

Incident / Investigation Report

San Francisco Police - Airport Bureau

Case# 10-35530

Officer's Narrative (continued)

bullets in Nicaragua. Ofc. Brother's told me that Gonzalez spontaneously stated to him that he thought he left the magazine containing the bullets back in Nicaragua. I ran a warrant check and had a history check done on Gonzalez. Gonzalez has been arrested many times, and convicted of selling narcotics, and controlled substances. I then arrested Gonzalez for being a felon in possession of ammunition, 12316 (b)(1) of the Penal Code. I contacted Sgt Cheung #208 and had him approve the charges. I contacted San Mateo Detective Josephson, Stephanie, who told me she would be interviewing Gonzalez in the morning. I searched Gonzalez prior to transport. Ofcs. Stokes, Diane, #2239, and Porter, Cecelia #1123 transported Gonzalez to Redwood City for Booking. Ofc. Brothers booked the bullets and magazine into locker #6, and took 5 pictures of the bullets, as they were when found by Customs agent Schoeneg. Brothers then placed the #6145 camera into locker number #5. I have attached the Rap Sheet of Gonzalez, along with the Cal Photo mug shot of Gonzalez. Gonzalez' belongings were given to his friend at the curbside. Her name is (N-1) Ruth Ann Ramirez. She has signed the paperwork, and it is attached to this report. Probable Cause Declaration was submitted to the Redwood City facility of the San Mateo Sheriff's. I have also attached a copy of the U.S. Department of Homeland Security receipt for the bullets and magazine that Customs seized from Gonzalez and later turned over to S.F.P.D. for booking.

CONTROLLED
DOCUMENT
NOT TO BE
DUPLICATED

GREG MUNIER, SHERIFF
SAN MATEO COUNTY

SUPPLEMENTAL REPORT

San Francisco Police - Airport Bureau

OCA 1033350

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Investigator: (926) HILL, RON

Date / Time: 12/21/2010 08:42:54

Tuesday

Contact:

Reference: ADDITIONAL INFO

On 12/21/2010, I downloaded the 5 digital photo files from camera 6145 onto a CD-R disc. I made 2 sets of prints for the DA's Office and a copy for the case file. The CD-R was then booked into evidence.

CONTROLLED
DOCUMENT
NOT TO BE
DUPLICATED

GREG MURPHY, SHERIFF
SAN MATEO COUNTY



SAN FRANCISCO POLICE DEPARTMENT, AIRPORT BUREAU
PROPERTY REPORT / RECEIPT

REPORT # 18-35550

DATE: 12/21/2010

SECTION VIOLATED 12314(B)(1)

PAGE # 1

SUSPECT Gonzalez, Ernesto

VICTIM POS

PROPERTY CONTINUATION		FOLLOW-UP		SUPPLEMENTAL		OTHER	
CODE NO.	ITEM ARTICLE NAME	QTY	IDENTIFICATION NUMBER	BRAND, MAKE OR MANUFACTURER	MODEL NAME AND MODEL NUMBERS	VALUE	TO LAB
E-2	CD-R Disc	1				\$	
DESCRIPTION: Containing 5 Digital Photo Files							83441
INSTRUCTIONS TO LAB:							
						\$	
DESCRIPTION:							
INSTRUCTIONS TO LAB:							
						\$	
DESCRIPTION:							
INSTRUCTIONS TO LAB:							
						\$	
DESCRIPTION:							
INSTRUCTIONS TO LAB:							
						\$	
DESCRIPTION:							
INSTRUCTIONS TO LAB:							
						\$	
DESCRIPTION:							
INSTRUCTIONS TO LAB:							
						\$	
DESCRIPTION:							
INSTRUCTIONS TO LAB:							
						\$	
DESCRIPTION:							
INSTRUCTIONS TO LAB:							
OFFICER REPORTING		STAR #	REVIEWING SERGEANT	ADDITIONAL PROPERTY LISTED		RECOVERED	TOTAL LOSS
HIN		926		<input type="checkbox"/> YES <input type="checkbox"/> NO		\$	\$

FOR PROPERTY OFFICER USE ONLY

RECEIVED ITEMS #

DESTROYED ITEMS #

FE DL #

DATE

NATURE

BY

LEASED BY

CONTROLLED
DOCUMENT
NOT TO BE
DUPLICATED

GREG MUNKS, SHERIFF
SAN MATEO COUNTY

623

Intelligence report

Submitted dt
07/27/2010

Criminal Act
Outlaw Motorcycle Gangs

File #
12007-0286

Database record ID number: 1928.

On 02-13-10 Ofc. Kirby #4143 stopped Gonzalez (G) on his Harley at Campbell/Fallbrook for amplified exhaust and failing to use the turn signal. (G) was a fully patched Vago and was flying colors. He had an exposed switchblade on the outside of his jacket pocket (653(k) PC). (G) was arrested and during inventory/incident to arrest search a loaded Steyr Mannlicher 9mm pistol was located in the saddle bags. (G)'s bike was impounded and on the way to PPC (G) made a spontaneous statement that he carried the weapon for protection. (G) was booked. See attached report for further.

On 02-14-10 Gonzalez left a message for Ofc. Kirby on the MDT asking him to call him at 415-760-3446 regarding his property.

Ofc. Woolsey from GIU was assigned the case and he soon determined that the weapon was actually stolen. When the officers checked the gun out in the field they erroneously ran it as an Uzi.

Lab check proved the weapon was fully functional semi-automatic, see attached report.

On 08-02-10 Judge Nadler put Gonzalez on SORP during arraignment until his next court appearance on 08-13, and granted him leave to Missouri. The SORP is useless in that Gonzalez told the judge he would be gone to Missouri from 08-03 to 08-12. He claimed he is going to Missouri for his brother's wedding. It just so happens that the national Vago run will be in Missouri at the same time.

***** See disk with images of evidence from this case *****

Links:

Subjects:

Ernesto Manuel Gonzalez Hispanic Male Apr 23, 1958 547-11-6745

Vehicles:

2009 Harley Davidson CA 19S5150

Groups:

Vagos MC

Linked files:

gun/lab (pdf file)

1050 (pdf file)

Gonzalez DL (jpg file)

Photos (pdf file)

Last Name / Apellido: GOZBANEZ, ERNESTO		First Name / Primer nombre: RAFAEL		Sex / Sexo: MA	Case Number: 10-226-1091
Address / Número de la casa: 4118 ROSEMIST		City / Ciudad: QUINTO		Telephone / Teléfono: 415-661-9335	
DOB / Fecha de nacimiento: 4/24/58	Race / Raza: H	HGT / Cauda en pies: 57	WGT / Cauda en peso: 175	Build / Tipo físico: M	Hair Color / Color de pelo: BR
Eyes / Ojos: BR	Build / Tipo físico: BR	Build / Tipo físico: BR	Build / Tipo físico: BR	Build / Tipo físico: BR	Build / Tipo físico: BR
Social Security Number / Número de seguro social: W5777663			Date / Fecha: 4/24/58		
Occupation / Ocupación: CROSS - PT			Employer / Empleador: SHAWNEER		
School / Escuela: BALCON COLLEGE			Parent / Nombre de los padres: 21703 CUC		
Location of Stop: BALCON COLLEGE			Reason for Stop: 21703 CUC		
Date / Fecha: 5/1/0			Time / Hora: 2100		
Officer / Oficial: JORGENSEN			Badge / Insignia: 4090		
Status / Estado: ROBBERY			Other / Otro: ARMED/INTEN		

Gang Membership Criteria / Criterios de membresía en la pandilla		Additional / Additional Details / Detalles	
Gang Name / Nombre de la pandilla: VALLOS			
How Long / Por cuánto tiempo: UNCOOPERATIVE			
Self Admission / Autoadmisión: NO			
Gang Tattoos / Tatuajes de la pandilla: NO			
Gang Clothing / Ropa de la pandilla: NO			
Residing in Gang Area / Residir en el área de la pandilla: NO			
Associating with Gang Members / Asociarse con miembros de la pandilla: NO			
Displaying Gang Symbols and/or Hand Signs / Mostrar símbolos de la pandilla y/o gestos de la mano: NO			
Participating in Gang Crime / Participar en el crimen de la pandilla: NO			
Gang Recruitment / Reclutamiento de la pandilla: NO			
Gang Restriction / Restricción de la pandilla: NO			
SELECT A MINIMUM OF TWO FROM ABOVE TO VALIDATE / SELECCIONAR UN MÍNIMO DE DOS DE LAS SIGUIENTES PARA VALIDAR: BLUE TEARS			
Vehicle / Vehículo: 1995 S130		Year / Año: 97	
Vehicle Color / Color del vehículo: BR		Vehicle Color / Color del vehículo: BR	
Vehicle Condition / Condición del vehículo: GOOD		Other Vehicle Condition / Otra condición del vehículo: GOOD	

JPQD V23 QUERY PERSON DETAIL 09/26/2011 18:16 PAGE: 1
PFN: BGE012 HAS COMPLIED WITH PC296 ON 02/14/2010
ENAM: GONZALEZ ENAM: ERNESTO MNAM: MANOEL GEN:
DOB: 04/23/1958 POB: NO HGHT: 507 WGHT: 175 HAIR: BR EYES: BR RACE: H SEX: M
S N A G
REG: SEXP: NEXP: AEXP: GEXP:
S/M/T: "IN MEMORY OF MI MADRE" RT 4ARM FPRT: 02/13/2010
HOUSE# S DR STREET NAME SF APT CITY
RESADD: 4118 FOLSOM ST SAN FRANCISCO
ST: CA ZIP: 94110 PHONE: 415 6659335 RTYP: R
EMP: NONE NOTED OCPN: NONE NOTED UNION:
HOUSE# S DR STREET NAME SF APT CITY LOCAL:
EMPADD:
ST: ZIP: PHONE:
CITY: A05781969 FBI#: 938514P1 DANO: SUFO: PROB: NO
ID: 05/01/1998 PHOTO: 02/14/2010 WARRANT: NO DECEASED:
ID NOTE:
DLN01: CAN5747663 SSN01: [REDACTED] MSN01:
***** END OF LIST *****

626

LSTEMG V05 LIST EMERGENCY CONTACTS 09/26/2011 18:10 PAGE: 001

PFN: BGE012 CEN: PRINT?: Y PRINTER: SJEM

PFN NAME: GONZALEZ, ERNESTO MANUEL

SEX: M DOB: 04/23/1958 POB: NU

RACE: HISPANIC

HEIGHT: 507 WEIGHT: 175 HAIR: BROWN

EYES: BROWN

CONTACT NAME: CATALINA

RELATION: OTHER

HOUSE# S DR STREET NAME

SF STE CITY

ADDR: NONE NOTED

ST: ZIP:

PHONE: (415) 760-3447 CEN: 10003408

DATE: 02/14/2010

CONTACT NAME: PEREZ, CATHLINA

RELATION: FRIEND

HOUSE# S DR STREET NAME

SF STE CITY

ADDR: 10 BERTIE MINOR

3 SAN FRANCISCO

ST: CA ZIP: 94115

PHONE:

CEN: 9392952

DATE: 01/01/1800

*** END OF LIST ***

627

JPOH V56 QUERY SINGLE CEN HISTORY 09/26/2011 18:08 PAGE: 1
SANTA CLARA COUNTY ARREST AND DISPOSITION HISTORY
PFN: BGE012 INAM: GONZALEZ FNAM: ERNESTO MNAM: MANUEL GEN:
CASE#/PURPOSE: RECKAS 1065 /////SPARKS INV

HAS COMPLIED WITH PC296 ON 02/14/2010

PERSON DATA
ALIASES: GONZALEZ ERNESTO MANUEL 0 MORE ALIASES

ID: 05/01/1998 PHOTO: 02/14/2010 DECEASED:
ID NOTE:
SEX RACE/TRANSL DOB POB HGHT WGHT HAIR EYES
M H HISPANIC 04/23/1958 NO 507 175 BROWN BROWN

CIL: A05781969 FBI#: 938514P1 DANO: SUPO:
SSN: 0 MORE SSNS DLN: CAN5747663 0 MORE DLNS
CDC: NONE

S N A G
REG: SEXP: NEXP: AEXP: GEXP:

TREATMENT CT:

ORIGINATING CENS

ORIG CEN ARST DATE BOOK DATE BOOK TYPE RELEASE STATUS

10008408 02/13/2010 02/14/2010 ONVIEW 02/14/2010 15:12 BB

STAY DT/CD: VER IND: VERIF
AAG ARR OFFCR OFCN DASN
SAN JOSE PD 4143 - KIRBY 100440866
BOOKING CHARGES: M/F DSE DDSP
PC 653(K) M CMBND OTHER COUNT/CASE 07/12/2010
PC 12025(A) (1) F CMBND OTHER COUNT/CASE 07/12/2010
PC 12031(A) (1) F CMBND OTHER COUNT/CASE 07/12/2010
PC 12020(A) (4) E CMBND OTHER COUNT/CASE 07/12/2010

CRT-DOCKET: SJ 43470-C1081959 FILED: 07/12/2010 DA CASE #: 100716646

CHILD: DV:
CHARGE M/F PRS ENHC
PC 12021(A) (1) F DDSP: 12/01/2010
DISPOSITION: DSMSD/INSUF EVIDENCE

CHARGE M/F PRS ENHC
PC 12031(A) (1) F DDSP: 12/01/2010
DISPOSITION: DSMSD/INSUF EVIDENCE

CHARGE M/F PRS ENHC
PC 12020(A) (1) F DDSP: 12/01/2010
DISPOSITION: DSMSD/INSUF EVIDENCE

CHARGE M/F PRS ENHC
PC 653K M DDSP: 12/01/2010
DISPOSITION: DSMSD/INSUF EVIDENCE

CASES CONVERTED FROM CJIC

628

JPQH V56 QUERY SINGLE CEN HISTORY 09/26/2011 18:08 PAGE: 2
SANTA CLARA COUNTY ARREST AND DISPOSITION HISTORY
PPN: BGE012 LNAM: GONZALEZ FNAM: ERNESTO MNAM: MANUEL GEN:
CASE#/PURPOSE: RECKAS 1065 /////SPARKS INV

CEN	ARST DATE	BOOK DATE	BOOK TYPE	RELEASE	STATUS
9357651	02/13/1993	02/13/1993	COMMITMENT	03/13/1993 16:00	SREL
STAY DT/CD: 02/20/1993 WWP VER IND: UNKNOWN					
AAG	ARR OFFCR		OFCN	DASN	
SCC DEPT CORR L0053 -					
BOOKING CHARGES:					
VC 14601.1(A)	M/F	DSP	DDSP		
VC 22349	M	COMMITMENT	02/13/1993		
	I	COMMITMENT	02/13/1993		

CEN	ARST DATE	BOOK DATE	BOOK TYPE	RELEASE	STATUS
9392952	01/21/1993	01/21/1993	ONVIEW	01/23/1993 06:40	SREL
STAY DT/CD: VER IND: VERIF					
AAG	ARR OFFCR		OFCN	DASN	
PALO ALTO PD D0075 - 93021006					
BOOKING CHARGES:					
VC 14601.1(A)	M/F	DSP	DDSP		
VC 40508(A)	M	FILED			
VC 42003(A)	M	PRIOR BOOKING	01/21/1993		
VC 40508(A)	M	PRIOR BOOKING	01/21/1993		
VC 14601.1(A)	M	PRIOR BOOKING	01/21/1993		
VC 22450	I	PRIOR BOOKING	01/21/1993		
VC 4000(A)	I	PRIOR BOOKING	01/21/1993		
VC 22349	I	PRIOR BOOKING	01/21/1993		
VC 14601.1(A)	M	PRIOR BOOKING	01/21/1993		

CRT-DOCKET: PA 43460-B9308352 FILED: 01/22/1993 DA CASE #:
CHILD: DV:
CHARGE M/F PRS ENHC
VC 14601.1(A) M 1
DISPOSITION: CONVICTED DDSP: 01/22/1993

SENTENCE: 01/22/1993
JAIL: 5 DAYS COUNTY JAIL
NOTE: CTS 3D-A; HOLD VALID LIC & INS; OBEY ALL LAWS; COMMITTED

CEN	ARST DATE	BOOK DATE	BOOK TYPE	RELEASE	STATUS
4213479	03/21/1992	04/13/1992	CRIMINAL CITATION		
STAY DT/CD: VER IND: UNKNOWN					
AAG	ARR OFFCR		OFCN	DASN	
HOLL-GILROY CHP M0318 - UD08377					
BOOKING CHARGES:					
VC 22349	M/F	DSP	DDSP		
VC 14601.1(A)	I	FILED			
	M	FILED			

CRT-DOCKET: SY 43635-E9254727 FILED: 03/26/1992 DA CASE #:
CHILD: DV:
CHARGE M/F PRS ENHC
VC 22349 I
DISPOSITION: CONVICTED DDSP: 01/21/1993

629

JPQH

V56 QUERY SINGLE CEN HISTORY

09/26/2011 18:08 PAGE: 3

SANTA CLARA COUNTY ARREST AND DISPOSITION HISTORY

PFN: BGE012 LNAM: GONZALEZ

FNAM: ERNESTO

MNAME: MANUEL

GEN:

CASE#/PURPOSE: RECKAS 1065 /SPARKS INV

SENTENCE: 01/21/1993, SENTENCE SUSPENDED

NOTE: \$10AF, \$10RF, AR FEE WAIVED, OBEY ALL LAWS O&ET ORD REL

CHARGE M/F PRS ENHC

VC 14601.1 (A) M 1

DISPOSITION: CONVICTED

DDSP: 01/21/1993

SENTENCE: 01/21/1993, IMPOSITION SENT SUSPENDED

PROBATION JAIL: 5 DAYS WEEKEND JAIL

PROBATION: 2 YEARS COURT PROBATION

PROBATION FINE: \$100.00 FINE, \$170.00 PENALTY ASSESSMENT

NOTE: ADM PR, DOC 02/13/93, WU 02/20/93, SATS ONLY,

CEN	ARST DATE	BOOK DATE	BOOK TYPE	RELEASE	STATUS
7843068	01/01/1800	10/26/1978	LOCAL BENCH WARRANT	10/26/1978 20:30	BAIL
STAY DT/CD:		VER IND: UNKNOWN			
AAG	ARR OFFCR	OFCN	DASN		
MT VIEW PD	J9027 -	787821			
BOOKING CHARGES:	M/F	DSP	DPS		
PC 594	M	TRANSFER PROSECUTION	10/26/1978		
PC 602M	M	TRANSFER PROSECUTION	10/26/1978		

THIS INFORMATION IS CONFIDENTIAL AND FOR OFFICIAL USE ONLY
DO NOT DUPLICATE

*** END OF LIST ***

630

Last Name / Apellido		First Name / Primer nombre		Middle Name / Segundo nombre		Sex / Sexo		Date of Birth / Fecha de nacimiento	
GONZALEZ		ERNESTO		MARTIN		M		10-22-61	
Address / Direccion (Subsequent)		Address / Direccion de la casa (Subsequent)		Address / Direccion de la casa (Subsequent)		Address / Direccion de la casa (Subsequent)		Address / Direccion de la casa (Subsequent)	
4118 FALCON ST.		9-11-0		415-664-4335					
Date of entry / Fecha de entrada		Race / Raza		Height / Altura		Weight / Peso		Color of hair / Color de pelo	
4/23/58		H		5-7		175		M	
Color of eyes / Color de ojos		Color of skin / Color de piel		Color of hair / Color de pelo		Color of hair / Color de pelo		Color of hair / Color de pelo	
BROWN		BROWN		BROWN		BROWN		BROWN	
Education / Estudios		Occupation / Ocupacion		Marital Status / Estado civil		Type of Vehicle / Tipo de Vehiculo		Type of Vehicle / Tipo de Vehiculo	
CROSS - ST. COLUMBER									
Signature / Firma (Signature)		Signature / Firma (Signature)		Signature / Firma (Signature)		Signature / Firma (Signature)		Signature / Firma (Signature)	
Identification / Identificacion		Identification / Identificacion		Identification / Identificacion		Identification / Identificacion		Identification / Identificacion	
21703 G.V.C.		21703 G.V.C.		21703 G.V.C.		21703 G.V.C.		21703 G.V.C.	
Date / Fecha		Time / Hora		Location / Lugar		Status / Estado		Status / Estado	
4/10/08		2100		JORGENSEN		4090		4090	

Case Number / Numero de Caso		Case Number / Numero de Caso		Case Number / Numero de Caso	
JAGOS		JAGOS		JAGOS	
Name / Nombre		Name / Nombre		Name / Nombre	
JAGOS		JAGOS		JAGOS	
Address / Direccion		Address / Direccion		Address / Direccion	
JAGOS		JAGOS		JAGOS	
Date / Fecha		Date / Fecha		Date / Fecha	
JAGOS		JAGOS		JAGOS	
Time / Hora		Time / Hora		Time / Hora	
JAGOS		JAGOS		JAGOS	
Location / Lugar		Location / Lugar		Location / Lugar	
JAGOS		JAGOS		JAGOS	
Status / Estado		Status / Estado		Status / Estado	
JAGOS		JAGOS		JAGOS	
Signature / Firma		Signature / Firma		Signature / Firma	
JAGOS		JAGOS		JAGOS	
Date / Fecha		Date / Fecha		Date / Fecha	
JAGOS		JAGOS		JAGOS	
Time / Hora		Time / Hora		Time / Hora	
JAGOS		JAGOS		JAGOS	
Location / Lugar		Location / Lugar		Location / Lugar	
JAGOS		JAGOS		JAGOS	
Status / Estado		Status / Estado		Status / Estado	
JAGOS		JAGOS		JAGOS	

200-22-0 Rm 08/09

631

Intelligence Report

Intel Date
03/24/2011

Criminal Activity
Outlaw Motorcycle Gangs

Verification
Verified

ID #
2055

Case #
(None)

File #
I2007-0415

Submitted By
Eve Woloszczuk #3223

Agency
San Jose Police- CIU

Intel Type
Outlaw Motorcycle Gang

Follow Up
(None)

Approved By
(None)

Disseminate
Yes

Restrict to
Law Enforcement

Narrative

On 12/02/10 at 0945 hrs Intel personnel (analyst Kim Reckas) observed two Vagos in the info parking lot. Gonzalez (G) was in the lot with another Vago male. (G) went to the info center and was demanding to have property released to him. Property was not released as his gun/knife case is still pending. See attached photos.

Linked Subjects

Subject # 1 - Gonzalez, Ernesto Manuel

Basic Information

DOB: 04/23/1958

FBI #: 938514P1 **State ID #:** (None) **DL #:** CA - N5747663

Physical Information

Race: Hispanic **Gender:** Male **Height:** 5'8" **Weight:** 175

Hair: Brown **Eyes:** Brown

Special Indicator

Fully Patched

Addresses Linked Directly to Subject

Address provided Jul 27 2010 - 4118 Folsom Street San Francisco CA 94110

Linked Vehicles

2009 Harley Davidson CA 19S5150

1999 Harley Davidson HI 301HNM

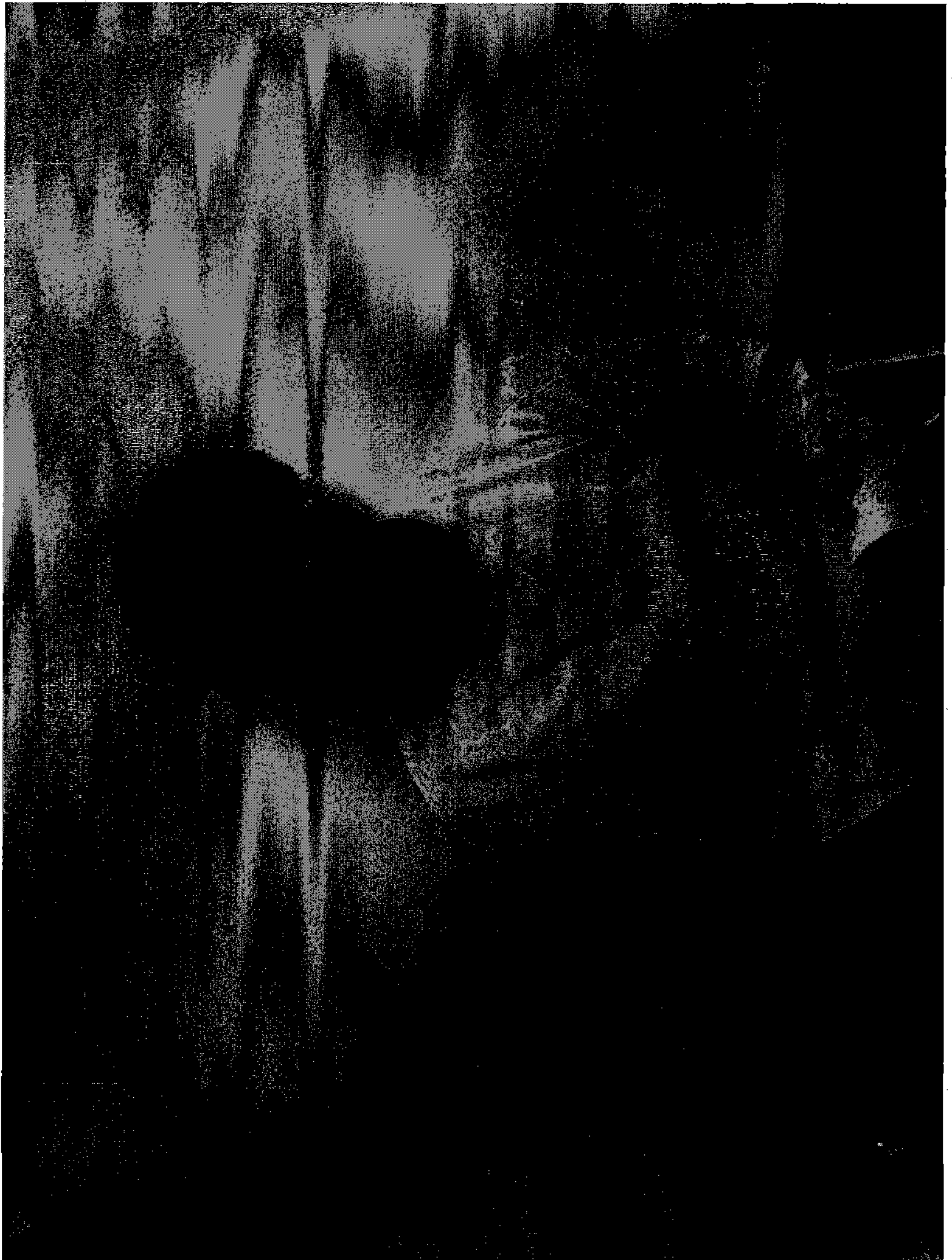
Linked Groups

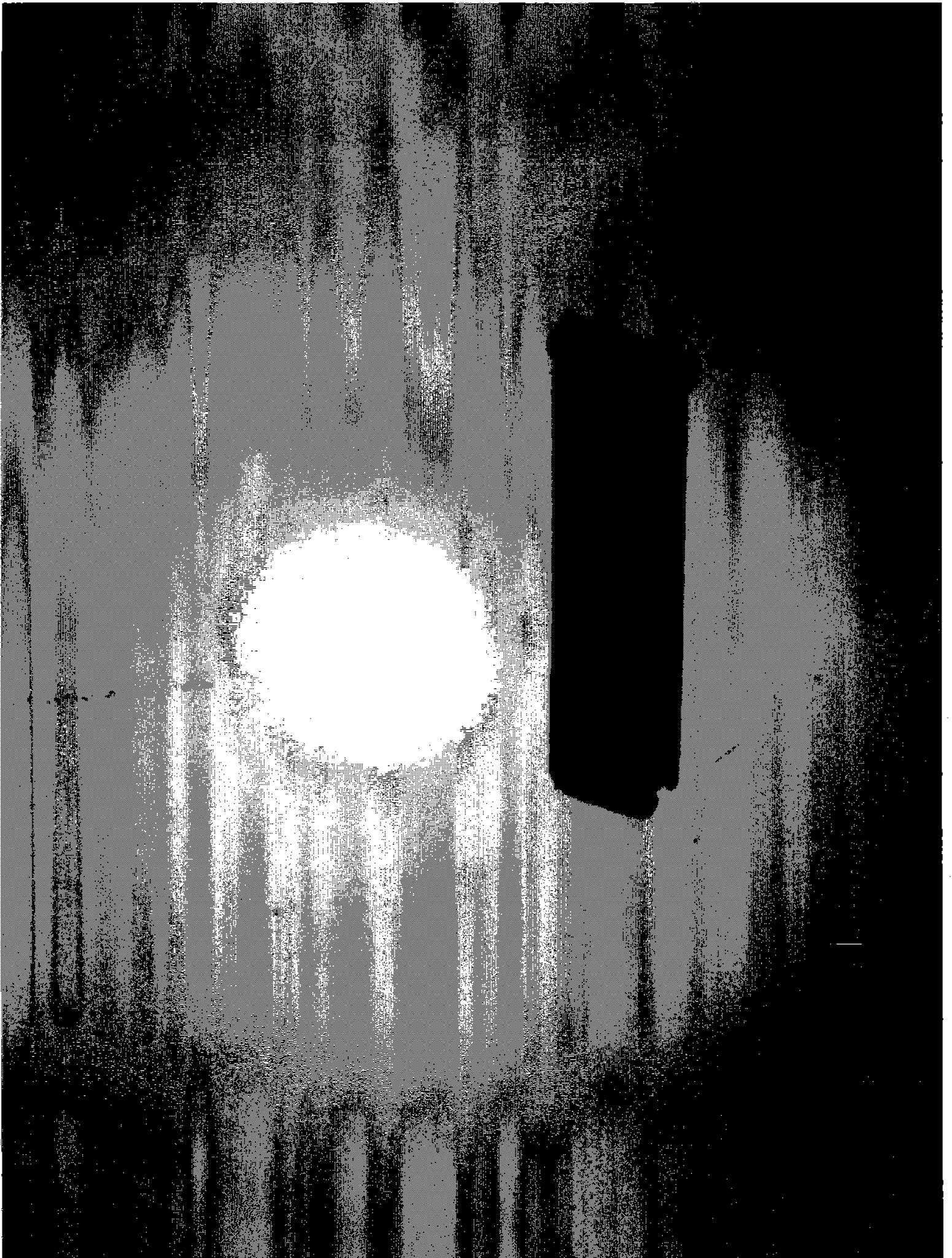
Vagos MC

632









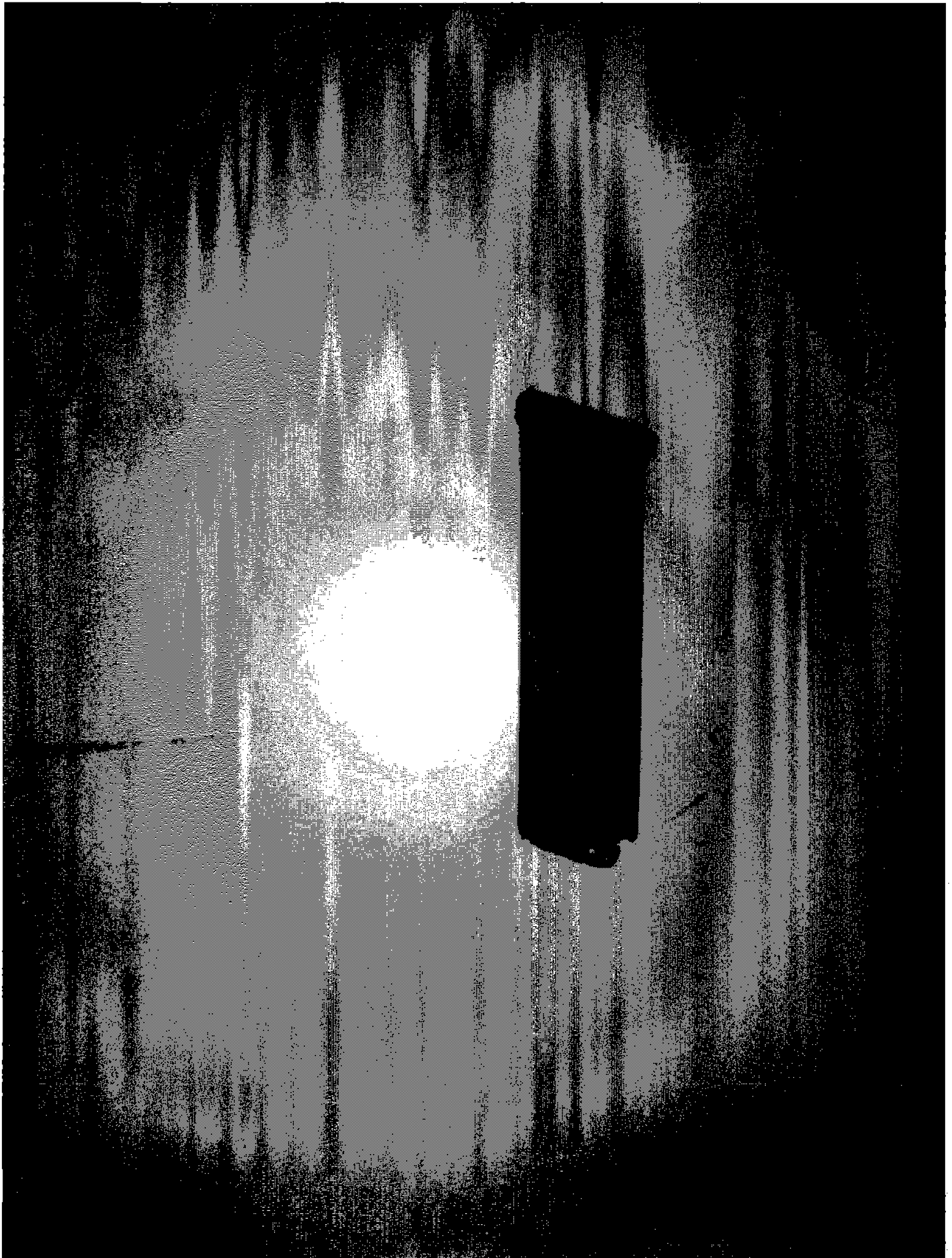








Exhibit 2

Exhibit 2

San Mateo County Sheriff's Office



Greg Munka Sheriff

Investigative Follow Up Report

Case Number: 10-35550

Charge:	Victim:	Disposition:
PC 12316 (b)(1)	Gonzalez, Ernesto Manuel	Arrest

Suspect:

Gonzalez, Ernesto Manuel
DOB 4-23-1958
CDL: N5747663
CII: A05781969
4118 Folsom Street
San Francisco, Ca 94110
Phone: 415-264-9335

On Monday, December 20, 2010, I was notified by San Francisco PD Airport Communications that Suspect Ernesto Gonzalez had been arrested by SFPD Officers for a violation of PC 12316(b)(1)- Felon in Possession of Ammunition. Officer Webb explained to me that Gonzalez had been detained by SFIA Customs and Border Patrol Agents upon his arrival to SFO Customs area A side. He arrived on a flight from Nicaragua. CBP noticed a loaded magazine in Gonzalez' property. The magazine contained thirteen rounds of 9mm pistol ammunition, some hollow point and some full metal jacket.

Gonzalez was positively identified with his US Passport # 057192903 and his California driver's license N5747663. A records check revealed that Gonzalez had a lengthy history of arrest in California, including felony convictions for drug possession.

Gonzalez explained to Customs agents that he did not have a firearm with him and had left one in Nicaragua. He further told them it was legal to carry ammunition in Nicaragua and that he forgot the ammunition and magazine were in his backpack.

Gonzalez was arrested and transported to the Maguire Correctional Facility where he was booked on one felony charge of PC 12316(b)(1),

Submitted by: Detective Josephson

Reviewed by: Sgt. Matsuura
Date: November 16, 2012

****FOR OFFICIAL USE ONLY****
CONFIDENTIAL INFORMATION
UNAUTHORIZED USE IS A CRIMINAL OFFENSE

Page #: 1

642

San Mateo County Sheriff's Office

Investigative Follow Up Report

Case Number: **10- 35550**

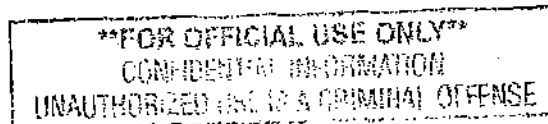
I conducted a records check of Gonzalez. He has a valid California driver's license with a motorcycle endorsement showing the current address at 4118 Folsom Street. A criminal history records check of California showed a history of at least thirteen aliases. It shows arrests dating back to 1976 for various crimes such as vandalism, trespass, assault, weapons charges, and several various narcotic offenses. On April 17, 1980, Gonzalez was convicted in San Francisco County of HS 11360(a)- transportation of marijuana and two counts of HS 11352- transportation of narcotics (SFCO case #100948). He was subsequently sentenced to formal probation and jail.

I went to the Maguire Correctional Facility to speak with Gonzalez. Paperwork there showed that Gonzalez was in the process of posting bail and would be released on \$10,000 bail. I began to read Gonzalez his Constitutional rights per Miranda. He interrupted and said he would like to speak to a lawyer. He said he already had one. I told him that he would be released shortly and would receive information from the jail as to the dates for his future hearings. I provided him with my contact information.

Recommendations:

Forward to the District Attorney's Office for prosecution of **PC 12316(b)(1)**- No person prohibited from owning or possessing a firearm under Section 12021 or 12021.1 of this code....shall own, possess, or have under his or her custody or control, any ammunition or reloaded ammunition.

PC 12021 (a)(1) states "Any person who has been convicted of a felony under the laws of the United States, the State of California....and who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony".



Submitted by Stephanie Josephson
Reporting Deputy:

Reviewed by:
Date: November 16, 2012

Page #: 2

643

U.S. DEPARTMENT OF HOMELAND SECURITY
Bureau of Customs and Border Protection

2978808

CUSTODY RECEIPT FOR SEIZED PROPERTY AND EVIDENCE

Marathon CB00-09

1. CBP No. 00000000000000000000	2. Incident No. 00000000000000000000
3. Investigative Case No. 00000000000000000000	4. Officer No. 00000000000000000000
5. Other Identifying No. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes, CBP #0518 No	6. Date Seized (MM/DD/YYYY) 11-20-2010
7. Time Seized (HH:MM) 23:48	8. Form No.
9. Seized From Name: Ernesto Hernandez Address: 4105 Jackson St San Francisco, CA 94110	10. Entry No. 11. Seize Other ID No.
12. Remarks SEIZED BY: [Signature] SE ONLY: [Signature] RECEIVED BY: [Signature]	
13. Seizure Location S.F. 94110	

14. PROPERTY (BY LINE ITEM) AND CBP # if conveyable

a. Line Item No.	b. Description	c. Packages Number Type	d. Measurements Qty L/M	e. Est. Dom. Value
01	10mm T. Round magazine	1	1	
02	10mm Full Metal Jacket	9	9	
03	10mm Full Metal Jacket	3	3	

15. Seizing Officer Name: [Signature] Signature: [Signature] Date: 11-20-2010
--

16. ACCEPTANCE/CHAIN OF CUSTODY

a. Line Item No.	b. Description	c. Party Name/Title/Organization	d. Signature	e. Date
01-03	see 14b	CBP #0518	[Signature]	11-20-2010
01-03	see 14b	CBP #16158	[Signature]	11-20-2010

CBP Form 8051A Continuation Sheet Attached? Yes ☐ No ☒

CBP Form 8051S (03/01)

CBP Retains Original

644

[illegible]

8FPD 188 REV101K

645



SAN FRANCISCO POLICE DEPARTMENT, AIRPORT BUREAU **PROPERTY REPORT / RECEIPT**

ORT # 10-35550

DATE: 12/21/2010

SECTION VIOLATED 12316(B)(1)

PAGE # 1

SUSPECT: Gonzalez, Ernesto

VICTIM: POS

PROPERTY CONTINUATION		FOLLOW-UP		SUPPLEMENTAL		OTHER	
CODE NO.	ITEM ARTICLE	QTY	IDENTIFICATION NUMBER	BRAND, MAKE OR MANUFACTURER	MODEL NAME AND MODEL NUMBERS	VALUE	TO LAB
E-1	CD-R Disc	1				\$	
DESCRIPTION: Containing 5 Digital Photo Files							83441
INSTRUCTIONS TO LAB:							
						\$	
DESCRIPTION:							
INSTRUCTIONS TO LAB:							
						\$	
DESCRIPTION:							
INSTRUCTIONS TO LAB:							
						\$	
DESCRIPTION:							
INSTRUCTIONS TO LAB:							
						\$	
DESCRIPTION:							
INSTRUCTIONS TO LAB:							
						\$	
DESCRIPTION:							
INSTRUCTIONS TO LAB:							
						\$	
DESCRIPTION:							
INSTRUCTIONS TO LAB:							
<div style="border: 1px solid black; padding: 5px;"> <p align="center">FOR OFFICIAL USE ONLY</p> <p align="center">CONFIDENTIAL INFORMATION</p> <p align="center">UNAUTHORIZED RELEASE CRIMINAL OFFENSE</p> </div>							
DESCRIPTION:							
INSTRUCTIONS TO LAB:							
						\$	
DESCRIPTION:							
INSTRUCTIONS TO LAB:							

OFFICER REPORTING R. Hill	STAR # 926	REVIEWING SERGEANT	ADDITIONAL PROPERTY LISTED <input type="checkbox"/> YES <input type="checkbox"/> NO	RECOVERED \$	TOTAL LOSS \$
------------------------------	---------------	--------------------	--	-----------------	------------------

FOR PROPERTY OFFICER USE ONLY

RECEIVED ITEMS # _____

DESTROYED ITEMS # _____

DATE _____ DL # _____

SIGNATURE _____

DATE _____

RELEASED BY _____

BY _____

646

FILED

Electronically

11-26-2012:02:14:17 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3366578

Exhibit 3

Exhibit 3

647





31

1 CODE
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. CR11-1718

11 v.

Dept. No. 4

12 CESAR VILLAGRANA, (A)
and
13 ERNESTO MANUEL GONZALEZ (B)

14 Defendants.
15 _____/

16 SUPPLEMENT TO MOTION FOR ORDER ADMITTING GANG ENHANCEMENT EVIDENCE
17 AND TESTIMONY

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 SIUPPLEMENT TO MOTION FOR
21 ORDER ADMITTING GANG ENHANCEMENT EVIDENCE AND TESTIMONY. This motion
22 is based upon the attached Points and Authorities, the evidence
23 presented at any hearing of this matter, oral argument of counsel,
24 and all other pleadings and papers on file herein.

25 ///

26 ///

1 POINTS AND AUTHORITIES

2 The State hereby supplements its previously filed motion
3 and addendum by filing the attached curriculum vitae of Detective
4 Daniel Long as Exhibit 15.

5 AFFIRMATION PURSUANT TO NRS 239B.030

6 The undersigned does hereby affirm that the preceding
7 document does not contain the social security number of any person.

8 Dated this 26th day of November, 2012.

9 RICHARD A. GAMMICK
10 District Attorney
Washoe County, Nevada

11
12
13 By /s/ Karl S. Hall
14 KARL S. HALL
15 23
Chief Deputy District Attorney

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 DAVID Z. CHESNOFF, ESQ.
8 RICHARD A. SHCONFELD, ESQ.
9 CHESNOFF & SCHONFELD
 520 S. FOURTH STREET, 2ND FLOOR
 LAS VEGAS, NV 89101

10 DATED this 26th day of November, 2012.

11 /s/LORI DELANO
12 LORI DELANO

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

MAIZIE W. PUSICH, C.D.P.D.
WASHOE COUNTY PUBLIC DEFENDER'S OFFICE
350 S. CENTER STREET, 5TH FLOOR
P.O. BOX 30083
RENO, NV 89520

BIRAY DOGAN, D.P.D.
WASHOE COUNTY PUBLIC DEFENDER'S OFFICE
350 S. CENTER STREET, 5TH FLOOR
P.O. BOX 30083
RENO, NV 89520

DATED this 26th day of November, 2012.

/s/ LORI DELANO
LORI DELANO

INDEX OF EXHIBITS

EXHIBIT 15 Curriculum Vitae of:
Detective Daniel Long, P#3969
Number of Pages: 5

FILED
Electronically
11-26-2012:04:32:07 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3367343

EXHIBIT 15

EXHIBIT 15

655

CURRICULUM VITAE

September 17, 2012

Detective Daniel Long, P# 3969

Las Vegas Metropolitan Police Department
Homicide Section / Robbery-Homicide Bureau
4750 W. Oakey Boulevard, Las Vegas, NV 89102 (702) 828-3521

Experience

Police Officer, Las Vegas Metropolitan Police Department	Hired: 09-11-90
Detective assigned to the Gang Crimes Section	11-18-1995 – 01-20-2001
Detective assigned to the Homicide Section	01-20-2001 - Present

Education

Bachelor of Science / Business Administration
University of Nevada, Las Vegas (1983).

Training Received

LVMPD Police Officer Academy	Class 2-1990
Poly-testing Narcotics Screening & Identification	03/1991
Search Warrant Preparation & Execution	02/1993
Interviews and Interrogations	07/1993
Gangs in Clark County	07/1993
Crime Scene Preservation & Investigation	09/1993
Managing Confidential Informants	09/1993
Investigator Development	03/1994
Search & Seizure Forfeitures	03/1994
Advanced Investigator Techniques (FBI)	08/1994
Surveillance Techniques	09/1994
Drug Recognition Expert	07/1995
Street Survival	12/1995
Gang Tactics Training	01/1996
Gang Tactics Training	02/1996
Nevada Gang Investigators Association Conference	03/1996
Instructor Development	06/1998

658

Nevada Gang Investigators Association Conference	04/1999
National Law Enforcement Inst. Advanced Gang Conference	08/1999
Behavior Analysis Deception Detection Techniques	10/1999
Nevada Gang Investigators Association Conference	04/2000
Reid Technique of Interview and Interrogation	09/2000
Advanced Reid Techniques Interview & Interrogation	09/2000
Advanced Practical Homicide Investigations	12/2000
California Homicide Investigators Association Conference	03/2001
Practical Homicide Investigation	03/2001
Killology	01/2002
Advanced Practical Homicide Investigations	03/2002
Advanced Officer Skills Training	07/2002
International Homicide Investigators Association Conference	08/2002
Cyber-Porn and Cyber Stalking	
Amber Alert	
VICAP	
Patterns and Trends in Child Homicides	
Interviews of Incarcerated Offenders	
Forensic Updates and DNA	
Geographic Profiling	
Multi-National Homicide Investigations	
Serial Murders	
National Center for Missing and Exploited Children	
Victim Concerns	
Mass Graves/Body Identifications	
Explosions - The Scene Investigation	
Child Pornography- Recognition and Interview Techniques	
Advanced Practical Homicide Investigations	12/2003
Advanced Practical Homicide Investigations	11/2004
Surface Skeleton and Buried Body Recovery Seminar	11/2004
The Bulletproof Mind by Lt. Col. Dave Grossman	02/2005
Advanced Practical Homicide Investigations	03/2005
 New York State Police	
Colonel Henry F. Williams Homicide Seminar	09/2006
Crime Scene Reconstruction	
Laci Peterson Murder investigation review	
Forensic Pathology	
Forensic Entomology	
Forensic Dentistry	
Childhood Deaths and Homicides	
Homicides in Hospitals	
Pharmacology of Death	

D.C. Sniper Serial Murder review	
Forensic Investigations	
BTK Killer Serial Murder review	
Forensic Video Investigations	
Forensic Anthropology	
Forensic Psychology	
Medgar Evers Murder review	
 Excited Delirium - In Custody Deaths	 03/2007
California Homicide Investigators Association	03/2007
Photo Line-Ups vs. Sequential Double Blind Line-Ups	
Homicide Reviews	
Undercover Homicide Investigations	
 International Homicide Investigators Association	 09/2007
14 th Annual Symposium	
California Homicide Investigators Association Conference	03/2008
State of the Drug Cartels in Mexico	
Shooting Dynamics, Force Science Institute	
Case Reviews	
 Public Agency Training Council	 12/2008
Use of Deadly Force	
Officer Involved Shootings	
 Institute for the Prevention of In-Custody Deaths	 04/2010
Arrest-Related Deaths Investigator Program	
 Nevada Coalition against Sexual Violence	 02/2011
CSI Effect: Maximizing the Potential of Forensic DNA	
 Public Agency Training Council	 12/2011
Cold Case Investigations	
Crime Scene Investigations	
Case and Courtroom Preparation	
Deadly Force Investigations	
Domestic Violence Murders	

Training Given

CLASSES TAUGHT

Gangs in Clark County
Gang Trends in Southern Nevada
Narcotics
Gang Awareness
Gangs in the Millennium
Officer Involved Shootings
Death Scene Investigations
Interviews and Interrogations
LVMPD Homicide Investigations
Intermediate Detective School

GROUPS INSTRUCTED

LVMPD Police Officer=s Academies
LVMPD Police Officer=s Lateral Academies
LVMPD Police Officer In-Service Training
LVMPD Citizens Academies
LVMPD Youth Citizens Academy
LVMPD Cadet Training
Nevada Sheriffs Association
Nevada POST Academy Training
UNLV, CCSD and University Of Phoenix Graduate and Undergrad Classes
Nevada Gang Investigators Association Conference
Nevada Police Accreditation Coalition
National CALEA Conference
Adult and Juvenile Parole and Probation
Las Vegas Security Officer Workshops
Nevada Dare Association Conference
KCEP Public Radio Talk Show
Culinary Workers Union Seminar
Numerous Teachers and Student Groups in Clark County
Numerous Other Civic and Church Groups

ARTICLES WRITTEN

Co-Author'd AGang Trends in Clark County 2000@ article published in the
LVMPD Gang Crimes Section paper AGang Busters@.
Co-Author'd ABlack Gang History in Clark County@ articles written with

Det. R. Wilson.

Books and Articles Read

Bureau of Alcohol, Tobacco and Firearms. Crips and Bloods Street Gangs 1989
Los Angeles Gangs Brief History African-American Gangs by Alejandro Alonso 1997
National Law Enforcement Institute, Inc. National Gang Update 1996
A.L.A. Style@ Los Angeles County Sheriff=s Office, Street Gang Manual 1993
AMonster@ The Autobiography of an LA Gang Member by Sannyika Shakur AKA Scott, Cody.
The Reid Technique of Interview and Interrogation by John Reid and Associates
Practical Homicide Investigations by Vernon Gebreth
Gunshot and Stab Wounds A Medical Examiners View by Barbara Clark Mims Assoc. Forensic Services, U.S. Department of Justice.
Federal Resources on Missing and Exploited Children, Federal Agency Task Force.
Forensic Anthropology by Dr. Sue Black, Consultant Forensic Anthropologist University of Glasgow and Director of Centre for International Forensic Assistance (CIFA).
Forensic Archaeology by Professor Margaret Cox, School of Conservation Sciences, Bournemouth University.
Officer-Involved Shootings and Use of Force, David Hatch, Practical Investigative Techniques.
Sex-Related Homicide and Death Scene Investigations, Vernon Geberth.

Gang Experience

Experience reference Street Gangs in Clark County.
Speak to gang members on a daily basis.
Thousands of field contacts with gang members.
Over two hundred investigations into gang related crimes.
Testified in Justice and District Court on Gang Related Cases.
Certified as a AGang Expert@ on several occasions in Justice and District Court.
Numerous interviews of Gang Members, Custodial and Non-custodial.

Homicide Experience

Conducted the Investigation of 158 Murders
Conducted the Investigation into 61 Officer Involved Shootings with 107 shooting officers
Involved in the Investigation of more than 421 Homicides

32

1 CODE
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. CR11-1718

11 v.

Dept. No. 4

12 CESAR VILLAGRANA, (A)
and
13 ERNESTO MANUEL GONZALEZ (B)

14
15 Defendants.

16
17 ADDENDUM TO MOTION FOR ORDER ADMITTING GANG ENHANCEMENT EVIDENCE
AND TESTIMONY

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 ADDENDUM TO MOTION FOR ORDER
21 ADMITTING GANG ENHANCEMENT EVIDENCE AND TESTIMONY.

22 ///

23 ///

24 ///

25 ///

1 This addendum is being filed due to the size of the motion
2 and exhibits for e-filing purposes.

3 AFFIRMATION PURSUANT TO NRS 239B.030

4 The undersigned does hereby affirm that the preceding
5 document does not contain the social security number of any person.

6 Dated this 26th day of November, 2012.

7 RICHARD A. GAMMICK
8 District Attorney
 Washoe County, Nevada

9
10
11 By /s/ Karl S. Hall
12 KARL S. HALL
 Chief Deputy District Attorney

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

DAVID Z. CHESNOFF, ESQ.
RICHARD A. SHCONFELD, ESQ.
CHESNOFF & SCHONFELD
520 S. FOURTH STREET, 2ND FLOOR
LAS VEGAS, NV 89101

DATED this 26th day of November, 2012.

/s/ LORI DELANO
LORI DELANO

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6

MAIZIE W. PUSICH, C.D.P.D.
WASHOE COUNTY PUBLIC DEFENDER'S OFFICE
350 S. CENTER STREET, 5TH FLOOR
P.O. BOX 30083
RENO, NV 89520

BIRAY DOGAN, D.P.D.
WASHOE COUNTY PUBLIC DEFENDER'S OFFICE
350 S. CENTER STREET, 5TH FLOOR
P.O. BOX 30083
RENO, NV 89520

/s/ LORI DELANO
LORI DELANO

INDEX OF EXHIBITS

EXHIBIT 11 Arizona Department of Public Safety
Case Number 2010-039100. August 21, 2010
Number of Pages: 284

EXHIBIT 12 Santa Cruz Sheriff's Office
Case Number 1102482. March 17, 2011
Number of Pages: 384

EXHIBIT 13 Operation Simple Green Takedown
Investigation Number BNE-R12011-00087
Number of Pages: 12

EXHIBIT 14 Curriculum Vitae of:
Detective Les S. Skelton - GIITEM
Don Fieselman - Las Vegas Metropolitan Police
Department
Jeffrey Simpson - Santa Cruz County Sheriff's Office
Eric Bennett - San Bernardino Police Department
Jorge Gil-Blanco
Number of Pages: 34

FILED

Electronically

11-26-2012:12:08:42 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3366076

EXHIBIT 11

PART 1

EXHIBIT 11
PART 1

675

Yavapai County, Arizona

August 21, 2010

2010-039100

2010-039208

Yuma Police Report Notes

Zavos Report is very informative

Supp #20 Raiss: is also very informative re: shell casings recovered

Supp #30 Surack: interview of Blankanship

Supp #32 Page: Crime scene diagrams

2670 North Yuma Drive is the HA house Casings were found in the front yard; different calibers;

Vagos bike out front -

HA was shooting at that house from a Harley dumped in front of the house.

Azevedo was the informant that provided information about how the gun fight started and he was working with law enforcement.

~~2661 N. Yuma Dr. is the HA hang out.~~

VAGOS house

2920 N. Yuma St. is where all the Vagos were staying Michael Diecks house

Numerous items of Vagos paraphernalia including guns, ammo, cuts, pot, etc.

Just like Gonzalez house: Report done by Det. J. Viles GIITEM

Bikes in the road looked like vagos bikes (stickers)

VAGOS (Church meeting)

Blankanship, Robert - Said the HA's shot at them as they drove by HA house;

He was hit in the knee; He's a member out of Vegas.

Micheal Diecks (2920 N. Yuma Rd "Maddog")

James P. Sabon

Ruben Lopez - President (kickstand) Was shot in the stomach (shot his own bike-stated that they were shot at as they drove by.

Aurelio Figueroa (aka 45) VP from Vegas. Said they were driving by 2670 when the HA started shooting at them and they shot back.

Shawn Fabretti

Carlito Woodley (Wednesday) Sgt. at arms

Danny Urquilla (Danny Loco) Was going to turn in his cuts; drove by was shot at and laid his bike down; gave wife's gun to Kickstand; Justin picked up wife's .357;

TopHat and Coyote was there at the house when he got back

Josh Ealey (Texas)

Justin Kaufmann? Sgt. at Arms

Shawn Pratt

William Pizel - Top Hat

Vagos arrested

Josh Ealey 2) Joshua Mead 3) Darryl Reed 4) William Pizel 5) Robert Blankenship 6) James Saban 7) Justin Kaufmann 8) Michael Diecks 9) Brian Apfel 10) Jess Flores 11) Shawn Pratte 12) David Wallusz 13) Ruben Lopez 14) Thomas Darling 15) Danile Urquilla 16) Aurelio Figueroa 17) Jermie Murphy

At this time no further

HELLS ANGELS 2670 N. Yuma Numerous guns and paraphernalia found inside the house

Kiley Hill – shooting according to Lopez (Zavos Report)

Larry Scott – construction bike?

Michael Koepke – bike on premises; shooting according to Lopez

John Bernard – shooting according to Lopez

Juan Marchelli – bike on premises

Warren Kuntz - bike on premises – gives statement Supp# 33 (was in the house when shooting started) Mentioned the Kingman incident which may have caused problems.

Bruce Schweigert

Byron Ellis – bike on premises

Kevin Christenson - Had gunshot wound to abdomen

Teddy Toth : Was a clubhouse

Robert Kittredge

2 Vagos shot and one HA so far

Whites report lists a lay witness who said vagos were outside of HA club house; saw a bike down and then HA started shooting;

Arizona Department of Public Safety
2010-039100

This is a supplemental report to Yavapai County Sheriff's Office report number 2010-030743 authored by Detective D. Zavos.

On August 21, 2010 at approximately 1228 hours, I, Arizona Department of Public Safety, Gang and Immigration Intelligence Team Enforcement Mission, Detective L. Skelton #4953 was called at home by Arizona Department of Public Safety Sergeant J. Milam in reference to a shooting involving the Hells Angels and Vagos motorcycle gangs in Chino Valley, Arizona. Sergeant Milam requested I respond to the area and assist detectives with the Yavapai County Sheriff's Office with any info they may need in relation to members of both gangs.

At approximately 1512 hours, I arrived at the south end of the scene on North Yuma Drive. As I approached I noticed a large police presence with many members of various S.W.A.T. team's position as scene security carrying assault style weapons and wearing helmets and heavy body armor. I made contact with Yavapai County Sheriff's Office Sergeant D. Raiss, Commander S. Mascher and they began removing officers from within the crime scene.

As I walked from the South end of the scene to the North, I observed two motorcycles lying on their right sides facing Northbound. The motorcycles were to the East of what I know to be the old Skull Valley chapter clubhouse of the Hells Angels gang and currently occupied by Theodore Toth, the ex-president for the Skull Valley chapter of the Hells Angels gang.

As I continued walking Northbound on Yuma Drive I noticed several motorcycles parked in the "driveway" area of 2670 North Yuma Drive. The driveway entrance to the residence was sealed off with yellow crime scene tape. I also saw several people I recognized to be members, prospects or hang-a-rounds for the Hells Angels gang. The first Hells Angels gang member I recognized by sight was Michael Trevor Koepke, DOB 9-28-81, who resides at 3270 North Bumblebee Drive, Apartment A, in Prescott Valley, Arizona. "Mike" had his haircut in the style of a mohawk and was wearing a green t-shirt with a Hells Angels death head on the back. When I approached Mike he smiled at me and looked away. I did not make contact with Mike. (Photo to right.)



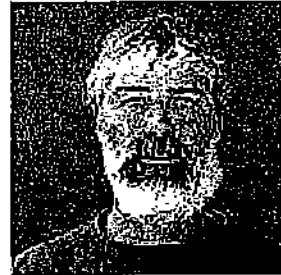
The next Hells Angels gang member I recognized was Theodore John Toth, DOB 7-8-1947, of 2670 North Yuma Drive, Chino Valley, Arizona. (Photo to right.) Theodore is known as "Teddy" and was sitting on a scooter wearing oxygen tubes. I approached Teddy and said hi to him and he responded with the same. I asked Teddy how his health was and he said it wasn't too good. While speaking with Teddy I noticed he had a Hells Angels death head gang tattoo on his left forearm. Teddy asked when he would be able to return to his house and I told him it would be awhile. I then continued



Arizona Department of Public Safety
2010-039100

walking northbound on North Yuma Drive.

As I continued to walk north, a uniformed officer was walking Southbound with a Hells Angels hang-around gang member I recognized as Bruce Andrew Schweigert, DOB 12-12-1963 of 2361 South Rio Verde Drive in Cottonwood, Arizona. (Photo to right.) I've seen and spoken with Bruce at several Hells Angels "parties" and events. He would usually be posted as security for the gang looking for surveillance units. That is a typical "job" for a hang-a-round or prospect for the gang.



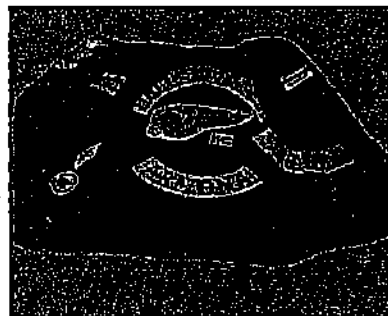
Further North on Yuma Drive I saw a Silver Chevy truck with a motorcycle parked to the rear of it. In the area immediately around the truck were several spent shell casings lying on the roadway. I continued to walk North to a Black Land Rover that was parked next to a patrol car with its emergency light's activated. Next to the patrol car were two motorcycles with Vagos gang related stickers attached to them.

I then walked to 2920 North Yuma Drive and saw there were approximately fifty people in the front yard of the residence and many of them were wearing Vagos gang related clothing such as "cuts" or green articles of clothing.



"Cuts" are what the biker community refers to as their leather or denim vests they wear to show their affiliation with a certain gang or group. (See photos to right.)

While at 2920 North Yuma Drive I saw several members of the Vagos gang I recognized. The area was being secured by officers and detectives from various police agencies.



I then walked back to the South end of the scene to meet with command staff for investigative assignments.

At approximately 1539 hours, I noted rain began falling in the area of the crime scene.

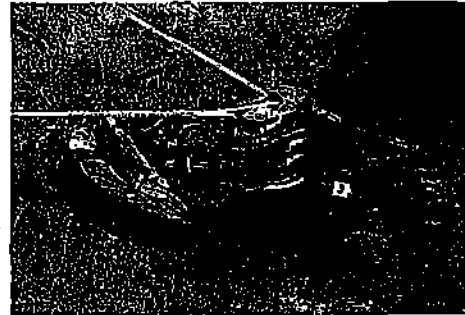
At approximately 1644 hours, I noted the rain stopped falling in the area of the crime scene.

At approximately 1640 hours, a briefing for all involved was held at the command post to brief all involved with the investigation of the current information and assign details for the investigation.

Arizona Department of Public Safety
2010-039100

At approximately 1725 hours, the briefing was completed and I was assigned to assist the lead investigator, Detective D. Zavos, from the Yavapai County Sheriff's Office with the investigation and provided support for the gang involvement. Also assigned to assist Detective Zavos with the investigation was GITEM Detective J. Morris.

At approximately 1733 hours, I checked into the South end of the crime scene and watched as photographs were taken of the scene by J. Nelson of the Yavapai County Sheriff's Office. After photographs were taken Detective Zavos, Detective Morris and I began checking North Yuma Drive for evidence.

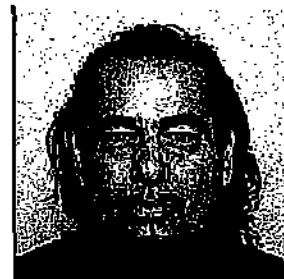


At approximately 1743 hours, I discovered a bullet hole in the rear tire of Arizona D666MC and pointed it out to Detective D. Zavos.

At approximately 1800 hours, Detective Zavos received permission from the property owners at 2661 North Yuma Drive to search their property for evidence from the shooting. Detective Zavos obtained the property owners information. No evidence was located.

At approximately 1820 hours, Detective Zavos, Detective Morris and I exited the North end of the scene and checked out of the scene.

At approximately 1829 hours, Detective Zavos, Detective Morris and I arrived at 2920 North Yuma Drive and checked in with the officer maintaining the crime scene log. I made contact with Auerelio Figueroa, DOB 2-23-1964 who is known as "45." (See photo to right) As of the time of this investigation, Auerelio Figueroa is the Vice President of the Tri-State Vagos gang and has been a point of contact for law enforcement. I asked Auerelio Figueroa if he would talk to me about what occurred. Auerelio Figueroa agreed and we walked away from the front of the residence for privacy.



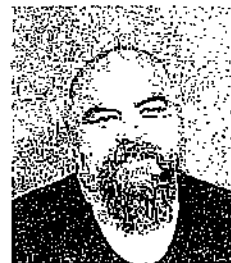
At approximately 1838 hours, Auerelio Figueroa was advised of the Miranda rights. Auerelio Figueroa agreed to speak with me about the shooting. The conversation was audio recorded by Detective Zavos. Refer to Detective Zavos' report for a summary of the interview and transcription.

At approximately 1905 hours, Detective Zavos, Detective Morris and I left 2920 North Yuma Drive and returned to the command post established at the South end of the crime scene. I remained there while evidence was being collected by Yavapai County Sheriff's Office Josh Nelson and secured as evidence.

Arizona Department of Public Safety
2010-039100

At approximately 2226 hours, Detective Zavos, Detective Morris and I returned to 2920 North Yuma Drive and entered the residence while a search warrant was being executed by GITEM Sergeant F. Stewart. I walked through the residence looking at various Vagos gang related items which include "cuts." Our purpose at the search warrant was to interview victims, suspects and witnesses to the shooting which occurred earlier and ensure that gang related evidence was collected. Once a front bedroom was searched and the evidence collected we began interviewing victims, suspects and witnesses. The first room cleared which we used to conduct interviews was the room on the Northwest part of the residence. Detectives conducting the search warrant indicated the room was clear of any evidence and available for our use.

Prior to beginning the interviews I spoke with Manny Pesqueira, DOB 8-21-70, of 286 West Palamino in Chandler, Az. Manny's moniker for the gang is "Arizona Manny." Manny told me he was at 2920 North Yuma Drive for his birthday party when everything happened.



The first person to be interviewed was Cindi Jean Reed, DOB 12-18-1961 of 4124 Helen Avenue in Las Vegas, Nevada and a phone number of 702-340-2728.

At approximately 2302 hours, Detective Zavos advised Cindi Reed of the Miranda warning. Cindi stated she understood her rights and answered questions. During the interview, Cindi indicated she was at the party with her husband, Darryl Reed who is a four year patched member of the Vagos. Darryl Reed's moniker is "Moses" and is believed to be the Treasurer for the Tri-State Vagos.

For a more detailed synopsis of the interview see Detective D. Zavos' report.

At approximately 2312 hours, the interview with Cindi Reed was completed.

The next person to be interviewed was Margarita Lynn Kleinman, DOB 7-1-78 of 2657 Heritage Court in Las Vegas, Nevada and a phone number of 702-677-6296.

At approximately 2313 hours, Detective Zavos advised Margarita Lynn Kleinmann of the Miranda warning. Margarita stated she understood her rights and answered questions.

During the interview Margarita indicated she was at the Vagos party with Shawn Fabretti, DOB 11-19-1965 of 3072 Leonetti, Las Vegas, Nevada. Shawn Fabretti is a full patched member of the Tri-State Vagos and uses the moniker "Dino." (See picture to right.)



For a more detailed synopsis of the interview see Detective D. Zavos' report.

**Arizona Department of Public Safety
2010-039100**

At approximately 2319 hours, the interview with Margarita Kleinmann was completed.

The next person to be interviewed was Martha Guadalupe Rojas, DOB 11-12-1972 of 3170 East Flamingo #108 in Las Vegas, NV with a phone number of 702-232-4112.

At approximately 2313 hours, Detective Zavos advised Martha Guadalupe Rojas of the Miranda warning. Martha stated she understood her rights and answered questions.

During the interview Martha indicated she was with "45," Auerelio Figueroa.

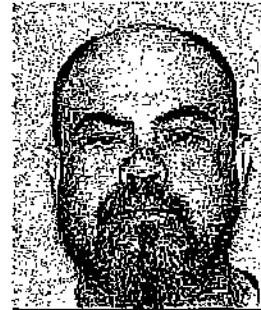
For a more detailed synopsis of the interview see Detective D. Zavos' report.

At approximately 2322 hours, the interview with Martha Rojas was completed.

The next person to be interviewed was Michelle L. Murphy, DOB 03-20-1981 of 6357 High Sierra Avenue in Las Vegas, NV with a phone number of 702-401-6267.

At approximately 2322 hours, Detective Zavos advised Michelle L. Murphy of the Miranda warning. Michelle stated she understood her rights and answered questions.

During the interview Michelle indicated she was at the Vagos party with Carlito Woodley, DOB 8-29-1966, of 8700 Grazing Hill, Las Vegas, Nevada who is a member with the Tri-State Vagos and has claimed to be the Vice President. Carlito Woodley's moniker with the gang is "Wednesday." Michelle indicated Carlito Woodley is currently the Sergeant at Arms. (See photo to right)



For a more detailed synopsis of the interview see Detective D. Zavos' report.

At approximately 2329 hours, the interview with Michelle Murphy was completed.

The next person to be interviewed was Janine Ann Urquilla, DOB 6-15-1963, of 3850 West Elgin Street in Chandler, AZ. Janine indicated her cell phone number is 602-696-4762 and her home phone number is 480-775-9069.

At approximately 2331 hours, Detective Zavos advised Janine Ann Urquilla of the Miranda warning. Janine stated she understood her rights and answered questions.

During the interview, Janine indicated she was at the party with her husband, Danny Urquilla, DOB 1-20-1960, of 3850 West Elgin Street in Chandler, AZ. Danny's moniker in the gang is "Danny Loco" and his status was Treasure. However, Danny's purpose for being at the party was to turn in his cuts. (See photo to right.)



**Arizona Department of Public Safety
2010-039100**

For a more detailed synopsis of the interview see Detective D. Zavos' report.

At approximately 2350 hours, the interview with Janine Urquilla was completed.

The next person to be interviewed was Emily Sanchez Vasquez of 2101 Eastern in Kingman, AZ. She indicated a phone number of 928-303-1466.

At approximately 2352 hours, Detective Zavos advised Emily Sanchez Vasquez of the Miranda warning. Emily stated she understood her rights and answered questions.

During the interview, Emily indicated she was at the party with Joe Herrera who was with the "Green Destiny Car Club."

For a more detailed synopsis of the interview see Detective D. Zavos' report.

At approximately 2358 hours, the interview with Emily Sanchez Vasquez was completed.

August 22, 2010

The next person to be interviewed was Natalie N. Schieber, DOB 8-1-80 of 90 Old Mine Road in Pahrump, NV. She indicated her phone number was 775-291-9415.

On August 22, 2010 at approximately 0001 hours, Detective Zavos advised Natalie N. Schieber of the Miranda warning. Natalie stated she understood her rights and answered questions.

During the interview Natalie indicated she was at the party with Joshua Ealey, DOB 1-28-1983 of 4670 Royal Ridge Avenue, Las Vegas, NV. Joshua is a patched member of the Vagos gang. (See picture to right.)



For a more detailed synopsis of the interview see Detective D. Zavos' report.

At approximately 0010 hours, the interview with Natalie Schieber was complete.

The next person to be interviewed was Renee D. Bermudez, DOB 11-4-1971, of 3449 North Jewel in Kingman, AZ with a phone number of 909-297-0421.

At approximately 0011 hours, Detective Zavos advised Renee D. Bermudez of the Miranda warning. Renee stated she understood her rights and answered questions.

During the interview Renee indicated she was at the party with Joseph Herrera and Emily Sanchez Vasquez.

Arizona Department of Public Safety
2010-039100

For a more detailed synopsis of the interview see Detective D. Zavos' report.

At approximately 0015 hours, the interview with Renee D. Bermudez was completed.

The next person to be interviewed was the home owner of 2920 North Yuma Drive, Leslie Diecks, DOB 12-16-1967. Leslie indicated her phone number was 928-308-0761.

At approximately 0016 hours, Detective Zavos advised Leslie Diecks of the Miranda warning. Leslie stated she understood her rights and answered questions.

During the interview Leslie indicated she was hosting the party with her husband and current member of the Tri-State Vagos gang, Michael Diecks, DOB 5-21-1964. Mike uses the moniker of "Mad Mike" and "Mad Dog." (See photo to right.)



For a more detailed synopsis of the interview see Detective D. Zavos' report.

At approximately 0031 hours, the interview with Leslie Diecks was completed.

The next person to be interviewed was Tanya Kaufmann, DOB 3-15-1985, of 2306 North Wilbur Circle in Mesa, AZ. Tanya indicated her phone number is 623-760-3889.

At approximately 0034 hours, Detective Zavos advised Tanya Kaufmann of the Miranda warning. Tanya stated she understood her rights and answered questions.

During the interview Tanya indicated she was at the party with her husband Justin Kaufmann, DOB 3-26-1982 and she also stated they were there for "Church." Justin is a patched member of the Vagos and is currently the Phoenix area Sergeant at Arms. (See photo to right.)



For a more detailed synopsis of the interview see Detective D. Zavos' report.

At approximately 0041 hours, the interview with Tanya Kaufmann was completed.

The next person to be interviewed was Heather Brunelle, DOB 8-4-1972 of 5469 Palisades, Newward Quad, NV. Heather indicated her phone number is 602-446-0407.

At approximately 0043 hours, Detective Zavos advised Heather Brunelle of the Miranda warning. Heather stated she understood her rights and answered questions

**Arizona Department of Public Safety
2010-039100**

Heather indicated she was at the Vagos party with her boyfriend and current member of the Vagos gang, Shawn Pratte, 5-28-1975. Shawn is known by the moniker "Fuzzy."



For a more detailed synopsis of the interview see Detective D. Zavos' report.

At approximately 0047 hours the interview with Heather was completed.

After the interview with Heather Brunelle it was brought to our, (Det. Zavos, Morris and Skelton's) attention that members of the Vagos were now sitting in the front yard, outside of the room where the interviews were being conducted. Because of this we changed the interview room to the room just across from the room we had been conducting interviews in. Detectives conducting the search warrant indicated the room was clear of any evidence and available for our use.

The next person to be interviewed was Ruben Lopez, DOB 6-21-1967 of 4115 Carmine Street in Las Vegas, NV. Ruben indicated his phone number is 702-762-2785.

At approximately 0049 hours, Detective Zavos advised Ruben Lopez of the Miranda warning. Ruben stated he understood his rights and answered questions.

Ruben indicated he is a current full patched member of the Tri-State Vagos gang and holds the rank of President. Ruben is known by the moniker "Kickstand."



For a more detailed synopsis of the interview see Detective D. Zavos' report.

At approximately 0111 hours, the interview with Ruben Lopez was completed.

The next person to be interviewed was Auerelio Figueroa, DOB 2-23-1964 of 1716 North Ridge Circle in Mesa, AZ.

At approximately 0117 hours, Detective Zavos advised Auerelio Figueroa of the Miranda warning. Auerelio stated he understood his rights and answered questions. Auerelio was also advised of the Miranda Rights at 1838 hours, by Detective Zavos.



During the interview Auerelio indicated he was the Vice President for the Tri-State chapter of the Vagos gang. His moniker for the gang is "45." (See photo to right)

For a more detailed synopsis of the interview see Detective D. Zavos' report.

**Arizona Department of Public Safety
2010-039100**

At approximately 0124 hours, the interview with Aurereilo was completed.

The next person to be interviewed was Danny A. Urquilla, DOB 1-20-1960 of 3850 W. Elgin Street in Chandler, AZ.

At approximately 0125 hours, Detective Zavos advised Danny Urquilla of the Miranda warning. Danny stated he understood his rights and answered questions.



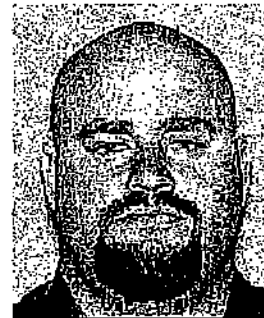
Danny indicated he came to the party with his wife and his reason for coming was to turn in his cuts. By doing this he would no longer be an active member of the Tri-State Vagos gang. Danny stated he was getting out of the club because he won't die for the club.

For a more detailed synopsis of the interview see Detective D. Zavos' report.

At approximately 0148 hours, the interview with Danny was completed.

The next person to be interviewed was Joshua E. Ealey, DOB 1-28-1983 of 90 Old Mine, Pahrump, NV with a phone number of 702-884-7300.

At approximately 0157 hours, Detective Zavos advised Joshua Ealey of the Miranda warning. Joshua stated he understood his rights and answered questions.



During the interview Joshua indicated he was at the Vagos party with his girlfriend Natalie Schieber.

For a more detailed synopsis of the interview see Detective D. Zavos' report.

At approximately 0208 hours, the interview with Joshua was completed.

The next person to be interviewed was William Bly Pizel, DOB 7-31-45 of 11610 Silver Spur in Dewey, AZ. William indicated he had two phone numbers, 928-772-4663 and 928-379-2200.

At approximately 0209 hours, Detective Zavos advised William Pizel of the Miranda warning. William stated he understood his rights and answered questions.



During the interview William indicated he was a member of the Vagos "Nomads" from California and he doesn't report to the officers in the Tri-State chapter of the Vagos gang. William is known by the moniker "Top Hat."

For a more detailed synopsis of the interview see Detective D. Zavos' report.

**Arizona Department of Public Safety
2010-039100**

At approximately 0221 hours, the interview with William was completed.

At approximately 0223 hours, it was brought to our, (Det. Zavos, Morris and Skelton's) attention that members of the Vagos were being placed under arrest for possession of marijuana and removed from the front of 2920 North Yuma Drive. This removed all subjects left to be interviewed from our location. Because of this we concluded conducting interviews on members and associates of the Vagos gang.

At approximately 0224 hours, I checked out of the search warrant location, 2920 North Yuma Drive.

Detective D. Zavos told Detective Morris and I that the search warrant on 2670 North Yuma Drive, the residence owned by Theodore Toth, would be conducted on August 22, 2010 at 1100 hours and the residence would be secured for the evening by officers in the command vehicle.

At approximately 0245 hours, I secured the scene for the evening.

August 22, 2010

On August 22, 2010 at approximately 1040 hours, I arrived at the command post across the street from 2670 North Yuma Drive. The yellow crime scene tape was still draped across the front access of the driveway. While waiting I was provided with a list of names of arrested Hells Angels gang members. The names provided are: Juan Marchelli, Warren Kuntz, Larry Scott, Robert Kittredge, John Bernard, Kilry Hill, Bruce Schweigert, Theodore Toth and Sandra Toth. Of the names provided the only one I wasn't familiar with was Juan Marchelli. Sandra Toth wouldn't be a member of the Hells Angels gang because she's female.

At approximately 1100 hours, all involved with executing the search warrant at 2670 North Yuma Drive were on scene. YCSO photographer J. Neilson entered the property at a time that is unknown to me to begin entry photographs. I stayed off the property until ready to begin searching the property.

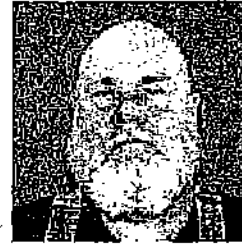
At approximately 1139 hours, I entered the curtilage at 2670 North Yuma Drive and begin searching the front yard for fired shell casings while entry photographs of the interior of the residence are being conducted.

At approximately 1207 hours, Sergeant D. Raiss formed a line search using detectives on scene to search the entire front yard.

At approximately 1228 hours, the line search is completed with no evidence located by me.

Arizona Department of Public Safety
2010-039100

At approximately 1229 hours, I begin searching a 1997 Harley Davidson motorcycle, bearing Arizona registration MCPM78, registered to Warren Spencer Kuntz, DOB 7-17-1951 of 2740 North Main Street in Flagstaff, Arizona. While conducting the search of the motorcycle I found gang indicia that consist of two sweat shirts with the death head artwork from San Jose and Orange County. Also located was cash, Hells Angels Nomads gang ledger and Hells Angels West Coast Officers Meeting gang notes for July 17, 2010.



Warren Kuntz is currently the Treasure for the Arizona Hells Angels Nomads gang. This is further supported by the ledger with gang members dues, fines and "out of club" status reported within the ledger. (Information contained within the ledger is explained further in this report.)

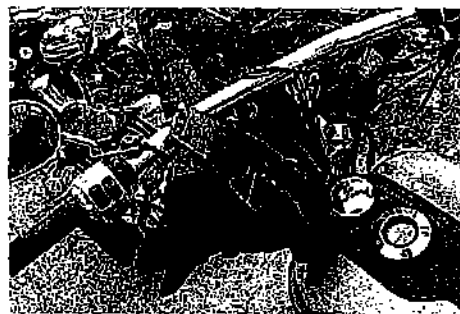
At approximately 1252 hours, I complete the search of Arizona MCPM78 owned by Warren Spencer Kuntz.

At approximately 1253 hours, the next motorcycle I searched was a 2006 Harley Davidson motorcycle bearing Arizona MC921Z, registered to Stacy L. Marchelli. While conducting a search of the motorcycle I found a Sonny Barger T-shirt, sling shot, red hoodie and a red hat. Sonny Barger is an icon within the Hells Angels gang and his shirts are often worn by members of the gang and the general public. Many of the Hells Angels wear clothing with the color red as the Hells Angels gang proudly boast "Red" or "Red and White" as the color that represents the gang.

These items were taken as evidence.

At approximately 1257 hours, I completed searching the 2006 Harley Davidson motorcycle bearing Arizona MC921Z.

At approximately 1257 hours, I began a 1997, Harley Davidson motorcycle bearing Arizona registration MC11Z9, registered to Byron Ellis of 1302 West Anderson in Phoenix, Arizona. While searching the motorcycle I discovered a holster fastened to the handlebar area and a rubber mallet attached to the down tube of the frame on the right side of the motorcycle.



It's common for members of motorcycle gangs to carry hammers, usually ball peen style, contained within their cuts to be used as weapons. Some Hells Angels gang members have started carrying various hammers attached to the frame of the motorcycle as described and pictured here.

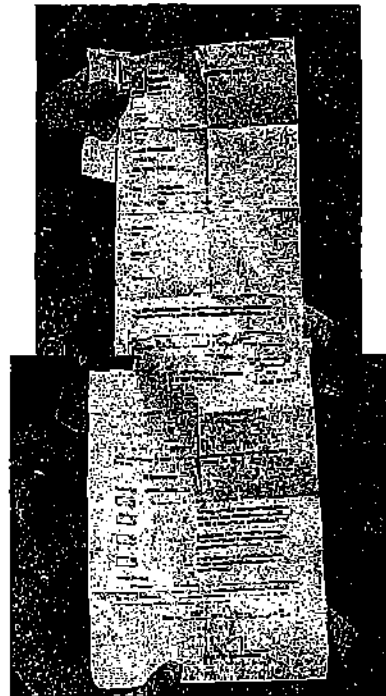


Arizona Department of Public Safety
2010-039100

These items were taken as evidence.

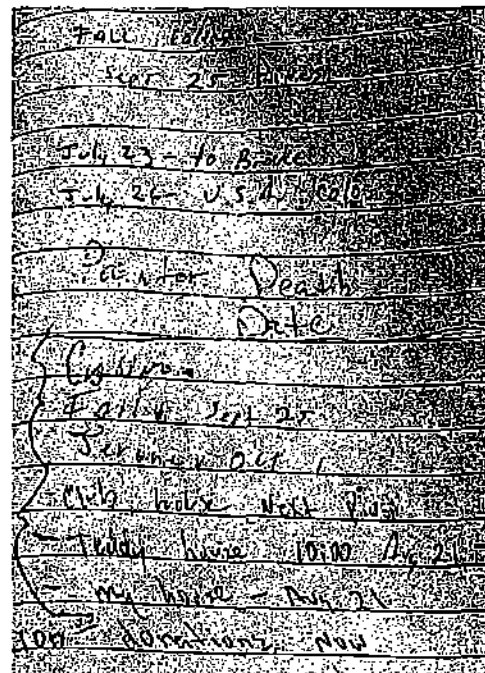
At approximately 1259 hours I completed searching the motorcycle bearing Arizona registration MC11Z9.

At approximately 1301 hour, my attention was drawn to documents left by the front gate to the entrance of the property. The documents were in a red notepad often carried by members of the Hells Angels gang and other miscellaneous paperwork with the notepad. One document was an instruction permit issued to Larry Dean Scott Jr., DOB 4-9-1963. Also located with the instruction permit was a Superior Court order restoring civil rights to carry a firearm with Larry Scott listed as the defendant.



I know Larry Dean Scott Jr., DOB 04-09-1963 of 1528 North Road 1 E, Chino Valley, Arizona to be a Prospect for the Hells Angels gang. Larry Scott is known by the moniker "Scotty."

While looking through the notepad the entry that stuck out to me was "Painter Death Date." This note is inline with current Hells Angels gang events for the Nomads charter. "Painter" is also the moniker for Jeffrey Beckett, DOB 12-13-1968, of 3005 North Stewart Street in Kingman, AZ and is a current patched member of the Vagos gang.



This page also has a note to further indicate the note is from Larry Dean Scott Jr. The entry on the second line to the bottom states, "-My house - Aug. 21." A similar entry is also found in a note pad belonging to John Anthony Bernard, DOB 08-25-1966 of 13413 North 33rd Street in Phoenix, Arizona. John Bernard is currently a Prospect for the Hells Angels gang from the Phoenix charter. In John Bernard's notepad the entry indicates, "Fri church 8:00 PM Scotty's."

The notepad and various items located around it were taken as evidence.

At approximately 1313 hours, I completed searching the items found around Larry Dean Scott's notepad.

Arizona Department of Public Safety
2010-039100

At approximately 1318 hours, I entered the residence located at 2670 North Yuma Drive through a door on the north side of the residence that enters into a food pantry. I took a walk through the house to see what would be required to complete the search. All rooms were marked with a letter to indicate where evidence or gang indicia was located and seized as evidence.

At approximately 1345 hours, all room in the residence were marked using the alphabet.

At approximately 1346 hours, Detective Morris and I began searching room "A."

At approximately 1349 hours, the search of room "A" was completed.

At approximately 1349 hours, the search of room "B" started. This room, the kitchen, was searched by Detective Zavos, Morris and I.

At approximately 1351 hours, I located a Hells Angels gang cup in the cabinet, brass knuckles on the refrigerator and a photograph of Theodore Toth on the refrigerator as well. All items were photographed and collected as evidence.

At approximately 1404 hours, the search of room "B" was completed.

At approximately 1405 hours, I began searching room "C." This room is the living room next to the kitchen.

At approximately 1407 hours, I located cash in Theodore Toth's wallet, a motorcycle key, an old photo of an airplane with "Hells Angels" on the photo, a death head displayed in the media center and a red "Angels" wood design.

At approximately 1413 hours, rooms "C" and "D" are completed. Room "D" was searched by Detective J. Morris.

At approximately 1414 hours, room "F" is searched by Detective J. Morris. Room "J" is searched by me. Both are bathrooms. Room "F" is a hall bathroom, room "J" is the bathroom in the master bedroom.

At approximately 1416 hours, Detective Morris tells me he's completed searching room "F."

At approximately 1417 hours, I located a picture of a death head on the bathroom wall.

At approximately 1420 hours, I located a female Hells Angels gang support shirt hanging in the bathroom. All items located in room "J" are photographed and collected as evidence.

At approximately 1421 hours, I completed searching room "J."

**Arizona Department of Public Safety
2010-039100**

At approximately 1416 hours, Detective J. Morris begins searching room "K."

At approximately 1423 hours, I began assisting Detective Morris with searching room "K."

At approximately 1426 hours, the search of room "K" was completed.

At approximately 1428 hours, I began searching room "L."

At approximately 1429 hours, the search of room "L" was completed.

At approximately 1430 hours, I began searching room "N."

At approximately 1432 hours, I completed searching room "N."

At approximately 1432 hours, I began searching room "O."

At approximately 1440 hours, I located to death head pictures.

At approximately 1447 hours, Detective J. Morris indicated to me he started searching room "P."

At approximately 1449 hours, Detective J. Morris indicated he completed searching room "P."

At approximately 1457 hours, Department of Public Safety, GITEM Sergeant R. Milam arrived on scene to assist with the search and was briefed as to the status of the investigation.

At approximately 1502 hours, I completed searching room "O." All items located in room "O" were photographed and collected as evidence.

At approximately 1503 hours, I began searching room "M." While searching room "M" I located miscellaneous Hells Angels gang related paperwork and memorabilia.

At approximately 1522 hours, I completed searching room "M." All items located in room "M" were photographed and collected as evidence.

At approximately 1523 hours, Detective D. Zavos searched the attic of the residence. Located in the attic was an extensive collection of Hells Angels gang related paraphernalia to include; T-shirts, photographs, posters, plaques, framed Hells Angels gang patches and charter photos.

At approximately 1700 hours, the search of the attic was completed. All items located in the attic were photographed and collected as evidence.

Arizona Department of Public Safety
2010-039100

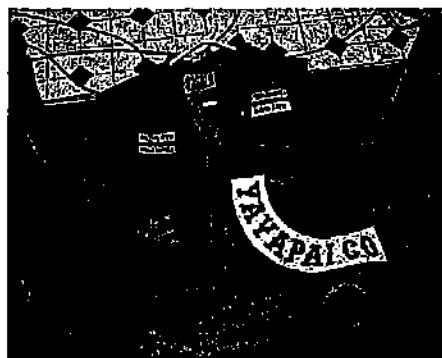
At approximately 1701 hours, I began to search room "E." Located in room "E" were three sets of fully patched cuts and one prospect set of cuts.

A full patch contains the top rocker, "Hells Angels," bottom rocker, "Arizona," the "death head" and the "MC" patch.

Prospect cuts have the bottom rocker, "Arizona," and the "MC" patch.



The cuts to the right I recognize as Michael Koepke's. On the left side of the cuts (as worn) at the top are "flashes" indicating Michael Koepke holds the position of Sergeant at Arms for the Nomad chapter of the Hells Angels gang. Below the flashes is a "YAVAPAI CO" side rocker. This indicates to me the Hells Angels gang is active in Yavapai County. This is significant since the Hells Angels Nomad chapter/clubhouse is/was located at 1611 North West Street in Flagstaff, Arizona in Coconino County. This side rocker along with other indicators, indicate that the Hells Angels gang may have been in the process of re-starting the "Skull Valley" chapter.



The Skull Valley chapter of the Hells Angels gang was frozen by the Hells Angels gang after members, including Theodore Toth were convicted on charges related to the investigation known as "Black Biscuit" where the Hells Angels gang was investigated by the Bureau of Alcohol, Tobacco, Firearms and Explosives. Theodore Toth's last day on probation from charges related to that investigation was August 20, 2010 and his probation officer was Brett Wrons, 928-774-3095 Extension 21.

The "flashes" on the right side of the cuts (as worn) are a "filthy few" and "Hells Angels." The filthy few flash is earned for committing a crime or violent act against another person. The Hells Angels gang flash is a common flash for members to display on their cuts.

The cuts to the right with the fringe on them are Theodore Toth's. On his cuts are various death head



Arizona Department of Public Safety
2010-039100

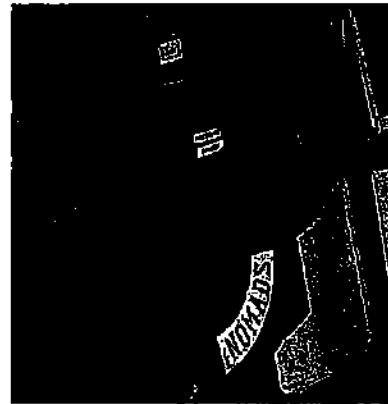
patches which members can purchase and display. On the right side of the cuts (as worn) is a "Filthy 666 Few" flash. The "666" represents the sixth letter of the alphabet, the letter "F" or "Filthy Few Forever."

Below that is a black and white "Dequiallo" flash which indicates the wearer committed an act of violence towards a person with authority or resisted arrest violently. There are only three known wearers of the "Dequiallo" patch in Arizona. Theodore Toth is one of them.

The second set of Theodore Toth's cuts have only the "Filthy 666 Few" and "Dequiallo" flash.

The fourth set of cuts belong to Kevin E. Christensen, DOB 07-04-1960 of 3301 East Ames Avenue in Kingman, Arizona. This set of cuts are prospect cuts.

The "flash" on the left side (as worn) of the cuts indicate that the member of the gang is in "prospect" status by displaying the prospect patch. Below the prospect patch is a small flash indicating "Nomads." Further below is a "Nomads" side rocker which indicates, along with displaying the "Arizona" bottom rocker on the back of the cuts that he is prospecting for the Arizona Nomads chapter of the Hells Angels Gang.



At approximately 1713 hours, a phone, motorcycle keys and a poster were located in room "E."

At approximately 1719 hours, I completed searching room "E." All items were photographed and collected as evidence.

At approximately 1720 hours, Detective Zavos, Morris and I began searching room "H," the master bedroom.

At approximately 1724 hours, I located various Hells Angels gang pins, papers, T-shirts, photographs, phone, and Theodore Toth's old "president" and "Skull Valley" flash.

At approximately 1743 hours, I completed my searching of room "H" while Detective Morris completed the closet. All items were photographed and collected as evidence.

At approximately 1744 hours, I began searching room "G." As I entered the room I observed several bullets on the floor. These items were to be collected as evidence.

At approximately 1800 hours, I suspended the search of room "G" for a dinner break.

At approximately 1812 hours, I continued searching room "G."

**Arizona Department of Public Safety
2010-039100**

Located in the room was a tower style computer on the floor below the desk and a laptop style computer in a drawer. Also located were several Hells Angels related books.

At approximately 1841 hours, I completed the search of room "G." All items were photographed and collected as evidence.

At approximately 1842 hours, I began searching room "R," the garage.

At approximately 1844 hours, I observed a motorcycle gas tank with a death head logo on it.

At approximately 1849 hours, Detective J. Morris indicated he began searching the vehicle "S."

At approximately 1852 hours, I completed my search of room "R," the garage.

At approximately 1852 hours, I began searching room "T." Room "T" didn't have an alphabet card assigned to it and was a shed just outside the garage.

At approximately 1853 hours, Detective J. Morris indicated he completed searching vehicle "S" and was out of room "R," the garage.

At approximately 1853 hours, I completed searching room "T."

While standing outside the garage and discussing the location where bullet holes were that entered room "Q," the room above the garage we (Detective Zavos, Morris and Skelton) decided to re-check room "Q" for an unaccounted for projectile.

At approximately 1857 hours, I began searching the ground for a projectile.

At approximately 1859 hours, I located a projectile on the ground near the west wall.

The projectile was photographed and collected as evidence.

At approximately 1923 hours, Detective Sergeant R. Milam, Detective J. Morris, Zavos and I exited the property and this concluded my involvement with physically searching 2670 North Yuma Drive in Chino Valley, Arizona.

At approximately 2032 hours, I arrived at the Yavapai County Sheriffs Office, Eastern Detention Bureau located at 2830 N Commonwealth Drive, Suite 105 in Camp Verde, Arizona. The purpose was to interview shooting victim and Hells Angels gang member Kevin E. Christensen.

At approximately 2043 hours, Detective Sergeant R. Milam, Detective J. Morris, Zavos and I were escorted to a secure room to interview Kevin Christensen.

Arizona Department of Public Safety
2010-039100

At approximately 2050 hours, Kevin Christensen was brought into the room. Detective Zavos advised Kevin Christensen of the Miranda Right's.

At approximately 2051 hours, Kevin Christensen stated he understood his right's and requested an attorney. No questions were asked.

At approximately 2052 hours, Kevin Christensen was removed from the room by detention officers.

This completed the investigation for August 22, 2010.

September 2, 2010

On September 2, 2010 at approximately 0850 hours, I arrived at the Yavapai County Sheriff's Office Evidence yard to meet with Detective Zavos and begin photocopying documents seized as evidence. When I arrived, Detective Zavos told me he was almost done with completing the inventory searches of Michael Diecks and Robert Kittredge's vehicles so he could box up their property to return it. I asked Detective Zavos if the search warrants included searching the vehicles while in property for evidence collection and he indicated the warrants did.

I was escorted to a vehicle bay where a 2004, Nissan bearing Arizona registration 170MZP, registered to Leslie S. Diecks of 2920 North Yuma Road in Chino Valley, Arizona, was being inventoried.

At approximately 0856 hours, I observed a green bandana and Vagos cuts pulled from the trunk of the vehicle. I also noted that on the key ring was a green clip. I suggested the green clip be documented as green is the color the Vagos identify their gang with.

At approximately 0916 hours, the inventory search of the 2004, Nissan bearing Arizona registration 170MZP was completed.

At approximately 0928 hours, Detective Zavos drove a 1998, Dodge SUV, bearing Arizona registration ACV0711 registered to Robert E. Kittredge of 3950 North Dana Court in Prescott Valley, Arizona into the vehicle bay to inventory items for return.

At approximately 0932 hours, blue bank bags were located within a brown briefcase that was unlocked. Inside the blue bank bags was United States currency. This was counted and kept for safekeeping by Detective Zavos.

At approximately 0944 hours, the inventory search of the vehicle was stopped to interview and meet with Auerelio Figueroa, DOB 2-23-1964 and Justin Kaufmann, DOB

**Arizona Department of Public Safety
2010-039100**

3-26-1982. These interviews and release of personal property was recorded by Detective D. Zavos.

At approximately 1111 hours, the inventory search of the 1998, Dodge SUV, bearing Arizona registration ACV0711 continued.

At approximately 1114 hours, a baggie of personal use marijuana was located between the driver's seat and the center console.

At approximately 1155 hours, the inventory of the 1998, Dodge SUV, bearing Arizona registration ACV0711 was completed.

Detective Zavos and I then photocopied various paper related documents seized as evidence. I've included these photocopies with this supplemental report.

This concluded case related investigation for September 2, 2010.

September 9, 2010

On September 9, 2010 at approximately 0902 hours, Detective Sergeant R. Milam provided me with copies of interviews from Jeremy Murphy, Jesus Lopez, Michael Koepke, Robert Kittredge, Kiley Hill, Theodore Toth, Sandra Toth, Justin Kaufmann, Michael Diecks, Brian Apfel and Kevin Christensen. The videos will be viewed later for gang related content.

On August 22, 2010, as stated earlier in this report, I was provided with a list of names of arrested Hells Angels gang members. The names provided were: Juan Marchelli, Warren Kuntz, Larry Scott, Robert Kittredge, John Bernard, Kilry Hill, Bruce Schweigert, Theodore Toth and Sandra Toth. Of the names provided the only one I wasn't familiar with was Juan Marchelli. Sandra Toth wouldn't be a member of the Hells Angels gang because she's female. The following is a known history of each gang member and an explanation of gang ledgers and notes as they relate to the gang in no particular order.

Michael Trevor Koepke, DOB 9-28-81, who resides at 3270 North Bumblebee Drive, Apartment A, in Prescott Valley, Arizona.

Michael Koepke is known in the Hells Angels gang as "Muff." Mike was first observed in Arizona by Detectives assigned to GIITEM on March 10, 2007 at a Spartan Riders MC poker run being held at the Spartan Glendale club house. (See picture to right taken by Det. Skelton.)



**Arizona Department of Public Safety
2010-039100**

At the time of the Spartan Riders MC poker run Mike was a full patched member of the Hells Angels Gang. He was later identified as a member of the Cave Creek Chapter of the Hells Angels Gang.

On February 21, 2010 Mike was observed at the Florence Prison Run with his wife Sarah Koepke. During this gang organized event Mike was wearing Hells Angels cuts with a "Cave Creek" side rocker. (See photo to right taken by Ken Lucas.)

On July 10, 2010 Mike was observed at the Pinon Pines Bar located at 2701 East Old US Highway 89A in Prescott, Arizona during the July meeting for the Arizona Confederation of Motorcycle Clubs meeting. While at this gang meeting Mike was observed displaying the "Yavapai" side rocker. Although not clear in the picture, the flash on the left side of Mike's cuts, as worn, is a Sgt. at Arms tab which indicates he's in an officer's position. (See photo to right taken by Sgt. Milam.)

The Hells Angels Nomads gang ledger, collected as evidence on August 22, 2010, indicates Mike began paying dues to the Nomads chapter on or about March 6, 2007. The date, 2007, for this entry appears to be a mistake. Dates surrounding the entry indicate the dues are actually for 2010. Further notes in the gang ledger indicate Mike was in an officer's position or a position of high trust. These notes are, "Mike to go to WCOM" and "Made envelope for Mike road trip + dues WCOM." These two notes indicate Mike Koepke was the Arizona Hells Angels Nomads gang representative for the Hells Angels West Coast Officers Meeting held most likely in San Bernadino or Oakland, California.

The West Coast Officers Meeting held by the Hells Angels gang is where representatives from each chapter meet to discuss gang issues. These meetings include notifying other chapters of the gang about new members, members that have left the gang and members that have been removed from the gang in bad standing. Also discussed are defense fundraising parties and merchandise sales to assist gang members with defense attorney fees which are sometimes paid for by the Hells Angels gang. Included in evidence collected on August 22, 2010 was a copy of the July 17, 2010 West Coast Officers Meeting notes. Included with the West Coast Officer gang notes is a phone list of current gang members by chapter. Mike Koepke is still listed under the "Cave Creek (602)" chapter.

On September 24, 2010 a check of Mike's Myspace! page titled "Koepke Kartel" found a flyer for the Hells Angels Fall Colors Run and various other pictures from the webpage. Mike's wife, Sarah Koepke, was displaying a profile picture which shows Mike and her posing with a weapon.



**Arizona Department of Public Safety
2010-039100**

Warren Spencer Kuntz, DOB 7-17-1951 of 2740 North Main Street in Flagstaff, Arizona.

Warren Kuntz is known in the Hells Angels gang as "Turtle." Warren told me he received his full patch in 1999 as a member of the Cave Creek Chapter. Warren currently holds the position of Treasure for the Arizona Hells Angels Nomads chapter of the gang. Warren's gang membership is further supported by his name and phone number being listed on the gang member phone list under "Nomads AZ (928)" as, "Turtle cell 607-1218."

As Treasurer, Warren maintains the gang ledger which indicates who has paid gang dues, been fined and gang membership status. Warren is also responsible for making sure all gang property mortgages and bills are current.



(The photo to the right of Warren was taken during the 2010, Laughlin River Run by Detective Skelton.)

On September 28, 2010 at approximately 1530 hours, Detective Zavos and I spoke with Warren Kuntz when he arrived at the Yavapai County Sheriffs Office Property Room to retrieve his motorcycle. During this conversation Kuntz indicated the Nomads were broke and could no longer afford the rent for the Nomad clubhouse located at 1611 North West Street in Flagstaff, Arizona. Kuntz indicated the Nomads rent the house from "Richard." When I asked Kuntz if the Nomads were looking to move their chapter to Skull Valley he smiled and told me the Nomads can go anywhere, that's why they're Nomads. I then asked him if they were moving into Yavapai County. I asked this question because on September 25, 2010 at the Fall Colors Run Bruce Schweigert was observed holding a small stack of Yavapai side rockers. Kuntz smiled and stated he couldn't talk about club business.

A check of public records found the property located at 1611 North West Street in Flagstaff, Arizona is owned by Richard L. Eby who list's an address of 1753 South Main in Snowflake, Arizona.

Robert Edward Kittredge, DOB 10-20-1973, of 3950 North Dana Ct. Apt. 2 in Prescott Valley, Arizona

Robert Kittredge is new to the gang and doesn't appear to yet be listed on the gang ledger.

On September 25, 2010 after the Hells Angels annual Fall Color Run, Robert Kittredge was arrested for assault and trespassing.



**Arizona Department of Public Safety
2010-039100**

When he was arrested he was wearing a black shirt with "Skull Valley" on the front. Kittredge was not a member of the original Hells Angels Skull Valley chapter. This is another indicator the Hells Angels gang may be re-starting the Skull Valley chapter or moving the Nomad chapter to the Chino Valley area.

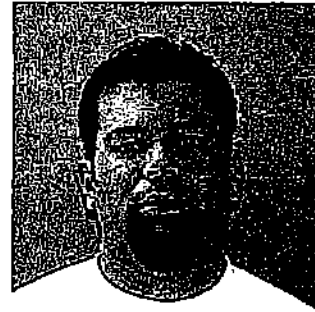
Theodore John Toth, DOB 7-8-1947, of 2670 North Yuma Drive, Chino Valley, Arizona.

Theodore Toth is known in the Hells Angels gang as "Teddy." Recently Theodore has not been seen in public with members of the Hells Angels gang because he was convicted on charges related to the investigation known as "Black Biscuit" where the Hells Angels gang was investigated by the Bureau of Alcohol, Tobacco, Firearms and Explosives. Theodore Toth's last day on probation from charges related to that investigation was August 20, 2010, the day before this shooting. During the time Theodore was on probation he was not to have contact with gang members.

Juan Vincent Marchelli, DOB 2-2-1972, of 4833 West Las Palmaritas Drive in Glendale, Arizona.

Juan Marchelli is a newer member of the Hells Angels gang and is currently listed as a hang-around.

The July 17, 2010 Hells Angels West Coast Officer gang meeting notes indicate Juan began his hang-around status on July 2, 2010 with the Phoenix chapter of the Hells Angels gang.



Juan Marchelli's notebook contained chores the Hells Angels gang expects a hang-around to do.

Larry Dean Scott Jr., DOB 04-09-1963, of 1528 N. Road 1 E in Chino Valley, Arizona.

Larry Scott is known in the Hells Angels gang as "Scotty." The gang ledger indicates Larry became a hang-around member of the gang on 11-14-2009.

On 2-20-2010 the gang ledger indicates Larry became a prospect member of the gang.

On July 10, 2010 Larry was observed at the Pinon Pines Bar located at 2701 East Old US Highway 89A in Prescott, Arizona during the July meeting for the Arizona Confederation



**Arizona Department of Public Safety
2010-039100**

of Motorcycle Clubs meeting. (See photo to right taken by Sgt. Milam.)

During the Arizona Confederation of Clubs meeting Larry was doing a typical prospect related gang assignment of looking for law enforcement surveillance. During the event Larry came to my vehicle and introduced himself as a prospect for the gang.

Other entries in Larry Scott's notepad not yet listed are:
"Friday/church 8:00 pm or Teddy House."

This is an indicator that the old "Skull Valley" club house owned by Theodore Toth may be used again as a Hells Angels clubhouse.

Bruce Andrew Schweigert, DOB 12-12-1963 of 2361 S. Rio Verde Drive in Cottonwood, Arizona.

The gang ledger indicates that on 2-13-10 Bruce became a hang-around member for the Hells Angels gang.

On February 21, 2010 Bruce was observed in attendance at the Florence Prison Run.

On April 18, 2010 Bruce was observed doing a typical prospect related gang assignment of looking for law enforcement surveillance while at Sonny Barger's birthday party held at the Steel Horse bar located at 1818 West Bell Road in Phoenix, Arizona. (See picture to right taken by Det. Skelton.) During this event Bruce made contact with me while I was parked in the parking lot observing the gang related party.



Kiley Steven Hill, DOB 04-29-1971 of 7237 North Apache Avenue in Williams, Arizona.

Kiley Hill is known in the Hells Angels gang as "Kile."

The gang ledger indicates that on 07-09-2009 Kiley became a hang-around member for the Hells Angels gang.

The gang ledger indicates that on 8-7-2010 Kiley Hill became a Prospect for the Hells Angels gang.



Gang ledger notes indicate Kiley Hill and Bruce Schweigert were assigned to "run shirts" while "Duck" (Robert Steffens) runs the LLC. This note indicates to me responsibilities

Arizona Department of Public Safety
2010-039100

within the gang to further fundraising by ensuring T-shirts are available for sale at gang related events.

John Anthony Bernard, DOB 8-25-1966 of 13413 North 33rd Street in Phoenix, Arizona.

John Bernard is a Prospect with the Hells Angels Phoenix chapter of the gang.

One of the items located during the search warrant at 2670 North Yuma Drive was John's prospect notebook. This notebook had various entries but the following entries stood out:

"Nomads chino Mike Rudy Turtle Duck Teddy off paper."

This entry is significant. John's notes are referencing full patched gang members of the Hells Angels Nomads, Mike Koepke, Rudolfo "Rudy" Martinez, Warren "Turtle" Kuntz, Robert "Duck" Steffens and Theodore "Teddy" Toth.

On August 7, 2010 Richard Laakmann, aka Showlow Rick, quit the gang. Rick was the Nomads President at the time he left. Richard Laakmaan was involved in locating the Nomads clubhouse and renting it from Richard Eby. During the conversation with Warren Kuntz on September 28, 2010, Kuntz confirms Rick is out of the club and the Nomads clubhouse at 1611 North West Street in Flagstaff, Arizona is no longer active because of Richard Laakmaan's departure from the gang and a lack of funds to pay rent to "Richard." This indicates the possibility that the Nomads will be moving their chapter to Chino Valley.

"Fri church 8:00 pm Scotty's."

This entry indicates the Hells Angels gang is holding their meeting at Larry Scott's house.

"Bruce Kevin Kyle Scotty."

This entry list's the "non-patched" members of the Hells Angels Nomads gang.

"Vagos stabbed Mike arrested."

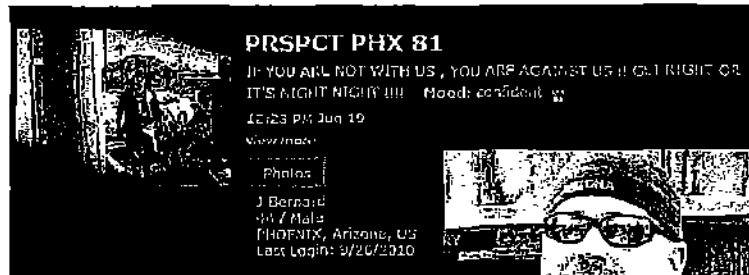
This entry indicates the members of the Hells Angels gang are aware of the violence which is ongoing between the Vagos and Hells Angels gangs. This entry is specific to a Vagos gang member that was stabbed on May 30, 2010 in Oildale, California by a member of the Hells Angels gang.



Arizona Department of Public Safety
2010-039100

Michael Henry Pena, also known as Delano Mike is a full patched member of the Hells Angels Orange County gang.

On September 24, 2010 a check of John Bernard's Myspace! PRSPCT PHX 81 page found him posing with hang-around cuts on and a "666" hat. John posted, "If you are not with us, you are against us!! Get it right or it's night night!!!!"



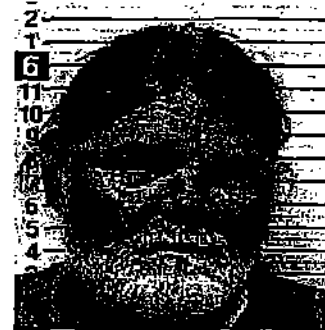
A check of John's Facebook page found him posing with Travis Fullerton, DOB 2-23-1969 who is a Hells Angels Prospect from the Mesa Chapter and Colon O'Connor, DOB 11-14-1972 who is a prospect for the Hells Angels Phoenix chapter. The picture to the right is cropped to show John wearing "Prospect Phoenix" cuts.



Kevin E. Christensen, DOB 07-04-1960 of 3301 East Ames Avenue in Kingman, Arizona.

The gang ledger indicates Kevin became a hang-around with the Hells Angles gang on 01-24-2009.

The gang ledger then indicates Kevin became a prospect with the Hells Angels gang on 06-12-2010.



On September 23, 2010 Detective D. Zavos provided me with jail recordings of calls made by Juan Marchelli, Warren Kuntz, Larry Scott, Robert Kittredge, John Bernard Bruce Schweigert and Sandra Toth.

During call recording number 187548728081411 John Bernard calls "Jennifer" his significant other.

Approximately four minutes into the call the following exchange of conversation occurs:

Jennifer: I talked to Juan yesterday he said he talked to a lawyer, a

Recording Number:	187548728081411.wav
Called Party:	6026807627
Start Call Date/Time:	2010-08-24 11:55:46
End Call Date/Time:	2010-08-24 12:03:25
Minutes:	8
Telephone ID:	43124
Name:	BERNARD, JOHN
Disconnected Reason:	INMATE HANGUP
Record Reason:	AUTOMATIC
Location:	2

Arizona Department of Public Safety
2010-039100

lawyer came to see him yesterday and that he was getting out today. They've already got Teddy and his wife out and some guy named Mike.

John: Yeah. Mike. This is his fucking fault.

The conversation then turns to other members of the gang that may be released.

During call recording number
187985802591235, Kiley Hill calls John
Bernard.

Approximately forty-eight seconds into
the recording the following exchange of
conversation occurs:

John: Hey. Hello?

Kiley: John.

John: Kile, what's happening man?

Kiley: Get you're patch?

John: Ah, no.

Kiley: Huh?

John: No, it's ahh, were gonna wait cause ah we don't want it to look like anything,
anything, a reward for anything.

Kiley: That's fucked up man.

John: Yeah, well no I mean, that's, we talked about it and I mean it's pretty much I been
told it's a forgone conclusion it's just. Yeah.

The conversation then turns to the party to raise money to bail Kiley out of jail.

Recording Number:	187985802591235.wav
Called Party:	6026807627
Start Call Date/Time:	2010-08-29 10:48:29
End Call Date/Time:	2010-08-29 10:55:23
Minutes:	7
Telephone ID:	63984
Name:	HILL, KILEY
Isconnected Reason:	INMATE HANGUP
Record Reason:	AUTOMATIC
Location:	1



G.I.T.E.M.

GANG & IMMIGRATION INTELLIGENCE TEAM ENFORCEMENT MISSION

Detective/Officer: L. Skelton	Agency: DPS	
Supervisor: R. Milam	DR#: 2011-051796	Date: 12-11-11
Suspects:	N/A	
Crime:	Surveillance Report	Gang Related: <input checked="" type="checkbox"/>
Narrative:		
<p>On December 11, 2011 at 0800 hours, GITEM detectives from the metro investigations squad conducted surveillance on the Nomads Hells Angels 2011 Toy Run held at Rock Springs Café, 35769 South Old Black Canyon Highway in Rock Springs, Arizona.</p> <p>During the toy run the following motorcycle clubs were observed attending the event;</p> <p>Hells Angels (Mesa, Cave Creek and Nomads), Devils Own, Bikers for Christ, Desert Thunder, Tinnerns, Lost Dutchman (Peoria), Brotherhood Union, Sober Riders, Spartan Riders (Phoenix), Sons of Aesir, Legacy Vets, Hooligans, Soldiers for Jesus, Survivors- Clean and Sober, Loners, Sons of Hell, Desert Eagles, Medieval Maidens, , Exiled Few, Desert Road Riders, ALMA, , U.S. Military Vets and Cerberus.</p> <p>Other groups that attended the toy run were;</p> <p>Brotherhood RC, All Brothers Together, Night Riders, Los Santos</p> <p>Hells Angels members observed at the toy run;</p> <p>From the Nomads Chapter; Secretary Andres Ospina, and members Michael Koepke, Bruce Schweigert, Robert Steffens, Kevin Christensen, Larry Scott and Warren Kuntz. Prospect; Kiley Hill and an unknown associate.</p> <p>From the Mesa Chapter; Prospects; William Sanders, Arturo Camacho and Joseph Chavez.</p> <p>From the Cave Creek Chapter; President Robert Eberhardt, VP Robert Reinstra, Secretary Patrick Cavanaugh. Members; Ralph "Sonny" Barger, John Veir, Chris Baucum, John Ward. Prospects John Mason, Mason Casten and Donald Battenfield. New prospects Patrick Eberhardt and Robert Miller and hang-around Normand Dupont.</p> <p>Devils Own members; Tim McNees, Anthony Scribner.</p> <p>At approximately 1600 hours, surveillance was concluded.</p>		
Report submitted by Detective/Officer: L. Skelton		
of the Arizona State Gang Task Force (GITEM - Gang & Immigration Intelligence Team Enforcement Mission)		



G.I.T.E.M.

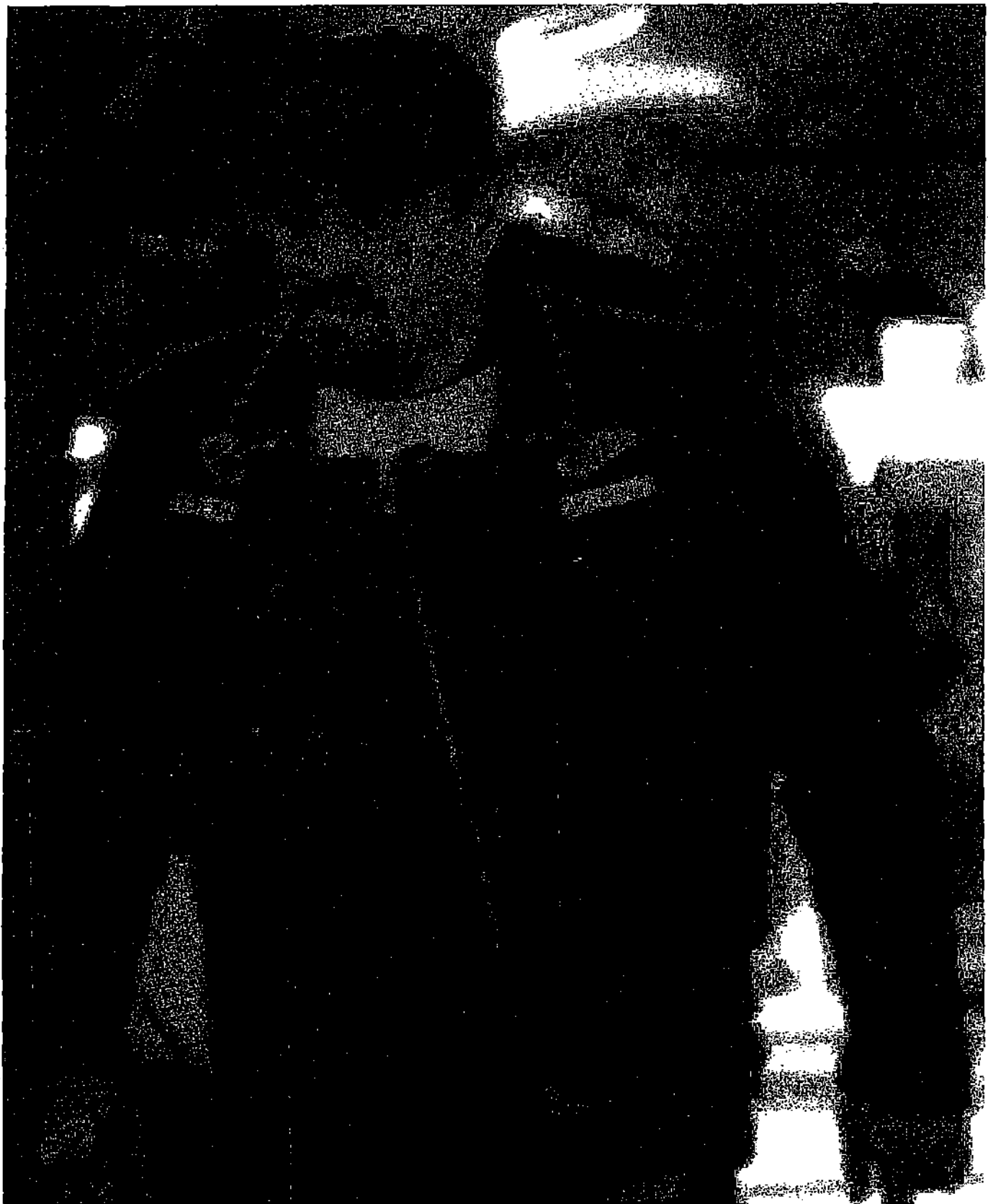
GANG & IMMIGRATION INTELLIGENCE TEAM ENFORCEMENT MISSION



new
cell
#

602-501-7916

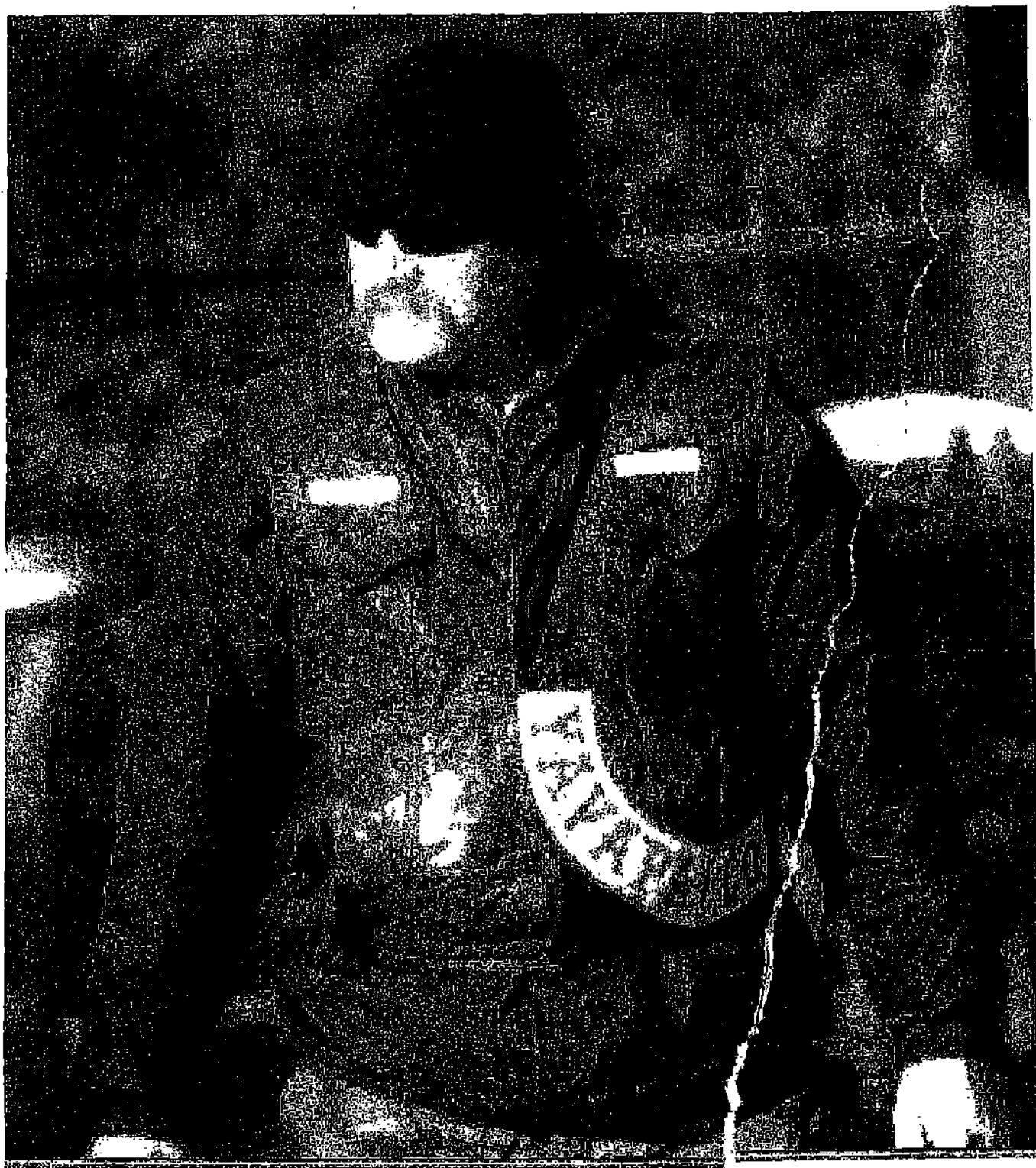
email is correct



Michael Koepke

001982

707

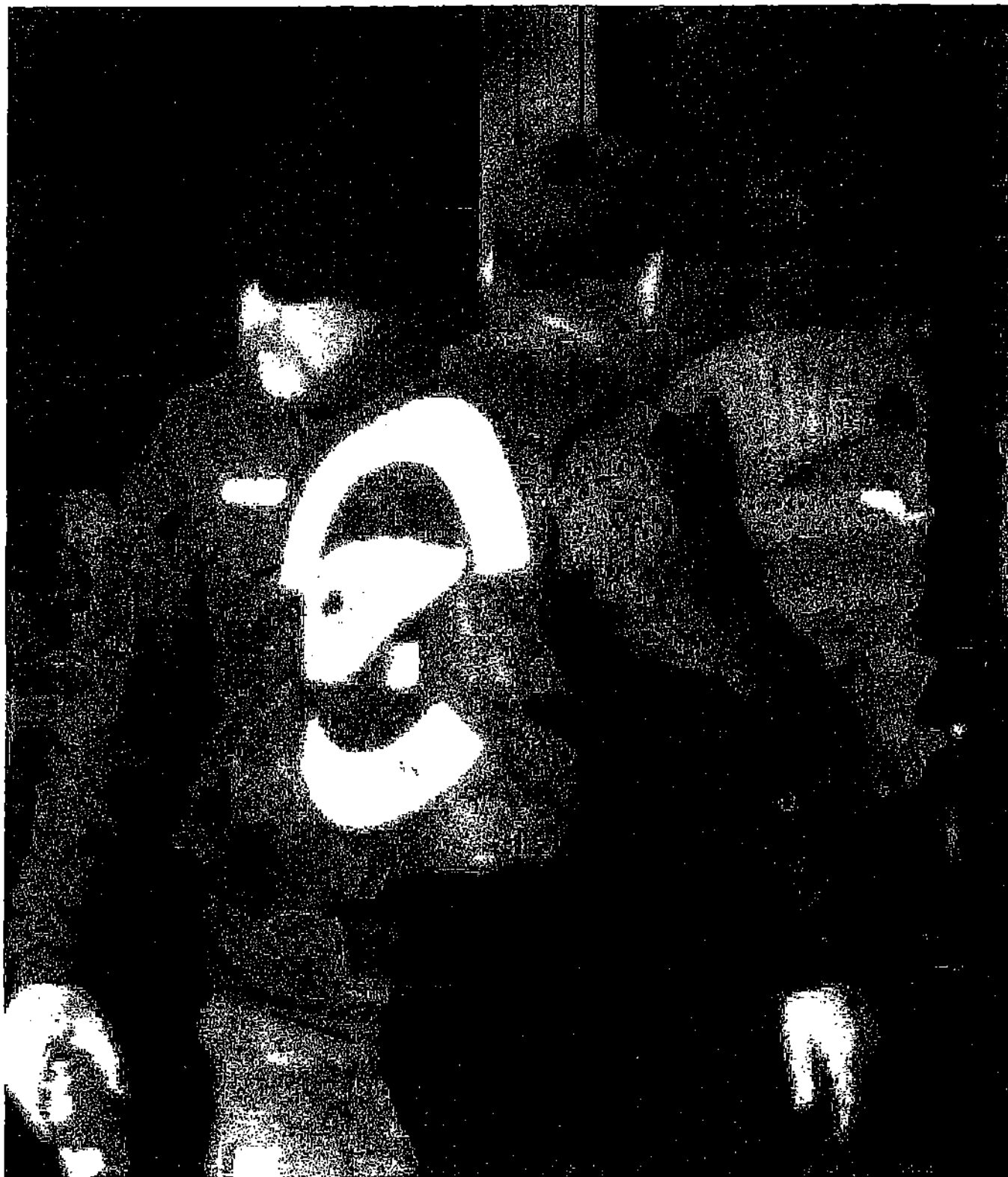


Larry Scott

001983

708

2=



Larry Scott/ Michael Koepke

001984

709

20



Kevin Christensen

710

001985

35



Kevin Christensen

711

001986



Kiley Hill/ Bruce Schweigert

001987

712

37



G.I.T.E.M.

GANG & IMMIGRATION INTELLIGENCE TEAM ENFORCEMENT MISSION

Detective/Officer:	Agency: Arizona Department of Public Safety		
Supervisor: J. Milam	DR#: 2010-039100	Date: April 4, 2012	
Suspects:			
Crime:			Gang Related: <input checked="" type="checkbox"/>

Narrative:

This is a supplemental report to Arizona Department of Public Safety report number 2010-039100.

On March 10, 2012 the Hooligans motorcycle club held their second annual Shamrocks and Shenanigans bike run. The run started at the Hooligans clubhouse located at 2663 West Lone Cactus in Phoenix, AZ and went to the Lost Dutchman Peoria chapter, motorcycle clubhouse at Cotton Crossing and 79th Avenue in Peoria, AZ.

At approximately 1751 hours, a silver Honda Accord, bearing Arizona registration of ASH2558 arrived in the area of 7800 W Market Street in Peoria, AZ which is in the area of the Lost Dutchman Peoria clubhouse. Arizona ASH2558 is registered to Sarah J Logan Koepke, the wife of Michael Koepke. The driver of the vehicle was a white female, Sarah Koepke and the passenger was Michael Trevor Koepke, DOB 9-28-1981.

As the Honda stopped at the event, Michael Koepke exited the vehicle and was greeted by Bruce Schweigert, DOB 12-12-1963 and they greeted each other with a hug.





GIITEM

GANG & IMMIGRATION INTELLIGENCE TEAM ENFORCEMENT MISSION

Also in attendance working the Hells Angels Nomads booth was Kiley Hill, DOB 4-29-1971.



L. S. Skelton #4953

Det. L. Skelton #4953
Arizona DPS, GIITEM

Report submitted by Detective/Officer: L. Skelton
of the Arizona State Gang Task Force (GIITEM – Gang & Immigration Intelligence Team Enforcement Mission)



G.I.T.E.M.

GANG & IMMIGRATION INTELLIGENCE TEAM ENFORCEMENT MISSION

Detective/Officer:	Agency: Arizona Department of Public Safety		
Supervisor: L. Griffith	DR#: 2010-039100	Date: May 21, 2012	
Suspects:	M. Koepke		
Crime:	Agg. Assault	Gang Related: <input checked="" type="checkbox"/>	

Narrative:

This is a supplemental report to Arizona Department of Public Safety report number 2010-039100.

On May 18, 2012 at approximately 1300 hours, I, Arizona Department of Public safety Detective L. Skelton #4953, checked the Arizona Hells Angels Nomads website and found the Nomads website to be promoting a "Shootout Party" to be held on August 18, 2012.

The Shootout Party is to commemorate the shooting that took place on August 21, 2010 between members of the Arizona Hells Angels Nomads chapter and the Vagos motorcycle gangs.

ARIZONA NOMADS

HOME
STORE
EVENTS
GALLERY
WORLD
CONTACT

CLICK ON FLYER TO VIEW THE EVENT DETAILS

SUPPORT 81 SALE
BIRMINGHAM CITY DIN
APRIL 29, 2012

SHOOTOUT PARTY
AUG. 18, 2012

SHOOTOUT PARTY
AUG. 18, 2012



GIITEM

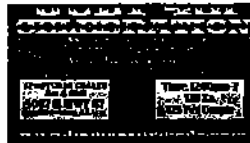
GANG & IMMIGRATION INTELLIGENCE TEAM ENFORCEMENT MISSION

On Monday, May 21, 2012 at approximately 0900 hours, I checked the Arizona Hells Angels Nomads website and found it to be updated. The website was showing a new photo promoting the "Shootout" party and listed the date for the party as Aug. 8th.

EVENT LIST

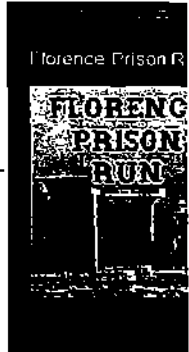
July 1st 2012 - Fourth of July Celebration

Aug 8th 2012 - Shoot Out



(Enlarge)

\$10 Ea. / \$15 Per Couple
Band - Food - Support 81 Gear



(Enlarge)

Aug. 8th - Shoot Out
TBD (sign up for our mailing list)

Support your local businesses and organizations!

L. S. Skelton #4953

Det. L. Skelton #4953
Arizona DPS, GIITEM

Report submitted by Detective/Officer: L. Skelton

of the Arizona State Gang Task Force (GIITEM - Gang & Immigration Intelligence Team Enforcement Mission)





G.I.T.E.M.

GANG & IMMIGRATION INTELLIGENCE TEAM ENFORCEMENT MISSION

Detective/Officer:	Agency: Arizona Department of Public Safety		
Supervisor: L. Griffith	DR#: 2010-039100	Date: May 21, 2012	
Suspects:	M. Koepke		
Crime:	Agg. Assault		Gang Related: <input checked="" type="checkbox"/>

Narrative:

This is a supplemental report to Arizona Department of Public Safety report number 2010-039100.

On May 18, 2012 at approximately 1300 hours, I, Arizona Department of Public Safety Detective L. Skelton #4953, checked the Arizona Hells Angels Nomads website and found the Nomads website to be promoting a "Shootout Party" to be held on August 18, 2012.

The Shootout Party is to commemorate the shooting that took place on August 21, 2010 between members of the Arizona Hells Angels Nomads chapter and the Vagos motorcycle gangs.

ARIZONA NOMADS

HOME
STORE
EVENTS
GALLERY
WORLD
CONTACT

CLICK ON PLYER TO VIEW THE EVENT DETAILS

SUPPORT 81 SALE
RELEASED CITY RUN APRIL 28, 2012
MAYDAY 1000 RUN MAY 6, 2012
JULY 4000S - SATUR JULY 1, 2012
SHOOTOUT PARTY AUG 18, 2012

SHOOTOUT PARTY
AUG. 18, 2012





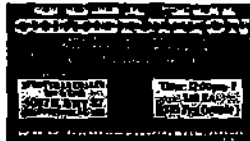
GIITEM

GANG & IMMIGRATION INTELLIGENCE TEAM ENFORCEMENT MISSION

On Monday, May 21, 2012 at approximately 0900 hours, I checked the Arizona Hells Angels Nomads website and found it to be updated. The website was showing a new photo promoting the "Shootout" party and listed the date for the party as Aug. 8th.

EVENT LIST

July 1-4 2012 Fourth of July Celebration
Aug 8th 2012 Shoot Out



(Enlarge)

\$10 Ea. / \$15 Per Couple
Band - Food - Support 81 Gear



(Enlarge)

Aug. 8th - Shoot Out
TBD (sign up for our mailing list)

Support your local businesses and organizations!

L. S. Skelton #4953

Det. L. Skelton #4953
Arizona DPS, GIITEM

Report submitted by Detective/Officer: L. Skelton

of the Arizona State Gang Task Force (GIITEM - Gang & Immigration Intelligence Team Enforcement Mission)






Arizona Department of Public Safety
2010-039100

This is a supplemental report to Arizona Department of Public Safety report number 2010-039100.

On November 4, 2010, at approximately 1432 hours, I, Arizona Department of Public Safety Detective L. Skelton #4953, checked the status of John Anthony Bernard's Facebook social media webpage to find the below information listed. From the information posted it appears John Bernard has become a full patched member of the Hells Angels gang.

John Bernard

Wall Info Photos

Attach:   

Share

Filters



Tommy Elliott CONGRADS JOHN! YOU EARNED YOUR PATCH! MUCH RESPECT TO YOU ALWAYS! LH&R!

5 hours ago · Comment · Like · See Friendship



Tommy Elliott drinks on me this weekend if ya can get away to 43rd. stay focused and positive..

Tuesday at 6:40pm · Comment · Like · See Friendship



Amber Cardinal miss you lots... doing good went to calif to see my mom.....

October 29 at 1:22pm · Comment · Like · See Friendship



Jennifer Coleman Bernard Your freedom is more important

October 22 at 1:15pm · Comment · Like · See Friendship

 Sheri Glarrusso Kellwood Brock likes this.

Write a comment...



Jennifer Coleman Bernard I deleted the photos...Sorry John..

October 22 at 1:15pm · Comment · Like · See Friendship

L. S. #4953

Detective L. Skelton #4953

719



UL




Arizona Department of Public Safety
2010-039100

This is a supplemental report to Arizona Department of Public Safety report number 2010-039100.

On November 4, 2010, at approximately 1432 hours, I, Arizona Department of Public Safety Detective L. Skelton #4953, checked the status of John Anthony Bernard's Facebook social media webpage to find the below information listed. From the information posted it appears John Bernard has become a full patched member of the Hells Angels gang.

John Bernard

Wall Info Photos

Attach:   

Share

Filters



Tommy Elliott CONGRADS JOHN! YOU EARNED YOUR PATCH! MUCH RESPECT TO YOU ALWAYS! LH&R!

5 hours ago · Comment · Like · See Friendship



Tommy Elliott drinks on me this weekend if ya can get away to 43rd. stay focused and positive..

Tuesday at 6:40pm · Comment · Like · See Friendship



Amber Cardinal miss you lots... doing good went to callf to see my mom.....

October 29 at 1:22pm · Comment · Like · See Friendship



Jennifer Coleman Bernard Your freedom is more Important

October 22 at 1:15pm · Comment · Like · See Friendship

 Sheri Giarrusso Kellwood Brock likes this.

Write a comment...



Jennifer Coleman Bernard I deleted the photos...Sorry John..

October 22 at 1:15pm · Comment · Like · See Friendship

L. S. #4953

Detective L. Skelton #4953

720



Arizona Department of Public Safety
2010-039100

This is a supplemental report to Yavapai County Sheriff's Office report number 2010-030743 authored by Detective D. Zavos.

On August 21, 2010 at approximately 1228 hours, I, Arizona Department of Public Safety, Gang and Immigration Intelligence Team Enforcement Mission, Detective L. Skelton #4953 was called at home by Arizona Department of Public Safety Sergeant J. Milam in reference to a shooting involving the Hells Angels and Vagos motorcycle gangs in Chino Valley, Arizona. Sergeant Milam requested I respond to the area and assist detectives with the Yavapai County Sheriff's Office with any info they may need in relation to members of both gangs.

At approximately 1512 hours, I arrived at the south end of the scene on North Yuma Drive. As I approached I noticed a large police presence with many members of various S.W.A.T. team's position as scene security carrying assault style weapons and wearing helmets and heavy body armor. I made contact with Yavapai County Sheriff's Office Sergeant D. Raiss, Commander S. Mascher and they began removing officers from within the crime scene.

As I walked from the South end of the scene to the North, I observed two motorcycles lying on their right sides facing Northbound. The motorcycles were to the East of what I know to be the old Skull Valley chapter clubhouse of the Hells Angels gang and currently occupied by Theodore Toth, the ex-president for the Skull Valley chapter of the Hells Angels gang.

As I continued walking Northbound on Yuma Drive I noticed several motorcycles parked in the "driveway" area of 2670 North Yuma Drive. The driveway entrance to the residence was sealed off with yellow crime scene tape. I also saw several people I recognized to be members, prospects or hang-a-rounds for the Hells Angels gang. The first Hells Angels gang member I recognized by sight was Michael Trevor Koepke, DOB 9-28-81, who resides at 3270 North Bumblebee Drive, Apartment A, in Prescott Valley, Arizona. "Mike" had his haircut in the style of a mohawk and was wearing a green t-shirt with a Hells Angels death head on the back. When I approached Mike he smiled at me and looked away. I did not make contact with Mike. (Photo to right.)



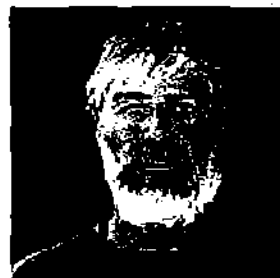
The next Hells Angels gang member I recognized was Theodore John Toth, DOB 7-8-1947, of 2670 North Yuma Drive, Chino Valley, Arizona. (Photo to right.) Theodore is know as "Teddy" and was sitting on a scooter wearing oxygen tubes. I approached Teddy and said hi to him and he responded with the same. I asked Teddy how his health was and he said it wasn't too good. While speaking with Teddy I noticed he had a Hells Angels death head gang tattoo on his left forearm. Teddy asked when he would be able to return to his house and I told him it would be awhile. I then continued



Arizona Department of Public Safety
2010-039100

walking northbound on North Yuma Drive.

As I continued to walk north, a uniformed officer was walking Southbound with a Hells Angels hang-around gang member I recognized as Bruce Andrew Schweigert, DOB 12-12-1963 of 2361 South Rio Verde Drive in Cottonwood, Arizona. (Photo to right.) I've seen and spoken with Bruce at several Hells Angels "parties" and events. He would usually be posted as security for the gang looking for surveillance units. That is a typical "job" for a hang-a-round or prospect for the gang.



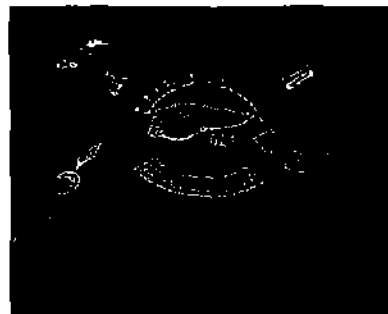
Further North on Yuma Drive I saw a Silver Chevy truck with a motorcycle parked to the rear of it. In the area immediately around the truck were several spent shell casings lying on the roadway. I continued to walk North to a Black Land Rover that was parked next to a patrol car with its emergency light's activated. Next to the patrol car were two motorcycles with Vagos gang related stickers attached to them.

I then walked to 2920 North Yuma Drive and saw there were approximately fifty people in the front yard of the residence and many of them were wearing Vagos gang related clothing such as "cuts" or green articles of clothing.



"Cuts" are what the biker community refers to as their leather or denim vests they wear to show their affiliation with a certain gang or group. (See photos to right.)

While at 2920 North Yuma Drive I saw several members of the Vagos gang I recognized. The area was being secured by officers and detectives from various police agencies.



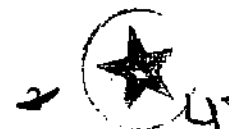
I then walked back to the South end of the scene to meet with command staff for investigative assignments.

At approximately 1539 hours, I noted rain began falling in the area of the crime scene.

At approximately 1644 hours, I noted the rain stopped falling in the area of the crime scene.

At approximately 1640 hours, a briefing for all involved was held at the command post to brief all involved with the investigation of the current information and assign details for the investigation.

722



Arizona Department of Public Safety
2010-039100

At approximately 1725 hours, the briefing was completed and I was assigned to assist the lead investigator, Detective D. Zavos, from the Yavapai County Sheriff's Office with the investigation and provided support for the gang involvement. Also assigned to assist Detective Zavos with the investigation was GITEM Detective J. Morris.

At approximately 1733 hours, I checked into the South end of the crime scene and watched as photographs were taken of the scene by J. Nelson of the Yavapai County Sheriff's Office. After photographs were taken Detective Zavos, Detective Morris and I began checking North Yuma Drive for evidence.



At approximately 1743 hours, I discovered a bullet hole in the rear tire of Arizona D666MC and pointed it out to Detective D. Zavos.

At approximately 1800 hours, Detective Zavos received permission from the property owners at 2661 North Yuma Drive to search their property for evidence from the shooting. Detective Zavos obtained the property owners information. No evidence was located.

At approximately 1820 hours, Detective Zavos, Detective Morris and I exited the North end of the scene and checked out of the scene.

At approximately 1829 hours, Detective Zavos, Detective Morris and I arrived at 2920 North Yuma Drive and checked in with the officer maintaining the crime scene log. I made contact with Auerelio Figueroa, DOB 2-23-1964 who is known as "45." (See photo to right) As of the time of this investigation, Auerelio Figueroa is the Vice President of the Tri-State Vagos gang and has been a point of contact for law enforcement. I asked Auerelio Figueroa if he would talk to me about what occurred. Auerelio Figueroa agreed and we walked away from the front of the residence for privacy.



At approximately 1838 hours, Auerelio Figueroa was advised of the Miranda rights. Auerelio Figueroa agreed to speak with me about the shooting. The conversation was audio recorded by Detective Zavos. Refer to Detective Zavos' report for a summary of the interview and transcription.

At approximately 1905 hours, Detective Zavos, Detective Morris and I left 2920 North Yuma Drive and returned to the command post established at the South end of the crime scene. I remained there while evidence was being collected by Yavapai County Sheriff's Office Josh Nelson and secured as evidence.

723

45

Arizona Department of Public Safety
2010-039100

At approximately 2226 hours, Detective Zavos, Detective Morris and I returned to 2920 North Yuma Drive and entered the residence while a search warrant was being executed by GITEM Sergeant F. Stewart. I walked through the residence looking at various Vagos gang related items which include "cuts." Our purpose at the search warrant was to interview victims, suspects and witnesses to the shooting which occurred earlier and ensure that gang related evidence was collected. Once a front bedroom was searched and the evidence collected we began interviewing victims, suspects and witnesses. The first room cleared which we used to conduct interviews was the room on the Northwest part of the residence. Detectives conducting the search warrant indicated the room was clear of any evidence and available for our use.

Prior to beginning the interviews I spoke with Manny Pesqueira, DOB 8-21-70, of 286 West Palamino in Chandler, Az. Manny's moniker for the gang is "Arizona Manny." Manny told me he was at 2920 North Yuma Drive for his birthday party when everything happened.



The first person to be interviewed was Cindi Jean Reed, DOB 12-18-1961 of 4124 Helen Avenue in Las Vegas, Nevada and a phone number of 702-340-2728.

At approximately 2302 hours, Detective Zavos advised Cindi Reed of the Miranda warning. Cindi stated she understood her rights and answered questions. During the interview, Cindi indicated she was at the party with her husband, Darryl Reed who is a four year patched member of the Vagos. Darryl Reed's moniker is "Moses" and is believed to be the Treasurer for the Tri-State Vagos.

For a more detailed synopsis of the interview see Detective D. Zavos' report.

At approximately 2312 hours, the interview with Cindi Reed was completed.

The next person to be interviewed was Margarita Lynn Kleinman, DOB 7-1-78 of 2657 Heritage Court in Las Vegas, Nevada and a phone number of 702-677-6296.

At approximately 2313 hours, Detective Zavos advised Margarita Lynn Kleinmann of the Miranda warning. Margarita stated she understood her rights and answered questions.

During the interview Margarita indicated she was at the Vagos party with Shawn Fabretti, DOB 11-19-1965 of 3072 Leonetti, Las Vegas, Nevada. Shawn Fabretti is a full patched member of the Tri-State Vagos and uses the moniker "Dino." (See picture to right.)



For a more detailed synopsis of the interview see Detective D. Zavos' report.

**Arizona Department of Public Safety
2010-039100**

At approximately 2319 hours, the interview with Margarita Kleinmann was completed.

The next person to be interviewed was Martha Guadalupe Rojas, DOB 11-12-1972 of 3170 East Flamingo #108 in Las Vegas, NV with a phone number of 702-232-4112.

At approximately 2313 hours, Detective Zavos advised Martha Guadalupe Rojas of the Miranda warning. Martha stated she understood her rights and answered questions.

During the interview Martha indicated she was with "45," Auerelio Figueroa.

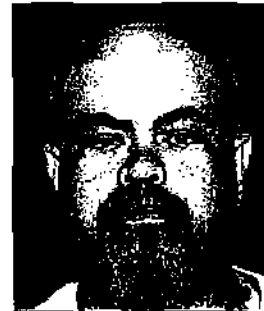
For a more detailed synopsis of the interview see Detective D. Zavos' report.

At approximately 2322 hours, the interview with Martha Rojas was completed.

The next person to be interviewed was Michelle L. Murphy, DOB 03-20-1981 of 6357 High Sierra Avenue in Las Vegas, NV with a phone number of 702-401-6267.

At approximately 2322 hours, Detective Zavos advised Michelle L. Murphy of the Miranda warning. Michelle stated she understood her rights and answered questions.

During the interview Michelle indicated she was at the Vagos party with Carlito Woodley, DOB 8-29-1966, of 8700 Grazing Hill, Las Vegas, Nevada who is a member with the Tri-State Vagos and has claimed to be the Vice President. Carlito Woodley's moniker with the gang is "Wednesday." Michelle indicated Carlito Woodley is currently the Sergeant at Arms. (See photo to right)



For a more detailed synopsis of the interview see Detective D. Zavos' report.

At approximately 2329 hours, the interview with Michelle Murphy was completed.

The next person to be interviewed was Janine Ann Urquilla, DOB 6-15-1963, of 3850 West Elgin Street in Chandler, AZ. Janine indicated her cell phone number is 602-696-4762 and her home phone number is 480-775-9069.

At approximately 2331 hours, Detective Zavos advised Janine Ann Urquilla of the Miranda warning. Janine stated she understood her rights and answered questions.

During the interview, Janine indicated she was at the party with her husband, Danny Urquilla, DOB 1-20-1960, of 3850 West Elgin Street in Chandler, AZ. Danny's moniker in the gang is "Danny Loco" and his status was Treasure. However, Danny's purpose for being at the party was to turn in his cuts. (See photo to right.)



Arizona Department of Public Safety
2010-039100

For a more detailed synopsis of the interview see Detective D. Zavos' report.

At approximately 2350 hours, the interview with Janine Urquilla was completed.

The next person to be interviewed was Emily Sanchez Vasquez of 2101 Eastern in Kingman, AZ. She indicated a phone number of 928-303-1466.

At approximately 2352 hours, Detective Zavos advised Emily Sanchez Vasquez of the Miranda warning. Emily stated she understood her rights and answered questions.

During the interview, Emily indicated she was at the party with Joe Herrera who was with the "Green Destiny Car Club."

For a more detailed synopsis of the interview see Detective D. Zavos' report.

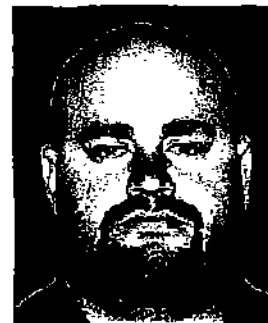
At approximately 2358 hours, the interview with Emily Sanchez Vasquez was completed.

August 22, 2010

The next person to be interviewed was Natalie N. Schieber, DOB 8-1-80 of 90 Old Mine Road in Pahrump, NV. She indicated her phone number was 775-291-9415.

On August 22, 2010 at approximately 0001 hours, Detective Zavos advised Natalie N. Schieber of the Miranda warning. Natalie stated she understood her rights and answered questions.

During the interview Natalie indicated she was at the party with Joshua Ealey, DOB 1-28-1983 of 4670 Royal Ridge Avenue, Las Vegas, NV. Joshua is a patched member of the Vagos gang. (See picture to right.)



For a more detailed synopsis of the interview see Detective D. Zavos' report.

At approximately 0010 hours, the interview with Natalie Schieber was complete.

The next person to be interviewed was Renee D. Bermudez, DOB 11-4-1971, of 3449 North Jewel in Kingman, AZ with a phone number of 909-297-0421.

At approximately 0011 hours, Detective Zavos advised Renee D. Bermudez of the Miranda warning. Renee stated she understood her rights and answered questions.

During the interview Renee indicated she was at the party with Joseph Herrera and Emily Sanchez Vasquez.

726

★ 51

Arizona Department of Public Safety
2010-039100

For a more detailed synopsis of the interview see Detective D. Zavos' report.

At approximately 0015 hours, the interview with Renee D. Bermudez was completed.

The next person to be interviewed was the home owner of 2920 North Yuma Drive, Leslie Diecks, DOB 12-16-1967. Leslie indicated her phone number was 928-308-0761.

At approximately 0016 hours, Detective Zavos advised Leslie Diecks of the Miranda warning. Leslie stated she understood her rights and answered questions.

During the interview Leslie indicated she was hosting the party with her husband and current member of the Tri-State Vagos gang, Michael Diecks, DOB 5-21-1964. Mike uses the moniker of "Mad Mike" and "Mad Dog." (See photo to right.)



For a more detailed synopsis of the interview see Detective D. Zavos' report.

At approximately 0031 hours, the interview with Leslie Diecks was completed.

The next person to be interviewed was Tanya Kaufmann, DOB 3-15-1985, of 2306 North Wilbur Circle in Mesa, AZ. Tanya indicated her phone number is 623-760-3889.

At approximately 0034 hours, Detective Zavos advised Tanya Kaufmann of the Miranda warning. Tanya stated she understood her rights and answered questions.

During the interview Tanya indicated she was at the party with her husband Justin Kaufmann, DOB 3-26-1982 and she also stated they were there for "Church." Justin is a patched member of the Vagos and is currently the Phoenix area Sergeant at Arms. (See photo to right.)



For a more detailed synopsis of the interview see Detective D. Zavos' report.

At approximately 0041 hours, the interview with Tanya Kaufmann was completed.

The next person to be interviewed was Heather Brunelle, DOB 8-4-1972 of 5469 Palisades, Newward Quad, NV. Heather indicated her phone number is 602-446-0407.

At approximately 0043 hours, Detective Zavos advised Heather Brunelle of the Miranda warning. Heather stated she understood her rights and answered questions

**Arizona Department of Public Safety
2010-039100**

Heather indicated she was at the Vagos party with her boyfriend and current member of the Vagos gang, Shawn Pratte, 5-28-1975. Shawn is known by the moniker "Fuzzy."

For a more detailed synopsis of the interview see Detective D. Zavos' report.

At approximately 0047 hours the interview with Heather was completed.

After the interview with Heather Brunelle it was brought to our, (Det. Zavos, Morris and Skelton's) attention that members of the Vagos were now sitting in the front yard, outside of the room where the interviews were being conducted. Because of this we changed the interview room to the room just across from the room we had been conducting interviews in. Detectives conducting the search warrant indicated the room was clear of any evidence and available for our use.

The next person to be interviewed was Ruben Lopez, DOB 6-21-1967 of 4115 Carmine Street in Las Vegas, NV. Ruben indicated his phone number is 702-762-2785.

At approximately 0049 hours, Detective Zavos advised Ruben Lopez of the Miranda warning. Ruben stated he understood his rights and answered questions.

Ruben indicated he is a current full patched member of the Tri-State Vagos gang and holds the rank of President. Ruben is known by the moniker "Kickstand."

For a more detailed synopsis of the interview see Detective D. Zavos' report.



At approximately 0111 hours, the interview with Ruben Lopez was completed.

The next person to be interviewed was Auerelio Figueroa, DOB 2-23-1964 of 1716 North Ridge Circle in Mesa, AZ.

At approximately 0117 hours, Detective Zavos advised Auerelio Figueroa of the Miranda warning. Auerelio stated he understood his rights and answered questions. Auerelio was also advised of the Miranda Rights at 1838 hours, by Detective Zavos.



During the interview Auerelio indicated he was the Vice President for the Tri-State chapter of the Vagos gang. His moniker for the gang is "45." (See photo to right)

For a more detailed synopsis of the interview see Detective D. Zavos' report.

Arizona Department of Public Safety
2010-039100

At approximately 0124 hours, the interview with Aurereilo was completed.

The next person to be interviewed was Danny A. Urquilla, DOB 1-20-1960 of 3850 W. Elgin Street in Chandler, AZ.

At approximately 0125 hours, Detective Zavos advised Danny Urquilla of the Miranda warning. Danny stated he understood his rights and answered questions.



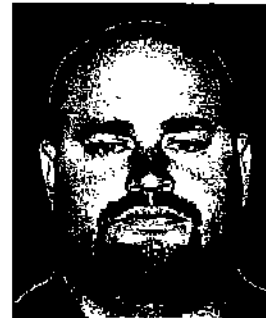
Danny indicated he came to the party with his wife and his reason for coming was to turn in his cuts. By doing this he would no longer be an active member of the Tri-State Vagos gang. Danny stated he was getting out of the club because he won't die for the club.

For a more detailed synopsis of the interview see Detective D. Zavos' report.

At approximately 0148 hours, the interview with Danny was completed.

The next person to be interviewed was Joshua E. Ealey, DOB 1-28-1983 of 90 Old Mine, Pahrump, NV with a phone number of 702-884-7300.

At approximately 0157 hours, Detective Zavos advised Joshua Ealey of the Miranda warning. Joshua stated he understood his rights and answered questions.



During the interview Joshua indicated he was at the Vagos party with his girlfriend Natalie Schieber.

For a more detailed synopsis of the interview see Detective D. Zavos' report.

At approximately 0208 hours, the interview with Joshua was completed.

The next person to be interviewed was William Bly Pizel, DOB 7-31-45 of 11610 Silver Spur in Dewey, AZ. William indicated he had two phone numbers, 928-772-4663 and 928-379-2200.

At approximately 0209 hours, Detective Zavos advised William Pizel of the Miranda warning. William stated he understood his rights and answered questions.



During the interview William indicated he was a member of the Vagos "Nomads" from California and he doesn't report to the officers in the Tri-State chapter of the Vagos gang. William is known by the moniker "Top Hat."

For a more detailed synopsis of the interview see Detective D. Zavos' report.

729



KU

**Arizona Department of Public Safety
2010-039100**

At approximately 0221 hours, the interview with William was completed.

At approximately 0223 hours, it was brought to our, (Det. Zavos, Morris and Skelton's) attention that members of the Vagos were being placed under arrest for possession of marijuana and removed from the front of 2920 North Yuma Drive. This removed all subjects left to be interviewed from our location. Because of this we concluded conducting interviews on members and associates of the Vagos gang.

At approximately 0224 hours, I checked out of the search warrant location, 2920 North Yuma Drive.

Detective D. Zavos told Detective Morris and I that the search warrant on 2670 North Yuma Drive, the residence owned by Theodore Toth, would be conducted on August 22, 2010 at 1100 hours and the residence would be secured for the evening by officers in the command vehicle.

At approximately 0245 hours, I secured the scene for the evening.

August 22, 2010

On August 22, 2010 at approximately 1040 hours, I arrived at the command post across the street from 2670 North Yuma Drive. The yellow crime scene tape was still draped across the front access of the driveway. While waiting I was provided with a list of names of arrested Hells Angels gang members. The names provided are: Juan Marchelli, Warren Kuntz, Larry Scott, Robert Kittredge, John Bernard, Kilry Hill, Bruce Schweigert, Theodore Toth and Sandra Toth. Of the names provided the only one I wasn't familiar with was Juan Marchelli. Sandra Toth wouldn't be a member of the Hells Angels gang because she's female.

At approximately 1100 hours, all involved with executing the search warrant at 2670 North Yuma Drive were on scene. YCSO photographer J. Neilson entered the property at a time that is unknown to me to begin entry photographs. I stayed off the property until ready to begin searching the property.

At approximately 1139 hours, I entered the curtilage at 2670 North Yuma Drive and begin searching the front yard for fired shell casings while entry photographs of the interior of the residence are being conducted.

At approximately 1207 hours, Sergeant D. Raiss formed a line search using detectives on scene to search the entire front yard.

At approximately 1228 hours, the line search is completed with no evidence located by me.

730



**Arizona Department of Public Safety
2010-039100**

At approximately 1229 hours, I begin searching a 1997 Harley Davidson motorcycle, bearing Arizona registration MCPM78, registered to Warren Spencer Kuntz, DOB 7-17-1951 of 2740 North Main Street in Flagstaff, Arizona. While conducting the search of the motorcycle I found gang indicia that consist of two sweat shirts with the death head artwork from San Jose and Orange County. Also located was cash, Hells Angels Nomads gang ledger and Hells Angels West Coast Officers Meeting.gang notes for July 17, 2010.



Warren Kuntz is currently the Treasure for the Arizona Hells Angels Nomads gang. This is further supported by the ledger with gang members dues, fines and "out of club" status reported within the ledger. (Information contained within the ledger is explained further in this report.)

At approximately 1252 hours, I complete the search of Arizona MCPM78 owned by Warren Spencer Kuntz.

At approximately 1253 hours, the next motorcycle I searched was a 2006 Harley Davidson motorcycle bearing Arizona MC921Z, registered to Stacy L. Marchelli. While conducting a search of the motorcycle I found a Sonny Barger T-shirt, sling shot, red hoodie and a red hat. Sonny Barger is an icon within the Hells Angels gang and his shirts are often worn by members of the gang and the general public. Many of the Hells Angels wear clothing with the color red as the Hells Angels gang proudly boast "Red" or "Red and White" as the color that represents the gang.

These items were taken as evidence.

At approximately 1257 hours, I completed searching the 2006 Harley Davidson motorcycle bearing Arizona MC921Z.



At approximately 1257 hours, I began a 1997, Harley Davidson motorcycle bearing Arizona registration MC11Z9, registered to Byron Ellis of 1302 West Anderson in Phoenix, Arizona. While searching the motorcycle I discovered a holster fastened to the handlebar area and a rubber mallet attached to the down tube of the frame on the right side of the motorcycle.

It's common for members of motorcycle gangs to carry hammers, usually ball peen style, contained within their cuts to be used as weapons. Some Hells Angels gang members have started carrying various hammers attached to the frame of the motorcycle as described and pictured here.



Arizona Department of Public Safety
2010-039100

These items were taken as evidence.

At approximately 1259 hours I completed searching the motorcycle bearing Arizona registration MC11Z9.

At approximately 1301 hour, my attention was drawn to documents left by the front gate to the entrance of the property. The documents were in a red notepad often carried by members of the Hells Angels gang and other miscellaneous paperwork with the notepad. One document was an instruction permit issued to Larry Dean Scott Jr., DOB 4-9-1963. Also located with the instruction permit was a Superior Court order restoring civil rights to carry a firearm with Larry Scott listed as the defendant.

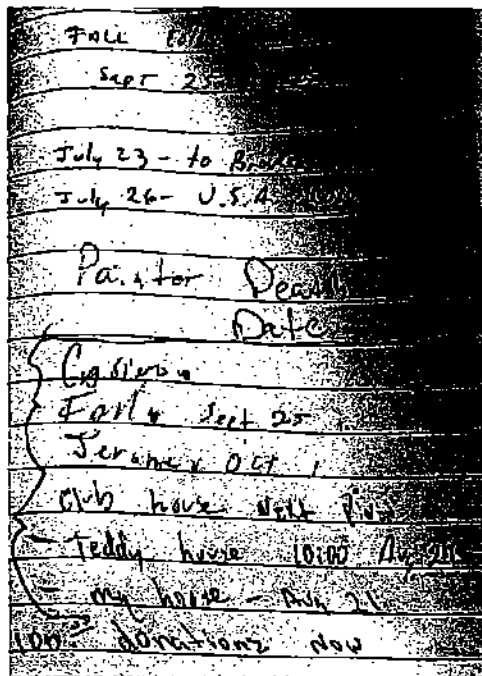
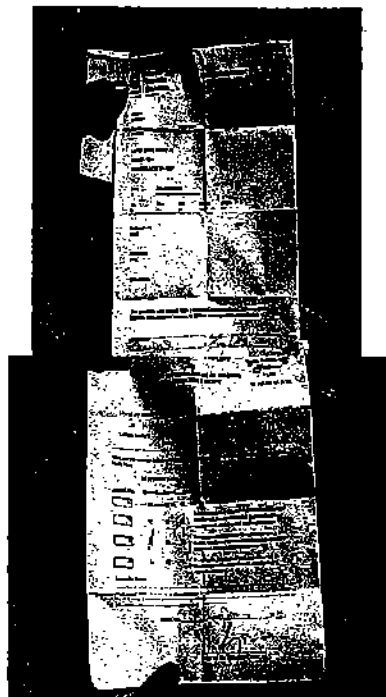
I know Larry Dean Scott Jr., DOB 04-09-1963 of 1528 North Road 1 E, Chino Valley, Arizona to be a Prospect for the Hells Angels gang. Larry Scott is known by the moniker "Scotty."

While looking through the notepad the entry that stuck out to me was "Painter Death Date." This note is inline with current Hells Angels gang events for the Nomads charter. "Painter" is also the moniker for Jeffrey Beckett, DOB 12-13-1968, of 3005 North Stewart Street in Kingman, AZ and is a current patched member of the Vagos gang.

This page also has a note to further indicate the note is from Larry Dean Scott Jr. The entry on the second line to the bottom states, "-My house - Aug. 21." A similar entry is also found in a note pad belonging to John Anthony Bernard, DOB 08-25-1966 of 13413 North 33rd Street in Phoenix, Arizona. John Bernard is currently a Prospect for the Hells Angels gang from the Phoenix charter. In John Bernard's notepad the entry indicates, "Fri church 8:00 PM Scotty's."

The notepad and various items located around it were taken as evidence.

At approximately 1313 hours, I completed searching the items found around Larry Dean Scott's notepad.



732



Arizona Department of Public Safety
2010-039100

At approximately 1318 hours, I entered the residence located at 2670 North Yuma Drive through a door on the north side of the residence that enters into a food pantry. I took a walk through the house to see what would be required to complete the search. All rooms were marked with a letter to indicate where evidence or gang indicia was located and seized as evidence.

At approximately 1345 hours, all room in the residence were marked using the alphabet.

At approximately 1346 hours, Detective Morris and I began searching room "A."

At approximately 1349 hours, the search of room "A" was completed.

At approximately 1349 hours, the search of room "B" started. This room, the kitchen, was searched by Detective Zavos, Morris and I.

At approximately 1351 hours, I located a Hells Angels gang cup in the cabinet, brass knuckles on the refrigerator and a photograph of Theodore Toth on the refrigerator as well. All items were photographed and collected as evidence.

At approximately 1404 hours, the search of room "B" was completed.

At approximately 1405 hours, I began searching room "C." This room is the living room next to the kitchen.

At approximately 1407 hours, I located cash in Theodore Toth's wallet, a motorcycle key, an old photo of an airplane with "Hells Angels" on the photo, a death head displayed in the media center and a red "Angels" wood design.

At approximately 1413 hours, rooms "C" and "D" are completed. Room "D" was searched by Detective J. Morris.

At approximately 1414 hours, room "F" is searched by Detective J. Morris. Room "J" is searched by me. Both are bathrooms. Room "F" is a hall bathroom, room "J" is the bathroom in the master bedroom.

At approximately 1416 hours, Detective Morris tells me he's completed searching room "F."

At approximately 1417 hours, I located a picture of a death head on the bathroom wall.

At approximately 1420 hours, I located a female Hells Angels gang support shirt hanging in the bathroom. All items located in room "J" are photographed and collected as evidence.

At approximately 1421 hours, I completed searching room "J."

733



Arizona Department of Public Safety
2010-039100

At approximately 1416 hours, Detective J. Morris begins searching room "K."

At approximately 1423 hours, I began assisting Detective Morris with searching room "K."

At approximately 1426 hours, the search of room "K" was completed.

At approximately 1428 hours, I began searching room "L."

At approximately 1429 hours, the search of room "L" was completed.

At approximately 1430 hours, I began searching room "N."

At approximately 1432 hours, I completed searching room "N."

At approximately 1432 hours, I began searching room "O."

At approximately 1440 hours, I located to death head pictures.

At approximately 1447 hours, Detective J. Morris indicated to me he started searching room "P."

At approximately 1449 hours, Detective J. Morris indicated he completed searching room "P."

At approximately 1457 hours, Department of Public Safety, GITEM Sergeant R. Milam arrived on scene to assist with the search and was briefed as to the status of the investigation.

At approximately 1502 hours, I completed searching room "O." All items located in room "O" were photographed and collected as evidence.

At approximately 1503 hours, I began searching room "M." While searching room "M" I located miscellaneous Hells Angels gang related paperwork and memorabilia.

At approximately 1522 hours, I completed searching room "M." All items located in room "M" were photographed and collected as evidence.

At approximately 1523 hours, Detective D. Zavos searched the attic of the residence. Located in the attic was an extensive collection of Hells Angels gang related paraphernalia to include; T-shirts, photographs, posters, plaques, framed Hells Angels gang patches and charter photos.

At approximately 1700 hours, the search of the attic was completed. All items located in the attic were photographed and collected as evidence.

734



Arizona Department of Public Safety
2010-039100

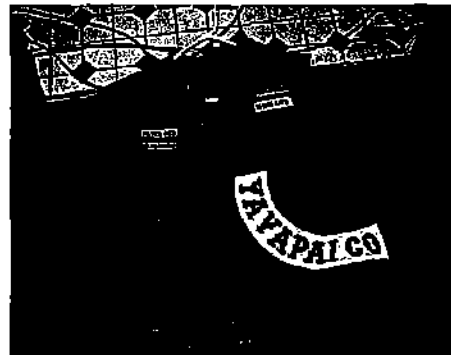
At approximately 1701 hours, I began to search room "E." Located in room "E" were three sets of fully patched cuts and one prospect set of cuts.

A full patch contains the top rocker, "Hells Angels," bottom rocker, "Arizona," the "death head" and the "MC" patch.

Prospect cuts have the bottom rocker, "Arizona," and the "MC" patch.



The cuts to the right I recognize as Michael Koepke's. On the left side of the cuts (as worn) at the top are "flashes" indicating Michael Koepke holds the position of Sergeant at Arms for the Nomad chapter of the Hells Angels gang. Below the flashes is a "YAVAPAI CO" side rocker. This indicates to me the Hells Angels gang is active in Yavapai County. This is significant since the Hells Angels Nomad chapter/clubhouse is/was located at 1611 North West Street in Flagstaff, Arizona in Coconino County. This side rocker along with other indicators, indicate that the Hells Angels gang may have been in the process of re-starting the "Skull Valley" chapter.



The Skull Valley chapter of the Hells Angels gang was frozen by the Hells Angels gang after members, including Theodore Toth were convicted on charges related to the investigation known as "Black Biscuit" where the Hells Angels gang was investigated by the Bureau of Alcohol, Tobacco, Firearms and Explosives. Theodore Toth's last day on probation from charges related to that investigation was August 20, 2010 and his probation officer was Brett Wrons, 928-774-3095 Extension 21.

The "flashes" on the right side of the cuts (as worn) are a "filthy few" and "Hells Angels." The filthy few flash is earned for committing a crime or violent act against another person. The Hells Angels gang flash is a common flash for members to display on their cuts.

The cuts to the right with the fringe on them are Theodore Toth's. On his cuts are various death head



735



Arizona Department of Public Safety
2010-039100

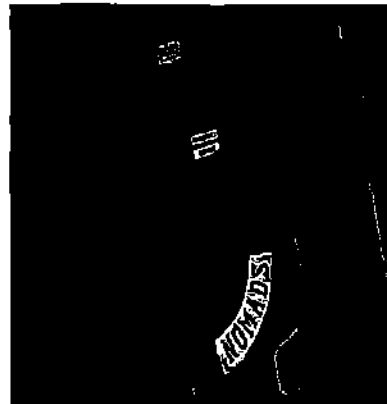
patches which members can purchase and display. On the right side of the cuts (as worn) is a "Filthy 666 Few" flash. The "666" represents the sixth letter of the alphabet, the letter "F" or "Filthy Few Forever."

Below that is a black and white "Dequiallo" flash which indicates the wearer committed an act of violence towards a person with authority or resisted arrest violently. There are only three known wearers of the "Dequiallo" patch in Arizona. Theodore Toth is one of them.

The second set of Theodore Toth's cuts have only the "Filthy 666 Few" and "Dequiallo" flash.

The fourth set of cuts belong to Kevin E. Christensen, DOB 07-04-1960 of 3301 East Ames Avenue in Kingman, Arizona. This set of cuts are prospect cuts.

The "flash" on the left side (as worn) of the cuts indicate that the member of the gang is in "prospect" status by displaying the prospect patch. Below the prospect patch is a small flash indicating "Nomads." Further below is a "Nomads" side rocker which indicates, along with displaying the "Arizona" bottom rocker on the back of the cuts that he is prospecting for the Arizona Nomads chapter of the Hells Angels Gang.



At approximately 1713 hours, a phone, motorcycle keys and a poster were located in room "E."

At approximately 1719 hours, I completed searching room "E." All items were photographed and collected as evidence.

At approximately 1720 hours, Detective Zavos, Morris and I began searching room "H," the master bedroom.

At approximately 1724 hours, I located various Hells Angels gang pins, papers, T-shirts, photographs, phone, and Theodore Toth's old "president" and "Skull Valley" flash.

At approximately 1743 hours, I completed my searching of room "H" while Detective Morris completed the closet. All items were photographed and collected as evidence.

At approximately 1744 hours, I began searching room "G." As I entered the room I observed several bullets on the floor. These items were to be collected as evidence.

At approximately 1800 hours, I suspended the search of room "G" for a dinner break.

At approximately 1812 hours, I continued searching room "G."

736



**Arizona Department of Public Safety
2010-039100**

Located in the room was a tower style computer on the floor below the desk and a laptop style computer in a drawer. Also located were several Hells Angels related books.

At approximately 1841 hours, I completed the search of room "G." All items were photographed and collected as evidence.

At approximately 1842 hours, I began searching room "R," the garage.

At approximately 1844 hours, I observed a motorcycle gas tank with a death head logo on it.

At approximately 1849 hours, Detective J. Morris indicated he began searching the vehicle "S."

At approximately 1852 hours, I completed my search of room "R," the garage.

At approximately 1852 hours, I began searching room "T." Room "T" didn't have an alphabet card assigned to it and was a shed just outside the garage.

At approximately 1853 hours, Detective J. Morris indicated he completed searching vehicle "S" and was out of room "R," the garage.

At approximately 1853 hours, I completed searching room "T."

While standing outside the garage and discussing the location where bullet holes were that entered room "Q," the room above the garage we (Detective Zavos, Morris and Skelton) decided to re-check room "Q" for an unaccounted for projectile.

At approximately 1857 hours, I began searching the ground for a projectile.

At approximately 1859 hours, I located a projectile on the ground near the west wall.

The projectile was photographed and collected as evidence.

At approximately 1923 hours, Detective Sergeant R. Milam, Detective J. Morris, Zavos and I exited the property and this concluded my involvement with physically searching 2670 North Yuma Drive in Chino Valley, Arizona.

At approximately 2032 hours, I arrived at the Yavapai County Sheriffs Office, Eastern Detention Bureau located at 2830 N Commonwealth Drive, Suite 105 in Camp Verde, Arizona. The purpose was to interview shooting victim and Hells Angels gang member Kevin E. Christensen.

At approximately 2043 hours, Detective Sergeant R. Milam, Detective J. Morris, Zavos and I were escorted to a secure room to interview Kevin Christensen.



Arizona Department of Public Safety
2010-039100

At approximately 2050 hours, Kevin Christensen was brought into the room. Detective Zavos advised Kevin Christensen of the Miranda Right's.

At approximately 2051 hours, Kevin Christensen stated he understood his right's and requested an attorney. No questions were asked.

At approximately 2052 hours, Kevin Christensen was removed from the room by detention officers.

This completed the investigation for August 22, 2010.

September 2, 2010

On September 2, 2010 at approximately 0850 hours, I arrived at the Yavapai County Sheriff's Office Evidence yard to meet with Detective Zavos and begin photocopying documents seized as evidence. When I arrived, Detective Zavos told me he was almost done with completing the inventory searches of Michael Diecks and Robert Kittredge's vehicles so he could box up their property to return it. I asked Detective Zavos if the search warrants included searching the vehicles while in property for evidence collection and he indicated the warrants did.

I was escorted to a vehicle bay where a 2004, Nissan bearing Arizona registration 170MZP, registered to Leslie S. Diecks of 2920 North Yuma Road in Chino Valley, Arizona, was being inventoried.

At approximately 0856 hours, I observed a green bandana and Vagos cuts pulled from the trunk of the vehicle. I also noted that on the key ring was a green clip. I suggested the green clip be documented as green is the color the Vagos identify their gang with.

At approximately 0916 hours, the inventory search of the 2004, Nissan bearing Arizona registration 170MZP was completed.

At approximately 0928 hours, Detective Zavos drove a 1998, Dodge SUV, bearing Arizona registration ACV0711 registered to Robert E. Kittredge of 3950 North Dana Court in Prescott Valley, Arizona into the vehicle bay to inventory items for return.

At approximately 0932 hours, blue bank bags were located within a brown briefcase that was unlocked. Inside the blue bank bags was United States currency. This was counted and kept for safekeeping by Detective Zavos.

At approximately 0944 hours, the inventory search of the vehicle was stopped to interview and meet with Auerelio Figueroa, DOB 2-23-1964 and Justin Kaufmann, DOB

738



Arizona Department of Public Safety
2010-039100

3-26-1982. These interviews and release of personal property was recorded by Detective D. Zavos.

At approximately 1111 hours, the inventory search of the 1998, Dodge SUV, bearing Arizona registration ACV0711 continued.

At approximately 1114 hours, a baggie of personal use marijuana was located between the driver's seat and the center console.

At approximately 1155 hours, the inventory of the 1998, Dodge SUV, bearing Arizona registration ACV0711 was completed.

Detective Zavos and I then photocopied various paper related documents seized as evidence. I've included these photocopies with this supplemental report.

This concluded case related investigation for September 2, 2010.

September 9, 2010

On September 9, 2010 at approximately 0902 hours, Detective Sergeant R. Milam provided me with copies of interviews from Jeremy Murphy, Jesus Lopez, Michael Koepke, Robert Kittredge, Kiley Hill, Theodore Toth, Sandra Toth, Justin Kaufmann, Michael Diecks, Brian Apfel and Kevin Christensen. The videos will be viewed later for gang related content.

On August 22, 2010, as stated earlier in this report, I was provided with a list of names of arrested Hells Angels gang members. The names provided were: Juan Marchelli, Warren Kuntz, Larry Scott, Robert Kittredge, John Bernard, Kilry Hill, Bruce Schweigert, Theodore Toth and Sandra Toth. Of the names provided the only one I wasn't familiar with was Juan Marchelli. Sandra Toth wouldn't be a member of the Hells Angels gang because she's female. The following is a known history of each gang member and an explanation of gang ledgers and notes as they relate to the gang in no particular order.

Michael Trevor Koepke, DOB 9-28-81, who resides at 3270 North Bumblebee Drive, Apartment A, in Prescott Valley, Arizona.

Michael Koepke is known in the Hells Angels gang as "Muff." Mike was first observed in Arizona by Detectives assigned to GITEM on March 10, 2007 at a Spartan Riders MC poker run being held at the Spartan Glendale club house. (See picture to right taken by Det. Skelton.)



**Arizona Department of Public Safety
2010-039100**

At the time of the Spartan Riders MC poker run Mike was a full patched member of the Hells Angels Gang. He was later identified as a member of the Cave Creek Chapter of the Hells Angels Gang.

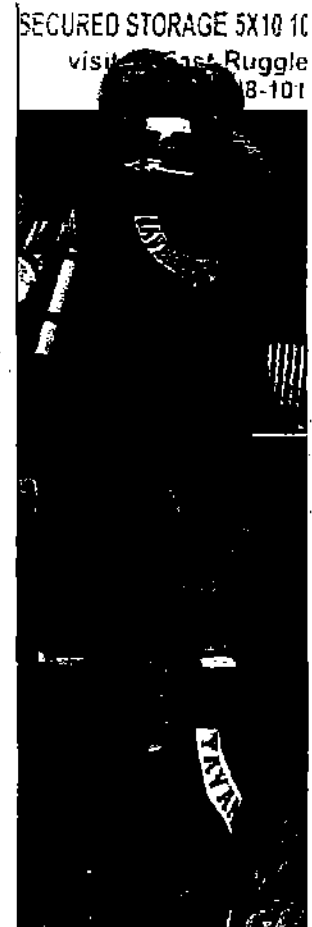
On February 21, 2010 Mike was observed at the Florence Prison Run with his wife Sarah Koepke. During this gang organized event Mike was wearing Hells Angels cuts with a "Cave Creek" side rocker. (See photo to right taken by Ken Lucas.)

On July 10, 2010 Mike was observed at the Pinon Pines Bar located at 2701 East Old US Highway 89A in Prescott, Arizona during the July meeting for the Arizona Confederation of Motorcycle Clubs meeting. While at this gang meeting Mike was observed displaying the "Yavapai" side rocker. Although not clear in the picture, the flash on the left side of Mike's cuts, as worn, is a Sgt. at Arms tab which indicates he's in an officer's position. (See photo to right taken by Sgt. Milam.)

The Hells Angels Nomads gang ledger, collected as evidence on August 22, 2010, indicates Mike began paying dues to the Nomads chapter on or about March 6, 2007. The date, 2007, for this entry appears to be a mistake. Dates surrounding the entry indicate the dues are actually for 2010. Further notes in the gang ledger indicate Mike was in an officer's position or a position of high trust. These notes are, "Mike to go to WCOM" and "Made envelope for Mike road trip + dues WCOM." These two notes indicate Mike Koepke was the Arizona Hells Angels Nomads gang representative for the Hells Angels West Coast Officers Meeting held most likely in San Bernadino or Oakland, California.

The West Coast Officers Meeting held by the Hells Angels gang is where representatives from each chapter meet to discuss gang issues. These meetings include notifying other chapters of the gang about new members, members that have left the gang and members that have been removed from the gang in bad standing. Also discussed are defense fundraising parties and merchandise sales to assist gang members with defense attorney fees which are sometimes paid for by the Hells Angels gang. Included in evidence collected on August 22, 2010 was a copy of the July 17, 2010 West Coast Officers Meeting notes. Included with the West Coast Officer gang notes is a phone list of current gang members by chapter. Mike Koepke is still listed under the "Cave Creek (602)" chapter.

On September 24, 2010 a check of Mike's Myspace! page titled "Koepke Kartel" found a flyer for the Hells Angels Fall Colors Run and various other pictures from the webpage. Mike's wife, Sarah Koepke, was displaying a profile picture which shows Mike and her posing with a weapon.



740



1.5

**Arizona Department of Public Safety
2010-039100**

Warren Spencer Kuntz, DOB 7-17-1951 of 2740 North Main Street in Flagstaff, Arizona.

Warren Kuntz is known in the Hells Angels gang as "Turtle." Warren told me he received his full patch in 1999 as a member of the Cave Creek Chapter. Warren currently holds the position of Treasure for the Arizona Hells Angels Nomads chapter of the gang. Warren's gang membership is further supported by his name and phone number being listed on the gang member phone list under "Nomads AZ (928)" as, "Turtle cell 607-1218."

As Treasurer, Warren maintains the gang ledger which indicates who has paid gang dues, been fined and gang membership status. Warren is also responsible for making sure all gang property mortgages and bills are current.

(The photo to the right of Warren was taken during the 2010, Laughlin River Run by Detective Skelton.)



On September 28, 2010 at approximately 1530 hours, Detective Zavos and I spoke with Warren Kuntz when he arrived at the Yavapai County Sheriffs Office Property Room to retrieve his motorcycle. During this conversation Kuntz indicated the Nomads were broke and could no longer afford the rent for the Nomad clubhouse located at 1611 North West Street in Flagstaff, Arizona. Kuntz indicated the Nomads rent the house from "Richard." When I asked Kuntz if the Nomads were looking to move their chapter to Skull Valley he smiled and told me the Nomads can go anywhere, that's why they're Nomads. I then asked him if they were moving into Yavapai County. I asked this question because on September 25, 2010 at the Fall Colors Run Bruce Schweigert was observed holding a small stack of Yavapai side rockers. Kuntz smiled and stated he couldn't talk about club business.

A check of public records found the property located at 1611 North West Street in Flagstaff, Arizona is owned by Richard L. Eby who list's an address of 1753 South Main in Snowflake, Arizona.

Robert Edward Kittredge, DOB 10-20-1973, of 3950 North Dana Ct. Apt. 2 in Prescott Valley, Arizona

Robert Kittredge is new to the gang and doesn't appear to yet be listed on the gang ledger.

On September 25, 2010 after the Hells Angels annual Fall Color Run, Robert Kittredge was arrested for assault and trespassing.



748



106

**Arizona Department of Public Safety
2010-039100**

When he was arrested he was wearing a black shirt with "Skull Valley" on the front. Kittredge was not a member of the original Hells Angels Skull Valley chapter. This is another indicator the Hells Angels gang may be re-starting the Skull Valley chapter or moving the Nomad chapter to the Chino Valley area.

Theodore John Toth, DOB 7-8-1947, of 2670 North Yuma Drive, Chino Valley, Arizona.

Theodore Toth is known in the Hells Angels gang as "Teddy." Recently Theodore has not been seen in public with members of the Hells Angels gang because he was convicted on charges related to the investigation known as "Black Biscuit" where the Hells Angels gang was investigated by the Bureau of Alcohol, Tobacco, Firearms and Explosives. Theodore Toth's last day on probation from charges related to that investigation was August 20, 2010, the day before this shooting. During the time Theodore was on probation he was not to have contact with gang members.

Juan Vincent Marchelli, DOB 2-2-1972, of 4833 West Las Palmaritas Drive in Glendale, Arizona.

Juan Marchelli is a newer member of the Hells Angels gang and is currently listed as a hang-around.

The July 17, 2010 Hells Angels West Coast Officer gang meeting notes indicate Juan began his hang-around status on July 2, 2010 with the Phoenix chapter of the Hells Angels gang.



Juan Marchelli's notebook contained chores the Hells Angels gang expects a hang-around to do.

Larry Dean Scott Jr., DOB 04-09-1963, of 1528 N. Road 1 E in Chino Valley, Arizona.

Larry Scott is known in the Hells Angels gang as "Scotty." The gang ledger indicates Larry became a hang-around member of the gang on 11-14-2009.

On 2-20-2010 the gang ledger indicates Larry became a prospect member of the gang.

On July 10, 2010 Larry was observed at the Pinon Pines Bar located at 2701 East Old US Highway 89A in Prescott, Arizona during the July meeting for the Arizona Confederation



742



**Arizona Department of Public Safety
2010-039100**

of Motorcycle Clubs meeting. (See photo to right taken by Sgt. Milam.)

During the Arizona Confederation of Clubs meeting Larry was doing a typical prospect related gang assignment of looking for law enforcement surveillance. During the event Larry came to my vehicle and introduced himself as a prospect for the gang.

Other entries in Larry Scott's notepad not yet listed are:
"Friday/church 8:00 pm or Teddy House."

This is an indicator that the old "Skull Valley" club house owned by Theodore Toth may be used again as a Hells Angels clubhouse.

Bruce Andrew Schweigert, DOB 12-12-1963 of 2361 S. Rio Verde Drive in Cottonwood, Arizona.

The gang ledger indicates that on 2-13-10 Bruce became a hang-around member for the Hells Angels gang.

On February 21, 2010 Bruce was observed in attendance at the Florence Prison Run.

On April 18, 2010 Bruce was observed doing a typical prospect related gang assignment of looking for law enforcement surveillance while at Sonny Barger's birthday party held at the Steel Horse bar located at 1818 West Bell Road in Phoenix, Arizona. (See picture to right taken by Det. Skelton.) During this event Bruce made contact with me while I was parked in the parking lot observing the gang related party.



Kiley Steven Hill, DOB 04-29-1971 of 7237 North Apache Avenue in Williams, Arizona.

Kiley Hill is known in the Hells Angels gang as "Kile."

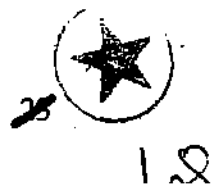
The gang ledger indicates that on 07-09-2009 Kiley became a hang-around member for the Hells Angels gang.

The gang ledger indicates that on 8-7-2010 Kiley Hill became a Prospect for the Hells Angels gang.



Gang ledger notes indicate Kiley Hill and Bruce Schweigert were assigned to "run shirts" while "Duck" (Robert Steffens) runs the LLC. This note indicates to me responsibilities

743



**Arizona Department of Public Safety
2010-039100**

within the gang to further fundraising by ensuring T-shirts are available for sale at gang related events.

John Anthony Bernard, DOB 8-25-1966 of 13413 North 33rd Street in Phoenix, Arizona.

John Bernard is a Prospect with the Hells Angels Phoenix chapter of the gang.

One of the items located during the search warrant at 2670 North Yuma Drive was John's prospect notebook. This notebook had various entries but the following entries stood out:



"Nomads chino Mike Rudy Turtle Duck Teddy off paper."

This entry is significant. John's notes are referencing full patched gang members of the Hells Angels Nomads, Mike Koepke, Rudolfo "Rudy" Martinez, Warren "Turtle" Kuntz, Robert "Duck" Steffens and Theodore "Teddy" Toth.

On August 7, 2010 Richard Laakmann, aka Showlow Rick, quit the gang. Rick was the Nomads President at the time he left. Richard Laakmaan was involved in locating the Nomads clubhouse and renting it from Richard Eby. During the conversation with Warren Kuntz on September 28, 2010, Kuntz confirms Rick is out of the club and the Nomads clubhouse at 1611 North West Street in Flagstaff, Arizona is no longer active because of Richard Laakmaan's departure from the gang and a lack of funds to pay rent to "Richard." This indicates the possibility that the Nomads will be moving their chapter to Chino Valley.

"Fri church 8:00 pm Scotty's."

This entry indicates the Hells Angels gang is holding their meeting at Larry Scott's house.

"Bruce Kevin Kyle Scotty."

This entry list's the "non-patched" members of the Hells Angels Nomads gang.

"Vagos stabbed Mike arrested."

This entry indicates the members of the Hells Angels gang are aware of the violence which is ongoing between the Vagos and Hells Angels gangs. This entry is specific to a Vagos gang member that was stabbed on May 30, 2010 in Oildale, California by a member of the Hells Angels gang.



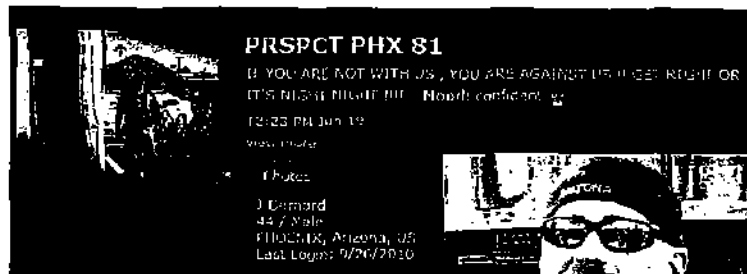
744



Arizona Department of Public Safety
2010-039100

Michael Henry Pena, also known as Delano Mike is a full patched member of the Hells Angels Orange County gang.

On September 24, 2010 a check of John Bernard's Myspace! PRSPCT PHX 81 page found him posing with hang-around cuts on and a "666" hat. John posted, "If you are not with us, you are against us!! Get it right or it's night night!!!!"



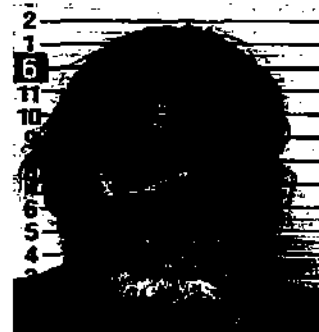
A check of John's Facebook page found him posing with Travis Fullerton, DOB 2-23-1969 who is a Hells Angels Prospect from the Mesa Chapter and Colon O'Connor, DOB 11-14-1972 who is a prospect for the Hells Angels Phoenix chapter. The picture to the right is cropped to show John wearing "Prospect Phoenix" cuts.



Kevin E. Christensen, DOB 07-04-1960 of 3301 East Ames Avenue in Kingman, Arizona.

The gang ledger indicates Kevin became a hang-around with the Hells Angles gang on 01-24-2009.

The gang ledger then indicates Kevin became a prospect with the Hells Angels gang on 06-12-2010.



On September 23, 2010 Detective D. Zavos provided me with jail recordings of calls made by Juan Marchelli, Warren Kuntz, Larry Scott, Robert Kittredge, John Bernard Bruce Schweigert and Sandra Toth.

During call recording number 187548728081411 John Bernard calls "Jennifer" his significant other.

Approximately four minutes into the call the following exchange of conversation occurs:

Jennifer: I talked to Juan yesterday he said he talked to a lawyer, a

Recording Number:	187548728081411.wav
Called Party:	6026807627
Start Call Date/Time:	2010-08-24 11:55:46
End Call Date/Time:	2010-08-24 12:03:25
Minutes:	8
Telephone ID:	43124
Name:	BERNARD, JOHN
Disconnected Reason:	INMATE HANGUP
Record Reason:	AUTOMATIC
Location:	2

745



71

Arizona Department of Public Safety
2010-039100

lawyer came to see him yesterday and that he was getting out today. They've already got Teddy and his wife out and some guy named Mike.

John: Yeah. Mike. This is his fucking fault.

The conversation then turns to other members of the gang that may be released.

During call recording number
187985802591235, Kiley Hill calls John
Bernard.

Approximately forty-eight seconds into
the recording the following exchange of
conversation occurs:

John: Hey. Hello?

Kiley: John.

John: Kile, what's happening man?

Kiley: Get you're patch?

John: Ah, no.

Kiley: Huh?

John: No, it's ahh, were gonna wait cause ah we don't want it to look like anything,
anything, a reward for anything.

Kiley: That's fucked up man.

John: Yeah, well no I mean, that's, we talked about it and I mean it's pretty much I been
told it's a forgone conclusion it's just. Yeah.

The conversation then turns to the party to raise money to bail Kiley out of jail.

Recording Number:	187985802591235.wav
Called Party:	6026807627
Start Call Date/Time:	2010-08-29 10:48:29
End Call Date/Time:	2010-08-29 10:55:23
Minutes:	7
Telephone ID:	63984
Name:	HILL, KILEY
Disconnected Reason:	INMATE HANGUP
Record Reason:	AUTOMATIC
Location:	1

746





G.I.T.E.M.

GANG & IMMIGRATION INTELLIGENCE TEAM ENFORCEMENT MISSION

Detective/Officer: L. Skelton #4953	Agency: Arizona DPS	
Supervisor: R. Milam #3950	DR#: 2010-039100	Date: 12-19-2011
Suspects: Michael Koepke		
Crime: Agg. Assault		Gang Related: <input checked="" type="checkbox"/>

Narrative:

This is a supplemental report to Yavapai County Sheriff's Office report number 2010-030743 authored by Detective D. Zavos.

On August 19, 2011 Chino Valley Police Officer C. Cousins #22, arrested Arizona Nomads Hells Angels member Warren Spence Kuntz, DOB 7-17-1951 for DUI. During the arrest, Chino Valley Police Officer B. Frost #25 located various Hells Angels related gang notes and made photo copies of them, all are attached.

On August 26, 2011 Department of Public Safety Sergeant R. Milam #3950, met with Chino Valley Police Officers and obtained a copy of the gang notes obtained by Chino Valley Police Officer Frost during the arrest of Kuntz.

On approximately August 31, 2011, Sergeant R. Milam provided me, Arizona Department of Public Safety Detective L. Skelton with a copy of the notes to review. Due to a temporary assignment I was unable to review the documents until November 29, 2011. Once I reviewed the notes I found them to provide valuable information related to the ongoing formal structure of the Hells Angels Nomads Chapter gang which included members of the gang which were involved in the assault on the Vagos motorcycle gang.

Some of the information noted is:

A document dated 9-30-10 the Arizona Hells Angles Nomads are requesting that members of the Hells Angels gang in the United States, members and prospects, be required to pay a \$250.00 assessment to help with the legal fees associated with various ongoing attorney fees for separate criminal charges the Arizona Nomad members have been charged with. The document didn't indicate if the motion had passed or failed, however, it provides insight how the Hells Angels function as an ongoing formal gang with nationwide and worldwide structure.

Notes specific to the Arizona Hells Angels Nomads gang indicated members, whether on court ordered non-association or not, continue to communicate with members of the Hells Angels Nomads. For example, the gang ledger indicated that Michael "Mike" Koepke, Larry "Scotty" Scott, Bruce Schweigert, Kevin Christensen, and Kiley "Kyle" Hill continued to pay their Hells Angels gang dues on the following dates, 11-6-10, 11-13-10, 11-20-10, 11-27-10, 12-4-10, 12-11-10, 12-18-10, 12-25-10, 1-1-11, 1-8-11, 1-15-11, 1-22-11, 1-29-11, 2-5-11, 2-12-11, 2-19-11, 2-25-11, 3-4-11, 3-11-11, 3-18-11, 3-25-11, 4-2-11, 4-15-11, 4-22-11, 4-29-11, 5-6-11, 5-13-11, 5-20-11, 5-27-11, 6-3-11, 6-10-11, 6-17-11, 6-25-11, 7-2-11, 7-8-11, 7-17-11, 7-24-11, 7-28-11, 8-6-11, 8-13-11 and 8-20-11. These dates are after the court imposed non-association restriction applied to each member unless their





GIITEM

GANG & IMMIGRATION INTELLIGENCE TEAM ENFORCEMENT MISSION

attorneys are present.

Further, the gang ledger indicates that on 7-8-11 Kevin (Christensen) makes member and Scotty (Larry Scott) 3-11-11 made member. Both are presumed to be "voted in" on those dates which coincide with the list of dates above for club meetings where members paid their gang dues.

Also found is the "AZ NOMADS BI-LAWS" which indicate they were updated April 2009, older Hells Angels gang phone list, Hells Angels Motorcycle Corporation Corporate Property Agreement, 2007 Upcoming Events List, Project 81.net logon information and passwords, run dates, Hells Angels Motorcycle Club Application, hang around information, photocopies of U.S. currency and a document on "Prospecting" all of which provide information and insight into the ongoing formal gang association of the Arizona Hells Angels Nomads.

L. S. Skelton #4953

Detective L. Skelton #4953
Arizona DPS/GIITEM

Report submitted by Detective/Officer: L. Skelton

of the Arizona State Gang Task Force (GIITEM - Gang & Immigration Intelligence Team Enforcement Mission)



IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

FILED
11:42 AM
DEC 1 2010

STATE OF ARIZONA,
Plaintiff,
vs.

INDICTMENT

DEC 1 2010

JEANNE HICKS, Clerk
BY J. K. K. Deputy

JOHN ANTHONY BERNARD,
KEVIN EUGENE CHRISTENSEN,
KILEY STEVEN HILL,
MICHAEL TREVOR KOEPKE, AND
LARRY DEAN SCOTT, JR.,
ROBERT EDWARD KITREDGE, AND
BRUCE ANDREW SCHWEIGERT, SR.,

NO.: P1300CR201000968
NO.: P1300CR201000969
NO.: P1300CR201000970
NO.: P1300CR201000971
NO.: P1300CR201000972
NO.: P1300CR201000976
NO.: P1300CR201000977

Defendants.

Grand Jury No. 160-GJ-17651

The Grand Jurors of Yavapai County, Arizona, accuse JOHN ANTHONY BERNARD, KEVIN EUGENE CHRISTENSEN, KILEY STEVEN HILL, MICHAEL TREVOR KOEPKE, LARRY DEAN SCOTT, JR., ROBERT EDWARD KITREDGE, AND BRUCE ANDREW SCHWEIGERT, SR., charging that in Prescott Precinct, Yavapai County, Arizona:

COUNT I

On or about August 21, 2010, JOHN ANTHONY BERNARD, KEVIN EUGENE CHRISTENSEN, KILEY STEVEN HILL, MICHAEL TREVOR KOEPKE, AND LARRY DEAN SCOTT, JR., using a deadly weapon or dangerous instrument, to-wit: a firearm, intentionally, knowingly or recklessly caused physical injury to Robert Blankenship, in violation of A.R.S. §§ 13-1204(A), 13-1203, 13-704, 13-301, 13-302, and 13-303, a class 3 felony.

COUNT II

On or about August 21, 2010, JOHN ANTHONY BERNARD, KEVIN EUGENE CHRISTENSEN, KILEY STEVEN HILL, MICHAEL TREVOR KOEPKE, AND LARRY DEAN SCOTT, JR., using a deadly weapon or dangerous instrument, to-wit: a firearm, intentionally, knowingly or recklessly caused physical injury to Ruben Lopez, in violation of A.R.S. §§ 13-1204(A), 13-1203, 13-704, 13-301, 13-302, and 13-303, a class 3 felony.

CONTINUED ON NEXT PAGE

COUNT III

On or about August 21, 2010, **JOHN ANTHONY BERNARD, KEVIN EUGENE CHRISTENSEN, KILEY STEVEN HILL, MICHAEL TREVOR KOEPKE, AND LARRY DEAN SCOTT, JR.**, using a deadly weapon or dangerous instrument, to-wit: a firearm, intentionally placed Robert Blankenship in reasonable apprehension of imminent physical injury, in violation of A.R.S. §§ 13-1204(A), 13-1203, 13-704, 13-301, 13-302, and 13-303, a class 3 felony.

COUNT IV

On or about August 21, 2010, **JOHN ANTHONY BERNARD, KEVIN EUGENE CHRISTENSEN, KILEY STEVEN HILL, MICHAEL TREVOR KOEPKE, AND LARRY DEAN SCOTT, JR.**, using a deadly weapon or dangerous instrument, to-wit: a firearm, intentionally placed Ruben Lopez in reasonable apprehension of imminent physical injury, in violation of A.R.S. §§ 13-1204(A), 13-1203, 13-704, 13-301, 13-302, and 13-303, a class 3 felony.

COUNT V

On or about August 21, 2010, **JOHN ANTHONY BERNARD, KEVIN EUGENE CHRISTENSEN, KILEY STEVEN HILL, MICHAEL TREVOR KOEPKE, AND LARRY DEAN SCOTT, JR.**, using a deadly weapon or dangerous instrument, to-wit: a firearm, intentionally placed Daniel Urquilla in reasonable apprehension of imminent physical injury, in violation of A.R.S. §§ 13-1204(A), 13-1203, 13-704, 13-301, 13-302, and 13-303, a class 3 felony.

COUNT VI

On or about August 21, 2010, **JOHN ANTHONY BERNARD, KEVIN EUGENE CHRISTENSEN, KILEY STEVEN HILL, MICHAEL TREVOR KOEPKE, AND LARRY DEAN SCOTT, JR.**, using a deadly weapon or dangerous instrument, to-wit: a firearm, intentionally placed Jeanine Urquilla in reasonable apprehension of imminent physical injury, in violation of A.R.S. §§ 13-1204(A), 13-1203, 13-704, 13-301, 13-302, and 13-303, a class 3 felony.

COUNT VII

On or about August 21, 2010, **JOHN ANTHONY BERNARD, KEVIN EUGENE CHRISTENSEN, KILEY STEVEN HILL, MICHAEL TREVOR KOEPKE, AND LARRY DEAN SCOTT, JR.**, using a deadly weapon or dangerous instrument, to-wit: a firearm, intentionally placed Aurelio Figueroa in reasonable apprehension of imminent physical injury, in violation of A.R.S. §§ 13-1204(A), 13-1203, 13-704, 13-301, 13-302, and 13-303, a class 3 felony.

CONTINUED ON NEXT PAGE

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Nov 13 2014 11:42 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

★ ★ ★ ★ ★

ERNESTO MANUEL GONZALEZ,

CASE NO. 64249

Appellant.

v.

THE STATE OF NEVADA,

Respondent.

APPELLANT'S APPENDIX, VOLUME III

APPEAL FROM JUDGMENT AFTER
JURY TRIAL AND SENTENCING

Second Judicial District
State of Nevada

THE HONORABLE CONNIE J. STEINHEIMER, PRESIDING

Richard F. Cornell, Esq.
Attorney for Appellant
150 Ridge Street
Second Floor
Reno, NV 89501
775/329-1141

Washoe County District Attorney's Office
Appellate Division
Attorney for Respondent
1 Sierra St., 7th Floor
Reno, NV 89501
775/337-5750

INDEX TO APPELLANT'S APPENDIX
ERNESTO MANUEL GONZALEZ v. THE STATE OF NEVADA
No. 64249

NO	DESCRIPTION	DATE	PAGES
	VOLUME I		
1	Indictment	11-09-11	1-10
2	Information Supplementing Indictment	1-30-13	11-21
3	Corrected Information Supplementing Indictment	3-02-12	22-32
4	Withdrawal of Information Supplementing Indictment	2-01-13	33-34
5	Second Information Supplementing Indictment	2-20-13	35-45
6	Third Information Supplementing Indictment	7-10-13	46-55
7	Fourth Information Supplementing Indictment	7-22-13	56-64
8	Grand Jury Transcript, Vol. I	10-25-11	65-107
9	Grand Jury Transcript, Vol. II	11-03-11	108-125
10	Grand Jury Transcript, Vol. III	11-09-11	126-250
	VOLUME II		
	Cont.		251-401
11	Motion to Dismiss Indictment or in the Alternative Petition for Writ of <i>Habeas Corpus</i>	2-24-12	402-410
12	Opposition to Defendant Gonzalez Motion to Dismiss/Petition for Writ of <i>Habeas Corpus</i>	3-05-12	411-417

13	Reply in Support of Motion to Dismiss Indictment or in the Alternative Petition for Writ of <i>Habeas Corpus</i>	4-06-12	418-429
14	Motion to Partially Join In Co-Defendant Cesar Villagrana's Writ of <i>Habeas Corpus</i> and Motion to Compel	5-29-12	430-433
15	Motion to Join to Balance of Co-Defendant Cesar Villagrana's Petition for Writ of <i>Habeas Corpus</i>	6-11-12	434-436
16	Opposition to Defendant Gonzalez' Motion to Partially Join in Co-Defendant Cesar Villagrana's Writ of <i>Habeas Corpus</i> and Motion to Compel	6-14-12	437-440
17	Reply to Opposition to Defendant's Motion Partially Join in Co-Defendant Cesar Villagrana's Petition for Writ of <i>Habeas Corpus</i> and Motion to Compel	6-14-12	441-445
18	Supplemental Points and Authorities in Support of Motion to Dismiss Indictment or in the Alternative Petition for Writ of <i>Habeas Corpus</i> and Motion to Reconsider Based Upon Newly Discovered Evidence	9-13-12	446-463
19	Opposition to Supplemental Points and Authorities (etc.)	9-19-12	464-472
20	Reply to State's Opposition to Defendant's Supplemental Points and Authorities and Motion to Reconsider	9-24-12	473-482
	VOLUME III		
21	Order	9-13-12	483-510
22	Second Motion to Dismiss	10-18-12	511-562
23	Opposition to Second Motion to Dismiss	10-12-12	563-567

24	Reply to State's Opposition to Defendant's Second Motion to Dismiss	10-19-12	568-573
25	Order Granting in Part and Denying in Part Request for Clarification or Supplemental Order and Denying Second Motion to Dismiss	10-30-12	574-586
26	Order Denying Petition, No. 62392	1-31-13	587-589
27	Order After October 29, 2012 Hearing	10-30-12	590-592
28	Motion to Bifurcate Enhancement Evidence	11-26-12	593-599
29	Opposition to Motion to Bifurcate Enhancement Evidence	12-06-12	600-607
30	Motion to Admit Evidence of Other Crimes, Wrongs, or Acts	11-26-12	608-649
31	Supplement to Motion for Order Admitting Gang Enhancement Evidence and Testimony	11-26-12	650-660
32	Addendum to Motion for Order Admitting Gang Enhancement	11-26-12	661-750
	VOLUME IV		
	(Cont.)		751-1000
	VOLUME V		
	(Cont.)		1001-1250
	VOLUME VI		
	(Cont.)		1251-1402
33	Opposition to Request for Disclosure of Proposed Gang Enhancement Evidence and Witnesses	10-19-12	1403-1423

34	Opposition to State's Motion to Admit Evidence of Other Crimes, Wrongs or Acts, and Motion to Strike	12-11-12	1424-1436
35	Opposition to State's Motion for Order Admitting Gang Enhancement Evidence and Testimony	12-11-12	1437-1464
36	Opposition to State's Motion for Order Admitting Gang Enhancement Evidence and Testimony	12-18-12	1465-1431
37	Motion Requesting Leave of Court to Supplement Gang Enhancement Discovery	1-23-13	1472-1500
	VOLUME VII		
	(Cont.)		1501-1543
38	Opposition to State's Motion for Leave to Supplement Gang Enhancement Discovery (Lake County Incident)	1-28-13	1544-1548
39	Transcript of Proceedings Pre-Trial Motions	10-29-12	1547-1713
40	Transcript of Proceedings Evidentiary Hearing	1-08-13	1714-1750
	VOLUME VIII		
	(Cont.)		1751-1948
41	Transcript of Proceedings Evidentiary Hearing	1-09-13	1949-2000
	VOLUME IX		
	(Cont.)		2001-2214
42	Transcript of Proceedings Evidentiary Hearing	1-14-13	2215-2250
	VOLUME X		

	(Cont.)		2251-2429
43	Transcript of Proceedings Evidentiary Hearing	1-15-13	2430-2500
	VOLUME XI		
	(Cont.)		2501-2553
44	Order Regarding the State's Motion for Order Admitting Gang Enhancement Testimony	5-20-13	2554-2561
45	Order Granting in Part and Denying in Part the State's Motion to Admit Evidence of Other Crimes, Wrongs or Acts	5-16-13	2562-2574
45A	Order Granting Motion to Join Select Legal Pleadings	4-29-13	2574A
46	Transcript of Proceedings Change of Plea (Villagrana)	7-22-13	2575-2592
47	Trial Transcript, Day Three Morning Session	7-24-13	2593-2726
48	Trial Transcript, Day Three Afternoon Session	7-24-13	2727-2747
	VOLUME XII		
	(Cont.)		2748-2818
49	Trial Transcript, Day Four Morning Session	7-25-13	2819-3004
	VOLUME XIII		
50	Trial Transcript, Day Four Afternoon Session	7-25-13	3005-3099
51	Trial Transcript, Day Five Morning Session	7-20-13	3100-3250
	VOLUME XIV		

	(Cont.)		3251-3261
52	Trial Transcript, Day Five Afternoon Session	7-29-13	3262-3366
53	Trial Transcript, Day Six, Morning Session	7-30-13	3367-3500
	VOLUME XV		
	(Cont.)		3501-3544
54	Trial Transcript, Day Six Afternoon Session	7-30-13	3545-3613
55	Trial Transcript, Day Six Examination of Donald Sandy	7-30-13	3614-3683
56	Trial Transcript, Day Seven Morning Session	7-31-13	3684-3750
	VOLUME XVI		
	(Cont.)		3751-3842
57	Trial Transcript, Day Seven Afternoon Session	7-31-13	3843-4000
	VOLUME XVII		
	(Cont.)		4001-4018
58	Trial Transcript, Day Eight Morning Session	8-01-13	4019-4200
59	Trial Transcript, Day Eight Afternoon Session	8-01-13	4201-4250
	VOLUME XVIII		
	(Cont.)		4251-4294
60	Trial Transcript, Day Nine Morning Session	8-02-13	4295-4444
61	Trial Transcript, Day Nine Afternoon Session	8-02-13	4445-4500

	VOLUME XIX		
	(Cont.)		4501-4589
62	Trial Transcript, Day Ten Morning Session	8-05-13	4590-4730
63	Trial Transcript, Day Ten Afternoon Session	8-05-13	4731-4750
	VOLUME XX		
	(Cont.)		4751-4757
64	Trial Transcript, Day Eleven	8-06-13	4758-4811
65	Trial Transcript, Day Twelve	8-07-13	4812-4956
66	Jury Instructions		4957-5000
	VOLUME XXI		
	(Cont.)		5001-5011
67	Refused Instructions, - Defendant A-E	8-06-13	5012-5017
68	Jury Question #2, No Response	8-07-13	5018-5021
69	Verdicts	8-07-13	5022-5036
70	Stipulation to Waive Separate Penalty Hearing	8-07-13	5037
71	Motion for a New Trial	8-14-13	5038-5141
72	Motion to Strike Redundant Convictions	8-13-13	5142-5145
73	Motion to Compel Election Between Multiplicitous Murder Counts	8-06-13	5146-5149
74	Opposition to Motion for New Trial	8-22-13	5150-5159
75	Opposition to Defendant's Motion to Strike	8-22-13	5160-5180
76	Reply to Opposition to Motion for New Trial	8-27-13	5181-5250

	VOLUME XXII		
	(Cont.)		5251-5489
77	Reply to Opposition to Motion to Strike Redundant Convictions	9-13-13	5490-5494
	VOLUME XXIII		
78	Transcript of Proceedings - Sentencing	10-03-13	5495-5571
79	Judgment	10-03-13	5572-5574
80	Corrected Judgment	10-04-13	5575-5577
81	Notice of Appeal to the Supreme Court	10-15-13	5578-5580

21

3370

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR11-1718A/B

CESAR VILLAGRANA, and
ERNESTO MANUEL GONZALEZ,

Dept. No. 4

Defendants.
/ORDER

On February 24, 2012, Defendant Ernesto Manuel Gonzalez (hereinafter, "Gonzalez") filed *Motion to Dismiss Indictment or in the Alternative Petition for Writ of Habeas Corpus*. The State of Nevada (hereinafter, "the State") filed *Opposition to Defendant Gonzalez's Motion to Dismiss/ Petition for Writ of Habeas Corpus* on March 5, 2012. The Court heard oral argument on the matter on the dates requested by counsel: June 14, 2012 and July 13, 2012.¹ The matter is now before the Court for review.

On March 5, 2012, Defendant Cesar Villagrana (hereinafter, "Villagrana") filed *Petition for Writ of Habeas Corpus* ("Original Petition"). The State filed *Opposition to Defendant Villagrana's Petition for Writ of Habeas Corpus* on May 4, 2012.² On June 7, 2012, Villagrana

¹ At the conclusion of the July 13, 2012 Hearing, the Court allowed Gonzalez to file a supplemental petition based on the parties' stipulation regarding Villagrana's *Motion to Compel Discovery of Transcript of Hearing to Withhold Marcum Notice and Other Documents Related to that Hearing*, which Gonzalez had joined. Gonzalez did not file a supplemental petition.

² The Court notes that On May 29, 2012, Gonzalez filed *Motion to Partially Join in Co-Defendant Cesar Villagrana's Writ of Habeas Corpus and Motion to Compel*. On June 11, 2012, Gonzalez filed *Motion to Join the Balance of Co-Defendant Cesar Villagrana's Petition for Writ of Habeas Corpus*. The State filed *Opposition to Defendant Gonzalez's Motion to Partially Join in Co-Defendant Cesar Villagrana's Writ of Habeas Corpus and Motion to Compel* on June 14, 2012. The same day, Gonzalez filed *Reply to Opposition to Defendant's Motion to Partially Join in Co-Defendant Cesar Villagrana's Petition for Writ of Habeas Corpus and Motion to Compel*.

1 filed *Defendant Cesar Villagrana's Supplement to Petition for Writ of Habeas Corpus*
2 ("Supplemental Petition"). The State filed *Opposition to Defendant Villagrana's Supplement to*
3 *Petition for Writ of Habeas Corpus* on June 11, 2012. The Court heard oral argument on the
4 matter on the dates requested by counsel: June 14, 2012 and July 13, 2012.³ On August 3, 2012,
5 Villagrana filed *Defendant Villagrana's Second Supplement to Petition for Writ of Habeas*
6 *Corpus* ("Second Supplemental Petition"). On August 10, 2012, the State filed *Opposition to*
7 *Defendant Villagrana's Second Supplement to Petition for Writ of Habeas Corpus*. The matter is
8 now before the Court for review.

9 NRS 34.360 provides that "[e]very person who is unlawfully committed, detained,
10 confined or restrained of his or her liberty, under any pretense what[so]ever, may prosecute a
11 writ of habeas corpus to inquire into the cause of such imprisonment or restraint." The party
12 seeking relief may prosecute a writ of habeas corpus prior to trial. See NRS 34.700, 34.710.

13 **I. Villagrana's Original Petition, Supplemental Petition and Second Supplemental**
14 **Petition**

15 In Villagrana's Original Petition he asserts six grounds for relief. First, Villagrana argues
16 that the Marcum Notice was improperly withheld. Second, Villagrana argues that the State did
17 not instruct the Grand Jury on self-defense. Third, Villagrana argues that the structure of the
18 indictment violates NRS 172.095(2). Villagrana also argues that the State committed other
19 instructional errors at the Grand Jury proceeding, in violation of NRS 172.05(2). Fourth,
20 Villagrana argues that the testimony of Jorge Gil-Blanco was inadmissible before the Grand Jury
21 because he is not an expert. Villagrana also asserts that the State impermissibly referred to Jorge
22 Gil-Blanco as an expert and that his testimony went beyond the permissible scope. Fifth,
23 Villagrana argues that the State failed to present sufficient evidence of the gang enhancement,
24 the charge of battery with a deadly weapon, and discharging a firearm in a structure.
25 Additionally, Villagrana asserts that there are duplicative counts in the indictment and that the
26

27 ³ At the conclusion of the July 13, 2012 Hearing, the Court also allowed Villagrana to file a supplemental
28 petition based on the parties' stipulation regarding his *Motion to Compel Discovery of Transcript of Hearing to*
Withhold Marcum Notice and Other Documents Related to that Hearing.

1 State failed to properly instruct on specific intent and the definition of concealed. Sixth,
2 Villagrana argues that the combination of inadmissible, secondary, and inflammatory evidence,
3 and the improper instruction to the Grand Jury constituted cumulative error which irreparably
4 impaired the Grand Jury function. In the Supplemental Petition, Villagrana alleges a seventh
5 ground for relief. Villagrana argues that the State failed to present exculpatory evidence to the
6 Grand Jury. In Villagrana's Second Supplemental Petition he supplements his arguments with
7 respect to the first ground in his Original Petition, relating to the Marcum Notice issue, but he
8 does not allege any additional grounds for relief.

9 The State asserts that Villagrana's Writ must be denied in its entirety. The State argues
10 that the Marcum Notice was properly withheld pursuant to NRS 172.241(3)(b). The State asserts
11 that it is required to instruct the Grand Jury on the elements of the crimes charged, not on the
12 law, as many of Villagrana's claims imply. The State argues that the indictment itself is legally
13 sufficient. Additionally, the State argues that it did not fail to present exculpatory evidence
14 because the evidence relied on by Villagrana was learned of after the Grand Jury proceeding and
15 it is not exculpatory as to Villagrana.

16 **A. The Arguments Contained in Ground II for Relief, as well as the Arguments**
17 **from Ground III and Ground V Regarding the State's Failure to Instruct the**
18 **Grand Jury**

19 NRS 172.095(1) provides, among other things, that "the court shall... [g]ive the grand
20 jury such information as required by law and any other information it deems proper regarding
21 their duties and any charges for public offices returned to the court or likely to come before the
22 grand jury." NRS 172.095(1)(a). "Before seeking an indictment, or series of similar
23 indictments, the district attorney shall inform the grand jurors of the specific elements of any
24 public offense which they may consider as the basis of the indictment or indictments." NRS
25 172.095(2).

26 Villagrana argues in Ground II of his Original Petition that the State was required to
27 instruct the Grand Jury on self-defense. Additionally, Villagrana argues in Ground V that the
28 State was required to instruct on specific intent for the gang enhancement and the definition of

1 concealed for Count 6 of the Indictment. The Court disagrees. The Court finds that none of the
2 cases cited by Villagrana impose a duty on the State to instruct the Grand Jury as he argues. In
3 fact, the Nevada Supreme Court has held that the prosecuting attorney is not required to instruct
4 the grand jury on the law. Schuster v. Eighth Judicial Dist. Court ex rel. County of Clark, 123
5 Nev. 189, 192 (2007) ("This court has further held that 'it is not mandatory for the prosecuting
6 attorney to instruct the grand jury on the law'" (citing Hylar v. Sheriff, 93 Nev. 561, 564 (1977);
7 Phillips v. Sheriff, 93 Nev. 309, 311-12 (1977)).

8 Further, NRS 172.095(2) only imposes a duty on the State to instruct the Grand Jury on
9 the specific elements of the public offenses to support the Indictment. Villagrana does not
10 contend, nor can the Court find based on the record, that the State failed to instruct the Grand
11 Jury on the specific elements of the offenses charged. Because NRS 172.095(2) only required
12 the State to instruct the Grand Jury on the elements of the offenses to support the indictment
13 against Villagrana, and because the traditional role of a grand jury is as an investigative and
14 accusatory body, rather than an adjudicative one, the Court finds that Ground II, as well as the
15 allegations contained in Ground V concerning instructions to the Grand Jury fail to state a basis
16 for relief. See Schuster, 123 Nev. at 193 ("our statutes and case law addressing grand juries
17 generally reflect the historical view that they are investigative and accusatory bodies, rather than
18 adjudicatory ones"); id. at 194 (noting that the Court has previously "expressed an unwillingness
19 to expand the rights of grand jury targets beyond those explicitly provided by statute or
20 constitutionally required").

21 With respect to Ground III, Villagrana argues that the State did not correctly instruct the
22 Grand Jury on the necessity of determining probable cause for the factual components of aiding
23 and abetting. Villagrana argues that the State did not instruct the Grand Jury that for Count 2
24 Villagrana must have aided and abetted with the intention that the crime be committed.
25 Additionally, Villagrana argues that the Grand Jury was improperly instructed on vicarious
26 liability as an aider and abettor in relation to Count 10. Based on the discussion above, the Court
27 finds that State was not required to provide the Grand Jury with instructions on aiding and
28

1 abetting. See Schuster, 123 Nev. at 192, 194; NRS 172.095(2). Because the State did provide an
2 instruction on aiding and abetting the Court will address Villagrana's argument that the language
3 used by the State in the instruction on principal liability as an aider and abettor was a complete
4 misstatement of the law. The Court finds that Villagrana's argument is without merit because
5 the exact language challenged by Villagrana, as well as the other language used in the
6 instruction, is contained in NRS 195.020. Therefore, the Court finds that the arguments in
7 Ground III regarding the State's duty to instruct the Grand Jury fail to state a basis for relief.

8 **B. The Remaining Arguments Contained in Ground III and the Arguments in**
9 **Ground V Regarding Duplicative Counts**

10 Villagrana makes a number of different arguments under Ground III, thus, the Court will
11 address each in turn. The Court will first address Villagrana's argument that Count 2 and Count
12 10 of the indictment are defective because they are only supported by generic factual allegations.
13 To support his argument, Villagrana relies on the finding in State v. Hancock that an indictment
14 that lumps multiple defendants together with multiple acts "is very difficult to decipher who is
15 alleged to have done what" and is defective. See 114 Nev. 161, 165 (1998). Villagrana asserts
16 that none of the allegations apply to him in Count 2 and Count 10, thus, he argues they fail to
17 state a basis for liability. Villagrana does not provide any explanation for his assertion that the
18 allegations contained in Count 2 and Count 10 do not apply to him. The Court finds that
19 Villagrana's concusitory statement is without merit because both Count 2 and Count 10
20 specifically name him and provide factual allegations against him, which include the elements of
21 the offense charged. See State v. Hancock, 114 Nev. 161, 164 (1998); NRS 173.075(1).

22 With respect to Villagrana's reliance on Hancock, the Court finds that the instant case is
23 distinguishable. In Hancock, the Court affirmed the district court's dismissal of the indictment,
24 and found that the indictment contained indefinite charges, it was difficult to decipher who was
25 alleged to have done what, and each count was defective because it failed to cite what particular
26 provisions of NRS 207.400 the respondents conspired to violate. Id. at 165-167. While the
27 indictment names Villagrana, as well as Gary Stuart Rudnick, Jeffrey Pettigrew, and Gonzalez in
28 Count 2 and Count 10, the Court finds that, unlike Hancock, it is clear what acts Villagrana

1 allegedly committed and the theory, or theories, of liability that support each Count. See id. The
2 Court finds that the allegations contained in Count 2 and Count 10 are sufficient to apprise
3 Villagrana of the allegations against him; thus, the Indictment is not deficient as Villagrana has
4 alleged. See id. at 164 (noting that the United State's Supreme Court has held that an indictment
5 is deficient unless it "sufficiently apprises the defendant of what he must be prepared to meet").

6 The Court next considers Villagrana's argument that there is no probable cause for Count
7 2 of the Indictment.⁴ Villagrana argues that there are no allegations or evidence that he agreed
8 with Gonzalez to engage in a fight and the death of Jeffrey Pettigrew resulted from their previous
9 agreement to fight, as required under NRS 200.450 and NRS 200.410.⁵ Villagrana urges the
10 Court to read NRS 200.410 and NRS 200.450 together. Villagrana asserts that pursuant to the
11 statutes the person doing the killing must have previously agreed to fight with the deceased in
12 order to be charged under NRS 200.450.

13 Villagrana is charged in Count 2 with a challenge to fight resulting in death with the use
14 of a deadly weapon, a violation of NRS 200.450, 200.010, 200.030, 193.165, 199.480, 195.020,
15 and 193.168. NRS 200.450 is entitled "[c]hallenges to fight; penalties" and provides, in its
16 entirety:

- 17 1. If a person, upon previous concert and agreement, fights with any other person or
18 gives, sends or authorizes any other person to give or send a challenge verbally or in
19 writing to fight any other person, the person giving, sending or accepting the
20 challenge to fight any other person shall be punished:
(a) If the fight does not involve the use of a deadly weapon, for a gross
misdemeanor; or

21 ⁴ Count 2 alleges, among other things, that Villagrana and the other named Defendants were responsible
22 directly for the challenge to fight resulting in death, had the intent to commit or accept a challenge to fight and
23 conspired with each other to commit the offense, or had the intent to commit the crime challenge to fight and
24 completed the offense by aiding and abetting each other directly or indirectly. While Villagrana refers to probable
25 cause, the Court finds that he actually does not challenge the sufficiency of the evidence to support Count 2 under an
26 agency theory or the other theories presented by the State. Villagrana does not cite to legal authorities or the record
27 to support his conclusory statements that there was not probable cause to support Count 2. Further, the Court notes
28 that Villagrana does not challenge the sufficiency of the evidence presented to the Grand Jury on Count 2 in Ground
V of his Writ, which is entitled "Sufficiency of the Evidence". Because Villagrana's arguments focus on the
interpretation of NRS 200.450, and because his argument focuses on the statutory basis for charging him under
Count 2, the Court finds that his arguments go to whether the State improperly charged him under the statutory
scheme, not to challenge the Grand Jury's probable cause determination.

⁵ Villagrana also argues that Count 2 of the Indictment is based on a faulty legal premise because the Grand
Jury was not instructed on vicarious liability or aiding and abetting related to that Count. However, as discussed
above, the State is not required to instruct on anything more than the elements of the offenses, not on theories of
liability. See Schuster, 123 Nev. at 192, 194; NRS 172.095(2); *supra* pp. 3-5.

- 1 (b) If the fight involves the use of a deadly weapon, for a category B felony
2 by imprisonment in the state prison for a minimum term of not less than 1
3 year and a maximum term of not more than 6 years, and may be further
4 punished by a fine of not more than \$5,000.
- 5 2. A person who acts for another in giving, sending, or accepting, either verbally or in
6 writing, a challenge to fight any other person shall be punished:
- 7 (a) If the fight does not involve the use of a deadly weapon, for a gross
8 misdemeanor; or
- 9 (b) If the fight involves the use of a deadly weapon, for a category B felony
10 by imprisonment in the state prison for a minimum term of not less than 1
11 year and a maximum term of not more than 6 years, and may be further
12 punished by a fine of not more than \$5,000.
- 13 3. Should death ensue to a person in such a fight, or should a person die from any
14 injuries received in such a fight, the person causing or having any agency in causing
15 the death, either by fighting or by giving or sending for himself or herself or for any
16 other person, or in receiving for himself or herself or for any other person, the
17 challenge to fight, is guilty of murder in the first degree which is a category A felony
18 and shall be punished as provided in subsection 4 of NRS 200.030.

19 NRS 200.030(4) is the penalty section for a person convicted of murder in the first degree and
20 provides that it is a category A felony, which shall be punished by death or imprisonment in the
21 state prison for life with, or without, the possibility of parole, or for a definite term of 50 years.
22 NRS 200.030(4)(a)-(b).

23 "Statutes should be given their plain meaning and 'must be construed as a whole and not
24 be read in a way that would render words or phrases superfluous or make a provision nugatory.'" Butler v. State, 120 Nev. 879, 892-93 (2004) (quoting Charlie Brown Constr. Co. v. Boulder City, 106 Nev. 497, 502 (1990)). It is presumed that every word, phrase, and provision of a
25 statute has a meaning. Id. at 893 (citation omitted). Only when the plain meaning of a statute is
26 ambiguous should the court look beyond the language to consider its meaning in light of its
27 spirit, subject matter, and public policy. Id. (citing Zabeti v. State, 120 Nev. 530, 534 (2004);
28 Moore v. State, 117 Nev. 659, 661 (2001)). "In addition, ambiguities in criminal liability
statutes must be liberally construed in favor of the accused." Zabeti, 120 Nev. at 534 (citations
omitted). NRS 200.450(3) provides that "the person causing or having any agency in causing
the death... is guilty of murder in the first degree...." See NRS 200.450(3) (emphasis added).

After review of NRS 200.450, the Court finds that NRS 200.450 is unambiguous.⁶ Thus,

⁶ The Court notes that even though Villagrana urges the Court to read NRS 200.450 in a particular way based on NRS 200.410 and the Nevada Supreme Court's interpretation of the prior challenge to fight statute, Villagrana never specifically asserts that NRS 200.450 is ambiguous.

1 the Court will give NRS 200.450 its plain meaning when addressing Villagrana's arguments.
2 Here, Villagrana urges the Court to read NRS 200.450 together with NRS 200.410, a crime not
3 charged in the Indictment, even though NRS 200.450 provides the elements and penalties of a
4 challenge to fight and does not internally refer to NRS 200.410. If the Court construes NRS
5 200.450 in the manner argued by Villagrana, it would render the language in subsection 3,
6 specifically, that the person having any agency in causing the death is guilty of murder in the
7 first degree, meaningless. See NRS 200.450(3). Because NRS 200.450 is not ambiguous, and
8 because NRS 200.450(3) allows a person having any agency in causing the death of another by
9 way of a challenge to fight to be held accountable for their actions, the Court finds that, contrary
10 to Villagrana's assertion, he did not have to agree with Gonzalez to engage in a fight resulting in
11 the death of Jeffrey Pettigrew in order to be charged under NRS 200.450. Therefore, the Court
12 finds that Villagrana's "probable cause" argument with respect to Count 2 fails to state a basis
13 for relief.⁷

14 The Court next considers Villagrana's argument that Count 1, 2, and 10 illegally charge
15 conspiracy to conspire.⁸ With respect to Count 2, Villagrana argues that a challenge to fight

16 ⁷ The Court finds that to the extent that Villagrana did attempt to challenge the sufficiency of the evidence
17 for Count 2 he failed to meet his burden. The Court finds that the evidence presented before the Grand Jury is
18 sufficient to support a probable cause finding by the Grand Jury. See Sheriff, Washoe County v. Miley, 99 Nev.
19 377, 379 (1983) (noting that the finding of probable cause to support an indictment may be based on "slight, even
20 'marginal' evidence... because it does not involve a determination of the guilt or innocence of an accused") (citation
21 omitted).

19 ⁸ The Court notes that Villagrana's argument is premised on the assertion that Nevada law does not allow for
20 a defendant to be charged with a conspiracy to conspire. However, Villagrana does not provide any authority to
21 support his proposition. The only authority cited by Villagrana relates to each charged offense, but the authority
22 does not support Villagrana's proposition. In opposition, the State responded by assuming that Villagrana was
23 raising a Warton Rule argument. During oral argument, Villagrana noted that he did not intend to make a Warton
24 Rule argument.

22 Even if Villagrana had intended to make a Warton Rule argument, the Court finds that the charges in this
23 case do not satisfy the classic requirements of Warton's Rule offenses as described by the United States Supreme
24 Court in Iannelli v. U.S. See 420 U.S. 770, 782-83 (1975) (finding that the classic Warton's Rule offenses are
25 characterized by three factors: (1) "the parties to the agreement are the only persons who participate in the
26 commission of the substantive offense, (2) "the immediate consequences of the crime rest on the parties themselves
27 rather than on society at large", and (3) "the agreement that attends the substantive offense does not appear likely to
28 pose the distinct kinds of threats to society that the law of conspiracy seeks to advert"). While Count 1 is the only
count that specifically charges conspiracy, Count 2 alleges a conspiracy as one of the theories of liability. Count 10
relies on an accomplice liability theory and does not deal with conspiracy. Thus, the Court will consider the Warton
Rule only as to Counts 1 and 2. The Court finds that none of the factors of classic Warton Rule offenses are present
in the charges in this case, but of particular importance to the Court in its consideration are the second and third
factors. See id. The U.S. Supreme Court has explained that in most cases there is a separate punishment for
conspiracy to do an act and for the subsequent accomplishment of the act because conspiracy poses distinct dangers

1 requires an agreement between two people to engage in the fight, and there is no allegation that
2 Villagrana did that. With respect to Count 1 Villagrana argues that the language of an affray
3 requires an agreement to fight and that Villagrana is essentially charged with making an
4 agreement to have an agreement to fight. Villagrana argues that Count 10 is not valid under
5 Nevada law because the theory that a person can aid and abet someone in reaching an agreement
6 to fight in a public place does not make sense.

7 As previously noted, Count 1 is the only Count in the Indictment which specifically
8 charges conspiracy pursuant to NRS 199.480. NRS 199.480(3) provides that "whenever two or
9 more persons conspire...(a) to commit any crime other than those set forth in subsections 1 and
10 2, and no punishment is otherwise prescribed by law... or (g) to accomplish any criminal or
11 unlawful purpose, or to accomplish a purpose, not in itself criminal or unlawful, by criminal or
12 unlawful means, each person is guilty of a gross misdemeanor." In this case, it is alleged that
13 Villagrana conspired with his respective gang member, Jeffrey Pettigrew, and/ or his co-
14 defendant Gonzalez to engage in an affray, and in furtherance of that conspiracy Villagrana shot
15 rival gang members. An affray is a crime pursuant to NRS 203.050. NRS 199.480(3) provides
16 that conspiracy exists when two or more persons conspire to commit *any* crime, which by the
17 plain reading of the statute would include the crime of affray. See NRS 199.480(3)(a). Because
18 the language of NRS 199.480(3) allows persons to conspire to commit any crime, and because
19 Villagrana has not come forward with any authority to the contrary, the Court finds that Count 1
20 of the Indictment is not an invalid or illegal charge under Nevada law.

21 In addition to allegations regarding direct liability, Count 2 also alleges that the
22 Defendants, including Villagrana, are vicariously liable for the crime of challenge to fight under
23 a conspiracy liability theory and/ or under an accomplice liability theory. Count 10 alleges that
24 Villagrana, by way of accomplice liability, committed the crime of murder in the second degree

25
26 from those of the substantive offense. *Id.* at 777-78 (noting that one rationale is that "collective criminal agreement-
27 partnership in crime—presents a greater potential threat to the public than individual delicts"). The facts of the
28 instant case are a prime example of potential consequences and the types of threats to society that conspiracy seeks
to punish because the alleged violations of law were committed in a crowded casino, where many innocent
bystanders were located.

1 with the use of a deadly weapon. The only authority that Villagrana cites to support his
2 proposition is the conspiracy statute, NRS 199.480, and the statute for an affray, NRS 203.050.
3 However, neither statute provides, or implies, that Villagrana cannot be charged through theories
4 of vicarious liability with a challenge to fight or murder in the second degree with the use of a
5 deadly weapon, nor has the Court found any authority to support Villagrana's arguments.
6 Therefore, the Court finds that Count 2 and Count 10 are not invalid under Nevada law.

7 Lastly, the Court considers the argument Villagrana raised in Ground V regarding
8 duplicative counts. Villagrana asserts that Counts 1, 2, and 10 violate the Double Jeopardy
9 Clause of the Fifth Amendment to the United States Constitution because they constitute
10 duplicative prosecution of a defendant for the same offense. Villagrana argues that the
11 allegations and burden of proof are identical in Counts 1, 2, and 10. "The Double Jeopardy
12 Clause of the United States Constitution protects defendants from multiple punishments for the
13 same offense." Salazar v. State, 119 Nev. 224, 227 (2003) (citations omitted). The Nevada
14 Supreme Court follows the test set forth by the United States Supreme Court in Bloackburger v.
15 United States, 284 U.S. 299 (1932), to determine whether multiple convictions for the same act
16 or transaction are permissible. Id. (citations omitted). "Under this test, if the elements of one
17 offense are entirely included within the elements of a second offense, the first offense is a lesser
18 included offense and the Double Jeopardy Clause prohibits a conviction for both offenses." Id.
19 (citations and internal quotations omitted).

20 The Court begins by noting that it is not persuaded by Villagrana's argument regarding
21 the burden of proof, because the burden of proof is the same in all criminal prosecutions.⁹ In
22 addition, while the allegations in the Indictment revolve around the same incident, that fact alone
23 does not preclude the State from bringing multiple charges against a defendant. See id.
24 (recognizing that the State may bring multiple charges based on a single incident) (citations
25 omitted). In this case, the Court finds that the elements of a conspiracy to engage in an affray, a

26 ⁹ Villagrana does not cite any authority to support his proposition that the burden of proof connected with
27 criminal charges violates the Due Process Clause. The Court finds that Villagrana's argument lacks merit—if
28 Villagrana's assertion were true, the prosecuting authority would never be able to allege more than one criminal
charge against a defendant in an indictment or information.

1 challenge to fight resulting in death with the use of a deadly weapon, and murder in the second
2 degree with the use of a deadly weapon are not entirely included in the other offenses so as to
3 violate the Double Jeopardy clause. A conspiracy to engage in an affray is not a lesser included
4 offense of a challenge to fight resulting in death with the use of a deadly weapon or murder in
5 the second degree with the use of a deadly weapon, because a finding of guilt on the conspiracy
6 to engage in an affray would not necessitate a finding of guilt on either of the other charges. See
7 NRS 199.480; NRS 203.050; NRS 200.450; NRS 200.010; NRS 200.030. Similarly, the
8 elements of a challenge to fight resulting in death with the use of a deadly weapon and murder in
9 the second degree with the use of a deadly weapon are different because murder in the second
10 degree does not include the elements of a challenge to fight—namely, that a person, upon
11 previous concert and agreement, fights with another person or gives, sends or authorizes a
12 challenge to fight to another person. See NRS 200.450; NRS 200.010; NRS 200.030. Because
13 the elements of Counts 1, 2, and 10 are not entirely included in each other, and because the
14 Double Jeopardy Clause does not necessarily prohibit multiple charges arising from the same
15 incident, the Court finds that Counts 1, 2, and 10 in the Indictment do not violate the Double
16 Jeopardy Clause. See Salazar, 119 Nev. at 227. However, the Court notes that a conviction for
17 both a challenge to fight resulting in death with the use of a deadly weapon and murder in the
18 second degree with the use of a deadly weapon may be considered redundant under Nevada law.
19 See id.¹⁰

20 C. The Arguments Contained in Ground IV

21 In Ground IV of his Writ, Villagrana asserts that the testimony of Jorge Gil-Blanco was

22 ¹⁰ While the Nevada Supreme Court recognizes that the State may bring multiple charges based on a single
23 incident, it will reverse “redundant convictions that do not comport with the legislative intent.” Salazar, 119 Nev. at
24 227 (citations omitted). “Redundancy does not, of necessity, arise when a defendant is convicted of numerous
25 charges arising from a single act.” Id. (citation omitted). “The question is whether the material or significant part of
26 each charge is the same even if the offenses are not the same.” Id. “[W]here a defendant is convicted of two
27 offenses that, as charged, punish the exact same illegal act, the convictions are redundant.” Id. (citation omitted).
28 Villagrana does not raise the issue of redundancy of the Counts in his Petition. However, the State did note that if
Villagrana is found guilty of Count 2 and Count 10 then the charges should merge at sentencing. Because
Villagrana has not been convicted of both Count 2 and Count 10, and because Villagrana did not raise the issue in
his Petition, the Court finds that the issue of redundancy is premature before the Court and would be more
properly dealt with in a post-verdict motion if Villagrana is convicted of both Count 2 and Count 10.

1 inadmissible before the Grand Jury and caused prejudice. Villagrana argues that the testimony
2 was highly inflammatory and inadmissible because it does not state a public offense. Villagrana
3 asserts that since the gang enhancement is not a separate offense it does not need to have a
4 probable cause finding before alleging the enhancement. Additionally, Villagrana argues that the
5 State impermissibly referred to Jorge Gil-Blanco as an expert. Further, Villagrana argues that
6 the testimony went beyond the permissible scope.

7 Villagrana is charged in Counts 2, 3, 4, and 10, with the criminal gang enhancement
8 pursuant to NRS 193.168. The Nevada Supreme Court has not addressed whether there must be
9 a probable cause finding by a grand jury in order for the State to seek the gang enhancement
10 pursuant to NRS 193.168. However, even though NRS 193.168(3) indicates that the section
11 does not create a separate offence, NRS 193.168(4) provides that the indictment or information
12 charging the defendant with the primary offense must allege that the primary offense was
13 "committed knowingly for the benefit of, at the direction of, or in affiliation with, a criminal
14 gang, with the specific intent to promote, further or assist the activities of the criminal gang" in
15 order for the trial court to impose the additional penalty under the section. NRS 193.168(4)(a).
16 Further, the Nevada Supreme Court has not found error when evidence of the deadly weapon
17 enhancement has been presented to a grand jury. See e.g. State v. Dunckhurst, 99 Nev. 696, 698
18 (1983) (reversing the district court's order granting a writ of habeas corpus and dismissal of the
19 murder charged based on the use of a deadly weapon, reasoning that the facts were sufficient to
20 establish the use of a knife in the commission of the murder). While NRS 193.168 and the
21 Nevada Statute relating to the use of a deadly weapon, NRS 193.165, are similar in that both
22 provide for additional penalties if certain circumstances are present, the Court notes that NRS
23 193.165 does not require that the indictment specifically allege the deadly weapon enhancement,
24 as required in NRS 193.168(4) in relation to the criminal gang enhancement. See NRS 193.165;
25 193.168(4). Because NRS 193.168(4)(a) provides that the indictment must allege the criminal
26 gang enhancement in order for the trial court to impose the additional penalty, and because the
27 Nevada Supreme Court has not found error when evidence of deadly weapon use was presented
28

1 to a grand jury, even when the enhancement is not required to appear in the indictment under
2 NRS 193.165, the Court finds that the State's presentation of evidence in support of the criminal
3 gang enhancement was not in error. See NRS 193.168(4); NRS 193.165; Dunckhurst, 99 Nev. at
4 698.

5 With respect to Villagrana's arguments specifically regarding Jorge Gil-Blanco, the
6 Court finds that the State's questions of Jorge Gil-Blanco were not impermissible as Villagrana
7 asserts. Here, Villagrana argues that the following two questions asked by the State, which
8 contained the word expert in them, were inadmissible and prejudicial: (1) "[h]ave you testified—
9 in which courts have you testified as an expert in Hells Angels motorcycle gang cases?", and (2)
10 "[h]ave you been recognized by the courts of those jurisdictions as an expert in the field of
11 outlaw motorcycle gangs?" The Court disagrees. The State asked two simple questions that are
12 generally asked when a party is attempting to qualify an expert. The Court finds that the
13 questions were not inadmissible or prejudicial.¹¹ A review of the transcript of his testimony
14 indicates that the State did not attempt to bolster Jorge Gil-Blanco's credibility by repeatedly
15 referring to him as an expert or by instructing the Grand Jury that he was in fact an expert.¹²
16 Further, after considering the other evidence presented before the Grand Jury in support of the
17 charges, the Court finds that the evidence to support the criminal gang enhancement was not
18 overly prejudicial to Villagrana. Nor can the Court find, even assuming that there was improper
19 evidence presented to the Grand Jury through Jorge Gil-Blanco's testimony, that the outcome
20 would have been different if the evidence was not presented. See Lay, 110 Nev. at 1198-99
21 (finding that the defendant did not show sufficient prejudice to require a dismissal of the
22 indictment because the alleged improper material introduced to the grand jury concerning gang
23 activity would not have changed the outcome when the grand jury heard overwhelming evidence
24 to support a true bill). Therefore, the Court finds that Ground IV of Villagrana's Petition fails to

25
26 ¹¹ The Court notes that Villagrana did not provide any relevant authority to support his proposition that the
questions from the State were inadmissible or prejudicial.

27 ¹² However, without ruling on Jorge Gil-Blanco's qualifications as an expert at this time, the Court notes that
28 pursuant to NRS 193.168(7) expert testimony is admissible to show particular conduct, status, and customs
indicative of criminal gangs in any proceeding to determine whether the additional penalty may be imposed.

1 state a basis for relief.¹³

2 **D. The Remaining Arguments Contained in Ground V**

3 The grand jury's function is to decide whether probable cause supports the indictment,
4 not to determine guilt or innocence. Sheriff, Clark County v. Burcham, 124 Nev. 1247, 1257
5 (2008) (citation omitted). The grand jury has a duty to weigh all evidence submitted to them and
6 must find probable cause to believe that an offense has been committed and that the person
7 charged committed the crime prior to indicting the accused. NRS 172.145(1); NRS 172.155(1).
8 The grand jury's "finding of probable cause may be based on slight, even 'marginal' evidence."
9 Burcham, 124 Nev. at 1258 (citations omitted). Thus, "the State need not produce the quantum
10 of proof required to establish the guilt of the accused beyond a reasonable doubt" before the
11 grand jury. Sheriff, Washoe County v. Hodes, 96 Nev. 184, 186 (1980) (citations omitted).

12 Villagrana argues that the evidence before the Grand Jury was insufficient to establish the
13 gang enhancement, battery with a deadly weapon against Leonard Ramirez as alleged in Count 4,
14 and discharging a firearm in a structure as alleged in Count 5.¹⁴ The Court will address each
15 argument in turn.

16 The Court first considers whether there was sufficient evidence to establish probable
17 cause for Count 4: battery with a deadly weapon against Leonard Ramirez. Villagrana argues
18 that Ramirez did not testify and therefore there was not sufficient evidence for the Grand Jury to
19 find probable cause. While Ramirez did not testify at the Grand Jury, the Court finds that the
20 video surveillance as well as the testimony of CS11-31 and Officer Yeadon Sturtevant supports a
21 probable cause finding by the Grand Jury. [See Grand Jury Proceedings Trans. of Nov. 9, 2012
22 ("Grand Jury"), filed Nov. 20, 2012, pp. 102-125]. Even though Villagrana was not the only
23

24 ¹³ To the extent that Villagrana attempts to challenge Jorge Gil-Blanco's testimony under NRS 172.135(2) in
25 Ground IV, even though he does not cite that authority, the Court finds that it is better addressed with the allegation
that the gang enhancement evidence was insufficient.

26 ¹⁴ Villagrana also included a subsection for Count 6 in his briefing regarding sufficiency of the evidence.
27 However, the only argument Villagrana made with respect to Count 6 was that the Grand Jury was not instructed as
28 to the statutory definition of concealed. Because the Court has already discussed the State's duty to instruct the
Grand Jury and ruled on Villagrana's argument with respect to Count 6, and because Villagrana does not raise any
other question regarding the sufficiency of the evidence of Count 6, the Court will not address the matter. See *supra*
pp. 3-4.

1 person observed firing a gun, the Court finds that the Grand Jury could make a reasonable
2 inference that Villagrana battered Ramirez with a deadly weapon as charged in Count 4. See
3 Burcham, 124 Nev. at 1258 (“[T]he State is not required to negate all inferences which might
4 explain [the conduct of the accused], but only to present enough evidence to support a reasonable
5 inference that the accused committed the offense”) (citation omitted).

6 The Court next considers whether there was sufficient evidence to support Count 5:
7 discharging a firearm in a structure. Specifically, Villagrana asserts that the State did not present
8 any evidence as required for the Grand Jury to find probable cause under this charge to show that
9 the location where the firearm was discharged has been designated by the city or county
10 ordinance as a populated area for the purpose of prohibiting the discharge of a weapon.
11 However, Detective John Patton testified to this element of the charge. [See Grand Jury, at p.
12 265: 18- 266: 2]. Specifically, Patton testified that the Nugget is located in a populated area for
13 the purpose of discharging a firearm in a structure. [See id. at p. 265:18-23]. Without any other
14 challenge on the sufficiency of evidence of Count 5, and because the Court finds that Patton’s
15 testimony was at least slight or marginal evidence that the Nugget had been designated as a
16 populated area to prohibit the discharge of a weapon, the Court finds that there was sufficient
17 evidence for the Grand Jury to find probable cause on Count 5 of the Indictment. See Burcham,
18 124 Nev. at 1258.

19 With respect to the gang enhancement under NRS 193.168, Villagrana argues that the
20 evidence to support the gang enhancement was insufficient because the State failed to show that
21 one of the common activities of the gang is engaging in criminal activity punishable as a felon,
22 other than the conduct which constitutes the primary offense. Villagrana relies on Origel-
23 Candido v. State, to support his argument that there was insufficient evidence before the grand
24 jury to find probable cause on the gang enhancement. See 114 Nev. 378, 382 (1998). However,
25 the Origel-Candido case is distinguishable because it discusses the State’s burden at trial to prove
26 beyond a reasonable doubt that the gang, as one of its common activities, engages in felonies.
27 See id. (relying on NRS 193.168(6)(c), which now appears in the statutory scheme under
28

1 subsection 8). While the definition of a "criminal gang" under NRS 193.168(8) includes that the
2 group, as one of its common activities, engages in felonies, and it is clear from Origel-Candido
3 that State must prove beyond a reasonable doubt at trial that the Hells Angels is a criminal gang
4 within the meaning of NRS 193.168 in order for the enhancement to apply, the Court finds that
5 the requirements are not the same before a grand jury. See Hodes, 96 Nev. at 186; NRS
6 193.168(4)(a)-(b) (requiring that the indictment allege "that the primary offense was committed
7 knowingly for the benefit of, at the direction of, or affiliation with, a criminal gang, with the
8 specific intent to promote, further or assist the activities of the criminal gang" and that "the trier
9 of fact find that allegation to be true beyond a reasonable doubt" before the additional penalty
10 can be imposed). A review of the testimony and evidence presented before the Grand Jury,
11 particularly the video surveillance and eyewitness testimony, indicates that there was sufficient
12 evidence to support the allegations in the indictment that Villagrana committed the underlying
13 offences knowingly for the benefit of, at the direction of, or affiliation with, a criminal gang,
14 with the specific intent to promote, further, or assist the criminal gang.¹⁵ Therefore, the Court
15 finds that Ground V of Villagrana's Petition fails to state a basis for relief.

16 **E. The Arguments Contained in Ground VII¹⁶**

17 NRS 172.145(2) provides that "[i]f the district attorney is aware of any evidence which
18 will explain away the charge, the district attorney shall submit it to the grand jury." Here,
19 Villagrana argues that the State failed to present exculpatory evidence to the Grand Jury because
20 it did not provide any evidence that there was a pre-planned attack by members of the Vagos on

21 ¹⁵ During oral argument, the issue was raised as to whether the State should have instructed on the gang
22 enhancement. NRS 172.095(2) requires the district attorney to instruct on the specific elements of any public
23 offense; however, NRS 193.168(3) specifically provides that it is only an additional penalty for the primary offense,
24 not a separate offense. Thus, the Court finds that the State was not required to instruct on the gang enhancement,
even though it was permitted to present evidence on the matter to support the allegation regarding the criminal gang
activity in the Indictment.

25 ¹⁶ The Court notes that Ground VII appeared in the Supplemental Petition Villagrana filed on June 7, 2012.
26 Villagrana did not raise the issue of exculpatory evidence in his Original Petition. In the Supplemental Petition
27 Villagrana relies on the additional charges filed by the State against Gonzalez on May 31, 2012, to support his
28 argument. While the Supplemental Petition was filed after the period allowed by the Court for filing his pretrial writ
for habeas corpus, the Court finds that it was not a ground that Villagrana could have raised in a previous petition
because it was premised on information gained after his Original Petition was filed. See NRS 34.700(1)(a); NRS
34.710(1)(b); *infra* pp. 20-22. Therefore, the Court will consider the arguments raised in Villagrana's Supplemental
Petition.

1 Jeffrey Pettigrew. Villagrana notes that the additional charges against Gonzalez filed by the
2 State on May 31, 2012, allege that Gonzalez and other members of the Vagos premeditated the
3 murder of Jeffrey Pettigrew and Gonzalez laid in wait for the opportunity to kill Jeffrey
4 Pettigrew. Villagrana argues that the information is exculpatory to him and the State's failure to
5 present it to the Grand Jury requires dismissal. The State argues that it did not fail to provide
6 exculpatory information to the Grand Jury because the information Villagrana relies on,
7 regarding the planned attack on Pettigrew, was not known to the State on November 9, 2011,
8 when the Grand Jury returned the Indictment. The State asserts that the information was
9 provided to the District Attorney's Office on February 15, 2012, which was over three months
10 after the Grand Jury Indictment. The State also argues that the information is not exculpatory
11 anyway because Jeffrey Pettigrew was not attacked before he punched Rudnick and neither
12 Villagrana nor Jeffrey Pettigrew knew about the plan.

13 Villagrana does not indicate what charge, or charges, he believes the information
14 regarding the preplanned attack would be exculpatory evidence for. However, assuming without
15 deciding that the information would be exculpatory, there is no question that the duty imposed by
16 NRS 172.145(2) does not apply to the State if it was not aware of the information at the time of
17 the Grand Jury proceeding. In this case, the State asserts that it did not have the alleged
18 exculpatory information at the time of the Grand Jury proceeding. Villagrana did not file a
19 Reply to support his Supplemental Petition to respond to, or challenge in any way, the State's
20 assertion that the information was not obtained until February 15, 2012, after the Grand Jury
21 proceeding. Nor did he come forward at oral argument to support his original proposition that
22 the State failed to present evidence that it was *aware of* to explain away the charge. A review of
23 the record in the State's case against Gary Rudnick, Case No. CR11-1718C, supports the State's
24 assertion that the information was not obtained until after the Grand Jury proceeding. Therefore,
25 the Court finds that the State did not fail to present exculpatory information before the Grand
26 Jury within the meaning of NRS 172.145(2).

27 ///

1 **F. The Arguments Contained in Ground I**

2 A person whose indictment the district attorney intends to seek shall receive reasonable
3 notice of the proceedings and may testify before the grand jury, unless the court determines that
4 adequate cause exists to withhold notice. NRS 172.241(1)-(2). NRS 172.241(3) provides that
5 the district attorney may seek an exception to the notice requirement if the district attorney
6 determines that the notice may result in the flight of the person whose indictment is being
7 considered, endanger the life or property of other persons, or is unable to notify the person after
8 reasonable diligence. The Court may order that no notice be given upon an application from the
9 district attorney if it conducts a closed hearing and makes a finding that adequate cause exists to
10 withhold the notice. NRS 172.241(4).

11 Villagrana asserts that the Indictment should be dismissed because the Court erred in
12 granting the State's request to withhold his Marcum Notice. Villagrana argues that the State
13 failed to meet the requirements of NRS 172.241(3) and it violated his due process right to
14 receive notice and a hearing. The Court disagrees. Initially, the Court finds that Villagrana's
15 due process argument fails because the Nevada Supreme Court has held that in a grand jury
16 proceeding neither the defendant nor his counsel has the constitutional right to be present.
17 Maiden v. State, 84 Nev. 443, 445 (1968); Gier v. Ninth Judicial Dist. Court of State of Nev., In
18 and for County of Douglas, 106 Nev. 208, 212-13 (1990) (noting that the notice required by NRS
19 172.095(1)(d) and NRS 172.241 is not constitutionally mandated); Gordon v. Ponticello, 110
20 Nev. 1015, 1020 (1994) (noting that "the Nevada legislature has chosen to extend the right to
21 testify to grand jury targets, a grant of grace that it was not constitutionally required to make").
22 Additionally, the NRS 172.241 specifically provides that notice may be withheld if adequate
23 cause exists, thus, in Nevada the right to testify before the grand jury is conditional and limited.
24 See NRS 172.241; Gordon v. Ponticello, 110 Nev. at 1020-21 ("the exceptions to the notice
25 requirement set forth in Nevada's statute and in the ABA Model Grand Jury Act provide strong
26 evidence that the right to testify is a conditional and limited right").

27 With respect whether there was adequate cause to withhold Villagrana's notice pursuant
28

1 to NRS 172.241, during the closed hearing the Court found, among other things, that there was a
2 potential danger to the life or property of other persons if Villagrana received notice of the Grand
3 Jury proceeding. At the closed hearing, Peter Grimm testified that he had difficulty getting
4 witness cooperation in the matter and that on a previous local case he personally observed
5 intimidation from Hells Angel members to witnesses and jurors. [Grand Jury Trans. ("Marcum
6 Trans."), filed November 20, 2011, at pp. 35-36]. In addition to the evidence presented to the
7 Court at the October 25, 2012 closed hearing, the facts surrounding the incident in question
8 support a finding that there was adequate cause to withhold the Marcum Notice to Villagrana—
9 such as, the fact that hand guns were carried into a crowded casino and discharged, without any
10 regard for the safety of innocent bystanders. While the evidence presented to the Grand Jury
11 seems to support that Villagrana and the other Hells Angel members focused on the Vagos
12 members during the September 23, 2012 incident, the Court finds that given the evidence of the
13 volatile nature of the two groups, how quickly the situation at the Nugget Hotel and Casino
14 escalated, and the general disregard for innocent bystanders, there was adequate cause to
15 withhold notice of the Grand Jury proceedings because it would potentially endanger lives and
16 property. See NRS 172.241(3)-(4). Moreover, the Court finds that even if Villagrana had
17 testified at the Grand Jury, there was still sufficient evidence for the Grand Jury to find probable
18 cause on the charges against him and return a true bill. Therefore, the Court finds that
19 Villagrana's first ground for relief is without merit.

20 G. The Arguments Contained in Ground VI

21 Villagrana argues that the Grand Jury function was irreparably impaired by the State's
22 presentation of inadmissible, secondary and inflammatory evidence, and misinstruction to the
23 Grand Jury on vicarious liability and self-defense, as well as the lack of sufficient evidence to
24 support certain counts. Villagrana relies on the Nevada Supreme Court's decision in Sheriff,
25 Clark County v. Frank, to support his proposition that the cumulative errors of the State warrant
26 dismissal of the Indictment in this case. See 103 Nev. 160, 164 (1987). Because the Court has
27 not found any error on the other Grounds raised, the Court finds that this case is distinguishable
28

1 from Frank. See id. Therefore, the Court finds that there is no cumulative error warranting
2 dismissal of the Indictment in this matter. See id.

3 Additionally, "dismissal of an indictment on the basis of governmental misconduct is an
4 extreme sanction which should be infrequently utilized." Sheriff, Clark County v. Keeney, 106
5 Nev. 213, 216 (1990). The Court finds that Villagrana has not demonstrated that he suffered
6 substantial prejudice based on his allegations of impropriety related to the State's presentation
7 before the Grand Jury. See id. (noting that "[i]mplicit in the decisions of most courts
8 considering prosecutorial misconduct or basic unfairness that violates due process within the
9 grand jury proceedings is the concept that substantial prejudice to the defendant must be
10 demonstrated before the province of the independent grand jury is invaded"). Further, like in
11 Keeney, a review of the Grand Jury record in this case, apart from the alleged prosecutorial
12 misconduct, establishes that there was sufficient evidence for the Grand Jury to find probable
13 cause on the charges against Villagrana. See id. at 220-221 (citing United States v. Riccobene,
14 451 F.2d 586 (3rd Cir. 1971) (where an abundance of competent evidence supported a finding of
15 probable cause, governmental misconduct did not invalidate the indictment because the votes of
16 the grand jurors were not necessarily based on bias resulting from the governmental
17 improprieties)).

18 **II. Gonzalez's Motions to Join Villagrana's Original Petition and Motion to Dismiss or**
19 **in the Alternative Petition for Writ of Habeas Corpus**

20 **A. Gonzalez's Motions to Join Villagrana's Original Petition¹⁷**

21 The State argues that joinder is improper because Gonzalez is essentially circumventing
22 the time requirements for filing his writ. The State asserts if the Court allows Gonzalez to join
23 Villagrana's Original Petition it would be allowing Gonzalez to raise a ground for relief that
24 could have been raised in a prior petition, since the Marcum notice issue was known to Gonzalez

25 ¹⁷ As discussed more fully along with the procedural history in this matter, Gonzalez originally sought to join
26 the Marcum notice argument from pages 4-7 of Villagrana's Original Petition. Subsequently, Gonzalez filed his
27 motion to join the balance of Villagrana's Original Petition. The State filed an opposition to Gonzalez's motion to
28 join Villagrana's Marcum notice argument, but did not oppose Gonzalez's subsequent motion to join the balance of
Villagrana's Original Petition. Gonzalez did not seek to join Villagrana's Supplemental Petition or his Second
Supplement.

1 since November. Gonzalez asserts that the State's Opposition was not timely filed.
2 Additionally, Gonzalez argues that the legal issues are the same between himself and his co-
3 defendant Villagrana, thus, he was already constructively joined in the arguments of Villagrana
4 before filing his formal motion. Further, Gonzalez argues that he has not brought a second
5 petition that raises new arguments; instead, he asserts that he is seeking to join an existing
6 petition that articulates relief that would operate as to himself and Villagrana if granted.

7 NRS 34.700(1), in relevant part, provides that a pretrial petition for a writ of habeas
8 corpus may not be considered unless the petition and all supporting documents are filed within
9 21 days after the first appearance of the accused in district court. NRS 34.700(1)(a). The district
10 court may, for good cause, extend the time to file a pretrial petition. NRS 34.700(3). "A district
11 court shall not consider any pretrial petition for habeas corpus... [b]ased on a ground which the
12 petitioner could have included as a ground for relief in any prior petition for habeas corpus or
13 other petition for extraordinary relief." NRS 34.710(1)(b).

14 In this Case, during the December 9, 2011 Status Conference, the Court found that there
15 was good cause to extend the time for Gonzalez and Villagrana to file their pretrial petitions for
16 habeas corpus to 90 days from December 9, 2011, which made the deadline March 8, 2012. The
17 Court also found good cause for allowing the State 60 days to oppose the petitions. Gonzalez
18 filed his petition on February 24, 2012, and Villagrana filed his petition on March 5, 2012.
19 Gonzalez's first motion to join was filed May 29, 2012. Gonzalez's subsequent motion to join
20 was filed on June 11, 2012. If Gonzalez joined Villagrana's petition prior to March 8, 2012,
21 there would be no question regarding the character of his motion because the Court would not
22 consider a motion to join, filed prior to the deadline for filing his Petition, as a supplemental
23 petition, even if it raised new claims. Gonzalez could have joined Villagrana's petition before
24 the deadline set by the Court; however, Gonzalez waited until over two months later to attempt
25 to join in Villagrana's petition. The Court notes that Gonzalez has not provided any rational or
26 excuse explaining his delay in filing his initial motion to join. Additionally, Gonzalez does not
27 dispute the State's assertion that the grounds for relief were known to him prior to filing his
28

Petition; instead, he argues that it would not be prejudicial to the State to allow his joinder. The Court finds that Gonzalez's joinder is untimely, as it is far outside the time period set by the Court to file his Petition, and that the joinder seeks to incorporate issues that Gonzalez could have raised in the Petition he filed on February 24, 2012. The statutory scheme does not give the Court discretion to consider untimely petitions and arguments that could have been raised in a prior petition, the statutory language is clear, the district court "may not" and "shall not" consider pretrial petitions if they are not timely filed or if they include grounds that could have been raised in any other petition. See NRS 34.700(1)(a); NRS 34.710(1)(b). Therefore, the Court finds that Gonzalez's motions to join must be denied.¹⁸

B. Gonzalez's Motion to Dismiss or in the Alternative Petition for Writ of Habeas Corpus

Gonzalez asserts that the Indictment against him must be dismissed. Gonzalez argues that it rests on inadmissible evidence. Specifically, Gonzalez argues that the evidence provided by CS11-67 contains broad generalizations, does not contain information regarding his participation with the Vagos, and his association is protected by the First Amendment. Gonzalez asserts that the information presented to the Grand Jury regarding the Vagos constituted other acts evidence, and was irrelevant and prejudicial. Gonzalez also argues that the Grand Jury should have been clearly instructed that the other acts evidence presented by the State could not be considered as evidence of the elements of the crimes alleged in the Indictment. Gonzalez asserts that the State did not conform to its obligation to provide a fair and balanced presentation to the Grand Jury in this case. Additionally, Gonzalez argues that the State did not present exculpatory evidence to the Grand Jury. Specifically, Gonzalez asserts that the State failed to properly advise the Grand Jury that CS11-67 was an accomplice to the criminal activity

¹⁸ The Court notes that during oral argument on the Pretrial Writ's the State did not object when Gonzalez argued points contained in Villagrana's Original Petition, but not originally contained in Gonzalez's Petition. Additionally, the State indicated that it was its belief that Gonzalez joined in all the arguments of Villagrana. Despite the apparent change in position of the State regarding Gonzalez's joinder, the Court's findings regarding timeliness and prior grounds for relief does not change. Moreover, even if Gonzalez properly joined in Villagrana's Original Petition, the Court finds that the Court's conclusions regarding the first six grounds of relief would not change if Gonzalez had asserted them, even though the Court's factual analysis would be slightly different to address Gonzalez's particular circumstances. See supra pp. 2-16, 17-20.

1 described occurring before September 2011. Gonzalez argues that the State should have advised
2 the Grand Jury that he had no criminal history with respect to any offense allegedly tied to the
3 Vagos. Further, Gonzalez argues that the presentation of the irrelevant and inadmissible
4 evidence, as well as the State's failure to present exculpatory evidence to the Grand Jury, was
5 compound error warranting dismissal of the Indictment against him.¹⁹

6 The State asserts that Gonzalez's Motion to Dismiss or Writ should be denied. The State
7 argues that it properly presented evidence to the Grand Jury to support the gang enhancement as
8 it relates to Gonzalez and the Vagos. The State asserts that the evidence presented concerning
9 the Vagos is admissible under NRS 193.168 and is not other bad act evidence. The State argues
10 that evidence of the past criminal activity under NRS 193.168 must be shown as to the gang, not
11 Gonzalez. Additionally, the State asserts that Gonzalez's claims regarding exculpatory evidence
12 are vague. The State asserts that there is no requirement that the State present criminal history of
13 the grand jury target, or lack thereof, or the criminal history of a grand jury witness. The State
14 also asserts that the video surveillance video shows that Pettigrew pistol-whipped an older man
15 before Gonzalez shot him. Further, the State argues that CS11-67's testimony does not require
16 corroboration because he never claimed to play a role in the prior crimes discussed and he was

17
18 ¹⁹ In his Reply, Gonzalez raises additional arguments for the first time to support the dismissal of the
19 Indictment against him, specifically, that the indictment is not plain, concise and definite. Additionally, Gonzalez
20 argues that the Grand Jury were not provided appropriate instructions regarding the intent necessary to support
21 Count II, or on the theory of aiding and abetting, and the State did not present evidence of self-defense. Further,
22 Gonzalez joins and incorporates by reference the arguments made by Villagrana in pages 17-23 of his Writ filed on
23 March 5, 2012, entitled "[t]here is no probable cause for Count 2 (challenge to fight) which is part of an anti-dueling
24 statute". The Court initially notes that it generally does not consider arguments only raised in a reply brief. In this
25 case, the Court finds that NRS 34.700(1)(a) and NRS 34.710(1)(b) preclude the Court from considering Gonzalez's
26 arguments raised in his reply brief because they are new issues raised after the deadline to file his petition had
27 passed and they could have been raised in his original pleading. See *supra* pp. 20-22.

28 Moreover, even if Gonzalez had properly raised the issues the Court finds that his arguments would fail.
With respect to Gonzalez's arguments regarding the Grand Jury instructions, the Court hereby incorporates the
authority and analysis from Section I of this Order regarding the State's duty to instruct the Grand Jury. See *supra*
pp. 3-5. Additionally, the Court hereby incorporates its analysis from Section I of this Order, with respect to
whether the charging document complies with NRS 173.075(1) and with respect to whether there was probable
cause to support Count 2 of the Indictment. See *supra* pp. 6-8. The Court finds that the State complied with the
requirements of NRS 172.095(2) when instructing the Grand Jury in this case. See NRS 172.095(2); *Schuster*, 123
Nev. at 193-94. Additionally, the Court finds that the allegations in Counts 1, 2, 7, 8, 9, and 10 are sufficient to
apprise Gonzalez of the charges against him because they contain the date and location that the alleged actions took
place, as well as the facts and elements of the offenses charged. See *Hancock*, 114 Nev. at 164; NRS 173.075(1).
Further, the Court finds that there is at least slight or marginal evidence to support the Grand Jury's probable cause
finding with respect to Gonzalez on Count 2. See *Miley*, 99 Nev. at 379.

1 presenting expert testimony pursuant to NRS 193.168. The State also argues that CS11-67 is not
2 an accomplice within the meaning of NRS 175.291 and his own testimony shows he acted as a
3 peacekeeper during the incident in question.

4 The Court will first consider Gonzalez's arguments relating to the gang enhancement.
5 The Court begins by incorporating its finding in Section I of this Order that the State properly
6 presented evidence of the gang enhancement before the Grand Jury. See supra pp. 12-13.

7 Further, NRS 193.168(7) provides that:

8 In *any proceeding* to determine whether an additional penalty may be imposed pursuant
9 to this section, expert testimony is admissible to show particular conduct, status and
10 customs indicative of criminal gangs, including, but not limited to:

- 11 (a) Characteristics of person who are members of criminal gangs;
- 12 (b) Specific rivalries between criminal gangs;
- 13 (c) Common practices and operations of criminal gangs and the members of those
gangs;
- 14 (d) Social customs and behavior of members of criminal gangs;
- 15 (e) Terminology used by members of criminal gangs;
- 16 (f) Codes of conduct, including criminal conduct, or particular criminal gangs;
and
- 17 (g) The types of crimes that are likely to be committed by a particular criminal
gang or by criminal gangs in general.

18 (emphasis added)

19 Contrary to Gonzalez's assertions, the Court finds that the type of testimony elicited
20 regarding the Vagos in the Grand Jury proceeding was consistent with the type of testimony
21 permitted by NRS 193.168(7). To the extent that some of the gang enhancement evidence was
22 inadmissible before the Grand Jury, the Court finds that there was sufficient legal evidence to
23 support allegations in the indictment that Gonzalez committed Count 2, Count 9, and Count 10
24 "knowingly for the benefit of, at the direction of, or in affiliation with, a criminal gang, with the
25 specific intent to promote, further or assist the activities of the criminal gang." See NRS
26 193.168(4)(a); Collins v. State, 113 Nev. 1177, 1182 (1997) ("regardless of the presentation of
27 inadmissible evidence, the indictment will be sustained if there is the slightest sufficient legal
28 evidence") (citation omitted). Further, after considering the other evidence presented before the
Grand Jury in support of the charges, the Court finds that the evidence to support the criminal
gang enhancement was not overly prejudicial to Gonzalez. The Court finds that, even if
inadmissible evidence was presented related to the gang enhancement, the outcome would not

1 have been different without the evidence. See Lay, 110 Nev. at 1198-99. Therefore, the Court
2 finds that Gonzalez has failed to show prejudice warranting the dismissal of the indictment
3 against him. See id.

4 With respect to Gonzalez's assertion that the State failed to present exculpatory evidence
5 related to him acting in self-defense, the Court finds that Gonzalez's argument fails. The Court
6 finds the State did not have a duty to inform the Grand Jury that Gonzalez had never been
7 convicted of any crimes because Gonzalez's previous criminal history, or lack thereof, does not
8 explain away the charges before the Grand Jury within the meaning of NRS 172.145. The
9 charges in the Indictment relate to Gonzalez's conduct on September 23, 2011, at the Nugget,
10 which was observed by eyewitnesses and caught on video surveillance.²⁰ Similarly, the Court
11 finds that the criminal history of CS11-67 would not explain away the charges against Gonzalez.
12 The Nevada Supreme Court has previously held that prior inconsistent statements of Grand Jury
13 witnesses are not exculpatory evidence within the meaning of NRS 172.145. See Lay v. State,
14 110 Nev. 1189, 1197-98 (1994) (reasoning that while a criminal defendant is entitled to impeach
15 a witness' credibility and testimony at trial, the fact that the witness previously contradicted
16 himself does not tend to explain away the charge, and therefore it does not make the witness'
17 first statement exculpatory within the meaning of NRS 172.145). A similar analysis applies to
18 Gonzalez's argument regarding prior convictions of CS11-67 because that evidence would only
19 be admissible to impeach CS11-67's credibility. Even assuming that CS11-67 has a criminal
20 conviction that would be admissible at trial, the conviction would not have any bearing on
21 Gonzalez's actions on the night in question or explain away the charges against him. See id.
22 Because evidence regarding Gonzalez's prior criminal history and CS11-67's criminal history,
23 does not explain away the current charges against Gonzalez, the Court finds that the State did not
24 fail to present exculpatory evidence within the meaning of NRS 172.145.

25 Lastly, the Court considers Gonzalez's argument that the State destroyed the

26
27 ²⁰ Gonzalez contends that the Grand Jury was not told that he shot Jeffrey Pettigrew after Jeffrey Pettigrew
28 pistol-whipped an older man. The Court notes that there is no requirement that the State present exculpatory
evidence through testimonial evidence. The Court finds that the State's presentation of the video surveillance was
sufficient to meet the requirement of NRS 172.145 with respect to Jeffrey Pettigrew's actions.

1 independence of the Grand Jury. "[D]ismissal of an indictment on the basis of governmental
2 misconduct is an extreme sanction which should be infrequently utilized." Sheriff, Clark County
3 v. Keeney, 106 Nev. 213, 216 (1990) (citation omitted). "Implicit in the decisions of most courts
4 addressing the prosecutorial misconduct or basic unfairness that violates due process within the
5 grand jury proceedings is the concept that substantial prejudice to the defendant must be
6 demonstrated before the province of the independent grand jury is invaded." Id. (citations and
7 internal quotations omitted). Because the Court has not found any errors committed by the State
8 at the Grand Jury proceeding, the Court finds that Gonzalez's argument fails. Further, even if
9 the State committed some type of error with respect to exculpatory evidence or presentation of
10 gang enhancement evidence, the Court finds that Gonzalez has not demonstrated that he suffered
11 substantial prejudice as a result. See id. Further, a review of the Grand Jury record establishes
12 that, apart from the allegations of prosecutorial error, there was substantial competent evidence
13 to establish probable cause to Indict Gonzalez under each Count. Id. at 220-21. Therefore, the
14 Court finds that Gonzalez's motion to dismiss or in the alternative pretrial writ must be denied.

15 Based on the forgoing, and good cause appearing,

16 IT IS HEREBY ORDERED that Defendant Cesar Villagrana's Petition for Writ of
17 Habeas Corpus is DENIED.

18 IT IS HEREBY FURTHER ORDERED that Defendant Ernesto Manuel Gonzalez's
19 Motion to Partially Join in Co-Defendant Cesar Villagrana's Writ of Habeas Corpus and
20 Motion to Compel is DENIED.²¹

21 IT IS HEREBY FURTHER ORDERED that Defendant Ernesto Manuel Gonzalez's
22 Motion to Join the Balance of Co-Defendant Cesar Villagrana's Petition for Writ of Habeas
23 Corpus is DENIED.

24 ///

25 ///

26
27 ²¹ The Court's denial is only with respect to the portion of the Motion to Join Villagrana's Petition for Writ of
28 Habeas Corpus. The Court notes that the Motion to Compel issue has previously been resolved by stipulation of the
parties at the July 3, 2012 Hearing.

1 IT IS HEREBY FURTHER ORDERED that Defendant Ernesto Manuel Gonzalez's
2 Motion to Dismiss Indictment or in the Alternative Petition for Writ of Habeas Corpus is
3 DENIED.

4 DATED this 12 day of September, 2012.

5 Connie J. Steinheimer
6

7 DISTRICT JUDGE
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

CASE NO. CR11-1718A/B

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 6 day of September, 2012, I filed the **ORDER** with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

 Personal delivery to the following: [NONE]

X I electronically filed with the Clerk of the Court, using the ECF which sends an immediate notice of the electronic filing to the following registered e-filers for their review of the document in the ECF system:

DIV. OF PAROLE & PROBATION

KARL HALL, ESQ. for STATE OF NEVADA

AMOS STEGE, ESQ. for STATE OF NEVADA

DAVID CHESNOFF, ESQ. for CESAR VILLAGRANA

DIV. OF PAROLE & PROBATION

RICHARD SCHONFELD, ESQ. for CESAR VILLAGRANA

SEAN SULLIVAN, ESQ. for ERNESTO GONZALEZ

BIRAY DOGAN, ESQ. for ERNESTO GONZALEZ

MAIZIE PUSICH, ESQ. for ERNESTO GONZALEZ

JEREMY BOSLER, ESQ. for ERNESTO GONZALEZ

CHRISTOPHER FREY, ESQ. for ERNESTO GONZALEZ

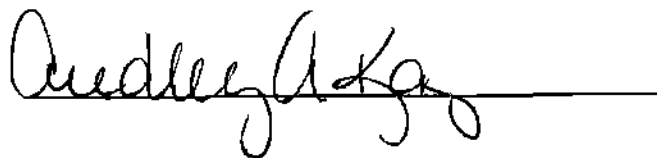
 Deposited in the Washoe County mailing system in a sealed envelope for postage and mailing with the United States Postal Service in Reno, Nevada: [NONE]

 Placing a true copy thereof in a sealed envelope for service via:

 Reno/Carson Messenger Service – [NONE]

 Federal Express or other overnight delivery service [NONE]

DATED this 13 day of September, 2012.



22

1 CODE: 2290
2 JEREMY T. BOSLER
3 Bar No. 4925
4 P.O. Box 30083
5 Reno, NV 89520
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 **SECOND MOTION TO DISMISS**

19 COMES NOW, the Defendant, ERNESTO MANUEL GONZALEZ, by and through his
20 attorney of record, Jeremy T. Bosler, Washoe County Public Defender, Maize Pusich, Chief
21 Deputy Public Defender, and Biray Dogan and Christopher Frey, Deputy Public Defenders, and
22 hereby moves to dismiss the indictment. This motion is based upon the attached points and
23 authorities and any evidence and argument as may be presented at the hearing on this matter.

24 **PROCEDURAL HISTORY AND FACTS**

25 On September 13, 2012, this court denied Mr. Gonzalez's motion to dismiss/writ
26 petition. The court further denied Mr. Gonzalez's motions to join the legal arguments of his co-
defendant. Order at 20-22. The denial of Mr. Gonzalez's requested joinder resulted in partial
review of Mr. Gonzalez's various challenges to the indictment.

1 Mr. Gonzalez has already moved to stay trial pending writ review in the Nevada
2 Supreme Court of this court's September 13, 2012, order. In his petition for extraordinary relief
3 in the Nevada Supreme Court, Mr. Gonzalez expects to seek review of (1) this court's rulings
4 disposing of the merits of his contentions, (2) the denial of joinder, and (3) this court's
5 resolution of his co-defendant's legal contentions that were not reviewed as to him but which
6 Mr. Gonzalez should have been allowed to join.

8 In addition to the present Second Motion to Dismiss, Mr. Gonzalez has filed a Request
9 for Clarification or Supplemental Order seeking a ruling on whether joinder is permitted in
10 support of Mr. Gonzalez's original motion to dismiss. As discussed below, the court did not
11 rule on this issue in its September 13, 2012, order.

12 Should the court decline to clarify or supplement its September 13, 2012, order with this
13 ruling, and in turn decline to resolve the merits of the arguments Mr. Gonzalez sought to join,
14 then Mr. Gonzalez would respectfully request a ruling disposing of the merits of the
15 contentions incorporated by reference in the present motion.

17 ARGUMENT

18 Mr. Gonzalez requests dismissal of the indictment for the legal reasons contained in his
19 co-defendant's Petition for Writ of Habeas Corpus, which he should have been allowed to join
20 as requested, and which are incorporated fully herein by reference. The petition of Mr.
21 Gonzalez's co-defendant is attached hereto as Exhibit 1.

22 In its order, the court reached Mr. Gonzalez's gang enhancement, exculpatory evidence,
23 and cumulative error arguments. See Order at 24-26. However, it denied Mr. Gonzalez's
24 motions to join his co-defendant's legal contentions on grounds that a joinder of arguments of
25 this nature was procedurally-barred under NRS 34.700 and NRS 34.710, which apply to pretrial
26

1 writ practice, but not to motions to dismiss. See id. at 20-21; 23 n.19. The court has yet to rule
2 on Mr. Gonzalez's requested joinder as it relates to Mr. Gonzalez's motion to dismiss.

3 Even assuming the procedural bars of NRS 34.700 and NRS 34.710 were properly
4 applied as to Mr. Gonzalez's writ petition, there was no similar legal prohibition or any
5 compelling reason to deny Mr. Gonzalez from joining his co-defendant's legal arguments in
6 support of his original motion to dismiss. Accordingly, Mr. Gonzalez has filed a Request for
7 Clarification or Supplemental Order seeking a ruling on whether he can join the legal
8 arguments of his co-defendant in support of his original motion to dismiss.

9
10 Should the court clarify that joinder is permitted in support of Mr. Gonzalez's original
11 motion to dismiss, then Mr. Gonzalez would request that the court dispose of the merits of the
12 joined arguments as they relate to him. Alternatively, should the court decline to clarify or
13 supplement its September 13, 2012, order, or were the court to deny joinder as to his original
14 motion to dismiss, then Mr. Gonzalez would request that the court rule on the merits of the
15 contentions incorporated by reference in the present motion.¹

16 17 CONCLUSION

18 Based on the foregoing, Mr. Gonzalez respectfully requests that the court determine the
19 merits of the contentions raised by reference in his Second Motion to Dismiss in the event the

20 ///

21 ///

22 ///

23 ///

24
25 ¹Although the court declined to perform direct review of these arguments in its September 13,
26 2012, order as they related to Mr. Gonzalez, it nevertheless ruled alternatively on their merits.
See Order at 22 n.18, 23 n.19.

1 court declines to clarify or supplement its September 13, 2012, order.

2 AFFIRMATION PURSUANT TO NRS 239B.030

3 The undersigned does hereby affirm that the preceding document does not contain the
4 social security number of any person.

5
6 DATED this 8th Day of October, 2012.

7 JEREMY T. BOSLER
8 Washoe County Public Defender

9 By /s/ Christopher Frey
10 CHRISTOPHER FREY
11 Deputy Public Defender

12
13 By /s/ Biray Dogan
14 BIRAY DOGAN
15 Deputy Public Defender

16
17 By /s/ Maizie Pusich
18 MAIZIE PUSICH
19 Chief Deputy Public Defender
20
21
22
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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 8th Day of October, 2012.

/s/ Leslie Tibbals
LESLIE TIBBALS

INDEX TO EXHIBIT

1. Petition for Writ of Habeas Corpus filed by David Z. Chesnoff, Esq.

EXHIBIT 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

EXHIBIT 1

FILED

Electronically

03-05-2012:11:43:40 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 2803025

1 DAVID Z. CHESNOFF, ESQ.
2 Nevada Bar No. 2292
3 RICHARD A. SCHONFELD, ESQ.
4 Nevada Bar No. 6815
5 CHESNOFF & SCHONFELD
6 520 South Fourth Street
7 Las Vegas, Nevada 89101
8 Attorneys for Petitioner
9 CESAR VILLAGRANA

10 SECOND JUDICIAL DISTRICT COURT OF NEVADA

11 WASHOE COUNTY, NEVADA

12 THE STATE OF NEVADA,

) Case No. CR-11-1718 - A

) Dept. 4

13 Plaintiff

)

14 v.

) PETITION FOR WRIT OF HABEAS CORPUS

)

15 CESAR VILLAGRANA,

)

16 Defendant.

)

17 TO: THE HONORABLE CONNIE J. STEINHEIMER, JUDGE OF THE SECOND JUDICIAL
18 DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE;

19 TO: SHERIFF OF WASHOE COUNTY, MIKE HALEY AND HIS COUNSEL, DISTRICT
20 ATTORNEY RICHARD A. GAMMICK;

21 COMES NOW, the Petitioner Cesar Villagrana, by and through his attorneys DAVID Z.
22 CHESNOFF, ESQ., and RICHARD A. SCHONFELD, ESQ., of the law offices of Chesnoff &
23 Schonfeld, and pursuant to NRS 34.360 to NRS 34.710, inclusive states:

24 1. That attorneys for Petitioner are duly qualified and licensed attorneys permitted to
25 practice in Reno, Nevada;

26 2. That Petitioners make application for a Writ of Habeas Corpus;

27 3. That the legal evidence presented at the Grand Jury was insufficient to establish
28

LAW OFFICES
CHESNOFF & SCHONFELD
AN ASSOCIATION OF PROFESSIONAL CORPORATIONS
520 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101-6593
TELEPHONE 702-384-5563

LAW OFFICES
CHESNOFF & SCHONFELD
AN ASSOCIATION OF PROFESSIONAL CORPORATION
520 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101-6593
TELEPHONE 702-383-5563

1 probable cause to believe that Petitioner committed the offenses with which Petitioner is charged;

2
3 4. That illegal evidence was presented to the Grand Jury which caused unfair prejudice
4 to Petitioner;

5 5. That the Petitioner did not receive required notice of the Grand Jury proceeding;

6 6. That Petitioner consents that if this Petition is not decided within 15 days before the
7 date set for trial, the Court may, without notice or hearing, continue the trial to such date as it
8 designates;

9
10 7. That the Grand Jury was not properly instructed on the law;

11 8. That Petitioner consents that if any party appeals the Court's ruling and the appeal is
12 not determined before the date set for trial, the trial date shall be vacated and the trial postponed unless
13 the Court otherwise orders.

14 9. That Petitioners' trial is scheduled for October 29, 2012, in Department IV of the
15 above entitled Court;

16
17 10. That no other Petition for Writ of Habeas Corpus has heretofore been filed on behalf
18 of Petitioners in this case.

19 Respectfully submitted this 22 day of March, 2012.

20 CHESNOFF & SCHONFELD

21
22 By 
23 DAVID Z. CHESNOFF, ESQ.

24 Nevada Bar No. 2292

25 RICHARD A. SCHONFELD, ESQ.

26 Nevada Bar No. 6815

27 520 S. Fourth St.

28 Las Vegas, NV 89101

Attorney for Petitioner

LAW OFFICES
CHESNOFF & SCHONFELD
AN ASSOCIATION OF PROFESSIONAL CORPORATIONS
320 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101-5593
TELEPHONE 702-384-5583

AFFIDAVIT OF RICHARD A. SCHONFELD

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)


RICHARD A. SCHONFELD, being first duly sworn, hereby deposes and says:

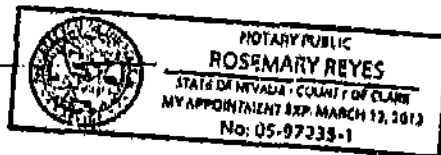
I, That Affiant is a Partner at the Law Firm of Chesnoff & Schonfeld and represents Cesar Villagrana, Petitioner in the above-entitled matter; that Affiant has read the foregoing Petition and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters, he believes them to be true. Further, that Petitioner has authorized him to make the foregoing application for relief.

Further Affiant Sayeth Naught.


RICHARD A. SCHONFELD

Subscribed and Sworn to before me
this 2 day of March, 2012.


NOTARY PUBLIC



1
2 **MEMORANDUM OF POINTS AND AUTHORITIES**
3 **SUPPORTING PETITION FOR WRIT OF HABEAS CORPUS**

4 **I**

5 **PROCEDURAL HISTORY**

6 On November 9, 2011, the State presented its case to the Grand Jury without notice to
7 Cesar Villagrana, and obtained an indictment charging him with: 1) Conspiracy to Engage in
8 Affray, 2) Challenge to Fight Resulting in Death with the Use of a Deadly Weapon, 3) Battery with
9 a Deadly Weapon, 4) Discharging a Firearm in a Structure, 5) Carrying a Concealed Weapon, and
10 6) Murder in the Second Degree. The Challenge to Fight, Battery and Second Degree Murder
11 charges also allege a gang enhancement.
12

13 **II**

14 **ARGUMENT**

15 **GROUND I - GRAND JURY NOTICE**

16 **MARCUM NOTICE:**

17 Mr. Villagrana was initially arrested on September 23, 2011, and charged by way of
18 Criminal Complaint in the Sparks Justice Court. Mr. Villagrana appeared in custody with his
19 counsel and requested that a reasonable bail be set. The Court requested a written Motion and Mr.
20 Villagrana filed the written Motion. In the meantime Mr. Villagrana's counsel reached a
21 Stipulation with the State whereby bail was set at \$150,000. Mr. Villagrana posted the bail and a
22 Preliminary Hearing date was set.
23

24 There is no allegation that Mr. Villagrana violated any condition of his bail. Mr.
25 Villagrana had appeared in Court, had an arraignment, and had a preliminary hearing scheduled.
26 Thereafter, without any notice whatsoever, Mr. Villagrana was Indicted on November 9, 2011, and
27
28

1 a warrant was issued. Mr. Villagrana was arrested in California, a stipulation was reached
2 regarding bail, Mr. Villagrana posted bail and voluntarily appeared in this Honorable Court for
3 arraignment.
4

5 Mr. Villagrana was entitled to notice of the grand jury proceedings pursuant to
6 *Marcum*, *infra*, and the denial of that notice requires dismissal of the indictment herein.
7

8 In *Sheriff, Humboldt County v. Marcum*, 105 Nev. 824 (1989) the Nevada Supreme
9 Court held:

10 NRS 172.095(1)(d) and NRS 172.241(1)(d) clearly give a defendant the right to
11 testify in front of a grand jury before he is indicted. This right would be meaningless
12 if a defendant is not given notice that a grand jury will meet and consider returning an
13 indictment against him. Without the right to notice, a defendant has only two ways of
14 finding out an indictment against him is being considered. The first is by accident. A
15 defendant's right to testify should not depend on luck. The second way a defendant
16 might learn of a grand jury proceeding against him is from the district attorney. This
17 would give the district attorney the power to inform or not inform any target
18 defendant against whom an indictment is requested. To give the district attorney such
19 discretion is unreasonable.

20 Finally, we conclude that giving a defendant notice that he is a target of a grand jury
21 investigation is consistent with the policy of avoiding unnecessary trials. A defendant
22 who has notice that he is the subject of a possible indictment may present the grand
23 jury with evidence which exonerates him. Hence, in some instances notice to the
24 target defendant will eliminate the need for a trial.

25 NRS 172.241 provides:

26 Right of certain persons to appear before grand jury; notice of consideration of
27 indictment; withholding of notice.

28 1. A person whose indictment the district attorney intends to seek or the grand jury on
its own motion intends to return, but who has not been subpoenaed to appear before
the grand jury, may testify before the grand jury if the person requests to do so and
executes a valid waiver in writing of the person's constitutional privilege against self-
incrimination.

2. A district attorney or a peace officer shall serve reasonable notice upon a person
whose indictment is being considered by a grand jury unless the court determines that

adequate cause exists to withhold notice. The notice is adequate if it:

(a) Is given to the person, the person's attorney of record or an attorney who claims to represent the person and gives the person not less than 5 judicial days to submit a request to testify to the district attorney; and

(b) Advises the person that the person may testify before the grand jury only if the person submits a written request to the district attorney and includes an address where the district attorney may send a notice of the date, time and place of the scheduled proceeding of the grand jury.

3. The district attorney may apply to the court for a determination that adequate cause exists to withhold notice if the district attorney:

(a) Determines that the notice may result in the flight of the person whose indictment is being considered, on the basis of:

(1) A previous failure of the person to appear in matters arising out of the subject matter of the proposed indictment;

(2) The fact that the person is a fugitive from justice arising from charges in another jurisdiction;

(3) Outstanding local warrants pending against the person; or

(4) Any other objective factor;

(b) Determines that the notice may endanger the life or property of other persons; or

(c) Is unable, after reasonable diligence, to notify the person.

4. If a district attorney applies to the court for a determination that adequate cause exists to withhold notice, the court shall hold a closed hearing on the matter. Upon a finding of adequate cause, the court may order that no notice be given.

Accordingly, it can only be assumed that the State sought an Order from the Court pursuant to NRS 172.241(4) and that the Court held a hearing in order to make a determination as to whether or not cause existed to withhold notice to Cesar Villagrana.

Defendant Villagrana has filed a Motion to Unseal that hearing so he can address the evidence/argument presented to the Court. Considering that Mr. Villagrana had already appeared in Justice Court, posted the agreed upon bail, retained counsel, and had a preliminary hearing date

1 set the State could not have legitimately argued that Mr. Villagrana was a flight risk. Additionally,
2 there is no evidence that Mr. Villagrana engaged in any conduct that would suggest that he was
3 endangering the life or property of any other person. Furthermore, Mr. Villagrana had counsel and
4 could have easily been notified of the grand jury proceedings.
5

6 Accordingly, counsel and Mr. Villagrana are concerned that the notice was withheld
7 based upon representations made by the State related to Mr. Villagrana's co-defendants and not
8 Mr. Villagrana. Clearly, NRS 172.241(4) only allows the potential to withhold notice based upon
9 factors that are unique to the Defendant that is being denied notice.
10

11 Mr. Villagrana reserves the right to supplement this portion of his Petition for Writ of
12 Habeas Corpus after receiving a ruling on his Motion to Compel Discovery of Transcript of
13 Hearing to Withhold Marcum Notice.
14

15 GROUND II

16 THE GRAND JURY INSTRUCTIONS FAILED TO ADDRESS SELF-DEFENSE

17 The evidence presented to the grand jury shows that Defendant Gary "Jabbers"
18 Rudnick, a members of the Vagos Motorcycle Club, provoked a fight with Hells Angels member
19 Jeffrey Pettigrew inside the John Ascuaga's Nugget in Sparks, Nevada. Although it appeared to
20 some that Mr. Rudnick was initially attacking and provoking Mr. Pettigrew, the ensuing altercation
21 erupted into what was actually a large-scale pre-meditated attack by Vagos members on Hells
22 Angels members. At the end of the night Mr. Pettigrew was dead.
23

24 The State's theory that the Hells Angels and the Vagos somehow conspired together or
25 aided and abetted each other in the commission of the fight makes no sense. The evidence
26 presented at the grand jury shows that the Hells Angels were largely outnumbered by members of
27 the Vagos club and, in any event, were friendly and congenial with Vagos members prior to the
28 altercation. According to the Director of Security at John Ascuaga's Nugget ("Confidential Source

1 11-54"), around 10:10 in the evening, "there were ten to twelve Hells Angels, and there were
2 maybe twenty Vagos at that point. As we were standing there watching the groups, we had
3 numerous other Vagos walk up to the Oyster Bar which raised a concern to all of us." GJ TS p. 55.
4 "...with the number of Vagos that were coming to the Oyster Bar, I felt that something was about to
5 transpire there." GJ TS p. 57. According to one Vagos member who was present during the entire
6 confrontation by Rudnick, other Vagos members attempted to control Mr. Rudnick but he
7 continued to taunt Mr. Pettigrew throughout the night. He testified in front of the grand jury as
8 follows:
9

10 Well, when I walked up there was a lot of Vagos that were around. And I took a look
11 over there, and they both came out, and "Jabbers" was very upset. And just kept on
12 talking, kept on talking, kept on talking. And he kept taunting Pettigrew.

13
14
15 Pettigrew's response back to him was, "Hey man, you know, I was just having a good
16 time. I just want to have a beer," basically. He wasn't in no shape or form upset at the
17 time.

18
19 What had happened is that we were talking to Pettigrew. He was cool. He was just
20 saying, "Hey man, everything is good. I have no problem." "Jabbers" comes up and
21 "Jabbers" then starts taunting him, You know, "You had not right touching me."
22 What he meant by "touching," he just tapped him on the back, basically. You know
23 what my insinuation was, he tapped him on the back. He said, "Hey, do you want to
24 have a beer?" "Jabbers" took it as an offensive thing, pushed out his chest because, of
25 course, there was a lot more Vagos than there were Hells Angels. So he kept on
26 taunting. He wouldn't stop.

27 So I told him, I said, "Listen, shut the fuck up." Excuse my French, but I have to tell
28 you the way it went. I said, "Shut the fuck up. Get the fuck out of here." He backed up
for a minute, then he came back again. I said, "I told you to leave." He says, "Hey, hey,
don't worry. I said, 'I told you to leave.'" Now me, in my position, he has to listen to
me. So what happens is that Pettigrew looks at him. I am going to call him Jethro.
Jethro looks at him and he says to Jethro, "You know I don't know why you had to
touch me." He says, you know, "Just talk to me." He said, "I don't need to talk to
you," this and this, whatever. Jethro lost it. He got pissed off.

For taunting him, taunting him, taunting him. He finally just said, "Listen, I don't need to fucking talk to you no more." [Jethro Pettigrew] turned around and walked away.

GJ TS p. 193-94.

This same witness later explained that "Jabbers" Rudnick continued to taunt Mr. Pettigrew and that he [the witness] knew "one hundred percent" that the Vagos were going to fight the Hells Angels if the situation was not diffused. GJ TS p. 200. This witness also testified that Defendant Ernesto Manuel Gonzalez was present as "back up to Mr. Rudnick." GJ TS p. 195. Despite the continued taunting, when members of the Vagos leadership approached Mr. Pettigrew, he explained that he did not want any issues. GJ TS p. 201. The taunting continued, however, and at one point during the interaction, Mr. Rudnick started putting his gloves on and, as the witness explained, this means "this thing is going to go off," and it is a "premeditated thing." GJ TS p. 210, 213. He later explains that another Vagos member can be seen on the video putting his drink down "which means he's getting prepared [to fight]." Then, the witness explains, you can see "Pettigrew and Bobby V getting attacked from the rear." GJ TS p. 214. According to this witness (a Vagos club member on the night of the attack), Mr. Pettigrew then got shot four times in the back. GJ TS p. 220. Chief Medical Examiner Ellen Clark confirmed that Mr. Pettigrew was shot in the back, stating:

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

GJ TS p. 168.

1 The same Vagos club member ("Confidential Source 11-67") also testified that the
2 wives of Vagos members were standing off to the side during the altercation because "the husbands
3 told them to move over here because something was going to take place." GJ TS p. 217. The
4 witness also detailed a previous violent incident between the Hells Angels and the Vagos, noting
5 that the Vagos "provoked that one, too." GJ TS p. 224.

6
7 There was also additional grand jury testimony that Vagos members were clearly
8 orchestrating the melee, even going so far as to encourage law enforcement to begin killing Hells
9 Angels inside the casino. According to Sergeant Jean Marie Walsh of the Sparks Police
10 Department, when she entered the casino during the melee, she went to an area near Trader Dicks.
11 She noted that one of the people inside the casino began screaming at her about Defendant
12 Villagrana. She stated that "[w]hen he saw me see Villagrana with the gun in his hand, he was
13 yelling at me, 'Kill him. Kill him. Kill him. He's right there. Kill him.'" GJ TS p. 142. The
14 witness testified that at that time, "there was fifty Vagos in Rosie's café" and "there was a boatload
15 of Vagos" there. GJ TS p. 143. She later noted that there were "hundreds" of Vagos in the general
16 area of the shooting. At the time they were all detained, this same witness noted that the Hells
17 Angels were "cooperative," and that it was the Vagos members who were "physically really
18 confronting" the police. GJ TS p. 144.

19 Most significant as it relates to the self-defense instruction is that testimony from CS
20 11-31. This witness testified that he saw Mr. Villagrana shooting in response to somebody
21 shooting at him:

22 Q. Okay, did you see somebody shooting at him?

23 A. Yes, sir, I did. I could not identify him, because they shot and he
24 turned, I am going to say he ran, but he disappeared from my view, but

1 I definitely saw that man.

2
3 Q. What color of clothing was the fellow who was shooting wearing?

4 A. I remember the green Vagos patch.

5 Not only is this significant for the general self-defense aspect of the case, but it
6 becomes even more significant as a result of Mr. Villagrana being charged in Count 3 and 4 with
7 Battery of two different alleged victims that did not testify at the grand jury. Accordingly, it could
8 very well have been those two individuals shooting at Mr. Villagrana when Mr. Villagrana acted in
9 self defense.
10

11 A review of the video evidence in this case clearly demonstrates that at the very
12 moment that Jeffery Pettigrew and Mr. Rudnick began to fist fight, several members of the Vagos
13 started smashing beer bottles over the heads of Hells Angels members that were in no way engaged
14 in any sort of violent or offensive conduct¹. It was not until after the Vagos members used beer
15 bottles (deadly weapons under Nevada law) to strike defenseless members of the Hells Angels that
16 Cesar Villagrana is accused of utilizing a firearm. Moreover, the testimony made it clear that Mr.
17 Villagrana was being shot at by at least one Vagos member.
18

19 The testimony established that Jeffrey Pettigrew had "many injuries that were
20 distributed literally from his head to his pelvis or buttocks region. In particular, visible at the
21 outset of the autopsy were injuries that were on the face, in the area of the nose and the eye and at
22 the bridge of the nose." GJ TS p. 163. "There was an injury over the eye, injury near the nose.
23 then sufficient injury to the center of the nose...there were injuries to the face that had primarily
24 features of sharp force trauma. There is a possibility there may have been blunt trauma, also
25
26

27 ¹
28 Mr. Villagrana hereby incorporates the video by reference
and will play the video for this Honorable Court at the
hearing on this matter.

1 commingling, mixed or mingled with, but the majority of the wound findings and margins of the
2 examination suggested the facial injuries were primarily sharp force... consistent with a knife" GJ
3 p. 164. Mr. Pettigrew's "tip of his nose, right nostril area (was)...almost completely detached from
4 the nose. It was hanging by a strip of skin on the side" GJ p. 165. Mr. Pettigrew had also been
5 shot five times. GJ. P. 168.
6

7 Notwithstanding the above evidence presented to the grand jury, the State failed to
8 advise the grand jury of self defense and the elements thereto.
9

10 Our Supreme Court has held that an appropriate self-defense instruction should read:
11 "[s]elf-defense may justify a homicide if a person reasonably believes that he is in danger of being
12 seriously injured or killed by his assailant." *Culverson v. State*, 106 Nev. 487-488 (Nev. 1990).
13 Our Supreme Court has further held "It is lawful for a person who is being assaulted to defend
14 himself from attack if, as a reasonable person, he has grounds for *believing and does believe* that
15 bodily injury is about to be inflicted upon him." *See Barone v. State*, 109 Nev. 778, 780, 858 P.2d
16 27, 29 (1993) (holding that in proving a case of battery, the State has the burden of proving the
17 defendant did not act in self-defense).
18

19 The Nevada Supreme Court has also held that evidence of specific acts showing that the
20 victim is a violent person are admissible for purposes of self-defense when the person was aware of
21 those acts. *Daniel v. State* 78 P.2d 890, 902 (2003). This evidence is relevant to the defendant's state
22 of mind, i.e., whether the defendant's belief in the need to use force in self-defense was reasonable.
23 *Id.*
24

25 There was testimony from the State's witness, a high ranking member of the Vagos that
26 they had previously instigated violent contact with the Hells Angels. GJ TS p. 224.
27
28

1 The State was required to instruct the grand jury on self defense and failed to do so. The
2
3 need for the self defense instruction was increased as a result of the State's election to withhold
4 notice to Defendant Villagrana of the grand jury proceedings. Had Mr. Villagrana known of the
5 pending grand jury proceeding he would have insisted that the presentation include exculpatory
6 evidence regarding self defense.

7
8 **GROUND III.**

9 **THE STRUCTURE OF THE INDICTMENT AS TO MR. VILLAGRANA - THE LACK**
10 **OF PROBABLE CAUSE AND INSTRUCTIONAL ERRORS THAT VIOLATE NRS §**
11 **172.095(2).**

12 NRS 172.095 provides:

13 Charges to be given to grand jury by court; district attorney to inform grand jury of specific
14 elements of public offense considered as basis of indictment.

15 1. The grand jury being impaneled and sworn, must be charged by the court. In doing so, the court
16 shall:

17 (a) Give the grand jurors such information as is required by law and any other information it deems
18 proper regarding their duties and any charges for public offenses returned to the court or likely to
19 come before the grand jury.

20 (b) Inform the grand jurors of the provisions of NRS 172.245 and the penalties for its violation.

21 (c) Give each regular and alternate grand juror a copy of the charges.

22 (d) Inform the grand jurors that the failure of a person to exercise the right to testify as provided in
23 NRS 172.241 must not be considered in their decision of whether or not to return an indictment.

24 2. Before seeking an indictment, or a series of similar indictments, the district attorney shall inform
25 the grand jurors of the specific elements of any public offense which they may consider as the basis
26 of the indictment or indictments.

1
2 A. The Public Offenses Charged Against Mr. Villagrana in Counts 1, 2, and 10
3 Fall into Two Categories: Conspiracy and Various Theories of Vicarious
4 Liability

5
6 L. Counts 2 and 10 Charged Against Mr. Villagrana are a result of what is
7 alleged to be vicarious liability

8 The indictment alleges four counts of conduct directly against Mr. Villagrana: 2 counts of
9 Battery with a Deadly Weapon, 1 count of Carrying a Concealed Weapon, and 1 count of
10 Discharging a Firearm in a Structure. The remaining counts (which amount to murder charges
11 where Mr. Villagrana is charged with murdering his friend as a result of the Vago Defendants'
12 conduct) are alleged as a result of a convoluted theory of vicarious liability against Mr. Villagrana -
13 as an aider and abettor or conspirator except in Count 1 (conspiracy- Gross Misdemeanor).

14 Count 2 alleges vicarious liability as it relates to Cesar Villagrana as it is not alleged that he
15 directly caused the death of his friend Jeffrey Pettigrew. The State's theory is that Mr. Villagrana
16 "having the intent to commit a challenge to fight or to accept a challenge to fight, conspiring with
17 each other to commit the offense of challenge to fight or to accept such a challenge to fight whereby
18 each co-conspirator is vicariously liable for the acts of the other co-conspirator" and by "aiding and
19 abetting each (sic) either directly or indirectly whether present or not."

20 Count 10 alleges vicarious liability as it relates to Cesar Villagrana as it alleges that he aided
21 and abetted "Gary Stuart Rudnick, also known as Jabbers a Vagos gang member and Jeffrey
22 Pettigrew a Hell's (sic) Angel gang member in the commission of an affray with the use of a deadly
23 weapon, that during the course of the affray the said defendants did maliciously fire deadly weapons
24 inside of John Ascuaga's casino, located in a congested area in Sparks, Washoe County, Nevada.
25 That the said discharging of handguns during the affray was in general malignant recklessness of
26 others' lives and safety of other people or in disregard of social duty and as a foreseeable
27
28

1 consequence of the shooting, Jeffrey Pettigrew, a human being, was killed and murdered..." This
2 charge does not allege that Mr. Villagrana shot or otherwise injured Mr. Pettigrew; rather, it asserts
3 that Mr. Villagrana "aided and abetted" Gary Rudnick in his recklessness of others lives and safety
4 which resulted in the death of Cesar Villagrana's friend Jeffrey Pettigrew.
5

6 The factual allegations in each count are generic and do not specify which of the multiple
7 factual acts upon which aiding and abetting is premised were committed by which defendants and
8 therefore these allegations are defective. See, *State v. Hancock*, 955 P.2d 183, 185 (Nev.
9 1998)(indictment that lumps multiple defendants together with multiple acts is "very difficult to
10 decipher who is alleged to have done what" and is defective). None of the allegations apply to Mr.
11 Villagrana and therefore fail to state a basis for liability.
12

13 A further, and glaring problem, arises in that the District Attorney did not correctly instruct
14 the Grand Jury on the necessity of determining probable cause existed for the factual components of
15 aiding and abetting. Nor did the prosecution instruct the grand jury that as to Count 2 the Defendant
16 must have aided and abetted with the intention that the crime be committed. See, *Bolden v. State*,
17 124 P.3d 191 (Nev. 2005). The prosecution provided a set of written instructions to the grand jury,
18 See Exhibit 4 attached hereto, and provided no further direction to the Grand Jury.
19

20 The Nevada Supreme Court in discussing the need to specifically allege the manner or
21 means by which a defendant is alleged to have committed a crime is more than a mere notice
22 requirement. The High Court held:
23

24 'To allow the prosecutor, or the court, to make a subsequent guess as to what
25 was in the minds of the grand jury at the time they returned the indictment would
26 deprive the defendant of a basic protection which the guaranty of the intervention of
27 a grand jury was designed to secure. For a defendant could then be convicted on
28 the basis of facts not found by, and perhaps not even presented to, the grand
jury which indicted him.'

1 *Simpson v. Eighth Judicial Dist. Court*, 503 P.2d 1225, 1229 (Nev. 1973)(quoting *Russell v. United*
2 *States*, 369 U.S. 749, 770 (1962)(emphasis added)). *Simpson* is the basis for the seminal Nevada
3 case requiring an indictment to specify the facts upon which aiding and abetting liability is based.
4 *Burren v. State*, 669 P.2d 725, 729 (Nev. 1983). Instructing the Grand Jury it could return a true
5 bill without finding probable cause that the facts that give rise to accomplice liability exist is the
6 same as instructing the Grand Jury to return a defective indictment. *Simpson, supra*.

7
8
9 The State instructed the grand jury as follows:

10 **Principal Liability As an Aider and Abetter:**

11 Every person concerned in the commission of a felony, gross misdemeanor or
12 misdemeanor, whether the person directly commits the act constituting the offense,
13 or aids or abets in its commission, and whether present or absent; and every person
14 who, directly or indirectly, counsels, encourages, hires, commands, induces or
15 otherwise procures another to commit a felony, gross misdemeanor or misdemeanor
16 is a principal, and shall be proceeded against and punished as such. The fact that the
17 person aided, abetted, counseled, encouraged, hired, commanded, induced or
18 procured, could not or did not entertain a criminal intent shall not be a defense to
19 any person aiding, abetting, counseling, encouraging, hiring, commanding, inducing
20 or procuring him or her.

21 (Emphasis added).

22 The instruction is a complete misstatement of the law.

23 In both *Bolden v. State*, 124 P.3d 191 and *Sharma v. State*, 118 Nev. 648 (2002) the Nevada
24 Supreme Court made it clear that "In order for a person to be held accountable for the specific
25 intent crime of another under an aiding and abetting theory of principal liability, the aider or
26 abettor must have knowingly aided the other person with the intent that the other person commit
27 the charged crime."

28 Count 2 is a specific intent crime and rises to the level of a first degree murder. The grand
jury was improperly instructed that Cesar Villagrana could aid in this crime without the necessary

1 criminal intent.

2
3 Count 10 is a general intent crime; however, the Grand Jury was improperly instructed on
4 vicarious liability as an aider and abetter, as they were not instructed that they must find that a
5 natural and probable consequence of Mr. Villagrana's alleged aiding and abetting was the death of
6 his friend Mr. Pettigrew. The Nevada Supreme Court has held that when a person enters into a
7 common plan or scheme but does not intend a particular crime committed by the principal, the
8 person is liable for the crime if "in the ordinary course of things [the crime] was the natural or
9 probable consequence of such common plan or scheme." *See State v. Cushing*, 61 Nev. 132, 148,
10 120 P.2d 208, 216 (1941). This rule does not constitute a *per se* basis for holding an accomplice to
11 one crime liable for a related crime by the principal simply because the related crime was
12 foreseeable. *See United States v. Greer*, 467 F.2d 1064, 1068-69 (7th Cir. 1972). To do so would be
13 "to base criminal liability only on a showing of negligence rather than criminal intent." *Id.* at 1069.
14 Where the relationship between the defendant's acts and the charged crime is too attenuated, the
15 State must provide "some showing of specific intent to aid in, or specific knowledge of, the crime
16 charged." *Id.*
17
18

19 Accordingly, the State's instruction that somebody could aid and abet without a criminal
20 intent, is completely erroneous.
21
22

23 **2. There Is No Probable Cause for Count 2 (Challenge to Fight) Which Is Part of an**
24 **Anti-dueling Statute:**

25 There are two inter-related issues concerning the Challenge to Fight allegation in Count 2 -
26 a violation of NRS § 200.450. First in light of the fact that this statute is designed to punish those
27 that act as seconds in connection with the prohibition against dueling proscribed by NRS § 200.410
28

1 is there probable cause to believe:

2
3 1. That there was any previous agreement between the deceased Hells Angels member
4 Jeffrey Pettigrew and the Vago member Stuart Gary Rudnick to fight a duel with deadly weapons;
5 or,

6 2. Cesar Villagrana delivered a challenge to Rudnick on behalf of Jeffrey Pettigrew, or

7
8 3. Cesar Villagrana received a challenge on behalf Jeffrey Pettigrew?

9 The video evidence in this case shows that Cesar Villagrana did nothing until Jeffrey
10 Pettigrew and Defendant Rudnick were already fighting and Vagos members were smashing beer
11 bottles and shooting guns at Hells Angels members.

12 The statutes at issue provide as follows:

13 NRS 200.410 Death resulting from duel; penalty. If a person fights, by previous appointment or
14 agreement, a duel with a rifle, shotgun, pistol, bowie knife, dirk, smallsword, backsword or other
15 dangerous weapon, and in so doing kills his or her antagonist, or any person, or inflicts such a
16 wound that the party or parties injured die thereof, each such offender is guilty of murder in the
17 first degree, which is a category A felony, and upon conviction thereof shall be punished as
provided in subsection 4 of NRS 200.030.

18 NRS 200.450 Challenges to fight; penalties.

19 1. If a person, upon previous concert and agreement, fights with any other person or gives, sends or
20 authorizes any other person to give or send a challenge verbally or in writing to fight any other
21 person, the person giving, sending or accepting the challenge to fight any other person shall be
punished:

22 (a) If the fight does not involve the use of a deadly weapon, for a gross misdemeanor; or

23 (b) If the fight involves the use of a deadly weapon, for a category B felony by imprisonment in the
24 state prison for a minimum term of not less than 1 year and a maximum term of not more than 6
years, and may be further punished by a fine of not more than \$5,000.

25 2. A person who acts for another in giving, sending, or accepting, either verbally or in writing, a
26 challenge to fight any other person shall be punished:

27 (a) If the fight does not involve the use of a deadly weapon, for a gross misdemeanor; or

28 (b) If the fight involves the use of a deadly weapon, for a category B felony by imprisonment in the
state prison for a minimum term of not less than 1 year and a maximum term of not more than 6

1 years, and may be further punished by a fine of not more than \$5,000.

2
3 3. Should death ensue to a person in such a fight, or should a person die from any injuries received
4 in such a fight, the person causing or having any agency in causing the death, either by fighting or
5 by giving or sending for himself or herself or for any other person, or in receiving for himself or
6 herself or for any other person, the challenge to fight, is guilty of murder in the first degree which
7 is a category A felony and shall be punished as provided in subsection 4 of NRS 200.030.

8
9 These statutes concern the same subject matter (prevention of dueling) and thus are in *pari*
10 *materia* and must be read together. *English v. State*, 116 Nev. 828, 834, 9 P.3d 60, 63 (2000)(citing
11 *State Farm Mut. v. Comm'r of Ins.*, 114 Nev. 535, 541, 958 P.2d 733, 737 (1998) for the
12 proposition that the "meaning of a statute may be determined by referring to laws which are 'in
13 *pari materia*' i.e., "when they relate to the same person or things, to the same class of persons or
14 things, or have the same purpose or object").²

15
16 Currently there are four statutes that concern the prohibition against dueling. NRS §§
17 200.410 - 450.³ These statutes have existed in Nevada law from its inception as a State and are set
18 out in the first compilation of crimes and punishment. See 1911 Crimes and Punishment (C&P) §§
19 157 - 161; Nevada Revised Laws (RL) §§ 6422 - 6426; Nevada Compiled Laws (NCL) §§ 10104 -
20 10108. The text of the original anti-dueling statutes have remained virtually unchanged except for
21 the punishment provisions and must be construed with that purpose or object in mind. *English v.*

22
23 This canon of construction has particular force in Nevada since acts of the legislature must constitutionally encompass
24 a single subject matter and the title may be considered in construing the statute. Nev. Const. Art 4, § 17; see also *Minor*
25 *Girl v. Clark County Juvenile Court*, 87 Nev. 544, 548, 490 P.2d 1248, 1250 (1971) ("the title of the statute may be
26 considered in construing the statute...the act must also be restricted to that subject expressed in the title.") (citations
27 omitted).

28
29 NRS 200.410 (compare RL § 6422) sets forth the elements of a duel and the agreement necessary and sets
30 the punishment when death results from the duel as the same as murder as proscribed in NRS 200.030(4).
31 NRS 200.430 (compare RL § 6424) makes any person present at a duel with deadly weapons including a
32 second to the duelist, an aid, a surgeon or advisor a competent witness and provides for immunity from
33 prosecution. NRS 200.440 (compare RL § 6425) prohibits 'posting' or publicly notifying others that an
34 individual refused to fight a duel or refuses to send or accept a challenge to a duel. RL § 6423 is not
35 separately represented in the current statutes but is in essence an attempt.

1 *State, supra*. The subtitle of the challenge to fight section in the original was "Penalty for dueling
2 - Acting as second - Deemed manslaughter". See RL § 6426 and compare NRS § 200.450. Its
3 intent was to punish those that aided the antagonists in arranging a duel (seconds).⁴ The State has
4 charged that the death of the Hells Angel member Jeffrey Pettigrew at the hands of the Vago
5 member Ernesto Gonzalez is attributable to a violation of NRS 200.450. Analysis of the structure
6 of the statute leads to the conclusion that NRS 200.450 is a special statute which contains not only
7 its own punishment provision for a death as a result of a violation of the statute but also contains a
8 limitation on what acts give rise to vicarious liability.

9
10
11 There is no evidence to support the requirements of the statute in this case and Cesar
12 Villagrana a Hells Angel defendant cannot be charged with the death of Hells Angels member
13 Jeffrey Pettigrew under NRS 200.450.

14
15 The language of NRS § 200.450 as a whole states that "[i]f a person, upon previous concert
16 or agreement, fights with any other person" and "should death ensue to a person in such a fight"
17 then "the person causing or having any agency in causing the death, either by fighting or by giving
18 or sending . . . or by receiving the challenge to fight . . . is guilty of murder . . . and shall be
19 punished as provided in subsection 4 of NRS 200.030." This language is mirrored in the primary
20 dueling statute NRS § 200.410. Both statutes deem the violation punishable in the same manner as
21 murder and incorporate the punishment under NRS 200.030(4) but not the elements of murder.

22
23 Under the statute charged here, the person doing the killing must have previously agreed
24 with the deceased to fight against each other. This is the exact interpretation placed on the
25

26
27 For a brief history of dueling and the role of seconds see *The Attorney as Duellist's Friend: Lessons from*
28 *the Code Duello*, 51 Case W. Res. L. Rev. 69, 83 - 88 (Fall 2000); see also *Payne v. State*, 391 So. 2d 140
(Ala. App. 1980)(definition of duel); see also *State v. Romero*, 801 P.2d 681 (N.M. 1990)(historical meaning
of dueling).

1 predecessor challenge to fight statute by the Nevada Supreme Court. *In re Finlen*, 20 Nev. 141,
2 18 P. 827, 834 (1888) ("there was a previous agreement between himself [defendant] and the
3 deceased to fight")(brackets added).⁵ In the structure of the statute the agreement to fight each
4 other between the deceased and the defendant must exist *before* the fight ensues.⁶

5
6 In this case, there is no evidence in the record that the Vago member Ernesto Manuel
7 Gonzalez previously agreed with the deceased Hells Angel member Jeffrey Pettigrew to fight with
8 deadly weapons or any other person for that matter.⁷ *Ex Parte Finlen, supra*. While Stuart Gary
9 Rudnick attempted to instigate a fight and taunted Mr. Pettigrew, Mr. Pettigrew refused to fight
10 and instead urged the leaders of the Vagos to take control of their member Stuart Gary Rudnick.
11

12 Well, when I walked up there was a lot of Vagos that were around. And I took a look over
13 there, and they both came out, and "Jabbers" was very upset. And just kept on talking, kept
14 on talking, kept on talking. And he kept taunting Pettigrew.

15
16 Pettigrew's response back to him was, "Hey man, you know, I was just having a good time.
17 I just want to have a beer," basically. He wasn't in no shape or form upset at the time.

18
19 The *Finlen* court quoted the then existent statute which is virtually the same except that the punishment
20 was at the time manslaughter. The court quoted Gen. St. § 4602 as reading "if any person or persons, with
21 or without deadly weapons, upon previous concert and agreement, fight one with the other, or give or send,
22 or authorize any other person to give or send, a challenge, verbally or in writing, to fight any other person,
23 the person or persons giving, sending, or accepting a challenge to fight any other person, with or without
24 weapons, upon conviction thereof, shall be punished by imprisonment in the state prison not less than two
25 or more than five years. *** Should death ensue to any person in such fight, or should any person die from
26 any injuries received in such fight within one year and one day, the person or persons causing, or having any
27 agency in causing, such death, either by fighting, or by giving or sending for himself, or for any other person,
28 or in receiving for himself, or for any other person, such challenge to fight, shall be deemed guilty of
manslaughter, and punished accordingly." *In re Finlen*, 18 P. at 828.

25 This was the commonly understood protocol for duelling at the time the original statute was passed. See
26 note 3, *supra*.

27 The only Vago that any Hells Angel spoke to was identified as Stuart Gary Rudnick. The testimony
28 demonstrated that Hells Angel member Jeffrey Pettigrew had no interest in fighting. "What had happened
is that we were talking to Pettigrew. He was cool. He was just saying, Hey man, everything is good. I have
no problem. 11/9/11 Trans. at 193-94.

What had happened is that we were talking to Pettigrew. He was cool. He was just saying, "Hey man, everything is good. I have no problem." "Jabbers" comes up and "Jabbers" then starts taunting him, You know, "You had not right touching me." What he meant by "touching," he just tapped him on the back, basically. You know what my insinuation was, he tapped him on the back. He said, "Hey, do you want to have a beer?" "Jabbers" took it as an offensive thing, pushed out his chest because, of course, there was a lot more Vagos than there were Hells Angels. So he kept on taunting. He wouldn't stop.

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

For taunting him, taunting him, taunting him. He finally just said, "Listen, I don't need to fucking talk to you no more." [Jethro Pettigrew] turned around and walked away.

GJ TS p. 193-94.

Compare the pleading under the same statute in *Wilmeth v. State* the only other case decided under this statute with the allegations in Count 2. *Wilmeth v. State*, 96 Nev. 403, 404, 610 P.2d 735, 736 (1980)(The defendant [Wilmeth] "did, upon previous concert and agreement, for the purpose of accepting and complying with a verbal challenge to fight, did therefore meet with one Grover Mack Hicks and did engage in that fight, after which the death of the said Grover Mack Hicks, a human being, did ensue within a year and a day as a result of the use of deadly weapons, to-wit: firearms, during said fight.").

There is no allegation in Count 2 that Jeffrey Pettigrew died as a result of the giving or receiving any challenge or a previously arranged or agreed upon fight or duel. *See Payne v. State*, 391 So. 2d 140 (Ala. App. 1980)(definition of duel); *see also State v. Romero*, 801 P.2d 681 (N.M.

1 App. 1990). Thus there is no evidence with respect to Jeffrey Pettigrew's death that satisfies the
2 statute.
3

4 The statute specifically restricts other persons not direct actors in the death who can be
5 charged in a death that is the result of a violation of this provision to those that have engaged in
6 specific conduct - that is by giving or receiving a challenge, NRS 200.450(3)("should death ensue
7 to a person in such a fight" then "the person causing or having any agency in causing the death,
8 either by fighting or by giving or sending . . . or by receiving the challenge to fight . . . is guilty of
9 murder . . . and shall be punished as provided in subsection 4 of NRS 200.030,"). This language
10 regarding death and agency (or vicarious liability) qualifies as a specific statute with regard to
11 homicide and to vicarious liability for deaths that result from a challenge to fight as opposed to the
12 general murder statute or the general aiding and abetting statutes and thus it controls. See, *Lader v.*
13 *Warden*, ___ Nev. ___, 120 P.3d 1164, 1167 (2005)("When the scope of a criminal statute is at
14 issue, ambiguity should be resolved in favor of the defendant. And when a specific statute is in
15 conflict with a general one, the specific statute will take precedence.")(footnotes omitted). Thus
16 the generic aiding and abetting allegations in Count 2 do not constitute probable cause and do not
17 give rise to vicarious liability under this statute. The grand jury was not instructed that vicarious
18 liability or aiding and abetting under this statute was so limited and therefore the Indictment on this
19 count is based on a faulty legal premise.
20
21
22

23 In the absence of any allegation in Count 2 that Hells Angel member Cesar Villagrana
24 agreed with Vago member Ernesto Manuel Gonzalez to engage in a fight and the death of Jeffrey
25 Pettigrew resulted from this previous agreement to fight there is no probable cause to support this
26 count.
27
28

1 B. CONSPIRACY TO CONSPIRE:

2 1. Count 2 and 10 charge a conspiracy to conspire which is not valid under Nevada law:

3 Even more troublesome is the fact that the State has essentially alleged a conspiracy to
4 commit a conspiracy. The statute requires an "agreement" to fight. The State has alleged that
5 Cesar Villagrana conspired to commit the offense of Challenge to Fight. A conspiracy to commit a
6 conspiracy. The State has alternatively alleged that Cesar Villagrana aided and abetted the other
7 Defendants in their conspiracy to fight. The stretched theories of liability against Cesar Villagrana
8 turn the statute on its head.
9

10 Nevada law does not allow for a Defendant to be charged with a conspiracy to conspire.

11 NRS 199.480 provides that when two people conspire to commit any crime other than those
12 enumerated in the statute, it is a gross misdemeanor. Accordingly, a conspiracy to conspire, if such
13 a crime existed, would be a gross misdemeanor.
14

15 Similarly, Count 10 charges Mr. Villagrana with Second Degree Murder alleging that Cesar
16 Villagrana aided and abetted Gary Stuart Rudnick a Vagos member and Jeffrey Pettigrew a Hell's
17 Angel member in the commission of an affray with the use of a deadly weapon and that it resulted
18 in the death of Jeffrey Pettigrew.
19

20 First, pursuant to statute, an affray requires an agreement between two or more persons (i.e.
21 conspiracy) to fight in a public place. The offense is then a misdemeanor, NRS 203.050. The
22 State has alleged that Mr. Villagrana "aided and abetted" Jeffrey Pettigrew and Vago member Gary
23 Rudnick in the commission of an affray. That a person can aid and abet someone in reaching an
24 agreement to fight in a public place is suspect to begin with. Nevertheless, the charge fails for
25 other reasons as it too is a conspiracy to conspire.
26
27
28

1 A person who aids and abets in the commission of a crime is someone who "aids.
2 promotes, encourages or instigates, by act or advice, the commission of such crime with the
3 intention that the crime be committed". *Bolden*, supra. Accordingly, the State's theory is that
4 Cesar Villagrana encouraged, instigated, promoted or aided Jeffrey Pettigrew and Gary Rudnick to
5 enter into an agreement to fight in a public place (a misdemeanor). Not only does the evidence
6 contradict such an assertion, the legal theory is absurd.

7
8 This count alleges criminal conduct that is so tenuous that it makes no sense. For example,
9 first there has to be an initial agreement to fight that was committed by Jeffrey Pettigrew and Gary
10 Rudnick, second Cesar Villagrana had to have aided and abetted Mr. Pettigrew
11 (encouraged/promoted) Mr. Pettigrew in the agreement to enter into a fight, third that Cesar
12 Villagrana's act of aiding and abetting Jeffrey Pettigrew in the commission of an Affray caused
13 Jeffrey Pettigrew to die, and fourth that a natural and probable consequence of Cesar Villagrana
14 aiding and abetting Jeffrey Pettigrew in the Affray was that Jeffrey Pettigrew would die.

15
16 Moreover, even if the State proved this unlikely scenario, it would still only hold Mr.
17 Villagrana liable as a principal to the commission of the misdemeanor Affray. There is no such
18 thing as an Affray with a Deadly Weapon. Nor are there enhancements for an Affray that results in
19 death.

20
21 The problem that the State has is that they want to charge Mr. Villagrana with some form of
22 murder; yet, it is his friend that died and it was not at the hands of Mr. Villagrana. Accordingly,
23 the State is attempting to torture Nevada law with their theories of criminal liability by charging
24 him with conspiracy to conspire to engage in a fight.

25
26 Moreover, the State did not instruct the grand jury on second degree murder which requires
27 proof of implied malice. NRS 200.020(2) provides "malice shall be implied when no
28

1 considerable provocation appears, or when all the circumstances of the killing show an
2 abandoned and malignant heart."

3
4 The State was required to prove that Cesar Villagrana was the aggressor in the alleged
5 affray, even though he is not accused of being a principal and is only accused of aiding and
6 abetting.

7
8 **2. Count 1 Charges a Conspiracy to Conspire:**

9 Count 1 specifically charges a conspiracy to commit the misdemeanor of Affray. As
10 described above, pursuant to statute, an affray is an agreement between two or more people to
11 engage in a fight in public. The State has alleged that Mr. Villagrana conspired to conspire to fight
12 and there is no such crime in the State of Nevada.

13 The instruction read to the grand jury is demonstrative of the fact that this charge is truly a
14 misdemeanor Affray which this Honorable Court has no jurisdiction to hear. The grand jury was
15 instructed:
16

17
18 The first charge is conspiracy to engage in an affray, a violation of NRS 199.480 and NRS
19 203.050, a gross misdemeanor. We have alleged that the targets, Gary Stewart Rudnick
20 also known as "Jabber" and Ernesto Manuel Gonzales, both Vagos gang members, and
21 Cesar Villagrana and Jeffrey Pettigrew, both Hells Angels gang members, did, while in the
22 County of Washoe, on or about the 23rd day of September, 2011, conspire with their
23 respective gang members and/or each other to engage in an affray, and in furtherance of the
24 conspiracy, defendant Ernesto Gonzalez shot at rival gang members.
25 GJ Transcript page 3.

26
27 There is no such thing as a conspiracy to commit an affray. The affray itself is the
28 agreement. The State has alleged that Cesar Villagrana either directly or through Jeffrey Pettigrew
29 agreed to fight with Vagos members. That allegation amounts to an alleged Affray and nothing
30 more. Count 1 must therefore be dismissed.

1
2 GROUND IV

3 THE TESTIMONY OF JORGE GIL-BLANCO WAS INADMISSIBLE AND CAUSED
4 PREJUDICE

5 A. Highly Inflammatory and Inadmissible Testimony:

6 During the presentation of evidence to the grand jury, the State presented evidence through
7 Jorge Gil-Blanco who proclaimed himself to be an expert in Hells Angels activity. The testimony
8 of Jorge Gil-Blanco was highly inflammatory evidence that does not state a public offense. *See*,
9 NRS 193.168(2)(gang enhancement does not create a separate offense); *see also Boyle v. Warden*,
10 603 P.2d 1068, 1069 (Nev 1979)(NRS 193.165 deadly weapon enhancement is not a separate
11 crime). By analogy to Capitol Murder Aggravators - which are also sentence enhancements -
12 there is apparently no need under Nevada case law to have a probable cause finding before alleging
13 this enhancement. *Floyd v. State*, 42 P.3d 249, 256 (Nev. 2002)(concluding that a probable cause
14 finding is not necessary for the State to allege aggravating circumstances - even in death case).
15 Rather, it is necessary that the trial jury find the fact to exist beyond a reasonable doubt. NRS
16 193.168(3)(b).
17

18
19 Nevertheless, the State presented the inflammatory, inadmissible, prejudicial testimony
20 with some examples of the same being outlined below.

21 B. Impermissibly referring to Jorge Gil-Blanco as an Expert:

22
23 In ruling on whether or not a witness may testify as an expert, the court must take care not
24 to use terms such as "qualified as an expert" or "certified as an expert" when referring to the
25 witness in the presence of the jury. The court should simply state that "the witness may testify," or
26 sustain any objection to a request to permit the witness to testify as an expert. This will prevent
27 potential prejudice by either demeaning or promoting the credibility of the *Bolin v. State*, 114 Nev.
28 503, 525-26, 960 P.2d 784, 799 (1998).

1 In the instant case the witness testified at page 231 as follows:
2

3 Q. Have you testified - - in which courts have you testified as an expert in Hells Angels
4 motorcycle gang cases?

5 A. Hells Angels, specifically, Arizona. In Nevada, in Las Vegas in a case involving
6 eleven Hells Angels, two associated and the stabbing of Mongols in California and
7 the State of Washington.
8

9 Q. Have you been recognized by the courts of those jurisdictions as an expert in the
10 field of outlaw motorcycle gangs?

11 A. Yes, I have.

12 The above testimony was inadmissible and prejudicial.

13 **C. Testimony Beyond the Permissible Scope:**
14

15 The so called gang expert testified in reliance upon inadmissible hearsay and with no
16 foundation. While the Nevada Supreme Court has not addressed the issue of the permissible scope
17 of a gang expert's testimony, other state courts have. In Minnesota, their Rules of Evidence
18 regarding expert testimony are virtually identical to Nevada.

19 Minnesota Rules of Evidence 702 allows expert testimony if the testimony will assist the
20 jury in evaluating evidence or resolving factual issues. *State v. Greninger*, 569 N.W.2d 189, 195
21 (Minn.1997). See also Federal Rule of Evidence 702.
22

23 In *State v. DeShay* and in *Lopez-Rios*, the Court held that gang-expert testimony should be
24 admitted only if it is helpful to the jury in making the specific factual determinations that jurors are
25 required to make. *State v. DeShay*, 669 N.W.2d 878, 884 (Minn.2003); *Lopez-Rios*, 669 N.W.2d,
26 603, 613 (2003). The Court added that, in order to be admissible, gang-expert testimony must add
27 precision or depth to the jury's ability to reach conclusions about matters that are not within its
28

1 experience. Moreover, this testimony must be carefully monitored by the [district] court so that the
2 testimony will not unduly influence the jury or dissuade it from exercising its independent
3 judgment. Even if acceptable under Rule 702, expert testimony should be excluded if its probative
4 value is substantially outweighed by the danger of unfair prejudice. *DeShay*, 669 N.W.2d at 888
5 (citing Minn. R. Evid. 403).
6

7
8 In *DeShay* and *Lopez-Rios*, the court held that the admission of expert testimony on general
9 gang activities and gang affiliation was error. *DeShay*, 669 N.W.2d at 888; *Lopez-Rios*, 669
10 N.W.2d at 613. In *DeShay*, the court held that much of the gang expert's testimony was admitted
11 erroneously because the testimony was duplicative of other lay testimony, giving little assistance to
12 the jury in evaluating the evidence. 669 N.W.2d at 888. In *Lopez-Rios*, the court held that much of
13 the gang expert's testimony on general gang activities and gang affiliation was similarly
14 erroneously admitted as the testimony was duplicative of previous witness testimony. 669 N.W.2d
15 at 612-13. The court also expressed concern over the expert's testimony that the defendant was a
16 member of a criminal gang. *Id.* In addition, the court cautioned that expert testimony should not be
17 used as a means to launder otherwise inadmissible hearsay. *DeShay*, 669 N.W.2d at 886.
18

19 That is precisely what happened in this case.
20

21 By way of example the so called expert testified:

22 • The first slide, this is a document seized during a search warrant conducted at the Fresno
23 Hells Angels clubhouse back in 2003. It was a case that was conducted - - investigation of
24 Hells Angels which subsequently resulted in the conviction of numerous Hells Angels for
25 charges of robbery, burglary, assault with a deadly weapon, all with a gang enhancement in
26 the State of California. GJ 235;

27 • There are about fifty-two incidents of violence so far. I just put in the ones between
28 specifically the Hells Angels and the Vagos. One of the ones earlier documented ones in
2001, Orange County, the Hells Angels and the Mongols and the Vagos got into a big fight
at a swap meet, started going at each other with motorcycle parts from the tables and
everything... GJ 256;

1
2 • That is an incident that occurred in Bullhead City where you had 5 Hell (sic) Angels and
3 two Desert Road riders showed up at a bar called Lazy Harry's Bullhead, Arizona and beat
4 down a Vagos there by himself...I have assisted in that case as far as expert opinion and
waiting for court on that...One of the Hells Angels already pled guilty also to a gang
enhancement; GJ 256;

5 • That incident was in Santa Cruz where you had three Vagos sitting at a Starbuck's having
6 coffee. They leave the Starbuck's and a couple of blocks from that location they end up
7 getting, the Hells Angels start to assault them, actually tried to assault them. GJ 257;

8 These statements are based on hearsay and other irrelevant and impermissible forms of
9 evidence because Mr. Gil-Blanco was clearly not present at events in question. Furthermore, these
10 statements by Mr. Gil-Blanco are not considered testimony of an expert under Rule 702 because
11 they do not involve "scientific, technical, or specialized knowledge. See also NRS 50.275.
12

13 GROUND V

14 SUFFICIENCY OF THE EVIDENCE

15 Before a defendant may be held to answer in district court, the State is required to establish
16 by "substantial and competent evidence" that there is probable cause to believe an offense has been
17 committed and the defendant committed it. *Sheriff v. Medberry*, 96 Nev. 202, 204 (1980); NRS
18 172.155.
19

20 It is respectfully submitted that a finding of probable cause may not rest on other than "legal
21 evidence" *Tetrou v. Sheriff*, 89 Nev. 166, 169 (1973), and "due process of law requires adherence
22 to the adopted and recognized rules of evidence." *Goldsmith v. Sheriff*, 85 Nev. 295, 303 (1969).
23

24 A. The Gang Enhancement:

25 In the event that this Honorable Court finds that the State was required to elicit testimony
26 from their so called gang expert in order to charge the gang enhancement in this case, the State
27
28

1 failed to prove the elements of a gang enhancement⁶.

2
3 NRS 193.168(6) defines "criminal gang." One of the requirements of this statute is that the
4 gang "[h]as as one of its common activities engaging in criminal activity punishable as a felony,
5 other than the conduct which constitutes the primary offense." NRS 193.168(6)(c).

6 The Nevada Supreme Court has analyzed this requirement and the sufficiency of proof
7 required to support that enhancement. In *Origel-Candido v. State*, 114 Nev. 378 (1998) the
8 Nevada Supreme Court reversed a jury verdict of a gang enhancement for lack of sufficient
9 evidence holding:
10

11 Thus, the plain language of the gang enhancement statute, as well as the Due Process
12 clause, clearly requires that in order for the statute to apply here, the State must prove
13 beyond a reasonable doubt that the Maravilla gang, as one of its common activities,
engages in felonies.

14 During direct examination of Officer Mohammad Rafaqat ("Rafaqat"), the State's
15 gang expert, the State addressed this issue twice. First, Rafaqat was asked to define a
16 criminal gang. He testified that "what separates [a criminal gang] from a group of kids
that play basketball ... [is] criminal activity, that is the defining point, the criminal
activity." Later, Rafaqat provided this testimony:

17 [STATE]: Is the Maravilla gang a criminal gang as defined in Nevada?

18 [RAFAQAT]: Yes, it is.

19 [STATE]: Are you familiar with some felony crimes that the Maravilla gang has-or
20 members of the Maravilla gang has [sic] committed?

21 [DEFENSE COUNSEL]: Objection, your honor.... That question, one, is irrelevant
and, two, is prejudicial.

22 THE COURT: [Sustained.]

23 [STATE]: Detective Rafaqat, do you know of your personal knowledge of any felony
crimes which were committed by Maravilla gang members prior to December 12th,
1994?

24 [RAFAQAT]: Yes.

25 [STATE]: And were those felony crimes committed in the course of or in furtherance

26
27 In the event that the Court does not find that the State had to
28 present evidence on the gang enhancement, then the Indictment must
be dismissed as a result of the prejudicial impact that the
irrelevant, inadmissible, and inflammatory testimony of the so
called gang expert.

1 of the activities of the Maravilla Gang?

2 [RAFAQAT]: Yes.

3 Rafaqat's testimony simply does not address the element of whether Maravilla
4 members commit felonies as a *common activity*. Rafaqat did not testify as to an
5 approximate number of Maravilla gang members who committed felonies. He did not
6 testify that incoming members of the gang were exhorted to felonious acts by senior
7 members. The fact that individual members committed felony crimes which
8 benefitted the gang does not lead necessarily to the conclusion that felonious action is
9 a common denominator of the gang. Likewise, just because certain members of a
10 hypothetical group play musical instruments, it does not follow that the group is an
11 orchestra.

12 Furthermore, Rafaqat's testimony as to the definition of a criminal gang, followed by
13 his statement that the Maravilla gang was such a gang, does not constitute sufficient
14 evidence. This testimony is akin to a police officer testifying as to some of the
15 statutory elements of murder and then stating the legal conclusion that the defendant
16 murdered the victim, without proving each and every one of those statutory elements.
17 Rafaqat's conclusory testimony is simply not proof of every factual element required
18 to find that the Maravilla gang was a criminal gang.

19 Therefore, we conclude that the evidence at trial, even when viewed in the light most
20 favorable to the prosecution, does not provide a rational factfinder with sufficient
21 evidence that the members of the Maravilla gang commit felonies as one of their
22 common activities.

23 In the instant case the so called gang expert testified regarding the "philosophy" of the
24 Hells Angels as follows:

- 25
- 26 • A serious motorcycle club, MC stands for motorcycle club, commands respect...we, as a
27 group, we cause fear and intimidation because we come in as a group wearing these
28 patches, riding a motorcycle, prepared for confrontation (GJ 235-236);
 - A man's life his loyalty and commitment to the well being of his club comes first, above
family, job, friend, personal possessions and personal safety (GJ 238);
 - You don't become a Hells Angel unless you are willing to be involved in criminal activity.
In the words of the Hells Angels I debriefed (hearsay) you are involved in criminal activity
whether you are higher level or lower level, but you are involved in criminal activity one
time or another (GJ 240);

29 Most significant the so called expert was asked:

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

31 A. There is nothing written down. In other words, if you are going to come into the
Hells Angels and they are looking at you, it is not a matter of, well, are you willing

1 to commit this crime, this crime, this crime? They don't talk about that....

2
3 Accordingly, the State tried but failed to establish that a common activity of the Hells
4 Angels is engaging in felony criminal activity as required by Nevada law to charge Mr. Villagrana
5 with a gang enhancement.
6

7 **B. THE GANG ENHANCEMENT IS A SPECIFIC INTENT CRIME;**

- 8 1. If the grand jury has to find probable cause for the gang enhancement then they also
9 had to be instructed on specific intent;

10 The grand jury was advised that Counts 2,3,4, and 10 as they relate to Cesar Villagrana
11 were committed "knowingly for the benefit of, at the direction of or in affiliation with a criminal
12 gang, with the specific intent to promote, further or assist the activities of a gang." See GJ

13 Transcript page 6.

14
15 In *Ford v. State*, 263 P.3d 1123 (2011) the Nevada Supreme Court held that it was plain
16 error not to instruct a jury on specific intent.

17
18 To combat Ford's constitutional challenges, the State readily concedes—in fact,
19 affirmatively argues—that NRS 201.300(1)(a) requires specific intent. We agree,
20 but the jury was not so instructed. The instructions the jury received simply
21 reprised the requirements for general intent under NRS 193.190 (there must be "a
22 union, or joint operation of act and intention" for "every crime or public offense")
23 and NRS 201.300(1)(a)'s text. Even more confusing, the general intent instruction
24 also addressed motive and admonished the jury that "[m]otive is not an element of
25 the crime charged and the State is not required to prove a motive on the part of the
26 Defendant in order to convict." Combined with the lack of an instruction on
27 specific intent, these instructions created the misimpression that Ford could be
28 convicted based simply on a showing that he intended to speak the words he did,
rather than that he spoke them specifically intending to persuade Fazal "to become
a prostitute" or "to continue to engage in prostitution." Although Ford did not
object to the failure to instruct on specific intent, the error was plain, and the
failure to give a specific intent instruction affected Ford's substantial rights. See,
e.g., *People v. Hill*, 103 Cal.App.3d 525, 163 Cal.Rptr. 99, 108 (1980) (reversing
pandering conviction because the jury was not instructed on specific intent). For

1 this reason, we reverse and remand for a new trial.
2

3 In the instant case the grand jury was instructed that in order for there to be a gang
4 enhancement they must find that the Defendant specifically intended to promote a criminal gang;
5 yet, they were not instructed as to what specific intent meant.
6

7 **C. COUNT IV:**

8 This count alleges that Mr. Villagrana committed a Battery with Deadly Weapon against
9 Leonard Ramirez. However, not only did Mr. Ramirez not testify at the grand jury, the State
10 presented no evidence to demonstrate that it was Mr. Villagrana that shot Mr. Ramirez. The
11 testimony was as follows:
12

13 Q. Tell us where you saw the apparent gunshot wound?

14 A. What appeared to be a gunshot wound in his lower right abdominal area.
15

16 ...

17 Q. When you tried to take a picture of the man's face, what was his reaction?

18 A. He was uncooperative with the photos of his face and tried to guard his face from
19 the photo.

20 ...

21 Q. Let me ask you, was the man with the apparent gunshot wound, was he cooperative
22 in describing what had happened?

23 A. No, he was not. He was not cooperative.
24

25 ...

26 Q. Was the surgeon - - Did you ever see if the surgeon removed a bullet from the man?

27 A. No, nothing was removed from him during surgery.
28

1 GJ TS p. 117-121.
2

3 Unlike Count 3 of the Indictment where it is alleged that Mr. Villagrana battered Diego
4 Garcia and the State introduced evidence that the bullet retrieved from Garcia's body was allegedly
5 fired by Villagrana's gun (GJ 182), there was no such evidence as it relates to Mr. Ramirez.
6

7 Q. Did you have any bullets to examine from Ramirez?

8 A. No. From what I understand, I was told there is an individual, I don't know who,
9 that still has a bullet in them.

10 GJ TS p. 187.

11 D. Duplicative Counts:

12 Counts 1, 2 and 10 charge the same criminal conduct. Count 1 is a conspiracy to enter into
13 an agreement to fight. Count 2 is a challenge to fight where it is alleged that Cesar Villagrana was
14 liable as a principle, conspirator or aider and abetter which resulted in the death of Jeffrey
15 Pettigrew and Count 10 is an allegation of an agreement to fight (affray) where Cesar Villagrana is
16 alleged to be an aider and abetter resulting in the death of Jeffrey Pettigrew.
17

18 The Fifth Amendment Double Jeopardy Clause forbids the duplicative prosecution
19 of a defendant for the "same offense." U.S. Const. amend. V; *Blockburger v. United States*, 284
20 U.S. 299, 304, 52 S.Ct. 180, 182, 76 L.Ed. 306 (1932).
21

22 In determining whether two counts (and in this case three) are duplicative and thus violate a
23 defendant's rights under the Double Jeopardy Clause of the Fifth Amendment, we ask whether each
24 count contains an element not contained in the other. *See Chacko*, 169 F.3d at 146 (citing
25 *Blockburger v. United States*, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932); *United States v.*
26 *Dixon*, 509 U.S. 688, 696, 113 S.Ct. 2849, 125 L.Ed.2d 556 (1993)). If so, the offenses "are not the
27
28

1 same offense for purposes of double jeopardy, and they can both be prosecuted." *Chacko*, 169 F.3d
2 at 146. If, however, either offense does not contain an element not contained in the other, the
3 offenses are considered the same offense for double jeopardy purposes, and a defendant cannot be
4 convicted of both.
5

6 The allegations and burden of proof as to each of these counts is identical and therefore
7 they are duplicative counts.
8

9 E. Count V:

10 This Count alleges that Cesar Villagrana discharged a firearm in a structure. This Count
11 requires the State to present evidence that the location where the firearm was discharged has "been
12 designated by the city or county ordinance as a populated area for the purpose of prohibiting the
13 discharge of weapons".
14

15 The State presented no evidence as to this element of the offense.

16 E. Count VI:

17 This Count alleges that Cesar Villagrana carried a concealed weapon. The grand jury was
18 not instructed as to the statutory definition of concealed.
19

20 NRS 202.350(8) provides:

21 As used in this section:

22 (a) "Concealed weapon" means a weapon described in this section that is carried upon a person in
23 such a manner as not to be discernible by ordinary observation.
24
25
26
27
28

GROUND VI.

CUMULATIVE ERROR:

- I. Under *Sheriff v. Frank*, this Combination of Inadmissible, Secondary, and Inflammatory Evidence, and Misinstruction of the Grand Jury, Destroyed the Existence of an Independent and Informed Grand Jury and Irreparably Impaired its Function.

In this case, the Grand Jury function was irreparably impaired by the presentation of inadmissible, secondary and inflammatory evidence as discussed above. The Grand Jury was not provided sufficient evidence upon which to determine certain counts. The Grand Jury was misinstructed on vicarious liability, and not instructed on vicarious liability through conspiracy. The prosecution failed to present the self-defense instruction. This case has a good deal more error than existed in *Sheriff, Clark County v. Frank*, 734 P.2d 1241 (Nev. 1987).

In *Frank*, the Supreme Court affirmed the granting of a writ when there was a combination of the "district attorney's failure to submit exculpatory evidence, coupled with the substantial body of inadmissible evidence received by the grand jury". *Frank*, 734 P.2d 1244 - 45. These circumstances - the Supreme Court found - "clearly destroyed the existence of an independent and informed grand jury and irreparably impaired its function." *Id.*

The proper mission of the Grand Jury is "to pursue its investigation independently of the prosecuting attorney." *Id.* Here not only was the vast majority of evidence inadmissible, irrelevant and inflammatory evidence was presented against the Petitioner - the Grand Jury was misinstructed on critical points necessary to its determination of the existence of probable cause. This leaves us in the position of only guessing what was in the minds of the Grand Jurors - which deprives the Petitioners of the basic protection the grand jury was designed to afford. See, *Simpson, supra*. It was also given insufficient evidence so it would be properly informed and be able to

1 make an independent determination.

2
3 DATED this 2nd day of March, 2012.

4 Respectfully Submitted:

5 CHESNOFF & SCHONFELD

6
7 ~~DAVID Z. CHESNOFF, ESQ.~~

8 Nevada Bar No. 2292

9 RICHARD A. SCHONFELD, ESQ.

10 Nevada Bar No. 6815

11 520 South Fourth Street

12 Las Vegas, Nevada 89101

13 Attorney for Cesar Villagrana

1 DAVID Z. CHESNOFF, ESQ.
Nevada Bar No. 2292
2 RICHARD A. SCHONFELD, ESQ.
Nevada Bar No. 6815
3 CHESNOFF & SCHONFELD
4 520 South Fourth Street
Las Vegas, Nevada 89101
5 Attorneys for Petitioner
6 CESAR VILLAGRANA

7 SECOND JUDICIAL DISTRICT COURT OF NEVADA
8 WASHOE COUNTY, NEVADA

9 THE STATE OF NEVADA,) Case No. CR11-1718A
10) Dept. 4
Plaintiff)
11)
v.)
12)
CESAR VILLAGRANA,)
13)
Defendant.)
14)

15 EXHIBIT LIST

16 ID	Description	Exhibit #			
17 1	Jury Instructions	1			

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____
Order that Writ of Habeas Corpus Issue _____

(Title of Document)

Case number: CR11-1718A

☒ Document does not contain the social security number of any person

-OR-

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

(State specific state or federal law)

-or-

☐ For the administration of a public program

-or-

☐ For an application for a federal or state grant

-or-

☐ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: 03/15/13

[Signature]
(Signature)

Richard Schonfeld
(Print Name)

Jesus Villagrana
(Attorney for)

1 DAVID Z. CHESNOFF, ESQ.
Nevada Bar No. 2292
2 RICHARD A. SCHONFELD, ESQ.
Nevada Bar No. 6815
3 SARALIENE S. DURRETT, ESQ.
Nevada Bar No. 11461
4 CHESNOFF & SCHONFELD
520 S. Fourth Street, 2nd Floor
5 Las Vegas, NV 89101
(702) 384-5563
6 Attorneys for Defendant
Cesar Villagrana

7
8 SECOND JUDICIAL DISTRICT COURT OF NEVADA
WASHOE COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

12 CESAR VILLAGRANA,

13 Defendant.

Case No. CA-11-1718-A
Dept. No. 4

14
15 CERTIFICATE OF SERVICE BY FACSIMILE AND MAIL

16 The undersigned hereby certifies that on the 5th day of March, 2012, the foregoing Petition
17 for Writ of Habeas Corpus was deposited in the United States Mail, postage prepaid, and sent via
18 Facsimile as follows:

19 Mr. Richard Gammick
Deputy District Attorney
20 P.O. Box 30083
Reno, Nevada 89520
21 Via Facsimile (775) 325-6701

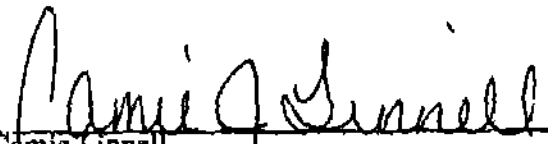
22
23 
Camie Linnell
An employee of Chesnoff & Schonfeld
24
25
26
27
28

EXHIBIT "1"

FILED
Electronically
03-05-2012:11:43:40 AM
Joey Orduna Hastings
Clerk of the Court
Transaction # 2803025

EXHIBIT '1'

JURY INSTRUCTIONS

CONSPIRACY

Nevada law defines a conspiracy as "an agreement between two or more persons for an unlawful purpose. A person who knowingly does any act to further the object of a conspiracy, or otherwise participates therein, is criminally liable as a conspirator. Evidence of a coordinated series of acts furthering the underlying offense is sufficient to infer the existence of an agreement and support a conspiracy conviction. However, absent an agreement to cooperate in achieving the purpose of a conspiracy, mere knowledge of, acquiescence in, or approval of that purpose does not make one a party to conspiracy.

Vicarious liability in criminal law is derivative liability necessarily based on some sort of status relationship between the accused and the primary actor, such as that of employer-employee.

PRINCIPLE LIABILITY AS AN AIDER AND ABBETTOR

Every person concerned in the commission of a felony, gross misdemeanor or misdemeanor, whether the person directly commits the act constituting the offense, or aids or abets in its commission, and whether present or absent; and every person who, directly or indirectly, counsels, encourages, hires, commands, induces or otherwise procures another to commit a felony, gross misdemeanor or misdemeanor is a principal, and shall be proceeded against and punished as such. The fact that the person aided, abetted, counseled, encouraged, hired, commanded, induced or procured, could not or did not entertain a criminal intent shall not be a defense to any person aiding, abetting, counseling, encouraging, hiring, commanding, inducing or procuring him or her.

AFFRAY

If two or more persons shall, by agreement, fight in a public place, to the terror of the citizens of this state, the persons so offending commit an affray.

BATTERY WITH A DEADLY WEAPON - ELEMENTS

1. a defendant
2. willfully and unlawfully;
3. perpetrates an act of violence against another person;
4. with the use of a deadly weapon (a firearm is a deadly weapon)

DISCHARGE OF A FIREARM IN A STRUCTURE

The elements of the crime of discharging a firearm in a structure are as follows:

1. A person is in, on or under a structure; and
2. maliciously or wantonly discharges or maliciously or wantonly causes to be discharged a firearm within or from the structure; and
3. the structure is within an area designated by city or county ordinance as a populated area for the purpose of prohibiting the discharge of weapons.

The words "maliciously" or "wantonly", in this context, mean conduct that not only creates unreasonable risk of bodily harm to others but also involves high probability that substantial harm will result.

CARRYING A CONCEALED WEAPON

It is unlawful for a person to carry a pistol, revolver or other firearm concealed upon his person unless authorized by State or Federal law.

THE ELEMENTS OF THE CRIME OF MURDER ARE AS FOLLOWS:

1. The defendant did willfully and unlawfully;
2. kill a human being;
3. with malice aforethought, either express or implied.

Express malice is that deliberate intention to unlawfully take away the life of a fellow creature, which is manifested by external circumstances capable of proof.

Malice may be implied when no considerable provocation appears or when all the circumstances of the killing show an abandoned and malignant heart.

Murder of the first degree is murder which is perpetrated by means of any kind of willful, deliberate, and premeditated killing. All three elements--willfulness, deliberation, and premeditation--must be proven beyond a reasonable doubt before an accused can be convicted of first-degree murder.

Willfulness is the intent to kill. There need be no appreciable space of time between formation of the intent to kill and the act of killing.

Deliberation is the process of determining upon a course of action to kill as a result of thought, including weighing the reasons for and against the action and considering the consequences of the action.

A deliberate determination may be arrived at in a short period of time. But in all cases the determination must not be formed in passion, or if formed in passion, it must be carried out after there has been time for the passion to subside and deliberation to occur. A mere unconsidered and rash impulse is not deliberate, even though it includes the intent to kill.

Premeditation is a design, a determination to kill, distinctly formed in the mind by the time of the killing.

Premeditation need not be for a day, an hour, or even a minute. It may be as instantaneous as successive thoughts of the mind. For if the jury believes from the evidence that the act constituting the killing has been preceded by and has been the result of premeditation, no matter how rapidly the act follows the premeditation, it is premeditated.

The law does not undertake to measure in units of time the length of the period during which the thought must be pondered before it can ripen into an intent to kill which is truly deliberate and premeditated. The time will vary with different individuals and under varying circumstances.

The true test is not the duration of time, but rather the extent of the reflection. A cold, calculated judgment and decision may be arrived at in a short period of time, but a mere unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation and premeditation as will fix an unlawful killing as murder of the first degree.

THE ELEMENTS OF THE CRIME OF CHALLENGE TO FIGHT RESULTING IN DEATH ARE AS FOLLOWS:

1. A person, upon previous concert and agreement, fights with any other person or gives, sends or authorizes any other person to give or send a challenge verbally or in writing to fight any other person, the person giving, sending or accepting the challenge to fight any other person or
2. A person who acts for another in giving, sending, or accepting, either verbally or in writing, a challenge to fight any other person and;
3. Death ensues to a person in such a fight, or should a person die from any injuries received in such a fight, the person causing or having any agency in causing the death, either by fighting or by giving or sending for himself or herself or for any other person, or in receiving for himself or herself or for any other person, the challenge to fight, is guilty of murder.

23

1 CODE 2645
2 Richard A. Gammick
3 #001510
4 P.O. Box 30083
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 OPPOSITION TO SECOND MOTION TO DISMISS

20 COMES NOW, the State of Nevada, by and through RICHARD A.
21 GAMMICK, District Attorney of Washoe County, and KARL S. HALL, Chief
22 Deputy District Attorney, and files this OPPOSITION TO SECOND MOTION
23 TO DISMISS based upon the attached Points and Authorities, NRS
24 34.700(1)(a) and NRS 34.710(1)(b), the Order denying the Motion to
25 Dismiss Indictment or in the Alternative Petition for Writ of Habeas
26 Corpus filed September 13, 2012, and all other pleadings and papers
on file herein.

///

///

///

1 POINTS AND AUTHORITIES

2
3 PROCEDURAL HISTORY and FACTS

4 The Indictment against ERNESTO MANUEL GONZALEZ (hereinafter,
5 "GONZALEZ") was filed on November 9, 2011. GONZALEZ filed his "Motion
6 to Dismiss Indictment or in the Alternative Petition for Writ of Habeas
7 Corpus" on February 12, 2012 as the Trial Court found good cause to
8 extend the deadline for filing a Writ of Habeas Corpus allowing
9 GONZALEZ to file his writ by March 8, 2012. Cesar Villagrana
10 (hereinafter "Villagrana") filed his Writ Petition on March 5, 2012.
11 GONZALEZ filed his first Motion to Join the arguments contained in
12 Villagrana's writ petition on May 29, 2012. GONZALEZ filed his second
13 motion to join on June 11, 2012. The State filed an Opposition to
14 Defendant GONZALEZ's Motion to Dismiss/Petition for Writ of Habeas
15 Corpus on March 5, 2012. Now GONZALEZ seeks to circumvent the time
16 proscriptions set forth in the Trial Court's Order setting the March
17 8th deadline for filing a writ of habeas corpus. GONZALEZ mistakenly
18 contends that the title of his moving papers, "Second Motion to
19 Dismiss" controls and allows him to enlarge the time for attacking the
20 indictment. GONZALEZ contends, at this late date, that he should be
21 able to now incorporate the issues raised in Villagrana's Petition for
22 Writ of Habeas Corpus filed March 5, 2012 into his "Motion to Dismiss".
23 GONZALEZ is wrong.

24 ///

25 ///

26 ///

1 GONZALEZ IS NOT ENTITLED TO RELIEF ON HIS "SECOND MOTION TO DISMISS"

2 The Second Motion to Dismiss filed by GONZALEZ should be
3 denied for the following reasons:

4 1) The Trial Court, in the Order dated September 13, 2012,
5 (hereinafter the "Order") has already denied GONZALEZ's first and
6 second motions to join the issues raised in Villagrana's writ based
7 upon the fact that the request was not timely filed.

8 2) The Order states that the Trial Court considered and
9 rejected the arguments raised in Villagrana's original petition and
10 would likewise reject those arguments with respect to GONZALEZ
11 stating: "Moreover, even if GONZALEZ properly joined in Villagrana's
12 Original Petition, the Court finds that the Court's conclusions
13 regarding the first six grounds of relief would not change if
14 GONZALEZ had asserted them, even though the Court's factual analysis
15 would be slightly different to address GONZALEZ's particular
16 circumstances." See Order p.22 fn. 18.

17 3) GONZALEZ fails to state any basis for his claim that the
18 title of his pleading relieves him of the time restraints imposed by
19 this Court. The Second Motion to Dismiss fails to make citation to
20 any fact or law supporting GONZALEZ's position. The mere use of
21 alternative nomenclature does not change the nature of GONZALEZ's
22 challenges to the indictment or the Trial Court's filing deadline.

23 ///

24 ///

25 ///

26 ///

1 CONCLUSION

2 This Court has already ruled on the issue(s) presented in
3 this "Second Motion to Dismiss" and the motion should be denied based
4 upon the doctrine of res judicata.

5
6 AFFIRMATION PURSUANT TO NRS 239B.030

7 The undersigned does hereby affirm that the preceding
8 document does not contain the social security number of any person.

9 Dated this 12th day of October, 2012.

10 RICHARD A. GAMMICK
11 District Attorney
12 Washoe County, Nevada

13
14 By/s/KARL S. HALL
15 KARL S. HALL
16 23
17 Chief Deputy District Attorney

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 MAIZIE W. PUSICH, C.D.P.D.
8 WASHOE COUNTY PUBLIC DEFENDER'S OFFICE
9 350 S. CENTER STREET, 5TH FLOOR
 P.O. BOX 30083
 RENO, NV 89520

10 CHRISTOPHER FREY, D.P.D.
11 WASHOE COUNTY PUBLIC DEFENDER'S OFFICE
12 350 S. CENTER STREET, 5TH FLOOR
 P.O. BOX 30083
 RENO, NV 89520

13 BIRAY DOGAN, D.P.D.
14 WASHOE COUNTY PUBLIC DEFENDER'S OFFICE
15 350 S. CENTER STREET, 5TH FLOOR
 P.O. BOX 30083
 RENO, NV 89520

16
17
18
19
20 DATED this 12th day of October, 2012.

21
22 /s/GAYET GUTIERREZ
23 GAYET GUTIERREZ
24
25
26

24

1 CODE: 3795
2 JEREMY T. BOSLER
3 Bar No. 4925
4 P.O. Box 30083
5 Reno, NV 89520
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 **REPLY TO STATE'S OPPOSITION TO DEFENDANT'S**
19 **SECOND MOTION TO DISMISS**

20 COMES NOW, the Defendant, ERNESTO MANUEL GONZALEZ, by and through his
21 attorney of record, Jeremy T. Bosler, Washoe County Public Defender, Maize Pusich, Chief
22 Deputy Public Defender, and Biray Dogan and Christopher Frey, Deputy Public Defenders, and
23 hereby replies to the State's opposition filed on October 12, 2012. This motion is based upon
24 the attached points and authorities and any evidence and argument as may be presented at the

25 ///

26 ///

///

///

1 hearing on this matter.¹

2 **ARGUMENT**

3 The State asserts that Mr. Gonzalez's second motion to dismiss should be denied
4 considering (1) the court's previous ruling denying joinder, (2) the court already ruled
5 alternatively on Mr. Gonzalez's co-defendant's arguments as they related to him and the
6 outcome would be the same if joinder had been permitted, (3) there is no authority for filing a
7 second motion to dismiss, and (4) a loose reference to res judicata. For the following reasons,
8 the State's cursory arguments all fail.
9

10 First, the State cannot assert untimeliness in aid of its claim that Mr. Gonzalez's second
11 motion to dismiss should be denied. The State consented to joinder for the reasons already
12 articulated, which are incorporated here by reference. See Reply to the State's Opposition to
13 Defendant's Request for Clarification or Supplemental Order (October 15, 2012) at 2-4. As
14 noted previously, that argument is waived. Id. at 4.
15

16 Second, the court's alternative rulings on his co-defendant's arguments are not merits-
17 determinations as to Mr. Gonzalez. The reasons why they are not merits-determinations have
18 already been articulated, and they are incorporated here by reference. See id. (explaining why
19 the court's alternative rulings in footnotes 18 and 19 are not merits-determinations); Motion to
20 Stay Trial Pending Writ Review of this Court's Order Denying Defendant's Motion to Dismiss
21 or in the Alternative Petition for Writ of Habeas Corpus (October 8, 2012) at 3-9
22 (distinguishing between the court's merits and alternative rulings and identifying those
23 arguments not reached as to Mr. Gonzalez); Reply to State's Opposition to Defendant's
24

25
26 ¹Mr. Gonzalez moved to extend time to file his reply on October 17, 2012, accompanied by an
affidavit establishing good cause. The State filed a non-opposition to the extension request on

1 (October 15, 2012) at 3-4; Request for Clarification or Supplemental Order (October 8, 2012);
2 Second Motion to Dismiss (October 8, 2012). The hypothetical disposition of the merits
3 achieved by the court's alternative rulings is not a basis to oppose the actual disposition of the
4 merits that Mr. Gonzalez is seeking. It is precisely why a merits-disposition is required, either
5 by clarification or supplement to this court's September 13, 2012, order, or by reaching the
6 merits of Mr. Gonzalez's second motion to dismiss.²
7

8 Third, the State suggests there is no authority for a second motion to dismiss, and thus it
9 should be denied, while citing no authority of its own. While a pretrial writ of habeas corpus is
10 a vehicle for challenging the "sufficiency of the evidence to sustain the indictment," NRS
11 172.155(2), legal issues arising from an indictment are subject to challenge by way of a motion
12 to dismiss, at "any time during the pendency of the proceedings."³ NRS 174.105(3); see, e.g.,
13 Sardis v. Dist. Court, 85 Nev. 585, 589, 460 P.2d 163, 165 (1969) (motion to dismiss brought
14
15

16
17 October 19, 2012.

18 ²See Request for Clarification or Supplemental Order (October 8, 2012) at 3 ("Should the court
19 clarify that joinder is permitted in support of Mr. Gonzalez's original motion to dismiss, then
20 Mr. Gonzalez would request that the court dispose of the merits of the joined arguments as they
21 relate to him. Alternatively, should the court decline to clarify or supplement its September 13,
22 2012, order, or were the court to deny joinder as to his original motion to dismiss, then Mr.
23 Gonzalez would request that the court rule on the merits of the contentions incorporated by
24 reference in his Second Motion to Dismiss."); Second Motion to Dismiss (October 8, 2012) at
25 3-4 (presenting the same alternative request for relief).

26 ³As the court has recognized, see, e.g., Order at 6 n.4, 8 n.7 (reviewing co-defendant's
argument as a legal one in the first instance and not one of sufficiency); 7 n.6 (recognizing that
co-defendant's argument raised the legal issue of statutory interpretation); 8 n.8
(acknowledging the legal nature of the conspiracy-to-conspire argument), and as Mr. Gonzalez
has already explained, see Motion to Stay Trial Pending Writ Review of this Court's Order
Denying Defendant's Motion to Dismiss or in the Alternative Petition for Writ of Habeas
Corpus (October 8, 2012) at 3-9, the arguments that Mr. Gonzalez sought to join are premised
on issues of law, issues with jurisdictional import, the cognizability of the charged offenses,
and raise defects in the institution of the prosecution, "other than insufficiency of the evidence
to warrant the indictment." See NRS 174.105.

1 under NRS 174.105(3) for complaint's failure to state an offense as a result of factual
2 deficiencies). Contrary to the State's claim, nomenclature matters.

3 Mr. Gonzalez's original pleading was alternatively a motion to dismiss and writ
4 petition. See Motion to Dismiss Indictment or in the Alternative Petition for Writ of Habeas
5 Corpus (February 24, 2012). The governing statutory authority honors the significance of this
6 alternative framing. Mr. Gonzalez is asking for the same recognition here. When the merits of a
7 first motion to dismiss are only partially resolved, a second motion to dismiss may be brought
8 to resolve the contentions that were not actually disposed of. Cf. NRS 174.105. Mr. Gonzalez is
9 entitled to this review, and he has no intention of waiving his right to it. See NRS 174.105(1)
10 and (2) (a motion to dismiss as to defects in indictment must be made "before trial"; failure will
11 "constitute[] a waiver"); Gibson v. State, 96 Nev. 48, 50. 604 P.2d 814, 815 (1980) (un-
12 litigated NRS 174.105-arguments are waived on appeal).

13
14
15 Finally, the State loosely refers to the "doctrine of res judicata," while making no
16 argument that it actually applies here. It does not. To the extent that it refers to claim
17 preclusion, see Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 1054, 194 P.3d 709, 713
18 (2008) (abandoning "res judicata" terminology in favor of "claim" and "issue" preclusion and
19 announcing separate tests for each), the reference is meritless. There is no final judgment and
20 this is not a subsequent action. See id. To the extent the State means to allude to claim
21 preclusion, the reference is inapposite for the reasons already noted, and because Mr.
22 Gonzalez's co-defendant's arguments were not actually resolved on the merits as to him. Id. at
23 1055, 194 P.3d at 713 (issue preclusion requires a ruling on the merits that has attained finality
24

25 ///

26 ///

1 of issues that were actually and necessarily litigated).

2 **CONCLUSION**

3 Based on the foregoing, should the court decline to clarify or supplement its September
4 13, 2012, order and allow joinder as to his original motion to dismiss, Mr. Gonzalez
5 respectfully requests that the court reach the merits of the contentions incorporated in Mr.
6 Gonzalez's second motion to dismiss.
7

8 **AFFIRMATION PURSUANT TO NRS 239B.030**

9 The undersigned does hereby affirm that the preceding document does not contain the
10 social security number of any person.
11

12 DATED this 19th Day of October, 2012.

13 JEREMY T. BOSLER
14 Washoe County Public Defender

15 By /s/ Christopher Frey
16 CHRISTOPHER FREY
Deputy Public Defender

17 By /s/ Biray Dogan
18 BIRAY DOGAN
19 Deputy Public Defender

20 By /s/ Maizie Pusich
21 MAIZIE PUSICH
22 Chief Deputy Public Defender
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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 19th Day of October, 2012.

/s/ Leslie Tibbals
LESLIE TIBBALS

25

FILED

Electronically

10-30-2012:02:11:47 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3313324

3370

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR11-1718B

ERNESTO MANUEL GONZALEZ,

Dept. No. 4

Defendant.

**ORDER GRANTING IN PART AND DENYING IN PART REQUEST FOR
CLARIFICATION OR SUPPLEMENTAL ORDER AND DENYING SECOND MOTION
TO DISMISS**

On October 8, 2012, Defendant Ernesto Manuel Gonzalez (hereinafter, "Gonzalez") filed *Request for Clarification or Supplemental Order* ("Request"). The State of Nevada (hereinafter, "the State") filed *Opposition to Request for Clarification or Supplemental Order* on October 12, 2012. On October 15, 2012, Gonzalez filed *Reply to State's Opposition to Defendant's Request for Clarification or Supplemental Order*. Thereafter the matter was submitted and is now before the Court for review.

Additionally, on October 8, 2012, Gonzalez filed *Second Motion to Dismiss* ("Second Motion to Dismiss"). The State filed *Opposition to Second Motion to Dismiss* on October 12, 2012. On October 19, 2012, Gonzalez filed *Reply to State's Opposition to Defendant's Second Motion to Dismiss*.¹ Thereafter the matter was submitted and is now before the Court for review.

¹ On October 17, 2012 Gonzalez filed *Defendant's Motion Requesting an Extension of Time to Reply to the State's Opposition to Second Motion to Dismiss*. On October 19, 2012, the State filed *Reply to Defendant's Motion Requesting an Extension of Time to Reply to the State's Opposition to Second Motion to Dismiss*. The State did not oppose an extension of time for Gonzalez to file his Reply brief. While Gonzalez's Motion Requesting an Extension of Time was not submitted to the Court, the Court will accept the State's non-opposition and review the Reply in its consideration of the Second Motion to Dismiss.

574

1 The Court will consider both of Gonzalez's motions together as they are almost identical
2 pleadings and ultimately seek the same relief. Gonzalez argues that, even if the Court properly
3 denied his joinder to Villagrana's Petition for Writ of Habeas Corpus ("Original Petition"), he
4 should have been allowed to join Villagrana's arguments in his Motion to Dismiss.² Gonzalez
5 notes that the Court ruled alternatively on those arguments in its September 13, 2012 Order;
6 however, Gonzalez requests that the Court rule on the merits of the Villagrana's arguments with
7 respect to him.

8 With respect to Gonzalez's Request the State argues that Gonzalez's joinder was
9 untimely because the deadline for filing a challenge to the indictment was March 8, 2012. The
10 State asserts that there is no need to clarify or supplement the Court's September 13, 2012 Order
11 because the Court found that the arguments raised by Villagrana were without merit. With
12 respect to the Second Motion to Dismiss, the State argues that the motion should be denied
13 because the Court already denied Gonzalez's Motions to Join. The State asserts that the Court
14 already found that if Gonzalez properly joined Villagrana's Original Petition his arguments
15 would not entitle him to relief. The State argues that Gonzalez does not cite any legal authority
16 for his Second Motion to Dismiss or to excuse his delay in filing the pleading.

17 As the parties recognize, the Court has previously ruled alternatively on the arguments
18

19 ² On February 24, 2012, Gonzalez filed *Motion to Dismiss Indictment or in the Alternative Petition for Writ*
20 *of Habeas Corpus*. The State filed *Opposition to Defendant Gonzalez's Motion to Dismiss/ Petition for Writ of*
21 *Habeas Corpus* on March 5, 2012. On May 29, 2012, Gonzalez filed *Motion to Partially Join in Co-Defendant*
22 *Cesar Villagrana's Writ of Habeas Corpus and Motion to Compel* ("First Motion to Join"), which sought to join the
23 Marcum notice issue raised in his Co-Defendant Cesar Villagrana's Pre-Trial Writ. The State filed *Opposition to*
24 *Defendant Gonzalez's Motion to Partially Join in Co-Defendant Cesar Villagrana's Writ of Habeas Corpus and*
25 *Motion to Compel* on June 14, 2012. The same day, Gonzalez filed *Reply to Opposition to Defendant's Motion to*
26 *Partially Join in Co-Defendant Cesar Villagrana's Petition for Writ of Habeas Corpus and Motion to Compel*.
27 Gonzalez filed *Motion to Join the Balance of Co-Defendant Cesar Villagrana's Petition for Writ of Habeas Corpus*
28 ("Second Motion to Join") on June 11, 2012. The Court heard oral argument on the matter on the dates requested by
counsel: June 14, 2012 and July 13, 2012. On September 13, 2012, the Court entered an Order denying Gonzalez's
Motions to Join and found that even if he had properly joined Villagrana's writ he would not be entitled to relief.
[See Order ("Sep. 13 Order") filed Sep. 13, 2012, p. 22, n. 18].

Subsequent to the Court's September 13, 2012 Order, Gonzalez filed *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 ("Motion to Reconsider"). The Court issued an Order regarding
Gonzalez's Motion to Reconsider earlier today, which is attached hereto as Exhibit 1. [See Ex. 1, Order Granting in
Part and Denying in Part Motion for Reconsideration and Denying Motion for Sanctions ("Reconsideration Order"),
filed October 30, 2012].

1 raised by Villagrana in his Original Petition that Gonzalez seeks to put forth in the current
2 pleadings before the Court. In the September 13, 2012 Order the Court cited to its findings and
3 analysis related to Villagrana's Original Petition and found that "even if Gonzalez properly
4 joined Villagrana's Original Petition, the Court finds that the Court's conclusions regarding the
5 first six grounds of relief would not change if Gonzalez had asserted them, even though the
6 Court's factual analysis would be slightly different to address Gonzalez's particular
7 circumstances." [Sep. 13 Order p. 22, n. 18]. In the Reconsideration Order entered earlier today,
8 the Court reconsidered its decision to deny Gonzalez's Motion to Join with respect to the
9 Marcum Notice issue.³ [See Ex. 1, pp. 2-3, 5]. The Court hereby incorporates its findings and
10 analysis from the Reconsideration Order herein. [See Ex. 1]. Because the Court has considered
11 and disposed of the merits of Gonzalez's Marcum Notice arguments in its Reconsideration
12 Order, the Court finds that, with respect to the Marcum Notice issue, Gonzalez's Request must
13 be denied as moot and his Second Motion to Dismiss must be denied for the reasons stated in the
14 Reconsideration Order. [See *id.*].

15 The Court next considers Gonzalez's Request and Second Motion to Dismiss with respect
16 to Ground Two through Ground Six of Villagrana's Original Petition. While Gonzalez does not
17 specifically seek reconsideration of the Court's September 13, 2012 Order denying his Second
18 Motion to Join, his Request essentially seeks reconsideration of the Court's decision.⁴
19 Consistent with the Court's finding in the Reconsideration Order regarding Gonzalez's joinder to
20 the Marcum Notice issue, the Court now finds that reconsideration of the September 13, 2012

21
22 ³ The Court notes that its Reconsideration Order was specific to the First Motion to Join filed by Gonzalez
23 on May 29, 2012, where Gonzalez attempted to join the Marcum Notice arguments contained in Ground One of
24 Villagrana's Original Petition. In his pleadings related to the Reconsideration Order Gonzalez did not request that
25 the Court reconsider its decision to deny his Second Motion to Join. Thus, the Court did not consider the issue in its
26 Reconsideration Order issued earlier today. Gonzalez's Second Motion to Join sought to join the balance of
27 Villagrana's Original Petition, which contained five additional grounds for relief. The following, as titled in
28 Villagrana's Original Petition, are the grounds of relief that were the subject of Gonzalez's Second Motion to Join:
(a) Ground Two: The Grand Jury Instructions Failed to Address Self-Defense; (b) Ground Three: The Structure of
the Indictment as to Mr. Villagrana—the Lack of Probable Cause and Instructional Errors that Violate NRS §
172.095(2); (c) Ground Four: The Testimony of Jorge Gil-Blanco was Inadmissible and Caused Prejudice; (d)
Ground Five: Sufficiency of the Evidence; and (e) Ground Six: Cumulative Error.

⁴ Gonzalez does not provide any authority for his Request; thus, it is unclear to the Court exactly what legal
basis he is attempting to assert in his pleading.

1 Order is appropriate with respect to Gonzalez's Second Motion to Join because Gonzalez could
2 have raised the arguments contained in Ground two through Ground Six of Villagrana's Original
3 Petition in a motion to dismiss, which does not have the same procedural requirements as a pre-
4 trial petition for habeas corpus. Therefore, to the extent that Gonzalez's Request seeks
5 reconsideration of the Court's September 13, 2012 Order denying his joinder to Ground Two
6 through Ground Six of Villagrana's Original Petition, the Court finds that his Request must be
7 granted.

8 In his instant pleadings, Gonzalez asks the Courts to rule on the merits of the contentions
9 he incorporated by reference from Villagrana; however, the Court has already ruled in the
10 alternative on Gonzalez's incorporation of Villagrana's pleadings. [See Sep. 13 Order, p. 22, n.
11 18]. Even though in the instant Order the Court has reconsidered its September 13, 2012 Order
12 regarding Gonzalez's joinder to Ground Two through Ground Six of Villagrana's Original
13 Petition, the Court's finding in the September 13, 2012 Order—that Gonzalez would not have
14 been successful if he had asserted the arguments raised by Villagrana in Ground Two through
15 Ground Six of his Original Petition—remains unchanged. [See id.]. The Court hereby
16 incorporates its findings and analysis from the September 13, 2012 Order related to Ground Two
17 through Ground Six of Villagrana's Original Petition herein.⁵ [See id. at pp. 2-16, 17-20].

18 ///

19 ///

20 ///

21 ///

22
23 ⁵ While the Court recognized in the September 13, 2012 Order that its factual analysis would be slightly
24 different to address Gonzalez's particular circumstances, the Court notes that Gonzalez did not plead or argue the
25 factual differences between himself and Villagrana in relation to Ground Two through Ground Six. The argument
26 that Gonzalez focused on from Villagrana's Original Petition was the Marcum Notice issue, which was presented in
27 Ground One. In the Reconsideration Order, the Court undertook a specific analysis related to Gonzalez on the
28 Marcum Notice issue. [See Ex. 1, pp. 3-4]. The majority of the arguments contained in Ground Two through
Ground Six of Villagrana's Original Petition are legal arguments or arguments where the evidence presented to the
Grand Jury supports the charges against Gonzalez in the same way as it did for Villagrana. Although, the Court
notes that some arguments Gonzalez sought to join are inapplicable to him. For example, in Ground Five Villagrana
challenged the sufficiency of evidence related to Count 4 and Count 5 of the Indictment, among other things.
Gonzalez is not named in Count 4 or Count 5 of the Indictment, nor did Gonzalez, in any pleading or during oral
argument, challenge the sufficiency of the indictment related to the charges that name him individually.

1 Therefore, the Court finds that Gonzalez's Request and Second Motion to Dismiss, with respect
2 to the merits of Ground Two through Ground Six of Villagrana's Original Petition, must be
3 denied. [See id.].

4 Based on the forgoing, good cause appearing, and in the interest of justice,

5 IT IS HEREBY ORDERED that Defendant Ernesto Manuel Gonzalez's Request for
6 Clarification or Supplemental Order is GRANTED in part and DENIED in part. The motion is
7 granted to the extent that it seeks reconsideration of the Court's September 13, 2012 Order
8 denying Gonzalez's Second Motion to Join. The motion is denied to the extent that it seeks
9 dismissal of the Indictment against Gonzalez.

10 IT IS HEREBY FURTHER ORDERED that Defendant Ernesto Manuel Gonzalez's
11 Second Motion to Dismiss is DENIED.

12 DATED this 30 day of October, 2012.

13
14 Connie S. Steinheimer

15 DISTRICT JUDGE
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

CASE NO. CR11-1718B

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 30TH day of October, 2012, I filed the **ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR CLARIFICATION OR SUPPLEMENTAL ORDER AND DENYING SECOND MOTION TO DISMISS** with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

 Personal delivery to the following: [NONE]

X I electronically filed with the Clerk of the Court, using the ECF which sends an immediate notice of the electronic filing to the following registered e-filers for their review of the document in the ECF system:

KARL HALL, ESQ. for STATE OF NEVADA
AMOS STEGE, ESQ for STATE OF NEVADA
SEAN SULLIVAN, ESQ. for ERNESTO GONZALEZ
BIRAY DOGAN, ESQ. for ERNESTO GONZALEZ
MAIZIE PUSICH, ESQ. for ERNESTO GONZALEZ
JEREMY BOSLER, ESQ. for ERNESTO GONZALEZ
CHRISTOPHER FREY, ESQ. for ERNESTO GONZALEZ
DIV. OF PAROLE & PROBATION

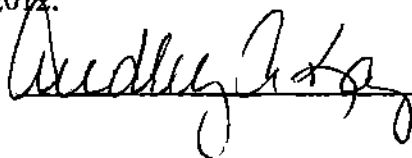
 Deposited in the Washoe County mailing system in a sealed envelope for postage and mailing with the United States Postal Service in Reno, Nevada: [NONE]

 Placing a true copy thereof in a sealed envelope for service via:

 Reno/Carson Messenger Service – [NONE]

 Federal Express or other overnight delivery service [NONE]

DATED this 30 day of October, 2012.



FILED
Electronically
10-30-2012:02:11:47 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3313324

EXHIBIT 1

EXHIBIT 1

FILED

Electronically

10-30-2012:11:51:11 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3312851

3370

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR11-1718B

ERNESTO MANUEL GONZALEZ,

Dept. No. 4

Defendant.

**ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR
RECONSIDERATION AND DENYING MOTION FOR SANCTIONS**

On September 13, 2012, Defendant Ernesto Manuel Gonzalez (hereinafter, "Gonzalez") filed *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*.¹ The State filed *Opposition to Supplemental Points and Authorities in*

¹ On February 24, 2012, Defendant Ernesto Manuel Gonzalez filed *Motion to Dismiss Indictment or in the Alternative Petition for Writ of Habeas Corpus*. The State of Nevada (hereinafter, "the State") filed *Opposition to Defendant Gonzalez's Motion to Dismiss/ Petition for Writ of Habeas Corpus* on March 5, 2012. The Court heard oral argument on the matter on the dates requested by counsel: June 14, 2012 and July 13, 2012. The Court entered its Order denying Gonzalez's Petition on September 13, 2012—prior to when Gonzalez filed the instant Motion. The Court will treat Gonzalez's *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 Discovered Evidence* only as a motion to reconsider. Gonzalez notes in his Motion that he previously did not supplement his underlying Motion because he only received the discovery related to the Marcum notice on August 31, 2012. On July 13, 2012, the Court ordered the State to provide the discovery by July 27, 2012, and allowed Gonzalez and his co-defendant to file supplements to their writs by August 3, 2012, if they sought to do so. [July 13, 2012 Trans., filed July 22, 2012, p. 57: 5-9]. The Court notes that Gonzalez did not seek an extension of his deadline to supplement by way of formal motion or during the August 31, 2012 hearing where the discovery delay was discussed with the Court. Because Gonzalez did not seek leave to supplement, and because the Court had already ruled on Gonzalez's underlying Motion at the time he filed the instant Motion, the Court finds that he could not supplement the briefing already disposed of by the Court and that it is more appropriate to consider the instant Motion as simply one of reconsideration.

1 *Support of Motion to Dismiss Indictment or in the Alternative Petition for Writ of Habeas*
2 *Corpus and Motion to Reconsider Based Upon Newly Discovered Evidence* on September 19,
3 2012.² On September 24, 2012, Gonzalez filed *Reply to State's Opposition to Defendant's*
4 *Supplemental Points and Authorities and Motion to Reconsider*. The Court heard oral argument
5 and took the matter under submission on October 3, 2012.

6 The Court will first consider Gonzalez's Motion for Reconsideration. Gonzalez asserts
7 that reconsideration of the Court's September 13, 2012 Order is appropriate because recently
8 produced discovery shows that Bradley Campos, one of the persons who was allegedly involved
9 in witness intimidation at the time of the underlying incident, was actually an agent of the State
10 and, therefore, the State's showing of witness intimidation in order to withhold the Marcum
11 notice to Gonzalez was not credible. Gonzalez argues that given Bradley Campos' relationship
12 with the State there was insufficient evidence for the Court to find good cause to withhold the
13 Marcum notice.

14 The State argues that Gonzalez's Motion must be denied because it is based on
15 speculation and incorrect information. The State asserts that Bradley Campos did not have a
16 relationship with law enforcement or the State. The State provides an affidavit from Peter
17 Grimm to support its Opposition.

18 The Court begins by noting that in its September 13, 2012 Order, it denied Gonzalez's
19 joinder to his co-defendant Cesar Villagrana's Petition for Writ of Habeas Corpus ("Original
20 Petition") on the Marcum notice issue, among others. [See Order ("Sep. 13 Order"), filed Sep.
21 13, 2012, pp. 20-22]. Gonzalez's argument in the instant Motion does not address the Court's
22 Order regarding his joinder to Villagrana's Original Petition on the Marcum notice issue or
23 request that the Court to reconsider its Order in that respect.³ In the instant Motion, Gonzalez

24 ² In the State's Opposition to the instant Motion and again during oral argument it moved for sanctions
25 against opposing counsel for bringing a frivolous motion. Gonzalez opposed the State's request for sanctions in his
26 Reply brief and during oral argument.

27 ³ By way of background, on May 29, 2012, Gonzalez filed *Motion to Partially Join in Co-Defendant Cesar*
28 *Villagrana's Writ of Habeas Corpus and Motion to Compel* ("Motion to Join"), which sought to join the Marcum
notice issue raised in his Co-Defendant Cesar Villagrana's Pre-Trial Writ. The State filed *Opposition to Defendant*
Gonzalez's Motion to Partially Join in Co-Defendant Cesar Villagrana's Writ of Habeas Corpus and Motion to
Compel on June 14, 2012. The same day, Gonzalez filed *Reply to Opposition to Defendant's Motion to Partially*

1 asserts his Marcum notice argument as if the Court allowed him to join Villagrana's Original
2 Petition. To the extent that Gonzalez, by the instant Motion, seeks reconsideration of the Court's
3 decision to deny his Motion to Join Villagrana's Original Petition, the Court finds that
4 reconsideration is appropriate because Gonzalez could have raised the Marcum notice issue in a
5 motion to dismiss, which is not governed by the same procedural requirements as a pretrial writ
6 of habeas corpus. However, the Court's finding in the September 13, 2012 Order that Gonzalez
7 would not have been successful if he had asserted the Marcum notice argument remains
8 unchanged. [See Sep. 13 Order, p. 22, n. 18].

9 During the October 25, 2011 ex parte hearing on the State's Motion to withhold
10 Gonzalez's Marcum notice, the Court found that there was reasonable and adequate cause to
11 withhold the Marcum notice under NRS 172.241 because there was some indication of
12 endangerment to the life and property of witnesses—based on testimony regarding alleged
13 intimidation of a witness by Vagos members after the incident in question—and that there was a
14 strong probability of Gonzalez becoming a fugitive from justice. [Oct. 25, 2011 Trans., filed
15 Nov. 20, 2011, p. 40: 13-24]. NRS 172.241(3) provides an exception to the notice requirement
16 for a grand jury target if the Court determines that notice might result in flight of the person
17 whose indictment is being considered, that the notice may endanger the life or property of other
18 persons, or is unable to notify the person after reasonable diligence. NRS 172.241(4) requires
19 the Court to conduct a closed hearing if the State moves to withhold a target letter. Because the
20 Court followed the procedure set forth in NRS 172.241, and because the Court found that
21 reasonable and adequate cause existed to withhold Gonzalez's Marcum notice pursuant to two
22 provisions of NRS 172.241(3), the Court finds that Gonzalez's Marcum notice was properly
23

24 *Join in Co-Defendant Cesar Villagrana's Petition for Writ of Habeas Corpus and Motion to Compel.* Gonzalez
25 filed *Motion to Join the Balance of Co-Defendant Cesar Villagrana's Petition for Writ of Habeas Corpus* on June
26 11, 2012; however, that Motion is not at issue here because it does not relate to the Marcum notice. In Gonzalez's
27 Motion to Join he does not mention supplementing his original pleading, which was titled as a motion to dismiss and
28 alternatively as a pre-trial writ, to incorporate Villagrana's arguments. Villagrana only filed a pre-trial writ of
habeas corpus and did not file a motion to dismiss, thus, the Court interpreted Gonzalez's joinder as simply one to
Villagrana's writ. In the September 13, 2012 Order, the Court denied Gonzalez's Motion to Join and found that
even if he had properly joined Villagrana's writ on the Marcum notice issue, among others, he would not be entitled
to relief. [See Sep. 13 Order, p. 22, n. 18].

1 withheld.

2 The alleged "new evidence" supporting Gonzalez's Motion does not change the Court's
3 finding. Gonzalez does not challenge or dispute the Court's finding that there was a flight risk if
4 he received a target letter, which is an independent basis to withhold the Marcum notice. Thus,
5 the Court finds that, even absent Gonzalez's argument concerning Bradley Campos, its finding
6 regarding Gonzalez's potential flight risk, or fugitive status, was sufficient to support the Court's
7 decision to withhold his notice. See NRS 172.241(3). Additionally, the court finds that
8 Gonzalez's argument concerning Bradley Campos' relationship with the State fails because he
9 has not come forward with any evidence to support his assertions. Indeed, the State has
10 presented evidence to the contrary. Therefore, the Court finds that Gonzalez's Marcum notice
11 argument fails to state a basis for relief.

12 The Court next considers the State's Motion for Sanctions. Nevada courts have
13 jurisdiction to impose sanctions on attorneys in either side of a criminal case based on the
14 inherent powers doctrine. Young v. Ninth Judicial Dist. Court, In and For County of Douglas,
15 107 Nev. 642, 647 (1991). While the Court recognizes that Gonzalez's Motion was based on an
16 inference his counsel made from a police report and the inference could have been investigated
17 prior to litigating the instant issue to no avail, the Court cannot find at this time that Gonzalez's
18 counsel went beyond the bounds of the type of advocacy that is required by the Sixth
19 Amendment or that counsel filed a patently unmeritorious motion. See id. at 649-650
20 (recognizing that a criminal defense attorney is not insulated from sanctions imposed for
21 "patently nonmeritorious motions", even in capital cases, despite the fact that a criminal defense
22 attorney's duty is to fully and vigorously defend). Nor can the Court find that counsel for
23 Gonzalez acted intentionally to interject a groundless delay in the instant matter when it filed the
24 instant Motion. See id. at 650 (concluding that the record before the court justified the action
25 taken by the district court in imposing sanctions against defense counsel for interjecting

26 ///

27 ///

1 groundless delay in a matter of substantial importance). Therefore, the Court denies the State's
2 motion for sanctions.

3 Based on the forgoing, good cause appearing, and in the interest of justice,

4 IT IS HEREBY ORDERED that Defendant Ernesto Manuel Gonzalez's Supplemental
5 Points and Authorities in Support of Motion to Dismiss Indictment or in the Alternative Petition
6 for Writ of Habeas Corpus and Motion to Reconsider Based Upon Newly Disclosed Evidence is
7 GRANTED in part and DENIED in part. The Motion to Reconsider is GRANTED. The Motion
8 to Dismiss or in the Alternative Petition for Writ of Habeas Corpus is DENIED.

9 IT IS HEREBY FURTHER ORDERED that the State of Nevada's Motion for Sanctions
10 is DENIED.

11 DATED this 30 day of October, 2012.

12
13 Connie S. Steinheimer

14 DISTRICT JUDGE
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

CASE NO. CR11-1718B

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 30TH day of October, 2012, I filed the ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR RECONSIDERATION AND DENYING MOTION FOR SANCTIONS with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

☐ Personal delivery to the following: [NONE]

☒ I electronically filed with the Clerk of the Court, using the ECF which sends an immediate notice of the electronic filing to the following registered e-filers for their review of the document in the ECF system:

KARL HALL, ESQ. for STATE OF NEVADA
AMOS STEGE, ESQ for STATE OF NEVADA
SEAN SULLIVAN, ESQ. for ERNESTO GONZALEZ
BIRAY DOGAN, ESQ. for ERNESTO GONZALEZ
MAIZIE PUSICH, ESQ. for ERNESTO GONZALEZ
JEREMY BOSLER, ESQ. for ERNESTO GONZALEZ
CHRISTOPHER FREY, ESQ. for ERNESTO GONZALEZ
DIV. OF PAROLE & PROBATION


☐ Deposited in the Washoe County mailing system in a sealed envelope for postage and mailing with the United States Postal Service in Reno, Nevada: [NONE]

☐ Placing a true copy thereof in a sealed envelope for service via:

☐ Reno/Carson Messenger Service - [NONE]

☐ Federal Express or other overnight delivery service [NONE]

DATED this 30 day of October, 2012.



26

FILED

Electronically

02-04-2013 08:41:30 AM

Joey Orduna Hastings

County of Clark Court

Transaction # 3506371

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERNESTO MANUEL GONZALEZ,
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE; AND THE HONORABLE
CONNIE J. STEINHEIMER, DISTRICT
JUDGE,

Respondents,

and

THE STATE OF NEVADA,
Real Party in Interest.

No. 62392

CUI-1718 B **FILED**

D4

JAN 31 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DENYING PETITION

This original petition for a writ of mandamus or prohibition challenges an order of the district court denying petitioner's pretrial petition for a writ of habeas corpus contending among other things that there was insufficient evidence to support withholding of notice pursuant to NRS 172.241(3).


Petitioner contends that there was not adequate cause to withhold notice under NRS 172.241(3)(b). We disagree. Evidence was presented that several members of the Vagos motorcycle club intimidated a witness immediately after the incident for which petitioner was being indicted. This was "adequate cause" to believe "that the notice may endanger the life or property of other persons." See NRS 172.241(3)(b), (4).

As to petitioner's other arguments,¹ we are not satisfied that this court's intervention by way of extraordinary writ is warranted for two reasons. First, he has a plain, speedy, and adequate remedy in the ordinary course of the law through an appeal should he be convicted, see NRS 177.015; NRS 177.045, and therefore a writ of mandamus or prohibition is not warranted, NRS 34.170; NRS 34.330. Second, petitioner has not demonstrated to our satisfaction that the district court refused to take action that is required by law, NRS 34.160, exercised its discretion in an arbitrary or capricious fashion, see Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981), or acted in excess of its jurisdiction, NRS 34.320, and therefore a writ of mandamus or prohibition is not warranted. Accordingly, we deny the petition. See NRAP 21(b); see also State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983) (petitions for extraordinary writs are addressed to the court's sound discretion), as modified by State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 147, 42 P.3d 233, 238 (2002); Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) (petitioner carries the


¹Petitioner's attempt to incorporate the arguments made by his codefendant in a separate petition by reference is not appropriate and we decline to consider those arguments. NRAP 28(e)(2).

burden of demonstrating that extraordinary relief is warranted).

It is so ORDERED.²


Gibbons, J.


Douglas, J.


Salta, J.

cc: Hon. Connie J. Steinheimer, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

²We also deny petitioner's motion for a stay of trial and motion to transmit grand jury exhibit.

27

1 2700

2
3 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
4
5 IN AND FOR THE COUNTY OF WASHOE

6 THE STATE OF NEVADA,

7 Plaintiff,

8 vs.

Case No. CR11-1718A/B

9 CESAR VILLAGRANA, and
10 ERNESTO MANUEL GONZALEZ,

Dept. No. 4

11 Defendants.
12 _____/

13 **ORDER AFTER OCTOBER 29, 2012 HEARING**

14 The Court conducted a hearing on the above entitled matters on October 29, 2012.
15 During the hearing, the Court found that the matter should be continued to a future date in order
16 for the Defendant Ernesto Manuel Gonzalez (hereinafter, "Gonzalez") and Defendant Cesar
17 Villagrana (hereinafter, "Villagrana") to cross examine the witness presented by the State of
18 Nevada (hereinafter, "the State"), Mr. Gil-Blanco.¹ The continued pretrial hearing shall be set
19 for January 7, 2013 at 10 a.m., and shall continue if necessary on January 8, 2013.

20 Additionally, the Court indicated that further briefing would be necessary before
21 proceeding with the continued pretrial hearing. With respect to gang enhancement evidence
22 under NRS 193.168 and/ or any other evidence that could be argued to be prior bad act evidence
23 under NRS 48.045, the Court finds that the State must file a motion to admit such evidence on or
24 before November 26, 2012.² The State must plead with specificity the evidence it seeks to

25
26 ¹ The State completed its direct examination of Mr. Gil-Blanco on October 29, 2012. The State will not be
permitted to elicit additional evidence from Mr. Gil-Blanco in the form of a direct examination during the hearing.
The State will be permitted to conduct a re-direct of Mr. Gil-Blanco, if necessary.

27 ² While the discussion at the October 29, 2012 hearing focused specifically on gang enhancement evidence,
the Court finds that it is appropriate to order the State to file any and all motions regarding prior bad act evidence by
28 November 26, 2012, as well.

1 introduce in its case in chief pursuant to NRS 193.168 and/ or NRS 48.045. Any discovery the
2 State seeks to introduce in its case in chief related to NRS 193.168 and/ or NRS 48.045 must be
3 disclosed contemporaneously with the State's pleading, or prior. Defendants Villagrana and
4 Gonzalez must file their oppositions or responsive pleadings on or before December 11, 2012.
5 The State may file a reply on or before December 18, 2012. Immediately thereafter the State
6 must submit the matter for the Court's review. The Court will hear oral arguments and evidence
7 on the pleadings beginning on January 7, 2013 at 10 a.m. and continuing to January 8, 2013, if
8 necessary.

9 With respect to the bifurcation issue raised during the October 29, 2012 hearing, the
10 Court finds that if Villagrana and/ or Gonzalez seek bifurcation of the trial in any respect they
11 must file a motion to bifurcate on or before November 26, 2012. The State must file an
12 opposition or responsive pleading on or before December 11, 2012. Villagrana and Gonzalez
13 will have until December 18, 2012, to file a reply. Immediately thereafter Villagrana and
14 Gonzalez must submit their pleadings for the Court's review. The Court will hear oral argument
15 on the bifurcation issue on January 7, 2013 at 10 a.m. and continuing to January 8, 2013, if
16 necessary.

17 Further, the Court heard oral argument on Gonzalez's Motion to Compel. The Court
18 finds that no additional argument is necessary to the resolution of Gonzalez's Motion to Compel
19 and will take the matter under submission.

20 Based on the forgoing, and in the interest of justice,

21 IT IS SO ORDERED.

22 DATED this 30 day of October, 2012.

23
24 Connie J. Steinheimer

25 DISTRICT JUDGE
26
27
28

CERTIFICATE OF SERVICE

CASE NO. CR11-1718A/B

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 30TH day of October, 2012, I filed the **ORDER AFTER OCTOBER 29, 2012 HEARING** with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

 Personal delivery to the following: [NONE]

 X I electronically filed with the Clerk of the Court, using the ECF which sends an immediate notice of the electronic filing to the following registered e-filers for their review of the document in the ECF system:

DAVID CHESNOFF, ESQ. for CESAR VILLAGRANA
RICHARD SCHONFELD, ESQ. for CESAR VILLAGRANA
KARL HALL, ESQ. for STATE OF NEVADA
AMOS STEGE, ESQ. for STATE OF NEVADA
SEAN SULLIVAN, ESQ. for ERNESTO GONZALEZ
BIRAY DOGAN, ESQ. for ERNESTO GONZALEZ
MAIZIE PUSICH, ESQ. for ERNESTO GONZALEZ
JEREMY BOSLER, ESQ. for ERNESTO GONZALEZ
CHRISTOPHER FREY, ESQ. for ERNESTO GONZALEZ
DIV. OF PAROLE & PROBATION

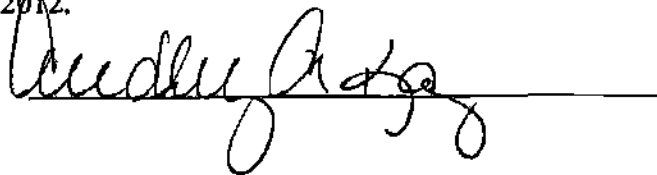
 Deposited in the Washoe County mailing system in a sealed envelope for postage and mailing with the United States Postal Service in Reno, Nevada: [NONE]

 Placing a true copy thereof in a sealed envelope for service via:

 Reno/Carson Messenger Service – [NONE]

 Federal Express or other overnight delivery service [NONE]

DATED this 30 day of October, 2012.



28

1 CODE: 2470
2 JEREMY T. BOSLER, BAR NO.: 4925
3 WASHOE COUNTY PUBLIC DEFENDER
4 P.O. BOX 11130
5 RENO, NV 89520-0027
6 (775) 337-4800
7 ATTORNEY FOR DEFENDANT

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,

14 vs.

Case No.: CR11-1718B

15 ERNESTO MANUEL GONZALEZ,

Dept. No.: 4

16 Defendant.
17 /

18 **MOTION TO BIFURCATE ENHANCEMENT EVIDENCE**

19 COMES NOW, DEFENDANT, in the above entitled and numbered cause, by and
20 through the Washoe County Public Defender's Office, hereby moves the Court to bifurcate
21 enhancement evidence and permit its introduction into evidence only during sentencing. This
22 Motion is made and based upon Mr. Gonzalez' constitutional rights to fair trial, due process,
23 and effective assistance of counsel, *NRS 174.165(1)*, the following points and authorities and
24 argument that will be presented at hearing. *U.S. Constitution, Fifth, Sixth and Fourteenth*
25 *Amendments; Nevada Constitution, Article 1, Section 8.*

26 **POINTS AND AUTHORITIES**

1. Statement of the Case

Mr. Gonzalez is charged by Indictment filed Nov. 9, 2011, with several offenses. The
Indictment alleges that he conspired to participate in an affray with Stuart Gary Rudnick,

1 Cesar Villagrana, and Jeffrey Pettigrew. Mr. Pettigrew died during the altercation that led to
2 the charges. Mr. Rudnick and Mr. Gonzalez are reportedly members of the Vagos Motorcycle
3 Club, while Pettigrew and Villagrana are reportedly members of the Hells Angels Motorcycle
4 Club. Count II charges Gonzalez, Rudnick and Villigrana with challenge to fight resulting in
5 death, under several different theories of prosecution; Counts III, IV, V and VI do not charge
6 Mr. Gonzalez. Count VII alleges that Mr. Gonzalez was carrying a concealed weapon on
7 September 23, 2011. Count VIII alleges that Mr. Gonzalez discharged a firearm in a structure.
8 Count IX charges Mr. Gonzalez with open murder. Count X accuses Mr. Gonzalez of murder
9 in the second degree for causing Mr. Pettigrew's death by aiding and abetting an affray and
10 discharge of a firearm in a structure. Mr. Gonzalez pleaded not guilty, and is scheduled for trial
11 to commence March 4, 2013. Gonzalez and Villigrana are scheduled for trial together. A
12 previous Motion to Sever defendants at trial has been denied. Rudnick has negotiated with the
13 State, and will not be jointly tried.

14 2. Statement of Facts

15 The charges stem from an incident that occurred at John Ascuaga's Nugget during the
16 2011 Street Vibrations Motorcycle Rally. The Rally is an annual event, which in 2011 ran
17 from September 21st until September 25th. The Sparks part of the festival was shortened after
18 the incident at the Nugget.

19 The Washoe County Grand Jury heard evidence relating to Mr. Gonzalez on Wednesday
20 November 9, 2011. Pursuant to a Court Order issued after closed proceedings, no notice to the
21 target defendants was provided. None appeared. Also pursuant to a Court order following a
22 closed hearing, five witnesses were not identified during their testimony before the Grand Jury.
23 Alpha-numeric designations were used. Those were CS 11-21, 11-54, 11-31, 11-42, and 11-67.
24 Their identities were later disclosed to the defense, but not publicly.

25 The second of the Grand Jury witnesses described a disagreement occurring shortly after
26 10:00 p.m. in front of the Oyster Bar restaurant at the Nugget. The dispute reportedly involved

1 Gary Stuart Rudnick and Jeffrey Pettigrew. No witness testified in any proceeding made
2 available to Mr. Gonzalez' defense that he participated in the disagreement outside the Oyster
3 Bar. The witnesses at the Grand Jury testified that the situation was tense, but was defused,
4 resulting in a lessening of the tensions and an expectation that the problem was resolved.
5 Despite this testimony the State then presented testimony to suggest that although its witnesses
6 identified Mr. Gonzales as near, although not involved in, the verbal disagreement outside the
7 Oyster Bar, he somehow missed the truce or "stand down" message and later continued the
8 disagreement outside Trader Dick's restaurant. No witness at Grand Jury testified that he or
9 she had spoken to Mr. Gonzalez about any plan to participate in or cause a fight. Subsequent to
10 the Grand Jury hearing Gary Stuart Rudnick negotiated his charges with the State and secured
11 his release from custody. It is anticipated he will suggest there was an agreement to harm Mr.
12 Pettigrew, of which Mr. Gonzalez was aware.

13 The Grand Jury did hear a great deal of information about reported gang behavior, but
14 none specifically relating to crimes committed by Mr. Gonzalez in any prior case. In the
15 present case the Grand Jury was advised that Mr. Gonzales shot Mr. Pettigrew, but not told he
16 only did so after Mr. Pettigrew pistol-whipped an older man, and Mr. Villagrana had shot two
17 others, and that a third man, while lying on the ground defenseless, was being viciously kicked
18 by Pettigrew and Villigrana.

19 During a pretrial hearing regarding alleged other bad acts, the gang enhancement
20 evidence the State proposes to present to the jury at trial was described by witness Jorge Gil-
21 Blanco. Mr. Gil-Blanco was formerly a member of law enforcement, who currently makes his
22 living as a paid consultant against alleged motorcycle club members. Mr. Gil-Blanco described
23 several incidents in the Western United States in which alleged club members have been
24 prosecuted for various criminal acts. The bulk of his testimony involved the Hells Angels.
25 Some discussed the Mongols. Gil-Blanco provided limited testimony regarding the Vagos.
26

1 Gil-Blanco did not provide the Court with current information regarding the disposition of the
2 prosecutions he referenced.

3 3. Argument

4 Mr. Gonzalez previously moved to have his trial severed from that of his co-defendant.
5 He respectfully incorporates by reference the earlier arguments presented in support of this
6 motion. Where prejudice from a joint trial is apparent, the Court may properly consider
7 bifurcation as a possible remedy, which preserves both fair trial and judicial economy. It
8 should be noted that while judicial economy is a consideration recognized by the Courts, it can
9 never overcome the constitutional right to fair trial.
10

11 The Sixth Amendment requires that evidence relied upon to support an enhanced
12 sentence must be proven to a jury beyond a reasonable doubt. Blakeley v. Washington, 542
13 U.S. 296 (2004). "This case requires us to apply the rule we expressed in Apprendi v. New
14 Jersey, 530 U.S. 466, 490, 147 L. Ed. 2d 435, 120 S. Ct. 2348 (2000): "Other than the fact of a
15 prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory
16 maximum must be submitted to a jury, and proved beyond a reasonable doubt." Although many
17 of the cases discussing the concept were capital cases the Supreme Court clarified earlier this
18 year that the analysis applies in all criminal cases, even fines. Union C., v. United States, 132
19 S.Ct. 2344 (June 21, 2012).

20 The Nevada Supreme Court has discussed bifurcation with respect to sentencing
21 enhancement evidence. In Morales v. State, 122 Nev. 966 (2006), the Court affirmed a lower
22 court ruling that bifurcated the presentation of evidence at trial. In that case the Court ruled
23 that evidence of a defendant's charge, ex-felon in possession of a firearm, was properly heard
24 only in a bifurcated proceeding in which a determination of guilt with respect to other charges
25 was made before any evidence of his ex-felon status was heard by the jury. The ruling was
26 made in part based upon the Court's earlier holding in Brown v. State, 114 Nev. 1118 (1998),

1 in which the Supreme Court determined that the prejudice against a defendant that occurred
2 when a jury was permitted to consider both an ex-felon with a firearm charge and other charges
3 in the same proceeding was insurmountable. The Court in Brown announced that in future
4 prosecutions including multiple counts one of which was ex-felon in possession of a firearm,
5 that count would have to be severed.

6 Although the Nevada Supreme Court's holding in Brown, supra, addressed a specific
7 crime based upon a prior conviction, it was consistent with several other enhancement laws in
8 Nevada. A defendant who faces a sentencing enhancement for driving under the influence,
9 domestic battery or habitual criminal, must be adjudicated by the jury. NRS 484.3792; NRS
10 200.485; NRS 207.010-014. If he or she is found guilty of the offense, the Court then
11 determines at sentencing whether or not the enhancement applies. The statutes applying to
12 these varied and serious offenses are all designed to prevent the same evil: presumptive
13 prejudice. In all but cases alleging murder in the first degree, sentences are determined by
14 Judges, although the facts supporting an enhancement other than prior conviction must be
15 determined by a jury. Ring v. Arizona, 536 U.S. 584 (2002). Yet, even where juries sentence,
16 there is a strict limitation on what evidence can be considered, and none before a conviction for
17 the underlying offense occurs. NRS 175.552. The presumption of prejudice which has
18 concerned both the Nevada Legislature and Nevada Supreme Court can be reduced in the
19 present case by bifurcating the presentation of the trial evidence from evidence the State
20 proffers in support of its charged sentencing enhancement.

21 The Grand Jury transcript and pretrial discovery clearly show the State proposes to
22 present evidence during trial that details the prior bad acts of others to try to convict Mr.
23 Gonzalez. While there remains a question of whether that evidence should be admissible at all,
24 (The prior bad acts of Mr. Gonzalez are only admissible in limited circumstances NRS 48.045)
25 whether the alleged prior bad acts of others should ever be admissible remains an unresolved
26 question. an effective and cost-efficient method to avoid irreparable prejudice would be to

1 bifurcate the trial, permitting relevant, admissible gang enhancement evidence, if any, only if
2 Mr. Gonzalez suffers a conviction for which enhancement is statutorily permitted.

3 The statute pursuant to which the State seeks to enhance a sentence in the event of
4 conviction is NRS 193.168. The statute specifically provides that "in any proceeding to
5 determine whether an additional penalty may be imposed pursuant to this section, expert
6 testimony is admissible to show ...". NRS 193.168(7). The statute enacts a sentencing
7 enhancement. As such, evidence in support of its application should only be admissible
8 following a finding of guilt. It is also clear from the language of the statute that this Court
9 retains discretion to grant the relief being requested. There is no statutory bar to bifurcation.
10 The statute appears to intentionally leave procedural matters open to be fashioned by the trial
11 Judge.

12 To support its request for an enhancement of sentencing the State must have a jury
13 finding that determines Mr. Gonzalez to be a member of a gang, whose members commonly
14 participate in criminal activities. Origel-Candido v. State, 114 Nev. 378 (1998).

15 The Due Process clause of the United States Constitution protects an
16 accused against conviction except on proof beyond a reasonable doubt of every
17 fact necessary to constitute the crime with which he is charged." Carl v. State, 100
18 Nev. 164, 165, 678 P.2d 669, 669 (1984) (emphasis added). In addition, NRS
19 193.168(3)(b) provides that the gang enhancement statute applies only when the
20 trier of fact finds, beyond a reasonable doubt, that the primary offense was
21 committed knowingly for the benefit of a criminal gang. Origel-Candido v.
22 State, 114 Nev. 378, 382 (Nev. 1998) .

23 The proceeding to ask the jury to consider that evidence should only occur after a
24 finding of guilt for an enhanceable offense.

25 In Brown, we adopted a procedure calculated to prevent prejudicial jury
26 exposure to a defendant's prior felony record in cases where the State joins an ex-
felon firearm possession charge with other charges. This procedure requires that
district courts prospectively sever such matters by means of separate trials."

We conclude that the district court's bifurcation procedure accomplishes the
policy reflected in the prospective severance mandate declared in Brown.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

2
3
4
5
6
7
8

9

10

11

12

13
14

15

16

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

Karl Hall, Deputy District Attorney
District Attorney's Office

Amos Stege, Deputy District Attorney
District Attorney's Office

Jennifer Lunt
Chief Alternate Public Defender

Tehan Slocum
Alternate Public Defender

MAILED TO:

David Chesnoff, Esq.
Chesnoff & Schonfeld
520 S. Fourth St.
Las Vegas, NV 89101

DATED this 26th day of November, 2012.

/s/ Vicki Hamm

29

1 CODE 2645
2 Richard A. Gammick
3 #001510
4 P.O. Box 30083
5 Reno, NV 89520-3083
6 (775) 328-3200
7 Attorney for Plaintiff

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
9
10 IN AND FOR THE COUNTY OF WASHOE.

11 * * *

12 THE STATE OF NEVADA,
13 Plaintiff,

Case No. CR11-1718B

14 v.

Dept. No. 4

15 ERNESTO MANUEL GONZALEZ,
16
17 Defendant.

18 OPPOSITION TO MOTION TO BIFURCATE ENHANCEMENT EVIDENCE

19 COMES NOW, the State of Nevada, by and through RICHARD A. GAMMICK,
20 District Attorney of Washoe County, and KARL S. HALL, Chief Deputy
21 District Attorney, and files this Opposition to Mr. Gonzalez' Motion to
22 Bifurcate the Enhancement evidence from the substantive charges at
23 trial. This Opposition is based upon the attached Points and
24 Authorities, argument of counsel at the hearing of this matter, the
25 Points and Authorities in Opposition to bifurcation set forth in the
26 States' Motion to Admit Gang Enhancement Evidence and all other
pleadings and papers on file herein.

///

///

1 POINTS AND AUTHORITIES

2 I. STATEMENT OF THE FACTS.

3 Ernesto Manuel Gonzalez ("Gonzalez") was indicted on a number of
4 charges stemming from a deadly brawl between members of the Vagos
5 Outlaw Motorcycle Gang ("OMG") and the Hells Angels OMG that occurred
6 on September 23, 2011 at John Ascuaga's Nugget ("Nugget"). The State,
7 by this reference, hereby incorporates the Statement of Facts set
8 forth in the States' Opposition to the Writ of Habeas Corpus/Motion
9 to Dismiss filed on March 5, 2011. The evidence presented before
10 the Grand Jury on November 9, 2011, clearly indicated that Hells
11 Angel OMG member Cesar Villagrana (Villagrana) shot two Vagos OMG
12 members and that Gonzalez shot and killed Hells Angel San Jose
13 Chapter President Jeffrey Pettigrew ("Pettigrew").

14 Vagos OMG member CS 11-67, testified before the Grand Jury that
15 five hundred Vagos OMG members were at the Nugget to attend a Vagos
16 member meeting. (GJT p.197 ll 1-13). He further testified that "We
17 got a call there was a problem with the Hells Angels. So when we got
18 that call, we moved towards the area of the Oyster Bar,". (GJT p.192
19 ll 15-18). Upon arrival at the Oyster Bar, CS 11-67 saw Co-defendant
20 Gary Rudnick ("Rudnick") and Pettigrew arguing over what Rudnick
21 perceived to be disrespectful treatment by Pettigrew. (GJT p.193-
22 194). Rudnick, also known as "Jabbers" was a Vice President in the
23 Vagos OMG and Gonzalez would be an "underling" meaning that Gonzalez
24 is backup to Rudnick if Rudnick asked him for assistance. (GJT p.195
25 ll 11-16). CS 11-67 spoke with other Vagos OMG members in an effort
26 to avoid a violent confrontation as he was aware that the situation

1 could get "real bad real quick, because us and Hells Angels don't get
2 along too well at all because of past history. (GJT p.200 ll 19-22).
3 The Vagos are an outlaw gang and many members typically carry weapons
4 both openly and concealed. (GJT p.205 ll 13-24). Vagos gang members
5 are required to protect other Vagos gang members in the event of an
6 altercation. (GJT p.208 ll 12-23).

7 Pettigrew, according to CS 11-67, was one of the most important
8 Hells Angel members in the United States. (GJT p.211 ll15-24). Video
9 surveillance captured images of other Vagos attacking members of the
10 Hells Angels in other parts of the Nugget. (GJT p.219-220). Finally
11 CS 11-67 testified that Gonzalez was following the Vagos code of
12 conduct - Vagos Forever, Forever Vagos when he shot Pettigrew. Vagos
13 expansion into San Jose, Hells Angel territory had caused problems
14 between the two gangs resulting in several specific violent
15 altercations between the gangs. (GJT p.223-224). The gang rivalry is
16 ongoing as we see in this case.

17 Another significant fact is that Rudnick provided a statement to
18 law enforcement and stated that the murder of Pettigrew was
19 sanctioned and planned by top members of the Vagos OMG. This planned
20 attack was sanctioned based upon prior problems with the Hells
21 Angels. Prior conflicts between the Vagos and Hells Angels have been
22 documented in the States' Motion to Admit Gang Enhancement Evidence
23 filed November 26, 2012.

24 II. ARGUMENT

25 It is well settled that when charged, an enhancement must be
26 proved beyond a reasonable doubt. Origel-Candido v. State, 114 Nev. 378, 381, 956

1 P.2d 1378, 1380 (1998). The trial court has broad discretion to deny
2 bifurcation of a charged gang enhancement. Broadbent v. Martel, WL
3 5879786 (E.D. Cal. 2012). Further, the Federal District Court held in
4 Broadbent that a challenge to a denial of a motion requesting
5 bifurcation of the gang enhancement from the substantive charges does
6 not present a question of constitutional dimension cognizable in
7 Federal Court based upon an interpretation of applicable state law.
8 Id. González fails to make citation to any state law supporting
9 bifurcation. See Spencer v. Texas, 385 U.S. 554, 568 91967) ("[t]wo-
10 part jury trial are rare in our jurisprudence; they have never been
11 compelled by this Court as a matter of constitutional law, or even as
12 a matter of federal procedure") citation omitted.

13 González makes citation to Morales v. State, 122 Nev. 966, 143
14 P.3d 463 (2006), to support his argument for bifurcation. The
15 Morales case is not on point. There the Nevada Supreme Court held
16 that the bifurcation procedure is calculated to prevent prejudicial
17 jury exposure to a defendant's prior felony record where the State
18 joint and ex-felon firearm possession charge with other charges. See
19 Brown v. State, 114 Nev. 1118, 967 P.2d 1126 (1998). Bifurcation is
20 not required in this case because the State is not presenting
21 prejudicial prior felony convictions. The State is presenting
22 evidence of gang affiliation which proves motive, intent, identity
23 and other factors that are inextricably intertwined with the case, as
24 such, bifurcation is improper and unnecessary. See Hernandez

25 Likewise, citation to driving under the influence cases,
26 domestic battery cases and habitual criminal cases is also without

1 merit for the same reason stated above i.e., the defendant is
2 prejudiced by the cloak of a prior conviction.

3 Gonzalez next argues that the State intends to introduce
4 evidence of crimes commonly committed by OMG's, evidence the State by
5 statute, is required to introduce. See Origel-Candido, supra.
6 Naturally, Gonzalez would like to prevent the State from offering
7 evidence of motive, intent, identity stemming from the rivalry
8 between the OMGs but that would prevent the State from presenting
9 relevant, probative evidence that would assist the jury in
10 determining whether any crime was committed.

11 Next, Gonzalez claims, without citation to any legal authority,
12 that since NRS 193.168 is a sentencing enhancement, that evidence is
13 only admissible after a finding of guilt. Gonzalez conveniently
14 overlooks similar enhancements such as the deadly weapon enhancement
15 NRS 193.165, elder enhancement pursuant to NRS 193.167, perceived
16 characteristics of a victim pursuant to NRS 193.1675 etc. all of
17 which must be proved beyond a reasonable doubt at trial. The words,
18 "in any proceeding" contained within NRS 193.168 do not suggest that
19 the trial should be bifurcated.

20 The issue of bifurcation of gang enhancement evidence has been
21 considered in other jurisdictions. See People v. Hernandez, 33
22 Cal.4th 1040, 94 P.3d 1080 (2004). There the California Supreme Court
23 reviewed the denial of a motion for bifurcation under the abuse of
24 discretion standard. Id. As noted in Hernandez, gang evidence may be
25 relevant to establish identity, motive, modus operandi, specific
26 intent, means of applying force or fear, other issues pertinent to

1 guilt of the charged crime. Id. Here, the gang evidence, specifically
2 the evidence establishing the rivalry and repeated acts of violence
3 between the Hells Angels and the Vagos is relevant to prove motive,
4 intent, modus operandi, specific intent, plan, knowledge and
5 opportunity. Both OMGs were wearing indicia of gang affiliation.
6 The evidence produced before the grand jury established a code of
7 conduct indicative of the gang culture and code of conduct. The fact
8 that the Hells Angels were at the Nugget where the Vagos were holding
9 their National Meeting is a sign of disrespect among the gangs and
10 that lack of respect resulted in the deadly brawl.

11 Finally, the jury should be instructed that it may only consider
12 the gang related evidence for the limited purpose of deciding whether
13 the defendant acted with the intent, purpose, and knowledge that are
14 required to prove gang-related crime and allegation charged. A jury
15 is presumed to follow the instructions given.

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

605

1 Conclusion

2 Based upon the foregoing, the State hereby respectfully requests
3 that the instant Motion to Bifurcate Enhancement Evidence be denied.

4 AFFIRMATION PURSUANT TO NRS 239B.030

5 The undersigned does hereby affirm that the preceding
6 document does not contain the social security number of any person.

7 Dated this 6th day of December, 2012.

8
9 RICHARD A. GAMMICK
District Attorney
10 Washoe County, Nevada

11
12 By /s/ Karl S. Hall
13 KARL S. HALL
23
14 Chief Deputy District Attorney

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

MAIZIE W. PUSICH, C.D.P.D.
WASHOE COUNTY PUBLIC DEFENDER'S OFFICE
350 S. CENTER STREET, 5TH FLOOR
P.O. BOX 30083
RENO, NV 89520

BIRAY DOGAN, D.P.D.
WASHOE COUNTY PUBLIC DEFENDER'S OFFICE
350 S. CENTER STREET, 5TH FLOOR
P.O. BOX 30083
RENO, NV 89520

DATED this 6th day of December, 2012.

/s/ LORI DELANO
LORI DELANO

30

1 CODE
2 Richard A. Gammick
3 #001510
4 P.O. Box 30083
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 MOTION TO ADMIT EVIDENCE OF OTHER CRIMES, WRONGS OR ACTS

19 COMES NOW, the State of Nevada, by and through RICHARD A.
20 GAMMICK, District Attorney of Washoe County, and AMOS STEGE, Deputy
21 District Attorney, hereby submits the attached Points and Authorities
22 in a Motion to Admit Evidence of Other Bad Acts.

23 POINTS AND AUTHORITIES

24 I. THE OTHER ACTS

25 Airport case

26 On December 20, 2010, the Defendant was detained and
subsequently arrested after San Francisco Airport Police found a 9 mm
Glock magazine loaded with 13 live rounds in the his luggage. See
Exhibit 1. The magazine was found during a customs search as the

1 Defendant returned from Nicaragua. The charge appears to have
2 ultimately been dismissed.

3 Steyr pistol case

4 On February 13, 2010 the Defendant was stopped by police
5 while riding his motorcycle in San Jose, California for failing to
6 use a turn signal and having an amplified exhaust. See Exhibit 2.
7 Gonzales was wearing Vago gang clothing, including his full patch.
8 Gonzalez had an exposed switchblade knife on the outside of his
9 jacket. He was arrested for the knife violation. A search of his
10 motorcycle revealed a 9mm Steyr Mannlicher semiautomatic pistol
11 located in the saddle bag of Defendant's motorcycle. As the
12 Defendant was being transported to jail, he made the spontaneous
13 statement, "I ain't gonna lie, I carry that for my protection 'cause
14 of my lifestyle. The gun was later determined to be stolen. The
15 Defendant was ultimately convicted of traffic offenses.

16 Posing with Glock February 22, 2011

17 When Defendant was arrested in San Francisco in September
18 of 2011 he had a laptop computer in his possession. A search warrant
19 was subsequently granted¹. Det. Clark located two photographs showing
20 the Defendant posing with two other men wearing Vago gang t shirts.
21 See Exhibit 3. The men are hugging each other. Defendant is holding
22 a large frame Glock pistol. One of the other men is also holding a
23 semiautomatic pistol. A second photo shows the men with their backs
24 turned to the

25 _____
26 ¹ A report was generated detailing the gang related content of the computer. This includes photographs of gang paraphernalia, the Defendant in gang clothing, other Vagos gang members and associates, gang activity in foreign countries. This evidence should be admitted to prove the gang enhancement and not as RNS 48.045(2) evidence.

1 camera. Gonzalez has placed the Glock pistol in his back pocket.
2 The men hug, displaying the gang emblems on their t-shirts.

3 May 25, 2007

4 Also found on the Defendant's laptop computer is a video
5 depicting him firing a black large framed semiautomatic pistol. The
6 Defendant fires 13 rounds in succession. The Defendant alternates
7 between a one-handed and two-handed grip. The video appears to have
8 been created on May 25, 2007.

9 II. ARGUMENT

10 NRS 48.045(2) allows otherwise inadmissible character
11 evidence to be admitted for other purposes, including motive,
12 opportunity, intent, preparation, plan, knowledge, identity, or
13 absence of mistake or accident. To admit such evidence, the district
14 court must determine that: (1) the prior bad act is relevant to the
15 crime charged and for a purpose other than proving the defendant's
16 propensity, (2) the act is proven by clear and convincing evidence,
17 and (3) the probative value of the evidence is not substantially
18 outweighed by the danger of unfair prejudice. See Bigpond v. State,
19 128 Nev. Adv. Op. 10, 270 P.3d 1244 (2012) (prior acts of domestic
20 violence admitted to explain relationship with defendant and to
21 explain the reason for victim's recantation).

22 With respect to the prior possession of firearms sought to
23 be admitted in this case, Homick v. State illustrative. Homick v.
24 State, 108 Nev. 127, 825 P.2d 600 (1992). In Homick the Nevada
25 Supreme Court found no error in the admission of two prior shootings
26 as other bad acts that connected the murder weapon to Homick. Id. at

1 140, 608 ("Evidence of the Maraldo and McDowell shootings was
2 properly admitted to connect the Tipton murder weapon to Homick. The
3 same weapon had been used in each instance and the testimony of
4 Dominguez concerning the [two other] incidents was essential to
5 understanding why the same weapon used in those shootings was also
6 used in the [instant] murders").

7 Similarly, the Court in Jacobs v. State affirmed the use of
8 NRS 48.045(2) evidence showing that the accused previously had
9 possession of the weapon that was used in a charged murder. Jacobs
10 v. State, 91 Nev. 155, 158, 532 P.2d 1034, 1036 (1975) ("[T]he
11 evidence was properly admitted to relate his possession of a shotgun
12 which was the same kind and type used in the commission of [the]
13 murder").

14 Airport case

15 The murder weapon in the instant case was never recovered.
16 However, forensic analysis of the shell casings and expended
17 cartridges show that the murder weapon is a .40 caliber semiautomatic
18 Glock pistol. Admission of the airport case places the Defendant in
19 possession of magazine to a Glock pistol. As in Jacobs, the evidence
20 shows the Defendant's possession of a gun with of the same kind and
21 type used in the murder. It is relevant to prove identity in that it
22 is some evidence that he is the shooter.

23 The evidence of Defendant possessing the loaded Glock
24 magazine also proves that the Defendant is not a casual member of the
25 gang. Undoubtedly, the defense will continue to argue that Vagos
26 gang is a club not a gang. This evidence refutes that claim.

1 Finally, this other act proves the Defendant's membership in the
2 gang. As CS 11-67 testified at grand jury, the Vagos gang carries
3 weapons, including guns. GJT p 205. It also proves that the gang is
4 a criminal gang in that the gang commonly commits felonies, in this
5 case illegal firearms possession.

6 This act is proven by clear and convincing evidence. There
7 are photographs and two police reports generated from the incident.
8 The probative value of the evidence is not substantially outweighed
9 by the danger of unfair prejudice.

10 Steyr case

11 The Defendant's possession of a loaded pistol while dressed
12 in full gang attire is probative of the Defendant's level of
13 commitment to the Vagos gang. As previously argued, showing that the
14 Defendant possessed a gun (without reference to it being stolen)
15 refutes the argument that he is a casual member of the gang. It also
16 proves that the gang is a criminal gang in that the gang commonly
17 commits felonies, in this case illegal gun possession.

18 The Defendant's possession of the gun is also supports the
19 gang enhancement prong related to rivalries. The Defendant's
20 possession of the gun shows that when he is dressed in full gang
21 attire, he feels the need to have a gun to protect himself. It
22 proves that the gang has violent rivalries.

23 Possession of the Steyr handgun goes to show opportunity,
24 i.e. that the Defendant has knowledge of and access to firearms, thus
25 giving him the opportunity to commit the murder.

26 ///

1 Finally, this other act proves the Defendant's membership
2 in the gang. As CS 11-67 testified at grand jury, the Vagos gang
3 carries weapons, including guns. GJT p 205.

4 This act is proven by clear and convincing evidence. There
5 are two police reports on the matter. The probative value of the
6 evidence is not substantially outweighed by the danger of unfair
7 prejudice.

8 February 2011 Photographs

9 The February 2011 photographs show the Defendant in actual
10 possession of a Glock pistol, possibly the weapon used to murder
11 Pettigrew. Thus it is relevant as it connects the Defendant to the
12 murder weapon. Just as the possession of the Glock magazine at the
13 airport connects the Defendant to the murder, this evidence is highly
14 probative- it is only months before the shooting. This evidence
15 literally puts a Glock pistol in the Defendant's hands.

16 This act is proven by clear and convincing evidence. The
17 photographs come from the Defendant's own computer and his identity
18 is clear. The probative value of the evidence is not substantially
19 outweighed by the danger of unfair prejudice.

20 Video of Defendant Shooting May 25, 2007

21 Admission of video showing the Defendant shooting an
22 unknown make semiautomatic handgun is relevant to show opportunity to
23 commit the crime. In U.S. v. Jobson the Court held

24 We hold, however, that defendant's gang
25 membership would be admissible to establish his
26 opportunity to commit the crime. Evidence used to
establish opportunity is evidence that shows
"access to or presence at the scene of the crime"
or the possession of "distinctive or unusual"

1 skills or abilities employed in the commission of
2 the crime charged." 1 McCormick on Evidence §
3 190, at 807 (John William Strong ed., 4th ed.
4 1992); see also United States v. Woods, 613 F.2d
5 629, 636 (6th Cir.1980) (in prosecution for armed
6 robbery, evidence that defendant possessed
7 firearms is admissible to show defendant's
8 opportunity to commit crime charged).
9 U.S. v. Jobson, 102 F.3d 214, 221 (6th Circuit
10 1996)

11 In the instant case, the video depicting the Defendant's
12 firearm skills explains how he was able to shoot at Pettigrew at a
13 distance of approximately 25 feet hitting him with an unusual level
14 of accuracy- 5 of the 7 shots hit Pettigrew, and all 5 hits struck
15 him in the torso. This shows the Defendant had the opportunity,
16 through his firearm skills, to commit the murder.

17 This act is proven by clear and convincing evidence. The
18 video comes from the Defendant's own computer and his identity is
19 clear. The probative value of the evidence is not substantially
20 outweighed by the danger of unfair prejudice.

21 All of the acts in this motion serve to corroborate the

22 ///

23 ///

24 ///

25 ///

26 ///

///

///

///

///

1 III. CONCLUSION

2 For the above-stated reasons, the State's Motion should be
3 granted.

4 AFFIRMATION PURSUANT TO NRS 239B.030

5 The undersigned does hereby affirm that the preceding
6 document does not contain the social security number of any person.

7 Dated this 26th day of November, 2012.

8 RICHARD A. GAMMICK
9 District Attorney
10 Washoe County, Nevada

11
12
13 By /s/ Amos Stege
14 AMOS STEGE
15 9200
16 Deputy District Attorney
17
18
19
20
21
22
23
24
25

26 1119CR111718B6

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
12 DATED this 26th day of November, 2012.

13
14 /s/DANIELLE RASMUSSEN
15 DANIELLE RASMUSSEN
16
17
18
19
20
21
22
23
24
25
26

INDEX OF EXHIBITS

EXHIBIT I SAN FRANCISCO POLICE AIRPORT BUREAU INCIDENT REPORT
NUMBER OF PAGES: 22

EXHIBIT 2 SAN MATEO COUNTY SHERIFF'S OFFICE FOLLOW UP REPORT
NUMBER OF PAGES: 5

EXHIBIT 3 VAGOS PHOTOS
NUMBER OF PAGES: 2

FILED

Electronically

11-26-2012:02:14:17 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3366578

Exhibit 1

Exhibit 1

618

INCIDENT REPORT

San Francisco Police - Airport Bureau

Case# 10-35550

Status Codes: L = Lost S = Stolen R = Recovered D = Damaged Z = Seized B = Burned C = Counterfeit / Forged F = Found E = Evidence									
D R U G S	Status	Quantity	Type Measure	Suspected Drug Type					
O F F E N D E R	Offender 1		Offender 2		Offender 3				
	Age: 52 Race: H Sex: M		Age: Race: Sex:		Age: Race: Sex:				
	Offender 4		Offender 5		Offender 6				
	Age: Race: Sex:		Age: Race: Sex:		Age: Race: Sex:				
	Name (Last, First, Middle)								
	SU1 Gonzalez, Ernesto Manuel								
Home Address									
4118 Folsom St, San Francisco, CA 94110									
Occupation									
Janitorial									
Business Address									
Self Employed / 4118 FOLSOM ST S.F., CA 94110									
S U B J E C T	DOB: / Age	Race	Sex	Hgt	Wgt	Build	Hair Color	Eye Color	
	4/23/1958 / 52	H	M	5'07	175		Brown	Brown	
	Hair Style								
	Hair Length								
	Glasses								
	Scars, Marks, Tattoos, or other distinguishing features (i.e. limp, foreign accent, voice characteristics)								
Hat									
Shirt/Blouse									
Coat/Suit									
Socks									
Shoes									
Type of Weapon									
Direction of Travel									
Mode of Travel									
VYR									
Make									
Model									
Style/Doors									
Color									
Lic/Lis									
Suspect Hate / Bias Motivated: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No									
Type:									
W I T N E S S	Name (Last, First, Middle)				D.O.B.	Age			
	Home Address				Home Phone	Employer	Phone		
	GREG MUMKS, SHERIFF								
	SAN MATEO COUNTY								

On Tuesday morning at 0015 hrs. I was dispatched to Customs "A" side to meet with Homeland Security in regard to a man they had searched coming in from Nicaragua. The man was reported to be carrying a loaded magazine, that held 13-Bullets (Hollow Point) in its compartment. The dispatch also mentioned that the individual might be on Parole, and probation, as this was possibly misconstrued by Customs to dispatch. I met Customs Agents along with S.F.P.D officers Brothers #4049, and Moriwoke #1687. (S-1) Gonzalez, Ernesto, was seated and being watched over in a holding room by Customs agent, Schoeneg, Save, #16168, and several other agents. I confirmed Gonzalez identity by checking his passport, his drivers license and asking him if he was Ernesto Manuel Gonzalez. All with positive responses. I spoke to Schoeneg who told me that while he was conducting a bag exam as part of the typical border search, after taking a binding declaration, opened the backpack of Ernesto Gonzalez, found a magazine loaded with full metal jacket and hollow point bullets. Schoeneg, asked Gonzalez if there was a gun? Did he have one on him or anywhere in his belongings? Gonzalez explained to Schoeneg that the bullets and magazine were his and that he left the gun, in Nicaragua. Customs agents told me that Gonzalez had told them, that he forgot the bullets were in there, referring to his backpack. He told them that it was legal to carry

med at: 12/21/2010 08:32

Page: 2

670