

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Nov 13 2014 11:41 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

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ERNESTO MANUEL GONZALEZ,

CASE NO. 64249

Appellant.

v.

THE STATE OF NEVADA,

Respondent.

APPELLANT'S APPENDIX, VOLUME II

**APPEAL FROM JUDGMENT AFTER
JURY TRIAL AND SENTENCING**

Second Judicial District
State of Nevada

THE HONORABLE CONNIE J. STEINHEIMER, PRESIDING

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1 charges of conspiracy to engage in an affray, challenge to
2 fight resulting in a death with the use of a deadly weapon,
3 battery with a deadly weapon two counts, discharging a firearm
4 in a structure two counts, caring a concealed weapon two
5 counts, open murder with the use of a deadly weapon, and
6 second degree murder with a deadly weapon, all of these in the
7 matter of Ernesto Manuel Gonzales, Stuart Gary Rudnick and
8 Cesar Villagrana?

9 THE WITNESS: Yes, sir.

10 BY MR. STEGE:

11 Q Sir, please state your full name and spell your last
12 name.

13 A Matthew Mutert, M-U-T-E-R-T.

14 Q How are you employed?

15 A With the City of Sparks for the Police Department as
16 a police officer.

17 Q How long have you been a police officer?

18 A Since June of 2000. But not at Sparks.

19 Q I am sorry?

20 A I started as a police officer down in L.A. in 2000,
21 but with Sparks 5 years.

22 Q Have you been in the patrol division of the Sparks
23 Police Department since you started?

24 A Yes.

1 Q On September 23rd of 2011 at 11:30, were you
2 dispatched or aware of a call for service at the Nugget?

3 A Yes. I was just coming from the training center.

4 Q Did you in fact respond to the Nugget?

5 A I did.

6 Q While on scene there, was there something that
7 caused you to go to a local hospital?

8 A Yes.

9 Q Tell us what it was that caused you to do that?

10 A I heard officer Sturtevant, the gentleman that just
11 left, advise he was on his way to the hospital or at the
12 hospital, Northern Nevada, with a gunshot victim.

13 Q Did you then go to Northern Nevada Medical Center?

14 A I did.

15 Q Did you assist him in, I guess, observing the person
16 who was identified as Leonard Ramirez?

17 A Yes.

18 Q Did you have contact with a patient or a person with
19 an apparent gunshot wound by the name of Diego Garcia?

20 A I did at Renown.

21 Q Tell us how that happened, please?

22 A After Ramirez was stabilized at Northern Nevada, he
23 was transported by ambulance to Renown. Once we were in the
24 emergency room there, detective Gallop advised me Diego Garcia

1 had a gunshot wound to his right calf area and asked me to
2 provide security over him.

3 Q Did you then go into a hospital room and observe a
4 man who was identified as Diego Garcia?

5 A Yes.

6 Q Tell us what you saw in that room?

7 A I saw some kind of bloody sheets near his right calf
8 area. And I saw, you know, some bandaging over the wound.

9 Q Was he getting medical attention to his calf area?

10 A Yes, he was, in the emergency room.

11 Q Did he ever leave that emergency room to go to
12 another area of the hospital?

13 A Yes, to surgery.

14 Q Did you accompany the man to surgery?

15 A I did.

16 Q Up to this point, had you taken any photographs of
17 the man, Diego Garcia?

18 A No, sir.

19 Q At some point, did you do that?

20 A Yes.

21 Q When was that?

22 A During surgery.

23 Q Tell us about the surgery?

24 A I was informed he was going to have surgery for

1 removing the bullet. Once we were in there I saw the surgeon,
2 you know, make a cut from the knee down to his right ankle and
3 just start going through the process to retrieve that bullet.

4 Q Did you in fact witness the surgeon remove a bullet
5 from Diego Garcia's leg?

6 A Yes.

7 Q What did the surgeon do with the bullet once removed
8 from Diego Garcia's leg?

9 A Placed it on the surgical table. The surgery tech
10 put that in a plastic cup and I took possession of that.

11 Q Did you later cause that bullet to be impounded into
12 evidence?

13 A Yes.

14 Q How did you do that?

15 A I, from the surgery room, I took it into my
16 possession and later gave it to detective Gallop.

17 Q It was impounded into evidence from there?

18 A Yes. Or I gave it to detective Gallop for that.

19 Q You gave it to him for the purpose of impounding it
20 into evidence?

21 A Correct.

22 Q You previously said that you took photographs during
23 surgery?

24 A Yes.

1 Q I would like to direct your attention here to a
2 couple of photographs. Do you recognize this photograph here?

3 A Yes.

4 Q Did you take this photograph?

5 A I did not.

6 Q Okay. Do you recognize what is depicted in that
7 photograph?

8 A That is Diego Garcia.

9 Q Is this how he appeared when you went to the
10 hospital and were looking at him?

11 A Yes.

12 Q This is the same man that you testified you watched
13 have surgery; is that right?

14 A Yes.

15 Q Could you scoot back just a hair? Do you recognize
16 what is depicted in this photograph?

17 A Same gentleman.

18 Q The previous photograph I should note for the record
19 was called Diego Garcia two. This is called Diego Garcia
20 three. Is this the person you observed?

21 A This is the individual room in the emergency room
22 where I was directed to provide security over him.

23 Q This is sort of early on in your contact with
24 Diego Garcia?

1 A Yes, before surgery.

2 Q What are we seeing here in the photograph entitled

3 Diego Garcia four?

4 A This appears to be his right calf area, lower leg

5 with the bullet hole with the bandaging over it.

6 Q Is this what in fact his leg looked like when you

7 saw his leg?

8 A Yes.

9 Q Are we able to see on this photograph the actual

10 bullet hole? Do you see that?

11 A No, I believe it is under.

12 Q Under the gauze there in the center of the picture?

13 A Yes.

14 Q Diego Garcia 5, what are we seeing here?

15 A Looks like a closer view of the subject.

16 Q Is this how his leg looked on the night?

17 A Yes.

18 Q Do you see the bullet hole now?

19 A It is this area right here. I believe that would be

20 the closest thing.

21 Q Let me ask you, is that the area you saw the surgeon

22 go in and remove a bullet?

23 A Yes.

24 Q Now do you recognize what is depicted in here called

1 Image 006?

2 A It appears to be the same subject being attended by
3 REMSA personnel.

4 Q Do you recognize that person to be Diego Garcia, the
5 same person you saw in the hospital going through surgery?

6 A Yes.

7 Q Now did you ever see any clothing of Diego Garcia
8 while you were with him?

9 A I did not.

10 Q Do you know what became of his clothing?

11 A I don't.

12 Q Now that image we just saw, 006, the man appeared to
13 have a tattoo on his stomach. Did you ever see any tattooing
14 while you were with Diego Garcia?

15 A I did see multiple tattoos on him. I don't remember
16 exactly what tattoos, but he was heavily tattooed.

17 Q Was there anyone with him at the time, anyone like
18 friends or anything like that at the hospital?

19 A I believe it was his wife.

20 Q Did you notice on either Diego Garcia or his wife or
21 the person with him any indications of a motorcycle club or
22 motorcycle gang?

23 A Now are you talking as far as his tattoos?

24 Q Tattoos, clothing on him or on the person he was

1 with, anything to indicate an affiliation?

2 A I believe I recall his wife had lots of green
3 coloring which indicates association with the Vagos.

4 Q I guess we could look closer at Image 6 you
5 previously testified was a fair depiction of him; is that
6 right?

7 A Yes.

8 Q Are you able to tell what his tattoos say?

9 A Vagos Motorcycle Club it says up there possibly, but
10 Rachel. The green stitching color on the jacket is the same
11 green that his wife had throughout her clothing.

12 MR. STEGE: I would now introduce, pursuant to the
13 rules of evidence, medical records pertaining to Diego Garcia.
14 Similarly to the previous exhibit, we have taken a portion, a
15 summary of the treatment and attached it to the Affidavit of
16 the Custodian, however the full medical records are available
17 for your review.

18 That concludes my questioning.

19 THE FOREMAN: Any questions for the witness?

20 A GRAND JUROR: Was his skin or hands ever tested
21 for gunshot residue?

22 THE WITNESS: I am not aware of that. If they were,
23 not during the time I was with him.

24 A GRAND JUROR: So you did not do it either?

1 THE WITNESS: No.

2 A GRAND JUROR: You may not be able to answer this:
3 You took custody of the bullet they removed?

4 THE WITNESS: Yes.

5 A GRAND JUROR: Could you tell anything about that
6 bullet, caliber anything like that?

7 THE WITNESS: No. Just it was -- The actual bullet
8 was deformed from like you would see on the shelf in the
9 store.

10 THE FOREMAN: Any other questions of the witness?

11 Sir, the proceedings before the Grand Jury are
12 secret. You may not disclose evidence presented to the Grand
13 Jury, any event occurring or statement made in the presence of
14 the Grand Jury, any information obtained by the Grand Jury or
15 the result of the investigation being made by the Grand Jury.

16 However, you may disclose the above information to
17 the District Attorney for use in the performance of his
18 duties.

19 You may also disclose your knowledge concerning the
20 proceeding when direct by a court in connection with judicial
21 proceedings or when otherwise permitted by the Court or to
22 your own attorney.

23 The obligation of secrecy applies until the Court
24 allows the matter to become public record.

1 A gross misdemeanor and contempt of court may be
2 pursued if your obligation of secrecy is not followed. Do you
3 understand?

4 THE WITNESS: I do, sir.

5 THE FOREMAN: Thank you. You are excused.

6 (Witness excused.)

7 MR. HALL: Do you all want to take a break?

8 THE FOREMAN: Sure.

9 MR. HALL: I do have another witness. We can keep
10 going or break for lunch. It is noon.

11 THE FOREMAN: DO we want to see one more witness
12 before we break for lunch? We have quite a few today.

13 A GRAND JUROR: Okay, one more.

14 THE FOREMAN: Thank you.

15 (Whereupon another witness entered the Grand Jury room.)

16 THE FOREMAN: Officer, could I have you raise your
17 right hand? Thank you.

18 (Whereupon the witness was sworn by the Foreman.)

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JEAN MARIE WALSH

called as a witness having been first duly
sworn by the Foreman testified as follows:

EXAMINATION

BY MR. HALL:

Q Ma'am, would you state your name and spell your last
name?

A Sergeant Jean Mary Walsh, W-A-L-S-H.

Q What is your occupation?

A I am a sergeant for the Patrol Division, Sparks
Police Department.

Q How long have been employed with the Sparks Police
Department?

A Just about twenty-two years.

Q Did you have an opportunity to respond to a call for
service at John Ascuaga's Nugget on the 23rd of September,
2011?

A I did.

Q Can you tell us what you did upon responding to that
location?

A When I arrived, I pulled in front at the 11th and
Victorian Street doors which is on the northeast corner of the
casino.. I got my patrol rifle out of my trunk and waited for

1 another patrol unit to get there. Myself and that officer
2 entered through the 11th and Victorian Street doors and
3 proceeded into the casino past what they call the U-shaped bar
4 that is kind of right in front of the Rose ballroom, then
5 through towards Trader Dicks as the indication on the radio
6 was that is where the altercation was occurring at the time.

7 Q All right. When the other units arrived, what did
8 you do? Where did you go?

9 A Into the casino, and I checked in briefly with the
10 poker room to make sure I didn't have a victim there. I don't
11 know if somebody told me there was some indication something
12 happened in the poker room. I checked in there really quick.
13 There was nothing. We just proceeded straight toward Trader
14 Dicks which is moving south through the casino.

15 Q Was anybody with you?

16 A Officer Gamwell was with me.

17 Q Where did you go?

18 A We proceeded directly in front of Trader Dicks.
19 There is some casino area that kind of leads out or is right
20 in front of the entrance to Trader Dicks. At that point, we
21 started seeing mostly Hells Angels motorcycle group members
22 standing there, and I noticed that one of them had a gun in
23 his hand. I moved around, put him at gunpoint, told him to
24 put the gun down. And after a very brief delay, he set the

1 gun down on a bank of slot machines that was right to his
2 right-hand side.

3 Q Who was that?

4 A He was later identified as Villagrana, last name
5 Villagrana. I believe his name is Cesar.

6 Q Okay. And then if I direct your attention to camera
7 number three on the video, do you recall having an opportunity
8 to look at some of the video?

9 A I have.

10 Q All right. Does the fairly and accurately depict
11 you and when you arrived on scene?

12 A That is officer Hopkins, and that right here is
13 officer Behr, and you can't see me, and I don't know, I
14 have -- No, wait. I am sorry. I think you are going to see me
15 here in a second. Right now we are kind of down right in
16 here.

17 Q Here we go in an altercation?

18 A There, that is me.

19 Q Let me back up a little bit?

20 A Yes, that is me.

21 Q That is you with the rifle?

22 A I have the assault rifle in my hand, yes.

23 Q What is happening right here at 23:30:39?

24 A Basically, when I moved around when Villagrana put

1 the gun down, I can't see. I notice his hand is empty. I
2 moved around kind of west of this bank of slot machines that
3 are here, and the other one you can't see over here. At that
4 point, I noticed there is a victim on the floor with a gunshot
5 wound, or what I believed to be gunshot wounds.

6 Q Let's go through that. You come in. What I want to
7 do is talk about identifying the person you saw with the gun.
8 Did you collect the gun? I think, if we watch the video at
9 23:30:21, I think we can actually see you getting the gun?

10 A Okay. At this point, I am just trying to keep
11 everybody under control at gunpoint. I think right now, well
12 maybe I can see the gun sitting on the bank of slot machines,
13 and I think I might have it in my hand. Right now I am
14 putting it down on the floor between my feet.

15 Q So that is depicted at 23:30.49?

16 A Correct.

17 Q The person identified as Mr. Villagrana was the one
18 you took the gun from?

19 A He put the gun down. I came around. The gun was
20 sitting where I thought it would be, and eventually I was able
21 to kind of feel like there was enough safety for me to reach
22 over and grab the gun and stick it in between my feet.

23 Q Who was with or in close proximity to Mr. Villagrana
24 at the time you took the gun from him?

1 A There was another Hells Angels member, Thornton,
2 last name is Thornton. And the victim of the homicide,
3 Pettigrew, was laying on the floor right there. There was a
4 Vagos who was identified as Wiggins who was laying on the
5 floor probably within four feet of Pettigrew. And a bunch of
6 other people that, you know, were mostly Hells Angels related.

7 Q Now Mr. Wiggins you indicated was a Vagos. How did
8 you identify him as a Vagos?

9 A He was wearing a jean vest with the Vagos insignia
10 on it.

11 Q Did you examine him or did he complain of any
12 injury?

13 A Eventually, we did ask him about injuries. He did
14 not appear to be injured. And when we asked him later if he
15 needed any medical attention, he said no.

16 Q Did you observe any injuries on him?

17 A I did not.

18 Q Was he laying on the ground did you say?

19 A He was laying on his back on the ground. We got
20 into a confrontation with him because he wanted to stand up.

21 Q All right. Just, if I can direct your attention to
22 the image, video three at 23:30:49. We have a bank of slot
23 machines in front, bathrooms. It appears to the right-hand
24 side of the image is where Mr. Villagrana was where you

1 collected the gun?

2 A Yes.

3 Q Can you describe the gun?

4 A Black semi-automatic handgun. I don't know the
5 make. I didn't check it. I picked it up and put it down.

6 Q All right. Were there any other weapons that you
7 saw during the course of your being at this location?

8 A There was. A bystander who was attempting to give
9 medical aid to the victim Pettigrew, I looked over and she had
10 in her hand a wooden grip revolver, and she was holding it
11 like this. And I looked at her. She said, "Do you want
12 this?" And I said, "yes, I do. Please put it down on the
13 ground." And she put it down on the ground. I reached over
14 with my foot and I slid it back to kind of close proximity
15 where the other gun was. They were both in between my feet.

16 Q Were the guns left there for later collection by FIS
17 or other qualified law enforcement?

18 A They were, as far as I know. We didn't touch those
19 guns after that.

20 Q They both would have been set there on the walkway?

21 A Probably been there probably within four feet of
22 each other just sitting there.

23 Q At that point in time, what was your overall purpose
24 and intent in investigating the situation just at that time?

1 A Right then and there, I knew that the gentleman that
2 was shot on the floor was not going to get medical attention
3 there, because it was a madhouse in that casino floor. So I
4 instructed his friends to pick him up, and we were taking him
5 to a door where medics would at least feel somewhat safe
6 coming into the environment to provide him with medical care.
7 So we picked him up, actually his friends did, and I had them
8 move him through the casino the same route we came in. We
9 went out and we ended up putting him down on the floor just by
10 where the poker room kind of meets up with that hallway where
11 they have their kind of displays of branding irons on the
12 northeast corner. So pretty much we put him down there. He
13 was able to receive medical attention there. After that, I
14 guess I was just trying to keep things under control.

15 Q Now were you one of the first officers to get to
16 Trader Dicks?

17 A Yes.

18 Q All right. As you were coming in, what did you see?

19 A When we reached Trader Dicks, there was just kind of
20 a lot of people standing around. And there was one gentlemen
21 who was screaming at me. When he saw me see Villagrana with
22 the gun in his hand, he was yelling at me, "Kill him. Kill
23 him. Kill him. He's right there. Kill him." So we dealt
24 with Villagrana. And the people that were in the immediate

1 area standing up, we put them all on the floor and kept them
2 there for kind of an extended period of time.

3 Q At that time, were there a lot -- You mentioned
4 there were Hells Angels in the immediate area. Did you see
5 any Vagos in the immediate areas other than Wiggins, the
6 person you indicated was laying on the floor?

7 A There was fifty Vagos in Rosie's Cafe, which you
8 can't necessarily see, but if you exit out this men's room
9 here, right here is Rosie's Cafe, and they were -- you see me
10 at some point in time looking back like this trying to keep an
11 eye on them as much as I could. But there was a boatload of
12 Vagos in that Rosie's Cafe.

13 Q Could you describe the situation at this point in
14 time, 23:30?

15 A We are just trying to get some semblance of control,
16 trying to keep people from shooting other people, and, you
17 know, just trying to get it under control.

18 Q Are you aware, were there people leaving the casino?

19 A I am sure there were.

20 Q All right. And so after you collected those guns,
21 what was done to secure the situation? What did you do later
22 on?

23 A Basically, the entire casino floor was emptied.
24 Anybody, whether they were in the general vicinity or way on

1 the other side of the casino, the entire ground level of the
2 Nugget was completely emptied except for the people that we
3 had detained inside the primary crime scene. There was
4 probably eight Vagos. Two Vagos we contained, Mr. Wiggins and
5 another guy who I don't recall at this time, and about six or
6 seven Hells Angels that we had detained within that primary
7 area, right in here, and a bank of slot machines right there.

8 Q And how would you describe them, as generally
9 cooperative?

10 A Generally, yes. They were not -- The only one who
11 was physically really confronting us was Wiggins.

12 Q Did you play any part in collecting any evidence or
13 searching for evidence?

14 A No.

15 Q Other than the two firearms?

16 A Other than putting the guns where I put them, no.

17 MR. HALL: Thank you. I have no further questions.

18 THE FOREMAN: Do we have any questions for the
19 witness?

20 A GRAND JUROR: You said his friends -- I am
21 assuming you thought they were friends by their affiliation
22 garb?

23 THE WITNESS: Yes.

24 A GRAND JUROR: -- picked him up. Did they come

1 back with you or did they stay with him or disappear?

2 THE WITNESS: What happened, once we got Pettigrew
3 to the area where I thought it was going to be at least
4 somewhat safe for the medics to come in and work on him, I had
5 a Reno officer escort those gentlemen back into the main crime
6 scene, and they stayed there more or less voluntarily until,
7 you know, we had a chance to get statements from their
8 identification. I don't remember who they are right now. So
9 we escorted them back.

10 THE FOREMAN: Any other questions?

11 A GRAND JUROR: So most of the people that you were
12 in contact with there were Hells Angels members in that
13 general area?

14 THE WITNESS: Yes, other than the two Vagos,
15 Mr. Wiggins and there was another gentleman. To be honest
16 with you I am not one hundred percent sure where he came from,
17 but when I was kind of able to slow down a little bit, looking
18 at who we had, there was another Vagos that was kind of in the
19 mix somewhere. I am not sure exactly where he came from. He
20 was just in the main crime scene.

21 BY MR. HALL:

22 Q Were there a lot of Vagos in the general area?

23 A Hundreds.

24 Q A lot of Vagos in Rosie's just to the left

1 surrounding areas?

2 A Back behind us in Trader Dicks. They were the
3 predominant gang, motorcycle gang inside of the Nugget. They
4 had by far the most numbers.

5 A GRAND JUROR: Did you ever see what kind of wound
6 Mr. Wiggins had?

7 MR. HALL: Mr. Wiggins, to clarify the testimony,
8 Mr. Wiggins did not have any injuries. You said Wiggins. Did
9 you mean Wiggins?

10 THE WITNESS: He was the one on the ground.

11 THE WITNESS: He was the Vagos that was on the
12 ground right next to Pettigrew, and he did not have any
13 apparent injuries to me at all.

14 A GRAND JUROR: Could I ask you a question?

15 MR. HALL: You can ask.

16 A GRAND JUROR: Are we going to be speaking to
17 somebody that may have collected evidence from Garcia and
18 Ramirez to see if there was gunshot residue on them, on their
19 hands?

20 MR. HALL: I not going to present any gunshot
21 residue evidence.

22 A GRAND JUROR: Okay.

23 THE FOREMAN: Any other questions?

24 A GRAND JUROR: I have one. Were you the officer

1 that was called earlier to the Oyster Bar?

2 THE WITNESS: I responded -- Let me back up. We
3 responded to a potential situation between the two groups at
4 the Oyster Bar probably about an hour beforehand.

5 A GRAND JUROR: Okay. Thank you.

6 THE FOREMAN: Any other questions?

7 Officer, the proceedings before the Grand Jury are
8 secret. You may not disclose evidence presented to the Grand
9 Jury, any event occurring or statement made in the presence of
10 the Grand Jury, any information obtained by the Grand Jury or
11 the result of the investigation being made by the Grand Jury.

12 However, you may disclose the above information to
13 the District Attorney for use in the performance of his
14 duties.

15 You may also disclose your knowledge concerning the
16 proceeding when directed by a court in connection with
17 judicial proceedings or when otherwise permitted by the Court
18 or to your own attorney.

19 The obligation of secrecy applies until the Court
20 allows the matter to become public record.

21 A gross misdemeanor and contempt of court may be
22 pursued if your obligation of secrecy is not followed. Do you
23 understand?

24 THE WITNESS: I do.

1 THE FOREMAN: Thank you. You are excused.

2 (Witness excused.)

3 THE FOREMAN: Lunch?

4 MR. HALL: We can. What time do you want to get
5 back together?

6 THE FOREMAN: 1:30.

7 MR. HALL: Okay, 1:30.

8 (Whereupon the Grand Jury adjourned until 1:30 p.m.)

9 (Whereupon another witness entered the Grand Jury room.)

10 THE FOREMAN: Thank you. Please have a seat.

11 (Whereupon the witness was sworn by the Foreman.)

12

13 CONFIDENTIAL SOURCE 11-42

14 called as a witness having been first duly

15 sworn by the Foreman testified as follows:

16

17 EXAMINATION

18 BY MR. HALL:

19 Q I am going to refer to this witness as Confidential
20 Source 11-42. Sir, are you aware the Grand Jury has convened
21 today to consider a proposed Indictment concerning allegations
22 of murder, battery with a deadly weapon, discharging a firearm
23 and other related charges?

24 A Yes.

1 Q Do you have information that would aid the Grand
2 Jury in this investigation?

3 A Yes.

4 THE FOREMAN: Are you aware the Grand Jury is
5 inquiring into evidence you may have relating to the charges
6 of conspiracy to engage in an affray, challenge to fight
7 resulting in a death with the use of a deadly weapon, battery
8 with a deadly weapon two counts, discharging a firearm into a
9 structure two counts, carrying a concealed weapon two counts,
10 open murder with the use of a deadly weapon, second degree
11 murder with a deadly weapon, and this in the matter of Ernesto
12 Manuel Gonzales, Stuart Gary Rudnick and Cesar Villagrana?

13 THE WITNESS: Yes.

14 THE FOREMAN: Thank you.

15 BY MR. HALL:

16 Q Sir, I am going to direct your attention to the 23rd
17 of September, 2011. Did you have an opportunity to be in
18 John Ascuaga's Nugget in Sparks, Washoe County, Nevada on that
19 evening?

20 A Yes, I was.

21 Q Did you have -- Are you familiar with the Nugget at
22 all?

23 A Yes.

24 Q Do you know where the Trader Dicks dance floor is?

1 A Yes.

2 Q Did you happen to be in that location at
3 approximately 11:30 p.m. on that date?

4 A Yes, I was.

5 Q Did you see anything that attracted your attention?

6 A Yes.

7 Q What did you see?

8 A I saw a very large gentlemen wearing a Hells Angels
9 vest engaged in an argument outside the dance floor with
10 another gentleman that I could not see at that time. He
11 towered, quite large, over him, and he had gotten into some
12 heated discussion about something. I really didn't see
13 everything that led up to it. And then I looked away for a
14 minute. When I looked back, the gentleman with the Hells
15 Angels had a pistol in his hand, fired twice in the floor, and
16 then started to shoot around the casino as well.

17 Q All right. And so did you have an opportunity to
18 look at some video that was captured by the surveillance
19 people at the Nugget?

20 A Yes, I did.

21 Q Did that truly and accurately depict some of the
22 events you witnessed, personally?

23 A Yes, it did.

24 Q Just to I guess give us your location, what I would

1 like to do is let me see if I can pull up a diagram here. If
2 you look behind you, I have got a diagram titled Trader Dicks.
3 Why don't you just take a minute so you can orient yourself to
4 this diagram to see if it comports with your recollection of
5 the layout. So this is the Fish Bar?

6 A Yes.

7 Q On the right-hand side. So this would be the dance
8 floor area?

9 A That's correct.

10 Q So then you were in the dance floor area; is that
11 fair?

12 A That's correct.

13 Q That's accurate?

14 A Yes.

15 Q So then you see an argument, a couple of people
16 arguing?

17 A Yes.

18 Q Where were they arguing?

19 A They were right in this area right here.

20 Q Then can I ask you to sit over here, that way
21 everybody can kind of see. They are in the walkway?

22 A Walkway right here around the tile floor outside of
23 Trader Dicks.

24 Q Okay. So if I showed you video, you would be able

1 to tell us if that was a portion of the event that you
2 witnessed?

3 A Yes.

4 Q Okay, you can go ahead and have a seat. Why don't
5 you scoot your seat over one way or the other, then everybody
6 can see. So we are going to go to, let's see, Monitor one,
7 all right? Did you see -- You indicated you saw a couple of
8 guys arguing?

9 A Yes.

10 Q Is this consistent with what you saw?

11 A Yes.

12 Q Okay. Then you indicated that you saw a guy wave a
13 pistol?

14 A Yes.

15 Q Now were you still inside Trader Dicks during this
16 event?

17 A Yes, I was.

18 Q It looks like a fight broke out?

19 A Yes.

20 Q All right. Then did you see right there?

21 A This is the gentleman that I saw shoot.

22 Q Which guy? Hold on. Let me back up and play that.

23 A This guy right here.

24 Q That one?

1 A Right there. That is the one right there.

2 Q It looks like he's shooting there, 11:26:30 or
3 thereabouts. Then we have another view of this at 45 which I
4 think is probably a little clearer to see him shooting. So
5 now we are looking at camera 45. The time is approximately
6 23:25:20. Now you indicated you saw the person wearing the
7 Hells Angels coat, big guy, shooting?

8 A Yes.

9 Q Do you remember seeing the individual at the top of
10 the screen wearing green?

11 A Yes.

12 Q This guy behind the guy with the --

13 A The guy back there with the sunglasses.

14 Q That guy right there?

15 A Yeah, that guy right there.

16 Q We'll talk about him in a minute. So that is when
17 you saw him shooting?

18 A Yes.

19 Q Then what happened?

20 A Then there was a lot of chaos, and then where I was
21 in here, the gentleman with the sunglasses on, he comes back
22 across. He comes through the bar, through Trader Dicks and
23 opens fire through the casino. I couldn't see who he was
24 shooting at, where he was shooting from where I was. There is

1 a wall that blocks the view. All you can see is men standing
2 there shooting.

3 Q Do you recall reviewing the video?

4 A He comes out from back behind the bar, comes through
5 here, shoots, takes back out the same way.

6 Q How close were to you that man when he was shooting?

7 A About fifteen yards.

8 Q Okay. Did you have a clear view?

9 A Yes.

10 Q Are you confident that is the same guy you saw
11 shooting that we saw earlier out here?

12 A Yes.

13 Q Is that him right there?

14 A There. He's standing right there. That is where he
15 runs off.

16 Q Then he runs off back the other way?

17 A Runs off.

18 Q Do you recall looking at some other video clips
19 depicting behind the Fish Tank Bar?

20 A Yes.

21 Q All right. Do you recall what they depicted?

22 A Depict him coming, the same gentleman, coming --
23 first going back behind the bar, coming back around the bar,
24 going into Trader Dicks, shooting, and him running off after

1 he shoots.

2 Q All right. So now we are looking at camera 2,
3 11:23:28. So I want to go to, okay, let me fast forward this
4 a little bit. I am going to stop at 11:25:50 looking at the
5 clock up at the top. All right. Right there. 11:24:54.
6 Did you see him?

7 A Yeah.

8 Q Okay. Actually, I am going to 214. So this would be,
9 I think, the north end of the Fish Tank Bar. Is that the same
10 man there at the top of the screen?

11 A That's him right there. Same guy.

12 Q Okay. Then let's go to 215. So this would be the
13 backside of the Fish Tank Bar, actually, so that would be
14 consistent with your recollection? This would be him right
15 here?

16 A Yeah. Uh-huh. Upper right-hand corner. Trader Dicks
17 is right over here. This is the back hall. This is where I
18 saw him come from when he shoots and runs back out the same
19 way.

20 Q So this would probably be, at the beginning, we see
21 him in video camera 45. He's kind of standing back there in
22 the hallway, then he runs back over this way. So this is
23 towards the --

24 A Uh-huh, the Noodle Hut.

1 Q -- Noodle Hut over here, runs down toward the Noodle
2 Hut?

3 A Yeah.

4 Q Is that him right there?

5 A Yes, it was. There he goes.

6 Q There he goes. It happened just about that fast?

7 A Yeah, it was about that fast.

8 Q Walk in, boom, walk out?

9 A Yeah.

10 Q Okay. How many shots did you hear, do you recall?

11 A Between the whole thing, between fifteen and twenty.

12 Q How many shots do you think he fired?

13 A At least six or seven he fired until his gun, until
14 the slide on his gun locked, then he ran off.

15 Q Fifteen yards about from you to the back of the
16 room, something like that?

17 A Yeah, maybe a little bit farther. I was right
18 there, though. I could see the whole thing.

19 Q Okay. All right. What happened after he ran off?
20 What did you do?

21 A I kind of stayed down where I was for a little bit,
22 then I got up.

23 Q Can I ask you to speak up? I want to make sure
24 everybody can hear you?

1 A After it was all over, I stayed down where I was,
2 then I got up and saw some people I knew, made sure they were
3 all right, then I walked out to the main walkway of Trader
4 Dicks to see what was going on. By that time, the police had
5 shown up.

6 Q Okay.

7 MR. HALL: Thank you. I have no further questions.

8 THE FOREMAN: Do we have any questions for the
9 witness?

10 A GRAND JUROR: Do you remember what the man was
11 wearing?

12 THE WITNESS: Which one?

13 A GRAND JUROR: The one you saw shooting?

14 THE WITNESS: The one I saw shooting, he was a
15 Hispanic male, dark hair, sunglasses, black vest, jeans, long-
16 sleeve shirt. I got -- I mean he was -- I got such a clear
17 look at him when he came in and fired. But the sunglasses are
18 the thing that really stick out with me the most, because it
19 is already dark in there as it is, and he's still wearing
20 sunglasses the whole time.

21 A GRAND JUROR: Did he have an insignia?

22 THE WITNESS: I couldn't see the back of his vest.
23 He had a green bandana hanging out of his back pocket. As far
24 as what was on his vest, I couldn't see what was on it.

1 BY MR. HALL:

2 Q I am showing you camera number 45. Okay. All right.
3 How did you describe the individual you saw shooting?

4 A Dark hair, sunglasses, had a vest, long-sleeve
5 shirt, green bandana hanging out of his pocket.

6 Q This guy right here?

7 A That's the one. Sunglasses. Yeah, that's the guy.

8 Q Okay. Can you tell what he's wearing there?

9 A Vest, long-sleeve shirt, dark hair, sunglasses.

10 Q Okay.

11 A Like I say, the only thing I didn't see was the back
12 of the vest.

13 Q Okay. So we are showing you part of the camera at
14 23:25 hours. There you can see the bandana?

15 A Uh-huh.

16 Q He's walking away. He comes back into view?

17 A Yeah.

18 Q Okay. All right. Thank you.

19 THE FOREMAN: Do we have anymore questions for the
20 witness?

21 Sir, the proceedings before the Grand Jury are
22 secret. You may not disclose evidence presented to the Grand
23 Jury, any event occurring or statement made in the presence of
24 the Grand Jury, any information obtained by the Grand Jury or

1 the result of the investigation being made by the Grand Jury.

2 However, you may disclose the above information to
3 the District Attorney for use in the performance of his
4 duties.

5 You may also disclose your knowledge concerning the
6 proceedings when directed by a court in connection with
7 judicial proceedings or when otherwise permitted by the Court
8 or to your own attorney.

9 The obligation of secrecy applies until the Court
10 allows the matter to become public record.

11 A gross misdemeanor and contempt of court may be
12 pursued if your obligation of secrecy is not followed. Do you
13 understand?

14 THE WITNESS: Yes.

15 THE FOREMAN: Thank you. You are excused.

16 (Witness excused.)

17 THE FOREMAN: I will have you raise your right hand.
18 Have a seat.

19 (Whereupon the witness was sworn by the Foreman.)

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24 ///

1 ELLEN CLARK, M.D.

2 called as a witness having been first duly
3 sworn by the Foreman testified as follows:
4

5 EXAMINATION

6 BY MR. HALL:

7 Q Would you please state your name and spell your
8 last?

9 A Ellen Clark, C-L-A-R-K.

10 Q Dr. Clark, are you aware the Grand Jury has convened
11 today to consider a proposed Indictment concerning allegations
12 of murder, battery with a deadly weapon and other related
13 charges?

14 A Yes.

15 Q Do you have information that would aid the Grand
16 Jury in their investigation?

17 A I do.

18 THE FOREMAN: Ms. Clark, are you aware the Grand
19 Jury is inquiring into evidence you may have relating to the
20 charges of conspiracy to engage in an affray, challenge to
21 fight resulting in death with the use of a deadly weapon,
22 battery with a deadly weapon, two counts, discharging a
23 firearm into a structure two counts, carrying a concealed
24 weapon two counts, open murder with the use of a deadly

1 weapon, second degree murder with a deadly weapon and this is
2 in the matter of Ernesto Manuel Gonzalez, Stuart Gary Rudnick
3 and Cesar Villagrana?

4 THE WITNESS: I am.

5 THE COURT: Thank you.

6 BY MR. HALL:

7 Q What is your occupation, Doctor?

8 A I am a doctor of medicine specialized in anatomic,
9 clinical and forensic pathology.

10 Q Are you the Medical Examiner for Washoe County?

11 A The Chief Medical Examiner, yes.

12 Q What does the Chief Medical Examiner do?

13 A The Chief Medical Examiner and Coroner is a forensic
14 pathologist who has specialized in pathology and is charged
15 with the investigation and examination and disposition of
16 cases involving unattended, unexpected and particularly
17 violent deaths.

18 Q Is there a certain conduct you would use to
19 determine cause and manner of death?

20 A Yes. We conduct autopsy examinations.

21 Q All right. Did you conduct an autopsy examination
22 of Jeffrey Pettigrew?

23 A I did.

24 Q When did you do that?

1 A The examination was conducted on September 24th of
2 this year.

3 Q Would typically -- Was this examination or autopsy
4 documented by photographs?

5 A Yes.

6 Q Did you have an opportunity to review a number of
7 photographs?

8 A I did.

9 Q Let me show you what has been marked for
10 identification Exhibit 7. I ask you to take a look at those
11 photographs and tell me if they fairly and accurately depict
12 the decedent when you conducted your autopsy and your
13 examination of him?

14 A They do.

15 Q Would those photographs aid you in explaining to the
16 jury cause and manner of death and the injuries suffered by
17 Mr. Pettygrew based upon your examination?

18 A Yes.

19 Q Would you like to step up and explain the injuries
20 to Mr. Pettigrew you observed? If you step over here, we can
21 put them up on the overhead projector.

22 A Okay.

23 Q Let me just switch it out. You can put them right
24 down on there. This will zoom out and zoom in. This is auto

1 focus. There you go.

2 A All right. Mr. Pettygrew's examination was
3 conducted in the usual fashion, and that is we perform,
4 initially, an external examination to collect evidence and
5 look for findings that might demonstrate a cause and manner of
6 death. I am sorry, I can't see the jury. But the cause of
7 death is simply the disease or injuries which result in death.
8 Manner of death describes a circumstance under which that
9 occurs.

10 Mr. Pettigrew had many injuries that were
11 distributed literally from his head to his pelvis or buttocks
12 region. In particular, visible at the outset of the autopsy
13 were injuries that were on the face, in the area of the nose
14 and the eye and at the bridge of the nose. This photograph is
15 one that we would deem to be an identification photograph or a
16 relatively clean photograph taken after blood and debris has
17 been removed from the body surface. It also shows some
18 evidence of resuscitation. The decedent had gone first to the
19 hospital for emergency resuscitation, been intubated, had
20 multiple therapies attached to him including chest tubes on
21 both sides of the body and evidence of transfusions of blood
22 and other products.

23 Q Can I ask you a couple of questions about the face?
24 There was an injury over the eye, injury near the nose, then

1 significant injury to the center of the nose. Was that
2 indicative, can you tell, the result of blunt force trauma or
3 was that caused by being cut?

4 A There were injuries to the face that had primarily
5 features of sharp force trauma. There is a possibility there
6 may have been blunt trauma, also commingling, mixed or mingled
7 with, but the majority of the wound findings and margins of
8 the examination suggested the facial injuries were primarily
9 sharp force.

10 Q Would that be consistent with a knife?

11 A Yes, any sharpened implement, yes. Do you want me
12 to continue?

13 Q All right.

14 A In particular, the next Grand Jury exhibit shows
15 Mr. Pettigrew's eye, his right eye, in particular, the right
16 side of the bridge of his nose, the eyebrow. It shows two
17 wounds that have features again suggestive of sharp force.
18 One is at the bottom end of the right eyebrow. It is
19 approximately two centimeters, almost an inch long, then there
20 is another one that is more characteristic of a puncture-type
21 wound or a deeper wound, but also has very clean margins as
22 opposed to having abrasion and tears and crushing injury at
23 the margins. So each of these injuries is consistent with
24 sharp force trauma, but the possibility of blunt force cannot

1 be totally eliminated.

2 Q Showing you 2-b.

3 A 2-b now shows the mustache of Mr. Pettigrew, the tip
4 of his nose, right nostril area. The left is almost
5 completely detached from the nose. It was hanging by a strip
6 of skin on the side. Again, the margins you will see are
7 fairly clean and discreet. There is some potential crushing of
8 the edges, but this has features more consistent with a sharp
9 force than blunt force.

10 Q Showing you 2-c?

11 A Okay. 2-c shows the back of Mr. Pettigrew's body. In
12 particular, you can appreciate some livor mortis which is the
13 congestion at the back of the body. There is a pressure
14 blanched area here. So that is an artifact or consequence of
15 the time interval since death. There are also evident gunshot
16 wounds, in particular towards the right mid to lower chest
17 area and toward the top of the right buttock. These were two
18 of what were ultimately identified as four gunshot wounds that
19 were toward the back and right side of Mr. Pettigrew.

20 You can also see a bit of a gunshot wound that is at
21 the back of the bicep region on the right side of the arm.
22 There is also one evident towards the forearm on the right
23 side of the body.

24 Q 2-d?

1 A 2-d shows the bottom of Mr. Pettigrew. He had
2 unique identifying features that also was identified by
3 fingerprint examination. He had at some point undergone
4 amputation of his right leg. He was initially received with a
5 prosthesis comprised of the lower right leg and the foot.

6 Q 2-e?

7 A Okay. 2-e shows the aggregate or an aggregate of
8 gunshot wounds that were identified on Mr. Pettigrew's back
9 and right torso. In particular, I will tell you the wounds
10 have been numbered, and that is a process used for
11 identification and reference. It does not necessarily reflect
12 an order of wounding or any sequencing of events.

13 So gunshot number one is towards the upper mid to
14 right side of the back, and it is a fairly pristine gunshot
15 entrance wound. It has abrasion around the margin. There is
16 a fixed puncture defect in the bed of the gunshot wound.

17 Two has a similar appearance, is at a similar level
18 on the body, more towards the right side or towards the back
19 axillary fold or back fold of the arm but still in the chest
20 area.

21 Gunshot number three is that which you saw in the
22 earlier photograph toward the buttock on the top right side of
23 the body.

24 Number four is a separate, what we would refer to as

1 an atypical gunshot wound because it has irregular shaping and
2 irregular margins. It is not discreet and specific and
3 isolated with a round puncture defect as gunshot number one
4 and gunshot number two and three are.

5 Gunshot number 5 is an atypical gunshot wound also.
6 During the course of the examination, gunshot number four
7 could be tracked to gunshot number 5. Number 4 representing
8 the entrance wound and number 5 an exist wound, this is a
9 through and through gunshot wound.

10 Number 3 on the body could be tracked internally to
11 the other wound shown which is gunshot 6 arbitrarily
12 identified, and the track for this wound was through the
13 buttocks soft tissue through a portion of the pelvic bone and
14 exiting from the front of the body.

15 You can also recognize there is some evidence of
16 therapy toward the right side of the more upper aspect of the
17 chest, and that is a chest tube that has been placed near the
18 level of the fourth rib or nipple area toward the side of the
19 body. Only toward the side of body.

20 Q 2-f?

21 A 2-f shows again the chest tube for reference gunshot
22 wound 7. Gunshot wound 7 is again an atypical wound but
23 represents an exit wound. It tracks from gunshot 1 at the back
24 of the body which represents the entrance with the exit from

1 number 7 at the front of the body. The area of bruising
2 adjacent to gunshot 7 was actually a region where a bullet was
3 recovered. It tracked from gunshot wound number 2 entering at
4 the back of the body to the recovery site at the right side of
5 the chest. Gunshot 8 represents another atypical wound, but
6 has features of an entrance wound. It may represent a reentry
7 from another wound. You will see a complex collection of
8 wounds on the right arm. This may actually be a reentry.
9 Again, it has those fairly discreet features with abrasion
10 around it, a fixed oval defect in this case, and it tracks
11 beneath the skin surface to gunshot 9 which represents its
12 exit.

13 So in aggregate, these photos have shown a total of
14 5 gunshot wounds to Mr. Pettigrew's body entering at the back
15 or the back right side of the body, passing from the back of
16 the body to the front and existing and/or leaving bullets
17 lodged at the front of the body.

18 Q Showing you Exhibit 2-g?

19 A 2-g shows a different perspective of gunshot
20 eventually labeled as gunshot 7, 8, 9 at the front of the
21 body. Again, an area of bruising at the right side of the
22 front of the chest wall. It also shows some wounds that are
23 on the axillary region or upper arm fold region towards the
24 right bicep. This is, again, an atypical gunshot wound. The

1 possibility represents a fragment of a bullet entering the
2 body or a reentry wound from a bullet fragment can't be
3 excluded, but you can see these wounds 8, 9, and this was
4 ultimately called number 10 are very closely approximated.
5 This is a little bit misleading because the arm is up. If you
6 release the arm down toward the side of the body, those would
7 all align fairly closely.

8 I would also point out it shows better in another
9 photograph. This is a series of wounds that begin at the
10 upper inner bicep region of the right arm and eventually
11 tracks down to another.

12 Q This is marked 2-I?

13 A Okay. 2-I for reference shows that wound on the
14 upper inner arm fold region of the right upper arm, then it
15 also shows this wound now identified as gunshot number 11.
16 This wound has many different small fragmentary perforations,
17 also some perforations extending downward toward the inner
18 bicep region exiting in part through a fairly large defect
19 that was identified as gunshot 11-a. So there is a track into
20 and beneath the skin surface from this wound to this wound.

21 Q This is 2-j I believe. Yes.

22 A This shows a different perspective of those wounds
23 again. Number 10, very close to the armpit crease. This
24 would be the hair for the armpit, also very close to those

1 wounds aggregated on the right upper chest. It shows a little
2 bit more clearly the gunshot identified as number 11, again,
3 with an abraded or a bruised and crushed margin, some smaller
4 defects adjacent to that with the wound tracking beneath the
5 skin surface to the inner edge of the bicep region on the
6 upper right arm.

7 Q I think we somehow got those out of the order, but
8 we could go to wound number 7?

9 A Okay.

10 Q That is 2-k?

11 A Okay. Excuse me. This is 2-k. The exhibit shows
12 the gunshots that were or the wounds that were at the front of
13 body. For orientation, the nipple on the right side of the
14 chest wall and the gunshot 7 that corresponded with the
15 entrance wound at the back of the body. But also now that
16 area of bruising adjacent to it has been sectioned so we can
17 retrieve the bullet that is impacted just beneath the skin
18 surface. It is a rather unique bullet. It was a hollow point
19 mushroomed with some packing material in the center of it, so
20 it was retrieved and submitted into evidence.

21 And gunshots 1 and 2 that track from the back of the
22 body to the front tore through the chest wall immediately
23 entering basically at the abdominal cavity through the
24 diaphragm. There was extensive tearing of the diaphragm, and

1 the liver had essentially been fragmented into numerous
2 pieces. These were each very severe fatal wounds.

3 Q All right. Showing you a picture of the evidence
4 that was retrieved from wound 7, adjacent to wound 7?

5 A This photograph shows that bullet that was retrieved
6 from the right chest wall and again the kind of unique
7 configuration of the bullet. It was a large, relatively large
8 caliber bullet, I believe .40-caliber.

9 Q 2-m?

10 A This photograph shows the forearm, towards the back
11 of the forearm. Or, actually, as we hold our hands this way,
12 it would be sort of toward the front and the side of the
13 forearm. It shows, again, a very atypical gunshot wound.
14 There is a lot of tearing, irregularity of the wound margins.
15 It appears to be tangential or sort of a curved grazing
16 gunshot entry wound --

17 Q 2-n?

18 A -- and recovered at the terminus of this wound.
19 Again tracking through the forearm on the right side of the
20 body was a separate aggregate of bullet material. Here there
21 is primary soft tissue, but the next exhibit shows the back of
22 the hand, tattoos at the wrist region and this area of the
23 forearm now having been cut to expose the bullet. This was
24 actually a fragment or these were fragmentary bullet portions

1 including some disconnected pieces of bullet jacket and a
2 piece of lead core all retrieved from the arm wound on the
3 right side.

4 So in summary, Mr. Pettigrew suffered at minimum of
5 5 gunshots to the back and right side of his body. Of those
6 5, four of them exited. Several of them were actually
7 atypical wounds that may have represented reentry of wounds
8 that were initially located on the right arm, the outer arm
9 and upper inner arm. Of the wounds to his torso, two passed
10 through the diaphragm, the muscle that separates the abdomen
11 from the chest, and severely injured the diaphragm, caused
12 extensive bruising to the right lung and massive injury to the
13 liver.

14 One passed through the pelvic soft tissue but caused
15 fracture injury to the pelvis. There was then an aggregate of
16 multiple, probably at least ten various wounds to the right
17 arm with some yielding fragmentary portions of bullet back
18 towards the right forearm and others appearing to be portions
19 of bullet that had either entered independently or exited
20 independently from fragments.

21 Q What was the manner of death?

22 A Manner of death was homicide.

23 Q That would be -- What is homicide?

24 A Death occurring as the direct result of the actions

1 of a person or persons against another.

2 Q All right. Thank you, Doctor. I have no further
3 questions. Date of death?

4 A 9-24-11.

5 Q Thank you.

6 THE FOREMAN: Do we have any questions?

7 A GRAND JUROR: Was it determined if all of
8 Mr. Pettigrew's bullet wounds were from the same gun?

9 THE WITNESS: I can't determine that. I can
10 identify only two bullets each having very similar
11 characteristics.

12 THE FOREMAN: Any other questions?

13 Dr. Clark, the proceedings before the Grand Jury are
14 secret. You may not disclose evidence presented to the Grand
15 Jury, any event occurring or statement made in the presence of
16 the Grand Jury, any information obtained by the Grand Jury or
17 the results of the investigation being made by the Grand Jury.

18 However, you may disclose the above information to
19 the District Attorney for use in the performance of his duty.

20 You may also disclose your knowledge concerning the
21 proceeding when directed by a court in connection with
22 judicial proceedings or when otherwise permitted by the court
23 or to your own attorney.

24 The obligation of secrecy applies until the Court

1 allows the matter to become public record.

2 A gross misdemeanor and contempt of court may be
3 pursued if your obligation of secrecy is not followed. Do you
4 understand?

5 THE WITNESS: I do.

6 THE FOREMAN: Thank you.

7 (Witness Excused.)

8 (Whereupon another witness entered the Grand Jury room.)

9 MR. HALL: Please step over here, raise your right
10 hand and be sworn.

11 THE FOREMAN: Thank you have a seat.

12 (Whereupon the witness was sworn by the Foreman.)

13
14 KERRI HEWARD

15 called as a witness having been first duly
16 sworn by the Foreman testified as follows:

17
18 EXAMINATION

19 BY MR. HALL:

20 Q Ma'am, would you please state your name and spell
21 your last name?

22 A My name is Kerri Heward, last name H-E-W-A-R-D.

23 Q Ms. Heward, are you aware the Grand Jury has
24 convened today to consider a proposed Indictment concerning

1 allegations of murder, battery with deadly weapon,
2 discharging a firearm in a structure and other related
3 charges?

4 A Yes.

5 Q Do you have information for the Grand Jury?

6 A I do.

7 THE FOREMAN: Ms. Heward, are you aware the Grand
8 Jury is inquiring into evidence you may have relating to
9 charges of conspiracy to engage in an affray, challenge to
10 fight resulting in death with the use of a deadly weapon,
11 battery with a deadly weapon two counts, discharging a firearm
12 in a structure, two counts, carrying a concealed weapon two
13 counts, open murder with the use of a deadly weapon, second
14 degree murder with a deadly weapon, and this in the matter of
15 Ernesto Manuel Gonzalez, Stuart Gary Rudnick and Cesar
16 Villagrana.

17 THE WITNESS: Yes.

18 BY MR. HALL:

19 Q Ma'am, what is your occupation?

20 A I am supervising criminalist for the Washoe County
21 Crime Lab.

22 Q How long have you been so employed?

23 A I have been at the Washoe County Crime Lab four
24 years. Prior to that, the San Bernardino Crime Lab for

1 fourteen years.

2 Q Can you tell the ladies and gentlemen of the Grand
3 Jury a little bit about your background, training and
4 experience as it relates to investigation of firearms?

5 A Yes. I have, even though my title is supervising
6 analyst, I am currently doing firearms examination at the
7 laboratory. And that is what I have spent most of my career
8 doing. I have a degree in biology, and I was trained to do
9 firearms examinations also at the laboratory in
10 San Bernardino. I have been so employed in firearms since
11 1997 is when I started in that section.

12 Q Did you have an opportunity to examine some evidence
13 that was collected by Heather Kohles?

14 A Yes, I did.

15 Q What did that evidence consist of?

16 A I examined several firearms. I examined fired
17 bullets both from the crime scene and from individuals, and I
18 examined fired cartridge cases.

19 Q I would like to focus on some evidence that was
20 collected inside the Nugget. That would be some shell cases
21 and a couple of guns.

22 Q Have you had an opportunity to see the diagram that
23 was presented by Mike Ivers?

24 A I did see that, yes.

1 Q That is depicted behind you. This is the Trader
2 Dicks diagram, and he testified that there was placards placed
3 next to evidence that was collected, specifically firearm
4 shell casings. I would like to talk about that evidence. Are
5 you familiar with the placards and the evidence connected next
6 to the placards?

7 A Yes. The items I examined, the packaging was marked
8 with a placard number where it was collected. If it was
9 collected at a placard number, I used that number to identify
10 the cartridge cases and bullets that I examined.

11 Q All right. Can you tell us, generally speaking, what
12 your examination revealed?

13 A Would you like to talk about cartridge cases first,
14 bullets or in general?

15 Q Let's do it this way: Let's talk about, there was
16 at placard 10 and 11, there was a revolver and a semi-auto
17 pistol. Did you examine those two guns?

18 A Yes, I did. I examined a Smith & Wesson revolver,
19 also a Smith & Wesson pistol. After examining those,
20 determining they were safe to fire, I test fired them at the
21 laboratory into a big what tank we have and the bullets that
22 are recovered in the what tank are virtually undamaged, and
23 the cartridge cases either are removed from the cylinder of
24 the revolver or ejected from the pistol, because it is a

1 semi-auto pistol. Then I can take those items and compare
2 them under a comparison microscope we have at the laboratory
3 which allows me to look at two different things at the same
4 time. So I compare first test fired evidence to test fired
5 evidence to determine if in fact there are matching lines that
6 I can use to make an identification. And then I will compare
7 a test fired cartridge case to evidence cartridge cases at the
8 scene, and I look for matching microscopic markings that are
9 placed on there when they are fired in the firearm. And those
10 markings are a result of the machining of the firearm when it
11 is made. They are transferred in the firing process to the
12 cartridge cases, also to the bullet. And by looking under the
13 microscope, I can match these lines. It is, simply what I am
14 doing is matching lines across the field of view in that
15 comparison microscope.

16 Q Can I direct your attention to the cartridge cases
17 that were collected at markers 51, 29, 44? If I am not
18 mistaken, 52 was a bullet an unfired bullet?

19 A May I refer to my report? I have the placard
20 numbers in my report.

21 Q Would that refresh your recollection?

22 A Yes, it would, please. I have a report that is
23 dated November 3rd of 2011, and on the description of all of
24 the evidence I have included the placard numbers. Can you

1 repeat that?

2 Q Yes. I was referring to placard 51, 29, 44 and 52.

3 A Forty-four is a 9mm Luger cartridge I examined.

4 Fifty-one is a 9mm Luger cartridge I examined. 29 is also a
5 9mm Luger cartridge I examined. The other item you asked me
6 about?

7 Q Fifty-two?

8 A Fifty-two is --

9 Q It was a regular bullet. You may not have examined
10 it.

11 A I don't have that listed specifically by number.

12 Q Did you examine any bullets that were unfired?

13 A I did not examine any that were not submitted with a
14 firearm. I know there was located at the scene -- I did not
15 examine that one.

16 Q Well, so you did look at 44, 29 and 51?

17 A Yes.

18 Q Those were 9mm?

19 A 9mm Luger fired cartridge cases.

20 Q Could you match those up to any firearm?

21 A Yes. I compared those to the 9mm Luger pistol.

22 They did have matching lines. They were fired in that gun.

23 Q What placard did the 9mm pistol come from?

24 A The 9mm pistol is listed as coming from placard 11.

1 Q Okay, placard 11 right here on the floor. All
2 right. And then when you examined the revolver, what, if
3 anything, can you tell us about that the caliber and such?

4 A The revolver I examined was .38 Special revolver
5 that had one fired cartridge case in the chamber. All the
6 other cartridges were unfired. I did take it from the package
7 that was labeled chamber and compared it back to test fires.
8 It was in fact fired from that firearm. I, however, didn't
9 receive any bullets that were consistent with having been
10 fired from that revolver, just the cartridge cases are from
11 the chamber.

12 Q Now if I can direct your attention to placards 23,
13 24, 25, 26, 27 which were purportedly collected inside of
14 Trader Dicks?

15 A Those items are all .40 Smith & Wesson fired
16 cartridge cases that I examined and compared to one another.
17 There were no firearms that were submitted to me for
18 examination that fired those cartridge cases, so that is still
19 an outstanding firearm.

20 Q Did you compare them to each other?

21 A I did. They were all fired in the same gun, and
22 they have marks that indicate they were fired in a Glock
23 pistol. They were fired in a Glock .40 Smith & Wesson caliber
24 firearm.

1 Q .40-caliber firearm. All these are .40-caliber
2 shell cases shot from the same gun?

3 A That's correct.

4 Q 23, 45, 26, 27. Did you examine projectiles from 53,
5 55, 18 and 19. 18, 19, 53, 55?

6 A I did. I compared 53, 55, 18 and 19. Those were all
7 consistent .40-caliber fired bullets with polygonal rifling,
8 which means it is a type of rifling inside the barrel of a
9 firearm that very few manufacturers use. Glock is one of
10 them, and the bullets have the appearance of kind of a stop
11 sign rather than conventional rifling which looks more like
12 stripes that are impressed on the bullet. That is as the
13 result of grooves being cut into the barrel of the firearm.
14 The reason why manufacturers put those marks inside the barrel
15 is they cut grooves out and cut them in a twisted fashion
16 either to the right or left to impart stability to the bullet.
17 When it fires, much like a football that spirals, it travels
18 further and more accurately. That is the reason for it. As a
19 result, those marks are impressed on a bullet. The bullets
20 that are fired in Glock firearms are almost impossible to
21 identify, because they kind of slip through the barrel, don't
22 pick up the markings very well. Whereas, essentially rifled
23 barrel marks they put on bullets are much easier to identify.
24 So we have very easy to identify cartridge cases or difficult

1 to identify bullets from a Glock pistol.

2 Q Did you have an opportunity to examine a bullet that
3 was taken from Diego Garcia's leg?

4 A Yes.

5 Q Were you able to match that bullet to any firearm?

6 A Yes, I was. That bullet is a .380 auto bullet that
7 was fired in a 9mm Smith & Wesson pistol.

8 Q Can you explain that? How we got a .380 bullet out
9 of the 9mm pistol?

10 A Certainly. What we call the nominal caliber of a
11 .380 auto bullet and 9mm which is just the diameter of that
12 bullet is about the same. A .380 weighs less. The shape is a
13 little different. It is a lighter bullet. The cartridge case,
14 .380 auto cartridge case can be fired in the 9mm Luger pistol,
15 but it doesn't have the force required to automatically eject
16 it. It fired. It didn't eject. I had to manually pull the
17 slide to the rear and eject the cartridge cases. But they did
18 successfully fire. I was able to match also a cartridge case
19 from the scene to that firearm as well, and the bullet.

20 Q So the bullet from Diego Garcia came from the 9mm
21 Luger that was placard 10, excuse me, placard 11?

22 A Yes. It was fired in that pistol.

23 Q Was that gun jammed in the Luger?

24 A I didn't examine the gun at the scene, but markings

1 on the evidence packaging indicate that it was double stacked.
2 What that means is there were two cartridges that were kind of
3 jammed in the slide, and it wasn't going forward. What causes
4 this is an event like firing a .380 in a 9mm. It doesn't
5 eject. Somebody would automatically pull that slide to the
6 back as I did to eject it letting the slide go forward and
7 pick up cartridge cases from the magazine. Because they are
8 not the right size, it probably picked up two at a time and
9 jammed it in the gun, and those are the ones that I believe
10 Heather marked as double stacked.

11 Q Would it be fair to say that the person who was
12 firing that semiautomatic pistol had the wrong ammunition in
13 it?

14 A They slid the wrong ammunition. The ammunition
15 submitted with the gun from the magazine, a couple of the
16 cartridge cases were marked 9mm BRC that is for Browning
17 Curtis. That is your plan designation, exactly the same
18 cartridge as a .380. It is not the same cartridge as 9mm
19 Luger. There was one I believe .380 auto in that magazine as
20 well. They were firing the wrong ammunition. They did fire
21 some ammunition successfully designed for that, because we
22 have three fired cartridge cases we know were fired from that
23 gun. So they had a mix.

24 Q All right. When we look at the cartridge cases we

1 discussed earlier at 51, 29, 44, those were actually -- that
2 was the right ammo?

3 A That was the right ammo, that is correct.

4 Q Okay. Now if we look at the fact that the
5 .40-caliber cartridge cases were in a location inside of
6 Trader Dicks dance area, and we have got bullets that are
7 consistent with .40-caliber bullets over here in the slot
8 bank, can you draw any conclusion as to what direction the
9 person was firing?

10 A Well, if a person is holding a firearm as designed
11 in an upright position, the cartridge case is generally
12 ejected to the right-hand side, sometimes a little forward,
13 sometimes a little rear, but to the right-hand side. So the
14 person firing would be to the left of where the cartridge
15 cases are found. If they are firing it in a normal fashion,
16 and I would say by the location of bullets that they were
17 firing in the direction of where they were found.

18 Q Standing somewhere in this area, Trader Dicks,
19 shooting over across into the bank of slot machines?

20 A Yes.

21 MR. HALL: Thank you. I have no further questions.

22 THE FOREMAN: Do we have any questions for the
23 witness?

24 MR. HALL: Hold on one second. I may have another

1 question.

2 BY MR. HALL:

3 Q Did you exam the bullets that were taken by the
4 Medical Examiner out of Mr. Pettigrew and examine those?

5 A Yes. I examined a total of 7 .40 Smith & Wesson
6 caliber bullets. They all had the polygonal rifling. I
7 didn't do a comparison between them any further than
8 determining they have the same class characteristics which
9 means they all were the same size. They all had the polygonal
10 rifling. It was in a six right configuration which is common
11 for a Glock.

12 Q So the combination of polygonal rifling on the
13 bullet and the cartridge cases, the only manufacturer of
14 firearms that could have fired those was a Glock .40 Smith &
15 Wesson and that was consistent with the shell casings you
16 found at 23, 24, 5 and 27?

17 A Yes.

18 Q All right. Were the bullets internally consistent
19 with each other?

20 A They were consistent. They had consistent class
21 markings with each other.

22 Q Then there was one bullet in Exhibit 7 which was the
23 autopsy photos. Let me find that one. Here it is. So it was
24 marked as 2-L. Do you recognize that photograph?

1 A That is the same style of .40 caliber bullet I
2 examined and all of them, it is a Hornady Critical Defense is
3 the brand name. It has a small plastic red insert in it. The
4 purpose of that insert is to keep things like fabric or tissue
5 or something from plugging that nose and not allowing it to
6 mushroom open. A jacketed hollow point, which is what this
7 is, is designed to open up, make a bigger surface area,
8 therefore make a bigger hole. This plastic insert is designed
9 to keep things from plugging up that hole, allowing it to
10 open.

11 Q That reminds me, there was another projectile that
12 was located near the Horseshoe Bar. That was placard 48 I
13 would like to say to you. Do you recall examining a bullet
14 from placard 48 over near the Horseshoe Bar?

15 A I don't have anything that was listed from placard
16 48. I have placard 18, 19, 46, 55, 53, 2 from the autopsy and
17 the fired bullet that was removed from Diego Garcia. Those
18 are the ones I examined.

19 Q I guess it was 46 I am looking to now?

20 A I did examine a bullet at placard 46.

21 Q Sorry about that. All right. What characteristics
22 did that projectile have displayed?

23 A That was also consistent with .40 Smith & Wesson
24 polygonal rifling, consistent with the Glock, and it had a red

1 plastic insert that was submitted with that as well.

2 Q That was consistent with the other .40-caliber
3 bullets we talked about?

4 A Yes, 6 of the 7 .40-caliber bullets I examined
5 consistent with jacketed hollow point Hornady style. One is
6 called a total metal jacket. It is an electroplated bullet.
7 Only certain manufacturers make that kind of a bullet. But all
8 the others were consistent with the Hornady style.

9 Q What about 47 located over here? I guess that was
10 some kind of projectile. Did you examine 47?

11 A I don't have a bullet identified as 47.

12 Q Okay. All right. That was just a casing or part of
13 a bullet apparently. So that is good. Thank you. I have no
14 further questions.

15 THE FOREMAN: Do we have any questions?

16 A GRAND JUROR: Did you have any bullets to examine
17 from Ramirez?

18 THE WITNESS: No. From what I understand, I was
19 told there is an individual, I don't know who, that still has
20 a bullet in them.

21 A GRAND JUROR: Okay.

22 THE FOREMAN: Any further questions? The
23 proceedings before the Grand jury are secret.

24 You may not disclose evidence presented to Grand

1 Jury, any event occurring or statement made in the presence of
2 the Grand Jury, any information obtained by the Grand Jury or
3 the result of the investigation being made by the Grand Jury.

4 However, you may disclose the above information to
5 the District Attorney for use in the performance of his duty.

6 You may also disclose your knowledge concerning the
7 proceedings when directed by a court in connection with
8 judicial proceeding or when otherwise permitted by the court
9 or to your own attorney.

10 The obligation of secrecy applies until the Court
11 allows the matter to become public record.

12 A gross misdemeanor and contempt of court may be
13 pursued if your obligation of secrecy is not followed. Do you
14 understand?

15 THE WITNESS: Yes, I do.

16 THE FOREMAN: Thank you.

17 (Witness excused.)

18 THE FOREMAN: May I inquire if anybody needs a break
19 or anything?

20 A GRAND JUROR: I will take one.

21 (Short recess taken.)

22 (Whereupon another witness entered the Grand Jury room.)

23 MR. HALL: I am going to have you stand right here,
24 raise your right hand and be sworn.

1 THE FOREMAN: Thank you. Have a seat.

2 (Whereupon the witness was sworn by the Foreman.)

3

4 CONFIDENTIAL SOURCE 11-67

5 called as a witness having been first duly

6 sworn by the Foreman testified as follows:

7

8 EXAMINATION

9 BY MR. HALL:

10 Q Sir I am going to refer to you as Confidential

11 Source 11-67, all right?

12 A Yes.

13 Q Sir, are you aware the Grand Jury has convened today

14 to consider a proposed Indictment considering allegations of

15 battery with a deadly weapon, murder, discharging a firearm in

16 a structure, conspiracy, challenge to fight and related

17 charges?

18 A Yes.

19 Q Do you have information that would aid the Grand

20 Jury in their investigation?

21 A Yes.

22 THE FOREMAN: Are you aware the Grand Jury is

23 inquiring into evidence you may have relating to charges of

24 conspiracy to engage in an affray, challenge to fight

1 resulting in death with the use of a deadly weapon, battery
2 with a deadly weapon two counts, discharging a firearm into a
3 structure two counts, carrying a concealed weapon two counts,
4 open murder with the use of a deadly weapon, second degree
5 murder with a deadly weapon and this is in the matter of
6 Ernesto Manuel Gonzalez, Stuart Gary Rudnick, Cesar
7 Villagrana?

8 THE WITNESS: Yes.

9 BY MR. HALL:

10 Q Are you familiar with the Vagos motorcycle club?

11 A Yes. I have been a Vagos for twenty-seven years. I
12 have been involved with Vagos for twenty-seven years. I moved
13 up the ranks to a very high rank of Vagos within the last few
14 months. Before this event took place, I was in the higher
15 echelon, echelon, excuse me, of the club.

16 Q Were you at the Nugget on the 23rd of September,
17 2011?

18 A Yes, I was.

19 Q Are you familiar -- I am showing you or behind you
20 videoed surveillance tape that was captured from the Oyster
21 Bar. It is Vagos-H.A. Oyster Bar two at about 22:13 hours or
22 about 10:13 p.m. on that day. Do you recognize some of the
23 individuals that are depicted in that video?

24 A Yes.

1 Q All right. I am going to play a little bit of that
2 video. Are you familiar with Ernesto Manuel Gonzalez?

3 A Uh-huh.

4 Q How are you familiar with him?

5 A Through the club.

6 Q You can identify him?

7 A Yes.

8 Q Do you know Cesar Villagrana?

9 A Yes.

10 Q How do you know him?

11 A Through the club.

12 Q Through the club?

13 A Yes.

14 Q All right. How about Mr. Pettigrew, Jeffrey also
15 known as Jethro Pettigrew?

16 A Yes, I can identify him, too.

17 Q Can you identify an individual by the name of Gary
18 Stuart Rudnick?

19 A What is his --

20 Q "Jabbers"?

21 A Yes.

22 Q So "Jabbers" would be a nickname?

23 A Yes.

24 Q All right. Having been at the Nugget, were you over

1 in the Oyster Bar on the night in question, the 23rd?

2 A Yes.

3 Q All right.

4 A That is me right there.

5 Q That would be you?

6 A Yes.

7 Q Were you familiar with what was going on that night?

8 A Yes.

9 Q Was there any tension between the Hells Angels
10 motorcycle club and the Vagos motorcycle club?

11 A Yes, there was.

12 Q What was the nature of that tension?

13 A What had happened is that, if I might go through
14 this, may go through this, I got a call. I was by the east
15 elevator bar over there. We got a call there was a problem
16 with the Hells Angels. So when we got that call, we moved
17 towards the area of the Oyster Bar, and at that time, when I
18 went to the Oyster Bar in this corner here, the corner -- Is
19 this the Oyster Bar here?

20 Q Yes?

21 A That's the back bar, right?

22 Q So it bears over on the left-hand corner.

23 A Okay. Right here where you see this little area
24 here, it is a little box. There is an opening behind it.

1 Right there is where "Jabbers" was at at the time when I first
2 came up, and Pettigrew.

3 Q What was going on between "Jabbers" or Mr. Rudnick
4 and Mr. Pettigrew?

5 A Well, when I walked up, there was a lot of Vagos
6 that were around. And I took a look over there, and they both
7 came out, and "Jabbers" was very upset. And he just kept on
8 talking, kept on talking, kept on talking. And he kept
9 taunting Pettigrew. What he was saying was the likes of, "I
10 don't know you. You don't have a right to touch me. What are
11 you doing?" You know. "I don't even need to talk to you,"
12 things of that nature, really pushing on top of him.

13 Pettigrew's response back to him was, "Hey, man, you
14 know, I was just having a good time. I just want to have a
15 beer," basically. He wasn't in no shape or form upset at that
16 time. Top Hat, who is this gentleman right here, is a twenty
17 year what you call a Nomad for a member. I have known Top Hat
18 for twenty-six years. He was there when we get to that point
19 to talk in conversation with Pettigrew.

20 What had happened is that we were talking to
21 Pettigrew. He was cool. He was just saying, "Hey man,
22 everything is good. I have no problem." "Jabbers" comes up
23 and "Jabbers" then starts taunting him. You know, "You had no
24 right touching me." What he meant by "touching", he just

1 tapped him on the back, basically. You know, what my
2 insinuation was, he tapped him on the back. He said, "Hey, do
3 you want to have a beer?" "Jabbers" took it as an offensive
4 thing, pushed out his chest because, of course, there was a
5 lot more Vagos than there were Hells Angels. So he kept on
6 taunting. He wouldn't stop.

7 So I told him, I said, "Listen, shut the fuck up."
8 Excuse my French, but I have to tell you the way it went. I
9 said, "Shut the fuck up. Get the fuck out of here." He
10 backed up for a minute, then he come back again. I said, "I
11 told you to leave." He says, "Hey, hey, don't worry." I
12 said, "I told you to leave." Now me, in my position, he has
13 to listen to me. So what happens is that Pettigrew and I are
14 talking. He comes back up again, and then Pettigrew looks at
15 him. I am going to call him Jethro. Jethro looks at him and
16 he says to Jethro, "You know I don't know why you had to touch
17 me." He says, you know, "Just talk to me." He said, "I don't
18 need to talk to you," this and this, whatever. Jethro lost
19 it. He got pissed off.

20 Q Jethro Pettigrew is mad at "Jabbers" or Rudnick?

21 A For taunting him, taunting him, taunting him. He
22 finally just said, "Listen, I don't need to fucking talk to
23 you no more." He turned around and walked away.

24 Q We have that depicted on the video. Let's see,

1 Mr. Rudnick also known as "Jabbers" and so we are at 22:13:40?

2 A We are looking at him right now.

3 Q Can I ask you to back up so we can see? I have a
4 pointer right here. We can kind of identify people. Now this
5 individual at the bottom left-hand corner?

6 A Gonzales.

7 Q Ernesto Manuel Gonzalez?

8 A Yes.

9 Q Is he associated -- How would he be associated with
10 Mr. Rudnick or "Jabbers"?

11 A He would be associated just as a brother, but he's
12 an underling because "Jabbers" is a V.P., Vice President. So
13 at any moment, if "Jabbers" was to ask him for assistance to
14 back him up, he would do it. So Mr. Gonzalez is basically the
15 backup to Mr. Rudnick because Rudnick is a Vice President in
16 the Vagos.

17 "Jabbers", yes, and here is Pettigrew right there.
18 That is him. All he's doing, he's just trying, shaking
19 people's hand, saying hello. That is his MO, tapping, say
20 hello, whatever. This is when I come over, because "Jabbers"
21 is having serious issues. So this is Top Hat, Gonzalez, they
22 call him Romeo, that is his nickname. There is "Jabbers"
23 right there. So I go over there. I am talking to him for a
24 minute, and I told him -- and here is this guy that was

1 backing him up. This is the guy that says I won't leave my
2 Vice President. He's an L.A. charter. This is Bret from
3 South Bay, South Bay member. I think that is Bret right there
4 from South Bay.

5 Q Did you go over and talk to Pettigrew?

6 A Yes. This is Pettigrew right here, Hells Angels
7 President. I am over there talking to him. And this is
8 Crusher, his name is Leo Ramirez. He's one of the guys that
9 got shot.

10 Q Leonard Ramirez, the person that got shot in the
11 stomach?

12 A Yes, he did. He watches over me. That was his job.
13 And I am talking to Top Hat here. And what we were trying to
14 do is make everything at ease right here, settle everybody, to
15 back them off. We don't want nobody in there.

16 Q You were trying to diffuse the situation, avoid an
17 altercation?

18 A One hundred percent. See there, I am on the phone.
19 I am trying to get in touch with some of the top, top,
20 National members so I could tell them what is going on before
21 this thing turns into a problem.

22 Q Now were there a lot of Vagos meeting at the Nugget
23 that weekend?

24 A Yes.

1 Q Had there been a meeting earlier that day at the
2 Nugget?

3 A Yes. We had a meeting at 8:00 o'clock in the West
4 towers.

5 Q Approximately how many Vagos members attended that
6 meeting?

7 A Over five hundred. There was a Vagos members
8 meeting. Right afterward, there was a Prospect meeting. Then
9 right after that, there was a Nomad meeting. Nomad, which
10 means there is gentlemen Vagos in the club that have been in
11 the club twenty years or over. And there was a Nomad force
12 there. They had the third meeting. After this meeting took
13 place and everything, we remained downstairs again.

14 Q All right. We can still see Mr. Gonzales in the
15 bottom right-hand corner, Mr. Rudnick or "Jabbers" there kind
16 of in the middle, I think that would be.

17 A There is "Jabbers" talking to Top Hat. That is his
18 wife. Top Hat is trying to talk to him, but "Jabbers" is not
19 paying attention. He's just getting more and more frustrated.
20 See by Top hat's demeanor when he's talking to him, basically
21 telling him he has to back up, just relax. Can we go back for
22 a moment, please?

23 Q Yes. I am getting there. Bear with me. It is
24 more.

1 A That's it right there.

2 Q We'll get there.

3 A There I am. I have got everybody for the back.

4 That is Bob. He is the Vice President of the San Jose Hells

5 Angels. I went up to Bob. I was talking to him, and he said,

6 "Everything is going to be all right." He says, "I am getting

7 too old for this." I said, "I am getting too old for this,

8 too." We shook each other hands. A lot of people around

9 didn't like what was going on. But I talked to his

10 Hang-around. I am talking to the guy. Now Top Hat goes back.

11 Everybody is a little bit tight. And there is "Jabbers" right

12 there.

13 Q Rudnick went back over to where Pettigrew was?

14 A Yes. I go back in. I am getting angry. I told him

15 already to go. When I go -- Leo's name is Crusher, the Vagos

16 name we call him.

17 Q Leonard, Leo, Crusher, they are all the same --

18 A Yes.

19 Q -- guy?

20 A Crusher, Leo, is right here. He has to watch me.

21 I am telling him to leave.

22 Q You are telling "Jabbers" to leave?

23 A He's trying to tell him, "What is going on? Don't

24 touch me." He's, "Listen, I was just playing around." So him,

1 Top Hat and I are telling "Jabbers", I put my hand on
2 "Jabber," said, "back off." I said, "Get out of here."
3 Basically just leave. I am telling him. That is his essay.

4 Q What happened after that? Did Mr. Rudnick,
5 "Jabbers", say anything about the situation?

6 A Yeah. What happened is that "Jabbers" kept taunting
7 him.

8 Q Taunting Pettigrew?

9 A Taunting Pettigrew. What happened is Pettigrew then
10 got angry and he says, "I don't need to talk to you no more,"
11 basically. And he walks away. So I tell everybody to walk
12 out. "Jabbers" and Top Hat sit right here at the video, and
13 "Jabbers" is drunk, and he tells Top Hat, he says, "Why are
14 Nomads always getting involved with our business?" Nomads
15 are, the Nomad Vagos are Vagos. We are all one. But still,
16 they are there to help out. Nomads are there to help out, and
17 each one of the charters of the Vagos, for any type of
18 encouragement if someone has a problem, whatever. They can
19 come into any meeting they want to at any time to hear what is
20 going on within the structure of each charter. He give Top
21 Hat, he has a beard, a full beard, and he says, "You got this
22 much time, because I made a call to the guys.: They were
23 still upstairs, the National members. This is the
24 International Vice President, Secretary, Sergeant at Arms, all

1 the way upstairs talking. What I then did was made a call to
2 the National President and he didn't answer the phone. I then
3 called the National President Nomads, Rocky, and we talked and
4 he says, "Come up here immediately." I walked -- Then he
5 says, Top Hat, I am right next to Top Hat, "If you guys don't
6 get down here, something's going to happen."

7 Q What did he mean by that?

8 A It is going to get it on, move without anybody's,
9 you know, permission or anything.

10 Q When you say get it on, Vagos are going to fight
11 with Hells Angels?

12 A One hundred percent. So I got pissed off at him.
13 Right at that point, being who I am, I could have smacked him
14 in the mouth, knocked him out, but I didn't choose to do that.
15 I went upstairs, because this is a big deal going on here.
16 When I went upstairs, I talked to Dragonman and Dragonman and
17 Rocky are up there. We are talking about the situation, what
18 happened. I told him "Jabbers" is drunk. I told him that,
19 you know, he was taunting the guy. And I told him it is going
20 to turn into a real bad thing real quick, because us and Hells
21 Angels don't get along too well at all because of past
22 history.

23 So what they did is they formed their little group.
24 They came downstairs. They walked around. They came back

1 down to the bar where no one was allowed. All Vagos were
2 backing up at that time. They went into the bar. Pettigrew
3 was there, Jethro, and they talked to Jethro and they talked
4 to Bobby V and everything was diffused. They said everything's
5 cool. Jethro says he didn't want no issues. There is no
6 problems. They said, okay, everything is fine. There is no
7 problems here. Everything is cool.

8 The problem is, when you have a lot of people, when
9 you have over five hundred people from a particular
10 organization, you can't get the word out to everybody at one
11 time. That is the problem. So they came walking back. And I
12 don't know if you want to go through that area.

13 Q Well, we'll get to that area. But before I get
14 there, can I talk a little bit about the organization of the
15 Vagos organization?

16 A Absolutely.

17 Q All right. So can you tell us about how the
18 organization is structured? You talked about the hierarchy,
19 the upper echelon?

20 A How it is structured is that you have a panel that
21 are called International who are what you call the top of the
22 whole Green Nation Vagos Motorcycle Club. It starts with the
23 International President, then goes International Vice President,
24 International Secretary, International Sergeant at Arms,

1 International Road Captain.

2 Q What are their duties? What are they charged with,
3 those different people?

4 A Road Captain is on the road. He basically takes
5 over the pack or the charter, whoever is on the road with him.
6 The International Road Captain, at all times you have to obey
7 what he has to say when you are on the road with the Road
8 Captain, because it is the road. What happens is, when he
9 takes a pack anywhere, whether it is to Vegas, Reno, whatever,
10 everybody has to follow his direction. He controls it on the
11 freeway.

12 Sergeant at Arms, when you are off the bikes and you
13 are out and about, Sergeant of Arms position is to make sure
14 that nobody, absolutely nobody guests hurt, has any problems.
15 I am talking Vagos members.

16 Okay. Each Vagos charter has the same type of set
17 up. You have your President, you have your Vice President,
18 you have your Secretary, you have your Sergeant at Arms, and
19 you have your Road Captain. Now each one of them have to
20 follow pretty much the same direction.

21 So the International President, he runs the club.
22 The International Vice President assists him in running the
23 club. He's like what you call a concierge, tells him,
24 delegates certain things to him, what he thinks he should do.

1 The Secretary takes care of, you know, the books,
2 Bylaws, things of that nature. At the end, the Secretary
3 combines everything and puts it together.

4 The Sergeant at Arms, his position is to protect the
5 President, International President at all times, at all cost
6 no matter what it is. Okay. If the International President
7 was here at the time, the first thing was to protect him from
8 all members, because it read that way in the Bylaws. In the
9 Bylaws it says that, number one, start off with the
10 International President. At all times the International
11 President is to be respected under any circumstances, wartime
12 or whatever, wherever he's at. That is the way it runs and
13 that is the way it operates.

14 Q Is respect an important part of the Vagos creed and
15 the Vagos code?

16 A Absolutely. Right underneath that part of the Bylaws
17 there is a thing call PBTs. The PBTs are -- The PBTs are in
18 essence underneath the International President. They are what
19 you call a higher king of the whole club. Anyone that
20 disrespects them faces serious, serious consequences. Anybody
21 from any chapter, say for instance there is a Riverside
22 chapter. Say for instance there is an L.A. chapter. Say for
23 instance members of the L.A. chapter come up to the President
24 of the other chapter and says words to him, he reports that to

1 the President, and then he could take care of it the way he
2 wants to. Or this President takes care of it the way he
3 thinks is peaceable. They talk about it. They come to a
4 remedy. Most of the time, most of the time when disrespect
5 gets out of order, they don't call the patch no more. They
6 became Prospect again. Sometimes they get a beating. So if
7 the guy has been around a long time, what they will do is
8 Prospect him.

9 Now how it operates, to become a Vagos member, you
10 have got to hang around first. It is called Hang-around.
11 From Hang-around, if we feel everything is good and you are a
12 good person to come into the club, we feel you could do the
13 right thing within the club, from that standpoint it goes from
14 Hang-around to Prospect. When you became a Prospect, the
15 minimum amount of time for Prospects are six months minimum
16 amount of time. It depends on your actions. It depends how
17 you are. But even though you are a Prospect for one charter,
18 because there is a lot of charters of the Vagos, illustration,
19 for instance southern California, Rivera, if there was a
20 Prospect for southern California Rivera that belongs to me or
21 belongs to another individual, at that time, that Prospect
22 then not only belongs to me but has to have the respect of all
23 and everybody until such time as he earns the patch. So
24 wherever he has to travel, wherever he has to go, whatever he

1 has to do, he does as a Prospect to earn that patch.

2 Q So for example if you have prospects that made the
3 trip up to Reno, what would they be tasked to do or told to
4 do?

5 A Well, that is when you had the second meeting with
6 the prospects. And the prospects are usually told, I wasn't
7 at the Prospect meeting, but have respect, shake everybody's
8 hand, get to meet everybody, say hello. But in any situation,
9 when a situation like that happened, you will see in this
10 video there is a Prospect that is walking through, and they
11 will up the command of their sponsor, move into a battle if
12 they are told to, because if they don't, they are gone.

13 Q Do Vagos typically carry a weapon?

14 A There is a lot of Vagos that carry weapons.

15 Q Is that part -- Is everybody required to carry
16 weapons or is it just your own personal choice?

17 A Well, it is basically personal choice. You are not
18 required to carry a weapon. Most of the time, probably
19 ninety-six percent of the club carries a knife, a pretty long
20 knife, a knife that could create damage.

21 Q What about guns?

22 A Yes, they carry guns.

23 Q Are they an outlaw gang?

24 A Yes.

1 Q Are they involved in criminal activity?

2 A Absolutely.

3 Q What kind of criminal activity would that include?

4 A Murder, rape, robbery, drugs, all types.

5 Q Now we were talking about the patch. What is it?

6 Is there a symbol that the Vagos have?

7 A Well, laymen's term, there are two parts of the
8 Vagos. I mean a pack of guys riding into the wind, motorcycle
9 gypsies. The Loki on the back the thing that looks like the
10 demon, it is called a Norse God of Mischief. And those are,
11 it is a very mythological term. It means, for instance, super
12 natural. It means germantic mythology. It means neo
13 paganism. It means to slaughter. There is a lot of meanings
14 to the Loki. That is basically it. If you took any time and
15 looked, you could see for yourself what it means. It comes
16 out of mythology, not from here but from Germany, from the
17 Netherlands and some EEC countries.

18 Q All right. I was just, if you could look behind
19 you, I have displayed a jacket. So when we are talking about
20 the patch, full patch member, is this the patch I am pointing
21 to with the Loki?

22 A Yeah. This right here is the Vagos patch. This is
23 the rocker that represents where you are from.

24 Q Did somebody say something?

1 A This is their flags, and this is the beginning of
2 when you became a member of the Vagos motorcycle club. This
3 patch is not on your back at first when you are a Prospect.
4 When you are done prospecting, that patch is given to you and
5 you have to sew that patch on. Then you take it somewhere to
6 get it sewed on.

7 Q All right now before we kind of digress into the
8 Vagos and discussed the Vagos and hierarchy, I had a couple
9 other questions about that. Do the Vagos have, each chapter,
10 have regular meetings?

11 A Yes. They are called church.

12 Q And what do you discuss at church?

13 A Church, usually it is pretty much a lot of the same
14 things, but most of the stuff at the church that is going on
15 is the Bylaws, the Bylaws of the Vagos way of living. To make
16 sure they understand those Bylaws. Everything in the Bylaws
17 has to do with the National with the Presidents, with the
18 members, with prospects and Vagos old ladies, their thinking
19 of that nature. He's laughing over there. I am going to tell
20 you, you are going to like this, the thing about the Vagos
21 ladies that has changed is that Vagos old ladies like to ride
22 bikes, so they can't ride bikes in the pack with the guys.
23 What they have to do, they have their own Vagos lady patch
24 that says she's the property of such and such a member. Say

1 for instance Leo, his wife has a rocker on her patch that says
2 Vagos old lady belonging to Crusher, property of Crusher which
3 means that is his property. No one can go near, disrespect or
4 whatever. But if she wants to ride a bike and get on the
5 bike, the rules change. If we are going out in the pack, say
6 we are going up to, you know, coming here to Reno in a pack,
7 she wants to ride a bike, she has to ride in the back of the
8 pack, just like any guest or anybody of that nature. A
9 Hang-around, the same thing. Prospects ride in the back also.
10 Only members ride in the front, back then there is prospects
11 then the Vagos old ladies.

12 Q Now Mr. Rudnick, what was his rank?

13 A "Jabbers"?

14 Q "Jabbers"?

15 A Please, if you call him "Jabbers".

16 Q We'll go with "Jabbers." I am sorry. Rudnick,
17 "Jabbers."

18 A He is Vice President of the Los Angeles Vagos.

19 Q So would that be the higher echelon?

20 A He's the second in command of his charter.

21 Q Are there people under him that are required to
22 protect him and stand behind him and back him up in case of an
23 altercation?

24 A Absolutely. His whole charter, his Sergeant of

1 Arms, depending on Campos. Campos was it. He holds rank. So
2 you have to make sure he's all right. By the same token, make
3 sure the Vice President is okay. They split it. Usually they
4 will have one. Sometimes Vagos charters or chapters they will
5 have two. Sergeants of Arm in their charters. A lot of them
6 have two. One follows the president, one follows the Vice
7 President. So, yes, they do watch them to make sure he's
8 okay. Being he's in that position, all Vagos members, who are
9 not -- who are not officers of the club, if he needs
10 assistance, they have to assist him no matter if they are at
11 another charter. He don't have to ask nobody at a time when
12 something like this goes on, pull him off to do something.

13 Q All right. Now I am going to go to camera number
14 45.

15 A Okay. This is the guy right here.

16 Q There is "Jabbers" there. No, that is not
17 "Jabbers", excuse me, this is Garcia?

18 A Yeah.

19 Q Diego?

20 A Diego, yes.

21 Q Do you know who these women are?

22 A Yeah. That is the International Secretary's old
23 lady, I think her name is Patty, and that is her sister.

24 Q Are they associated with the Vagos?

1 A They are Vagos. Lori is definitely a Vagos old
2 lady. These are just friends of hers.

3 Q Do you know what charter Diego Garcia is associated
4 with?

5 A San Jose.

6 Q Now did you see Diego Garcia that evening?

7 A Yes.

8 Q Did you notice whether or not he had any injuries?

9 A Yes. He was shot in the right leg. There is
10 Gonzales. Romeo. That is Little Dave right there. Now he's
11 here. He comes over to have a discussion. This is the
12 Sergeant at Arms for South Bay. This is Justin. He's a
13 Prospect. When you see his back, you will see a patch. This
14 gentleman is from Lake County. I think his name is Mike or
15 Mark. I can't remember. You have to, even though you are in
16 a club for a long time, there is some people in a club, there
17 is not just a couple hundred, you know, there is over
18 thousands of people in the club now.

19 Right there is "Jabbers." Right there. He's
20 putting on his gloves. He's talking to him. The reason why
21 he's putting on his gloves, for one reason only, is that it is
22 a premeditated thing. They are going to start some action.
23 This thing is going to go off. And they already have talked
24 to each other, and he told him and he put on his gloves,

1 because they are ready to get down with the people that will
2 come into the picture here shortly. See his gloves going on?

3 Q Are these Hells Angels?

4 A These are Hells Angels.

5 Q Walking past him?

6 A And there is some prospects and Hang-arounds that
7 are moving forward. Mind you, this was diffused by National.
8 This is Bobby V, the Vice President, and this is Pettigrew.
9 Now this is "Jabbers".

10 Q When you say it was diffused, you were talking about
11 forty minutes earlier when they were at the Oyster Bar?

12 A Absolutely. When the National members went down and
13 talked to them, everything was worked out. It was diffused.
14 There was no problems.

15 Q Do you know Pettigrew or Jethro?

16 A Yes.

17 Q What is his rank?

18 A President of San Jose Hells Angels.

19 Q Is that significant?

20 A In Hells Angels world, absolutely. He's one of
21 probably top five or six on the council of Hells Angels.

22 Q So he's an important person in the Hells Angels
23 organization?

24 A One of the most important guys in the United States.

1 Q All right. So do you know whether or not the Hells
2 Angels motorcycle club is similar to the Vagos motorcycle club
3 in terms of the hierarchy and the code of conduct in terms of
4 protecting the President, respect?

5 A One hundred percent.

6 Q Very similar? One hundred percent. The only
7 difference between the Hells Angels and only difference
8 between the Vagos is that each charter or chapter of the Hells
9 Angels are all separately incorporated. Vagos are under one
10 cooperate-type entity. The Hells Angels, it is a very,
11 actually it is a smart move on their behalf. The reason why,
12 it has to do with, you know, conspiracy factors and what is
13 the other?

14 Q Aiding and abetting, Rico?

15 A Rico. Thank you so much. Rico and things of that
16 nature. So if someone does something in this chapter here,
17 that is incorporated, Hells Angels San Jose, San Francisco is
18 not responsible. Oakland is not responsible for that
19 particular situation. That is how it was formed by them.
20 Sonny Barger forged that a while back.

21 Q 23:25.

22 A We see the gloves on Diego. What he does, you just
23 saw him, he taps him saying, hey, you know, seems like he's
24 saying no problem. But this guy right here, "Jabbers", has a

1 big mouth. He's always had a big mouth. This guy is going to
2 grab on to him, because he probably sees him taunting again.

3 Q Would taunting and provoking --

4 A Yes.

5 Q -- be similar?

6 A Absolutely.

7 Q To pick a fight?

8 A Yeah. He's again in his face. Pettigrew as you saw
9 was walking by. He called him over.

10 Q Would that be disrespectful?

11 A One hundred percent.

12 Q After what had happened earlier at the Oyster Bar to
13 call him over?

14 A Absolutely. As far as today is concerned with
15 "Jabbers", he's no longer in the Vagos motorcycle club. He's
16 been kicked out, okay? And because of the problems he's done
17 which is going to create a lot of problems for him.

18 Q I don't want to digress. I am on a limited time.
19 Let's just, I want to bring your attention to one thing,
20 though that would maybe be indicative of preparation for
21 battle, and that was one thing that we already discussed was
22 the fact Diego Garcia put some gloves on. Based upon your
23 experience with the club, that would be preparation for
24 battle?

1 A One hundred percent.

2 Q The other thing where we have Romeo.

3 A Romeo, yeah he's taking off.

4 Q He has a drink?

5 A He comes over, drops off his drink which means he's
6 getting prepared. This is the President of San Jose.

7 Q Now he's freeing up his hands?

8 A There. He's right there.

9 Q Vagos there. Here is a Hells Angels that gets hit.
10 Over here you can see Pettigrew and Bobby V getting attacked
11 from the rear?

12 A Absolutely.

13 Q Would that be, based upon your view of this, a
14 concerted effort?

15 A One hundred percent.

16 Q Of the Vagos? All right.

17 A But it works on both ends because --

18 Q Pettyigrew threw the first punch?

19 A It started from that point, things going to happen.
20 Pettigrew could have said to him as well, hey, listen things
21 has been diffused. I talked to your National members.
22 Everything is okay. It didn't happen. This is the outcome.
23 That is Leo Ramirez right there. He was shot. He was shot in
24 the stomach. And he shot Diego in the leg and Gonzalez,

1 Romeo, disappeared back here.

2 Q Would it be fair to say in modern terms parlance a
3 challenge to fight was issued and accepted in this particular
4 case?

5 A Absolutely. There is Pettigrew.

6 Q Now where were you in relation when all this was
7 going down? Where were you?

8 A I was blown to some tables. When I came down the
9 aisle, everything started to happen. We took a right turn.
10 Right to the left, Pettigrew was right in the middle. He was
11 in the fight. The Vagos were crushing him. Leo went inside.
12 Gunshots went off. Leo went left, went out, got shot in the
13 stomach. All hell broke loose, just bam, bam, bam, bam, bam,
14 bam, you know. Bam, bam, bam, bam, bam, numerous amount of
15 shots were happening. I ran straight. I told everybody to
16 hit the deck, everybody. There is people still on the tables,
17 people on machines. Finally, everybody -- I actually rammed
18 into the tables, and there is a lady delivering some drinks.
19 I ran into the table. She fell down. I hit my hand. I just
20 wanted to get everybody down. When gunfire is going off,
21 anyone can get hit. I am surprised that a citizen didn't get
22 shot in the event. Because anyone could have walked out of
23 any corner anywhere. You could have walked out of the
24 bathroom and got shot.

1 Q There was one other individual that I wanted to ask
2 you if you knew who he was.

3 A There is Gonzales there.

4 Q I guess I can ask in simple terms, do you know who
5 shot Leonard Ramirez or Leo?

6 A Yes, him.

7 Q This fellow right here?

8 A Yes.

9 Q Do you know what his name is?

10 A God, I can't believe it. I lost my train of thought
11 on him. Cesar.

12 Q Cesar Villagrana?

13 A Yes. Sorry.

14 Q That is all right. We can see this fight here. Are
15 there other altercations going on?

16 A Bobby V gets hit. He hit him in the head with the
17 gun. Lake County Vagos. There is a fight down over here.

18 Q He's going to get hit again. You see him go down
19 right there?

20 A Yup. Because that happens. That is when he walks
21 in, all the fight starts happening over here.

22 Q There is the shooting?

23 A Yeah, bam. But then there was so many shots going
24 on right now. There is shots going on through this whole

1 melee that is happening here.

2 Q Did you see any Vagos with guns?

3 A Here?

4 Q Well --

5 A No.

6 Q While you were there?

7 A No, I didn't see guns. They were all tucked away.

8 But I am sure there were plenty of guns there.

9 Q So then I was going to go to camera 5.

10 A These are Vagos old ladies. One is "Jabbers" wife
11 here.

12 Q Would there be a reason they would be standing over
13 here as opposed to standing over there with their husband?

14 A The husbands told them to move over here, because
15 something was going to take place.

16 Q The altercation we just witnessed on camera 45 would
17 be happening at the top of the screen?

18 A Absolutely.

19 Q They are kind of back here?

20 A Because they were told to go there.

21 Q Would that be indicative of a prior plan to engage
22 in mutual combat?

23 A Absolutely. Absolutely. They are watching the whole
24 time. As you can see, although people here, some people here,

1 some citizens all around playing not even having a clue. At
2 any moment any of them could have been shot, been killed
3 innocently.

4 Q Here is 88.

5 A That is me, and Pettigrew is in here now with the
6 fight. Then the bullets. You will see me run through here.
7 Bullets go off.

8 Q Pettigrew in camera 5 at 23:26:20. There is a
9 number of Vagos he's confronting?

10 A Yes. Leo comes in here, takes a left. He would be
11 right over here. Takes a right. He is throwing something at
12 the guy with the gun. I don't know, maybe it is his karate
13 background, who knows. But at that time, he gets shot, but
14 then the shooting is pretty repetitive. It happened, you hear
15 the first round of shooting go off, one, two seconds; next
16 sound of shooting go off, one, two seconds; next round of
17 shooting goes off. Bam, bam, bam, bam, bam, bam, bam,
18 bam, bam. And to me it sounded like there were thirty rounds
19 go off.

20 It is not out of the question for the members, after
21 they shoot their guns or whatever, to pick up the bullets as
22 the evidence and take it with them. Everybody is hitting the
23 ground.

24 Q That looks like another Hells Angels getting chased

1 by some Vagos there.

2 A Yeah. He ran through here. I think that is Lunch
3 Box right there.

4 Q All right. Then camera 3. So this would be just to
5 the left of Trader Dicks looking at the bathrooms?

6 A Yeah. That is the bathroom. That is the men's.
7 Women's over there.

8 Q We need to kind of move ahead a little.

9 A There I am right there.

10 Q Okay. So that you are heading towards the
11 altercation?

12 A Absolutely. You see the punch. You see, I mean you
13 see the punch right there, bam when he hit "Jabbers" in the
14 face, then all the melee took place.

15 Q Ducking and running, is that consistent with the
16 beginning of people running for cover?

17 A Absolutely. You know, it is a Friday night. There
18 is a lot of people at the casino. Everybody is just minding
19 their business playing, you know, their game, playing their
20 poker, playing their game. And this is like a pretty heavy
21 thing to happen.

22 Q Here we see an H.A.?

23 A Yeah.

24 Q He gets attacked by more Vagos down here?

1 A Yes, he does.

2 Q That is a group of Vagos attacking the Hells Angels?

3 A Absolutely. Actually, some women in the women's
4 bathroom.

5 Q So right there is that where you see Pettigrew come
6 down?

7 A Yes.

8 Q That is where Pettigrew --

9 A Gets shot.

10 Q That is where he gets shot, right there?

11 A Uh-huh.

12 Q Okay.

13 A He gets shot four times in the back.

14 Q So then here is camera 7, and that surveillance
15 camera captures the front of Rosie's Cafe which, again, is
16 just left of the bathroom. I guess that would be south of the
17 bathroom. I am going to go ahead.

18 A There I am right there. I just came out of the
19 bathroom with Crusher.

20 Q Ramirez was with you?

21 A Uh-huh.

22 Q He went down where the fight was. That is where he
23 got shot?

24 A Absolutely.

1 Q Diego Garcia putting on the gloves. He gets shot?
2 A Uh-huh.
3 Q Then Pettigrew gets shot?
4 A And he dies.
5 Q So that series of events I just relayed, is that
6 consistent with the video and your recollection of the events
7 of that evening?
8 A Yes.
9 Q Basically, was that a result of the challenge to
10 fight issued by "Jabbers" to Pettigrew?
11 A Absolutely. One hundred percent.
12 Q All right. Thank you.
13 MR. HALL: I have no further questions.
14 THE FOREMAN: Do we have any questions for the
15 witness?
16 A GRAND JUROR: I have a question.
17 THE WITNESS: Yes.
18 A GRAND JUROR: Do you know who actually fired the
19 shots at Mr. Pettigrew and hit him with the bullets?
20 THE WITNESS: Yeah, Gonzales.
21 A GRAND JUROR: I don't know if you can answer this.
22 Is he just following the code at that point, Gonzales, do you
23 think?
24 THE WITNESS: When a situation like this happens, it

1 is Vagos Forever, Forever Vagos. Whatever happens at that
2 time, the way the Vagos organization feels, when you get into
3 situations is to protect. And "Jabbers", he is a Vice
4 President. That is how it started. So the thing was the guy
5 who was the shooter and Diego, they are related. They are
6 family, okay? So the chapter that was started, when you saw
7 the cut, the jacket with the Vagos Nicaragua and San Jose are
8 all cousins. Gonzalez and Diego are cousins. They are the
9 ones who helped start that whole charter down there. And they
10 are building the chapter very rapidly down there right now.
11 So to your answer, it is a thing that happens, and it is a
12 protective mode to go in because of the guns and the shooting
13 of the other Vagos individuals that got shot first by the
14 Hells Angels automatically puts them into the mode to shoot
15 one of them.

16 BY MR. HALL:

17 Q I was going to ask a question. You mentioned San
18 Jose and the fact the Vagos are expanding rapidly in the San
19 Jose area, Nicaragua area. The Vagos were expanding in the
20 San Jose area?

21 A They were.

22 Q Had that caused some problems with the Hells Angels?

23 A Yes. Hells Angels didn't want them there. The
24 Hells Angels in northern California are very big. The Hells

1 Angels felt the Vagos were coming into their territory. It is
2 like you have a home. You have an acre of land. That is your
3 land. They have been there for some years. They claim that
4 territory. Like taking a house and putting it on the corner
5 of your lot. That is the way they feel about it in laymen's
6 terms. This is our house. Just don't move into our
7 territory. It is is going to create problems. Well, it has
8 been creating problems forever. A lot of people -- This is
9 not the first incident that this has happened. This has been
10 building up, building up. Big Mike, Lake County got beat
11 merciless in a casino. But he was the one who was provoking
12 the Hells Angels over there telling them they were scum bags,
13 they are pigs, all these things. They came and beat his ass.

14 There was another Vagos with him named Chris from
15 Lake County who was a Secretary. They didn't touch him
16 because he wasn't a big mouth. So with all that said, then
17 you have the incident in Bakersfield. I don't know if you
18 know about the incident in Bakersfield. An 18 year old young
19 man was stabbed right through his body by Diego who was a
20 Hells Angels.

21 Q The victim was a Vagos?

22 A Victim was a Vagos. His father brought him in. He
23 was an 18 year old kid. Now that was also provoked by the
24 Vagos motorcycle club. He said go up in, a 18 year old young

1 man who was getting patched. The Bylaws, an 18 year old is
2 not suppose to come into this club. For some reason his
3 father, being in the position he was, their rules were changed
4 a little bit. But the kid was killed, and he was stabbed
5 twice in the back. So the man went on trial, but it got
6 self-defense on the Hells Angels. They walked away. But
7 Vagos provoked it. They provoked that one, too. Lied about it
8 at first. It was provoked. So then the point being, there has
9 been some ongoing animosity and problems between the Vagos and
10 Hell Angels. Arizona. This is all stuff that just happened
11 within the last, you know, year and a half, two years. Arizona
12 there was a pack going to a party. Hells Angels came out, six
13 guys shooting on the Vagos on the bikes, shooting on them.
14 They weren't very good shots, I hate to say. When the Vagos
15 came up on them, they shot three of their guys. You know, one
16 was critical. This is a situation that is ongoing. And
17 because of this particular event and, you know, Pettigrew.

18 Q We can probably leave it there I am sure as far as
19 this case goes.

20 A Okay. Yes?

21 A GRAND JUROR: How long is someone in the higher
22 hierarchy? If you are a Vice President, is it a year term,
23 four years, until they vote you out?

24 THE WITNESS: You can stay there. You are pretty

1 much there as long as you want to be. There is a vote that
2 happens, but most of the time in the vote, people don't like
3 to be in an officer position because an officer position is
4 the one that gets hit the most, you know, from all sanctions,
5 whether it be National or law enforcement. They go after a
6 lot of the hierarchy, you know, the Presidents, Vice
7 Presidents, Secretaries, all that. So in order to become, you
8 know, an officer in a club, you have got to really think hard
9 in order to do that. But, yes, he could be there for a very
10 long time. But if the time period comes, he could become a
11 Nomad and do what he wants to do.

12 THE FOREMAN: Do we have any other questions?

13 Sir, the proceedings before the Grand Jury are
14 secret. You may not disclose evidence presented to the Grand
15 Jury, any event occurring or statement made in the presence of
16 the Grand Jury, any information obtained by the Grand Jury or
17 the result of the investigation being made by the Grand Jury.

18 However, you may disclose the above information to
19 the District Attorney for use in the performance of his
20 duties.

21 You may also disclose your knowledge concerning the
22 proceedings when directed by a court in connection with
23 judicial proceeding or when otherwise permitted by the court
24 to your own attorney.

1 The obligation of secrecy applies until the Court
2 allows the matter to become public record.

3 A gross misdemeanor and contempt of court may be
4 pursued if your obligation of secrecy is not followed. Do you
5 understand?

6 THE WITNESS: I understand.

7 THE FOREMAN: Thank you.

8 THE WITNESS: Thank you.

9 (Witness excused.)

10 (Whereupon another witness enter the Grand Jury room.)

11 MR. STEGE: Stand over here. That is where you will
12 be testifying.

13 THE FOREMAN: Would you raise your right hand, sir?

14 (Whereupon the witness was sworn by the Foreman.)

15

16 JORGE GIL-BLANCO

17 called as a witness having been first duly

18 sworn by the Foreman testified as follows:

19

20 EXAMINATION

21 BY MR. STEGE:

22 Q Sir, are you aware this Grand Jury is considering
23 charges of second degree murder with the use of a deadly
24 weapon, carrying a concealed weapon, challenge to fight and

1 associated charges relative to a shooting at the Nugget?

2 A Yes, I am.

3 Q Do you believe you have relevant evidence in the
4 case?

5 A Yes.

6 THE FOREMAN: Sir, are you aware the Grand Jury is
7 inquiring into evidence you may have relating to the charges
8 of conspiracy to engage in an affray, challenge to fight
9 resulting in the death with use of a deadly weapon, battery
10 with a deadly weapon two counts, discharging a firearm in a
11 structure two counts, carrying a concealed weapon two counts,
12 open murder with the use of a deadly weapon, second degree
13 murder with a deadly weapon and this is in the matter Ernesto
14 Manuel Gonzalez, Stuart Gary Rudnick and Cesar Villagrana.

15 THE WITNESS: Yes, I am aware of that.

16 THE FOREMAN: Thank you.

17 BY MR. STEGE:

18 Q Sir, would you state and spell your name?

19 A Jorge Gil-Blanco. J-O-R-G-E. G-I-L hyphen
20 B-L-A-N-C-O.

21 Q Sir, how are you currently employed?

22 A I am the the Training Coordinator for the Western
23 States Information Network.

24 Q What is that organization?

1 A WSIN is the acronym. We are one of the six RISS
2 centers, Regional Information Sharing Systems. There are six
3 RISS centers throughout the United States. We cover the five
4 western states, Alaska, Washington, Oregon, California,
5 Hawaii. We are a federally funded agency, but we receive
6 Justice assistance. Our purpose is to assist law enforcement
7 agencies in the dissemination of intelligence, gathering of
8 intelligence, putting people together, making sure people work
9 together, work cases together.

10 We also have de-conflict systems. In other words,
11 any time an agency assisting to conduct a search warrant, do
12 any kind of law enforcements operation they call WSIN in or
13 one of the RISS centers. It is posted on a board, basically.
14 So we, in any blue on blue situation, if there is a conflict,
15 anybody working within that area, a phone call is made and
16 both agencies know there is a possible conflict in their
17 operations.

18 Q Is one of the things that you do is monitoring
19 outlaw motorcycle gangs?

20 A My specialty happens to be assisting in
21 investigations monitoring outlaw motorcycle gangs.

22 Q Is one of those outlaw motorcycle gangs you monitor
23 the Hells Angels?

24 A Yes, it is.

1 Q Do you have experience monitoring them?

2 A Yes.

3 Q Tell us a little bit about that experience and
4 training.

5 A Yes. I was a police officer for thirty-four years.
6 I started with the Los Angeles Police Department. I went to
7 work for the Sacramento Sheriff's Department. That was a
8 total of 5 years between the two agencies. I then went to
9 work for the San Jose Police Department. During my tenure of
10 twenty-six years as a police officer there, I worked the
11 intelligence unit. I was specifically assignment outlaw
12 motorcycle gangs. The last four-year period specifically that
13 is all I monitored was outlaw motorcycle gangs.

14 Q Would you just monitor motorcycle gangs in your area
15 or have a National perspective or regional perspective?

16 A As with most of you, you are obviously mandated to
17 work within your area, your jurisdiction. However, to really
18 be effective, you have to understand the whole
19 National-International concept of outlaw motorcycle gangs. Of
20 the 7 major outlaw motorcycle gangs, the Hells Angels are the
21 top of the heap.

22 Q What are those 7 outlaw motorcycle gangs?

23 A Hells Angels, Outlaws, the Mongols, the Pagans, the
24 Vagos, the Sons of Silence, the Bandidos.

1 Q Let me ask you, you might have answered this with
2 the previous question, did you conduct actual investigations
3 and arrests of Hells Angels motorcycle group members when you
4 were a police officer?

5 A No. My goal was just an intelligence gathering
6 function to assist other officers in the actual investigation.
7 I would obtain intelligence information, or I would kind of
8 look at the big picture almost in an analytical sense, looking
9 at all the different cases, finding out what is going on in
10 different areas, putting the puzzle together.

11 Q With that information, would you share it with other
12 officers who could take enforcement action, things of that
13 sort?

14 A Correct. Yes, sir. Then I actually, after four
15 years doing that, I went to the DEA, Drug Enforcement
16 Administration Task Force. As a Task Force Agent, I actively
17 worked cases on Hells Angels.

18 Q So you sort of transitioned into a more enforcement
19 type role doing arrests, Search Warrants, such like that?

20 A Correct.

21 Q Was that specifically aimed at outlaw motorcycle
22 gangs or specifically Hells Angels?

23 A The reason I went to the Task Force was specifically
24 to work Hells Angels outlaw motorcycle gang cases. I worked

1 all different aspects of drug enforcement.

2 Q Have you ever taught any courses to other agencies
3 on the subject of the Hells Angels and outlaw motorcycle
4 gangs?

5 A For the past twenty years, I teach an average of
6 about twenty classes a year. I give presentations all over
7 the United States. I give presentations in Canada. I have
8 conducted and also done expert testimony on outlaw motorcycle
9 gang cases.

10 Q You have testified -- In which courts have you
11 testified as an expert in Hells Angels motorcycle gang cases?

12 A Hells Angels, specifically, Arizona. In Nevada, in
13 Las Vegas in a case involving eleven Hells Angels, two
14 associated and the stabbing of Mongols in California and the
15 State of Washington.

16 Q Have you testified in any Federal cases also related
17 to outlaw motorcycle gangs?

18 A Just one, in the State of Washington, an evidentiary
19 hearing on a Hells Angels case.

20 Q Have you been recognized by the courts of those
21 jurisdictions as an expert in the field of outlaw motorcycle
22 gangs?

23 A Yes, I have.

24 Q Now in your current duty, do you monitor specific,

1 intelligence surrounding outlaw motorcycle gangs?

2 A Yes. I am not a sworn officer anymore, so I assist
3 in the agency. Basically, if a case happens, I usually get a
4 phone call. If it is a Hells Angels case, Vagos case, if it
5 is any kind of significant case, I usually get a phone call to
6 assist. Sometimes, depending on the size of an agency, some
7 of the agencies are smaller, so I might assist them in
8 preparing the report, you know. Sometimes they will send me
9 the report, ask am I missing anything here, is there anything
10 that should be added, that type of thing. So I assist in that
11 respect. Give them suggestions, give them advice on, you know,
12 things that could possibly help them in their investigation.
13 Put people together to help in the investigation. It is a big
14 network.

15 Q Part of that is to continue to gather the
16 information and share it with other officers?

17 A Absolutely.

18 Q Or law enforcement agencies?

19 A Absolutely.

20 Q Were you called on the case or did someone call you
21 on the case you are about to testify about that happened?

22 A Initially, 3:00 o'clock in the morning on the
23 Saturday after the shooting, I couldn't sleep, and I got up
24 and I got on my computer and saw the Fusion Center was on

1 line, sent a message. They told me what had happened. I
2 started helping identify individual members and all that

3 Q Have you had specific contact with Hells Angels
4 members over your years as a law enforcement officer and in
5 your current position?

6 A Yes, I have.

7 Q Tell us a little bit about that, your contact with
8 Hells Angels members.

9 A I have had contact as a matter of fact with the
10 Hells Angel that was killed in this incident. I actually had
11 spoken to him personally, had investigated him while I was a
12 San Jose police officer. I have also talked to numerous other
13 Hells Angels that were currently members or ex-members of the
14 organization.

15 Q Do you have an understanding of the way, based on
16 that plus your experience doing the intelligence portion, do
17 you have an understanding of how the Hells Angels motorcycle
18 group works?

19 A Yes, based on talking to well over probably ten to
20 twelve Hells Angels over the course of my career, actually
21 sitting down and talking to them, debriefing them, talking
22 about how the organization works. I also monitor, they have
23 what is called the West Coast office or meeting notes which
24 every, most Hells Angels meet once a month either in San

1 Bernardino or Oakland at which time they discuss what is going
2 on in the organization. They actually type up minutes. It is
3 disseminated to all the different chapters. Sometimes during
4 Search Warrants, we seize those documents. I make a habit of
5 going over those documents to get an idea worldwide.

6 Q Are you aware or read police report surrounding
7 crimes that have been committed by Hells Angels members?

8 A Absolutely.

9 Q Now you have prepared a slide show to assist in your
10 presentation today?

11 A Yes.

12 Q Is now a good point to get into that?

13 A Sure. Sure is.

14 Q I will direct your attention to the screen.

15 MR. STEGE: I will note for the record we will
16 provide a copy of these slides. For the record, it is the
17 Sparks Vagos versus H.A. case.

18 BY MR. STEGE:

19 Q Right here?

20 A Right there.

21 Q All right. You will begin your presentation. Tell
22 me when to click.

23 A Okay. Go ahead. What I did, I put down, so you get
24 an idea the gang structure of the Hells Angels, how the

1 organization is structured, the etiology, philosophy of outlaw
2 motorcycle gangs, in particular the Hells Angels.

3 The first slide, this is a document seized during a
4 Search Warrant conducted at the Fresno Hells Angels clubhouse
5 back in 2003. It was a case that was conducted --
6 investigation of Hells Angels which subsequently resulted in
7 the conviction of numerous Hells Angels for charges of
8 robbery, burglary, assault with a deadly weapon, all with a
9 gang enhancement in the State of California. The document is
10 actually about eight or nine pages long. I kind of
11 highlighted some of the area it applies, in my opinion, to the
12 gang statute, that they are a gang, what their philosophy is.

13 The first part, a serious motorcycle club, MC stands
14 for motorcycle club, commands respect. In the gang world, it
15 is all about respect. Of course, it is a different type of
16 respect than we would expect as normal citizens. Those who
17 are informed respect the man for what he has accomplished by
18 being able to earn and keep the patch he wears. Those
19 informed we are talking about individuals that have earned
20 that patch once you have gone through being a Hang-around, a
21 Prospect, gone through the ranks, get that full patch. They
22 understand what it takes to be a full patch member. Those less
23 informed are everybody else.

24 See the vigilance of mutual support, potential

1 danger, evincing the potential danger of invoking a response
2 from a well-organized unit that travels in numbers and is
3 always prepared for a confrontation. In other words this is
4 what it is about. It is all about the gang mentality. We, as
5 a group, we cause fear and intimidation because we come in as
6 a group wearing these patches, riding a motorcycle, prepared
7 for confrontation. Is always ready for that confrontation,
8 always ready for that fight. They know that one cannot
9 provoke one club member without being answerable to the entire
10 group. In other words one on all and all on one. In other
11 words, if one member is assaulted or attacked everybody is
12 expected to join in. You don't stand back. It is not just a
13 one-on-one type situation.

14 Q Can I interrupt you a little bit here? You said
15 this document or this is from a document seized during a
16 Search Warrant in San Jose?

17 A No, Fresno.

18 Q Fresno. Sorry. Is it your belief this is a National
19 document that goes out to all the chapters?

20 A This is a document to me to corroborate my opinion
21 on what an outlaw motorcycle is, what their philosophy is,
22 what they do. This also has do's and don'ts for a Prospect
23 for example.

24 Q Does this language here, those sorts of rules, have

1 you seen that in effect in other clubs or in Hells Angels in
2 general, this idea that if one person is attacked, they all
3 must respond?

4 A I have seen that similar in other clubs,
5 particularly the Vagos. Not written the same way, but along
6 the same lines.

7 Q Is that a value or credo of the Hells Angels
8 motorcycle club?

9 A Yes, it is.

10 Q Would you say the same thing about the other values
11 or statements on this slide, it is a trait of all Hells
12 Angels?

13 A Absolutely.

14 Q That is based on your experience and training?

15 A Yes.

16 Q I interrupted you there I think?

17 A The second part it says: And that such an answer is
18 a point of honor that must come to the last man. The type of
19 respect that this generates is one that is born out of fear.
20 That is exactly what it is. The only way you get respect is by
21 causing fear and intimidation to other people. That is the
22 gangster's motto.

23 Q Is it fair to say each Hells Angels -- Are we going
24 to get to the organization?

1 A Yes.

2 Q I will save my question until then. Let's talk
3 about this next?

4 A This part over here, of all things in a man's life
5 his loyalty and commitment to the well-being of his club comes
6 first, above family, job, friend, personal possessions and
7 personal safety. In other words, the club comes before
8 anything else. Your gang is your life. That is your
9 identity. That is your lifestyle no matter whether you are
10 gainfully employed or not. There is never ever any doubt or
11 time spent on considering which comes first. The only thing
12 that approaches his commitment to the club is his commitment
13 to his brother. But I have even heard the interests of the
14 club always come before that of the individual. In other
15 words, this is your life. Are you prepared to make that
16 commitment when you come as a Hang-around, Prospect, to get
17 the full patch.

18 Q When they say club here, are they talking about
19 their local club like one in a city called Los Angeles, their
20 loyalty to that club or the entire Hells Angels?

21 A The Hells Angels organization.

22 Q Also there is a statement here about the only thing
23 that approaches commitment to the club is the commitment to
24 his brother. What does that brother terminology mean within

1 the Hells Angels motorcycle group?

2 A That is a common terminology when outlaw motorcycle
3 gang members refer to the other as you are my brother. They
4 refer to them as brothers.

5 Q Let's talk about the third slide here?

6 A This is basically the steps that it takes to become
7 a member. How do you became a member of this organization?
8 The first step is you became a friend or associate of the
9 organization. That is the first step. They start hooking up,
10 start hanging out with these individuals. You have no
11 official status in the organization at this point. You are
12 not an official member. You can attend club parties and
13 functions. You can be seen associating with club members.
14 You may be required to do menial tasks for the club,
15 bartending, sentry duty, etcetera. In the words of one of the
16 Hells Angels I was able to talk with recently, it was
17 basically we are going to look at you, we are going to tell
18 you you want to be one of us, we are going have you
19 Hang-around with us. Some of them have a rule unless I know
20 you for 5 years, we are not going to even talk to you. They
21 are always concerned about infiltration.

22 Q You said they are looking at the associate. What
23 are the values that the Hells Angles motorcycle club cling to
24 or look for in associates or people who are trying to enter

1 the Hells Angels?

2 A Well, they call it do you have what it takes to be a
3 Hells Angels? To me, in talking to them, it is just you fit
4 into that mold like the description over there, are you ready
5 to take on other rival clubs? Are you willing to, this is
6 your lifestyle, give your life for a brother if you have to?

7 Q Is this just a club where people are really close or
8 crime is being committed as part of being the Hells Angel?

9 A You don't become a Hells Angel unless you are
10 willing to be involved in criminal activity. In the words of
11 the Hells Angels I debriefed, you are involved in criminal
12 activity whether you are higher level or lower level, but you
13 are involved in criminal activity one time or another.

14 Q Is that one of the focuses of being in the Hells
15 Angels?

16 A You mean by focus, that is what their goal is or
17 they aspire to be?

18 Q Right. That they commit felonies or commit crime as
19 part of being a Hells Angels? That is a value?

20 A There is nothing written down. In other words, if
21 you are going to come into the Hells Angels and they are
22 looking at you, it is not a matter of, well, are you willing
23 to commit this crime, this crime, this crime? They don't talk
24 about that. It is, if I am looking at you, and I have a drug

1 distribution business and you are going to Prospect for me, I
2 am going to sponsor you, then, obviously, I trust you enough
3 to try to bring you into my midst. You will be part of me.
4 Are you willing to get involved in that aspect, all different
5 types of crime? They are involve in white color crimes, blue
6 color crimes, you name it.

7 Q That is documented, all those crimes you are
8 referencing?

9 A Yes.

10 Q Would a friend or associate be required to
11 participate in those crimes to sort of work their way up the
12 ranks?

13 A One of those is what do you bring to the table.
14 What do you have to offer to bring to this organization? Do
15 you have a network already? Do you have the ability to get
16 involved in this? Are you what I would call an individual
17 that is willing to take people on because of your size,
18 because of your looks. Like you could be an intimidating
19 individual.

20 Q Let's move on to the next slide here.

21 A The next step -- By the way, kind of going back a
22 little bit, as an associate, there are people that are happy
23 being associates. They have no aspiration of becoming a
24 member. The ones that would want to become members get into

1 this part over here. You want to start being a Hang-around.
2 They make you an an official Hang-around at that point, what I
3 would call a non-voting member of the organization because you
4 are not a full patch yet. But you get -- Some of the states,
5 not all the chapters, the majority on the West coast will give
6 their Hang-arounds a license plate, basically a rectangular
7 shaped patch like you see on this photograph here. The red
8 background, white lettering. It will have the chapter that
9 you are a Hang-around for. If it happened to be the Nevada
10 Nomads, it would say no Nomad on the back. On the front it
11 would say Nomad. Also it would have NV, Nevada?

12 Q Explain what Nomad is within the Hells Angels?

13 A A Nomad, just about every state has a Nomad chapter.
14 The intent of the Nomad chapter, just like it would be instead
15 of having the Reno chapter, there is a Nomad chapter. They
16 happen to be in Reno. They are still a Hells Angels chapter.
17 They are meant to have the ability to roam, not be tied down
18 to one area. If there is an area within that state that is
19 not covered by another chapter, then they get to go in and try
20 to control that area, take care of business in that area.

21 Anyway, this can last anywhere from two to three
22 months and might be longer. I have seen it usually two to
23 three months is the average as a Hang-around then you get
24 taken up to the next step.

1 Q What sort of, in the previous slide you talked about
2 having to do menial tasks might be something they would have
3 to do. How are those duties changed when you make it to
4 Hang-around status?

5 A As a Hang-around, you are expected to do more. You
6 are expected to do those menial tasks. The associate, it is
7 kind of up to you if you want to do it. Whereas here, you are
8 expected to kind of step up. It depends how fast, how much
9 you step up to the plate to take care of business, to show
10 that you are really interested in being a Hells Angels, then
11 you are going to have to do more tasks. Okay. Again, it
12 could be as simple as go get me a beer, go get me a hamburger,
13 go get me whatever it is they want. Doing guard duty when
14 they go on a run, a motorcycle run, or go to an event. These
15 guys will be out and guard the motorcycles, direct traffic,
16 things like that.

17 Q In terms of committing crime or helping people in
18 the club to commit crime, is your role expected to increase or
19 the same as the previous step?

20 A It depends how serious they are going to take you as
21 to what what your role is.

22 Q Let's move on to the next slide.

23 A The next step up is you became a Prospect. At that
24 point, you wear a bottom rocker as depicted in this

1 photograph. They will have the state or country you are from.
2 It will have the MC for motorcycle club on the front. It will
3 have a patch similar to that in white background, red
4 lettering, Prospect. Another patch that will have the chapter
5 you are a Prospect for. At this point, it is mandatory at
6 least a year as a Prospect before you can become a full patch
7 member. But you are expected to travel around to as many
8 different chapters as you can so other members get to see you,
9 get to meet you, get to see what you are like.

10 And, again, you are going to be doing security,
11 could be debt collection, enforcement. Again, be involved in,
12 more active involvement in criminal activity.

13 Q Let's move on to another slide.

14 A It is basically the more things you offer. You have
15 have to have unanimous vote to become a full patch. It has to
16 be one hundred percent by all members in a chapter. If one
17 says no, then you don't become a member. They put it up for
18 discussion. They might have another vote again, but it has to
19 be a unanimous vote.

20 Q Can I ask you something about a Hang-around status?
21 There was previous testimony by a witness about in the Vagos
22 motorcycle club the Hang-around or Prospect becomes property
23 of a particular member. Is there a similar analogous thing in
24 the Hells Angels?

1 A Yes and no. You have to have a sponsor to go up so
2 you are a full patch member of that particular chapter. You
3 are a Prospect for the Hells Angeles, not a Prospect for this
4 individual. That is just your sponsor. Do they get
5 proprietary sometimes? Yes. But you are not considered
6 property of the sponsor in the Hells Angels.

7 Q We have been talking about like the patch and things
8 people wear. Is this something that is unique to the Hells
9 Angels motorcycle club?

10 A Not all of them. I mean the other chapters will
11 have, like the Vagos bottom rocker says the state and have
12 that on the back. But, obviously, the colors are going to be
13 different, but pretty much along the same lines. I have yet
14 to see a Hang-around patch for the Vagos.

15 Q But the colors, are the colors red and white
16 significant in the Hells Angels?

17 A Absolutely. All the different gangs have their own
18 particular colors. The Hells Angels are red and white. That
19 is another term how they are commonly referred to, red and
20 white.

21 Q Let's move on to step four, I guess, full patch
22 member. Please describe that.

23 A Once you get your full patch, you get a top rocker
24 which says Hells Angels depicted in the photograph. The

1 bottom rocker has the state or country, a death head. It has
2 on the death head, you notice the mouth is closed. It might
3 be a little difficult to see. It has stitching across the
4 mouth. We don't talk about club business. That was actually
5 changed in 1987 from the open mouth death head. MC for
6 motorcycle club.

7 On the front you usually have, it varies from member
8 to member, Hells Angeles, they will have a chapter they are
9 from. If they are an officer in the organization, it will
10 have their rank such as President, Vice President, Sergeant at
11 Arms, Secretary/Treasurer. Those are the office positions.
12 The rest of them are all rather optional what they want to
13 wear.

14 Q You said the logo. There are the wings. The skull
15 is called a death head?

16 A Death head, yes.

17 Q You said that logo changed. Could you explain what
18 it was that changed?

19 A It has actually changed three times during the
20 history of the Hells Angels. When they first started in 1948,
21 it was a smaller death head still referred to it then.
22 Basically, you look at this photograph, this death head the
23 black and red top is suppose to signify a fighter. The bottom
24 is a leather helmet, back from World War II, more detail back

1 then when it first came out. It was basically a wing that was
2 pointed straight up. It was more of a caricature. They then
3 changed it to the type of death head, a little more
4 sophisticated. One wing view on the side view with the mouth
5 open. In 1987, after Operation Caucasus was taken down, it
6 was a case where an individual by the name of Anthony Tate,
7 Tony Tate infiltrated the Hells Angels, the whole time working
8 as an agent for the police, for the FBI, for the ATF. He
9 became the West Coast Sergeant at Arms. After that, it was
10 basically because he testified about the Hells Angels, it was
11 basically closed mouth. We don't talk about club business.

12 Q That was this direct response to the law enforcement
13 action and problems of the Hells Angels?

14 A Yes. I mean it was right after that case. When
15 that case was taken down, they changed it shortly after to
16 closed mouth.

17 Q Tell us a little bit about the insignia, the patches
18 and the AFFA?

19 A It stands for Angel Forever, Forever Angel. The
20 Vagos have the same, Vagos Forever, Forever Vagos. It is the
21 same thing. The outlaw motorcycle gangs, they all have that
22 type of thing. "World", is basically they are a world
23 organization. The Hells Angels have different patches, no
24 particular meaning, just for decoration.

1 In this, the one percent is basically they consider
2 themselves one percenters. The term one percenter came about
3 in 1947 when, after a couple of incidents down in Riverside, a
4 riot in Hollister, the President of the American Motorcycle
5 Association said people who ride motorcycles are getting a bad
6 reputation. It is ninety-nine percent of the people riding
7 motorcycles are good law abiding citizens. The one percent
8 gives it a bad name. That is where the term comes from. The
9 people that consider themselves outlaws go by the term one
10 percenter.

11 Q What sort of values do they abuse being the one
12 percent?

13 A The rules of society don't apply to us.

14 Q Is that one percenter I.D., is that something unique
15 only to the Hells Angels or do other groups share that one
16 percenter idea?

17 A Other groups also share that one percenter idea.

18 Q What other sort of groups, other gangs?

19 A Other gangs. The Vagos, the Outlaws, the Pagans,
20 the Bandidos.

21 Q Let's move to the next slide.

22 A This is the structure on the local level. You have
23 a President, a Vice President, Secretary/Treasurer, Sergeant
24 at Arms. Those are the officers, considered the officers of

1 the organization, your full patch members. You have a Road
2 Captain which is kind of collateral duty, that is basically in
3 charge when going on a run, carrying cash for that, which
4 route we are taking, are we going to go in cop friendly
5 territory, enemy territory, who is going to be carrying the
6 guns, security type of thing. In addition to the Sergeant at
7 Arms, prospects and the Hang-arounds, your associates, you
8 have your old lady, party girl and your puppet clubs over to
9 the side. Puppet club being a group that is formed by that
10 particular chapter to basically enhance their number without
11 being part of Hells Angels.

12 Q Is this hierarchy important in the Hells Angels
13 culture?

14 A Absolutely, yes.

15 Q We talked at the beginning about respect being a key
16 value in the Hells Angels. How does the hierarchy play into
17 that value?

18 A As far as respect goes, the old time members it is
19 not so much the respect, as far as this is more of a
20 structure, a structure of the organization, kind of the order
21 that it sets. They are very structured.

22 Q Now can a Prospect or lower level officer question a
23 person at the top of the hierarchy?

24 A They can question. I mean they are required to have

1 weekly meetings which are called church. It is only attended
2 by the full patch members and the officers. Prospects and
3 Hang-arounds are not allowed to attend the weekly meeting.
4 They can be outside guarding the bikes, doing menial duty
5 while the full patches are having the meeting inside.

6 Q Let me ask another question about the clothing.
7 Would you ever see a non-Hells Angels member wearing a Hells
8 Angels death head patch or the rocker or any of the back
9 patches without being associated with actually Hells Angels?

10 A I have seen that, not very often, but it is because
11 they really don't take seriously the consequences of being
12 caught by a Hells Angels wearing those colors. They take that
13 very seriously.

14 Q What are the consequences?

15 A Could be as minimal as a beat down to getting
16 killed.

17 Q We have another slide here on the world organization
18 Hells Angels?

19 A The United States is broken into East Coast and West
20 Coast. The West Coast starts in Denver, Colorado. All the
21 Hells Angels chapters west of Denver, Colorado include Alaska,
22 California, Arizona and Nevada. Two officers from every
23 charter are required to attend what is called the West Coast
24 officers' meeting. It is held in Oakland and San Bernardino

1 clubhouse. They elect, out of those officers, a Chairman,
2 Sergeant of Arms, Secretary/Treasurer. Those are the highest
3 ranking officers to the West Coast. They do the same thing
4 for the East Coast members. That starts in Nebraska, Omaha,
5 and all the chapters east of that. They have a similar
6 structure. They also meet once a month. At these meetings,
7 they express what is going on in the respective areas. And in
8 the minutes you can see by each chapter month, new business,
9 such and such is a new member, so on and so on. A new
10 Prospect, the Hang-around, so and so got raided, so and so got
11 arrested for carrying a gun or took a gun beef, things like
12 that.

13 Q The criminal aspect of the Hells Angels is reflected
14 in the International organization?

15 A Yes.

16 Q Let's move on here to I guess the next series of
17 slides is entitled Gang Violence. We have a list here.
18 Explain what this is?

19 A Dequiallo, in keeping with the violence. In my
20 opinion, they are not afraid to assault citizens, but also
21 police officers. This is a patch earned by assaulting a
22 police officer. The top dequiallo, that is the oldest patch
23 around between the two of them. It is the incorrect spelling.
24 The actual correct spelling is the one, d-e-g-u-e-l-l-o

1 Spanish word on the bottom. If you look up deguello in the
2 dictionary, there are two definitions. One is the give no
3 mercy, expect no quarter. The other definition is cutting
4 somebody's throat.

5 Q This is something that a Hells Angels member would
6 earn by assaulting a police officer?

7 A Absolutely. That is the only way you earn that
8 patch.

9 Q Worn as a patch of pride?

10 A Yes, it is.

11 Q You have a slide here of a death head on a
12 motorcycle?

13 A Yes. It is a photograph I took actually in Cody,
14 Wyoming during the USA run, one of the annual events for the
15 Hells Angels just to show again they portray themselves to be
16 just a social organization, doing Toys for Tots, blood drives,
17 all that. But they are actually a criminal street gang. They
18 are, as you can see the 187 which is the California term for
19 homicide which is commonly used by gangsters just to show fear
20 and intimidation.

21 This is a T-shirt, photograph I took of a T-shirt, a
22 Santa Cruz Hells Angels chapter T-shirt. They sell these type
23 of T-shirts. It has a two-fold effect. One is show how the
24 ball-peen hammer is a choice weapon. They carry them around

1 as weapons. The blood dripping from this, it says support
2 your local red and white, the term for the Hells Angels.
3 Santa Cruz 81 on there, Hells Angels, the eighth and first
4 letter of the alphabet. Beat them they will bleed, and then
5 beat them for bleeding, to incur fear and intimidation.

6 Q The culture of the Hells Angels motorcycle club?

7 A Yes. Another T-shirt from the CC, stands for Cave
8 Creek 81 Hells Angels talking about revenge. Just like any
9 typical gang, an eye for an eye. Right at the bottom, the
10 crossed ball-peen hammers in the teeth of the skull. Support
11 your local red and white.

12 Another T-shirt, Hells Angels World Run. Basically,
13 this was commemorative of T-shirt given out to the members
14 attending the World Run that was held in New Hampshire in
15 2003. It was right after the Laughlin shootout which occurred
16 in 2002 in Las Vegas depicting the shooter from that, Cal
17 Shaffer, with a ball-peen hammer depicted in the video in one
18 hand and a gun in the other.

19 Another violent act again showing the ball-peen
20 hammer as a weapon, blood dripping. This is a Valley Ojai
21 Hells Angels T-shirt. Even right here depicting exactly what
22 it says, you can run but you can't hide, hitting the
23 individual over the head with a ball-peen hammer. This is the
24 Riverside chapter of the T-shirt.

1 Another one, orange County has on the shirt, get
2 lit, upside down police car on fire.

3 Q You are aware of specific rivalries between the
4 Hells Angels and other outlaw motorcycle gangs?

5 A Yes. I keep track of all the different incidents
6 documented throughout the United States.

7 Q Specifically the Hells Angels as a gang and the
8 other motorcycle groups as a gang?

9 A Yes.

10 Q Talk about this.

11 A This photograph I took is a sticker up on a wall
12 inside the Merced Hells Angels clubhouse. A Search Warrant
13 issued by law enforcement in that area. It depicts the Nomad
14 chapter. Angel Forever, Forever Angel. May God have mercy on
15 our enemy because we won't. Blood dripping. APMD, all Pagans
16 must die. ALOMD, all outlaws must die. AMMD, all Mongols
17 must die with two .45's on either side talking about revenge,
18 kill the enemy.

19 Another drawing of the Hells Angels AFFA, Angel
20 Forever, Forever Angel. I think if you have a status with
21 the Hells Angels, you only obtain that by exacting an act of
22 violence for benefit of the club.

23 A muscular Hells Angel with the death head, smoking
24 gun sitting on a motorcycle.

1 Hells Angels motorcycle club death head on the gas
2 tank kneeling over an individual laying on the ground with a
3 bullet hole in his head laying in a pool of blood. On the
4 bottom, AOMD, all outlaws must die, again showing the
5 violence, showing the hatred they have for the enemy.

6 Q In fact, actual documented violence, not just
7 T-shirt, actual violence toward the other group?

8 A Yes. Here you have another one out of the Merced
9 chapter, a Hells Angel, muscular Hells Angel with a death
10 head, HAMC. FTW which stands for fuck the world. Typical
11 outlaw motorcycle gang saying with a smoking gun and modified
12 ball-peen hammer sharpened. On his arm he has AMMD, all
13 Mongols must die.

14 Q This is just a highlight of the previous one?

15 A Yes.

16 Q The Mongols are a rival group to the Hells Angels?

17 A Yes, they are.

18 Q Let's talk about some specific gang incidents.

19 A This is 2002 Hells Angels-Vagos? I put in the
20 ones -- There are about fifty-two incidents of violence so
21 far. I just put in the ones between specifically the Hells
22 Angels and the Vagos. One of the ones, earlier documented
23 ones in 2001, Orange County, the Hells Angels and the Mongols
24 and the Vagos got into a big fight at a swap meet, started

1 going at each other with motorcycle parts from the tables and
2 everything. After that incident the Vagos kind of got
3 together, said why are we so afraid of the Hells Angels? At
4 that point they decided to go on a major expansion mode.

5 Q What about bullet point two?

6 A That is an incident that occurred in Bullhead City
7 where you had 5 Hell Angels and two Desert Road riders showed
8 up at a bar called Lazy Harry's Bullhead, Arizona and beat
9 down a Vagos there by himself. That case is actually still
10 going through the Court. I have assisted in that case as far
11 as expert opinion and waiting for court on that. But they
12 charged him with gang enhancement. One of the Hells Angels
13 already pled guilty also to a gang enhancement.

14 Q Not to get into the legal aspect of gang
15 enhancement, talk about how do we know this assault at the bar
16 in Arizona isn't just a personal thing between two guys who
17 don't like each other, and the difference between that and
18 that crime being committed for the respect or for the gang?

19 A Because you don't bring the whole group in on it, 5
20 other Hells Angels and two Desert Road riders and associate
21 clubs in that area to this type of incident. It is kind of an
22 ongoing escalation of violence going on between the two
23 different organizations.

24 Q Is that same pattern indicated in all the four

1 bullet points you have on this slide?

2 A Yes.

3 Q Talk about bullet point three.

4 A That incident was in Santa Cruz where you had three
5 Vagos sitting at a Starbuck's having coffee. They leave the
6 Starbuck's and a couple blocks from that location they end up
7 getting, the Hells Angels start to assault them, actually
8 tried to assault them. They get into a confrontation. One of
9 the Vagos was beat up by the Hells Angels but he was able to
10 fight them off.

11 Q This rivalry is known by all Hells Angels chapters?

12 A Yes.

13 Q Move on to, we are to the seventh documented
14 incident between the Hells Angels and the Vagos through June
15 4th of 2011; is that right?

16 A Yes, sir.

17 Q Let's talk about this instant case. You said, you
18 already said you knew Jeffrey Pettigrew; is that right?

19 A Yes.

20 Q Do you know him to be involved in the Hells Angels
21 motorcycle gang?

22 A He was actually the President of the San Jose
23 chapter of the Hells Angels.

24 Q Cesar Villagrana, are you familiar with him?

1 A I am. Full-patch member of the San Jose Hells
2 Angels.

3 Q Have you reviewed any of the documents or the
4 materials in this case?

5 A I haven't seen any of the reports, only the video.

6 Q As you reviewed the video, what, if anything, can
7 you tell us about the particular aspects of the video as they
8 relate to the Hells Angels motorcycle gang?

9 A There was obviously a fight that started off from
10 viewing it with a confrontation in the Oyster Bar at the
11 Nugget. You could see there was obvious animus going on over
12 there between Pettigrew and one of the other Vagos.

13 Q Let me interrupt you a little bit and give a
14 hypothetical on this situation: Suppose there was a
15 confrontation in a bar between Pettigrew being the Hells Angel
16 and a Vagos, and Vice President of a chapter of the Vagos
17 motorcycle club went to that. The National people from the
18 Vagos motorcycle club told Pettigrew and others not to engage
19 with Pettigrew. I mean told, sorry, told the Vagos Vice
20 President and others not to engage with Pettigrew?

21 A I think you lost me over here. Start that one over
22 again.

23 Q Okay. A Vagos Vice President has a confrontation
24 with Pettigrew in the bar?

1 A Okay.

2 Q Verbal confrontation?

3 A Okay.

4 Q Afterwards, Vagos International officers tell the
5 person who had the confrontation with Pettigrew to stop the
6 confrontation, not to engage with Pettigrew further?

7 A Okay.

8 Q Based on your understanding of outlaw motorcycle
9 gangs, would that sort of order be expected to stand?

10 A It would be expected to, but it is not always
11 followed.

12 Q What about is there any aspect of disrespect between
13 a Vice President of Vagos approaching or having a
14 confrontation with a President of the Hells Angels?

15 A It is just the idea of any Vagos, whether it is the
16 President, whether it is a member being disrespectful toward
17 another individual.

18 Q Would that be seen as a provocation?

19 A Oh, absolutely.

20 Q As to which side would it be seen as a provocation?

21 A It would be seen as provocation by the one being
22 disrespected. If the Vagos was the one that initiated the
23 confrontation, obviously the one feeling disrespected would be
24 the Hells Angels.

1 Q Suppose a fight broke out based on that situation,
2 how would the members of the Hells Angels be expected to
3 react?

4 A If one of their own gets into a fight with a Vagos,
5 they expect them to fight back, expect them not step down, not
6 back down.

7 Q Would there be consequences if a person were to not
8 jump in or aid a fellow Hells Angels in a fight with a Vagos?

9 A Oh, absolutely.

10 Q What sort of consequences?

11 A The consequence would be beat down of that
12 individual at a later date, being kicked out of the
13 organization in disgrace.

14 Q How would, I guess getting into the fight or backing
15 up your fellow Hells Angels, who would that protect?

16 A First of all, you have to protect your "P," "P"
17 being the President. That is a given. You have to protect
18 your President. If it is other Hells Angels, not the
19 President, you better be there to back up your fellow, your
20 brothers in the fight. You don't stop and question as to what
21 the reason was for the fight, anything like that. You discuss
22 that at later time. Now you take care of doing that. It is
23 seen as a matter of honor. It is a sign you are there willing
24 to step up for the gang. It gives you more status within the

1 organization, you were there to step up. Otherwise, you are
2 going to get as we call it, going to get punked and kicked
3 out.

4 Q Based on your viewing of the video, do you have an
5 opinion as to whether the fight or the actions of the Hells
6 Angels was in furtherances of the Hells Angels gang?

7 A Oh, absolutely.

8 Q What is that opinion?

9 A That it was in the furtherance of the Hells Angels
10 gang, because they did exactly what was expected of them.
11 They stepped up. The President threw the punch, and despite
12 the Vagos, everyone stepped in right away, started fighting
13 with the Vagos, trying to protect each other overall.

14 Q On the flip side, you see a number of Vagos
15 attacking Hells Angels. Would that also be in furtherance of
16 the Vagos gang in terms of full engagement or mutual agreement
17 to engage in an affray?

18 A Absolutely.

19
20 EXAMINATION

21 BY MR. HALL:

22 Q That would be consistent with gang psychology,
23 credo and their tenants of understanding being a gang member?

24 A Absolutely.

1 Q Either the Vagos or Hells Angels?

2 A You need to step up to the plate. If you don't take
3 care of business, you will be taken care of later.

4 MR. HALL: I have no further questions. Thank you.

5 THE FOREMAN: Do we have any questions for the
6 witness?

7 Mr. Gil-Blanco, the proceedings before the Grand
8 Jury are secret. You may not disclose evidence presented to
9 the Grand Jury, any event occurring or statement made in the
10 presence of the Grand Jury, any information obtained by the
11 Grand Jury or the result of the investigation being made by
12 the Grand Jury.

13 However, you may disclose the above information to
14 the District Attorney for use in the performance of his
15 duties.

16 You may also disclose your knowledge concerning the
17 proceeding when directed by a court in connection with
18 judicial proceeding or when otherwise permitted by the Court
19 or to your own attorney.

20 The obligation of secrecy applies until the Court
21 allows the matter to become public record.

22 A gross misdemeanor and contempt of court may be
23 pursued if your obligation of secrecy is not followed. Do you
24 understand?

1 THE WITNESS: Yes, sir, I do.

2 THE FOREMAN: Thank you.

3 (Witness Excused.)

4 (Whereupon another witness entered the Grand Jury room.)

5 THE FOREMAN: Raise your right hand, please.

6 (Whereupon the witness was sworn by the Foreman.)

7

8 JOHN PATTON

9 called as a witness having been first duly

10 sworn by the Foreman testified as follows:

11

12 EXAMINATION

13 BY MR. HALL:

14 Q Are you aware the Grand Jury has convened today to
15 consider a proposed Indictment concerning allegations of
16 conspiracy, challenge to fight, murder, carrying a concealed
17 weapon, battery with a deadly weapon?

18 A Yes.

19 Q Do you have information to aid the Grand Jury?

20 A Pardon?

21 Q Do you information to aid in their investigation?

22 A I do.

23 THE FOREMAN: Sir, are you aware the Grand Jury is
24 inquiring into the evidence you may have relating to the

1 charges of conspiracy to engage in an affray, challenge to
2 fight resulting in death with the use of a deadly weapon,
3 battery with a deadly weapon two counts, discharging a firearm
4 into a structure two counts, carrying a concealed weapon two
5 counts, open murder with the use of a deadly weapon and second
6 degree murder with a deadly weapon in the matter of Ernesto
7 Manuel Gonzalez, Stuart Gary Rudnick, Cesar Villagrana?

8 A I do.

9 BY MR. HALL:

10 Q Sir, state your name and spell your last name?

11 A John Patton, P-A-T-T-O-N.

12 Q Are you currently employed as a detective for the
13 Sparks Police Department?

14 A I am.

15 Q Are you the case agent on the case that derived from
16 the Nugget fight between the Vagos and the Hells Angels?

17 A I am.

18 Q Have you had an opportunity to view the video that
19 was provided by the Nugget surveillance security?

20 A Yes.

21 Q And did you have an opportunity to identify the
22 subjects which have been identified as Mr. Gonzales, that
23 would be Ernesto Manuel Gonzales and Cesar Villagrana?

24 A Yes.

1 Q Did you have an opportunity to kind of watch them as
2 they walked around in the casino?

3 A Yes.

4 Q Could you tell whether or not they were carrying
5 firearms?

6 A Yes.

7 Q All right. Did they have, based upon your viewing
8 the video, did they have firearms concealed upon their person?

9 A They did.

10 Q Is that a violation of law if you have a firearm
11 concealed on your person?

12 A It is.

13 Q And did you check to see whether they had a permit
14 to carry those firearms?

15 A I did.

16 Q Did they?

17 A No.

18 Q All right. Then also the Nugget, is that located in
19 a populated area?

20 A It is.

21 Q For purposes of discharging a firearm in a
22 structure?

23 A Yes.

24 Q Of course the Nugget is here in Washoe County; is

1 that right?

2 A Yes.

3 MR. HALL: Those are all the questions I have.

4 Thank you.

5 THE FOREMAN: Do we have any questions for the
6 witness?

7 A GRAND JUROR: I just want to be clear. You
8 ascertained all of this from the videos?

9 THE WITNESS: Yes.

10 THE FOREMAN: Any other questions?

11 MR. HALL: "Ascertained all of this," I am assuming
12 you are talking about the carrying the weapons?

13 THE WITNESS: Yes.

14 MR. HALL: That is in evidence. You can review it
15 yourself.

16 THE FOREMAN: Do we have any other questions?

17 Sir, the proceedings before the Grand Jury are
18 secret. You may not disclose evidence presented to Grand
19 Jury, any event occurring or statement made in the presence of
20 the Grand Jury, any information obtained by the Grand Jury or
21 the result of the investigation being made by the Grand Jury.

22 However, you may disclose the above information to
23 the District Attorney for use in the performance of his duty.

24 You may also disclose your knowledge concerning the

1 proceeding when directed by a court in connection with
2 judicial proceedings or when otherwise permitted by the Court
3 or to your own attorney.

4 The obligation of secrecy applies until the court
5 allows the matter to become public record.

6 A gross misdemeanor and contempt of court may be
7 pursued if your obligation of secrecy is not followed. Do you
8 understand?

9 THE WITNESS: I do.

10 THE FOREMAN: Thank you. You are excused.

11 (Witness Excused.)

12 MR. STEGE: I have a question. Can I turn the
13 lights up a little bit?

14 THE FOREMAN: Yes, unless we have more displays.

15 MR. STEGE: Too much?

16 THE FOREMAN: No, that is good.

17 MR. HALL: Ladies and gentlemen, that concludes my
18 presentation. I was calling Judge Steinheimer. I am going to
19 request her to give you one other admonition before you
20 deliberate. If you can hold off on deliberation for just one
21 minute to see if I can get her down here then you can
22 deliberate. Does anybody have any questions regarding any
23 part of presentation? Yes, ma'am.

24 A GRAND JUROR: You are dismissing Paul Ochs?

1 MR. HALL: He testified. He was the Security
2 Director.

3 A GRAND JUROR: Okay.

4 A GRAND JUROR: Jennifer Mead?

5 MR. HALL: Jennifer Mead is the Custodian of
6 Records, however I think she actually is Northern Nevada
7 Medical Center where I didn't need that, didn't present, I am
8 not going to present the Custodian of Records. It is actually
9 Jenny Mosher. In lieu of her testimony I presented her
10 Certificate of the Custodian of Records. You can receive her
11 Certificate in lieu of her testimony.

12 Okay. So you are free to deliberate at this point
13 unless you have further questions.

14 THE FOREMAN: Anybody have any questions? I don't
15 think we do.

16 (Whereupon the Deputy District Attorneys and the
17 Court Reporter left the Grand Jury room.)

18 (Whereupon the Grand Jury deliberated.)

19 (Whereupon the Deputy District Attorneys and the
20 Court Reporter re-entered the Grand Jury room.)

21 THE FOREMAN: In the matter of State of Nevada
22 versus Stuart Gary Rudnick, Cesar Villagrana and Ernest Manuel
23 Gonzalez, Count I, conspiracy to engage in an affray, we have
24 returned a True Bill.

1 Count II, challenge to fight resulting in a death
2 with the use of a deadly weapon, we have returned a True Bill.

3 Count III, battery with a deadly weapon, we have
4 returned a True Bill.

5 Count IV, battery with a deadly weapon, we have
6 returned a True Bill.

7 Count V, discharging a firearm in a structure, we
8 have returned a True Bill.

9 Count VI, carrying a concealed weapon, we have
10 returned a True Bill.

11 Count VII, carrying a concealed weapon, we have
12 returned a True Bill.

13 Count VIII, discharging a firearm into a structure
14 we have returned a True Bill.

15 Count IX, open murder with the use of a deadly
16 weapon, we have returned a True Bill.

17 Count X, murder of the second degree with the use of
18 a deadly weapon, we have returned a True Bill.

19 MR. HALL: All right. Thank you. I did note there
20 was a typo in one of the counts. I corrected those. I made
21 that clerical corrections of that. I will sign that and
22 supply that to you for your signature. I think we ought to
23 get out of here. I will take the evidence.

24 ///

1 RETURN OF THE GRAND JURY INDICTMENT

2 -o0o-

3
4 THE COURT: Please be the seated. The clerk will
5 call the roll of the Grand Jury. Please answer here or
6 present.

7 (Whereupon the roll was called by the clerk.)

8 THE COURT: The clerk will record a quorum of the
9 Grand Jury being present.

10 Mr. Hall, do you have something to present?

11 MR. HALL: Yes. Thank you, Your Honor. I presented
12 a proposed Indictment before a quorum of the Grand Jury which
13 Grand Jury you just took roll of. They returned a True Bill
14 on all ten counts in the proposed Indictment. If I may
15 approach?

16 THE COURT: You may.

17 MR. HALL: With the original. I also have an Order
18 Staying Proceedings in Justice Court. I can present you with
19 that Order. I also have the Bench Warrant. I would like to
20 address the issue of bail.

21 THE COURT: Mr. Foreperson, is this your signature
22 on the True Bill?

23 THE FOREMAN: It is Your, Honor.

24 THE COURT: You heard all these witnesses?

1 THE FOREMAN: Yes, we did.

2 THE COURT: But you changed one of the CS 11
3 numbers?

4 THE FOREMAN: Yes, we did. It was a typo.

5 THE COURT: The 67 was the number you know that
6 person by?

7 THE FOREMAN: Yes.

8 THE COURT: You initialed it?

9 THE FOREMAN: I did.

10 THE COURT: Okay. Thank you. The clerk will record
11 the Indictment in the record of the Court.

12 Mr. Hall, with regard to the Order Staying
13 Proceedings, where are their proceedings currently?

14 MR. HALL: Well, we are waiting return of
15 Ernesto Manuel Gonzales from San Francisco. We did a
16 Governor's Warrant. He waived extradition once we did the
17 Governor's Warrant. He's going to be on his way back shortly.
18 I don't know exactly the date, but I know the Sparks Police
19 Department is working on that. He's been charged with open
20 murder, so we would like to have that proceedings stayed once
21 he gets back.

22 The other, there is another proceeding in Sparks
23 Justice Court against Mr. Villagrana, a Prelim set next month,
24 I believe December 2nd, something like that. I would like to

1 have that proceeding stayed.

2 Then, of course, Stuart Gary Rudnick, I think it is
3 Gary Stuart. I don't know how these names got transposed.
4 Gary Stuart Rudnick.

5 THE COURT: It is Stuart Gary Rudnick here.

6 MR. HALL: That is how it is on the Indictment. I
7 just noticed that when I was walking up. I believe it is
8 actually Gary Stuart Rudnick. I am almost positive. As a
9 matter of fact, I have identifying information in my file I
10 could present you if we could.

11 THE COURT: So the Indictment is wrong?

12 MR. HALL: It should be Gary Stuart Rudnick aka
13 "Jabbers".

14 THE COURT: Counsel approach.

15 (Discussion at the bench.)

16 THE COURT: With regard to the Order Staying
17 Proceedings that is with regard to Mr. Villagrana and
18 Mr. Gonzales both in Sparks Justice Court, we will enter that
19 Order staying those proceedings.

20 With regard to the Bench Warrant, you have requested
21 a Bench Warrant for Cesar Villagrana, Ernesto Gonzalez and
22 Stuart Gary Rudnick also known as "Jabbers" also known as Gary
23 Stuart Rudnick, correct?

24 MR. HALL: Correct.

1 THE COURT: And how much do you want the bail set on
2 those Bench Warrants?

3 MR. HALL: In light of the fact they are charged
4 with murder of the first degree, I would ask for no bail.

5 THE COURT: Are they all three charged with murder
6 in the first degree?

7 MR. HALL: Yes. Count II, challenge to fight
8 resulting in death.

9 THE COURT: What is their bail set at currently?

10 MR. HALL: Well, before Mr. Villagrana was charged
11 with murder and a number of other additional charges, his bail
12 was set at \$150,000. It is a no bail hold on Ernesto Gonzalez
13 currently.

14 THE COURT: Okay. We'll set a no bail hold on all
15 three until their first appearance in court, then they can
16 address that issue.

17 With regard to the Indictment, are you asking it be
18 sealed?

19 MR. HALL: Yes.

20 THE COURT: And the Order will be the Indictment is
21 sealed until the Warrants are served. Is there anything else
22 for this afternoon?

23 MR. HALL: Nothing further. Your Honor.

24 THE COURT: Did you want to lodge anything with us,

1 any evidence or anything?

2 MR. HALL: Yes. Thank you, Your Honor. I did bring
3 the evidence. I can lodge it with the clerk.

4 THE CLERK: I am sorry, do you know how many? 1
5 through 9?

6 MR. HALL: I think it is 1 through 9.

7 THE CLERK: Thank you.

8 THE COURT: And a demonstrative exhibit also, is
9 that correct?

10 MR. HALL: I don't know if you need that. I can
11 make a record of it. It is just a diagram of the Nugget.

12 THE CLERK: It was marked Exhibit 9.

13 THE COURT: Then we will accept it and lodge all the
14 exhibits utilized by the Grand Jury. Okay.

15 Anything further, counsel?

16 MR. HALL: Nothing further at this time, Your Honor.

17 THE COURT: Okay. Ladies and gentlemen of the Grand
18 Jury, I want to thank you for your service. I see you all
19 have your coats on. I hope that doesn't mean you were
20 freezing toward the end of the day. I know it was really hot
21 there this morning. I hope it got a little bit more
22 comfortable.

23 As always, I want to let you know we all appreciate
24 your service. Every Judge in the District is appreciative of

1 the service you are providing as members of the Grand Jury. It
2 is essential that we have you and you do make a difference for
3 your community. So thank you. Thank you, Mr. Foreperson.

4 Court is in recess.

5 (Whereupon, the proceedings were concluded.)
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1 STATE OF NEVADA,)
2) ss.
3 COUNTY OF WASHOE.)

4 I, Judith Ann Schonlau, one of the Court Reporters
5 of the Second Judicial District Court of the State of Nevada,
6 in and for the County of Washoe, do hereby certify:

7 That I reported in stenotype the testimony of the witnesses
8 before the Washoe County Grand Jury in the matter of STUART
9 GARY RUDNICK, also known as "JABBERS, also known as GARY
10 STUAET RUDNICK, CESAR VILLAGRANA and ERNESTO MANUEL GONZALEZ
11 at Reno, Nevada on November 9, 2011;

12 That the foregoing transcript, consisting of pages
13 numbered 1 through 276, inclusive, is a full, true and correct
14 transcription of the stenotype notes taken in the
15 above-entitled matter, to the best of my knowledge, skill and
16 ability.

17 I further certify that I am in no way interested in
18 the outcome of said action.

19 Dated at Reno, Nevada, this 18th day of November, 2011.
20
21

22 /s/ Judith Ann Schonlau
23 JUDITH ANN SCHONLAU CSR #18
24

//

1 CODE 2315
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6 (775)337-4800
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8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

10
11 IN AND FOR THE COUNTY OF WASHOE

12 THE STATE OF NEVADA,

13 Plaintiff,

Case No. CR11-1718B

14 v.

Dept. No. 4

15 ERNEST MANUEL GONZALEZ,
16 Defendant.

17
18 **MOTION TO DISMISS INDICTMENT OR IN THE ALTERNATIVE**
19 **PETITION FOR WRIT OF HABEAS CORPUS**

20 COMES NOW Defendant above-named, by and through counsel Washoe County Public
21 Defender JEREMY T. BOSLER and Deputies MAIZIE W. PUSICH and BIRAY DOGAN,
22 and hereby moves this Court for an Order Dismissing Indictment, or in the alternative that the
23 Court grant a Petition for Writ of Habeas Corpus based upon the presentation of significant
24 testimony of reported gang activities without first establishing the defendant's involvement in
25 or knowledge of the criminal activities, and the failure to present exculpatory evidence. *U.S.*
26 *Const, Fifth, Sixth and Fourteenth Amendments; Nev. Const, Art. 1, Section 8, and NRS*
174.172.145 (A Motion to dismiss for improper notice to the Defendant is being filed
separately).

1. STATEMENT OF THE CASE

A proposed Indictment was presented to a Grand Jury on November 9, 2011 charging
Ernesto Manuel Gonzalez with several felony counts. Included among them was murder with

1 the use of a deadly weapon and a challenge to fight resulting in death, with the use of a deadly
2 weapon. Included counts also allege gang enhancement.

3 2. STATEMENT OF FACTS

4 A Washoe County Grand Jury convened on November 9, 2011. A copy of the
5 transcript of that proceeding was filed with the Court on November 18, 2011. The charges
6 stem from an incident that occurred at John Ascuaga's Nugget during the 2011 Street
7 Vibrations Motorcycle Rally. The Rally is an annual event, which in 2011 was in its eighteenth
8 year, and hosted in part by the cities of Reno and Sparks. In 2011 it ran from September 21st
9 until September 25th. The Sparks part of the festival was shortened by the State of Nevada and
10 City of Sparks after the incident at the Nugget.

11 The Washoe County Grand Jury heard evidence relating to Mr. GONZALEZ. Pursuant
12 to a Court Order issued after closed proceedings, no notice to the target defendants was
13 provided. None appeared. Also pursuant to a Court order following a closed hearing, five
14 witnesses were not identified during their testimony before the Grand Jury. Alpha-numeric
15 designations were used. Those were CS 11-21, 11-54, 11-31, 11-42, and 11-67. To date their
16 identities remain undisclosed. Immediately after advising the Grand Jury of the proposed
17 charges, the State told them that notice to the potential defendants had not been given, and that
18 not giving the notice was pursuant to the Court's Order. PHT 13; 1-8. Before the Grand Jury
19 heard any testimony the District Court Judge personally admonished them they should not
20 consider the lack of a target letter "for any purpose other than that you may proceed to consider
21 the presentation." GJT 15; 8-10. (Motions regarding the disclosure and other discovery
22 requested are under submission with the Court). The State then chose to provide the Grand
23 Jury with a "brief overview" of the case. GJT 13; 14-15. At page 14 of the transcript the State
24 then conflates its theories of liability, advising the grand jurors that the State was alleging
25 conspiracy, aiding and abetting, malicious recklessness, and once again aiding and abetting.
26 GJT 14; 3-4, 8-9, 13-14 and 19-20.

1 The first witness called explained video surveillance at the Nugget, including video
2 collection following the shootings. The second witness, also a Nugget employee provided
3 information regarding security and record-keeping procedures. He testified that Mr.
4 GONZALEZ was a guest of the Nugget during Street Vibrations. The witnesses described a
5 disagreement occurring shortly after 10 p.m. in front of the Oyster Bar restaurant. The dispute
6 involved Gary Stuart Rudnick and Jeffrey Pettigrew. Grand Jury witnesses testified that the
7 situation was tense, but was diffused, resulting in a lessening of the tensions and an expectation
8 that the problem was resolved. Despite this testimony the State then presented testimony to
9 suggest that although its witnesses identified Mr. GONZALEZ as near the initial dispute
10 outside the Oyster Bar, although not involved in it, he somehow missed the truce or "stand
11 down" message and later continued the disagreement outside Trader Dick's restaurant. No
12 witness at Grand Jury testified that he or she had spoken to Mr. GONZALEZ about any plan to
13 participate in or cause a fight. None testified they were present when such a conversation
14 occurred between Mr. GONZALEZ and anyone else.

15 The Grand Jury heard a great deal of information about reported gang behavior, but
16 none specifically relating to crimes committed by Mr. GONZALEZ in any prior case. In the
17 present case the Grand Jury was advised that Mr. GONZALEZ shot Mr. Pettigrew, but not told
18 he only did so after Mr. Pettigrew pistol-whipped an older man, and Mr. Villagrana shot two
19 others.

20 3. ARGUMENT

21 The Due Process guarantees of the United States and Nevada Constitutions provide at
22 the outset of a criminal prosecution the accusations will be presented to a neutral fact-finder to
23 determine whether probable cause exists for the prosecution. *Gerstein v. Pugh*, 420 U.S. 103,
24 95 S.Ct. 854, 43 L.Ed.2d 54 (1975); *Powell v. State*, 113 Nev. 41, 930 P.2d 1123 (1997), on
25 remand from the U.S. Supreme Court, 511 U.S. 79, 114 S.Ct. 1280, 128 L.Ed.2d 1 (1994).

1 An Indictment is obtained in a process that is not adversarial. A finding of probable
2 cause is made by the Grand Jury, having heard only one side of the allegations. Because of that
3 rules have been imposed to assure due process of law to the accused. Included among those
4 rules are notice and an opportunity to be heard, fundamental tenets of the Constitutional
5 obligation to provide due process. Further, Grand juries are to receive only lawful evidence,
6 and the best evidence. *NRS 172.135(2)*.

7 In addition, a statutory obligation is imposed on the State: to present all evidence that
8 will explain away the charge. *NRS 172.145*. The "explain away" language has been
9 interpreted by the Nevada Supreme Court to impose an obligation on a prosecutor to present
10 exculpatory evidence to the Grand Jury. *King v. State, 116 Nev. 349, 998 P.2d 1172 (2000)*. In
11 the present case the Indictment secured was obtained without meeting the requirements of Due
12 Process or the obligation to present exculpatory evidence.

13 The State's Indictment rests upon inadmissible evidence. The Grand Jury was not
14 provided with evidence that would explain away the charge.

15 The State presented an unnamed witness to provide information about the nature and
16 structure of the Vagos Motorcycle Club (hereinafter "VMC"). Beginning on page 205, line 23
17 of the Grand Jury Transcript (hereinafter "GJT"), about the VMC the witness is asked,

18 Q Are they an outlaw gang?

19 A Yes.

20 Q Are they involved in criminal activity?

21 A Absolutely.

22 Q What kind of criminal activity would that include?

23 A Murder, rape, robbery, drugs, all types.

24 The witness uses broad generalizations about the VMC and its membership as a whole. The
25 witness also states, "there is not just a couple hundred, you know, there is over thousands of
26 people in the club now." GJT 210; 17-18. This statement highlights the impossibility of the

1 witness to know the activities, criminal or otherwise, of thousands of people. The witness
2 provides no information regarding Mr. GONZALEZ'S participation within the VMC; as such,
3 without proof of Mr. GONZALEZ promoting the VMC as a criminal gang, his association is
4 protected by the First Amendment and was not admissible evidence as used before the Grand
5 Jury. *Dawson v. Delaware*, 503 U.S. 159, 112 S.Ct. 1093, 117 L.Ed.2d 709 (1992); *Flanagan v.*
6 *State*, 109 Nev. 50, 53, 846 P.2d 1053 (1993).

7 In this case other acts evidence was presented to the Grand Jury. This imposed special
8 obligations on the State and the Court, but none on the defense, who was not permitted to
9 participate, argue, or object at the Grand Jury hearing. *Hill v. State*, 124 Nev. Adv. 52, 188 P.3d
10 51 (2008); *NRS 172.097*; *NRS 172.235*.

11 Relevance of other acts evidence will be evaluated in part with reference to the timing
12 of the alleged prior bad act versus the time of the charged offense. In *Walker v. State*, 116 Nev.
13 442, 997 P.2d 803 (2000), the Court ruled as stale evidence regarding alleged threats by the
14 defendant against the victim that occurred six and ten years before the charged offense. The
15 court noted that in evaluating the relevance of prior acts evidence, "we have consistently noted
16 that events remote in time from the charged incident have less relevance in proving later
17 intent." *Id.* at 806-807. Here, the nexus between the alleged other acts and the alleged offense
18 would be far more tenuous. The evidence the Grand Jury heard was remote in time. More
19 importantly, there was no evidence presented connecting Mr. GONZALEZ to any of the prior
20 incidents at all. The relevance is low, increasing the prejudice. Using evidence merely to show
21 bad character is precisely the use to which the information cannot be put in Nevada. The gang
22 evidence introduced at the Grand Jury only gives irrelevant and prejudicial information from
23 which they could conclude that Mr. GONZALEZ was a criminal in ways other than those the
24 Grand Jury was called upon to decide.

25 A jury being permitted to consider evidence other than the elements of the crime must
26 be clearly instructed. It must be clearly instructed that the other acts evidence is NOT an

1 element of the crime, and cannot be considered by them as an element. The United States
2 Supreme Court has made clear every element of a charged offense must be proven to a jury,
3 beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).
4 While appearing before a Grand Jury a prosecutor has the obligation to make sure the evidence
5 is admissible, and the jury is properly advised of its use. Under the direction of the District
6 Court, it is the prosecutor's obligation to provide a fair and balanced presentation, because no
7 defender is present. That did not occur at the Grand Jury hearing in this case.

8 The error was compounded because after presenting irrelevant and inadmissible
9 evidence, the state did not present exculpatory evidence to the Grand Jury. The Grand Jury was
10 not properly advised that the CS-insider witness was, with respect to the criminal activity he
11 described occurring before September, 2011, an accomplice whose testimony required
12 corroboration. *NRS 175.291*. Corroboration is required at preliminary hearings, *Wellman v.*
13 *Sheriff, Clark County*, 90 Nev. 174, 521 P.2d 365 (1974), and similarly should be required at
14 Grand Jury hearings. The Grand Jury was further not advised with respect to the witness'
15 criminal history. Because his identity is being shielded by the State and the Court, despite his
16 descriptions of several prior felonies, no impeachment by prior conviction was submitted to the
17 Grand Jury. Nor were they advised that Mr. GONZALEZ had no criminal history with respect
18 to any of the crimes the witness claimed the VMC were involved in committing. Mr.
19 GONZALEZ has never been convicted of any offense allegedly tied to the VMC.

20 CS 11-67, testifying about the VMC, alleges broad criminal activity and associates
21 thousands of people with those acts. This is prejudicial to Mr. GONZALEZ. This testimony
22 should not have been presented to the Grand Jury because, "The use of uncharged bad act
23 evidence to convict a defendant is heavily disfavored in our criminal justice system because
24 bad acts are often irrelevant and prejudicial and force the accused to defend against vague and
25 unsubstantiated charges." *Tavares v. State*, 117 Nev. 725 (2001). The prejudice is compounded
26 by the fact that the witness can offer no proof that Mr. GONZALEZ was involved with the

1 criminal acts the witness associated with the VMC as a group. Even if members of the VMC
2 have committed criminal acts, the use of that as evidence against Mr. GONZALEZ is improper
3 because, "Evidence of other crimes, wrongs or acts is not admissible to prove the character of a
4 person in order to show the person acted in conformity therewith." *NRS 48.045(2)*.

5 In some cases the State argues that other bad act evidence should be admitted under a
6 *res gestae* or complete-story-of-the-crime theory. Cases approving that argument require that
7 the acts for which admission is sought actually be part of a complete story, not individual
8 unrelated short stories, merely compiled in the state's hoped-for anthology. In *Bellon v. State*,
9 *121 Nev. 436, 117 P.3d 176 (2005)*, the Nevada Supreme Court reversed the defendant's
10 conviction for murder because of the erroneous admission of alleged *res gestae* evidence.
11 Although such evidence is evaluated under *NRS 48.035*, not *NRS 48.045* both are to be
12 narrowly construed.
13

14 The State may present a full and accurate account of the crime, and such
15 evidence is admissible even if it implicates the defendant in the commission of
16 other uncharged acts. However, the "complete story of the crime" doctrine must
17 be construed narrowly. Accordingly, we have stated that "the crime must be so
18 interconnected to the act in question that a witness cannot describe the act in
19 controversy without referring to the other crime." We now reiterate that
20 admission of evidence under *NRS 48.035(3)* is limited to the statute's express
provisions. Under the statute, a witness may only testify to another uncharged act
or crime if it is so closely related to the act in controversy that the witness cannot
describe the act without referring to the other uncharged act or crime. *Id. at 444*.
[citations omitted].

21 Where the alleged crime can be fully described without reference to alleged other bad
22 acts, both *NRS 48,045* and *NRS 48.035* exclude the evidence. Such was the case before the
23 Grand Jury in this case.

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CONCLUSION

Based upon the foregoing Mr. GONZALEZ requests the Indictment be dismissed or in the alternative, that the Court grant the Petition for writ of habeas corpus.

AFFIRMATION

The undersigned does hereby affirm under NRS 239B.030 that the aforementioned document does not contain the social security number of any person.

Respectfully submitted this 24th day of February, 2012.

JEREMY T. BOSLER
Washoe County Public Defender

By /s/ Maizie W. Pusich
MAIZIE W. PUSICH,
Chief Deputy Public Defender

By /s/ Biray Dogan
BIRAY DOGAN
Deputy Public Defender

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**MOTION TO DISMISS INDICTMENT OR IN THE ALTERNATIVE
PETITION FOR WRIT OF HABEAS CORPUS**

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Tehan Slocum, Deputy Alternate Public Defender
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/s/ Vicki Hamm

VICKI HAMM

12

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5 Reno, NV 89520-3083
6 (775) 328-3200
7 Attorney for Plaintiff

8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
10
11 IN AND FOR THE COUNTY OF WASHOE.

12 * * *

13 THE STATE OF NEVADA,

14 Plaintiff,

Case No. CR11-1718B

15 v.

Dept. No. 4

16 ERNESTO MANUEL GONZALEZ,

17 Defendant.

18
19 _____/
20 OPPOSITION TO DEFENDANT GONZALEZ' MOTION TO DISMISS/PETITION FOR WRIT
21 OF HABEAS CORPUS

22 COMES NOW, the State of Nevada, by and through RICHARD A.
23 GAMMICK, District Attorney of Washoe County, and AMOS STEGE, Deputy
24 District Attorney, hereby submits the attached Points and Authorities
25 in Opposition to Defendant's Motion to Dismiss/Petition for Writ of
26 Habeas Corpus.

This opposition is made and based upon all the papers and
pleadings on file herein, the attached points and authorities in
support hereof, and oral argument at the time of hearing, if deemed
necessary by this Honorable Court.

///

activities of the criminal gang, shall, in addition to the term of imprisonment prescribed by statute for the crime, be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 20 years. ...

4. The court shall not impose an additional penalty pursuant to this section unless:

(a) The indictment or information charging the defendant with the primary offense alleges that the primary offense was committed knowingly for the benefit of, at the direction of, or in affiliation with, a criminal gang, with the specific intent to promote, further or assist the activities of the criminal gang; and

(b) The trier of fact finds that allegation to be true beyond a reasonable doubt.

7. In any proceeding to determine whether an additional penalty may be imposed pursuant to this section, expert testimony is admissible to show particular conduct, status and customs indicative of criminal gangs, including, but not limited to:

(a) Characteristics of persons who are members of criminal gangs;

(b) Specific rivalries between criminal gangs;

(c) Common practices and operations of criminal gangs and the members of those gangs;

(d) Social customs and behavior of members of criminal gangs;

(e) Terminology used by members of criminal gangs;

(f) Codes of conduct, including criminal conduct, of particular criminal gangs; and

(g) The types of crimes that are likely to be committed by a particular criminal gang or by criminal gangs in general.

8. As used in this section, "criminal gang" means any combination of persons, organized formally or informally, so constructed that the organization will continue its operation even if individual members enter or leave the organization, which:

(a) Has a common name or identifying symbol;

(b) Has particular conduct, status and customs indicative of it; and

(c) Has as one of its common activities engaging in criminal activity punishable as a felony, other than the conduct which constitutes the primary offense.

1 The State presented evidence at the grand jury to support
2 the gang enhancement as it relates to Gonzalez and the Vagos gang.
3 Defendant's characterizations of the Vagos gang evidence as other bad
4 acts under NRS 48.045(2) is simply erroneous. Under NRS 193.168
5 expert testimony is admissible "in any proceeding" to determine
6 whether an additional penalty may be imposed. This testimony may
7 include, but is not limited to, evidence of codes of "criminal
8 conduct". The definition of a criminal gang includes that the group
9 "has as one of its common activities engaging in criminal activity
10 punishable as a felony, other than the conduct which constitutes the
11 primary offense." CS 11-67 testified to the past criminal conduct in
12 these contexts, not as other bad acts. Jorge Gil-Blanco added expert
13 testimony including testimony about the gang rivalry between the
14 Vagos and Hell's Angels, including documented violence between the
15 groups.

16 Defendant's claim that Gonzalez was not connected to the
17 prior Vagos gang crimes is irrelevant. While it is true that
18 Gonzalez was not directly described as committing previous crimes,
19 this is not required by NRS 193.168. Evidence about past criminal
20 activity must be shown as to the gang, not to Gonzalez. What must be
21 shown as to Gonzalez was that he committed the charged offenses
22 "knowingly for the benefit of, at the direction of, or in affiliation
23 with, a criminal gang, with the specific intent to promote, further
24 or assist the activities of the criminal gang". NRS 193.168(1).

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Defendant's related claim that the criminal history of 11-67 should have been revealed to the grand jury is similarly unfounded. It would be improper propensity evidence. Also, the State is not required to present evidence bearing on the credibility of a witness. U.S. v. Linton 502 F.Supp. 861, 867 (D.C.Nev. 1980) ("It is well settled that the prosecutor need not present material bearing on credibility of witnesses appearing before the grand jury").

///

1 was able to see and deduce for itself that Pettigrew was shot only
2 after Pettigrew pistol whipped a Vago and Villagrana was shooting.

3 CORROBORATION

4 Gonzalez makes the bizarre claim that CS 11-67 is an
5 accomplice to the foundational crimes used to show the gang
6 enhancement. First, 11-67 never claimed to have played any role in
7 the prior crimes. Second, 11-67 was presenting expert testimony on
8 the subject of the Vagos gang under NRS 193.168. Third, 11-67 is not
9 an accomplice under NRS 175.291 as "[a]n accomplice is ... defined as
10 one who is liable to prosecution, for the identical offense charged
11 against the defendant on trial in the cause in which the testimony of
12 the accomplice is given". 11-67's own testimony shows that he acted
13 as a peacekeeper, not an instigator or participant in the melee.
14 Finally, the protections of NRS 175.291 apply to the charged crimes
15 not the foundational crime. NRS 175.291 (corroboration evidence must
16 "connect the defendant with the commission of the offense").

17 CONCLUSION

18 For the above-stated reasons the Defendant's motion should
19 be denied.

20 Dated this 5th day of March, 2012.

21 RICHARD A. GAMMICK
22 District Attorney
23 Washoe County, Nevada

24 By /s/Amos Stege
25 AMOS STEGE
26 9200
Deputy District Attorney

0205CR111718B6

1 CERTIFICATE OF SERVICE BY E-FILING

2 I certify that I am an employee of the Washoe County
3 District Attorney's Office and that, on this date, I electronically
4 filed the foregoing with the Clerk of the Court by using the ECF
5 system which will send a notice of electronic filing to the
6 following:

7
8 WASHOE COUNTY PUBLIC DEFENDER
9 MAIZIE WHALEN PUSICH

10
11 DATED this 5th day of March, 2012.

12
13 /s/DANIELLE RASMUSSEN
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CR11-1718B
STATE VS. ERNESTO MANUEL GONZALEZ
District Court
Washoe County
DC-9806034179-034
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SHAMROCK

CODE 3795
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ATTORNEY FOR DEFENDANT

FILED
2012 APR -6 PM 12:47
JUDY D. HARRIS
BY [Signature]

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,
Plaintiff,
v.

Case No. CR11-1718B

ERNEST MANUEL GONZALEZ,
Defendant.

Dept. No. 4

**REPLY IN SUPPORT OF MOTION TO DISMISS INDICTMENT
OR IN THE ALTERNATIVE
PETITION FOR WRIT OF HABEAS CORPUS**

COMES NOW Defendant above-named, by and through counsel Washoe County Public Defender Jeremy T. Bosler and Deputies Maizie Pusich, Biray Dogan and Christopher Frey and hereby serves this Reply in support of his Motion for an Order Dismissing Indictment, or in the alternative Petition for Writ of Habeas Corpus. *U.S. Const, Fifth, Sixth and Fourteenth Amendments; Nev. Const, Art. 1, Section 8, and NRS 174.172.145*

STATEMENT OF THE CASE

A proposed Indictment was presented to a Grand Jury on November 9, 2011 charging Ernesto Manuel Gonzalez with several felony counts. Included among them was murder with the use of a deadly weapon and a challenge to fight resulting in death, with the use of a deadly weapon. Included counts also allege a gang enhancement.

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1 The first witness called explained video surveillance at the Nugget, including video
2 collection following the shootings. The second witness, also a Nugget employee provided
3 information regarding security and record-keeping procedures. He testified that Mr. Gonzalez
4 was a guest of the Nugget during Street Vibrations. The witnesses described a disagreement
5 occurring shortly after 10 p.m. in front of the Oyster Bar restaurant. The dispute involved Gary
6 Stuart Rudnick and Jeffrey Pettigrew. Grand Jury witnesses testified that the situation was
7 tense, but was diffused, resulting in a lessening of the tensions and an expectation that the
8 problem was resolved. Despite this testimony the State then presented testimony to suggest
9 that although its witnesses identified Mr. Gonzales as near the initial dispute outside the Oyster
10 Bar, although not involved in it, he somehow missed the truce or "stand down" message and
11 later continued the disagreement outside Trader Dick's restaurant. No witness at Grand Jury
12 testified that he or she had spoken to Mr. Gonzalez about any plan to participate in or cause a
13 fight. None testified they were present when such a conversation occurred between Mr.
14 Gonzalez and anyone else.

15 The Grand Jury heard a great deal of information about reported gang behavior, but
16 none specifically relating to crimes committed by Mr. Gonzalez in any prior case. In the
17 present case the Grand Jury was advised that Mr. Gonzales shot Mr. Pettigrew, but not told he
18 only did so after Mr. Pettigrew pistol-whipped an older man, and Mr. Villagrana shot two
19 others. In its Opposition the State argues that the Grand Jury saw the video, and this was
20 sufficient. However, the Grand Jury was given no information or instruction regarding self
21 defense or defense of others.

22 3. ARGUMENT

23 Due Process requires a criminal prosecution be commenced only after presentation to a
24 neutral fact-finder to determine whether probable cause exists. *Gerstein v. Pugh*, 420 U.S. 103,
25 95 S.Ct. 854, 43 L.Ed.2d 54 (1975); *Powell v. State*, 113 Nev. 41, 930 P.2d 1123 (1997), on
26 remand from the U.S. Supreme Court, 511 U.S. 79, 114 S.Ct. 1280, 128 L.Ed.2d 1 (1994).

1 An Indictment by Grand Jury occurs with the fact finder having heard only one side of
2 the allegations. Because of that, rules have been imposed to assure due process of law to the
3 accused, including notice and an opportunity to be heard. In addition, a statutory obligation is
4 imposed on the State: to present all evidence that will explain away the charge. *NRS 172.145*.
5 The "explain away" language has been interpreted by the Nevada Supreme Court to impose an
6 obligation on a prosecutor to present exculpatory evidence to the Grand Jury. *King v. State*,
7 *116 Nev. 349, 998 P.2d 1172 (2000)*. In the present case, the Indictment secured was obtained
8 without meeting the requirements of Due Process or the obligation to present exculpatory
9 evidence.

10 The State's Indictment rests upon inadmissible evidence. The Grand Jury was not
11 provided with evidence that would explain away the charge.

12 Without proof of Mr. Gonzalez promoting the VMC as a criminal gang, his association
13 is protected by the First Amendment and was not admissible evidence as used before the Grand
14 Jury. *Dawson v. Delaware, 503 U.S. 159, 112 S.Ct. 1093, 117 L.Ed.2d 709 (1992); Flanagan v.*
15 *State, 109 Nev. 50, 53, 846 P.2d 1053 (1993)*.

16 In this case, other acts of evidence was presented to the Grand Jury. This imposed
17 special obligations on the State and the Court, but none on the defense, who was not permitted
18 to participate, argue or object at the Grand Jury hearing. *Hill v. State, 124 Nev. Adv. 52, 188*
19 *P.3d 51 (2008); NRS 172.097; NRS 172.235*.

20 Relevance of other acts evidence will be evaluated in part with reference to the timing
21 of the alleged prior bad act versus the time of the charged offense. *Walker v. State, 116 Nev.*
22 *442, 997 P.2d 803 (2000)*. Here, evidence the Grand Jury heard regarding alleged prior acts
23 was remote in time. More importantly, there was no evidence presented connecting Mr.
24 Gonzalez to any of the prior incidents at all. The relevance is low, increasing the prejudice.
25 Using evidence merely to show bad character is precisely the use to which the information
26 cannot be put in Nevada. The gang evidence introduced at the Grand Jury only gives irrelevant

1 and prejudicial information from which they could conclude that Mr. GONZALEZ was a
2 criminal in ways other than those the Grand Jury was called upon to decide. The State argues
3 that the evidence was not other acts evidence, but rather that it was permissible gang
4 enhancement evidence. As noted above, the State failed to prove the requisite nexus to the
5 alleged gang-related previous activities. It concedes that it presented not evidence tying Mr.
6 Gonzalez to reputed prior incidents of violence reputedly involving the Hells Angels and Vagos
7 Motorcycle Clubs.

8 A jury being permitted to consider evidence other than the elements of the crime must
9 be clearly instructed. It must be clearly instructed that the other acts evidence is NOT an
10 element of the crime, and cannot be considered by them as an element. The United States
11 Supreme Court has made clear every element of a charged offense must be proven to a jury,
12 beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).
13 While appearing before a Grand Jury a prosecutor has the obligation to make sure the evidence
14 is admissible, and the jury is properly advised of its use. Under the direction of the District
15 Court, it is the prosecutor's obligation to provide a fair and balanced presentation, because no
16 defender is present. That did not occur at the Grand Jury hearing in this case.

17 The Grand Jury was given information suggesting that evidence presented supported the
18 myriad charges the State proposed, but not given the proper information that much of the
19 evidence supported the defenses of self-defense and defense of others. Nevada recognizes self-
20 defense. *Culverson v. State*, 106 Nev. 484, 797 P.2d 238 (1990). It recognizes defense of
21 others. *Barone v. State*, 109 Nev. 778, 858 P.2d 27 (1993). The Grand Jury was not properly
22 advised that if the alleged participants in the altercation at the Nugget had knowledge of prior
23 acts of violence by other participants, that would actually support a defense, not a charge.
24 *Daniel v. State*, 119 Nev. 498, 78 P.3d 890 (2003). Specific acts of violence perpetrated by a
25 victim are admissible to show self-defense, where the accused is aware of those acts. Similarly
26 where a defense of self-defense is raised, the defendant may present evidence to support his

1 theory, including evidence regarding the reasonableness of his fear. *Pineda v. State*, 120 Nev.
2 204, 88 P.3d 827 (2004). Self-defense is permitted in the face of a reasonable, though
3 mistaken, belief in the need to defend. *Runion v. State*, 116 Nev. 1041, 13 P.3d 52 (2000).
4 Failure of the State to present evidence of self-defense, and appropriate instructions governing
5 the use of such evidence, unfairly prejudiced Mr. Gonzalez. The prejudice was increased
6 because refusal to notify Mr. Gonzalez of the pending Grand Jury hearing precluded him from
7 presenting self-defense evidence for himself.

8 Mr. Gonzalez is charged in the Indictment with several counts. Those include counts I,
9 II and X, which allege offenses based upon alternative theories. Count I alleges conspiracy to
10 engage in an affray, a gross misdemeanor, and claims that the three named co-defendants and
11 the decedent either conspired with each other, or their respective gang members to engage in an
12 affray. Count II alleges that the three named defendants were responsible for challenge to fight
13 resulting in death by either committing the offense, conspiring or aiding and abetting. The
14 charge, under any theory, rests upon the unsupported allegation that the parties acted "upon
15 previous concert or agreement." The charge alleges that the defendants acted as both principals
16 and agents, for the benefit of a criminal gang. Count X alleges that the defendants committed
17 murder in the second degree by participating in an affray and discharge of a firearm in an
18 occupied structure, again with the gang enhancement.

19 The Indictment is insufficiently specific to support its multiple allegations and various
20 theories against the defendants. *State v. Hancock*, 114 Nev. 161, 955 P.2d 183 (1998). The
21 Indictment must be plain, concise and definite.

22 The Grand Jury was not provided appropriate instruction regarding the intent necessary
23 to support Count II. Probable cause for aiding and abetting requires proof that the accused
24 intended that the crime alleged be committed. *Bolden v. State*, 121 Nev. 908, 124 P.3d 191
25 (2005).
26

1 To hold Mr. Gonzalez criminally responsible under any theory of prosecution the Grand
2 Jury would have to reject self-defense. However, they were never given the opportunity,
3 because the issue of self-defense was never presented to them.

4 Mr. Gonzalez is also accused as an aider and abettor in Counts II and X. The Grand
5 Jury was not properly instructed regarding the legal requirements to find probable cause on a
6 theory of aiding and abetting. The Grand Jury was instructed that aiding and abetting did not
7 require the State to prove the accused entertained any criminal intent. This is false. Nevada
8 Law requires that the State prove specific intent to commit the offense. *Bolden v. State*, 121
9 Nev. 908, (2005), overruled on other grounds in *Cortinas v. State*, 124 Nev. 1013 195 P.3d 315
10 (2008). Further, although Nevada applied the natural and probable consequences doctrine for a
11 period of time following *Mitchell v. State*, 114 Nev. 1417, 971 P.2d 814 (1998), in *Sharma v.*
12 *State*, 118 Nev. 648, 56 P.3d 868 (2002), the Nevada Supreme Court expressly rejected the
13 natural and probable consequences doctrine, imposing a duty on prosecutors to prove specific
14 intent in aiding and abetting cases: That did not occur before the Grand Jury in this case.

15 This doctrine has been harshly criticized by "most commentators . . . as both
16 'incongruous and unjust' because it imposes accomplice liability solely upon proof
17 of foreseeability or negligence when typically a higher degree of mens rea is
18 required of the principal." It permits criminal "liability to be predicated upon
19 negligence even when the crime involved requires a different state of mind." n16
20 Having reevaluated the wisdom of the doctrine, we have concluded that its
21 general application in Nevada to specific intent crimes is unsound precisely for
22 that reason: it permits conviction without proof that the accused possessed the
23 state of mind required by the statutory definition of the crime.
24 *Sharma v. State*, 118 Nev. 648, 654 (Nev. 2002).

25 The defense for Mr. Gonzalez joins in and incorporates by reference the arguments
26 made by counsel for Cesar Villigrana at pages 17-23, captioned "[t]here is no probable cause for
Count 2 (Challenge to Fight) which is part of an anti-dueling statute, of the Petition for Writ of
Habeas Corpus filed March 5, 2012.

1 The Opposition on file lists statutes for the first three pages. However, the statutes the
2 State references all refer to evidence admissible at sentencing. The State first cites *NRS*
3 *193.168*, which begins "[e]xcept as otherwise provided in subsection 5, and *NRS 193.16*, any
4 person who is convicted..." [Emphasis added]. The citations next refer to subsection 4, which
5 begins "4. The court shall not impose an additional penalty... The State's citation to the
6 enhancement statute then concludes with subsection 7: "In any proceeding to determine
7 whether an additional penalty may be imposed ..." [Emphasis added]. The cited portions of
8 *NRS 193.168* govern the receipt of evidence at sentencing, not Grand Jury proceedings. Grand
9 Jury is a probable cause hearing, not a proceeding to determine penalty. Accordingly, the cited
10 portions of the statute simply do not apply, and do not support the State's argument that the
11 cited statutes support its introduction of evidence at the Grand Jury. .
12

13 The opposition then claims that the testimony of CS11-67 and George Gil Blanco was
14 admissible to prove the sentencing enhancement to the jury. However, the testimony of Mr. Gil
15 Blanco was not appropriate at the Grand Jury, and in fact violated *NRS 48.045*, and was
16 improperly vouched for by the State. Immersing the Grand Jury in other acts evidence was
17 unfairly prejudicial under *NRS 48.045*. The State spent most of the Grand Jury hearing
18 attempting to increase the prejudice by emphasizing the gang evidence. *NRS 193.168(2)*
19 specifies that it does not create a separate offense. Nevada law does not require that
20 enhancements be established at the time probable cause is found. In most sentencing
21 enhancements, notifying the trial jury is expressly forbidden. *NRS 484.3792(3)* jury not to be
22 advised of prior convictions in DUI trial; *NRS 200.485(3)* jury not to be advised of prior
23 offenses in Domestic Battery trial. *Brown v. State*, 114 Nev. 1118, 967 P.2d 1126 (1998) - ex-
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1 felon in possession of a firearm charge must be tried separately from other charges to avoid
2 undue prejudice.

3 The prejudice caused by the improper introduction of prior acts evidence was
4 compounded by the manner in which it was presented. Witness Jorge Gil-Blanco was presented
5 as an "expert" and referred to himself as such during his testimony. Nevada Courts do not
6 permit Courts to endorse testimony of proposed witnesses as coming from a "qualified expert."
7 *Cramer v. Dept. of Motor Vehicles*, 126 Nev. Adv. 38, 240 P.3d 8 (2010). In this case Mr. Gil-
8 Blanco's testimony was improperly introduced by the State. By characterizing him as an
9 "expert" improper vouching occurred. In addition, his testimony extended beyond the proper
10 bounds of admissible expert testimony. *NRS 50.275* describes when expert testimony may be
11 admissible in Nevada Courts. Three requirements must be met. First, the person offering the
12 testimony must have specialized skill or knowledge. Next, the information proffered must be
13 useful to the jury to help it understand a fact in issue. Finally, the testimony must be within the
14 expert's scope of knowledge. The gatekeeper for the admission of expert testimony is the
15 Court. *Higgs v. State*, 126 Nev. Adv. 1, 222 P.3d 648 (2010). In the present case, none of the
16 requirements were met. Mr. Gil-Blanco's testimony presents yet another instance of the State
17 not presenting evidence that would explain away the charge.

18 The inflammatory and prejudicial evidence regarding prior reputed gang activity was
19 presented in support of the State's alleged gang enhancement, a penalty issue not properly
20 before the Grand Jury. *NRS 193.178(6)(c)*. However, if the issue had been properly before the
21 Grand Jury, the evidence presented was not sufficient to support the finding. CS11-67 testified
22 that the Vagos Club with which he was associated as a long-time member and officer had been
23 involved in many serious crimes. GJT 206; 4. Never did he testify that Mr. Gonzalez had been
24
25
26

1 involved in any criminal activity. The State's Opposition claims that the acknowledged
2 association of their insider-witness did not make him an accomplice. But, they nowhere explain
3 how he avoids that situation. The State focuses on the witness' self-serving testimony that he
4 was a peacemaker the evening of the events charged. But, they ignore the fact that with respect
5 to the criminal activity he described occurring before September, 2011, he remains an
6 accomplice whose testimony required corroboration. *NRS 175.291*. Corroboration is required
7 at preliminary hearings, *Wellman v. Sheriff, Clark County, 90 Nev. 174, 521 P.2d 365 (1974)*,
8 and similarly should be required at Grand Jury hearings. The Grand Jury was further not
9 advised with respect to the witness' criminal history. Because his identity is being shielded by
10 the State and the Court, despite his descriptions of several prior felonies, no impeachment by
11 prior conviction was submitted to the Grand Jury. Nor were they advised that Mr. Gonzalez had
12 no criminal history with respect to any of the crimes the witness claimed the VMC were
13 involved in committing. Mr. Gonzalez has never been convicted of any offense allegedly tied
14 to the VMC.
15

16
17 The alleged prior gang crimes were improperly presented in evidence against Mr.
18 Gonzalez at the Grand Jury. They were allegedly presented to establish the enhancement,
19 which was not at issue during the grand jury. They were further presented to support the State's
20 intent argument. The intent required for the gang enhancement is specific intent. The Grand
21 Jury should have been instructed with respect to specific intent. Failure to instruct a jury
22 determining a specific intent crime is plain error. *Ford v. State, 127 Nev. Adv. 55, 262 P.2d*
23 *1123 (2011)*.
24

25 The State's failure to properly present exculpatory evidence, admission of inflammatory
26 and prejudicial evidence that was not admissible and failure to properly instruct the Grand Jury

1 resulted in a defective Indictment against Mr. Gonzalez. The Nevada Supreme Court affirmed a
2 District Court order granting a pre-trial writ of habeas corpus in *Sheriff v. Frank*, 103 Nev. 160,
3 734 P.2d 1241 (1987). The Court concluded that the State had not honored its obligation to
4 present exculpatory evidence to the Grand Jury, and had as a result destroyed the independence
5 of the Grand Jury. The same situation is presented to this Court. Therefore, the Writ should be
6 granted.
7

8 **CONCLUSION**

9 Based upon the foregoing Mr. Gonzalez requests the Indictment be dismissed or in the
10 alternative, that the Court grant the Petition for writ of habeas corpus.

11 DATED this 6th day of April, 2012.

12 JEREMY T. BOSLER
13 Washoe County Public Defender

14 By:  for

15 MAIZIE W. PUSICH
16 Chief Deputy Public Defender

17 By: 

18 BIRAY DOGAN
19 Deputy Public Defender

20 By: 

21 CHRISTOPHER FREY
22 Deputy Public Defender
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Public Defender's Office, not a party to, nor interested in the foregoing action, and that on this date, I filed the foregoing and sent a copy through inter-office mail.

REPLY IN SUPPORT OF MOTION TO DISMISS INDICTMENT
OR IN THE ALTERNATIVE
PETITION FOR WRIT OF HABEAS CORPUS

Addressed to

KARL HALL, Chief Deputy District Attorney
AMOS STEGE, Deputy District Attorney
195 So. Sierra St., Reno, Nevada

Document mailed to:

David Chesnoff
Chesnoff & Schonfeld
520 S. Fourth St.
Las Vegas, NV 89101

Dated this 6th day of April, 2012.


VICKI HAMM

14

1 CODE: 2490
2 JEREMY T. BOSLER, Bar No. 4925
3 WASHOE COUNTY PUBLIC DEFENDER
4 P.O. Box 30083
5 Reno, NV 89520-3083
6 (775) 337-4800
7 Attorney for Defendant

8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND
10
11 FOR THE COUNTY OF WASHOE

12 THE STATE OF NEVADA,

13 Plaintiff,

CASE NO: CR11-1718B

14 v.

DEPT. NO: 4

15 ERNESTO MANUEL GONZALEZ,

16 Defendant.

17
18 **MOTION TO PARTIALLY JOIN IN CO-DEFENDANT CESAR VILLAGRANA'S**
19 **WRIT OF HABEAS CORPUS AND MOTION TO COMPEL**

20 COMES NOW, the Defendant, ERNESTO MANUEL GONZALEZ, by and through,
21 Jeremy T. Bosler, Public Defender, Maizie Pusich, Chief Deputy Public Defender, Biray
22 Dogan and Christopher Frey, Deputy Public Defenders, and hereby join in (1) the Marcum
23 notice argument detailed on pages 4 through 7 of co-defendant Cesar Villagrana's Petition for a
24 Writ of Habeas Corpus filed on March 5, 2012, and (2) co-defendant Cesar Villagrana's
25 Motion to Compel Discovery of Transcript of Hearing to Withhold Marcum Notice and Other
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1 Documents Related to That Hearing filed on January 30, 2012, with the exception of the
2 alleged factual assertions contained in pages 4 through 8.

3 AFFIRMATION PURSUANT TO NRS 239B.030

4 The undersigned does hereby affirm that the preceding document does not contain the
5 social security number of any person.
6

7 DATED this 29th Day of May, 2012.

8 JEREMY T. BOSLER
9 Washoe County Public Defender

10 By: /s/ Christopher Frey
11 CHRISTOPHER FREY
12 Deputy Public Defender

13 By: /s/ Maizie Pusich
14 MAIZIE PUSICH
15 Chief Deputy Public Defender

16 By: /s/ Biray Dogan
17 BIRAY DOGAN
18 Deputy Public Defender
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CERTIFICATE OF SERVICE

I, LESLIE TIBBALS, hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada, and that on this date I forwarded a true copy of the foregoing document through inter-office mail to:

Karl Hall, Deputy District Attorney
District Attorney's Office

Amos Stege, Deputy District Attorney
District Attorney's Office

DATED this 29th Day of May, 2012.

_____/s/ Leslie Tibbals_____
LESLIE TIBBALS

15

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3 WASHOE COUNTY PUBLIC DEFENDER
4 P.O. Box 30083
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9
10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND
11
12 FOR THE COUNTY OF WASHOE

13 THE STATE OF NEVADA,

14 Plaintiff,

CASE NO: CR11-1718B

15 v.

DEPT. NO: 4

16 ERNESTO MANUEL GONZALEZ,

17 Defendant.

18
19 **MOTION TO JOIN THE BALANCE OF CO-DEFENDANT CESAR VILLAGRANA'S**
20 **PETITION FOR WRIT OF HABEAS CORPUS**

21 COMES NOW, the Defendant, ERNESTO MANUEL GONZALEZ, by and through,
22 Jeremy T. Bosler, Public Defender, Maizie Pusich, Chief Deputy Public Defender, Biray
23 Dogan and Christopher Frey, Deputy Public Defenders, and hereby joins the balance of the

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1 legal contentions advanced in co-defendant Cesar Villagrana's Petition for a Writ of Habeas
2 Corpus not already previously joined on May 29, 2012.

3 AFFIRMATION PURSUANT TO NRS 239B.030

4 The undersigned does hereby affirm that the preceding document does not contain the
5 social security number of any person.

6 DATED this 11th day of June, 2012.

7 JEREMY T. BOSLER
8 Washoe County Public Defender

9
10 By: /S/ CHRISTOPHER FREY
11 CHRISTOPHER FREY
12 Deputy Public Defender

13 By: /S/ MAIZIE PUSICH
14 MAIZIE PUSICH
15 Chief Deputy Public Defender

16 By: /S/ BIRAY DOGAN
17 BIRAY DOGAN
18 Deputy Public Defender
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CERTIFICATE OF SERVICE

I, LINDA GRAY, hereby certify that I am an employee of the Washoe County Public
Defender's Office, Reno, Washoe County, Nevada, and that on this date I electronically served
a true copy of the foregoing document to:

Karl Hall, Deputy District Attorney
District Attorney's Office

Amos Stege, Deputy District Attorney
District Attorney's Office

DATED this 11th day of June, 2012.

/S/ LINDA GRAY
LINDA GRAY

16

1 CODE
Richard A. Gammick
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P.O. Box 30083
3 Reno, NV 89520-3083
(775) 328-3200
4 Attorney for Plaintiff

5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR11-1718B

11 v.

Dept. No. 4

12 ERNESTO MANUEL GONZALEZ

13 Defendant.

14 _____/
15 OPPOSITION TO DEFENDANT GONZALEZ' MOTION TO PARTIALLY JOIN IN CO-
16 DEFENDANT CESAR VILLAGRANA'S WRIT OF HABEAS CORPUS AND MOTION TO
COMPEL

17 COMES NOW, the State of Nevada, by and through RICHARD A.
18 GAMMICK, District Attorney of Washoe County, and AMOS STEGE, Deputy
19 District Attorney, hereby submits the attached Points and Authorities
20 in Opposition to Defendant Gonzalez' Motion to Partially Join in Co-
21 Defendant Cesar Villagrana's Writ of Habeas Corpus and Motion to
22 Compel.

23 This opposition is made and based upon all the papers and
24 pleadings on file herein, the attached points and authorities in
25 support hereof, and oral argument at the time of hearing, if deemed
26 necessary by this Honorable Court.

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The Court agreed to the schedule and granted the defendants 90 days from the date of the hearing to file writs. The State was granted 60 days thereafter to file a response.

Gonzalez filed his writ, entitled "motion to dismiss indictment or in the alternative petition for writ of habeas corpus" on February 24, 2012. The State's opposition was filed on March 5th. On April 6th Defendant Gonzalez filed his reply. The Court ordered and the Court Clerk issued the writ on April 2, 2012. The State filed a return on the same day.

Gonzalez' now attempts to circumvent the agreement between the parties, the Court's order, NRS 34.700 and 34.710. The grand jury notice issue was known to Gonzalez since November- it is not a

1 novel or unique issue to the Defendant. The instant motion was filed
2 just over two weeks before the hearing on the writ. In fairness and
3 in recognition of the strict statutory requirements, the Court should
4 not allow Gonzalez to join Villagrana's writ arguments.

5 Neither should Gonzalez be allowed to join Villagrana's
6 motion to compel nearly four months after Villagrana filed his
7 motion. Gonzalez has shown no reason for not previously asserting
8 the arguments and therefore laches should apply.

9 CONCLUSION

10 For the foregoing reasons, the Defendant's motion should be
11 denied.

12 AFFIRMATION PURSUANT TO NRS 239B.030

13 The undersigned does hereby affirm that the preceding
14 document does not contain the social security number of any person.

15 Dated this 14th day of June, 2012.

16
17 RICHARD A. GAMMICK
18 District Attorney
19 Washoe County, Nevada

20
21 By /s/Amos Stege
22 AMOS STEGE
23 9200
24 Deputy District Attorney

25
26 0531CR111718B6

1 CERTIFICATE OF SERVICE BY E-FILING

2 I certify that I am an employee of the Washoe County
3 District Attorney's Office and that, on this date, I electronically
4 filed the foregoing with the Clerk of the Court by using the ECF
5 system which will send a notice of electronic filing to the
6 following:

7
8 WASHOE COUNTY PUBLIC DEFENDER
9 MAIZIE PUSICH

10
11 DATED this 14th day of June, 2012.

12
13 /s/DANIELLE RASMUSSEN
14 DANIELLE RASMUSSEN
15
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17

1 CODE: 3660
2 JEREMY T. BOSLER, Bar No. 4925
3 WASHOE COUNTY PUBLIC DEFENDER
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6 (775) 337-4800
7 Attorney for Defendant

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9
10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND
11
12 FOR THE COUNTY OF WASHOE

13 THE STATE OF NEVADA,

14 Plaintiff,

CASE NO: CR11-1718B

15 v.

DEPT. NO: 4

16 ERNESTO MANUEL GONZALEZ,

17 Defendant.

18
19
20 **REPLY TO OPPOSITION TO DEFENDANT'S MOTION PARTIALLY JOIN IN CO-**
21 **DEFENDANT CESAR VILLAGRANA'S PETITION FOR WRIT OF HABEAS**
22 **CORPUS AND MOTION TO COMPEL**

23 COMES NOW, the Defendant, ERNESTO MANUEL GONZALEZ, by and through,
24 Jeremy T. Bosler, Public Defender, Maizie Pusich, Chief Deputy Public Defender, Biray
25 Dogan and Christopher Frey, Deputy Public Defenders, and hereby replies to the State's
26 Opposition to Defendant's Motion to Partially Join Co-Defendant Cesar Villagrana's Petition
for Writ of Habeas Corpus and Motion to Compel.

This motion is based upon the attached points and authorities and any testimony,
documentary, and real evidence as may be presented at the hearing on this matter.

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I. ARGUMENT

The State opposes Mr. Gonzalez's motion to join on grounds that (1) the joinder request is time-barred and (2) a nondescript allegation of prejudice. Both grounds fail.

a. Motion to join co-defendant's motion to compel.

Regarding Mr. Gonzalez's request to the motion to compel, the State correctly asserts that the lack of Marcum notice "is not a novel or unique issue to the Defendant." Opposition at 2-3. This is precisely why there is no prejudice to the State in allowing the joinder. Because the issues are identical, granting the motion to compel as to one co-defendant, and not as to all co-defendants, would be an inequitable result.

Most importantly, the State overlooks the conference call held between the parties on April 23, 2012. See Transcript of Proceedings (filed May 21, 1012). There, this court invited Mr. Gonzlez to join the motion to compel. Id. at 6, lines 20-22 ("[Y]ou could join Mr. Villagrana's motion, but you must do so formally and give the State an opportunity to oppose, or not."). Mr. Gonzalez accepted the invitation.

Technicalities should not govern the issue of joinder when there is an identity between the issues, and the State is unable to persuasively articulate prejudice. Even so, it is notable that the State misses the technical irony in opposing Mr. Gonzalez's motion to join at this time on grounds of untimeliness. The State's opposition was filed this morning, 16 days after the filing of Mr. Gonzalez's motion, thus placing the State in ostensible violation of paragraph "A" of the court's pretrial order, which prescribes 10 days of response time.

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1 **b. Motion to join co-defendant's Marcum notice argument.**

2 The same reasoning applies to the State's opposition to Mr. Gonzalez's motion to join
3 his co-defendant's petition for a writ of habeas corpus.¹

4 The legal issues are identical as between the co-defendants. Accordingly, there is no
5 prejudice to the State in permitting joinder. Because of the identical nature of the legal issues,
6 Mr. Gonzalez was already constructively joined in the arguments of his co-defendant before
7 filing his formal motion. See, e.g., U.S. v. Orm Hieng, 2012 U.S. App. LEXIS 9596 (9th Cir.
8 Cal. May 11, 2012) (refusing to find waiver where co-defendant's objection sufficiently
9 preserved the issue); U.S. v. Brown, 562 F.2d 1144, 1147 n.1 (9th Cir. Wash. 1977) ("[W]hen
10 one codefendant objects and thereby brings the matter to the attention of the court, further
11 objections by other defendants are unnecessary.").

12 The State mischaracterizes the nature of Mr. Gonzalez's joinder request. Mr. Gonzalez
13 has not brought a second petition that raises new arguments. He is seeking to join an existing
14 petition that articulates relief that would operate as to both co-defendants if granted.
15 Accordingly, there is no procedural bar to Mr. Gonzalez's request for joinder, as the State
16 seems to claim under NRS 34.700 and NRS 34.710.

17 **c. Laches do no apply.**

18 The State cannot articulate prejudice as a result of permitting joinder. Accordingly,
19 laches do not apply. See Carson City v. Price, 113 Nev. 409, 412, 934 P.2d 1042, 1043 (1997)
20 (recognizing that the laches doctrine is an equitable doctrine that is invoked to deny relief to a
21 party who worked to the disadvantage of the other and caused a change in circumstances).
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II. CONCLUSION

There being no good cause for denying the motions, Mr. Gonzalez respectfully requests that this court permit his requested joinders.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 14th Day of June, 2012.

JEREMY T. BOSLER
Washoe County Public Defender

By: /s/ Christopher Frey
CHRISTOPHER FREY
Deputy Public Defender

By: /s/ Maizie Pusich
MAIZIE PUSICH
Chief Deputy Public Defender

By: /s/ Biray Dogan
BIRAY DOGAN
Deputy Public Defender

¹Mr. Gonzalez filed an additional motion to join the balance of his co-defendants petition on June 11, 2012.

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CERTIFICATE OF SERVICE

I, LESLIE TIBBALS, hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada, and that on this date I forwarded a true copy of the foregoing document through inter-office mail to:

Karl Hall, Deputy District Attorney
District Attorney's Office

Amos Stege, Deputy District Attorney
District Attorney's Office

DATED this 14th Day of June, 2012.

/s/ Leslie Tibbals
LESLIE TIBBALS

18

FILED

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Joey Orduna Hastings

Clerk of the Court

Transaction # 3216558

1 Code 4100
2 JEREMY T. BOSLER, 4925
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4 Reno, NV 89501
(775)337-4800
Attorney for Defendant

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 THE STATE OF NEVADA,

9 Plaintiff,

10 v.

Case No. CR11-1718B

11 ERNEST MANUEL GONZALEZ,

Dept. No. 4

12 Defendant.
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15 **SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO**
16 **DISMISS INDICTMENT OR IN THE ALTERNATIVE**
17 **PETITION FOR WRIT OF HABEAS CORPUS AND**
18 **MOTION TO RECONSIDER BASED UPON**
19 **NEWLY DISCLOSED EVIDENCE**

20 **(FILED UNDER SEAL)**

21 COMES NOW Defendant, above-named, by and through counsel, Washoe County
22 Public Defender Jeremy T. Bosler and Deputies Maizie Pusich, Biray Dogan and Christopher
23 Frey and hereby serves this Supplement in support of his Motion for an Order Dismissing
24 Indictment, or in the Alternative, Petition for Writ of Habeas Corpus, and Motion to Reconsider
25 Based upon Newly-Discovered Evidence. *U.S. Const, Fifth, Sixth and Fourteenth*
26 *Amendments; Nev. Const, Art. 1, Section 8, and NRS 174.172.145.*

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1 In his testimony, Mr. Grimm alleges he contacted the Vagos club members who had
2 appeared to have confronted the casino patron with the phone. Id. at 32. Mr. Grimm next claims
3 that while two members fled, he succeeded in detaining the third. Id. In his sworn testimony,
4 Mr. Grimm did not notify the court that he apparently knew his detainee.

5 In one of the State's August productions of discovery, the defense received a police
6 report authored by Detective Patton.³ See Exhibit 1. The report appears to reveal that Peter
7 Grimm's undercover assignment that evening was the "contact and protection" of Bradley
8 Campos. Prior discovery identifies Bradley Campos as the Vagos member allegedly
9 responsible for the video destruction incident. See Exhibit 2. Bradley Campos is therefore
10 presumably the person Peter Grimm detained that evening.

11 ARGUMENT

- 12 a. **There was no credible showing of witness intimidation to justify withholding**
13 **Marcum notice in light of the recent revelations about Peter Grimm's pre-**
14 **existing relationship with Bradley Campos.**

15 Given the revelation of Peter Grimm's relationship with Bradley Campos, the State's
16 claim of possible witness intimidation by Vagos club members must be rejected, as the video
17 destruction incident appears to have been the product of a State-sponsored witness and the
18 failure to disclose the relationship renders Peter Grimm's testimony not credible.

19 Mr. Campos appears to have been actively protected by Peter Grimm on the evening of
20 September 23, 2011. Mr. Campos was presumably, therefore, being handled by Peter Grimm in
21 furtherance of an ongoing investigation into the Vagos motorcycle club. Nevertheless, the State
22 presented the actions of Bradley Campos—a witness that the District Attorney's office was
23

24 ²Detective Patton also testified to the alleged video destruction incident, and that he had "no
25 doubt" the incident was one of witness intimidation. Transcript at 17.

26 ³ The report purports to summarize various supplemental reports created by RPD officers
regarding the events of September 23, 2011. Despite referring back to the events of last year,
this report was generated on July 26, 2012, and only produced within the last month.

1 actively managing that evening—as the predicate for its claim of possible witness intimidation
2 justifying withholding Marcum notice to Mr. Gonzalez. See NRS 172.241(3)(d).

3 It remains unclear what role Bradley Campos plays in this case. But he appears to fall
4 somewhere on the spectrum between citizen cooperator and embedded law enforcement. Either
5 way, he appears to have been actively managed that evening by Peter Grimm, and was the
6 reason for his presence on scene hours before the incident occurred. See Transcript at 28.

7 Unless the State can demonstrate otherwise, Bradley Campos appears to be an agent of
8 law enforcement, actual or implied. See United States v. Jacobsen, 446 U.S. 109 (1984);
9 Coolidge v. New Hampshire, 403 U.S. 443 (1971). As such, the video destruction incident is
10 the product of state action. The State cannot offer circumstances of its own creation as basis to
11 withhold Marcum notice to Mr. Gonzalez. Cf. Kentucky v. King, ___ U.S. ___ (2011) (police
12 cannot rely upon exigency of their creation to justify a warrantless search).

13 Accordingly, the alleged video destruction incident, having been instigated by an
14 apparent or actual agent for the State, must be discounted as a basis for withholding Marcum
15 notice. Once this incident is properly excised from the analysis, there was insufficient evidence
16 of possible witness intimidation by Vagos club members to find good cause to grant the State's
17 ex parte application. Alternatively, the State's failure to disclose to the court the pre-existing
18 relationship between its investigator and Bradley Campos renders Peter Grimm's testimony not
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1 credible, further undermining the basis for withholding notice.⁴

2 **b. There is no good cause for delaying disclosure that Campos was being handled**
3 **by the District Attorney's office.**

4 The above information was conspicuously withheld from the court during the sealed
5 hearing on the State's ex parte application to withhold Marcum notice, as well as from counsel
6 for Mr. Gonzalez, despite the fact that a member of the investigative staff of the District
7 Attorney's office testifying before the court was personally aware of it. This knowledge is
8 imputed to the State. Kyles v. Whitley, 514 U.S. 419 (1990).

9 In Nevada, the rule announced in Kyles is interpreted as requiring disclosure where
10 nondisclosure would undermine the confidence in the outcome of a criminal case. See Mazzan
11 v. Warden, 116 Nev. 48, 993 P.2d 25 (2000). Failing to disclose to Mr. Gonzalez that the
12 person responsible for the video destruction incident described by Peter Grimm—Bradley
13 Campos—was actually engaged in assisting law enforcement that evening, would tend to
14 undermine any verdict that would be adverse to Mr. Gonzalez.

15 There is no good cause for delaying disclosure of Bradley Campos' relationship with
16 Peter Grimm, or Bradley Campos' relationship to the State's case. These relationships should
17 have been disclosed from the outset, since they were known to the State from the outset.
18 Inserting a two-page police report with an oblique reference to Bradley Campos in an 899-page
19 production of hotel records nearly eleven months after the events of last September does not
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25 ⁴ To the extent that video destruction incident was offered to the court and relied upon to reach
26 other rulings, the implications of this information appear to extend beyond simply Mr.

1 constitute a "disclosure" consistent with Brady v. Maryland, 373 U.S. 83 (1963).⁵

2 **c. Duty of candor and of fairness to the opponent.**

3 Failing to disclose Peter Grimm's pre-existing relationship with Bradley Campos,
4 something that the defense has had to piece together for itself, violates the duty of candor to
5 this court and the duty of fairness to opposing counsel.

6 The Nevada Rules of Professional Conduct require that an attorney in an ex parte
7 proceeding "shall inform the tribunal of all facts necessary to enable the tribunal to make an
8 informed decision, whether or not the facts are adverse." Nev. Rules of Prof. Conduct 3.3
9 (emphasis added). The State also has the following obligations to opposing counsel:

10 A lawyer shall not:

11 (a) Unlawfully obstruct another party's access to evidence or unlawfully alter,
12 destroy or conceal a document or other material having potential evidentiary
13 value. A lawyer shall not counsel or assist another person to do any such act.

14 (b) Falsify evidence, counsel or assist a witness to testify falsely, or offer an
15 inducement to a witness that is prohibited by law.

16 Nev. Rules of Prof. Conduct 3.4.

17 Regarding candor, in the present instance, a witness for the State appears to have misled
18 the court in an ex parte proceeding by omitting critical information about his pre-existing
19 relationship with the alleged source of intimidation that evening: Bradley Campos. In granting
20 the State's request to withhold Marcum notice, this court relied upon the information offered by
21 the State, as much as it did upon the information that the State chose to omit

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24 Gonzalez's writ petition, and may constitute cause for reconsideration of, among other things,
25 this court's determination regarding bail and witness protection.

26 ⁵ The writ already on file discusses at length the obligation of the State to provide evidence that
will explain away the charge. NRS 172.145. This information is exculpatory, and should Mr.
Gonzalez incorporate by reference all the previous arguments, and will not restate them herein

1 Mr. Grimm occupies a dual role in this case. As a criminal investigator for the District
2 Attorney's office, he is a member of the District Attorney's staff, as well as a sworn peace
3 officer and a member of law enforcement. As noted above, it is unclear what the State may
4 have known, or when it knew it. But these considerations are irrelevant. As a member of the
5 District Attorney's staff and of law enforcement, his knowledge is the State's knowledge. See
6 Kyles v. Whitley, 514 U.S. 419 (1990); Nev. Rules of Prof. Conduct 5.3.
7

8 Regarding fairness to the defense, there appears to be no good cause for delaying
9 disclosure of Peter Grimm's relationship with Bradley Campos. See Nev. Rules of Prof.
10 Conduct 3.8(d). Mr. Gonzalez declines to speculate about the State's intent at this juncture. But
11 the effect of the non-disclosure has been to limit the defense's access to important discovery,
12 and to artificially hinder its investigation. Moreover, the non-disclosure has allowed the State to
13 unfairly impute to Mr. Gonzalez and the Vagos motorcycle club misconduct that is actually
14 attributable to an agent of law enforcement, with no way to correct this misimpression.
15

16 **d. This supplement and motion to reconsider is grounded in new evidence.**

17 Although the court previously granted leave to do so, Mr. Gonzalez has as of yet not
18 filed a supplement to his writ petition. The present supplement and motion to reconsider is
19 based on information that did not become available until after the production of the Marcum
20 notice hearing transcript and related documents following the August 31, 2012, status hearing,
21 and the State's 899-page production of hotel records earlier that month.
22

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1 CONCLUSION

2 Based upon the new evidence described herein, Mr. Gonzalez supplements his motion
3 to dismiss and writ petition, and requests that the indictment be dismissed or that the petition be
4 granted. Alternatively, he requests reconsideration of the court's order of September, 13, 2012.

5 DATED this 13th day of September, 2012.

6 JEREMY T. BOSLER
7 Washoe County Public Defender

8 By: /s/ Maizie W. Pusich
9 MAIZIE W. PUSICH
Chief Deputy Public Defender

10 By: /s/ Biray Dogan
11 BIRAY DOGAN
12 Deputy Public Defender

13 By: /s/ Christopher Frey
14 CHRISTOPHER FREY
15 Deputy Public Defender

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Public Defender's Office, not a party to, nor interested in the foregoing action, and that on this date, I deposited for mailing, via interoffice mail, a copy of the foregoing

SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS INDICTMENT OR IN THE ALTERNATIVE PETITION FOR WRIT OF HABEAS CORPUS AND MOTION TO RECONSIDER BASED UPON NEWLY DISCLOSED EVIDENCE

Addressed to:

KARL HALL, Chief Deputy District Attorney
AMOS STEGE, Deputy District Attorney
195 So. Sierra St., Reno, Nevada

Dated this 13th day of September, 2012.

/s/ Vicki Hamm
VICKI HAMM

INDEX OF EXHIBT

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FILED
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09-13-2012:04:28:58 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3216558

EXHIBIT 1

EXHIBIT 1

456

jp

SPARKS POLICE DEPARTMENT
Supplemental or Continuation Report

Type of Report: Homicide

Case: 11-8996

Date/Time of Supplement: 07/26/2012 2300 hours

Detective: Patton 3618 

Approving Supervisor: Tibben 4677

Date: 7.27.12

Details of Supplement:

The following is a brief summary of the Reno Police Department supplements provided by officers.

BURFIELD, Joseph – initial police response, was at southeast portion of casino keeping people out of the crime scene.

HICKS, Michael – initial police response, assisted with searching kitchen and employee access areas, secured potential crime scene inside the northeast entrance where blood evidence was located, until FIS personnel arrived.

JOHNSTON, Chad – initial police response, went inside casino and assisted Reno SWAT in handcuffing several subjects, secured crime scene at Trader Dicks until relieved by SPD.

KATRE, Mark (SGT) – supervisor of Special Investigation, was in plain clothes that night, responded to the Nugget, gave members of his unit instructions to respond to other locations in case there was retaliation.

LAMERE, Bernard – assigned to SWAT, assisted with interior perimeter and assisted other officers.

LOOK, Travis – was with Officer BELLINGER in transport unit when they responded to the Nugget, also assisted with arrest of Angelo WILKINS.

LOPEZ, Juan – Initial police response w/ Officer D. ROBINSON, assisted with contacting Hells Angels member Angelo WILKINS, describes being outnumbered by numerous Vagos gang members.

MARKO, Vincent – initial police response, assigned to scene security at elevators near center of casino, assigned to secure crime scene near Trader Dicks until relieved by SPD.

Case # 11-8996
Detective Patton
Homicide

ROBINSON, Joseph (SGT) – was supervisor of eight (8) SWAT team members who were already working in downtown Reno, describes a very chaotic scene, saw a subject bleeding on the floor near Trader Dicks and another subject kneeling next to him saying the subject had been shot, observed numerous Vagos gang members, his team detained approx. thirty (30) subjects, assisted Investigator Pete Grimm with contact and protection for Vagos, Bradley CAMPOS, responded to Renown for security.

UTTER, Jet – initial police response, met with officers on east side and provided cover for officers and security for potential witnesses.

No further details.

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Transaction # 3216558

EXHIBIT 2

EXHIBIT 2

459

SPARKS POLICE DEPARTMENT
Supplemental or Continuation Report

Type of Report: Homicide

Case: 11-8996

Date of Report: 09/23/11

Officer: THOMAS #1494

Victim: PETTIGREW, Jeffrey
RAMIREZ, Leonard
GARCIA, Diego

Location: 1100 Nugget Ave

Date/Time of Supplement: 09/27/11 1700 hrs

Approving Supervisor: _____

Date: 9/28/11

Details of Offense:

On Friday September 23, 2011 at approximately 2326 hrs I responded to The Nugget at 1100 Nugget Ave. on a report of a fight involving 20-30 people with shots fired. Dispatch advised that the fight was near Trader Dick's Restaurant inside the In the casino area and that Nugget Security was watching it on their security cameras. Dispatch advised that the fight involved members of the Hells Angel's Motorcycle Club.

While I was in route I heard numerous officers advising that they were arriving on scene and a number of officers requesting cover units. One officer told dispatch that there were numerous people there and that additional units were need from other agencies to assist. Officers advised that a Nugget employee had witnessed a subject on the west side of the building toss a gun under a van in the parking lot and that they were attempting to detain three people as I was arriving in the area. I responded there to assist and observed that the Officers MUTERT, SANDY, and GINCHEREAU had the subjects detained. At that time officers on the east side of the building were requesting assistance to deal with a large number of subjects and one subject with a gunshot wound.

I responded to east side of the Nugget and located Officers MOWBRAY and COOMBES near the middle doors on 11th St. Lying on the ground near Officer MOWBRAY was a subject who appeared was bleeding from the leg. Officer MOWBRAY advised me that Medics were in route to assist the subject. At that time I entered the east side doors and made my way towards Trader Dick's Restaurant. I observed that there were still hundreds of people inside the casino including a large amount of subjects wearing vests and other clothing identifying them as members of the Vagos Motor Cycle Club.

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OFFICER: Lt. Thomas #1494
PAGE: 2 of 4

Case: 11-8996

I located Officers HOPKINS and BARE who were covering a number of subjects who were lying on the ground. Officer HOPKINS advised me that some of the subjects had not been handcuffed. I observed that there were at least four subjects on the ground two of whom appeared to be members the Hells Angels and two members of the Vagos. I also observed that there were two handguns lying on the ground nearby. One of the Hells Angels had a cut on his forehead and was bleeding. The other "Hells Angel" subject was lying face down on the ground wearing a vest with the Hells Angels Logo on it. I told that subject to put his hands behind his back numerous times however he refused to comply. I grabbed the subjects left hand and placed a handcuff on it and pulled his left arm behind his back at that time the subject put his right hand back and I completed handcuffing him. This subject is now identified as Cesar VILLAGRANA. After handcuffing VILLAGRANA I assisted a Reno Officer in handcuffing another subject nearby.

There were a large number of Vagos present in the area and at that time I told a number of them to leave which they did, however more Vagos kept coming near. At that time I attempted to contact an officer outside to bring in crime scene tape to secure the area however my radio would not transmit. I made contact with ~~the~~ the Nugget Security Director who was standing nearby and asked him to have his personnel assist with clearing out the casino area near the scene. I then went out to the 11th St doors, located Officer COOMBES and directed him to get crime scene tape and rope off a large area of the casino floor.

I then went back inside the casino where Officer GINGCHEREAU advised me that the Trader Dick's Restaurant had not been cleared. Officer GINGCHEREAU, a Reno Police Department Officer, and I cleared the restaurant. After clearing Trader Dick's and seeing that the situation inside was somewhat stabilized I went back outside and met with Sgt. LEARY. I told Sgt. LEARY the situation inside and the decision was made to clear out the entire Nugget Casino area. I met with supervisors from the Reno Police Department and requested their assistance in clearing out the casino. RPD had more officers on scene including members of their SWAT team so it was decided that Sparks Officers would handle the outside perimeter while Reno Officers cleared the floor.

I stationed Sparks Officers near all exits at and told them to get as much information as possible from possible witnesses who were exiting. I also instructed officers that only people with rooms would be allowed to enter the Nugget and that they would need to do so at the valet entrance and be escorted to the elevators by Nugget Security. After the casino floor was cleared I assigned officers to guard the inner perimeter of the crime scene and the Washoe County Sheriff's Department SWAT Team assisted by taking over a portion of the outside perimeter. Lt. KRALL had arrived on scene and I requested that he handle the staffing of the perimeter. I was also notified that there were a large number of witnesses at the station and that a group of Vagos had been seen in the area. I asked Sparks dispatch to assign two officers who had been called in to provide security at the station.

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OFFICER: Lt. Thomas #1494

Case: 11-8996

PAGE: 3 of 4

At about this time while I was inside the casino an RPD Officer pointed out a subject sitting in the casino area who had reportedly destroyed a cell phone that a witness had used to film the incident. The subject was wearing a Vagos vest is now identified as Bradley CAMPOS. I spoke with CAMPOS and asked him what had happened. CAMPOS told me he didn't know and he did not see anything. I asked CAMPOS if he would come to the station to be interviewed and he said "What's the point, I didn't see anything". At that time I had officers continue to watch him. CAMPOS was eventually brought out of the casino and placed in a patrol vehicle while we attempted to determine his involvement. I asked (S) to see if there security could locate CAMPOS on video to determine what his involvement was however he told me that they were assisting detectives and had not been able to locate anything at that time. CAMPOS was later released.

I contacted Officer SANDY who was on the west side of the Nugget with the three subjects who were detained and were possibly involved in the fight. A nugget employee had reportedly witnessed one of these subjects throwing a gun under a van in the parking lot. These three subjects were identified as Billy DYSON, John SCHMIDT and Kevin BOULEY. I asked (S) to see if he could locate the witness who had seen the subject throw the gun under van and to see if it was on video. (S) notified me later that they did not have anything on video and could not locate the witness. Officer SANDY told me that the subjects were not admitting to any involvement and stated they did not witness any of the incident. They all refused to go to the Reno Police Department to be interviewed. I asked Officer SANDY to photograph and get their information before releasing them.

I was notified that a transport unit was needed to transport VILLAGRANA to the Sparks Police Department. I assigned Officer SANDY to transport VILLAGRANA with Officer THELIN following for security reasons since there still numerous VAGOS in the area.

Nugget Security Director (S) also advised me that one of there security officers had escorted a Hells Angel who was bleeding to the 11th floor of the east tower. I spoke with the security officer and he told me that the injured subject was with another Hells Angel who was assisting him. The security officer told me that he could not tell what kind of injuries the subject had but that he was bleeding so he escorted both subjects to the service elevator and up to the 11th floor. The security officer did not see what room the subjects went into. I asked (S) if they could provide a list of the Hells Angels members who had booked rooms there in order to see if we could find out what room the subject had gone into.

(S) told me that they did not have a list of the Hells Angels however they could provide a list of the Vagos registered at the hotel. (S) told me that the Vagos had a group discount code called "Green Nation" and that they could provide a list of anyone who checked in under that code. (S) provided me with that list along with a list of the Henchman Motor Cycle Club members who also had a discount code. I gave both of these lists to Sgt. LEARY. (S) also gave me a list of the subjects staying on the 11th floor however at the time we did not have the resources to try and locate the two Hells Angels who had been escorted up there.

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OFFICER: Lt Thomas #1494
PAGE: 4 of 4

Case: 11-8996

During this time I was attempting to set up an area where we could assemble the independent witnesses and transport them to the station. I had arranged for a Citifare bus and Nugget Shuttle to transport victims however due to the large number of Vagos still in the area many of the witnesses feared exiting the building and did not want to be seen. I told officers with witnesses that anyone that wanted to transport themselves to the station could and to get statements if possible from the others. The Reno Police Department agreed to transport any involved members of Vagos to their department for interviews and the Hells Angels were transported to the Sparks Police Department.

After the scene was secured and detectives were conducting their investigation and I began securing officers from other agencies and replacing them on perimeter with Sparks Police Officer. Once this was completed I left Sgt Cleveland in charge of the scene.

No further details.

19

1 CODE 2645
Richard A. Gammick
2 #001510
P.O. Box 30083
3 Reno, NV 89520-3083
(775) 328-3200
4 Attorney for Plaintiff

5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 THE STATE OF NEVADA,
10 Plaintiff,

Case No. CR11-1718B

11 v.

Dept. No. 4

12 ERNESTO MANUEL GONZALEZ,

13 Defendant.
14 _____/

15 OPPOSITION TO SUPPLEMENTAL POINTS AND AUTHORITIES
16 IN SUPPORT OF MOTION TO DISMISS INDICTMENT OR IN
17 THE ALTERNATIVE PETITION FOR WRIT OF HABEAS CORPUS AND
MOTION TO RECONSIDER BASED UPON NEWLY DISCOVERED EVIDENCE

18 COMES NOW, the State of Nevada, by and through RICHARD A.
19 GAMMICK, District Attorney of Washoe County, and KARL S. HALL, Chief
20 Deputy District Attorney, and files this OPPOSITION TO SUPPLEMENTAL
21 POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS INDICTMENT OR IN
22 THE ALTERNATIVE PETITION FOR WRIT OF HABEAS CORPUS AND MOTION TO
23 RECONSIDER BASED UPON NEWLY DISCOVERED EVIDENCE, filed by Defendant
24 ERNESTO MANUEL GONZALEZ. This Opposition is based upon the attached
25 Points and Authorities, arguments of counsel for the State and all
26 other pleadings and papers on file herein.

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1 POINTS AND AUTHORITIES

2 Procedural Background

3 ERNESTO MANUEL GONZALEZ, (hereinafter referred to as
4 "GONZALEZ") was indicted by a Washoe County Grand Jury on several
5 felony charges stemming from his alleged involvement in the murder of
6 Jeffrey Pettigrew during a fight between the Vagos and Hells Angels
7 Outlaw Motorcycle Gangs (OMG's) at John Ascuaga's Nugget Hotel Casino
8 on September 23, 2011.

9 Prior to presenting the case to a Washoe County Grand Jury
10 the State filed a motion requesting permission to withhold the "Marcum"
11 notice to the targets of the Grand Jury investigation based primarily
12 upon concerns regarding witness intimidation and Court house security.
13 See NRS 172.241. The State presented sworn testimony from a percipient
14 witnesses to the intimidation of a civilian witness by a Vagos OMG
15 member, in support of the motion. On November 8, 2011 the Court filed
16 the "ORDER GRANTING THE MOTION WITHHOLDING THE GRAND JURY TARGET
17 LETTER".

18 Now Maizie W. Pusich, Biray Dogan and Christopher Frey accuse
19 the State of obstructing justice and committing a fraud upon the Court
20 by withholding evidence of a perceived relationship between Washoe
21 County District Attorney Investigator Peter Grimm and Vagos OMG member
22 Bradley Campos. This frivolous motion is based upon pure speculation
23 and a sentence in a police report taken out of context.¹ Exhibit 2 of

24
25 ¹ In a brief summary of Reno police supplements, Detective Patton of the Sparks
26 Police Department paraphrased Sergeant Joseph Robinson's Report as follows:
"ROBINSON, Joseph (SGT) - was supervisor of eight (8) SEAT team members who were
already working in downtown Reno, describes a very chaotic scene, saw a subject
bleeding on the floor near Trader Dicks and another subject kneeling next to him

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1 Gonzalez' Supplemental Points and Authorities in Support Motion to
2 Dismiss Indictment, contains no information whatsoever that could
3 support an allegation that Bradley Campos was working with law
4 enforcement.

5 ARGUMENT

6 The allegation that Bradley Campos was being "handled" by the
7 District Attorney's Office as some kind of a confidential informant is
8 not true. See Defendant's Motion at page 5 lines 2-3. Peter Grimm
9 does not have and never did have any relationship with Vagos OMG member
10 Bradley Campos. See Exhibit "1", Affidavit of Peter Grimm attached
11 hereto and incorporated hereat. The Public Defender should have, at a
12 minimum, spoken with Peter Grimm and/or Bradley Campos prior to making
13 baseless allegations of fraudulent misrepresentation(s) to a tribunal.
14 The instant motion reeks of bad faith and is nothing more than a
15 reckless attempt to impugn the integrity of the State and these
16 proceedings. The unsupported claim that Bradley Campos is or was
17 working for law enforcement is pure fantasy. An accusatory pleading
18 based upon speculation is reprehensible and is in violation of Nevada
19 Rules of Professional Conduct 3.3 and 7.1.

20 Frankly, the Public Defender's Office should be ashamed and
21 held accountable for filing such a frivolous motion asserting
22 prosecutorial misconduct without a shred of credible evidence. The
23 instant motion exhibits total disregard for truth, candor with the
24 Court and were obviously asserted in bad faith. As such, the State is

25 saying the subject had been shot, observed numerous Vagos gang members, his team
26 detained approx. thirty (30) subjects, assisted Investigator Pete Grimm with
contact and protection for Vagos, Bradley CAMPOS, responded to Renown for security.
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1 requesting a hearing on this matter to hold those persons accountable
2 for filing the instant motion. In light of the fact that the Public
3 Defender's Office has, by this pleading, attempted to commit a fraud
4 upon this court the State is requesting sanctions based upon Nevada
5 Rules of Professional Conduct 3.3 Rule 11 of the Nevada Rules of Civil
6 Procedure.

7 Accusing members of the District Attorney's Office of a
8 crime without any evidence to support the allegation is reprehensible.
9 The tactics recklessly employed by the Public Defender's Office should
10 be dealt with harshly.

11
12 AFFIRMATION PURSUANT TO NRS 239B.030

13 The undersigned does hereby affirm that the preceding
14 document does not contain the social security number of any person.

15 Dated this 19TH day of SEPTEMBER, 2012.

16 RICHARD A. GAMMICK
17 District Attorney
Washoe County, Nevada

18
19 By Karl S. Hall

20 KARL S. HALL

21 23

22 Chief Deputy District Attorney
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Dated this 19th day of September, 2012.

/s/ GAYET GUTIERREZ

GAYET GUTIERREZ

INDEX OF EXHIBITS

- EXHIBIT 1
AFFIDAVIT OF PETER GRIMM
Number of pages: 2

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09-19-2012:05:23:05 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3227947

EXHIBIT 1

EXHIBIT 1

470

A F F I D A V I T

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, Peter Grimm do hereby swear under information and belief and penalty of perjury that the assertions of this affidavit are true.

1. That your affiant is a duly qualified and presently acting Investigator for the Washoe County District Attorney's Office.

2. That I have specialized training and experience in law enforcement which I utilize on a regular basis as an investigator the District Attorney's Office.

3. That I monitored the Street Vibrations Motorcycle Rally for purposes of gathering intelligence for law enforcement at the 2011 event.

4. That by mere coincidence I was near the John Ascuaga's Nugget Hotel Casino when the report of "shots fired" was released to law enforcement in the Reno Sparks area.

5. That I was outside of the Nugget preparing to leave when the call for assistance came over the radio. I responded to the call, walked into the Nugget and was directed by a patron to assist a witness who was being accosted by three Vagos gang members.

6. That I assisted in detaining Bradley Campos until he was taken into custody by members of the Reno Police Department due to the fact that he was observed intimidating a civilian witness who had been watching the melee.

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7. That I had no relationship with Bradley Campos prior to September 23, 2011. That I do not have a relationship with Bradley Campos and I was not providing any protection for Bradley Campos. I was trying to provide protection to the civilian witness from the attack by Bradley Campos and his fellow Vagos gang members.

8. The allegation that I "managed" Bradley Campos or that Bradley Campos is "embedded law enforcement" is totally false.

9. That my testimony before the District Court Judge Steinheimer was truthful.

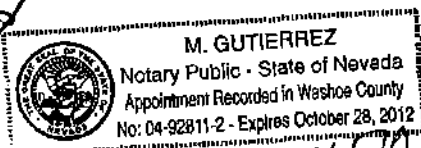
10. That the allegations leveled by the Public Defenders representing Vagos Gang member Ernesto Manuel Gonzalez are totally false and misleading.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Subscribed and sworn to before me this 19th day
of SEPTEMBER, 2012.

~~NOTARY PUBLIC~~



20

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Joey Orduna Hastings

Clerk of the Court

Transaction # 3237605

SEALED

1 CODE: 3795

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4 One California Ave

5 Reno, NV 89509

6 (775) 337-4800

7 Attorney for Defendant

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND

9 FOR THE COUNTY OF WASHOE

10 THE STATE OF NEVADA,

11 Plaintiff,

CASE NO: CR11-1718B

12 v.

DEPT. NO: 4

13 ERNESTO MANUEL GONZALEZ,

14 Defendant.

15 **REPLY TO STATE'S OPPOSITION TO DEFENDANT'S SUPPLEMENTAL POINTS**
16 **AND AUTHORITIES AND MOTION TO RECONSIDER**

17 **(FILED UNDER SEAL)**

18 COMES NOW, the Defendant, ERNESTO MANUEL GONZALEZ, by and through his
19 attorney of record, Jeremy T. Bosler, Washoe County Public Defender, Maize Pusich, Chief
20 Deputy Public Defender, and Biray Dogan and Christopher Frey, Deputy Public Defenders, and
21 hereby replies to the State's Opposition to Defendant's Supplemental Points and Authorities
22 and Motion to Reconsider filed on September 19, 2012.
23

24 ///

25 ///

26 ///

SEALED

FACTS AND PROCEDURAL HISTORY

Before seeking an indictment against Mr. Gonzalez, the State moved to withhold Marcum notice. The State also moved to seal documents and for a witness protection order. The court granted all of the State's requests. Each request was based on a variation of the State's "concerns regarding witness intimidation."¹ Opposition at 2.

On September 13, 2012, Mr. Gonzalez filed a supplement to his petition for writ of habeas corpus/motion to dismiss. He titled the document, alternatively, a motion to reconsider. The basis for the filing was contained in the two exhibits that accompanied it. The first is a report from Detective Patton. The second is a report from Lieutenant Thomas. Both reports were attached as exhibits. The inference from these two reports was that Peter Grimm knew Bradley Campos before detaining Campos on September 23, 2012.

Based on this inference, which is grounded in the discovery, Mr. Gonzalez filed his supplement/motion to reconsider, and advanced a legal argument. Mr. Gonzalez's legal argument is that, assuming a pre-existing relationship between Peter Grimm and Bradley Campos, the court's ruling permitting the withholding of Marcum notice to Mr. Gonzalez

¹See Ex-Parte Application for an Order Withholding Notice of Intent to Present a Case to the Grand Jury (October 21, 2011) at 4, 5 (asserting that "[i]n this case the State is informed and believes that . . . the . . . Vagos may present a threat to the lives, health, safety and welfare of the Grand Jurors, witnesses, and court personnel," and using the video-destruction incident as an illustration); Motion to Seal Documents (October 21, 2011) at 2 ("[O]ther people may be endangered if the identities of the suspects and informants were to be obtained by either motor cycle [sic] gang."); Motion for Witness Protection Order (November 28, 2011) at 2 ("Naturally, witnesses have expressed their reluctance to testify as they are in fear of harassment, exposure to threats of violence and retaliation for providing incriminating evidence to law enforcement."); Response to the Above-Named Defendants [sic] Opposition to the States' [sic] Motion for Witness Protection (January 12, 2012) at 3, 6, 7 (offering "factual support" for its claim that the Vagos present a risk to the safety of potential witnesses, and attaching exhibits purporting to substantiate this risk).

SEALED

1 should be reconsidered, since, assuming a prior Grimm-Campos relationship, the grounds for
2 withholding notice would appear to be vitiated.

3 The State filed an opposition to Mr. Gonzalez's supplement/motion to reconsider on
4 September 19, 2012. In that filing, the State's attorney challenges the accuracy of Mr.
5 Gonzalez's inference, and thereby offers an opposition to Mr. Gonzalez's legal argument, and a
6 reason for denying Mr. Gonzalez's requested relief. The State's pleading does this in a single
7 sentence and an affidavit from Peter Grimm. See Opposition at 3: 8-10.

9 The remainder of the State's filing is devoted to (1) communicating its attorney's
10 feelings of having been accused of a "crime" and "committing a fraud upon the court," id. at
11 2:18-19, (2) using a number of different descriptors to disparage the accuracy of Mr.
12 Gonzalez's inference, id. at 2-4, (3) memorializing its attorney's own personal displeasure with
13 opposing counsel, id. at 3:20-24; 4:1-10, (4) identifying opposing counsel by name, id. at 2:18,
14 (5) doubting Mr. Gonzalez's good faith, and (6) claiming that Mr. Gonzalez's pleading is
15 fraudulent. Id. at 4:3-6.2. The filing concludes with a plea for Mr. Gonzalez's attorneys to feel
16 shame, and contains a request for "harsh" sanctions. Id. at 4:3-10.

18 In consideration of the contents of the filing, which touch upon confidential sources and
19 a sealed transcript, see Order (July 17, 2012) (transferring documents related to the withholding
20 of Marcum notice to defense counsel, and ordering "[t]he documents shall remain sealed at the
21 same level when transferred into the respective CR11 Case Numbers, as they were in the Grand
22 Jury Case"), and to correspond to this court's prior orders accepting the State's rationale for
23 secrecy, Mr. Gonzalez filed his supplement/motion to reconsider under seal. The State's
24 attorney has chosen to file his opposition publicly.

26 ///

SEALED

ARGUMENT

The State's opposition tersely denies the merits of Mr. Gonzalez's supplement/motion to reconsider by denying the accuracy of Mr. Gonzalez's inference. The balance of the State's document is concerned with enlisting this court in prosecuting what appears to be an interpersonal matter between counsel. As discussed below, memorializing a personal sense of being affronted, and pleading for shame, accountability, and harsh treatment of opposing counsel, is a curiously-placed response to Mr. Gonzalez's legal pleading.

I. THE INFERENCE, THE LAW, AND THE LEGAL ARGUMENT

In his supplement/motion to reconsider, Mr. Gonzalez asserted that, assuming a pre-existing relationship obtained between Peter Grimm and Bradley Campos, reconsideration of the court's ruling permitting the withholding of Marcum notice would be warranted, since the grounds for withholding notice would be vitiated.

a. The inference.

This contention is based on an inference. The inference was that there appears to be a pre-existing relationship between Peter Grimm and Bradley Campos.

This inference is derived from two discovered police reports: (1) the July 26, 2012, report of Detective Patton, and (2) the September 27, 2011, report of Lieutenant Thomas. These reports were attached as exhibits. The Patton report describes Peter Grimm as being assigned with the "contact and protection" of Bradley Campos. The Thomas report appears to confirm that Bradley Campos was detained by Peter Grimm that evening and released.²

²Despite appearing to be released on scene, Bradley Campos was later named as a prospective target of the grand jury's investigation, but was dropped from the prosecution. See Order Granting the Motion Withholding the Grand Jury Target Letter (November 8, 2011) at 2. Mr. Campos' name does not appear in the State's October 21, 2011, Ex-Parte Application for an

SEALED

1 The reasoning behind this inference is fully explained on pages 2 through 5 of Mr.
2 Gonzalez's supplement/motion to reconsider. The inference is a qualified one. As a
3 consequence, it was conveyed in qualified language. See, e.g., Supplement/Motion to
4 Reconsider at 3:10 (Bradley Campos was "presumably" detained by Peter Grimm); 3:16-19
5 (Campos "appears to have been" protected by Grimm); 3:20 ("presumably"); 4:3-4 (Campos's
6 role "remains unclear"); 4: 3, 5, 8 ("appears to"); 6: 17 ("appears to"); 7: 3-5 (what the State
7 may have known is "unclear"); 7: 10 (declining to "speculate about the State's intent").

9 **b. The law.**

10 As Mr. Gonzalez argued in his supplement/motion to reconsider, assuming the
11 existence of a prior relationship between Bradley Campos and Peter Grimm, that fact would
12 entitle Mr. Gonzalez to legal relief in the form of the dismissal of the indictment. See Sheriff v.
13 Marcum, 105 Nev. 824, 783 P.2d 1389 (1989).

14 There are limited grounds for withholding notice to a grand jury target. See NRS
15 172.241. The primary ground presented here was the State's claim that the Vagos posed a
16 threat to the "life or property of other persons" under NRS 172.241(3)(b).³ This formed the
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20 Order Withholding Notice of Intent to Present a Case to the Grand Jury, and it does not appear
in the minutes of the October 25, 2011, closed hearing held on that motion.

21 ³This claim was routinely presented to the court at the beginning of these proceedings, and has
22 and will continue to permeate the State's theory of prosecution. See Ex-Parte Application for
an Order Withholding Notice of Intent to Present a Case to the Grand Jury (October 21, 2011)
23 at 4, 5 (asserting that "[i]n this case the State is informed and believes that . . . the . . . Vagos
may present a threat to the lives, health, safety and welfare of the Grand Jurors, witnesses, and
24 court personnel," and using the video-destruction incident as an illustration); Motion to Seal
Documents (October 21, 2011) at 2 ("[O]ther people may be endangered if the identities of the
25 suspects and informants were to be obtained by either motor cycle [sic] gang."); Transcript of
Hearing on Ex Parte Application (November 20, 2011) at 34 (claiming that the Vagos
26 presented a "threat" to the witnesses, court, and grand jurors); Motion for Witness Protection
Order (November 28, 2011) at 2 ("Naturally, witnesses have expressed their reluctance to
testify as they are in fear of harassment, exposure to threats of violence and retaliation for

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1 basis of the court's decision to withhold notice to Mr. Gonzalez. See Order Granting the
2 Motion Withholding the Grand Jury Target Letter (November 8, 2011) (granting the State's ex
3 parte application to withhold notice based on the court's "finding that [Mr. Gonzalez . . . is] a
4 member[] of the . . . Vagos motorcycle gang[] and/or club[]" and there was therefore a "risk [of
5 notice] endangering life or property of other persons"). However, if the basis for withholding
6 notice became vitiated, Mr. Gonzalez would appear to be entitled to a dismissal of the
7 indictment. See Marcum, 105 Nev. 824, 783 P.2d 1389.

9 **c. The legal argument.**

10 In the event of a prior relationship between Grimm and Campos, the basis for
11 withholding Marcum notice to Mr. Gonzalez would be vitiated in two ways.

12 First, as Mr. Gonzalez argued, the video-destruction incident would cease to be an
13 objective illustration of witness intimidation. See Supplement/Motion to Reconsider at 4-5.
14 Second, under a Kyles imputed-knowledge analysis, the knowledge of a prior relationship
15 between Grimm and Campos would be imputed to the State, and thus Grimm's omission in
16 mentioning it during his testimony would be contrary to the disclosures that are ethically
17 required of the prosecution in an ex parte proceeding.⁴ Id. at 6-7.

19 **II. SANCTIONS ARE GROUNDLESS AND THE STATE'S READINESS TO**
20 **INVOKE THEM IS DISTRACTING.**

21
22
23 providing incriminating evidence to law enforcement."); Response to the Above-Named
24 Defendants [sic] Opposition to the States' [sic] Motion for Witness Protection (January 12,
25 2012) at 3, 6, 7 (offering "factual support" for its claim that the Vagos present a risk to the
26 safety of potential witnesses, and attaching exhibits purporting to substantiate this risk);
Transcript of Grand Jury Proceedings (November 9, 2011) at 205, 206, 212, 226-63.

⁴Separately, failing to previously disclose any prior relationship to the defense, whether known
to the State or not, see Kyles, 514 U.S. 419, would implicate the State's Brady obligations, as
well as the duty of fairness to opposing counsel. Supplement/Motion to Reconsider at 5-7.

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1 The State's claim that Mr. Gonzalez's legal argument is sanctionable misconduct is an
2 unfortunate one. It also distracts from the business of this case.

3 Mr. Gonzalez declined to speculate about the State's actual knowledge or intent
4 regarding the alleged omission. Id. at 7. The State's attorney has not exhibited the same
5 reservation. See Opposition at 3:14, 15, 24; 4: 3 (accusing Mr. Gonzalez's defense of "bad
6 faith," an intent to "impugn," and an intent to "[de]fraud" the court).

7
8 This is not the first time the State's attorney has responded to Mr. Gonzalez's defense
9 efforts with a plea for an admonishment, or chosen a public setting to express personal
10 displeasure with members of the defense. The readiness of the State's attorney to invoke
11 sanctions in lieu of merits-based oppositions, and publicly register personal displeasure with
12 defense counsel, distracts from the business of this case.

13 **III. THIS ROUND OF MOTION PRACTICE AND ANY RELATED HEARING**
14 **SHOULD BE UNDER SEAL.**

15 Mr. Gonzalez filed his supplement/motion to reconsider under seal. The State has made
16 the choice to file its opposition as a public document. This is a puzzling choice.

17 Mr. Gonzalez filed under seal because (1) the filing dealt with facts contained in a
18 sealed transcript, and (2) this course of action corresponded to the spirit of this court's previous
19 rulings granting the State's motions regarding the need for secrecy in these proceedings.⁵ The
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23 ⁵See Ex-Parte Application for an Order Withholding Notice of Intent to Present a Case to the
24 Grand Jury (October 21, 2011) at 4, 5 (asserting that "[i]n this case the State is informed and
25 believes that . . . the . . . Vagos may present a threat to the lives, health, safety and welfare of
26 the Grand Jurors, witnesses, and court personnel," and using the video-destruction incident as
an illustration); Motion to Seal Documents (October 21, 2011) at 2 ("[O]ther people may be
endangered if the identities of the suspects and informants were to be obtained by either motor
cycle [sic] gang."); Motion for Witness Protection Order (November 28, 2011) at 2 ("Naturally,
witnesses have expressed their reluctance to testify as they are in fear of harassment, exposure
to threats of violence and retaliation for providing incriminating evidence to law

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1 State's publicly filed opposition, on the other hand, contravenes the spirit of this court's
2 previous rulings, violates the State's own rationale for secrecy, and, if this rationale is to be
3 credited, risks endangering the life and property of Bradley Campos. See NRS 172.241(3)(b).
4 These considerations make the State's choice to file a public response to a sealed document
5 puzzling.
6

7 **III. MR. GONZALEZ REQUESTS A HEARING ON HIS SUPPLEMENT/MOTION**
8 **TO RECONSIDER.**

9 Because it is based on an inference derived from discovered materials, and therefore
10 requires an evidentiary hearing before a ruling can be made, Mr. Gonzalez requests a hearing
11 on his supplement/motion to reconsider.

12 **CONCLUSION**

13 Based on the foregoing, Mr. Gonzalez respectfully requests a hearing on his
14 supplement/motion to reconsider.

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24 enforcement."); Response to the Above-Named Defendants [sic] Opposition to the States' [sic]
25 Motion for Witness Protection (January 12, 2012) at 3, 6, 7 (offering "factual support" for its
26 claim that the Vagos present a risk to the safety of potential witnesses, and attaching exhibits
purporting to substantiate this risk); Transcript of Conference Call on the State's Motion for
Witness Protection Order (May 21, 2012) at 306 (denying in part the State's motion and,
among other things, granting the State's request to file its notice of witnesses under seal).

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AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 24th Day of September, 2012.

JEREMY T. BOSLER
Washoe County Public Defender

By /s/ Christopher Frey
CHRISTOPHER FREY
Deputy Public Defender

By /s/ Biray Dogan
BIRAY DOGAN
Deputy Public Defender

By /s/ Maizie Pusich
MAIZIE PUSICH
Chief Deputy Public Defender

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CERTIFICATE OF SERVICE

I, LESLIE TIBBALS, hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada, and that on this date I forwarded a true copy of the foregoing document through inter-office mail to:

Karl Hall, Deputy District Attorney
District Attorney's Office

Amos Stege, Deputy District Attorney
District Attorney's Office

DATED this 24th Day of September, 2012.

/s/ Leslie Tibbals
LESLIE TIBBALS