

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
Clerk of Supreme Court
Supreme Court Case No. 78081

APPELLANT'S APPENDIX VOLUME 11 OF 13 PAGES 2152-2366

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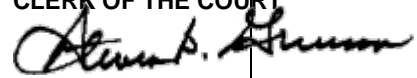
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1 **EXHS**

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11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 DEANGELO R. CARROLL,

14 Petitioner,

15 vs.

16 THE STATE OF NEVADA,

17 Respondent.

Case No.: C212667-4

Dept. No: XXI

**PETITIONER'S EXHIBITS IN SUPPORT OF
SUPPLEMENT TO POST-CONVICTION WRIT
OF HABEAS CORPUS**

Date of Hearing: Nov. 15, 2018

Time of Hearing: 9:30 a.m.

18 COMES NOW Petitioner, Deangelo Carroll, by and through appointed counsel, Jamie J.
19 Resch, Esq., and hereby submits his Exhibits in Support of Supplement to Post-Conviction Writ
20 of Habeas Corpus.

21 Dated this 31st day of August, 2018.

22 Submitted By:

23 RESCH LAW, PLLC d/b/a Conviction Solutions

24 By:

25 JAMIE J. RESCH

26 Attorney for Petitioner

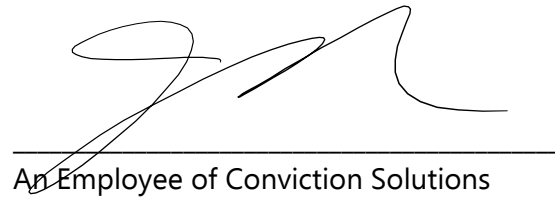
CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Resch Law, PLLC d/b/a Conviction Solutions and that, pursuant to N.R.C.P. 5(b), on August 31, 2018, I served a true and correct copy of the foregoing Exhibits in Support of Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) via first class mail in envelopes addressed to:

Clark County District Attorney
200 Lewis Ave.
Las Vegas, NV 89155

and via Wiznet's electronic filing system, as permitted by local practice to the following person(s):

Steven B. Wolfson
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An Employee of Conviction Solutions

ORIGINAL

FILED IN OPEN COURT
FEB 04 2008

CHARLES J. SHORT
CLERK OF THE COURT

) CASE NO. C21266

DENISE HUSTED ^{DEPUTY}

)

)

1

Excerpt of Proceedings
Testimony of Rontea Zone

APPEARANCES:

FOR THE STATE:

MARK DIGIACOMO, ESQ.
Deputy District Attorney
GIANCARLO PESCI, ESQ.
Deputy District Attorney

FOR THE DEFENDANT:

BRET WHIPPLE, ESQ.
KRISTINA WILDEVELD, ESQ.

RECORDED BY: JANIE OLSEN, COURT RECORDER

TRANSCRIBED BY: KARReporting and Transcription Services

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I N D E X

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RONTAE ZONE

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1 LAS VEGAS, NEVADA, FRIDAY, FEBRUARY 1, 2008, 9:50 A.M.

2 (PORTIONS OF PROCEEDINGS BEGAN AT 10:03 A.M.)

3 RONTAE ZONE, STATE'S WITNESS, SWORN

4 THE CLERK: Please be seated, sir, and please state and
5 spell your name.

6 THE WITNESS: Rontae, R-o-n-t-a-e; last name Zone, Z-o-n-e.

7 THE CLERK: Thank you.

8 DIRECT EXAMINATION

9 BY MR. DIGIACOMO:

10 Q Good morning, Mr. Zone.

11 A Morning.

12 Q I need you to sit up for me. All right. And roll
13 right up to that microphone. All right. Because sometimes you talk
14 a little low and I want to make sure everyone can hear you. All
15 right?

16 A All right.

17 Q Now, you have to answer every question out loud, no
18 uh-huh, huh-uh. Just make sure you answer the question because she's
19 going to record everything. Okay?

20 A All right.

21 Q How old are you?

22 A 21.

23 Q 21. What's your date of birth?

24 A May 30, 1986.

25 Q May 30th of 1986?

KARReporting and Transcription Services
720-244-3978

3

1 A Yes.

2 Q I'm going to direct your attention back to sometime in
3 2005. Let's say May 2005. Back then, did you have a girlfriend?

4 A Baby's mother.

5 Q Baby's mother. You had a child?

6 A Yes.

7 Q Okay. Was the baby actually born by then or was she
8 pregnant?

9 A She was seven months.

10 Q She was seven months pregnant. And did you know an
11 individual by the name of Deangelo Carroll?

12 A Yes.

13 Q How did you know Deangelo?

14 A He was a good friend from years ago.

15 Q From years ago. How many years?

16 A About five or six.

17 Q Five or six years. Did there come a point in time
18 when you wound up staying with Deangelo?

19 A Excuse me?

20 Q Did there come a time when you and your girlfriend or
21 baby's mother wound up staying with Deangelo?

22 A Yes.

23 Q Okay. About when did that happen?

24 A It happened about the time -- my baby's momma was
25 arguing with her family so we moved with them. It was the only place

1 we could stay, so that's how we ended up there.

2 Q How long would you say, prior to the time of the
3 homicide, did you move into Deangelo Carroll's home?

4 A About a week and a half.

5 Q A week and a half?

6 A A week and a half, two weeks.

7 Q At that time were you employed at all?

8 A Just for the club.

9 Q Just for the club. And what club is that?

10 A Palomino.

11 Q The Palomino Club?

12 A Yes.

13 Q The one in north Las Vegas?

14 A Yes.

15 Q When you say you were employed with them, what did you
16 do for them?

17 A I promoted.

18 Q What does promoted mean?

19 A Passed out flyers, pamphlets, things that represented
20 the club.

21 Q Did you ever actually get to go in the club or did you
22 work outside the club?

23 A I worked outside the club.

24 Q Did they even let you inside or not?

25 A No.

1 Q When you say you passed out flyers, pamphlets, stuff
2 like that --

3 A Yes.

4 Q -- what kind of flyers are they?

5 A VIP cards, pamphlets that -- that tell -- tells you
6 that like what time you're supposed to be there, if it's ladies night
7 or any kind of night it is, it's on the flyer, and we drop it off so
8 they'll come to the club the next night.

9 Q Why do you do it at cab stands?

10 A I'm not sure. All I know is that I had a job and I
11 was told to do it. I was passing out flyers and he said cab
12 places -- where cab drivers get out, work. And then when they go
13 from work, get them to go to the club.

14 Q Okay. And when you say "he" said, are you talking
15 about Deangelo?

16 A Yes.

17 Q So you were working with Deangelo?

18 A Yes.

19 Q What was your understanding of Deangelo's job at the
20 Palomino?

21 A I really didn't have an understanding, like all I know
22 is that he was a big representative for the club. I knew he worked
23 for the club for a long time and that's about it. I never really
24 knew the work that he does.

25 Q Did he have a vehicle at the club?

1 A Astro van.

2 Q Describe the van for us.

3 A It's white, one sliding door.

4 Q Is that the only vehicle you ever saw him with from

5 the club or were there other vehicles too?

6 A Except for the shuttle.

7 Q There's a shuttle. What does the shuttle look like?

8 A Palomino shuttle. It has a naked woman on it, then

9 it's got PC like on the back or on the side.

10 Q This is for shuttling customers to and from the club?

11 A Yes.

12 Q Now, Deangelo -- would he sometimes work inside the

13 club?

14 A Yes.

15 Q Let's talk about some of the people at the club. Did

16 you ever meet a guy by the name of Mr. H?

17 A No.

18 Q Okay. You never personally met this individual?

19 A I never met him. I've never seen him. I don't know

20 who he is.

21 Q Do you know what his role at the Palomino was?

22 A No. All I know is that he ran the Palomino. That's

23 all I know.

24 Q He's the guy that runs the joint?

25 A Yes.

1 Q What about an individual by the name of Anabel
2 Espindola, did you ever meet Ms. Anabel --
3 A No.
4 Q -- prior to the homicide?
5 A Yes.
6 Q At some point in time, do you meet Ms. Anabel?
7 A Yes. I met her for about five or ten minutes.
8 Q Was this after the homicide?
9 A Yes.
10 Q Okay. So I'm going to back up. So Ms. Anabel, what
11 does she generally look like? Do you remember at all?
12 A Like, you know, Italian. Like, I mean, I could be
13 wrong. I know she ain't American.
14 Q What color of hair?
15 A Brown.
16 Q Now, what about an individual by the name of Little
17 Lou or Luis Hildalgo or Lui? Do you know who that is?
18 A Yes.
19 Q Okay. And what's his relationship to the club?
20 A I was just told that he worked there and I was told he
21 was Mr. H's son.
22 Q You were told he was Mr. H's son?
23 A Yeah.
24 Q Okay. I'm going to direct your attention now to the
25 day of the homicide. Daytime, okay. Were you promoting on that day?

1 A Yeah and no.

2 Q What do you mean yeah and no? What does that mean?

3 A Cause there was time where I went and promoted and
4 there's times when I didn't promote for him. Like sometimes we would
5 promote in the day and then there would be -- most of the time we
6 promote in the night, but sometimes he would have us promote in the
7 day for some reason, which I don't know why.

8 Q Okay. Were you with -- let's say in the afternoon or
9 noonish, were you with Deangelo Carroll at all?

10 A Yes, I was.

11 Q Do you know a person by the name of Jayson Taoipu?

12 A Yes, I do.

13 Q How do you know Jayson?

14 A He's a good friend of mine.

15 Q How long have you been friends with Mr. Taoipu?

16 A For about four years.

17 MR. WHIPPLE: I'm sorry. I didn't understand that. Did
18 you say four or 40?

19 THE COURT: Well --

20 THE WITNESS: Four years.

21 THE COURT: Since he's only 21, I would assume it was four
22 years.

23 MR. WHIPPLE: I was hoping that, Your Honor, but I couldn't
24 understand him.

25 THE COURT: You said four years; is that right, Mr. Zone?

1 THE WITNESS: Yes, I did.

2 THE COURT: Thank you.

3 Mr. DiGiacomo.

4 MR. DIGIACOMO: Thank you, Judge.

5 BY MR. DIGIACOMO:

6 Q About four years. Was Jayson younger or older than
7 you?

8 A Jayson's younger than me.

9 Q Now, was Jayson with you and Deangelo?

10 A Yes, he was.

11 Q And had you ever -- had Jayson -- let me ask you this:
12 Does Jayson know Deangelo?

13 A Yes, he does.

14 Q How does Jayson know Deangelo?

15 A He met Deangelo from me because when I was staying
16 with Deangelo, me and Jayson always kicked it together, so he used to
17 come over to Deangelo's because I was staying there. And he met him
18 from me.

19 Q Now, you indicated that you were promoting. About how
20 long had you been promoting with Deangelo?

21 A I'd been promoting with him about -- it's been on and
22 off a week and a half, like four days, about three days.

23 Q So about a week and a half, but a total of three days'
24 worth of work?

25 A Yeah. A total of three days fully of a workday. We

1 out passed out flyers, got dropped off. But there's times where I
2 worked for a whole day and got paid.

3 Q Now, when you worked for a whole day, did you have
4 some sort of agreement of how you get paid?

5 A I had an agreement that I pass out the flyers and then
6 I get paid after I passed out the flyers, after my job is done.

7 Q Did you have a set amount? Is it an hourly wage? How
8 did it work?

9 A I only got paid 20 bucks.

10 Q Okay. No matter how long you worked?

11 A No matter how long I worked.

12 Q I'm going to direct your attention now to May 19th,
13 the day of the homicide, about noon. You and Jayson and Deangelo are
14 together. And does the subject of hurting somebody come up?

15 A Yes.

16 Q Okay. Who brings up the subject?

17 A Deangelo.

18 Q Okay. And is Deangelo asking anything of you and
19 Jayson?

20 A He asked us were we in to commit murder.

21 Q Are those the terms he used or did he use more street
22 terms?

23 A No. Yeah, was I down to do it.

24 Q Were you down to do it?

25 A Yes.

1 Q And what was "it"?
2 A Was down to kill.
3 Q Okay. Did you know who you were supposed to kill?
4 A I didn't know nothing.
5 Q Okay. How did you know that when he says, Are you
6 down with it or down to do it, that -- that he specifically wanted
7 you to go kill somebody?
8 A Because, I mean, what else would he mean? I mean, was
9 we just going to say hi?
10 Q Okay.
11 A I mean --
12 Q And when you were asked whether or not you were down
13 with it, what was your response?
14 A No.
15 Q How about Jayson's?
16 A Yes.
17 Q Jayson indicated yes?
18 A Yes.
19 Q Now, at some point in time after the initial
20 conversation, do you get more information from Mr. Carroll exactly
21 what it is that he wants done?
22 A Yes.
23 Q And how long after that initial conversation happened?
24 A It happened about three hours -- three hours later.
25 Q Okay. And does Mr. Carroll give you more information

1 about what the nature of this "down with it" is?

2 A Yes, he does.

3 Q What does he tell you?

4 A He tells me that there's this guy at the club, that he
5 did something wrong to either the -- Mr. H or the club and that he
6 needed to be dealt with.

7 Q And when he said he needed to be dealt with, you took
8 that to mean what?

9 A I took that to mean killed.

10 Q Was Jayson with you at this point too?

11 A Yes, he was.

12 Q Okay. At this point did he ask you whether or not you
13 were interested in helping him?

14 A He asked me was I interested in helping him and I said
15 no.

16 Q Was that the term he used or did he use different
17 terms?

18 A He asked me was I down. He was like, Are you in? And
19 I said, No, I'm not.

20 Q What about Jayson?

21 A He said he was.

22 Q Jayson indicated that he was?

23 A Yes, he did.

24 Q Okay. At some point in time does Deangelo give
25 anything to Jayson?

1 A Yes.

2 Q What did he give him?

3 A He gave him a gun.

4 Q Okay. Can you describe the gun at all for me?

5 A .22 resolver, chrome.

6 Q Now, do you know much about guns?

7 A No.

8 Q Okay. Can you describe for me -- when you say

9 "revolver," what do you mean it looked like?

10 A It's -- it's like -- all I can tell you is it was a

11 revolver. And it was -- it was chrome and it has like a green pearl

12 handle on it.

13 Q Okay. When you indicate that it's a revolver, do you

14 know the difference of -- let me ask you this: Was it a square gun

15 like the police use or was it like an old cowboy gun with the wheel

16 in it?

17 A The one with the wheel in it.

18 Q The one with the wheel. Okay. Now, did the gun have

19 bullets?

20 A No, not in it.

21 Q Okay. Did you ever see any bullets from Deangelo?

22 A Yes, I did.

23 Q Okay. Where were those?

24 A He gave them to me.

25 Q Okay. What do you mean he gave them to you? Where

1 were you?

2 A I was in the van.

3 Q Okay. And when he tried to give them to you, where
4 were you sitting?

5 A I was sitting in the back of him.

6 Q And Deangelo was sitting where?

7 A Deangelo was sitting in the front seat.

8 Q Passenger side or driver's side?

9 A Driver's side.

10 Q Where was Jayson?

11 A Jayson was on the passenger's side.

12 Q On the front passenger's side?

13 A Front passenger's side.

14 Q At this point Jayson has the gun. What happens with
15 the bullets when they're handed back to you?

16 A He gives them to me and I dump them out of my shirt.

17 Q Okay. Show the ladies and gentlemen of the jury.
18 Show the ladies and gentlemen of the jury. What do you mean?

19 A He put them in my shirt. He put them, like, on my
20 pants, like the bottom of my pants, and all I did was just take it up
21 with my shirt and just dump it over.

22 Q Who picked them up?

23 A Jayson did.

24 Q Did there come a point in time when you wind up back
25 at Deangelo Carroll's house?

1 A Yes.

2 Q Okay. Who's there?

3 A My baby's mother and his wife and his son.

4 Q And is there some discussion, first of all, of any

5 more of this "being down with it" or dealing with this guy or

6 anything else like that?

7 A Well, I was told only -- I was being asked over and

8 over to be involved in it.

9 Q By who?

10 A By Deangelo.

11 Q Okay. And what did you say?

12 A I said no.

13 Q Okay. Did there come a point in time when Deangelo

14 left?

15 A Yes.

16 Q Okay. And did he -- did you guys still have that

17 white van?

18 A Yes.

19 Q Now, were you and Jayson supposed to do anything while

20 he was gone?

21 A I'm not sure.

22 Q Okay. What about getting dressed that night?

23 A Yeah, we got dressed. He told us to take a shower and

24 he said he'd be right back. And we got dressed and we waited on him

25 to get back.

1 Q Eventually when he gets back, does he ask you to go
2 anywhere?

3 A Yes. He just says, Come on. He says, Come on, we're
4 going to go promote.

5 Q And so you get -- do you go to the van?

6 A Yes, I do.

7 Q And who do you get in with?

8 A I get in with Jayson.

9 Q Does there come a point in time after you're in the
10 van that Deangelo tells you anything about Little Lou and what Little
11 Lou wants?

12 A Yes.

13 Q What does he say?

14 A He said Little Lou said that Mr. H said that he would
15 pay the man who killed him.

16 Q Is there any reference at some point to baseball bats?

17 A Yes --

18 Q What was that about?

19 A -- but I did not hear it. But I was told.

20 Q Well, let me ask you -- before you tell me you don't
21 hear it, did somebody say something to you about baseball bats?

22 A Yes, they did.

23 Q Who said it to you?

24 A Deangelo.

25 Q What did Deangelo tell you about baseball bats?

1 A He said they had baseball bats and they had trash bags
2 for the crime.

3 Q Okay. And did he indicate to you who had the trash
4 bags and the garbage -- the baseball bats and the trash bags for the
5 crime?

6 A He said that Lui had them, but that was -- that's
7 hearsay, though.

8 Q Well, I understand that, but that's what he told you?

9 A Yes.

10 Q Okay. You let us worry about the legal rulings and
11 you just keep answering the questions. Okay, Rontae?

12 A All right.

13 Q All right. So now you're in this van. Is there
14 flyers in the van?

15 A Yes. There's flyers and there's VIP passes.

16 Q Okay. What about like a -- it's called a pneumatic
17 tube -- but, I mean, something like you'd get from an ATM or a
18 Walgreen's or something?

19 A It's a canister, like some kind of canister when you
20 go and pick up prescriptions in a drive-through. One of those.

21 Q How did that get in the van? Do you know?

22 A We went to go pick up his son's prescription --

23 Q When you say "he," you've got to tell us who he is.

24 A We went to go pick up Deangelo's son's prescription
25 because he was sick. And we went through the drive-through and

1 like -- I guess like how you authorize it in the drive-through, when
2 they sent it back, the canister for -- with the prescription in it,
3 he just kept the canister.

4 Q Okay. And that was in the van?

5 A That was in the van.

6 Q You indicated that Deangelo has a son. So at
7 Deangelo's house, it's not just Deangelo living there, correct?

8 A Correct.

9 Q Who else lives there?

10 A My baby's mother, me, his wife and his son.

11 Q So he had one child?

12 A Yes.

13 Q He had a family?

14 A Yes.

15 Q So you're in the van. You've got flyers in the van.

16 There's a pneumatic tube. Does the van go somewhere?

17 A Yes.

18 Q Where'd it go?

19 A We go to a friend's house. He said he had something
20 to pick up. And we went and I didn't go in with him so I wouldn't
21 know.

22 Q Do you know January -- generally, where in the valley
23 that you guys drove to? What area of town was it?

24 A I think it was the west side, but like around -- like
25 by Cheyenne or like -- like near that -- near that area.

1 Q Is that your area of town?
2 A No, it's not.
3 Q Okay. So that's not a place where you hang out?
4 A No.
5 Q Was it near anywhere that you knew there was family of
6 Deangelo?
7 A Yes.
8 Q What family of Deangelo?
9 A His -- his -- all right. It was a friend that passed
10 away, his -- his girlfriend.
11 Q Tell me what happens when you guys get to wherever
12 this is, this house. Do you get out?
13 A No, I don't.
14 Q Jayson?
15 A No.
16 Q Deangelo gets out?
17 A Yes.
18 Q He goes inside?
19 A He goes inside.
20 Q How long is he inside for?
21 A He's inside for about 15, 20 minutes.
22 Q Eventually does Deangelo come back?
23 A Yes, he does.
24 Q Anybody with him?
25 A No.

1 Q What happens next?

2 A Then we go back to his house and we go -- we get ready
3 to go promote, and then we left. Like, we left that night to go
4 promote. Like we were just anxious to go to work. He said he was
5 waiting to go to work and I was definitely waiting to go to work,
6 so...

7 Q So the first time you go to this one house where he
8 walks in and comes out alone, about what time would you say that was?

9 A About 3:00, 3:30 in the afternoon.

10 Q So that's still the daytime?

11 A Yes.

12 Q And then later in the evening after you guys get ready
13 and get dressed, do you leave again with Deangelo?

14 A Yes.

15 Q All right. Do you go back to this location?

16 A No.

17 Q Never?

18 A We don't go back to this location. We go towards E
19 Street.

20 Q Okay.

21 A About -- around E Street and -- I don't know. I'm not
22 familiar with the west side so...

23 Q So you go to E Street and what happens when you go to
24 E Street?

25 A We get to E Street and we go to KC's house.

1 Q Okay. Well, at the time did you know who KC was?
2 A No.
3 Q Ever met him before?
4 A No.
5 Q Okay. Ever heard Deangelo talk about him? Without
6 telling us what he said, did you ever hear Deangelo talk about KC?
7 A No.
8 Q So where do you pull up?
9 A Pull up like on the side of his house and Deangelo
10 goes in and gets him.
11 Q Okay. And when he goes in the house, does he go in by
12 himself?
13 A Yes, he does.
14 Q After he goes inside, how long does he stay inside?
15 A He stayed inside for about -- about 15 minutes, 15
16 minutes tops he stayed in.
17 Q Does he eventually come out?
18 A Yes, he does.
19 Q Is anybody with Deangelo or does he come out alone
20 this time when it's nighttime?
21 A No. KC's with Deangelo.
22 Q KC is?
23 A Yes.
24 Q You keep saying KC and nodding this direction. Do you
25 see KC in court here today?

1 A (No audible answer.)
2 Q You don't see KC right now?
3 A (No audible answer).
4 Q Do you remember testifying previously against KC?
5 A Excuse me?
6 Q Do you remember testifying previously against KC?
7 A Yes, I do.
8 Q Okay. And at that time you were able to identify him,
9 correct?
10 A Yes, I was.
11 Q At this point you don't see him in court today?
12 A No.
13 Q All right. You go to KC's house. KC comes out with
14 Deangelo. How's KC dressed?
15 A He was in all black.
16 Q Okay. All black pants?
17 A All black everything.
18 Q Okay. What kind of top does he have on?
19 A Hoody.
20 Q Okay. What kind of -- does he have a hat or no hat?
21 A No.
22 Q What about gloves? Does he have gloves?
23 A Yes.
24 Q Okay. And where does Deangelo -- does he get in the
25 van?

1 A Yes.

2 Q Where does KC get in the van?

3 A They both get in the van.

4 Q Okay. Where's KC sitting?

5 A Next to me on the right, on the right back.

6 Q Okay. So you're in the right back and you're sitting

7 in the van on the left side?

8 A Yes.

9 Q Behind the driver?

10 A Yes.

11 Q Jayson's still in the front seat?

12 A Yes.

13 Q Okay. Where does the van go?

14 A The van goes -- it goes to Lake Mead.

15 Q Okay. It starts heading out towards Lake Mead?

16 A Yes.

17 Q At some point on the ride out to Lake Mead, you

18 realize there's no more cab stands?

19 A Excuse me?

20 Q At some point on the ride out to --

21 MR. WHIPPLE: Judge, I'm going to object as to leading at

22 this point.

23 THE COURT: I didn't hear the question.

24 MR. DIGIACOMO: I'll rephrase.

25 THE COURT: Okay. He'll rephrase it.

1 BY MR. DIGIACOMO:

2 Q At some point on the way out to Lake Mead, do you
3 leave the greater Las Vegas area where there's houses and stuff?

4 A Yes, we do.

5 Q Okay. At that point, once you're outside of Las
6 Vegas, what are you thinking?

7 A I'm thinking this is it.

8 Q This is what?

9 A I didn't know until I got there at that point. Like,
10 I did not know what was going on, period. Like...

11 Q Okay. You're in the van. Is there anybody getting
12 phone calls in the van?

13 A Yes.

14 Q Who?

15 A Deangelo.

16 Q Okay. Now, does Deangelo have a regular phone or is
17 there something a little different about Deangelo's phone?

18 A He has a walkie-talkie.

19 Q Walkie-talkie?

20 A Yes.

21 Q Now, was he getting regular calls or walkie-talkie
22 calls?

23 A He was getting walkie-talkie calls.

24 Q Okay. And could you hear what was being said by the
25 person, not Deangelo, but the person on the other end of the phone

1 call?

2 A No.

3 Q Okay. Could you hear what was being said by Deangelo
4 at all?

5 A Yes. Yes.

6 Q Okay. Can you describe for me what you hear Deangelo
7 saying?

8 A He told them that he was going -- I'll meet you there
9 in a little bit to drop you off this weed, marijuana, and that was
10 about it. That was about all I heard from that.

11 Q Okay. And at that point, who was your understanding
12 of who he was speaking to about dropping off weed and stuff like
13 that?

14 A I wasn't sure until after the call, like then he said
15 who he was going to meet.

16 Q And who was he going to meet?

17 A He was going to meet TJ.

18 Q Now, had you ever met TJ before?

19 A No.

20 Q Do you know who he is?

21 A No.

22 Q Okay. You know now obviously?

23 A Yes, I do.

24 Q So as you're driving out there and he says that
25 he's -- that that's TJ and TJ's going to meet him for the weed, is

1 there any discussion among either you, Jayson, Kenneth or Deangelo
2 about --

3 MR. WHIPPLE: Judge, I'm going to object. There's no --

4 BY MR. DIGIACOMO:

5 Q -- KC?

6 MR. WHIPPLE: KC's the only person that's been identified
7 at this point.

8 MR. DIGIACOMO: I'm sorry. That's right. It's KC.

9 THE COURT: All right.

10 BY MR. DIGIACOMO:

11 Q Is there any conversation at this point between you --
12 either you, Jayson, KC or Deangelo about what's supposed to happen
13 when you finally get out to Lake Mead?

14 A Well, like I said, I was told from -- I was told from
15 the beginning, but I said no. But it just happened like -- I didn't
16 know -- I didn't know nothing and then there wasn't nothing really
17 said until we got there.

18 Q What was said when you got there is what I'm asking.

19 A I was asked, did I have a gun.

20 Q Who were you asked if you had a gun by?

21 A KC.

22 Q KC asked you if you had --

23 MR. WHIPPLE: Judge, I'm going to object as to hearsay at
24 this point.

25 THE COURT: Overruled.

1 MR. DIGIACOMO: Thank you, Judge.

2 BY MR. DIGIACOMO:

3 Q And what was your response?

4 A My response was that I didn't have one.

5 Q That was -- is "a gun" the term he used or was it
6 something else?

7 A A burner.

8 Q A burner?

9 A Yeah.

10 Q To you that meant, do you have a gun?

11 A Yes.

12 Q Okay. Anything else discussed about the plan once the
13 van gets to Lake Mead that you heard?

14 A No.

15 Q So once you get out towards Lake Mead, tell me, at
16 some point, do you cross into the Lake Mead area? Is there something
17 there to identify you that you're now onto, like, the Lake Mead area?

18 A It was a road -- like one road to take you left and
19 there's another road to take you to the right.

20 Q Before you got there, was there some sort of toll
21 booth or guard shack that you recall?

22 A Yes. Yes, there was.

23 Q Okay. So you passed that guard shack?

24 A Yes.

25 Q How many times did you wind up passing that guard

1 shack?

2 A I think around four times because he had -- he had to
3 go first, then turn around, then come back and then go again.

4 Q Do you know why -- when you say "he," you're talking
5 about Deangelo?

6 A Yes.

7 Q Do you know why Deangelo had to go first, turn around,
8 and then come back again?

9 A Because he had no signal on his phone.

10 Q No signal on his phone, so he lost phone service?

11 A Yes.

12 Q So he had to go back and forth to get it?

13 A He had to go back towards the city so he could get
14 service.

15 Q Eventually when you come to the area where you've just
16 described, there's a -- you can go right or you can go left, what
17 happens? Which way does the van go?

18 A Left.

19 Q Okay. And how far down the street does it go?

20 A It goes pretty far until we run into TJ.

21 Q Okay. You say you run into TJ. When you first run
22 into TJ, is the van moving or is the van stopped at that point?

23 A The van was moving.

24 Q Okay.

25 A We seen -- when we seen TJ, he pulled over. Deangelo

1 pulled over.

2 Q Let me get this straight. When you first see TJ, is
3 TJ's vehicle coming at you or is it -- or are you driving up on TJ's
4 vehicle? Tell me what happens.

5 A He's coming on the other side of the road and he
6 turns. He like -- you know, he busts a U-turn to park.

7 Q So you guys are facing one direction, he's coming at
8 you?

9 A And he makes a U-turn and then he's facing the same
10 direction as the van was faced.

11 Q Okay. Does he park in front of you or behind you?

12 A He parks in front of us.

13 Q Now, at some point does Deangelo get out of the van?

14 A Yes.

15 Q Okay. When does he first get out of the van?

16 A He gets out of the van like as TJ pulls up.

17 Q Okay. And what does he do?

18 A He goes and uses the bathroom.

19 Q Okay. When you say "use the bathroom," there wasn't
20 like a port-a-potty or anything there. He just went to the --

21 A No.

22 Q -- bathroom out in the desert?

23 A He just went -- yeah.

24 Q Okay. Does he come back to the van after that?

25 A Yes, he does.

1 Q Okay. Does he ever get out a second time that you
2 recall?

3 A No.

4 Q So once he gets back in the van, where's TJ when he
5 gets back in the van?

6 A TJ is walking towards -- he's getting out of the car
7 and he's coming towards us.

8 Q How far do you think TJ parked down the road from
9 where you guys are sitting?

10 A I give it about -- I give it about a good 25 feet.

11 Q 25 feet or so?

12 A About 20, 25 feet.

13 Q So at this point your car is facing the same direction
14 as TJ's?

15 A Yes.

16 Q All right. And you're behind the driver's seat?

17 A Yes.

18 Q And is Mr. Count's next to you -- I'm sorry --

19 MR. WHIPPLE: Judge --

20 MR. DIGIACOMO: KC.

21 THE COURT: Yeah, that's sustained.

22 BY MR. DIGIACOMO:

23 Q -- KC next to you?

24 A Yeah.

25 Q KC's next to you?

1 A Yes.

2 Q Jayson's still in the front passenger's seat?

3 A Yes.

4 Q And Deangelo's now in the front driver's seat?

5 A Yes.

6 Q Okay. How is TJ acting?

7 A I'm not sure. He was -- he was just happy to see

8 Deangelo.

9 Q Okay.

10 A He seemed -- he seemed real happy to see him.

11 Q So is he walking towards the van?

12 A Yes, he is.

13 Q Are the van's lights on?

14 A Yes.

15 Q Okay. Was there any other lights out there other than

16 the van's lights --

17 A No.

18 Q -- or maybe TJ's down the road?

19 A It was just both car lights.

20 Q Okay. So there was --

21 A There was no -- even -- there was even no cars. There

22 was no nothing.

23 Q No nothing?

24 A There was no nothing.

25 Q As -- at some point, do you see this individual KC

1 with the gun or -- do you ever see KC with a gun?

2 A Yes.

3 Q Okay. Describe for me what you see.

4 A A .357.

5 Q Now, do you know what a .357 is?

6 A No.

7 Q At some point in time, did somebody tell you it was a
8 .357?

9 A Yes.

10 Q Who told you?

11 A The officers that investigated it.

12 Q So at some point there's some discussion among the
13 officers about the .357?

14 A Yes.

15 Q Okay. Do you see the gun at all?

16 A Yes.

17 Q Can you describe it, as best you can, for the ladies
18 and gentlemen of the jury.

19 A All I can tell you is the butt. I couldn't see really
20 much of nothing that night.

21 Q So he has a black gun?

22 A Yes.

23 Q All right. And as TJ's walking up to the vehicle,
24 what does KC do?

25 A As he's walking up to the vehicle, KC is getting out

1 of the van.

2 Q All right. When you say he's getting out of the van,
3 what door is he getting out of the van?

4 A Out of the sliding door of the van that's on the right
5 side.

6 Q The sliding door he's getting out of?

7 A That's on the right side.

8 Q Okay. And where approximately is TJ in relationship
9 to the van when he starts getting out of the -- the sliding door?

10 A He walks to the driver's side.

11 Q All right. And the driver's side -- is the driver's
12 side window open or closed?

13 A It was -- it was like -- it was like a little bit of
14 both. It was like in the middle.

15 Q In the middle?

16 A Yes.

17 Q Do you hear TJ saying anything?

18 A All I heard him say was, Hey, Deangelo. That's all I
19 heard.

20 Q Did you hear Deangelo respond at all?

21 A No, Deangelo didn't say nothing.

22 Q What do you see KC do at this point?

23 A He was creeping out of the van.

24 Q When you say "creeping out of the van," can you
25 describe what -- let's assume that that door to that van, that

1 sliding door, is this open area right here. What do you mean he was
2 creeping out of the van?

3 A He sneaked slowly, quietly out of the van.

4 Q Can you demonstrate it for the jury without falling
5 down the steps obviously.

6 A He just got down and crept around and, like, he was
7 so quiet you couldn't see him coming. You couldn't see it coming.

8 Q Okay. So he creeps around. And I'm going to ask you
9 to come back down for just a second.

10 MR. DIGIACOMO: Judge, with your permission.

11 THE COURT: That's fine.

12 BY MR. DIGIACOMO:

13 Q Go ahead and stand up again. Do the creeping for me
14 and pretend now that the front of the van is -- this is the side and
15 this is the front of the van. Where's TJ standing, if this is the
16 front of the van? Is the driver's side window over here?

17 A Yeah. TJ is standing over here.

18 Q Okay. So then if TJ's standing over here, tell me
19 what -- show me what KC does.

20 A Slid open the door, got low, and he crept around,
21 raises up and shot.

22 Q Raises up how? Show the ladies and gentlemen of the
23 jury.

24 A I couldn't really see. All this action, I couldn't
25 see. You're talking about Lake Mead at like 11:00 at night. You

1 can't see nothing.

2 Q Okay. Take your seat. What do you see?

3 A All I see is a spark.

4 Q A spark?

5 A That's all I see.

6 Q All right. How far is the spark from TJ?

7 A See, that's the thing, like everything was black. All
8 I seen was nothing but black. The spark was so -- it shot it out
9 like so much, you could just see the spark, nothing but spark in the
10 barrel.

11 Q Okay.

12 A And then you could just hear him fall.

13 Q So you see a spark. Do you hear it?

14 A Yes.

15 Q And then you hear TJ fall?

16 A I heard TJ fall.

17 Q Once TJ falls, did you see another spark?

18 A Yes.

19 Q Okay. And --

20 MR. WHIPPLE: Judge, I'd object to leading at this point.

21 THE COURT: Go on.

22 MR. DIGIACOMO: Thank you.

23 BY MR. DIGIACOMO:

24 Q Describe for me what you see the second time. TJ's
25 now down on the ground, I'm assuming.

1 A Then he shoots him in the head again.
2 Q Again, the second time?
3 A Yes.
4 Q And then what does KC do?
5 A Then he hurry up and hop back in the van.
6 Q And then what does the van do?
7 A The van pulls off in like -- in a -- in a speeding
8 pace.
9 Q Does it go straight or does it make a U-turn?
10 A It went straight. It went straight and it was a bump.
11 He ran over TJ.
12 Q You felt the bump?
13 A Yes.
14 Q And later on, was there some discussion about running
15 over TJ?
16 A No.
17 Q You just -- that's the assumption you made or was
18 there a discussion you had with other people?
19 A I mean, like, I know it wasn't no rock. I know it
20 couldn't -- it was him --
21 Q All right.
22 A -- because you could just tell how -- the pace of the
23 van when he pulled off. It was just a fast pace, so you can catch
24 it, you know.
25 Q So you felt the bump and then do you go back out the

1 same way you came into Lake Mead or do you go a different way?

2 A No, we don't. We come from Boulder -- like from the
3 way of Boulder City.

4 Q So you come out down the southern side by Boulder
5 City?

6 A Yes.

7 Q All right. And where eventually does the van head to?

8 A Back to the club.

9 Q The Palomino Club?

10 A Yes.

11 Q On the way to the Palomino Club, is KC still in the
12 same spot now that he was in when he came down?

13 A Yes.

14 Q Is he still next to you?

15 A Yes.

16 Q Let's first talk about when KC gets in the van. Does
17 he say anything to Jayson?

18 A He asked Jayson did he have a gun.

19 Q He asked Jayson if he had a -- did he use the term gun
20 or did he use the term burner or did he use something else?

21 A He used the term burner.

22 Q All right. And what was Jayson's response?

23 MR. WHIPPLE: I'll object as to hearsay at this point.

24 THE COURT: Overruled.

25 MR. DIGIACOMO: Thank you, Judge.

1 THE WITNESS: Jayson's response was, Yes, I do have one.

2 KC asked him, Why didn't you shoot? And he said, I would have, but

3 Deangelo was in the way.

4 BY MR. DIGIACOMO:

5 Q So Jayson says, I would have, but Deangelo was in the
6 way?

7 A Yes.

8 Q Okay. At some point, does -- well, let me ask you
9 this: What was the tone of KC's voice while he's talking to Jayson?

10 A It was anger.

11 Q Okay. At some point does KC ask any questions of you?

12 A No. He asked me -- the only thing he asked me was
13 where do I live.

14 Q Where do you live?

15 A Yes.

16 Q Okay. Did you tell him?

17 A Yes, I did.

18 Q And what did you tell him?

19 A I told him I was staying with Deangelo.

20 Q Eventually when you get back to the club, the four of
21 you were still together?

22 A Yes.

23 Q Who goes in the club?

24 A KC and Deangelo.

25 Q KC and Deangelo. Where do you stay?

1 A We stay out by the seats where the cabs pull up. We
2 were in the van at first, but like as time went -- passed, we got out
3 of the van and went and sat in the seats that's like by the club
4 where the cabs pull up.

5 Q How long was KC and Deangelo inside the club?

6 A I give it about 30 minutes.

7 Q Do they come out together or did they come out
8 separately?

9 A They came out separately.

10 Q Okay. When KC comes out -- well, let me ask you this:
11 Any time after you get back to the club, do you ever have a
12 conversation with KC or does he ever come back to the van and talk to
13 you and Jayson?

14 A No.

15 Q Okay. When KC comes out, where does he go?

16 A He hops in the cab and he leaves.

17 Q What kind of cab?

18 A A yellow cab.

19 Q A yellow cab?

20 A Yes.

21 Q And he leaves?

22 A Yes.

23 Q Okay. And how long do you wind up staying?

24 A Me and Jayson wind up staying for like another 30
25 minutes, another 30, 45 minutes.

1 Q And during that time does Deangelo come outside?
2 A Yes, he does.
3 Q Okay. And is there some discussion on what happened
4 inside the club?
5 A Yes.
6 Q And what does he tell you?
7 A He said that KC was tripping about him not getting
8 paid what he was supposed to be paid.
9 Q Okay. Ultimately, does Deangelo tell you the figure
10 that he did get paid?
11 A Yes.
12 Q And what was that?
13 A He said he got paid six grand.
14 Q Did you get paid?
15 A I didn't get paid.
16 Q Did Jayson get paid?
17 A I didn't expect to get paid. Jayson didn't get paid.
18 Q Was there some discussion about why KC got paid and
19 you and Jayson didn't?
20 A Yes.
21 Q Okay. What did Deangelo say?
22 A He said that he got paid because he did the job and we
23 didn't.
24 Q Okay. Did he indicate to you whether or not he got
25 any money?

1 A No.

2 Q Was there anything that he was supposed to do now with
3 this van?

4 A He was supposed to get rid of all the evidence, slash
5 all four tires and clean the van.

6 Q Did he have some money to do that?

7 A Yes, he did.

8 Q Okay. What was that?

9 A I'm not sure how much. I didn't see. I didn't see no
10 kind of money activity after the prior homicide.

11 Q So as you sit here, you don't know what -- what or if
12 even Deangelo got paid?

13 A No.

14 Q Do you guys get in the van?

15 A Yes, we can.

16 Q Where do you go initially?

17 A We go back to Deangelo's house.

18 Q At some point do you go to a car wash?

19 A Yes, we do.

20 Q Is it before you get to Deangelo's or after?

21 A It was before. It was way before, like it was right
22 after the club.

23 Q So you leave the club, you go to a car wash?

24 A Yes.

25 Q And what -- let me ask you this: Do you take part in

1 washing the van?

2 A No.

3 Q And where are you at that point?

4 A I'm just standing on the side, watching him cleaning.

5 Q Is it still dark out?

6 A Yes, it is.

7 Q Is it still the night?

8 A It had to be like around at least 1:00 or 2:00 in the
9 morning.

10 Q So this is some sort of all night car wash?

11 A Yes.

12 Q Is it one where you wash yourself or is it a machine
13 automated?

14 A It's one where you do it yourself.

15 Q Who washes the van?

16 A Deangelo.

17 Q What happens after the van gets washed? Where do you
18 go back to?

19 A The van gets washed and then we go back to his house,
20 Deangelo's house.

21 Q The next morning what do you guys do with the van?

22 A We go and we slash all four tires.

23 Q Okay. Who actually slashed the tires?

24 A Deangelo.

25 Q And what car -- well, if he slashed all four tires, is

1 there another car?

2 A Yes.

3 Q Whose car?

4 A His wife's parents' car.

5 Q What did it look like? Do you remember?

6 A I don't remember what kind of car it was, but I think

7 it was like burgundy, burgundy or maroon.

8 Q Who is driving the van the next morning?

9 A Jayson.

10 Q And where's -- where is Deangelo? Is he in the van or

11 is he in the car with you?

12 A He's in the car with me.

13 Q Who's driving that car?

14 A Deangelo.

15 Q Does he -- where does he slash the tires at?

16 A Like I'm not -- I'm not sure. All I did was just see

17 him slash all four tires. I didn't see where or nothing.

18 Q I meant like once he slashes the tires, does he take

19 the van somewhere?

20 A Yeah. He takes it around the corner to a tire shop.

21 Q All right. And do -- do the -- do the tires get

22 replaced?

23 A Yes, they do.

24 Q Was there any discussion as to why the tires needed to

25 be replaced?

1 A Well, he didn't tell them that --

2 Q Not them. I'm just saying between you, Jayson, and
3 Deangelo.

4 A Yeah. Evidence.

5 Q Evidence?

6 A He wanted to -- he wanted to kill the evidence. He
7 wanted to make sure no evidence was found.

8 Q What happens to the tires that got slashed?

9 A They got put in separate places of Las Vegas, like a
10 few went in the trash can and then Lord knows where the other ones
11 went.

12 Q After the tires get thrown in the trash can, at some
13 point is there some sort -- do you guys go somewhere with the --
14 Deangelo's family, your baby's mom, some other people?

15 A We go to I-Hop to eat.

16 Q How many people were there?

17 A It was a lot of people there.

18 Q Okay. Well, there's you.

19 A There's me, there's my baby's mother, there's his
20 wife, there's JJ, there's a -- his son and then some -- a couple of
21 his other friends that I didn't know.

22 Q So there's a group of individuals that you didn't know
23 along with you guys that went to I-Hop?

24 A Yes.

25 Q When the bill came, who paid?

1 A Deangelo paid.

2 Q At some point after breakfast, did you guys -- do you
3 and Jayson and Deangelo go anywhere with the van?

4 A We go to a barbershop.

5 Q And then where else do you go?

6 A After the barbershop, we go to the Family Dollar. He
7 had to pick up a few items.

8 Q When you say "he," who --

9 A Deangelo.

10 Q And did he pick some items up?

11 A Yes, he did.

12 Q Do you remember what he bought?

13 A He bought a fan, a mop, cleaning material, lights for
14 his house and that's about it.

15 Q Do you remember him buying anything for his children?

16 A Yes, he did. But, like I said, I didn't really -- I
17 wasn't really paying attention to what he did when he went in the
18 store, like...

19 Q So you don't know exactly what he bought for the
20 children --

21 A No.

22 Q -- for the child?

23 A No. But just the items I named, I know he bought
24 those.

25 Q At any point in time, do you wind up at a place called

1 Simone's Auto Plaza?

2 A Yes, we do.

3 Q Had you ever been to Simone's before?

4 A No.

5 Q What was your understanding about what Simone's was?

6 A I have -- actually, I have no clue.

7 Q Okay.

8 A I have no clue what it was. All I know is it's just
9 an auto plaza like...

10 Q Where in the valley is it located?

11 A It's located like by the airport across from -- I
12 think it's across from Alamo Rent-a-Car.

13 Q Do you go inside?

14 A Yes.

15 Q Who else goes inside with you?

16 A JJ.

17 Q And while you're inside, did you -- was there any
18 conversation with Deangelo while you were inside the --

19 A No, because Deangelo had went in first and we were
20 left in the van. And after about 15 minutes, he came out to the van
21 and told us to come in, so I -- and he was talking with Mr. H at the
22 time, so I didn't -- I didn't speak.

23 Q Now, did you know what Mr. H looks like?

24 A No.

25 Q So then he's speaking to Mr. H, that was Deangelo

1 telling you that he was going to speak to Mr. H?

2 A Yes.

3 Q So when you and Jayson go inside, where do you sit?

4 A Sit on the couch that's like in the area where --

5 that's by where the offices are -- the office is. And we sat on the
6 couch and watched TV.

7 Q At some point do you use the restroom?

8 A Yes. Me and JJ gets up and goes to the restroom and
9 Deangelo meets us in the restroom.

10 Q And does he say anything?

11 A He said -- he just told me to keep my mouth shut and
12 he said that -- he said that -- yep, that's what he said basically,
13 keep my mouth shut.

14 Q Now, is this in the daytime, the day after the murder?

15 A Yes.

16 Q Does there come a point in time that night when you
17 and Deangelo aren't together any longer, the next night after the
18 murder?

19 A The next night, yes.

20 Q How does that come about?

21 A After Simone's Auto Plaza, we had split up from there.
22 See, he dropped me and JJ off like around the corner from his house.

23 Q Okay.

24 A And I didn't meet up with him until I got back to his
25 house.

1 Q So you get back to his house.
2 A Yes.
3 Q Is he there?
4 A Yes.
5 Q Okay. Is there anybody with him at that point?
6 A My baby's mother and his wife and his son.
7 Q Does there come a point in time when Deangelo leaves
8 and the next time you see him he's with some law enforcement?
9 A Yes.
10 Q Okay. Is it that night or the night after? Do you
11 recall?
12 A No. It was about -- they didn't come and get us --
13 they didn't come and get me until, I think, about 11:00, 12:00, so,
14 yeah, it was the same -- it was the same day.
15 Q So it's the next day like 11:00, 12:00 at night?
16 A Yes.
17 Q So prior to Deangelo -- does he leave prior to the
18 police arriving or does the police come and get him first?
19 A He left and he went to work and he came back with law
20 enforcement.
21 Q So that night Deangelo leaves?
22 A Yeah. He left and I guess homicide came to see him.
23 Q Without telling us what you think happened over there,
24 just answer my questions. When he left, he was dressed for work?
25 A Yes, he was.

1 Q And he told you he was going to work?
2 A Yes, he was.
3 Q At the Palomino Club?
4 A Yes.
5 Q The next time you see him, who's he with?
6 A He was with law enforcement.
7 Q Okay. Detectives?
8 A Yes.
9 Q And where do you see him?
10 A I met him at the door because I had to open up the
11 door for him.
12 Q So you open up the door and there's law enforcement
13 right there?
14 A Yes.
15 Q Describe for me the conversation at that point.
16 A All I was told is --
17 MR. WHIPPLE: Judge, I'm going to object to hearsay.
18 A All I was told was to get down --
19 MR. WHIPPLE: Excuse me, Mr. Zone.
20 All of this is hearsay, Your Honor.
21 THE COURT: Ask the question in a different way.
22 MR. DIGIACOMO: Let me rephrase.
23 BY MR. DIGIACOMO:
24 Q I'll skip what was told to you. Was there a long
25 conversation with Deangelo once law enforcement is standing there

1 with him?

2 A They just told me to tell the truth or you're going to
3 jail.

4 MR. WHIPPLE: Judge, I'm going to object. That's hearsay.

5 THE COURT: All right. I mean, are you getting to -- based
6 on the conversation, did he do something; is that where you're going
7 with this?

8 MR. DIGIACOMO: Right. I don't know if that's the truth of
9 the matter asserted, Judge. It's not exactly a hearsay statement.

10 THE COURT: No, I know.

11 MR. DIGIACOMO: It's offered for his state of mind.

12 THE COURT: I understand. Go on.

13 MR. DIGIACOMO: Thank you, Judge.

14 BY MR. DIGIACOMO:

15 Q So Deangelo is there with a police officer and he
16 says, Tell the truth or we're going to jail?

17 A Yes.

18 Q So do you leave with the homicide detectives?

19 A Yes.

20 Q Do you go voluntarily?

21 A Yes.

22 Q Do you go down to the police station?

23 A Yes.

24 Q Where do they put you?

25 A They put me in the investigation room and they put

1 Deangelo in another investigation room.

2 Q Okay. So they separated the two?

3 A Yes.

4 Q Did you ride down in the same car together?

5 A No.

6 Q It's separate cars you went down there in?

7 A Yes.

8 Q Eventually do the police come in and interview you?

9 A Yes, they do.

10 Q And do you provide them information like you're
11 providing this jury here today?

12 A Yes.

13 Q After giving that statement, were you issued a
14 subpoena to testify at a preliminary hearing?

15 A Yes.

16 Q And did you respond down to the preliminary hearing to
17 testify?

18 A Yes, I did.

19 Q Do you remember?

20 A Yes, I did.

21 Q Once you arrived, did you take the stand and begin
22 testifying?

23 A Yes, I did.

24 Q During the course of your testimony, was there a
25 request by the various defense attorneys for you to have a lawyer?

1 A Yes.

2 Q And was there a lawyer, in fact, appointed to you?

3 A Yes.

4 Q After --

5 MR. WHIPPLE: Judge, I'm going to object to relevance at
6 this point. Objection.

7 THE COURT: I'll see counsel at the bench.

8 (Off-record bench conference)

9 THE COURT: Go on, Mr. DiGiacomo.

10 MR. DIGIACOMO: Thank you, Judge.

11 BY MR. DIGIACOMO:

12 Q After consultation with your lawyer, did you then
13 retake the stand and testify?

14 A Yes, I did.

15 Q Okay. At any point in time, had you ever been
16 arrested for the crime?

17 A No.

18 Q And at -- I'll leave it at that. Now, you had
19 indicated earlier -- you indicated earlier that you testified at that
20 first preliminary hearing, correct?

21 A Yes.

22 Q And during the course of that preliminary hearing, you
23 were able to identify the person that was KC?

24 A Yes.

25 Q You picked him out of a courtroom and identified him

1 as the individual that was in the van with you?

2 A Yes.

3 MR. DIGIACOMO: Judge, I'd ask the Court to take judicial
4 notice in the preliminary hearing in this particular case that the
5 individual who was KC identified at the preliminary hearing was, in
6 fact, Kenneth Counts.

7 THE COURT: The Court will.

8 MR. DIGIACOMO: Thank you, Judge.

9 I pass the witness.

10 THE COURT: All right. Thank you, Mr. DiGiacomo.
11 Cross.

12 MR. WHIPPLE: Can I take -- can we have our break here for
13 a few minutes while I prepare my notes?

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

15 (Court recessed at 10:55 a.m. until 11:11 a.m.)

16 (Discussion held outside the presence of the jury)

17 (Jury is present)

18 CROSS-EXAMINATION

19 BY MR. WHIPPLE:

20 Q Mr. Zone, currently you're 21 years old?

21 A Yes.

22 Q Where are you employed?

23 A I was employed at the Palomino.

24 Q Where are you currently employed?

25 A I wasn't currently employed.

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1 Q Where are you employed today?

2 A Oh. I'm employed with Premier Staffing, a staffing
3 agency.

4 Q Is that a position here in Clark County?

5 A Yes.

6 Q Now, on May 19th, 2005, you were 18 years old; is that
7 correct?

8 A Yes.

9 Q And at 18 years of age you're old enough to know the
10 difference between the truth and a lie?

11 A Yes.

12 Q And what is the truth?

13 A The truth is what I'm telling you now.

14 Q What is a lie?

15 A A lie is when -- a lie is a lie. A lie is being
16 dishonest.

17 Q All right. And do you think a person who doesn't tell
18 the truth should be believed?

19 A I figure that if you telling the truth, the truth sets
20 you free.

21 Q Okay. That's fine.

22 Now, when you were 18 years of age you were with a group of
23 people that shot an innocent man on May 19th, 2005; correct?

24 A Correct.

25 Q And you never went to jail on that -- following that

1 shooting?

2 A No.

3 Q In fact, following the days of that shooting you
4 followed the story in the news?

5 A Yes.

6 Q You followed it in the newspaper?

7 A Yes.

8 Q You watched it on TV?

9 A Yes.

10 Q You learned information about the shooting from the
11 news?

12 A Yes.

13 Q You talked to detectives two days after the shooting?

14 A I talked to them three days after the shooting.

15 Q That would be -- the shooting was on the 19th;
16 correct?

17 A Because I didn't -- yeah, you're right. Because I met
18 with them twice. The first time was on -- was on the 21st, and then
19 a couple days later.

20 Q So that'd be two days after the shooting on the 19th?

21 A Yes.

22 Q And Mr. Carroll is a very good friend of yours;
23 correct?

24 A Yes and no.

25 Q In fact, in 2005 you worked for him?

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1 A Yes.

2 Q You were a flier boy?

3 A Yes.

4 Q And he paid for your services?

5 A Yes.

6 Q You don't have a lot of money?

7 A No.

8 Q You didn't have a lot of money back in 2005?

9 A No, I didn't.

10 Q He paid you \$20 for a full day's work?

11 A Yes.

12 Q That's more money than you were making elsewhere?

13 A It was -- it was the -- it was money at the time, so I

14 was trying to do whatever I could to support --

15 Q You also spent time and stayed at his house?

16 A Yes.

17 Q You call her your mama's baby?

18 A My baby's mother.

19 Q She lived at the house, as well?

20 A Yes.

21 Q You had a child there that lived with Deangelo?

22 A [Unintelligible].

23 Q So there's three of you. Your family lived with his

24 family?

25 A Yes.

1 Q Do you call the job you did with Deangelo a promoter?
2 A Yes.
3 Q At first it was just you and Deangelo promoting
4 together?
5 A Yes.
6 Q Later a person by the name of Jason Tatum joined you?
7 A Yes.
8 Q So there was three of you promoting together?
9 A Yes.
10 Q Just three, nobody else?
11 A Just three.
12 Q Now, you don't want to be here today, do you?
13 A Yes.
14 Q You want to be here today?
15 A I have to be here today.
16 Q You have to be here because --
17 A Yes.
18 Q -- if you weren't --
19 A To improve [sic] my innocence and to tell the truth.
20 Q Well, if you weren't here, you'd go to jail, wouldn't
21 you?
22 A Yes, I would.
23 Q You don't want to go to jail, do you?
24 A Why should I want to go to jail?
25 Q Do you want to go to jail?

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1 A No.

2 Q And you've a child? You still have a child?

3 A Yes, I do.

4 Q You don't want your child and your baby mama to be
5 alone, do you?

6 A No.

7 Q Now, you've talked with Mr. Pesci and Mr. DiGiacomo on
8 several occasions?

9 A Yes.

10 Q Have you talked to the detectives on several
11 occasions?

12 A No. I talked to them once.

13 Q Just one time?

14 A Just one time.

15 Q The 21st?

16 A Just one time.

17 Q How many have you spoke with Mr. Pesci and Mr.
18 DiGiacomo?

19 A I spoke with them twice.

20 Q And when did you speak with them?

21 A I spoke with them a couple days before the hearing,
22 and then at the actual hearing.

23 Q And that was the hearing back in I believe that would
24 be --

25 A It was the last hearing I went to.

1 Q Was that in 2005?
2 A Yes.
3 Q June 2005?
4 A Yes.
5 Q So you haven't --
6 A It was -- it was the last hearing I went to.
7 Q And so you haven't spoke with them since June 2005
8 until today?
9 A No. I spoke with them -- I spoke with them a couple
10 days ago.
11 Q When was that?
12 A About two days ago.
13 Q Where did you speak with them at?
14 A I spoke with them at the District Attorney's office.
15 Q And how long were you there?
16 A I was there for just about 30 minutes.
17 Q But you've never spoke with myself, have you?
18 A No.
19 Q Did you know that I tried to speak with you? Are you
20 aware of that?
21 A No.
22 Q You've never had anybody [inaudible] you and say, Mr.
23 Counts's attorneys would like to speak with you?
24 A I was told if -- if anybody else would want to speak
25 to me, then it's my choice to speak to them or not. That's what I

1 was told.

2 Q Okay. And what was your choice to speak with other
3 individuals?

4 A I didn't get that choice, because I -- nobody came and
5 spoke to me.

6 Q Now I'll take you back to May 21st. That's when you
7 spoke to the detectives. You remember that?

8 A Yes.

9 Q The detectives -- do you -- do you know their names?

10 A No.

11 Q But there were two detectives; right?

12 A Yes.

13 Q And that's when you described to us how you were
14 living with Deangelo, correct --

15 A Yes.

16 Q -- and he had come over and brought detectives over?

17 A Yes.

18 Q And he had said -- well, basically the detectives
19 introduced themselves?

20 A Yes.

21 Q And then they took you to be interviewed?

22 A Yes.

23 Q And they took you in a separate car?

24 A Yes.

25 Q And you had been with Deangelo for about two days --

1 A Yes.

2 Q -- leading up to that interview?

3 A Yes.

4 Q And when you talked to the detectives did you tell
5 them the truth?

6 A Yes, I did. I lied to them at first, but --

7 Q So you either lie or you don't. Did you lie to the
8 detectives?

9 A No, I lied to them in the --

10 MR. DIGIACOMO: Objection as to the --

11 THE WITNESS: In the beginning I lied to them,--

12 MR. DIGIACOMO: I'll let it go.

13 THE WITNESS: -- until they told me --

14 BY MR. WHIPPLE:

15 Q No, I'm not -- I didn't ask you. I asked you did you
16 lie to the detectives.

17 A Yes, I did.

18 Q And you lied to them and you told them you didn't know
19 who wanted TJ shot; correct?

20 A Yes.

21 Q It was a lie because you did know who wanted TJ shot,
22 didn't you?

23 A It was a lie 'cause I was scared.

24 Q Well, it was -- just back up for a second. You told
25 them you did not know who wanted TJ shot; correct?

1 A Yes.

2 Q But you knew who wanted TJ shot, didn't you?

3 A No, I did not know who wanted TJ shot until it

4 occurred.

5 Q All right. When you interviewed with the police

6 officers on May 21st --

7 A Yes.

8 Q -- you lied to them?

9 A Yes, I did.

10 Q And you lied to because you told them you did not know

11 who wanted TJ Hadland shot; correct?

12 A I told them I didn't know nothing.

13 Q But in fact you did know.

14 A Yes, I did.

15 Q And in fact the persons who wanted -- excuse me -- TJ

16 shot was Deangelo Carroll; correct?

17 A Yes.

18 Q And you knew that lying would protect Deangelo;

19 correct?

20 A Yes.

21 Q So you covered for Deangelo.

22 A No, I did not.

23 Q Well, let me back up, okay.

24 A No, I did not.

25 Q You just told you lied to --

1 A I did not lie to protect Deangelo, if that's what
2 you're trying to say. It's not. It's not.

3 Q Let's talk about the lie for second, okay. The lie
4 was -- you told the police officers you didn't know who wanted TJ
5 shot; correct?

6 A Yes, I did.

7 Q Okay. But in fact you knew who wanted TJ shot, didn't
8 you?

9 A Yes, I did.

10 Q And you know that it was Deangelo Carroll who wanted
11 TJ shot, didn't you?

12 A Yes.

13 Q So your lie protected Deangelo Carroll?

14 A No.

15 Q It didn't?

16 A If that's -- if that's how you want to put it, but
17 that's not how I'm going to say it.

18 Q All right.

19 A Because first of all --

20 Q Well, I didn't ask you --

21 A -- yes, I lied -- I lied to the -- I lied to the
22 officers --

23 Q Sir, sir --

24 THE COURT: Sir, Mr. Zone, right now just try to answer Mr.
25 Whipple's questions. Mr. DiGiacomo will have an opportunity to come

1 back and question you and allow you to clarify some of your answers
2 if he wants to do that, okay.

3 THE WITNESS: All right.

4 BY MR. WHIPPLE:

5 Q Now, you ended up telling those detectives who wanted
6 TJ shot, didn't you?

7 A Yes, I did.

8 Q And you told them because it was either that or go to
9 jail?

10 A I told them that 'cause it was either that or go to
11 jail. I would be -- if I didn't tell them, then I would be involved.
12 And I wasn't involved.

13 Q You don't want to be involved, do you?

14 A No. And I wasn't.

15 Q Because if you were involved, you wouldn't be sitting
16 there, would you?

17 A No, I wouldn't.

18 Q You don't want to be charged with murder, do you?

19 A No.

20 Q And you know that all you have to do to be involved is
21 be aware of it and be part of it; right?

22 A Right.

23 Q So it's very good from your point of view to say you
24 didn't know anything about it; right?

25 A Yes.

1 Q But in fact that's a lie, too?

2 A Yes.

3 Q Because you did know about it?

4 A No. I didn't know -- see -- what are you -- what are

5 you talking about?

6 Q Well, I'm talking about May 19th, 2005.

7 A Okay. Tell me exactly what you're talking about,

8 exactly what day.

9 Q I'm going to you ask you specifically.

10 A Okay.

11 Q May 19th, 2005, you knew that Mr. TJ Hadland was going

12 to be shot?

13 A I knew it. Yes, I did.

14 Q And you knew it before you got in the car?

15 A Yes, I did.

16 Q Okay. And then you drove with those individuals in a

17 car to Lake Mead; correct?

18 A Yes.

19 Q And he was shot.

20 A Yes.

21 Q Now, a couple questions. When you were in that car

22 driving to the lake how many times did you see Deangelo talk on the

23 phone with TJ?

24 A I only seen him talk with him once.

25 Q One time?

1 A One time.

2 Q And when TJ came up the highway did he -- as he was
3 driving past you -- the first time you saw TJ was he was coming
4 towards you; correct?

5 A Yes.

6 Q And so you passed each other?

7 A No. He -- as -- as he approached he never passed the
8 van. He turned. He made a U turn and he turned around. He never
9 passed us.

10 Q He never got close enough to talk to you before he got
11 out of the vehicle?

12 A No.

13 Q He never spoke to anybody?

14 A No. All he'd said was, hey, Deangelo.

15 Q You never ducked down?

16 A No.

17 Q You never tried to hide?

18 A No.

19 Q Mr. DiGiacomo talked about the preliminary hearing.
20 Do you recall that?

21 A Yes.

22 Q The preliminary hearing --

23 THE COURT: Mr. Whipple, if we're not going to use any
24 exhibits, can you just shut the screen off.

25 MR. WHIPPLE: Sure.

1 BY MR. WHIPPLE:

2 Q Now, at the preliminary hearing you said something
3 very similar today, which is what you said today, and that is you
4 didn't know that Deangelo was going to kill TJ Hadland when you got
5 in the car.

6 A No, I didn't.

7 Q And is that still your position today?

8 A That's still my -- that's going to be my position.

9 Q Because if you change that position you know that you
10 will be liable for murder; right?

11 MR. DIGIACOMO: Objection, Judge.

12 THE COURT: Yeah. It's sustained.

13 MR. DIGIACOMO: He would not be.

14 THE COURT: Well, I mean, I think it kind of calls for a
15 legal conclusion. You can ask the question a different way.

16 MR. WHIPPLE: Sure.

17 BY MR. WHIPPLE:

18 Q Your position is you had no idea that the murder was
19 going to take place when you got in the car.

20 A No.

21 Q And that's what you said at the preliminary hearing;
22 correct?

23 A Correct.

24 Q But that's not necessarily what you said to the
25 detectives, is it?

1 A Excuse me?

2 Q Remember when you talked to the detectives?

3 A Yeah.

4 Q That's not exactly what you told the detectives.

5 A I told them that if would have known that this was
6 going to happen or I was -- that we were driving up that way, I
7 wouldn't have got in the car.

8 Q Okay.

9 A That's what I said.

10 Q In fact today you said -- in fact I believe your
11 comment was -- he'd asked if you were down --

12 MR. DIGIACOMO: Page, Counsel?

13 MR. WHIPPLE: Just from his statements today.

14 THE COURT: What page are you looking at, Mr. Whipple?

15 MR. WHIPPLE: I'm not yet.

16 THE COURT: Oh. Okay.

17 MR. WHIPPLE: This is testimony today.

18 BY MR. WHIPPLE:

19 Q Mr. DiGiacomo was asking you questions about
20 Deangelo's communications with you about taking the life of Mr.
21 Hadland, and you said -- what'd you tell him? I forgot.

22 A I said no.

23 Q You said Mr. Deangelo Carroll had asked you were you
24 down. What was your response?

25 A No.

1 Q It was no?

2 A Yes. No.

3 Q In fact that's not what you told the police, is it?

4 A That's not what I told the police.

5 Q Well, did you --

6 A Okay. If I didn't police that, I wouldn't be -- I
7 wouldn't be sit here right now if I didn't tell the police that.

8 Q Well, let me -- let me ask you a question.

9 MR. WHIPPLE: If I may approach, Your Honor.

10 THE COURT: That's fine.

11 MR. WHIPPLE: This is page 9, counsel.

12 MR. DIGIACOMO: Okay.

13 BY MR. WHIPPLE:

14 Q I could just give you your own copy. Here's one.

15 Take a look at page 9, please, the bottom of page 9.

16 See that? I want to start at the top of that page. See that
17 -- that page?

18 A "Around that time we were supposed to promote."

19 Q The police officer asked, the top line on page 9, "So
20 what time was it where Deangelo told you, we got to go deal with
21 somebody tonight?" You see that?

22 A It had been around the time we were supposed to go
23 promote. Which is the reason I got in the car.

24 Q That's why you got in the car, right, because you were
25 going to go promote?

1 A Uh-huh.

2 Q All right. And now I want you to go halfway down that
3 page, okay. And then once you read it I want to ask you a question.
4 And it says, "Okay. So did you end up promoting before you guys did
5 anything else?" You see that?

6 A Yeah.

7 Q All right. And then you answered, "Yeah, we did. We
8 floated at the beginning, but after that came back to the house, and
9 I stayed. And then he came back and he told me come on."

10 MR. DIGIACOMO: Whoa, whoa, whoa. "And then
11 [unintelligible] had left and then he came back and then he told me
12 come on, so I hopped in."

13 MR. WHIPPLE: Correct.

14 BY MR. WHIPPLE:

15 Q You hopped -- you hopped in his car; right?

16 A Yes.

17 Q And then I want you to read down at the bottom of the
18 page. "Okay." This is what the detective asks you. "Now, when
19 Deangelo came back to the house and he said, come on, you took that
20 to mean let's go deal with this problem; correct"?

21 A No. No, no, no, no.

22 Q Sir, I didn't ask a question yet. Flip that page
23 over. What's your answer? "Yes."

24 MR. DIGIACOMO: Well, that's not his answer. Read your
25 whole answer.

1 MR. WHIPPLE: I'll let him read anything --

2 THE WITNESS: Yeah, but I'm --

3 BY MR. WHIPPLE:

4 Q You said -- no, wait a second.

5 MR. DIGIACOMO: Judge, he asked him the question, what was
6 his answer. I'd ask for the witness to be allowed to read the answer
7 to the jury.

8 MR. WHIPPLE: Judge, I'm not going to deny that. If I can
9 get to it and I can confirm a few things, I'll do that.

10 THE COURT: All right. Well, I think he gets to read his
11 whole answer to each question, so --

12 MR. WHIPPLE: Absolutely.

13 BY MR. WHIPPLE:

14 Q Mr. Zone --

15 MR. DIGIACOMO: So can he answer the top -- the answer on
16 the top of --

17 THE WITNESS: It say, "Yeah, but I want --"

18 MR. WHIPPLE: Your Honor, could I --

19 THE COURT: What was the last question? You read the
20 question.

21 MR. WHIPPLE: I read the question.

22 THE COURT: And he said, "Yes," and then there's an
23 explanation.

24 MR. WHIPPLE: Correct.

25 THE COURT: Okay.

1 MR. DIGIACOMO: But he doesn't say, yes. He says, "Yeah,
2 but I'm --" and there's a whole line that he --

3 THE WITNESS: All you're doing is -- all you're doing is,
4 "Yeah." That's all you're pointing at. You're not -- you're not --

5 THE COURT: Right. Mr. Zone, go ahead and read the whole
6 line of what your answer was.

7 THE WITNESS: It says, "Yeah, but I'm not -- I'm not fixing
8 -- I'm not fixing to deal with nobody's battles for them or they're
9 not going to -- I have a son to look out for." Which means that I
10 did not want to be involved.

11 BY MR. WHIPPLE:

12 Q Which means you knew, but you didn't want to be
13 involved, but you took the car anyway, which makes --

14 A But I said no. You can -- you can say -- you can come
15 at me whatever -- however you want to come at me. I said no, all
16 right. I said no to anybody that had anything to do with it.

17 Q Mr. Zone --

18 THE COURT: Mr. Whipple, try not to be so argumentative.

19 MR. WHIPPLE: Okay.

20 BY MR. WHIPPLE:

21 Q But you knew, and you got in the car anyway, didn't
22 you?

23 A I knew that we were going to work.

24 Q Well, that's not what he asked you. Read the question
25 before. Tell me what he asked you the question before.

1 A Look, exactly what I said, yeah, but, no, I'm not --

2 THE COURT: Mr. Zone, the question was what was the question
3 from the police officer.

4 MR. DIGIACOMO: Judge, I'd ask --

5 THE WITNESS: The question from the police--

6 MR. DIGIACOMO: I'm sorry, Mr. Zone.

7 MR. DIGIACOMO: Judge, I'd ask that the witness be shown
8 some respect. And the histrionics, that's complete badgering.

9 THE COURT: I asked Mr. Whipple not to --

10 MR. DIGIACOMO: Thank you, Judge.

11 THE COURT: All right. Mr. Zone, the last question from Mr.
12 Whipple was, what was the question the police officer asked you.

13 THE WITNESS: He asked me, "Okay. Now, when Deangelo came
14 back to the house and he said, come on, you took that to mean that
15 we're going to deal with this problem?" No. That's not how I took
16 it.

17 BY MR. WHIPPLE:

18 Q That's not what you said, is it?

19 A That's not -- that's not how I took that, yeah, we're
20 going to --

21 THE COURT: Mr. Zone, there's not a question in front of you
22 right now.

23 Mr. Whipple, go ahead and ask your next question.

24 And again, Mr. Zone, the State, Mr. DiGiacomo will have the
25 opportunity -- when Mr. Whipple is done questioning you, they'll come

1 and ask you additional questions, okay.

2 THE WITNESS: Okay.

3 THE COURT: Mr. Whipple, go on.

4 MR. WHIPPLE: Sure.

5 BY MR. WHIPPLE:

6 Q Well, I just want to clarify something, because I want
7 to make sure that you understand when the police officer asked you
8 "this problem," that you in fact meant -- what that meant, okay. So
9 I'm going to ask you to go back to page -- to page 7, please. Okay?
10 And did the police officer ask you, "Okay. So he did say TJ needs to
11 be dealt with?" And what's your answer?

12 A "Yes."

13 Q "Okay. Deangelo tell you who said that TJ needed to
14 be dealt with? Who said that?"

15 A Deangelo.

16 Q Okay. You didn't tell no names?

17 A No.

18 Q Then the police officer asks you, "Okay. So then you
19 thought, hey, this needs to be dealt with, what did you think --
20 think that meant?" What was your answer?

21 A I already knew what it meant.

22 Q Okay. And he asked you, "What did it mean?" What'd
23 you say?

24 A It meant murder.

25 Q So you lied today, as well, didn't you?

1 A Lied today about what?

2 Q You said from the start, from the jump, were you down;
3 you said no.

4 A Yes.

5 Q But in fact you told -- you never said that to the
6 police; correct?

7 A I did say that to the police.

8 Q And you told the folks here today that you didn't know
9 when you got in the car that it was going to go -- the people in it
10 were going to take the life of TJ Hadland; right?

11 A No, I did not. I was told that we were going to
12 promote.

13 Q That's not what you said, okay.

14 A That is what I said. I told him that's exactly what
15 he said, come on, we're going to promote.

16 Q All right. So let go to the bottom of page 9 one more
17 time, and then I'll let you read your answer, okay.

18 A Okay. Back at the same question? The same question?
19 I just answered you.

20 MR. DIGIACOMO: Judge -- and I apologize --

21 THE COURT: What's your objection?

22 MR. DIGIACOMO: One is that's one portion of the statement.
23 There's a certain other portion where Mr. Zone's talking about. So
24 we've talked about this. If he wants to move on. I'd object to
25 asked and answered.

1 THE COURT: Well, I'll let him ask one more time. And, as
2 you know, Mr. DiGiacomo, if there's other things that you need to
3 cover, you can do that when you go on redirect.

4 All right.

5 BY MR. WHIPPLE:

6 Q "Now, when Deangelo came back to the house and he
7 said, come on, you took that to mean, let's go deal with this
8 problem?"

9 A No.

10 Q And what did you say to the police officers?

11 A "Yeah, but I'm not --" it's the same answer. It's the
12 same answer, man. I just --

13 THE COURT: Mr. Zone, just read it again.

14 THE WITNESS: "Yeah, but I'm not fixing to do anybody's
15 battles for them. I have a son to look out for."

16 BY MR. WHIPPLE:

17 Q So you said, "Yeah, but I'm not fixing to do anybody's
18 battles"; right?

19 A Yes.

20 Q Okay. And so what did you mean by "Yeah"?

21 A I knew what he meant, I knew what Deangelo was going
22 to do, but I didn't know that he was going to do it at that
23 particular time.

24 Q Oh. That's a little -- okay. So let me -- let me
25 flesh that one out. You knew that Deangelo was going to go take the

1 life of TJ Hadland; correct?

2 A Yes, I did.

3 Q And you knew that he said to you, come on, let's go,
4 and you took that to meant that he was going to go take the live of
5 TJ Hadland; correct?

6 A Back at the same question. No.

7 Q And, Mr. Zone, if you said yes to that, what do you
8 believe would happen to you today?

9 A I would be in jail.

10 Q Would you also be telling the truth?

11 A No. I'm telling the truth what I'm telling you right
12 now. That's the truth.

13 Q Now, he also asked you at some point along the way to
14 -- on the way to the lake if you had picked somebody up. Do you
15 remember them asking you that?

16 A Excuse me? Excuse me?

17 Q Do you remember them asking you if you picked somebody
18 up?

19 A Yes.

20 Q Top of page 11. What was your first answer?

21 A "Yes, I guess we did."

22 Q "I guess"?

23 A Yes.

24 Q Okay. Now --

25 MR. WHIPPLE: Your Honor, with the Court's permission I'd

1 like to approach.

2 THE COURT: That's fine.

3 BY MR. WHIPPLE:

4 Q Mr. Zone, I want to show you some defense exhibits,
5 Exhibits A through E and ask that you take a look at that and set
6 them down.

7 A I don't know him.

8 THE COURT: Just -- for right now just look at them.

9 THE WITNESS: Okay. I see it.

10 BY MR. WHIPPLE:

11 Q Okay. Do you recognize the folks in those
12 photographs?

13 A Not in the last two.

14 Q No? Do you recognize the folks in the first three, A,
15 B, and C?

16 A Yes.

17 Q Is that a fair and accurate representation of those
18 people? Do you know who that is?

19 A Know what?

20 Q Do you know who these are in A, B, and C?

21 A Yes, I do.

22 MR. WHIPPLE: We'll move to admit A, B, and C, Your Honor.

23 THE COURT: Any objection?

24 MR. DIGIACOMO: No objection. Well --

25 MR. WHIPPLE: [Inaudible].

1 THE COURT: He hasn't said who they, but --

2 MR. DIGIACOMO: Right.

3 (Defendant's A through C admitted.)

4 BY MR. WHIPPLE:

5 Q Do you know Deangelo?

6 A Yes, I do.

7 Q You know Jayson?

8 A Yes, I do.

9 Q He's a friend of yours?

10 A Yes.

11 Q Deangelo's a friend of yours?

12 A Yes. He was.

13 Q And now yourself; right?

14 A Yes.

15 Q Do you know a person by the name of Calvin Williams?

16 A No.

17 Q He's not a person that you met at Sunset Park?

18 A No.

19 Q You never had a relationship with him for a year?

20 A Who is Calvin Williams?

21 Q I mean, if you don't know, you don't know.

22 A No, I don't.

23 Q You don't remember spending time with Mr. Williams at
24 the Budget Suites on West Tropicana?

25 A No.

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80

1 Q You ever frequented the Budget Suites at West
2 Tropicana?
3 A No.
4 Q You don't remember getting into an argument with Mr.
5 Williams?
6 A No.
7 Q You don't remember making a statement to him?
8 A I don't know nobody named Mr. Williams.
9 Q Have you ever told him, I'll put two in your head like
10 I did the guy at Palomino Club?
11 A Man, that's nonsense.
12 Q You never said that to anybody?
13 A That's nonsense.
14 Q -- answer me.
15 A Never came out of my mouth.
16 Q Okay. And then you said, think I'm playing with you?
17 A Never came out of my mouth.
18 Q -- I'll get away with it like I did with the Palomino
19 Club?
20 A Never came out of my mouth.
21 Q Never said it?
22 A Never came out of my mouth.
23 Q And you never had a gun with you --
24 A Never.
25 Q -- at Budget Suites?

1 A No.

2 Q Never carried one?

3 A No. I don't carry a weapon at all.

4 Q Mr. Zone, you lied to the police; correct?

5 A Yes.

6 Q You lied to the police to protect your friends.

7 A No. I lied to the police 'cause I was scared and I

8 didn't know what to do in the situation that I was in.

9 Q You lied to the police to protect yourself?

10 A Yes.

11 Q And you're protecting yourself today?

12 A I'm protecting myself today.

13 MR. WHIPPLE: Court's indulgence, Your Honor.

14 THE COURT: All right.

15 (Pause in the proceedings)

16 BY MR. WHIPPLE:

17 Q Mr. Zone, you never carried a .357?

18 A No.

19 Q You've never carried a gun?

20 A No.

21 Q Mr. Zone, on the trip from Las Vegas to the lake was

22 there any talking?

23 A No.

24 Q You said you saw Mr. Taoipu with a gun?

25 A Yes.

1 Q Where did that gun come from?

2 A That gun came from Deangelo.

3 Q Were you going to get paid -- was your expectation to
4 get paid for what happened to TJ Hadland --

5 A No.

6 Q -- up at Lake Mead?

7 A No. I didn't expect to get paid, I didn't want to get
8 paid. I wanted nothing to do with it, period.

9 Q You said Mr. Zone -- or, excuse me, Mr. Taoipu was
10 asked why he didn't shoot.

11 A Yes, he was.

12 Q And what did he say?

13 A He said that he would have shot but Deangelo was in
14 the way.

15 Q You remember testifying at the preliminary--

16 A Yes.

17 Q You have to wait till I ask you a question.

18 -- December 6th, 2005?

19 A Yes.

20 Q That's for your friend Taoipu?

21 A Yes.

22 Q You saw him?

23 A Yes.

24 MR. WHIPPLE: If I can approach.

25 THE COURT: That's fine.

1 MR. DIGIACOMO: Page, Counsel?

2 MR. WHIPPLE: Page 91.

3 BY MR. WHIPPLE:

4 Q In fact, let me get you your own copy.

5 Top of page 91. That would be -- Mr. Zone, that would be
6 this page right here.

7 MR. DIGIACOMO: Top of page 81, Counsel?

8 MR. WHIPPLE: 91.

9 MR. DIGIACOMO: 91.

10 BY MR. WHIPPLE:

11 Q Now, before you -- sir, before you went into this
12 preliminary hearing you took the same oath as you did today; correct?

13 A Yes.

14 Q You raised your hand?

15 A Huh?

16 Q You raised your hand?

17 A Yes.

18 Q And swore to tell the truth --

19 A Yes.

20 Q -- nothing but the truth?

21 A Yes.

22 Q And then you testified; correct?

23 A Yes, I did.

24 Q And Mr. DiGiacomo was the person asking you questions;
25 correct?

1 A Yes.

2 Q And he asked you -- he says, "All right. Now, was
3 there any talk about shooting before you got to Lake Mead?" Remember
4 what your answer was?

5 A "Deangelo."

6 Q Well, first of all, was there any talking on your way
7 to Lake Mead?

8 A There was no talking till we got to Lake Mead.

9 Q Okay. So when you got to Lake Mead there was talking?

10 A Soon as we got there he talked -- the only talking
11 that was -- communication that was communicating with was off the
12 phone. That was the only communication.

13 Q And so you're saying there was talking, or there
14 wasn't now?

15 A There was talking on the phone, yes, there was.

16 Q All right. So let's read through this, okay. "Now,
17 was there any talk about a shooting before you got to Lake Mead?"
18 What'd you say?

19 A Where's that at?

20 MR. DIGIACOMO: Go up there and show him the page, because
21 they're not numbered.

22 THE WITNESS: "Yeah, there was talking on the phone, yeah."

23 BY MR. WHIPPLE:

24 Q And this is -- this is Mr. DiGiacomo asking you;
25 right?

1 A Yes.

2 Q And the question was, "All right. Now, was there any
3 talk about a shooting before you got to Lake Mead?" And you
4 answered?

5 A Yes.

6 Q And then the question is, "Who talked -- who was
7 taking about the shooting?"

8 A Deangelo.

9 MR. DIGIACOMO: Well, read your answer, Rontae. I'm sorry.

10 BY MR. WHIPPLE:

11 Q And the answer is -- this is -- this is even before it
12 occurred; right?

13 A Yes.

14 Q The question is, "Who was talking about the shooting?"

15 A "Deangelo was."

16 Q Deangelo. The question was, "What did he say?" And
17 your answer was, "He said Hidalgo had wanted somebody dead. He
18 didn't say who, he didn't say what -- what he looked like. He said
19 he wanted him dead"; correct?

20 A That's it.

21 Q Now, when you testified at the preliminary hearing you
22 protected not only yourself, but you tried to protect Mr. Taoipu,
23 didn't you?

24 A No.

25 Q You didn't?

1 A No.

2 Q You didn't try to --

3 A All I did was tell the truth.

4 Q Okay. You didn't try to cover for Mr. Taoipu?

5 A All I did was tell the truth. That's my answer for

6 you.

7 Q Did you try to help Mr. Taoipu?

8 A All I did was tell the truth.

9 Q Okay. Let's follow up on the truth, okay. Page 95,

10 the bottom of page 95. You see that? There was a question, "Did

11 Jayson do anything --"

12 And Jayson's your friend; right?

13 A Yes.

14 Q "-- any shooting?" What did you say? You said, "He

15 didn't move, he didn't do nothing"; correct?

16 A Yes.

17 Q And Mr. DiGiacomo asked you, "Did he encourage --" and

18 your answer was, "He didn't." And Mr. DiGiacomo said, "-- KC to do

19 any shootings. Did he say, shoot him KC, shoot him, or did he --"

20 and then you answered, "He did exactly what I did."

21 A Yes.

22 Q "He didn't say nothing"; correct?

23 A Yes.

24 MR. DIGIACOMO: I apologize, but I object. None of this is

25 inconsistent with his prior testimony.

1 THE COURT: It's not necessarily inconsistent.
2 MR. WHIPPLE: My position is it's inconsistent with
3 [inaudible].
4 THE COURT: All right.
5 THE WITNESS: All I did was tell the truth.
6 THE COURT: Mr. Zone, there's no question.
7 Mr. Whipple, go on.
8 BY MR. WHIPPLE:
9 Q Okay. In fact, that wasn't the only time you said,
10 "He did exactly what I did"; correct?
11 A Correct.
12 Q You said it several times?
13 A Yes. And it's the truth.
14 Q But you weren't trying to protect him?
15 A No. It was the truth.
16 Q And you're not trying to protect him today?
17 A It was the truth. That's all I'm -- I'm telling the
18 truth.
19 Q Because he's your friend?
20 A I'm telling the truth 'cause it's the truth and it
21 need to be told.
22 Q Now, the gun -- I want to talk to you more about the
23 gun. You said Deangelo gave it to him; right?
24 A Yes.
25 Q Where did you see that happen?

1 A I seen that happen at the apartment.
2 Q Whose apartment?
3 A Deangelo's.
4 Q When?
5 A About three hours before he went back to work that
6 night, before he came and got us.
7 Q Clarify that. You said Deangelo gave it to him three
8 hours before he came back?
9 A Yes.
10 Q So when Deangelo was at the house?
11 A Yes. He gave it to JJ. He gave it to him.
12 Q Okay. Where did you see it? Where were they at?
13 A He pulled it out of his closet.
14 Q And you just saw him hand it to JJ?
15 A Yes.
16 Q Did he say anything when he gave it to him?
17 A No.
18 Q He didn't just -- just --
19 A He just told him to hold -- he said, hold this.
20 That's it.
21 Q Did he hand him any bullets?
22 A He handed me the bullets.
23 Q At that time?
24 A Yes.
25 Q And then so what did you do with the bullets?

1 A I dumped them out. I threw them on the floor.
2 Q So you threw them on the floor at the apartment?
3 A Yeah -- no. I threw them on the floor in the
4 apartment and in the van. They were given to me twice.
5 Q He gave the bullets to you twice?
6 A Yes. And I did exactly this.
7 Q So tell me more about this twice he gave you the
8 bullets. So he gave JJ the gun, and he gave you some bullets?
9 A Yes.
10 Q You were sitting in the apartment; right?
11 A Yes.
12 Q And you just dumped them on the floor?
13 A Yes, I did.
14 Q And what happened then?
15 A Then after that he got kind of upset with me and --
16 'cause I didn't want to be involved, and he said that we were going
17 to promote, and he told us to get dressed, and he said he'll be back.
18 Q And what happened to the bullets?
19 A The bullets remained on the floor until Jayson picked
20 them up.
21 Q When did Jayson pick them up?
22 A He picked them up right after I dumped them on the
23 floor.
24 Q Where'd he put 'em?
25 A He holded on to them.

1 Q Where at?

2 A I didn't pay attention to that.

3 Q You don't know where he put them?

4 A I didn't pay attention to that.

5 Q Okay. And so what happened to the gun?

6 A He holded it.

7 Q He holded it. And where'd he hold it?

8 A I'm not sure. I didn't pay attention to that.

9 Q Okay. And then when's the next time you saw the gun?

10 A The next time I seen the gun was afterwards, after the

11 murder.

12 Q After the murder is the next time you saw the gun?

13 A Yeah.

14 Q And where did you see the gun?

15 A I seen the gun -- JJ -- JJ, he had still had it.

16 Q Okay. And how'd you happen to see the gun from JJ?

17 A He showed it to me.

18 Q Why did he show it to you?

19 A Ask him.

20 Q And what -- well, what did he tell you when he showed

21 you the gun?

22 A He didn't tell me nothing.

23 Q Where were you when he showed you the gun?

24 A Where was he when he showed me the gun? He was around

25 the corner on Yale, which is down the street from where I was staying

1 before I started staying with Deangelo.

2 Q So he showed you the gun all the way when you got back
3 in vegas?

4 A Yes, he did.

5 Q And you never saw it on the way up, on the trip?

6 A No.

7 Q You never saw it when the shooting happened?

8 A No.

9 Q You never saw it all the way down?

10 A No.

11 Q Okay. And what about the bullets?

12 A What about the bullets?

13 Q You said he gave you bullets twice. When'd he give
14 you the bullets the second time?

15 A He gave them in the van. I just told you that.

16 Q When?

17 A When we got in the van and we was going to meet some
18 folks to pick up some marijuana.

19 Q So he gave you -- who gave you the bullets the second
20 time?

21 A Deangelo gave me the bullets.

22 Q After you'd thrown them on the ground the first--

23 A Yes.

24 Q -- and after TJ [sic] had collected them?

25 A No. After JJ had collected them.

1 Q JJ had collected them.

2 A Yes.

3 Q And so then you got in the van a second time --

4 A I got in the van the second time, and it wasn't the

5 same -- it wasn't around the same time. It wasn't just like right

6 back to back.

7 Q So this was later?

8 A Yes.

9 Q And you got in the van. What happened then?

10 A He gave me bullets, and I did the same thing with

11 them, threw them on the floor.

12 Q And this is when, the first trip to the Westside, or

13 the second trip?

14 A There wasn't no second trip to the Westside. There

15 wasn't no -- there was only one trip.

16 Q Okay. But you told me earlier that you had driven

17 over to Cheyenne area, that Deangelo had gone into the house.

18 A But that wasn't the area where it occurred.

19 Q Okay. Where was -- where was that?

20 A It was over on Cheyenne somewhere.

21 Q And that's not the Westside?

22 A If it is, I don't know. I'm not -- I just told you

23 guys I'm not familiar with it. I just gave you a answer, and you ask

24 me the same questions.

25 Q So you made two trips with Deangelo after he came back

1 from promoting?

2 A Yes.

3 Q And it was after 6:00 o'clock?

4 A Yes.

5 Q And after the first trip he went out somewhere, and
6 you went with Jayson in the car, and you came back to his apartment?

7 A Yes.

8 Q And you waited there for how long?

9 A Waited there -- well, like I said, which day are you
10 talking about?

11 Q I'm sorry?

12 A Which day? Which day? Which promotion? Which day
13 that I promoted? Which day are you talking about?

14 Q Talking about the day after the lake, the trip to the
15 lake.

16 A Okay. I didn't promote that day.

17 Q So my understanding is you were at Deangelo's house;
18 right?

19 A Yes.

20 Q That's the day that he gave Jayson the gun?

21 A Yes.

22 Q That's the day that you threw the bullets on the
23 ground?

24 A Yes.

25 Q Deangelo went out promoting?

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1 A Yes.

2 Q He came back, picked up both of you?

3 A Came back and picked up both of us, and he said, let's

4 go.

5 Q And that's when you went out to the Cheyenne area?

6 A Yes.

7 Q And he went into a house?

8 A He went into a house, he picked up some things, and

9 then he came back out.

10 Q What'd he pick up?

11 A Picked up marijuana.

12 Q You didn't say that the first time.

13 A I just said it.

14 Q Okay.

15 A I just said it. You're telling me I didn't say it,

16 and I just said it.

17 Q Okay. So he picked up marijuana the first time. And

18 you and Jayson were in the back; right? You and Jayson were in the

19 car still?

20 A Yes.

21 Q And what did you do with the marijuana?

22 A What did I do with it? It wasn't mines. I didn't go

23 in -- see --

24 It's nonsense, Your Honor.

25 THE COURT: Well, Mr. Zone, just try and answer the

1 question.

2 THE WITNESS: You should be asking Deangelo what he did with
3 it. All these questions you're asking me you can -- you should ask
4 him --

5 BY MR. WHIPPLE:

6 Q I'm going to ask you.

7 A -- and see if he'll tell you.

8 Q I'm asking you. We can compare [inaudible].

9 So you picked up marijuana that day; correct?

10 A No. Deangelo picked up marijuana.

11 Q Okay. And it was over by Cheyenne; right?

12 A Yes.

13 Q And that was after he was promoting?

14 A Yes.

15 Q And then he was also obviously talking to you at that
16 time about TJ; correct?

17 A Yes.

18 Q And then he was going to take some -- what was the
19 term for it, take him out, or -- what was the term he used?

20 A That he needed to be dealt with.

21 Q He needed to be dealt with. And you knew that meant
22 murder?

23 A Yes, I did.

24 Q And so then you went back to his apartment, you and
25 Mr. Taoipu; correct?

1 A Yes.

2 Q And did Mr. Deangelo stay there the whole time?

3 A Yes.

4 Q So you were in that apartment for how long?

5 A We were -- we were in the apartment for about a few

6 hours, because we were all -- we were all just chillin' together, and

7 then about a couple hours later he left because he had a call from

8 the job.

9 Q Okay. And then he left; correct?

10 A Yes.

11 Q And then -- and then he came back at some point. How

12 long was he gone?

13 A He was gone for about -- for about one or two hours.

14 Q And he came back?

15 A Yes.

16 Q You said that he said, let's go.

17 A Yes.

18 Q And that's where the answer to the question was

19 [inaudible]?

20 A Huh?

21 Q And he said, let's go take care of a problem; correct?

22 A No, he didn't.

23 Q Oh. He didn't say that?

24 A He said, let's go. Those was his words. He didn't

25 say, let's go -- let's go kill somebody, he didn't say, let's go fix

1 this problem; he just said, let's go, come on, let's go.

2 Q And you took that to mean that you were going to take
3 care of a problem?

4 A No. I meant that as I was going to work.

5 Q Well, you'll admit -- you'll agree that you told the
6 detectives that, yeah, that you understood that was, let's take care
7 of a problem?

8 A Of course. How am I not going to understand?

9 MR. WHIPPLE: Court's indulgence, Your Honor.

10 THE COURT: Uh-huh.

11 (Pause in the proceedings)

12 BY MR. WHIPPLE:

13 Q Mr. Zone, at some point on that -- during that day,
14 the 19th, there was also discussions about trash bags; correct?

15 A Right.

16 Q When did that occur?

17 A That occurred around the same time when he was talking
18 about TJ needing to be dealt with.

19 Q So that was earlier in the day?

20 A Yes. But it was the same time that he said that TJ
21 needed to be dealt with. It was around the same time.

22 Q Did you in fact ever find the trash bags?

23 A No.

24 Q You didn't assist him with that?

25 A No. I didn't see nothin'. I didn't see no trash bag,

1 I didn't see no bats, I didn't nothin'.

2 Q What does living on the down low mean, do you know?
3 What does it mean to you?

4 A Living on the down low?

5 Q Down low. Do you know -- assign any meaning to living
6 on the down low -- down low?

7 A (No audible response)

8 Q You have to say --

9 A No.

10 MR. WHIPPLE: Nothing further. Thank you, Your Honor.

11 THE COURT: All right. Redirect, Mr. DiGiacomo.

12 MR. DIGIACOMO: Yes, Judge. May I approach the clerk?

13 THE COURT: Sure.

14 REDIRECT EXAMINATION

15 BY MR. DIGIACOMO:

16 Q Mr. Zone, before I get too far, you have met with
17 myself before; correct?

18 A Yes.

19 Q And you've met with me both in a courtroom and outside
20 a courtroom?

21 A Yes.

22 Q Okay. Have I ever told you to say anything before?

23 A No.

24 Q Okay. What have I always told you?

25 A You told me to tell the truth.

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1 Q Okay. Have you met with my investigator, Mr.
2 Faulkner, before?

3 A Yes.

4 Q Okay. And what has he ever told you?

5 A Tell the truth.

6 Q Mr. Whipple asked you questions about you followed the
7 news in this particular case; correct?

8 A Yes.

9 Q Okay. Now, prior to going to the police station on
10 May 21st was there any news about the underlying facts of the
11 Palomino Murder Club [sic] that you remember?

12 A It just -- it taught me a lot that I needed to know
13 about the club that I didn't know.

14 Q Okay. But that's on the news about after it hits the
15 news; correct?

16 A Yeah, after it hits the news.

17 Q Okay.

18 A In the media.

19 Q And so you're watching stuff that's talking about what
20 happened at the Palomino Club and those types of things?

21 A Yes.

22 Q And you've read it in the newspapers since the time?

23 A Yes.

24 Q Okay. But you go to the police station two days after
25 the murder; correct?

1 A Yes.

2 Q There were some questions from Mr. Whipple about that
3 you said you did exactly the same thing as Jayson. And in fact your
4 -- you testified at both a preliminary hearing involving several
5 defendants, and then you testified at a later preliminary hearing
6 involving Jayson Taoipu; correct?

7 A Yes.

8 Q Okay. At that later hearing with Jayson Taoipu did
9 you tell the judge that Mr. Taoipu agreed to kill TJ?

10 A Yes, I did.

11 Q Okay. Have you ever wavered from that particular
12 position?

13 A No.

14 Q Okay. Now, Mr. Whipple asked you questions about
15 trying to protect Mr. Taoipu. I'm going to ask it a different way.
16 When Jayson actually said he was willing to help, did you believe
17 Jayson?

18 A No.

19 Q Okay. And have you repeatedly told that to
20 authorities over the course of time that you've been interviewed?

21 A Yes, I did.

22 Q Mr. Whipple also asked you about during your statement
23 with the police that Deangelo Carroll -- that you were trying to
24 protect Deangelo; correct?

25 A Yes.

1 Q Okay. Were you trying to protect Deangelo?
2 A Absolutely not.
3 Q At the end of that interview did you think that
4 Deangelo Carroll was in a lot of trouble?
5 A Yes.
6 Q Okay. Prior to giving that interview to the police
7 did you and Deangelo Carroll sit there and concoct some story about
8 what the truth should be?
9 A No.
10 Q Prior -- or I guess it was a couple of nights ago you
11 over in my office; right?
12 A Yes.
13 Q Okay. And I showed you the videotape that is a little
14 preamble prior to your statement with the police?
15 A To my investigation, correct.
16 Q Okay. And that was the sum total of the information
17 you had before they started interviewing and we have this transcript
18 with the taped statement; correct?
19 A Yes.
20 Q Okay. You had an opportunity to review the
21 transcript, as well, on a number of occasions?
22 A Yes.
23 Q I'm going to show you that tape. This has been marked
24 as 157. That's you, right, Rontae Zone?
25 A Yes.

1 Q Okay. And then I'm going to show you your transcript,
2 which is marked as 157A; correct?

3 A Yes.

4 Q And the transcript at least appeared to be a true,
5 fair, and accurate transcription of what it is that you said to the
6 police that night; right?

7 A Right.

8 Q And then you were able to watch the first few minutes
9 on the videotape about what that preamble was; correct?

10 A Yes.

11 Q Okay. There's been a lot of questions about you
12 telling the truth, telling lies, and protecting people; correct?

13 A Yes.

14 Q Okay. What's on here is what you actually told the
15 police that night?

16 A Yes.

17 MR. DIGIACOMO: Move to admit 157 and 157A.

18 THE COURT: The tape and the transcript?

19 MR. DIGIACOMO: The tape and the statement.

20 MR. WHIPPLE: No, we have no objection to it.

21 THE COURT: All right.

22 MR. WHIPPLE: I'm sure if they intended to play it now or
23 what the position is.

24 THE COURT: I don't know. But if you have no objection,
25 then it's admitted.

1 (State's Exhibits 157 and 157A admitted)

2 MR. DIGIACOMO: Thank you, Judge. I'd ask --

3 THE COURT: Do you intend to play it now?

4 MR. DIGIACOMO: I do intend to play the preamble. I don't
5 know --

6 THE COURT: I was --

7 MR. DIGIACOMO: -- going to take a --

8 THE COURT: Well, I was going to suggest perhaps this would
9 be an excellent time, because Mr. DiGiacomo is going to have to get
10 that cued up with the assistance of a court recorder.

11 It being 12:15, ladies and gentlemen, let's go ahead and
12 take our lunch recess. We will be in recess until 1:30 for the lunch
13 break.

14 (Court recessed at 12:19 p.m., until 1:37 p.m.)

15 (Jury is present)

16 REDIRECT EXAMINATION (continued)

17 BY MR. DIGIACOMO:

18 Q Before I play the tape, there was one other question
19 asked by Mr. Whipple during cross-examination that if you weren't
20 here today, you'd get arrested. Do you remember that?

21 A Excuse me?

22 Q Do you remember there being a question by Mr. Whipple
23 that if you didn't show up today, you'd wind up getting arrested or
24 something like that?

25 A Yes.

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1 Q All right. And during your discussions with myself,
2 Mr. Faulkner or anybody else associated with my office, you were
3 told, like any other witness, if you don't come respond -- in
4 response to a subpoena, you'd go to jail for not showing up for
5 process of the subpoena, right?

6 A Yes.

7 MR. DIGIACOMO: Judge, I'd ask to publish No. 157A to the
8 jury.

9 THE COURT: The tape. All right. Very good. We'll go
10 ahead and play that.

11 (Playing State's Exhibit 157A)

12 BY MR. DIGIACOMO:

13 Q At the end of that interview when they're asking you
14 questions about Deangelo Carroll, were you trying to protect Deangelo
15 Carroll?

16 A No, but I was scared.

17 MR. DIGIACOMO: Nothing further, Your Honor.

18 THE COURT: All right. Recross.

19 MR. WHIPPLE: Your Honor, first I wanted to ask the State
20 if they had those maps that were being drawn on. Those were in those
21 binders as well.

22 MR. DIGIACOMO: Once again, he's come to my office. He's
23 seen them. He should have a copy of them. I don't have a copy with
24 me in court today. If he wants one, we'll get him another copy.

25 MR. WHIPPLE: We'll request those, Your Honor. Can we get

1 that as soon as possible?

2 THE COURT: I believe that is possible.

3 MR. WHIPPLE: Thank you.

4 RECROSS-EXAMINATION

5 BY MR. WHIPPLE:

6 Q Rontae, that statement -- you saw the time and date
7 log, didn't you?

8 A Yes.

9 Q And, in fact, that said May 21 about 1:00 o'clock in
10 the morning, right?

11 A Yes.

12 Q And the shooting happened May 19 about 11:00 o'clock
13 at night, right?

14 A Yes.

15 Q So this is about 24 hours and give or take a few -- 24
16 hours, give or take a few hours, right?

17 A Yes.

18 Q And you already admitted that you lied to the police,
19 right?

20 A Yes.

21 Q Minor transformation from what we heard in court today
22 from what was on that screen, wouldn't you say?

23 A I lied to the police.

24 Q That -- there has been a number of inconsistencies.

25 Let's talk about -- you know, you told Mr. DiGiacomo and I that, you

1 know, you never promoted that day. Do you remember telling
2 Mr. DiGiacomo and I that?

3 A I didn't promote that day.

4 Q You didn't promote that day?

5 A No.

6 Q Then why did you tell the police you promoted that
7 day?

8 MR. DIGIACOMO: Objection. I don't think he's ever said
9 that.

10 THE WITNESS: I didn't tell the police. I told the police
11 I never promoted.

12 THE COURT: I don't recollect that, but if it's in the
13 transcript, then, Mr. Whipple, you need to get to that part of the
14 transcript.

15 MR. WHIPPLE: Sure.

16 MR. DIGIACOMO: Which transcript, Mr. Whipple?

17 MR. WHIPPLE: That would be the one that was played.

18 BY MR. WHIPPLE:

19 Q Let's go to the bottom of page 5. Are you on page 5?
20 In fact, the officer asked you: Okay. So, like I said, were you
21 helping -- were you helping Deangelo and JJ with promotions that day;
22 is that right?

23 And the answer was?

24 A Yes, I was.

25 Q Yes, I was. Okay.

1 You tell me --

2 A But I also made that statement that I was scared when
3 I talked to them the first time and I told you that I lied to them.

4 Q Oh, I got it. It's only when you're scared that you
5 lie, right?

6 MR. DIGIACOMO: Objection.

7 THE WITNESS: Look, first of all --

8 MR. DIGIACOMO: Argumentative, Judge.

9 THE WITNESS: First of all --

10 BY MR. WHIPPLE:

11 Q No, you don't have to -- I'm just trying to get --

12 A First of all -- first of all -- first of all --

13 Q No, no, no. You don't ask the questions, sir. I ask
14 the questions.

15 MR. DIGIACOMO: Mr. Zone's, there's not a question --

16 THE COURT: Well, okay. It's a little argumentative,
17 Mr. Whipple.

18 MR. DIGIACOMO: Thank you, Judge.

19 BY MR. WHIPPLE:

20 Q All right. Let me ask you in a very sensible nice
21 manner. Mr. Zone, when you're scared, do you lie?

22 A No. But this is the first time I was in this
23 predicament, the first time I've ever been in any situation like
24 this, so I'm supposed to be scared. Yes, I am.

25 Q All right. Let me ask you again: When you're scared,

1 do you lie?

2 A I lied to them when I was scared. And I've been
3 telling you -- I just told you that how many times.

4 THE COURT: Mr. Zone, there's no question in front of you
5 right now.

6 BY MR. WHIPPLE:

7 Q Are you scared today?

8 A No, I'm not.

9 Q You're not scared at all?

10 A No, I'm not.

11 Q Now, when I looked at that screen, I was observing
12 you. I didn't see you looking scared.

13 MR. DIGIACOMO: Objection as to what exactly Mr. Whipple's
14 conclusion of --

15 MR. WHIPPLE: That's fine.

16 THE COURT: Well, Mr. Whipple, you're not a witness and so
17 if there's a question, then you may ask it.

18 MR. WHIPPLE: That's the followup, Your Honor.

19 THE WITNESS: But you --

20 THE COURT: Well, wait, there's no question.

21 BY MR. WHIPPLE:

22 Q I didn't see any signs of you being scared on that --

23 MR. DIGIACOMO: Once again, Judge, I object to the form of
24 the question.

25 THE COURT: Mr. Whipple, don't make argument.

1 MR. WHIPPLE: Okay.

2 MR. DIGIACOMO: It's inappropriate. Thank you.

3 BY MR. WHIPPLE:

4 Q Mr. Zone, where on that screen did it show that you
5 were scared?

6 A Well, you would have to be there to see it.

7 Q But we observed.

8 A But you didn't see it. You weren't there. You
9 weren't in that room at that particular time.

10 Q So it was something that was in that room in addition
11 to what we saw?

12 A Yes.

13 Q Okay. Now, you also -- tell me, if you recall, from
14 your testimony to Mr. DiGiacomo and myself -- tell me about what
15 contact you had with TJ that night.

16 A No contact. How can I have contact with someone I
17 don't know?

18 Q And did Deangelo have any contact with him that night?

19 A He had very much contact with him.

20 Q All right. What I'm talking about is out on the lake
21 when you were out in the van.

22 A How -- like I said, how can I have contact with
23 someone I don't know?

24 Q Did TJ have any contact with you all who were in the
25 van?

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1 A I can't have contact with someone I don't know.

2 THE COURT: Mr. Zone, the question was did TJ have contact
3 with you all who were in the van.

4 THE WITNESS: No.

5 BY MR. WHIPPLE:

6 Q All right. Would you turn to page 29. And when you
7 get there, let me know and I'll point you to where you should look.
8 Are you ready?

9 A Yes.

10 Q Are you on page 29?

11 A Yes.

12 Q Right here, about two-thirds of the way down,
13 question: Okay. And that's on the passenger side?

14 Answer: And this is the van. He gets out. He goes to the
15 front, but TJ -- as he's getting out, TJ's getting out and when he --
16 when TJ gets out, he's walking towards Deangelo and he's like, Hey,
17 Deangelo. He's like, What's up, dude?

18 A He's walking towards him while he's at -- at the
19 driver's seat of the van.

20 Q So, in fact, there was contact out there between
21 Deangelo and the folks in the van?

22 A If you call waiving to him contact, that was it.

23 Q Now, if you would turn to page -- let's turn to the
24 page prior to that, 28. I want to ask you some questions about the
25 gun.

1 Now, you told us you don't know anything about guns, right?

2 A Yes.

3 Q You don't know the -- you and Mr. DiGiacomo talked

4 about revolvers that spin like a wheel and automatics that police

5 officers have.

6 A Yes.

7 Q And officers asked you in that video, did you get a

8 good look at the gun?

9 A And I said no.

10 Q You responded -- turn to that page?

11 A I'm here.

12 Q Answer: It's a .357.

13 Right?

14 A Okay. Now, afterwards --

15 Q No, no, no, sir. I just asked you a question.

16 A Yes, you just asked me a question, but the answer is

17 right at the bottom of that question that you just asked.

18 Q Do you know what? In just a minute we'll go there,

19 okay?

20 You said it's a .357, right?

21 A Yes, I did.

22 Q Okay. What is a .357?

23 A That's what I was told. It was a .357. I was told

24 from somebody else what it was.

25 Q Okay. So you gathered information from Deangelo

1 afterwards that you incorporated into your statement, right?

2 A I was given information. I wasn't -- I didn't gather
3 anything. I was given.

4 Q All right. You were given information?

5 A Yes, I was.

6 Q From Mr. Carroll?

7 A Yes.

8 Q Because you didn't know when it had happened what it
9 was, right?

10 A No.

11 Q And you told the police officers information that
12 Deangelo told you later?

13 A Yes, he did.

14 Q Now, tell me again how much money was on the line for
15 what happened out there at Lake Mead.

16 A I was never told we were supposed to be paid. All I
17 was told was that they were getting -- they were going to have an
18 envelope waiting on them. There was no amount of money.

19 Q Well, did I hear it wrong? Because when Mr. DiGiacomo
20 was asking you questions, I distinctly remember you saying \$6,000.

21 A That's around what Deangelo said. This is coming from
22 Deangelo's mouth.

23 MR. DIGIACOMO: Judge, I'm going to object --

24 THE WITNESS: Okay. It's not coming from my mouth.

25 MR. DIGIACOMO: Mr. Zone --

1 THE WITNESS: I was told this.

2 BY MR. WHIPPLE:

3 Q So when you --

4 MR. DIGIACOMO: Rontae, when I stand up --

5 THE COURT: Mr. Zone, when the lawyers --

6 MR. DIGIACOMO: -- stop talking.

7 THE COURT: -- object, you need to wait for that and then
8 I'll tell you whether or not to --

9 THE WITNESS: I'm sorry.

10 THE COURT: -- answer or tell you that you don't need to
11 answer.

12 THE WITNESS: Sorry.

13 THE COURT: What's your objection?

14 MR. DIGIACOMO: Objection to the form of the question and
15 that it was misleading. What Deangelo told him after the crime
16 versus what he was asking was what was before and then he's trying to
17 impeach him with it.

18 THE COURT: Well, I -- go on, Mr. Whipple.

19 BY MR. WHIPPLE:

20 Q So let me get this right. When did the \$6,000 come
21 up? Because it certainly wasn't out when you gave the statement at
22 24 hours, 25 hours after the shooting, right?

23 A Right.

24 Q Okay. So you obviously went back and talked to some
25 other people then. Who did you talk to?

1 MR. DIGIACOMO: Objection.

2 THE WITNESS: I didn't talk to nobody. I was told.

3 THE COURT: Go on, Mr. Whipple.

4 BY MR. WHIPPLE:

5 Q Who told you?

6 A Deangelo.

7 Q When did he tell you?

8 A He told me -- at the same time when he told me that
9 around the amount that they were supposed to be getting paid, he had
10 told me the kind of gun that it was. It was around the same time,
11 the same conversation, the same thing.

12 Q And, you know, Rontae, you talked to us ahead of time.
13 You told us about how often you went into the Palomino Club. What
14 did you tell us when Mr. DiGiacomo asked you -- what did you tell him
15 with regard to how often you went into the Palomino Club before
16 May 19, 2005?

17 A All I did was go to the back of the club, the back
18 where the van comes. I didn't go in -- I didn't get to go inside,
19 all the way inside where Mr. H is or none of that. I didn't do none
20 of that because, first of all, I was under age and they're not going
21 to let you in when you're under age.

22 Q And that's what you testified to today, right?

23 A Yes.

24 Q All right. Let's turn to page 37. Go to the bottom
25 of that page.

1 A Yeah. Any other day, I --

2 Q I'm sorry. There's no question pending.

3 A Okay. Well...

4 Q Question -- did you have a chance to look at that?

5 A I see it.

6 Q Question: Okay. And what did you see? Tell me what
7 you saw.

8 Answer: I didn't get to go in. That's just for something
9 that day. I just couldn't go in.

10 A Yes.

11 Q Question --

12 A For that --

13 Q Sir, no question.

14 A Okay.

15 Q Question: Couldn't go in that club?

16 Answer: Yeah. Any other day I could go in, but I couldn't
17 go in that day.

18 Is that what you said on that --

19 A Yes, that is what I said. But when I mean "in," I
20 don't mean in the club, actually in the club. There is a place in
21 the back where people sit to do their breaks. I sat. I had to be
22 there. That's the only time I went in the club, was being at the
23 back where they smoke their cigarettes in the back. And that's not
24 even really like inside the club. That's like as you're going out to
25 go park your car.

1 Q Okay. And then in the statement they asked you -- the
2 question was, did you tell this shooter where you lived?

3 A Yes, I did.

4 Q And that's what you testified to, right?

5 A Yes.

6 Q Okay. Go to your transcript, page 72.

7 THE COURT: And you're referring to the preliminary hearing
8 transcript?

9 MR. DIGIACOMO: I'm sorry. What page is that?

10 MR. WHIPPLE: Correct.

11 Page 72.

12 MR. DIGIACOMO: Of which preliminary hearing transcript?

13 MR. WHIPPLE: The first one.

14 MR. DIGIACOMO: The first one.

15 THE COURT: This is -- what's the date on it?

16 MR. WHIPPLE: This would be --

17 MR. DIGIACOMO: June 13, 2005.

18 MR. WHIPPLE: That's right.

19 THE COURT: All right.

20 BY MR. WHIPPLE:

21 Q Do you remember me asking you questions about walking
22 in, swearing to tell the truth, nothing but the truth so help you
23 God?

24 A Yes, I do.

25 Q Okay. You looked at the judge and he asked you -- you

1 were asked the question by Mr. DiGiacomo: When KC got back in the
2 van, did he say anything to you?

3 Answer: He asked me where I lived.

4 Question from Mr. DiGiacomo: Did you tell him?

5 Answer: No.

6 Is that what you said?

7 A Yes, I did.

8 Q It's no different from yes?

9 A Yes, it is.

10 Q Okay. You told us today also, Rontae, about a trip
11 earlier in the day when you went and bought marijuana. Do you
12 remember that?

13 A I didn't buy it.

14 Q Okay. You were with -- of course, you didn't buy it
15 because you were with Mr. Deangelo and he bought it, right?

16 A Yes.

17 MR. DIGIACOMO: Objection, Judge. I actually think this is
18 way beyond the scope of redirect. I didn't go anywhere near that
19 conversation.

20 THE COURT: That's probably true, but I'll allow
21 Mr. Whipple to get into it.

22 MR. WHIPPLE: I appreciate it, Your Honor.

23 BY MR. WHIPPLE:

24 Q Okay. So did you ever tell Mr. DiGiacomo or Mr. Pesci
25 that you, in fact, had earlier in the day, with Mr. Deangelo Carroll,

1 gone and purchased marijuana?

2 A Excuse me?

3 Q Have you ever told anybody -- well, let's start with
4 Mr. DiGiacomo and Mr. Pesci. Did you ever tell them that you had
5 been buying marijuana with Mr. Deangelo earlier in the day?

6 A Yes, I did.

7 MR. DIGIACOMO: Objection, Judge. The -- that
8 mischaracterizes that he had been buying. Deangelo Carroll bought.

9 THE COURT: No, he didn't say that he had been buying.

10 MR. DIGIACOMO: That's what he said.

11 THE COURT: He asked him whether he had previously told
12 anyone that he had been buying. Today he said that he didn't buy
13 them.

14 So did you ever tell anyone previously that?

15 THE WITNESS: Yes, I did.

16 THE COURT: All right. Go on, Mr. Whipple.

17 BY MR. WHIPPLE:

18 Q And let me get it clear, because I want to make sure
19 that the question's proper. It's not that you were buying the
20 marijuana, it's that you were with Deangelo Carroll who was buying
21 it, right?

22 A Yes.

23 Q And you just said you did tell people that before
24 today. Who did you tell?

25 A I told Mr. DiGiacomo.

1 Q You told Mr. DiGiacomo?
2 A Yes, I did.
3 Q You didn't tell the police officers?
4 A Yes, I did.
5 Q You did?
6 A Yes, I did.
7 Q You did. It's in that statement.
8 A It was in the hearing if you -- if you were paying
9 attention to it.
10 Q It's in the statement?
11 A It's in this statement.
12 Q Please, sir, do you know where?
13 A No, but I know it's there because I know I said it.
14 Q And it's something that you just heard when it was
15 played to you, right?
16 A Would you come again?
17 Q Well, sir, you just heard that statement to the
18 police, right?
19 A Yes.
20 Q Did you tell them anything more than what's on that
21 statement?
22 A I told them we was getting weed. Yeah, I did tell
23 them that. I told them exactly everything they needed to know.
24 Q To protect yourself?
25 A To prove my innocence. That -- I don't have nothing

1 to do with this.

2 Q Gotcha.

3 A And I don't want it.

4 Q So it was those two officers -- you admitted that you
5 lied to the police, right?

6 A Yes, again.

7 Q And it was those two officers that we saw on the
8 screen?

9 A Yes.

10 MR. WHIPPLE: Court's indulgence.

11 THE COURT: All right.

12 MR. WHIPPLE: That's it for --

13 THE COURT: Anything else, Mr. DiGiacomo?

14 MR. DIGIACOMO: No, Judge.

15 (PORTION OF PROCEEDING ENDED AT 2:50 P.M.)

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.357 [9] 33/4 33/5 33/8 33/13	81 [1] 84/7	120/16 121/6
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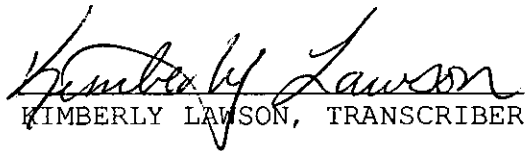
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ATTEST: I HEREBY CERTIFY THAT I HAVE TRULY AND CORRECTLY
TRANSCRIBED THE AUDIO/VIDEO PROCEEDINGS IN THE
ABOVE-ENTITLED CASE TO THE BEST OF MY ABILITY.


KIMBERLY LAWSON, TRANSCRIBER

KARReporting and Transcription Services

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720-244-3978

ORIGINAL

THE STATE OF NEVADA,

Plaintiff,

VS.

KENNETH COUNTS,

Defendant.

FILED IN OPEN COURT

FEB 07 2008

20

CHARLES J. SHORT
CLERK OF THE COURT

) CASE NO. C212667

) DEPT. XXI

BY

DENISE HUSTED ^{DEPUTY}

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

Wednesday, February 6, 2008

RECORDER'S TRANSCRIPT OF HEARING RE:
JURY TRIAL - DAY SEVEN

APPEARANCES:

FOR THE STATE:

MARK DIGIACOMO, ESQ.
Deputy District Attorney
GIANCARLO PESCI, ESQ.
Deputy District Attorney

FOR THE DEFENDANT:

BRET WHIPPLE, ESQ.
KRISTINA WILDEVELD, ESQ.

RECORDED BY: JANIE OLSEN, COURT RECORDER

TRANSCRIBED BY: KARReporting and Transcription Services

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SUPP 0143

AA 2296

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1 THE COURT: We're looking for Calvin Williams.

2 CORRECTIONS OFFICER: He's coming.

3 THE COURT: Thank you, Ron.

4 All right. Mr. Williams, just follow our bailiff right
5 here over to the witness stand and just remain standing next to the
6 chair, facing this lady right here who will be administering the
7 oath.

8 CALVIN WILLIAMS, DEFENDANT'S WITNESS, SWORN

9 THE CLERK: Please be seated. And, sir, please state and
10 spell your name.

11 THE WITNESS: Calvin Williams, C-a-l-v-i-n,
12 W-i-l-l-i-a-m-s.

13 THE COURT: All right. Mr. Whipple, you may proceed.

14 DIRECT EXAMINATION

15 BY MR. WHIPPLE:

16 Q Good afternoon, Mr. Williams. Mr. Williams, you
17 currently live at the Nevada State Prison?

18 A Yes.

19 Q And what are the circumstances that put you in the
20 Nevada State Prison?

21 A Probation violation.

22 Q And how much more time do you have in the Nevada State
23 Prison before you anticipate being released?

24 A 90 to 100 days.

25 Q And what's the underlying charge again?

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1 A Conspiracy to commit robbery.
2 Q And, Mr. Williams, how old are you?
3 A 21.
4 Q And where do you live when you're not at the Nevada
5 State Prison?
6 A I live with my girlfriend or my mom.
7 Q And that's here in Las Vegas?
8 A Yes.
9 Q And how long have you lived here in Las Vegas?
10 A About five years, off and on.
11 Q Okay.
12 MR. WHIPPLE: May I approach, Your Honor?
13 THE COURT: That's fine.
14 BY MR. WHIPPLE:
15 Q I'm showing you what's marked as Defense Exhibits D
16 and E. Do you recognize these photographs?
17 A Yeah.
18 Q Is that you?
19 A Yeah.
20 MR. WHIPPLE: Okay. Move to admit D and E, Your Honor.
21 THE COURT: All right. Those will be admitted.
22 (Defendant's Exhibits D and E admitted.)
23 BY MR. WHIPPLE:
24 Q Now, Calvin, I want to ask you some questions about --
25 this is your son, right?

1 A Yes.

2 Q I want to ask you some questions about a person named

3 Rontae Zone. Do you know a person named Rontae Zone?

4 A Yes, I do.

5 Q How do you know a person named Rontae Zone?

6 A Me and Rontae Zone used to date.

7 Q I'm sorry?

8 A Me and Rontae Zone used to date.

9 Q Mr. Williams, I'm going to ask that you sit up a

10 little bit, if you can, because that's a speaker and we're trying to

11 take down all of the information.

12 What's your -- if you don't mind me asking, what's your

13 sexual propensity?

14 A Bisexual.

15 Q And you said you had -- that you used to date Rontae

16 Zone?

17 A Yes.

18 Q I'm showing you what's been -- Exhibit B. Who's that?

19 A Rontae.

20 Q So you had a relationship with Mr. Zone?

21 A Yes.

22 Q And how long did your relationship with Mr. Zone

23 exist?

24 A About seven to eight months.

25 Q And when was that relationship?

1 A In '05.

2 Q When in -- in 2005, right?

3 A Yeah.

4 Q When in 2005?

5 A Around my birthday.

6 Q Okay. When's your birthday?

7 A January 26.

8 Q So that would be '05 or '06 that you --

9 A '05.

10 Q Now, tell me your birthday again.

11 A January 26.

12 Q January 26. Okay. Now, we've already heard testimony

13 that Mr. Zone was involved with an incident in May of 2005, okay?

14 A (No audible answer).

15 Q You have to say yes for the record.

16 A Yes.

17 Q Okay. And it involved the Palomino Club. Now, when

18 you were with Mr. Zone, did you ever hear him -- and I'm not going to

19 ask you what he said -- but did you hear him make -- ask about

20 conversations or did you hear in conversations any contact with the

21 Palomino Club?

22 A Just one time when me and him were arguing.

23 Q Okay. And I'm going to ask you some specific

24 questions about that. Where were you at when you heard comments

25 about the Palomino Club?

1 A We were at the Budget Suites on Charleston.
2 Q How can you remember that?
3 A Because he had threatened me at that --
4 Q I'm sorry?
5 A He had threatened me.
6 Q Had threatened you?
7 A Yes.
8 Q And so that's something that you obviously remember?
9 A Yeah.
10 Q Tell me the circumstances that lead up to him
11 threatening you.
12 A A dude named Alex called my phone. Rontae picked it
13 up. The guy Alex said, What's up, baby? Rontae got real upset about
14 it.
15 Q Let's stop there. This person said, What's up, baby?
16 A Yeah.
17 Q So was it kind of a term of affection?
18 A Yes.
19 Q And then Rontae's the one that heard that on his
20 ear -- on the cell phone?
21 A Yes.
22 Q And then how did he respond or react?
23 A He got mad. He pulled out his tri 57.
24 Q Okay. When you say he pulled out a tri 57, what do
25 you mean -- what are you meaning -- what did he pull out?

1 A A gun.

2 Q Okay. And what type of gun was it?

3 A A tri 57.

4 Q What is it -- what is a tri 57?

5 A It's a black handgun.

6 Q Okay. And would that be a .357?

7 A Yes.

8 Q And do you recall what he said when he pulled that gun

9 out?

10 A He started yelling and was like, If you want to play

11 me, I'll play you. He was like, I'll put two in your head like I did

12 that fool from the Palomino Club.

13 Q Now, when he said, If you want to play me, I'll play

14 you, what did you take that to mean?

15 A Basically, he was saying if I was going to play him,

16 he was going to kill me.

17 Q What do you mean "play him"?

18 A Like disrespect him, basically.

19 Q You were having outside other relationships; is

20 that --

21 A Yes.

22 Q And when he said, I'll put two in your head, like he

23 did at the Palomino Club, what was he doing with the gun at this

24 point?

25 A He was pointing it at me.

1 Q Can you show me, with your limited --
2 A It was like this.
3 Q One hand?
4 A Yeah.
5 Q Did he say -- did he say anything else in addition to,
6 I'll put two in your head like I did the guy at the Palomino Club?
7 A No, that was it.
8 Q Did he say anything about getting away with murder?
9 MR. DIGIACOMO: Objection, Judge. Leading.
10 THE COURT: Yeah. That's sustained.
11 MR. DIGIACOMO: Do you want to feed him the whole testimony
12 or just --
13 MR. WHIPPLE: Hang on just a second.
14 MR. DIGIACOMO: Judge, do they have a statement of
15 Mr. Williams? If so, we need to approach.
16 MS. WILDEVELD: We don't.
17 THE COURT: Please do.
18 MS. WILDEVELD: No, Your Honor, we don't.
19 BY MR. WHIPPLE:
20 Q What did you do after -- what did you do after
21 Mr. Zone said that to you, pulled that gun and put it in your face?
22 MR. DIGIACOMO: Objection. Relevance, Judge. This is a
23 very limited --
24 MR. WHIPPLE: I'm sorry?
25 THE COURT: Approach.

1 (Off-record bench conference)

2 THE COURT: That's sustained.

3 MR. WHIPPLE: Nothing further, Mr. Williams. Thank you.

4 THE COURT: All right. Mr. DiGiacomo, will you be
5 crossing?

6 MR. DIGIACOMO: Thank you, Judge.

7 CROSS-EXAMINATION

8 BY MR. DIGIACOMO:

9 Q I want to talk to you a little bit about, first of
10 all, how you got here today. Do you remember how you got here today?

11 A Yeah.

12 Q Who picked you up last night? The investigator from
13 the district attorney's office, correct?

14 A Yeah.

15 Q Do you remember driving down here with the
16 investigator from the district attorney's office?

17 A Mm-hmm.

18 THE COURT: Is that yes?

19 THE WITNESS: Yes.

20 BY MR. DIGIACOMO:

21 Q Now, specifically, what exactly did Rontae say about
22 the Palomino?

23 A He said that he'd put two in my head like he did the
24 fool from the Palomino Club.

25 Q From --

1 A Yeah.

2 Q -- or at?

3 A From.

4 Q Okay. Do you remember telling my investigator that he

5 said, I'll put two in your head like I did that guy "at" the

6 Palomino?

7 A Huh-uh.

8 Q You don't remember my investigator saying, What do you

9 mean? Nobody was killed at the Palomino?

10 A (The witness nodded.)

11 Q You don't remember saying that?

12 A No.

13 Q So -- okay. Let's talk about -- how is it that the

14 defense knows this particular piece of information? How did they

15 find out about it?

16 A Because I had told somebody else about it.

17 Q Okay. And the person you told about it was who?

18 A Another inmate.

19 Q And the inmate was who?

20 A Mr. Counts.

21 Q Okay. So let me see how I can figure this out. How

22 is it that you knew that Mr. Counts would be interested in what

23 Rontae said?

24 A Because another inmate that he was talking to, I

25 had -- was walking by during free time and heard him talking about

1 it. I talked to the other inmate and the other inmate told
2 Mr. Counts what I had said about it.

3 Q So you were in the same module as Mr. Counts, correct?

4 A Yes.

5 Q And he was just -- you were just so fortuitous to hear
6 him mention Rontae Zone, correct?

7 A Yeah.

8 Q And then you came out and said, I know that guy, I've
9 been having sex with him for a while, correct?

10 A No, I didn't come out like that.

11 Q Okay. Well, let me ask you this: You said that you
12 knew him around your birthday, correct?

13 A Yeah.

14 Q And you also told my investigator that you lived with
15 him during that time period that you guys were together, right?

16 A No.

17 Q You didn't?

18 A No, we didn't --

19 Q Okay. Well, let me ask you this: Where was he living
20 during the time period you were with him?

21 A I was -- he was at the -- Budget's.

22 Q He was staying at the Budget Suites too?

23 A Yes.

24 Q Okay. That was his address?

25 A I don't -- it wasn't his address. It was somebody

1 A Yes.

2 Q In fact, he said the same way I put two bullets in the
3 head of the person from the Palomino Club?

4 A Yes.

5 Q And -- okay. So you're an inmate at the Clark County
6 Detention Center, right?

7 A Yes.

8 Q And you've heard -- some other person, not Mr. Counts,
9 some other person heard some comments about that, correct?

10 A Yes.

11 Q Tell us exactly how it came out so everybody knows
12 exactly what this other person that brought this attention to you.

13 A I was walking around. I heard another inmate talking
14 about the -- Rontae Zone, and I stopped and was like, you know, You
15 know Rontae Zone? He was like, Yeah. He was like -- he was -- they
16 used to buy weed from each other.

17 And so I got to talking to the dude about it and he was
18 like, Well, how do you know Rontae? I was like, Me and Rontae are
19 real good friends. And the dude got to talking and was like, Well --
20 what did he say? Oh, yeah. The dude said that, you know, him and
21 Rontae, you know, were like way cool on the streets, you know, so I
22 started telling him, you know, what I know about Rontae.

23 And then I left, walked around again. I heard him talking
24 about it to Mr. Counts and then that's when I heard the Palomino
25 Club -- about the Palomino Club shooting. And then I went and talked

1 to the same inmate again and then I told him -- because what I had
2 heard them say was not relevant and so I went and talked to the dude
3 about it, the other inmate, and he went and got Mr. Counts. And then
4 from there, Mr. Counts was like, Would you tell my lawyers what, you
5 know, you just told me? And I was like, Yes.

6 Q Is the same thing you just told these folks the same
7 things you told the lawyers?

8 A Yes.

9 Q And the lawyers would be Ms. Wildeveld?

10 A Yes.

11 MR. WHIPPLE: Nothing further.

12 THE COURT: Any -- I'm sorry. Oh, I guess Mr. Whipple has
13 something else.

14 BY MR. WHIPPLE:

15 Q What's it mean "living on the down low"?

16 A Secret life.

17 RECROSS-EXAMINATION

18 BY MR. DIGIACOMO:

19 Q Who was the other inmate?

20 A I don't remember the other inmate's name.

21 Q White guy named Bremer?

22 A No.

23 Q Okay. Do you know a white guy named Bremer who was in
24 the same module as Mr. Counts and yourself?

25 A (The witness nodded.)

1 Q You don't know that guy, huh?

2 MR. DIGIACOMO: Okay. Thank you.

3 MR. WHIPPLE: Nothing else, Your Honor.

4 THE COURT: All right. Please don't discuss your testimony
5 with anyone else who may be a witness. And the witness is excused at
6 this time.

7 Mr. Whipple.

8 MR. WHIPPLE: Yeah, Your Honor. The defense will call
9 Mr. Counts.

10 THE COURT: All right. Mr. Counts, come on over to the
11 witness stand right here. And then please just remain standing,
12 facing our court clerk who will be administering the oath to you.

13 KENNETH J. COUNTS, II, DEFENDANT'S WITNESS, SWORN

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

16 THE WITNESS: Kenneth J. Counts, II, K-e-n-n-e-t-h,
17 C-o-u-n-t-s.

18 THE CLERK: Thank you.

19 THE COURT: All right, Mr. Whipple.

20 MR. WHIPPLE: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. WHIPPLE:

23 Q Mr. Counts, where do you live here in Clark County?

24 A I live in Las Vegas Nevada, 1676 E Street.

25 Q And how long have you lived here in Las Vegas?

IN THE SUPREME COURT FOR THE STATE OF NEVADA

DEANGELO R. CARROLL,
Appellant,
v.

THE STATE OF NEVADA,
Respondent.

No. 64757

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Appeal

From the Eighth Judicial District Court
Clark County
The Honorable Valerie Adair, District Judge

APPELLANT'S OPENING BRIEF

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I.
JURISDICTIONAL STATEMENT

The Court has jurisdiction over this appeal pursuant to NRS 177.015(3). This is Deangelo R. Carroll’s (Deangelo) direct appeal from the verdict and final judgment in a criminal case.

This was a death penalty case in the district court. The jury’s verdict, finding Deangelo guilty of conspiracy to commit murder and murder in the first-degree with use of a deadly weapon, was entered May 25, 2010. 9 AA 2000–01.¹ The jury’s verdict, imposing a sentence of *life* in prison with the possibility of parole after 40 years served, was entered June 4, 2010. 11 AA 2408–12. The judgment of conviction was entered September 8, 2010, and an amended judgment was entered March 23, 2011. 11 AA 2419–20, 2432–33.

Deangelo was originally deprived of his right to a direct appeal through ineffective assistance of counsel. *See* Order, Case No. 63115 (Nev. July 23, 2013). However, the post-conviction petition in which this

¹ “AA” stand for Appellant’s Appendix. The number before and after “AA” represents the volume number and the page number cited in the appendix. For example, the above citation to “9 AA 2000–01” means Volume 9 of Appellant’s Appendix at pages 2000–01.

issue was raised was itself filed out-of-time. *Id.* This Court dismissed Deangelo's first-restored appeal so the district court could determine whether Deangelo had good cause for the late post-conviction petition. *Id.* The district found he did and ordered the district court clerk to file a notice of appeal under NRAP 4(c)(1)(B)(iii). 11 AA 2434–40. On January 6, 2014, the clerk did so. 11 AA 2441.

II.

STATEMENT OF THE ISSUES

- A. Was Deangelo's statement rendered involuntary because he was promised that he would not go to jail if he told the truth?
- B. Was Deangelo's statement taken in violation of *Miranda* because he was interrogated in a small room at the homicide office for at least two and half hours and gave a complete confession before he was advised of his rights?
- C. Were the recordings Deangelo helped the police make erroneously admitted against him because his own statements were not admissions, and the statements of others were not in furtherance of the charged conspiracy?
- D. Was there insufficient evidence to support Deangelo's conviction for conspiracy to commit murder and first-degree murder when the State presented no evidence that Deangelo intended for the victim to be killed or that he lied in wait to harm him?
- E. Was there insufficient evidence to support the deadly-weapon enhancement when the State presented no evidence that Deangelo knew a gun would be used?
- F. Were the errors in Deangelo's trial so numerous and significant that, even if they could be found harmless on their own, together they combined to deprive Deangelo of a fair trial?

III.
STATEMENT OF THE CASE

A. Nature of the case

This is Deangelo's direct appeal from the verdict and final judgment in a criminal case.

B. The course of the proceedings

On May 31, 2005, Deangelo was charged by criminal complaint with conspiracy to commit murder and murder with a deadly weapon. 1 AA 140–42.

His preliminary hearing was scheduled for June 13, 2005. 1 AA 1. At that time, Deangelo waived his right to a preliminary hearing. 1 AA 3–4.

On June 20, 2005, Deangelo was charged by Information with conspiracy to commit murder and murder with a deadly weapon. 1 AA 155–56.

On July 6, 2005, the State filed a notice of intent to seek the death penalty against Deangelo. 1 AA 158.

Deangelo eventually sought review of the State's notice via writ in this court. *See Nevada Supreme Court Case No. 50576*. After this Court granted the writ in part, *see Order Granting Petition, Case No. 50576* (Nev. Sep. 24, 2008), the State filed an amended notice of intent to seek the death penalty on October 20, 2008. 2 AA 382.

On April 30, 2010, Deangelo filed a motion to suppress his statement to the homicide detectives in this case. 3 AA 493. On May 11, 2010, the district court held a hearing on the motion — but not an evidentiary hearing. 3 AA 646. The court denied the motion later that same day in a minute order. 3 AA 655.

On May 17, 2010, Deangelo's jury trial began. 4 AA 656. On May 21, 2010, the State filed its last amended information against Deangelo. 8 AA 1587. The guilt phase concluded on May 25, 2010. The penalty phase of the trial commenced on June 2, 2010 and concluded on June 4, 2010.

C. The disposition below

On May 25, 2010, Deangelo was found guilty of conspiracy to commit murder and murder in the first-degree with use of a deadly weapon. 9 AA 2000–01.

On June 4, 2010, the jury determined “the mitigating circumstances outweigh any aggravating circumstance” and imposed a sentence of *life* in prison with the possibility of parole beginning when a minimum of 40 years has been served. 11 AA 2412.

On August 12, 2010, Deangelo was sentenced to 36 to 120 months in prison for conspiracy to commit murder (Count 1), and to *life* with the possibility of parole after 20 years, plus an equal and consecutive term of *life* with the possibility of parole after 20 years for first-degree murder with a deadly weapon (Count 2). 11 AA 2417–18. The sentences on counts 1 and 2 were run consecutively. *Id.*

IV.
STATEMENT OF FACTS

A. Deangelo R. Carroll

1. His birth and family relationships

Virginia Carroll (Virginia) has lived in North Las Vegas, Nevada for the past 35 years. 11 AA 2254. She has eight children, and her oldest daughter is Thelma Jean Johnson (Thelma). *Id.*

Thelma gave birth to Deangelo Reshawn Carroll (Deangelo) on January 28, 1981. 11 AA 2254; *see also* 3 AA 507–08. But Thelma “didn’t have time for him.” 11 AA 2254. She was “too busy” running around with “her friends,” so Virginia took care of Deangelo and raised him from the day he was born. 11 AA 2254–55. Deangelo still “[l]ong[ed] for his mother,” but “every time they tr[ied] to get back together she wouldn’t treat him well. She had boyfriends and they didn’t treat him well” either. 11 AA 2282–83. Because of her nearly complete absence from his life, Deangelo “never really bonded with his mom and his mom really never bonded with him.” 11 AA 2282.

Deangelo therefore turned to Virginia. 11 AA 2282. Virginia certainly loved Deangelo, 11 AA 2256–57, but when he was growing up

she was very busy herself, raising her own children and running a daycare center to make ends meet, so Deangelo only “got a little piece” of her attention. 11 AA 2282.

As for Deangelo’s father — whoever he is — he was never a part of Deangelo’s life. 11 AA 2255. This profoundly impacted Deangelo. Every time a man came to the house Deangelo “claimed them to be his dad. He wanted them to be his dad.” 11 AA 2256. “He wanted a daddy so bad so he was claiming anybody.” *Id.*

2. His low IQ and learning disabilities

Deangelo’s IQ is 82. 11 AA 2278. He is “functional” but “four out of five people have higher IQs” than his. 11 AA 2277–78. He lacks “depth in regards to his ability to think and communicate and understand.” 11 AA 2277.

According to Clark County records, Deangelo “has been labeled learning disabled for a long time.” *Id.* He attended “special ed” classes in school, and yet he failed “a good number” of them and got Ds and Cs in most of the others. 11 AA 2310–12.

3. *Deangelo's dependent personality disorder*

As a result of the “bad things” that happened to him as a child, Deangelo suffers from post-traumatic stress disorder and a dependent personality disorder. 11 AA 2280–81.² These bad things were: his mother’s rejection; her preference for her friends and boyfriends over Deangelo; the maltreatment Deangelo had from his mother and her boyfriends when all he wanted was to be with her; the limited attention and care he received from his loving but busy grandmother; and the complete lack of a relationship or even knowledge of his father. 11 AA 2254–56, 2282–83.

Plus, Deangelo was “picked on a lot,” because he was in “special ed” classes and “wasn’t a success” in school. 11 AA 2283, 2309. These childhood events “make their appearance in adult function.” 11 AA 2281.

² Dr. Roitman explained a personality disorder this way:

In order to really make a diagnosis the personality has to be pretty distorted *It gets to be a disorder when it interferes with function, otherwise it's just a characteristic.*

11 AA 2281 (emphasis added).

People who suffer from dependent personality disorder “are *not* highly charismatic people who take the lead, are innovative, . . . are entrepreneurs, [or] can operate on their own.” 11 AA 2281 (emphasis added).

They’re people who like to be tucked under more like in a submissive role and so have a hard time making decisions, difficulty dealing with rejection . . . They feel insecure a lot of the time, tend to isolate unless they are given a specific set of rules to follow, and really are susceptible to a lot of misery because in the dependent role, you’re not in control. Your life is — depends on who you wind up depending on.

11 AA 2281–82.

Deangelo has always sought a “father figure . . . someone to depend on.” 11 AA 2282. He became a follower, but developed a “tough exterior” to cover up the painful void “on the inside.” 11 AA 2283. Because he “never really got that need fulfilled,” he “never moved out of that . . . stage of development. He’s continued to be dependent like a child.” *Id.*

What’s more, Deangelo’s low IQ negatively impacts his dependent personality disorder. “IQ or intelligence is a tool . . . that can help you

problem solve, figure things out, become and stay independent, be able to depend on yourself.” *Id.*

So the dependent tendency, somebody who feels needy all the time, they might, with insight, work around it one way or another. But without intelligence, a high level intelligence, you can’t reflect on yourself, get a sense of who you are, compensate for those tendencies. And so the IQ is another weakness that [put] Deangelo in a — in a vulnerable state.

11 AA 2283–84.

4. *How Deangelo started working for the Palomino Club*

In September 1999, Luis Hidalgo, Jr. (Mr. H) opened an auto repair shop on Bermuda, between Sunset and the 215, in Las Vegas, Nevada called Simone’s Autoplaza. 7 AA 1416, 1418; 10 AA 2111–12. Luis Hidalgo, III (a.k.a. “Little Lou,” “Little Luis,” “Little Louie”³) is Mr. H’s son. 7 AA 1415; 10 AA 2111. Anabel Espindola (Anabel) was Mr. H’s business partner and mistress. 10 AA 2111–14. She was the manager at Simone’s. 10 AA 2114. She did all the hiring and firing, and all of the paperwork. *Id.*

³ Deangelo refers to him as Little Louie. *See* 3 AA 593.

Sometime around 2001 or 2002, a personal friend of Mr. H's, bought the Palomino Club, a strip club, for \$13 million. 2 AA 410–13, 418–20. This friend employed Mr. H as the general manager and Anabel handled the books. 2 AA 418–20. After a year or so, the friend wanted to sell the club, and Mr. H agreed to buy it for \$13 million. 2 AA 420–24. With the sale, Mr. H moved up to owner and Anabel to general manager. 10 AA 2113–14.

Little Lou and Deangelo were friends. 10 AA 2117. Around September 2004, Deangelo started working at the Palomino club. 3 AA 508, 510. For the first three months he worked “under the table” before he was put on the official payroll. *Id.* Deangelo was only hired at the club because he was “good friends” with Little Lou. 12 AA 2576. But once he was hired, Deangelo’s “been cool with Mr. H ever since.” *Id.*

At the club, Deangelo did whatever was needed—drive the shuttle bus, deejay, cash out girls, sell chips, or “work the floor.” 3 AA 512–13. He also did some “promoting” for the club: going out on the strip and

passing out flyers⁴ to cab drivers and “VIP passes to people.” 3 AA 511–13.

Deangelo “derived his identity from the Palomino Club.” 11 AA 2287. He saw in Mr. H a father figure, someone who was taking care of him, someone he could trust. 11 AA 2261. Deangelo therefore was willing to do anything they asked of him. 11 AA 2287.

B. Timothy J. Hadland’s death

1. Hadland is fired from the club

In 2005, Timothy J. Hadland (TJ) worked as a doorman at the Palomino Club. 6 AA 1204, 1221; 10 AA 2114. His girlfriend was Paijit Karlson. 6 AA 1203–04. She, too, had worked at the Palomino Club as a dancer. 6 AA 1208, 1221.

TJ and Deangelo were coworkers at the Palomino Club, but they were also close friends. 3 AA 509, 519; 6 AA 1208. TJ was known for

⁴ The flyers listed the Palomino Club’s payout rates. Payout rates are how much a club pays cabbies for each person they bring to the club. 7 AA 1543. The rates varied from as low as \$3 or \$4 a person to as high as \$30 or \$40 a person. 7 AA 1543–44.

always having superb marijuana and the two would often smoke it in TJ's car during work. 3 AA 532–33, 607.

While TJ and Deangelo hit it off, the same was not true of TJ and Palomino Club management. TJ talked bad about them and the club. 6 AA 1216. But that wasn't the worst of it.

Around May 11 or 12, 2005, Little Lou told Anabel that TJ was stealing from the club. 10 AA 2114–15. As cab drivers dropped off customers, the club's doorman would give drivers a ticket with the number of customers they brought. 10 AA 2115. The cabbies would then take the ticket to the cab office in the back and get paid a bounty for each admission. *Id.* But TJ was adding fictitious customers to the tickets so that the drivers were getting paid more than they were supposed to. *Id.* The drivers would then kickback some of that extra money to TJ. 10 AA 2115–16. When Anabel found out, she told the office manager Arial⁵ to fire TJ. *Id.*

About a week after he was fired, May 19, 2010, TJ and Paijit decided to go camping at Lake Mead. 6 AA 1204–05. With only them

⁵ Arial's real name is Michelle Schwanderlik. 1 AA 41.

and their three dogs, they drove out to the lake in Paijit's Kia Sportage. 6 AA 1205–06, 1218. They left to camp around 6:00 p.m. and were only going to stay overnight. 6 AA 1205, 1222.

Once at the lake, TJ got a phone call. 6 AA 1206. Paijit could only hear TJ's side of the conversation. 6 AA 1206, 1223–24. When he got off the phone, TJ told Paijit he was meeting Deangelo to get some marijuana. 6 AA 1207, 1227. After TJ left, Paijit never saw him again. 6 AA 1211.

2. TJ is found dead

Sometime after 11:30 p.m. that evening, Ishmael Madrid and two friends were driving on North Shore Road, leaving the Lake Mead national recreation area, when they saw a body lying in the middle of the street. 6 AA 1182–84. It was a white male adult. 6 AA 1185. A hat was lying on top of the body and a gold chain lying across the chin. 6 AA 1188. Near the body was a car, some advertisement cards from the Palomino Club, and capsule for a pneumatic tube. 6 AA 1188, 1190–91, 1200. At exactly 11:47 p.m., Ishmael called 911. 6 AA 1190; 8 AA 1641–42.

The body lying in the middle of street was TJ's. 7 AA 1527; 8 AA 1639. He was dead, shot twice in the head. 7 AA 1384, 1529–30. The coroner's examination found the death was homicide and revealed that TJ had .07 % alcohol in his blood and marijuana in his system. 7 AA 1538–39.

3. *The investigation into TJ's death soon focuses on Deangelo*

The homicide detectives that responded to the scene were Martin Wildemann, Michael McGrath, Jimmy Vaccaro and Theresa Kyger. 7 AA 1385.

The car parked alongside the road was Paijit's Kia Sportage. 6 AA 1239. There was a cell phone in the car. 6 AA 1239–40. The cell phone was turned over to McGrath. 6 AA 1244; 8 AA 1641. McGrath examined the phone and found that the last phone call received was from Deangelo. 8 AA 1641. McGrath gave this information to Wildemann. 7 AA 1385.

Wildemann returned to the homicide office to research the number Deangelo called from. *Id.* He came up with Anabel's name and found out she worked at the Palomino Club. 7 AA 1387–88.

Meanwhile, Lake Mead park rangers told the detectives on scene about Paijit. 7 AA 1387. The detectives then contacted some of TJ's family who confirmed that TJ and Paijit were camping out. *Id.* Later that same morning, Wildemann and Kyger returned to the lake and spoke with Paijit. 6 AA ; 1211–13; 7 AA 1387.

Based on the evidence at the crime scene, the phone information, the conversation with Paijit, and their investigation linking Deangelo to the Palomino Club and TJ, the detectives' investigation focused on Deangelo as a prime suspect. 1 AA 6; 7 AA 1386–88.

Because the Palomino Club is in North Las Vegas, McGrath contacted a friend with the North Las Vegas Police Department for Mr. H's contact information. 8 AA 1643. McGrath in turn gave it to Wildemann. *Id.*

When Wildemann called Mr. H, he said he was investigating “one of his employees.” 7 AA 1389 (emphasis added). Wildemann asked if Mr. H would meet with him so he could “access some records.” *Id.* Around 3 p.m. that afternoon, Wildemann and Kyger met Mr. H at the Palomino Club. 7 AA 1389–90. Again they told Mr. H they were investigating “a current employee” of the Palomino Club, and asked him if they could

“get some records regarding Deangelo Carroll, meaning an address or a telephone number to contact him by.” 7 AA 1390 (emphasis added).

Mr. H confirmed that he had an employee named Deangelo Carroll but said he didn’t have access to any of the records himself. *Id.* He told the detectives to return around 7:00 p.m. that evening (May 20, 2005) and talk with Arial, the manager, who could help them. 7 AA 1391.

C. Detectives pick Deangelo up at the club

1. Detectives meet Deangelo and drive him to the homicide office

McGrath and Wildemann returned to the Palomino Club that evening. 7 AA 1391–92. While they were inside, Vaccaro and Kyger watched the club outside. 7 AA 1392.

Mr. H met McGrath and Wildemann as they entered the club. *Id.* He called Arial over and she led the two detectives to a quiet employee area. *Id.*

While they were talking with Arial, Vaccaro called Wildemann’s cell phone. *Id.* Wildemann left the meeting and walked out into the hallway to take the call. *Id.* Vaccaro told Wildemann someone matching

Deangelo's description had entered the club. *Id.* Just then, Mr. H walked up and introduced Deangelo. *Id.*

Wildemann told Deangelo they were investigating "a friend of his that was employed there by the name of TJ." 7 AA 1396. He told Deangelo that his call was the last TJ received and that he wanted to discuss the call and his relationship with TJ. *Id.* Wildemann asked Deangelo to "accompany" him to the homicide office so they could talk "in private." 7 AA 1394. Deangelo agreed to go with them. *Id.*

Wildemann and McGrath took Deangelo to the homicide office in their car. *Id.* On the way, the detectives were very careful about what they said because they didn't want Deangelo "to prepare" for the interview. 7 AA 1394–95.

At trial, Wildemann admitted they could have questioned Deangelo at the Palomino Club or at Deangelo's house (it was nearby). 7 AA 1481–82. But he preferred the homicide office because it's "more intimidating." *Id.*

2. *A description of the homicide office and interview room*

The homicide office at that time was in an office complex on Charleston and Rainbow. 7 AA 1395. Inside the office was a very small waiting room. *Id.* To get to the interview rooms, Deangelo and the detectives had to go from the waiting room through a “small gate . . . about knee high.” *Id.*

Like the waiting room, the interview room was also very small. 7 AA 1485; *see also* 12 AA 2578–80 (pictures of the room). Wildemann described it as a six feet by six feet room, possibly smaller. 1 AA 169. There’s only one door in and out of the room. 7 AA 1485. There’s a table in the room. *Id.* The detectives sat Deangelo at the table with his back against the wall. *Id.* Between Deangelo and the door were the table, Wildemann and McGrath. 7 AA 1485. There was no phone or any other way for a witness to communicate with the outside world. 1 AA 170. And the room was uncomfortably hot. 12 AA 2508, 2535, 2538. Wildemann admitted that a reasonable person would feel “pretty intimidated” in that situation. 7 AA 1487.

3. *The detectives surreptitiously video-record the interview*

The detectives told Deangelo that the interview was being audio recorded, but they did not tell him they were video-recording it as well.

7 AA 1489. It's something they do "surreptitious[ly]." 7 AA 1396.

Wildemann was recording audio with a handheld recorder Deangelo could see, while Vaccaro was video-recording from "a back room." 7 AA 1396–97. The video tape captured everything that happened in the interview room.⁶ 7 AA 1397–98. The audio tape, on the other hand, only captured "certain conversations."⁷ 7 AA 1398.

⁶ In 2005, the detectives used VCRs to record interviews. 7 AA 1397. If one tape ran out, "you had to pull that tape real quick, insert another tape and hit the record button." *Id.* Deangelo's interview spanned more than one video tape. *Id.* Those video tapes were digitized and admitted at trial as State's Exhibit 243 (hereinafter "Video Ex. 243"). 7 AA 1397, 1424–25. The district court clerk has been ordered to transmit ex. 243 to this Court.

The State created a transcript (with time stamps on the left-hand side) of the video recordings. That transcript was admitted into evidence as State's Exhibit 246. 7 AA 1425–26. The transcript, however, does not include everything that's on the video recording. *Compare* Video Ex. 243 with 12 AA 2463–577.

⁷ Prior to trial, the State provided Deangelo with a copy of the transcript the Las Vegas Metropolitan Police Department (Metro) created of the audio recording. Deangelo attached a copy of that transcript to his motion to suppress. 3 AA 507. That transcript is different than State's ex. 246, which contains most (but not all) of

4. *The detectives interrogate Deangelo without Miranda warnings*

The detectives did not Mirandize Deangelo because, in their opinion, he was “not in custody.” 7 AA 1488–89; 8 AA 1645. Yet they never told him he did not have to answer their questions or that he was free to terminate the interview and leave at any time if he wanted. *See, e.g.,* Video Ex. 243.

And in reality, Deangelo wasn’t free — free to make a phone call, free to step out and smoke a cigarette, free to go home on his own. Early in the interview, the detectives asked for Deangelo’s Nextel phone and took notes of what they found on it. 12 AA 2478; Video Ex. 243 at 12:00 – 16:33 minutes.⁸ They did not give it back. *See* Video Ex. 243 at 16:30. Later on, Deangelo asked if he could make a phone call, McGrath told him “[n]o, no, no” and asked him for his “other phone.” 12 AA 2507; Video Ex. 243 at 43:30 – 44:50 minutes. When Deangelo placed it on the

what’s on the video recording of Deangelo’s interview. Video Ex. 243 contains the entire interview.

⁸ The times provided indicate the time from the beginning of the video. So, for example, the above citation is to Video Ex. 243 from 12 minutes from the start to 16 minutes, 33 seconds from the start. The on-screen timestamp for this same period is 21:31:53 to 21:37:36.

table, the detectives took it and left the interview room, leaving Deangelo totally cutoff from the world. *See* Video Ex. 243 at 43:30 – 44:50 minutes, 53:40 – 56:00 minutes.

Right before Wildemann and McGrath stepped out of the room the first time, Deangelo asked them, “Can I just smoke a cigarette?” 12 AA 2507. Wildemann and McGrath said they would see what they could do, but then walked out of the room and closed the door. 12 AA 2507–08; Video Ex. 243 at 44:22 – 44:50 minutes. They never let Deangelo leave the room, not for a smoke, not even to get his own water (they would go and get it for him and bring it back). Video Ex. 243 at 44:20 – 44:50, 54:50 – 55:25 minutes (showing Wildemann and McGrath leave the room, close the door, and then ten minutes later come back with a cup of water for Deangelo). They would tell Deangelo things like “we’ll be back” or “we will be back in a minute” and “just hang,” “sit tight” and “drink your water” but they would never let him leave the room. 12 AA 2507–08, 2535, 2677. Knowing he wasn’t allowed to just get up and leave, Deangelo had to ask the detectives if they would at least leave the door cracked a little during one of the breaks when the detectives

stepped out because it was so hot in the room. 12 AA 2535; *see also* Video Ex. 243 at 1:23:20 – 1:23:40 (minutes).

Wildemann even testified at trial that he was “not sure” they would have allowed Deangelo to stop the interrogation, get up, and go home. 7 AA 1487–88.

D. Deangelo’s statement during interrogation

1. The initial story about buying weed from TJ

The first story Deangelo told the detectives about what happened that night centered on marijuana. There were two major versions of this story. In this account, Deangelo and TJ had several conversations about getting together to smoke some weed, but that didn’t happen because TJ was camping and Deangelo and his wife were home caring for their sick son. *See* 3 AA 511–42. After being told that toll booth cameras located at Lake Mead captured everything day and night, and that cell site records gave away Deangelo’s location (none of which was true, *see* 3 AA 644), Deangelo gave the second account of this story. 3 AA 536–40. Deangelo said he called TJ because his mom’s neighbor, a guy Deangelo knew only as “KC,” wanted to buy some weed. 3 AA 549–50. TJ told

them to meet him out at the lake. 3 AA 550. When they met up, KC shot TJ twice. 3 AA 550–55. He then aimed the gun at Deangelo and told him to “fuckin’ drive.” 3 AA 555. Deangelo was scared and nervous. 3 AA 556. He made a quick U-turn around TJ’s body and drove straight out of the Lake Mead area, through Henderson, and on to the 95. 3 AA 557–58. When they exited at Las Vegas Boulevard, KC jumped out of the van and took off. 3 AA 559.

2. Deangelo then tells the truth about what happened that night

Early in the evening of Thursday, May 19, 2005, Deangelo, Rontae and JJ were working together promoting the Palomino Club.⁹ 3 AA 511, 515, 566–68. They were driving around in the club’s white 1996 Chevy Astro van. 3 AA 525, 528, 564. After promoting for a while, they went to Deangelo’s house. 3 AA 564, 593, 628.

While at home, Deangelo received a call from Little Lou. Little Lou told Deangelo to go to the club and to bring two garbage bags and a

⁹ “Rontae” is Rontae Zone and “JJ” is Jayson Taoipu. 6 AA 1268, 1270. Rontae was 18 years old and JJ was 16 years old during these events. 7 AA 1472. Rontae was living with Deangelo. 6 AA 1268. JJ was Rontae’s friend. 3 AA 611.

baseball bat because they had to go take care of something. 3 AA 562–63, 566, 593–94. Little Lou didn’t say what it was they needed to take care of, but Deangelo knew something was up and he didn’t want to do it. 3 AA 566. This was at about 8:00 p.m. 3 AA 594.

Deangelo went to the club by himself. 3 AA 566, 583, 594. When he arrived, he was called into Mr. H’s office where Anabel, “Miss A,”¹⁰ and Mr. H were waiting. 3 AA 562–67, 580, 594. Little Lou wasn’t there yet. 3 AA 594.

Mr. H told Deangelo he wanted TJ taken care of — “hurt bad.” 3 AA 567. TJ had been stealing from the club. 3 AA 565. And after he was fired, TJ was badmouthing the club. 3 AA 562, 594. That hurt business, something Mr. H wouldn’t allow. 3 AA 562, 565. He wanted the issue handled that night. 3 AA 570, 597. Deangelo didn’t want to do it, so Mr. H told him to find someone who would. 3 AA 562, 570, 597. Mr. H said he would pay this other person but didn’t say how much. 3 AA 567, 606.

¹⁰ Deangelo never said who “Miss A” was, but it’s likely a reference to Arial, the office manager. 1 AA 41.

The meeting lasted about 20 minutes and then Deangelo left the club sometime between 8:30 and 9:00 p.m. 3 AA 566, 597.

From there he went to KC's house, which was across the street from Deangelo's mom's house on E Street. 3 AA 572, 574. He knew Kenneth Counts only as "KC" or "K". 3 AA 576. KC is a gang member, a Blood, from California, who sold drugs. *Id.* Deangelo knew KC was someone who "didn't give a fuck" and who was more than capable of beating up TJ. 3 AA 565, 597, 601, 604–05. He told KC his boss would pay him to "take care of" TJ. 3 AA 571, 606. KC said he would do it as long as the money was right. 3 AA 571, 574, 597. But Deangelo had to take him to wherever TJ was, not just give him directions, so that Deangelo wouldn't "snitch on him." 3 AA 574.

Around 11:00 p.m., Deangelo called TJ about getting some weed and found out he was at the lake. 3 AA 569. TJ said he didn't have any but he knew where they could get some. 3 AA 600. They planned to meet up at the lake, go get some weed, and then return to TJ's campsite to smoke. 3 AA 600, 631.

Sometime thereafter, Deangelo picked up Rontae and JJ in the club's Astro van and drove for gas. 3 AA 571, 629. From there they

drove to KC's house. 3 AA 571–73, 629. Deangelo went up to the door to get KC but he was getting his hair cut so Deangelo waited “out front.” 3 AA 629. When KC finished, he walked out of his house and straight into the van. 3 AA 586. He was dressed all in black: black pants, black sweater, black hoodie and black gloves. 3 AA 555, 587, 600, 615.

They then drove out to the lake. Deangelo was driving, JJ was in the front passenger seat, Rontae was in the back seat behind Deangelo, and KC was in the back seat behind JJ. 3 AA 608. As they got closer to the lake, Deangelo called TJ to tell him they were on their way. 3 AA 70. They agreed to meet TJ at a stop sign inside the lake area because Deangelo had no idea how to get to where TJ was camping, somewhere around mile marker 5. 3 AA 576, 600–01.

When they arrived at the stop sign (around 11:35 or 11:40), they tried calling TJ but couldn't — no reception. 3 AA 576–77. So they drove back out and called TJ again, who confirmed he was on his way. 3 AA 577–78. On hearing that, Deangelo and the rest drove back towards the stop sign but, instead of waiting there, they turned left and drove around for about 5 or 6 minutes until they saw TJ coming toward them. 3 AA 577, 606.

On seeing TJ, they pulled over to the side of the road and Deangelo got out of the van to pee. 3 AA 578, 613, 617–18. Meanwhile, TJ passed them, made a U-turn, and pulled Paijit’s Sportage behind their van. 3 AA 578, 607, 613, 618. Deangelo then got back in the van. 3 AA 578, 613, 618. Rather than stay behind them, TJ moved his vehicle and parked in front of the van. 3 AA 576–77. While this was going on, KC snuck out of the van through the sliding passenger door in the back.¹¹ 3 AA 578, 609, 613–14, 617. TJ then got out of his car and walked back towards the van.¹² 3 AA 613, 618.

TJ was wearing a tan hat, shorts and sandals, but no shirt. 3 AA 588, 616, 630. He walked up to the driver’s side window to talk with Deangelo. 3 AA 578, 588–89, 624. Meanwhile, KC, who had crouched down, moved to the front of the van. 3 AA 578, 586, 613–14. TJ never saw him because it was dark and KC was wearing all black. 3 AA 615. Just as TJ took off his hat and started talking with Deangelo, KC shot

¹¹ Deangelo told the detectives this is probably how the plastic tube they found by TJ’s body fell out of the van. 3 AA 552, 617.

¹² According to Deangelo, TJ was so drunk that he “staggered” to the van. 3 AA 578, 616.

TJ twice, instead of beating him up like he was supposed to.¹³ 3 AA 579, 588–89, 601–02, 604, 613–16, 620, 630. Deangelo, Rontae and JJ hadn't seen KC's gun that night until he pulled it out and shot TJ. 3 AA 589, 602–03. KC had hid the gun under his sweater. 3 AA 602–03. Deangelo heard the two shots and then TJ drop. 3 AA 589, 615–16.

Deangelo started to get out to help TJ. 3 AA 579, 613, 617. That's when the Palomino Club flyers the detectives found around TJ's body fell out of the van. *Id.* But quickly KC jumped back in the van and was pointing the gun at Deangelo, Rontae and JJ, yelling at them: "drive mother fucker, drive," and "get me the fuck up out these mountains." 3 AA 579, 589, 613, 616, 618.

In shock, Deangelo made a U-turn around TJ's body and headed back out of the lake area. 3 AA 589, 616–17. They drove past the stop sign and the toll booth, straight through Henderson to the 95, then to the club. 3 AA 579, 619–20.

¹³ Deangelo described the gun as a chrome .357 with a long extended barrel and a black pistol grip. 3 AA 602.

At the club, Rontae and JJ stayed in the van, while Deangelo and KC went upstairs to Mr. H's office. 3 AA 579, 583, 620. KC did not go into Mr. H's office, he stood outside in the hall because Mr. H wouldn't allow him in. 3 AA 579, 621.

Inside the office, Deangelo met with Mr. H and Anabel and told them what had happened: how KC "flipped out" and "shot" TJ, and that he was now demanding to be paid \$6,000. 3 AA 571, 579–80, 620–21. Mr. H responded "fuck . . . I just wanted him hurt," and Anabel said "man, I told you guys only to hurt him." 3 AA 579, 620. KC was in a hurry to leave, however, so he kept banging on the door to the office, yelling "man, hurry the fuck up" and "get me the fuck outta here." 3 AA 586, 620. Anabel didn't want to pay KC, but Mr. H told her "just pay him" so they could get that "mother fucker away from" them. 3 AA 579, 620. So Anabel went into a back room and came back with the money: \$6,000, all in crisp, new \$100 bills, wrapped in a rubber band. 3 AA 580–81. She gave the money to Deangelo and Deangelo went out and handed it to KC. 3 AA 571, 581. KC counted the money then jumped in a cab and went home. 3 AA 581, 586.

Mr. H was worried the van might have blood on it so he gave Deangelo \$100 to get the tires changed. 3 AA 625. The next morning, May 20, 2005, Deangelo bought four tires from a shop on Griswold and Las Vegas Boulevard *Id.* Two of the old tires he threw into a dumpster down by Van Der Meer, and the other two he threw in a 7-Eleven dumpster on Civic Center and Las Vegas Boulevard 3 AA 626.

When asked if he got paid, Deangelo said Mr. H gave him \$100 that he reluctantly accepted. 3 AA 581–82. He used the money to buy breakfast for Rontae and JJ (who weren't paid anything) and his family, to buy a fan, and get a haircut. 3 AA 584–85, 612, 628.

Relying on their promises that, if he told them the truth he wouldn't go to jail and they would protect him and prove his story, Deangelo confessed all of the above to McGrath and Wildemann *before* he was Mirandized. *See* 3 AA 507–90. And, he told them the same thing *after* he was Mirandized. 3 AA 590–634. As to why he initially lied, Mr. H came up with the first story and instructed Deangelo to tell it. 3 AA 624–26.

E. After the interview, Deangelo helped the police gather more evidence

1. Deangelo locates tires and witnesses

When the interview ended, the detectives had Deangelo take them to find the old tires. They took two separate vehicles. 1 AA 42. Deangelo rode in the car McGrath drove with another unnamed detective. 1 AA 42; 7 AA 1398. Wildemann and Detective Long followed in a separate car. *Id.* At each location, they recovered two white-wall tires from the dumpsters. 1 AA 43; 7 AA 1398–99.

After recovering the tires, the detectives drove Deangelo home. 7 AA 1398. But the detectives weren't done with Deangelo; they wanted to pick up Rontae so they could interview him at the homicide office. 1 AA 42; 7 AA 1399. Deangelo therefore was not allowed to walk into his house unescorted. 1 AA 42.

Deangelo introduced Rontae to the detectives and told him to go with them and tell the truth or they were all going to jail. 6 AA 1315–16; 8 AA 1646–47. Deangelo wasn't allowed to “sit and talk” with Rontae. 8 AA 1647. Soon, the detectives came out of the house, but with Rontae *and* Deangelo. 1 AA 42. They road back to the homicide office in

separate cars: Deangelo in McGrath's, and Rontae in detectives Long and Wildemann's. *Id.* Back at the homicide office, detectives interviewed Rontae, and when they finished, they dropped him and Deangelo back home. *Id.* During the drop off, Wildemann instructed Deangelo to bring JJ in "for a statement" when he "came in contact with him." 1 AA 4.

Sure enough, when Wildemann returned to the homicide office the next day (May 21, 2005), he found Deangelo and JJ waiting outside. *Id.* The office was closed because it was a Saturday, so Wildemann had to let them inside. *Id.* Once in, Deangelo and JJ had to wait "quite a while in the lobby,"—two hours—while Wildemann and Vaccaro got their "notes together and, then, eventually interviewed them." 1 AA 4–5, 7. JJ's interview was recorded and used as evidence. 1 AA 5.

2. Deangelo helps capture the shooter Kenneth Counts

While JJ was being questioned, McGrath was typing up a search warrant for KC's residence because the police were preparing to move on him. 1 AA 42; 8 AA 1648. It was Deangelo that gave the detectives the ability to do so.

During his interview the day before, Deangelo told the detectives where KC lived. 3 AA 571–73. He described the house KC lived in, who lived with him, and the cars he owned. 3 AA 572.

To confirm Deangelo’s account, McGrath instructed another officer to drive by the described house, survey it, and run the plates of the cars parked outside. The details checked out: the house at 1676 E. Street was, in fact, KC’s house. 7 AA 1412; 8 AA 1648–49.

Using the information Deangelo provided, the detectives got an arrest warrant for KC and a search warrant for his house. 7 AA 1411–12. Because of the violent nature of the crime, SWAT executed the warrants. 7 AA 1412; 8 AA 1649.

While they were executing the search warrant on KC’s house, Deangelo called Detective Wildemann’s cell phone and told him he was watching the raid from his mom’s house, “literally right across the street.” 7 AA 1412–13. More importantly, Deangelo warned Wildemann they had missed KC, as he had run across the street into another residence. 7 AA 1413. Again, based on the information Deangelo provided, the police surrounded the other house — 1677 E Street — while Detective Vaccaro requested a telephonic search warrant. 1 AA

43; 7 AA 1413; 8 AA 1650. Once the detectives got the new warrant, SWAT entered. 7 AA 1413.

SWAT members were in the house for “quite a while.” 7 AA 1414. Eventually they came out with KC. *Id.* KC was sweating heavily and was covered in fiberglass insulation because he had been hiding in the attic “under the insulation.” *Id.* SWAT had to “drop him out of the attic” and taser him because he wasn’t compliant. 7 AA 1414; 8 AA 1659. Wildemann and McGrath then arrested KC for TJ’s murder. 7 AA 1414–15.

3. *The detectives have Deangelo wear a recorder to get incriminating statements from Anabel, Mr. H, and Little Lou*

The detectives “next course” of action was to meet with Deangelo and take all of the other information he had provided to them and “work that towards” getting the other suspects in this case. 1 AA 46. “A method” they used to get the other defendants was to have Deangelo wear a “body recorder” to record his conversations. 7 AA 1416–17.

Detective McGrath turned to an acquaintance in the FBI, Special Agent Brent Shields, for help with a recorder. 8 AA 1691. Agent Shields

had “a piece of equipment” McGrath could use, “provided that he [Shields] came with us during the investigation.” *Id.*

On Monday, May 23, 2005, McGrath contacted Deangelo and set up surveillance at Simone’s. 1 AA 46–47; 7 AA 1417; 8 AA 1691.

McGrath told Deangelo to meet him and Agent Shields behind Jerry’s Nugget. 8 AA 1692. After checking that Deangelo was unarmed, McGrath and Shields put the recorder on Deangelo. 8 AA 1691–92.

The recorder was a little pager that they put on Deangelo’s belt. 8 AA 1754, 1756. It was turned on by pressing a small button with a paper clip, after which it recorded continuously. 8 AA 1696. It was only a recording device; it did not transmit. 8 AA 1691, 1728.

In the detectives’ opinion, there was no question Deangelo was working for them. 8 AA 1726. They knew Deangelo was risking his life by helping them. 8 AA 1726–27. So, McGrath told Deangelo that, “if something happen[ed] to him inside” Simone’s, he “was to scream as loud as he can and if he came outside and waived his hands above his head,” then McGrath and Shields would know they needed to “go in and get him.” 8 AA 1691.

McGrath, Shields and Deangelo also discussed strategy: what Deangelo should do and say to elicit incriminating responses from Anabel, Little Lou and Mr. H. 8 AA 1726, 1729–30. For instance, McGrath instructed Deangelo to tell them that the KC, Rontae, and JJ wanted more money. 8 AA 1739–40. That of course wasn't true. 8 AA 1740. It also wasn't true that KC was threatening Deangelo, *id.*, but Deangelo told Anabel and Little Lou both of these things to elicit responses and gather evidence against them that ultimately proved useful to the detectives. *See e.g.*, 12 AA 2442, 2445–47, 2453, 2458–59. Deangelo then went into Simone's as instructed. 8 AA 1692.

When he came out, McGrath, Shields and Deangelo met at a nearby golf place. 8 AA 1692–93. Deangelo gave McGrath and Shields the recording device as well as \$1,400 cash and a bottle of Tanqueray gin that Anabel and Little Lou gave him during the meeting. 8 AA 1693.

The recording Deangelo made was very helpful to the State's case. It reveals that Anabel gave Deangelo the money to quiet the other defendants, and Little Lou gave him the gin to mix with rat poison to

get rid of the others. 12 AA 2447, 2458–61. But more importantly, it reveals what the plan for TJ had been:

Deangelo: Hey what's done is done, you wanted him fucking taken care of we took care of him.

Anabel: Listen.

Deangelo: Don't worry.

Anabel: Why are you saying that shit, what he [Mr. H]¹⁴ really wanted was for him to be beat up, then anything else, _____ mother fucking dead.

...

Deangelo: We were gonna call it quits and fucking KC fucking got mad and I told you he went fucking stupid and fucking shot dude. Not nothing we can fucking do about it.

Anabel: You should have fucking turned your ass around, before this guy . . . knowing that you had people in the fucking car that could pinpoint you, that this motherfucker [TJ] had his wife, you should of mother fucking turned around on the road, don't give

¹⁴ There's no question Anabel is talking about Mr. H. Anabel referred to Mr. H as "Louie." 2 AA 405; 8 AA 1703. That's why right before she says he, meaning Mr. H, wanted TJ beat up not dead, Anabel says that Louie had gone to see an attorney "not just for him but for [Deangelo] as well." 12 AA 2448. And that, if it got to the point where they needed an attorney, "you [Deangelo] and Louie are gonna have to stick together." *Id.*

a fuck what KC said, you know what bad deal turn the fuck around.

12 AA 2448, 2452. This corroborated what Deangelo said during his interview: that it was never meant for TJ to get shot, the plan was always just for TJ to get beat up, but KC went off on his own and shot him anyway. *See, e.g.*, 3 AA 101.

After listening to the recording, McGrath decided to send Deangelo in again to gather more evidence against Anabel and Little Lou and, if possible Mr. H. 1 AA 48; 8 AA 1695, 1729, 1739. So, on Tuesday, May 24, 2005, McGrath set up surveillance at Simone's to make sure Mr. H was inside. 8 AA 1695. He then met with Deangelo, discussed a little strategy, then sent him back into Simone's with the recorder for more evidence. 1 AA 48; 8 AA 1694–95, 1726, 1729.

When Deangelo came out, he again gave the recorder to McGrath and Shields. 8 AA 1695–96. He also gave them \$700 or \$800 that Anabel or Little Lou had given him after telling them KC was threatening him and his family and that he needed to get his wife and kid out of town. 8 AA 1704; 12 AA 2442. This of course wasn't true. KC had already been arrested and was in custody. 8 AA 1739–40.

Like the first recording, the second contains incriminating evidence, but once again Anabel emphasizes that the plan was not to kill TJ, only to beat him up. 12 AA 2442–43.

F. Deangelo’s help leads to the conviction of everyone — including Deangelo

Because of Deangelo’s initial help, the detectives were able to bring in JJ and KC. Now they were able to go further. With the recordings and other evidence Deangelo helped them collect, the detective were able to charge Anabel, Little Lou and Mr. H. 1 AA 48–49; 7 AA 1418; 8 AA 1730, 1736–38. And ultimately, as shown below, it lead to some sort of conviction against everyone.

But despite helping the detectives build cases against everyone else after they promised him he would be okay if he did, Deangelo was arrested along with the rest. 1 AA 136, 146.

1. JJ and Anabel plead out

JJ’s case was the first to conclude. In June 2007, he agreed to plead guilty to conspiracy to commit murder and voluntary manslaughter with a deadly weapon. 1 AA 240–47. In exchange, he agreed to testify against the other defendants. 1 AA 232–234. After he

testified in KC's trial, JJ was sentenced in March 2008. 2 AA 367–68. He received a sentence of up to 120 months, but that sentence was immediately suspended and instead JJ was placed on probation for five years. *Id.*

Anabel was the next to cut a deal. In February 2008, she agreed to plead guilty to voluntary manslaughter with use of a deadly weapon. 2 AA 324–33. Part of the plea was apparently an agreement to testify for the State. *See* 2 AA 441–46. And she did testify against the Hidalgos and Deangelo. *See, e.g.,* 2 AA 400–30. In February 2011, she was finally sentenced to a term of 24 to 72 months, but was given credit for 1,379 days (about 3.77 years). 11 AA 2421.

2. *Counts and the Hidalgos go to trial*

Counts, of course, did not plead. He took his case to trial around February 2008. He was found guilty of conspiracy to commit murder but *not* guilty of the murder itself. 2 AA 342–43. In March, 2008, he was sentenced under the small habitual criminal statute to 96 to 240 months. 2 AA 348.

The Hidalgos did not plead, either. The State agreed not to seek the death penalty against the pair so that it could try them together. *See* 2 AA 387–88. At the end of their trial in February 2009, Hidalgo, Jr. was found guilty of conspiracy to commit battery with a deadly weapon or battery resulting in substantial bodily harm and second-degree murder with a deadly weapon. 2 AA 431–33. Hidalgo, III was found guilty of those same two crimes as well as two counts of solicitation to commit murder. *Id.* The two were sentenced in June 2009, and each received a sentence that required at least 20 years in prison and a maximum of *life*. 2 AA 447–82.

3. *The long course of Deangelo’s proceedings*

Deangelo’s case was the last one to be brought to trial, despite the fact that he was charged at the same time as Counts, Anabel, and Hidalgo, III. 1 AA 140–42. Certainly part of that delay is attributable to the State’s decision to seek the death penalty against Deangelo—a decision that entailed extra preparation for trial as well as litigation over the validity of that decision. *See, e.g.,* Nevada Supreme Court Case

No. 50576 (Deangelo's writ seeking to strike the death penalty aggravators).

On May 17, 2010, Deangelo's trial finally began. 4 AA 656. On May 24, the jury was instructed and both sides gave their closing arguments. 9 AA 1803–34. Just after 2 p.m., the jury recessed to deliberate. 9 AA 1943. And just after 2 p.m. the next day, the jury returned a guilty verdict on both counts: conspiracy to commit murder and murder with a deadly weapon. 9 AA 1995–96, 2000–01.

The penalty phase of Deangelo's trial began June 2, 2010. 10 AA 2004. On June 3, after hearing additional testimony, the jury recessed to deliberate the penalty question. 11 AA 2399. The next afternoon they returned the penalty verdict. 11 AA 2403. It found one aggravating circumstance: the murder was committed by a person, for himself or another, to receive money or any other thing of monetary value. 11 AA 2411.

But they also found a multitude of mitigating circumstances:

- Deangelo did not come up with the idea to kill Timothy Hadland
- Deangelo was not the shooter

- Deangelo's cooperation led to charges being filed against other defendants
- Deangelo has a low IQ
- Deangelo suffers from dependent personality disorder
- Deangelo can still be a significant part of his grandmother's life
- Deangelo can still be a significant part of his son's life
- The killing did not involve torture or mutilation of the victim
- The killing was not a case of multiple homicides
- Other persons involved in the offense received punishments significantly lower than the punishment Deangelo is facing

11 AA 2408–11. Consequently, the jury determined “the mitigating circumstances outweigh any aggravating circumstance” and recommended a *life* sentence with the possibility of parole after 40 years. 11 AA 2412.

On August 12, 2010, Deangelo was formally sentenced to 36 to 120 months in prison for conspiracy to commit murder (Count 1), and to *life* with the possibility of parole after 20 years, plus an equal and

consecutive term of *life* with the possibility of parole after 20 years for first-degree murder with a deadly weapon (Count 2). 11 AA 2417–18.

The sentences on counts 1 and 2 were run consecutively. *Id.*

And for the reasons stated below, Deangelo’s convictions and sentences should be overturned.

V.

ARGUMENT

A. Deangelo’s statement to the police was coerced and is therefore inadmissible

1. The promise of leniency

Before Deangelo said a word implicating himself in TJ’s death, he sought reassurance from the detectives interrogating him. They had accused him of lying. He told them, “I’m just not trying to get in trouble.” 12 AA 2490. The detectives pressed him further, and again Deangelo responded, “I just, I don’t wanna get in trouble, you know what I’m saying, I got a kid at home.” 12 AA 2491. Deangelo said he wanted protection, and for a moment, the detectives thought he was concerned about his physical safety. *Id.*

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