as to the guilt or innocence of any other person. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the Defendant, you should so find, even though you may believe one or more persons are also guilty.

In arriving at a verdict in this case as to whether the defendant is guilty or not guilty, the subject of penalty or punishment is not to be discussed or considered by you and should in no way influence your verdict. If your verdict is Murder in the First Degree, you will, at a later hearing, determine the issue of penalty or punishment.

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

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2 Whenever there is slight evidence that a conspiracy existed, and that the defendant
3 was one of the members of the conspiracy, then the statements and the acts by any person
4 likewise a member may be considered by the jury as evidence in the case as to the defendant
5 found to have been a member, even though the statements and acts may have occurred in the
6 absence and without the knowledge of the defendant, provided such statements and acts were
7 knowingly made and done during the continuance of such conspiracy, and in furtherance of
8 some object or purpose of the conspiracy.

9 This holds true, even if the statement was made by the co-conspirator prior to the time
10 the defendant entered, or withdrew from, the conspiracy, so long as the co-conspirator was a
11 member of the conspiracy at the time.

12 An adoptive admission is a statement of which a listener has manifested his adoption or
13 belief in its truth.
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The flight of a person immediately after the commission of a crime, or after he is accused of a crime, is not sufficient in itself to establish his guilt, but is a fact which, if proved, may be considered by you in light of all other proved facts in deciding the question of his guilt or innocence. Whether or not evidence of flight shows a consciousness of guilt and the significance to be attached to such a circumstance are matters for your deliberation.

The conviction shall not be had on the testimony of an accomplice unless he is corroborated by other evidence which in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense; and the corroboration shall not be sufficient if it merely shows the commission of the offense or the circumstances thereof.

An accomplice is hereby defined as one who is liable for prosecution, for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given.

To be an accomplice, the person must have aided, promoted, encouraged, or instigated by act or advice the commission of such offense with knowledge of the unlawful purpose of the person who committed the offense.

To corroborate the testimony of an accomplice there must be evidence of some act or fact related to the offense which, if believed, by itself and without any aid, interpretation or direction from the testimony of the accomplice, tends to connect the defendant with the commission of the offense charged.

However, it is not necessary that the evidence of the corroboration be sufficient in itself to establish every element of the offense charged, or that it corroborate every fact to which the accomplice testifies.

In determining whether an accomplice has been corroborated, you must first assume the testimony of the accomplice has been removed from the case. You must then determine whether there is any remaining evidence which tends to connect the defendant with the commission of the offense.

If there is not such independent evidence which tends to connect the defendant with the commission of the offense, the testimony of the accomplice is not corroborated.

NSTRUCTION NO. __41__

The determination of whether someone is an accomplice is left to the jury to decide, unless the witness' own statement leaves no doubt that he is subject to prosecution for the charged crime.

The accomplice corroboration rule is a separate and distinct legal requirement from the statements of a co-conspirator made in the course of and in furtherance of a conspiracy. When an accomplice testifies, their testimony must be corroborated. The other evidence in the case, including co-conspirator statements in the course and in furtherance of the conspiracy, may be evidence utilized to establish the corroboration.

INSTRUCTION NO. __43__

The credibility or believability of a witness should be determined by his manner upon the stand, his relationship to the parties, his fears, motives, interests or feelings, his opportunity to have observed the matter to which he testified, the reasonableness of his statements and the strength or weakness of his recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

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2 Although you are to consider only the evidence in the case in reaching a verdict, you
3 must bring to the consideration of the evidence your everyday common sense and judgment
4 as reasonable men and women. Thus, you are not limited solely to what you see and hear as
5 the witnesses testify. You may draw reasonable inferences from the evidence which you feel
6 are justified in the light of common experience, keeping in mind that such inferences should
7 not be based on speculation or guess.

8 A verdict may never be influenced by sympathy, prejudice or public opinion. Your
9 decision should be the product of sincere judgment and sound discretion in accordance with
10 these rules of law.
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2 When you retire to consider your verdict, you must select one of your number to act
3 as foreperson who will preside over your deliberation and will be your spokesperson here in
4 court.

5 During your deliberation, you will have all the exhibits which were admitted into
6 evidence, these written instructions and forms of verdict which have been prepared for your
7 convenience.

8 Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it
9 signed and dated by your foreperson and then return with it to this room.
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INSTRUCTION NO. ~~48~~ 47

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN:

DISTRICT JUDGE

1 VER

2 ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

2011 12 27 2:05 pm

5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

Denise Husted
DENISE HUSTED, DEPUTY

7 THE STATE OF NEVADA,)

8 Plaintiff,)

9 -vs-)

10 DEANGELO RESHAWN CARROLL,)

11 Defendant.)

CASE NO: C212667

DEPT NO: XXI

12
13 VERDICT

14 We, the jury in the above entitled case, find the Defendant DEANGELO RESHAWN
15 CARROLL, as follows:

16 COUNT 1 – CONSPIRACY TO COMMIT MURDER

17 *(please check the appropriate box, select only one)*

18 ☒ Guilty of Conspiracy To Commit Murder

19 ☐ Guilty of Conspiracy To Commit A Battery With A Deadly Weapon or
20 Battery Resulting In Substantial Bodily Harm

21 ☐ Guilty of Conspiracy To Commit A Battery

22 ☐ Not Guilty

1 We, the jury in the above entitled case, find the Defendant DEANGELO RESHAWN
2 CARROLL, as follows:

3 **COUNT 2** – MURDER WITH USE OF A DEADLY WEAPON

4 *(please check the appropriate box, select only one)*

- 5 ☒ Guilty of First Degree Murder With Use of a Deadly Weapon
6 ☐ Guilty of First Degree Murder
7 ☐ Guilty of Second Degree Murder With Use of a Deadly Weapon
8 ☐ Guilty of Second Degree Murder
9 ☐ Guilty of Involuntary Manslaughter
10 ☐ Not Guilty

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13 DATED this 25 day of May, 2010

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15 FOREPERSON
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IN THE SUPREME COURT OF THE STATE OF NEVADA

DEANGELO CARROLL,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Supreme Court Case No. 78081

APPELLANT'S APPENDIX

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 30th day of May, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Steven Wolfson, Clark County District Attorney's Office

Aaron Ford, Nevada Attorney General

Jamie J. Resch, Resch Law, PLLC d/b/a Conviction Solutions

By: 

Employee, Resch Law, PLLC d/b/a Conviction Solutions