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IN THE SUPREME COURT OF THE STATE OF NEVADA

2008 JAN 23 PM 2:51

KRISTINA WILDEVELD,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA, COUNTY OF  
CLARK, THE HONORABLE VALERIE ADAIR,  
DISTRICT COURT JUDGE,

Respondent,

KENNETH COUNTS,

Real Party in Interest.

Case No. 50939  
(Dist. Ct. No. C212667)

FILED

JAN 24 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
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**PETITION FOR WRIT OF MANDAMUS AND  
EMERGENCY MOTION FOR STAY OF PROCEEDINGS**

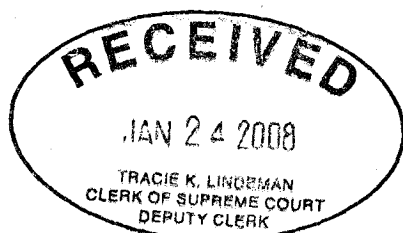
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08-01805

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1 of this Petition and any argument should this Honorable Court order  
2 a hearing on this matter.

3 DATED this 23<sup>rd</sup> day of January, 2008.

4 LAW OFFICES OF KRISTINA WILDEVELD, LTD.

5  
6 By 

7 KRISTINA WILDEVELD, ESQ.

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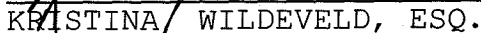
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1 POINTS AND AUTHORITIES

2 I.

3 STATEMENT OF THE ISSUES

4 1. Whether the District Court erred in denying the  
5 Defendant's Motion to Strike Aggravating Circumstances.

6 II.

7 STATEMENT OF THE CASE

8 Defendant, KENNETH COUNTS, is charged with the shooting  
9 murder of Timothy Hadland (hereinafter "Hadland") on or about May 19,  
10 2005, was charged by way of a criminal complaint with open murder  
11 based on multiple theories of liability. The State eventually decided  
12 to seek the Death Penalty against four of the five co-defendants,  
13 including MR. COUNTS. The only co-defendant against whom the Death  
14 Penalty was not sought was a juvenile at the time and ineligible for  
15 the Death Penalty for that reason.

16 In the District Court, all defendants plead not guilty and  
17 the case was assigned to Eighth Judicial District Court Department  
18 XIV. Later, because of a change in counsel, the District Court  
19 recused itself and the matter was reassigned to Eighth Judicial  
20 District Court Department XXI. Co-defendants, Luis Hildago, III and  
21 Anabel Espindola filed a motion to strike the aggravating  
22 circumstances on numerous grounds and that motion was denied. A writ  
23 of mandamus was taken up by the co-defendants and that matter was  
24 decided on December 27, 2007 striking the notices of Intent To Seek  
25 the Death Penalty against those Defendants. Deangelo Carrol who later  
26 joined the Writ, is still pending.

27 On or about January 9, 2008, the Defendant filed a Second  
28 Motion to Reconsider Striking Aggravating Circumstances in the

1 District Court Department XXI based on the recent Supreme Court  
2 Decision in the Matter of Hidalgo and Espindola striking the Death  
3 Penalty. The State was given an opportunity to respond in writing and  
4 did so on January 18, 2008 after hearing brief argument by Defense  
5 counsel in court on January 15, 2008 regarding the matter. The Court  
6 held a full hearing on the matter on January 22, 2008. The Court  
7 **denied the motion for a stay of proceedings made by the Defendant in**  
8 **the District Court.** Additionally, pursuant to Supreme Court Rule  
9 250 (4) (d), following the State's late notice of intent, the Defendant  
10 has a right to a reasonable continuance. Here, despite the fact that  
11 the State's Second Amended Notice of Evidence in Support of  
12 Aggravating Circumstances was filed on January 10, 2008, the Court has  
13 insisted that this Death Penalty trial begin on January 28, 2008. The  
14 instant petition follows.

15 **III.**

16 **STATEMENT OF FACTS**

17 Just before midnight on May 19, 2005, the Las Vegas Metropolitan  
18 Police Department (LVMPD) received a 9-1-1 call concerning a homicide  
19 on North Shore Road near Lake Mead (Reporter's Transcript of the  
20 Preliminary Hearing (hereinafter "RTP"), page 146). Upon arrival they  
21 found the body of Timothy Hadland (hereinafter "Hadland") lying in the  
22 middle of the road with an two gunshot wounds to the head. (RTP 151,  
23 157). Just south of the body were several flyers from a strip club  
24 in North Las Vegas called the Palomino Club which led police to do  
25 begin an investigation at the club. (RTP, 152-160). Additionally, the  
26 last number on Hadland's cell phone was from an individual identified  
27 as "Deangelo" on the phone itself, but the number was registered to  
28 an individual named Anabel Espindola (hereinafter "Espindola") who was  
a key employee at the Palomino club. (RTP, 153-159).

1       It was determined that Hadland was a former employee of the  
2 Palomino club and that Deangelo Carroll was a current employee of the  
3 club. (RTP, 163-164). Carroll gave the police a lengthy, recorded  
4 statement which contains multiple versions of the motivations and  
5 intentions behind the events of the evening of May 19, 2007, but in  
6 his statement, Carroll essentially admits that he drove a van out to  
7 Lake Mead on May 19, 2005 with three passengers in the car, Rontae  
8 Zone, Jason Taoipu, and Kenneth Counts; there they encounter Timothy  
9 Hadland who was friends with Carroll; at that point Kenneth Counts  
10 shot and killed Timothy Hadland. Rontae Zone, a juvenile who was not  
11 charged with any offense and Jason Taoipu, the juvenile co-defendant  
12 confirm this essential account and the State has not contested that  
13 Kenneth Counts was the actual shooter. The discrepancies and outright  
14 contradictory accounts made by Carroll to the police primarily  
15 surround the motivation for meeting with Hadland at the lake in the  
16 first place.

17       In one version of Carroll recitation of the events, after Hadland  
18 was shot he returned to the Palomino club where Kenneth Counts  
19 demanded 6,000 dollars in compensation for the shooting. Carroll told  
20 police that he got the 6,000 dollars from Anabel Espindola and gave it  
21 to Counts.

22       Carroll agreed to work with police in an attempt to ensnare the  
23 owners/managers of the Palomino club as involved with the shooting of  
24 Hadland. To that end, he wore a surreptitious listening device on his  
25 person and entered an establishment where Anabel Espindola and Luis  
26 Hildago, III (the son of the owner of the Palomino Club), were  
27 present. There Carroll was able to solicit numerous statements from  
28 his eventual co-defendants that the State has cast as incriminating.  
At that meeting, Carroll placed his own life in jeopardy as the co-

1 defendant's made Carroll strip his clothes off with the implication  
2 that if he was cooperating with police he would be killed. The  
3 listening device was not recovered.

4 MR. COUNTS was arrested on the charge of murder and the State is  
5 seeking the death penalty.

6 In the Amended Notice of Evidence in Aggravation filed January  
7 10, 2008, the State alleges two aggravating circumstances pursuant to  
8 NRS 200.033, to wit: murder for pecuniary gain and under sentence of  
9 imprisonment. Essentially, the pecuniary gain comes from the 6,000  
10 dollars given to Deangelo Carroll by Anabel Espindola. The prior  
11 conviction involves a 1999 plea by Mr. Counts to the charge of  
12 possession of a controlled substance to which he was given three years  
13 probation. The Supreme Court has stricken the pecuniary gain  
14 aggravator as a matter of law finding that the notice failed to give  
15 sufficient notice to Defendants as written under NRS 250(4). The  
16 pecuniary gain aggravator is written the same way for all co-  
17 defendants and would therefore be applicable to Mr. Counts as well.

18 **ARGUMENT**

19 **The relief requested by the Petitioner should be**  
20 **properly granted by this Court<sup>1</sup>.**

21 This court may issue a writ of mandamus in order  
22 "to compel the performance of an act which the law  
23 especially enjoins as a duty resulting from an  
24 office, trust or station." NRS 34.160.  
25 Generally, a writ of mandamus may issue only when  
26 there is no plain, speedy, and adequate remedy at  
27 law. See NRS 34.170. However, where  
28 circumstances reveal urgency or strong necessity,  
this court may grant extraordinary relief. See  
Jeep Corp. v. District Court, 98 Nev. 440, 443,  
652 P.2d 1183, 1185 (1982). Moreover, "where an  
important issue of law needs clarification and  
public policy is served by this court's invocation  
of its original jurisdiction, our consideration of



1 a petition for extraordinary relief may be  
2 justified." Business Computer Rentals v State  
3 Treas., 114 Nev. 63, 67, 953 P.2d 13, 15 (1998).

4 It is Petitioner's position that facially the so-called  
5 "murder for hire" or pecuniary gain aggravating circumstance does not  
6 apply to him, or in the alternative, that it is so broad as to be  
7 Constitutionally infirm. Likewise, the so called "under sentence of  
8 imprisonment" aggravating circumstance does not apply to him because  
9 his prior conviction in 1999 and sentence of three (3) years  
10 probation was too remote. In light of the utmost seriousness  
11 attached to the imposition of the Death Penalty on an individual under  
12 the present national and international debate on the subject that the  
13 public interest can only be served by analysis of our Nevada Supreme  
14 Court before another person potentially sentenced to death under an  
15 unconstitutional system.

16 When the State is not required to narrow the categories of those  
17 individuals eligible for and against whom the Death Penalty is sought,  
18 not only is it a manifest injustice for that individual, but the  
19 public confidence in a state where execution is allowed will be  
20 forever lost. When the State can and cannot seek the Death Penalty,  
21 especially in a case where they are seeking against all individuals  
22 involved, including the non-shooter and parties not even present,  
23 there can be little argument that this is not an important issue of  
24 law which needs clarification and which serves the public policy. As  
25 such, the Petitioner implores this Court to stay these  
26 unconstitutional proceedings for time to consider the Petitioner's  
27 request for writ.

28 Capital punishment is reserved for the most heinous of murders.  
Not all murders qualify for death as the punishment. "Death is  
different" goes the famous and oft-quoted citation of the United

1 States Supreme Court. Not surprising, the United States Supreme Court  
2 has relied upon this principle and its application to Eight Amendment  
3 implications for decades. See Gregg v. Georgia, 428 U.S. 153, 188  
4 (1976); Ring v. Arizona, 536 U.S. 584, 606 (2002).

5 The Nevada Supreme Court also recognized its "obligation to  
6 ensure that aggravators are not applied so liberally that they fail to  
7 perform their constitutionally required narrowing function." Redeker  
8 v. Eighth Judicial District Court, 122 Nev. \_\_\_\_, 127 P.3d 520, 526  
9 (2006) (citations omitted). In interpreting the statute at issue, the  
10 Nevada Supreme Court looks to the plain language of the statute.  
11 State v. Colosimo, 122 Nev. \_\_\_\_, 142 P.3d 352 (2006) (citing State v.  
12 Washoe County, 6 Nev. 104, 107 (1870)). If a penal statute is  
13 ambiguous, "rules of statutory interpretation...require that  
14 provisions which negatively impact a defendant must be strictly  
15 construed, while provisions which positively impact a defendant are to  
16 be given a more liberal constructions." Colosimo, 122 Nev. At \_\_\_\_, 142  
17 P.3d at 359 (quoting Mangarella v. State, 117 Nev. 130, 134, 17 P.3d  
18 989, 992 (2001)).

19 The Nevada Supreme Court has decided on December 27, 2007, that  
20 the Notice, as written in this case against Mr. Hidalgo and Ms.  
21 Espindola, is Constitutionally infirm and must be stricken. Since the  
22 notices plead are identical, this ruling would apply to Mr. Counts as  
23 well.

24 **1. UNDER THE SENTENCE OF IMPRISONMENT.**

25 Defendant Counts was convicted of *POSSESSION OF MARIJUANA* in 1999  
26 in California and sentenced to three (3) years probabtion.  
27 Understandably, the State has alleged in the Notice of Intent to Seek  
28 the Death Penalty the "underlying" facts of the conviction to which  
the Defendant plead guilty, however, the State does not allege how Mr.

1 Counts was still under a sentence of imprisonment, the crime for which  
2 the judgment of conviction was entered was in 1999 in and of itself  
3 which is required to proceed under the Death Penalty. See Redeker v.  
4 Eighth Judicial District Court, 122 Nev. \_\_\_\_\_, 127 P.3d 520(2006).  
5 Instead, the State submits an explanation by the Superior Court of  
6 California County of Los Angeles "Probation Officer's Report"  
7 declaring that Mr. Counts failed to pay restitution and failed to  
8 submit to two periodic anti-narcotic tests. However, Mr. Counts was  
9 granted leave of the California court to transfer his probation to the  
10 State of Nevada. There is no proof that Mr. Counts failed to abide by  
11 the terms of his Nevada Probation.

12 The State cannot offer any authority for the proposition that the  
13 Nevada Supreme Court has authorized an old charge to stand for the  
14 narrowing required to make it an death eligible aggravator. Indeed,  
15 to the contrary, the Nevada Supreme Court seems to have indicated that  
16 the moment of striking aggravators for failure to narrow is at hand.  
17 See Leslie v. Warden, 118 Nev. 773, 59 P.3d 440 (2002) (Maupin  
18 concurring opinion).

19 NRS 200.033(2) is unconstitutionally vague both on its face and  
20 in its application to this case. Under these circumstances the  
21 aggravating factor of under sentence of imprisonment is invalid. A  
22 statute violates due process if it is so vague that it fails to give  
23 persons of ordinary intelligence fair notice of what conduct is  
24 prohibited and fails to provide law enforcement officials with  
25 adequate guidelines to prevent discriminatory enforcement." Hernandez  
26 v. State, 118 Nev. 513, 524 (2002).

## 27 2. MURDER FOR HIRE / PECUNIARY GAIN

28 From the onset it should be noted that this aggravator has  
already been challenged by the co-defendants, Luis Hidalgo III and

1 Anabel Espindola, and the notice of intent to seek the death penalty  
2 has been stricken as of Decemeber 27, 2007 as being infirm as plead.

3 **3. MOTION FOR A STAY**

4 In that there are two aggravators at issue in the Notice of  
5 Intent to Seek the Death Penalty, and both are potentially infirm,  
6 statutorily and constitutionally - and since the Nevada Supreme Court  
7 has already considered the validity of the "murder for hire/pecuniary  
8 gain" aggravator - it only makes sense to stay these proceedings until  
9 at least word comes down from the Nevada Supreme Court on this issue.  
10 Further, the Defendant intends to appeal this Court's ruling if it is  
11 denied to grant the specific relief sought. Defendant Counts will  
12 suffer irreparable harm by having to stand trial for a capital case  
13 despite the invalid Notices of Intent to Seek the Death Penalty.

14 Because this is currently a capital case, he is being held  
15 without bail and may not be released from custody and is therefore  
16 unable to assist his counsel in preparation for his defense in an  
17 effective manner. Further, court resources will be unnecessarily  
18 expended by the potentially lengthy proceedings concerning the capital  
19 penalty hearing, a lengthy and complicated jury selection process,  
20 transcript expenses and other costs incurred by this case which would  
21 not be incurred if the Notices of Intent to Seek the Death Penalty are  
22 dismissed with regard to all Defendants. Finally, there is a  
23 prejudice to the Defendant in facing a "death-qualified" jury. To the  
24 contrary, the State in the interest of justice should be sure that the  
25 aggravators being used to potentially execute a human being are valid.  
26 Lastly, pursuant to Supreme Court Rule 250 (4)(d), following the  
27 State's late notice of intent, the Defendant has a right to a  
28 reasonable continuance. Here, despite the fact that the State's  
Second Amended Notice of Evidence in Support of Aggravating

1 Circumstances was filed on January 10, 2008, the Court has insisted  
2 that this Death Penalty trial begin on January 28, 2008. Pursuant  
3 to the requirements of NRAP 8, the Defendant did make motion in the  
4 District Court for stay and that was denied by written order.

5 CONCLUSION

6 Petitioner prays and it would be in the best interest of the  
7 public, to not induce the waste of judicial resources and public  
8 confidence that would result from holding a Death Penalty trial when  
9 there is no justifiable or Constitutionally sound argument in support  
10 of it. Death as a means of punishment in the modern era is an  
11 extraordinary issue filled with debate to the extent that the United  
12 States Supreme Court is currently considering whether it violates the  
13 Eight Amendment and one state after another are falling in moratoriums  
14 disallowing the State from even seeking it. In the present case there  
15 can be no legitimate claim that KENNETH COUNTS, who did not plan the  
16 killing of Timothy Hadland is facing the Death Penalty. If the  
17 District Court refuses to consider the broader picture and really  
18 scrutinize the State's decision-making in the case where every adult  
19 co-defendant in what is, not callously, but frankly in the modern  
20 world filled with hundreds of murders each year in our jurisdiction,  
21 an unremarkable murder case -- the Nevada Supreme Court hopefully will  
22 take on that task.

23 NRS 200.033 as used by the District Attorney in Clark County is  
24 clearly on a slippery slope with regard to how and who is being  
25 "narrowly" defined for eligibility. It inches closer and closer to  
26 seeking it in a way that will eventually preclude the Nevada structure  
27 from meeting Constitutional muster. In the present case, the State  
28 has crossed the line and this extraordinary relief is the only real  
remedy. Petitioner again requests that the trial be stayed and the

1 writ be fully briefed and heard so that these very important issues  
2 can be resolved and guidance given to all district courts.

3 Respectfully submitted,

4 LAW OFFICES OF KRISTINA WILDEVELD, LTD.

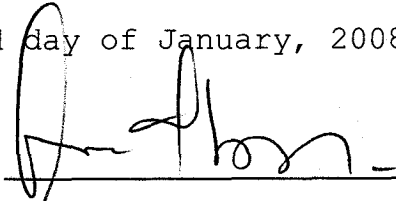
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6 By 

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1                                    **DECLARATION OF FACSIMILE AND MAILING**

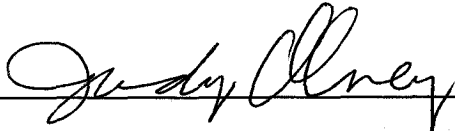
2 Ana Flores, an employee with the LAW OFFICES OF KRISTINA WILDEVELD,  
3 hereby declares that she is, and was when the herein described mailing  
4 took place, a citizen of the United States, over 21 years of age, and  
5 not a party to, nor interested in, the within action; that on the 22nd  
6 day of January, 2008., declarant deposited in the United States mail  
7 at Las Vegas, Nevada, a copy of the Petition for Writ of Mandamus and  
8 Emergency Motion for Stay of Proceedings in the case of Kenneth  
9 Counts, Petitioner vs. The Eighth Judicial District Court of the State  
10 of Nevada, County of Clark, the Honorable Valerie Adair, Respondent,  
11 KENNETH COUNTS, Real Party in Interest, District Court Case No.  
12 C212667, enclosed in a sealed envelope upon which first class postage  
13 was fully prepaid, addressed to Catherine Cortez Masto, 100 North  
14 Carson Street, Carson City, Nevada 89701-4717; Judge Valerie Adair,  
15 District Court Judge, 200 Lewis Avenue and David J.J. Roger, 200 Lewis  
16 Avenue that there is a regular communication by mail between the  
17 places of mailing and the places so addressed. I declare under penalty  
18 of perjury that the foregoing is true and correct.

19                    EXECUTED on the 22<sup>nd</sup> day of January, 2008.

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21                    \_\_\_\_\_  
22                    Ana Flores  
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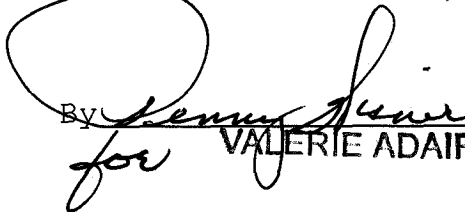
1 RECEIPT OF A COPY of the foregoing **Petition for Writ of**  
2 **Mandamus and Emergency Motion for Stay of Proceedgins** is hereby  
3 acknowledged this 2<sup>nd</sup> day of January, 2008.

4 DAVID J.J. ROGER  
5 CLARK COUNTY DISTRICT ATTORNEY

6 By   
7  
8

9 RECEIPT OF A COPY of the foregoing **Petition for Writ of**  
10 **Mandamus and Emergency Motion for Stay of Proceedgins** is hereby  
11 acknowledged this 2<sup>nd</sup> day of January, 2008.

12 VALERIE ADAIR  
13 DISTRICT COURT JUDGE, DEPARTMENT XXI

14 By   
15 for VALERIE ADAIR  
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1 **ORDR**  
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9 Fax (702) 974-4008  
10 Counsel for Defendant, KENNETH COUNTS

**FILED**

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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

\*\*\*\*

THE STATE OF NEVADA,

Plaintiff,

vs.

KENNETH COUNTS,

Defendant.

CASE NO: C212667  
DEPT. NO: XXI

**ORDER DENYING MOTION TO STRIKE AGGRAVATING CIRCUMSTANCES**

Upon the Defendant Counts' Motion to Strike Aggravating Circumstances brought by counsel for the Defendant KENNETH COUNTS, in the matter, and good cause appearing therefor.

Defendant's Motion to Strike Aggravating Circumstances is hereby DENIED.

DATED this 23<sup>rd</sup> day of January 2008.

By:

**STEWART L. BELL**

DISTRICT COURT JUDGE

Respectfully Submitted by:

*[Signature]*  
Bret Whipple Esq.  
1100 S. 10<sup>th</sup> Street  
Las Vegas, NV 89104

1 **NISD**  
2 **DAVID ROGER**  
3 **Clark County District Attorney**  
4 **Nevada Bar #002781**  
5 **GIANCARLO PESCI**  
6 **Chief Deputy District Attorney**  
7 **Nevada Bar #007135**  
8 **200 Lewis Avenue**  
9 **Las Vegas, Nevada 89155-2212**  
10 **(702) 671-2500**  
11 **Attorney for Plaintiff**

12 **DISTRICT COURT**  
13 **CLARK COUNTY, NEVADA**

14 **THE STATE OF NEVADA,**

15 **Plaintiff,**

16 **-vs-**

17 **KENNETH COUNTS**  
18 **#1525643**

19 **Defendant.**

20 **Case No. C212667**

21 **Dept No. XXI**

22 **SECOND AMENDED NOTICE OF EVIDENCE IN SUPPORT OF**  
23 **AGGRAVATING CIRCUMSTANCES**

24 COMES NOW, the State of Nevada, through DAVID ROGER, Clark County District  
25 Attorney, by and through GIANCARLO PESCI, Chief Deputy District Attorney, pursuant to  
26 NRS §175.552 and NRS §200.033, and Nevada Supreme Court Rule 250, declares its  
27 intention to seek the death penalty at a penalty hearing. Furthermore, the State of Nevada  
28 discloses that it will present evidence of the following aggravating circumstances:

1. The murder was committed by a person under sentence of imprisonment, to-wit:  
Defendant KENNETH COUNTS having been convicted in 1996 in Los Angeles California  
Municipal Court of Sale/Transportation/Offer To Sell Controlled Substance, Cocaine Base in  
case number BA133814 and/or pursuant to that conviction, he was placed on three (3) years  
probation and/or while on probation, in 1999, Defendant was convicted of Possession  
Marijuana/Hash for Sale in Los Angeles California Municipal Court case number BA171370

TO: Brett Whipple COMPANY

1 and/or at sentencing on that matter, Defendant was once again given probation of three (3)  
2 years, and/or his probation in BA133814 was extended three (3) years as an added condition  
3 of probation and/or Defendant's probation was extended in BA133814 and/or BA171370  
4 and a warrant for his arrest was eventually entered on August 9, 2004 for probation violation  
5 and/or as of May 19, 2005, the warrant was outstanding and/or Defendant was under  
6 sentence of imprisonment on the date of the murder. [NRS 200.033(1)]

7 The basis for this aggravator will be the certified copy of the court records and/or  
8 police reports and/or probation documents and/or witnesses which will establish that  
9 Defendant KENNETH COUNTS was under sentence of imprisonment when he killed  
10 Timothy Jay Hadland.

11 2. The murder was committed by a person, for himself or another, to receive money  
12 or any other thing of monetary value, to-wit by: On or about May 19, 2005, the owner of the  
13 Palomino Club, Luis Hidalgo, Jr., located at 1848 North Las Vegas Boulevard, made it  
14 known to Deangelo Carroll, an employee of the Palomino Club, that he would pay someone  
15 to kill Timothy Jay Hadland, who was a former employee of the club. Luis Hidalgo, Jr., was  
16 angry with the victim, Timothy Jay Hadland, because after his firing from the club, Timothy  
17 Jay Hadland was hurting the club's business by "bad mouthing" the club by spreading  
18 rumors about Luis Hidalgo Jr., and about the club. Timothy Jay Hadland had a lot of contact  
19 with cab drivers and was telling cabbies not to bring their fares to the club in retaliation for  
20 his firing. The Palomino Club is not located on the Strip and its business relies heavily on  
21 customers being brought to the club by cabs. The club was losing money because of  
22 Timothy Jay Hadland's actions and as such Luis Hidalgo Jr., wanted him killed so that he,  
23 his business, and his employees would be better off financially by the increased flow of  
24 clients after Timothy Jay Hadland was silenced. Based upon this initial conversation,  
25 Deangelo Carroll procured the assistance of Jayson Taoipu to commit the murder.

26 On the same date, after the initial conversation, Luis Hidalgo, III, a manager of the  
27 Palomino Club, called Deangelo Carroll and told him to come to the club and "bring baseball  
28 bats and garbage bags." When Defendant Carroll arrived at the Palomino Club, Defendant

TO: Brett Whipple COMPANY

1 Espindola and Luis Hidalgo, Jr., hired Deangelo Carroll to kill Timothy Jay Hadland. After  
2 conveying this information and procuring Deangelo Carroll, Deangelo Carroll went to 1676  
3 "E" Street to the residence of Kenneth Counts and enlisted Defendant Kenneth Counts to kill  
4 Timothy Jay Hadland. Defendant Deangelo Carroll then drove Defendants Kenneth Counts  
5 and Jayson Taoipu, as well as witness Rontae Zone, out to the area of North Shore Road at  
6 Lake Mead, where Defendant Kenneth Counts shot and killed Timothy Jay Hadland.

7 After the killing, the group drove back to the Palomino Club and Defendant Deangelo  
8 Carroll entered the club with Defendant Kenneth Counts. Defendant Deangelo Carroll went  
9 into Luis Hidalgo Jr.'s office and met with him and Defendant Anabel Espindola. At that  
10 time Defendant Deangelo Carroll announced that, "it was done" and that Defendant Kenneth  
11 Counts wanted to be paid. Luis Hidalgo Jr., then told Defendant Anabel Espindola to get the  
12 money, which Defendant Anabel Espindola did and which she provided to Defendant  
13 Deangelo Carroll who then provided the six thousand dollars (\$6,000) to Defendant Kenneth  
14 Counts. Defendant Kenneth Counts then left the club in a cab and Luis Hidalgo Jr., and  
15 Defendant Anabel Espindola then discussed with Defendant Deangelo Carroll what he  
16 should say if the police spoke to him. Additionally, Defendant Anabel Espindola and/or  
17 Luis Hidalgo, III, provided hundreds of dollars to Defendant Deangelo Carroll for his part in  
18 the crime.

19 These facts support the aggravator because the murder was committed, "to receive  
20 money" in that Kenneth Counts was paid six thousand dollars (\$6,000) for committing the  
21 murder.

22 The basis for this aggravator is the aggravated nature of the crime itself. The  
23 evidence upon which the State will rely is the testimony and exhibits introduced during the  
24 guilt or penalty phase of the trial, as well as the verdicts from the guilt phase.

25 In filing this SECOND AMENDED NOTICE, the State incorporates all pleadings,  
26 witness lists, notices and other discovery materials already provided to Defendant by the

27 ///

28 ///

TO: Brett Whipple COMPANY

1 Office of the District Attorney as part of its open-file policy as well as any future discovery  
2 received and provided to Defendant.

3 DATED this 10TH day of January, 2008.

4 Respectfully submitted.

5 DAVID ROGER  
6 Clark County District Attorney  
7 Nevada Bar #002781

8 BY /s/ GIANCARLO PESCI  
9 GIANCARLO PESCI  
10 Chief Deputy District Attorney  
11 Nevada Bar #007135

12  
13 **CERTIFICATE OF FACSIMILE TRANSMISSION**

14 I hereby certify that service of SECOND AMENDED NOTICE OF INTENT TO  
15 SEEK DEATH PENALTY, was made this 10TH day of January, 2008. by facsimile  
16 transmission to:

17  
18 BRET WHIPPLE, ESQ.  
19 974-4008

20 /s/ D. Daniels  
21 Secretary for the District Attorney's Office  
22  
23  
24  
25  
26  
27  
28

1 **NISD**  
2 **DAVID ROGER**  
3 **Clark County District Attorney**  
4 **Nevada Bar #002781**  
5 **MARC DIGIACOMO**  
6 **Chief Deputy District Attorney**  
7 **Nevada Bar #006955**  
8 **200 Lewis Avenue**  
9 **Las Vegas, Nevada 89155-2211**  
10 **(702) 671-2500**  
11 **Attorney for Plaintiff**

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

KENNETH JAY COUNTS,  
#1525643

Defendant.

CASE NO: C212667

DEPT NO: XIV

**AMENDED NOTICE OF INTENT TO SEEK DEATH PENALTY**

COMES NOW, the State of Nevada, through DAVID ROGER, Clark County District Attorney, by and through MARC DIGIACOMO, Chief Deputy District Attorney, pursuant to NRS 175.552 and NRS 200.033 and declares its intention to seek the death penalty at a penalty hearing. Furthermore, the State of Nevada discloses that it will present evidence of the following aggravating circumstances:

1. The murder was committed by a person under sentence of imprisonment, to-wit: Defendant KENNETH COUNTS having been convicted in 1996 in Los Angeles California Municipal Court of Sale/Transportation/Offer To Sell Controlled Substance, Cocaine Base in case number BA133814 and/or pursuant to that conviction, he was placed on three (3) years probation and/or while on probation, in 1999, Defendant was convicted of Possession Marijuana/Hash for Sale in Los Angeles California Municipal Court case number BA171370 and/or at sentencing on that matter, Defendant was once again given probation of three (3) years. and/or his probation in BA133814 was extended three (3) years as an added condition

1 of probation and/or Defendant's probation was extended in BA133814 and/or BA171370  
2 and a warrant for his arrest was eventually entered on August 9, 2004 for probation violation  
3 and/or as of May 19, 2005, the warrant was outstanding and/or Defendant was under  
4 sentence of imprisonment on the date of the murder. [NRS 200.033(1)]

5 The basis for this aggravator will be the certified copy of the court records and/or  
6 police reports and/or probation documents and/or witnesses which will establish that  
7 Defendant KENNETH COUNTS was under sentence of imprisonment when he killed  
8 Timothy Jay Hadland.

9 2. The murder was committed by a person, for himself or another, to receive money  
10 or any other thing of monetary value, to-wit: by ANABEL ESPINDOLA (a manager of the  
11 PALOMINO CLUB) and/or LUIS HILDAGO, III (a manager of the PALOMINO CLUB)  
12 and/or LUIS HILDAGO, JR. (the owner of the PALOMINO CLUB) procuring  
13 DEANGELO CARROLL (an employee of the PALOMINO CLUB) to beat and/or kill  
14 TIMOTHY JAY HADLAND; and/or LUIS HIDALGO, JR. indicating that he would pay to  
15 have a person either beaten or killed; and/or by LUIS HIDALGO, JR. procuring the injury or  
16 death of TIMOTHY JAY HADLAND to further the business of the PALOMINO CLUB;  
17 and/or LUIS HIDALGO, III telling DEANGELO CARROLL to come to work with bats and  
18 garbage bags; thereafter, DEANGELO CARROLL procuring DEFENDANT KENNETH  
19 COUNTS and/or JAYSON TAOIPU to kill TIMOTHY HADLAND; thereafter, by  
20 DEFENDANT KENNETH COUNTS shooting TIMOTHY JAY HADLAND; thereafter,  
21 LUIS HIDALGO, JR. and/or ANABEL ESPINDOLA providing six thousand dollars  
22 (\$6,000) to DEANGELO CARROLL to pay DEFENDANT KENNETH COUNTS,  
23 thereafter, DEFENDANT KENNETH COUNTS receiving said money; and/or by ANABEL  
24 ESPINDOLA providing two hundred dollars (\$200) to DEANGELO CARROLL and/or by  
25 ANABEL ESPINDOLA providing fourteen hundred dollars (\$1400) and/or eight hundred  
26 dollars (\$800) to DEANGELO CARROLL and/or by ANABEL ESPINDOLA agreeing to  
27 continue paying DEANGELO CARROLL twenty-four (24) hours of work a week from the  
28 PALOMINO CLUB even though DEANGELO CARROLL had terminated his position with

1 the club and/or by LUIS HIDALGO, III offering to provide United States Savings Bonds to  
2 DEANGELO CARROLL and/or his family. [NRS 200.033(6)].

3 The basis for this aggravator is the aggravated nature of the crime itself. The  
4 evidence upon which the State will rely is the testimony and exhibits introduced during the  
5 guilt or penalty phase of the trial, as well as the verdicts from the guilt phase.

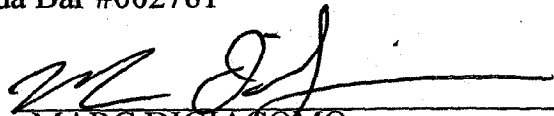
6 In filing this NOTICE, the State incorporates all pleadings, witness lists, notices and other  
7 discovery materials already provided to Defendant by the Office of the District Attorney as  
8 part of its open-file policy as well as any future discovery received and provided to  
9 Defendant.

10 DATED this 28<sup>th</sup> day of November, 2005.

11 Respectfully submitted,

12 DAVID ROGER  
13 Clark County District Attorney  
14 Nevada Bar #002781

15 BY

  
16 MARC DIGIACOMO  
17 Chief Deputy District Attorney  
18 Nevada Bar #006955  
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27 ddm  
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11/9/05

13

1 NISD  
2 DAVID ROGER  
3 Clark County District Attorney  
4 Nevada Bar #002781  
5 MARC DIGIACOMO  
6 Chief Deputy District Attorney  
7 Nevada Bar #006955  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2211  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 KENNETH JAY COUNTS, ...  
12 #1525643

13 Defendant.

CASE NO: C212667

DEPT NO: XIV

14 NOTICE OF INTENT TO SEEK DEATH PENALTY

15 COMES NOW, the State of Nevada, through DAVID ROGER, Clark County District  
16 Attorney, by and through MARC DIGIACOMO, Chief Deputy District Attorney, pursuant to  
17 NRS 175.552 and NRS 200.033 and declares its intention to seek the death penalty at a  
18 penalty hearing. Furthermore, the State of Nevada discloses that it will present evidence of  
19 the following aggravating circumstances:

20 1. The murder was committed by a person under sentence of imprisonment, to-wit:  
21 Defendant KENNETH COUNTS having been convicted in 1996 in Los Angeles California  
22 Municipal Court of Sale/Transportation/Offer To Sell Controlled Substance, Cocaine Base in  
23 case number BA133814 and/or pursuant to that conviction, he was placed on three (3) years  
24 probation and/or while on probation, in 1999, Defendant was convicted of Possession  
25 Marijuana/Hash for Sale in Los Angeles California Municipal Court case number BA171370  
26 and/or at sentencing on that matter, Defendant was once again given probation of three (3)  
27 years. and/or his probation in BA133814 was extended three (3) years as an added condition  
28

1 of probation and/or Defendant's probation was extended in BA133814 and/or BA171370  
2 and a warrant for his arrest was eventually entered on August 9, 2004 for probation violation  
3 and/or as of May 19, 2005, the warrant was outstanding and/or Defendant was under  
4 sentence of imprisonment on the date of the murder. [NRS 200.033(1)]

5 The basis for this aggravator will be the certified copy of the court records and/or  
6 police reports and/or probation documents and/or witnesses which will establish that  
7 Defendant KENNETH COUNTS was under sentence of imprisonment when he killed  
8 Timothy Jay Hadland.

9 2. The murder was committed by a person, for himself or another, to receive money  
10 or any other thing of monetary value, to-wit: by ANABEL ESPINDOLA (a manager of the  
11 PALOMINO CLUB) and/or LUIS HILDAGO, III (a manager of the PALOMINO CLUB)  
12 and/or LUIS HILDAGO, JR. (the owner of the PALOMINO CLUB) procuring  
13 DEANGELO CARROLL (an employee of the PALOMINO CLUB) to beat and/or kill  
14 TIMOTHY JAY HADLAND; and/or LUIS HIDALGO, JR. indicating that he would pay to  
15 have a person either beaten or killed; and/or by LUIS HIDALGO, JR. procuring the injury or  
16 death of TIMOTHY JAY HADLAND to further the business of the PALOMINO CLUB;  
17 and/or LUIS HIDALGO, III telling DEANGELO CARROLL to come to work with bats and  
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20 DEFENDANT KENNETH COUNTS shooting TIMOTHY JAY HADLAND; thereafter,  
21 LUIS HIDALGO, JR. and/or ANABEL ESPINDOLA providing six thousand dollars  
22 (\$6,000) to DEANGELO CARROLL to pay DEFENDANT KENNETH COUNTS,  
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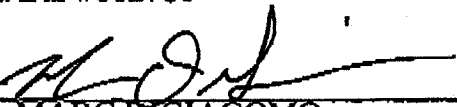
6 In filing this NOTICE, the State incorporates all pleadings, witness lists, notices and other  
7 discovery materials already provided to Defendant by the Office of the District Attorney as  
8 part of its open-file policy as well as any future discovery received and provided to  
9 Defendant.

10 DATED this 9<sup>th</sup> day of November, 2005.

11 Respectfully submitted,

12 DAVID ROGER  
13 Clark County District Attorney  
14 Nevada Bar #002781

15 BY

  
16 MARC DIGIACOMO  
17 Chief Deputy District Attorney  
18 Nevada Bar #006955

19 CERTIFICATE OF FACSIMILE TRANSMISSION

20 I hereby certify that service of NOTICE OF INTENT TO SEEK DEATH PENALTY,  
21 was made this 9<sup>th</sup> day of January, 2005, by facsimile transmission to:

22 BRETT WHIPPLE, ESQ.  
23 FAX#895-7315

24 BY   
25 Employee of the District Attorney's Office

26 ddm  
27  
28

11/9/05

1 NISD

2 DAVID ROGER

3 Clark County District Attorney

4 Nevada Bar #002781

5 MARC DIGIACOMO

6 Chief Deputy District Attorney

7 Nevada Bar #006955

8 200 Lewis Avenue

9 Las Vegas, Nevada 89155-2211

10 (702) 671-2500

11 Attorney for Plaintiff

12 DISTRICT COURT  
13 CLARK COUNTY, NEVADA

14 THE STATE OF NEVADA,

15 Plaintiff,

16 -vs-

17 KENNETH JAY COUNTS,  
18 #1525643

19 Defendant.

20 CASE NO: C212667

21 DEPT NO: XIV

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EXHIBIT 1

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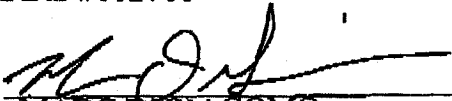
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8 part of its open-file policy as well as any future discovery received and provided to  
9 Defendant.

10 DATED this 9<sup>th</sup> day of November, 2005.

11 Respectfully submitted,

12 DAVID ROGER  
13 Clark County District Attorney  
14 Nevada Bar #002781

15 BY

  
16 MARC DIGIACOMO  
17 Chief Deputy District Attorney  
18 Nevada Bar #006955

19 CERTIFICATE OF FACSIMILE TRANSMISSION

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22 BRETT WHIPPLE, ESQ.  
23 FAX#895-7315

24 BY   
25 Employee of the District Attorney's Office

26 ddm  
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