

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed  
Nov 29 2010 08:26 a.m.  
Tracie K. Lindeman

LUIS A, HIDALGO, JR.

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

CASE NO. 54209

LUIS A, HIDALGO, III

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

CASE NO. 54272

**LUIS A. HIDALGO, JR.'S AND LUIS HILDALGO. III'S JOINT MOTION FOR A  
FIFTH EXTENSION OF TIME TO FILE OPENING BRIEF**

COMES NOW Appellants, Luis A. Hidalgo, Jr. (hereinafter "Hidalgo Jr."), by and through his counsel, Dominic P. Gentile, Esq., and Paola M. Armeni, Esq., of the law firm of Gordon Silver, and Luis A. Hidalgo, III. (hereinafter "Hidalgo III"), by and through his counsel, John L. Arrascada, Esq. of the law firm of Arrascada & Arrascada Ltd., and jointly file this Motion for Extension of Time to file Opening Brief based upon NRAP 31(a)(1) and NRAP 26(d).

NRAP 26(d) states, in pertinent part, that "time provided in any of theses rules within which an act shall be done, may be extended or shortened . . . by order of the court or a justice thereof upon good cause shown. NRAP 26(d). Further, NRAP 31(a)(1) states, in pertinent part, that "[a]pplications for extensions of time beyond that which the parties are permitted to stipulate

1 . . . will be considered only on motion for good cause clearly shown, or ex parte in cases of  
2 extreme and unforeseeable emergency." NRAP 31(a)(1).

3 This Motion is made and based on the following:

4 **REGARDING HIDALGO Jr. Counsel's good cause for an extension of time:**

5 1. Counsel for Appellant Hidalgo Jr. has now spent close to 210 hours reading,  
6 digesting and assimilating the record and conducting preliminary research into the legal issues  
7 and 50 hours has been spent since the last request for extension from August 27, 2010, through  
8 to date of the filing of this motion, to focus on this appeal and prepare the Opening Brief in the  
9 instant matter, currently due on November 29, 2010.

10 2. In the previous request for an extension, counsel for appellant informed the Court  
11 that there were material errors in the record that needed to be remedied by the district court. See  
12 Exhibit "1" Request for Extension to File Opening Brief. After receiving an extension, counsel  
13 for appellant filed a Motion to Amend the Record in district court. See Exhibit "2" Motion to  
14 Amend Record. The hearing on that motion was held on November 9, 2010. At the hearing the  
15 district court stated the incorrect wording in the trial transcript would be remedied. The court  
16 also stated it would look for the notes pertaining to Anabel Espindola's post-plea deal interview  
17 and it would inform counsel for appellant whether the notes were located so that counsel could  
18 prepare the appropriate order.

19 After the hearing on the motion, there was an amended transcript filed on November 12,  
20 2010 which fixed incorrect wording in one part of the trial transcript. However, the district court  
21 has not yet contacted counsel regarding whether it ever found the notes pertaining to Anabel  
22 Espindola's post-deal interview. Additionally, to date there are no minutes available on the  
23 district court docket reflecting the district court's decision. It is imperative that there is a clear  
24 record regarding the notes for the following reasons:

25 a. Anabel Espindola, an accomplice who sat for over thirty months prior to  
26 'cooperating' and did so only after this Honorable Court ordered the Death Penalty  
27 stricken; but while the State had a Petition for Rehearing pending; participated in a post-  
28 deal interview. This interview was not recorded despite the fact that her original

1 interview which took place May 24, 2005, was both video and audio recorded as were the  
2 original interviews of all of her alleged co-conspirators/accomplices recorded via video  
3 and audio. Despite, there being no video or audio of Espindola's post-deal interview,  
4 notes from the interview existed which memorialized what was said by her. The defense  
5 demanded the notes<sup>1</sup> and the District Court denied the request<sup>2</sup>. The defense renewed the  
6 request on January 29, 2009<sup>3</sup>. After a thorough review of the transcripts, there is  
7 absolutely no record that the Court (1) denied the Motion; (2) ordered the notes to be  
8 made a Court's exhibit or (3) whether the court lost the notes. It leaves counsel to believe  
9 that that these events have either not yet been transcribed or were never recorded. It is  
10 crucial that this issue is clarified with the district court and in turn the transcript be  
11 corrected so that the record is clear.

12 3. Counsel has a firm trial setting in the matter of *Gary Wright, M.D. v. TCR*  
13 *Enterprises; et al.*, Case No. CV22897, District Court, Nye County, Nevada, scheduled to  
14 commence on Tuesday, November 30, 2010. The Complaint in this matter was filed on January  
15 31, 2006. The first trial in this matter was not set until September 15, 2010, scheduling the trial  
16 for November 30, 2010, which was after the last requested extension of time for filing  
17 Appellant's Opening Brief in the instant matter. Counsel has requested a continuance of this  
18 trial, but said continuance was denied because the five-year rule runs in January, 2011.

19 4. Counsel has oral argument before this Honorable Court in the matter of *William*  
20 *E. Shack, Jr., etc v. Barbara Ann Hollier Trust, et al.*, Nevada Supreme Court Case No. 53039,  
21 on December 15, 2010.

22 5. Counsel has depositions scheduled in the matter of *Pete Eliades v. Dolores*  
23 *Eliades, et al.*, Case No. CV 2010 3030, State of New Mexico, County of Bernalillo, Second  
24 Judicial District Court, on December 16 and December 17, 2010.

25  
26 <sup>1</sup> The defense filed a Motion to Compel Production of Handwritten Notes or Other Recordings of Statements of  
Defendant Anabel Espindola filed on February 8, 2008.

27 <sup>2</sup> Transcript of Motions - February 14, 2008, p. 44-45.

28 <sup>3</sup> Transcript of Trial - January 29, 2009 transcript, p. 235-236.

1           6.       Counsel believes that at least an additional 100 hours must be spent on this  
2 project, including time to research and write two issues of constitutional magnitude and first  
3 impression in the State of Nevada, time to collaborate with, John Arrascada, counsel for  
4 Defendant/Appellant, Luis Hidalgo, III, in Appeal No. 54272, and time to travel to Southern  
5 Desert Correctional Center in Indian Springs, Nevada to visit and discuss same with counsel's  
6 client.

7           7.       The jury trial in the instant matter lasted for three (3) weeks and the record  
8 contains fifteen (15) volumes with approximately 3359 pages, exclusive of pretrial and post-trial  
9 motions which appellate issues are also involved.

10          8.       Because of the above, Counsel has been unable to adequately and competently  
11 perform his appellate services for Hidalgo Jr. due to the immensity of the trial transcripts and  
12 complexity of the appealable issues.

13                   **REGARDING HIDALGO III's Counsel's good cause for an extension of time:**

14          9.       Counsel for Appellant Hidalgo III. budgeted similar time as Hidalgo Jr.'s counsel  
15 for this brief. Counsel for Hidalgo III has previously advised this Court in a prior motion for  
16 extension of time that there exists mutual issues from this joint trial of both Appellants. The  
17 mutual issues include (2) key issues in these Appeals involving two (2) jury instructions.  
18 Counsel for Hidalgo III and counsel for Hidalgo Jr. have been working jointly on these two (2)  
19 key issues and due to the events outlined above, both counsel have been unable to adequately  
20 prepare these joint arguments which pertain to issues of first impression with this Court or  
21 changes in the law that this court has never addressed.

22          10.       These issues are jointly asserted by Hidalgo Jr. and Hidalgo III. and should be  
23 consolidated. Accordingly, for the convenience to the Court and the best interests of Appellants,  
24 this Court will best be served if it reviews these joint issues simultaneously for consistency  
25 purposes and for purposes of reviewing a voluminous record from a single trial.

26          11.       This motion is made in good faith and not for purposes of delay.


27       //

28       //

1 12. Counsel respectfully asks this Court to grant an additional 45 days from  
2 November 29, 2010, within which to file Appellants' Opening Brief.

3 Dated this 24<sup>th</sup> day of November, 2010.

4 GORDON SILVER



6 DOMINIC P. GENTILE

Nevada Bar No. 1923

7 PAOLA M. ARMENI, ESQ.

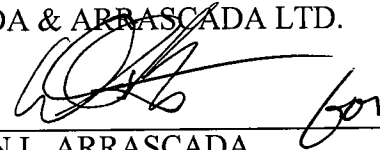
Nevada Bar No. 8357

8 3960 Howard Hughes Pkwy., 9th Floor

Las Vegas, Nevada 89169

9 Attorney for Appellant Luis A. Hidalgo, Jr.

10 ARRASCADA & ARRASCADA LTD.



12 JOHN L. ARRASCADA

Nevada Bar No. 4517

13 145 Ryland St.

Reno, Nevada 89501

14 Attorney for Appellant Luis A. Hidalgo, III.

**AFFIDAVIT OF DOMINIC P. GENTILE, ESQ.**

STATE OF NEVADA           )  
  ) ss.  
COUNTY OF CLARK        )

DOMINIC P. GENTILE ESQ., having first been duly sworn, deposes and states that:

1. I am an attorney duly licensed to practice before all Courts in the State of Nevada.

2. I am the court-appointed attorney representing the Appellant/Defendant, Luis Hidalgo, Jr., in the instant matter. John L. Arrascada, Esq. of law firm of Arrascada & Arrascada Ltd. is the court-appointed attorney representing Co-Appellant/Defendant, Luis A. Hidalgo, III, in the instant matter.

3. I am a partner of the law firm of Gordon Silver, located at 3960 Howard Hughes Parkway, 9<sup>th</sup> Floor, Las Vegas, Nevada 89169.

4. I have now spent close to 210 hours reading, digesting and assimilating the record and conducting preliminary research into the legal issues and 50 hours have been spent since the last request for extension from August 27, 2010, to the date of the filing of this motion, to focus on this appeal and prepare the Opening Brief in the instant matter, currently due on November 29, 2010.

In the previous request for an extension, I informed the Court that there were material errors in the record that needed to be remedied by the district court. See Exhibit "1" Request for Extension to File Opening Brief. After receiving an extension, counsel for appellant filed a Motion to Amend the Record in district court. See Exhibit "2" Motion to Amend Record. The hearing on that motion was held on November 9, 2010. At the hearing the district court stated the incorrect wording in the trial transcript would be remedied. The court also stated it would look for the notes pertaining to Anabel Espindola's post-plea deal interview and it would inform counsel for appellant whether the notes were located so that counsel could prepare the appropriate order.

After the hearing on the motion, there was an amended transcript filed on November 12, 2010 which fixed incorrect wording in one part of the trial transcript. However, the district court

1 has not yet contacted counsel regarding whether it ever found the notes pertaining to Anabel  
2 Espindola's post-deal interview. Additionally, to date there are no minutes available on the  
3 district court docket reflecting the district court's decision. It is imperative that there is a clear  
4 record regarding the notes for the following reasons:

5 a. Anabel Espindola, an accomplice who sat for over thirty months prior to  
6 'cooperating' and did so only after this Honorable Court ordered the Death Penalty  
7 stricken; but while the State had a Petition for Rehearing pending; participated in a post-  
8 deal interview. This interview was not recorded despite the fact that her original  
9 interview which took place May 24, 2005, was both video and audio recorded as were the  
10 original interviews of all of her alleged co-conspirators/accomplices recorded via video  
11 and audio. Despite, there being no video or audio of Espindola's post-deal interview,  
12 notes from the interview existed which memorialized what was said by her. The defense  
13 demanded the notes<sup>4</sup> and the District Court denied the request<sup>5</sup>. The defense renewed the  
14 request on January 29, 2009<sup>6</sup>. After a thorough review of the transcripts, there is  
15 absolutely no record that the Court (1) denied the Motion; (2) ordered the notes to be  
16 made a Court's exhibit or (3) whether the court lost the notes. It leaves counsel to believe  
17 that that these events have either not yet been transcribed or were never recorded. It is  
18 crucial that this issue is clarified with the district court and in turn the transcript be  
19 corrected so that the record is clear.

20 5. I have a firm trial setting in the matter of *Gary Wright, M.D. v. TCR Enterprises;*  
21 *et al.*, Case No. CV22897, District Court, Nye County, Nevada, scheduled to commence on  
22 Tuesday, November 30, 2010. The Complaint in this matter was filed on January 31, 2006. The  
23 first trial in this matter was not set until September 15, 2010, scheduling the trial for November  
24 30, 2010, which was after the last requested extension of time for filing Appellant's Opening

25  
26 <sup>4</sup> The defense filed a Motion to Compel Production of Handwritten Notes or Other Recordings of Statements of  
Defendant Anabel Espindola filed on February 8, 2008.

27 <sup>5</sup> Transcript of Motions - February 14, 2008, p. 44-45.

28 <sup>6</sup> Transcript of Trial - January 29, 2009 transcript, p. 235-236.

1 Brief in the instant matter. I requested a continuance of this trial, but said continuance was  
2 denied because the five-year rule runs in January, 2011.

3 6. I have oral argument before this Honorable Court in the matter of *William E.*  
4 *Shack, Jr., etc v. Barbara Ann Hollier Trust, et al.*, Nevada Supreme Court Case No. 53039, on  
5 December 15, 2010.

6 7. I have depositions scheduled in the matter of *Pete Eliades v. Dolores Eliades, et*  
7 *al.*, Case No. CV 2010 3030, State of New Mexico, County of Bernalillo, Second Judicial  
8 District Court, on December 16 and December 17, 2010.

9 8. The jury trial in the instant matter lasted for three (3) weeks and the record  
10 contains fifteen (15) volumes with approximately 3359 pages, exclusive of pretrial and post-trial  
11 motions which appellate issues are also involved.

12 9. I believe that at least an additional 100 hours must be spent on this project,  
13 including time to research and write at least two issues of constitutional magnitude and first  
14 impression in the State of Nevada, in addition to additional evidentiary issues that arose at trial,  
15 time to collaborate with John Arrascada, counsel for Defendant/Appellant, Luis Hidalgo, III, in  
16 Appeal No. 54272, and time to travel to Southern Desert Correction Center at Indian Springs,  
17 Nevada to visit and discuss same with my client.

18 10 Because of the above, I have been unable to adequately and competently perform  
19 his appellate services for Hidalgo Jr. due to the immensity of the trial transcripts and complexity  
20 of the appealable issues.

21 11. Furthermore, two (2) key issues in this Appeal involve two (2) separate jury  
22 instructions. These issues are jointly asserted by Hidalgo III and Hidalgo Jr. and should be

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1 consolidated. Accordingly, the convenience to the Court and the interests of Appellants will best  
2 be served if the Court reviews these joint issues simultaneously for consistency purposes.

3 Further, Affiant sayeth naught.



4  
5 DOMINIC P. GENTILE

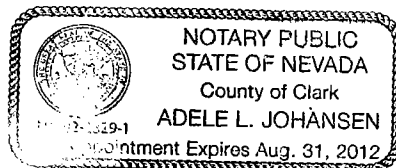
6 **SUBSCRIBED and SWORN** to before me

7 this 24<sup>th</sup> day of November, 2010.

8 

9 **NOTARY PUBLIC** in and for said County

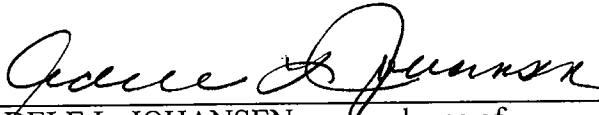
And State



**CERTIFICATE OF SERVICE**

The undersigned, an employee of Gordon Silver, hereby certifies that on the 24<sup>th</sup> day of November, 2010, she served a copy of the LUIS A. HIDALGO, JR.'S and LUIS A. HIDALGO, III'S JOINT MOTION FOR A FIFTH EXTENSION OF TIME TO FILE OPENING BRIEF, by facsimile, and by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

Nancy A. Becker  
Chief Deputy District Attorney  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155

  
ADELE L. JOHANSEN, an employee of  
GORDON SILVER

**EXHIBIT "1"**

1  
2  
3 IN THE SUPREME COURT OF THE STATE OF NEVADA

4 Electronically Filed  
5 Aug 27 2010 09:37 a.m.  
6 Tracie K. Lindeman

6 LUIS A, HIDALGO, JR.

7 Appellant,

CASE NO. 54209

8 vs.

9 THE STATE OF NEVADA

10 Respondent.

11 LUIS A, HIDALGO, III

12 Appellant,

CASE NO. 54272

13 vs.

14 THE STATE OF NEVADA

15 Respondent.

16  
17 **LUIS A. HIDALGO, JR.'S AND LUIS HILDALGO. III'S JOINT MOTION FOR A**  
18 **FOURTH EXTENSION OF TIME TO FILE OPENING BRIEF**

19 COMES NOW Appellants, Luis A. Hidalgo, Jr. (hereinafter "Hidalgo Jr."), by and  
20 through his counsel, Dominic P. Gentile, Esq., and Paola M. Armeni, Esq., of the law firm of  
21 Gordon Silver, and Luis A. Hidalgo, III. (hereinafter "Hidalgo III"), by and through his counsel,  
22 John L. Arrascada, Esq. of the law firm of Arrascada & Arrascada Ltd., and jointly file this  
23 Motion for Extension of Time to file Opening Brief based upon NRAP 31(a)(1) and NRAP  
24 26(d).

25 NRAP 26(d) states, in pertinent part, that "time provided in any of theses rules within  
26 which an act shall be done, may be extended or shortened . . . by order of the court or a justice  
27 thereof upon good cause shown. NRAP 26(d). Further, NRAP 31(a)(1) states, in pertinent part,  
28 that "[a]pplications for extensions of time beyond that which the parties are permitted to stipulate

1 . . . will be considered only on motion for good cause clearly shown, or ex parte in cases of  
2 extreme and unforeseeable emergency." NRAP 31(a)(1).

3 This Motion is made and based on the following:

4 **REGARDING HIDALGO Jr. Counsel's good cause for an extension of time:**

5 1. Counsel for Appellant Hidalgo Jr. has now spent close to 160 hours reading,  
6 digesting and assimilating the record and conducting preliminary research into the legal issues  
7 and most of this 160 hours has been spent since the last request for extension from June 28,  
8 2010, through today, to focus on this appeal and prepare the Opening Brief in the instant matter,  
9 currently due on August 27, 2010.

10 2. In the course of reading through the transcripts in this matter, counsel has  
11 discovered that there are errors in certain transcripts that must be corrected by the District Court  
12 to make the record clear. The issues that need to be corrected are important to the instant appeal.

13 a. Anabel Espindola, an accomplice who sat for over thirty months prior to  
14 'cooperating' and did so only after this Honorable Court ordered the Death Penalty  
15 stricken; but while the State had a Petition for Rehearing pending; participated in a post-  
16 deal interview. This interview was not recorded despite the fact that her original  
17 interview which took place May 24, 2005, was both video and audio recorded as were the  
18 original interviews of all of her alleged co-conspirators/accomplices recorded via video  
19 and audio. Despite, there being no video or audio of Espindola's post-deal interview,  
20 notes from the interview existed which memorialized what was said by her. The defense  
21 demanded the notes<sup>1</sup> and the District Court denied the request<sup>2</sup>. The defense renewed the  
22 request on January 29, 2009<sup>3</sup>. After a thorough review of the transcripts, there is  
23 absolutely no record that the Court (1) denied the Motion; (2) ordered the notes to be  
24 made a Court's exhibit and (3) NOW cannot be found. It leaves counsel to believe that

25  
26 <sup>1</sup> The defense filed a Motion to Compel Production of Handwritten Notes or Other Recordings of Statements of  
Defendant Anabel Espindola filed on February 8, 2008.

27 <sup>2</sup> Transcript of Motions - February 14, 2008, p. 44-45.

28 <sup>3</sup> Transcript of Trial - January 29, 2009 transcript, p. 235-236.

1 that these events have either not yet been transcribed or were never recorded. It is  
2 imperative that this issue is clarified with the District Court and in turn the transcript be  
3 corrected so that the record is clear. It may be necessary for defense counsel to review  
4 the video system utilized by the district court so as to assist the district court in  
5 memorializing what in fact occurred in regard to the post-deal interview notes relating to  
6 Anabel Espindola and in turn allowing a corrected transcript to be produced.

7 b. In addition, there is a very important aspect of the transcript that needs  
8 correction as to the Jury Instruction Settlement Conference on February 12, 2009, page  
9 70 lines 12 through 19. At line 13 the words "is in the" should read "isn't" and at line 16  
10 the word "not" was never said at all.

11 3. Counsel flew to Kansas City, Missouri, on July 11, 2010 to attend depositions in a  
12 federal civil matter and did not return to Las Vegas until late in the evening on July 13, 2010.

13 4. Counsel was involved in an evidentiary hearing from July 26, 2010 through July  
14 29, 2010, and is still continuing on in the matter of *State of Nevada v. Tamara and Michael*  
15 *Farrell*, Department XV, District Court, Clark County, Nevada Case No. C258223.

16 5. Counsel was involved in several depositions in the matter of *Tannoury v.*  
17 *Fernandez*, Department XIII, District Court, Clark County, Nevada, Case No. C258223 since the  
18 last motion for extension of time.

19 6. Counsel believes that at least an additional 150 hours must be spent on this  
20 project, including time to research and write two issues of constitutional magnitude and first  
21 impression in the State of Nevada, time to collaborate with, John Arrascada, counsel for  
22 Defendant/Appellant, Luis Hidalgo, III, in Appeal No. 54272, and time to travel to Southern  
23 Desert Correctional Center in Indian Springs, Nevada to visit and discuss same with counsel's  
24 client.

25 7. Counsel Gentile committed to attend and participated on the panel of presenters  
26 for the Trial Academy hosted by the Young Lawyers Section of the Nevada State Bar at the State  
27 Bar Conference in Monterrey, California from June 24, 2010 through and including June 27,  
28 2010. Specifically, counsel was a Presenter during sessions involving Closing Arguments and

1 Jury Instructions as well as a Team Instructor. Counsel committed to participate in this  
2 Conference and related activities months in advance.

3 8. The jury trial in the instant matter lasted for three (3) weeks and the record  
4 contains fifteen (15) volumes with approximately 3359 pages, exclusive of pretrial and post-trial  
5 motions which appellate issues are also involved.

6 9. Because of the above, Counsel has been unable to adequately and competently  
7 perform his appellate services for Hidalgo Jr. due to the immensity of the trial transcripts and  
8 complexity of the appealable issues.

9 **REGARDING HIDALGO III's Counsel's good cause for an extension of time:**

10 10. Counsel for Appellant Hidalgo III. budgeted similar time as Hidalgo Jr.'s counsel  
11 for this brief. Counsel for Hidalgo III has previously advised this Court in a prior motion for  
12 extension of time that there exists mutual issues from this joint trial of both Appellants. The  
13 mutual issues include (2) key issues in these Appeals involving two (2) jury instructions.  
14 Counsel for Hidalgo III and counsel for Hidalgo Jr. have been working jointly on these two (2)  
15 key issues and due to Hidalgo Jr.'s counsel's unforeseen events outlined above, both counsel  
16 have been unable to adequately prepare these joint arguments which pertain to issues of first  
17 impression with this Court or changes in the law that this court has never addressed.

18 11. These issues are jointly asserted by Hidalgo Jr. and Hidalgo III. and should be  
19 consolidated. Accordingly, for the convenience to the Court and the best interests of Appellants,  
20 this Court will best be served if it reviews these joint issues simultaneously for consistency  
21 purposes and for purposes of reviewing a voluminous record from a single trial.

22 12. This motion is made in good faith and not for purposes of delay.

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1           13.     Counsel respectfully asks this Court to grant an additional 90 days from August  
2 27, 2010, within which to file Appellants' Opening Brief.

3           Dated this 26<sup>th</sup> day of August, 2010.

4                               GORDON SILVER

5                               

6                               DOMINIC P. GENTILE

7                               Nevada Bar No. 1923

8                               PAOLA M. ARMENI, ESQ.

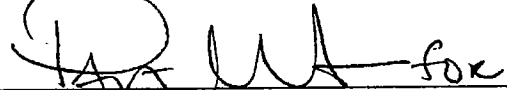
9                               Nevada Bar No. 8357

3960 Howard Hughes Pkwy., 9th Floor

Las Vegas, Nevada 89169

Attorney for Appellant Luis A. Hidalgo, Jr.

10                           ARRASCADA & ARRASCADA LTD.

11                           

12                           JOHN L. ARRASCADA

13                           Nevada Bar No. 4517

14                           145 Ryland St.

15                           Reno, Nevada 89501

16                           Attorney for Appellant Luis A. Hidalgo, III.



**AFFIDAVIT OF PAOLA M. ARMENI, ESQ.**

STATE OF NEVADA       )  
                                  ) ss.  
COUNTY OF CLARK       )

PAOLA M. ARMENI, ESQ., having first been duly sworn, deposes and states that:

1. I am an attorney duly licensed to practice before all Courts in the State of Nevada.

2. Dominic Gentile is the court-appointed attorney representing the Appellant/Defendant, Luis Hidalgo, Jr., in the instant matter. John L. Arrascada, Esq. of law firm of Arrascada & Arrascada Ltd. is the court-appointed attorney representing Co-Appellant/Defendant, Luis A. Hidalgo, III, in the instant matter.

3. I am an associate of the law firm of Gordon Silver, located at 3960 Howard Hughes Parkway, 9<sup>th</sup> Floor, Las Vegas, Nevada 89169. I primarily work under the supervision of Dominic Gentile and work closely with him on the majority of his criminal cases. In that capacity, I was co-counsel for Luis Hidalgo Jr. during his trial.

4. I filed my Notice of Association with this Honorable Court on August 25, 2010 so as to assist Mr. Gentile with the appeal in this matter.

5. Currently, Mr. Gentile is out of the jurisdiction and is unable to sign an affidavit in support of this Motion but nevertheless wanted to file an affidavit. All information provided below was either provided to me by Mr. Gentile or that information in which I have personal knowledge:

a. Mr. Gentile has now spent close to 160 hours reading, digesting and assimilating the record and conducting preliminary research into the legal issues and most of these 160 hours has been spent since the last request for extension from June 28, 2010, through today, to focus on this appeal and prepare the Opening Brief in the instant matter, currently due on August 27, 2010.

b. In the course of reading through the transcripts in this matter, counsel has discovered that there are errors in certain transcripts that must be corrected by the District Court to make the record clear. The issues that need to be corrected are important to the

1 instant appeal.

2 i. For example, Anabel Espindola, an accomplice who sat for over  
3 thirty months prior to 'cooperating' and did so only after this Honorable Court  
4 ordered the Death Penalty stricken; but while the State had a Petition for  
5 Rehearing pending; participated in a post-deal interview. This interview was not  
6 recorded despite the fact that her original interview which took place May 24,  
7 2005, was both video and audio recorded as were the original interviews of all of  
8 her alleged co-conspirators/accomplices recorded via video and audio. Despite,  
9 there being no video or audio of Espindola's post-deal interview, notes from the  
10 interview existed which memorialized what was said by her. The defense  
11 demanded the notes and the District Court denied the request. The defense  
12 renewed the request on January 29, 2009. After a thorough review of the  
13 transcripts, there is absolutely no record that the Court (1) denied the Motion; (2)  
14 ordered the notes to be made a Court's exhibit and (3) NOW cannot be found. It  
15 leaves counsel to believe that that these events have either not yet been  
16 transcribed or were never recorded. It is imperative that this issue is clarified with  
17 the District Court and in turn the transcript be corrected so that the record is clear.  
18 It may be necessary for defense counsel to review the video system utilized by the  
19 district court so as to assist the district court in memorializing what in fact  
20 occurred in regard to the post-deal interview notes relating to Anabel Espindola  
21 and in turn allowing a corrected transcript to be produced.

22 ii. In addition, there is a very important aspect of the transcript that  
23 needs correction as to the Jury Instruction Settlement Conference on February 12,  
24 2009, page 70 lines 12 through 19. At line 13 the words "is in the" should read  
25 "isn't" and at line 16 the word "not" was never said at all.

26 c. Mr. Gentile flew to Kansas City, Missouri, on July 11, 2010 to attend  
27 depositions in a federal civil matter and did not return to Las Vegas until late in the  
28 evening on July 13, 2010.

1           d.     Mr. Gentile and I were both involved in an evidentiary hearing from July  
2 26, 2010 through July 29, 2010, in the matter of *State of Nevada v. Tamara and Michael*  
3 *Farrell*, Department XV, District Court, Clark County, Nevada, Case No. C258223. The  
4 evidentiary hearing is not completed and will continue during the week of September 7,  
5 2010.

6           e.     Mr. Gentile was involved in several depositions in the matter of *Tannoury*  
7 *v. Fernandez*, Department XIII, District Court, Clark County, Nevada, Case No.  
8 A571770, since the last motion for extension of time.

9           f.     Mr. Gentile also committed to attend and participated on the panel of  
10 presenters for the Trial Academy hosted by the Young Lawyers Section of the Nevada  
11 State Bar at the State Bar Conference in Monterrey, California from June 24, 2010  
12 through and including June 27, 2010. Specifically, he was a Presenter during sessions  
13 involving Closing Arguments and Jury Instructions as well as a Team Instructor. He  
14 committed to participate in this Conference and related activities months in advance.

15           g.     The jury trial in the instant matter lasted for three (3) weeks and the record  
16 contains fifteen (15) volumes with approximately 3359 pages, exclusive of pretrial and  
17 post-trial motions which appellate issues are also involved.

18           h.     Mr. Gentile believes that at least an additional 150 hours must be spent on  
19 this project, including time to research and write at least two issues of constitutional  
20 magnitude and first impression in the State of Nevada, in addition to additional  
21 evidentiary issues that arose at trial, time to collaborate with John Arrascada, counsel for  
22 Defendant/Appellant, Luis Hidalgo, III, in Appeal No. 54272, and time to travel to  
23 Southern Desert Correction Center at Indian Springs, Nevada to visit and discuss same  
24 with my client.

25           i.     Because of the above, Mr. Gentile has been unable to adequately and  
26 competently perform his appellate services for Hidalgo Jr. due to the immensity of the  
27 trial transcripts and complexity of the appealable issues.

28     ///

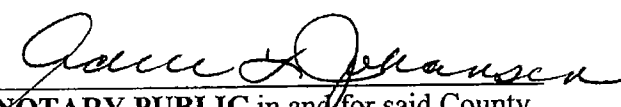
1 j. Furthermore, two (2) key issues in this Appeal involve two (2) separate  
2 jury instructions. These issues are jointly asserted by Hidalgo III and Hidalgo Jr. and  
3 should be consolidated. Accordingly, the convenience to the Court and the interests of  
4 Appellants will best be served if the Court reviews these joint issues simultaneously for  
5 consistency purposes.

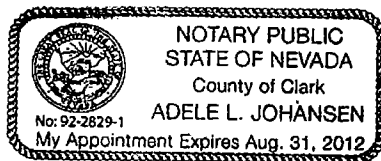
6 Further, Affiant sayeth naught.

7   
8  
9 PAOLA M. ARMENI

10 **SUBSCRIBED and SWORN** to before me

11 this 26<sup>th</sup> day of August, 2010.

12   
13 **NOTARY PUBLIC** in and for said County  
14 And State

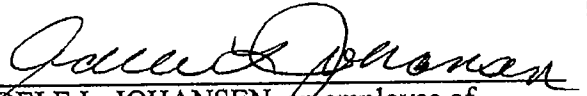


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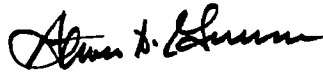
**CERTIFICATE OF SERVICE**

The undersigned, an employee of Gordon Silver, hereby certifies that on the 26<sup>th</sup> day of August, 2010, she served a copy of the LUIS A. HIDALGO, JR.'S and LUIS A. HIDALGO, III'S JOINT MOTION FOR A FOURTH EXTENSION OF TIME TO FILE OPENING BRIEF, by facsimile, and by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

Nancy A. Becker  
Chief Deputy District Attorney  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155

  
ADELE L. JOHANSEN, an employee of  
GORDON SILVER

**EXHIBIT "2"**



CLERK OF THE COURT

0001  
GORDON SILVER  
DOMINIC P. GENTILE  
Nevada Bar No. 1923  
PAOLA M. ARMENI  
Nevada Bar No. 8357  
3960 Howard Hughes Pkwy., 9th Floor  
Las Vegas, Nevada 89169  
(702) 796-5555  
(702) 369-2666 (facsimile)

Attorneys for Defendant LUIS A. HIDALGO, JR.

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

CASE NO. C241394  
DEPT. XXI

vs.

LUIS A. HIDALGO, JR., #1579522

Defendant.

**MOTION TO AMEND RECORD**

Hearing Date: November 9, 2010  
Hearing Time: 9:30 a.m.

COMES NOW the Defendant, Luis A. Hidalgo, Jr., by and through his attorneys, Dominic P. Gentile, Esq., and Paola M. Armeni, Esq., of the law firm of Gordon Silver, and hereby files his motion to amend the record. This motion is made and based upon all the files, pleadings and records on file herein, together with the Points and Authorities attached hereto,

///

///

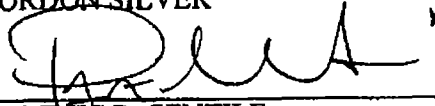
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1 and any and all evidence or argument of counsel brought at the time of the hearing of this  
2 Motion.

3 Dated this 28<sup>th</sup> day of October, 2010.

4 GORDON SILVER

5 

6 DOMINIC P. GENTILE  
7 Nevada Bar No. 1923  
8 PAOLA M. ARMENI  
9 Nevada Bar No. 8357  
10 3960 Howard Hughes Pkwy., 9th Floor  
11 Las Vegas, Nevada 89169  
12 (702) 796-5555  
13 Attorneys for Defendant  
14 LUIS A. HIDALGO, JR.

15 **ORDER SHORTENING TIME**

16 Good Cause Appearing Therefor:

17 IT IS HEREBY ORDERED that the time for hearing the Motion to Amend Record is  
18 hereby shortened to be heard on the 9<sup>th</sup> day of November, 2010, at the hour of 9:30 o'clock a.m.,  
19 or as soon thereafter as counsel may be heard.

20 IT IS SO ORDERED this 28<sup>th</sup> <sup>October</sup> day of ~~November~~, 2010.

21 

22 DISTRICT COURT JUDGE

23 **AFFIDAVIT OF PAOLA M. ARMENI, ESQ.**

24 STATE OF NEVADA )  
25 ) ss.  
26 COUNTY OF CLARK )

27 I, Paola M. Armeni, Esq., being first duly sworn, deposes and says:

28 1. I am an associate with the law firm of Gordon Silver, counsel for Defendant Luis  
A. Hidalgo, Jr., in the above captioned matter and am duly licensed to practice law in the State of  
Nevada. I have personal knowledge of the facts in this matter, and if called upon to testify, could  
and would do so.



1 submitted to and settled by that court and the record conformed accordingly. Id.

2 It is requested that if the notes were ultimately discovered by the Court, that the record be  
3 amended to reflect the fact the notes were discovered. In the event the notes were discovered, it  
4 is requested that the notes be transmitted to the Nevada Supreme Court to be made a part of the  
5 record. If the notes have not be found, it is requested that the record be amended to reflect that  
6 fact, either by minute order or some other written order the Court deems appropriate.  
7 Additionally, the errors concerning arguments made during the conference to settle jury  
8 instructions must also be corrected. It is imperative that these issues are clarified and in turn the  
9 transcript be corrected so that the record is clear for the purposes of the appeal.

10 Thus, in order to have an accurate trial record, it is respectfully requested that the Court  
11 make the following corrections to the record:

12 **The Notes Regarding Defendant Espindola's Post-Deal Interview**

13 (1) amend the record to reflect the fact that the Court ordered the notes be made a court  
14 exhibit;

15 (2) amend the record to reflect whether the renewed motion to compel was ultimately  
16 denied;

17 (3) amend the record to include an order reflecting whether or not the notes were ever  
18 discovered.

19 **Discussion about jury instructions**

20 (4) correct line thirteen on page seventy of the Jury Instruction Settlement Conference  
21 transcript from February 12, 2009 should be edited to read "isn't in the" opposed to "is in  
22 the" and the word "not" in line sixteen should be deleted. Exhibit 3.

23 ///

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1 interview which took place May 24, 2005, was both video and audio recorded as were the  
2 original interviews of all of her alleged co-conspirators/accomplices recorded via video and  
3 audio.

4 Although the district attorney failed to record Defendant Espindola's post-deal interview,  
5 notes from the interview existed which memorialized what she said. Prior to trial, the defense  
6 filed a motion to compel production of the notes which was denied. See Exhibit 1 "Transcript of  
7 Hearing on Motion to Compel" February 14, 2008, p. 44-45. Although the motion was denied,  
8 the Court ordered that the notes be given to the Court and marked as an exhibit. However, there  
9 is no order in the record reflecting the Court's decision to require the notes be made a Court's  
10 Exhibit.

11 During trial in this case, defense counsel renewed the motion to compel the notes from  
12 the post-deal interview with Defendant Espindola. See Exhibit 2 "Trial Transcript" February 10,  
13 2009, p. 14 lines 3-6. When counsel moved to renew the motion, the Court stated "here's the deal  
14 on the notes. They were made a Court's exhibit which we're still looking for, candidly." Id. at  
15 lines 22-24. After this exchange, there seems to be no mention as to whether the notes were ever  
16 found.

17 As to the issue regarding the Jury Instruction Settlement Conference transcript from  
18 February 12, 2009, it appears there are two mistakes in the transcript in regard to Mr. Gentile's  
19 argument. These mistakes occur on page 70, lines 12 through 19. Specifically, at line 13 the  
20 words "is in the" should read "isn't" and at line 16 the word "not" was never said at all. See  
21 Exhibit 3 "Trial Transcript" February 12, 2009, p. 70 lines 12-19.<sup>1</sup>

22 2.

23 Argument

24 Nevada Rules of Appellate Procedure allows a correction or modification of the record if  
25 there is any difference which arises about whether the trial court record truly discloses what  
26 occurred in the district court. NRAP 10(C). Pursuant to the rule, the difference shall be


27 <sup>1</sup> Defense counsel has attempted to contact the prosecutor regarding said changes, however has never received a  
28 response.

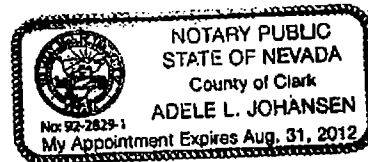
1           2.       Good cause exists to hear this Motion on shortened time. The Opening Brief in  
2 this matter is currently due to be filed on Monday, November 29, 2010; therefore, this Motion to  
3 Amend Record cannot be heard in the ordinary course.

4           Further, affiant sayeth naught.

5  
6   
PAOLA M. ARMENI, ESQ.

7       **SUBSCRIBED AND SWORN** to before me  
8 this 28 day of October, 2010.

9  
10   
11 **NOTARY PUBLIC** in and for said County  
12 and State



13                               **POINTS AND AUTHORITIES**

14   1.

15   **Background and Relevant Facts**

16           The trial transcript in this case must be amended to accurately reflect events that took  
17 place during trial. Specifically, the trial transcript is bereft as to certain events concerning notes  
18 taken during a post-plea bargain interview with Defendant Anabel Espindola. In addition to the  
19 fact the transcript is silent on the issues regarding the notes from Defendant Espindola's post-deal  
20 interview, the trial transcript is also incorrect concerning arguments made by Dominic Gentile,  
21 Esq. during the settlement of jury instructions.

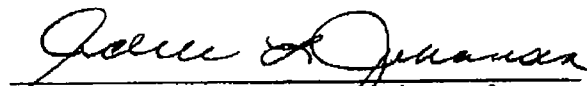
22           As the Court is aware, Defendant Espindola is an accomplice in this case who was  
23 incarcerated for over thirty months prior to cooperating with the District Attorney's office. On  
24 February 2, 2008, the prosecution had a meeting with Defendant Espindola, wherein she  
25 provided a statement as part of a proffer. Present at the meeting were the deputy district  
26 attorneys, Defendant Espindola, her attorney, and one or more police officers. Both the attorneys  
27 and the police officers took notes of Defendant Espindola's statement. The district attorneys'  
28 post-deal interview with Defendant Espindola was not recorded despite the fact that her original

1 CERTIFICATE OF SERVICE

2 The undersigned, an employee of Gordon Silver, hereby certifies that on the 28<sup>th</sup> day of  
3 October, 2010, she served a copy of the Motion to Amend Record, by facsimile, and by placing  
4 said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said  
5 envelope addressed to

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

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

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ADELE L. JOHANSEN, an employee of  
GORDON SILVER

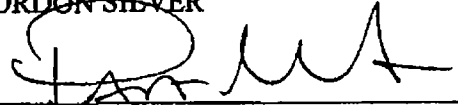
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3 3.

4 Conclusion

5 A trial record that accurately reflects events that took place during trial is vital to Mr.  
6 Hidalgo's appeal. For these reasons, it is requested that the Court grant this motion to amend the  
7 trial record to reflect the abovementioned corrections.

8 Dated this 28<sup>th</sup> day of October, 2010.

9 GORDON SILVER

10 

11 DOMINIC P. GENTILE  
12 Nevada Bar No. 1923  
13 PAOLA M. ARMENI  
14 Nevada Bar No. 8357  
15 3960 Howard Hughes Pkwy., 9th Floor  
16 Las Vegas, Nevada 89169  
17 (702) 796-5555  
18 Attorneys for Defendant  
19 LUIS A. HIDALGO, JR.