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3 IN THE SUPREME COURT OF THE STATE OF NEVADA  
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Electronically Filed  
Jan 12 2011 03:44 p.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 HIDALGO, III'S JOINT MOTION  
FOR A SIXTH 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 281 hours reading,  
6 digesting and assimilating the record, conducting research into the legal issues and writing the  
7 Opening Brief. Seventy-One (71) hours have been spent since the last request for extension from  
8 November 29, 2010, through to date of the filing of this motion, to focus on this appeal and  
9 prepare the Opening Brief in the instant matter, currently due on January 13, 2011. Because the  
10 assignment of errors primarily deals with the insufficient evidence presented at trial, the  
11 statement of facts is voluminous and is being edited as scrupulously as possible without losing  
12 salient factual information. Additionally, there are approximately five assignments of error of  
13 which three are completely briefed and the other two will be completed in a matter of days.

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

23 After the hearing on the motion, there was an amended transcript filed on November 12,  
24 2010 which fixed incorrect wording in one part of the trial transcript. However, after some time  
25 went by without the court informing counsel whether the notes had been found, counsel's  
26 assistant called the District Court on or about December 28, 2010 to inquire as to the status of the  
27 notes. At that time the District Court's Judicial Executive Assistant informed counsel's assistant  
28 that the notes could not be found and that counsel needed to file a motion regarding the status of

1 the notes and put the matter on for hearing. Counsel followed the directive of the court and re-  
2 filed the motion on an order shortening time. See Exhibit "3" Motion to Amend Record on an  
3 Order Shortening Time. The hearing was set for January 11, 2011.

4 At the January 11, 2011 hearing the district court informed counsel that it would not  
5 sign an order stating that the notes were a court's exhibit and that they were lost. However, the  
6 court did say that it would state on the record that the notes were made a court's exhibit and  
7 subsequently lost. The District Court then ordered that the minutes from the January 11, 2011  
8 hearing and the transcript be expedited. Additionally, at the hearing the district attorney  
9 requested that the transcript from the October 28, 2008 hearing be unsealed. The District Court  
10 granted that request. Thus, after an order is entered unsealing the transcript, counsel for Hidalgo  
11 Jr. will have to determine whether anything at that hearing needs to be addressed in the Opening  
12 Brief.

13 To date there are no minutes available on the district court docket reflecting the district  
14 court's decision regarding the loss of the notes. It is imperative that there is a clear record  
15 regarding the notes for the following reasons:

16 a. Anabel Espindola, an accomplice who sat for over thirty months prior to  
17 'cooperating' and did so only after this Honorable Court ordered the Death Penalty  
18 stricken; but while the State had a Petition for Rehearing pending; participated in a post-  
19 deal interview. This interview was not recorded despite the fact that her original  
20 interview which took place May 24, 2005, was both video and audio recorded as were the  
21 original interviews of all of her alleged co-conspirators/accomplices recorded via video  
22 and audio. Despite, there being no video or audio of Espindola's post-deal interview,  
23 notes from the interview existed which memorialized what was said by her. The defense  
24 demanded the notes<sup>1</sup> and the District Court denied the request<sup>2</sup>. The defense renewed the

25  
26  
27 <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.

28 <sup>2</sup> Transcript of Motions - February 14, 2008, p. 44-45. See Exhibit 4 "Transcript of Motions"

1 request on January 29, 2009<sup>3</sup>. After a thorough review of the transcripts, there is  
2 absolutely no record that the Court (1) denied the Motion; (2) ordered the notes to be  
3 made a Court's exhibit or (3) whether the court lost the notes. It leaves counsel to believe  
4 that that these events have either not yet been transcribed or were never recorded. It is  
5 crucial that this issue is clarified with the district court and in turn the transcript be  
6 corrected so that the record is clear.

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

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

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

20 6. This motion is made in good faith and not for purposes of delay.

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28 <sup>3</sup> Transcript of Trial - January 29, 2009 transcript, p. 235-236. See Exhibit 5 "Transcript of Trial"

7. Counsel respectfully asks this Court to grant an additional twenty one days from January 13, 2011 within which to file Appellants' Opening Brief.

Dated this 12<sup>th</sup> day of January, 2011.

~~GORDON SILVER~~

DOMINIC P. GENTILE  
Nevada Bar No. 1923  
PAOLA M. ARMENI, ESQ.  
Nevada Bar No. 8357  
3960 Howard Hughes Pkwy., 9th Floor  
Las Vegas, Nevada 89169  
Attorney for Appellant Luis A. Hidalgo, Jr.

ARRASCADA &amp; ARRASCADA LTD.

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Nevada Bar No. 4517  
145 Ryland St.  
Reno, Nevada 89501  
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. Counsel for Appellant Hidalgo Jr. has now spent close to 281 hours reading, digesting and assimilating the record, conducting research into the legal issues and writing the opening brief. Seventy-One (71) hours has been spent since the last request for extension from November 29, 2010, through to date of the filing of this motion, to focus on this appeal and prepare the Opening Brief in the instant matter, currently due on January 13, 2011. Because the assignment of errors primarily deals with the insufficient evidence presented at trial, the statement of facts is voluminous and is being edited as scrupulously as possible without losing salient factual information. Additionally, there are approximately five assignments of error of which three are completely briefs and the other two will be completed in a matter of days.

2. In the previous request for an extension, counsel for appellant 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, after some time went by without the court informing counsel whether the notes had been found, counsel's assistant called the District Court on or about December 28, 2010 to inquire as to the status of the notes. At that time the District Court's Judicial Executive Assistant informed counsel's assistant

1 that the notes could not be found and that counsel needed to file a motion and put the matter on  
2 for hearing. Counsel followed the directive of the court and re-filed the motion on an order  
3 shortening time. The hearing was set for January 11, 2011.

4 At the January 11, 2011 hearing the district court informed counsel that it would not  
5 sign an order stating that the notes were a court's exhibit and that they were lost. However, the  
6 court did read those facts into the record. The District Court then ordered that the minutes and  
7 transcript be expedited. Additionally, at the hearing the district attorney requested that the  
8 transcript from the October 28, 2008 hearing be unsealed. The District Court granted that  
9 request. Thus, after an order is entered unsealing the transcript, counsel for Hidalgo Jr. will have  
10 to determine whether anything at that hearing needs to be addressed in the Opening Brief.

11 To date there are no minutes available on the district court docket reflecting the district  
12 court's decision regarding the loss of the notes. It is imperative that there is a clear record  
13 regarding the notes for the following reasons:

14 a. Anabel Espindola, an accomplice who sat for over thirty months prior to  
15 'cooperating' and did so only after this Honorable Court ordered the Death Penalty  
16 stricken; but while the State had a Petition for Rehearing pending; participated in a post-  
17 deal interview. This interview was not recorded despite the fact that her original  
18 interview which took place May 24, 2005, was both video and audio recorded as were the  
19 original interviews of all of her alleged co-conspirators/accomplices recorded via video  
20 and audio. Despite, there being no video or audio of Espindola's post-deal interview,  
21 notes from the interview existed which memorialized what was said by her. The defense  
22 demanded the notes<sup>4</sup> and the District Court denied the request<sup>5</sup>. The defense renewed the  
23 request on January 29, 2009<sup>6</sup>. After a thorough review of the transcripts, there is  
24 absolutely no record that the Court (1) denied the Motion; (2) ordered the notes to be  
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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. See Exhibit 4.

28 <sup>6</sup> Transcript of Trial - January 29, 2009 transcript, p. 235-236. See Exhibit 5.

1 made a Court's exhibit or (3) whether the court lost the notes. It leaves counsel to believe  
2 that that these events have either not yet been transcribed or were never recorded. It is  
3 crucial that this issue is clarified with the district court and in turn the transcript be  
4 corrected so that the record is clear.

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

6 4. Counsel for Appellant Hidalgo III budgeted similar time as Hidalgo Jr.'s counsel  
7 for this brief. Counsel for Hidalgo III has previously advised this Court in a prior motion for  
8 extension of time that there exists mutual issues from this joint trial of both Appellants. The  
9 mutual issues include (1) key issues in these Appeals involving two (2) jury instructions.  
10 Counsel for Hidalgo III and counsel for Hidalgo Jr. have been working jointly on these two (2)  
11 key issues and due to the events outlined above, both counsel have been unable to adequately  
12 prepare these joint arguments which pertain to issues of first impression with this Court or  
13 changes in the law that this court has never addressed.

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

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

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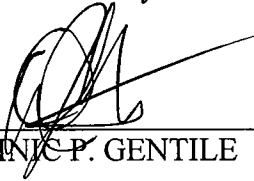
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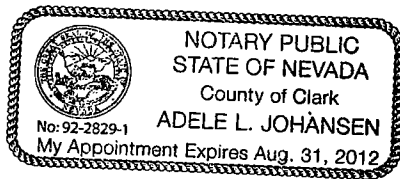
1 consolidated. Accordingly, the convenience to the Court and the interests of Appellants will best  
2 be served if the Court reviews these joint issues simultaneously for consistency purposes.

3 Further, Affiant sayeth naught.

4   
DOMINIC P. GENTILE

5  
6 **SUBSCRIBED and SWORN** to before me  
7 this 12<sup>th</sup> day of January, 2011.

8   
9 **NOTARY PUBLIC** in and for said County  
10 and State



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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"**

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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

7 LUIS A, HIDALGO, JR.

8 Appellant,

9 vs.

10 THE STATE OF NEVADA

11 Respondent.

CASE NO. 54209

12 LUIS A, HIDALGO, III

13 Appellant,

14 vs.

15 THE STATE OF NEVADA

16 Respondent.

CASE NO. 54272

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.

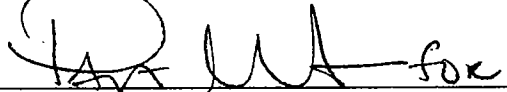
9                               Nevada Bar No. 8357

10                              3960 Howard Hughes Pkwy., 9th Floor

11                              Las Vegas, Nevada 89169

12                              Attorney for Appellant Luis A. Hidalgo, Jr.

13                              ARRASCADA & ARRASCADA LTD.

14                              

15                              JOHN L. ARRASCADA

16                              Nevada Bar No. 4517

17                              145 Ryland St.

18                              Reno, Nevada 89501

19                              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.

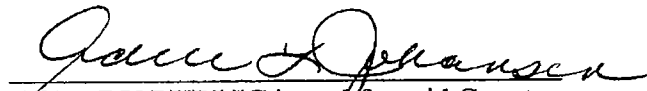
6 Further, Affiant sayeth naught.

7  
8 

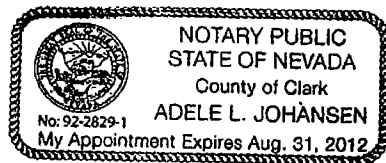
9  
10 PAOLA M. ARMENI

11 **SUBSCRIBED and SWORN** to before me

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

13 

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

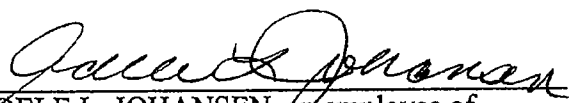


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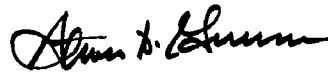
CERTIFICATE OF SERVICE

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,

///

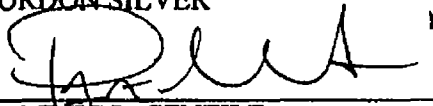
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1 and any and all evidence or argument of counsel brought at the time of the hearing of this  
2 Motion.

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.

11 **ORDER SHORTENING TIME**

12 Good Cause Appearing Therefor:

13 IT IS HEREBY ORDERED that the time for hearing the Motion to Amend Record is  
14 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.,  
15 or as soon thereafter as counsel may be heard.

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

17   
18 DISTRICT COURT JUDGE

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

20 STATE OF NEVADA )  
21 ) ss.  
22 COUNTY OF CLARK )

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

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



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 ///

24 ///

25 ///

26 ///

27 ///

28

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.

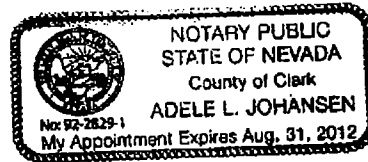
1           2.       Good cause exists to hear this Motion on shortened time. The Opening Brief in  
2 this matter is currently due to be filed on Monday, November 29, 2010; therefore, this Motion to  
3 Amend Record cannot be heard in the ordinary course.

4           Further, affiant sayeth naught.

5  
6   
7 PAOLA M. ARMENI, ESQ.

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

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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28  
  
ADELE L. JOHANSEN, an employee of  
GORDON SILVER

3.

Conclusion

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

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

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

Attorneys for Defendant

LUIS A. HIDALGO, JR.

**EXHIBIT "3"**

1 MAME  
GORDON SILVER  
2 DOMINIC P. GENTILE  
Nevada Bar No. 1923  
3 PAOLA M. ARMENI  
Nevada Bar No. 8357  
4 3960 Howard Hughes Pkwy., 9th Floor  
Las Vegas, Nevada 89169  
5 (702) 796-5555  
(702) 369-2666 (facsimile)

6 Attorneys for Defendant LUIS A. HIDALGO, JR.

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CLERK OF THE COURT

9 DISTRICT COURT  
10 CLARK COUNTY, NEVADA

13 STATE OF NEVADA,

14 Plaintiff,

CASE NO. C241394  
DEPT. XXI

15 vs.

16 LUIS A. HIDALGO, JR., #1579522

17 Defendant.

18 **MOTION TO AMEND RECORD**

19 Hearing Date: January 11, 2011  
20 Hearing Time: 9:30 a.m.

21 COMES NOW the Defendant, LUIS A. HIDALGO, JR., by and through his attorneys,  
22 DOMINIC P. GENTILE, ESQ., and PAOLA M. ARMENI, ESQ., of the law firm of GORDON  
23 SILVER, and hereby files his motion to amend the record. This motion is made and based upon  
24 all the files, pleadings and records on file herein, together with the Points and Authorities  
25 attached hereto,

26 ///

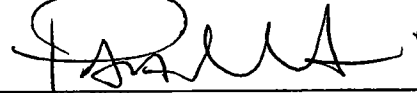
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28 ///

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 December, 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 11<sup>th</sup> day of January, 2011, at the hour of 9:30 a.m., or as  
19 soon thereafter as counsel may be heard.

20 IT IS SO ORDERED this 29<sup>th</sup> day of December, 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           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 January 13, 2011; therefore, this Motion to Amend  
3 Record cannot be heard in the ordinary course.

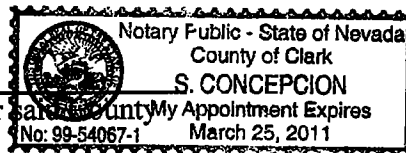
4           Further, affiant sayeth naught.

5   
6 PAOLA M. ARMENI, ESQ.

7 **SUBSCRIBED AND SWORN** to before me

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

9   
10 **NOTARY PUBLIC** in and for Clark County  
11 and State



12                                   **POINTS AND AUTHORITIES**

13                                                           **I.**

14                                                                           **Background and Relevant Facts**

15           The trial transcript in this case must be amended to accurately reflect events that took  
16 place during trial. Specifically, the trial transcript is bereft as to certain events concerning notes  
17 taken during a post-plea bargain interview with Defendant Anabel Espindola. In addition to the  
18 fact the transcript is silent on the issues regarding the notes from Defendant Espindola's post-deal  
19 interview.

20           As the Court is aware, Defendant Espindola is an accomplice in this case who was  
21 incarcerated for over thirty months prior to cooperating with the District Attorney's office. On  
22 February 2, 2008, the prosecution had a meeting with Defendant Espindola, wherein she  
23 provided a statement as part of a proffer. Present at the meeting were the deputy district  
24 attorneys, Defendant Espindola, her attorney, and one or more police officers. Both the attorneys  
25 and the police officers took notes of Defendant Espindola's statement. The district attorneys'  
26 post-deal interview with Defendant Espindola was not recorded despite the fact that her original  
27 interview which took place May 24, 2005, was both video and audio recorded as were the  
28

1 original interviews of all of her alleged co-conspirators/accomplices recorded via video and  
2 audio.

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

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

## 16 II.

### 17 Argument

18 Nevada Rules of Appellate Procedure allows a correction or modification of the record if  
19 there is any difference which arises about whether the trial court record truly discloses what  
20 occurred in the district court. NRAP 10(C). Pursuant to the rule, the difference shall be  
21 submitted to and settled by that court and the record conformed accordingly. Id.

22 If the notes have not be found, it is requested that the record be amended to reflect that  
23 fact. A proposed order has been attached as Exhibit 3. It is imperative that this issue is clarified  
24 so that the record is clear for the purposes of the appeal.

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

- 1 (1) amend the record to reflect the fact that the Court ordered the notes be made a court  
2 exhibit;  
3 (2) amend the record to reflect that the renewed motion to compel was ultimately  
4 denied;  
5 (3) amend the record to reflect that the notes were misplaced.  
6 (4) amend the record to reflect that the notes were never recovered.

7 **III.**

8 **Conclusion**

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

12 Dated this 28<sup>th</sup> day of December, 2010.

13 GORDON SILVER

14 

15 DOMINIC P. GENTILE  
16 Nevada Bar No. 1923  
17 PAOLA M. ARMENI  
18 Nevada Bar No. 8357  
19 3960 Howard Hughes Pkwy., 9th Floor  
20 Las Vegas, Nevada 89169  
21 (702) 796-5555  
22 Attorneys for Defendant  
23 LUIS A. HIDALGO, JR.  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

The undersigned, an employee of Gordon Silver, hereby certifies that on the 28<sup>th</sup> day of December, 2010, she served a copy of the Motion to Amend Record, 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

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

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

  
STACEY CONCEPCION, an employee of  
GORDON SILVER

# **EXHIBIT 1**

1 TRAN

**COPY**

**FILED**  
OCT 30 8 47 AM '08  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

6 THE STATE OF NEVADA,

7 Plaintiff,

8 vs.

9 LUIS ALONZO HIDALGO, aka LUIS  
10 ALONSO HIDALGO III,

11 Defendant.

CASE NO. C212667  
DEPT. XXI

**FUS**

13 BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

14 THURSDAY, FEBRUARY 14, 2008

15 RECORDER'S TRANSCRIPT OF HEARING RE:

16 MOTIONS

18 APPEARANCES:

19 FOR THE PLAINTIFF:

CHRIS J. OWENS, ESQ.  
GIANCARLO PESCI, ESQ.  
Deputy District Attorneys

21 FOR THE DEFENDANT:

DOMINIC P. GENTILE, ESQ.  
PAOLA M. ARMENI, ESQ.

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

JRP TRANSCRIBING  
702.635.0301

1 THE COURT: -- or anything --

2 MR. PESCI: -- already complied.

3 THE COURT: -- like that in there or anything was inconsistent with any  
4 prior information that I had received regarding Anabel Espindola. You know, what  
5 I can do is when we get that transcript, look at the transcript as compared to the  
6 notes. And if there's an issue there, then certainly that -- we'll revisit this.

7 MS. ARMENI: Okay.

8 THE CLERK: Judge, just for the record, those motions were set for the  
9 19<sup>th</sup>, so I'm just putting them on today --

10 THE COURT: That's fine.

11 THE CLERK: -- so they don't have to come back on the 19<sup>th</sup>.

12 MS. ARMENI: Giancarlo, she never actually ruled on the -- the intercept  
13 ones either even though we --

14 MR. PESCI: Oh, yeah. You're right.

15 Judge --

16 THE COURT: I mean, on the motion to compel production, I'll just defer  
17 ruling on that officially. I'm disinclined to grant it. Like I said, there's no  
18 exculpatory information, there's nothing inconsistent with anything I already know.  
19 But --

20 MS. ARMENI: Is it the Court's position that it's work product? Is that why  
21 we're not entitled to them?

22 THE COURT: Well, it's not work product of the attorneys.

23 MS. ARMENI: Right.

24 THE COURT: Obviously it's the police officers. But, I mean, yeah. I  
25 mean, it's their work product. It doesn't fall within the attorney work product

1 exception, but, like I said, you know, I don't -- unless it's specifically something  
2 that has to be turned over, I'm disinclined to start turning over all of their notes.

3 But if there's something in there that you're entitled to, you'll get  
4 them, number one. And number two, if there's anything in there, obviously, that's  
5 inconsistent with her grand jury testimony, then you will get them. Because then  
6 you certainly have a right to cross-examine her on anything inconsistent she told  
7 the police in their interview.

8 MS. ARMENI: Okay.

9 And then just -- I -- Mr. -- we were in chambers the other day and  
10 discussed these intercept -- the motion for intercept communications. And I know  
11 that we discussed it back in chambers, but we never discussed -- put it on the  
12 record, so --

13 THE COURT: Right. And my understanding was that Mr. DiGiacomo  
14 assured Mr. Gentile that there was no wire tap where his conversations were  
15 intercepted in connection with this case or investigation relating to this case, and  
16 that if, in fact, his intercept -- conversations were intercepted, it had nothing to do  
17 with this case and he had no knowledge of that.

18 MR. PESCI: Correct. The State of Nevada in this case has not obtained  
19 a [inaudible].

20 THE COURT: Is there anything else we need to do?

21 MS. ARMENI: No, that's it.

22 THE COURT: All right. All right.

23 MR. PESCI: Thank you, Judge.

24 MS. ARMENI: Thank you.

25 THE COURT: Thank you.



# **EXHIBIT 2**



**COPY**

DISTRICT COURT  
CLARK COUNTY, NEVADA

**FILED**

NOV 24 2009

*[Signature]*  
CLERK OF COURT

STATE OF NEVADA,

Plaintiff,

vs.

LUIS ALONSO HIDALGO, aka  
LUIS ALONSO HIDALGO, III, and  
LUIS ALONSO HIDALGO, JR.,

Defendants.

CASE NO: C212667/C241394

DEPT NO: XXI

**Transcript of  
Proceedings**

BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE

**JURY TRIAL - DAY 11**

TUESDAY, FEBRUARY 10, 2009

**APPEARANCES:**

FOR THE STATE:

MARC DiGIACOMO, ESQ.  
Chief Deputy District Attorney  
GIANCARLO PESCI, ESQ.  
Deputy District Attorney

FOR LUIS ALONSO HIDALGO, JR.:

DOMINIC P. GENTILE, ESQ.  
PAOLA M. ARMENI, ESQ.

FOR LUIS ALONSO HIDALGO, III,:

JOHN L. ARRASCADA, ESQ.  
CHRISTOPHER ADAMS, ESQ.

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1 THE COURT: Okay. Terrific.

2 So let's take two minutes and then we'll begin.

3 MR. ADAMS: Judge, one additional point is there had been pretrial  
4 litigation about the notes related to Anabel Espindola that the prosecution had  
5 with -- meetings with her, and the Court deemed them work product. We  
6 would just renew that at this point in time to make sure that the record's  
7 complete.

8 MR. DIGIACOMO: And I would take the position that when Mr.  
9 Wildemann hits the stand any notes that he made, once he hits the stand that I  
10 think they're entitled to -- I think that any notes that he made to the extent that  
11 the Court has those notes, they're entitled to them. Detective Wildemann  
12 didn't refresh it, but the statute's pretty clear that a statement of a witness and  
13 that is a statement of the witness about the subject matter he's going to testify  
14 to he's certainly can say he was a --

15 MR. GENTILE: I know. I just --

16 MR. DIGIACOMO: So I would say once he hits the stand that those  
17 notes are no longer work product. The work product privilege has been waived.  
18 So that would be the position. I don't know whether the -- if the Court still has  
19 them. I haven't seen them.

20 MR. GENTILE: We'd certainly like to see them, you know, before the  
21 State rests because we may want to call this person.

22 THE COURT: Yeah. Here's the deal on the notes. They were made a  
23 Court's exhibit which we're still looking for, candidly. So if Detective  
24 Wildemann needs to be recalled, he can be recalled or Anabel --

25 MR. GENTILE: I'm assuming that he kept a copy of his notes. He

1 wouldn't have just --

2 THE COURT: Yeah.

3 MR. GENTILE: -- he may have given you his original, but I can't imagine  
4 he wouldn't have kept a copy.

5 MR. DIGIACOMO: He has his whole case file.

6 THE COURT: Yeah, he should have them in his case file. So then it's  
7 not an issue. And like I said, Dominic, I remember it exact -- Mr. Gentile, I  
8 remember it exactly. It was one page, legal page, and it was -- I mean, I can  
9 almost visualize what it was.

10 MR. GENTILE: Things happen, and I understand that, and I'm not -- I  
11 mean, you know, at some point in time, God forbid, if there's an appellate issue  
12 in this case we may have a problem. But if the man has a copy of it --

13 THE COURT: There's no problem.

14 MR. GENTILE: -- then it moots the problem.

15 THE COURT: Well, the reason I said it was one legal page is because if  
16 he has something different, that's not what the Court saw.

17 MR. DIGIACOMO: I'm not even sure that he took notes.

18 THE COURT: Or if he only has one page I don't want --

19 MR. DIGIACOMO: I think Detective --

20 THE COURT: -- I don't want Mr. Gentile to think there could be a  
21 second page or whatever.

22 (Jury entering 9:24 a.m.)

23 THE COURT: All right. Court is now back in session. The record will  
24 reflect the presence of the State through the Deputy District Attorneys, the  
25 presence of the defendants and their counsel, the officers of the court and the

1 BY MR. DIGIACOMO:

2 Q Detective, after gathering some evidence -- and you've testified in  
3 a few prior proceedings, correct?

4 A Correct.

5 Q Did there come a point in time of February of 2008 when you  
6 asked to be part of a conversation with Anabel Espindola?

7 A Yes.

8 Q Where did that conversation take place?

9 A At your conference room at the District Attorney's office.

10 Q And what was your understanding of the reason for the  
11 conversation with Ms. Espindola?

12 A She wanted to give you a statement.

13 Q Was that statement recorded either by audio recording or  
14 videotape?

15 A No.

16 Q Okay. And let me ask you this question. Why didn't you record  
17 the statement?

18 A I was an invited guest. I was not in my own environment there. I  
19 wasn't sure what was applicable or not. So I did not take a recording with me.

20 Q Did you or any other person during this time period make any  
21 notations as to questions you might want asked or answered during the course  
22 of the interview?

23 A I jotted down some notes, yes.

24 Q And eventually were those notes turned over to the Court?

25 A Yes.

1 Q Did you keep a copy of the notes?

2 A No, sir.

3 THE COURT: Do you recall what you used to make the notes, like what  
4 kind of paper or --

5 THE WITNESS: I think it was a legal pad. I think it was a -- I think it  
6 was a yellow legal pad.

7 THE COURT: All right. Thank you.

8 BY MR. DIGIACOMO:

9 Q At some point in time you learned that Anabel Espindola entered a  
10 guilty plea, correct?

11 A Correct.

12 MR. DIGIACOMO: Judge, I have in my hand State's Proposed Exhibit  
13 228, which is a copy of that guilty plea agreement I move to admit.

14 MR. GENTILE: Same objection as yesterday.

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

16 MR. ADAMS: We join Mr. Gentile's objection.

17 THE COURT: Sustained.

18 MR. DIGIACOMO: I pass the witness, Judge.

19 THE COURT: All right. Before we go to cross while it's fresh a juror  
20 had a question.

21 You identified Exhibit No. 240 as having been recovered from  
22 Anabel's satchel -- or in a satchel, excuse me, in Anabel's office, and we  
23 admitted Exhibit 240; is that right?

24 MR. DIGIACOMO: Correct.

25 THE COURT: And the juror wants to know what that exhibit is.

# **EXHIBIT 3**

1 **ORDR**

2 GORDON SILVER

3 DOMINIC P. GENTILE

4 Nevada Bar No. 1923

5 PAOLA M. ARMENI

6 Nevada Bar No. 8357

7 3960 Howard Hughes Pkwy., 9th Floor

8 Las Vegas, Nevada 89169

9 (702) 796-5555

10 (702) 369-2666 (facsimile)

11 Attorneys for Defendant LUIS A. HIDALGO, JR.

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 STATE OF NEVADA,

15 Plaintiff,

CASE NO. C241394

DEPT. XXI

16 vs.

17 LUIS A. HIDALGO, JR., #1579522

18 Defendant.

19 **ORDER**

20 The above-entitled matter having come on for hearing on the 11<sup>th</sup> day of January 2011, in  
21 Department XXI, the Honorable Judge Valerie Adair presiding, \_\_\_\_\_,  
22 District Attorney appearing on behalf of the Plaintiff, State of Nevada and Dominic P. Gentile  
23 and Paola M. Armeni, of the law firm of Gordon Silver, appearing on behalf of Defendant Luis  
24 A. Hidalgo, Jr, and the Court being fully advised in the premises and good cause appearing  
25 thereof:

26 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Court  
27 ordered during the trial in this matter that the notes regarding the debriefing of the post-deal  
28 interview of Anabel Espindola be made a court exhibit.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the  
renewed Motion to Compel the Production of the Notes of the Debriefing of the Post-deal



1 interview of Anabel Espindola made during trial was denied.

2 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the notes of  
3 the debriefing of the post-deal interview of Anabel Espindola were misplaced during the trial in  
4 this matter.

5 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the notes of  
6 the debriefing of the post-deal interview of Anabel Espindola were never recovered and as  
7 such are not part of the current Court's trial exhibits in this matter.

8 IT IS SO ORDERED this \_\_\_\_\_ day of December, 2010.

9  
10 \_\_\_\_\_  
11 DISTRICT COURT JUDGE  
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\*\*\*\*\*  
\*\*\* MULTI TX/RX REPORT \*\*\*  
\*\*\*\*\*

TX/RX NO 1889  
PGS. 20  
TX/RX INCOMPLETE  
TRANSACTION OK  
(1) 4772922  
(2) 4772961  
ERROR INFORMATION



## Gordon Silver

Attorneys and Counselors at Law

### Facsimile Transmittal Sheet

Date: December 29, 2010

To:

Fax No:

Marc DiGiacomo  
Giancarlo Pesci

(702) 477-2922  
(702) 477-2961

From: Paola Armeni, Esq.  
File No.: 101371-001  
Subject: Case No. C241394  
Number of pages  
incl. cover page: 20

<input checked="" type="checkbox"/> Please see attached	<input type="checkbox"/> Per your request	<input type="checkbox"/> For your review
<input type="checkbox"/> Please review, sign and return	<input type="checkbox"/> Please acknowledge receipt	<input type="checkbox"/> For your information or records

Message: Dear Counsel:

Attached hereto please find Defendant's Motion to Amend Record in the above-referenced matter.

Thank you for your attention in this matter.

**EXHIBIT "4"**

1 TRAN

**COPY**

**FILED**  
OCT 30 8 47 AM '08  
CLERK OF THE COURT

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA  
5

6 THE STATE OF NEVADA,

7 Plaintiff,

8 vs.

9 LUIS ALONZO HIDALGO, aka LUIS  
10 ALONSO HIDALGO III,

11 Defendant.  
12

CASE NO. C212667  
DEPT. XXI

**FUS**

13 BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE  
14 THURSDAY, FEBRUARY 14, 2008  
15 RECORDER'S TRANSCRIPT OF HEARING RE:  
16 MOTIONS  
17

18 APPEARANCES:

19 FOR THE PLAINTIFF:

CHRIS J. OWENS, ESQ.  
GIANCARLO PESCI, ESQ.  
Deputy District Attorneys

21 FOR THE DEFENDANT:

DOMINIC P. GENTILE, ESQ.  
PAOLA M. ARMENI, ESQ.

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

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702.635.0301

1 THE COURT: -- or anything --

2 MR. PESCI: -- already complied.

3 THE COURT: -- like that in there or anything was inconsistent with any  
4 prior information that I had received regarding Anabel Espindola. You know, what  
5 I can do is when we get that transcript, look at the transcript as compared to the  
6 notes. And if there's an issue there, then certainly that -- we'll revisit this.

7 MS. ARMENI: Okay.

8 THE CLERK: Judge, just for the record, those motions were set for the  
9 19<sup>th</sup>, so I'm just putting them on today --

10 THE COURT: That's fine.

11 THE CLERK: -- so they don't have to come back on the 19<sup>th</sup>.

12 MS. ARMENI: Giancarlo, she never actually ruled on the -- the intercept  
13 ones either even though we --

14 MR. PESCI: Oh, yeah. You're right.

15 Judge --

16 THE COURT: I mean, on the motion to compel production, I'll just defer  
17 ruling on that officially. I'm disinclined to grant it. Like I said, there's no  
18 exculpatory information, there's nothing inconsistent with anything I already know.  
19 But --

20 MS. ARMENI: Is it the Court's position that it's work product? Is that why  
21 we're not entitled to them?

22 THE COURT: Well, it's not work product of the attorneys.

23 MS. ARMENI: Right.

24 THE COURT: Obviously it's the police officers. But, I mean, yeah. I  
25 mean, it's their work product. It doesn't fall within the attorney work product

1 exception, but, like I said, you know, I don't -- unless it's specifically something  
2 that has to be turned over, I'm disinclined to start turning over all of their notes.

3 But if there's something in there that you're entitled to, you'll get  
4 them, number one. And number two, if there's anything in there, obviously, that's  
5 inconsistent with her grand jury testimony, then you will get them. Because then  
6 you certainly have a right to cross-examine her on anything inconsistent she told  
7 the police in their interview.

8 MS. ARMENI: Okay.

9 And then just -- I -- Mr. -- we were in chambers the other day and  
10 discussed these intercept -- the motion for intercept communications. And I know  
11 that we discussed it back in chambers, but we never discussed -- put it on the  
12 record, so --

13 THE COURT: Right. And my understanding was that Mr. DiGiacomo  
14 assured Mr. Gentile that there was no wire tap where his conversations were  
15 intercepted in connection with this case or investigation relating to this case, and  
16 that if, in fact, his intercept -- conversations were intercepted, it had nothing to do  
17 with this case and he had no knowledge of that.

18 MR. PESCI: Correct. The State of Nevada in this case has not obtained  
19 a [inaudible].

20 THE COURT: Is there anything else we need to do?

21 MS. ARMENI: No, that's it.

22 THE COURT: All right. All right.

23 MR. PESCI: Thank you, Judge.

24 MS. ARMENI: Thank you.

25 THE COURT: Thank you.

**EXHIBIT "5"**

1 TRAN

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA  
5

**FILED**  
NOV 24 2009  
*Alison L. Johnson*  
CLERK OF COURT

6 THE STATE OF NEVADA,

7 Plaintiff,

8 vs.

9 LUIS ALONSO HIDALGO III and LUIS

10 HIDALGO, JR.,

11 Defendants.  
12

CASE NO. C212667/ C241394  
DEPT. XXI

13 BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

14 THURSDAY, JANUARY 29, 2009

15 RECORDER'S TRANSCRIPT OF HEARING RE:

16 JURY TRIAL

17 APPEARANCES:

18 FOR THE STATE:

MARC P. DIGIACOMO, ESQ.  
GIANCARLO PESCI, ESQ.  
Deputy District Attorneys

19  
20 FOR LUIS HIDALGO III:

JOHN L. ARRASCADA, ESQ.  
CHRISTOPHER W. ADAMS, ESQ.

21  
22 FOR LUIS HIDALGO, JR:

DOMINIC P. GENTILE, ESQ.  
PAOLA M. ARMENI, ESQ.

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

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**COPY**



1 to it and says, yeah, the -- or the conversation and says, yeah, that's what he  
2 said.

3 MR. ADAMS: We sure would like some notes of that debriefing session,  
4 Your Honor, because that is critical to us and we're entitled to know how she was  
5 prepped, how she was prompted to come up and listen to this stuff and fill in the  
6 gaps that are being filled in after the audibility hearing.

7 THE COURT: Okay. And that was with the district attorneys; right? Not  
8 with the police, not when she was in custody?

9 MR. DIGIACOMO: That's correct.

10 THE COURT: Okay.

11 MR. DIGIACOMO: And they're certainly not entitled to any notes should  
12 they exist.

13 THE COURT: So that's subsequent to the negotiation and all of that; is  
14 that right?

15 MR. DIGIACOMO: Correct.

16 THE COURT: Okay. And when just did -- did this meeting occur where  
17 she listened to the tape and the -- looked at the transcript and all that stuff?

18 MR. DIGIACOMO: What day is -- it was Monday because we were dark  
19 Monday.

20 THE COURT: Okay. And where did it occur?

21 MR. DIGIACOMO: What?

22 THE COURT: Where?

23 MR. DIGIACOMO: In this building.

24 THE COURT: In the DA's office?

25 MR. DIGIACOMO: Well, it was brought -- no, it's not technically in the

1 DA's office, but it's a room in the regional justice center for in-custody interviews.

2 THE COURT: Okay. And who was there?

3 MR. DIGIACOMO: Myself, Mr. Pesci, and the transporting investigators,  
4 and I believe Mr. Oram for part of the time was present.

5 THE COURT: Okay. And that would -- Would that be Mr. Faulkner?  
6 Was he there?

7 MR. DIGIACOMO: Mr. Faulkner and --

8 THE COURT: Okay.

9 MR. DIGIACOMO: -- one of the transporting, and Mr. Doherty, I believe,  
10 was the other transporting individual.

11 MR. ADAMS: We'd like to see some notes about how she was prompted  
12 on this part of the tape. If she's going to say this is the creation, this is how they  
13 came --

14 THE COURT: Well, first of all, those wouldn't be the investigator's notes  
15 because that would be the DA's preparing for her testimony, which if there are  
16 notes, that would be the lawyers' notes, number one. Because at this point in  
17 time, the DA investigators are just, I'm assuming, transport. They have to have  
18 her -- she's in custody, they bring her and what not. They're not really  
19 investigating at this point if the lawyers are the ones that are doing it, number  
20 one.

21 Number two, the reason I asked that was because it's not something  
22 from previous when she initially met with Metro and had the debriefing and all of  
23 that stuff. And you're certainly free to question her about it.

24 MR. ADAMS: But here's my concern, Judge. If they play the tape and  
25 she has the transcript and no changes are made and then they say, well, listen to