IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS A, HIDALGO, JR.

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

CASE NO.: 54209

On Appeal from a Final Judgment of Conviction entered by The Eighth Judicial District Court

APPELLANT'S APPENDIX

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TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. LUIS ALONSO HIDALGO, aka LUIS ALONSO HIDALGO, III, LUIS HIDALGO JR., aka LUIS A. HIDALGO, Defendants.	CASE NO. C212667 CASE NO. C241394 DEPT. XXI

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

TUESDAY, JUNE 23, 2009

RECORDER'S TRANSCRIPT OF HEARING RE:
SENTENCING

APPEARANCES:

FOR THE STATE:	MARC DIGIACOMO, ESQ. Chief Deputy District Attorney GIANCARLO PESCI, ESQ. Chief Deputy District Attorney
FOR THE DEFENDANTS:	DOMINIC P. GENTILE, ESQ. PAOLA M. ARMENI, ESQ. JOHN L. ARRASCADA, ESQ. CHRISTOPHER ADAMS, ESQ.

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

LAS VEGAS, CLARK COUNTY, NV., TUES., JUNE 23, 2009

THE COURT: All right. This is the time for State of Nevada versus Luis Hidalgo III and Luis Hidalgo Jr,, both of whom are present in custody with all of their attorneys. This is the time set for the rendition of sentencing.

Is there any reason we cannot proceed with sentencing at this time? And then I have some preliminary matters to address.

Before we do that, Mr. Adams, you had an issue with an order?

MR. ADAMS: Yes, ma'am, related to a matter which we'd previously addressed about U.S. savings bonds belonging to Mr. Hidalgo III were introduced into evidence. The parties have reached a stipulation to release those into the custody of Mr. Arrascada on behalf of Mr. Hidalgo III. We're making copies of the stipulation and our proposed order for the Court, and we will work on that. We'll substitute in either photocopies or actual photographs of the evidence, and we agree that nothing about the authenticity of the savings bonds is an issue related to our case.

THE COURT: All right.

MR. DI GIACOMO: And Mr. Bunin has signed that on behalf of Mr. Figler -- on behalf of Mr. Carroll, which is the outstanding defendant set for trial.

THE COURT: All right. As soon as that's presented to the Court, the Court will sign that releasing the bonds.

Before we move into the sentencing, there are some outstanding matters that I just want to address on the record. This is not a substitute for the more detailed written decision which will be forthcoming and has not been filed yet with the clerk.

The defense raised some interesting and important issues with respect for the motion for judgment of acquittal and the motion for new trial which the Court has spent some time carefully considering. I want to address just on the record right now the most important points and the Court's reasoning, and again, this is not a substitute.

With respect to the purported juror misconduct with -- according to the defense -- misusing the jury instructions and the consideration of the words of Deangelo Carroll on the audiotape reconciling that with the, I believe it's the Meyer decision, which says, Misuse of the instructions is juror misconduct and then goes on in the same sentence, I believe, to say, But you can't consider the thoughts and deliberations.

I think that this case is distinguishable in that that case it was clear that they had considered punishment, and the Court said, Well, that could have impacted their deliberations. It did not require the individual jury members or the jury foreman to come in and to say how that had impacted their consideration of guilt.

The Court said, Well, it might have, and that was something that -- in terms of them having considered the punishment, that was something that was disclosed publicly.

This case, I think, goes to the very heart of how the jurors evaluated the evidence, what evidence they found to be important, and I think that goes to the essence of the deliberative process, and I think that that exactly is the kind of thing that our statute seeks to prevent.

Additionally, with respect to the purported misconduct in considering the statement of Deangelo Carroll, I would just note that that could even be considered an adoptive admission by Ms. Espindola and Mr. Hidalgo III in their response or lack

of response to that comment made by Mr. Carroll. So to that extent it could be considered as the Court had previously ruled -- again, that's an issue for appeal rightly or wrongly -- that for purposes of the conversation of the cover-up the conspiracy was still ongoing and that there was a new conspiracy with respect to the solicitation for murder allegations relating to Kenneth Counts.

With respect to the verdict form where we separated battery and then battery with substantial bodily harm and/or battery with a deadly weapon, perhaps the better verdict form would have been battery with substantial bodily harm with a deadly weapon, battery with substantial bodily harm without a deadly weapon. That was not, according to my recollection, offered.

I think that if you consider the totality of the jury instructions with respect to the use of a deadly weapon, any potential problem in not separating those out I don't think is fatal to the verdict because again, there were other instructions relating to the use of a deadly weapon and what not, and I think that that takes care of it.

Again, no one gave a verdict form saying battery with substantial bodily harm with a deadly weapon, battery with substantial bodily harm without a deadly weapon. To just separate it out other than that wouldn't have made any sense because you could have found both obviously that they intended battery with substantial bodily harm and battery with a deadly weapon.

With respect to the interpretation of the evidence to support the verdict which was raised, obviously, by both, you know, defendants, I certainly think that there was enough evidence here to support, you know, at the end of the day I don't know whether or not they conspired to kill Timothy Hadland. I don't know whether or not they conspired to commit substantial bodily harm or not. That's me personally, but I think there certainly was sufficient evidence that the conspiracy went beyond a

simple battery and that the conspiracy went to do significant harm to Mr. Hadland or to utilize a deadly weapon.

So, you know, the Court is not inclined to overturn the verdict or to sit as the thirteenth juror and say, no, there's not enough evidence. I don't think that this is the kind of case that cries out for the Court's intervention because, again, I think certainly a reasonable interpretation of the evidence while -- is that they wanted significant harm to come to Mr. Hadland.

With respect to the Jayson Taoipu prior testimony that the Court refused to admit, I stand by that decision because as we argued and as came out during the trial, the State did not really have an effective opportunity to -- they could have cross-examined him on that issue, the bats and bags and who said what, but it wasn't important at all in the Kenneth Counts case, and it would have made absolutely no sense for the State to have nitpicked on that point with Mr. Taoipu, And to me even though it was testimony, it's more like a statement he may have made to police that the Court would not have admitted.

And finally -- well, I think that covers the essential points.

MR. GENTILE: Your Honor, there's one other one that's a very important one, and that's the one where the Court instructed over our objection that the jury could use a slight evidence standard with respect to the hearsay that they weren't supposed to listen to in the first place, but nevertheless the slight evidence --

THE COURT: Well, again, you're disagreeing with the use of any of the hearsay on the tape, and again, that's obviously an appellate issue. As I indicated, the Court stands by its determination that the conspiracy was still ongoing with respect to Mr. Hidalgo III and Ms. Espindola in engaging in the cover-up.

I think that the instructions were clear that the slight evidence was only

to be used as to whether or not there was an existence of a conspiracy for evidentiary purposes. I don't find that it confused the jury. I don't think that there's reason to believe that it confused the jury or in any way reduced the State's burden of proof in this case. So I think those are the critical, I guess, issues that were raised.

All right. Anything else, Mr. DiGiacomo, before I move into sentencing?

MR. DI GIACOMO: The only thing is is that the Court -- I had sent an order over to P&P and then copied the Court on that order, and the Department of Parole and Probation attempted to do a supplemental PSI as to both defendants.

THE COURT: Right.

MR. DI GIACOMO: They were successful as to Luis Hidalgo III. As to Luis Hidalgo Jr., there was a couple of words and in one phrase that they failed to correct despite the fact that it's in the order. And my suggestion to the Court is, one, that we attach a copy of the order itself to Luis Hidalgo Jr.'s PSI, and we can do any corrections by interlineation.

THE COURT: I was going to say we can interlineate both the Court's copy and we can interlineate the copy that goes to the prison to reflect --

MR. DI GIACOMO: The changes that should have been made that were not made.

THE COURT: And also in terms of the credit for time served, obviously the Court can independently calculate the correct credit for tiuniorme served.

MR. DI GIACOMO: And in fact, as to Mr. H. I calculated two more days than even Mr. Gentile did. I have it at 184 for Mr. Hidalgo Jr., and I think it's 1492 as it relates to Luis Hidalgo III.

THE COURT: Okay. And my understanding is as to Mr. Hidalgo III, there's

no dispute as to the credit for time served.

MR. ARRASCADA: At the 1492 that Mr. DiGiacomo --

THE COURT: Right, at the 1492.

MR. ARRASCADA: And, Your Honor, just one item. They must have missed this. They still have Ms. Armeni listed as their defense counsel on their revised presentence report, and it's Mr. Adams and myself.

THE COURT: All right. We can also correct that by way of interlineation.

MR. GENTILE: Am I to understand then that our objections to the supplemental presentence investigation report is basically being granted?

THE COURT: That is correct. It seems --

MR. GENTILE: We focused on the misspellings, the specific offense summary and the credit for time served.

THE COURT: Right. My understanding of what Mr. DiGiacomo is saying is he does not dispute those corrections and agrees to both attach this with the PSI as well as have the interlineation take place.

MR. DI GIACOMO: I actually have an order of the Court to sign that directs that those corrections were in the order. For whatever reason P&P just didn't get them into the PSI. So there's no dispute among the parties.

THE COURT: And I understand we have four family members that will be speaking today; is that correct?

MR. DI GIACOMO: We're currently at three, Judge, who actually want to speak. We may actually only be at two depending on what their choice is at the time of their turn to speak.

THE COURT: Okay. And I'm assuming the State would like them to speak last?

MR. DI GIACOMO: That's correct, Judge.

THE COURT: All right. Mr. Adams.

MR. ADAMS: Judge, I do now have the hard copy of the stipulation of proposed order. Would you like me to hold those to the end or to tender those now?

THE COURT: Either way.

MR. ADAMS: I'll go ahead and get that done.

THE COURT: You can approach.

MR. GENTILE: Your Honor, there is one other thing I'd like to call to the Court's attention before we start.

THE COURT: Yes.

MR. GENTILE: We filed a sentencing memorandum.

THE COURT: Yes, and I have reviewed that.

MR. GENTILE: All right. If you'd take a look at page 2, lines 18 through 21.

THE COURT: I'm sorry, which page?

MR. GENTILE: Page 2, lines 18 through 21.

THE COURT: Yes.

MR. GENTILE: I'd ask you to read it, not aloud, please.

THE COURT: Okay.

MR. GENTILE: We'd ask that those lines be sealed, that they -- either a redacted copy of this be placed in the official file with a sealed copy -- if this becomes -- you can appreciate why.

THE COURT: I understand why.

Any objection?

MR. DI GIACOMO: I don't, Judge, although it's already been filed as a public record, so someone's going to have to notify the clerk's office to seal it.

THE COURT: That would be the clerk's -- my preference would be to redact those lines so that we have a copy that is publicly accessible and then to have a complete copy placed under as a, like a Court's exhibit or placed under seal.

MR. DI GIACOMO: I'm just saying that someone needs to withdraw it currently from the file.

THE COURT: All right. Ms. Husted will do that.

MR. DI GIACOMO: 'Cause it's on Blackstone currently.

THE COURT: Do you understand the order, Ms. Husted?

THE CLERK: I do.

THE COURT: And just for the record it's lines --

THE CLERK: 18 through 21, page 2.

THE COURT: Yeah, 18 starting with Luis Jr., and 21 --

MR. DI GIACOMO: The whole line would be fine.

THE COURT: All right. The whole line.

Those housekeeping matters aside, is the State ready to proceed with their argument?

MR. DI GIACOMO: And I'm going to be somewhat brief. I have a few items to give to the Court; I've shown the defense counsel. The family has photos of Mr. Hadland in real life, and there is a letter from the family that we've provided to the defense related to their position of sentencing.

Obviously, the choice for the Court is really from the State's point of view whether or not you give him a life sentence or you give him a term of years.

I'd like to address Luis Hidalgo III first because there's an additional sentencing consideration for the Court. I'm not going to get lengthy into arguing for substantials, consecutive time from the solicitation to commit murder counts, but

those counts are wholly independent of the murder in this case, and the fact that the defendant committed those at a separate period of time is indicative that there are different victims, and while the Court may not see them as victims certainly he solicited an individual that he knows has already committed a murder to kill two more people and certainly consecutive time would be appropriate.

So that leads us to the murder count. I recognize that the legislature as to both defendants provides the Court the possibility of giving a term of years in a case that involves second degree murder, and as the Court knows, second degree murder is a broad range of activity, and that activity can be as minor as an inherently dangerous felony that never intended harm to an individual all the way up to intentional murder without premeditation and deliberation, and I heard the Court earlier say that these individuals intended to commit substantial harm to Timothy Hadland. I can't imagine the legislature thought that a term of years is appropriate for that type of behavior.

It's certainly the position of the State of Nevada that Timothy Hadland's life had more value than a term of years, and it's our position that they both deserve a life sentence.

As to their sentencing memorandum, there are two issues I'd like to correct to the Court. It has always been the State's position, and I don't think the Court would dispute this, had a jury determined that Kenneth Counts was the shooter, he would have not received a term of years.

In addition to that, they represent that the Court is going to give Anabel Espindola probation at some future point in time. It's my belief based upon the times that I've been in this courtroom that that statement is not an accurate probability of occurrence, and I do not think that it's appropriate to sentence these

two individuals based upon either the sentence of Ms. Espindola or the sentence of Mr. Counts. They are responsible and accountable for their actions they took in this case, and certainly Mr. Hadland and his family are entitled to a life sentence for the individuals for the actions that they took, and I'll submit it to the Court.

THE COURT: All right. Thank you.

Who would like to speak -- well, would the attorneys like to address the Court first, or would you like to have your clients address the Court first?

MR. GENTILE: Your Honor, I'll address the Court first.

THE COURT: All right. Thank you.

MR. GENTILE: It's almost four decades I've been doing this, and I can't remember another day that I've dreaded as much as I did this morning because candidly I didn't anticipate it in advance.

It is rare in my career that I would allow a person to testify in his own behalf at trial, but that happened here for two reasons. Number one, because from the very beginning, day one, when I flew back from San Diego and met with Mr. Hidalgo and Anabel Espindola and from what I was told by Mr. DePalma and Don Dibble about what occurred the day before I met with them, this account of what occurred never changed, not once.

The jury's acted. Nothing's going to change that now and certainly not in this courtroom, but I looked at two things here that just don't warrant a life sentence. One, the fact of the matter is even according to Anabel Espindola whose credibility not only did we assail, but I don't think anybody really believes that she told the truth in this courtroom, but even with all of her bias she conceded that she was the one who learned from Deangelo Carroll that Timothy Hadland had been talking badly about the Palomino Club and that she was the one who told Luis

Hidalgo Jr., about that.

His response to that and his testimony about his response to that has never been refuted. Nobody testified that there was some discussion that took place between him and anybody else wherein a murder or a serious beating was even discussed. The jury, of course, found not enough evidence for a conspiracy that an agreement was made to murder him. They did find that either one or the other of the objectives of the conspiracy --

THE COURT: Or possibly both.

MR. GENTILE: Or possibly both, kind of hard to have both, I think, but maybe. You can maybe pistol whip somebody, I guess. That's what they came back with, and I look to Luis Hidalgo Jr.'s testimony in this case, which was never refuted. Anabel Espindola didn't come in and say, no, that didn't happen. And what did he say? He said that he told Deangelo Carroll to tell his friend to stop spreading shit, specifically talk badly about the club.

I have to tell you I doubt very much that there's a business person in any business who if confronted with such a communication, that being that someone's talking badly about the club, and if they knew that the person who was reporting it was a friend of that person as was the facts here, wouldn't tell that person, well, tell him to stop it, and from that coupled with Timothy Hadland's not saying no to making a trip to get drunk -- Timothy Hadland is dead today, that's a shame. We all feel that way. I think you're going to hear that from Mr. Hidalgo when he speaks to you, but it was not intended, and a life sentence really should be reserved for those situations where it was.

This is a second degree murder. The legislature has spoken to second degree murder in allowing a life sentence, but on the facts that are before you on

this case where there is no evidence, there is no evidence that there was a deliberate murder that took place here or that there was anything in the nature of something that was foreseeable that this man would die, and with the absence of those facts in this case, it seems to me that the proper and just sentence in this case should be a term of years of 10 to 25 years.

There has to be a consecutive sentence because of the enhancement with the weapon. We, of course, recognize that the Supreme Court has spoken to the starting date of the new statute and its application. Hopefully someday maybe some federal court, maybe a supreme court, if we are not successful on appeal, will see it differently. And so we are asking you, recognizing that as it stands right now you can't, but we are asking you to make his consecutive sentence also the minimum. This man is old and sick.

By the way, I don't know that you are going to do this so I'm going to ask you to do it. Would you please attach our sentencing memo to the presentence report so that it goes with him to the institution. The reason for that --

THE COURT: It indicates the prescriptions that he's taking and his --

MR. GENTILE: Exactly.

THE COURT: -- diagnosis.

MR. GENTILE: Exactly.

And so that having been said, I can honestly say, and it doesn't matter, and I couldn't say this to a jury 'cause ethics prohibit that, but I can say it to you, I believe in the innocence of my client, even today, even with the jury having said what they said.

Hopefully someday this verdict will be changed. It's not going to bring Timothy Hadland back. Nobody wanted him dead in the first place, most certainly

not Luis Hidalgo Jr., and we're asking essentially for the most lenient sentence that you can impose.

He would like to address the Court and the family at this time.

THE COURT: All right. Thank you.

Mr. Hidalgo Jr., what if anything would you like to say?

THE DEFENDANT HIDALGO JR: Well, first of all, I would like to sympathize with the family, and I'm going to say I've been hearing a lot of things, you know, from the Court about evidence and so on and so forth. But I stand firm today like I did at the very beginning.

Mr. Hadland and I only came in contact three or four times. I never disliked the man simply enough because I never knew the man. All I ever did was to say hello. He greeted me well. It was fine with me. I did not know very much about him at all whatsoever, none. I had no reason at all whatsoever to go ahead and do any harm to this gentleman at all whatsoever. None.

I don't function that way. I'm not that kind of person. He was a good man. All I know is that what happened, what was offered to me was information that he was talking about the club which to me didn't mean a damn thing. It didn't bother me at all whatsoever. None. Absolutely not at all.

I sympathize with the fact that he died, definitely. I'm sorry about that, but I can definitely assure you that I had nothing to do with his death or beating suggestions and all whatsoever to do any harm at all to him at all whatsoever. And I know that there's conversations that talk about evidence this and evidence that. What evidence?

Three years later I get arrested. I'm not the one that got caught on tape. I was never on tape. Ms. Espindola was. She definitely is deeper in this

situation than anybody else is. The way I look at it personally, a trophy needed to be obtained; the prosecution got it. There was nobody else more important in this case other than to go after me. If not, you would have gone ahead and done it way before that.

Ms. Espindola was facing a death penalty. She was facing two or three conspiracies. What happened? And then she gets to go home free because she turns State's evidence against me, and I'm the one that the least had anything to do with it. And I don't understand why it is, but I just sincerely hope, please, if you have to push the issue with somebody, find out who actually killed Mr. Hadland, because the other gentleman who was accused he got off. He got acquitted. The other two weren't even charged.

So I really don't understand, really, is this justice? No. The other two gentlemen were in the van when all this occurred. They weren't even charged. Everybody got probation or otherwise. My son and I are the ones that are getting the rap for it.

I stand firm again today telling you the same thing I would have, and I would have told the same story two days after this occurred when we sent, obviously, the first letter to the prosecution and tell them that I wanted to come down and tell them what I knew of the case. But here we are before you.

I understand that what I'm saying is not going to change your mind, Your Honor. I'm 58 years old. I'm sick. Okay. I ask for leniency for my son for being stupid, for thinking, obviously, the gentleman was his friend. They know it. They know that my son all he did was just converse, talk. Other than that, somebody else put this thing together, and it wasn't me.

And we have a gentleman, obviously, who keeps eluding everybody,

and his trial hasn't started, his trial which should have been the first one. Now it's into next year. What's going on? I don't know. But I can assure you I had nothing to do with it. I didn't suggest, direct it, anybody, and I was not a thump in the law.

THE COURT: All right. Thank you.

Just to correct the record, Mr. Counts was sentenced to prison. The Court gave him the maximum sentence that I could give given the charge for which he was convicted by the jury, and as is clear on the record, he was adjudged a habitual criminal. The Court imposed the maximum prison sentence the Court could impose.

With respect to Mr. Carroll, the State has been trying and wanted Mr. Carroll to be the first trial out, and there's a separate record that has been made on the issue with why Mr. Carroll did not go to trial that I don't need to, I think, address here.

With respect to Ms. Espindola, she has not been sentenced. The negotiation that Ms. Espindola received is up to the State. The sentence will be up to me, and as Mr. DiGiacomo pointed out, I think the Court's opinion has already been made on that.

Now moving to Mr. Hidalgo III, would -- Mr. Arrascada, would you like to address the Court first or would you like your client?

MR. ARRASCADA: No, Your Honor, I'd like to address the Court.

THE COURT: All right. Thank you.

MR. ARRASCADA: Your Honor, regarding Luis Hidalgo III, what we'd like the Court to do regarding sentencing is focus on what is a just sentence as we did in our sentencing memorandum that we provided the Court. We're not going to argue facts or lack thereof. That's when we go up to the Supreme Court.

Mr. Hidalgo III on our advice is not going to be making a statement to the Court, but I can tell the Court that myself, Mr. Adams, Mr. Hidalgo III and throughout -- throughout our representation and throughout this entire trial have felt and expressed our sincerest condolences to the Hadland family --

THE COURT: And I just have to interrupt you. I was just going through everything to make sure I hadn't overlooked the sentencing memo. We did not receive a sentencing memo on behalf of Mr. Hidalgo III. We received the sentencing memo on behalf of Mr. Hidalgo Jr., and the objections on behalf of Mr. Hidalgo Jr., but that's all that we have. And like I said, I just went through my stack to make sure it wasn't my oversight, but we don't have anything.

MR. DI GIACOMO: Judge, I'll just give you my copy if you want to -- it's fairly short if the Court wants to read it.

MR. ARRASCADA: Your Honor, we'd ask that you review it before we continue.

THE COURT: Okay. Do you want us to take a break for the Court to review it?

MR. ARRASCADA: If you would, please.

THE COURT: All right. I'm now reading the letters that have been attached in support of Mr. Hidalgo III, just so you know why it's taking a few minutes. There are a number of letters that have been written in response of Mr. Hidalgo III, and I'm now reading those.

I've read all the letters as well as the memo.

MR. ARRASCADA: Your Honor, just for the record, it was filed with the court clerk downstairs. A courtesy copy was not provided to you for delay.

THE COURT: There's a delay, just so you know, between the time -- we are

now paperless, so there is a delay between the time the documents are filed and they're actually scanned into the system and available for review by the Court, but there's no harm because I have taken the time to read the -- a lot of the things frankly I was aware of. Many of the things in the letters from people that grew up and have known Mr. Hidalgo III are consistent with the behavior the Court has observed during the trial and the numerous hearings. There's no prejudice. I have read everything and considered it.

MR. ARRASCADA: Thank you, Your Honor. Your Honor, then I'd like to proceed with my sentencing argument on behalf of Mr. Hidalgo III.

Your Honor, I agree to a point with the recommendation from the division, but as you can see in our memorandum and the presentation I'm about to make that we do disagree regarding the sentence they recommend for the second degree murder with the weapon enhancement.

We believe based on the argument I'm about to present that Mr. Hidalgo III, should receive in his youth, and his ability to rehabilitate warrants the term of years of 10 to 25 years. We do believe the division is very correct and accurate when they recommend on Counts 3, 4, and 5 that that time run concurrent to the second degree murder conviction or Count 1, and we're going to urge the Court that you do so.

Your Honor, when I said we're not going to reargue facts today, it's as I said, that's an issue now for the Supreme Court, but what we'd like you to focus on is the four principles of sentencing which are rehabilitation, retribution, deterrence and incapacitation.

As the Court knows, Mr. Hidalgo has been incapacitated for over four years in this matter, and from what I understand, the time in the Clark County

Detention Center it's like serving time in dog years. It -- there is no yard time. There is no programming. Mr. Hidalgo has not seen sunlight above his head in four years, but during all that time he has not had any major infractions. He has done his time. The goals of incapacitation and deterrence and even retribution have already been met regarding Luis Hidalgo III.

What I'd like the Court to focus on is rehabilitation, and that is a significant factor regarding any sentencing, and what we're asking you to do by imposing the term of years and running all of the other offences concurrent provides to Mr. Hidalgo a degree a hope. And when you're looking at rehabilitation, hope is significant, and a term of years indicates to Mr. Hidalgo as I believe the Court has just even stated, that you've noticed all of these tremendously good qualities and characteristics about Mr. Hidalgo III while he's been present through these numerous years in court.

THE COURT: I don't think that's what I said. I said some of the things regarding his behavior are consistent. I mean that he tries to be affable. He tried to be affable with court staff. He tried to be affable and was affable with the correction officers. You know, he tried to make jokes and things like that, and that was consistent with what I observed. He was a compliant prisoner. He was respectful to the correction officers, things like that, and I noticed that.

MR. ARRASCADA: And, Your Honor, that respect that you're noticing is an indication of through rehabilitation that Mr. Hidalgo III can be a functioning, productive member of our society. Because of that, Your Honor, we're going to ask that you impose the term of years -- he's 27 years old, and what does a term of years actually do? As I said, it gives hope of release, but regardless, if you follow the sentence we're recommending that you do, at a minimum, at a minimum Mr.

Hidalgo will serve 20 years in prison before he even gets to see the parole board, at a minimum.

And we need to look at his age, 27, the fact that he has no prior history whatsoever contacts with law enforcement and the fact of how will he -- who will he be and how will he do when he's reintegrated into society, and through the most trying of times the Court, as you put on the record, has noticed some characteristics or qualities, I'd like to call them, that are indicative of what he will do or how he will do when he is released.

And the term of years accomplishes all of the goals, Your Honor, of incapacitation, deterrence, retribution. It becomes a sentence that is equitable in light of all the other players involved, and it provides to Mr. Hidalgo the incentive to continue to program in the prison to do all the right things, to get a -- take college classes if available, to work his way towards being a model prisoner so that he's going through rehabilitation because he will have hope of someday not being incarcerated with the term of years if you impose it.

We're going to urge that you impose the term of years based on these reasons, and with that we submit, Your Honor.

THE COURT: All right. Thank you, Mr. Arrascada.

MR. GENTILE: Your Honor, there's one other thing.

And thank you, Mr. Pesci, for bringing it to our attention, and I mean that sincerely.

In the sentencing memorandum for Mr. Hidalgo Jr., a couple of the exhibits make reference to the same subject matter that we sealed, Exhibit 3, the first large paragraph, and Exhibit 9, the last paragraph.

THE COURT: All right. So you're --

MR. GENTILE: And so we're making this -- whoa, first and last paragraph, first full paragraph. It starts off with, Luis Hidalgo was --

THE COURT: So you want the first full paragraph as well as the last paragraph redacted?

MR. GENTILE: Right. Exactly.

THE COURT: And, Ms. Husted, did you get that?

The State has no objection to that?

MR. DI GIACOMO: That's correct, Judge.

THE COURT: And again, the redacted will be public record and the unredacted will be sealed and be part of the total record in the case, and that's for --

MR. GENTILE: Thank you.

MR. ARRASCADA: Your Honor, I'm sorry, one other issue I do want to bring up regarding the weapon enhancement. We do recognize the Nevada Supreme Court has spoken. Having been counsel in the Petrocelli case I don't see how it jibes with the ruling regarding the weapon enhancement. Notwithstanding that, Your Honor, we would ask that you impose the term of 4 to 10 years on the weapon enhancement, which would be under the new statute realizing the Supreme Court has spoken, and this may be an issue someday for a federal court.

THE COURT: Okay. And I would just put on the record that with respect to those areas that defense has sought to have redacted, the State has made no opposition to that. That is all information that has come out during the trial and during the various hearings of this case. So that information already is out there for purposes of the record in this case. That was all -- I think most of that came out in the trial, most if not all came out in the trial. So that information is public.

All right. We can hear from the speakers.

MR. DI GIACOMO: Yes.

THE COURT: Ma'am, please come on up here to the witness stand and just remain standing facing our court clerk who will administer the oath to you.

(Speaker sworn.)

THE CLERK: Please be seated and please state and spell your name.

THE WITNESS: Doris Emily Gibbs, G-i-b-b-s.

THE COURT: What would you like to say to me?

THE WITNESS: First I'd like to thank the Courts for their time and allowing me to speak today on behalf of my children and my extended Hadland family.

When the Hidalgo father-son team chose to do this crime, there were more victims than just Tim, also known as T.J. There are the family members that T.J. left behind. I'd like the Court to visualize a little four-year-old boy dressed in a yellow rain coat covered in soot with a little plastic red fireman hat watching and acting out the movies from Backdraft sceneries every day. And then last April this child fulfilled his dream and graduated third in his class from the fire academy.

On his way home that day, he called me up all excited because he was now a fireman. He said, I wish I could call dad and tell him. This entire great moment was tainted because his dad was not there to share this moment or to even share the memories of his childhood.

Then there's my daughter. I'd like you to imagine a young girl going through some major medical problems, no father to call or come and stay with you. Imagine that young girl going through a divorce, major medical and dealing with the murder of her father.

When she was born he had planted a tree in our backyard, an apple tree because she was the apple of his eye. She's in the military based far from

either side of her family, going through and dealing with all this all on her own.

And then there's my oldest son. He worked with his dad pouring concrete out here in Vegas, and he also worked at Home Depot. He got a major promotion a few months ago, and he could not call his dad or share this great news. I could not even imagine being 21 years old and getting a call that your dad is at the morgue.

This was a good child, respected, hard-working kid with good morals, good citizenship who's had, I believe, one speeding ticket his entire life, and these men who thought they were above the law dealt him a life sentence.

My mother passed away 39 years ago, and last year I got married, and on that day I missed my mother terribly. She died of an aneurysm, something that is explainable.

My kids will still miss their father, and this will still make no sense to any of them in 40 years. They still will not be able to explain it to their family. They will not be able to explain it to their children because in Girl Scouts you learn sticks and stones may break your bones, but words will never harm you. But this makes no sense. My kids will never experience another joy, reason to celebrate or just need to speak with their dad ever again because of these men's actions.

When their children are born, when they get married, when they experience life's great moments and sad times, they will never be able to share these moments with their dad ever again. These men handed them a life sentence.

I had the privilege to sit in this courtroom during trial, and I watched the Hidalgos and the way that they acted during trial, but when the jury left the courtroom, I saw different Hidalgos. They were joking, laughing; they showed no respect for the families that was sitting in the room. They were arrogant. At one

point, Hidalgo III even called his lawyers the dream team.

I don't know who these men thought they are, but I do know that after what I witnessed in this courtroom that they have no remorse of their crimes. They might act like they are, but it's not for their crime; it's for themselves. They're remorseful because they were caught, tried and found guilty.

One prime example is that after Tim was murdered, they then began to plan the murder of two more people, young kids, and if they would have succeeded, they would have had two more families dealt life sentences.

I know Mr. H has some medical issues, and I'm sure his family will plead to this; however, please remember that when Mr. Hadland, my beloved father-in-law had a stroke last fall, his son could not be there to support his father or his mother, and when he passed away a few weeks ago, Tim wasn't there to console his mother or his grieving children, and I'm sure that Hidalgo III has family, brothers and sisters, but please remember their family, friends, and neighbors, whoever, can visit them in prison, and that's a whole lot more than Tim or Tim's family can do.

That night on that desert road they handed Tim a death sentence, and they handed his loved ones a life sentence. What was once fiction to my children is now a reality, something that they will have to live with and deal with for the rest of their lives.

I ask the Court today for -- after a long four years to hand these two men the same that they handed my children. Please remember they aren't remorseful for their actions, only that they were caught, tried and found guilty. Their family can still visit them in prison, which is a whole lot more than Tim's family can do.

I ask that you please give them the maximum sentence that this Court

is allowed to give, and I'd like to thank you for your time.

THE COURT: All right. Thank you.

Please, to the witness stand just up those couple of stairs, and just remain standing facing that lady right there.

(Speaker sworn.)

THE CLERK: Please be seated. And please state and spell your name.

THE WITNESS: Allana, A-l-l-a-n-a, Hadland, H-a-d-l-a-n-d.

THE COURT: Thank you. What would you like to say to me?

THE WITNESS: My father was and still is the love of my life. He may not have been the most wonderful man in the world. He did do drugs and everything else, but he was the best father I could have ever asked for. He always told me that the happiest day of his life was the day that I was born, and as my mom stated, he planted me an apple tree, and I was his angel, and I have a tattoo on my back of an angel for him.

One of the proudest moments he had as a father was signing my pre-enlistment papers into the military. He had a sticker on the back of his truck that said, "My daughter's in the Air Force." He bragged about me being in the military all the time.

After I moved to Nebraska we talked every -- every day before I went to bed. Sometimes in the mornings when he would be on his way home from work at the Palomino Club I would be on my way to work, and we would talk for the drive. When I would iron my uniform we would talk and iron together. When I had a bad day, somehow he had ESP and knew, and even if it was just the sound of him singing to my voicemail, it made me feel better. It always helped.

On May 19, 2005, I talked to my dad for the last time before I went to

bed. He was excited about going camping, and we were making plans for him to come and see me that summer in Nebraska to see where I lived and what I did. I woke up about 12 -- 2 o'clock in the morning Nebraska time, which would be 12 here, freezing cold and shaking. Mind you, the weather's the same here as it is there, just more humid there. So for me to be cold is not right, and I knew something was wrong.

I went to work the next day and at 11 o'clock I went to lunch, and the coroner's office called and told me that my father was found dead at the lake last night. I was 19, and I was the first person to know that my dad was dead, and I didn't know what to do or who to talk to. And then I went home and I called my uncle because I wasn't going to be the one to call my grandma and say, hey, guess what, we're living a movie.

I don't believe it. At the time I told them that they were crazy and playing a very dirty joke on me, and today I still don't believe it. I still sit by the phone on my birthday four years later waiting for my dad to call. I sit in my office at work waiting for flowers because he sent me flowers at work every year, at school or work.

After he died I couldn't make that drive to work anymore. I had to move because driving the route that I took to talk to him I couldn't take it. I didn't iron my uniform for almost a year because ironing was not an option for me. For the first couple of months I called voicemail, and I'd listen to his voice. It would help a little bit, and then his phone got turned off, and now I'll never hear the sound of my father's voice again. My father will never tell me that he loves me again. He'll never sing to my voicemail. He'll never answer the phone and say, Hey, baby.

He wasn't there with me when I got married; he didn't walk me down

the aisle. When I found out my husband had a girlfriend, he wasn't there to do what dad's usually do and have a talk with their son-in-laws. He wasn't there when I got divorced. I have reoccurring bone tumors in my arm, and I'm in extreme pain 24 hours a day, and my dad's not there to comfort me.

Because of the murder and the constant back and forth with courts, I have officially been diagnosed with post-traumatic stress disorder. I take antidepressants, antianxiety pills, sleep aids, probably more medication than any 23-year-old person should take just to keep myself from having a nervous breakdown. And every time I start getting better, somehow there's an appeal done, and court is delayed a few more months, and it sets me back. It brings back all the pain every time, and usually it's worse, and it's like all the victims become -- keep becoming victims and the defendants are just sitting back laughing because they're just hanging out, in my opinion.

I don't understand how someone's life can be valued at $5,000. My father's life wasn't -- could not be valued in dollar amounts. To me it -- nothing will ever replace what was taken from me. I will always look at the picture that I have of my father and miss him. I'll always have to tell my children about my dad and how much all he wanted was for us to have kids, four of us each because he had four children so he wanted us to all have four kids so that he could have grandbabies out the wazoo.

To me a couple years in prison isn't -- doesn't justify what was done to my father. Nobody can play God but God, and to shoot somebody in the head, that's playing God. Nobody should have that right. The rest of my life I have to deal with the fact that I live in a movie because to me all this ever was was a movie and then only in movies do people get murdered, not in real life. And then on May 20th,

2005, I woke up and I was in a movie.

And that's all.

THE COURT: Thank you.

Just please remain standing facing our court clerk.

(Speaker sworn.)

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

THE WITNESS: Jennifer Hadland, J-e-n-n-i-f-e-r, H-a-d-l-a-n-d.

THE COURT: Thank you. What would you like to say to me?

THE WITNESS: I was 14 years old when my dad was killed, and I graduated from high school two weeks ago on his birthday. I'm not going to say much because I'm going to start crying, but like my sister said, $5,000 doesn't put a price on my dad's life, and I will never have him back.

When I get married, I won't have my father there. When my sister was married he wasn't there. He wasn't there to teach me how to drive. He won't be there when I have kids. I don't think it's right that they got to do what they did and get away with it, and just because they're in jail doesn't mean that they're getting away with it, but it doesn't mean that I'll have my father back 'cause they're in jail.

People can say whatever they want; it will never bring my dad back. I'll never be able to have him hug me. I'll never be able to see him. He'll never tell me that he loves me again.

They can still talk to their family. They can still see their family. They can live, they can breathe, they can eat. Yeah, it's from a jail cell, but it's better than nothing. The pain that they have brought to me and my family is more than anybody will ever have in this world. I've sat in here every single day for their trial, for the Kenneth Counts trial, and I'll do it again for Deangelo's trial, and I still don't believe.

I still wake up on my dad's birthday and want to call him. I still wake up on Father's Day and want to call him. I've actually woken up dialing his number. I woke up that day, and I saw it on the news. I saw his girlfriend's car, and I knew he had gone to the lake that night, and I went to school anyways. I got told by my mother and a counselor that I would never see my father again. I was supposed to go to this house that weekend. I was going to stay with him that summer, and I couldn't.

I'm the youngest of four children, and I love my brothers and my sister with all my heart, and they loved my father and we -- and I loved him too. He'll never be completely gone. He'll always be loved. He'll always be missed.

My entire family sits here, and we've all gone through these trials, and it's still unbelievable. I have nothing else to say. I'm going to break.

THE COURT: Thank you for coming and speaking to me.

MR. DI GIACOMO: That's it, Judge.

THE COURT: Mr. Hidalgo Jr., and Mr. Hidalgo III, if you'll please stand.

All right. Mr. Hidalgo Jr., pursuant to the jury's verdict in this case, you are hereby adjudged guilty of Count No. 1, Second degree murder with use of a deadly weapon and Count No. 2, Conspiracy to commit battery with a deadly weapon or Conspiracy to commit battery with substantial bodily harm, a gross misdemeanor.

In addition to the $25 administrative assessment, the $150 DNA analysis fee and the fact that you have to submit to a test for genetic markers on Count No. 1, you're sentenced to a minimum term of 120 months in the Nevada Department of Corrections and a maximum term of life and an equal and consecutive 120 months to life.

On Count No.2, the Conspiracy, you are sentenced to 12 months in the Clark County Detention Center. That is imposed concurrently with the time you received on Count No. 1. And you are entitled to --

What is the correct credit for time served?

MR. DI GIACOMO: It's 184, Judge, but it's actually -- Count 1 is the Conspiracy, Count 2 is the murder.

THE COURT: I'm sorry. It was wrong in the PSI.

MR. DI GIACOMO: Okay.

THE COURT: So it should be corrected to Count 1 being the Conspiracy and Count 2 being the Second degree murder with use of a deadly weapon which is imposed concurrently.

As to Mr. Hidalgo III --

So Count 1 is the conspiracy, Count 2 is the Second degree murder, and Counts 3 and 4 are the solicitation; is that right?

MR. DI GIACOMO: That's correct, Judge.

THE COURT: Okay. That was also incorrect in the PSI.

Mr. Hidalgo III, by virtue of the jury's verdict, you are hereby adjudged guilty of Count No. 1, Conspiracy to commit battery with a deadly weapon or Conspiracy to commit battery with substantial bodily harm, a gross misdemeanor. Count No. 2, Second degree murder with use of a deadly weapon, Count No. 3, Solicitation to commit murder, and Count No. 4, Solicitation to commit murder.

In addition to the $25 administrative assessment, the $150 DNA analysis fee and the fact that you must submit to a test for genetic markers, on Count No. 1, Conspiracy, you're sentenced to 12 months in the Clark County Detention Center.

On Count No. 2, Second degree murder with use of a deadly weapon, you're sentenced to a minimum term of 120 months in the Nevada Department of Corrections and a maximum term of life with an equal and consecutive 120 to life. That is imposed concurrently with the time I gave you on Count No. 1.

On Count 3, Solicitation to commit murder, you're sentenced to a minimum term of 24 months in the Nevada Department of Corrections, a maximum term of 72 months in the Nevada Department of Corrections. That is imposed concurrent with the time I gave you on Counts No. 1 and 2.

On Count No. 4, Solicitation to commit murder you're sentenced to a minimum term of 24 months in the Nevada Department of Corrections, a maximum term of 72 months. That is also imposed concurrently with the time you were given on the other counts. And the correct credit for time served is 1,492 days.

MR. DI GIACOMO: That's correct, Your Honor.

THE COURT: All right. Thank you.

MR. GENTILE: Your Honor, I don't believe you read the credit for time served with respect to Mr. Hidalgo Jr.

THE COURT: Oh, I apologize.

MR. DI GIACOMO: 184

THE COURT: And the correct time is 184 days credit for time served.

MR. DI GIACOMO: Judge, one housekeeping matter. Do you want a short order on the motion for new trials, or do you want a written order drafted up on the findings here?

THE COURT: If you would do a draft that would be great.

MR. DI GIACOMO: Can I send an order down for the transcripts so I can have a transcript of it?

THE COURT: Of course.

MR. DI GIACOMO: Thank you, Judge.

-oOo-

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

JANIE L. OLSEN
Recorder/Transcriber

JOC

FILED

2009 JUL 10 A 8:27

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

LUIS HIDALGO, JR.
aka Luis A. Hidalgo
#1579522

Defendant.

CASE NO. C241394

DEPT. NO. XXI

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – CONSPIRACY TO COMMIT MURDER (Category B Felony), in violation of NRS 199.480, 200.010, 200.030, and COUNT 2 – MURDER WITH USE OF A DEADLY WEAPON (Category A Felony), NRS 200.010, 200.030, 193.165; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 1 – CONSPIRACY TO COMMIT A BATTERY WITH A DEADLY WEAPON (Gross Misdemeanor), in violation of NRS 199.480, 200.481, COUNT 2 – SECOND DEGREE MURDER WITH USE OF A DEADLY WEAPON (Category A Felony), NRS 200.010, 200.030, 193.165; thereafter, on the 23RD day of June, 2009, the Defendant

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was present in court for sentencing with his counsel, DOMINIC GENTILE, ESQ., and PAOLO ARMENI, ESQ., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition to the $25.00 Administrative Assessment Fee and $150.00 DNA Analysis Fee including testing to determine genetic markers, the Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as follows: AS TO COUNT 1 - TO TWELVE (12) MONTHS in the Clark County Detention Center (CCDC); AS TO COUNT 2 - TO LIFE with a MINIMUM parole eligibility of ONE HUNDRED TWENTY (120) MONTHS, plus an EQUAL and CONSECUTIVE term of LIFE with a MINIMUM parole eligibility of ONE HUNDRED TWENTY (120) MONTHS for the Use of a Deadly Weapon, COUNT 2 to run CONCURRENT with COUNT 1, with ONE HUNDRED EIGHTY-FOUR (184) DAYS credit for time served.

DATED this 25th day of June, 2009

Valerie Adair

VALERIE ADAIR
DISTRICT JUDGE

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Attorneys for Defendant LUIS A. HIDALGO, JR.

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, vs. LUIS A. HIDALGO, III, #1849634, LUIS A. HIDALGO, JR., #1579522 Defendant.	CASE NO. C212667/C241394 DEPT. XXI **LUIS A. HIDALGO, JR.S' NOTICE OF APPEAL**

COMES NOW the Defendant, Luis A. Hidalgo, Jr., by and through his attorney, Dominic P. Gentile, Esq., of the law firm of Gordon Silver, hereby appeals all pretrial motions, the judgment of conviction, the jury verdict and all post-trial motions. The judgment of conviction was entered on July 10, 2009.

Dated this 14th day of July, 2009.

GORDON SILVER

DOMINIC P. GENTILE
Nevada Bar No. 1923
3960 Howard Hughes Pkwy., 9th Floor
Las Vegas, Nevada 89169
(702) 796-5555
Attorney for Defendant LUIS A. HIDALGO, JR.

CERTIFICATE OF SERVICE

The undersigned, an employee of Gordon Silver, hereby certifies that on the 16 day of July, 2009, she served a copy of Notice of Appeal, 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
Fax: (702) 477-2922

Giancarlo Pesci
Deputy District Attorney
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155
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ADELE L. JOHANSEN, an employee of
GORDON SILVER

ORDR
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
MARC DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #006955
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

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2009 AUG -4 A 8:57

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

LUIS ALONSO HIDALGO, III
#1849634
LUIS HIDALGO, JR.
#1579522,

Defendants.

CASE NO: C212667 / C241394

DEPT NO: XXI

ORDER DENYING DEFENDANTS MOTION FOR JUDGMENT OF ACQUITTAL, OR IN THE ALTERNATIVE, MOTION FOR NEW TRIAL

DATE OF HEARING: 5/1/2009
TIME OF HEARING: 9:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 1st day of May and the 23rd day of June, 2009, the Defendants being present, DOMINIC GENTILE and PAOLA ARMENI for Defendant LUIS HIDALGO JR. and JOHN ARRASCADA and CHRIS ADAMS for Defendant LUIS HIDALGO, III, the Plaintiff being represented by DAVID ROGER, District Attorney, through MARC DIGIACOMO and GIANCARLO PESCI, Chief Deputy District Attorneys, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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///

1. NRS 175.381 allows for the Court to set aside the verdicts and enter a Judgment of Acquittal if the evidence is insufficient to support the charges. NRS 176.515 allows for the Court to grant a new trial. Unless based upon new evidence under NRS 176.515, the motion for either Judgment of Acquittal or New Trial must be made within seven (7) days of the verdict.

2. On February 24, 2009, the seventh day after verdict, the Court signed an *ex parte* application to extend time to file a motion for new trial. Although the order did not reference a motion for judgment of acquittal, the Court finds that it has jurisdiction to consider both statutes and the entire Motion before the Court.

3. As to the motion for judgment of acquittal, the court finds there was sufficient evidence that the conspiracy to harm Timothy Hadland engaged in by Defendants went beyond a simple battery and that the conspiracy intended to do significant harm to Mr. Hadland and that there was sufficient evidence to infer Defendants' knowledge and utilization of a deadly weapon. As such, the Court will not set aside the verdicts and enter a judgment of acquittal.

4. As to whether or not the Court, as the thirteenth juror, will set aside the verdicts and order a new trial based upon conflicting evidence, the Court's personal belief is the conspiracy to harm Timoth Hadland went beyond a simple battery and the conspiracy intended to do significant harm to Mr. Hadland. Additionally, Defendants had knowledge of and utilization of a deadly weapon. As such, the Court will not set aside the verdicts based upon its own personal interpretation of the evidence.

5. Defendant asserts misconduct occurred during the deliberation stage of the trial. The common law and statutory rule that a jury's verdict may not be impeached by affidavits, testimony or statements of the jurors themselves clearly precludes consideration of this allegation. See Meyer v. State, 119 Nev. 554, 80 P.3d 447 (2003); NRS 50.065. The allegation that the jury misinterpreted the instructions of the Court is premised directly on a statement of a juror about his mental processes which are contained in the affidavit of Ms. Armeni. The Court finds that such mental processes are specifically the type and nature of

allegations which are precluded from consideration by both NRS 50.065 and Meyer. As such, those portions of Ms. Armeni's affidavit which reference such mental processes are stricken. Moreover, even if the Court were to consider the allegation of the defense, the mere fact that the jury heard something different on the tape does not necessarily mean that the jury misconstrued the instructions of the Court. The fact that Ms. Espindola and Mr. Hidalgo, III did not correct Deangelo Carroll when he used the pronoun "He," could be considered an adoptive admission by those parties. As such, the jury would have properly been following the instructions of the Court.

6. As to the allegation that the verdict forms are fatal to the verdict, the Court finds this argument without merit. The jury instructions, as a whole, clearly indicate the law as it relates to when a Defendant may be held liable for another person's use of a deadly weapon. Jurors are presumed to follow the instructions on the law. See Richardson v. Marsh, 481 U.S. 200, 206, 107 S.Ct. 1702 (1987). The fact that the verdict form for the conspiracy count did not separate out the two separate felony battery theories in no way suggests the jury did not follow the law. This is particularly true where the jury convicted defendants of the deadly weapon enhancement on the murder counts indicating they found the enhancement beyond a reasonable doubt. While the exact thought process of the jury may have been clearer if the Court had separated out the Conspiracy to Commit Battery Constituting Substantial Bodily Harm and Conspiracy to Commit Battery With A Deadly Weapon, the Court finds that failure to do so did not prejudice Defendants.

7. As to the admissibility of Jayson Taoipu's testimony from the Kenneth Counts trial, the Court stands by its decision to not admit the testimony. Defendant LUIS HIDALGO, III sought to admit just a miniscule portion of the transcript to establish one fact. Defendant LUIS HIDALGO, III objected to the entire transcripts being read, and to impeachment of that portion of the transcript as allowed under NRS 51.069. The Court found that the prior testimony was not properly admissible as there was no reason for the State in the severed trial of Kenneth Counts to have impeached Mr. Taoipu on a fact wholly irrelevant to the issue before the jury in Kenneth Counts. As such, the Court found that it

would be inappropriate to admit just the one portion of the transcript as prior testimony as it was not reliably tested, and as such, hearsay.

8. Finally, Defendant Hidalgo, Jr. asserts that the language of "slight evidence of a conspiracy" reduced the burden of proof of the State in jury instruction number 40. Jury instruction number 40 was a correct statement of the law as it relates to how the jury is to assess statements of co-conspirators during the course and in furtherance of the crime. The instruction does not in any manner relate to the burden of proof on the underlying charge. In contradistinction, jury instructions number 16, 23, 24, 26, 28, 29, 30, 35, 36, and 37 each reference the State's burden of proof of beyond a reasonable doubt. Additionally, during deliberations, the Court responded to a question from the jury which reiterated the burden of proof. Not only are jurors presumed to follow the instructions on the law, Richardson v. Marsh, 481 U.S. 200, 206, 107 S.Ct. 1702 (1987), but it seems inconceivable that the jury could have misunderstood those six (6) words in instruction 40 considering that the jury was instructed more than ten (10) times on the State's burden of proof.

9. THEREFORE, IT IS HEREBY ORDERED that DEFENDANTS MOTION FOR JUDGMENT OF ACQUITTAL, OR IN THE ALTERNATIVE, NEW TRIAL shall be, and it is, hereby denied.

DATED this 30th day of July, 2009.

VALERIE ADAIR

DISTRICT JUDGE

DAVID ROGER
District Attorney
Nevada Bar #002781

BY
MARC DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #006955

REGISTER OF ACTIONS
CASE NO. 08C241394

The State of Nevada vs Luis Hidalgo Jr

Case Type:	**Felony/Gross Misdemeanor**
Date Filed:	**02/13/2008**
Location:	**Department 21**
Conversion Case Number:	**C241394**
Defendant's Scope ID #:	**1679522**
Lower Court Case Number:	**07GJ00101**

RELATED CASE INFORMATION

Related Cases

05C212667-1 (Consolidated)
05C212667-2 (Consolidated)
05C212667-3 (Consolidated)
05C212667-4 (Consolidated)
05C212667-5 (Consolidated)

PARTY INFORMATION

Defendant	**Hidalgo Jr, Luis** *Also Known As* Hidalgo , Luis A	**Lead Attorneys** **Dominic P. Gentile** *Retained* 7023860066(W)
Plaintiff	**State of Nevada**	**David J. Roger** 702-671-2700(W)

CHARGE INFORMATION

Charges: Hidalgo Jr, Luis	Statute	Level	Date
1. CONSPIRACY TO COMMIT A CRIME	199.480	Gross Misdemeanor	01/01/1900
1. MURDER.	200.010	Gross Misdemeanor	01/01/1900
1. DEGREES OF MURDER	200.030	Gross Misdemeanor	01/01/1900
2. MURDER.	200.010	Felony	01/01/1900
2. DEGREES OF MURDER	200.030	Felony	01/01/1900
2. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900

EVENTS & ORDERS OF THE COURT

08/11/2009 **Minute Order** (3:30 PM) ()
MINUTE ORDER RE: JUDGMENT OF CONVICTION Court Clerk: Denise Husted Heard By: Valerie Adair

Minutes
08/11/2009 3:30 PM
- It having been brought to the attention of the Court by defense counsel in this matter that the Judgment of Conviction, filed on 7/10/09, contained an error as to the exact count the Deft. was found guilty of at time of trial, the Court does HEREBY ORDER, that an AMENDED JUDGMENT OF CONVICTION be filed to reflect that the Deft. was found GUILTY of COUNT I - CONSPIRACY TO COMMIT A BATTERY WITH A DEADLY WEAPON OR BATTERY RESULTING IN SUBSTANTIAL BODILY HARM (F), in place and stead of Conspiracy to commit a battery with a deadly weapon.

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

LUIS HIDALGO, JR.
aka Luis A. Hidalgo
#1579522

Defendant.

CASE NO. C241394

DEPT. NO. XXI

AMENDED JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – CONSPIRACY TO COMMIT MURDER (Category B Felony), in violation of NRS 199.480, 200.010, 200.030, and COUNT 2 – MURDER WITH USE OF A DEADLY WEAPON (Category A Felony), NRS 200.010, 200.030, 193.165; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 1 – CONSPIRACY TO COMMIT A BATTERY WITH A DEADLY WEAPON (Gross Misdemeanor), in violation of NRS 199.480, 200.481, COUNT 2 – SECOND DEGREE MURDER WITH USE OF A DEADLY WEAPON (Category A Felony), NRS 200.010, 200.030, 193.165; thereafter, on the 23RD day of June, 2009, the Defendant was present in court for sentencing with his counsel, DOMINIC GENTILE, ESQ., and PAOLO ARMENI, ESQ., and good cause appearing,

THE DEFENDANT WAS ADJUDGED guilty of said offenses and, in addition to the $25.00 Administrative Assessment Fee and $150.00 DNA Analysis Fee including testing to determine genetic markers, the Defendant was SENTENCED to the Nevada Department of Corrections (NDC) as follows: AS TO COUNT 1 - TO TWELVE (12) MONTHS in the Clark County Detention Center (CCDC); AS TO COUNT 2 - TO LIFE with a MINIMUM parole eligibility of ONE HUNDRED TWENTY (120) MONTHS, plus an EQUAL and CONSECUTIVE term of LIFE with a MINIMUM parole eligibility of ONE HUNDRED TWENTY (120) MONTHS for the Use of a Deadly Weapon, COUNT 2 to run CONCURRENT with COUNT 1, with ONE HUNDRED EIGHTY-FOUR (184) DAYS credit for time served.

THEREAFTER, on the 11th day of August, 2009, a Minute Order was prepared reflecting: It having been brought to the attention of the Court by Defense Counsel in this matter that the Judgment of Conviction, filed on July 10, 2009, contained an error as to the exact count the Defendant was found guilty of at time of trial, the Court does HEREBY ORDER that an AMENDED JUDGMENT OF CONVICTION be filed to reflect that the Defendant was found GUILTY of COUNT 1 – CONSPIRACY TO COMMIT A BATTERY WITH A DEADLY WEAPON OR BATTERY RESULTING IN SUBSTANTIAL BODILY HARM, in place and stead of Conspiracy to Commit Battery with a Deadly Weapon.

DATED this 14th day of August, 2009

Valerie Adair

VALERIE ADAIR
DISTRICT JUDGE

REGISTER OF ACTIONS
CASE NO. 05C212667-3

The State of Nevada vs Anabel Espindola

Case Type:	**Felony/Gross Misdemeanor**
Date Filed:	**06/17/2005**
Location:	**Department 21**
Conversion Case Number:	**C212667**
Defendant's Scope ID #:	**1849750**
Lower Court Case Number:	**05FB00052**

RELATED CASE INFORMATION

Related Cases

05C212667-1 (Multi-Defendant Case)
05C212667-2 (Multi-Defendant Case)
05C212667-4 (Multi-Defendant Case)
05C212667-5 (Multi-Defendant Case)
08C241394 (Consolidated)

PARTY INFORMATION

Defendant	**Espindola, Anabel**	**Lead Attorneys** **Jennifer R. Lloyd-Robinson** *Retained* 7022334225(W)
Plaintiff	**State of Nevada**	**David J. Roger** 702-671-2700(W)

CHARGE INFORMATION

Charges: Espindola, Anabel	Statute	Level	Date
1. VOLUNTARY MANSLAUGHTER	200.050	Felony	01/01/1900
1. MANSLAUGHTER	200.040	Felony	01/01/1900
1. A PERSON CONVICTED OF THE CRIME OF VOLUNTARY MANSLAUGHTER IS GUILTY OF A	200.080	Felony	01/01/1900
1. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
2. DEGREES OF MURDER	200.030	Felony	01/01/1900
2. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
3. SOLICITATION TO COMMIT A CRIME.	199.500	Felony	01/01/1900
4. SOLICITATION TO COMMIT A CRIME.	199.500	Felony	01/01/1900

EVENTS & ORDERS OF THE COURT

10/07/2010 **Sentencing** (9:30 AM) (Judicial Officer Adair, Valerie)
10/07/2010, 02/10/2011

Minutes
10/07/2010 9:30 AM
- The Court noted that a presentence investigation report was not prepared. COURT ORDERED, matter referred to the Division of Parole and Probation for a presentence investigation report and SET for sentencing. O.R./H.A. CONTINUED TO: 2/10/11 9:30 AM

02/10/2011 9:30 AM

Parties Present
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DISTRICT COURT
CLARK COUNTY, NEVADA

CLERK OF COURT

THE STATE OF NEVADA, Plaintiff, vs. LUIS HIDALGO JR., aka LUIS A. HIDALGO, Defendant.	)	CASE NO. C241394 DEPT. XXI

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

TUESDAY, JANUARY 11, 2011

RECORDER'S TRANSCRIPT OF HEARING RE:
DEFENDANT'S MOTION TO AMEND RECORD

APPEARANCES:

FOR THE STATE: MARC DIGIACOMO, ESQ.
Deputy District Attorney

FOR THE DEFENDANT: DOMINIC P. GENTILE, ESQ.

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

LAS VEGAS, CLARK COUNTY, NV., TUES., JAN. 11, 2011

THE COURT: Mr. Gentile is next on 1.

MR. DI GIACOMO: Good morning, Judge. Marc DiGiacomo for the State.

MR. GENTILE: Good morning, Your Honor, Dominic Gentile.

THE COURT: All right. This is the defendant's motion to amend the record which was somewhat opposed by the State.

I would note I don't think we need to amend the record. I think that the record is clear on pretty much all of these points, and we can say today the record should reflect that the notes have not been recovered or the memorandum or whatever you call it.

I don't really dispute it was notes. I mean, I think we've said there wasn't a lot on it. It was a page of legal paper. It wasn't written on every line. There was just a few sort of, you know, three or four lines here and then a few spaces and then three or four lines there as I recollect.

Does that comport with the State's recollection?

MR. DI GIACOMO: To be honest with you, Judge, I don't remember ever seeing the notes. My recollection is that --

THE COURT: Is they came directly from the police.

MR. DI GIACOMO: -- the police, and he said he had a -- when he was asked to provide it to the Court, he provided it to the Court, and my understanding from both him and the Court was there was very limited information that was contained on this document. It certainly wasn't a complete memorialization of the interview or anything like that.

THE COURT: No, and that comports with the Court's recollection. I just

wanted it to be clear it was a single sheet of legal paper. It was not written on every line. It was, like I said, you know, three or four lines here and then some spaces referencing another idea or thought or topic and then three or four more lines. So in any event, I think we do need to make that clear on the record.

MR. GENTILE: I would propose -- and Mr. DiGiacomo I think is in agreement -- the State's right. It was not -- I don't think it's right to characterize the interview as a post deal. It was really the proffer that led to the deal, and so I think the best way for the order to read would be to insert the date of the interview, and I -- we're of the belief that it was -- well, we know it was a Saturday, and it was either the 26th of January or the 2nd of February. And I think the record reflects it.

So I'm more than willing to go back to the office, find the date and put that in instead of the words post deal.

MR. DI GIACOMO: I don't know that there needs to be another order. I mean, I think the record is clear. There will be a transcript of this proceeding. I don't know that there's an order that is necessary.

I agree with Mr. Gentile that the date is going to be one of those two dates, but I think, and unfortunately the one transcript where the most discussion was had obviously was ordered sealed because there was some conversation outside the presence of the State, but the entire transcript has been sealed. And so I don't have the ability to pull that up on Odyssey or Blackstone and read it.

And I was talking to Mr. Gentile. He doesn't object if that transcript now becomes unsealed so that it can be part of the permanent record. He tells me there's nothing in there that's of consequence.

MR. GENTILE: I don't think there's anything in there that at this point cannot be made public.

THE COURT: All right.

MR. GENTILE: Which of course is going to require another motion to continue the brief in the Supreme Court so that we can get it unsealed and copied. But --

MR. DI GIACOMO: Well, they don't need a copy. Once it becomes unsealed, we'll be able to get access to it.

MR. GENTILE: No, that's not the issue. The issue is to supplement the record.

THE COURT: Well, the issue is getting it up there and making it a part of the record up there so that they can --

So, I mean, I don't know that -- I just wanted to say I don't think we need to amend the record because I agree with the State. I think it's clear on the record, number one, that the Court ordered that the notes be made a court exhibit; that is true, and I think that should be already reflected in the record, but I'll just state it for today so you'll have a single transcript, Mr. Gentile, if that would aid you in front of the Supreme Court.

MR. GENTILE: Sure.

THE COURT: The next thing is the renewed motion to compel was ultimately denied, and I just want to state I think this is already clear, but the denial had nothing to do with the location or missing nature of the notes. It was not based on that. I don't think that there's any inference of that in the record, but I just want to make that clear as well.

The notes were misplaced or lost. We don't know what happened to them, and the notes have not been recovered.

MR. GENTILE: Okay. Well, that's certainly good enough. I can submit that

to the Supreme Court.

THE COURT: All right. Anything else, Mr. Gentile?

MR. GENTILE: Only I'd ask for an expedited transcript.

THE COURT: That's fine.

And, Mr. DiGiacomo, anything else for the State?

MR. DI GIACOMO: Just put on the record that the hearing on February 14, 2008 --

THE COURT: Can I do an oral order?

THE COURT RECORDER: Sure.

THE COURT: All right. I'm orally ordering the transcript expedited. That's just for our internal bookkeeping.

MR. DI GIACOMO: And just the transcript filed on October 30th of '08, from February 14th, '08, shall be unsealed.

THE COURT: All right. That we need an order for.

MR. DI GIACOMO: I will send an order down for that.

THE COURT: All right. Thank you.

MR. GENTILE: Thank you, Your Honor.

-oOo-

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

JANIE L. OLSEN
Recorder/Transcriber