IN THE SUPREME COURT OF

THE STATE OF NEVADA

LUIS A. HIDALGO, III

Appellant,

v. No. 54209

STATE OF NEVADA, No. 54272

Respondent.
_____/

PETITION FOR EN BANC RECONSIDERATION PURSUANT TO NRAP 40A

COMES NOW, Appellant, LUIS A. HIDALGO, III, (Hidalgo III) by and through counsel, John L. Arrascada and Christine A. Aramini and files the following Petition for En Banc Reconsideration Pursuant to NRAP 40A.

STANDARD OF REVIEW

En Banc reconsideration of a panel decision by the full court may only be ordered when (1) to secure or maintain uniformity in of its decisions; (2) the proceeding involves a substantial precedential, constitutional or public policy issue. Both of these standards apply in this case.

I. The Essence of the Issue Presented Regarding Jury Instruction 40

Jury Instruction #40, directed the jury to apply a "slight evidence" test in determining two essential elements of a conspiracy: (1) its existence, and (2) its membership. 24 Appellant's Amended Appendix[1] 4487. See also "Jury Instruction

[1] Appellant's Amended Appendix will be referred to hereinafter as "AAA."

#40" attached hereto as Exhibit 1. It did so over the specific objection of the Petitioner on the grounds that it addressed the law of *admissibility* of evidence - a judicial function with which the jury is not to be concerned - and not the substantive law of conspiracy that the jury must apply at that stage of the proceedings. 23 AAA 4212-4213. The instruction was preceded by others articulating the proof beyond a reasonable doubt standard, but none of them expressly addressed the elements of "existence" of and "membership" in a criminal conspiracy in clear terms. That standard of proof is constitutionally mandated as to each element of an offense in a criminal trial. In re Winship, 397 U.S. 358 (1970); Labastida v. State, 115 Nev. 298, 303, 989 P. 2d 443, 447 (1999). To permit otherwise is structural error mandating reversal, Sullivan v. Louisiana, 508 U.S. 275, 113 S. Ct. 278 (1993), as it is plainly inconsistent with the constitutionally rooted presumption of innocence. Cool v. United States, 409 U.S. 100, 93 S. Ct. 354 (1972).

Petitioner has no quarrel with the "slight evidence" standard being used to decide the *admissibility* of co-conspirators statements. McDowell v. State, 103 Nev. 527, 746 P. 2d 149 (1987). However, the question presented in this case is one that was left unanswered by McDowell: "should the standard utilized by the court in deciding *admissibility* be employed by the jury in it's decision process?" The answer is "no" for two reasons: (1) the standard for *admission* of the evidence is less than beyond a reasonable doubt; and (2) the jury should not be deciding questions of *admissibility*. The instruction has a pernicious impact upon confidence that the elements of the crime – which are **identical** to the predicates for *admission* of the evidence - were decided by the jury beyond a reasonable doubt. A jury must not be required to apply the "slight evidence" standard to the **identical** elements to which they must also apply the beyond a reasonable doubt standard.

II. The Problem is Systemic and Impacts All Conspiracy Cases

As the State told the Court at oral argument on June 13, 2012: "The argument [of the Petitioner] is that this instruction should never be given to a jury. Well... **it's the same instruction that's been given in every conspiracy case we've ever had in the last, well, thirteen years that I've been here.**" Official Nevada Supreme Court Oral Argument Recording commencing at 11min.48sec. (emphasis added.) The State acknowledged that: "[I]n Nevada, it is an unresolved issue of statutory interpretation whether a jury may be charged with also making an admissibility determination regarding co-conspirator statements," (Respondent's Answering Brief at page 16, lines 19-21), and "the Court is free to now permit or prohibit Nevada's district courts from instructing their juries to make the admissibility determination regarding co-conspirator statements. **The law would probably benefit from the Court's guidance and Hidalgo III's case does present the question.**" Respondent's Answering Brief at page 24, lines 24 – 28. (emphasis added). Thus, the substantial precedential, constitutional and public policy value of an *en banc* decision in this matter, as required by NRAP 40A(a)(2), is satisfied.

III. The Problem is Unique to Nevada

Every Nevada court bound by Title 4 of the Nevada Revised Statutes faces a serious problem when called upon to instruct a jury at the conclusion of a case in which NRS 51.035-3(c), (d) or (e) was the bases for the admission of evidence. If the charges, claims or defenses contain elements **identical** to the conditions that must be met for *admissibility* under NRS 51.035(3)(c), (d) or (e), the "slight evidence" instruction invites confusion of the jurors and reduction of the burden of proof they must apply in deciding the merits. Jury instructions that tend to confuse or mislead are erroneous. Culverson v.State, 106 Nev. 484, 488, 797 P. 2d 238, 240 (1990).

It has been said that Nevada "jumped the gun" when it adopted the Preliminary Draft of the Federal Rules of Evidence. Wright & Graham, Federal Practice & Procedure, §5051 (2nd ed.). No other state did so. Therefore, unless this Court addresses the issue, trial courts cannot look to the law of other jurisdictions in deciding this important recurring question. No decisions exist interpreting the language of the Nevada statutes at issue herein: NRS 47.060, which deals with who determines *admissibility*[2], and NRS 47.070, which concerns the relative roles of the judge and jury in determining *relevancy.*[3]

IV. The Problem in Context

Under NRS 47.060 the court's ruling on *admissibility* is final. NRS 47.070 is only triggered when additional predicate facts are necessary to make evidence *relevant.* The specific category of evidence at issue *sub judice* is "a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy." NRS 51.035-3(e). However, the problem also exists when NRS 51.035-3(c) or (d) are employed for the admission of evidence in criminal and civil cases. Where an objection is made at the

---

[2] 1. Preliminary questions concerning … the admissibility of evidence shall be determined by the judge, subject to the provisions of N.R.S. 47.070. 2. In making his determination he is not bound by the rules of evidence provisions of this Title except the provisions of chapter 49 of NRS with respect to privileges.

[3] 1. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the **judge shall admit** it upon the introduction of evidence **sufficient to support a finding of the fulfillment of the condition.** 2. If **under all the evidence upon the issue** the jury might reasonably find that the **fulfillment of the condition is not established**, the judge shall instruct the jury to consider the issue and to disregard the evidence unless they find the condition was fulfilled. 3. If **under all the evidence upon the issue** the jury could not reasonably find that the condition was fulfilled, the **judge shall instruct the jury** to disregard the evidence. (emphasis added.)

time it is offered, as it was in this case, [4] NRS 47.060 mandates that the judge makes the determination of its admissibility.

For NRS 51.035-3(e) to apply, the existence and membership of the conspiracy must be established by evidence independent of the statement itself. Wood v State, 115 Nev. 344, 349 (1999). See Carr v. State, 96 Nev. 238, 239, 607 P. 2d 114, 116 (1980). If the court decides that "slight evidence" exists independent of the statement, it is deemed not hearsay, it is admitted and can be considered by the jury. This Court has never addressed whether the jury should revisit the issue of *admissibility.* Neither has it decided whether NRS 47.070 applies to this situation and, if it does, what quantum of evidence the state and federal Constitutions require as "*sufficient to support a finding of the condition*" now that *"all the evidence upon the issue"* has been received in a trial. It has never suggested that the jury should be instructed to apply the "slight evidence" standard. All conspiracy cases and trial courts cry out for guidance on this issue.

When making the decision as to *admissibility* a trial judge is not concerned with sufficiency to convict. Bourjaily v. United States, 483 U.S. 171, 107 S.Ct. 2775, (1987).[5] The judge's use of the lower standard of proof does no violence to the beyond a reasonable doubt standard the jury must apply. "Once a trial judge makes a preliminary determination under [NRS 47.060] that the requirements of [NRS 51.035-3(e)] have been satisfied, there is no reason to instruct the jury that it is required to make an identical determination independently of the court: whether such a statement can be considered at all is for the court alone to determine." United States v. Hagmann,

---

[4] A standing objection was allowed by the district court to all out-of-court statements by persons alleged to be co-conspirators. 13 AAA 2398, 2478-2488, 14 AAA 2715-2716, 2493-2500.

[5] "The inquiry made by a court concerned with [admissibility] is not whether the proponent of the evidence wins or loses his case on the merits, but whether the evidentiary rules have been satisfied. Thus, the evidentiary standard is unrelated to the burden of proof on the substantive issues."

950 F. 2d 175, 181 n.11 (5th Cir. 1991), cert. denied 506 U.S. 835 (1992), rehearing denied 506 U.S. 982 (1992) (bracketed material substituted for federal equivalents in original). In United States v. Martinez de Ortiz, 907 F.2d 629 (7th Cir. 1990)(en banc) the court addressed the mechanics of deciding the admissibility of such evidence. It held "...the jury does not decide the hearsay question. The question for the jury is one of the substantive law of conspiracy." Martinez de Ortiz, 907 F.2d at 632-33. It explained "the judge's decision is conclusive...the jury may not re-examine the question whether there is 'enough' evidence of the defendant's participation to allow the hearsay to be used." Id. at 633. To do so allows the jury to second guess the judge's decision to admit the statements; to impermissibly sit in review of the judge's legal determination. To present this issue to the jury unnecessarily confuses them as to the proper burden of proof of two elements of the conspiracy charge in the case.

This Court should hold that once the trial judge finds under NRS 47.060 that the prerequisites to NRS 51.035-3(e) have been met, the jury does not revisit the issue and can consider the co-conspirator statements for all purposes in its determination as to whether there has been proof beyond a reasonable doubt that the defendant is guilty of conspiracy. See Martinez de Ortiz, 907 F.2d at 634-635. In other words, the statements are not subject to "conditional relevancy," analysis as that term is used in NRS 47.070, as to the jury's decision on the conspiracy charge or claim. In determining whether the alleged conspiracy existed or the defendant was a member, the jury can consider the actions and statements of all of the alleged participants that the judge admitted into evidence. United States v. Stephenson, 53 F.3d 836, 847 (7th Cir. 1995). United States v. Bell, 573 F.2d 1040, 1044-45 (8th Cir. 1978); United States v. Ammar, 714 F.2d 238, 249 (3rd Cir. 1983) (once admitted, co-conspirator statements should go to the jury without further instruction); United States v. Vinson, 606 F.2d 149, 153 (6th Cir. 1979) (once admitted statements go to jury, judge should not

describe to the jury the government's burden of proof on the preliminary question); People v. Vega, 321 N.W.2d 675 (Mich. 1982) (trial judge must make determination of admissibility, not jury).

In United States v. Martinez De Ortiz, 883 F. 2d 515 (7th Cir. 1989) (Easterbrook, J. concurring) *rehearing granted and judgment vacated on other grounds,* 897 F.2d 220 (7th Cir. 1990), *affirmed upon rehearing en banc,* United States v. Martinez de Ortiz, 907 F. 2d 629 (7th Cir. 1990)(*en banc*), Circuit Judge Frank Easterbrook, decried the use of the language "slight evidence" or "slight connection" in conspiracy prosecutions, stating at 883 F 2d 524-25:

> *That we have to tease [a non-troubling interpretation] out of a formula with dubious alternative meanings, though, is a mark against its use. ... Maybe we could torture the phrase until it confessed to a constitutionally acceptable meaning, but why bother?* ...Nothing we do as a judge is more important than assuring that the innocent go free....Conspiracy is a net in which prosecutors catch many little fish. We should not go out of our way to tighten the mesh. Prosecutors have many legitimate advantages in the criminal process. *Defendants' great counterweight is the requirement that the prosecution establish guilt beyond a reasonable doubt. References to "slight evidence" and "slight connection" reduce the power of that requirement."*

A plenary analysis of the confusion and damage caused by the use of "slight evidence" language with juries is contained in a concurring opinion written by Circuit Judge Jon. O. Newman[6] in United States v. Huezo, 546 F. 3d 174, 184-189, fn.10; 191, fn.2 (2nd Cir. 2008). It recognized that "[t]he 'slight evidence' formulation is inconsistent with the constitutional requirement that every element of an offense must be proven beyond a reasonable doubt" and "creates an unacceptable risk that juries, if the phrase is included in a charge, ...will be misled (or mislead themselves) into

---

[6] Circuit Judge Newman's opinion was joined by the entire panel which included now United States Supreme Court Justice Sonia Sotomayor, and circulated and adopted by the entire Second Circuit Court of Appeals.

thinking that the defendant's link to the conspiracy may be established by evidence insufficient to surmount the reasonable doubt standard. The vice of the 'slight evidence' formulation,...is that...,when stated in juxtaposition with the test for establishment of the conspiracy itself, ...may too easily be taken as an implication that proving participation in a conspiracy is subject to a lesser standard of proof than proving the existence of the conspiracy. But that implication is simply wrong." Id. at 185.

V. The Compromise of the Reasonable Doubt Standard is Structural Error

The Huezo court noted that the Fifth Circuit had already found that jury instructions such as the one given in this case are not subject to harmless error analysis and are *per se* reversible error, citing United States v. Partin, 552 F. 2d 621, 628-629 (5th Cir. 1977) and its internal citations of earlier Fifth Circuit precedent holding that "[d]espite the lack of provable prejudice to defendant's case because of other instructions giving the reasonable doubt standard... the erroneous instruction reduced the level of proof necessary for the government to carry its burden by possibly confusing the jury about the proper standard or even convincing jury members that a defendant's participation in the conspiracy need not be proved beyond a reasonable doubt." See United States v. Hall, 525 F.2d 1254, 1256 (5th Cir. 1976); United States v. Malatesta, 590 F2d 1379, 1382 (5th Cir. 1979)(en banc).

In Cortinas v. State, 124 Nev. 1013, 195 P.3d 315, (2008), cert. denied, 130 S. Ct. 416 (2009), this Court recognized that erroneous jury instructions can be structural error. Here, the instructions taken as a whole permitted the jury to find Petitioner guilty of the general intent crimes of battery with a deadly weapon or with substantial bodily harm under a theory of vicarious liability once it found him guilty of the conspiracy. Thus the impact of the confusing and "pernicious" instruction (#40) employing an improper and unconstitutional standard is clear. The evidence against Petitioner was

slight at best. Nothing except the co-conspirators statements demonstrated Petitioner's pre-event connection, knowledge or intent. The instruction permitted the jury to use an impermissible standard in deciding the issue of membership in the conspiracy.

VI. UNDER THE FACTS OF THIS CASE THE EXCULPATORY STATEMENT MADE BY DEANGELLO CARROLL WERE ADMISSABLE AND VIOLATED HIDALGO III'S RIGHT TO A FAIR TRIAL AND DUE PROCESS

At trial, Deangello Carrol a co-conspirator, five day after the killing of Timothy Hadland was wired and obtained a tape of Anabel Espindola and Hidalgo III. At the beginning of the Carroll stated in the presence of Hidalgo and Espindola: referring to Hidalgo III, "[D]on't worry about it... you didn't have nothing [sic] to do with it." This statement was made in reference to Hidalgo III's lack of involvement in the conspiracy against Timothy Hadland.

The District Court gave Instruction 40 which included the following:

> The statements of a co-conspirator after he has withdrawn from the conspiracy were not offered, and **may not be considered by you for the truth of the matter asserted**. They were only offered to give context to the statements made by the other individuals who are speaking, as or adoptive admissions or other circumstantial evidence in the case. An adoptive admission is a statement of which a listener has manifested his adoption or belief in its truth.

AA,Vol.I,47 (emphasis added).

The court limited the use of the statement as an adopted admission of Espindola and that it could not be considered for truth. The court did allow the statement to be read to the jury; however, counsel was not allowed to argue it as exculpatory for Hidalgo III or as an adopted admission by Hidalgo III regarding his lack of

involvement in the conspiracy to harm or kill Hadland. This violated Hidalgo III's confrontation rights. See. United States v.Monks. 774 F.2d 945, 1985) (confrontation clause implicated when [Carrol] third party statement is unable to be cross examined).

VII. NRS 51.035 MUST BE APPLIED UNIFORMALLY

The panel ruling will create further problems in evidentiary issues regarding adopted admissions. This Court has held that, "An admission by a party is not hearsay and is admissible for the truth of the matter asserted and as substantive evidence under NRS 51.035(3)". See State Department of Motor Vehicles and Public Safety v. Kinkade, 107 Nev. 257, 261, 810 P.2d 1201, 1203 (1991). The district court's limiting the use of non-hearsay statement abrogates the hearsay doctrine in this case and all future cases.

The panel ruling also creates future inconsistencies regarding taped statement. The panel ruled that the district court's error was harmless. See Order of Affirmance at p. 4-6. The District Court's error was not harmless. This panel stated the Carroll taped statement was, "probative on the issue of whether Hidalgo was aware of the hit." Id at 6. However in the tape Hidalgo III does not discuss the hit or the dynamics. This is critical to whether Hidalgo was a member of the conspiracy to injure or kill Timothy Hadland.

The panel further stated that, "[A]t trial, Espindola's testimony largely indicated that Hidalgo was not involved in the conspiracy." Id. at 8. The panel then relied largely upon the statements and discussion on the DeAngelo Carroll tape as corroborative evidence of Hidalgo's participation, although he never discussed the dynamics of the hit in the conspiracy against Hadland, while not permitting Hidalgo III to properly argue the exculpatory statement in violation of his right to Due Process and

a fair trial and denied Hidalgo III the opportunity to present a full and fair defense as promised by the Due Process Clause in the Fourteenth Amendment of the United States Constitution.

The Carroll statement was the dividing line between Hidalgo's culpability in the solicitation of murder conspiracy which is not at issue in this case and his lack of knowledge and culpability in the conspiracy against Timothy Hadland This Motion for En Banc Consideration only challenges the convictions of Louis Hidalgo, III, of Count I: Conspiracy to Commit a battery with a deadly weapon or battery resulting in substantial bodily harm, and Count II: Second degree murder with the use of a deadly weapon. It does not challenge the second conspiracy and convictions in count III and IV, the solicitations to commit of the other witnesses.

IIX. NRS 51.325 MUST BE APPLIED UNIFORMALLY

The panel ruling also misapplied NRS 51.325. The trial court properly found that a witness was unavailable but would not allow his transcript, which was exculpatory and contradictory of other witnesses to be presented because the transcript came from a different trial with different issues and would harm the co-defendant. The first ruling is wrong and the second statement should have led the court to sever the trials.

The transcript came from the trial of Kenneth Counts who was charged with the same conspiracy. See Ex. 1. The panel's ruling conflicts with the unambiguous language of NRS 51.325 and conflicts with Kaplan v. State, 99 Nev. 449,452, 663 P.2d 1190,1183 (1983) and Lisle v. State, 113 Nev. 679, 699 941 P.2d 459, 472 (1997) (in Lisle as in this case the motive of the prosecutors questioning was the same. In this

case the prosecutor by the very charges against Counts, motive was to prove who was involved in the conspiracy).

Further, defense counsel for Hidalgo Jr. declared he would ask for a mistrial if the transcript came in. At that point the court should have declared a mistrial to Hidalgo III or severed the trial.

The test for severance during trial is, "whether the joint trial was so manifestly prejudicial as to require the trial judge to exercise her discretion just one way, by ordering separate trials." U.S. v. Baker, 10 F.3d 1374, 1387 (9th Cir. 1993). Severance should be granted when the defendant shows that the core of the co-defendants defense is so irreconcilable with the core of his own defense that the acceptance of the co-defendants theory by the jury precludes acquittal of the defendant. U.S. v. Throckmorton, 87 F.3d 1069, 1072 (9th Cir. 1996). That is exactly what happened in this case. The Taoipu transcript exonerated Hidalgo III as the maker of the statement to bring baseball bats and bags. The jury's failure to hear this statement placed his defense in complete conflict with Hidalgo Jr. and violated Hidalgo III's right to a fair trial and due process. The court's ruling also conflicts with this court's rulings in Hayes v. State, 106 Nev. 543, 797 P.2d 962 (1990) (subsequently overruled on other grounds by), Ryan v. State, 123 Nev. 419, 168 P.3d 703(2007).

For the foregoing reasons this court should rehear this case En Banc and grant Luis Hidalgo III a new trial.

///

///

///

///

Dated this 10 day of August, 2012.

JOHN L. ARRASCADA, ESQ.
State Bar No. 4517
Arrascada & Aramini, Ltd.
145 Ryland Street
Reno, NV 89501
(775)329-1118

Certificate of Compliance

I hereby certify that I have read this Petition for En Banc Reconsideration, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular N.R.A.P. 40(b)(4), which requires that this brief complies with all applicable Nevada Rules of Appellate Procedure, including the requirement of Rule 28(e) that every assertion in the Petition regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I further certify that this brief complies with the formatting requirements of Rule 32(a)(4)-(6), and either the page or type-volume limitations stated in Rule 32(a)(7). I understand that I may be subject to sanctions in the event that the accompanying Petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 10 day of August, 2012.

JOHN L. ARRASCADA, ESQ.
State Bar No. 4517
Arrascada & Aramini, Ltd.
145 Ryland Street
Reno, NV 89501
(775)329-1118
Attorneys for Appellant

CERTIFICATE OF SERVICE

The undersigned, an employee of Arrascada and Aramini Ltd., hereby certifies that on the 10 day of August, 2012, he served a copy of the Petition for En Banc Reconsideration pursuant to Nevada Rule of Appellate Procedure 40A, by Electronic Service, in accordance with the Master Service List as follows:

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

JOHN L. ARRASCADA, ESQ.
State Bar No. 4517
Arrascada & Aramini, Ltd

EXHIBIT 1

JUSTICE COURT, BOULDER TOWNSHIP

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

KENNETH COUNTS, aka Kenneth Jay Counts II, #1525643,
LUIS ALONSO HIDALGO, aka, Luis Alonso Hidalgo III #1849634,
ANABEL ESPINDOLA #1849750,
DEANGELO RESHAWN CARROLL #1678381,
JAYSON TAOIPU,

Defendants.

CASE NO: 05FB0052A-E

SECOND AMENDED CRIMINAL COMPLAINT

The Defendants above named having committed the crimes of CONSPIRACY TO COMMIT MURDER (Felony - NRS 200.010, 200.030, 199.480); MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030, 193.165) and SOLICITATION TO COMMIT MURDER (Felony - NRS 199.500), in the manner following, to-wit: That the said Defendants, on or between May 19, 2005 and May 24, 2005, at and within the County of Clark, State of Nevada,

COUNT 1 - CONSPIRACY TO COMMIT MURDER

Defendants KENNETH JAY COUNTS, aka Kenneth Jay Counts, II, and LUIS ALONSO HIDALGO, aka, Luis Alonso Hidalgo III, ANABEL ESPINDOLA, DEANGELO RESHAWN CARROLL and JAYSON TAOIPU did, on or between May 19, 2005 and May 24, 2005, then and there meet with each other and/or Luis Hildago, Jr. and between themselves, and each of them with the other, wilfully, unlawfully, and feloniously conspire and agree to commit a crime, to-wit: murder, and in furtherance of said conspiracy, Defendants and/or their co-conspirators, did commit the acts as set forth in Counts 2 thru 4, said acts being incorporated by this reference as though fully set forth herein.

COUNT 2 - MURDER WITH USE OF A DEADLY WEAPON

Defendants KENNETH JAY COUNTS, aka Kenneth Jay Counts, II, and LUIS

ALONSO HIDALGO, aka, Luis Alonso Hidalgo III, ANABEL ESPINDOLA, DEANGELO RESHAWN CARROLL and JAYSON TAOIPU did, on or about May 19, 2005, then and there wilfully, feloniously, without authority of law, and with premeditation and deliberation, and with malice aforethought, kill TIMOTHY JAY HADLAND, a human being, by shooting at and into the body and/or head of said TIMOTHY JAY HADLAND, with a deadly weapon, to-wit: a firearm, the Defendants being liable under one or more of the following theories of criminal liability, to-wit: (1) by directly or indirectly committing the acts with premediation and deliberation and/or lying in wait; and/or (2) by aiding and abetting the commission of the crime by, directly or indirectly, counseling, encouraging, hiring, commanding, inducing or otherwise procuring each other to commit the crime, to-wit: by Defendant ANABEL ESPINDOLA and/or DEFENDANT LUIS HILDAGO, III and/or Luis Hildago, Jr. procuring Defendant DEANGELO CARROLL to beat and/or kill TIMOTHY JAY HADLAND; thereafter, Defendant DEANGELO CARROLL procuring KENNETH COUNTS and/or JAYSON TAOIPU to shoot TIMOTHY HADLAND; thereafter, Defendant DEANGELO CARROLL and KENNETH COUNTS and JAYSON TAOIPU did drive to the location in the same vehicle; thereafter, Defendant DEANGELO CARROLL calling victim TIMOTHY JAY HADLAND to the scene; thereafter, by KENNETH COUNTS shooting TIMOTHY JAY HADLAND; and/or (3) by conspiring to commit the crime of battery and/or battery with use of a deadly weapon and/or to kill TIMOTHY JAY HADLAND whereby each and every co-conspirator is responsible for the foreseeable acts of each and every co-conspirator during the course and in furtherance of the conspiracy.

COUNT 3 - SOLICITATION TO COMMIT MURDER

Defendants LUIS ALONSO HIDALGO, aka, Luis Alonso Hidalgo III and ANABEL ESPINDOLA did, on or between May 23, 2005, and May 24, 2005, then and there wilfully, unlawfully, and feloniously counsel, hire, command or otherwise solicit another, to-wit: DEANGELO CARROLL, to commit the murder of JAYSON TAOIPU; the defendants being liable under one or more theories of criminal liability, to-wit: (1) by directly or

indirectly committing the acts constituting the offense; and/or (2)) by aiding and abetting the commission of the crime by, directly or indirectly, counseling, encouraging, hiring, commanding, inducing or otherwise procuring each other to commit the crime; and/or (3) by conspiring to commit the crime of murder where each and every co-conspirator is liable for the foreseeable acts of every other co-conspirator committed in the course and in furtherance of the conspiracy.

COUNT 4 - SOLICITATION TO COMMIT MURDER

Defendants LUIS ALONSO HIDALGO, aka, Luis Alonso Hidalgo III and ANABEL ESPINDOLA did, on or between May 23 and May 24, 2005, then and there wilfully, unlawfully, and feloniously counsel, hire, command or otherwise solicit another, to-wit: DEANGELO CARRALL, to commit the murder of RONTAE ZONE; the defendants being liable under one or more theories of criminal liability, (1) by directly or indirectly committing the acts constituting the offense; and/or (2)) by aiding and abetting the commission of the crime by, directly or indirectly, counseling, encouraging, hiring, commanding, inducing or otherwise procuring each other to commit the crime; and/or (3) by conspiring to commit the crime of murder where each and every co-conspirator is liable for the foreseeable acts of every other co-conspirator committed in the course and in furtherance of the conspiracy.

All of which is contrary to the form, force and effect of Statutes in such cases made and provided and against the peace and dignity of the State of Nevada. Said Complainant makes this declaration subject to the penalty of perjury.

5/27/2005

05FB0054A-E/jmh
LVMPD EV# 0505193516
CONSP MRDR; MWDW;
SOLICIT MRDR - F
(TK7)