

1 A. Yeah, this is prior to the incident. We've got
2 Cavazos who at the time was the national sergeant at arms.

3 Q. For the Hells Angels or the Vagos?

4 A. For the Mongols.

5 Q. The Mongols.

6 A. At this point the Hells Angels were outnumbered,
7 this is prior to the other Hells Angels arriving. That's the
8 Hells Angels arriving over here. The fight starts down here,
9 this is looking at it from a different angle, looking at it
10 down -- first you saw it from this direction.

11 Q. Was the Mongol president murdered after this?

12 A. No, he was not murdered. He was stabbed. The
13 president was stabbed in this incident. There was another
14 Mongol that -- one Mongol killed at the casino and one Mongol
15 killed on Highway 40 in Ludlow -- I'm sorry, a Hells Angels
16 was killed in Ludlow, not a Mongol.

17 Numerous skirmishes going on in the casino.

18 MR. HALL: All right, so is that video -- we can
19 watch the whole thing, but I think you get an idea of what --

20 THE COURT: Okay.

21 BY MR. HALL.

22 Q. And it's in evidence. And this is the wedding
23 chapel. So are you familiar with this video?

24 A. Yes, I am.

1 MR. CHESNOFF: For the record, your Honor,
2 Mr. Villagrana was not at the wedding either.

3 THE COURT: Okay.

4 A. Yes, I am familiar with this case.

5 BY MR. HALL:

6 Q. Can you identify the Mongols and the Hells Angels?

7 A. Yes, the Mongols start showing up, there's a Mongol
8 here, wearing what we call the soft cuts. WE see the Mongol,
9 the other Mongol over here. One that was there to get
10 married. The Hells Angels are going to be coming up in this
11 area over here on the right-hand side led by Pee Wee, who at
12 the time was the president of the Sin City charter of the
13 Hells Angels.

14 There's Pee Wee, some other members. Several
15 prospects, one has a knife in his hand. There's John Merchant
16 from the Nomads. He's hitting an individual over the head
17 with a vase. Reaching into his pocket. There's a knife
18 where he ends up stabbing a Mongol in the back of the head.
19 Got a Mongol here and a Mongol here, they're being beat down.

20 THE COURT: I'm sorry, being what?

21 THE WITNESS: Beat down. There's another Hells
22 Angel, Squeak. Squeak, I don't remember his actual full
23 name. There you see Dominic Orlando. That's pretty much --

24 MR. HALL: Okay, you can have a seat. So with

1 respect to Laughlin and the wedding chapel, we had intended
2 to notice the investigating detective to lay a little more
3 foundation for the admission of that evidence to show, you
4 know, basic characteristics of criminal gang, common
5 practices, operations of criminal gangs, and members of those
6 gangs, social customs, behavior of members of criminal gangs,
7 terminology, codes of conduct, including criminal conduct in
8 particular criminal gangs, and the types of crimes that are
9 likely to be committed by criminal gangs, or by criminal
10 gangs in general.

11 In addition, when you see these two incidences and
12 compare that to the video of the altercation at the Nugget,
13 you see that -- a very similar code of conduct by both the
14 Vagos and the Hells Angels, in terms of they see each other,
15 we've established by Mr. Gil-Blanco that they are rival gangs
16 based on the other incidences of violence that we've
17 discussed with respect to Oildale, Chino Valley, Starbucks,
18 Lakeport. We have provided those police reports, we've also
19 provided some CVs of several of the experts, specifically
20 we've provided some information regarding Mr. Bennett,
21 Mr. Bennett actually testified.

22 THE COURT: I understand that you -- much of what
23 you're saying, but is this witness -- are you through with
24 this witness, or were you trying to lay a predicate for some

1 testimony from the witness?

2 MR. HALL: Well, I was going to do a little of
3 both, I guess.

4 THE COURT: Okay.

5 MR. HALL: But I'm about done with Mr. Gil-Blanco.

6 THE COURT: Okay, well, I just wanted -- if there
7 was more for him, let's get that done, and then I thought we
8 were getting a little bit beyond that.

9 MR. HALL: Okay.

10 BY MR. HALL:

11 Q. With respect to crimes that are specifically
12 committed by the Hells Angels and Vagos, can give us some
13 information about that, and also discuss Operation Simple
14 Green? So we've got crimes committed by Hells Angels, and
15 crimes committed by the Vagos, and Operation Simple Green.

16 A. Sure. Which one do you want to --

17 Q. Let's talk about Hells Angels primarily, and keep
18 going down that direction.

19 A. As far as the type of crimes that they're involved
20 in?

21 Q. Type of crimes, crimes that you would typically use
22 in a gang enhancement case.

23 MR. CHESNOFF: Your Honor, I would object. General
24 crimes -- this is a case involving a U.S. citizen who is

1 entitled to be treated as an individual, not grouped. And so
2 I don't understand what the generic gang person means in
3 relation to a club member who has not yet been convicted of
4 anything. Typical crime? I mean, I don't think there's one
5 thing that this man will say that is a crime that has not
6 been committed by any other group of people in the United
7 States. People with cancer, someone with leprosy, some guy
8 who is an Elk --

9 THE COURT: Perhaps you're familiar with some case
10 law with regard to NRS 193.168 and how it's been limited?

11 MR. CHESNOFF: I didn't hear the last part.

12 THE COURT: How it may have been limited. I think
13 you're asking me to limit the presentation of the evidence
14 pursuant to the statute?

15 MR. CHESNOFF: Yes.

16 THE COURT: And so I'm saying are you familiar with
17 some case law that has limited the presentation of evidence
18 pursuant to the statute? Either found the statute to be
19 unconstitutional in its application or in its wording --

20 MR. CHESNOFF: The only case I can think of off the
21 top of my head is U.S. v Leary, your Honor, which is a U.S.
22 Supreme Court case which says you can't be prosecuted because
23 of your status. I am happy, in response to what we've
24 learned today, and probably would have been happier -- I'm

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1 sorry for not standing, your Honor -- to receive the kind of
2 briefing that the Court suggested a long time ago, to
3 respond. But we have also done some brief writing in
4 anticipation of this. But at the conclusion of this
5 witness's testimony today, I can promise your Honor that we
6 will be supplementing the record with legal authority in
7 light of testimony and the offer of proof we've heard today.

8 THE COURT: With regard to the question, you can --
9 under the statute, you can testify to characteristics of
10 persons who are members of a particular organization. You're
11 arguing -- the State is arguing it's a criminal gang, and so
12 that's what's to be determined here. So you can testify,
13 under the statute, as to characteristics of persons who are
14 members. You may also speak of specific rivalries, which
15 we've heard. You may talk about common practices in
16 operation of that organization and members of it.

17 So you may talk about all of that for purposes
18 only, of course, of the gang enhancement. I think that was
19 the question Mr. Hall was asking.

20 THE WITNESS: Okay, and as I understand it, crimes
21 that have been committed by members of the Hells Angels?

22 MR. HALL: Correct.

23 MR. CHESNOFF: And for the record, your Honor, in
24 Nevada I don't think there's a reported decision where the

1 Hells Angels have been determined to be a gang.

2 THE COURT: Okay. You may answer the question.

3 A. Okay. Thank you. Yeah, the Hells Angels have been
4 involved in crimes of homicide, assaults with a deadly
5 weapon, narcotics violations, making criminal threats.
6 Predominantly I'd say crimes of violence as far as assaults
7 with deadly weapon were the major crimes.

8 BY MR. HALL:

9 Q. Well, and if we looked at Exhibit G you can just go
10 through the documentation provided by ATF in documents, a
11 number of crimes including drug trafficking, drug sales,
12 weapons violations, murder, and we've got -- would represent
13 to the Court, we've got two volumes of crimes committed by
14 Hells Angels during that course of that investigation, is
15 that right? In your brief review you could see a number of
16 crimes committed, is that right?

17 A. That's correct.

18 Q. There have been a number of convictions of Hells
19 Angels for violent crime, drug crimes, other felonies, and
20 you're familiar with a lot of those convictions during the
21 course of your training and experience, is that right?

22 A. And I've testified to several of those cases.

23 Q. And those would include the gang enhancement, is
24 that right?

1 A. That's right.

2 Q. Have there been any recent convictions for felonies
3 committed by Hells Angels with the gang enhancement?

4 A. Yes.

5 Q. Could you mention those? I think there was one in
6 San Diego.

7 A. One as recent as two, three weeks ago in Riverside
8 County. President of the Orange County charter was convicted
9 by a jury of criminal threats with a gang enhancement. Or
10 for being an active participant in a criminal street gang.

11 There's three weeks -- about a month or two months
12 prior to that, San Diego County, member of the San Diego or
13 Dago charter was convicted by a jury of assault with a deadly
14 weapon with a gang enhancement. There's also a member of the
15 San Fernando Valley charter was convicted of assault with a
16 deadly weapon with a gang enhancement by a jury in Ventura
17 County. Another member was convicted of auto theft, which
18 was stealing of a motorcycle of a prospect from that
19 particular charter, convicted for the auto theft, and with a
20 gang enhancement. Another Ventura member was just recently
21 convicted of making criminal threats with a gang enhancement.
22 That was also out of Ventura County.

23 And in Kings County several Hells Angels were
24 convicted, including a hangaround at the time who was an

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1 active duty lieutenant commander in the Navy that pled to the
2 assault with a deadly weapon with a gang enhancement. And
3 several other members were convicted by jury trial on that
4 same case of various other charges, from burglary, robbery,
5 and assault with a deadly weapon.

6 Q. And with respect to the Vagos, have there been a
7 number of Vagos that have been convicted of felony crimes?

8 A. Yes, there have been.

9 Q. Are you familiar with any of those?

10 A. Yes, there were numerous cases done in Southern
11 California several years back where members were convicted of
12 various crimes, including a gang enhancement for firearms
13 violations to assault with deadly weapons. Also recently a
14 homicide, a member of the Vagos was convicted by jury of
15 homicide with a gang enhancement. There was also the
16 Northern California, Sacramento area, numerous Vagos were
17 convicted of crimes of conspiracy to distribute controlled
18 substances, distribution of controlled substances. Using, in
19 one instance, one Vago member was actually the IT person at
20 the California Department of Corrections that was gathering
21 information from the computers, passing it on to other
22 members. Was also a Vago that was convicted for giving
23 instructions how to smuggle steroids from Mexico into the
24 U.S., and he was an LA County probation officer that was a

1 full-patch Vago. So there have been numerous crimes
2 involving Vagos and Hells Angels.

3 MR. HALL: Your Honor, in addition to that I want
4 to have marked for your consideration a transcript of Gary
5 Rudnick's interview. Talks about not the only his membership
6 in the Vagos, but the Vagos organization, structure, as well
7 as the particular crime alleged in the indictment.

8 I'd also like you to take notice of the grand jury
9 transcript --

10 THE COURT: Just --

11 THE CLERK: Exhibit I marked.

12 (Marked Exhibit I.)

13 THE COURT: Okay.

14 MR. HALL: I'd also like you to take notice of the
15 grand jury transcripts, specifically testimony of
16 confidential source 67 and the testimony of Mr. Gil-Blanco,
17 who has basically testified consistently with his testimony
18 here today, with a little more specific detail, since we are
19 not as confined time-wise as we were during the grand jury
20 presentation.

21 I believe that that is -- those are all the
22 questions that I have for -- oh. You know, the one thing we
23 didn't talk about was Operation Simple Green. I know you
24 talked about a lot of information, but I want to bring that

1 up.

2 MS. PUSICH: Excuse me, your Honor. Before he
3 moves away from that exhibit could I ask a couple of
4 questions?

5 THE COURT: Certainly.

6 MS. PUSICH: I don't believe it's been moved in,
7 but in any event, sir, were you able to review this before
8 your testimony here today?

9 THE WITNESS: Which one?

10 MS. PUSICH: The transcript of Mr. Rudnick's
11 statement.

12 THE WITNESS: I don't remember if I have. I don't
13 know if I have seen the transcripts.

14 MS. PUSICH: Your Honor, if he's not familiar with
15 it, I don't believe it forms the basis of his opinions. I
16 would argue it's not relevant at this time.

17 MR. HALL: Your Honor, this was information that
18 was provided in discovery. It was a statement of a
19 co-conspirator, which that information which was potentially
20 inculpatory, so it was mandatorily discovered. I'll
21 represent as an officer of the court that we gave them a
22 video of the transcript. If they're really trying to argue
23 about the foundation, I think that's a very weak argument in
24 light of the fact this has already been provided in

1 discovery. And we're providing that as part and parcel of
2 our evidence to establish membership in a gang.

3 And the other factors listed in NRS 193.168. I
4 don't think this is a foundational question, and I would
5 represent as an officer of the court, if you want to swear me
6 in, I'll lay the foundation for that.

7 And in addition I have Officer Patton here, who was
8 kicked out of the court, and he was going to come in and
9 authenticate that, but I'm trying to save some time.

10 MS. PUSICH: Your Honor, my --

11 THE COURT: Whoa, he wasn't kicked out of the
12 court, Mr. Hall. The rule of exclusion doesn't mean people
13 are being kicked out. Now, you're offering Exhibit I
14 independent of the witness?

15 MR. HALL: Right.

16 THE COURT: Ms. Pusich's argument went to whether
17 or not the witness as an expert had considered Exhibit I.

18 MS. PUSICH: Correct.

19 THE COURT: But you were just sort of offering it;
20 even though you had a witness on the stand, it really had
21 nothing to do with the witness?

22 MR. HALL: I'm offering that to supplement his
23 testimony with respect to Vagos' involvement, as being an
24 outlaw motorcycle gang. I'm supplementing his testimony with

1 that.

2 MS. PUSICH: And your Honor, with respect to the
3 exhibit, certainly if he's not offering it through this
4 witness, that objection is not the one that flies. However,
5 if this Court is considering it under either the gang
6 enhancement statute or 48.045, I think it would be
7 appropriate, before you determine if anything he has to say
8 is clear, convincing and proven, that you see how he performs
9 under cross-examination.

10 MR. CHESNOFF: Yeah -- never mind.

11 MR. HALL: I'd request permission to allow
12 Mr. Gil-Blanco to review the testimony, and supplement his
13 opinions with that testimony at trial.

14 THE COURT: Okay. With regard to the exhibit, the
15 exhibit is marked. This is going to be an ongoing hearing,
16 we've already determined that, so we're not going to get
17 through all these issues in this hearing. So it's marked,
18 it's not admitted at this time.

19 If -- and Mr. Hall, I did make a ruling that you
20 were going to put on your evidence. You had your witness
21 here, you were going to put it on, you weren't going to
22 supplement it after the fact. Because we want to get to the
23 cross-examination, we don't want to keep on reinventing what
24 the direct is.

1 Now I hear you say that you would like to have
2 permission to have your expert review Exhibit I to determine
3 if it helps to form a basis for his testimony. Is that
4 correct?

5 MR. HALL: That's correct.

6 THE COURT: The never-ending motion practice here.
7 I'm not sure it's necessary, and I think I'm going to deny
8 that. This was the time to do it. That evidence may or may
9 not come in, Mr. Rudnick may or may not qualify as an expert
10 as to Vagos gang, and his testimony may come in that way.

11 So I think we have to have an end to it. And you
12 could have had him review the transcript at any time, if he
13 needed to.

14 MR. HALL: Are you going to preclude me from
15 presenting testimony from Eric Bennett, for example?

16 THE COURT: Mr. Hall, I haven't said anything about
17 any other witness, so please don't start.

18 MR. HALL: Okay, I understand.

19 THE COURT: Let's deal with the one witness that's
20 on the stand, okay? So. Anything else with regard to this
21 witness on direct?

22 MR. HALL: With the Court's indulgence.

23 THE COURT: I think there was something about
24 Simple Green you wanted to get into.

1 MR. HALL: Thank you.

2 BY MR. HALL:

3 Q. Are you familiar with Operation Simple Green?

4 A. Yes, I am.

5 Q. And how are you familiar with Operation Simple
6 Green?

7 A. During the course of the investigation I was in
8 contact with Detective Eric Bennett, while his investigation
9 was ongoing. And I was also present at the date of the
10 take-down in October of -- 2011, I believe.

11 Q. What types of crimes were they investigating they
12 suspected had been or learned had been committed by the Vagos
13 OMG?

14 A. A lot of weapons violations, there were about 300
15 firearms seized on -- close to 300 firearms seized on the day
16 of the take-down. There were -- during the course of the
17 take-down there were approximately 20 kilos of cocaine that
18 were seized, approximately -- there were several assault
19 weapons, there was also a military rigged rocket launcher,
20 then there were several ballistic vests that were seized,
21 military grade.

22 Q. That was an operation that was conducted in Southern
23 California? Or did it extend to Northern California and
24 other states as well?

1 A. It extended to Northern California and other states
2 as well.

3 Q. Eric Bennett was one of the main investigators in
4 that case, based upon your speaking with him?

5 A. He was one of the co-case agents, yes.

6 Q. Thank you.

7 THE COURT: Are you going to ask him if he's formed
8 any opinion about these gangs?

9 MR. CHESNOFF: Objection.

10 THE COURT: I just know -- I just want to get it
11 out.

12 MR. CHESNOFF: I know, but for the record, your
13 Honor, most respectfully. I would rather we only have to
14 deal with them.

15 THE COURT: You're right.

16 MS. PUSICH: I agree, your Honor.

17 THE COURT: You're right, you're both right, it's
18 just --

19 MR. CHESNOFF: I know.

20 THE COURT: Thank you. I won't -- did you have any
21 other questions?

22 MR. HALL: I was going to ask about his opinion as
23 to whether or not this crime was committed for the benefit of
24 a criminal gang.

1 BY MR. HALL:

2 Q. Do you have an opinion on that, based on your
3 training and experience and knowledge of these two gangs?

4 A. Yes, I do.

5 Q. And what is your opinion?

6 A. That yes, on both sides it was committed for the
7 benefit of the respective gangs.

8 Q. All right, and why do you have that opinion?

9 A. Based on all the prior incidents I'm aware of, based
10 on the -- based on my belief that it's based on over turf
11 wars, so to speak, and my knowledge of motorcycle gangs in
12 general.

13 Q. Was part of your opinion based on the fact that
14 there was animosity between the San Jose Hells Angels and the
15 Vagos moving into that area?

16 A. That is also part of it, yes.

17 Q. Is part of your opinion the fact that the Vagos were
18 staying at the Nugget, and the Hells Angels typically stay at
19 another place, that was their national meeting, and there was
20 obvious tension with respect to the Hells Angels being
21 essentially on Vagos territory, that being the Nugget?

22 A. Yes, it was an affront to the Vagos that the Hells
23 Angels were there in their location.

24 Q. And then did you also take into consideration

1 Laughlin, the wedding chapel, Oildale, Arizona, Chino, and
2 those types of things, to establish a code of conduct, as
3 well as particular conduct, status and customs indicative of
4 the outlaw motorcycle gangs, the Vagos and Hells Angels?

5 A. Yes.

6 MS. PUSICH: Your Honor, just for the record, maybe
7 before we get to trial Mr. Hall could ask questions and the
8 witnesses could answer them? I think that was all quite
9 leading.

10 MR. CHESNOFF: Join.

11 THE COURT: And I would have sustained the
12 objection if anyone had objected while he was doing it. I
13 was looking at you, even though I'm not allowed to say
14 anything.

15 MR. CHESNOFF: I understand, your Honor. I'm glad
16 I now understand his case.

17 THE COURT: Okay. Let's try and avoid the leading
18 questions, I'd like the expert to testify for himself. But
19 the record -- the objections were a tad late. It's in the
20 record for the purposes of today's hearing.

21 MS. PUSICH: Your Honor, one other thing. We
22 objected at the time, but we didn't use the case name. In
23 response to your question, then the State then rephrasing, as
24 to whether or not he had an opinion to the ultimate issue in

1 this case, I think under Townsend versus State, no witness
2 can tell the jury the ultimate issue in the case.

3 THE COURT: So your objection is to the opinion as
4 it was stated?

5 MR. CHESNOFF: We join, your Honor.

6 MS. PUSICH: That he concludes that the reason this
7 occurred was for the benefit of the criminal gang.

8 THE COURT: The Court is very aware of that
9 standard, and will review the transcript to see if it's been
10 supported, and if he testified appropriately. I don't really
11 remember the exact question. But it was asked by Mr. Hall,
12 whatever the phraseology was.

13 BY MR. HALL:

14 Q. Mr. Gil-Blanco, you mentioned during the course of
15 your Powerpoint presentation that disrespect is a major
16 consideration among the outlaw motorcycle gangs. Did you
17 perceive any disrespect or any actions by either the Vagos or
18 the Hells Angels during your review of the Nugget video that
19 would be indicative of either organization being
20 disrespectful to the other?

21 A. Yes.

22 Q. And what was that?

23 A. The fact that the Hells Angels were at the Nugget in
24 itself, where it's kind of established that that was their --

1 that was the Vagos' turf, so to speak, or territory during
2 the event, the Street Vibrations where they were having their
3 national meeting. And that was an affront to them. But that
4 was also compounded not only by that, but by the other
5 previous incidents that I delineated, all the previous
6 incidents, the fighting in Oildale, the Santa Cruz incident,
7 and that kind of brought it to a head.

8 Q. Would the culture of these two organizations
9 contribute to the fight and the ultimate murder of
10 Mr. Pettigrew and the shooting of two Vagos?

11 A. Yes.

12 Q. And how did culture dictate the result that we have
13 in this case?

14 A. That you have to do something about it. It gets to
15 the point where you have to take --

16 MR. CHESNOFF: Your Honor, I'm going to object to
17 the relevance of his opinion of what has to be done.

18 THE COURT: Sustained.

19 BY MR. HALL:

20 Q. Would culture be one of the considerations that you
21 would take into consideration to determine whether or not
22 this was actually a gang-related fight?

23 A. It depends on what you mean by culture.

24 Q. Well, what I mean by culture is those -- well, let's

1 take, for example, the rules and regulations that you
2 provided that you found in the clubhouse. Those rules and
3 regulations provide for a specific code of conduct when --

4 A. Let me -- those are not -- what I talked about today
5 were not rules and -- those were kind of guidelines. There
6 are separate rules and regulations that the Hells Angels
7 have. They actually have world rules, U.S. rules, charter
8 rules that they actually have delineated in books setting out
9 the rules. This is more of a guideline philosophy of an
10 outlaw gang member that I talked about today.

11 Q. What rules with respect to the Hells Angels would
12 apply to the situation at the Nugget?

13 A. There's nothing specifically that addresses those --
14 that situation, as far as the Hells Angels rules. It's just
15 in the subculture of the outlaw motorcycle gang. Okay, in
16 other words, that you have to take care of business, at some
17 point you're going to have to take care of business. And one
18 thing, all it takes is one incident, one little perceived act
19 of disrespect to set it off. As you saw in the Laughlin
20 video, where the tensions start building up over the -- over
21 a couple of days, and then it just gets to that point where
22 in the casino they're there together, and one dirty look, one
23 mad dog beating up the other one, and the fight is on. And
24 it just sparks everything, everybody else fighting,

1 shooting --

2 MR. CHESNOFF: Objection, your Honor, assumes facts
3 not in evidence. I don't want to be a witness, your Honor.
4 Those are not facts, your Honor. I thought we were almost
5 done.

6 THE COURT: Okay, I'm going to sustain the
7 objection, I think it went beyond the -- whatever you were
8 asking. I think he did get off point. So I'm going to
9 sustain the objection.

10 BY MR. HALL:

11 Q. Would the incidences that we discussed -- you know,
12 with respect to Chino Valley, Oildale, Santa Cruz -- would
13 those, in your opinion, contribute to the tension between the
14 two groups which would lead to potential problems at the
15 Nugget between the Vagos and Hells Angels?

16 A. Yes.

17 Q. So in your opinion, those could be foundational
18 issues that needed to be resolved, or at least could cause
19 problems between the Hells Angels and the Vagos?

20 MR. CHESNOFF: Objection, leading the witness, your
21 Honor.

22 THE COURT: Sustained.

23 MR. HALL: No further questions.

24 THE COURT: Okay, thank you, sir, you may step

1 down. You're going to have to come back, I don't know when.

2 MR. HALL: Your Honor, I'd like to move for
3 admission of all exhibits so far.

4 THE COURT: Okay. Some I'm sure can be admitted
5 now, some will probably have to be admitted at a different
6 time. So what do we have, Ms. Clerk?

7 MR. CHESNOFF: Your Honor, may I ask the Court's
8 indulgence to review a transcript of this, and then in our
9 written submissions make whatever objections to particular
10 exhibits before you rule?

11 THE COURT: I think for purposes of not having him
12 have to reopen, I have no problem with you all doing that.
13 But I can provisionally accept certain exhibits pursuant to
14 legal arguments that you all may be making. And Mr. Hall can
15 respond to them.

16 MR. CHESNOFF: And I would like to ask, your Honor,
17 they may have already given it to us, so I'm not sure, if
18 we've gotten the affidavit in support of the search warrant
19 that led to the discovery of the material in our client's
20 home.

21 MR. HALL: You know, I know that we provided them
22 with all the police reports.

23 MR. CHESNOFF: Because we may challenge --

24 MR. HALL: I think Mr. Villagrana probably has

1 that, since I think they're required to leave one at his
2 house.

3 MR. CHESNOFF: They're required to leave the search
4 warrant, but generally they keep the affidavit under seal.
5 So I'd make a request, your Honor, that through the court to
6 direct the --

7 THE COURT: This is in San Jose, right?

8 MR. CHESNOFF: Yeah, well, if they're going to use
9 it here we're still allowed to test it.

10 THE COURT: And was this pursuant to this case, the
11 search warrant? Or was it pursuant to a different case?

12 MR. CHESNOFF: I have --

13 MR. HALL: Different case.

14 THE COURT: Okay.

15 MR. CHESNOFF: Then we definitely don't have it,
16 your Honor. But certainly it's Mr. Villagrana's right to
17 contest the search if they're going to try to use things they
18 took -- police took out of his house in this case.

19 THE COURT: So what was the case that the search
20 warrant was exercised in?

21 MR. HALL: That was a case where Mr. Villagrana was
22 accused of carrying a loaded weapon in violation of
23 California code. So he wrecked his motorcycle --

24 THE COURT: So it is a case that is still pending?

1 MR. HALL: It's still pending.

2 THE COURT: In California?

3 MR. HALL: In California.

4 THE COURT: I think you may know about that case?

5 MR. HALL: Filed a little later this year.

6 MR. CHESNOFF: I do, your Honor. And now more than
7 ever I want that affidavit, because I can't figure out how
8 they could get to his house from a traffic accident. So.

9 THE COURT: So you're familiar with the case
10 number, correct?

11 MR. CHESNOFF: Yes, and I know who his lawyer is,
12 so as a courtesy to the State and to the Court I'll make an
13 inquiry as to whether he has the affidavit in support of that
14 search warrant. If he doesn't, I'll let the prosecutor know,
15 and he can help us get it.

16 THE COURT: And also let the prosecutor know the
17 case number and all that, all the identifying marks.

18 MR. CHESNOFF: Yes, your Honor.

19 THE COURT: So for now we're going to leave that in
20 your hands to try to get the predicate between the defense
21 and the State. Now, the clerk was going to tell us which
22 exhibits were actually marked in today's hearing, and may or
23 may not have been admitted as we went.

24 THE CLERK: Exhibit D, which is the three page

1 small photographs, JPEG photographs.

2 THE COURT: That was requested that that be
3 admitted, is that correct?

4 MR. HALL: Yes.

5 THE CLERK: Exhibit E is the larger one-page
6 photograph. Exhibit F is it appears to be a list of phone
7 numbers. In blue, red and black.

8 THE COURT: Did we hear testimony on Exhibit F?

9 MS. PUSICH: Just that it was a phone list, your
10 Honor.

11 THE COURT: Okay.

12 THE CLERK: G is the binder. H is the flash drive,
13 which was admitted. And I is the transcript from Rudnick.

14 THE COURT: So Exhibit I is not admitted in today's
15 hearing, it will be subject to further evidence before its
16 admissibility. H was admitted already, and then the request
17 with regard to -- the rest of the documents, it looks to me
18 like they were all secured pursuant to the search warrant of
19 Mr. Villagrana's home, is that correct?

20 MR. HALL: The phone numbers came out of
21 Mr. Pettigrew's pocket.

22 THE COURT: At the -- upon --

23 MR. HALL: When his clothing was collected in the
24 course of the autopsy.

1 THE COURT: All right, but I don't know what the
2 relevance is of Exhibit F.

3 MR. HALL: Relevance of that --

4 THE COURT: In the testimony we've heard today.

5 MR. HALL: Relevance of that is to show the
6 communication interstate between all the various groups. As
7 you can see, there's all the different chapters are
8 referenced on that telephone list, which would be indicative
9 of communications between the groups. Which is --

10 MR. CHESNOFF: It's an early version of Facebook,
11 your Honor.

12 THE COURT: Okay. Anything else you want to
13 describe, Mr. Hall? Any of the other exhibits? D. E was --
14 where did E come from?

15 MR. HALL: E came from the -- it's a picture of
16 Pettigrew's funeral. So I just happened to look up the date
17 of that, I thought it was interesting because Mr. Tausan was
18 the person who was killed, and I believe that Mr. Villagrana
19 is now riding Mr. Tausan's motorcycle. In addition, there
20 are a couple of Reno local members right there in the same
21 photograph. So again that shows, you know, connection of
22 Hells Angels interstate, communicating, being together.

23 THE COURT: Oh, you mean the fact that there's a
24 Reno Hells Angels at the funeral?

1 MR. HALL: Right.

2 THE COURT: Of the San Jose president?

3 MR. HALL: In addition, it's another felony,
4 another murder that was committed by Hells Angels. So if
5 we're talking about --

6 THE COURT: Has that been shown, that the Hells
7 Angels committed that murder?

8 MR. HALL: It has been shown that there was --
9 there's been an arrested for the murder. I think the
10 evidence -- I don't have police reports of that, but I think
11 it's known knowledge.

12 MR. CHESNOFF: That wasn't in evidence today,
13 number one, your Honor. Number two, the transfer of the
14 motorcycle occurred lawfully through the DMV. That's not in
15 evidence either, that's just something we're being told. I
16 don't think the funeral picture has any relevance to
17 anything, including the alleged expert's testimony.

18 MR. HALL: Well, it shows gang affiliation. Your
19 Honor, the purpose I want to go over it --

20 MR. CHESNOFF: I don't understand something, your
21 Honor. Does the State think we're denying our client is a
22 member of the Hells Angels Motorcycle Club? I mean, where --
23 would be one thing if somebody was saying we're not. We're
24 not saying that. So I don't understand why showing a picture

1 of him at the funeral of his friend, who he watched get
2 murdered, is relevant to these proceedings, your Honor.

3 MR. HALL: So they're going to stipulate?

4 MR. CHESNOFF: To what?

5 MR. HALL: That he's a member of the Hells Angels.

6 MR. CHESNOFF: I don't need to stipulate to it,
7 your Honor. It's their proof, your Honor.

8 THE COURT: Okay, we're ready, we're through,
9 everybody has argued what they want to argue? Because I'm
10 going to give a ruling, and I hate to do it and then you all
11 tell me things I didn't know afterward.

12 All right. E can come in for the sole purpose of
13 this hearing, and to show the affiliation between Reno, San
14 Jose, and the other gang member -- or club member that was
15 identified by the expert. Just to show his knowledge.

16 I'm very concerned, and I don't believe this case
17 has anything to do with the death of the gentleman at the
18 funeral. And we certainly don't want that to infuse this
19 case, and I don't think the expert testified to that.

20 So that really has no relevance, and it's not being
21 introduced for that reason. Or at least it's not being
22 admitted for that reason.

23 I'm going to stick with my provisional admission of
24 the documents that were taken from Mr. Villagrana's home

1 pursuant to a lawful search warrant until it's determined
2 that we shouldn't. I'll let you certainly argue that once
3 you have the search warrant information.

4 And I think that's it for the exhibits from today.
5 Okay?

6 (Exhibit E admitted.)

7 All right. Now, because we have already determined
8 that we are going to have to come back for cross-examination
9 of this witness, and if we're going to have additional
10 witnesses they're going to have to take place -- the first
11 question I have is has all the discovery that needs to
12 happen, happened?

13 MR. CHESNOFF: No.

14 THE COURT: Okay. So you all are looking for more
15 from Mr. Hall or from the State, is that correct?

16 MR. SCHONFELD: Yes, your Honor, as relates to the
17 proposed experts, or the witnesses that they claim are
18 technically experts but aren't percipient witnesses, that I
19 believe the State acknowledges that they have materials they
20 would have to produce in that respect.

21 THE COURT: Okay. And what I would like to do is
22 determine a time to decide the admissibility of any evidence
23 that relates to the gang enhancement or bad act evidence,
24 whichever way it comes in. And I want that hearing prior to

1 the day we start selecting a jury. So we need to get that
2 out there, get the discovery completed, and set the date for
3 the hearing.

4 MR. SCHONFELD: Your Honor, my request would be
5 that the Court first set a deadline for the State to file its
6 motion to introduce that other act evidence for gang
7 enhancement type evidence. We then file a response to it,
8 and then we have a hearing. Because as of today we came in
9 not knowing, until they filed last week on the 19th their
10 opposition, we don't know -- and even in their opposition
11 they don't identify some witnesses. Unnamed United States
12 Department of Justice witness.

13 You know, obviously we need notice. And it's very
14 specific, it's their burden to get the Court's approval in
15 advance of trial that they can bring this evidence in. So if
16 they don't put it in this motion, and Court doesn't address
17 it at the hearing, then it shouldn't be admissible at trial.
18 I think we should have that deadline first.

19 THE COURT: However, the State has put everyone on
20 notice by including in the indictment the allegation of the
21 gang enhancement. Yes, they have to substantiate the proof
22 that will allow this evidence to go before the trier of fact.
23 But I don't think it's their responsibility to say we're
24 going to do a gang enhancement. They've already said that.

1 MR. SCHONFELD: No, but it's their responsibility
2 for example, your Honor, to suggest -- I'll give one
3 example -- that they're going to call Detective Long, who is
4 the lead detective in what's been termed the Laughlin case.
5 If they actually plan on calling Detective Long as a witness,
6 he has absolutely no percipient witness knowledge of this
7 case, probably doesn't even know who Mr. Villagrana is except
8 for maybe hearing about this case. So clearly his testimony
9 is going to be in the form of an expert or type of expert
10 witness.

11 They have to give us notice of that. They have to
12 give us notice that they plan on calling Detective Long, what
13 he's going to testify to, that they intend to introduce
14 police reports or video from Laughlin through his testimony.
15 Because that's other acts, our client wasn't there, he had
16 nothing to do with it. And the Court has to make a decision,
17 obviously, before this goes to the jury as to whether or not
18 that comes in. And that's what Petrocelli and the other
19 cases, 404(b) type cases, in federal court makes clear. They
20 have the burden, and the Court makes a determination.

21 THE COURT: We'll let Ms. Pusich argue, then you
22 can argue, Mr. Hall.

23 MS. PUSICH: Your Honor, we would join in the
24 request Mr. Schonfeld has made. The other piece of evidence

1 that I'm confident we don't have that I think we should,
2 you're going to hear evidence I believe from other witnesses
3 regarding telephone calls that were intercepted in which my
4 client is speaking. Those can only be done pursuant to a
5 federal court order, and I have no documentation regarding
6 the application or order that authorized those.

7 So before anything is brought before the Court with
8 respect to the intercepted phone calls, I'd ask for the
9 foundational information for how the State obtained them.

10 THE COURT: How do you know there were intercepted
11 telephone calls?

12 MS. PUSICH: They've given us summaries in police
13 reports, your Honor, and they've described them as coming
14 into their control that way.

15 THE COURT: And this was pursuant to a federal
16 search warrant?

17 MS. PUSICH: Yes, your Honor, that's my
18 understanding.

19 THE COURT: Because you know it can be secured
20 through a state search warrant, too.

21 MS. PUSICH: And your Honor, it's part of --

22 THE COURT: Not that I had anything to do with it.

23 MS. PUSICH: No, I understand. It's in California.
24 But it's part of the Fusion Center and the interrelated law

1 enforcement agencies. Paperwork that we've been provided
2 suggests that it's pursuant to a federal court order, but
3 whoever's order it was pursuant to, we'd like to see it.

4 THE COURT: Have you received the actual
5 transcript?

6 MS. PUSICH: Just summaries of what was said, your
7 Honor.

8 THE COURT: In Nevada case law you're entitled to
9 the actual transcripts, I don't know about federal.

10 MS. PUSICH: I don't, either, your Honor, it's just
11 in these myriad police reports we've been provided there
12 are -- and I believe mostly from Mr. Bennett, who may be here
13 at the next hearing, he was at the bail hearing, that these
14 phone calls were intercepted and he relies on some of what
15 was said during those phone calls to reach some of his
16 opinions regarding Mr. Gonzalez.

17 THE COURT: Okay. Whether or not, Mr. Hall, you
18 agree that the transcript of those telephone calls need to be
19 provided to the target or the person who is speaking on the
20 call, pursuant to the federal law, whether or not you agree
21 with any of that, or whether or not you think the search
22 warrant that was secured in order to do the wiretap is
23 discoverable, I think it is for sure discoverable which court
24 issued the wiretap warrant.

1 And then perhaps it is something that the State --
2 I'm not sure what the federal law is on it, with regard to
3 your responsibilities as the prosecutor. But I think the
4 defense certainly has a right to explore what that is, and
5 they can't do it without knowing who issued the search
6 warrant.

7 So you need to provide the search warrant data, at
8 least in terms of who -- where it was secured, what
9 jurisdiction, what court, what case number, et cetera, so
10 that they can conduct their own discovery. If for some
11 reason you do not feel it is appropriate for you to disclose
12 it, or if you don't have it or are unable to get it.

13 MR. HALL: I'll tell you I don't have it, first of
14 all. I don't know if that's something I was going to use as
15 incriminating evidence with respect to Mr. Gonzalez. But I
16 will certainly get that information to the defense in a
17 timely fashion.

18 THE COURT: Okay. One of the things is that -- and
19 then the other thing that you didn't have was -- there was
20 something else you also named. You don't have any of the
21 search warrants of Mr. Villagrana's home, correct?

22 MR. CHESNOFF: Correct.

23 THE COURT: And were going to get those.

24 MR. CHESNOFF: Hopefully, but obviously I'm going

1 to try to do that as courtesy to everybody. But it's still
2 incumbent, if I can't, for the State to produce it if they
3 intend on using the fruits of the search. But I'll try to
4 get it so that it's one less thing for the State to have to
5 do.

6 THE COURT: Okay. Clearly, the statute discusses
7 an expert testifying as to specific instances, based upon
8 their opinions. However, how far we're going to go into
9 specific instances has not been explored, and clearly we need
10 to do that. And I will have to make a decision in that
11 regard.

12 So as you supplement your pleadings, rather than
13 just saying any discussion, obviously, of prior specific
14 instances is not appropriate -- you could certainly say that,
15 but perhaps you need to look at the realistic application of
16 the statute. And the -- and I'm looking at defense now --
17 the realistic way that we can keep this trial manageable, and
18 still follow the statute and deal with the relationship of
19 the proof to the case.

20 MR. CHESNOFF: With no disrespect intended, your
21 Honor, it's even conceivable that after our cross you may not
22 find him to be as expert.

23 THE COURT: There's always that.

24 MR. CHESNOFF: But we'll do it step by -- that will

1 be our ultimate goal, and then our secondary goal will be to
2 at least address the question of more prejudicial than
3 probative as one of the important things for the Court to
4 consider. In regard to the different examples that the
5 gentleman said he would like to talk about, and the State
6 would like to adduce. We understand.

7 THE COURT: Okay. Now, we have currently a trial
8 set in this matter in March. So when you think about that,
9 that means the month of February is trial prep. So we have
10 to resolve these issues in the next month or two. And I'm
11 not sure what the timeline is for securing all the evidence
12 to the defense, and getting ready for the remainder of the
13 issues that you may want to present, Mr. Hall, in support of
14 the gang enhancement evidence.

15 MR. HALL: I think the Court identified an issue
16 that needs to be addressed, and I'd like some guidance.
17 Specifically, you know, when they -- the defense talks about
18 a trial within a trial, and they talk about 48.045 and
19 character evidence, I think if you look at Somi, Somi says,
20 excuse me, this is not character evidence. This is gang
21 enhancement evidence.

22 So the defense gets up and says, oh, you know, we
23 have to show by clear and convincing evidence, then we're
24 going to have to establish the Tinch criteria or Petrocelli

1 criteria, that's not necessarily true. I think the Court
2 does need to determine whether or not the probative value of
3 the evidence is not substantially outweighed by its
4 prejudicial effect. I agree with that, that's what I put in
5 my pleading that we need to have this hearing.

6 The point is how much foundation do we need to
7 prove. I've provided the police reports. With respect to
8 the incidences that we've identified in the Powerpoint
9 presentation, those are documented by police reports. So
10 there really isn't any question that like the shootout in
11 Arizona happened, there is really no question there was a man
12 murdered in Oildale, another fight between Vagos and Hells
13 Angels. So I think by virtue of the police reports, those
14 things happen.

15 I provided that information in the police reports
16 to the defense so they -- you know, are assured that we can
17 meet the burden of clear and convincing evidence, and I
18 listed those detectives and investigated that to -- and I can
19 call them, if need be, to establish the clear and convincing
20 portion of the Petrocelli analysis. Although this isn't
21 necessarily Petrocelli. I think by virtue of the police
22 reports we know this has happened, and we know that the
23 purpose or at least my purpose for admitting the evidence is
24 to meet the factors listed in the gang enhancement statute.

1 So I'd like some guidance how far down that road we have to
2 go.

3 That's one of the reasons I didn't want to continue
4 this case, this hearing for today. Because no matter how
5 much discovery was provided to the defense, it wasn't going
6 to be enough. There was always going to be something else
7 that they don't have, or they want or claim they want once
8 they have the things that I provided.

9 So I wanted to get a -- some guidance from the
10 Court to determine how far we're going to go to establish
11 clear and convincing evidence.

12 Obviously, we're going to have an expert testify
13 regarding their opinions, and I think Eric Fentz' (ph)
14 opinion or Fosman's opinion is going to be consistent with
15 the opinion of Jorge Gil-Blanco. And those are the people
16 who have been primarily involved in the investigation of
17 certain crimes involving the Hells Angels and Vagos, that's
18 why we identified those people.

19 Other witnesses are simply fact witnesses that
20 establish what happened, as far as foundation. So am I going
21 to be required to establish foundation, which I think is
22 going to turn this into a trial within a trial, when we don't
23 really have an issue of clear and convincing evidence? Or
24 are we going to be able to present the fact that these

1 incidents did happen, and go from there?

2 MR. CHESNOFF: Your Honor, first of all, the State
3 in its response, it's called the opposition to request for
4 disclosure of proposed gang enhancement evidence and
5 witnesses, said specifically we suggest you determine whether
6 the evidence is relevant, is proven by clear and convincing
7 evidence, and its probative value is not substantially
8 outweighed. So they've already conceded that, although they
9 just backtracked on the fact they've conceded that.

10 MR. HALL: I think that's what I just said.

11 MR. CHESNOFF: I'm talking, your Honor.

12 THE COURT: One person at a time.

13 MR. CHESNOFF: The problem I'm having, your Honor,
14 is he has a burden. Meet your burden. You decide if he
15 meets it. We're not going to -- most respectfully, your
16 Honor, ask -- have a situation where you're advising them how
17 to proceed with their prosecution. Your Honor --

18 THE COURT: Not my preference.

19 MR. CHESNOFF: I understand. And your Honor, it's
20 not our fault that they want to introduce something from 14
21 years ago from some Arizona police officer. Do they plan on
22 calling the officer? That's why they were supposed to file
23 something, your Honor, so they could tell you how they
24 planned on doing this. So that we could intelligently

1 respond.

2 That hasn't happened. And to suggest that we're
3 going to just keep asking for things, your Honor, I can
4 promise you, I'm going to keep asking for things,
5 Mr. Schonfeld is going to keep asking for things, and from my
6 watching my colleagues here, I'm confident they're going to
7 continue to ask for things. If we're lawfully entitled to
8 them.

9 I've done 404(b) hearings before, your Honor, for
10 33 years. If you want to introduce 404(b) evidence, you meet
11 the standard, and then you give discovery. And if that means
12 that you have to give Jencks material in the federal court or
13 prior statements or grand jury, that's the burden that you
14 have, if you want to go down that road.

15 But you can't go down that road and cut us off on
16 the road. And so if they're not clear on how they do this, I
17 can tell you right now, your Honor, this gentleman testified
18 about things that when we cross-examine him, there are cases
19 that have been dismissed, people were found not guilty.
20 He -- with all due respect, he has an agenda, I understand
21 that, but he's not always right. And in a large part, he's
22 wrong. And when your Honor hears that, we may not have him
23 as an expert.

24 But at some point in time, they have to understand

1 if they're going to try the Hells Angels or they're going to
2 try the Vagos, to try to convict these people of what
3 happened there, then they need to produce -- I mean, the
4 agents from the ATF case that are in that volume, some of
5 them got kicked off. Cases got thrown out because they did
6 discovery. I mean, we need that. I want to -- we're going
7 to have this stuff, the Reno jury needs to hear that the
8 police officers involved are not necessarily always -- he
9 just said we have a police report. So what? Police officers
10 unfortunately lie all the time. There needs to be a concrete
11 response from them in writing to you as to what they intend
12 on producing, how they intend on producing it, and what the
13 evidence is to back it up. And then we can defend it, your
14 Honor. But that's how the system works.

15 THE COURT: Okay. Ms. Pusich?

16 MS. PUSICH: Your Honor, I won't restate what
17 Mr. Chesnoff said; we agree. The only thing that caught my
18 attention separate apart from what he's described is the
19 State's comment several times they provided the police
20 reports, and they believe the police reports are clear and
21 convincing evidence. For the most part, police reports are
22 hearsay, your Honor. And while that may be admissible in
23 this hearing and it may be admissible if there were a
24 sentencing hearing, it's not normally admissible before the

1 jury.

2 THE COURT: Okay, this is a clear case, the purpose
3 of today's hearing is different than before the jury. The
4 differences between a Petrocelli or Tinch hearing is
5 different than what actually goes before a jury. There's
6 threshold determinations that the Court hears prior to the
7 jury ever getting to the issue.

8 I think the Court's belief that one of the things
9 that was offered today that will be very helpful is the
10 proposal that we bifurcate the trial. I'm going to seriously
11 look at that. Because I think it may in fact help resolve
12 many issues, whether there is a conviction or not, but a
13 bifurcated trial eliminates a lot of issues with regard to
14 the gang enhancement statute, that I may not believe have
15 been litigated in the state yet.

16 So many of the issues, if there's already a
17 determination of guilt prior to gang enhancement evidence
18 being presented, may be of benefit to both sides.

19 So I'm going to consider that. And you certainly
20 should consider placing that in your supplemental briefing
21 that you're going to do. And then Mr. Hall, I don't know if
22 you like the idea or don't like the idea, but certainly you
23 can respond to their suggestion, and give me the reasons why
24 it might or might not work, from your perspective.

1 That still gets us down to the briefing schedule of
2 how we're going to get there. And we need to set that
3 timeline.

4 This is October 29th. I think this week is
5 probably, the rest -- the remainder of this week is probably
6 not a week that we're going to be dealing with a lot of
7 litigation from the State's perspective in this matter. Now,
8 I know that you've requested a stay, right, Mr. Schonfeld?

9 MR. SCHONFELD: Your Honor, we have filed a motion
10 for stay.

11 THE COURT: But you haven't offered anything,
12 right?

13 MR. SCHONFELD: Excuse me, your Honor, we actually
14 filed a motion for stay in this court as it related to the
15 Marcum and writ issues. The Court had already denied the
16 motion for stay as related to the severance. We have filed
17 the writ in the Nevada Supreme Court addressing all issues,
18 and we have also filed a motion for stay in the Nevada
19 Supreme Court. But procedurally, this Court I believe will
20 have to rule on the motion for stay as it relates to the
21 denial of the writ and Marcum issues.

22 The short answer is we have filed in the Nevada
23 Supreme Court. But my concern is that the court hasn't ruled
24 on the stay as it relates to the writs.

1 THE COURT: I thought I had ruled on that.

2 MR. SCHONFELD: I had only seen the ruling as it
3 related to the --

4 THE COURT: Marcum?

5 MR. SCHONFELD: Severance.

6 THE COURT: Severance? Okay.

7 MR. FREY: That's also true with respect to our
8 motion to stay, your Honor. We'd like to have you rule on
9 two motions to stay. You ruled on the motion to stay as it
10 relates to the severance, but we wanted to take all the
11 issues up in conjunction with one another, so we're still
12 awaiting that ruling.

13 THE COURT: Not submitted.

14 MR. FREY: I believe that I submitted our part with
15 respect to Mr. Gonzalez.

16 THE COURT: Okay. So as to Mr. Villagrana, I'm
17 sorry, it never got submitted. So I didn't realize that you
18 were waiting for another ruling. And that's fine, you can
19 just submit it, you don't need to plead something different,
20 it's just based on the motion. That you must have already
21 made.

22 MR. SCHONFELD: We filed it, the State filed their
23 opposition, your Honor.

24 THE COURT: Okay. When do you think you filed your

1 submission on Mr. Gonzalez?

2 MR. FREY: I would estimate maybe three weeks ago
3 tomorrow.

4 THE COURT: We don't have it in the record. I can
5 tell you we don't have it in the record. Whether or not we
6 should have it in the record, I don't know. It could have
7 been filed and it was just missed. The clerk's office --
8 when those get filed, the clerk's office submits them to us,
9 and puts the document on a specific list. If it doesn't
10 happen, we don't get it. So.

11 The reason I ask was just to see if you had gotten
12 any kind of sense from the supreme court, because obviously
13 once we get a stay, if we do get a stay from the supreme
14 court, this briefing schedule I'm going to give you, if it is
15 entered as to both or one, kind of puts everything on hold.

16 MR. SCHONFELD: Right. No indication as of yet,
17 your Honor.

18 THE CLERK: The only thing I'm showing under
19 submission at this point that was submitted by a request for
20 submission is the defendant's motion to compel. The
21 defendant's second motion to dismiss. The defendant's
22 request for clarification or supplemental order of State's
23 opposition, and defendant's reply. And that's all filed for
24 submission.

1 MR. FREY: I could have sworn I did, it wasn't
2 stored in motion practice there, so we'll be sure to follow
3 up with that.

4 THE COURT: Okay, thank you. Assuming there is no
5 stay granted either by the U.S. Supreme Court I'll go ahead
6 and set up a briefing schedule just to be sure we have that.

7 So Mr. Hall, you I think were questioning what we
8 were going to brief?

9 MR. HALL: Well, my position is this, this isn't
10 prior bad act evidence, and a Petrocelli hearing is not even
11 required. We could have just gone to trial and said okay,
12 I'm going to try to prove my gang enhancement, and here we
13 go. But I thought it would save time if we had a hearing and
14 discussed it before we go in.

15 So my position is that I want to present some other
16 evidence, I want to give the Court an opportunity to review
17 that evidence in light of Mr. Gil-Blanco's testimony, so I
18 have probably two other witnesses that I'd like to present in
19 support of those other acts that we've identified.

20 And, you know, I'm thinking if we had probably a
21 month and a half, that would give me time to get the wiretap
22 information and the search warrant for Mr. Villagrana, and
23 give everybody time to file their briefs.

24 THE COURT: Yes?

1 MR. FREY: Judge, I just want to be absolutely
2 clear, because I do not want a miss an issue when we do our
3 supplemental briefing. It sounds like, number one, the legal
4 issue before the Court is the extent to which gang
5 enhancement evidence under 193.168 is intertwined with in
6 some sense 48.045. The State has already conceded, as
7 Mr. Chesnoff noted, that the standard of proof appears to be
8 the same as showing -- is also the same. If your Honor would
9 like briefing on the issue, which has already been conceded
10 by the State, we can certainly do that.

11 THE COURT: Well, this, there's one case, the Somi
12 case, it reverses on other completely different grounds, and
13 basically begins that it wasn't character evidence, therefore
14 there was no error in not giving a limiting instruction.
15 Although there was a limiting instruction given in the case
16 actually sua sponte by the court. So really, where we're at
17 in this state on this issue isn't real clear.

18 So I do believe that we are on very, very new
19 ground in terms of what the supreme court is really going to
20 say when the case is completely contested and is not
21 reversible on any other easy issue, but this one. So I will
22 very carefully review the issue, and how it interrelates with
23 character evidence.

24 Whether it's character evidence or not in the

1 federal court, it still has to be more probative than
2 prejudicial. And so we still have to deal with that, and I
3 still have to find certain thresholds of the reliability of
4 the evidence.

5 So we are going to be going down this road, whether
6 we call it character evidence or gang enhancement evidence.
7 It's one of the reasons that I think the idea of bifurcating
8 the trial is a good one, because then we don't infuse any
9 issues that the supreme court hasn't already ruled on into
10 the guilt penalty of the case -- the guilt phase of the case,
11 as opposed to the penalty issues. But clearly under the
12 statute, the trier of fact has to make the finding with
13 regard to the gang enhancement.

14 So yes, you need to talk about it. You need to
15 talk about it, and I would suggest that you look at the
16 federal court. Because what we have in the State of Nevada
17 right now is not going to convince me one way or another.

18 MR. CHESNOFF: There's good Ninth Circuit on this.

19 THE COURT: I'm aware of -- but there's also other
20 circuit courts, and there's other reasoning. So this is --
21 this is a very interesting legal issue. I want you to go in
22 as much depth as you feel is necessary in order to make the
23 record, because what decision we reach here I think well
24 could be considered later by our supreme court. And I prefer

1 to get affirmed. On everything that you have.

2 MR. FREY: We understand, judge. So it sounds like
3 the defense will be filing the motion, or will the State be
4 filing the motion as to the legal issue that you just
5 articulated?

6 THE COURT: It doesn't -- I don't know if it really
7 matters who starts the motion practice. I do believe that
8 the State has basically started it by filing the gang
9 enhancement. But I do also understand that at this point the
10 defense has no idea what evidence the State wants to put on
11 in support of the gang enhancement. We do have some
12 testimony, and Mr. Hall's objection to your motion.

13 MR. FREY: Certainly. I think that went far
14 enough. I would propose we do two things, your Honor. I
15 have no problem filing the motion on the substantive legal
16 issue that we were just talking about. But I would request
17 that the State, as Mr. Schonfeld mentioned, file a motion,
18 being as specific as possible as to what witnesses it will be
19 calling. If they're experts, include those expert witness
20 disclosures pursuant to NRS 174.234. If there are fact
21 witnesses, what are those fact witnesses. If there is some
22 sort of open issue as to whether or not certain fact witness
23 will actually be used as experts, in particular CI 67 and
24 Gary Stuart Rudnick, then they need to include expert witness

1 disclosures if they're proposing and using them as such.

2 So I think two filings will be made, one by the
3 defense and one by the State, judge.

4 THE COURT: Okay. With regard to NRS 193.168, I'm
5 going to order that the State provide a motion to use
6 evidence in support of NRS 193.168. That motion has to be
7 filed with specificity as to experts. One for any other kind
8 of evidence you want to put on. I don't know if you want to
9 bring in patches, vests that you confiscate. Whatever it is
10 that you want to put on in support of NRS 193.168 that could
11 arguably be determined to not be factually based on this
12 particular incident.

13 I'm not talking about -- there may well be
14 cross-over between the actual incident that's being tried and
15 the enhancement that's being requested. I'm not talking
16 about cross-over evidence, I'm talking about specific
17 evidence that's only being solicited and the only relevance
18 is in support of NRS 193.168. The only relevance of the
19 evidence and admissibility of the evidence is based on that
20 statute.

21 And then the defense can certainly, in their
22 opposition, will tell me why I should not allow that kind of
23 evidence under 193.168. And why it isn't probative, and it
24 is highly prejudicial and questionable, suspect evidence, et

1 cetera. And then the State is going to tell me in their
2 reply why the defense is wrong. And then we're going to have
3 a hearing where I actually hear the evidence that they want
4 to put on, with regard to the specific, if there's experts.
5 Or if there's prior incidents, specific instance of conduct.
6 I need to hear that evidence to make a determination of its
7 probative value.

8 Now, with the gang enhancement, we all know there's
9 a huge probative value here, it's really a question of
10 prejudicial effect. But the probative nature of the evidence
11 with the pleading of the gang enhancement is there. So it's
12 just whether or not it's more prejudicial than probative.

13 And you certainly can argue how this should be
14 weighed, should it be weighed in a similar situation as
15 Petrocelli, even though it's not character evidence.

16 MR. FREY: Would you like that in our opposition?

17 THE COURT: Yes, that should actually be in your
18 opposition.

19 MR. CHESNOFF: Your Honor, when will we see the
20 witness again?

21 THE COURT: When will we see each other again,
22 right? That's the question. How long does the State -- what
23 would the State like? Since this is a pleading, the State is
24 going to initiate with specific stuff. And I know you're

1 somewhat ready to do that today, and you were getting very
2 close to it. What would the State ask for that deadline to
3 be?

4 MR. CHESNOFF: Your Honor, I know you prohibit cell
5 phones --

6 THE COURT: You want to look at your calendar, go
7 ahead.

8 MR. CHESNOFF: That, and try to text something to
9 my secretary so we can get flights changed.

10 THE COURT: Okay.

11 MR. CHESNOFF: Thank you.

12 MS. PUSICH: Your Honor, while they're checking
13 their calendars, perhaps the other major issue that the Court
14 has identified here today, we can initiate. And that would
15 be the issue to bifurcate.

16 THE COURT: Yes, that would certainly be something
17 that you would want -- sort of was raised today by
18 Mr. Villagrana's counsel, but I don't think in the formality
19 of a motion.

20 MR. SCHONFELD: For the record, your Honor, we did
21 put it in our motion to exclude. That that was filed
22 recently as a result of the October 19th filing, so we raised
23 those issues in the further proceedings.

24 MR. HALL: Could we go out to January? January

1 20th?

2 THE COURT: For filing your pleadings?

3 MR. HALL: Right. I've got a murder trial that
4 starts next month. And then I go on vacation over the
5 Christmas holiday, and be gone for about two weeks. So that
6 really --

7 THE COURT: I don't think we can get it done by
8 March 5th. If you file it -- the 20th is Sunday, so it would
9 be the 22nd, and then 10 judicial days would be February 4th.
10 So we'd only be two weeks before trial, and there's no way we
11 can make these decisions two weeks before trial. So come up
12 with a little bit -- you have a murder trial the month of
13 November?

14 MR. HALL: December 3rd. And it's that alleged
15 murder of Jared Hyde out at Lemmon Valley, so there's -- it
16 was during the course of a keg party, so there's 40
17 witnesses, and boxes of transcripts.

18 THE COURT: Is that multiple people?

19 MR. HALL: Yes, three defendants.

20 THE COURT: When do you get back? Well, you'll be
21 gone, right?

22 MR. HALL: I'll be gone until 6th of January.

23 THE COURT: Have you made contingency plans in case
24 you are not in the DA's office?

1 MR. HALL: I withdrew.

2 THE COURT: Oh. I didn't know that. Okay.

3 MR. HALL: So I could do this.

4 THE COURT: Okay. I was going to look at
5 Mr. Stege's calendar.

6 I can't go out to January -- we can't go that long
7 because we really need to have more closure on some of these
8 issues closer to -- further away from trial. With so much
9 evidence involved.

10 So I think we have to go out -- I mean, the latest
11 I could look at would be January 10th.

12 MR. FREY: I think that would work from our
13 perspective, your Honor. I would just remind the Court that
14 I think the timeline that we're talking about right now
15 should build in the consideration of discovery and a filing
16 deadline 20 days before the hearing at a minimum. Actually,
17 I'd like to track the expert witness disclosure statute in
18 NRS 174.2342, 21 days before the hearing we are to have all
19 discovery that is pertinent to the hearing and all the notice
20 that the State can provide.

21 THE COURT: Well, I'm actually going to order that
22 the State provide its initial pleading January 10th, and that
23 all discovery is provided then, that supports it.

24 MR. FREY: Very well.

1 MR. HALL: Doesn't that statute say it's got to be
2 21 days before trial? Not the hearing?

3 MR. FREY: It does, your Honor.

4 THE COURT: For an expert, yeah.

5 MR. FREY: You can supersede that by court order,
6 and I've discussed that in my reply.

7 THE COURT: Is there some reason why you don't
8 think you can provide the discovery with regard to this
9 issue --

10 MR. HALL: I think I can. I'm just saying, you
11 know, that the defense is arguing oh, yeah, you should have
12 provided that 21 days before the hearing. There's never been
13 that ruling.

14 THE COURT: Correct.

15 MR. HALL: And that's not the statute, and he's
16 kind of insinuating that there has been that order. There's
17 never been that order.

18 THE COURT: There hasn't. So what I am ordering
19 now, if that date works, if we do January 10th for the
20 pleading and discovery to be provided, then we would be --
21 the 10 days after that, counting the holiday, would be
22 January 23rd. No, I'm sorry, January 25th for the defense to
23 oppose the motion, and pleading. And then the State would
24 have five days to reply, which puts us into the beginning of

1 February. Which is only 30 days before trial.

2 MR. CHESNOFF: And when would we cross-examine?

3 THE COURT: That would have to be then, I guess.

4 But as we discussed in chambers, if new counsel comes in,
5 it's my understanding they're in trial in February. Was that
6 correct?

7 MS. PUSICH: Your Honor, that was what he
8 discussed, although he's actually been discussing coming into
9 the case for about eight months and hasn't yet. However, I
10 do have a question with respect to making the arguments
11 before we complete the cross-examination of the witness.

12 THE COURT: Which argument? You mean about his
13 admissibility? No, I'm going to have you argue that when the
14 hearings are all done.

15 MS. PUSICH: So it's not part of the briefing.

16 THE COURT: No, no. What you're going to be
17 arguing is what experts generally should be able to say, what
18 the evidence -- Mr. Hall is going to tell you I'm going to
19 call -- and you know he's called one witness, and this is
20 what he wanted him to say. He's certainly going to tell you
21 what other witnesses he's going to call, et cetera.

22 MS. PUSICH: So we'll make the arguments regarding
23 the witness's qualifications and the specifics of their
24 testimony after the cross-examination is concluded.

1 THE COURT: Right. But the general area of inquiry
2 I think you should be talking about, whether or not that's
3 appropriate for an expert, you've already raised that issue.
4 And what the expert can talk about under the statute versus
5 under the case law.

6 I'm still a little concerned about this February
7 4th date, 30 days before trial. That seems pretty short.

8 MR. CHESNOFF: Could I speak the unspeakable? Can
9 we -- can we move the trial date?

10 MS. PUSICH: Your Honor, from our perspective of
11 the person in custody, he says yes, and that may be more
12 compelling than the people who say yes who aren't. But he
13 has no objection to moving it later, to get this concluded
14 before trial begins.

15 MR. HALL: I don't think there's that much gang
16 evidence, I think we covered most of the ground today.
17 There's a couple other experts, I could bring in the
18 witnesses and establish what I need to establish. Are we
19 going to have another hearing, or are we just going to submit
20 it on the pleadings?

21 THE COURT: No, we're going to have another
22 hearing, and you can put on any witnesses that you want to
23 put on.

24 MR. HALL: Okay.

1 THE COURT: That's what I'm saying, is there any
2 way to get those pleadings done earlier?

3 Because that's really what's driving us getting
4 this date so late, is not being able to get the pleadings
5 done. If we could get those pleadings -- the initial
6 pleadings from the State done by the end of November, that
7 would certainly -- that would put us into some arguments the
8 end of December, maybe the beginning of January, rather than
9 the beginning of February. Then we would not have to -- it
10 would not require a continuance of the trial.

11 MR. STEGE: Could I ask your Honor, do we have to
12 put on all of our gang evidence at this hearing, or is it
13 going to be sufficient that we identify it in the pleadings?
14 Otherwise we're doing it twice, we're basically having two --

15 MR. CHESNOFF: Your Honor, shouldn't they do
16 whatever they think they have to do?

17 THE COURT: Yes.

18 MR. CHESNOFF: Thanks.

19 MR. HALL: I'll do whatever I think I have to do.

20 THE COURT: Just roll the dice.

21 MR. HALL: Yeah. And then I mean, you know, I
22 don't think we really to have put them all on so they can
23 cross-examine them twice, that's never been the rule, you
24 know. Petrocelli only requires clear and convincing, and I

1 can try to meet that burden any way I want. And then I'll
2 just have to roll the dice and see if you agree with me.
3 That's what I'll do.

4 MR. CHESNOFF: I agree with that, and we can always
5 have mistrials.

6 MR. HALL: Well, we sure can.

7 THE COURT: Okay, gentlemen. Can we shorten -- can
8 we get this brief done sooner by the State? That would mean
9 that we could have our oral arguments the beginning of
10 January, and the evidence the beginning of January rather
11 than the beginning of February. Which would save the trial
12 date.

13 MR. HALL: We'll just give the trial a month and
14 keep that date.

15 THE COURT: How many weeks do you want to set this
16 for? How many weeks do we have it?

17 MS. PUSICH: We have it set for three right now
18 with both of us joined.

19 THE COURT: I had a four week trial starting April
20 8th. That's I think why we picked so much, so we could be
21 sure we could -- you know, we can usually bump little things,
22 but three and four week trials are very difficult to have
23 another judge cover.

24 Do you want me to issue an order? I know we're

1 having trouble finding a date.

2 MR. HALL: Did you have in mind issuing an order
3 continuing the trial and setting a briefing schedule, or did
4 you have in mind just to go ahead and set a briefing
5 schedule?

6 THE COURT: I had in mind just to set the briefing
7 schedule. I'm not really enthusiastic about continuing the
8 trial. Every time we continue the trial we get more
9 discovery, we get more stuff filed, more briefs filed.

10 MR. HALL: Just set a briefing schedule.

11 THE COURT: I just think it's better to set the
12 briefing schedule, I'll do it in writing. I've tried to be
13 clear, but maybe I can make it more clear that way.

14 MR. HALL: Okay.

15 THE COURT: We'll set a briefing schedule, we'll
16 set the hearing, hopefully you'll all be able to clear your
17 calendar to be at the hearing date. If new attorney comes
18 in, hopefully they'll be able to also. I just don't see how
19 I can coordinate it all and keep that trial date without it
20 going out aways. And I think this should be tried, we should
21 just get it done.

22 MR. HALL: Agreed.

23 THE COURT: Right or wrong, certainly hopefully
24 it's right, but -- so we'll just come up with a -- I'll look

1 at the calendar and figure out a date. I don't know where
2 all of you are in the beginning of January. And I know
3 Mr. Hall will be gone the first week of January.

4 MR. HALL: Right.

5 THE COURT: Probably around the second week. Are
6 you all available the second week of January, that is 7th
7 through the 11th?

8 MS. PUSICH: Your Honor, I'm here the 7th through
9 the 10th.

10 THE COURT: Okay.

11 MR. CHESNOFF: January will be fine, your Honor.

12 THE COURT: We'll try to get that out. And you'll
13 get the notice of submissions on those days that you
14 requested, and we'll continue the date. It will be the 7th
15 or 8th of January, we'll let you know.

16 Mr. Hall, will your witness be available for
17 cross-examination those dates?

18 MR. HALL: I don't know.

19 MR. STEGE: He's nodding yes.

20 THE COURT: Great. And we'll get that notice to
21 everyone and hold the date until you get the written order.

22 MS. PUSICH: Thank you, your Honor.

23 THE COURT: Anything else for today?

24 MS. PUSICH: No, thank you.

1 MR. STEGE: Mark the Powerpoint as an exhibit?

2 THE COURT: Do you have it?

3 MR. STEGE: No, but we will.

4 THE COURT: Okay, the Powerpoint will be submitted
5 to the Court in written form, and will be marked as an
6 exhibit to reflect what we saw. So when you get the
7 Powerpoint, counsel, be sure to review it. If you see any
8 problems in it, let me know. Otherwise it will be admitted
9 as submitted.

10 MR. FREY: Thank you.

11 THE COURT: Court is in recess.

12 (Proceedings concluded.)

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1 STATE OF NEVADA,)
2)
3 COUNTY OF LYON.)
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5

6 I, MARCIA L. FERRELL, Certified Court Reporter of the
7 Second Judicial District Court of the State of Nevada; in and
8 for the County of Washoe, do hereby certify:

9 That I was present in Department No. 4 of the
10 above-entitled Court and took stenotype notes of the
11 proceedings entitled herein, and thereafter transcribed the
12 same into typewriting as herein appears;

13 That the foregoing transcript is a full, true and
14 correct transcription of my stenotype notes of said
15 proceedings.

16 Dated at Fernley, Nevada, this 9th day of November,
17 2012.
18
19

20 /s/ Marcia L. Ferrell
21 Marcia L. Ferrell, CSR #797
22
23
24

1713

40

1 Code No. 4185

2
3 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

4 IN AND FOR THE COUNTY OF WASHOE

5 THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

6 -o0o-

7 STATE OF NEVADA,)

8 Plaintiff,)

9 vs.)

10 CESAR VILLAGRANA and)
11 ERNESTO GONZALEZ,)

12 Defendants.)
13

Case No. CR11-1718A
CR11-1718B

Dept. No. 4

14 TRANSCRIPT OF PROCEEDINGS

15 Evidentiary Hearing

16 Tuesday, January 8, 2013

17 Reno, Nevada
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23

24 Reported By: SUSAN CULP, CCR No. 343
Captions Unlimited of Nevada, Inc. (775) 746-3534

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1 RENO, NEVADA, TUESDAY, JANUARY 8, 2013, 10:06 A.M.

2 -oOo-

3
4 THE COURT: This is the time set for continued
5 motion hearings on Case Number CR11-1718 A and B.

6 Counsel, are you ready to proceed?

7 MR. FREY: We are, Your Honor.

8 THE COURT: Is the State ready to proceed?

9 MR. HALL: State is ready, Your Honor.

10 THE COURT: Okay.

11 MR. SCHONFELD: Yes, Your Honor.

12 THE COURT: I think the first thing we should do is
13 maybe finish the cross-examination of the officer that was
14 on -- the expert that was on the stand.

15 MR. HALL: All right.

16 THE COURT: So, is he here and ready to go?

17 MR. HALL: Yes, he is.

18 THE COURT: All right.

19 MR. SCHONFELD: Your Honor, for the record, we would
20 re-invoke the exclusionary rule.

21 THE COURT: Okay. Exclusionary rule has been
22 invoked.

23 MR. FREY: We request that as well.

24 I made a request in my opposition to the State's
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1 motion that we be heard in respect to the legal sufficiency of
2 Mr. Gilblanco's testimony as it relates to Mr. Gonzalez before
3 conducting our cross-examination.

4 THE COURT: Denied.

5 MR. FREY: Thank you.

6 THE COURT: Sir, please take the stand. You're
7 still under oath. Sir, you're still under oath. I want to
8 remind you of that.

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Would you state your name.

11 THE WITNESS: Jorge Gil-Blanco, G-I-L-B-L-A-N-C-O.

12 THE COURT: Counsel, you may proceed.

13 MR. SCHONFELD: Thank you, Your Honor.

14 There's no podium, is it okay if I remain at counsel
15 table?

16 THE COURT: You can or we can move the podium out if
17 you would like to use it. It's up to you.

18 MR. SCHONFELD: I'll move it out there, Your Honor.

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JORGE GIL-BLANCO,
having been previously duly sworn, was examined
and testified as follows:

CROSS-EXAMINATION

BY MR. SCHONFELD:

Q Mr. Gil-Blanco, you are currently not a police
officer; is that correct?

A I'm a reserve deputy with San Mateo Sheriff's
Office.

Q So you're not an active police officer, correct?

A No.

Q You don't have any formal degree such as a
bachelor's degree in criminal justice, correct?

A That's correct.

Q The highest level of education is associate of arts
degree in philosophy, is that accurate?

A No, photography.

Q Photography?

A Yes.

Q That's your highest level of education, correct?

A Formal education, yes.

Q No formal classes in sociology?

A No, sir.

1 Q No formal classes in behavioral science?

2 A No, sir.

3 Q No formal education in psychology?

4 A No, sir.

5 Q In fact, you've written no scholarly publications
6 related to what you term outlaw motorcycle gangs; is that
7 correct?

8 A That's correct.

9 Q Never been published on the subject whatsoever,
10 correct?

11 A That's correct.

12 Q You haven't written any analytical reports as an
13 expert witness regarding Hells Angels, correct?

14 A No. I haven't written any documents --

15 Q No?

16 A -- if that's what you mean as far as cases. I'm not
17 sure --

18 Q Analytical reports, journals, publications.

19 A No.

20 Q So I'm, correct?

21 A Correct.

22 Q You've never taught a four-year college course
23 regarding the subjects of what you term outlaw motorcycle
24 gangs; is that correct?

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1 A That's correct.

2 Q Now, in your direct examination, you would agree
3 with me that part of the basis on which you form your opinions
4 regarding the Hells Angels Motorcycle Club is interviews
5 you've attended with former members of the Hells Angels; is
6 that correct?

7 A That is some of it, yes.

8 Q And the circumstances of those interviews were that
9 the former members of the Hells Angels were cooperating with
10 law enforcement, correct?

11 A Yes.

12 Q And the reason they were cooperating with law
13 enforcement is because they were facing their own criminal
14 charges, correct?

15 A I'm trying to think if all of them were. Not all of
16 them were, no.

17 Q Okay. How many people -- we are talking about five
18 people that you interviewed, correct?

19 A No, I've interviewed approximately ten.

20 Q Out of the ten, how many of them were not facing
21 their own criminal charges?

22 A I believe possibly two.

23 Q Possibly, but you're not certain?

24 A Possibly three.

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1 Q So of the other seven or eight, you would agree they
2 were all facing criminal charges of their own, correct?

3 A Yes.

4 Q So those people were receiving a benefit for their
5 cooperation, correct?

6 A I assume so, yes.

7 Q You would agree with me that whether or not someone
8 is receiving a benefit for sharing information with you or
9 other law enforcement is something that can affect that
10 person's credibility, correct?

11 A It needs to be looked at, yes.

12 Q You would also agree with me that members of the
13 Hells Angels Motorcycle Club can quit the club with absolutely
14 no repercussion, correct?

15 A Some can, yes.

16 Q They can leave on good standing, correct?

17 A Yes.

18 Q And I believe you've previously testified that the
19 members that leave on good standing do not cooperate with
20 police and share information regarding the club, correct?

21 A Not always.

22 Q You have never interviewed a member of the Hells
23 Angels Motorcycle Club that is either not facing criminal
24 charges or has not been kicked out or left the club on bad

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1 standing, correct?

2 A I'm sorry. Can you repeat that?

3 Q I'll rephrase.

4 Every member or former member of the Hells Angels
5 Motorcycle Club that you interviewed was either facing a
6 criminal charge or had left the club on bad standing, correct?

7 A I'm trying to recall all the different ones, what
8 the circumstances were. Yeah, I believe that's accurate.

9 Q So you would agree with me that the only members
10 cooperating with the police are either working off the case or
11 have bad feelings toward the club, correct?

12 A Not just those two circumstances, no.

13 Q At least one of those two, correct?

14 A Yes.

15 Q Part of the basis -- what are the names of the
16 former members that you interviewed that forms the basis of
17 your opinions that you testified to in this case?

18 A I believe there's five of them listed on my CV.
19 Mr. Robert Sandy who was a former vice president of the
20 Oakland Charter. I can't remember the individual's name, but
21 from Winston Salem Charter. I can't think of his name off the
22 top of my head at this point. He was probably the first one I
23 did interviews. I'm drawing a blank on the other ones that
24 are on my CV.

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1 Q What about the five that aren't? I asked you, my
2 understanding was that you based your opinion based on
3 interviewing five people. You said it was more like ten.
4 What about the five people not listed on the CV?

5 A I would rather not give their names because I'm
6 afraid for their safety.

7 MR. SCHONFELD: Court's indulgence, Your Honor.

8 Your Honor, at this point, I would move to strike
9 Mr. Gil-Blanco's direct testimony as he's refusing to provide
10 the defense the basis upon which he has formed his opinions
11 rendered in this case:

12 THE COURT: Mr. Hall?

13 MR. HALL: I don't think they can make a request, a
14 blanket request that all of his testimony be stricken because
15 his testimony is based on his cumulative effort or cumulative
16 evidence that he has collected during the course of his career
17 which spans, you know, many years.

18 So not only has he interviewed five Hells Angels,
19 but he's also reviewed many case files, he's testified in a
20 number of cases, he's been privy to evidence collected in a
21 number of search warrants all of which Mr. Gil-Blanco has
22 taken into consideration when rendering his opinion in this
23 particular case.

24 THE COURT: Okay. I'm going to stop you there.
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1 This is a very easy motion for the defense to file. State can
2 respond. There's law on point. We can discuss the law that
3 applies, and I can make a ruling. It's really not factually
4 presented, so I'm going to allow the testimony to go on for
5 today and you can file your motion.

6 MR. SCHONFELD: Court's indulgence, Your Honor.

7 Your Honor, in order to preserve the record, I would
8 like to ask some additional questions just so we have a record
9 just to who the witnesses are.

10 THE COURT: You may.

11 BY MR. SCHONFELD:

12 Q Mr. Gil-Blanco, of the five people not listed on
13 your CV, can you please provide the chapters of the Hells
14 Angels Motorcycle Club they were once a member of?

15 A I'll just go as far as saying from Arizona and
16 California. If I get specific chapters, it would help to
17 identify who the individuals are.

18 Q So you're refusing to provide us with the chapters
19 of I'm going to call them your witnesses 5 through 10; is that
20 correct?

21 A At this point, yes, sir.

22 Q And you're refusing to provide their names; is that
23 correct?

24 A At this point yes, sir.

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1 THE COURT: I think it would be 6 through 10.

2 BY MR. SCHONFELD:

3 Q 6 through 10; is that correct?

4 A Yes, sir that's correct.

5 Q And you're refusing to advise us as to whether or
6 not they were -- left the motorcycle club on good or bad
7 standing, correct?

8 A No. I can tell you some left on -- I'm trying to
9 remember. Some were on good, some were on bad.

10 Q Okay. Of witnesses 6 through 10, please identify
11 what they're charged with as far as criminal offenses that
12 they are working off as a result of their cooperation?

13 A Again, I think that would help to identify who the
14 individuals are.

15 Q So you're refusing to answer that question; is that
16 correct?

17 A Yes, sir.

18 Q Please identify if any witnesses 6 through 10 remain
19 members of the Hells Angels Motorcycle Club?

20 A I'm sorry?

21 Q Please identify if any witnesses 6 through 10 remain
22 to be members of Hells Angels Motorcycle Club?

23 A No.

24 Q They do not. So not one of those individuals
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1 remains a member of the Hells Angels Motorcycle Club, yet you
2 still refuse to answer the questions, correct?

3 A That's correct, yes, sir.

4 Q Were the interviews of any of the witnesses we
5 referred to that would be 1 through 10 at this point recorded?

6 A Not -- the only one would be Mr. Kaminski. That's
7 one of the ones I forgot. Mr. Kaminski is part of the 1
8 through 5 that was recorded, and I believe there's transcripts
9 of that available.

10 Q That's out of all ten people, only one was recorded;
11 is that accurate?

12 A I believe so, yes.

13 Q Were notes taken of the interviews of -- let's start
14 with 1 through 5?

15 A Not by me, no.

16 Q By other members of law enforcement?

17 A Probably, yes.

18 Q Have you turned those notes over to the State of
19 Nevada for purposes of this case?

20 A No, sir.

21 Q Were notes taken of the interviews of 6 through 10?

22 A No, sir.

23 Q Not by you or any other level of law enforcement?

24 A Not that I'm aware of, no.

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1 Q What were the dates of interviews you performed on
2 witnesses? Let's start with witness number six. How many
3 times did you interview that witness?

4 A I couldn't tell you at this point. I don't have the
5 dates in front of me.

6 Q Can you give me the dates and locations of the
7 interviews of witnesses number 6 through 10?

8 A I couldn't give you that, sir.

9 Q Okay. If you had that information before you, would
10 you give us the information related to the locations of the
11 interviews of witnesses 6 through 10?

12 A Not the location because again, that would help to
13 identify the individuals as far as the dates that would also
14 help to identify the individuals.

15 Q So you're refusing to answer those questions,
16 correct?

17 A At this point, yes, sir.

18 Q Part of the basis upon which you form your opinions
19 is from the seizure of documents during law enforcement raids
20 of Hells Angels' clubhouses; is that correct?

21 A And residences, yes, sir.

22 Q And you seized or law enforcement seized minutes of
23 meetings, west coast officer meetings, for example, at the
24 Oakland clubhouse, 1998; is that correct?

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1 A Yes, sir.

2 Q Isn't it true you have not provided any of the
3 minutes of the meetings that have been seized that form the
4 basis upon which you render opinions to the prosecution in
5 this case to turn over to the defense?

6 A I don't think so. Obviously, if it was requested I
7 did, if I wasn't asked, then I didn't.

8 Q So the seizure is from the Oakland Clubhouse in 1998
9 where you have minutes of west coast officers meetings, you
10 don't know whether you turned over to the State in this case?

11 A No, I don't.

12 Q The bulk of your investigation as a police officer
13 is related to the Hells Angels in San Jose; is that correct?

14 A No, it's not correct.

15 Q Okay. The beginning of your law enforcement career
16 while you were employed in San Jose, isn't it true the
17 majority of your time was spent investigating the Hells
18 Angels?

19 A For an eight-year period out of 26, yes.

20 Q And as part of your duties investigating the Hells
21 Angel in San Jose, you drafted intelligence reports; is that
22 correct?

23 A Yes, I did.

24 Q Those reports memorialize things you learned about
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1 the San Jose Hells Angels, correct?

2 A Some did.

3 Q You wrote down your opinions and knowledge about the
4 San Jose Hells Angels Motorcycle Club in those reports,
5 correct?

6 A Whatever I had at the time.

7 Q And those documents form part of the individual
8 opinion which you provide opinion testimony regarding the
9 Hells Angel, correct?

10 A At that time, yes.

11 Q As you sit here today, you didn't compartmentalize
12 your eight years of investigating the Hells Angels in San Jose
13 and set it to the side and not use that in rendering your
14 opinions, did you?

15 A No. It's all based together the entire time, all
16 the investigations.

17 Q And you have not provided those documents to the
18 State of Nevada to turn over to the defense in this case,
19 correct?

20 A No, because I don't have access to those reports.
21 Once you leave the intelligence unit, you have no access to
22 those files.

23 Q So those files and reports in part form the basis
24 upon which you're rendering opinions in this case, but you

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1 can't provide those to the defense, correct?

2 A No, I cannot.

3 Q And Mr. Villagrana is a member of the San Jose
4 chapter of the Hells Angels, correct?

5 A Yes, sir.

6 Q You would agree with me the only basis upon which
7 you can form your opinions on the Hells Angels Motorcycle Club
8 is by relying on what other people have told you, correct?

9 A No.

10 Q Okay. Isn't it true that you don't actually swear
11 out -- you've never sworn out a search warrant for a raid of a
12 Hells Angel' clubhouse, correct?

13 A I've never been the affiant, but I've provided
14 expert opinions that's been added to certain ones.

15 Q You have never infiltrated the Hells Angels
16 Motorcycle Club in undercover or other capacity otherwise,
17 correct?

18 A Correct.

19 Q You're aware that the Hells Angels Motorcycle Club
20 is a nonprofit cooperation?

21 A I believe they have that status.

22 Q You would agree the other clubs you investigated
23 such the Vagos, Mongols, Outlaws, and Banditos are not
24 incorporated as nonprofit entities, correct?

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1 A I don't know.

2 Q You don't know the answer to that?

3 A No. I don't know if any of those other ones are
4 incorporated or not.

5 Q You agree with me the Hells Angels Motorcycle Club
6 charters engage in charitable toy runs and other events,
7 correct?

8 A Yes, they do.

9 Q You would agree with me that there are members of
10 the Hells Angels in the United States that have absolutely no
11 felony convictions?

12 A Yes, I do.

13 Q There are members of Hells Angels in the United
14 States that don't have any misdemeanor convictions?

15 A That's correct.

16 Q There are members that don't have either misdemeanor
17 or felony convictions, correct?

18 A Correct.

19 Q Members that have absolutely no criminal record,
20 correct?

21 A Correct.

22 Q There are members of the Hells Angels in the United
23 States that have never even been arrested, correct?

24 A Correct.

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1 Q There are members of Hells Angels in the United
2 States that hold professional licenses, correct?

3 A Correct.

4 Q In fact, at the grand jury in this case, you
5 testified that there is nothing written down as far as the
6 Hells Angels having to commit felonies or other crimes as part
7 of being a member of the Hells Angels, correct?

8 A There are no written rules to that effect, that's
9 correct.

10 Q In previous testimony related to the Hells Angels
11 Motorcycle Club, you talked about Cody, Wyoming, as an example
12 of criminal conduct that members of the Hells Angels engaged
13 in. Do you remember that type of testimony?

14 A Yes, sir.

15 Q Isn't it true that case resulted in a full acquittal
16 by the jury?

17 A That's correct.

18 Q Nevertheless, you utilized that as a basis on which
19 you form your opinion, of which I disagree with, that the
20 Hells Angels Motorcycle Club is a gang, correct?

21 A It shows to me that there's violence that occurred
22 which I base an opinion on between two different gangs, the
23 Outlaws and Hells Angels, yes.

24 Q So you disagree with the constitutional right to a
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1 jury trial, and notwithstanding the acquittal, you still
2 believe that is conduct that forms the basis for your opinion,
3 correct?

4 A That there is gang activity, yes. No problem with
5 the constitutionality of the trial and the rights. Not a
6 problem at all.

7 Q You just disagreed with the jury where they
8 acquitted somebody for the charge?

9 A No, no. I have no aspect of the legal -- I have no
10 concept of the legal aspects. All I know is that the incident
11 that occurred, it was a shootout between the Hells Angels and
12 Outlaws.

13 Q You testified in the Steve Tausan case in 1998 where
14 there were allegations of gang enhancements, correct?

15 A Yes, sir.

16 Q You testified at the preliminary hearing in that
17 case, correct?

18 A Yes, sir.

19 Q You testified at the trial in that case, correct?

20 A Yes, sir.

21 Q You rendered the same opinion as you do in this case
22 that the Hells Angels Motorcycle Club is a criminal gang,
23 correct?

24 A Yes, sir.

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1 Q You would agree with me that the jury in that case
2 returned a not-guilty verdict, didn't they?

3 A That's correct.

4 Q Notwithstanding having heard your testimony,
5 correct?

6 A That's correct.

7 Q You were also named as a defendant in a lawsuit
8 filed by the San Jose Hells Angels Motorcycle Club chapter; is
9 that correct?

10 A That's correct.

11 Q You were sued in your capacity as an active duty
12 police officer at the time?

13 A That's correct.

14 Q San Jose Police Department was also sued?

15 A That's correct.

16 Q Isn't it true that the police department ultimately
17 paid approximately \$2 million to the Hells Angels members that
18 were the plaintiffs in that case?

19 A No. I think the police department paid out 800,
20 900,000. The remainder was paid by the sheriff's department
21 and I believe -- the sheriff's department or the county.

22 Q And the allegations in that case were also related
23 to the Tausan criminal case where he was found not guilty,
24 correct?

1 A That's correct.

2 Q You also testified in the case of People versus Ray
3 Heffington in Fresno County Superior Court, correct?

4 A Correct.

5 Q Nine defendants admitted in their opening statement
6 that they committed the misdemeanor charge of carrying a
7 weapon, and you testified in support of the felony gang
8 enhancement; is that correct?

9 A That's correct.

10 Q The jury found them not guilty of the gang
11 enhancement in 45 minutes of deliberations, correct?

12 A I don't know how long they deliberated, but you're
13 correct in the end result.

14 Q In fact, you never testified in a Hells Angel case
15 and opined that the alleged underlying crime was not committed
16 in furtherance of a gang; isn't that true?

17 A That's correct.

18 Q Every time a Hells Angel gets arrested and it's
19 brought to you, you render the opinion that it was in
20 furtherance of the gang?

21 A No, that is not correct.

22 Q Let me rephrase.

23 In furtherance of what you believe to be a gang,
24 correct?

1 A No, not every case. You're asking me on some of the
2 cases I've testified on, not in every case presented to me.

3 Q Let's talk about the case of People versus Diaz
4 where you were prepared to testify that a father watching his
5 son's football game and wearing a Hells Angel T-shirt when he
6 gets in a fight at the football game is acting in furtherance
7 of the Hells Angels as a gang; do you remember that case?

8 A I remember that case, yes. I didn't testify in that
9 case.

10 Q You were prepared to testify that a father watching
11 his son's football game merely wearing a T-shirt that said
12 Hells Angels on it who gets into a fight at the football game
13 was acting in furtherance of what you believe to be a gang.
14 You were prepared to render that opinion, weren't you?

15 A No. I was asked to testify. I did not testify.

16 Q The case was dismissed, that's why you didn't
17 testify.

18 A I have no control of that, sir.

19 Q You would agree with me a large number of law
20 enforcement officers are members of motorcycle clubs, correct?

21 A Correct.

22 Q You have a strong opinion that police officers
23 should not be members of motorcycle clubs, don't you?

24 A Any group that associated with outlaw motorcycle
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1 gangs, yes, I do.

2 Q You've observed in surveillance activities of law
3 enforcement officers that are members of motorcycle clubs that
4 have attended Hells Angels events, haven't you?

5 A Yes, sir.

6 Q They place Hells Angels support stickers on their
7 motorcycles, right?

8 A Correct.

9 Q The stickers say they support the Hells Angels,
10 correct?

11 A Correct.

12 Q You don't approve of that, do you?

13 A No, I don't.

14 Q You don't believe an officer with a support sticker
15 on the motorcycle is acting in furtherance of the Hells Angels
16 what you call gang, are they?

17 A On just that alone, no.

18 Q You don't believe that an officer that places a
19 Support-the-Hells-Angels sticker on their motorcycle is a
20 criminal, do you?

21 A Based on that alone, no.

22 Q In fact, there's nothing illegal about supporting
23 the Hells Angels, is there?

24 A There is not.

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1 Q Nothing illegal about being a member of the Hells
2 Angels, correct?

3 A Correct.

4 Q In fact, you're familiar that the Hells Angels
5 Motorcycle Club has filed lawsuits when they believe their
6 rights have been violated?

7 A Correct.

8 Q And they've won a lot of those lawsuits, haven't
9 they?

10 A They've won, yes.

11 Q You testified on direct examination regarding some
12 of the Hells Angels Motorcycle Club patches; do you remember
13 that testimony?

14 A Yes, sir.

15 Q You testified regarding the Filthy Few patch; do you
16 remember that?

17 A Yes, I did.

18 Q Isn't it true that the Filthy Few patch was
19 originated as a result of the member to come first to the run
20 and last to leave being the biggest partier became the Filthy
21 Few?

22 A That is what they claim. I don't believe it though.

23 Q Well, you testified to that previously in other
24 cases, haven't you?

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1 A That that's what they believe. That's what they say
2 it is.

3 Q That's how it started?

4 A I didn't say that's how it started. I said that's
5 what they believe and they give as a meaning for that patch.

6 Q I'm going to go through some of the witnesses that
7 we've talked about that -- we'll call them 1 through 5. One
8 of those witnesses is an individual named Pat Matters; is that
9 correct?

10 A I never spoke with Mr. Matters personally.

11 Q Isn't that one of the bases -- isn't Mr. Matters one
12 of the bases upon which you form your opinions that you've
13 attempted to render in direct examination in this case?

14 A No, I don't believe so.

15 Q What about George Kaminski?

16 A George Kaminski, yes.

17 Q George Kaminski was a member of the Hells Angels who
18 cooperated with the government, correct?

19 A Yes.

20 Q He was debriefed, correct?

21 A Correct.

22 Q And he stated that the Hells Angels Motorcycle Club
23 is not involved in criminal activity, but some of the members
24 thrive on crime, do you remember that?

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1 A He did say that, yes.

2 Q So he actually told you that the Hells Angels
3 Motorcycle Club is not in total involved in criminal activity,
4 right?

5 A That's what he said, yes.

6 Q You don't have to engage in crime in order to be a
7 member of the Hells Angels, correct?

8 A Correct.

9 Q You took that information, yet you still render your
10 opinion that the Hells Angels Motorcycle Club is a criminal
11 street gang, correct?

12 A Correct. Because that's not the only information he
13 gave me.

14 Q So you pick and choose what you want to listen to
15 when informants talk to in your goal of opining that the Hells
16 Angels Motorcycle Club is a gang, correct?

17 A No. I listen to everything they say, and based on
18 what they say and what I can corroborate and not corroborate,
19 then I base an opinion on that.

20 Q You don't think Mr. Kaminski was lying to you, do
21 you?

22 A He wasn't telling completely truthful on everything,
23 absolutely not.

24 Q But you relied on portions of what he told you in
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1 rendering opinions in the various locations you've testified,
2 correct?

3 A Because I've been able to corroborate that from
4 other sources, yes.

5 Q Your entire current career is devoted to compiling
6 information and providing testimony relating to the Hells
7 Angels, correct?

8 A I don't know if I would call it my entire career but
9 I still am involved in investigations regarding outlaw
10 motorcycle gangs, particularly Hells Angels.

11 Q It would be a pretty significant part of your job
12 description if you were to provide that, right?

13 A Yes.

14 Q So eventually you make a living testifying as an
15 expert in Hells Angels cases?

16 A Don't make a living because I don't get paid for it.
17 I get reimbursed for travel and per diem.

18 Q You work through a government grant, do you not?

19 A Not since June of this last year.

20 Q So right now you don't receive a paycheck whatsoever
21 through law enforcement?

22 A No, sir.

23 Q Prior to last year, you would agree you made a
24 living off testifying on the Hells Angels cases, correct?

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1 A I make a living as a law enforcement training
2 coordinator for Western States Information Network, but that
3 wasn't my sole job to testify, no.

4 Q Would you agree with me that most of the Hells
5 Angels chapters have a clubhouse?

6 A Most do, yes.

7 Q The clubhouse generally has a death head, the Hells
8 Angels logo on the front of the house?

9 A Yes.

10 Q They make it clear that's their clubhouse?

11 A Correct.

12 Q They hold parties where members of the public can
13 attend?

14 A Yes, sir.

15 Q In fact, law enforcement officers have attended
16 those parties, right?

17 A I'm sure there have been members of law enforcement
18 that have attended some of those parties. I can't think of
19 any particular instance right off the top of my head.

20 Q Members of Hells Angels wear jackets with the
21 trademarked logo on it, correct?

22 A Correct.

23 Q You would agree with me most Hells Angels have
24 regular day jobs?

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1 A Yes.

2 Q They have families and children?

3 A Yes.

4 Q So they have families, children, and full-time jobs,
5 correct?

6 A Some of them do, yes.

7 Q For example, you're familiar with a member named
8 Fuzzy O'Neil, correct?

9 A Yes.

10 Q He owns a very well-known security business?

11 A Yes.

12 Q Member of the Oakland Hells Angels?

13 A Yes.

14 Q His security company does large-scale security for
15 movie productions in northern California?

16 A Yes.

17 Q Friends with Sean Penn and other successful actors?

18 A I don't know if he's friends with Sean Penn and
19 other actors.

20 Q I think you testified to that in another case?

21 A Not that I can recall.

22 Q It's a full-time business that he owns, correct?

23 A I'm sorry?

24 Q It's a full-time business that he owns, correct?

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1 A He and Cisco, yes.

2 Q You wouldn't sit here and testify that Mr. O'Neil's
3 primary activity is engaging in the commission of felonies,
4 would you?

5 A At this point, unless I had some specific crime that
6 he was involved in, no.

7 Q But he's a member of the Hells Angels, correct?

8 A Correct.

9 Q David La Brava, are you familiar with him?

10 A Yes, I am.

11 Q Owns a tattoo shop named Evil Ink, correct?

12 A Correct.

13 Q He works on the show *Sons of Anarchy*, correct?

14 A Correct.

15 Q Very successful hit television show?

16 A Correct.

17 Q So he owns a tattoo shop and he works on a very
18 successful hit television show, correct?

19 A Correct.

20 Q You wouldn't sit here and testify that one of his
21 primary activities is engaging in felonious misconduct, would
22 you?

23 A I know he's been involved in criminal activity, but
24 if that's his primary activity, at this point, I wouldn't say

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1 that.

2 Q You've never actually performed any study or
3 research on the types of jobs that Hells Angels members have,
4 have you?

5 A No in-depth study, but I know what type of jobs
6 different members have.

7 Q You understand that no jury has every returned a
8 verdict in Nevada that the Hells Angels is a gang, correct?

9 A In Nevada, no.

10 Q You testified on direct examination regarding the
11 Laughlin -- Harrah's Laughlin incidents; do you remember that?

12 A Yes, sir.

13 Q You understand that there was no convictions for a
14 gang enhancement in fact, correct?

15 A That's correct, not for the gang enhancement.

16 Q You have you testified in what's called the Las
17 Vegas Wedding Chapel case; do you remember that?

18 A Yes.

19 Q Isn't it true that case resulted in a mistrial?

20 A I heard that's the case, but it's still going to be
21 going to court again.

22 Q You testified regarding the Hells Angels and Vagos
23 in Yavapie County; do you remember that?

24 A Can you repeat that question?

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1 Q You testified regarding the Hells Angels and Vagos
2 in Yavapie County; do you remember that?

3 A Yes, sir.

4 Q That case was dismissed; isn't that true?

5 A Yes, sir.

6 Q Isn't it true the reason it was dismissed is because
7 the only witness in that case turned out to be a paid
8 informant and that was not disclosed to the defense?

9 A I don't know if that's the only reason, but that's
10 one of the reasons, yes.

11 Q You testified regarding the Hells Angels and Vagos
12 incidents in Santa Clara; do you remember that?

13 A I'm sorry, say that again.

14 Q Hells Angels and Vagos in Santa Clara.

15 A Hells Angels and Vagos in Santa Clara, no. Not in
16 Santa Clara. Santa Cruz.

17 Q Is that the one that there's been no trial yet,
18 correct?

19 A No, I'm not sure which one we are talking about,
20 then.

21 Q I'll skip over that one.

22 You also testified, maybe not in direct examination
23 in this case, but previously regarding the alleged stabbing of
24 Vagos Roger Viallano on May 30th, 2010?

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1 A Yes, sir.

2 Q And you use that as a basis upon which you render
3 opinions related to the Hells Angels, correct?

4 A Correct.

5 Q Isn't it true he was found not guilty on June 2nd?
6 The Hells Angels member was found not guilty on June 2nd,
7 2011?

8 A That is correct.

9 Q But you utilize that as a basis upon which you
10 render opinions that the Hells Angels is a gang, correct?

11 A Correct.

12 MR. SCHONFELD: Court's indulgence?

13 THE COURT: Yes.

14 MR. SCHONFELD: Nothing further.

15 MR. FREY: Mazie Pusich is going to conduct the
16 cross-examination.

17 But just for the record, I know you summarily denied
18 my request to go ahead and have you rule on the sufficiency of
19 the testimony as to the weight of Mr. Gonzalez. I just want
20 to make a record of that, Judge, and incorporate by reference
21 to put in the motion that you are essentially --

22 THE COURT: First off, I want to remind you, you did
23 not file a motion. A request that is obtained in an
24 opposition is not a motion. So you're making an oral motion

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1 now?

2 MR. FREY: I am. That's exactly what I'm doing.
3 Its based upon what are the contents of my opposition. I just
4 don't see the two essential predicates have been met by
5 Mr. Gil-Blanco. Number one, there's no opinion rendered as to
6 whether or not the Vagos, in the first instance, are even a
7 criminal gang.

8 Number two, there's no opinion to render based upon
9 my reading of the transcript that Mr. Gonzalez was even
10 contemporaneously affiliated with the Vagos at the time of the
11 commission of the offense.

12 THE COURT: Okay. Thank you.

13 Ms. Pusich?

14 MS. PUSICH: Thank you, Your Honor. I apologize. I
15 was detained in Department 15.

16 THE COURT: That's fine. We knew where you were.

17 MS. PUSICH: Thank you.

18

19 CROSS-EXAMINATION

20 BY MS. PUSICH:

21 Q Sir, I'll start at the end since that's what you've
22 just been discussing with Mr. Villagrano's counsel.

23 With respect to the Santa Cruz incident, there has
24 been adjudication with respect to the Vagos that was accused?

Captions Unlimited of Nevada, Inc. (775) 746-3534

1 A That's correct.

2 Q And he's been acquitted?

3 A That's correct.

4 Q Then in your discussion this morning in talking with
5 Mr. Schonfeld regarding some of the earlier instances, with
6 respect to the Cody, Wyoming, incident, that was not an
7 investigation specifically related to a rivalry involving the
8 Vagos, correct?

9 A Correct.

10 Q Several of my questions will probably be similar to
11 the ones you've been asked by Mr. Schonfeld.

12 With respect to the Vagos, you are aware that there
13 are people who claim to be members who have regular daytime
14 jobs, correct?

15 A Correct.

16 Q Who have not suffered convictions for any level of
17 offense, correct?

18 A Correct.

19 Q That don't have significant criminal histories,
20 correct?

21 A Correct.

22 Q You were aware at the time of Mr. Gonzalez' arrest
23 in this case that he actually had a valid, current California
24 business license, correct?

Captions Unlimited of Nevada, Inc. (775) 746-3534

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Nov 13 2014 11:44 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 VII

**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

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No. 64249

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**LAKE COUNTY SHERIFF'S OFFICE**

1220 MARTIN STREET LAKEPORT, CA 95453 707 262 4200

SUPPLEMENT 7

Page 24

C11060074

Attachments:

Property / Evidence Form (Scanned)

DVD with .avi Files (In File)

Supplemental Report

On 06/09/11, Sergeant Gregore gave me two discs regarding this case. Sergeant Gregore told me the discs came from Konocti Vista Casino's Security Department. One disc was labeled "Face Shots 06/04/11" and the other was not labeled.

I viewed the disc labeled "Face Shots 06/04/11" and found it contained eight .bmp files. The images were titled with titles similar to "HA in Fight" and were of different people in different areas of what appeared to be Konocti Vista Casino.

The un-labeled disc contained 28 .g64 files, one application, one cabinet file, one HTML document, and one script file. Using the cabinet file and the on disc application, I opened Omnicast, a web based program capable of viewing a .g64 file. I also used Omnicast to convert each of the .g64 file into an .avi file.

I copied the .avi files into three CDs and also onto two DVDs. I also transferred each of the .g36 files onto its own CD in .avi format. Each disc was labeled with its file name as it was listed on the original disc from the casino. I also labeled each disc with a number, 1 through 28. The file names and disc numbers are as follows:

CasinoFrontDoorsCam#47_2001-06-04_13h16min00s0002ms	D1
SmallBanquet#2Cam#111_2001-06-04_13h20min00s032ms	D2
Bank#504Cam#110_2011-06-04_13h22min00s008ms	D3
EastFloorPtz#2PTZ#139_2011-06-04_13h19min0s005ms	D4
EastFloorPtz#1PTZ#140_2011-06-04_13h21min00s007ms	D5
BanquetRoom#5PTZ#142_2011-06-04_10h36min00s005ms	D6
BanquetRoom#5PTZ#142_2011-06-04_11h07min49s015ms	D7
BanquetRoom#5PTZ#142_2011-06-04_12h13min00s003ms	D8
BanquetRoom#5PTZ#142_2011-006-04_12h19min43s006ms	D9
BanquetRoom#5PTZ#142_2011-006-04_11h15min00s031ms	D10
BanquetRoom#5PTZ#142_2011-006-04_12h33min24s011ms	D11
BanquetRoom#5PTZ#142_2011-006-04_13h20min45s004ms	D12
BanquetRoom#5PTZ#142_2011-006-04_12h59min00s002ms	D13
BanquetRoom#HallwayCam#119_2011-06-04_13h17min00s019ms	D14
SmallBanquet#2Cam#11_2011-06-04_13h17min00s021ms	D15
OutsideCasinoFrontDoorsCam#138_2011-06-04_13h22min00s024ms	D16
CasinoFrontDoorsCam#47_2011-06-04_13h22min00s008ms	D17
Bank#504Cam#110_2011-06-04_13h20min00s005ms	D18
BanquetRoom#5PTZ#142_2011-06-04_10h34min00s005ms	D19
BanquetRoom#3Cam#1_2011-06-04_13h19min00s005ms	D20
ParkingLotPtz#2PTZ#133_2011-06-04_13h26min00s042ms	D21

Prepared By:

50292 MOORE, BENJAMIN

Date:

6/10/2011

Approved By:

S0146 GREGORE, JOHN

Date:

6/15/2011

1501

**LAKE COUNTY SHERIFF'S OFFICE**

1220 MARTIN STREET LAKEPORT, CA 95453 707 262 4200

SUPPLEMENT 7

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C11060074

Bank#501,504,505,509Cam#57_2011-06-04_13h15min58s894ms	D22
ParkingLotPtz#3PTZ#153_2011-06-04_13h21min00s07ms	D23
Bank#501,504,505,509Cam#57_2011-06-04_13h22min00s008ms	D24
SoutheastParkingLotCam#2_2011-06-04_13h21min00s031ms	D25
EastFloorPtz#1PTZ#140_2011-06-04_13h26min00s011ms	D26
BanquetRoom#5PTZ#142_2011-06-04_13h29min18s007ms	D27
ParkingLotPtz#2PTZ#133_2011-06-04_13h27min00s012ms	D28

I booked the original two discs from the casino, one of the DVDs and the above 28 discs into an evidence locker at the LCSO Main Office. I attached the other DVD to this report.

Case Pending:

Prepared By:

S0292 MOORE, BENJAMIN

Date:

6/10/2011

Approved By:

S0146 GREGORE, JOHN

Date:

6/15/2011

1502

**LAKE COUNTY SHERIFF'S OFFICE**

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1220 MARTIN STREET LAKEPORT, CA 95453 707-262-4200
SUPPLEMENT 6

CI1060074

Attachments: None.

The Request for Video Surveillance Form mentioned in Deputy Frace's narrative was not returned to him by casino personnel so it is not an actual attachment to this case.

Case closed: Complaint

Prepared By:
S0146 GREGORE, JOHN

Date:
6/15/2011

Approved By:
S0146 GREGORE, JOHN

Date:
6/15/2011

1503

**LAKE COUNTY SHERIFF'S OFFICE**

1220 MARTIN STREET LAKEPORT, CA 95453 707.262.4200

SUPPLEMENT 9

Page 27

C31060074

Attachments:

Property receipt(Scanned)

On 06/20/2011, I was on duty with the Lake County Sheriff's Office, assigned to the Investigations Division. Sergeant John Gregore assigned me the follow up task of contacting Penny White, Raul Rojas, Robert Hoskins, Joe Rovetti and Duane Gonzales to obtain statements from them as to what, if anything, they witnessed during the altercation on 06/04/2011. The above mentioned people were said to be security guards at Konocti Vista Casino.

On 06/20/2011, at approximately 1430 hours, I went to Konocti Vista Casino and spoke with security director Jim Beland. I provided Beland with the names of the people I needed to contact, as they were all supposed to be security guards that had worked on 06/04/2011. Beland told me that Gonzales was available to be interviewed, but the others had already left work for the day. Beland said that I could use his office to conduct my interview with Gonzales.

A short time later I spoke with Gonzales in Beland's office. I recorded our conversation using my digital recorder. I later made a CD copy of the recording and booked it into evidence at the Sheriff's Department Main Office. The following is a summary of our conversation.

Gonzales was working as a security guard on 06/04/2011. On one of his breaks he was smoking behind the casino and heard a "Code 5" called for over the radio at the front doors. A "Code 5" is asking for a surveillance camera to zoom in on an area of the casino. After hearing the request, he knew something was happening at the front doors and went up there to assist if needed. When he arrived at the front doors he observed "the vagos guy" (Michael Burns) lying on the ground "all full of blood". The security Lieutenant, Robert Hoskins, was tending to the injured guy on the ground until Gonzales arrived to take over.

Gonzales tried to get Burns to stay on the ground, but he refused and stood up. When Burns stood up, he had a very unsteady gait. Burns told Gonzales that nothing was done to him and that he had "fell". Gonzales told Burns that he wanted him to sign a release form, but Burns refused and left the property.

Gonzales told me that he would not be able to identify Burns in a photo line-up. He also said that he referred to Burns as "the vagos guy", because that's what people had told him after the incident. Gonzales said that he never saw Burns get assaulted and arrived after his injuries had occurred.

On 06/21/2011, at approximately 0900 hours, I returned to Konocti Vista Casino to conduct interviews. It should be noted that Detective Ben Moore was with me while I conducted all of the interviews on this date. I first spoke with Robert Hoskins, in Beland's office, and I recorded our conversation using my digital recorder. I later made a CD copy of the recording and booked it into evidence at the Sheriff's Department Main Office. The following is a summary of our conversation.

Hoskins was working on 06/04/2011 as the Lieutenant of security at the casino. He heard a "Code 33"

Prepared By:

S0277 DREWREY, JOHN

Date:

6/21/2011

Approved By:

S0146 GREGORE, JOHN

Date:

7/6/2011

1504

**LAKE COUNTY SHERIFF'S OFFICE**

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1220 MARTIN STREET LAKEPORT, CA 95453 707.262.4200

SUPPLEMENT 9

C11060074

over the radio, which meant there was an emergency. When Hoskins got to the front entrance, he observed someone wearing a Hells Angels vest standing over a guy that was lying on the ground bleeding (Burns). He heard one of the people wearing a Hells Angels vest say something to Burns, but he could not recall what was said. Hoskins did not observe anyone kick or punch Burns while he was there.

Hoskins said that he could not describe Burns' face, because there was so much blood on it. He told me that he would not be able to identify anyone involved in a photo line-up. Hoskins also stated that he did not want to testify to anything that he had told me, because of his previous experiences with the judicial system.

I then spoke to Penni White in Beland's office. I recorded our conversation using my digital recorder. I later made a CD copy of the recording and booked it into evidence at the Sheriff's Department Main Office. The following is a summary of our conversation.

White was working on 06/04/2011 as the day shift security supervisor. She heard a "Code 33" over the radio and went to the front entrance. When she got to the front entrance, she observed a male with his fist in the air (Kristopher Perkin). She pushed Perkin, with the assistance of John Meyer, back into the casino to keep him away from the altercation that was occurring. She did not observe anything else, because she was so focused on Perkin and would not be able to identify anyone involved in this incident. She did not see anyone hit or kick anyone else.

Next, I spoke to John Meyer in Beland's office. I recorded our conversation using my digital recorder. I later made a CD copy of the recording and booked it into evidence at the Sheriff's Department Main Office. The following is a summary of our conversation.

Meyer was working on 06/04/2011 as a security officer. Meyer heard a "Code 5" at the front entrance and went over to that location. When he got approximately 15 feet from the front entrance he saw "Angels jackets thumping on somebody on the ground". He then called for a "Code 33" over the radio, so that other security officers would respond. Meyer observed Perkin had an "Angel" on each side of his person before being pushed back towards the casino by Hoskins. Meyer observed White then attempt to restrain Perkin and went to her aid.

I asked Meyer what exactly he observed in regards to the Hells Angels "thumping" someone. Meyer said two of them were "whaling away" on Burns and another was kicking him. Meyer told me that he would not be able to identify any of the Hells Angels that assaulted Burns. He stated that he did not hear anything being said by the Hells Angels during or after the assault.

It should be noted that Meyer referred to people wearing Hells Angels vest as being "Hells Angels" and did not know if they were actual members or not.

Case Closed: By complaint

Prepared By:
S0277 DREWREY, JOHN

Date:
6/21/2011

Approved By:
S0146 GREGORE, JOHN

Date:
7/6/2011

1505

**LAKE COUNTY SHERIFF'S OFFICE**

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1220 MARTIN STREET LAKEPORT, CA 95453 707 262 4200

SUPPLEMENT 10

C11060074

Attachments: None.

On 6/21/2011, At approximately 1000 hours, I met with Jorge Gil-Blanco at his office in Sacramento. Gil-Blanco is a Training Coordinator for Western States Information Network (WSIN). He is also a recognized expert in Outlaw Motorcycle Gangs (OMG). I provided him with a copy of the surveillance videos and reports related to this investigation so he could review the material and provide his opinion, as well as possibly provide additional information regarding the incident.

Case pending.

Prepared By:

S0146 GREGORE, JOHN

Date:

6/22/2011

Approved By:

S0146 GREGORE, JOHN

Date:

7/6/2011

1506

**LAKE COUNTY SHERIFF'S OFFICE**

Page 30

1220 MARTIN STREET LAKEPORT, CA 95453 707 262 4200

SUPPLEMENT 11

C11060074

Attachments:

PDF File Containing: - (Scanned)

- Casino Maps

Property / Evidence Form (Scanned)

Supplemental Report

On 06/22/11, at approximately 1600 hours, I contacted Jim Beland, Director of Security at Konocti Vista Casino in regards to this case. I requested a map of the interior of the casino and banquet room.

Beland provided me with two pieces of paper. The first was of the casino, banquet room, and included the foyer. The map sated the foyer was 10'6" by 30'. The banquet room stated it was 39' by 60'.

The second map was of the banquet room as it was set up the day of the assault. It showed the Hells Angles were at the north east table.

I scanned and attached the two maps and to this report, I booked original two maps into an evidence locker at the LCSO Main Office.

Case Closed: Complaint

Prepared By:

S0292 MOORE, BENJAMIN

Date:

6/23/2011

Approved By:

S0146 GREGORE, JOHN

Date:

6/23/2011

1507

**LAKE COUNTY SHERIFF'S OFFICE**

1220 MARTIN STREET LAKEPORT, CA 95453 707 262 4200
SUPPLEMENT 12

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C11060074

Attachments:

CD Containing Video Files D1 - D28

Supplemental Report

On 06/28/11, at the request of the DA's Office, I transferred each of the video files I originally separated from the disc Konocti Vista Casino provided onto the attached DVD. Each file had been renamed with its respective "D" number as outlined in Supplemental Report #7. The video files on the attached DVD are in .avi format.

Case Closed: Complaint.

Prepared By:

S0292 MOORE, BENJAMIN

Date:

6/28/2011

Approved By:

S0146 GREGORE, JOHN

Date:

6/28/2011

1508

**LAKE COUNTY SHERIFF'S OFFICE**1220 MARTIN STREET LAKEPORT, CA 95453 707 262 4200
SUPPLEMENT 13

Page 32

C11060074

Attachments:**1. Hells Angel Opinion Letter from Jorge Gil-Blanco (Scanned)**

On 7/7/2011, at approximately 0846 hours, I received the Hells Angel Opinion Letter and attachment "A" from Jorge Gil-Blanco via electronic mail. In summary, Gil-Blanco states, "It is my belief that they were acting for the benefit of, and/or in furtherance of the Hells Angels Outlaw Motorcycle Gang. Furthermore, based on the information provided above, I believe the gang enhancements contained in Penal Code 186.22 are applicable." See letter for additional information.

Prepared By:
S0146 GREGORE, JOHNDate:
7/7/2011Approved By:
S0146 GREGORE, JOHNDate:
7/7/2011

1589



Attachments: None

Narrative:

On 06/07/2011, at approximately 0845 hour, I met with the Konocti Vista Casino (Konocti) Gaming Commission members to obtain permission to secure the video surveillance tapes of a Hells Angels (HA) gang related beating that occurred at the Konocti Casino on 06/04/2011 at approximately 1325 hours.

After securing permission from the Gaming Commissioners, I met with Glenn Greer, the surveillance technician for Konocti. Greer has been employed with Konocti since August 10, 2004. I met Greer at a location located behind the casino known as the "Review Room."

Greer allowed me to watch the tapes of the incident on his computer workstation. The video surveillance tapes I viewed on 06/07/2011 had been bookmarked, labeled and exported from Konocti's server onto Greer's workstation. I asked Greer to identify and produce still face shots of the involved parties. Greer gave me a DVD with the videos and a DVD with face shots of the suspects.

I asked Greer to review all the video surveillance tapes related to the HA's incident of 06/04/2011 and bookmark, save and copy any other video that related to the incident.

On 06/08/2011, at approximately 0745 hours, I returned to the Konocti review room and met with Greer again. Greer provided me with a DVD containing all the surveillance video concerning the HA incident of 06/04/2011 along with a DVD of the face shots of the individuals involved.

On 07/13/2011, at approximately 0910 hours, at the request of

Prepared By:
S0344 RIVERO, FRANCISCO

Date:
7/12/2011

Approved By:
S0146 GREGORE, JOHN

Date:
7/12/2011

1510



LAKE COUNTY SHERIFF'S OFFICE

1220 MARTIN STREET LAKEPORT, CA 95453 707 262 4200

SUPPLEMENT 14

Page 34

C11060074

Detective Sgt. John Gregore, I re-contacted Greer to obtain technical information requested by the District Attorney's Office.

I asked Greer about the manufacturer of the surveillance system in use at Konocti. Greer told me the software surveillance system is called Omnicast, which is made by Genetec out of Montreal Quebec Canada. He added that Konocti has had the system for 4 years. Greer said the computer system in use to operate the Genetec system is an HP workstation "Z 600" system.

Greer told me that Konocti maintains its own server, which is located in a room adjacent to the Review Room. He added that Konocti has over 150 surveillance cameras that operate at 30 frames per second at "4 cif" covering the entire interior and exterior of the premises with the exception of the bathrooms.

Greer said a date and time stamp is imprinted automatically on the surveillance video and no one has the ability to manipulate or change the date stamp. He said the video derives its date and time stamp from the Internet. He added that the surveillance video couldn't be altered, changed or modified in any way shape or form. Greer said he is the only person at Konocti with access to the surveillance video's server and the only person with access to export any surveillance video. Greer assured me the HA surveillance video he provided me was in its original form without any modification.

Greer explained that Konocti's surveillance video system has a 14-day cycle. After 14 days in will record over itself and gets erased. Greer told me the surveillance system allows him to bookmark incidents by retrieving them from the Genetec Omnicast archive player. Once he identifies an incident he wants to bookmark, he

Prepared By:

S0344 RIVERO, FRANCISCO

Date:

7/12/2011

Approved By:

S0146 GREGORE, JOHN

Date:

7/12/2011

(51)

**LAKE COUNTY SHERIFF'S OFFICE**1220 MARTIN STREET LAKEPORT, CA 95453 707.262.4200
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presses an "add bookmark" button on the screen, which brings up a window wherein he can add a title and a description of the event. That event is then time stamped and saved to the server for 14 days. Greer must export the bookmarked video of the event to his workstation within that 14-day period in order to save it indefinitely.

Greer told me that the original video was saved "indefinitely" when he exported it from the server to his workstation. On June 7th, and again today, I asked Greer to maintain the videos of the 06/04/2011 HA's incident indefinitely. Greer agreed to do so.

Case Status: Closed, criminal complaint requested from DA's Office

Prepared By:
S0344 RIVERO, FRANCISCO

Date:
7/12/2011

Approved By:
S0146 GREGORE, JOHN

Date:
7/12/2011

1512

**LAKE COUNTY SHERIFF'S OFFICE**

1220 MARTIN STREET LAKEPORT, CA 95453 707-262-4200

SUPPLEMENT 15

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C11060074

Attachments:

Property receipt (Scanned)

Konocti Vista Casino Incident Report #116 (Scanned)

On 07/12/2011, at approximately 1230 hours, I was on duty with the Lake County Sheriff's Office, assigned to the Investigations Division. I went to Konocti Vista Casino to conduct follow up investigation related to this case.

I met with Joe Rovetti in the security office to obtain his statement regarding this case. I recorded our conversation using my digital recorder. I later made a CD copy of the recording and booked it into evidence at the Sheriff's Department Main Office. The following is a summary of his statement.

Rovetti was working at Konocti Vista Casino as a security officer on 06/04/2011. He was posted at the front doors of the casino when he observed the altercation between a male subject, later identified as Michael Burns, and several subjects wearing Hells Angels attire. The first thing that he saw was hands up in the air, which he thought was just someone expressing themselves as they spoke. Then he observed someone wearing Hells Angels clothing get slammed into a doorway. He moved a Hells Angels member that was fighting with Burns in an attempt to end the fight and also held back the person that Burns was with, Kristopher Perkin.

Rovetti told me that he would be unable to identify any of the individuals involve in the altercation. He stated that he did not recall hearing anything being said by the Hells Angels during the altercation.

I then spoke with Todd Flaherty in the security office. I recorded our conversation using my digital recorder. I later made a CD copy of the recording and booked it into evidence at the Sheriff's Department Main Office. The following is a summary of his statement.

On 06/04/2011, Flaherty was working at Konocti Vista Casino as a security officer. He was near the front doors of the business getting ready to escort a customer to the cash cage when he heard a "Code 5" at the front doors. A "Code 5" is a request for surveillance cameras to pay specific attention to. After hearing the "Code 5", Flaherty immediately went to the front doors to find out what was happening. Upon his arrival to the front doors, he observed a male on the ground (Burns) "getting the shit beat out of him". He believed there were two Hells Angels members on top of Burns that were hitting him and one Hells Angels member standing above Burns to kick him. Flaherty thought the person standing above Burns left the area just after his arrival. Flaherty approached the two guys that were hitting Burns and tapped them on the shoulders and asked them to stop. The two guys looked up at Flaherty, stopped the fighting and then left the area.

After the fighting ceased, security personnel attempted to get Burns to sign a waiver, but he declined and stated that he just fell. Flaherty did not hear anything being said during the altercation. Flaherty stated that he didn't think he could identify any of the Hells Angels members, because things happened so fast.

Prepared By:

S0277 DREWREY, JOHN

Date:

7/12/2011

Approved By:

S0146 GREGORE, JOHN

Date:

7/13/2011

1513

**LAKE COUNTY SHERIFF'S OFFICE**

1220 MARTIN STREET LAKEPORT, CA 95453 707 262 4200

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It should be noted that Flaherty and Rovetti both referred to the subjects wearing Hells Angels clothing as "Hells Angels". Neither of them actually knew these subjects or if they were members of the Hells Angels.

I then spoke to Konocti Vista Casino security director Jim Beland. He provided me with a copy of casino report #116, which documented some of the details surround the altercation. I later attached the above mentioned report to this supplemental report.

Case Closed: By complaint

Prepared By:

S0277 DREWREY, JOHN

Date:

7/12/2011

Approved By:

S0146 GREGORE, JOHN

Date:

7/13/2011

1514

**LAKE COUNTY SHERIFF'S OFFICE**1220 MARTIN STREET LAKEPORT, CA 95453 707 262 4200
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Attachments**None**

On 07/14/11 I was working for the Lake County Sheriff's Office, assigned to the Investigation's Unit. I contacted Sutter Lakeside Hospital Emergency Room via telephone and I spoke to Dr. Steven Shifflett. Dr. Shifflett confirmed that he had treated Mike Burns on, 06/05/11.

Burns had claimed he was assaulted at Konocti Vista Casino on, 06/04/11. Burns was kicked in the face multiple times. Dr. Shifflett said that Burns had multiple contusions to his (Burns') face. Dr. Shifflett described contusions as bruises. Dr. Shifflett said that X-rays were not taken of Burns' face/head. Dr. Shifflett said that he determined that Burns' had a nasal fracture because Burns' nasal area was swollen, bruised and was continually oozing blood. Dr. Shifflett based his diagnoses on a visual examination and his twenty-seven (27) years of experience as a physician.

I asked Dr. Shifflett about the hand written comment on the form titled, "Emergency Department Physician Record." The form was attached to this case's supplement five (5) as page nineteen (19). The comment was on the right hand side of the page and it read, "Wife sewed upper lip." The comment was not written in quotes and there was another illegible hand written word under the comment. Dr. Shifflett said that Burns' lip was sewed with a needle and thread by his (Burns') wife. I asked Dr. Shifflett if he was able to determine if the, "Home made stitches" were necessary. Dr. Shifflett said that the injury did require stitches. I asked Dr. Shifflett if Burns' indicated that he lost consciousness at any time during or after the assault. Dr. Shifflett said that Burns did not lose consciousness. This was indicated by the hand written minus sign in the circle, next to the letters, "LOC" on the above form.

I asked Dr. Shifflett if he observed other contusions or broken bones on Burns' person. Dr. Shifflett said that he did not. He explained that he saw Burns 24 hours after the incident. Burns was walking, alert and orientated. Dr. Shifflett said that Burns did not require any follow up emergency procedures (MRI's or X-rays) for his injuries. Dr. Shifflett said that Burns could have received a Computerized Tomography (CT) Scan to determine if he had a nasal fracture, but it was a costly procedure and nothing could have been done to treat it. Dr. Shifflett told me that if law enforcement had been conducting an investigation at the time of his examination, then he would have suggested a CT Scan to confirm his diagnoses.

I asked Dr. Shifflett if he had ever testified in court as an Expert in his field. Dr. Shifflett said that he had testified approx. four to five times. He remembered that he testified on a stabbing case, but he could not remember the content of his testimony on the other cases.

Case closed: Criminal ComplaintPrepared By:
S0134 COSTANZA, NICOLEDate:
7/14/2011Approved By:
S0038 SAMPLES, JIMDate:
7/14/2011

1515

**LAKE COUNTY SHERIFF'S OFFICE**1220 MARTIN STREET LAKEPORT, CA 95453 707 262 4200
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Attachments

None

On 07/15/11, I responded to 3358 Clarkson St in Clearlake in an attempt to interview Kristopher Perkin. The occupants of the residence said that they had lived there for approximately one year and they did not know anyone by the above name. I knew from prior research that Perkin had two other address listed on his driver's license info in CLETS. One of those addresses was 8040 Soda Bay Road in Kelseyville. There was no response at that address. I then responded to 4565 Lakeshore Drive in Lakeport. I saw a black motorcycle parked on the sidewalk near the house, but there was no answer at the door. I was told by neighbors that a guy named, "Chris" lived at the house with his wife and two kids. They saw the wife leave earlier in the day with the kids. The second vehicle was also gone which indicated Chris was not home.

I spoke to a person that wished to remain anonymous. That person also told me that a man named, "Chris" lived at the residence. The person continued to say that Chris had a motorcycle and the person had seen Chris riding his motorcycle while wearing, "Colors" on multiple occasions. The person was not able to provide any other information.

I changed the address in Kristopher Perkin's RIMS Person screen to reflect the address on Lakeshore Drive in Lakeport. I will attempt contact with Perkin at this address at a later time.

Case closed: Adult Complaint

Prepared By:
S0134 COSTANZA, NICOLE

Date:
7/15/2011

Approved By:
S0146 GREGORE, JOHN

Date:
7/18/2011

1516

**LAKE COUNTY SHERIFF'S OFFICE**

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SUPPLEMENT 18

C11060074

Attachments**1. Property Receipt (Item 41) (Scanned)**

On 07/18/11 I was working for the Lake County Sheriff's Office assigned to the Investigation's Unit. Detective Drewrey and I responded to 4565 Lakeshore Blvd, apartment A, in Lakeport, CA. We contacted Kristopher Perkin. The contact was captured via my digital recorder, later down loaded to a compact disc and booked into evidence. In short, Perkin provided the following information.

Perkin denied any involvement in the altercation at Konocti Casino with the Hell Angels. He said that he was in the vehicle with Michael Burns after the incident occurred. I told Perkin that the video surveillance was viewed and he was seen in the area of the altercation. He appeared to have been pulled away from the altercation by security. Perkin said, "Yeahh....hmm." Detective Drewrey said that we watched the video, we knew that he was there and he asked Perkin if it was something he rather not talk about. Perkin said, "Well yeah." Perkin later said that he had a wife and kids to protect. Perkin continued to say, "You know it's an unfortunate incident that I never expected either. You know? In spite of...you know....uhhh.....what I do." Detective Drewrey said, "You mean by what you do as in your involvement with the Vagos?"

Perkin said, "Uh, uh, I ride. You know? Uhhh..you know...I like to....I like to ride. I like to fellowship and all that, but you know? I don't like *that* sort of thing."

Perkin again said that he can't say anything about it. He had a family, coached little league and had his own business. Perkin said that the incident that occurred before, "That" (Referring to the altercation at the casino) was a coincidence. Detective Drewrey asked if they knew, "They" (the Hells Angels) were going to be there. Perkin paused and said that they did not know they were going to be there and that was also a coincidence. Perkin said that everything seemed to be coincidences. He said, "People don't know what other people are thinkin'...." Detective Drewrey made a comment that we don't need this kind of stuff happening here. Perkin said, "No. It ain't happening here. You know? It ain't...It is not gonna happen again here. I guarantee ya that."

Perkin again said that there was nothing to talk about. I told Perkin that I had one more question and he did not have to answer it if he did not know or if he did not want to answer. I asked Perkin if he knew the name of the lady friend to Burn's wife that was also present at the casino. Detective Drewrey told Perkin that Leayla (Burn's wife) told him that a lady friend of hers went with him (Perkin's) and Burns to the casino. Perkin said that he did not know anything about that. He really didn't and it was a, "Dead story." Perkin had no other information.

Case closed: Adult Complaint

Prepared By:
S0134 COSTANZA, NICOLE

Date:
7/18/2011

Approved By:
S0146 GREGORE, JOHN

Date:
7/19/2011

1517

**LAKE COUNTY SHERIFF'S OFFICE**1220 MARTIN STREET LAKEPORT, CA 95453 707 262 4200
SUPPLEMENT 19

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C11060074

Attachments:

PDF File Containing: - (Scanned)

- Documents Received from FBI
- Property / Evidence Form(Scanned)

Supplemental Report

On 07/18/11, I received a FedEx delivered envelope from the Reno division of the FBI. Inside the envelope addressed to me was information regarding criminal charges against David Dabbs while in the state of Nevada during 2002 and 2003.

Based on the paperwork, it appears in 2002, Dabbs was charged by the Nevada Highway Patrol for violation of aggressive driving and no turn signals laws. Through the court proceedings, Dabbs plead to a modified charge of speeding in excess of 21 miles per hour over the speed limit. Dabbs was sentenced to pay a total of \$170.00 in fines and fees.

It also appears in 2003, Dabbs was arrested on an arrest warrant by the Reno Police Department for possession of a document for the purpose of establishing a false identity. Through the court proceedings, Dabbs pled No Contest to the charge. He was sentenced to pay a total of \$615.00 in fines and fees.

Included in the envelope was Docket Sheet from the City of Sparks NV case number 04C004725 regarding Dabbs. The information outlined charges made against Dabbs for violation of speeding and obstructing an officer.

The last document received in the packet was a Judgment in a Criminal Case. The judgment again regarded Dabbs. The date of the judgment was 10/28/02, and had to do with the charge Dissuasion of an Informant.

I later scanned the documents I received and booked the originals into an evidence locker at the LCSO Main Office.

Case Closed: Complaint

Prepared By:

S0292 MOORE, BENJAMIN

Date:

7/20/2011

Approved By:

S0146 GREGORE, JOHN

Date:

7/25/2011

(518)

**LAKE COUNTY SHERIFF'S OFFICE**1220 MARTIN STREET LAKEPORT, CA 95453 707 262 4200
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Attachments:**1. Disc of predicate offenses provided by Jorge Gil-Blanco(In File)**

On 7/7/2011, I received a portion of the predicate offenses involving the Hells Angels from Jorge Gil-Blanco. Some of the files were too large to email so they were placed on a CD. See attached. I also made arrangements to obtain certified copies of the Information and Abstract of Judgment for each relevant predicate offense.

As noted previously, the initial identification of the Hells Angels involved in the fight was made by several members of MAGNET. I contacted SRPD Detective Greg Wojcik by telephone in order to clarify if this was based on previous contacts they had with the individuals. Detective Wojcik told me that most of the identification was based off of shared Law Enforcement intelligence gathered on known and suspected Hells Angels members. He stated that there were some Gang Task Force members who have had personal contacts with some of the individuals and he would forward that information to me as soon as he was able.

I also spoke with Jorge Gil-Blanco by telephone. Gil-Blanco confirmed that he was also able to positively identify Josh Johnson, David Dabbs, Nicolas Carrillo and Timothy Bianchi from the videos I provided him. Gil-Blanco stated that he has extensive experience regarding Outlaw Motorcycle Gangs. He is routinely asked to identify photographs of various known and suspected gang members that he receives Law Enforcement sources. He has obtained some of his knowledge from personal contacts he has had with known and suspected gang members, surveillance information he receives, and Law Enforcement gang intelligence information he has received. He confirmed that those four were the same subjects that I previously identified as the subjects that battered Michael Burns and Kristopher Perkin.

On 7/26/2011, I received an updated photograph of David Dabbs from Shannon Ryan of the Drug Enforcement Administrations San Diego Field Office. The Cal-Photo driver's license image I had previously obtained for Dabbs was obviously an older photo even though it showed as renewed in 2011. The new photo was from a surveillance photo taken in a public place. I updated our RiMS database to reflect the recent photograph of Dabbs. This photograph also confirmed Dabbs identity as the subject in the videos stomping and kicking Burns to the head and upper torso.

Prepared By:

S0146 GREGORE, JOHN

Date:

7/28/2011

Approved By:

S0146 GREGORE, JOHN

Date:

8/2/2011

1519

**LAKE COUNTY SHERIFF'S OFFICE**

1220 MARTIN STREET LAKEPORT, CA 95453 707 262 4200
SUPPLEMENT 21

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C11060074

Attachments:

PDF File Containing: - (Scanned)

- Affidavit for Search Warrant
- Information from PG&E

Affidavit for Search Warrant

Information from PG&E

Supplemental Report

On 08/23/11, I served Search Warrant 11-080 at Pacific Gas and Electric (PG&E) located at 325 North Forbes St., Lakeport. The warrant, signed by Judge Martin, allowed information regarding any accounts Timothy Bianchi had with PG&E.

PG&E employee Wanda Otte gave me the attached information regarding Bianchi. It showed Bianchi had PG&E service starting 03/19/11 and was still active on 08/18/11, the last day of a full billing cycle. Otte said the address for the service was 1400 Technology Ln., Unit 1112, Petaluma, California. Otte also said the account was still active. According to PG&E, Bianchi had two phone numbers associated with him, 707 762 1277 and 650 270 7218. Bianchi's mailing address through PG&E was 1400 Technology Ln., Unit 1112, Petaluma. Otte hand wrote the information on the sheet she provided me.

I later attached the Affidavit for the Search Warrant to this supplemental report.

Case Closed: Complaint

Please forward a copy of this supplemental report to LPD Officer Norm Taylor.

Prepared By:
S0292 MOORE, BENJAMIN

Date:
8/23/2011

Approved By:
S0146 GREGORE, JOHN

Date:
8/23/2011

1520

**LAKE COUNTY SHERIFF'S OFFICE**1220 MARTIN STREET LAKEPORT, CA 95453 707 262 4200
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Attachments:**1. Santa Rosa Police Department report #11-0010260 (Scanned)**

On Friday, 8/19/2011, I received a copy of Santa Rosa Police Department (SRPD) report #11-0010260. It was prepared by SRPD Gang Officer Travis Menke. Officer Menke reviewed the video surveillance footage from the fight at the Konocti Vista Casino on 6/4/2011. Officer Menke stated that he positively identified Josh Johnson, Timothy Bianchi, David Dabbs, Nicolas Carrillo and several other Hells Angels members on the videos. Officer Menke also outlined the dates where he personally observed some of the subjects during unrelated incidents prior to reviewing the video. See attached copy of the report.

Case closed: Complaint.

Prepared By:
S0146 GREGORE, JOHN

Date:
8/23/2011

Approved By:
S0146 GREGORE, JOHN

Date:
8/23/2011

1575

**LAKE COUNTY SHERIFF'S OFFICE**1220 MARTIN STREET LAKEPORT, CA 95453 707 262 4200
SUPPLEMENT 23

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Attachments:

Property receipt (3) (Scanned)
Currency receipt (Scanned)
Copy of USA Passport (Johnson's) (Scanned)
Copy of 29 Palms Pass (Johnson's) (Scanned)
Copy of EDD Payment Notification (Johnson's) (Scanned)
Copy of Comcast bill (Johnson's) (Scanned)
Copy of "2008 Tax returns" (Johnson's) (Scanned)
Copy of "2010 Tax returns" (Johnson's) (Scanned)

On 08/25/2011, I was on duty with the Lake County Sheriff's Office, assigned to the Investigations Division. As part of this investigation, I was assigned to assist in the service of Search Warrant #11-082, which was authored by Lakeport Police Department Officer Norm Taylor. I was assigned, by Sergeant John Gregore, to be the team leader at 2413 Rock Creek Drive in Santa Rosa, which was in "Exhibit A" of Search Warrant #11-082. The above address was Josh Johnson's residence and he had an active felony warrant for his arrest.

A briefing regarding the service of the search warrant was held in Santa Rosa on 08/25/2011, at approximately 0430 hours. Assigned to assist me with the service of the search warrant were Lake County Sheriff's Office Detective Luke Bingham, Santa Rosa Police Department Detective John Cregan, Santa Rosa Police Department Detective Kyle Philp, California Highway Patrol Officer Randall #18497, California Highway Patrol Officer Herman #18462 and Federal Bureau of Investigation Special Agent Melissa Vanek.

On 08/25/2011, at approximately 0600 hours, members of the Federal Bureau of Investigation S.W.A.T. team assisted with the service of the search warrant at 2413 Rock Creek Drive by securing the residence. After the residence had been secured (approximately 0610 hours), myself and the members assigned to assist me went to the residence. When I arrived at the residence, I was informed that Josh Johnson was not present, but his girlfriend (Jennifer Bochman) and her daughter (Malisha Bochman) were.

I went into the residence and spoke with Jennifer, who was sitting on a couch in the living room with Malisha. Our conversation was recorded with my digital recorder. I later made a CD copy of the recording and booked it into evidence at the Sheriff's Department Main Office.

Jennifer said that Josh was her boyfriend of two years. Jennifer told me that Josh did not live at the residence, but that he "stayed" there. She said that Josh was out of town working, but that she did not know where he was working. Jennifer stated that Josh wouldn't be home for weeks, because he was working. She told me that one room of the residence was occupied by a roommate, Kami Hollingsworth, who was not present.

After speaking to Jennifer, I began to searching the residence for items in "Exhibit B" of Search Warrant #11-082. The following is a list of items that I seized pursuant to the Search Warrant and the location

Prepared By:

S0277 DREWREY, JOHN

Date:

8/26/2011

Approved By:

S0146 GREGORE, JOHN

Date:

9/6/2011

1522

**LAKE COUNTY SHERIFF'S OFFICE**

1220 MARTIN STREET LAKEPORT, CA 95453 707.262.4200

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they were located.

<u>Item #</u>	<u>Item description</u>	<u>Item location</u>
43	Black business bag/case	Master bedroom- in clothes cabinet
44	Motorola silver flip phone	"677" "677" - in clothes cabinet
45	EDD payment notification	"635" "635" - on floor by bed
46	29 Palms pass	"629" "629" - on top of dresser area
47	Dog tags	"629" "629" - in clothes cabinet
48	"Hells Angels" Belt/Buckle	"621" "621" - in clothes cabinet
49	"Prospect" vest	"677" "677" - in clothes cabinet
50	"Vice President" vest	"629" "629" - in clothes cabinet
51	Various patches	"629" "629" - plastic container cloth.cab.
52	HAMC Newsletter	"629" "629" - plastic container cloth.cab.
53	Johnson's Passport	"629" "629" - drawer on top of cloth.cab.
54	Comcast bill	"677" "677" - on top of dresser area
55	"Hells Kitchen" CD	"629" "629" - on top of dresser area
56	"Birthday" CD	"629" "629" - on top of dresser area
57	Johnson's Tax returns	"629" "629" - drawer on top of cloth.cab.
58	Iphone mod#A1303	"677" "677" - in Jennifer's purse
59	Iphone mod#A1332	"677" "677" - on bed
60	Dell CPU	Office
61	Sony camcorder	Office- in desk drawer
62-65	Camcorder cassette tapes	Office- in desk drawer
66	Plastic container w/ drawers	Office

I collected all of the above items and later booked them into evidence at the Sheriff's Department Main Office.

Item 43 contained a lot of "Sonoma County Productions" paperwork, which was later scanned and made into a pdf file before being booked into evidence. While looking through the paperwork in item 43, I located \$660.00 in cash, which I booked into evidence separate from the bag for "safekeeping". I attached a copy of the currency bag receipt to this report.

Items 45 and 54 both were addressed to "John Johnson" at "2413 Rock Creek Dr".

Item 58 was found in Jennifer's purse, which was on the floor of her bedroom. Jennifer told me it was just an extra phone that Malisha played with.

Item 59 was found on the bed in Jennifer's bedroom. At approximately 0620 hours, members of my search team notified me that the phone had several missed called calls from "Big Daddy". At

Prepared By:
S0277 DREWREY, JOHN

Date:
8/26/2011

Approved By:
S0146 GREGORE, JOHN

Date:
9/6/2011

1523

**LAKE COUNTY SHERIFF'S OFFICE**

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C11060074

approximately 0628 hours, I looked at the phone and observed a picture of what appeared to be Josh Johnson and "Big Daddy" displayed on the screen with an incoming call. I activated my digital recorder and answered the phone. The person identified them self as "Josh". I informed Josh that I was conducting a search warrant at his residence and asked if he would be willing to come by the residence to discuss the search warrant. He declined and told me that I could leave a copy with Jennifer. The recorded conversation was later put onto a CD and booked into evidence at the Sheriff's Department Main Office. Jennifer told me that the security code to item 59 was "9636".

Item 66 contained several Hells Angels stickers, indicia for Josh and other miscellaneous Hells Angels items. I later took everything out of the drawers in the container and took photos its contents. I later made a CD of those photos and booked it into evidence at the Sheriff's Department Main Office. I booked a CD that was in a cover titled "Gangland", separate from item 66. I also booked two "scandisk" items separate from item 66.

I made copies of items 45, 46, 52, 53, 54 and 57, which I later attached to this report.

Detective Bingham took photos of the items that I collected and the locations that they were collected from. It should be noted that Detective Bingham took several photos of the residence, to document it as it was, before my team conducted the search for evidence. Detective Bingham also took photos after my team was done searching for evidence. All of the photos taken by Detective Bingham were later transferred to a CD and booked into evidence at the Sheriff's Department Main Office.

Case Closed.

Prepared By:
S0277 DREWREY, JOHN

Date:
8/26/2011

Approved By:
S0146 GREGORE, JOHN

Date:
9/6/2011

1524

**LAKE COUNTY SHERIFF'S OFFICE**

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SUPPLEMENT 24

C11060074

Attachments:

1. Arrest warrant copies (Scanned)
2. Search Warrant copy (Scanned)

On 8/24/2011, at approximately 0800 hours, I received the signed arrest warrants for Timothy Bianchi, David Dabbs, Nicolas Carrillo and Joshua Johnson. I delivered them immediately to the Hill Road Jail to be logged. See attached copy.

I had previously requested the assistance of Lakeport Police Department (LPD) Officer Norm Taylor in securing search warrants for the suspects' residences and the Hells Angels clubhouse. On 8/24/2011, he obtained a search warrant related to this incident. See attached copy of search warrant #11-082.

In the early morning hours of 8/25/2011, Detective John Drewrey, Detective Nicole Costanza, Detective Ben Moore and LPD Officer Taylor served the search warrant at four locations in Sonoma County. Refer to their reports for additional information regarding the warrant service.

Case closed: Arrest

Prepared By:
S0146 GREGORE, JOHN

Date:
8/26/2011

Approved By:
S0146 GREGORE, JOHN

Date:
9/6/2011

1525

**LAKE COUNTY SHERIFF'S OFFICE**

1220 MARTIN STREET LAKEPORT, CA 95453 707 262 4200

SUPPLEMENT 25

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Attachments

1. Property Receipts (Items 75 thru 119) (Scanned)
2. Property Receipt (Item 138 & 162) (Scanned)
3. Property Receipt (Item 165) (Scanned)
4. Property Receipts (3 pgs, unnumbered items) (Scanned)
5. Copy of hand drawn sketch by FBI Special Agent Mac Crumrine (Scanned)
6. Copies of various documents seized from residence (Scanned)
7. Registration on motorcycle (Scanned)
8. Registration on vehicle in driveway (Scanned)
9. Automated firearms check on rifle—no record on file (scanned)
10. Copy of arrest warrant for Nicolas Carrillo (CR927286C) (Scanned)

On 08/29/11, I was working for the Lake County Sheriff's Office assigned to the Investigation's Unit. I was asked by Detective Sergeant John Gregore to assist in the service of Search Warrant #11-082, authored by Lakeport Police Officer Norm Taylor. I was assigned as the search team leader for 1022 Stanislaus Way in Santa Rosa, which was listed in Exhibit A of Search Warrant # 11-082. The residence was occupied by Nicolas Carrillo. N. Carrillo had a felony arrest warrant out of Lake County. Lake County Sheriff's Office Narcotics Sergeant Detective Jim Samples, Federal Bureau of Investigation (FBI) Special Agent Mac Crumrine and Knowle Boswell, Santa Rosa Police Department Officers Brian Singiani and Tommy Isachsen and California Highway Patrol Officers Kathleen Hayes and William Harm were all assigned as part of the search team. I met with all the above members of the search team prior to searching the residence. I read the entire Search Warrant #11-082 aloud. A separate tactical team led by FBI Special Agent Mac Crumrine conducted entry and secured the residence. Once the residence was secured, Agent Crumrine contacted me via telephone and told me the search team could respond.

Upon arrival, the tactical team was still present to maintain scene security. I saw Nicolas Carrillo sitting on the sofa in the living room. His wife, later identified as Leona Carrillo was in the children's bedroom with their three young daughters. Sergeant Detective Jim Samples and I contacted Leona Carrillo and spoke to her in the master bedroom. The contact was captured via my digital recorder, later down loaded to a compact disc and booked into evidence. I identified myself to L. Carrillo and explained that we had a search warrant for her residence and that N. Carrillo had an arrest warrant out of Lake County for an incident that occurred in Lake County. I asked L. Carrillo if she was familiar with the incident of which I spoke and she said she had no idea, but she was going to find out. L. Carrillo then told me that she and N. Carrillo had been married for at least five years. I asked L. Carrillo if she knew if N. Carrillo was a member of any clubs and she said, "Well, the Hells Angels." I asked her how long N. Carrillo had been a member of the Hells Angels and she said, "A long time." She said that N. Carrillo was, "Prospecting" when she met him and, "He made member" sometime before they got together. L. Carrillo said that it must have been something pretty serious for law enforcement to be there like we were. L. Carrillo seemed to be referring to the tactical team entry and the abrupt awakening of her family. Sergeant Detective Samples and I apologized and explained that no chances could be taken and everyone's safety was paramount at the time of entry and in securing the residence. L. Carrillo indicated she understood and said that she would cooperate any way she could. I asked L. Carrillo if there were in

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S0134 COSTANZA, NICOLE

Date:

8/26/2011

Approved By:

S0146 GREGORE, JOHN

Date:

9/6/2011

1526

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any weapons in the house that we needed to be concerned about and she said that there was a rifle in the closet. The rifle was given to her by her father when she was sixteen years old. She did not know if it was registered and she said there was no ammunition in the house for it. L. Carrillo said there were no drugs or large sums of money in the house. I asked L. Carrillo if we could take her photograph. She wanted to know if she had a choice and said that she did not want her picture in a file somewhere to be examined. She said she knew her husband was a Hells Angel, and she hoped that whatever occurred warranted law enforcement entering her house. I again told her that we knew her husband was involved in criminal activity in our county and we had enough probable cause that a Judge signed a search warrant for their residence. She was told that we did not have to take her photograph, but we would have to seize a photograph or some type of indicia that showed she lived in the house. L. Carrillo said that if meant us seizing less items from her house, then she would agree to have her picture taken. Sergeant Detective Jim Samples took one photograph of L. Carrillo which was later down loaded to a compact disc and booked into evidence. No search of the residence was conducted during this time. When the search was conducted, no personal or family photographs were taken. Only photographs that seemed to depict Hells Angels' activity. L. Carrillo then gathered up the three children and went next door to Joel Silva's house. I was previously advised by FBI Special Agent Dale Dutton that Joel Silva was a known Hell's Angels member and a neighbor to the Carrillos.

I contacted N. Carrillo and he confirmed his identity. The contact was captured via my digital recorder, later down loaded to a compact disc and booked into evidence. Carrillo's hands were hand cuffed in the front of his body. I identified myself and explained that law enforcement was there pursuant to a search warrant and that he had a felony arrest warrant out of Lake County with a \$500,000 bail. I advised N. Carrillo of his Miranda Rights and he indicated he understood by saying, "hmmhm." I asked Carrillo if he was willing to talk to me and he said the only information he would provide was from his driver's license. He then said, "Anything else, I d-don't have nothin' to talk about." I confirmed he meant his general information like his date of birth. He said, "If you have an arre....If you have a...If you have aaa.. arrest warrant for me already then that's what's happening." I asked N. Carrillo if he was curious as to what the arrest warrant was for and he said, "I am. Yeah." I told him the arrest warrant was for a physical altercation that occurred at a casino in Lake County. I asked him if he was willing to talk about that and N. Carrillo said, "I have nothing to talk about." I asked no other questions of N. Carrillo that pertained to the case. I told N. Carrillo that we were going to have him step outside and asked if he was going to be warm enough. N. Carrillo indicated a black jacket on the back of a dining room chair and asked if he could have the coat. I searched the jacket before I released it to N. Carrillo. I found a photograph that I recognized as the Hells Angels' death head symbol in one of the coat pockets. I placed the photograph on the dining room table. The photo was later photographed and seized. I took various photographs of N. Carrillo's tattoos, which I later down loaded to a compact disc and booked into evidence.

Santa Rosa PD Officer A. Jauregui took custody of N. Carrillo pursuant to the arrest warrant and he was transported to their local facility in Santa Rosa (Santa Rosa PD case 11-10678).

I was previously told by Sergeant Detective John Gregore that Santa Rosa Police Department (SRPD) was going to run a drug K-9 through the residence once it was secured. Any drugs that were located would be subsequently handled by the agency with jurisdiction. After all occupants were removed from

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Date:

8/26/2011

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S0146 GREGORE, JOHN

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the inside of the residence a SRPD K-9 conducted a search of the residence. Nothing was seized as a result of the K-9 search.

Before the K-9 went through the house and before any searching was conducted by the search team, Sergeant Detective Jim Samples took overall photographs of the residence as we found it. I took photographs of items as they were found and Sergeant Detective Jim Samples recorded the items on Property Receipts. FBI Special Agent Mac Crumrine created a hand drawn sketch of the residence. I later made a copy of the sketch and attached it to this supplement. The original was booked into evidence.

Once the search was completed and everyone was out of the house, I took overall photographs of the residence as we left it. All photographs were later down loaded to a compact disc and booked into evidence. Joel Silva walked through and secured the residence. During the search, items 75 through 119 were seized. A copy of the search warrant and Property Receipts (3 pages) were left on the dining room table. All the property seized was secured in the evidence van driven by Lake County Sheriff's Office Evidence Technician Elona Porter. Upon returning to Lake County, Porter secured the items in the Lake County Sheriff's Office Evidence building.

On 08/26/11, I responded to the Lake County Sheriff's Office Evidence building and retrieved all the items I seized from the search warrant. I again photographed the items, entered them into the property section of this case and itemized them on new Property Receipts. It should be noted that I documented 26 color photos that were seized from the living room area (Item 118) and two separate photographs taken from the, "Shrine" in the living room (Items 110 & 112). On the original Property Receipts, Sergeant Detective Jim Samples listed that 12 photographs were taken from the living room cabinet ("Shrine") and 16 photographs were taken from a box in the living room, totalling 28 photographs. All the photographs were placed in a bag and labeled, "Living room." I had no way of telling which photographs were taken from where, however the end total was, 28. I scanned copies of all the documents seized from the residence and I added them as attachments to this case. The originals were all booked into evidence. It should also be noted that there was a disassembled LG phone, model L5670, on the table in the master bedroom that was photographed, but not seized.

I later realized that entry 102 (Iphone), on page 3 of the Property Receipt was a duplicate entry. I had intended to complete that entry and accidentally added the next item, a Sprint LG phone (103). I then added the Iphone as 104 when it should have been 102. I confirmed this on 09/01/11, by physically checking the phones booked into evidence. Detective Jerry Pfann noted this in the property section of this case by marking 102 as, "Destroyed." I marked item 102 on the attached Property Receipt as, "Duplicate entry. This phone is actually 104."

I later obtained a copy of the arrest warrant and attached it to this supplement. I changed N. Carrillo's status in the person screen from, "Suspect" to "Suspect arrested."

Case closed

Prepared By:
S0134 COSTANZA, NICOLEDate:
8/26/2011Approved By:
S0146 GREGORE, JOHNDate:
9/6/2011

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**LAKE COUNTY SHERIFF'S OFFICE**

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Attachments

Property Receipt Items 120 - 137, 164 (PDF attachment)
Crime Scene Sketch (PDF attachment)

Narrative

On August 25, 2011, I assisted in the service of search warrant # 11-082, with Lakeport Police Officer Norm Taylor at 516 Fraizer Avenue, Santa Rosa, which is the Hells Angels Clubhouse.

I took overall and close-up photos as the search was taking place (Item 137). I unplugged item 135 - Hewlett Packard CPU serial # MEID HEX APPLE 0000024585F66, from it's power source, at approximately 0940 hrs. I collected items 120-136, later placing them into Lake County Sheriff's Office (LCSO) evidence building. I prepared a sketch of the clubhouse (item 164), and scanned a copy into Rims and placed the original in evidence at LCSO evidence building.

Case Status: Cleared Complaint

Prepared By:
S0114 PORTER, ELONA

Date:
8/26/2011

Approved By:
S0146 GREGORE, JOHN

Date:
9/6/2011

1529

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Attachments:

Property / Evidence Form (Items 139-160) (Scanned)

Property / Evidence Form (Item 166) (Scanned)

Supplemental Report

On 08/25/11, at approximately 0600 hours, members of the City of Petaluma Police Department SWAT team, gang task force, along with Detective Pfann and I, served Lake County Search Warrant 11-082 at Timothy Bianchi's residence, 1400 Technology Ln., Unit 1112, Petaluma.

As a result of the service, Bianchi was detained and moved away from his residence. I activated my digital recorder and attempted to speak with Bianchi. I read him his rights per Miranda after which I asked if he understood each of his rights. Bianchi said something inaudible and nodded his head in a "yes" motion. I told him I wanted to talk to him regarding the fight at Konocti Vista Casino. Bianchi told me he did not know what I was talking about. I attempted to question him further about the fight only for Bianchi to respond with something similar to, "I don't know what you're talking about." I explained to Bianchi he had a warrant for his arrest from Lake County. Bianchi requested to go to jail and not talk with me any further. I ended our conversation. I later transferred the recording onto a CD and booked it into an Evidence Locker at the LCSO Main Office.

Detective Pfann and I entered Bianchi's residence and began our search for items listed on the warrant. Before moving anything, Detective Pfann took digital photographs of the residence.

In the garage of the residence, I located many t-shirts and sweat shirts that had the Hells Angels Death Head logo. I knew from training and experience, only members in good standing can possess the Death Head logo or anything item containing the Death Head. Located in the pile of t-shirts and sweat shirts was a "filthy few" t-shirt. I knew from training and experience members of the Hells Angels Motorcycle Club (HAMC) members who possess a "filthy few" patch or shirt may do so only after committing an act of violence in furtherance of the gang. I collected the "filthy few" t-shirt as evidence. It was labeled as placard 1 and photographed as such.

In the family room of the residence were many pictures on the wall depicting members of the HAMC dressed in their patched vests. Included in the photos were Bianchi dressed in the same three piece patch vests. Also found in the family room was a scrapbook containing a small history of Bianchi within the HAMC. I collected the scrapbook as evidence, labeled placard 2. I also collected an iPhone with a "Speck" phone case as placard 3.

I collected Bianchi's HAMC vest as placard 4. On the vest were the HAMC three piece patch and what appeared to be a fairly new, "filthy few" patch. The material of the vest, the shape of the vest, and the appearance of the vest's patches, less the filthy few patch, appeared to be the same vest Bianchi wore in the assault while at the Konocti Vista Casino.

Inside the vest was an HAMC member phone list and miscellaneous papers labeled as placard 5. Bianchi's wallet was located on the front room table. Inside his wallet was a HAMC member card. I collected the member card as placard 6. I collected his CA DL as placard 7.

Prepared By:

S0292 MOORE, BENJAMIN

Date:

8/29/2011

Approved By:

S0146 GREGORE, JOHN

Date:

9/6/2011

1530

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Also within the front room was a display case. Inside the case were three knives. I collected the knives as placard 8. There were many HAMC patches located within the case as well. I collected the patches as placard 9.

Under the display case was a locked wooden cabinet. After searching for the key to the cabinet with negative results, using a screwdriver, I forced open the cabinet. Located inside the cabinet was a plastic organizer with many different HAMC patches inside and loose patches outside the container. I collected the container and patches as placard 10. In the cabinet were four copies of a photograph that depicted Bianchi, Johnson, and Dabbs, and one other HAMC member. I collected the photographs as placard 11. Located in the cabinet was a book labeled "cash". The book appeared to be a ledger for what different HAMC members owed for patches. I collected the book as placard 12.

In the kitchen area was paperwork and catalogs for different HAMC patches. Also there were CDs labeled with HAMC titles. I collected the paperwork and CD as placard 13. Also in the kitchen was a Dell PC. I collected the PC as placard 14.

Located inside the master bedroom of the residence was a locked pistol safe. I located a key that fit the safe. Inside the safe was a Ruger LCR .38 pistol. The pistol was loaded with five .38 rounds. I collected the firearm and rounds as placard 15. Also in the master bedroom was another small safe. After locating the key to the safe, I found a plastic bag full of numerous different calibers of firearm ammunition. I collected the ammunition as placard 16.

Inside the master bedroom closet, on the top shelf, was a partial box of Winchester .40 ammunition. I collected the ammunition as placard 17. I collected two video cameras from the same master bedroom closet as placard 18.

On the dresser in the master bedroom was a PG&E bill for Bianchi with the same address as we were at. I collected the bill as placard 20.

Inside the spare room were many different pictures, t shirts, sweat shirts, and posters all having HAMC logos on them. The items were photographed by detective Pfann. I collected the HAMC patches that were on the bed as placard 19.

In the front room of the residence were three metal replica hand grenades. Each grenade was drilled out with no powder inside. Each of the grenades blasting caps were spent and not live. One was on the fireplace mantel and painted a metallic red. Two were on a TV table and were OD green. I collected the grenades as placard 21.

Detective Pfann searched Bianchi Chevrolet pickup and collected two cell phones as placard 22.

Each of the above items described by a placard number was photographed where they were found by detective Pfann. After collecting each item, they were later booked into an evidence locker at the Lake County Sherriff's Office Evidence. As Detective Pfann and I were gathering the above

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S0292 MOORE, BENJAMIN

Date:

8/29/2011

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9/6/2011

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evidence, Detective Pfann completed the attached Property / Evidence Forms.

Case Closed: Complaint.

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S0292 MOORE, BENJAMIN

Date:

8/29/2011

Approved By:

S0146 GREGORE, JOHN

Date:

9/6/2011

1532

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SUPPLEMENT 28

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Attachments: Property Receipt (Scanned)

Copy of item 163 - Scene Sketch Bianchi residence (Scanned)

On 8/25/11, I assisted with the service of s/w # 11-082 at 1400 Technology Ln # 1112 in Petaluma Ca (including Bianchi's truck parked on the street behind his residence) with Det. Moore. I photographed the scene as I found it as well as the items collected pursuant to the search warrant. At approx. 0815 hrs, I unplugged the power cord to the Dell CPU (item 152) located in the kitchen area. Refer to Det. Moore's report for further details. I stored the photographs on a CD (item 161) and stored the CD and original scene sketch (item 163) in evidence at the LCSO Evidence Building.

Case Closed.

Prepared By:

S0078 PFANN, JERRY

Date:

8/30/2011

Approved By:

S0146 GREGORE, JOHN

Date:

9/6/2011

1533

**LAKE COUNTY SHERIFF'S OFFICE**

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Attachments: Court Order for Appointment of Special Master in Re: Search Warrant # 11-082
(Scanned)

On 9/1/11, pursuant to DDA Grothe's instructions, Det. Moore and I went through the documents seized pursuant to s/w 11-082 and separated out any items that were either marked as Attorney/Client Confidential or anything similar that might indicate the material was Attorney/Client related.

On 9/2/11, I received the attached copy of the Court Order for Appointment of Special Master Re: Search Warrant #11-082. Attorney Christopher Neary was appointed as Special Master.

On 9/2/11, DDA Art Grothe and I contacted Neary by phone and made arrangements to meet with him at the LCSO Main Office on 9/6/11.

On 9/6/11, I met with Neary at the LCSO Main Office. He reviewed and took custody of the following items which consisted of all the items we located and separated as possible Attorney/Client Confidential:

Item # 77 HAMC Active and Continuing Matters (marked as Attorney/Client privilege)
seized from the living room of Carillo's residence.

Item 126 Group of files from top drawer (filing cabinet Sonoma County HA Clubhouse
weight room) - the items collected by Special Master were from the following files:

- a) "Misc. Pictures/Nick Carillo"
- b) "Ray Ray"
- c) "Frank"
- d) "X-People"

Item 128 White envelope full of documents (Locker east side of weight room Sonoma
County HA Clubhouse).

Neary signed a LCSO Chain of Custody form showing the transfer of the above listed items.

Case Closed

Prepared By:
S0078 PEANN, JERRY

Date:
9/6/2011

Approved By:
S0146 GREGORE, JOHN

Date:
9/9/2011

1534

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Attachments

1. Property Receipt (Items 167 & 168)(Scanned)
2. Dr. Shifflett's CV (3 pages)(Scanned)
3. Burns' medical records used as reference in intvs (10 pages)(Scanned)

On 09/09/11, I responded to Sutter Lakeside Hospital Emergency Room where I met with Devin Sheridan. The contact was captured via my digital recorder, later down loaded to a compact disc and booked into evidence. Sheridan told me that he was a Registered Nurse and had been working for Sutter Lakeside Hospital Emergency Room for approximately nine years. Prior to Sutter, Sheridan worked for a year and a half in a hospital in Fort McCloud, Alberta.

I told Sheridan that I wanted to speak to him about the treatment of Mike Burns back in June 2011. Sheridan remembered the patient and the incident because he knew Leayla Burns. On 06/05/11, Sheridan was the intake/triage nurse and he was in the treatment room for a short time with Michael and Leayla Burns when they came into the emergency room. Sheridan said that he had already heard through the, "Grapevine" about the fight at the casino. Sheridan said that on morning of 06/05/11, his wife told him that Burns had been in a fight at the casino and then Burns showed up in the emergency room later that day. Sheridan did not know where his wife got the information. The right side of Burns' face was swollen and his upper lip was also swollen. Sheridan said it looked like a, "Duck bill." Sheridan noticed that Michael Burns had a couple stitches in his upper lip and he asked Michael Burns if he had already received treatment for his injuries. Leayla Burns told Sheridan that she had stitched Michael Burns' upper lip. Michael Burns did not say who beat him up or where it occurred. He only said that he was in the wrong place at the wrong time. Sheridan said that he knew that Michael Burns was, "The big Vagos enforcer." Sheridan said that he heard that Burns had been beat up about three times recently and all of the beatings were allegedly by the Hells Angels. Sheridan said that prior to Michael getting beat up, Michael and Leayla Burns were posting anti Hells Angels stuff on Facebook and Michael Burns was broadcasting that he was a Vagos member.

Sheridan said that Michael Burns had told him that he broke his right bottom molar as a result of the altercation at the casino. Sheridan did not look into Burns' mouth and check because there was nothing that could be done for it. I directed Sheridan to the comment that Burns' eye was swollen and I asked if Burns was able to see out of his eye. Sheridan said that there was slit, so his vision was probably limited.

As part of the interview, I showed Sheridan the attached 10 pages of Burns' medical records from Sutter Lakeside Hospital dated, 06/05/11. The pages had a facsimile stamp across the top and a page number. The pages were numbered, 06 through 15. I will refer to the facsimile page numbers in referencing the pages. Sheridan said that he wrote the notes on page 08 and completed the form. All the comments on page 08, under the section titled, "Chief Complaint" were told to him by Michael Burns and the injuries occurred as a result of the altercation the day prior. Sheridan wrote his first name, "Devin" and initialed and dated the bottom of the page. Sheridan told me that Dr. Shifflett wrote the comments at the bottom

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Date:

9/9/2011

Approved By:

S0146 GREGORE, JOHN

Date:

10/5/2011

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of pages 09 and 10. Sheridan wrote the name, "Shifflett" at the bottom of both pages along with his initials and the date. Dr. Shifflett later confirmed that Sheridan was correct in his notations about who completed what pages.

I then met with Christina Birge (Approximately 15:30 into the recording). Birge told me that she was a Registered Nurse with Sutter Lakeside Hospital Emergency Room. She had been working in the Emergency Room for approximately a year and a half. Prior to that she worked for approx. ten years in the Med surge unit at Sutter Lakeside Hospital. I showed Birge the above medical records and she reviewed them. She said that pages 11 through 15 were her, "Charting." At first she did not remember treating Michael Burns on, 06/05/11. I told her that Burns' came in with his wife, Leayla and Birge remembered. Birge remembered that Leayla Burns had sutured Michael Burns' upper lip. Birge said that she was Michael Burns' primary nurse. Sheridan was Burns' intake nurse and Birge took over the care. Birge said that Michael Burns was in the emergency room for 55 minutes. Michael or Leayla Burns did not say anything about what happened. I asked Birge if Leayla or Michael said why they waited to come in to the emergency room or why he decided to come in at all. Birge said that Michael Burns did not look comfortable at all. She said that he could not sleep or breath through his nose.

On 09/21/11, I responded to Sutter Lakeside Hospital Emergency Room where I met with Dr. Steven Shifflett. The contact was captured via my digital recorder, later down loaded to a compact disc and booked into evidence. Dr. Shifflett looked at the above medical records, specifically page 09. Dr. Shifflett told me that the comments written on page 09, were made to him by Michael Burns. Dr. Shifflett said that Michael Burns' injuries were consistent with being significantly beat up. Dr. Shifflett said that he believed Michael Burns had a nasal fracture. That diagnosis was made based on the amount of deformity and swelling to Burns' nose. Dr. Shifflett came to that conclusion based on his training and experience. I asked Dr. Shifflett if Michael Burns' injuries were consistent with a person being repeatedly kicked and punched while on the ground and he said they were. I asked Dr. Shifflett if major injuries are likely to occur to someone as a result of the being repeatedly punched and kicked while on the ground. Dr. Shifflett said, "Sometimes." I asked him what type of major injuries he has personally seen as a result of this type of altercation. Dr. Shifflett said, "If he had loss of consciousness and he was still experiencing...you know, significant vomiting...you know and level of alertness that's...you know...significantly diminished....then I would have CAT Scanned him. But he was able to converse appropriately and you know.... didn't have significant dizziness, you know...or signs that I consider...you know.....uhmm....life threatening." I asked Dr. Shifflett if he actually saw the broken molar and he said that he did not. He did say that Michael Burns said the molar was broken as a result of the altercation.

Dr. Shifflett said he was willing to view a short video clip of someone on the ground being repeatedly kicked and punched and provide his opinion of the injuries that are likely to occur as a result of such a beating. Dr. Shifflett viewed the video clip of Burns being attacked in the entryway at Konocti Casino (Main camera view). Dr. Shifflett said that it appeared that all the attackers wore soft shoes (Tennis shoes). Dr. Shifflett said he would not suspect major trauma with soft shoes. He then said that if a person were kicked in the right place on the skull, then grave bodily injury could occur. Dr. Shifflett touched the soft area of my temple and said that death could result from a direct kick to the soft area by fracturing the skull and causing an epidural hematoma. He said that he could not discount the force of the kicks and felt that Burns was lucky he did not sustain a kick in that area and die within an hour. I

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Date:

9/9/2011

Approved By:

S0146 GREGORE, JOHN

Date:

10/5/2011

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asked Dr. Shifflett if he had seen what he just described and he said that he had not personally seen it, but he had seen reports of such fatalities from skiing accidents, etc. He said that he personally had not seen or heard of such a fatality from an assault. I asked Dr. Shifflett what type of injuries he has personally seen as a result of assaults similar to the one he just viewed. He said that he has seen facial fractures, facial contusions, concussions, and loss of consciousness.

Dr. Shifflett provided me with his Curriculum Vitae, which I attached to this report.

I took no further action regarding this case.

Case closed: Arrest

Prepared By:
S0134 COSTANZA, NICOLE

Date:
9/9/2011

Approved By:
S0146 GREGORE, JOHN

Date:
10/5/2011

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**LAKE COUNTY SHERIFF'S OFFICE**

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Attachments:

1. Lakeport Police Department case#11080777(Scanned)

On 9/22/2011, I received pages 1-3 from Lakeport Police Department case #11080777 prepared by Officer Norm Taylor. See attached.

Case closed

Prepared By:
S0146 GREGORE, JOHN

Date:
9/22/2011

Approved By:
S0146 GREGORE, JOHN

Date:
9/22/2011

1538

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Attachments: None

On 9/27/11, I was reviewing the attachments for this case looking for a copy of Search Warrant 11-082. I noticed that there was a scanned attachment dated 8/26/11 "HAMC Active and Continuing Matters - Carillos Desk Drawer" (item 77) that I recognized as being a document that was originally stored in evidence and later collected by the appointed Special Master Christopher Neary on 9/6/11. I contacted my supervisor Det. Sgt. Gregore and advised him of what I had found. I also notified DDA Art Grothe and LCSO Law Enforcement Records Technician Rebekah Dolby by email.

On 9/28/11, I spoke with Dolby and Grothe. Dolby advised that supp 25 and all its attachments were sent over to the DA's Office on 9/12/11. Grothe advised the discovery including that item had already been sent out. I asked Dolby to remove that attachment from the computer case file and confirm there was no hard copy in the Records case file.

On 9/28/11, Dolby confirmed that she had removed that attachment from the computer case file and that there was no hard copy of the document in the Records case file.

Case Closed: Arrest

Prepared By:
S0078 PFANN, JERRYDate:
9/28/2011Approved By:
S0146 GREGORE, JOHNDate:
9/29/2011

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**LAKE COUNTY SHERIFF'S OFFICE**

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1220 MARTIN STREET LAKEPORT, CA 95453 707 262 4200
SUPPLEMENT 33

C11060074

Attachments:

Santa Rosa P.D. report #11-0010687 (Scanned)

On 09/06/2011, I received a copy of Santa Rosa Police Department report #11-0010687, via fax, which I later attached to this report. The report details the arrest of Russell Lyles Jr during the service of Search Warrant #11-082 on 08/25/2011.

Case Closed: Arrest**Prepared By:**
S0277 DREWREY, JOHN**Date:**
10/4/2011**Approved By:**
S0146 GREGORE, JOHN**Date:**
10/5/2011

1540

**LAKE COUNTY SHERIFF'S OFFICE**

1220 MARTIN STREET LAKEPORT, CA 95453 707 262 4200
SUPPLEMENT 34

Page 64

C11060074

Attachments:**1. Property receipt(scanned)**

On 9/8/2011, I sent copies of the videos and reports of the Konocti Vista Casino altercation to Las Vegas Metropolitan Police Department (LVMPD) Detective Donald Fieselman by certified mail. I requested that their Criminal Intelligence Unit review the videos to attempt to create a video of each suspect and the victims that runs continuously from beginning to end. I also asked that they attempt to include identifying arrows or marks for each participant so that the activity of each suspect could be observed. As the subjects were also identified by clothing and/or tattoos during the incident, I asked that they attempt to locate and mark those items of identification on the videos.

On 2/21/2012, I received the final product from Detective Fieselman by certified mail. I later booked the envelopes, Request for Video Analysis form and CD master created by LVMPD into Evidence. See attached property receipt.

Case closed.

Prepared By:
S0146 GREGORE, JOHN

Date:
2/23/2012

Approved By:
S0086 DAVIDSON, ANDY

Date:
2/23/2012

6541

**LAKE COUNTY SHERIFF'S OFFICE**

1220 MARTIN STREET LAKEPORT, CA 95453 707 262 4200

SUPPLEMENT 35

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C11060074

Attachments:

Property / Evidence Form (Item 171) (Scanned)

Supplemental Report

On 03/26/12, at approximately 1211 hours, I spoke to Ledra Lance at Sutter Lakeside Hospital in regards to this case.

Lance is a Release of Information Officer and also a Notary Public for the hospital. I informed her of the medical records I received from Cindy Farr as a result of a served Search Warrant on 06/08/11. I told Lance I needed to verify their writing was made in the regular course of business for the hospital. Lance asked if I had received an "affidavit" when I received the records. I told her I did not.

Lance prepared the attached Declaration of Custodian of Medical Records regarding the documents I had received. I later booked the Declaration into an evidence locker at the LCSO Main Office.

Case Closed: Arrest

Prepared By:

S0292 MOORE, BENJAMIN

Date:

3/26/2012

Approved By:

S0199 MCPHERSON, DON

Date:

3/26/2012

1542

**LAKE COUNTY SHERIFF'S OFFICE**

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1220 MARTIN STREET LAKEPORT, CA 95453 707 262 4200

SUPPLEMENT 36

C11060074

Attachments: Signed copy of Order for Return of Property to Joshua Johnson (Scanned)
Copy of Josh Johnson CDL(Scanned)

On 4/16/12, I released items 44, 58, 59 and 61 to Joshua Johnson pursuant to the attached Order for Return of Property.

Case Closed: Arrest

Prepared By:
S0078 PFANN, JERRY

Date:
4/16/2012

Approved By:
S0086 DAVIDSON, ANDY

Date:
4/17/2012

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1 CODE: 2645
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

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9
10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND
11
12 FOR THE COUNTY OF WASHOE

13 THE STATE OF NEVADA,

14 Plaintiff,

CASE NO: CR11-1718B

15 v.

DEPT. NO: 4

16 ERNESTO MANUEL GONZALEZ,

17 Defendant.
18 _____/

19 **OPPOSITION TO STATE'S MOTION FOR LEAVE TO SUPPLEMENT GANG**
20 **ENHANCEMENT DISCOVERY (LAKE COUNTY INCIDENT)**

21 COMES NOW, the Defendant, ERNESTO MANUEL GONZALEZ, by and through his
22 attorney of record, Jeremy T. Bosler, Washoe County Public Defender, Maize Pusich, Chief
23 Deputy Public Defender, and Biray Dogan and Christopher Frey, Deputy Public Defenders, and
24 hereby opposes the State' motion for leave to supplement discovery filed on January 23, 2013.

25 This motion is based upon the attached points and authorities and any evidence and
26 argument as may be presented at the hearing on this matter.

ARGUMENT

On October 30, 2012, this court entered an order. See Order After October 29, 2012.
The order mandated that the State plead its gang enhancement evidence with "specificity" and

1 produce all discovery "contemporaneously with its pleading." Id. The State has since violated
2 this order on a serial basis. It now requests leave to violate the order again, without
3 demonstrating that there is good cause for the request.

4 **I. THE STATE HAS HAD EVERY CHANCE TO PREPARE ITS GANG**
5 **ENHANCEMENT EVIDENCE AND MAKES NO ATTEMPT AT DEMONSTRATING**
6 **GOOD CAUSE FOR ITS REQUEST TO SUPPLEMENT.**

7 The State has had every opportunity to plead its evidence and notice its arguments
8 regarding the gang enhancement. It should not be allowed to supplement at this late date. There
9 is no good cause for the supplement. And the State does not even pretend that good cause
10 exists, considering that it makes no attempt to show good cause in its motion.

11 This case has been pending since November of 2011. The State has had nearly a year
12 and a half to organize its gang enhancement evidence. During that time, the State has been
13 given two opportunities to plead its evidence and notice its arguments—once in response to Mr.
14 Gonzalez's Request for Disclosure of Proposed Gang Enhancement Evidence and Witnesses
15 (October 9, 2012), see Opposition to Defendant's Request for Disclosure of Proposed Gang
16 Enhancement Evidence and Witnesses (October 18, 2012), and again in response to this court's
17 Order After October 29, 2012 Hearing (October 30, 2012). See Motion for Order Admitting
18 Gang Enhancement Evidence and Testimony (November 26, 2012).

19 There is no good cause warranting leave to provide supplemental discovery on an
20 incident that the State had presumably intended to use against Mr. Gonzalez from the outset of
21 this case. Good cause is determined by reference to the purpose of the rule to which an
22 exception is sought. See Nunnery v. State, 263 P.3d 235, 245 (2011) ("'[G]ood cause' is a
23 relative and highly abstract term such that its meaning must be determined not only by the
24 verbal context of the statute in which the term is employed, but also by the context of the action
25
26

1 and procedures involved and the type of case presented.” (internal quotation marks omitted)).
2 The court’s order was a bright line in the sand with a three-fold purpose: (1) bringing finality
3 and clarity to the State’s gang enhancement evidence and arguments, (2) providing fair notice
4 to Mr. Gonzalez of the evidence against him, and (3) bringing an end to the discovery delays
5 and notice problems that were plaguing this litigation.
6

7 The State offers no explanation why its delay in producing this report earlier is not the
8 product of oversight or dilatory preparation. As a result, the State fails to advance even a
9 colorable claim that good cause exists for its request. See Bennett v. Dist. Ct., 121 P.3d 605,
10 611 (2005) (“[G]ood cause is not established due to “mere oversight on the part of a
11 prosecutor” (internal quotation marks omitted)). The State’s motion must be denied.
12

13 **II. REFERENCES TO PAST TESTIMONY ABOUT LAKE COUNTY DO NOT** 14 **AMOUNT TO GOOD CAUSE.**

15 Instead of making an explicit effort at showing good cause, as it is required to do, the
16 State merely notes that (1) Jorge Gil-Blanco testified to the Lake County incident at grand jury,
17 (2) Jorge Gil-Blanco referred to the Lake County incident during his direct examination on
18 October 29, 2012, and (3) Lt. Jason Ferguson referred to the same incident during his testimony
19 at the continued hearing on January 8th and 9th. None of these casual observations about past
20 testimony offer good cause to supplement discovery past deadline.

21 Jorge-Gil Blanco’s grand jury testimony is a stale matter of historical record at this
22 point. The fact that he may have made reference to this incident at grand jury is therefore
23 meaningless. Moreover, Jorge Gil-Blanco’s direct examination is concluded, over, final,
24 closed—it is not subject to re-opening or post hoc bolstering by the State. In its order, the court
25 could not have been clearer about the finality of Jorge Gil-Blanco’s testimony: “[t]he State
26 completed its direct examination of Mr. Gil-Blanco on October 29, 2012. The State will not be

1 permitted to elicit additional evidence from Mr. Gil-Blanco in the form of a direct examination
2 during the hearing.” Order After October 29, 2012 Hearing n.1 (emphasis added). The same is
3 true regarding the testimony of Lt. Ferguson. His testimony cannot be bolstered after the fact
4 merely because the material that bolsters may have come to light after the fact. Otherwise, the
5 State could endlessly supplement discovery on the gang enhancement, reducing the court’s
6 order to a token gesture at control, rather than a rule with binding significance.
7

8 **CONCLUSION**

9 Based on the foregoing, Mr. Gonzalez respectfully request that this court to enforce its
10 order and deny the State’s motion.
11

12 **AFFIRMATION PURSUANT TO NRS 239B.030**

13 The undersigned does hereby affirm that the preceding document does not contain the
14 social security number of any person.
15

16 RESPECTFULLY SUBMITTED this 28th Day of January, 2013.

17 JEREMY T. BOSLER
Washoe County Public Defender

18
19 By: /s/ Christopher Frey
CHRISTOPHER FREY
Deputy Public Defender

20
21 By: /s/ Maizie Pusich
MAIZIE PUSICH
Chief Deputy Public Defender

22
23 By: /s/ Biray Dogan
BIRAY DOGAN
Deputy Public Defender
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Karl Hall, Deputy District Attorney
District Attorney's Office

DATED this 28th Day of January, 2013.

/s/ Leslie Tibbals
LESLIE TIBBALS

39

11-09-2012:07:51:42 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3335275

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5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF WASHOE

7 THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

8 -oOo-

9 STATE OF NEVADA,)

10 Plaintiff,) Case No. CR11-1718A

11 vs.) CR11-1718B

12 CESAR VILLAGRANA and)

13 ERNESTO MANUEL GONZALEZ,) Dept. No. 4

14 Defendants.)

15 _____)
16
17 TRANSCRIPT OF PROCEEDINGS

18 PRETRIAL MOTIONS

19 MONDAY, OCTOBER 29, 2012

20 RENO, NEVADA
21
22
23

24 Reported By: MARCIA FERRELL, CCR No. 797

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APPEARANCES:

For the Plaintiff: AMOS R. STEGE
KARL S. HALL
DEPUTY DISTRICT ATTORNEYS
1 S. Sierra St., 4th Floor
RENO, NEVADA 89520
For the Defendant Villagrana: DAVID CHESNOFF
RICHARD A. SCHONFELD
CHESNOFF & SCHONFELD
ATTORNEYS AT LAW
520 S. Fourth St.
LAS VEGAS, NEVADA 89101
For the Defendant Gonzalez: BIRAY DOGAN
CHRISTOPHER P. FREY
MAIZIE WHALEN PUSICH
DEPUTY PUBLIC DEFENDERS
1 California Ave.
RENO, NEVADA 89509

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1 RENO, NEVADA, MONDAY, OCTOBER 29, 2012, 10:00 A.M.

2 --oOo--

3 THE COURT: I know that the courtroom is very warm
4 today, we have asked maintenance to try to cool it down, so
5 my apologies. This is the time set for pretrial motions, I
6 think I'd like to begin with Mr. Gonzalez's motion to compel.

7 MR. DOGAN: Your Honor, we did file a motion to
8 compel, and that motion was filed on October 11, 2012.
9 Before we filed the motion to compel I had actually sent a
10 letter over to the district attorney's office requesting
11 certain items of discovery. Those items of discovery are the
12 NCIC reports for Mr. Gonzalez's codefendant Cesar Villagrana,
13 the NCIC reports, as well as all the case in chief witnesses
14 that the State intends to call.

15 And we also requested a report that was generated
16 by the district attorney's investigator, Peter Grimm, who is
17 a percipient witness on the night of the incident.
18 Thereafter, I received a letter in response to my letter from
19 Mr. Hall, from the district attorney's office, and that
20 letter advised that the material that was requested in my
21 letter would not be forthcoming.

22 Thereafter we did file a motion to compel, and we
23 cited to the -- to case law which specifically says that NCIC
24 reports are impeachment evidence, they are Brady material,

1 and the standards that the prosecutor must abide by are the
2 same standards that are applied by the ABA rules, which have
3 been adopted by the State of Nevada under the Nevada Rules of
4 Professional Conduct, I believe Rule 3. So the Nevada
5 prosecutors are held to a higher standard.

6 In response to my motion to compel, in the State's
7 opposition what they essentially argue, and they base their
8 argument on a letter from the Department of Justice. And I
9 have not had sufficient time to review the letter and
10 research the letter, and that's because I have been preparing
11 for the gang enhancement evidence. Because that letter
12 initially was not attached as an exhibit to the State's
13 opposition. I thereafter sent Mr. Hall a courtesy e-mail
14 requesting that he file it, and he indeed filed that letter I
15 believe on Thursday or Friday of last week.

16 Your Honor, the NCIC records are required because
17 they can be used, as I have said, as impeachment evidence.
18 We have cited case law where NCIC records will show whether a
19 witness has used aliases in the past, and the fact that an
20 individual has used an alias shows that they have a
21 propensity to lie. Not only to law enforcement officers, but
22 to prosecutors and judges as well.

23 The State only will provide us with felony
24 convictions and nothing more. NCIC records go a step

1 further. Not only will there be evidence as to whether or
2 not aliases were used, but also whether an individual is
3 known to have committed thefts, have also used false
4 registration on their tags. In the State of Nevada, the case
5 of Bennett has showed that juvenile records were to be given
6 to the defense because those records showed that the
7 codefendant in that case was a ring leader. Had a propensity
8 to commit criminal acts.

9 And the Sixth Amendment and the confrontation
10 clause takes precedence over any letter or any rule that the
11 State cites to, because the law that the State cites to is
12 essentially based on privacy laws, and nothing more.

13 In terms of Mr. Grimm's statement, your Honor, we
14 requested that because we have a police report where we know
15 that Mr. Grimm was at the John Ascuaga Nugget on the night of
16 the incident, and it is our understanding that he went inside
17 into the John Ascuaga Nugget, and he was there not in
18 relation to this case, because this case had not yet opened,
19 but in some type of investigation with two other law
20 enforcement officers.

21 While Mr. Grimm was at the John Ascuaga Nugget, he
22 then -- he left the John Ascuaga Nugget, he saw that multiple
23 individuals were leaving the John Ascuaga Nugget, and then
24 Mr. Grimm went back inside the John Ascuaga Nugget after the

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1 shots were fired.

2 Once Mr. Grimm went back inside the John Ascuaga
3 Nugget he had contact with a specific individual by the name
4 of Bradley Campos. Mr. Campos, it is our understanding, is a
5 club member of the Vagos and who is also a percipient
6 witness, and who was accused by the State of deleting phone
7 messages of an individual who was taking photos or videos of
8 the incident itself.

9 We filed a motion some time ago, the State
10 requested sanctions against us. That has been previously
11 argued and that is now under advisement.

12 That material, your Honor, is important to our case
13 because it not only can be used for impeachment purposes, but
14 it also can be used to lead to further investigation. In the
15 State's opposition they have cited to no law, no privilege,
16 no authority whatsoever as to the reason why that statement
17 should not be disclosed to the defense. And we request that
18 the State be compelled by this Court or directed by this
19 Court to produce the evidence that has been requested
20 specifically by Mr. Gonzalez.

21 THE COURT: Anything else you want to go over?

22 MR. DOGAN: I don't know if I'm missing anything,
23 your Honor. I wasn't really prepared to argue the motion to
24 compel, I was here for the gang enhancement. But I just --

1 THE COURT: Didn't mean to throw you a curve.

2 MR. DOGAN: I'd like to reserve any rebuttal to
3 Mr. Hall's argument.

4 THE COURT: Okay. Mr. Hall.

5 MR. HALL: With respect to the NCIC records, your
6 Honor, our position has been pretty consistent in the office
7 regarding that. I know that issue has come up on a couple of
8 occasions, and if we disseminate those NCIC records it's our
9 understanding that our ability to run NCIC reports on
10 witnesses, defendants or other involved individuals will be
11 taken away. As a matter of fact, Chris Menadue has met with
12 federal officers. He's actually here in court today, and I
13 can present him as a witness to address that issue. Because
14 it has come up fairly recently, and that prohibition
15 regarding dissemination was discussed here I think in the
16 last six months, and he disseminated the letter we provided
17 in discovery.

18 As I indicated, your Honor, if there are prior
19 criminal histories I would provide that to the defense. I
20 told them I'd tell them about felonies and try to work with
21 them in terms of criminal histories. I think there's only
22 maybe one or two people who have actual criminal histories,
23 and I told him I'd provide that.

24 With respect to Mr. Grimm's statement, I told him,

1 as I'm informing the Court as you probably read from my
2 response, that I'd provide that to the Court in an in camera
3 inspection, any GD-mat report to contain any exculpatory
4 Brady material, discoverable material, and do with it what
5 you deem appropriate. But I would like to have the Court
6 review that. I don't think there's anything exculpatory in
7 there. As a matter of fact, I know there isn't, or I would
8 have discovered it. So that's our position on those two
9 issues. That's what I'll have. I'll go ahead and call
10 the witness, Chris Menadue.

11 THE COURT: Okay, and the purpose of the witness
12 is?

13 MR. HALL: To buttress my argument of not giving
14 out NCIC reports, and that his work with I believe people
15 representing the federal government and working in the NCIC,
16 he's in charge of running some of those records and he was in
17 charge of determining whether or not we can disseminate those
18 records, and he worked with some representatives of the
19 federal government just so I can make a record on that issue.

20 MR. DOGAN: Your Honor, I would object to this
21 witness being called. I have no notice of this witness
22 whatsoever.

23 THE COURT: Okay, I don't have a problem with the
24 representation from the State, and I don't think you're

1 traversing that. That they believe based on this letter that
2 was written to the Carson City department in December of
3 2005, to the Carson City DA, I guess, or -- yes. About a
4 Carson City case. Anyway, there's no debate that the DA's
5 office believes that they cannot disclose the NCIC reports
6 without impacting their criminal history -- or impacting
7 their ability to run criminal histories in the future.
8 You're not debating that, are you?

9 MR. DOGAN: No, your Honor.

10 THE COURT: Okay. And so, Mr. Hall, I think the
11 real witness that might be necessary to bolster your argument
12 is somebody from the federal government that would say if
13 there was an order of the court you could lose your right to
14 do it, and that's what the statute says. I think your
15 witness is basically -- the only thing he can give us that is
16 not hearsay is what we all accept, that that is the position
17 you all understand yourselves to be in. So I don't think we
18 need the witness today.

19 MR. HALL: All right. So even though he has
20 representations, he can make representations about what his
21 understanding is from talking to representatives from the
22 federal government, you think that would be objectable and a
23 hearsay statement?

24 THE COURT: I think it would be based upon --

1 MR. HALL: If this were trial I would understand,
2 but under 47.010 I don't even know that hearsay rule would
3 apply here. Unless you're claiming that it was highly
4 improbable or suspect. If you're claiming there's a
5 credibility issue of his representations, and therefore I'm
6 thinking under the general exception of hearsay it should
7 come in to bolster our position on this issue.

8 THE COURT: I guess my point is I don't find it
9 very helpful. I'd rather hear from a different source.

10 MR. HALL: Who would you like to hear from?

11 THE COURT: I don't debate that that is your
12 position, your office's position.

13 MR. HALL: Yes, ma'am.

14 THE COURT: And I don't debate that you truly and
15 honestly believe that to be case, and it may be the case.
16 But I think there isn't really going an issue. The issue for
17 us in this case is whether there's Brady material. I was
18 much more concerned with the argument that aliases somehow
19 become Brady material, that's something I'd like to hear your
20 respond to. Thank you.

21 MR. HALL: The impeachment statute under 50.035 or
22 50.085 outlines how a witness can be impeached. And defense
23 hasn't indicated in any pleadings until standing up today
24 saying that we're going to use aliases to try to impeach

1 witnesses' testimony. He hasn't identified any witness who
2 he thinks is going to be impeached with any information
3 regarding an alias, he hasn't disclosed how that's going to
4 assist his case, how that's Brady material or how it's
5 admissible evidence.

6 So based upon those objections, your Honor, I would
7 ask you to deny his motion for the NCIC records for the
8 reasons I put in my motion and the reasons I've set forth
9 here today.

10 THE COURT: Okay. Anything further, counsel?

11 MR. DOGAN: Your Honor, that material is requested
12 specifically because it will go to character for truthfulness
13 of the witnesses that the State intends to call in its case
14 in chief. I don't need to indicate which witnesses may have
15 criminal histories or may have used aliases or what-have-you,
16 and the reason is because what I know is this, that the State
17 intends on calling those witnesses in their case in chief.

18 THE COURT: Do you have any case that says the fact
19 that a person used an alias in the past, that that goes to
20 their propensity to lie?

21 MR. DOGAN: Your Honor, I have a -- with the
22 Court's indulgence.

23 Your Honor, non-felonies are relevant. And that's
24 under Butler versus State, 120 Nevada 879, and Butler stated

1 that attempted forgery is a crime involving dishonesty and
2 conduct that goes to Wilson's truthfulness as a witness.
3 There is also no indication that the State attempted to
4 impeach Wilson by introducing extrinsic evidence; rather, the
5 State merely asked her questions about prior convictions on
6 cross-examination, which she answered. We conclude under
7 these particular facts that the State's cross-examination of
8 Wilson was proper pursuant to NRS 50.0853.

9 Furthermore, in our opposition and in our motion to
10 compel, your Honor, I cited a case -- I cited to authority,
11 specifically Crivens versus Roth, 172 F3d 991, a Seventh
12 Circuit Court of Appeal case, 1999. Since NCIC records show
13 much more, such as whether the witness is prone to lie by
14 using aliases.

15 And then United States versus Price, 566 F3d 900, a
16 Ninth Circuit Court of Appeals case from 2009. Whether a
17 witness has little regard for truth and honesty demonstrated
18 by their acts of fraud, such as using false registration tags
19 on a vehicle, and convictions for theft.

20 Also State versus Bennett. Whether a witness's
21 criminal sophistication lends credibility to the theory of
22 defense. And that's 119 Nevada 589, and 2003. All of this
23 are only reflected in the NCIC records, your Honor.

24 What the State wants to do is merely provide us

1 with felony convictions alone. That's not enough to be able
2 to adequately and -- to be able to adequately impeach the
3 credibility of the witnesses that the State intends to call
4 in their case in chief. All of these NCIC records will show
5 that whether they have a reputation for being untruthful.

6 That is the reason why we're requesting the NCIC
7 records. Nevada law requires it, federal law requires it,
8 and an order from this Court will trump any federal -- any
9 letter that has been provided by the United States Department
10 of Justice which is dated 2005.

11 If the Court would like, I'd like to go back to the
12 Grimm statement, your Honor.

13 THE COURT: Okay. Do you have anything else,
14 Mr. Hall, in this regard?

15 MR. HALL: Just saying, your Honor, Brady and
16 Chapter 174 require us to produce that information. It's not
17 required constitutionally or statutorily. So I ask that the
18 motion be denied.

19 THE COURT: Okay, thank you. So we can move into
20 the request regarding gang enhancement.

21 MR. DOGAN: Briefly, your Honor, I just wanted to
22 make one point regarding Peter Grimm's statements. And that
23 point I wanted to make is this. The State requested -- and I
24 hadn't even mentioned it, but out of an abundance of caution

1 I mentioned Peter Grimm's statement should be provided to
2 this Court in camera for an in camera review,

3 But in camera now is irrelevant, your Honor, and
4 the reason why it is irrelevant is because the State has
5 failed to cite to any work product privilege, any law, any
6 authority, stating why this Court should be a conduit or a
7 filter for discovery.

8 Therefore, the statement generated by Peter Grimm
9 should be provided to the defense in its entirety.

10 THE COURT: Okay, thank you.

11 MR. DOGAN: Thank you, your Honor.

12 THE COURT: Okay, we'll move into the request for
13 disclosure, counsel.

14 MR. FREY: Thank you, your Honor, Chris Frey on
15 behalf of Mr. Gonzalez. Judge, as you recall, on the 31st of
16 August you entered an order from the bench directing that
17 motions be filed with respect to the hearing that was to be
18 conducted today, to vacate the trial date. This hearing is
19 devoted to nothing but gang enhancement issues.

20 Your Honor, if you reference your pretrial order
21 you will see that you incorporated the Local Rule of Criminal
22 Practice 7, which really sends a clear signal that pretrial
23 motions are to be filed 20 days before the hearing. A
24 hearing such as this, your Honor.

1 What had occurred is that on October 9th, judge, 20
2 days from the hearing, we hadn't heard from the State. We
3 heard absolutely nothing, there was nothing on file. We
4 didn't have any communication by e-mail or telephone with
5 respect to notice that's required, who is going to be called
6 as a witness, what evidence is going to be presented, and
7 under what theory of admissibility. And no discovery in any
8 respect.

9 So we were in a position where we had to make a
10 strategic decision. Do we go into the hearing with
11 absolutely no notice, with absolutely no disclosures, with
12 absolutely zero discovery, or do we actually attempt to
13 extract that from the State. And we made a determination
14 that because we are not in a position to understand what you
15 may be doing, judge, we can't forecast what you might say
16 with respect to this hearing. Because perhaps you may have
17 said, you know, no notice was required, so you just do the
18 hearing. We didn't want to be put in that spot, so we said
19 to the State, State, we request that you disclose everything
20 that we believe you should have already done on your own
21 motion. Tell us who your witnesses are, tell us what the
22 evidence is going to be, give us the discovery.

23 We didn't get any of that until we received an
24 opposition to our request, because the State apparently

1 treated it as if it was a motion. Really it was an attempt
2 to extract notice that we had not gotten from the State. We
3 didn't get anything from the State until the 19th of October.
4 I will say that there were two productions of discovery, one
5 on the 17th, one on the 22nd, your Honor. But discovery has
6 to be contemporaneous with the notice, otherwise the notice
7 is meaningless.

8 We didn't get notice of who they were going to
9 call, the disclosures with respect to their experts, the
10 evidence they were going to present, until 10 days before the
11 hearing. Your Honor, when you exclude the weekends, they
12 gave us nothing but five working days to prepare for a 24
13 witness hearing, that dealt with over a thousand pages of
14 discovery.

15 This is my binder right here, it contains about
16 half of the discovery. The discovery is voluminous, it's
17 late-timed, and by the State's own admission, it's
18 incomplete.

19 So we were put into a troubled kind of position,
20 and we requested disclosure. The disclosure was, you know,
21 some disclosures, it was some notice, and there were some
22 productions of discovery.

23 Some I would agree is better than none, your Honor,
24 but the deficiencies in the disclosure that was made by the

1 State doesn't cure the defects that we're complaining about
2 right now. Because those defects have put us in a truly
3 disadvantaged position at this hearing.

4 And I want to go further, but I want to make sure,
5 your Honor, we are objecting to proceeding with this hearing
6 for all of the reasons that we've enumerated in our reply. I
7 don't want to go through those, but they track the discovery
8 statutes, the expert witness disclosure statute, due process
9 concerns, and effective assistance concerns. And your
10 pretrial orders.

11 Your Honor, on 10-19, as I've mentioned, we
12 received the first notice of who they're going to call,
13 what's going to be discussed and, in effect, discovery. That
14 is not enough time to meaningfully investigate the witnesses
15 the State is going to present. It's not enough time to
16 conduct an independent investigation as to the evidence
17 they're going to present, it's not enough time to review the
18 1200 some-odd pages of discovery that they produced. It's
19 certainly not enough time to secure a rebuttal expert
20 witness, consult with that person, provide materials to that
21 person. I think it's a safe estimation to say that expert
22 witness would need weeks to review the materials that were
23 produced to us only 10 days ago.

24 With respect to disclosures, judge, for the first

1 time on 10-19 we learned that an officer by the name of
2 Bennett is going to testify. We did not receive his CV or
3 his report until either 10-17 or 10-19 -- 10-17 or 10-22 in
4 one of those productions. The same is true with respect to
5 Simpson, also a purported expert. The same is true with
6 respect to Jorge Gil-Blanco, your Honor. We haven't received
7 anything in terms of a substantive opinion about the Vagos
8 from Jorge Gil-Blanco until either the 10-17 production or
9 the 10-22 production of materials. And those materials
10 relate to the Santa Cruz incident in which Mr. Gil-Blanco
11 testified at the preliminary hearing, and actually produced
12 an expert opinion as to the Vagos with respect to the case.

13 The grand jury testimony, your Honor, doesn't act
14 as a substitute for our notice as to what Mr. Gil-Blanco is
15 going to opine as to the Vagos. Because if you recall the
16 grand jury transcript, your Honor, it was in essence
17 Mr. Gil-Blanco equating the Vagos in terms of structural
18 hierarchy and other qualities with the Hells Angels. That
19 was really the extent of his opinion. He didn't go into
20 detailed findings with respect to the Vagos. The only time,
21 the first time, that we've heard from Mr. Gil-Blanco was in
22 the expert opinion report prepared in relation to the
23 Santa Cruz case, and the transcript of his preliminary
24 hearing in reference to the Santa Cruz case. That was not

1 produced to us until 10-17 or 10-22.

2 And with respect to discovery in general, your
3 Honor, as I've referenced, in their opposition they concede
4 that discovery is incomplete, in fact they're even
5 positioning to move to continue. They had gone so far as to
6 actually reach out to the codefendant and ask them for a
7 continuance and obtain a stipulation. I don't know why this
8 hearing is going forward today when we have an admission from
9 the State that it's not prepared, an admission from the State
10 that by implication the defense is not prepared. I'm
11 confused about that, frankly.

12 With respect to discovery, your Honor, a couple
13 final points. It was only produced to us 10-17 and 10-22.
14 As I've mentioned, discovery is absolutely meaningless if
15 it's not contemporaneous with a notice. We should have
16 notice of what's going to happen, and then discovery should
17 follow. They should happen at the same time. And judge,
18 you've been very clear throughout this litigation that the
19 timeline for filing motions such as this is 20 days before
20 the hearing in question. This notice never came to us until
21 10-19, only after we had made efforts to extract it.

22 Your Honor, I would ask you to consider what if we
23 did not make a request for disclosure? I would submit to you
24 we'd be in the same position as our codefendant right now.

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1 My understanding is they have absolutely no notice of what's
2 going to be presented today, as to them. I submit to you
3 that we'd be in the same position if we had not taken the
4 affirmative step to say you need to tell us something.

5 Judge, the State needs to show cause why exclusion
6 should not be the order of the Court today. The State is
7 really in that position, judge. I think it's absolutely
8 unreasonable by any objective standard why Mr. Gonzalez
9 should have to proceed to a 24 witness hearing with 1200
10 pages of documents, with only 5 days -- 5 working days of
11 preparation time, and expect -- be expected to meet the
12 challenge before him. I don't think that's reasonable under
13 any set of circumstances, your Honor.

14 What the State has in essence done, judge, is it's
15 left you with a series of very unattractive options. Nobody
16 wants to continue the hearing. There's been a premium --

17 MR. CHESNOFF: That's not accurate.

18 MR. FREY: Your Honor, I'm not going to speak for
19 my codefendant, we haven't done that so far. I don't think
20 the State wants to continue the hearing and I don't think you
21 want to continue the hearing.

22 And I don't think you want to proceed under the
23 current circumstances knowing that we have very detailed
24 concerns with the inadequacy of the disclosure notice and

1 discovery in this case. So the position that you're in is
2 really to decide what to do. I think that the balanced
3 option is to make a ruling that respects Mr. Gonzalez's right
4 to due process, effective assistance, and a ruling that
5 enforces compliance with your orders. And one that respects
6 judicial economy. That's exclusion.

7 THE COURT: Okay, thank you. Mr. Hall.

8 MR. HALL: My turn? Thank you, your Honor. First
9 of all, I'd like to indicate that a couple months ago I had
10 identified several different altercations that had occurred
11 during the last few years. Specifically, there were three
12 that involved fights between the Hells Angels OMG and the
13 Vagos OMG. In addition, felt there was some relevance to the
14 Laughlin fight as well as the wedding chapel down in Las
15 Vegas.

16 THE COURT: So it's three plus Laughlin plus
17 wedding chapel?

18 MR. HALL: Right, and those are our primary focus,
19 although there are other -- you know, when you speak with
20 Jorge Gil-Blanco, he is aware and has been advised of other
21 minor skirmishes. But I wanted to focus on these, and the
22 reason I wanted to focus on these is because there was
23 documentation, and that laid a foundation for his opinion,
24 and it laid a foundation for the elements of the factors

1 contained in NRS 193.168.

2 So that was where I was going. Now, I was --

3 THE COURT: You said that you disclosed that?

4 MR. HALL: So I didn't get that in a timely
5 fashion, so I had to kind of take matters in my own hands. I
6 had expected some law enforcement personnel, nobody from
7 Sparks Police. Actually went up to the Fusion Center, and
8 because they supposedly, you know, have a lot of contacts
9 through law enforcement nationwide. And unfortunately I
10 didn't get the reports in a timely fashion.

11 So I started making calls myself, I was able to get
12 some reports, and I got those out in a timely fashion.

13 As soon as I got them, I copied them, sent them
14 out. As a matter of fact, I was in the process of preparing
15 a motion outlining what evidence I intended to produce, when
16 I received a barrage of motions from the defense including
17 the motion to compel, second motion to dismiss, second motion
18 for clarification of the order. So, you know, my time was
19 taken up in responding to those in a timely fashion.

20 And knowing that time was kind of a crunch, I
21 called up Mr. Frey and I said hey, Mr. Frey, would you like
22 to continue this hearing so that we can get the discovery and
23 we can kind of discuss what exactly we're going to talk
24 about? And he said no, file your motion. I got the same

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1 message from Maizie, file your motion.

2 In the meantime I talked to Richard Schonfeld and
3 he said sure, I'll stipulate to continue it. Then when
4 Mr. Frey talked to Mr. Schonfeld, he sends me an e-mail
5 saying oh, yeah, we'll go ahead and continue that. And I
6 thought well, now I'm two days away from the hearing, I've
7 got a witness coming, and I'd like to at least get some
8 evidence out in front of the court.

9 I think I'm going over and above my obligation to
10 provide the defense with discovery in terms of having a
11 hearing and presenting this five months before the trial, so
12 at least you can get an idea of what we intend to present
13 during the course of the trial, the defense gets an idea of
14 what we're going to present during the course of the trial.
15 I'm ready to make a presentation to give the Court that
16 information so you can start thinking about the issues that
17 are involved with the gang enhancement.

18 So that's how this -- that's how we got to where we
19 are today. So I'm kind of surprised that he stands up and
20 asks if we can continue it, you know, he just kind of leaves
21 that out of his initial comments. So I have a witness today.

22 THE COURT: Who do you have?

23 MR. HALL: I have Jorge Gil-Blanco.

24 MR. FREY: Your Honor, I'd like to respond to some

1 points Mr. Hall made.

2 THE COURT: We'll -- just a minute.

3 MR. FREY: Thank you.

4 THE COURT: So you have that witness, and is there
5 anything that has not been disclosed with regard to his
6 testimony?

7 MR. HALL: Well, I do have an updated CV, it's
8 right here today.

9 THE COURT: Okay.

10 MR. HALL: I also have a letter that he sent me
11 last night which deals with rules and regulations for the
12 Hells Angels, which I was going to provide to defense counsel
13 today. He has a video presentation, I've got a couple of
14 clips from Laughlin, the wedding chapel, I was going to
15 present those for the Court's consideration. We're going to
16 go through his Powerpoint, and we were going to go through
17 those several instances in Santa Cruz, Oilfield, Chino
18 Valley, Lakeport and Lake County.

19 And I think we've provided some discovery, but as
20 the Court can probably surmise, there's always motions that
21 they don't have enough discovery, and so I want to kind of
22 flesh those issues out during the course of this hearing or a
23 subsequent hearing.

24 At least we kind of lay some groundwork for where

1 we are, so we don't delay the trial, and that's why I didn't
2 want to continue it. I thought let's just get a foundation,
3 here, as to the evidence that I'm going to present, and if
4 they need more time to think about it, look at it, do
5 whatever they want to do, then you know, then all right. But
6 at least we have some groundwork and we can go through it.

7 THE COURT: Okay, so you don't have 24 witnesses.

8 MR. HALL: No. I noticed those witnesses so that
9 they had an idea of who was involved in the police reports
10 that we disclosed, so I did do that.

11 THE COURT: So your plan was to put on Jorge Del
12 Blanco?

13 MR. HALL: Gil-Blanco, G-i-l hyphen Blanco.

14 THE COURT: And -- today.

15 MR. HALL: Yes.

16 THE COURT: And at a subsequent hearing you'd put
17 the remainder of the witnesses on that you noticed? If
18 necessary.

19 MR. HALL: The experts. And I think, you know, for
20 example, there's an issue as to whether or not confidential
21 source 67 is an expert. Now, he is, in my opinion and view,
22 a fact witness that was in the Vagos, he can testify about
23 his involvement in the Vagos and what Vagos do, consistent
24 with his testimony at the grand jury. Likewise with Gary

1 Rudnick. He's a Vago, he should be allowed to testify about
2 the hierarchy of the Vagos, and other things consistent with
3 NRS 193.168.

4 There may be other witnesses that are fact
5 witnesses, depending upon the extent of the foundation that
6 must be laid. However, it's our position that in light of
7 the fact that we disclosed police reports -- and I don't
8 think there's really any question that we had, you know, a
9 stabbing involving Robert Villano in Oildale -- in Oilfield
10 or the Santa Cruz County fight, you know, I think we can
11 establish those through police reports, the clear and
12 convincing standard.

13 So I don't believe that this is character evidence,
14 I believe it is gang evidence. So that's another issue that
15 we have to flesh out. And I think a lot of those witnesses
16 are lay witnesses, fact witnesses, investigating police
17 officers who aren't necessarily rendering an opinion, but
18 they're laying a foundation. I don't know that I necessarily
19 have to lay that much foundation, but I wanted to provide the
20 defense with that information so that there is no claim that
21 we failed to provide adequate discovery for them to determine
22 what they need to do to protect their clients' constitutional
23 rights.

24 THE COURT: Yes, Mr. Frey.

1 MR. FREY: Thank you, judge. Mr. Hall wanted to
2 get more time to file the motion for an extension. In fact,
3 that's what we requested that he do, because not only does it
4 comport with kind of the formal way we've been practicing in
5 this case, but we want to see his grounds. We want to see
6 what the holdup was. Because with respect to discovery,
7 judge, we're on the date that was formally set for trial.

8 This is the vacated trial date. There's absolutely
9 no excuse why we couldn't get 21 days or 20 days worth of
10 notice and constant time in discovery in this case. I would
11 submit to you after reviewing the discovery and looking at
12 what they're proposing on presenting, judge, if I could just
13 take it by geographic incident, the Santa Cruz incident, the
14 Yamapai incident and the Kern County incident, all of those
15 reports that pertain to those incidents were drafted two
16 years ago.

17 When they were produced to the State I have no
18 idea. But I would submit to you that there's simply no
19 excuse for not producing those to us in a timely fashion,
20 especially when the hearing that we're about to conduct is
21 set on a vacated trial date.

22 I think that the State really has to show reasons
23 why it hasn't complied to the letter of your pretrial order,
24 and with all of the other provisions that govern their

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1 disclosure requirements as laid out in my reply.

2 THE COURT: Okay, thank you. Did you want to say
3 something?

4 MR. CHESNOFF: Yes, your Honor. I think the State
5 recognizes this matter should be continued, and I'm not clear
6 why co-counsel didn't agree right away, and suggested that
7 somehow it should be done in a more formal matter. I think
8 the State was ready to continue it. We believe there's two
9 real remedies for the Court, no other. Mr. Schonfeld is
10 prepared to argue why this entire line of evidence should be
11 excluded.

12 I am at this time telling your Honor that in light
13 of the fact that there's material that we have not received
14 that has formed the basis of their one witness they have here
15 today, his expert opinion, that there's no way we can
16 effectively do the cross-examination. I think the State
17 understood that, and that's why they were willing to postpone
18 this.

19 The Court will recall that two months ago you
20 indicated that we would do this, and directed the State to
21 proceed accordingly. And the State is supposed to file a
22 motion with the Court explaining their offer, why it meets
23 the clear and convincing proof standard that it needs, and
24 comply with the discovery requirements of introducing an.

1 expert and having such a hearing.

2 While we believe that the State has attempted to
3 provide what they have up until now, we're not disputing
4 that, we also happen to know, based on our own experiences,
5 that there's a volume of material that relates to all these
6 separate instances.

7 Obviously, we believe this is a murder case, all of
8 this other stuff just makes this prejudicial, not probative.
9 We have very good arguments as to why they should not be
10 allowed at trial. But at this juncture, your Honor, we
11 shouldn't be required to proceed with an examination. I need
12 to have this material, Mr. Schonfeld needs to have this
13 material, in order to examine a man who spent years,
14 apparently, obsessed with the Hells Angels. We need to be in
15 a position to confront that obsession, your Honor.

16 THE COURT: I hate to tell you this, but the same
17 word could be used for you and Mr. Schonfeld.

18 MR. CHESNOFF: Yeah, except -- that's a good point,
19 your Honor.

20 THE COURT: Okay. With regard to the request for
21 the Court to exclude the evidence based on the failure of the
22 State to proceed, that is an absolute last resort in all
23 cases, and I don't find that the necessity to do that is
24 found in this case. We are a ways away from trial, we're

1 almost -- we're five months away from the trial, four and a
2 half months. So it isn't as though this were during trial.
3 Obviously it would be a different situation if this were the
4 first day of trial; it isn't. So we have a little bit more
5 leeway there. It isn't my favorite circumstance and I'm not
6 particularly pleased that we haven't been able to get on a
7 better or more streamlined presentation of the pleadings and
8 the evidence.

9 I'd also find that there has been a lot of requests
10 for reconsideration, second motion to dismiss, think about
11 this again, judge. And I'm not pleased by that, either,
12 because I'm not sure all of those had a true basis in law.
13 So I see both sides here not particularly moving the case in
14 an expeditious manner.

15 I also think that the request for a continuance,
16 the local practice is that a call is made first, get a
17 stipulation. If there is no stipulation, yes, written
18 motions are filed, it's presented to the Court. But you
19 can't wait until two days before the hearing, and then say we
20 agree.

21 So if you did change your mind and agree two days
22 before the hearing, I'm a little concerned why didn't you
23 agree 10 days before this witness was brought here and
24 prepared.

1 So all of that in mind, I don't think that I'm
2 pleased particularly with the State in this presentation, I
3 don't think they did everything they could. But I'm not
4 particularly pleased with Mr. Gonzalez's counsel, either.

5 So that being said, the motion is denied to exclude
6 the evidence based on procedural issues.

7 I would -- at this point I think it does make sense
8 to hear the witness, but not cross-examine. Clearly, you're
9 not prepared to cross-examine. We've got the witness here,
10 we've got part of it. Time is of the essence, we're all
11 here. So you can hear the direct, you can hear the
12 presentation, but I'm not going to compel the defense to
13 cross-examine. You don't have the discovery, and you do need
14 some more before you can do that.

15 So that would be the appropriate remedy. Let the
16 State go forward, present what they have. And then I would
17 say this, the presentation today by the State will be the
18 State's presentation. We're not going to continue this out
19 for cross-examination and then spend another two or three
20 hours on direct. So just make that really clear, Mr. Hall is
21 ready to go, I take him at his word, he'll go, and then we'll
22 continue it for cross-examination, and we'll move directly
23 into cross-examination when we're back together again.

24 Does everybody understand?

1 MR. CHESNOFF: Thank you, your Honor.

2 MR. FREY: Judge, I need to make one factual
3 correction. I saw Mr. Schonfeld in court last Monday, the
4 Monday after the State had filed their opposition. So it's
5 not as if we said we want you to file the motion two days
6 before trial when the witness was already up here, certainly
7 that was not the case. It was the case, though, that I sent
8 Mr. Hall the request that we will stipulate, that
9 notification, on Monday. Last Monday.

10 THE COURT: On Monday.

11 MR. FREY: Given the fact that we only received an
12 opposition the Friday before, I don't think it was
13 unreasonable in terms of the time in giving a response. It
14 was not two days.

15 THE COURT: Okay, so a week ago.

16 MR. FREY: A week ago.

17 THE COURT: You said you would stipulate to a
18 continuance.

19 MR. FREY: A week ago, yes. That's my
20 recollection, judge, I just confirmed it with Mr. Schonfeld.
21 I saw him in Reno Justice Court, and after that conversation
22 I emailed Mr. Hall.

23 THE COURT: Okay. I'm not sure why we didn't
24 continue it at that point, but --

1 MR. FREY: Never mind, judge.

2 THE COURT: Okay, we'll move forward with the
3 evidence we're going to hear today.

4 MR. HALL: The reason I didn't continue it is
5 because I want to find out where we were with respect to
6 going back and reading the minutes, I want to find out
7 exactly where we are. I was a little unclear as to where we
8 were in the gang enhancement evidence, what I'm required to
9 present, and I thought if we brought everybody here and got
10 this thing started, then we wouldn't be starting from ground
11 zero a month from now.

12 So I thought it would be beneficial to use this
13 time to find out where exactly we are on this gang
14 enhancement issue, what issue is going to be raised, what
15 other work has to be done. Because I do intend to present
16 Mr. Bennett, Mr. Simpson, other witnesses. However, I think
17 Mr. Gil-Blanco is familiar enough with the incidences that I
18 have set forth in my pleadings to address all of them.

19 MR. SCHONFELD: Your Honor, may I respond briefly?

20 THE COURT: Yes.

21 MR. SCHONFELD: And I know the Court's ruling on
22 the motion to exclude so I'm not going to argue that, but I
23 didn't have the opportunity to say some of the things that I
24 think are important. Your Honor, I actually raised this

1 issue when we were here two months ago that it's the State's
2 burden to attempt to introduce other acts evidence. And as
3 the Court has heard, at least five so-called other acts are
4 things the State is interested in introducing.

5 I raised this issue because I saw some discovery,
6 some indication that we weren't anywhere close to complete
7 discovery, that the State was going to try to do this at
8 trial. Obviously they had Mr. Gil-Blanco testify to the
9 grand jury, and some of the situations are the basis upon
10 which he forms his opinions. So I raised that issue, and
11 that's when the Court suggested this week would have been a
12 great period of time in which to address these issues in what
13 would amount to a Petrocelli hearing. The Court then told
14 the State to act on this sooner rather than later, and the
15 State has not filed notice of experts.

16 We received on October 19th, in response to the
17 public defender's motion for discovery, what I guess amounts
18 to an outline of what they plan on doing, but it doesn't come
19 close to meeting the standards required under the rules, your
20 Honor.

21 We don't know by way of this opposition whether
22 they actually plan on calling the officers who investigated,
23 for example, the Santa Cruz incident. Do they plan on
24 bringing in three police officers who investigated an

1 incident that occurred in California, to testify about that
2 incident? Obviously if they do plan on doing that, I would
3 like to see a legal basis upon which they can do that. It's
4 even more than a trial within a trial. And if that were to
5 occur, then are we supposed to bring in witnesses that the
6 defense would have called at that trial in California to
7 rebut the witnesses they're bringing?

8 This is going to turn into a year long trial if
9 every one of those five cases -- and I can tell the Court
10 that the wedding chapel case has been pending for over a year
11 in Las Vegas, resulted in a mistrial. Are we going to get
12 all the videos -- as a result of the prosecution not
13 providing discovery, are we going to get all the videos from
14 that case, because we're going to have to cross-examine all
15 the police officers from that case? This is really unheard
16 of.

17 So if the State is going to go down this path of a
18 trial within the trial within the trial, I would certainly
19 like to see how they plan on doing that, what they plan on
20 bringing in, give us an opportunity to respond. And then
21 that would be when we have the Petrocelli hearing, because
22 they have to prove it's relevant, that they have proof of
23 clear and convincing evidence, and that the probative
24 value -- the prejudice is not outweighed by the probative

1 value.

2 So we don't have any of that, your Honor, and I
3 believe -- obviously I don't want to presume what the Court
4 intended this week to be, but I believe that's what we all
5 had planned this was going to be, and that that would have
6 occurred long before today. So not only do we not have the
7 discovery, we don't even have an outline as to what the State
8 plans on doing.

9 And then on top of that, your Honor, in their
10 opposition they listed 20 some-odd witnesses. They cited
11 three experts as it relates to our client. Mr. Gil-Blanco,
12 Simpson, and I think the other one was Bennett. We don't
13 have all the material related to those witnesses. Then they
14 listed all these other officer witnesses, and I know today
15 the State has suggested as it relates to Mr. Gonzalez that
16 those witnesses may not be experts. Obviously, they're not
17 percipient witness to the events in question, so if they're
18 going to try to introduce that type of evidence, it is their
19 burden.

20 And I think the Court should enter an order
21 requiring the State to do something before we proceed in
22 writing, so that we have an opportunity to respond, at least
23 have a better idea of what they plan on doing at trial,
24 because this could just snowball into something I don't think

1 the Court or the defense or anyone other than maybe the
2 prosecution wants to see.

3 THE COURT: Okay. Yes, I think you are right, the
4 Court expected this to be done, and that a Petrocelli hearing
5 on any bad acts evidence that wanted to be presented by the
6 State would be proved at a hearing today, tomorrow, and
7 whatever else we needed.

8 Yes, that was my intent, absolutely. That's pretty
9 clear in the transcript, I think. I did not enter a written
10 order, perhaps that needs to happen in the future, we'll be
11 more careful. But you are absolutely right, that's what I
12 thought was going to happen.

13 Now, that being said, I don't have a clue what the
14 State wants to do today, but I'm thinking we ought to all see
15 it and then we all know what it is that the State thinks is
16 somehow relevant and is appropriate. And then we'll have
17 another time for you all to cross-examine and/or file
18 motions, whatever we need to do.

19 So I think it's a good idea to get a sense of what
20 the State is thinking, and what their process is going to be.
21 I think it will help everyone kind of codify in their own
22 mind what the State's presentation is intended to be.

23 So I would like to go forward with the testimony
24 today. Okay, Mr. Hall.

1 THE CLERK: Please raise your right hand.

2 JORGE GIL-BLANCO

3 called as a witness by the State

4 who, having been first duly sworn,

5 testified as follows:

6 THE CLERK: Please be seated at the witness stand.

7 Thank you.

8 THE COURT: Excuse me, everyone, we're talking
9 about the heat in the courtroom. It's gone up four degrees
10 in the last hour. We're close to 80 at this point. So we
11 are asking for some assistance, we don't know what's going
12 on. We could maybe solve some of the problems by turning out
13 the lights in the audience, I don't know if you'd want to do
14 that. Does anybody mind doing that? It isn't real dark then
15 it's just a little cooler.

16 MR. CHESNOFF: Be like Clarence Darrow, your Honor,
17 we could take our coats off, roll our sleeves up.

18 THE COURT: Yes, it is getting very warm in here,
19 you can take your jackets off if you need to. Wrong ones.
20 There, that will help. Well, no, that's probably the wrong
21 ones, too. Can you turn those in the back and leave these
22 on?

23 MR. CHESNOFF: Your Honor, can we invoke the rule,
24 if the State thinks there's anybody in the future that may be

1 relevant to these particular proceedings, ask that they be
2 excluded?

3 MR. FREY: We'd join that request, judge.

4 THE COURT: Okay, Mr. Hall, the rule of exclusion
5 has been invoked. If you have any witnesses in the courtroom
6 that will be testifying at the trial, please ask them to wait
7 outside.

8 MR. CHESNOFF: Thank you, your Honor.

9 THE COURT: Okay, could everyone see their
10 paperwork? Okay, we'll just leave it the way it is and get
11 started. Counsel.

12 DIRECT EXAMINATION

13 BY MR. HALL:

14 Q. Sir, would you state your name and spell your last
15 name?

16 A. Yes, Jorge Gil-Blanco, G-i-l hyphen B-l-a-n-c-o.

17 Q. What is your current occupation?

18 A. I'm a reserve deputy for San Mateo County Sheriff's
19 Office.

20 Q. Can you give the judge some detail about your
21 history in law enforcement?

22 A. Yes, I was a police officer for approximately 32
23 years. Started in 1973 as a police officer with the Los
24 Angeles Police Department, worked there for approximately a

1 year and a half, working patrol in east Los Angeles. I then
2 transferred to the Sacramento Sheriff's Department where I
3 worked for four years working in an undercover capacity,
4 working narcotics. Worked the jail, worked the courthouse
5 security. I then transferred to the San Jose Police
6 Department where I spent over 26 years. During my time with
7 the San Jose Police Department I was assigned -- one of my
8 assignments was the intelligence unit, where I was assigned
9 specifically to work outlaw motorcycle gangs. That was a
10 four year assignment from 1990 to 1994.

11 I then was assigned to the DEA drug task force
12 where I was assigned, cross-designated as a task force agent,
13 and specifically to work Hells Angels cases.

14 I then retired from the San Jose Police Department
15 in 2004, I then worked -- went to work for the Dixon Police
16 Department as a reserve deputy -- reserve officer on a
17 contract doing narcotic cases for them. I then went to work
18 for WSIN, that's W-S-I-N, which stands for Western State
19 Information Network, which is the equivalent of RMIN, which
20 is Rocky Mountain Information Network here in Arizona -- I'm
21 sorry, in Nevada.

22 A federally funded project to assist law
23 enforcement agencies in whatever they need as far as helping
24 their cases, also a database that was nationwide for all the

1 other projects. With criminal activity, criminal -- names of
2 criminals involved.

3 I was laid off from that in July of this year
4 because of budgetary cuts, and then I just became a reserve
5 deputy with the San Mateo Sheriff's Department or Sheriff's
6 Office assigned to the gang intelligence unit.

7 Q. Can you tell her Honor how you have obtained
8 information or what you have done to investigate outlaw
9 motorcycle gangs, specifically the Hells Angels and Vagos?

10 A. Yes, since 1990 when I first started working outlaw
11 motorcycle gangs I've become a member of the International
12 Outlaw Motorcycle Gang Investigators Association, currently
13 on the board of directors. Also the Biker Investigator
14 Association of Northern California, on the board of that
15 also. I teach classes on outlaw motorcycle gangs, I've
16 taught them across the country, in Canada, giving
17 presentations. I talk to outlaw motorcycle gang
18 investigators across the world, from Europe, Australia,
19 Canada and United States on a regular basis, almost daily
20 basis.

21 I have assisted local agencies throughout
22 California in outlaw motorcycle gang cases and investigations
23 such assault, homicide, those types of investigations.

24 I've done expert testimony, I've testified

1 approximately 29 times as an expert on outlaw motorcycle
2 gangs. The majority of the times were specifically on Hells
3 Angels cases, and that's in both federal and state court in
4 the state of Washington, Nevada, Arizona and California.

5 Q. Now, are you familiar with Hells Angel and Vago gang
6 culture and rules, regulations, identifying symbols, language
7 that they use, that type of thing?

8 A. Yes, I am.

9 Q. And have you prepared a Powerpoint presentation that
10 would outline the Hells Angels code of conduct and culture?

11 A. Yes.

12 MR. HALL: All right, your Honor, I'd like
13 permission to play that for the Court.

14 MR. SCHONFELD: Your Honor I would request that an
15 electronic copy of this presentation be produced in discovery
16 prior to its --

17 MR. HALL: It's already been provided in discovery,
18 it was provided in discovery when we presented the defense
19 with a copy of the grand jury transcript. It was one of the
20 exhibits, so they already have a copy of it.

21 MR. SCHONFELD: My understanding is it's been
22 modified. Maybe I misheard you at the beginning of the
23 hearing.

24 MR. HALL: I don't know if it's been modified or

1 not. I don't think so.

2 THE WITNESS: No.

3 THE COURT: Is this what you presented to the grand
4 jury?

5 THE WITNESS: It's the same one I presented to the
6 grand jury.

7 THE COURT: Okay.

8 MR. SCHONFELD: Okay, thank you.

9 MS. PUSICH: Your Honor, we'd simply ask, since he
10 indicated this would have to do with his explanation of the
11 hierarchy of the Hells Angels, that the Court consider it
12 only with respect to Mr. Villagrana.

13 THE COURT: Okay.

14 MR. HALL: Well --

15 THE COURT: Unless he identifies it as something --
16 unless he connects the Vagos, but for now, that's the ruling.
17 BY MR. HALL:

18 Q. Are there similarities between the Hells Angels and
19 Vagos in terms of their modus operandi, their structure and
20 hierarchy, as well as rules and regulations that would govern
21 the two OMGs?

22 A. To most of it, yes. There are some variances as far
23 as some of the rules and regulations for the Vagos and Hells
24 Angels, and the hierarchy is different.

1 THE COURT: Okay, so your presentation is on the
2 Hells Angels.

3 THE WITNESS: Yes.

4 THE COURT: Okay.

5 THE WITNESS: Go ahead?

6 MR. HALL: Yes, just come down.

7 THE COURT: You can step down. Can you all see?

8 MR. CHESNOFF: If we can, your Honor, do you mind
9 if we move around a little?

10 THE COURT: You're welcome to move.

11 MR. CHESNOFF: Thank you.

12 THE WITNESS: The first part is the -- there's
13 two -- the first two slides have to do with a document that
14 was seized during search warrants at different locations.
15 The first time it was seized, the document is titled What is
16 an MC. And it was first seized in 2003 search warrants.
17 2002, 2003, when search warrants were conducted at the Fresno
18 Hells Angels clubhouse and also several members' houses in a
19 case out of Kings County, California. That ultimately ended
20 in a jury trial where Hells Angels were convicted, including
21 gang enhancement charges in California.

22 It was also recently -- not recently, in 2010 it
23 was also seized at the Nomads, Arizona Nomads clubhouse, and
24 also a couple of members' residences. The difference between

1 the two -- it was the same document, except the one out of
2 Arizona had a cover sheet that said from Chesty, which is a
3 Hells Angels letter of a Long Island charter.

4 It's approximately a 9 or 10 page document, but I
5 only used an excerpt on a couple of these things to show --
6 because it corroborates my opinion on what an outlaw
7 motorcycle gang is, specifically what the Hells Angels belief
8 is basically as it was found in their possession and
9 distributed by members of the Hells Angels.

10 MR. CHESNOFF: Your Honor, just for the record, I
11 want to have a continuing objection so I don't have to
12 interrupt. But to the legitimacy of the seizures, that's
13 another issue that's going to come up in this multiple cases,
14 that we have to fight to see the search warrants and
15 affidavits in support of the search warrant in order to allow
16 this into evidence, your Honor. So we make a continuing
17 objection to the presentation of this without having received
18 a return on the search warrants, the search warrants, the
19 search warrant affidavits, and all the information about the
20 various searches that the witnesses testify to.

21 THE COURT: Okay, thank you.

22 THE WITNESS: Yes. The first statement that it
23 says on there is a series of motorcycle -- MC stands for
24 motorcycle club. Commands respect. Those who are informed

1 respect the man for what he has accomplished by being able to
2 earn and keep the patch awareness. In other words, if you
3 are a patch holder that you know what it takes to earn that
4 patch and to keep that patch.

5 To those who are less informed -- which is
6 everybody else -- see the vigilance of mutual support, the
7 potential danger of invoking a response from a well-organized
8 unit that travels in numbers and is always prepared for a
9 confrontation. In other words, you ride in a pack and it's
10 all about numbers, strength in numbers.

11 They know that no one can provoke one club member
12 without being answerable to the entire group. In other
13 words, you mess with me, you're messing with my entire
14 organization.

15 And that such an answer is a point of honor that
16 must come to the last man. The type of respect that this
17 generates is one that is born out of fear. In other words,
18 the only way that you earn respect is by if you fear me.

19 Second part of that. Of all the things in a man's
20 life is his loyalty and commitment to the well-being of his
21 club. Comes first above faith, job, friends, personal
22 possessions and personal safety. There is never, ever any
23 doubt or time spent on considering which comes first. The
24 only thing that approaches his commitment to the club is his

1 commitment to his brother. But even here, the interests of
2 the club always comes before that of the individual.

3 In other words, once you're a member, that is your
4 life. That is your persona, that is everything, above
5 family, job, anything else. If you get the call that you
6 need to respond, you'd better be there. You'd better take
7 care of business if you have to.

8 And then they talk about what it takes to become a
9 member of the organization. First step is you become -- in
10 Canada they refer to them a friends of the club, here we call
11 them associates.

12 You have no official status. You can attend club
13 parties and functions. You can be seen as associating with
14 members. You may be required to do menial tasks for the
15 club, bartending, sentry duty, clean up the clubhouse.
16 Again, I have what I distinguish between a criminal associate
17 and a noncriminal associate. There are some individuals that
18 are just happy to be associates of the organization. Have no
19 intentions of taking it any further than that.

20 MR. CHESNOFF: Your Honor, excuse me. Is this
21 another alleged document that was taken from somewhere, or is
22 this the witness's creation?

23 THE COURT: I was thinking the same thing. Is
24 this --

1 THE WITNESS: This is something I put together
2 based on the individuals that I've spoken to, members, former
3 members of the Hells Angels, different outlaw motorcycle
4 gangs, other investigators.

5 THE COURT: This is your opinion as an expert.

6 THE WITNESS: Yes, it is.

7 THE COURT: Okay.

8 MR. CHESNOFF: Thanks, your Honor.

9 THE WITNESS: The first -- the next step up is
10 what's called a hangaround. At this point you have an
11 official status in the organization.

12 Not every Hells Angels charter has what they call a
13 license plate, in other words a rectangular shaped patch on
14 the back, lower back of the vest. That has red background,
15 red lettering on the front, though they have a similar patch
16 that has a red background with lettering, and it has similar
17 to this, Merced County, San Jose, Sonoma County, whatever it
18 is. Nomads, and sometimes they have hangaround with that
19 charter, sometimes they just have the charter by itself on
20 the front.

21 And at this point you have an official status.
22 Again, you're identified by the plain vest with a single
23 flash, like I said earlier. Subservient to all members,
24 required to do menial tasks for the club, will hold the

1 position for an undetermined amount of time. I've seen
2 anywhere from a couple months to a year as a hangaround.
3 Depends on the individual, as far how much involvement he has
4 at that point.

5 Next step up is a prospect. On the back of the
6 vest you would wear a rocker, which is called a bottom rocker
7 with an MC for motorcycle club. On the bottom rocker it has
8 the state or country that you are from. In the United States
9 it's by state, in Canada it's by province, the rest of the
10 world is by country. There is an exception, and that is the
11 German chapters have a bottom rocker that is designated the
12 charter that they're from. Because in Germany, the Hells
13 Angels some of the charters have been banned by the
14 government, and if you're part of that banned charter, you
15 can be arrested for that.

16 So they went -- they elected to go to a bottom
17 rocker that has the state -- or the charter that they're
18 from. Some of them still have, when they go out of the
19 country, some of them still have a Germany bottom rocker,
20 however.

21 At this point, again, perform duties such as
22 security, protection, debt collection, whatever it is that's
23 expected of them at that point. Depending on how much
24 involvement they have, or what you call stepping up to the

1 plate, take care of business, as to how long a prospect
2 lasts. It's a minimum of a year as a prospect, I have seen
3 prospects go more than a year. And again, it's the last step
4 before becoming a full patch.

5 On the front they're going to have a white
6 background, red lettering that will say prospect and the
7 charter that they're from. Again, minimum one year as a
8 prospect before you get voted in as a full-patch member.

9 You have to have usually a unanimous vote, 100
10 percent vote, for you to become a full patch member of that
11 particular charter by the members of that charter.

12 And again, at the time you get your full patch you
13 get a top rocker, the center the death head, and it has
14 stitching across the mouth which stands for we don't talk
15 about club business. And the bottom rocker, again, the state
16 or country, with the MC. Side rockers, those are all
17 optional to the individual to wear, things like that.

18 BY MR. HALL:

19 Q. Mr. Gil-Blanco, do the Vagos OMG, do they have
20 similar colors, rules and regulations with respect to their
21 vests, and becoming a full patch member, hangaround, that
22 type of thing?

23 A. In most ways, yes. Their patch is obviously
24 different, they have technically a two piece patch. It says

1 Vagos on one part with Loki, the god of mischief, and that is
2 one piece, then on the bottom it will have the designated
3 state that they're from. Their country, in that case.

4 As far as their -- what it takes to be a member,
5 fairly along the same lines except --

6 MS. PUSICH: Objection, foundation, your Honor. He
7 said his opinion was based on search warrants and other
8 documents that Mr. Chesnoff has objected to, but they were
9 specifically related to the Hells Angels.

10 THE COURT: He has enough experience with the Vagos
11 to testify, he doesn't have to have a search warrant.

12 MS. PUSICH: I'm not saying he has to have a search
13 warrant, your Honor, but I don't believe he has expressed a
14 foundation with respect to the Vagos as the foundation for
15 his testimony regarding them here today.

16 THE COURT: Okay. I'm going to overrule that and
17 see if he -- because he testified that he's been involved in
18 both clubs, in investigating the clubs, he's a board member
19 of the national association, and he's got 30 years experience
20 with motorcycle clubs. So to the extent that you do have
21 knowledge, I will allow you to testify to it.

22 THE WITNESS: Thank you, your Honor.

23 So yeah, pretty much along the same lines except it
24 is a two piece type of thing as opposed to three piece patch.

1 The structure of the Hells Angels and most outlaw
2 motorcycle gangs, pretty much the same thing. You have a
3 president, a vice-president, secretary, treasurer. Depending
4 on the size of the charter you might have one person that is
5 either both, or you might have one that is secretary, one
6 that is a treasurer. For example, the Oakland charter the
7 Hells Angels has over 40 plus members, so they even have
8 assistant secretary, assistant treasurer, assistant sergeant
9 at arms, as far as the rank.

10 BY MR. HALL:

11 Q. Excuse me for interrupting. Mr. Gil-Blanco, you
12 were talking about hangaround status, prospect status, then
13 full patch member status with respect to the Hells Angels,
14 and I think you were going to address that issue with respect
15 to the Vagos but you were interrupted.

16 A. Yes, it's the same structure. They have
17 hangarounds, they have prospects, then they have full patch.
18 As far as a hangaround, they don't wear, like the Hells
19 Angels, they don't have an official hangaround patch for the
20 Vagos, but they do have, for a prospect they would wear just
21 the bottom rocker of the particular state they are from. Or
22 in the case now, depending on the size of the charter, if
23 it's less than six members they would wear a Nomad patch if
24 they don't belong to a regular established charter already.

1600

1 Because they've been expanding so much nationwide, worldwide.

2 Q. And they have a color that they use?

3 A. Yes.

4 Q. In their vests?

5 A. Yes, the Vagos is green. That's their color, they
6 call themselves the Green Nation sometimes.

7 And again the red, the Hells Angels is known as red
8 and white, because that's the colors of the Hells Angels.

9 So again, going back, sergeant at arms, these are
10 the officers within the charter. And then you have your full
11 patch members, your road captain, that's kind of a collateral
12 duty for a member that when you're on the run, that's where
13 you're in charge of security to make sure where you're going,
14 you know, what do you need to take for equipment, things like
15 that. That's the road captain. Mapping out the location
16 where you're going to.

17 The prospects and your hangarounds, and then you
18 have your associates, your puppet club, and then your party
19 girls, old ladies, that's something on the side over there,
20 no particular structure to that. That's the general
21 structure of an outlaw motorcycle gang, and in particular the
22 Hells Angels.

23 THE COURT: Did you call those puppet clubs?

24 THE WITNESS: Puppet clubs, yes. They have puppet

1 clubs and support clubs, actually. I've developed a new one
2 since I put this one together, and it basically has
3 everything is the same, took out the old ladies and party
4 girls, and put the puppet clubs and support clubs on there.

5 A puppet club is one that is created by a
6 particular charter. For example, out of the San Francisco
7 you have the Bay Riders, which was started after the
8 president of the Frisco charter, who was also west coast
9 chair, was killed by a Mongol in San Francisco. They develop
10 -- they start them, they can do a lot of their dirty work for
11 them. Also it expands the numbers without actually making
12 them members of that particular organization. When they
13 started the Bay Riders there were about 52 members that were
14 started right off the bat. Things like that. That's a
15 puppet club.

16 MR. CHESNOFF: Your Honor, are we also clear this
17 is something this gentleman created? Right?

18 THE WITNESS: Yes.

19 MR. CHESNOFF: So that's your language.

20 THE WITNESS: Yes.

21 THE COURT: Okay.

22 MR. CHESNOFF: Thank you.

23 THE WITNESS: And the Hells Angels have a rather
24 different -- this didn't come out very well in the change, as

1 far as the font. But the Hells Angels is a one man, one vote
2 organization. There is no international president. What you
3 have is you have a structure such as the United States is
4 broken up into west coast and east coast. The west coast
5 starts in Denver, Colorado -- excuse me, and all the charters
6 west of Denver including Alaska, and now a new prospect
7 charter in the island of Hawaii.

8 You have out of -- one officer, sometimes two
9 officers are required to attend what's called the west coast
10 meeting, west coast officer meeting, and that's held once a
11 month in Oakland and in Berdoo, or San Bernardino. That's
12 B-e-r-d-o-o. So they alternate every other month. So all
13 the west coast charters are required to send a
14 representative, they attend this west coast meeting, they
15 discuss what's going on in the respective areas, they discuss
16 what's going on in all other areas of the Hells Angels.
17 They'll have an east coast representative at the west coast
18 meeting, they'll also have a west coast representative at the
19 east coast meeting, to make sure they have knowledge what's
20 going on respectively.

21 They will read the minutes from the east coast at
22 the west coast meeting, and they read the minutes from the
23 west coast meetings at the east coast meeting.

24 After each monthly meeting they'll come up with a

1 set of minutes that are called the WECOM, or W-E-C-O-M, and
2 it's the west coast officer meeting minutes and it has
3 delineated by charter, as to either there's no new business
4 or what's happening in that respective charter, what's going
5 on in their area. It tells you who the new members are, new
6 hangaround, new prospect, new full patch members, and the
7 date that they got their patch.

8 It goes on to talk about defense funds for their
9 criminal activity, it talks about all the different
10 activities occurring through different parts of not only the
11 United States, the west coast, the United States, Canada,
12 other parts of the world.

13 They have -- the world organization has a meeting
14 twice a year, different part of the world, sometimes they
15 will combine one of those meetings with what's called a USA
16 World Run. The Hells Angels also in the U.S. have a
17 mandatory USA run where all charters are supposed to be
18 represented from both east coast and west coast, and that
19 could be anywhere in the U.S. as to where they meet. They
20 change the locations.

21 Europe has a structure similar to this, that
22 includes South Africa, Europe, Australia, South America, has
23 a similar structure. There's talk about changing the
24 supervising regions because of the expansion of the Hells

1 Angels. They're located in about 46 countries, in six
2 continents, and they have approximately close to 5,000
3 membership worldwide. In U.S. we have 900 to 1,000 Hells
4 Angels. In Canada they're broken up into western, central
5 and eastern Canada.

6 As far as the Vagos, their structure is they have a
7 dual structure. And this is something that came out of the
8 Operation Simple Green case, the information, speaking to the
9 investigators from that particular case, detective --

10 MS. PUSICH: Your Honor, if I might inquire. Sir,
11 wasn't that conducted after my client was arrested in this
12 case?

13 THE WITNESS: That was during the case, the
14 take-down was actually October -- I believe 2011.

15 MS. PUSICH, your Honor, I would simply note that I
16 have a continuing objection with respect to foundation for
17 his opinion, and I think some of what he's going to be
18 telling you has come to light when my client was in custody
19 and hasn't been part of any of it.

20 THE COURT: I think that goes to argument and the
21 weight to give the evidence. You may proceed.

22 THE WITNESS: Thank you. So the Vagos structure is
23 they have a structure that has the international president
24 and the international Nomads president. They correlate --

1 they work on the same level. The reason that was created is
2 because of the expansion that the Vagos went into, and
3 they -- you're supposed to have six members in a charter to
4 have an actual charter, or chapter.

5 Because they were only getting three, four,
6 possibly five members when they go into a new territory,
7 instead of making them a full charter they made them Nomads.
8 They come under the jurisdiction of the international Nomads
9 president. And once they got their six members or more, they
10 would come under the jurisdiction of the international Vagos
11 president. But they're all one and the same organization.
12 And like I said, they have expanded worldwide at this point,
13 and still expanding.

14 Talked about again the violence involving the Hells
15 Angels and meaning of some of the patches, and in particular
16 the Filthy Few patch that is worn by several members of the
17 Hells Angels. This was a wire intercept called Operation 5
18 Star from October 28th of 2002, and this is the time that the
19 intercept was taken. This was a case that resulted in the
20 conviction of numerous Hells Angels out of the San Diego
21 County area, it was a DEA operation.

22 And this involves a conversation between Skeeter,
23 Larry Skeeter Gaskins, who at the time was a Dago, D-a-g-o,
24 or San Diego member. He was incarcerated in the Bureau of

1 Prisons when this phone call was made. He's currently a
2 member of the Berdoo charter at this point. And Guy
3 Castiglione, who at the time was the president of the Dago
4 charter and is now again the president of the Dago charter.
5 And another individual, a third individual by the name of
6 Bobby Perez.

7 The incident involves an incident where Bobby Perez
8 was tending bar, all three of them were full patch members of
9 the Hells Angels. Bobby Perez was tending bar at Dumont's
10 Bar, which is a Hells Angels owned bar in El Cajon,
11 California, a couple doors down from the Hells Angels
12 clubhouse.

13 Several -- a couple of Mongols, Mongol associates,
14 walked into the bar, knowing it's a Hells Angel bar, and
15 confronted Bobby Perez. He ends up stabbing one of the
16 Mongol associates, who subsequently bleeds out and dies, and
17 he gets shot in return as the Mongol was leaving.

18 So this is a conversation regarding that particular
19 incident. Bobby Perez survived the shooting.

20 (Audio played.)

21 THE WITNESS: So again, talking about the Filthy
22 Few patch and how he -- did he get his Filthy Few patch for
23 killing the Mongol associate that was killed.

24 How you get this Filthy Few patch is by committing

1 an act of violence for the benefit of the gang, by either
2 assaulting somebody, all the way up to a homicide.

3 BY MR. HALL:

4 Q. What was the date of that telephone call?

5 A. It's October 28th, 2002, at 2:59 p.m.

6 Q. Now, Mr. Gil-Blanco, you were aware that Cesar
7 Villagrana's home was searched and some photographs were
8 taken in the course of the execution of that search warrant?

9 A. Yes.

10 Q. All right, and did you see anything that was
11 relevant to the Filthy Few patch in reviewing the photographs
12 of the residence?

13 A. Yes.

14 MR. CHESNOFF: Your Honor, could I get a reference
15 point? If the witness knows, was Mr. Perez ever arrested as
16 a result of this incident?

17 THE WITNESS: He was subsequently killed when he
18 went to do a debt collection.

19 MR. CHESNOFF: But was he ever arrested?

20 THE WITNESS: No, I don't believe he was.

21 MR. CHESNOFF: I didn't think so.

22 THE WITNESS: I'm sorry, Mr. Villagrana, what were
23 you saying? He was saying something, he's been saying
24 something all along, I just wanted to make sure.

1 THE COURT: Okay, first off, you don't get to talk
2 to them.

3 THE WITNESS: I'm sorry, your Honor, you're right.

4 THE COURT: Number one. Number two, I heard what
5 you said, because I have pretty good hearing, so if I heard
6 it, he probably heard it. So if you want to whisper to your
7 lawyer, do that, because when you speak out loud we all hear
8 it. So then you can't complain about us all hearing it.

9 So just -- just keep that in mind. But no
10 communication.

11 THE WITNESS: Yes, your Honor.

12 THE COURT: I don't want to have to tell you again.

13 THE WITNESS: It will never happen again.

14 THE COURT: Okay, Mr. Hall.

15 MR. HALL: May I have this marked as State
16 Exhibit 1, please. It's a three page document, consists of
17 photographs taken in execution of a search warrant of
18 Mr. Villagrana's residence.

19 THE CLERK: Exhibit E marked.

20 THE COURT: We're going to keep all the exhibits
21 we're marking in the alpha order, not just for this hearing
22 but for this case, and then any trial exhibits will be marked
23 numerically.

24 MR. HALL: Okay.

1 THE CLERK: Exhibit D marked.

2 (Marked Exhibit D.)

3 MR. HALL: Also mark these too.

4 THE CLERK: Separately?

5 MR. HALL: Yes, please.

6 THE CLERK: Exhibit E and F marked.

7 MS. PUSICH: Counsel, can I see it?

8 MR. HALL: Yes, I'm sorry.

9 MS. PUSICH: Thank you.

10 (Marked Exhibit E & F.)

11 THE COURT: I just noticed the time, it's 12:00
12 noon. So I'm wondering if we should break for lunch now. Is
13 this a good time? Good time to break for lunch?

14 MR. CHESNOFF: Fine with us, your Honor.

15 THE COURT: All right. Then we'll break for lunch.
16 We'll be back on the record at 1:00 p.m. Court is in recess.

17 (Lunch recess.)

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1 RENO, NEVADA, MONDAY, OCTOBER 29, 2012, 1:00 P.M.

2 --o0o--

3 THE COURT: Witness will retake the stand, and I
4 remind you you're still under oath. But I think you're not
5 on the stand.

6 THE WITNESS: Yes, your Honor.

7 THE COURT: You may proceed.

8 DIRECT EXAMINATION

9 (Continued)

10 BY MR. HALL:

11 Q. When we left off we were talking about the Filthy
12 Few patch, and I'd like to direct your attention to
13 Exhibit D, which for the record I would indicate is a collage
14 of photographs that were taken during the execution of a
15 search warrant of Mr. Villagrana's residence in I believe
16 it's Gilroy, California. Is there anything probative with
17 respect to Filthy Few depicted in Exhibit D?

18 A. Yes.

19 Q. What would that be?

20 A. That would be photograph DSCN1499.JPG, it's a
21 depiction, a photograph of a Filthy Few banner. Looks like
22 it's encased in a frame, says Filthy Few with the SS lighting
23 bolt, San Jose.

24 Q. Is there a way a person would earn that patch with

1 that insignia?

2 A. To earn the patch, yes, you have to commit an act of
3 violence for the benefit of the gang. What this tells me by
4 seeing that inside the house, he possibly earned that patch.
5 Just not wearing it on his vest.

6 Q. There's a number of other photographs in that
7 Exhibit D. Are there any that are indicative of membership
8 in the Hells Angels OMG?

9 A. Yes.

10 Q. Can you give a brief description --

11 THE COURT: I think he can retake the stand.

12 MR. CHESNOFF: I'd like to move to strike the
13 reference to the Filthy Few for the purposes of this. The
14 witness said it possibly could; I believe he's speculating.

15 THE COURT: Objection is speculation?

16 MR. CHESNOFF: Yes.

17 THE COURT: Sustained. I don't know if he can,
18 we'll see, but that answer was speculative. Okay, Mr. Hall.

19 MR. HALL: Well, can I have some clarification on
20 that? Does that mean the evidence is not admissible, or his
21 opinion that he earned the patch is not admissible?

22 THE COURT: He did not give an opinion that he
23 earned the patch. He said it's possible.

24 MR. HALL: Right.

1 THE COURT: So I don't know what his opinion really
2 is, I think maybe you can clean that up with more direct
3 questions. So I just dealt with the objection.

4 MR. HALL: All right.

5 BY MR. HALL:

6 Q. So the other photographs that would be indicative of
7 gang membership, of course the Filthy Few patch would be
8 indicative of gang membership, is that correct?

9 A. The Filthy Few patch, yes definitely. Also there's
10 numerous other photographs of Hells Angel with a death head.
11 San Jose, it's encased in a frame. Numerous photographs of
12 what appears to be soft colors. Soft colors are anything
13 other than a regular vest that has the colors on it, notice
14 the patch. In this case it looks like a T-shirt that has a
15 death head on the back, Hells Angels, San Jose. Has other
16 T-shirts that has death heads on it, also. Hells Angels
17 Minnesota, another T-shirt. A couple of T-shirts with death
18 heads and Minnesota on it. Another one was Santa Cruz.
19 Another one SFV, for San Fernando Valley. Another one that
20 says Hells Angels Forever MC with a death head also.

21 Then he also has, on another page, he's got
22 photographs of a Hells Angels vest, looks like it's been cut
23 off. And it has death head pins and a full patch on the
24 back. And it's -- excuse me, a side rocker, San Jose.

1 Q. With respect to the vest, is that what's commonly
2 referred to as cuts in motorcycle gang terminology?

3 A. Could be colors, patch, cuts.

4 Q. All right. With respect to Hells Angels full patch
5 member, is anybody allowed to wear the death head patch or
6 the full cuts?

7 A. No. Only a full patch member of the Hells Angels
8 would be allowed to wear anything that has a death head on
9 it.

10 Q. What would be the consequences, based on your
11 training and experience, if someone were to wear cuts or
12 jacket, wearing the full patch, the top rocker, the insignia,
13 the death head, and the bottom rocker?

14 A. At a very minimum would be serious injury for
15 wearing something that you're not allowed to.

16 Q. So if a person is a members of the Hells Angels and
17 then he withdraws or decides he doesn't want to be a member
18 of the Hells Angels, what happens with your Hells Angels
19 memorabilia?

20 A. You have to give it all back to the Hells Angels,
21 it's collected. If you're kicked out in bad standing usually
22 you're escorted back to your residence, and all the Hells
23 Angel paraphernalia is collected and taken from you. That
24 includes tattoos have to be covered up, either Xed out or

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1 covered up completely with an out date. And if the tattoo is
2 covered up itself, that tells that you're out in bad
3 standing. If it's not covered up, then you still have to
4 have an out date. That tells you you're out in good
5 standing.

6 MR. HALL: All right. We were in the middle of
7 your Powerpoint presentation, so with the Court's permission
8 I'd like to continue with that.

9 THE COURT: Yes, you may step down.

10 THE WITNESS: We talked about gang violence, one of
11 the patches that Hells Angels earn --

12 MR. CHESNOFF: Your Honor, excuse me. For the
13 record, I would continue an objection to the use of the word
14 "gang."

15 THE COURT: Okay.

16 THE WITNESS: One of the patches that a Hells
17 Angels earns is a Deguello patch. There's two variations of
18 it, one is in black and white as seen here, with the spelling
19 D-e-q-u-i-a-l-l-o. And the actual correct spelling is
20 D-e-g-u-e-l-l-o, which is on the other patch, which is in red
21 and white. That's the actual correct spelling of it. It's
22 been around for years, the only way you earn that is by
23 assaulting a police officer.

24 The meaning of the word deguello, it's a Spanish

1 word, in the dictionary it has two meanings. It's the tune
2 Santa Ana's army played prior to assaulting the Alamo, called
3 a deguello, which stood for expect no mercy, give no quarter.
4 The other definition is cutting somebody's throat.

5 Q. Now, was there an Operation Deguello conducted by
6 the federal government?

7 A. I'm not aware of the title of that. I'm not aware
8 of what the actual title of that was, I don't know.

9 Q. Were you aware there was a number of ATF document
10 that were recovered from Mr. Villagrana's residence during
11 the course of the search warrant?

12 A. Yes.

13 Q. So what was the name of those operations that were
14 contained in the ATF documentation?

15 A. I don't know the exact title of it, I know there was
16 documentation from there. There were I believe documents
17 from the Laughlin incident, the shootout that occurred in
18 2002 in Laughlin.

19 Q. We can get into that later, why don't you just
20 continue.

21 A. This photograph we took in Cody, Wyoming, in 2006.
22 Again depicting to me what I believe to be violence. It's
23 not the only time I've seen it on a Hells Angels gas tank.
24 The 187 number, which in California is the penal code section

1 for homicide commonly used by gangsters. And this is -- this
2 gas tank was a California Hells Angel, and again I saw it
3 another time in Canada on a former California Hells Angels
4 that is now in Canada.

5 A T-shirt, support T-shirt from Santa Cruz again
6 depicting the violence, showing what I showed, the ball-peen
7 hammer, a common weapon used by the Hells Angels, with the 81
8 for Hells Angels, the eighth and first letter of the alphabet
9 for HA, blood dripping from it. Support your local 81, red
10 and white, Santa Cruz. Then on the front they had -- on the
11 back they had beat them until they bleed, then beat them for
12 bleeding. Again, depicting the violence.

13 Another one from Cape Creek charter in Arizona. 81 for
14 Hells Angels. Support your local red and white. Cross
15 ball-peen hammers in the teeth of the skull. An eye for an
16 eye, that was retribution.

17 This one came out the year after the Laughlin
18 shootout which depicts Laughlin, Cal Shaeffer, it's a
19 depiction -- it's a Hells Angel with the death head, a gun,
20 semiautomatic pistol in one hand, ball-peen hammer in the
21 other. Has the Hells Angels World Run, a commemorative
22 T-shirt, which was held in New Hampshire in 2003.

23 Another one of the Vallejo charter, the Hells
24 Angels, blood dripping from this ball-peen hammer. Again,

1 Hells Angels Vallejo.

2 Another support one. This is from the R-Side, it's
3 R apostrophe s-i-d-e, which is the Riverside charter of the
4 Hells Angels, has that on their bandanas. It shows two
5 individuals, two skulls, hitting an individual in the head
6 with a ball-peen hammer. You can run but you can't hide.
7 Another one support for the Orange County charter of the
8 Hells Angels. Talk shit, get lit, with an upside-down police
9 car on fire.

10 Then go into the gang rivalries that showed the
11 rivalries that they had, the animosity they had with each
12 other. I took this photograph inside the Merced Hells Angels
13 clubhouse during the search warrant that was done a couple
14 years back. This is from the Nomads New Hampshire, Angels
15 Forever, Forever Angels. May God have mercy on our enemy,
16 because we won't. Two 45 caliber pistols on either side with
17 the words, the letters APMD, which stands for All Pagans Must
18 Die; AOLMD, which stands for All Outlaws Must Die; and AMMD,
19 All Mongols Must Die. And the same thing on both sides,
20 dripped in blood.

21 Another one that I've seen at several Hells Angels
22 members residences and also clubhouses. This one I took a
23 photograph, this one also at the Merced clubhouse search
24 warrant. AFFA, again, Angel forever, forever Angel.

1 Filthy Few with the lightning bolts. Has a muscular
2 depiction of a muscular Hells Angel with a death head. Has a
3 smoking semiautomatic pistol in his left hand, and he's
4 got -- has his knee, sitting on a motorcycle with his knee on
5 top of an individual that's on the ground with a bullet hole,
6 what appears to be a bullet hole, and blood dripping from it.
7 And on the bottom, AOMD, All Outlaws Must Die.

8 Another Merced T-shirt, Merced charter, a support
9 T-shirt. Semiautomatic pistol, Hells Angel with a death
10 head. HAMC for Hells Angels Motorcycle Club. And he's got
11 on his -- another kind of a modified hammer, some type of
12 weapon, not your typical ball-peen hammer. And on the
13 shoulder he's got All Mongols Must Die kind of tattooed on
14 his left shoulder. With Filthy Few 666 also tattooed on
15 there.

16 Talk about gang incidents involving -- suggested
17 to me, I counted about 50 incidents between Hells Angels,
18 Mongols and Vagos since 2001. This one started off with the
19 Orange County charter, back in -- in Orange County, I'm
20 sorry, not the charter. In Orange County there was a fight
21 between Hells Angels, Mongols and Vagos at a swap meet, they
22 went at each other with just all of the items that were at
23 the swap meet. It was after this incident where the Vagos at
24 that point decided to expand, and that's when we started

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1 seeing the expansion of the Vagos.

2 THE COURT: You mean all three fought each other?

3 THE WITNESS: Well, the Vagos and Mongols were kind
4 of siding with each other against the Hells Angels.

5 THE COURT: Oh, I see.

6 THE WITNESS: The other incident, Bullhead City,
7 Arizona, was at Lazy Harry's Bar. We had Hells Angels,
8 Desert Road Riders, which is a Hells Angels affiliate and
9 support club, showed up, but the Hells Angels went inside the
10 bar and assaulted a couple Vagos, one Vago in particular at
11 the bar. That occurred on June 19th, 2009.

12 Third incident -- there were some other incidents
13 between -- or after this time also. Santa Cruz we had Hells
14 Angels assaults -- Hells Angels assaulted Vagos over their
15 establishing a charter in Santa Cruz, which they were not
16 successful in starting because of the opposition of the Hells
17 Angels.

18 Oildale, California, May 30th, 2010, Hells Angels
19 stabs and kills a Vagos prospect and stabs a full patch Vagos
20 member that was over there.

21 We have Yavapai County, Arizona, we had Hells
22 Angels and Vagos involved in a shootout, approximately 50
23 rounds exchanged between the two over an initial
24 confrontation started at a convenience store. And that case

1 is still going back and forth in the courts.

2 MR. CHESNOFF: Your Honor, I object --

3 BY MR. HALL:

4 Q. This slide was in your original presentation at the
5 grand jury?

6 A. Yes.

7 MR. HALL: All right, so just for the Court's
8 information, all this information was provided to defense in
9 the initial round of discovery. We have supplemented that
10 subsequently with some police reports so that we don't have a
11 speculation as to the foundation for that information. So
12 we've already provided this information when we indicted the
13 defendants in this case.

14 In addition, I would mention that confidential
15 source number 67 also mentioned that in his grand jury
16 testimony, these specific instances. So these are the
17 specific incidents of violence between the two groups that
18 the State seeks to introduce during the course of trial. So
19 with respect to discovery issue and the late notice, the
20 defense has had notice for a year now.

21 MS. PUSICH: Your Honor, just to clarify, although
22 the Court ordered the State to provide much of the
23 information with respect to the grand jury I believe at the
24 beginning of April, we got it middle of June. This is

1 information that was provided previously, however, it doesn't
2 provide this Court with any foundation under 48.045.

3 THE COURT: Overruled.

4 THE WITNESS: Another incident, Lake County,
5 California, had a Sonoma Hells Angels associate riding with a
6 Hells Angels Sonoma charter, assaulted a Vago member in
7 Lakeport. That was April 16th, 2011. About a month later or
8 couple weeks later, same location, same Vago, sergeant at
9 arms for the Lake County Vagos, was at a tattoo convention in
10 Lake County, in Konocti Vista Casino and was assaulted by
11 four Hells Angels. That case is still pending in the courts.

12 THE COURT: Do we have a printed version of this
13 Powerpoint?

14 MR. HALL: Yes, we do.

15 THE COURT: I'd like to have it marked.

16 MR. HALL: Okay.

17 THE COURT: You can bring it later and provide it
18 to everyone, and provide it to the Court.

19 MR. HALL: All right.

20 THE COURT: Thank you.

21 BY MR. HALL:

22 Q. Let me draw your attention to Exhibit E. Directing
23 your attention to Exhibit E, do you recognize that
24 photograph?

1 A. Yes.

2 Q. What does that photograph depict?

3 A. It's several Hells Angels. Excuse me. Standing
4 around, they're looking down at the time. This is the body
5 of Steve Tausan, who was the sergeant at arms for the
6 Santa Cruz charter who had just been shot by another Hells
7 Angel at Mr. Pettigrew's funeral in San Jose.

8 Q. Do you remember the date that Mr. Tausan was -- or
9 the date of the funeral?

10 A. I remember the date of the funeral, I don't know the
11 exact date off the top of my head.

12 Q. Okay, it was shortly after the murder of
13 Mr. Pettigrew at the Nugget?

14 A. Yes.

15 Q. Which was September 23rd --

16 MS. PUSICH: Objection, your Honor. It's up to the
17 judge to decide if there's been a murder of Mr. Pettigrew.

18 MR. HALL: Well, he was murdered. It's up to the
19 jury to find out who did it, make a determination as to that.

20 THE COURT: I suppose there could be an argument
21 made whether it was a homicide or murder. With me -- maybe
22 you might want to argue some of these things in front of a
23 jury, I don't know, but I'm not going to worry about whether
24 he uses the word murder, it's not going to improperly

1 influence with me. I don't get inflamed with that word. You
2 may proceed.

3 BY MR. HALL:

4 Q. Now, with respect to that photograph, do you
5 recognize any of the individuals depicted in the photograph?

6 A. Yes, I do, several individuals.

7 Q. Who do you recognize in the photograph?

8 A. Number one, the defendant Mr. Villagrana is in
9 there, looks like he appears to be talking on the phone.
10 There's Mr. Mecco from the Nevada Nomads. There's Cornbread,
11 I can't remember his actual name, from the Las Vegas charter.
12 There's a former member, now out, from the Nomads in
13 California, Oscar Jose.

14 Those are the ones I recognize. Yeah, those are
15 the only ones I recognize. Looks like Rusty Coons from
16 San Fernando Valley charter.

17 Q. Are persons present at the funeral indicative of
18 being a member of Hells Angels?

19 A. If they're wearing their colors. I recognize them
20 from previous incidents as being Hells Angels. Not all of
21 them are members of the Hells Angels in this photograph.

22 Q. Do you know Mr. Villagrana to be a member of the
23 Hells Angels?

24 A. Yes, I do.

1 Q. Do you know Mr. Pettigrew to be a member of the
2 Hells Angels?

3 A. Yes, I do.

4 Q. Let me show you what's been marked as Exhibit F, do
5 you recognize that exhibit?

6 THE COURT: Mr. Hall, would you approach with that
7 exhibit?

8 MR. HALL: Yes.

9 THE COURT: Thank you.

10 A. Yes.

11 BY MR. HALL:

12 Q. What's Exhibit F?

13 A. It's a phone list of members from different
14 charters, from Anchorage, Daly City, Berdoo, Dago, several
15 other charters.

16 Q. Now, do the Hells Angels communicate with each other
17 in different states? You indicated earlier it's a nationwide
18 organization, but with respect to United States do the
19 different chapters communicate with each other about club
20 business?

21 A. Yes.

22 Q. All right, and what type of business do they engage
23 in and have to discuss, based upon your previous experience?

24 MR. CHESNOFF: Your Honor, I'm going to object to

1 the form of the question. Lack of foundation.

2 THE COURT: Yes, and it was pretty broad.

3 MR. HALL: I can narrow it down.

4 BY MR. HALL:

5 Q. Are you familiar with west coast officers meetings?

6 A. Yes.

7 Q. How are you familiar with west coast officers
8 meetings?

9 A. I've monitored some of the meetings in Berdoo, in
10 other words, in the area while they're conducting their
11 meetings. I've also spoken to former members of the Hells
12 Angels, and talked about what they've discussed at the
13 meetings.

14 Q. All right, so what's discussed at the meetings?

15 MR. CHESNOFF: Your Honor, objection. Can we get
16 the names of who he's talked to for foundation purposes so we
17 can confront the witness at the appropriate time? And
18 there's no foundation.

19 THE COURT: Well, at this point he's monitored and
20 spoken with club members. Your argument would be that that
21 person wasn't a former member. And therefore his information
22 was not sufficient?

23 MR. CHESNOFF: When he says monitor I don't think
24 he was in the meeting, I think he was probably watching from

1 afar. And secondly, I think we're entitled to know the
2 source of his information in order for you and us to
3 ultimately decide the credibility of it.

4 THE COURT: I'm not going to order it today, but I
5 think you may be entitled to it. As with all experts, the
6 basis they reach their conclusions are usually discoverable,
7 but it goes to the weight to be given the evidence, not the
8 admissibility. So for today I will overrule your objection.

9 MR. CHESNOFF: Thank you.

10 THE COURT: You may proceed.

11 MS. PUSICH: Your Honor, we would join in that
12 objection.

13 THE COURT: Same ruling.

14 MS. PUSICH: Thank you.

15 BY MR. HALL:

16 Q. So the answer is you can tell us what they talk
17 about at the west coast officers meeting?

18 A. They discuss what's going on in their respective
19 areas. I've reviewed west coast officers minutes from 1990
20 through when the search warrant was conducted at the Oakland
21 club, that was 1998. I reviewed all the minutes from the
22 Mosby units from 1990 to 1998, and I still continue to review
23 those west coast officer minutes that were seized during the
24 search warrant services. I get copies of those minutes.

1 Each charter has either no new business or what
2 they discussed at the meeting. It's just kind of a shortened
3 version of what's discussed at the meetings, what's going on
4 in the areas, who is a new member, who is a new prospect, who
5 is a new hangaround. They might be having trouble with
6 certain people, or they might be they've talked to somebody
7 from the Vagos, they've talked to somebody from the Outlaws,
8 it varies.

9 Q. Okay. Well, let's talk about some of the problems
10 that there may have been between the Hells Angels and the
11 Vagos. You've listed a number of incidences of violence
12 between the two groups. Can you walk us through those
13 various conflicts between the Vagos and the Hells Angels,
14 with relationship to rivalries, and the reasons for the
15 rivalries?

16 MR. CHESNOFF: Your Honor, I'm going to object.
17 There may be conflict between someone who is a member of the
18 Vagos and someone who is a member of the Hells Angels, but
19 the idea that there is a conflict between Vagos and Hells
20 Angels is speculation. These are individual incidents. The
21 club was not tried, the club was not convicted on either
22 side, these are people. Whether they're Boy Scouts, U.S.
23 Army members, policemen, that have conflict.

24 And so the form -- I object to the form of the

1 question, your Honor. And I know that it ultimately goes to
2 a lot about what you're going to decide, but -- for example,
3 we have -- we will on cross-examination at the appropriate
4 time point out some of the things that are left out that are
5 probably relevant to your determination.

6 It's just -- it gets to the point, your Honor,
7 where people are being prosecuted for their status, which we
8 know the U.S. Supreme Court does not permit. I made the
9 record, I object to the form of the question, your Honor.

10 THE COURT: Thank you.

11 MS. PUSICH: Your Honor, we object as well, the
12 question is overbroad.

13 THE COURT: Okay, pursuant to the statute, NRS
14 193.168 allows an expert to testify into this type of
15 evidence. It is admissible, and therefore I'm going to
16 overrule the objection. You may proceed.

17 THE WITNESS: Thank you, your Honor. I'm sorry,
18 could you repeat the question again?

19 BY MR. HALL:

20 Q. The question was, during the course of your
21 Powerpoint presentation you listed a number of violent
22 conflicts between the Hells Angels and Vagos. And with
23 respect to NRS 193.168, the gang enhancement statute, you're
24 allowed to discuss certain rivalries, motive, those types of

1 things, to establish whether or not this particular crime was
2 committed in furtherance of a gang.

3 A. Yes.

4 Q. All right, so I'd like to talk, I'd like to discuss
5 about the different conflicts, I'd like you to address those
6 different conflicts, based upon your experience and knowledge
7 of those different conflicts, so that we can ask you to
8 establish the factors set forth in the statute.

9 A. Most of these conflicts involve an issue of turf, or
10 territory. Has to do with the Vagos starting to open up
11 charters, kind of infringing in what Hells Angels consider to
12 be their area. And that's how the conflict usually starts.

13 They're opposed -- the Hells Angels are opposed to
14 the Vagos expanding, particularly into areas they feel that
15 they control or should be in control of. And that's where it
16 starts, all these conflicts. For example, the Santa Cruz
17 incident was over starting a charter. The Vagos were
18 supposed to have a grand opening ceremony coming out of their
19 charter up in the Santa Cruz mountains, they sent out
20 posters, fliers for it. It was subsequently not done because
21 of the problems that they were concerned about after the
22 incident where several Hells Angels assaulted three Vagos as
23 they left the Starbuck's downtown Santa Cruz.

24 They -- all these incidents, the Oildale incident

1 was over a perceived act of disrespect the night before,
2 where several Vagos showed up at a local bar, the Hells
3 Angels -- one Hells Angel in particular that was kind of
4 controlling the Bastards motorcycle club out of Bakersfield,
5 which is a puppet club created by them, to -- they said
6 you're not allowed here, this is our area, you know, I
7 thought we agreed that you guys were going over to another
8 bar, another location in town. And that confrontation the
9 next day occurred because of that act of perceived
10 disrespect. From, in my opinion, one gang to another.

11 And again, just kind of continues on. That's what
12 it's all about, the ongoing wars.

13 Q. Well, specifically I wanted to discuss Yapapai,
14 Oildale and Santa Cruz. So can we get a little more specific
15 with respect to your knowledge of those cases, and we can
16 start with Santa Cruz if you'd like.

17 A. That's the one I just referred to, the Santa Cruz
18 one was the incident that several Hells Angels assaulted --
19 actually, they were on the way to assault, you had two Vagos
20 on a motorcycle stopped at a stoplight, another Vago in a van
21 behind them, a short -- several cars behind them. He
22 observed several Hells Angels, one of them with a claw
23 hammer, start to approach the two on the motorcycle. He
24 honks his horn -- excuse me, honks his horn to warn the two

1 Vagos, they turn around see the Hells Angels coming at them,
2 they split through the intersection.

3 The Vago in the van drives over to the -- across
4 the street onto the sidewalk, gets out of the van and
5 confronts the -- I believe there were approximately five
6 Hells Angels, and he gets assaulted by those Hells Angels.
7 He takes the claw hammer from one of them, he ends up with a
8 boot stomp on his forehead. The other Vagos start to come
9 back, everybody splits, everybody leaves. And the police
10 make contact with the three Vagos at a park a short distance
11 away, and they arrest the Vago with the claw hammer. They
12 then subsequently charge them with, in California law, the
13 challenging to fight, and with the gang enhancement.

14 The Oildale incident was, like I said, an act of
15 disrespect from the night before where the Vago showed up at
16 a bar, gets confronted by an individual named Delano Mike,
17 which is a Hells Angels from the Orange County charter, but
18 he's there to supervise the Bastards motorcycle club in Kern
19 County, with the idea of starting a Kern County charter of
20 the Hells Angels.

21 The next day the Vagos are having a birthday party
22 a short distance away, they -- somebody sees that Delano Mike
23 is sitting out in front of the tattoo parlor which is run by
24 the Hells Angels and the Bastards, and they start -- they

1 confront -- they start to drive up to the location, and the
2 fight ensues where one Hells Angel -- I'm sorry, one Vago
3 prospect is subsequently stabbed and dies, and another Vago
4 full patch is stabbed and survives.

5 The Yapapai incident was a confrontation that
6 occurred between some Hells Angels and Vagos at a convenience
7 store. The Hells Angels leave, go to their clubhouse, and
8 wait for the Vagos to drive by. First Vago drives by, he's
9 shot in the side, he goes down, starts returning fire.
10 Second Vago comes through, gets hit I believe in the leg, he
11 goes down. Third Vago and his old lady, as the term is used,
12 I don't know if it was a wife or girlfriend, he puts the bike
13 down. Several other Vagos make it through, go to their
14 location where their Vagos are at. They get reinforcements,
15 they come back, surround the Hells Angels clubhouse and end
16 up a total of 50 rounds are exchanged. Two Vagos are shot,
17 two Hells Angels are shot during that incident.

18 Q. Was there also a Lake County incident?

19 A. Yes, the Lake County incident, what I referred to
20 earlier was Mr. Verns, a sergeant at arms with the Lake
21 County Vagos, is at this tattoo convention in Lake County --
22 Lakeport, the Sonoma charter of the Hells Angels has a table
23 set up with selling their support T-shirts at this tattoo
24 convention. In reviewing the video, you can see that they

1 start -- two of the Hells Angels start to follow Mr. Verns
2 around through the tattoo convention, and subsequently these
3 two Hells Angels walk out directly behind Mr. Verns, and one
4 of the Hells Angels just walks up to him and sucker punches
5 him in the face. The fight is on, two other Hells Angels
6 join in. And that case is still pending in the courts.
7 There was a hearing, a preliminary hearing, and a holding was
8 held for that. And one of those Hells Angels is still a
9 fugitive, not only from that case but another case out of
10 Southern California. So four Hells Angels were charged on
11 that.

12 Q. Now, would it be fair to say that the Hells Angels
13 do not get along with the Vagos?

14 A. It's area by area. In certain areas, where some of
15 the Vagos and Hells Angels have grown up together for a long
16 time, sometimes they get along. It's certain charters that
17 kind of come in and -- I'll give you an example. At the Easy
18 Rider show in Sacramento about a year ago, about the height
19 of all this time, the Sac Hells Angels had a booth set up to
20 sell their support T-shirts. The Vagos show up, they
21 actually walk up to the table, they hug each other, they've
22 known each other for a long time. But Richmond and I
23 believe -- I don't know if it was -- definitely Richmond and
24 another bay area charter, Oakland or Frisco show up, and the

1 Vagos were escorted outside, the gloves started coming on,
2 and the Vagos left. There was obvious tension between the
3 groups at that time. So it's area-by-area as to what's going
4 on.

5 Q. Now, are you familiar with the San Jose chapter of
6 the Hells Angels?

7 A. Yes, I am.

8 Q. All right now, do you know if the San Jose chapter
9 of the Hells Angels had any kind of a dispute with the San
10 Jose chapter or chapter near San Jose of the Vagos?

11 A. Yes.

12 Q. And what do you know about them?

13 A. It's my --

14 Q. That relationship?

15 A. It's my belief that the -- every time the Vagos
16 started to expand, particularly Santa Cruz, San Jose area,
17 that the San Jose Hells Angel would step in and basically
18 shut it down.

19 Q. Now, with respect to turf, I'd like to discuss Reno
20 and where the respective OMGs would stay while in Reno,
21 specifically at Street Vibrations. Do you have any
22 information about that?

23 A. Yes.

24 Q. All right, so were you aware that the Vagos, also

1 known as the Green Nation, were having a nationwide meeting,
2 and their meeting was to be held at the Nugget and attended
3 by hundreds of Vago members?

4 A. Yes.

5 Q. As a matter of fact, they -- you were aware that
6 they had a discounted rate for rooms if they signed in under
7 the Green Nation, which you mentioned earlier, is that right?

8 A. Yes.

9 Q. Now, where, based upon your training and experience
10 and knowledge of this case, where do the Hells Angels usually
11 stay?

12 A. Normally, the kind of central focus area for the
13 Hells Angels during Street Vibrations is the Silver Legacy.

14 Q. And we discussed a number of other incidents of
15 violence between the Hells Angels and the Vagos. Is the
16 information -- is there information shared between the
17 different OMGs regarding, for example, the stabbing at
18 Oildale or different fights, the Starbucks fight, the
19 shootout down in Yapapai?

20 A. Yes, absolutely. As a matter of fact, on another
21 case that's still pending in courts in San Jose, one of the
22 Santa Cruz members, Mr. Bettencourt, who is currently in
23 custody still, during the search warrant served on him and
24 his cell phones, the cell phones had many, had a lot of

1 communications talking about the shooting in Yapapai that
2 occurred. There was text going between him and other -- I
3 believe either prospects or members.

4 Q. All right, so would it be fair to say or assume that
5 nationwide, members would know of altercations between the
6 Hells Angels and Vagos, and so if they saw each other there
7 would be potential for at least tension, if not violence?

8 A. Yes.

9 Q. And based upon your review of the video at the
10 Nugget initially at the Oyster Bar, did you see that there
11 was tension and potential for violence at that time?

12 A. Yes.

13 Q. While I'm talking about information that would be
14 shared among groups, you were aware that there was a search
15 warrant served at Villagrana's residence; we discussed that
16 earlier, is that correct, sir?

17 A. Yes, sir.

18 Q. During the course of the execution of the search
19 warrant there were a number of reports that were collected.
20 And I'd like to show you those reports, have you take a brief
21 look at those.

22 If we could have this marked as an exhibit.

23 THE COURT: Okay.

24 MR. HALL: I guess that would be G. Why don't you

1 just take a moment and take a look at that.

2 THE CLERK: Exhibit G marked.

3 (Marked Exhibit G.)

4 MR. HALL: This has been provided in discovery.

5 THE COURT: Okay, Mr. Hall, this is a large black
6 binder, and it was provided in discovery as documents taken
7 from Mr. Villagrana's home?

8 MR. HALL: Yes. It was actually -- I would
9 indicate for the record that there's actually three binders
10 of documents that were taken from Villagrana's home. They
11 were contained on a disk, and we provided both the disks and
12 then we printed it out, the information that was contained on
13 the disk. And for the record, I'd indicate that they are ATF
14 reports that document an investigation where members of the
15 federal government's Alcohol, Tobacco and Firearm agency used
16 confidential sources to gain information regarding the Hells
17 Angels and different activities that they were involved in.
18 And those activities were usually drugs and guns. There was
19 hand grenades, rifles, methamphetamine, marijuana, those
20 types of things. And the confidential source was buying
21 drugs, and that investigation took place from 2002 through
22 2004. In addition --

23 THE COURT: Okay, why don't we just stop there. We
24 just want to identify the document.

1 MR. HALL: Okay.

2 THE WITNESS: Okay, there's numerous reports from
3 ATF, from Agent Sacconi, some of the other -- Kozlowski,
4 agents that I know and recognize. Seems predominantly with
5 the -- involving the Laughlin shootout, and also the managing
6 or surveillance on an informant source of information,
7 including the San Fernando Valley charter of the Hells
8 Angels. Several incidents, purchase of -- undercover
9 purchase of silencers. Attendance at a Hells Angels Oakland
10 Charter 45th anniversary party in Oakland. Talking about the
11 homicide in Mesa with -- trying to remember the defendant's
12 last name. That was where a female was beaten at the
13 clubhouse, and her body dumped -- stabbed and dumped in the
14 desert, in Arizona.

15 There's numerous conversations about -- Hells
16 Angels had about Mongols. Talking about narcotics --

17 MR. CHESNOFF: Your Honor?

18 THE WITNESS: Quite a few --

19 MR. CHESNOFF: Your Honor? The question should be
20 do you recognize these documents.

21 THE COURT: That's what you asked, right? You
22 asked him to review it and see if he recognized it.

23 THE WITNESS: I'm sorry. I'm sorry.

24 THE COURT: Okay.

1 MR. CHESNOFF: Objection to foundation, your Honor.
2 Relevance.

3 MR. HALL: Your Honor, I'll make an offer of proof
4 as an officer of the court --

5 MR. CHESNOFF: More prejudicial than probative.

6 MR. HALL: -- that this, in addition to the other
7 information I'm going to talk about, was evidence that was
8 taken from Mr. Villagrana's residence. So not only do you
9 have the ATF reports which we've just discussed, he's
10 familiar with some of the officers that were named in those
11 reports, but you also have the Laughlin grand jury testimony,
12 in addition to another volume of ATF reports. In addition to
13 that, there was video of the Laughlin shootout.

14 Unfortunately I wasn't able to open those, I sent
15 them back to Alex Buyers -- not Alex Byers -- yeah, I did
16 send them back to Alex Byers, who was actually handling
17 Mr. Villagrana's California cases, to get them in a different
18 format. But I do have a video of the Laughlin shootout that
19 I want to play, in addition to the wedding chapel that I
20 wanted to play and introduce.

21 THE COURT: This is all taken from Mr. Villagrana's
22 home after this incident?

23 MR. HALL: That's evidence taken from Villagrana's
24 home. The video of Mr. -- the video of the Laughlin shootout

1 was taken from Mr. Villagrana's home. The transcript from
2 Laughlin grand jury, federal grand jury, was taken from
3 Mr. Villagrana's home.

4 MR. CHESNOFF: And your Honor --

5 MR. HALL: That's why the Laughlin incident is
6 relevant to this, because it shows that they share
7 information regarding various criminal activity or rivalries
8 between gangs, and that they do kind of surveillance. And I
9 was going to ask Mr. Gil-Blanco if these ATF report are
10 reports that he normally disseminated to, you know, the
11 general public.

12 THE COURT: Okay.

13 MR. CHESNOFF: Your Honor, we don't understand the
14 relevance of it. First of all, it's not contraband per se,
15 there's nothing illegal about possessing this material, no
16 offer that there was anything illegal about possessing it. I
17 can probably list in 30 seconds 30 reasons why someone would
18 have it, certainly it's not illegal to have it. One of the
19 references was to some murder in Arizona. That was a murder
20 done by a guy who turned out to be an informant for the Feds.

21 I don't really understand, your Honor, what's the
22 probative value or the relevance of him possessing
23 information regarding a club he belongs to. His members have
24 been attacked, they've used self-defense and been successful

1 in getting acquitted. There's no reason why Mr. Villagrana
2 can't read this material for his own protection, for the
3 protection of his family, to assist people who are being
4 improperly prosecuted, to help them with their defense.
5 There's a myriad of reasons why you would possess this.

6 I really don't understand how they intent -- do
7 they intend on having the jury hear about all of this stuff,
8 and try to argue to you with a straight face that it's more
9 probative than prejudicial? I mean, you have cartoon
10 pictures showing blood dripping. There's no -- their theory
11 here is that there was a murder. But all of this stuff is
12 just to inflame, your Honor. So if this man wants to opine
13 that Mr. Villagrana having this material is consistent with
14 his membership in the Hells Angels, I understand that. But
15 the idea that somehow somebody is going to get to hear about
16 all of the contents, it flies in the face of all the rules of
17 evidence, your Honor.

18 I mean, this just becomes a prosecution for being a
19 member of the club, as opposed to what happened in the
20 location. And that hasn't been allowed in a lot of courts,
21 your Honor. And I know the Court is balancing this, but it
22 gets to the point now, your Honor, where we feel we need to
23 at least make the record. We're going to have another
24 chance, we understand that, but some point in time it just

1 becomes -- it's the proof of what they're trying to do as a
2 tactic, as opposed to providing the jury in Reno an
3 opportunity to figure out who committed the homicide. Which
4 is what the prosecution claims they should be doing. So we
5 object to its mention, your Honor.

6 THE COURT: Okay.

7 MS. PUSICH: Your Honor, we join partly. Certainly
8 I agree with what Mr. Chesnoff said. However, with respect
9 to my client, the information that's being provided with
10 respect to Laughlin wedding chapel incidents don't involve
11 the Vagos at all. So I'd simply ask you to maintain what we
12 agreed at the beginning, to consider it, if at all, only with
13 respect to the Hells Angels.

14 THE COURT: The gang enhancement statute is
15 extremely broad about what an expert can testify to, and the
16 basis for that. I don't necessarily believe that Exhibit G
17 would be admitted before the jury. But for purposes of
18 today's hearing, which involves whether or not the gang
19 enhancement can even remain in the indictment, I think it's
20 appropriate to allow it in since it was subject to a lawful
21 search warrant.

22 MR. CHESNOFF: Which has not yet been tested. But
23 I have one more question to ask, your Honor. I would ask you
24 to remember this, the only question about the gang.

1 enhancement is if we're convicted.

2 THE COURT: Correct.

3 MR. CHESNOFF: So at some point the Court may also
4 want to think about whether or not in the interest of justice
5 it's better to have a trial about the murder without that,
6 and if we are convicted, have a bifurcated hearing with the
7 jury on the enhancement issues. Which could then include, if
8 the Court makes a finding that this gentleman is an expert
9 capable of testifying. So that our jury is not infected with
10 the enhancement issue before they ever have to consider the
11 enhancement issue. So I would propose at some juncture we
12 address that as well, your Honor.

13 THE COURT: Okay.

14 MR. CHESNOFF: Thank you.

15 THE COURT: Okay, for purposes of today's hearing
16 you may proceed with the exhibit as marked, admitted for
17 purposes of today's hearing only. So you may proceed.

18 (Exhibit G admitted.)

19 BY MR. HALL:

20 Q. Are you familiar with Operation Catch 22? Arizona
21 Operation Catch 22?

22 A. Is that -- I'm not sure which one that is. I don't
23 recognize the title.

24 MR. HALL: If I may approach.

1 THE COURT: Yes.

2 THE WITNESS: Yes, do I remember this now.

3 BY MR. HALL:

4 Q. All right.

5 A. Yes.

6 Q. I'd just mention, your Honor -- can you tell us what
7 Operation Catch 22 is?

8 A. That was involving Arizona, the GIITEM, g-i-i-t-e-m,
9 gang task force, serving several search warrants on Vagos
10 members. It was involving crimes they committed from
11 assaults -- this is after the Lazy Harry's incident. I
12 believe there was also some incidents that occurred on the
13 beach where some citizens were assaulted.

14 MR. HALL: Now, I got kind of sidetracked there.
15 Initially we were talking about Laughlin, and the fact
16 Mr. Villagrana had a number of items that were related to
17 Laughlin, specifically a video and grand jury transcript.
18 And I'd like to play the video from Laughlin because I think
19 that that's very probative in terms of the fight that
20 occurred in the Nugget is almost identical to the wedding
21 chapel, and Laughlin. So I'd like to play that for your
22 Honor, and -- so that you can see it.

23 THE COURT: Did you want the witness to remain on
24 the stand?

1 MR. HALL: No, I was going to ask him to come down.
2 He can identify what's going on during the course of the
3 video, since I think he's familiar with the video.

4 MR. CHESNOFF: Your Honor, I'll going to object to
5 this now. Your Honor, having seen this video probably 200
6 times, it's clear from the video that the Hells Angels in the
7 video acted in self-defense. That was established in a
8 federal trial and in a state case. So somehow if now we're
9 going to opine this is some kind of evidence that relates to
10 this prosecution, your Honor -- I mean, you're dealing with
11 things from 2002. I want to try a murder case, your Honor.
12 I don't want to try the history of this gentleman's career.

13 THE COURT: How long is the video?

14 MR. CHESNOFF: The video is short, your Honor, but
15 it's irrelevant to this. And it's --

16 MR. HALL: As Mr. Chesnoff has mentioned, you know,
17 they communicate, they talk about defenses, they help their
18 buddies and try to get them out of a jam, and he has all that
19 information in his bedroom drawer. So obviously it's
20 important to him. And then he's talking about, you know,
21 self-defense, and this was self-defense, and that's what
22 they're going to claim here is self-defense. I mean, that's
23 their theme in every fight. We can go through every
24 incident --

1 MR. CHESNOFF: That's not our defense, your Honor.

2 THE COURT: So your objection is it's not relevant.
3 Counsel, what is the relevance?

4 MR. HALL: The relevance, it shows motive, intent,
5 common scheme, plan, design. And it was in the defendant's
6 bedroom, which shows his gang affiliation.

7 THE COURT: Without ruling on whether or not it
8 does show that, I will allow -- there is an arguable reason
9 for presenting it in today's hearing only, so I will allow
10 you to present it. Has it been marked?

11 MR. HALL: No.

12 MR. CHESNOFF: Just so you know, Mr. Villagrana was
13 not in Laughlin, your Honor.

14 THE COURT: Okay, thank you.

15 MS. PUSICH: And your Honor, we would join, neither
16 was Mr. Gonzalez. We would also ask there are dozens of
17 pieces of information that's coming out here today with
18 various objections being made. We would ask leave of the
19 Court to be able to supplement them in writing before the
20 cross-examination in the next proceeding.

21 THE COURT: I don't know if it's necessary before
22 cross-examination, but you certainly can supplement them
23 before I rule on the motions that are before the Court.

24 MS. PUSICH: Thank you, your Honor.

1 THE COURT: Now, with regard to that, we obviously
2 need a record of what you're providing to me. So it's not
3 marked, can it be marked, is it on a disk, what's the
4 circumstance?

5 MR. HALL: As a matter of fact, I do have it. Mark
6 it as an exhibit, I happen to have it. This has both the
7 wedding chapel and Laughlin.

8 THE COURT: Put it in an envelope, just an envelope
9 and mark the envelope.

10 Are you going to want to use the zip drive, is that
11 what you're going to --

12 MR. HALL: No, I have it on a computer.

13 THE COURT: So you can download it, okay.

14 THE CLERK: Exhibit H marked.

15 (Marked Exhibit H.)

16 THE COURT: For demonstrative purposes it will be
17 marked as an exhibit. Is this the only thing on this zip
18 drive?

19 MR. HALL: Yes. I think so.

20 BY MR. HALL:

21 Q. Mr. Gil-Blanco, you're probably more familiar with
22 this than I am. Now, you've seen this a number of times,
23 Mr. Gil-Blanco?

24 A. Yes, I have.

1 Q. Can you identify the parties?

2 A. I believe that is Raymond Foakes, that's where they
3 get started, the whole incident. Or set it in motion, so to
4 speak.

5 Q. So essentially you've got Hells Angels and Mongols?

6 A. Yes.

7 Q. In the casino, got a number of Mongols, there you
8 see a kick, it starts off a little kick or a punch?

9 A. And Cal Schaefer should be here shortly. There,
10 it's hard to see. I've seen better versions of this video.
11 That's Cal Schaefer right there, shooting. Shooting again.
12 He's got a ball-peen hammer in his left hand, pistol in the
13 other. You see him shooting again.

14 But there are several skirmishes during this whole
15 thing. The president of the Mongols gets stabbed in that
16 incident. This individual over here shortly goes down and
17 gets hit over the head with a wrench by Rodney Cox from
18 Arizona. It's hard to identify --

19 MR. CHESNOFF: Your Honor, for the record, so you
20 know, the Mongols shot first.

21 BY MR. HALL:

22 Q. This is essentially another view of the same
23 incident, but you can see the Mongols vest, the Mongols
24 colors?