

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS HIDALGO, III and ANABEL
ESPINDOLA,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF CLARK, AND THE
HONORABLE DONALD M. MOSLEY,
DISTRICT JUDGE,

Respondents.

and

THE STATE OF NEVADA,

Real Party in Interest.

48233
CASE NO. 58344

FILED

MAR 10 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY [Signature]
DEPUTY CLERK

PETITIONER'S APPENDIX TO ANSWER TO STATE'S PETITION FOR REHEARING

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(775) 684-1265

Counsel for Real Party in Interest

RECEIVED

MAR 10 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

88-05968

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS HIDALGO, III and ANABEL
ESPINDOLA,

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vs.

THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF CLARK, AND THE
HONORABLE DONALD M. MOSLEY,
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CASE NO. 58344

**PETITIONER'S ANSWER TO STATE'S
PETITION FOR REHEARING**

1. Verdict

2. Recorder's Transcript of Hearing Re: Verdict, February 8, 2008

Page

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1 **CERTIFICATE OF SERVICE**

2 The undersigned, an employee of Gordon & Silver, Ltd., hereby certifies that on the 7th
3 day of March, 2008, she served a copy of the Petitioner's Appendix to Answer to State's Petition
4 for Rehearing, and by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at
5 Las Vegas, Nevada, said envelope addressed to:

6 Marc DiGiacomo
7 Clark County District Attorney
8 Regional Justice Center
9 200 Lewis Avenue
10 Las Vegas, NV 89155
11 Fax: (702) 477-2922

12 Giancarlo Pesci
13 Clark County District Attorney
14 Regional Justice Center
15 200 Lewis Avenue
16 Las Vegas, NV 89155
17 Fax: (702) 477-2961

18 Catherine Masto Cortez
19 Nevada Attorney General
20 100 North Carson Street
21 Carson City, NV 89701-4717

22 
23 ADELE L. JOHANSEN, an employee of
24 GORDON & SILVER, LTD.
25
26
27
28

1 VER

2 ORIGINAL

FILED IN OPEN COURT
FEB 08 2008

5:40pm

20
CHARLES J. SHORT
CLERK OF THE COURT

BY Denise Husted
DISTRICT COURT DENISE HUSTED DEPUTY

6 CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 KENNETH JAY COUNTS,

11 Defendant.

CASE NO: C212667

DEPT NO: XXI

13 VERDICT

14
15 We, the jury in the above entitled case, find the Defendant KENNETH JAY
16 COUNTS, as follows:

17 COUNT 1 - CONSPIRACY TO COMMIT MURDER

18 (please check the appropriate box, select only one)

19 ☒ Guilty of Conspiracy To Commit Murder

20 ☐ Not Guilty

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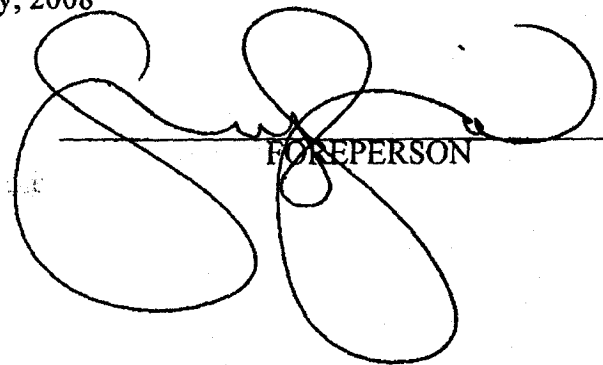
We, the jury in the above entitled case, find the Defendant KENNETH JAY
COUNTS, as follows:

COUNT 2 - MURDER WITH USE OF A DEADLY WEAPON

(please check the appropriate box, select only one)

- ☐ Guilty of First Degree Murder With Use of a Deadly Weapon
- ☐ Guilty of First Degree Murder
- ☐ Guilty of Second Degree Murder With Use of a Deadly Weapon
- ☐ Guilty of Second Degree Murder
- ☒ Not Guilty

DATED this 8 day of February, 2008



FOREPERSON

CERTIFIED TRUE AND CORRECT COPY
OF THE ORIGINAL RECORD

2008 MAR -5 P 1:56


CLERK OF THE COURT

2

1 TRAN

2
3 ORIGINAL

4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

FILED
FEB 15 9 54 AM '08

Cliff
CLERK OF THE COURT

7 THE STATE OF NEVADA,)

8 Plaintiff,)

9 vs.)

CASE NO. C212667

DEPT. XXI

10 KENNETH COUNTS, aka KENNETH)
11 JAY COUNTS II,)

12 Defendant.)

13
14 BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

15 FRIDAY, FEBRUARY 8, 2008

16 RECORDER'S TRANSCRIPT OF HEARING RE:
17 VERDICT

18 APPEARANCES:

19 FOR THE STATE:

MARC DIGIACOMO, ESQ.

20 GIANCARLO PESCI, ESQ.

Deputies District Attorney

21 FOR DEFENDANT COUNTS:

22 KRISTINA M. WILDEVELD, ESQ.

BRET O. WHIPPLE, ESQ.

23
24
25 RECORDED BY: JANIE L. OLSEN, COURT RECORDER/TRANSCRIBER

RECEIVED

FEB 15 2008

CLERK OF THE COURT

1 LAS VEGAS, CLARK COUNTY, NV., FRI., FEB 8, 2008

2
3 (Jury entering 5:35 p.m.)
4

5 THE COURT: Court is now back in session. The record will reflect the
6 presence of the defendant along with his attorneys, the Deputy District Attorneys, all
7 12 members of the jury and all officers of the court.

8 Who is the presiding juror?

9 JUROR NO. 3: I am.

10 THE COURT: All right, Juror No. 3, Ms. Spina, has the jury reached a
11 verdict?

12 JUROR NO. 3: Yes.

13 THE COURT: If you will please hand the verdict forms to our bailiff.

14 The clerk will now read the verdict out loud and inquire if this is the
15 verdict of the jury.

16 THE CLERK: District Court, Clark County, Nevada, the State of Nevada,
17 Plaintiff, versus Kenneth J. Counts, Defendant. Case No. 212667, Department 21,
18 Verdict.

19 We the jury in the above-entitled case find the defendant, Kenneth Jay
20 Counts as follows:

21 Count I, Guilty of Conspiracy to commit murder.

22 Count II, Murder with use of a deadly weapon, not guilty.

23 Dated this 8th day of February 2008, Shelby Spina, Foreperson.

24 Ladies and gentlemen of the jury, is this your verdict as read so say you
25 one so say you all?

1 THE JURORS: Yes.

2 THE COURT: All right. Before the verdict is recorded in the minutes of the
3 Court --

4 Mr. Whipple.

5 MR. WHIPPLE: I'm sorry. I'm sorry.

6 THE COURT: Would you please behave yourself in a professional manner.

7 MR. WHIPPLE: I'm sorry, Your Honor.

8 THE COURT: Does either side desire to have the jury polled?

9 MR. DIGIACOMO: No, Your Honor.

10 THE COURT: Does the defense desire to have the jury polled?

11 MS. WILDEVELD: No, Your Honor.

12 THE COURT: All right, then, the clerk will now record the verdict in the
13 minutes of the court.

14 Ladies and gentlemen of the jury, this concludes your jury service. The
15 prohibition on discussing this matter is now lifted. You are free to discuss this
16 matter with whomever you choose including the attorneys if they choose to speak to
17 you. Because this is not a first degree murder conviction, as we explained during
18 the jury selection, you will not be participating in the penalty phase.

19 The matter of sentencing on the conspiracy to commit murder is now up
20 to the Court. You may be curious; that carries a maximum penalty of 48 to 120
21 months with whatever credit for time the defendant may be entitled to. That matter
22 will be handled by the Court at a future date.

23 Thank you for your service. You are now free to leave. Jeff will escort
24 you to jury services where you'll be eligible to receive your vouchers. If everyone
25 will please get their personal belongings and follow our bailiff from the courtroom.

(Jury recessed 5:38 p.m.)

THE COURT: All right, Mr. Counts, I don't know if bail was set on Count No. 1. You've now been found guilty of Count No. 1. You will be held without bail on Count No. 1, Conspiracy to commit murder. Obviously you've been acquitted of the murder charge so that charge is no longer against you.

We're going to refer this matter to the Department of Parole and Probation for a presentence investigation report and set it over for rendition of sentence on --

THE CLERK: March 20th at 9:30.

-oOo-

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


JANIE L. OLSEN
RECORDER/TRANSCRIBER

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE DOCUMENT ON FILE

2008 MAR -5 P 1:55


CLERK OF THE COURT