

1 if he doesn't know the chief identifying symbol of the Vagos
2 club, I can make a proffer here it's a Loki, if he doesn't
3 know that, he doesn't have expertise to testify.

4 THE COURT: With regard to the testimony of an
5 expert, 50.275 requires special knowledge, skill, experience
6 training, or education in matters within the scope of their
7 knowledge.

8 I think the State has proved him to be an expert. I
9 think all of your arguments go to the weight that may be
10 afforded to him.

11 I also want to hear what his experience is which was
12 precluded by your objections which is part of the basis for me
13 making a determination as to his expertise.

14 So for purposes of today's hearing, I am going to
15 allow him to testify as an expert. I'm going to reserve
16 ruling on whether or not he can maintain his expertise after I
17 hear the full extent of his testimony because experience is
18 one -- his experiences are one of the bases of his being
19 accepted as an expert.

20 Mr. Hall, you may continue.

21 MR. HALL: Thank you.

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1 DIRECT EXAMINATION RESUMED

2 BY MR. HALL:

3 Q So I believe before there was an objection regarding
4 your expertise, we were going to talk about your experience
5 with the Vagos in particular, and you testified that there is
6 a chapter of the Vagos in Lakeport; is that correct?

7 A In Lake County.

8 Q In Lake County?

9 A Correct.

10 Q All right. So can you tell us a little bit about
11 your experience with the Vagos and that chapter in Lake
12 County?

13 A Prior to 2004, Lake County was always considered
14 under the grounds of the Hells Angels. It was commonly known.
15 However, they did not have a chapter there. Sometime around
16 2004, the Vagos came into the territory and established a
17 chapter there. From that point on, we start to see more
18 activity by the Vagos, more were showing up, more full-patch
19 members. We had one living in the city of Lakeport, a
20 full-patch member. We started to take note of that
21 individual. Things did not seem to be much of a problem for a
22 while until 2011 came around and we started having issues
23 between the two factions.

24 Q And can you tell what type of issues you had between
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1 the two factions, one being the Hells Angels and the Vagos?

2 A Yes. As I began to talk earlier, while I was on
3 patrol, a full-patch member of the Vagos was riding solo by
4 himself, Main Street southbound just as I was northbound. At
5 the same time, there were these 50-plus bikes parked at the
6 Clearlake Club Bar, and there were numerous full-patch members
7 of the Hells Angels mixed in along with Lake County OG Riders
8 and another group which I was unable to identify standing in
9 and outside the bar.

10 As the -- his name is Mike Diaz. Correction, his
11 name is Mike Burns, the full-patch member. As he was riding
12 by, he looked at the members of the Hells Angels. The Hells
13 Angels began to say and chant things to him across the street.
14 I heard them because I was in my patrol car with the windows
15 down. I had fortunately driven by at the right moment,
16 because I'm not sure what would have happened exactly right
17 then had I not been there.

18 Due to concerns for violence and potential for
19 violence that I already knew existed from other cases in 2010,
20 I pulled to the side of the road, immediately radioed my
21 dispatch as an officer safety issue of what just occurred
22 hopefully notifying other units to be available. I was the
23 only person patrolling at the time. So I pulled to the side
24 of the road.

1 As I did so, I observed as Mike Burns continued
2 southbound. At this time, most everybody from the bar
3 proceeded to get on their motorcycles and leave town
4 southbound. At the same time, Mike Burns had turned around
5 and he had come back northbound past the bar again. This time
6 he had pulled off the side of the road and got off his bike in
7 front of what's called a Campos clothing store.

8 I turned around to follow the groups of
9 motorcyclists that were leaving Lakeport. It was a little
10 chaotic: Numerous bikes were leaving at the same time, a
11 couple of individuals were halting traffic in the intersection
12 so the motorcyclist could go through without stopping, a
13 couple of them intertwined and passed a vehicle.

14 I followed them outbound, and just as I got toward
15 the end of the city limits, radio-called dispatch alerted me
16 there was a physical assault occurring between gang members in
17 front of the Campos clothing store. I immediately responded
18 back as well as other units from the county assisting.

19 I arrived and found the full-patch Vagos member Mike
20 Burns staggering on the sidewalk. He was bleeding from the
21 nose and had a cut lip. I asked him what happened. He failed
22 in any way to cooperate with me at all, said nothing. I
23 explained to him I believe he might have caused this by riding
24 by in his Vagos patches, and he proceeded to tell me that this

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1 is his area. "We live here and they don't." I took that to
2 mean this is -- Lake County is Vagos territory meaning his
3 area and that the Hells Angels -- this isn't their area. So I
4 immediately recognized the territorial issue probably had a
5 lot to do with why he passed by, especially wearing his
6 colors.

7 At the same time, dispatch notified me that a
8 witness had observed the assault and had followed one of the
9 motorists to a gas station up on what's called Lakeport
10 Boulevard. The witness chose not to provide a name, chose not
11 to participate and assist in any way due to concerns and fear.
12 The individual was contacted in the gas station. He was not
13 flying any colors. However, he is an individual that I knew
14 and that was standing outside the sidewalk associating with
15 the Hells Angels members and the OG Riders members.

16 At that point, because we did not have any
17 cooperation from the victim, we did not have a witness who was
18 willing to provide anything. We photographed the individual,
19 his name was Mike Diaz, and allowed him to leave, leave the
20 area.

21 Q All right. And with respect to Mr. Burns, are you
22 aware of any other confrontations between Mr. Burns, the Vagos
23 and Hells Angels?

24 A Yes, I am.

1 Q Can you explain that?

2 A Yeah, if I may. That event that I just discussed
3 happened in April. In May, we got intelligence indicating
4 there was going to be an officers meeting.

5 MR. FREY: I object. This is beyond the scope of
6 the briefing. Clearly they are talking about new predicates.
7 That's my understanding.

8 THE COURT: I'm sorry, beyond the briefing?

9 MR. FREY: Correct. This is --

10 THE COURT: This is something you don't know about?

11 MR. FREY: This is something entirely new. We've
12 just exhausted the event that they have noticed up and briefed
13 in the motion for an order of gang evidence. This is
14 something entirely new.

15 THE COURT: Okay. I'm going to let the testimony
16 proceed. I may give you a chance to cross-examine after you
17 get more information on it.

18 THE WITNESS: We received intelligence information
19 there was going to be an officers meeting in the city of
20 Lakeport at the Clearlake Club Bar, the same bar where this
21 incident had just gone down in April, the same bar in which
22 the Hells Angels were in attendance.

23 Due to concerns, we were hearing that there was
24 going to be in excess of a hundred. My town is very small;

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1 population of 6,000, square miles of about 2.5. We had grave
2 concern for a hundred-plus patch members of the Vagos
3 organization coming in. I set up an immediate operation to
4 try to get as many allied units to assist. Went about an hour
5 and a half. I was able to gather six law enforcement
6 individuals from various agencies' command posts, and we
7 observed approximately 100 members of the Vagos from various
8 chapters arrived into the city of Lakeport and had their
9 meeting at the Clearlake Club Bar.

10 BY MR. HALL

11 Q All right. Were there any other problems with
12 Mr. Burns?

13 A Yes.

14 Q And with respect to the Hells Angels?

15 A Yes. In June of that same of year, there was --
16 just on the outskirts of the city limits of Lakeport, there's
17 a casino known as Konocti Vista Casino. This casino was
18 holding a tattoo convention. At that convention were factions
19 of the Hells Angels. They had banners, selling Hells Angels
20 logos, merchandise, and patch members were present.

21 Mike Burns and a hang-around for the Vagos club
22 walked into the casino, they walked around the casino and into
23 the banquet area where the Hells Angels were, and as they were
24 leaving the foyer of the casino, both of them were violently

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1 assaulted by four members of the fully-patched members of
2 Sonoma County Chapter Hells Angels.

3 Mike Burns was left on the ground unresponsive,
4 bleeding heavily, and again chose not to indicate anything had
5 happened at all as a result of that incident.

6 Q Was that incident videotaped?

7 A That incident was on surveillance video at the
8 casino.

9 MR. CHESNOFF: Your Honor, I just need to make a
10 record that we had no notice of this particular incident,
11 either.

12 THE COURT: Okay.

13 BY MR. HALL:

14 Q Was Mr. Burns in colors?

15 A Mr. Burns was wearing what's considered like a
16 summer cut. It's a T-shirt with the same patches on the back,
17 same lime green color, and he had a green -- lime green
18 baseball cap on.

19 Q Okay. So would those be termed -- are you familiar
20 with the term soft colors?

21 A Yes.

22 Q Would that be --

23 A Yes.

24 Q -- in your opinion be termed soft colors?

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1 A Yes.

2 Q So was that another incident that is the basis of
3 your opinion that there is an ongoing rivalry between the
4 Hells Angels and the Vagos?

5 A Yes, absolutely, combined with the information we
6 had prior to 2011 with the other incidents that occurred
7 throughout the State of California and other states.

8 Q All right. And then you had an opportunity to
9 review the video of the Nugget beating and shooting; is that
10 correct?

11 A Portions of it, yes.

12 Q All right. And so would it be your opinion that
13 those crimes were committed in affiliation with, or at the
14 direction of, or for the benefit of the Vagos or the Hells
15 Angels to further assist the activities of the criminal gangs?

16 A Absolutely.

17 MR. FREY: Judge, I'm sorry. If I could just refer
18 you back to his earlier portion of the direct testimony. I
19 believe he himself limited his expertise to trends only. This
20 goes beyond the scope of his expertise.

21 MR. CHESNOFF: Join, Your Honor.

22 THE COURT: Okay. I thought what Mr. Hall offered
23 was him as an expert with regard to the ongoing rivalry.

24 Is that what you offered?

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1 MR. HALL: Yes.

2 THE COURT: Okay. So what was the question that you
3 asked with regard to his opinion?

4 MR. HALL: My opinion was whether or not it was his
5 opinion that the incident at the Nugget was a result of a
6 rivalry, and that that was that the fight occurred at the
7 direction of, in affiliation with and the specific intent to
8 promote the activities of the two criminal gangs, the Vagos
9 and the Hells Angels.

10 MR. CHESNOFF: For the record, Your Honor, we object
11 to the State of Nevada having dual theories, one which is that
12 there was a premeditated murder and then the second theory.
13 And we think that it's incumbent from an ethical perspective
14 for the State to choose its theory. And when it's convenient,
15 it's premeditated, and when it's not, it's to have mutual gang
16 activity.

17 MR. FREY: I join in that.

18 THE COURT: I'm not exactly sure. I think the
19 objection was to the State having dual theories, correct?

20 MR. CHESNOFF: Yes, Your Honor. There's abundant
21 law on parties presenting a theory of how something occurred
22 or how something didn't occur, but you cannot present what I
23 guess would be called duplicitous theories, ones that are
24 inconsistent. If someone was planning to kill somebody and

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1 they came there to kill them, premeditated. I don't
2 understand, I haven't understood it since I saw it, how then
3 you can argue that somehow somebody else was there to create
4 some kind of benefit for themselves when they are the subject
5 of the premeditated attack. But I made a record.

6 What I'm trying to say, Your Honor, is we are -- and
7 I'm doing this for the record, Your Honor. We are taking what
8 is a murder charge and making it into an either a federal RICO
9 case, I mean, it's just -- we are constantly being prejudiced
10 by the inability for the State to focus on what they really
11 think happened here.

12 MR. FREY: I join that objection. But I led off
13 with an objection, Your Honor, that I hope you would consider,
14 which is he's now exceeding the scope of his own expertise and
15 under Higg and related case law, it's impermissible testimony.
16 This expert can, if he's qualified as an expert, and you have
17 qualified him for purposes of this hearing, he can testify
18 what's in subsection 7, but that doesn't also mean he can
19 testify to subsection 1, that alternate issue. That's a jury
20 question.

21 THE COURT: That's a whole nother issue.

22 MR. FREY: It is. But I think it pertains to only
23 one point in subsection 7. It certainly does not pertain to
24 subsection 1.

1 THE COURT: Okay. Mr. Hall?

2 MR. HALL: With respect to expertise, I don't think
3 Higg is the applicable standard. I think the Court identified
4 the applicable standard with respect to specialized knowledge
5 that this witness has and testified to with respect to
6 hands-on knowledge in addition to specialized training over
7 the course of probably the last ten years or so. So I think
8 he has the specialized knowledge to render an opinion with
9 respect to rivalry. He's had an opportunity to review reports
10 and evidence in this particular case which is totally
11 consistent with his observations over the course of his
12 training and experience with respect -- in addition to his
13 hands-on personal observations.

14 So Higg isn't an applicable standard. Certainly he
15 has an expert to offer expertise with regard to -- regarding
16 Hells Angels.

17 With regard to the two theories objection, well, I
18 think what counsel is referring to is the fact that Gary
19 Rudnick has provided a statement saying that there was an
20 authorized hit on Mr. Pettigrew. Unfortunately, we haven't
21 had Mr. Rudnick on the stand and have him prove that.

22 Nevertheless, the theory of premeditated murder in
23 addition to the challenge to fight theory and conspiracy
24 theories that we have alleged in the Indictment are totally

1 consistent, especially based on the rivalry. As a matter of
2 fact, premeditated murder is consistent with the rivalries
3 that have been testified to by Lieutenant Ferguson. So they
4 are not inconsistent. They are totally consistent. They are
5 consistent with the rivalry and the objections should both be
6 denied. Thank you.

7 THE COURT: With regard to the objection as to the
8 two theories, it's overruled at this time.

9 With regard to the objection with regard to the
10 expert opinion, I am going to overrule the objection as it
11 relates to the rivalry and the setting that example.

12 With regard to the ultimate issue in this case about
13 whether or not an expert can testify as to subsection 1 as
14 opposed to subsection 7, I'm going to allow you to brief that
15 question because I think that is an ultimate question.

16 But for purposes of today's hearing, I want to hear
17 the evidence and we'll have briefing as to how far the expert
18 can go at trial.

19 MR. FREY: Very well.

20 THE COURT: So you can answer the question.

21 THE WITNESS: Okay.

22 BY MR. HALL:

23 Q Do you remember what the question was?

24 A No.

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1 Q The question was whether or not in your opinion the
2 fight at the Nugget, this instant case, was a --

3 A Right.

4 Q -- was a result of a rivalry and whether or not that
5 fight was committed knowingly for the benefit of, at the
6 direction of, or in affiliation with the criminal gangs, the
7 Hells Angels and the Vagos, with specific intent to promote,
8 further, or assist the activities of those two gangs?

9 A Yes.

10 Q So your opinion, yes, it was a result of a rivalry?

11 A Yes.

12 Q And it was with specific intent to further promote
13 criminal gangs?

14 A Yes.

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

16 THE COURT: Counsel, Mr. Hall, there were objections
17 with regard to the review of a police report from the Mike
18 Burns Clearlake Club Bar incident. Has that been disclosed?

19 MR. HALL: No.

20 THE COURT: Do you have that information?

21 MR. STEGE: The bar, yes.

22 THE COURT: The information that the witness just
23 testified to with regard to the Clearlake Bar incident and
24 Mike Burns in May.

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MR. HALL: Yes.

THE COURT: You provided that?

MR. STEGE: Yes.

THE COURT: And can you note where?

MR. HALL: Yes, I can.

THE COURT: Did you find it, Counsel?

MR. FREY: I'm sorry?

THE COURT: Did you find it?

MR. FREY: I did not find anything regarding the additional two incidents that the witness testified about.

MR. STEGE: He's looking at it right now.

THE COURT: Okay.

MR. FREY: I'm looking at the alleged assault of Mike Burns at the hand of 50 HAs. I think you testified to three incidents. That was my recollection.

THE COURT: The first one was the 50. He drove by.

MR. HALL: Right.

THE COURT: They went through the town.

MR. HALL: So we have that one.

THE COURT: Outside of the store, Campos clothes store?

THE WITNESS: Campos Casual Clothing Store.

THE COURT: Something like that.

The second one was the meeting. The officers
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1 meeting. There wasn't any assault, but there was a discussion
2 about the officers meeting of a hundred people. I'm not
3 exactly sure what that was all about.

4 And third was the casino incident, right?

5 MR. FREY: I don't see it in my discovery, no. And
6 the exhibit is Exhibit 6 for the record.

7 THE COURT: Exhibit 6 to the motion?

8 MR. FREY: Exhibit 6 to the State's motion.

9 MR. HALL: Your Honor, that is mentioned by Jorge
10 Gil-Blanco in Exhibit J, item number 7.

11 MR. FREY: In his PowerPoint?

12 MR. HALL: Item seven, his PowerPoint.

13 THE COURT: Do we have J?

14 THE COURT CLERK: He has that.

15 MR. HALL: It's right here, if I may approach.

16 THE COURT: Yes.

17 MR. HALL: I'm sure we can.

18 THE COURT: Okay. So the only -- that's -- is there
19 any other information that's been provided with regard to that
20 incident?

21 MR. HALL: No. But we could attempt to get the
22 video and the police reports, have the lieutenant here, I'm
23 sure he would assist us in providing those.

24 MR. FREY: We'd object and we move to exclude both
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1 of the additional two incidents.

2 THE COURT: Okay. The State is not in possession of
3 those at this time, so I will give you leave to cross-examine
4 once you get the evidence to look at that, the -- that this
5 officer was testifying was the basis of his experience. So
6 you can look at that, and I'll allow you to cross-examine.
7 We've got a little time before the trial starts, so we can get
8 a few more things done.

9 MR. FREY: I understand. My only concern, Your
10 Honor, is that if it's part of his qualification to the extent
11 it goes to experience that's one thing. If it's a separate
12 independent predicate, a new fact, that's another thing. He
13 didn't give notice. Your order was to plead for specificity.
14 That's my ground for the motion.

15 MR. HALL: I'm a little confused. I thought the
16 Court's ruling was there were no predicates when we had Dimel.
17 We were a little unsure since we didn't have a ruling with
18 respect to the clear and convincing portion of our gang
19 enhancement evidence. So they are saying had to prove it by
20 clear and convincing evidence. I said I don't, I thought it
21 was res gestae part of gang enhancement, so on so forth. But
22 to cover myself, I wanted to call the witnesses to lay the
23 foundation in case they attacked Mr. Gil-Blanco's or other
24 experts' personal knowledge of those events. So do you

1 understand what I'm --

2 THE COURT: I kind of understand what you're saying.
3 Clearly both sides in the briefings, it's clear that people
4 are not going down the same road.

5 MR. HALL: Right.

6 THE COURT: But my opinion is that if it's bad act
7 evidence, clearly it has to be shown by clear and convincing
8 evidence. If it's the basis for an expert's opinion, it does
9 not. But I'm not sure it's going to come in anyway because we
10 have lots of other issues. But if an expert testifies that
11 one of the bases for his opinion is a specific instance, then
12 the defense is entitled to the discovery of that.

13 MR. HALL: Okay.

14 THE COURT: Everything that expert is relying upon.
15 It's not somehow otherwise privileged. They are entitled to
16 see -- they are entitled to see that before they cross-examine
17 the expert because that gives them information that they may
18 want to use in cross-examining them and attacking their
19 credibility and perhaps even ultimately asking the Court to
20 rule that they are not even an expert ultimately.

21 But for purposes of today's hearing, we are hearing
22 it. I'm ordering that the State give it to you. And I'm
23 giving you, defense, an opportunity to cross-examine once you
24 get it.

1 MR. FREY: For the record, our motion was to
2 exclude, but I understand the ruling.

3 THE COURT: You may get it excluded ultimately, but
4 for purposes of today.

5 MR. CHESNOFF: This is exactly what happened the
6 last time we were here, your Honor, because we were not given
7 material because the State didn't understand that you couldn't
8 introduce the witness for the purpose that they wanted. But
9 so far, that's only acting to our detriment. I would like to
10 ask this witness some questions, Your Honor, if I could.

11 THE COURT: Certainly.

12 MR. CHESNOFF: Thanks.

13

14 CROSS-EXAMINATION

15 BY MR. CHESNOFF:

16 Q Sir, for the record, Mr. Diaz was not arrested as a
17 result of the incident with Mr. Burns, correct?

18 A Correct.

19 Q And that the tattoo parlor when Mr. Burns got
20 involved in another incident, no one was arrested for that
21 either, correct?

22 A That case was handled by the Lake County Sheriff's
23 Department, then all the specifics of that case, that was
24 outside my city limits.

1 Q As far as you know, you have no personal knowledge
2 that anybody was arrested?

3 A Initially that day, no.

4 Q As -- are you aware are that in Nevada the Hells
5 Angels have never been found to be a criminal gang?

6 A Not aware.

7 Q So, then, how is it possible for you to conclude
8 that what occurred at the casino was to further the activities
9 of the criminal gang if the Hells Angels have never been
10 determined by a court of law or a jury to be a criminal gang?

11 MR. HALL: I'm going to object, Your Honor. There
12 is no requirement that the Hells Angels be determined to be an
13 outlawed criminal gang in Nevada before he can render an
14 opinion as to whether or not --

15 THE COURT: What is your objection?

16 MR. HALL: Vague. Irrelevant.

17 THE COURT: I'm going to sustain on relevance
18 grounds. I don't see why --

19 MR. CHESNOFF: Your Honor, the witness is giving you
20 his expert opinion and he is telling you that the purpose --
21 the reason the fight occurred and the murder occurred was to
22 -- the rivalry between two criminal gangs. What kind of
23 expert can tell you it was a rivalry between two criminal
24 gangs if one of the gangs, alleged gangs, has never been found

1 to be a gang? At some point in time, Your Honor --

2 THE COURT: This is argument. You'll have lots of
3 time to argue.

4 MR. CHESNOFF: Then it's argument in furtherance of
5 getting to ask questions, Your Honor. And to sustain that
6 question as vague --

7 THE COURT: No, I didn't sustain it as vague.

8 MR. CHESNOFF: Well, what's --

9 MR. FREY: Relevance.

10 MR. CHESNOFF: It's not relevant for me to be able
11 to cross-examine the expert on how he's concluding --

12 THE COURT: It's not relevant. And this is exactly
13 what I'm not going to do any more. I'm tired of it. I will
14 explain it to you. It's not relevant what he knows about
15 whether or not the Hells Angels has ever been found to be a
16 criminal gang. That's not relevant. It's argument. You can
17 certainly argue that he doesn't know enough. But it is not
18 relevant to ask him this question. I've sustained it. If I'm
19 wrong, 30 miles down the road. But we have to stop the
20 arguing with me. And you're just the one that's getting the
21 end of it because everybody's been arguing.

22 BY MR. CHESNOFF:

23 Q In that case, what specific information forms the
24 basis upon which you have opined that the incidents in

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1 question at the casino in question are the result of an
2 ongoing rivalry?

3 A Based on the history of what I was involved with,
4 information that I received, albeit the state of California,
5 for incidents that have occurred throughout California in 2010
6 which led me to have concern when the Vagos member passed
7 through the town with Hells Angels present, exactly the
8 outcome I expected was exactly the outcome that occurred.
9 There's a territorial issue between the two factions and the
10 County of Lake. Those territorial issues have resulted in
11 intimidation, fear, and violence. Those were supported by
12 cases I was involved in between the two organizations in cases
13 that were proven through the casino in Lake County when Mike
14 Burns, the patch-member Vagos, was violently assaulted by four
15 members, patch members of the Hells Angels Sonoma County
16 chapter.

17 Q So would it be fair to say that those three
18 instances that you have testified to are the basis for you
19 giving the opinion you gave in response to the District
20 Attorney's question?

21 A Yes.

22 MR. CHESNOFF: Thank you. Nothing further.

23 ///

24 ///

1 CROSS-EXAMINATION

2 BY MR. FREY:

3 Q A hang-around.

4 A Uh-huh.

5 Q They are not a patched member, correct?

6 A Correct.

7 Q You mentioned a casino beating, Mike Burns being the
8 victim?

9 A Uh-huh.

10 Q What year was that?

11 A That was 2011.

12 Q What about the prior beating? What year was that?

13 A That was 2011.

14 Q I'm confused. If a hang-around doesn't have a
15 patch, how could Mike Burns have been a hang-around in the
16 casino beating, but he was a patched member when he was beaten
17 the prior incident?

18 A I think you're confused. There were two Mike names
19 brought up. Mike Burns is the full-patch member of the Vagos,
20 which was a full-patch member at the time of the assault at
21 the Clearlake Club Bar, the first case I talked about.

22 Q He assaulted the Clearlake Club Bar?

23 A No, no. Mike Burns was the full-patch Vagos member
24 that rode by himself in front of the Clearlake Club Bar where

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1 the Hells Angels were present. He was later assaulted, after
2 I followed the Hells Angels group out of town. That was the
3 first case we talked about. That is Mike Burns who is a
4 full-patch member of the Vagos. He is also the same victim,
5 full-patch member, who was assaulted at the casino by four
6 patch-member Hells Angels.

7 Q Do you not recall that you referred to him as a
8 hang-around?

9 A I did not. He was with a hang-around at the casino.

10 Q Okay. You didn't witness the beating of Mike Burns?

11 A No.

12 Q The first incident?

13 A Correct.

14 Q You arrived later and saw injuries?

15 A Correct.

16 Q Mike Diaz. Was he a witness or was he a suspect?

17 A He was contacted based on a witness who observed the
18 assault and followed him from the incident to the gas station
19 on Lakeport Boulevard.

20 Q And he wasn't wearing any colors?

21 A No.

22 Q And obviously you didn't observe the beating of Mike
23 Burns, so you couldn't have observed the assailant?

24 A Correct.

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1 Q So you have no personal knowledge whether or not
2 that beating occurred at the hands of a Hells Angel member?

3 A What I believed and my opinion --

4 Q No, no. You don't have any personal knowledge,
5 firsthand experience of who beat Mike Burns?

6 A Correct.

7 Q And this case concluded with no charges being filed
8 against the only suspect in the case, Mike Diaz?

9 A Correct.

10 MR. FREY: No further questions.

11 THE COURT: Anything further?

12

13 REDIRECT EXAMINATION

14 BY MR. HALL:

15 Q Was Mike Diaz associated with the Hells Angels?

16 A Yes. Sonoma County Chapter.

17 Q Based on your training and experience, would there
18 be a way a Hells Angel could earn a patch, or become a
19 prospect, or become a full-patch member if they supported the
20 club in a violent nature such as beating up a Vagos who
21 disrespected them by driving by one of their meetings?

22 MR. CHESNOFF: Beyond the scope, Your Honor.

23 MR. FREY: And leading.

24 THE COURT: Okay. It was beyond your scope, but not
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1 Mr. Gonzalez's attorney's scope.

2 But it is leading and it's really compound.

3 MR. HALL: I can break it down.

4 THE COURT: So it's just really bad.

5 Sustained.

6 BY MR. HALL:

7 Q Break it down. Do you know if Mike Diaz was
8 associated with the Hells Angels?

9 A Yes.

10 Q Are you familiar are with how a prospect or somebody
11 who wanted to be a Hells Angel could promote their status in
12 the club?

13 A Yes.

14 Q And how might they do that?

15 A By committing a violent act such as an assault. It
16 escalates them in the club because they committed such an act
17 on the benefit of the gang.

18 Q And you knew who Mike Diaz was?

19 A I did.

20 Q Do you know whether or not he had training or
21 experience in martial arts, or self-defense, or MMA?

22 A Yes.

23 MR. FREY: Objection. Relevance. We can't link the
24 type of injuries to an MMA-training-type background, then what

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1 are we doing?

2 THE COURT: Yeah. What are we doing? Sustained.

3 BY MR. HALL:

4 Q Did you draw any inferences from the evidence that
5 you had pursuant to the witness's identification and the
6 injuries and proximity of Mike Diaz to Mike Burns?

7 A Again, I formed the opinion, given the witness
8 account of observing the assault, and then following Mike Diaz
9 to the gas station. I formed the opinion that Mike Diaz
10 committed the assault.

11 No, that was not discussed with me by Mike Burns
12 because that is also common practice within the organization
13 of the Vagos: Do not give information to law enforcement.
14 It's a sign of weakness and shows disrespect.

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

16

17 RECROSS-EXAMINATION

18 BY MR. FREY:

19 Q How long have you been an officer?

20 A Again, 16 years for Lakeport. Two and a half prior
21 to that for the Lake County Sheriff's Department.

22 Q And you encounter probably how many cases in your
23 years of experience?

24 A Thousands.

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1 Q All different types?

2 A Yes.

3 Q There are witnesses?

4 A Yes.

5 Q Victims who just don't want to cooperate?

6 A Yes.

7 THE COURT: Okay. Anything further? Okay. I am
8 going to give you leave to cross-examine once the discovery is
9 provided. So, Mr. Hall, you have to keep this witness
10 available, not in Reno, but available. You have to stay in
11 touch.

12 THE WITNESS: Okay.

13 THE COURT: Thank you. Anything further for today?
14 Okay. You may step down.

15 MR. STEGE: Next witness is Matt Kirby.

16 MR. CHESNOFF: Your Honor, at some point in time is
17 the Court going to issue an order explaining what it is these
18 people are allowed to talk about and why?

19 THE COURT: I'm sure I will have to do that.

20 MR. CHESNOFF: Okay. Thank you.

21 THE COURT: We are going to have to take a short
22 recess.

23 Court's in recess.

24 (A break was taken.)

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MATTHEW KIRBY,
having been first duly sworn, was examined
and testified as follows:

DIRECT EXAMINATION

BY MR. STEGE:

Q Sir, will you state and spell your name?

A Matthew, M-A-T-T-H-E-W, Kirby, K-I-R-B-Y.

Q You're a police officer with the San Jose Police
Department; is that correct?

A That's correct.

Q How long have you been a police officer?

A About four and a half years.

Q I'd like to direct your attention -- what part of
the police department do you work in?

A Patrol.

Q Your entire time has been on patrol?

A Absolutely.

Q Directing your attention back to February 3rd of
2010, were you on duty in a marked police vehicle at Campbell
Avenue and Fallbrook Road in San Jose, California?

A Yes.

Q What were you doing at that particular area?

THE COURT: Just for my -- to assist me, Counsel,
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1 would you explain which exhibit this relates to?

2 MR. STEGE: This is the other bad act related to
3 Mr. Gonzalez where he was found to have the Steyr, S-T-E-Y-R,
4 pistol.

5 THE COURT: Okay. Thank you.

6 BY MR. STEGE:

7 Q What were you doing in that area?

8 A I just left a call for service and I went back into
9 service and I was leaving that scene.

10 Q And when you were leaving that scene, what did you
11 see?

12 A I heard a motorcycle that sounded like it was
13 traveling at a high rate of speed, and it had passed in front
14 of me as I was pulling out of the parking lot of a shopping
15 center.

16 Q And so what did you do next?

17 A I got behind the motorcycle and I saw a moving
18 violation and made a vehicle stop on the motorcycle.

19 Q What was the moving violation that you stopped?

20 A He failed to use his turn signal when turning.

21 Q When he made a turn?

22 A Yes.

23 Q When you stopped the motorcycle, who was on top --
24 who was riding the motorcycle?

1 A It was Ernesto Gonzalez.

2 Q Do you see Ernesto Gonzalez in the courtroom right
3 now?

4 A Yes, I do.

5 Q Can you identify what he's wearing and where he is?

6 A He's seated wearing a green vest with glasses and
7 red pants.

8 MR. STEGE: May the record reflect the ID of
9 Gonzalez?

10 THE COURT: Record will so reflect.

11 BY MR. STEGE:

12 Q What happens when the motorcycle pulled over?

13 A He immediately pulled over, and I approached the
14 motorcycle. And I was accompanied by my fellow officer which
15 was directly behind me when I initiated the vehicle stop. I
16 approached on the left and my partner approached on the right,
17 and he saw Mr. Gonzalez had a knife exposed on his vest. So
18 we rendered the knife safe and discovered it was an illegal
19 weapon. And then --

20 Q How was it illegal?

21 A It was considered a switchblade. It was easily
22 accessible, easily readily available with the flick of a wrist
23 or the slight push of a thumb stud.

24 Q Under California law, that is an illegal weapon?

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1 A Yes.

2 Q What happened next?

3 A Placed Mr. Gonzalez under arrest for the knife and
4 discovered while searching the motorcycle for the impound
5 process, discovered a set of brass knuckles and a loaded
6 firearm.

7 Q So you, again, do an inventory of the motorcycle
8 prior to it being towed; is that right?

9 A Yes, yes.

10 Q And you discovered -- where do you discover the
11 metal knuckles?

12 A It was in the -- I believe it was the right-rear
13 saddle bag.

14 Q Did you discover anything else during your search of
15 the motorcycle, your inventory of the motorcycle?

16 A Yes. Below the brass knuckles was a loaded pistol.

17 Q And how did you determine that it was loaded?

18 A When the fellow officer went to open the chamber,
19 there was a live round in the chamber and then the magazine
20 was loaded.

21 Q And what was the caliber of the weapon?

22 A I believe it was a nine-millimeter.

23 Q When you came into contact with Gonzalez, how was he
24 dressed?

1 A He was wearing -- I don't remember the type of
2 clothing. The thing that stood out the most was the vest that
3 he had on with the patches on his back that signified that he
4 was associated with a criminal street gang.

5 Q Specifically which one?

6 A Vagos.

7 Q Anything happen there at the scene before you
8 transport Gonzalez to the detention center?

9 A Well, not at the scene, but while I was transporting
10 Mr. Gonzalez, he gave a spontaneous statement. I don't know
11 it verbatim. Can I look in my report to refresh my memory?

12 Q Would it refresh your recollection to do so?

13 MR. DOGAN: Your Honor, objection. He hasn't said
14 it would refresh his recollection, and I would also like to
15 take this --

16 THE COURT: One at a time.

17 Sustained.

18 Will it refresh the recollection if you look in the
19 report?

20 THE WITNESS: Yes, Your Honor.

21 THE COURT: He can refresh his recollection.

22 Now what did you want to do?

23 MR. DOGAN: Your Honor, I don't believe he has an
24 independent recollection of the offense that took place that

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1 night or that day, and the reason is because he has his report
2 in front of him and he's reading from his report while he's
3 testifying.

4 THE COURT: Well, you can talk to him about it.
5 Go ahead.

6 THE WITNESS: The spontaneous statement was, "I
7 ain't gonna lie. I carry that for protection because of my
8 lifestyle."

9 BY MR. STEGE:

10 Q Did you have any further discussion on that subject
11 while you were in the police car going down to the detection
12 area?

13 A No, I did not.

14 Q Once you get down to the police, what do they call
15 it, the jail?

16 A It's a processing center where we fingerprint and
17 photograph them.

18 Q Once you got down there, did you conduct an
19 audiotaped interview with the Defendant, Gonzalez?

20 A Yes.

21 Q Before we get there, let me ask you, did you take
22 some photographs of the clothing worn by Gonzalez?

23 A Yes.

24 Q And the weapon -- you described the other two
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1 weapons?

2 A Yes.

3 MR. STEGE: May I have these exhibits marked?

4 THE COURT CLERK: Do you want them individual
5 exhibits or one group?

6 MR. STEGE: One group would be fine if it's okay
7 with the Court.

8 THE COURT CLERK: Exhibit K is a group of nine
9 photographs.

10 MR. STEGE: May I approach the witness?

11 THE COURT: Do we want to make them K-1, 2, 3 and 4?
12 Are you going to use them separately?

13 MR. STEGE: Yes.

14 THE COURT: Okay. Give them back to her so she can
15 put a number after each one.

16 MR. STEGE: And I also have this other exhibit
17 marked, I guess J, whatever the next in order is.

18 THE COURT CLERK: Exhibits K-1 through 9 marked.
19 (Exhibit K1-K9 marked for identification.)

20 MR. STEGE: L would be the next one.

21 THE COURT CLERK: Exhibit L marked.

22 (Exhibit L marked for identification.)

23 MR. STEGE: Can I approach the witness with the
24 Exhibit K series?

1 THE COURT: You may.

2 BY MR. STEGE:

3 Q Sir, do you recognize -- I'll ask you to review
4 these. What is depicted in Exhibit K-1 through 9?

5 THE COURT: Do counsel have a copy of that?

6 MR. DOGAN: I believe these are not attached to the
7 exhibits to Mr. Stege's motion for other act.

8 MR. STEGE: No. They were provided more recently in
9 discovery through our electronic discovery within the last two
10 weeks.

11 THE COURT: Did you bring a copy for them?

12 MR. STEGE: No. But I know they got them.

13 MR. DOGAN: Your Honor, this should have been
14 provided by court order along with the prior bad acts motion.
15 It was not provided to the defense when Mr. Stege filed his
16 prior bad act motion and neither was an audio recording which
17 I believe Mr. Stege is going to be playing for the Court.

18 THE COURT: Do you have it now?

19 MR. DOGAN: I received it when I returned. I had it
20 on my desk when I returned from my vacation on Monday. So I
21 have it now, yes, Your Honor.

22 THE COURT: But you haven't heard it?

23 MR. DOGAN: Well, I've listened to parts of it. I
24 haven't listened to all of it. And there are videos on the CD
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1 that do not open and do not play, and I have not had time to
2 play the videos. But the State is -- they should have
3 provided this to us when they filed the PBA motion.

4 THE COURT: Okay. Yes, they probably should have.
5 But do you -- are -- are you saying you want me to do
6 something about that?

7 MR. DOGAN: I would love for you to exclude this,
8 Your Honor.

9 THE COURT: Well, I'm sure you would, but that would
10 probably get me reversed very quickly because that's a tad
11 overbroad of a remedy.

12 But the appropriate remedy would give you time to
13 look at this evidence and review it before you have an
14 opportunity to cross-examine. So you can identify it, but
15 that's about as far as you can go today.

16 BY MR. STEGE:

17 Q Do you recognize those?

18 A Yes, I do.

19 Q Are those pictures that were taken during the course
20 of this investigation that you just described?

21 A Yes.

22 Q And they are a fair and accurate depiction of the
23 weapons I've talked about and the clothing worn by Gonzalez;
24 is that right?

1 A Yes.

2 MR. STEGE: I move to introduce these exhibits.

3 THE COURT: Because they haven't had a chance to
4 review them in light of this witness, I'm going to not -- I
5 think you have established it pretty good.

6 MR. STEGE: Yes.

7 THE COURT: But I am going to give them a chance to
8 look at these exhibits before they cross-examine on them and
9 before I admit them.

10 MR. STEGE: Okay.

11 BY MR. STEGE:

12 Q And let's get back to this interview that you were
13 talking about. You sat down with Gonzalez in one of the
14 interview rooms at the booking center?

15 A Correct.

16 Q And you read him his rights pursuant to Miranda,
17 pursuant to a card issued to you by your police department?

18 A Yes.

19 Q And Gonzalez agreed to speak to you?

20 A Yes.

21 Q And did you ask him further about this statement
22 that, "I carry that for my protection due to my lifestyle"?

23 A Yes.

24 Q Isn't it true that he said he -- well, let's get to
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1 this question. Leading up to this, were you aware or had you
2 received any briefings with respect to a Vagos versus Hell's
3 Angel conflict or --

4 A Prior to the interview or during the interview?

5 Q Prior to the interview in your police briefings,
6 have you heard any information about this rivalry between the
7 Vagos and the HAs?

8 A Yes.

9 MR. DOGAN: Your Honor, I would object. This is
10 beyond the scope of this witness's testimony. I believe that
11 this witness is being offered as a lay witness and he's not
12 being offered as an expert witness. This witness was only
13 mentioned in the State's other act motion and not in their
14 gang evidence motion, so it's beyond the scope.

15 THE COURT: And I'm not sure what the purpose of
16 whether or not he's been briefed on this.

17 MR. STEGE: Well, actually, Judge, it didn't go to
18 the truth of the matter asserted whether there was this
19 conflict or not. Ultimately what happens is he's questioning
20 about this rivalry, and the defendant himself acknowledged
21 that he knew about this assault in Santa Cruz only in the days
22 before he's caught carrying this weapon.

23 THE COURT: So what difference does it make if he
24 knew about it?

1 MR. STEGE: It's the segue to get into why would he
2 ask Gonzalez about a rivalry with the Hells Angels.

3 THE COURT: We are going to stop with regard to the
4 interview that you're asking questions about. Apparently this
5 is a statement that's on the interview tape.

6 MR. STEGE: Right. There's no video, by the way
7 which he's saying -- there's no video of it. There's two
8 audio files.

9 THE COURT: The first notice that counsel had was
10 after the holidays of this. Today is Tuesday. That means he
11 got it on Monday. I'm going let him listen to it and figure
12 out why he had it before I let you put on any testimony with
13 regard to it.

14 MR. STEGE: Well, can I have him identify it at
15 least so it might save some time and make an offer at least.

16 THE COURT: Without talking about the content.

17 MR. STEGE: Right.

18 THE COURT: Yes.

19 BY MR. STEGE:

20 Q You previously listened to the audio recording of
21 the statement that you were just talking about, right?

22 A Yes.

23 THE COURT: Of the thing you held up, Exhibit L.

24 MR. STEGE: I'm about to approach him.

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1 THE COURT: Because I'm not letting you put in any
2 evidence of the content of the tape.

3 MR. STEGE: Right.

4 BY MR. STEGE:

5 Q Do you recognize this CD I'm handing you labeled
6 proposed L?

7 A Yes.

8 Q Is that the CD that I played for you and which you
9 recognized being a fair and accurate depiction of this
10 interview we've been talking about?

11 A Yes.

12 THE COURT: Okay. Why don't you go ahead and hand
13 it back to the clerk.

14 BY MR. STEGE:

15 Q Okay. Let's get back to these photographs which the
16 defense has now reviewed.

17 MR. STEGE: I move to introduce these exhibits.

18 THE COURT: Have you had a chance to review the
19 documents? Other than non-notice, do you have any objection
20 for purposes of today's hearing?

21 MR. DOGAN: For purposes of today's hearing, no
22 objection.

23 THE COURT: Okay. Exhibits K-1 through 9 are
24 admitted for purposes of today's hearing.

1 (Exhibits K1-K9 admitted into evidence.)

2 BY MR. STEGE:

3 Q All right. K-1, please tell the Judge what we are
4 seeing here.

5 But it's not --

6 MR. STEGE: Judge, I'll just hand these back to the
7 clerk. Actually, can I publish them to Your Honor?

8 THE COURT: Yes.

9 MR. STEGE: Subject to questions of the interview,
10 Judge, I would pass the witness.

11 THE COURT: Did you want to identify any of these?

12 BY MR. STEGE:

13 Q K-9. What is K-9?

14 A That is the magazine that was inside the pistol.

15 Q K-8. What's K-8?

16 A Is the back of the motorcycle helmet he was wearing.

17 Q Why did you take a photograph of that?

18 A Just because of the colors and more ties to the
19 colors associated with the Vagos.

20 Q K-7, what's that?

21 A That's a picture of the pistol.

22 Q What's K-6?

23 A It's a picture of the bag of ammunition also found
24 on the bike.

1 Q So besides the loaded magazine in the weapon, there
2 was a bag of live ammunition?

3 A Correct.

4 Q K-5. What's K-5?

5 A That was the vest that Gonzalez was wearing.

6 Q What about K-4?

7 MR. HALL: Amos, it's working now.

8 THE WITNESS: That was the shirt that Gonzalez was
9 wearing.

10 BY MR. STEGE:

11 Q K-4 is the shirt?

12 A Yes.

13 Q What's K-3?

14 A That's a front view of the vest that Gonzalez was
15 wearing.

16 Q And what's in K-2?

17 A That was a bottom rocker on the vest. Also
18 associated himself with the San Jose Chapter.

19 Q And what's in K-1?

20 A That's a collective shot of the weapons that was
21 found on his person or in the motorcycle bag.

22 MR. STEGE: Subject to the statement coming in, I
23 pass.

24 THE COURT: Okay.

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1 Cross?

2 MR. DOGAN: Thank you.

3

4 CROSS-EXAMINATION

5 BY MR. DOGAN:

6 Q I want to make it clear at the outset, you don't
7 claim to be an expert, do you?

8 A No.

9 Q Did you take these photos?

10 A Yes, I did.

11 Q And these were the items that were located on my
12 client's person, correct?

13 A Correct.

14 Q Okay. And this knife, you stated that this is a
15 switchblade knife?

16 A Correct.

17 Q Is that the reason why my client was arrested?

18 A Originally, yes.

19 Q You were patrolling with another officer on this
20 day, right?

21 A No, I was in a patrol car by myself.

22 Q And you heard what sounded like speeding?

23 A A motorcycle speeding.

24 Q Right. But you didn't see a motorcycle speeding?

1 A I saw a motorcycle pass in front of me at a high
2 rate of speed.

3 Q But it was your testimony during direct examination
4 that you heard a motorcycle speeding, correct?

5 A Initially, yes, I heard before I saw.

6 Q And you stopped this motorcycle for loud pipes?

7 A That was one of the reasons.

8 Q And the other reason was for failure to use a turn
9 signal?

10 A Correct.

11 Q And the motorcycle came to a stop, right after you
12 turned your red and blue lights on?

13 A Correct.

14 Q Yeah. Did you offer testimony in this case? Did
15 this case go to trial?

16 A No, it did not.

17 Q Why didn't it go to trial?

18 A I do not know.

19 Q Because it was dismissed?

20 A I didn't do any follow-up. I don't know.

21 Q Because the arrest was unlawful, right?

22 MR. STEGE: Objection.

23 THE COURT: Sustained. He said he didn't do any
24 follow-up. He doesn't know.

1 BY MR. DOGAN:

2 Q There was no conviction in this case, correct?

3 A Once again, I didn't follow up. I don't know.

4 Q You never follow up on any of your cases?

5 MR. STEGE: Objection.

6 THE COURT: Did you want to ask that argumentatively
7 as you just did or do you want to rephrase it?

8 MR. DOGAN: No, it's a serious question.

9 THE COURT: Then rephrase it.

10 BY MR. DOGAN:

11 Q You have a duty to write police reports, correct?

12 A Yes.

13 Q And those police reports are provided to the
14 prosecuting attorney, correct?

15 A Yes.

16 Q And those police reports are also provided to the
17 defense attorney, correct?

18 A Yes.

19 Q And then when the prosecuting attorney gets a police
20 report, they determine whether or not they pursue charges,
21 correct?

22 A Yes.

23 Q And in this -- in almost all cases, you keep in
24 touch with the prosecutor, correct?

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1 A No.

2 Q How about serious felony cases? You don't keep in
3 touch with the prosecutor?

4 A No.

5 Q So you have no idea whether this case was dismissed
6 or not, correct?

7 A Yes.

8 Q And if I told you that this case was dismissed --

9 MR. STEGE: Objection. He's not a witness.

10 THE COURT: I don't understand. What if you tell
11 him that, where do you want to get? Are you going to ask him
12 -- what was the question going to be?

13 MR. DOGAN: If I can rephrase the question, Your
14 Honor.

15 THE COURT: Okay.

16 Sustained.

17 MR. DOGAN: Thank you. Court's indulgence.

18 BY MR. DOGAN:

19 Q You never spoke to the prosecutor in this case,
20 right?

21 A No.

22 Q Okay. Do you know who the prosecutor was?

23 A No, I don't.

24 Q And that was not a switchblade knife, correct?

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1 A That was a switchblade knife.

2 Q When Ernesto made that statement to you, "I ain't
3 going to lie, I carry it for my protection," did I say that
4 correctly?

5 A I don't know word for word. Can I refer to my
6 report?

7 Q Yes.

8 A "I ain't going to lie, I carry that for my
9 protection because of my lifestyle."

10 Q Are you paraphrasing that statement?

11 A No, I'm not.

12 Q That's an exact quote?

13 A That's an exact quote.

14 Q Did you write that -- you wrote that down in your
15 police report, right?

16 A Yes.

17 Q And you wrote that down later after the arrest,
18 correct?

19 A Can I refer to my report?

20 Q Yeah.

21 A I wrote it initially, but I don't know if I wrote it
22 in the statement or not.

23 Q Okay. Refer to your report.

24 A Are you asking if he said that twice or if I wrote
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1 that twice?

2 Q No. I'm asking you if that was an exact quote from
3 him.

4 A Yes.

5 Q Okay. And when did you write that police report?
6 How long after the stop of Ernesto did you write that police
7 report?

8 A Within the next three or four hours.

9 Q Okay. Did my client say anything else to you today
10 other than what we are going to go into when he was taken to
11 the jail?

12 A While I was en route to the jail?

13 Q Yes.

14 A Or the processing center?

15 Q Or did you -- was he in your patrol vehicle?

16 A Yes.

17 Q Did he make any statements while he was in your
18 patrol vehicle?

19 A That was the statement he said in my patrol vehicle.

20 Q And that's the only thing he told you the entire
21 time?

22 A That's all, yes.

23 Q Did you read him his rights in the patrol vehicle?

24 A No, I did not.

1 Q But he did have handcuffs on, right?

2 A Yes.

3 Q And he was under arrest?

4 A Yes.

5 MR. DOGAN: Court's indulgence.

6 Your Honor, I'll pass the witness.

7 THE COURT: Counsel?

8

9 REDIRECT EXAMINATION

10 BY MR. STEGE:

11 Q The statement he made in your car, was that in
12 response to any questioning by you?

13 A No.

14 Q Spontaneously blurted out?

15 A Just spontaneously said it.

16 Q They are questioning you about stuff you put in your
17 report, about something you put in your report. Remember that
18 line of questioning?

19 A Yes.

20 Q Did you put the statements made by the defendant on
21 that audio CD we've been talking about into your report?

22 A A brief synopsis of it.

23 MR. STEGE: Nothing further.

24 MR. DOGAN: Your Honor, the State has an obligation
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1 to advise the Court that this case was dismissed against my
2 client, Mr. Gonzalez. The State has not advised or made any
3 mention that this matter was dismissed. This matter was
4 dismissed because it was an unlawful arrest and everything
5 that this officer testified to was excluded, and therefore
6 that was the reason for the dismissal.

7 This officer is testifying that he doesn't know. I
8 would -- I don't know what he knows.

9 THE COURT: Wait, wait, wait, just a second.

10 MR. DOGAN: Yeah.

11 THE COURT: Is this something you want to argue when
12 the witness steps off the stand or -- you don't really have
13 any more questions, right?

14 MR. DOGAN: Right.

15 THE COURT: So then let's let this witness go.

16 MR. DOGAN: Except if we go to the audio recording.

17 THE COURT: Right. So we are going to let you step
18 down today, but you have to come back tomorrow morning, and so
19 the State will advise you of what time you have to be here.

20 THE WITNESS: Okay.

21 THE COURT: So go ahead and step down and don't
22 leave the courthouse until you get a chance to talk to them.

23 THE WITNESS: Okay.

24 THE COURT: Okay. Thank you.

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1 Do we have any -- okay. The witness doesn't have
2 any exhibits, right?

3 Okay. Now, Mr. Dogan?

4 MR. DOGAN: Your Honor, when my client was stopped
5 on his motorcycle by that officer who just testified, the stop
6 was unlawful, the arrest was unlawful. All the charges that
7 were brought against my client were dismissed. A Motion to
8 Suppress was filed by my client's attorney in California. And
9 the State is required to advise the Court of this, and they
10 have failed to advise the Court of this. Everything that he
11 testified to is based upon unlawfully-seized evidence. It
12 does not meet the clear and convincing standard because it is
13 simply not admissible. If it wasn't admissible in a court in
14 California, it is certainly not admissible in a court in
15 Nevada. And that's my objection. It is inadmissible. The
16 State should advise the Court that it was dismissed. I
17 believe they have that duty. They have that obligation and
18 they have yet to meet it.

19 THE COURT: What -- where is your proof that it was
20 dismissed?

21 MR. DOGAN: Your Honor, the proof is through my
22 client. The proof is through his attorney, I think in
23 California, Ed Souza. He even came to Reno to speak about
24 this matter in our office because at some point he may have --

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1 he was trying to come onto this case. So Mr. Souza is the one
2 who advised us that the charges against my client were
3 dismissed.

4 THE COURT: Do you have a record of the dismissal?

5 MR. DOGAN: Your Honor, we can provide the
6 documents. We don't have the documents with us. We don't
7 have a record with us today. The State probably has that in
8 the criminal history portion that they routinely gather
9 upon -- of defendants, and certainly they gathered the
10 criminal history of our client and that should show that the
11 charges were dismissed.

12 THE COURT: Do you have any authority for the
13 argument that because the lawyer told you that the charges
14 were dismissed that the Court cannot consider the evidence?
15 Do you have any authority for that?

16 MR. DOGAN: Your Honor, at this point I don't have
17 any authority, but if the Court -- if you want to order me to
18 provide the documents to you, Your Honor, I will do so.

19 THE COURT: I'm not ordering you to provide anything
20 to me. It's just that if you make a motion, you usually have
21 to have some authority. So that's why I'm asking.

22 You have a pad of paper, Mr. Chesnoff. You can
23 write it.

24 MR. CHESNOFF: Yeah, I know. I know.

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1 THE COURT: Are you done?

2 MR. DOGAN: One last thing. The State under Brady
3 versus Maryland, that the Court should inquire of the State
4 under Brady versus Maryland if they have any documents or
5 information which would reveal to the Court that the charges
6 against my client have been dismissed, and I would further
7 supplement that information with my documents if I can gather
8 them.

9 THE COURT: Okay. Thank you.
10 Counsel?

11 MR. STEGE: I don't know why -- what happened with
12 the case, Judge. We asked the officer the same questions. We
13 don't know what happened. We know he's not convicted of it.
14 But aside from that, it's not really relevant.

15 THE COURT: Well, it kind of is relevant. Now,
16 Brady requires you to disclose evidence that is exculpatory.

17 MR. STEGE: Right.

18 THE COURT: You are trying to put this evidence on
19 and use it against the defendant. If the evidence is of a
20 poor quality and not clear and convincing because of some
21 action that was taken or something else, you have a duty and
22 an obligation not only to inform the Court, but to inform
23 counsel. Now, I don't know what your NCIC says.

24 MR. STEGE: Right.

1 THE COURT: But if your NCIS says dismissed, you
2 have withheld Brady material. Now I don't know if it says
3 that because lots of time they don't. So that's what he's
4 arguing now. So I don't know. I guess you need to take some
5 time and look and see what kind of evidence you have, what
6 information you have in your file with regard to this charge
7 and whether or not you have an obligation to notify the Court
8 and counsel. So --

9 Yes.

10 MR. DOGAN: Thank you, Your Honor. There's one last
11 thing. I would renew my motion. We currently have a pending
12 motion to compel the NCIC records not only of Mr. Gonzalez but
13 also codefendant and all the case-in-chief witnesses that the
14 State intends to call at the trial.

15 THE COURT: I think I ruled on that today.

16 So this -- unfortunately for where we are at now in
17 this situation, it is incumbent upon the State to review the
18 evidence that they have in their file and report to the Court
19 because Brady requires the State affirmatively search that
20 information out and provide it. The motion that was made did
21 not supply any information to the Court that would support a
22 release of the information held by the State. But if in fact
23 the State has withheld Brady information in this instance,
24 that may well be sufficient for the Court to order the report

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1 to be released in a sealed format.

2 So we've got a little bit of a problem here, so I
3 think we better take a recess. You need to go look at your
4 evidence. Whatever you've got, you need to provide, at least
5 communicate with the defense so that there can be some
6 discussion before tomorrow morning, okay.

7 MR. STEGE: Okay.

8 THE COURT: All right. It's 20 to 5:00. It's been
9 a long day. I think it's probably a good idea to recess now.
10 We'll be back on the record at 9:30 tomorrow morning.

11 Yes.

12 MR. STEGE: We have one witness that's very, very
13 brief.

14 THE COURT: Okay.

15 MR. STEGE: If I do say so myself.

16 THE COURT: No controversy?

17 MR. STEGE: No.

18 MR. CHESNOFF: We'll think of something, Your Honor.

19 MR. STEGE: Well, since it's not Mr. Chesnoff, I'm
20 sure it will be very brief.

21 THE COURT: I don't know, I think you're all just a
22 little bit here.

23 Okay. If you can do it.

24 MR. STEGE: We have Officer Webb.

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1 THE COURT: Okay. We just don't want to do
2 overtime.

3
4 JOHN WEBB,
5 having been first duly sworn, was examined
6 and testified as follows:
7

8 DIRECT EXAMINATION

9 BY MR. STEGE:

10 Q Sir, please state and spell your name.

11 A J-O-H-N, Webb.

12 Q And you're employed with the San Francisco Police
13 Department; is that correct?

14 A That is right.

15 Q And what -- where do you work?

16 A I'm stationed at the San Francisco International
17 Airport.

18 Q I'd like to direct your attention back to
19 December 20th of 2010. Were you working at the airport on
20 that date?

21 A Yes, I was.

22 Q Were you called to the customs area in reference to
23 a person with some prohibited item?

24 A Yes.

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1 Q And where were you called to?

2 A I was called to the A side customs level. They have
3 a holding cell type of area.

4 Q And once you got there, tell us about your
5 investigation.

6 A Well, I was told by the customs agents that this
7 gentleman was in line to have his items searched. They do a
8 declaration, what they have in the package.

9 Q This is coming into San Francisco from overseas?

10 A Right. From any foreign country. This is where
11 they have to come.

12 MR. DOGAN: Your Honor, objection. Hearsay.

13 THE COURT: It is. We'll see where he's going with
14 it, if you're offering it for the truth of the matter asserted
15 or not.

16 MR. STEGE: Right.

17 BY MR. STEGE:

18 Q You received information that someone in this
19 process had a prohibited item?

20 A Correct.

21 Q And what was the prohibited item?

22 A It was a magazine.

23 THE COURT: Wait, wait, wait. I'm sorry. The
24 question that you had asked that was objected to was the

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1 conversation from an officer, another officer told him?

2 MR. STEGE: Right.

3 THE COURT: I overruled the objection on the grounds
4 that you weren't offering that conversation for the truth of
5 the matter asserted.

6 MR. STEGE: That's true.

7 THE COURT: However, now you've gotten into a
8 subject area by saying what was in the package, what were you
9 told was in the package.

10 MR. STEGE: Right.

11 THE COURT: That is different. That is hearsay.
12 You can't go there.

13 BY MR. STEGE:

14 Q What did you do with this information that someone
15 had come through customs with a prohibited item?

16 A Well, we confiscate the prohibited item. We try to
17 determine if the individual is the individual in possession of
18 the item, if it's his, and then we positively identify the
19 individual.

20 Q Okay. So let's go through those three things. What
21 was the prohibited item determined to be or identified as?

22 A It was a magazine containing 13 bullets.

23 Q And you said -- who was the person determined to
24 have it?

1 A His name was Ernesto Gonzalez.

2 Q And how do you identify Ernesto Gonzalez as the
3 person who had the item?

4 A He had a passport. He had a driver's license. And
5 we asked him if he was Ernesto Gonzalez, and he said yes.

6 Q Did you ask him about this loaded magazine?

7 A Yes. He said he forgot that he had it in the bag.
8 He said to carry bullets is legal in Nicaragua where he was
9 coming from.

10 Q So he admitted that he was coming from Nicaragua to
11 the airport?

12 A Yeah.

13 Q Some photographs were taken in the case; is that
14 correct?

15 A That's correct.

16 THE COURT CLERK: Exhibits M-1 through 4 marked.
17 (Exhibits M1-M4 marked for identification.)

18 MR. STEGE: Judge, these have been in discovery for
19 some time. They've been shown to the defense.

20 THE COURT: Okay.

21 MR. STEGE: May I approach the witness?

22 THE COURT: Yes.

23 BY MR. STEGE:

24 Q Handing you M-1 through 4, do you recognize the
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1 items depicted in these exhibits?

2 A Yeah, this is the individual Ernesto Gonzalez.

3 Q And what's contained in M-4?

4 A This is the backpack he had the magazine in.

5 Q That's M-1?

6 A And these are both pictures of the magazine.

7 Q M-2 and M-3, did you yourself take these
8 photographs?

9 A No.

10 Q Were you present when they were taken?

11 A I'm not sure if I was in that room or not. I don't
12 know.

13 Q But you do recognize these being the items from the
14 case?

15 A Correct.

16 Q And you recognize this photograph to be Ernesto
17 Manuel Gonzalez, the subject?

18 A Yes, yes.

19 MR. STEGE: I'd like to introduce these exhibits.

20 THE COURT: Any objection for purposes of today's
21 hearing?

22 MR. DOGAN: Court's indulgence.

23 Your Honor, I make the same objection as I did the
24 last witness. This case was also dismissed as well and I, of
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1 course, don't have court documents to provide the Court that
2 the case was dismissed. All I have is the word of that
3 attorney that we spoke to. And again, this would go to the
4 Brady violation.

5 But in regard to the exhibits, if you still want me
6 to, for the purposes of this hearing, I would object, lack of
7 foundation and the other objection I made, Brady violation. I
8 just don't think it's proper.

9 THE COURT: Do the photographs fairly and accurately
10 depict what you saw that day?

11 THE WITNESS: Yes, they do.

12 THE COURT: Objection overruled. Admitted for
13 purposes of today's hearing.

14 (Exhibits M1-M4 admitted into evidence.)

15 BY MR. STEGE:

16 Q Do you see Ernesto Gonzalez in the courtroom right
17 now?

18 A Yes, he's the gentleman in the green sweater.

19 MR. STEGE: Ask the record reflect the ID of the
20 defendant.

21 THE COURT: Record will so reflect.

22 BY MR. STEGE:

23 Q Do you know what happened to the prosecution in the
24 case?

1 A No. I didn't get any follow-up paperwork except the
2 first week we got something from the detective saying that
3 they were doing the follow-up, and then I never got a dispo on
4 it.

5 Q So you don't know if there was ultimately any
6 prosecution in the case?

7 A No. Never heard.

8 Q But you did arrest Gonzalez for having this
9 ammunition at the airport?

10 A Correct.

11 Q These items at the airport.

12 And did you identify the caliber of the ammunition
13 in this magazine?

14 MR. DOGAN: Objection, Your Honor. He is referring
15 to a document.

16 THE COURT: Okay.

17 MR. DOGAN: It's improper.

18 THE COURT: All right. Does he need to refresh his
19 recollection?

20 THE WITNESS: It's my case. It's the written
21 report. It's the same stuff that he has.

22 THE COURT: Okay. So do you want to ask him a
23 question?

24 THE WITNESS: Yeah. It's a nine-millimeter.
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1 THE COURT: No, no, no, no, no. That's not the
2 question he gets to ask you. Go ahead.

3 BY MR. STEGE:

4 Q Would it refresh your recollection to look at your
5 report what the caliber of the ammunition was?

6 A Yes, it would.

7 Q Would you do that, please. And then before you give
8 me your answer, look up and I'll get your answer.

9 A Yeah, there were nine-millimeter rounds.

10 MR. STEGE: Thank you.

11 Nothing further.

12 THE COURT: Counsel?

13 MR. DOGAN: Thank you, Your Honor.

14

15 CROSS-EXAMINATION

16 BY MR. DOGAN:

17 Q Did you confiscate the -- is it a magazine?

18 A That's correct. I did not confiscate it. The
19 customs agents confiscated it from him, the U.S. customs. But
20 they don't have powers of arrest in California, so they call
21 us.

22 Q What kind of magazine was it, sir?

23 Please stop referring to the report you have in
24 front of you.

1 A Okay.

2 Q Can you please flip it over.

3 A Yeah, I'll flip it over.

4 Q Sir, do you have an independent recollection of this
5 day?

6 A Vaguely.

7 Q Do you remember what my client was wearing?

8 A Not really, no.

9 Q Do you remember what other officers were with you?

10 A Yeah.

11 Q Name those officers?

12 A Moriwaki and Brothers.

13 Q What agency do both of them work for?

14 A SFPD.

15 Q That's the same agency you work for?

16 A Yes.

17 Q Are you currently retired?

18 A No.

19 Q Okay. What time did you get the call to go over
20 there?

21 A I think it was around midnight.

22 Q And I asked you, but you don't recall the exact
23 time. Just say yes or no.

24 A No, not exact.

1 Q And you were contacted by customs agents?

2 A Yes, well customs agents contact our headquarter's
3 dispatch and dispatch dispatches us.

4 Q Do you have personal interaction with my client?

5 A Yes.

6 Q Did you handcuff him?

7 A A little bit.

8 I -- Your Honor, I don't if I can recall I was the
9 one who handcuffed him or not.

10 Q Was he read his rights?

11 A I'm not really sure.

12 Q Was he with anyone?

13 A No -- well, he had someone to pick up his bags
14 outside on the street and, yeah, we rendezvoused with them, so
15 to, you know, maintain his possession, you know, with his
16 family member, girlfriend I believe it was.

17 Q Did you confiscate the gun magazine personally?

18 A No. The Customs agents confiscated it, but then
19 they give it to us for our case, with evidence.

20 Q Did you ever review the gun magazine yourself?

21 A Did I review it?

22 Q Did you look at it?

23 A Yeah, I probably -- I think I probably brought it up
24 to the report writing room.

1 Q So you did look at it?

2 A Yeah.

3 Q Are you sure you looked at it?

4 A Well, as far as I -- you know, we get a lot of these
5 cases, and I would say if it was my call, I took -- I take
6 control of the evidence.

7 Q So you did look at the magazine?

8 A Yeah.

9 Q Personally?

10 MR. STEGE: Asked and answered.

11 THE COURT: Sustained.

12 BY MR. DOGAN:

13 Q Did you look at the bullets?

14 A Yeah, I believe we took all the bullets out to check
15 and see what kind of bullets they were. Some were -- some
16 were hollow point, some were full metal case.

17 Q Did you write that in your report?

18 A I think so, yeah.

19 Q Would you like to refer to your report and tell me
20 where you --

21 A Yeah. In the report I wrote that Schoenberg, the
22 Customs agent --

23 Q Don't read it. Read it to yourself.

24 A I'm just doing that. Okay. I've got to look up,
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1 huh.

2 Yeah, he took them out. I guess he put them back
3 in, but he described them as a couple of different types of
4 bullets.

5 Q So that's --

6 A Some were hollow points.

7 Q Sorry?

8 A Some were hollow point and some were full metal
9 jacket.

10 MR. DOGAN: Your Honor, I object being hearsay in
11 that another individual told him what type or caliber the
12 bullets were. It's not based on personal knowledge, and I
13 move to strike that portion of his testimony.

14 THE COURT: You mean the response he just gave to
15 you?

16 MR. DOGAN: Yes. And lack of personal knowledge.

17 Let me --

18 BY MR. DOGAN:

19 Q What kind of magazine was it to what kind of gun?

20 A I believe it was a Glock.

21 Q And you know this because the Customs officer told
22 you, right?

23 A No. Well, he gave it to me. I have to take it to
24 make my report. So I have to take pictures, you know, take

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1 pictures of it and brought it up, put it into the evidence
2 locker. I took custody of it.

3 Q The photos that were introduced by the State, did
4 you take photos of it?

5 A No, I did not.

6 Q What photos did you take?

7 A I didn't take any photos. I said we took photos. I
8 was referring to the guy who had the camera. It's probably in
9 my report which officer took them or it's on the photos
10 themselves who they were taken by.

11 Q You were in the room when the photos were taken,
12 that's your testimony?

13 A I believe so, yeah.

14 Q And who was the officer who took the photos?

15 A I would say it was probably Brothers, Todd Brothers.

16 Q But you don't know for sure?

17 THE COURT: He said he had to look at his report.

18 Do you want him to look at his report?

19 BY MR. DOGAN:

20 Q Please look at your report.

21 A Okay. These were taken by Officer Ron Hill.

22 Q This report was authored by you, correct?

23 A Yes.

24 Q Did you author this report based on your own
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1 personal knowledge or based on what the Customs officers told
2 you?

3 A Well, everything the Customs officer told me came to
4 fruition when I examined the item myself and I had -- we ran
5 him through NCIC, and, you know, we had a case on him. But
6 everything -- so it's both. It's both. It's what I learned
7 from the Customs agent and what I learned on my own at work
8 and from the other officers.

9 MR. DOGAN: Court's indulgence.

10 THE COURT: Yes.

11 BY MR. DOGAN

12 Q This may have been asked and answered. You held
13 that magazine, right? In your hand?

14 A Yes. And I placed it in my pocket and I went up to
15 the office with it.

16 Q Okay. And you observed that it belongs to a Glock
17 yourself?

18 A It belongs to Glock? I don't know what you mean by
19 that.

20 Q Well, a gun magazine belongs to a specific gun,
21 correct? You can't fit an HK magazine into a Glock gun, can
22 you?

23 A Some are interchangeable, but no, I wouldn't think
24 that you could do two brand names, no.

1 Q And you observed yourself that this was a Glock
2 magazine?

3 A You know, that's what I wrote in my report. That's
4 what -- what it was, I'm sure. I don't think I would write
5 something different, I don't think, than what it is.

6 Q But the Customs agent isn't the one who told you
7 it's a Glock magazine, correct?

8 A You know, I don't recall that. If he described it
9 with the brand name, because magazines, you know, I don't know
10 I don't think -- they don't have it emblazoned on them.

11 Q Okay. Officer, what I'm trying to get at it is
12 this, okay. When you wrote this police report, you were
13 writing it with your own personal knowledge. Are you with me?

14 A Yeah.

15 Q Okay. The Glock magazine was in your hand, you look
16 at it, you determined yourself that it was a Glock magazine,
17 you determined yourself that the bullets are nine-millimeter
18 bullets, all yourself, on your own, without anybody else
19 telling you what it belonged to and what type of bullet they
20 were; is that correct?

21 A I don't necessarily think that's absolutely
22 positive, no. I probably -- there was other guys who were
23 helping me with the report. Sometimes one guy will do the
24 evidence while one guy writes the report and one guy puts the

1 stuff if the locker. There's multiple things that are being
2 done by multiple officers. I don't think I did everything on
3 the bullets. I don't -- you know, I don't recall that.
4 Usually when you have a guy helping you, he does the evidence
5 and you do the report.

6 Q Okay. And those other officers that you're
7 referring to are?

8 A Moriwaki and Todd Brothers.

9 Q Schoenberg?

10 A Schoenberg is a Customs agent.

11 Q Moriwaki and Brothers. Do you know whether they
12 wrote police reports in this case?

13 A No, they didn't write a police report. There's only
14 one police report written.

15 Q But they did not write a police report?

16 A They -- no. They -- they helped. They assisted.
17 And I forget who did what that particular night.

18 Q If you know, you don't know whether you were told it
19 was a nine-millimeter or that you know it was a
20 nine-millimeter, right?

21 A Well, the bullets have a little label engraved on
22 the bottom of them that says nine-millimeter.

23 Q Officer, just going back to your testimony where
24 others may have, you know, observed it themselves and reported

1 it to you, now the question is, I understand that bullets are
2 engraved with the what type of bullet they are, but in this
3 case, you don't know whether you were told that the bullets
4 are nine-millimeter or whether you know based on your personal
5 knowledge?

6 A I carried mine for 17 years, and I looked at it and
7 you can tell what it is just by looking at it. So nobody had
8 to tell me what it was. I could easily see if it was in my
9 hand that's it's a nine-millimeter. When you have a magazine,
10 part of it sticks out. You just have to go like that and you
11 read it right there.

12 Q And the gun magazine, again, same question, you
13 don't know whether you were told it was -- belonged to a Glock
14 gun or whether you know based on your personal knowledge that
15 it belongs to a Glock gun?

16 A I don't know of my personal knowledge --

17 MR. STEGE: Asked and answered. We've gone over
18 this.

19 THE COURT: Sustained.

20 THE WITNESS: Not the Glock gun.

21 MR. DOGAN: Not the --

22 THE COURT: Wait, wait, wait. You can't talk at the
23 same time. When they make a motion, you have to stop talking,
24 okay.

1 THE WITNESS: Yeah.

2 THE COURT: Now, he made a motion. It was asked and
3 answered. I thought we had been through the Glock, whether
4 it's nine-millimeter or not.

5 MR. DOGAN: I'm almost done, but I was first talking
6 about the bullets, and now I'm talking about the gun magazine.
7 So it's my final question.

8 THE COURT: Okay. Ask it.

9 MR. DOGAN: Thanks.

10 MR. STEGE: Is that the final question?

11 THE COURT: That's the final question.

12 MR. STEGE: Exception to the rule.

13 THE COURT: Go for it.

14 MR. CHESNOFF: Sure was brief, Your Honor.

15 BY MR. DOGAN:

16 Q You don't know whether that magazine belonged to a
17 Glock pistol or whether you know based on your own personal
18 knowledge that that magazine belonged to a Glock pistol,
19 correct?

20 MR. STEGE: Objection. Compound question.

21 THE COURT: Sustained. But it is painful.

22 MR. STEGE: Last question.

23 BY MR. DOGAN:

24 Q Somebody friggin told you that that magazine
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1 belonged to a Glock gun?

2 MR. STEGE: Objection. Just --

3 MR. DOGAN: I'll strike the friggin part.

4 THE COURT: You didn't use that word, really?

5 MR. STEGE: Yes.

6 THE COURT: Okay. It really has been obviously a
7 very long day. Are you done?

8 MR. DOGAN: That -- I apologize with all due respect
9 to the Court and counsel. But I'll rephrase it in a much more
10 respectful way and my question to the witness would be, you
11 were told that that magazine belonged to a Glock pistol,
12 right?

13 THE WITNESS: Yeah. I honestly don't remember if
14 somebody told me, but it's a very good possibility that
15 someone did because Moriwaki, probably, he's like a gun
16 expert. He probably told me there was a Glock.

17 THE COURT: Okay.

18 MR. DOGAN: Again, Your Honor, I'm sorry.

19 THE COURT: Okay. All right. Okay. Tomorrow
20 morning, 9:30, we will all be together again. But before
21 we're all together tomorrow morning at 9:30, I want to see all
22 the lawyers in chambers.

23 Thank you, sir. We'll see you back -- do we need
24 him back?

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MR. STEGE: No. He's excused.

THE COURT: You're excused.

MR. CHESNOFF: What time would you like to see us?

THE COURT: Right now.

Court's in recess.

(Proceedings concluded.)

1 STATE OF NEVADA)
) ss.
2 COUNTY OF WASHOE)

3
4 I, SUSAN CULP, an Official Reporter of the
5 Second Judicial District Court of the State of Nevada, in and
6 for the County of Washoe, State of Nevada, DO HEREBY CERTIFY:

7 That I am not a relative, employee or
8 independent contractor of counsel to any of the parties, or a
9 relative, employee or independent contractor of the parties
10 involved in the proceeding, or a person financially interested
11 in the proceedings;

12 That I was present in Department No. 4 of the
13 above-entitled Court on Tuesday, January 8, 2013 and took
14 verbatim stenotype notes of the proceedings had upon the
15 matter captioned within, and thereafter transcribed them into
16 typewriting as herein appears;

17 That the foregoing transcript, consisting of
18 pages 1 through 235, is a full, true and correct transcription
19 of my stenotype notes of said proceedings.

20 DATED: At Reno, Nevada, this 20th day of
21 January, 2013.

22
23 /s/ Susan Culp
24 SUSAN CULP, CCR No. 343

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41

Code No. 4185

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

-oOo-

STATE OF NEVADA,)	
)	
Plaintiff,)	Case No. CR11-1718A
)	CR11-1718B
vs.)	
)	Dept. No. 4
CESAR VILLAGRANA,)	
ERNESTO GONZALEZ,)	
)	
Defendant.)	
)	

TRANSCRIPT OF PROCEEDINGS
EVIDENTIARY HEARING
WEDNESDAY, JANUARY 9, 2013
RENO, NEVADA

Reported By: STEPHANI L. LODER, CCR No. 862

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1 RENO, NEVADA, WEDNESDAY, JANUARY 9, 2013, 9:43 A.M.

2 -oOo-

3
4 THE COURT: Please be seated. Good morning. Are
5 we ready to proceed?

6 MR. STEGE: Yes.

7 THE COURT: Go ahead.

8 MR. STEGE: I'd like to continue with Officer
9 Matt Kirby.

10 THE COURT: Okay. Sir, you're still under oath.
11 Please retake the stand.

12 THE WITNESS: Thank you.

13 MR. DOGAN: Your Honor, I know we went back to
14 chambers yesterday and your concern about the amount of
15 argument that's being made, I believe, but I need to
16 protect the record in regards to a violation of your order
17 which was filed on October 30th of last year.

18 And in your order, Judge Steinheimer, you stated
19 that the State must file a motion. The State must plead
20 with specificity any discovery the State seeks to
21 introduce in its case in chief related to NRS 193.168
22 and/or 48.045 must be disclosed contemporaneously with the
23 State's pleading or prior.

24 And in this case, Your Honor, we have followed

1 your order perfectly. However, the State, they provided
2 the audio recording as has been previously indicated to
3 the Court just recently.

4 Furthermore, Officer Kirby's report was provided
5 in the past, but it wasn't attached to the State's motion.

6 And there is over 5,000 pages of discovery. In
7 fact, today, the State filed an additional 500 pages of
8 discovery. It's like looking for a needle in a haystack.

9 I don't know what the Court would like to do in
10 terms of a remedy. But at some point, the Court must make
11 a specific ruling in regards to the State, that this type
12 of conduct -- that your orders must be followed or it
13 would render your orders meaningless.

14 And all I'm requesting is that every pleading
15 that the State files be contemporaneous with your order,
16 which stated it should be.

17 THE COURT: You mean the attachments?

18 MR. DOGAN: The attachments, absolutely, Your
19 Honor.

20 THE COURT: And so did you get a chance to review
21 the audio at this point?

22 MR. DOGAN: This morning I did review the audio.
23 And in regards to Officer Kirby's report, I did not have
24 that in possession yesterday. And Mr. Stege did e-mail

1 that to me in a PDF format this morning, and he did
2 indicate that that had been previously discovered to the
3 defense. But again, the sheer amount of discovery dumps
4 that we've been receiving, it makes it quite difficult for
5 us to look for these reports.

6 It would be much better, much easier and more --
7 in regards to our time, if the State followed your orders
8 so that we could have it in front of our face while we're
9 reviewing the motions and the pleadings that are being
10 filed by the State.

11 THE COURT: Okay.

12 MR. STEGE: Ideally, yes, I wish we had all this
13 stuff ages ago. But what we did have at the time of the
14 filing of the other bad act motion is what we attached to
15 the defense, and that previously been disclosed to them.

16 In the meantime, in the difficult process of
17 finding the actual officer and making arrangements, we
18 were able to find these additional reports, which we did.
19 Once we got them, and which included -- the audio came a
20 little bit after that -- we promptly disclosed those in
21 discovery.

22 I don't really know what to make of, well,
23 there's too much discovery argument, but as soon as we --

24 (Discussion off the record between

1 Mr. Hall and Mr. Stege.)

2 MR. STEGE: Yeah. And specifically, this -- I
3 think the report that he was just referring to, we
4 received on December 26th, and that was immediately
5 disclosed. The audio came shortly thereafter.

6 THE COURT: Okay. So what I think the concern
7 is, is that you did the report -- you disclosed the report
8 in a traditional discovery release of information that
9 contained a lot of different things as opposed to also
10 filing it with the Court, as was the order, as an addendum
11 to your motion so everyone was on notice, including the
12 Court, of what the evidence is that we're going to be
13 seeing.

14 I think you noticed from yesterday, we did review
15 what you'd filed and we do have an idea of what you put in
16 the pleadings, but of course we had no idea about things
17 that you had not put, nor did the defense so that is the
18 tenor of the order.

19 MR. STEGE: Right.

20 THE COURT: And it really is for judicial
21 economy. We're not talking about trying to make the State
22 do something different than they normally would or
23 increasing any burden on anyone. It is because the remedy
24 is a continuance.

1 MR. STEGE: Right.

2 THE COURT: That is the remedy for the defense
3 not getting this information timely or soon enough or in a
4 manner that they can deal with it. They're entitled to a
5 continuance so that they can review the material.

6 And the reason we're doing this in January and
7 not March is so we can try the case in March.

8 MR. STEGE: Right.

9 THE COURT: But I understand if you don't have
10 it.

11 MR. STEGE: Right. The 500 pages, that was
12 something they specifically had asked for, being the
13 wiretap orders with respect to the Operation Simple Green.

14 THE COURT: Okay. Well, yes.

15 MS. PUSICH: Your Honor, I apologize.

16 Mr. Bennett will be my witness, and he, I believe
17 is one of the primary people in respect to Operation
18 Simple Green. It is true that at the conclusion of the
19 hearing in October, I asked the Court to provide the
20 information regarding the phone wiretaps. That is --
21 actually the wiretap information I think is 496 pages,
22 therefore pages of a separate report from Detective
23 Patton.

24 I received those this morning about 7:00. I

1 think I've actually read most of them, but I don't want to
2 represent that I would be in the position to effectively
3 cross-examine on Mr. Gonzalez's behalf if the State starts
4 questioning about those today.

5 THE COURT: And you just got them? You didn't
6 get them before today to send them over?

7 MS. PUSICH: Your Honor, my staff advises they
8 were scanned in by the DA's system on Saturday. I don't
9 have any staff on Saturday. They started printing them
10 out for me yesterday afternoon and finished this morning.

11 THE COURT: And is that how this -- I'm not
12 really familiar with how your discovery is now working.
13 The State scans them into a separate program of some kind?

14 MR. STEGE: Right.

15 MS. PUSICH: There's a program, Your Honor, that
16 our office has access to, and once a file is made
17 available to us, we have a number. In this case it's
18 434444. We know it by heart because we see it all the
19 time. And they send an e-mail that says additional
20 discovery has been made available in this case, and then
21 our staff prints it off.

22 So although it appears to have been scanned in on
23 their side Saturday morning, no one in my office was aware
24 of it until Monday.

1 MR. STEGE: Well, no one was working on Saturday
2 besides the lawyers, so I think it actually happened
3 sooner, a day or two before that, but --

4 THE COURT: But it didn't become available in
5 your system until Saturday?

6 MR. STEGE: I don't know for sure when it became
7 available.

8 THE COURT: Okay. So when did you get the data?

9 MR. STEGE: We got the data just -- let's see.
10 It was the Friday before Christmas, Judge. And prior to
11 disclosing it, we wanted to have a sit-down with the
12 witness to make sure that -- they stated they were under
13 seal, and we wanted to make sure with the witness that --
14 because of the nature of the case, that it was still
15 proper and okay to release the documents.

16 THE COURT: Okay.

17 MR. STEGE: Which we did and then produced them.

18 THE COURT: Okay. So we're going to have to have
19 Mr. Bennett obviously return to talk about this. We can't
20 expect the defense to be ready to cross-examine on the
21 discovery and the information that was provided, that much
22 information just this week.

23 If you'd had it since December, I think they
24 should at least have the same amount of time to look at it

1 as you had before they're required to respond to the
2 witness. So we'll just find time. We'll find more time,
3 I guess.

4 MR. STEGE: Okay.

5 THE COURT: Okay.

6 MS. PUSICH: Thank you, Your Honor.

7 THE COURT: You're welcome.

8 MR. HALL: So can I let Mr. Bennett go then if
9 we're not going to do him today? He's here. We're not
10 going to do him today; is that right?

11 THE COURT: We can't do Ms. Pusich's cross. So
12 whatever you want to do. Do you want to put the direct on
13 and then delay for the cross, or do you want to wait?

14 MR. HALL: Court's discretion. I'd just as soon
15 do as much as we can while he's here. I got him here.

16 THE COURT: I'm here all day. I'm fine with you
17 doing direct, but we just won't be able to do the cross.
18 Okay?

19 So Counsel, do you feel comfortable going forward
20 with the cross this morning on the limited issue of the
21 audio?

22 MR. DOGAN: Yes, Your Honor.

23 THE COURT: Okay.

24 MR. DOGAN: Thank you, Your Honor.

1 THE COURT: All right. Did you have anything
2 else, Mr. Stege?

3 MR. STEGE: I move to introduce the audio.

4 THE COURT: I'm sorry, you move to introduce
5 Exhibit L?

6 MR. STEGE: Exhibit L, the audio, the CD that he
7 previously identified as being the one we listened to,
8 being a fair and accurate depiction of the interview with
9 Gonzalez.

10 THE COURT: Counsel?

11 MR. DOGAN: I'm sorry, I was speaking to
12 co-counsel.

13 THE COURT: He's just asked me to admit Exhibit L
14 for purposes of today's hearing. That's the CD.

15 MR. DOGAN: I would request that the proper
16 foundation be laid in regards to the exhibit, Your Honor.

17 THE COURT: He did. He -- well --

18 MR. FREY: Yesterday.

19 THE COURT: Yesterday.

20 MR. DOGAN: Okay.

21 THE COURT: I know it was a long day.

22 MR. DOGAN: It was a very long day, Your Honor.

23 THE COURT: Okay. So I think he has identified
24 it. He says he listened to it. He was familiar with it.

1 It was what it purported to be.

2 MR. DOGAN: Your Honor, for the purposes of this
3 hearing, I have no objection, but we still have that *Brady*
4 issue regarding the dismissal of this case.

5 THE COURT: Right. I understand that.

6 One of the things that we really need to focus on
7 today is this is the proffered evidentiary hearing. The
8 argument with regard to whether or not any of this is
9 admissible or could be admitted or was proper can come
10 later, but we've got to get evidence out and figure out
11 what the State is trying to offer. So we'll see if we can
12 get through that. Okay?

13 I'm admitting it. L is admitted.

14 (Exhibit No. L admitted.)

15 MR. STEGE: May I publish L?

16 THE COURT: Yes.

17 MR. STEGE: Or would the Court like to review it
18 later in camera?

19 THE COURT: No. Go ahead and publish it.

20 MR. STEGE: Okay.

21 MR. HALL: Your Honor, I'm going to go ahead and
22 let Detective Bennett go. We've got other witnesses here.
23 I don't want to bifurcate the hearing.

24 THE COURT: Okay. That's fine.

1 MR. HALL: So we'll just set a another date to
2 bring him back.

3 THE COURT: Okay.
4

5 MATTHEW KIRBY,
6 recalled as a witness by the State,
7 having been previously duly sworn, was examined
8 and testified further as follows:
9

10
11 REDIRECT EXAMINATION (RESUMED)

12 BY MR. STEGE:

13 Q Officer, at this point, you're in the room with
14 Mr. Gonzalez and you turn your recorder on; is that right?

15 A Correct.

16 Q Then you read him his Miranda rights.

17 A Yes.

18 (Audio played.)

19 BY MR. STEGE:

20 Q Officer, just so this gets transcribed into this
21 recording, you asked the defendant if his life's been
22 threatened.

23 A Yes.

24 Q Or he makes the statement that his life has been

1 threatened.

2 A Yes.

3 (Audio played.)

4 BY MR. STEGE:

5 Q You then ask him if it's been specifically
6 threatened by a rival gang, and what is -- sorry. What is
7 his answer?

8 A "Yes."

9 Q And that's about two minutes and 40 seconds into
10 this.

11 (Audio played.)

12 BY MR. STEGE:

13 Q You asked him: Well, what specific rival
14 motorcycle gang and what's -- and you asked: Was it the
15 Hell's Angels?

16 MR. DOGAN: Objection. Leading. Compound.

17 THE COURT: Sustained.

18 Let's just play the video. Let's publish it, and
19 then if you have questions about it, you can ask them.

20 MR. CHESNOFF: Your Honor, just for the record
21 and future reference, there are *Bruton* issues raised by
22 this for our client.

23 THE COURT: There could be. Thank you.

24 MR. CHESNOFF: Post duress statement of a

1 codefendant.

2 THE COURT: Okay.

3 MR. CHESNOFF: Thank you.

4 THE COURT: Let's just play it.

5 MR. CHESNOFF: All right.

6 (Audio played.)

7 MR. DOGAN: Your Honor, I'd object at this point.
8 It's beyond --

9 THE REPORTER: Your Honor, could I hear the
10 objection again?

11 THE COURT: Yes, would you repeat that.

12 MR. DOGAN: It's beyond the scope of their
13 pleading. It's just irrelevant material that's coming in.

14 THE COURT: Did you want to present this, or were
15 you just playing the whole thing --

16 MR. STEGE: I'm just playing it for thoroughness.
17 I understand that if admitted at trial, it may be limited
18 to -- there wouldn't be a reason to talk about his record.
19 I think that would be obvious.

20 THE COURT: Okay. How much longer is there on
21 there?

22 MR. STEGE: About two minutes.

23 THE COURT: Go ahead and finish.

24 Overruled.

1 (Audio played.)

2 BY MR. STEGE:

3 Q So back and talk about some of the statements
4 that we just heard so we can make a record of this.

5 Among the things mentioned by the defendant was
6 that -- and in fact placed in your report were that the
7 defendant said he had the weapons so he could defend
8 himself in case he got attacked; is that right?

9 A Yes.

10 MR. DOGAN: Objection. Leading. Asked and
11 answered.

12 THE COURT: It is leading.

13 MR. STEGE: Okay.

14 THE COURT: Sustained.

15 BY MR. STEGE:

16 Q Did the defendant make any statements about the
17 reason he had the weapon?

18 A Yes.

19 Q And what were those?

20 A To carry them for protection.

21 Q Did he -- defendant make any statements about a
22 specific rivalry that he was aware of involving the Vagos?

23 A Yes.

24 MR. DOGAN: Objection. Leading, and also it's

1 not the best evidence.

2 MR. CHESNOFF: I'm just going to renew my *Bruton*
3 issue.

4 THE COURT: The *Bruton* issue we'll deal with once
5 this is over, and I assume you're going to want to file
6 something with regard to this.

7 MR. CHESNOFF: If I have to. I mean, it's --

8 THE COURT: We'll see. We'll see if it is even
9 necessary.

10 MR. CHESNOFF: Enough paperwork already. Thank
11 you.

12 THE COURT: So with regard to leading, it's
13 sustained.

14 BY MR. STEGE:

15 Q What statements did the defendant make about a
16 rivalry, if any?

17 A He knew about the altercation that happened in
18 Santa Cruz.

19 Q And what was the altercation? Or did you have
20 prior knowledge of the altercation?

21 A Yes. There was members of the Vagos that were
22 jumped by Hell's Angels.

23 Q And when was that alleged incident in relation to
24 this?

1 A About two weeks prior.

2 MR. DOGAN: Objection. Relevance.

3 MR. STEGE: Goes to his knowledge of the rivalry.
4 The reason -- the entire reason he's carrying the gun is
5 because, whether true or not, he believes that it's
6 dangerous to be a Vago, hanging out --

7 THE COURT: Overruled.

8 MR. STEGE: -- in the area.

9 BY MR. STEGE:

10 Q When was the prior alleged incident in Santa
11 Cruz?

12 A About two weeks prior.

13 Q What other statements did the defendant make
14 reference to Hell's Angels?

15 A His life was threatened.

16 Q Did you ask the defendant about why he was riding
17 alone or anything about riding alone?

18 A I asked if he was carrying a weapon because he
19 was riding alone.

20 Q And what was his response?

21 A He couldn't answer that.

22 Q Did the defendant mention anything about
23 territory or anything related to the Vagos and Hell's
24 Angels?

1 A Such as, where they are?

2 Q Where they are. Didn't he make a statement about
3 this being Vago territory or Hell's Angels territory or --

4 MR. DOGAN: Objection.

5 BY MR. STEGE:

6 Q -- something about his charter?

7 MR. DOGAN: Objection. Leading.

8 THE COURT: Sustained.

9 BY MR. STEGE:

10 Q Were there any statements made by the defendant
11 about his charter, about the Vagos charter?

12 A Can you rephrase the question?

13 Q Well, was there a point at about three minutes
14 and 30 seconds into this call -- maybe this would refresh
15 your recollection.

16 MR. CHESNOFF: Your Honor, the tape speaks for
17 itself --

18 (Audio played.)

19 MR. DOGAN: Your Honor -- I'm sorry.

20 THE COURT: Okay. I'm not exactly sure what
21 you're trying to do. You keep saying to make a record.
22 The record is made with the exhibit being admitted.

23 So is there something, something additional to
24 the record that this witness has to add to the recording?

1 MR. STEGE: Well, here's the issue. If this gets
2 reviewed by anyone else, the -- it's going to say:
3 Thereupon the recording was played. Right?

4 THE COURT: Right.

5 MR. STEGE: And it's not transcribed by the
6 reporter, so the statements that are made in it are either
7 going to have to be stated by me orally in my arguments or
8 the officer can explain what is on the tape so that
9 there's an accurate --

10 THE COURT: Well, you just identify the exhibit.
11 If it's reviewed, the reviewing Court has the exhibit
12 that's been admitted.

13 MR. STEGE: Okay.

14 THE COURT: And of course you can always have a
15 transcript prepared.

16 MR. STEGE: Okay. All right.

17 THE COURT: So I don't -- I don't think it's
18 necessary to kind of reiterate it.

19 MR. HALL: Your Honor, may we just ask leave of
20 the Court to supplement the record with a transcript of
21 the recording?

22 THE COURT: Yes.

23 MR. HALL: Thank you.

24 MR. STEGE: I'll pass the witness.

1 THE COURT: Okay. Counsel?

2 MR. DOGAN: Thank you, Your Honor.

3
4 **RE CROSS-EXAMINATION**

5 BY MR. DOGAN:

6 Q Did you speak to any other officer about your
7 testimony before coming into Court today?

8 A Yes.

9 Q Where did you speak to this officer at?

10 MR. STEGE: Objection. Scope.

11 THE COURT: Overruled. It goes to his vice. Go
12 ahead.

13 MR. DOGAN: Your Honor, it also goes to the
14 exclusionary rule.

15 THE COURT: I figured that.

16 BY MR. DOGAN:

17 Q Where did you speak to this officer?

18 A There was multiple places I talked to officers
19 about this case.

20 Q When did you speak to the officer?

21 A Over a two-year period, I couldn't recall.
22 There's numerous times.

23 Q Did you speak to any officer about your testimony
24 outside of court today?

1 A Yes.

2 Q Who was that officer?

3 A I don't recall his name.

4 Q What does he look like?

5 A Like, gray hair, glasses, and a suit.

6 Q Is he in the courtroom right now?

7 A Yes.

8 Q And where is he seated?

9 A He's seated in the front row.

10 THE COURT: Are you talking about the DA's
11 investigator? Is that who you're calling an officer?

12 THE WITNESS: Yes. Yes, yes.

13 BY MR. DOGAN:

14 Q How about yesterday?

15 A Well, knowing my knowledge now that they're not
16 officers, then no, I haven't spoke to an officer.

17 Q Anyone?

18 A DAs.

19 Q Have you spoken to any witness, officer or
20 non-officer, about your testimony here today?

21 MR. STEGE: Objection. Vague. How does he know
22 who a witness is?

23 THE COURT: Well, it may be vague, but he may be
24 able to answer it. I don't know. Overruled.

1 Can you answer that question?

2 THE WITNESS: Are you asking if I've talked to
3 other officers that are here to testify?

4 BY MR. DOGAN:

5 Q No. Anyone. Have you spoke to anyone regarding
6 your testimony here today?

7 THE COURT: Since when?

8 BY MR. DOGAN:

9 Q Have you spoken to anyone today about your
10 testimony?

11 A No.

12 Q Other than the investigator who is present in
13 Court today.

14 A No.

15 Q Nobody else, correct?

16 A No.

17 Q How about yesterday?

18 A Yes.

19 Q Who did you speak to?

20 A Other officers that are here.

21 Q Do you know their names?

22 A Not off the top of my head, no.

23 Q Do you know what they look like?

24 A Generally, yes.

1 Q What do they look like?
2 A White males.
3 Q How many?
4 A Three, four.
5 Q Are they witnesses in this case?
6 A Yes.
7 Q And you spoke about your testimony, correct?
8 A I'm confused.
9 Q You spoke about this case?
10 A I spoke -- I don't understand the question.
11 Spoke how?
12 Q You previously stated that you spoke about this
13 case to other witnesses.
14 A That I was here to testify, yes.
15 Q And you discussed your testimony, correct?
16 A Not what I said, no.
17 Q You discussed the facts of this case, correct?
18 A Yes.
19 Q Did you discuss their testimony?
20 A I don't recall.
21 Q You don't recall? This occurred yesterday.
22 A Correct.
23 Q And you forgot?
24 MR. STEGE: Argumentative.

1 THE COURT: Overruled.

2 THE WITNESS: I don't know any specific details,
3 no.

4 MR. DOGAN: Your Honor, at this point, I move to
5 strike the witness for violation of the exclusionary rule.

6 THE COURT: Okay.

7 MR. CHESNOFF: Your Honor, may I ask questions,
8 Your Honor?

9 THE COURT: Yes, you certainly can, and then I'll
10 let the State ask some questions.

11 MR. CHESNOFF: Thank you.

12
13 VOIR DIRE EXAMINATION

14 BY MR. CHESNOFF:

15 Q Officer, how long have you been a policeman?

16 A Four and a half years.

17 Q How many times have you testified?

18 A Three.

19 Q Three times in four and a half years?

20 A Yes.

21 Q Are you -- what kind of -- felony cases?

22 A What kind of felony?

23 Q Felony cases? No. Were they felonies?

24 A One was a misdemeanor.

1 Q Okay. So yesterday you were here and you were
2 with fellow officers, correct?

3 A Correct.

4 Q And of course, in the course of visiting with
5 fellow officers, you discussed the fact that you were here
6 to testify about this particular defendant, correct?

7 A Correct.

8 Q And you did you identify this defendant to the
9 other officers as who you were going to be testifying
10 about?

11 A Yes.

12 Q Did you describe the fact that you had been
13 involved in a traffic stop?

14 A Yes.

15 Q Did you tell the other officers that the traffic
16 stop involved the seizure of a weapon?

17 A Yes.

18 Q Did you mention to the officers the fact that you
19 had done something really unique in getting a member of a
20 motorcycle club to consent to an interview?

21 A We were just exchanging info as far as our
22 experience with the different gangs.

23 Q Right. So you told them that, in this case, you
24 had actually been fortunate enough to get a Mirandized

1 defendant to give you a statement, correct?

2 A Yes.

3 Q And you told them that the Mirandized statement
4 included admissions by this particular defendant that he
5 believed that it was a rivalry between various motorcycle
6 gangs.

7 A That I did not, no.

8 Q Okay. But they were interested in the fact that
9 you had actually interviewed him, correct?

10 A No.

11 Q That's what you talked about, though, right?

12 A No.

13 Q Well, you just told us you talked to 'em about
14 it, didn't you?

15 A I talked to 'em about the items that I had
16 seized.

17 Q Okay. And you also told 'em that you had
18 interviewed him. You just told us that, right?

19 A If I said that, that's not what I meant.

20 Q Well, were you telling then or are you telling
21 the truth now, Officer?

22 A Now.

23 Q Okay. So you never discussed the fact that you
24 had interviewed him, even though about a minute ago, you

1 told Her Honor that you did discuss it?

2 A I never discussed that I had interviewed him with
3 any other officer, no.

4 Q That was a misstatement?

5 A Yes.

6 Q Were you not hearing me when I asked the
7 question?

8 A I must have misread the -- or misheard the
9 question. Sorry.

10 Q What was the name of the officers that you talked
11 to?

12 A I don't remember.

13 Q What departments?

14 A Kern County. Phoenix. Another Arizona
15 department, I believe.

16 Q Okay. You were aware of course that as a witness
17 in this case, you aren't supposed to discuss your
18 testimony with other people that are witnesses, correct?

19 A I didn't discuss what I --

20 Q Answer the question, sir. You are --

21 MR. STEGE: Judge -- Judge, he's trying to answer
22 the question.

23 MR. CHESNOFF: No, Your Honor.

24 THE COURT: Okay. I don't think he was being

1 responsive, so I am going to overrule your objection,
2 but --

3 MR. CHESNOFF: Okay, I'm sorry --

4 THE COURT: -- raising your voice isn't
5 appropriate with the witness.

6 MR. CHESNOFF: You're correct, Your Honor. I
7 apologize.

8 BY MR. CHESNOFF:

9 Q Officer, you are aware, as a witness in a
10 criminal case, that you are not supposed to discuss your
11 testimony with other witnesses in the case, correct?

12 A Yes. Can I add to that, though?

13 Q You answered my question, sir.

14 MR. STEGE: Can he answer the question?

15 BY MR. CHESNOFF:

16 Q When you talked to --

17 THE COURT: He can when you're -- when you --

18 BY MR. CHESNOFF:

19 Q When you talked to these officers, were you all
20 together?

21 A Yes.

22 Q So the other officers were talking back to you,
23 correct?

24 A Yes.

1 Q And they were exchanging information with you,
2 correct?

3 A Yes.

4 Q And they were telling you about their
5 experiences, correct?

6 A Yes.

7 Q And they were telling you about their experiences
8 either with members of the Vagos or members of the Hell's
9 Angels, correct?

10 A Yes.

11 Q And that was here in the courthouse?

12 A Yes.

13 THE WITNESS: Your Honor, could I add something?

14 THE COURT: The State's attorney is going to ask
15 you some questions.

16 THE WITNESS: Okay.

17 THE COURT: And then I may ask you some
18 questions.

19 THE WITNESS: Okay.

20 BY MR. CHESNOFF:

21 Q Did you have lunch with the fellow officers?

22 A No.

23 Q Did you do any socializing since you had to stay
24 over last night with the other officers?

1 A No.

2 Q Were any of the DAs present when you were having
3 these conversations?

4 A I don't remember, no.

5 Q Well, one's a pretty tall guy and one's got a
6 white beard. Either one of those fellows present when you
7 were talking to these witnesses?

8 A I don't remember. They were going in and out of
9 the courtroom.

10 Q Did anybody tell you you need to stop talking
11 about your involvement in this with the witnesses at any
12 point in time?

13 A No.

14 Q Did any of the other officers say: You know
15 what, we better not talk to each other about this stuff?

16 A No.

17 MR. CHESNOFF: I have nothing further, Your
18 Honor.

19 THE COURT: Okay. Mr. Stege?

20
21 **VOIR DIRE EXAMINATION**

22 BY MR. STEGE:

23 Q Did you discuss the substance of your testimony
24 with these other officers?

1 A No, I did not.

2 Q You asked twice if there was something you could
3 add to the answers.

4 A Yes.

5 Q What was it that you wanted to add to your
6 answers?

7 A Well, I just wanted to add that we exchanged
8 information to either gather intel for further experience.

9 Q Were any of those officers that you were talking
10 to from San Jose Police Department?

11 A No.

12 Q Were any of those officers involved in the stop
13 that we've been talking about?

14 A No.

15 Q In fact, what you have testified to is you
16 exchanged basic information about your case.

17 A Correct.

18 Q That you found what you found on the defendant.

19 A Yes.

20 Q But that was after you had testified yesterday in
21 the case, right?

22 A Yes.

23 Q And after you talked about the stop, including
24 identifying the photographs and the audiotape that we've

1 played today.

2 A Correct.

3 Q Has your testimony -- did talking to these
4 officers change your testimony in any way in the brief
5 testimony you have given today since --

6 A No.

7 Q -- you previously testified?

8 MR. CHESNOFF: Your Honor --

9 BY MR. STEGE:

10 Q Did you talk to the attorney with the long hair
11 over there, seated next to --

12 MR. CHESNOFF: That's me.

13 THE COURT: Oh. I was looking. I didn't think
14 anybody had that long --

15 MR. CHESNOFF: I actually got it cut recently,
16 Your Honor.

17 THE COURT: You don't have a ponytail, do you?

18 THE WITNESS: Prior to coming in today?

19 BY MR. STEGE:

20 Q Prior to being cross-examined by him today.

21 A No.

22 MR. CHESNOFF: Your Honor, may I follow up?

23 THE COURT: Yes.

24 ///

1 **FURTHER VOIR DIRE EXAMINATION**

2 BY MR. CHESNOFF:

3 Q You just acknowledged that you talked to these
4 other officers after your testimony yesterday, correct?

5 A Yes.

6 Q Do you remember Her Honor telling you yesterday
7 that you needed to stay around because you were still a
8 witness in the case?

9 A Yes.

10 Q So at the time you talked to these officers, it
11 had been after the judge had reminded you that you were
12 still a witness in this case, correct?

13 A Yes.

14 Q Okay. And the thing that you could pass
15 intelligence on about as it applies to motorcycle clubs
16 with other officers, one of the things related to the very
17 reason you were here, the stop involving our codefendant;
18 is that right?

19 A Yes.

20 Q So it's clear that's one of the most important
21 pieces of intelligence that you possess to help and aid
22 your fellow officers, correct?

23 A Yes.

24 MR. CHESNOFF: Nothing further, Your Honor.

1 THE COURT: Okay. Anyone have anything else?
2 Any other questions?

3 MR. DOGAN: Not from this --

4 THE COURT: Sir, would you tell me what you were
5 told about your responsibilities as a witness from the
6 district attorney.

7 THE WITNESS: I wasn't told anything about my
8 responsibilities. I just knew my responsibilities, being
9 law enforcement, you know, not to discuss anything about
10 the testimony or anything like that.

11 But as far as sharing intel on, you know, if it
12 could help benefit officer safety, things like that,
13 because of the uprising numbers of attacks on law
14 enforcement, that's what I was talking about. Nothing
15 about what I had testified about yesterday.

16 THE COURT: So the district attorney's office,
17 when they said, okay, you're going to testify in this
18 case, or when you came yesterday morning and they said,
19 well, sit out or sit wherever you were sitting, if you
20 were over in their office or out in the hall, they didn't
21 give you any instructions as to what it meant, that there
22 had been a rule of execution invoked in this case?

23 THE WITNESS: No.

24 THE COURT: Any investigator didn't?

1 THE WITNESS: No, I was just -- just assumed.
2 I'm guessing.

3 THE COURT: Okay. So as an officer, you knew you
4 really weren't supposed to talk about stuff too much.

5 THE WITNESS: Correct.

6 THE COURT: But you thought it was okay to talk
7 about intel.

8 THE WITNESS: Correct.

9 THE COURT: You thought the gentleman in the
10 courtroom with the orange lanyard was an officer; is that
11 correct?

12 THE WITNESS: Correct.

13 THE COURT: And I told you, I guess, that he was
14 a district attorney's investigator. Was he present when
15 you were talking to the other officers?

16 THE WITNESS: Your Honor, I don't remember
17 because there was, you know, multiple bodies going in and
18 out of the courtroom.

19 THE COURT: Right. So this was over a period of
20 time, these conversations took place?

21 THE WITNESS: A short period of time, yes.

22 THE COURT: Were you outside in the hallway? Is
23 that where you were waiting?

24 THE WITNESS: Yes.

1 THE COURT: How long did you have to wait out
2 there?

3 THE WITNESS: About an hour.

4 THE COURT: Before you came in?

5 THE WITNESS: Before I came in, yes.

6 THE COURT: Were there other people waiting to
7 testify?

8 THE WITNESS: Yes.

9 THE COURT: Were they here this morning, too, the
10 other people?

11 THE WITNESS: I believe one of them was.

12 THE COURT: Okay. Which -- what did he look
13 like?

14 THE WITNESS: Kind of a taller gentleman with
15 blonde hair.

16 THE COURT: About how old?

17 THE WITNESS: 30s.

18 THE COURT: All right. And you didn't know where
19 he was from?

20 THE WITNESS: No.

21 THE COURT: All right. Do my questions raise any
22 issues for anyone that wants to ask any more questions?

23 MR. STEGE: No.

24 THE COURT: Okay. Before we go on, we're going

1 to have to have another hearing. We love these hearings,
2 so I'm going to ask you to step down and go outside.

3 THE WITNESS: Okay.

4 THE COURT: The rule of execution in this state
5 means that you cannot talk about your testimony with
6 anyone but the lawyers and their staff, and no one else
7 can be present when you're talking about your testimony
8 and the information that you are testifying to.

9 You can't even talk about cross-examination. So
10 in other words, somebody says, they said X, Y, or Z to me,
11 or I think the defense is going for this, you can't talk
12 about that with anyone else but the lawyers, their staff,
13 and only if there's no one else present.

14 THE WITNESS: Even if it's to share or gather
15 intel?

16 THE COURT: Right.

17 THE WITNESS: Okay.

18 THE COURT: You can't do that. I understand that
19 you did, but you didn't under -- you did do that, right?

20 THE WITNESS: Correct.

21 THE COURT: But you didn't know you weren't
22 supposed to.

23 THE WITNESS: Correct.

24 THE COURT: Thank you. Would you step outside

1 for a few minutes.

2 THE WITNESS: Yes, ma'am.

3 THE COURT: Thank you very much.

4 (Witness exits the courtroom.)

5 THE COURT: I guess my first question is: Do we
6 have any other witnesses outside sitting around?

7 And my first question would be: Does the State
8 agree that you did not notify the witnesses of their
9 responsibilities based on the rule of exclusion? Or did
10 this witness just not understand he was being told? I
11 mean, is he telling the truth, nobody told him?

12 MR. STEGE: I don't think anyone has told him,
13 Judge.

14 THE COURT: Okay. All right. I think we should
15 take a short recess. There is a case in Nevada on this,
16 partially on this issue, and I want to read that case.
17 It's been a long time since I had this kind of an issue
18 come up to this extent.

19 And I know the request is to exclude the
20 witness's testimony. I'm not positive that's the right
21 remedy, but I'm going to look it up.

22 MR. CHESNOFF: Your Honor, do you remember the
23 name of the case?

24 MR. DOGAN: Can we get a copy?

1 THE COURT: I have to look it up. It was --
2 Scott Freeman was the defense attorney.

3 (Discussion off the record between
4 the clerk and the Court.)

5 THE COURT: *Romo*. Susan Romo. It's a civil
6 case. That's the only one I know about. I'm going to
7 have to look and see if there's anything else, but it's
8 the one I know about.

9 MR. CHESNOFF: Okay. And we'll do some checking
10 ourselves, Your Honor. Thank you.

11 MS. PUSICH: And, Your Honor, during the break,
12 since we may have a hallway full of people who don't
13 realize they're not supposed to be talking, could they be
14 specifically instructed no more?

15 THE COURT: Well, yes. The only issue, the only
16 concern I have is we don't have a record on what anybody
17 else thinks, knows, believes is appropriate.

18 If I order the State to notify them, you
19 certainly will have more difficulty making more of a
20 record if you want to make more of a record.

21 MR. CHESNOFF: I think we should leave it at the
22 status quo and that we're going to need to inquire which
23 officers shared information, because I think that we're
24 going to find that we want to know how many officers have

1 been tainted, Your Honor.

2 THE COURT: And, you know, I just want to take a
3 short recess so you can figure out what you're supposed to
4 do. I'm sure you're on the phone right now to your
5 appellate division, and that's fine. You all can do that.

6 We'll take a 15-minute recess.

7 (Recess taken 10:30 a.m. to 11:03 a.m.)

8 THE COURT: Thank you. Please be seated.

9 Okay. We've all taken a little recess and we've
10 been able to look, I assume, at the case law, what there
11 is of the rule of exclusion issues.

12 And at this point, I'd like to ask -- I know the
13 defense of Mr. Gonzalez has requested exclusion of this
14 particular witness. I don't know how much further and I
15 don't know what Mr. Chesnoff's request is at this point.
16 So why don't we start there.

17 MR. CHESNOFF: Well, Your Honor, I think that we
18 probably need to have a hearing with the other witnesses
19 and find out -- and some of them probably are the Arizona
20 and other places that may not still be here, but I think
21 that -- I've read not only the case the Court cited but
22 also some 9th Circuit law, and I think there needs to be a
23 hearing so that the record is complete.

24 And then I think that there are various remedies,

1 including, you know, striking the witness, use of it on
2 cross-examination at some point in time. I think there's
3 a third one, which I asked permission --

4 THE COURT: I know.

5 MR. CHESNOFF: And also I believe it's kind of a
6 burden shifting here, but there's a presumption at least
7 under the 9th Circuit law of prejudice because the way the
8 courts analyze it, it's very hard to get into the heads of
9 the witnesses and know how it ultimately affects them, so
10 there's a presumption of prejudice.

11 And it's for the State at the evidentiary hearing
12 to establish the lack of prejudice, but there's one case
13 that provided us with some possible -- hold the witness in
14 contempt -- and I'm not suggesting that, Your Honor,
15 because I truly believe that the officer is incredibly
16 naïve or inexperienced.

17 Obviously it's -- the second option is that you
18 cross-examine him concerning the violation, and the third
19 is you exclude the witness, which obviously would be the
20 sanction that we would be most interested in, but I think
21 we have to hear from the other witnesses.

22 MR. DOGAN: Your Honor, I would join in that
23 request.

24 THE COURT: Okay. So the officer that was on the

1 stand most recently, I think that we talked with him and
2 inquired of him as to what he did, what he talked about,
3 but we did not proceed with the portion of the hearing
4 that's contemplated under the case law as to whether or
5 not he was influenced or what he heard from other people,
6 and then your argument that he was somehow influenced by
7 that.

8 So I think we have to -- we should start with the
9 witness that we've already had, find out the other side of
10 the coin, and then move into the other witnesses.

11 Does the State have another proposal?

12 MR. HALL: Well, Your Honor, first of all, I
13 think this has been blown out of proportion significantly.

14 First of all, you know, all these witnesses have
15 information regarding other act evidence that they were
16 involved in, investigations. They really don't have
17 anything to do with the substantive offense.

18 When the rule of exclusion was invoked, there
19 wasn't even any witnesses in the courtroom. I was advised
20 by my investigator that they did tell the witnesses that
21 were out there that the rule of exclusion had been
22 invoked.

23 And I really am at a loss to figure out how the
24 witnesses that are going to testify, based upon the

1 information that we have set forth in our motion and the
2 information that they're going to provide regarding expert
3 testimony regarding whether or not the Vagos and Hell's
4 Angels are -- how is that going to be influenced?

5 I mean, I really don't understand it at all. I
6 mean, if they had tried to coordinate their testimony,
7 that would be one thing. But they're all from different
8 parts of the country testifying about different facts and
9 circumstances that they are familiar with.

10 So I really think we're wasting a lot of time on
11 an issue that is really not there.

12 So -- we can bring them all in -- and I don't
13 know even know what the Court, other than saying that the
14 rule of exclusion was invoked, I don't know that there was
15 any other direction by the Court ordering us or informing
16 the witnesses what the extent of the rule of exclusion
17 was, that you can't talk to witnesses, you can't share
18 information about what you're doing over there at this
19 point in time. None of that.

20 THE COURT: Okay. I just have a couple of
21 questions, Mr. Hall.

22 MR. HALL: Okay.

23 THE COURT: One is, the defense has requested a
24 hearing pursuant to what they perceive to be a violation

1 of the rule of exclusion.

2 MR. HALL: Okay.

3 THE COURT: Is it your position that the State
4 can ignore that request because you think it's a waste of
5 time?

6 MR. HALL: No. I don't have --

7 THE COURT: Okay. So we have --

8 MR. HALL: -- a problem with the hearing.

9 THE COURT: -- to do it. Okay.

10 MR. HALL: Yeah.

11 THE COURT: And the second question I have for
12 you is, do you believe it's the Court's responsibility to
13 notify the witnesses of the rule of exclusion, or is it
14 the parties' -- the attorneys' responsibility who is
15 calling the witness?

16 MR. HALL: Well, I want to know what the record
17 is so that I know what my responsibility is.

18 Certainly, I think when we told seasoned
19 officers -- or at least I'm informed that my investigators
20 who are seasoned investigators informed the witnesses that
21 the rule of exclusion had been invoked, that they would
22 know not to discuss, you know, the case or their
23 testimony.

24 You know, but of course the rule of exclusion,

1 the whole purpose of the rule of exclusion is to prevent
2 witnesses from sitting in the courtroom, listening to the
3 testimony of a witness, and then sharing that with a
4 witness outside the courtroom. I don't know that we have
5 any evidence of that.

6 THE COURT: The purpose is that.

7 MR. HALL: Right.

8 THE COURT: But it is also not to disclose to
9 witnesses before they testify what the theory of the
10 defense is, what cross-examination is happening, so that
11 they can prepare for cross-examination and also create a
12 record that is consistent with other witnesses.

13 MR. HALL: It precludes other witnesses from
14 talking to other witnesses, right?

15 THE COURT: Yes.

16 MR. HALL: Right.

17 THE COURT: It is 50.155.

18 MR. HALL: Right.

19 THE COURT: And it is not the Court's practice to
20 take the responsibility to notify every witness that is
21 going to be called in a case of what the rule of exclusion
22 is. We would have had to have all those witnesses present
23 at the same time before the case ever started, and you'd
24 have to bring every witness in and then I could notify

1 them. I'd be glad to do that.

2 I think it would be a huge expense and, really,
3 not appropriate for the Court to spend that time advising
4 all the witnesses.

5 MR. HALL: I understand. I just want to know
6 what was said at the beginning of the hearing regarding
7 the rule of exclusion.

8 THE COURT: The defense lawyers requested that
9 the rule of exclusion be invoked, and I granted it.

10 MR. HALL: That's it.

11 THE COURT: That's it.

12 MR. HALL: Okay.

13 MR. CHESNOFF: Your Honor, before the break, we
14 were told that the DAs didn't think they had told the
15 witnesses, but now we've been told that the witnesses were
16 instructed by somebody.

17 One, we should identify that person; but two, I
18 kind of take back what I said about the issue of contempt
19 because if these witnesses were warned that they shouldn't
20 talk to each other and they did, that's -- that's a --
21 magnifies the problem.

22 THE COURT: It is a different issue.

23 MR. CHESNOFF: Yes.

24 THE COURT: So let's bring our first -- everyone

1 is in agreement we have to have a hearing, so we'll bring
2 our first witness back. I will allow you to inquire as to
3 what he may have heard from other people, and we'll
4 establish that, and maybe even more description of who he
5 was talking to.

6 And then we can also bring the State's
7 investigator in, if he's the person who notified the
8 witnesses, and have him testify. We can do that, but I'd
9 like to get the young officer who was on the stand, get
10 him completely resolved first, and then we can continue to
11 make a record.

12 We only had at the hearing before Mr. Stege's
13 comment that he did not believe anyone had told the
14 witnesses the rule of exclusion, and then Mr. Hall turned
15 and looked at the investigator and asked, "Did anybody
16 tell them?" And the investigator in the courtroom shook
17 his head no. But that could be changed with the
18 testimony.

19 Okay. Sir, please come forward. Go ahead and
20 retake the stand. You're still under oath.

21 I think we're going to let Mr. Chesnoff start
22 with the witness to make the record.

23 MR. CHESNOFF: Thank you, Your Honor.

24 ///

1 **MATTHEW KIRBY,**

2 recalled as a witness by the State,

3 having been previously duly sworn, was examined

4 and testified further as follows:

5
6 **VOIR DIRE EXAMINATION**

7 BY MR. CHESNOFF:

8 Q Officer, you described having had discussions
9 with other officers regarding intelligence matters; is
10 that right?

11 A Yes.

12 Q Okay. And how many officers, in total, did you
13 speak to?

14 A One in general. There was probably two other
15 present.

16 Q Earlier I think you said three or four. Do you
17 remember if that may be more accurate?

18 A Yeah.

19 Q Okay. And did you have an opportunity to talk to
20 a law enforcement gentlemen by the name of Jorge
21 Gil-Blanco?

22 A No.

23 Q Did you meet him?

24 A I know of him. I didn't see him here, no.

1 Q Okay. Can you describe the first person you
2 spoke to? Do you remember where he was from?

3 A I don't remember where he was from, no.

4 Q Which cases did you talk about with that person?

5 A Just mine.

6 Q Okay. So you shared with him your traffic stop.

7 A Yes.

8 Q And the ensuing activity that followed from that
9 traffic stop.

10 A Only the items that I had seized.

11 Q Okay. And what did he tell you about his --
12 since you were exchanging intelligence, that was your part
13 of the exchange. What was his part of the exchange?

14 A It was -- we were just basically talking about,
15 you know, what current events and stuff that have been
16 going on with the Hell's Angels and the Vagos. And that's
17 about it. It wasn't much.

18 Q Well, if the purpose was to gather intelligence
19 or to learn intelligence, you were trying to learn what
20 you could, right?

21 A That wasn't the sole purpose of our conversation.
22 It was just casual conversation and exchanging information
23 at the same time, but --

24 Q Okay. So in the course of the conversation, you

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Clerk of Supreme Court

★ ★ ★ ★ ★

ERNESTO MANUEL GONZALEZ,

CASE NO. 64249

Appellant.

v.

THE STATE OF NEVADA,

Respondent.

_____ /

APPELLANT'S APPENDIX, VOLUME VIII

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

**Second Judicial District
State of Nevada**

THE HONORABLE CONNIE J. STEINHEIMER, PRESIDING

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No. 64249

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1 A I'm not aware of that.

2 Q In this case, with respect to Mr. Gonzalez, were you
3 given any investigative assignments or are you a background
4 resource?

5 A Background resource.

6 Q You would agree that not everything that a person
7 who claims to be a member of the Vagos club does is in
8 furtherance of the club, correct?

9 A Correct.

10 Q And you would agree that not everything that a
11 person who claims to be a member of the Vagos club does is
12 itself illegal, correct?

13 A Correct.

14 Q In fact, membership is not illegal?

15 A Correct.

16 Q It's protected by the 1st Amendment among other
17 things?

18 A Correct.

19 Q Before this case, have you been called on to render
20 an expert opinion with respect to the Vagos Motorcycle Club in
21 the State of Nevada?

22 A No.

23 Q During your original testimony back at the end of
24 October, you indicated that you were asked to evaluate three
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1 altercations that you believe were primarily between the Vagos
2 and the Hells Angels, and you discussed Laughlin, the wedding
3 chapel, and one other that wasn't specified. Are those, in
4 fact, the altercations that you base your opinion on with
5 respect to the Vagos here today?

6 A I'm sorry, which ones?

7 Q Okay. Laughlin, the Las Vegas Wedding Chapel, and
8 one that wasn't actually named in your earlier testimony. You
9 said there were three.

10 A No. Those -- those -- the first two you stated have
11 nothing to do with the Vagos.

12 Q Okay.

13 A So --

14 Q So with respect to the Vagos, those incidents don't
15 form the basis of your opinion here today?

16 A Of the Vagos, no.

17 Q You indicated that during the course of your law
18 enforcement employment that approximately eight years were
19 devoted to investigation with respect to the Hells Angels,
20 correct?

21 A Yes.

22 Q Approximately how much, if any, were devoted to
23 investigation of the Vagos?

24 A During that time period, very -- very little during
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1 that eight-year period.

2 Q During any other period, how much in terms of months
3 or years of your career has been devoted to investigation as a
4 member of law enforcement into the Vagos club?

5 A I'd say from 2001 on.

6 Q Until the present?

7 A To the present.

8 Q And in some of the background information we've been
9 provided with respect to training and education, some of your
10 training and education is listed as consulting, correct?

11 A Correct.

12 Q And that's when you talk to people to get
13 information or perhaps provide it to them, correct?

14 A When I say consulting, it's mostly that they call me
15 to assist in either background investigation on the outlaw
16 motorcycle gangs or respective members, things like that.

17 Q Okay. And you also listed some experience through
18 what is characterized as observations, correct?

19 A Yes.

20 Q When you're watching people?

21 A Yes.

22 Q Did you also include references to contemporary
23 fiction, such as television shows?

24 A No.

1 I'm sorry, did you say that I use that -- that I use
2 TV as --

3 Q Are they listed among your references or background
4 and experience?

5 A As having appeared on like *Gangland* or something
6 like that? Is that what you mean?

7 Q So you're listing that you appeared on them, not
8 that you used them as resources?

9 A Correct.

10 Q What sorts of published documentation might you rely
11 on, or do you not rely on any?

12 A It depends on what publication is out there from
13 other law enforcement agencies, reports, books that have been
14 written maybe involving outlaw motorcycle gangs.

15 Q Can you give me some examples? For example, books
16 that you might rely on or refer to?

17 A Not only the book, not on the Vagos -- no, that was
18 on the Mongols.

19 Nothing I can think of on the Vagos specifically.

20 Q How about clubs in general? What types of books
21 would you rely on or consider authoritative?

22 A Written by ex-members, people that have lived the
23 life. And again, take everything with a grain of salt,
24 everything that is said in there, too.

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1 Q Anything academic?

2 A I'm not aware of any academic books that were out
3 there. If they were out there, I would consider those, yes.
4 But I'm not aware of any that have been published specifically
5 by the Vagos.

6 Q Are you aware of any that have been published
7 regarding what you're characterizing as outlaw motorcycle
8 gangs other than the Vagos?

9 A I'm not sure I follow.

10 Q You said that you're not aware of any books
11 published specifically with respect to the Vagos that you
12 would consider academic authority. I'm asking, are you aware
13 of any that relate to other groups or clubs that you would
14 consider academic authority?

15 A I can't think of any off the top of my head as far
16 as academic that was written by a professor. I mean, there's
17 some studies I read as far as from some that claim to be not
18 necessarily members of Vagos, but other groups, smaller
19 groups, that have -- that are professors now that teach and
20 are published, like a thesis, things like that.

21 Q Are you familiar with a book called *The Mammoth Book*
22 *of Bikers*?

23 A No, I'm not familiar with that one.

24 Q So you have not read that?

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1 A No.

2 Q When you testified at the end of October, you
3 described sort of a hierarchy that you were familiar with
4 existing within the Hells Angels organizations, correct?

5 A Yes.

6 Q And that you believe that something similar was in
7 existence with respect to other clubs that you might be less
8 familiar with, correct?

9 A Yes.

10 Q Isn't it true that the clubs themselves are not
11 one-size-fits-all, that many of them have different view
12 points, different perspectives, they certainly have different
13 officers, that sort of thing, correct?

14 A Are you talking about the entire organization as
15 opposed to chapters? I'm not sure I follow the question.

16 Q Well, let's start there. In fact, the
17 organizational structure for the Hells Angels is not the same
18 as the organizational structure for the Vagos, correct?

19 A Correct.

20 Q And that's true on a national level?

21 A And international.

22 Q Okay. And also the individual chapters or charters
23 may be different from one another in different clubs?

24 A The structure is pretty much the same.

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1 Q How do you know?

2 A From talking to members, former members.

3 Q Of which?

4 A Of both Vagos and Hells Angels.

5 Q With respect to the Vagos, when was the most recent
6 time that you spoke to someone who claimed to be a member, a
7 former member?

8 A Probably a couple of weeks ago.

9 Q And prior to September 2011, when was the most
10 recent time you spoke to someone who was a member or former
11 member?

12 A Prior to September 2011? Is that what you said?

13 Q Correct.

14 A If not -- if not that same year, probably a couple
15 of weeks before that, within the year.

16 Q As an investigator and consultant, is it your common
17 practice to memorialize your interviews in writing?

18 A No, most of the time I'm not there since it's not my
19 case. I'm just there as an observer where I get to ask some
20 questions maybe. But I don't do the memorialization.

21 Q Would it be your expectations that the other
22 investigators involved would be keeping track of who they
23 spoke to and when and where?

24 A I would imagine, yes.

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1 Q Is that something that you would have access to
2 review and make sure that it got handled correctly or
3 memorialized accurately?

4 A Yes, I would like to hopefully be able to see the
5 end, the notes that were taken.

6 Q In preparing your testimony here today, were you
7 given an opportunity to review the notes of any of the
8 investigations that form the basis of your opinions?

9 A From this case, yes.

10 Q But you don't base your entire opinion of the Vagos
11 club on the allegations in this case, do you?

12 A No.

13 Q You actually report that you have prior experience
14 in investigating the club, correct?

15 A Yes.

16 Q And with respect to your former investigations, were
17 you given the opportunity to review your notes from earlier
18 cases or earlier interviews?

19 A I don't recall. I know I read some of the other
20 cases. As far as the notes and debriefings themselves, no.

21 Q In your experience, you said that you spoke to
22 someone as recently as a couple of weeks ago and you believe
23 that there was also conversation with members or former
24 members shortly before September 2011, correct?

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1 A Yes.

2 Q Who did you speak to?

3 A That was an individual that had infiltrated the
4 Vagos as a member. He's actually another source.

5 Q Let me stop you for a minute. Where did the person
6 infiltrate?

7 A He was a member. I can't remember which specific
8 charter, but he was in Southern California.

9 Q Approximately when?

10 A I don't recall the exact year, but it's within the
11 last two to three years.

12 Q And that's not someone that you're going to
13 identify?

14 A I don't have his full name. I just -- I just
15 know -- I have a number to call him and talk to him.

16 Q Would you if you could?

17 A I'm sorry?

18 Q Would you tell us here if you did?

19 A In this particular case, yes, because he's actually
20 coming out with a book that he's coming out with. It's not
21 like it's a secret source.

22 Q What about the others that form the basis of your
23 opinion?

24 A The others?

1 Q You've talked to more than one person, correct?

2 A As far as the Vagos?

3 Q Right.

4 A Yes. And I would give up his name, except I don't
5 have -- I can't remember his name. I don't have his real full
6 name. I was given an opportunity to speak to him at one of
7 our international outlaw motorcycle club conferences that he
8 came in as a speaker, and he was another individual that
9 worked as an agent for the police and became a Vagos member.

10 Q If you need to reach him again, how would you do
11 that?

12 A The one I could reach no problem by giving him a
13 phone call. The other one I would have to go through
14 another -- to the -- in order who the handler is.

15 Q But you're not refusing to disclose?

16 A No.

17 MS. PUSICH: Then, Your Honor, I would ask when we
18 have a break if he could get the information to contact them
19 to us, we would appreciate that.

20 THE COURT: Okay.

21 MS. PUSICH: Thank you.

22 BY MS. PUSICH:

23 Q Sir, comparatively, your experience in investigating
24 the Vagos and your experience in investigating the Hells

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1 Angels is not equal, correct?

2 A Correct.

3 Q You spent a great deal more time looking into the
4 Hells Angels than you have into the Vagos?

5 A Correct.

6 Q In your earlier testimony, you were providing
7 information regarding alleged gang rivalries and you
8 described, I believe, three incidents relating to Merced,
9 California, correct?

10 A I can't recall specifically. You'd have to refresh
11 my memory.

12 Q Okay. With respect to Merced, California, the
13 investigations involved no Vagos, correct?

14 A I don't believe so, no. I believe that was between
15 Mongols and Hells Angels.

16 Q During your earlier testimony, you were asked by the
17 State regarding alleged rivalries during the Laughlin incident
18 at the River Run; do you recall that?

19 A Not specifically, but I'm sure some of those
20 questions came up.

21 Q Are you familiar with that incident?

22 A With the Laughlin River Run, the 2002 shootout?

23 Q Correct.

24 A Yes.

1 Q And isn't it true that the primary combatants in
2 that appear to be both Hells Angels and Mongols?

3 A That's correct.

4 Q Not Vagos?

5 A Correct.

6 Q You also testified in participating in something
7 called Operation Simple Green, correct?

8 A That's correct.

9 Q Which was in part the execution of several search
10 warrants at certain locations to target people allegedly with
11 Vagos, correct?

12 A I don't think it was just targeting certain areas,
13 it was actually, I believe, encompassing wire taps on members
14 of Vagos and their activities, and again, the final takedown.

15 Q That occurred primarily or exclusively in the state
16 of California?

17 A No, it took part in other states also. I can't
18 recall what other states, but I know it was outside of
19 California also.

20 Q Was Nevada included?

21 A I can't remember.

22 Q And approximately when did that occur?

23 A I believe the takedown occurred in October of 2011.

24 Q Other than your conversations with people who are
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1 either members or claim to be former members of Vagos, do you
2 base your opinion with respect to the club allegedly being a
3 gang on any studies?

4 A Depends what you mean by studies. The research that
5 I've done involving the cases where they've been convicted of
6 especially legal gang enhancements in the state of California.

7 Q So you're starting at the conclusion?

8 A I'm not sure I follow you.

9 Q If you narrow your focus to situations in which the
10 conclusion has already been reached, wouldn't you agree that
11 your sample pool is too small?

12 A It depends on what we are looking at.

13 Q Well, for example, I'm going to ask you to think
14 about a hypothetical situation. If you responded to a series
15 of automobile accidents, and you found that in those
16 accidents, everyone who had been involved in driving had been
17 under the influence, would it then be appropriate to conclude
18 that every time there's an automobile accident, the driver
19 must have been drunk?

20 A Involving all those vehicles and everybody was found
21 to be --

22 Q No. In the world in general. If your focus was,
23 "I'm going to respond to those accidents," and in those
24 accidents, the circumstance happen to be that the driver is

1 drunk, would it be accurate to then extrapolate your finding
2 and say, "Therefore, in all automobile accidents, the driver
3 must have been drunk"?

4 A No.

5 Q So if you focus too narrowly on the conclusion, you
6 may not reach an accurate result?

7 A Again, depends on what we are looking at. If you
8 ask me about outlaw motorcycle club gangs, you talk about the
9 history, you talk about specifically the Vagos, you talk about
10 the type of crimes that members have been involved in, then no
11 other conclusion, at least in my opinion, could be reached as
12 far as one the primary activities of gangs.

13 Q Okay. But what you just said is that your research
14 is based on going to the cases in which a conviction has been
15 obtained with an enhancement. But that ignores all the cases
16 in which there was no enhancement alleged or no enhancement
17 found.

18 A I read other reports where no gang enhancement was
19 reached, also.

20 Q So if your research is focusing just on, "Here is a
21 conviction with this enhancement," your focus is too narrow,
22 correct?

23 A If that's all I based it on, yes. But that's not
24 all I base it on.

1 Q Okay. And you said you have had conversations with
2 two people that you will let us know who they were or how to
3 contact them, correct?

4 A Correct.

5 Q And would you agree that two is a very small number
6 of the people who are associated with or members of the Vagos
7 Motorcycle Club?

8 A That's all I have to base it on, then yes.

9 Q Okay. Who else?

10 A Oh, I forgot Agent Kozlowski, Darrin Kozlowski who
11 also infiltrated the Vagos as a prospect.

12 Q Let me stop you for a moment. How long ago and
13 where?

14 A That was in southern California. That was -- I
15 couldn't tell you years. It was either late '90s, early -- I
16 think close, yeah. I couldn't tell you exactly when it was.

17 Q So at least ten years ago?

18 A Oh, over ten years ago.

19 Q So now we have three?

20 A Uh-huh.

21 Q Still very small compared to the combined total
22 number of people who may be members, correct?

23 A Correct, absolutely.

24 Q You said that you were not relying on any academic,
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1 published-type information, correct?

2 A That I'm aware of in that regard, yes.

3 Q So other than your three interviewees or the
4 information from the infiltrating agent and two, and your
5 review of conviction-type documents or participation in cases
6 that result in convictions, what other resources do you rely
7 on in reaching your conclusions?

8 A In speaking with investigators that have
9 investigated the Vagos outlaw motorcycle gang.

10 Q And the investigators are relying on, in part,
11 interviews with other witnesses, correct?

12 A With witnesses, suspects, just investigating the
13 crime itself.

14 Q But not people that you personally interviewed in
15 those cases?

16 A Not people that I personally interviewed, no.

17 Q In preparing your testimony for this case, have you
18 relied on any records or other documents that have not been
19 provided to us?

20 A I don't know what's been provided to you, so I
21 couldn't say that.

22 Q You have presented information at law enforcement
23 trainings, correct?

24 A Correct.

1 Q Have you ever presented information that was subject
2 to questioning or attack, for lack of better discussions?

3 A I don't think I understand your question.

4 Q Have any of your conclusions or publications been
5 subject to a review to discuss your methodology?

6 A No. I don't have any publications.

7 Q Okay. But you do have information that's been
8 provided to others in training settings, correct?

9 A That's correct.

10 Q And none of that has been subject to academic
11 verification or attack?

12 A Well, it depends on what you mean by academic. Is
13 there a professor that has reviewed my work? I'm not sure I
14 understand what you mean.

15 Q That would be a good start. Has there been a
16 professor that's reviewed your work?

17 A No.

18 Q Outside the context of other people in law
19 enforcement, have there been people who reviewed your work?

20 A Not necessarily reviewed my work, but I just
21 recently attended a two-day symposium for experts on
22 specifically Hells Angels experts in Canada where an academic
23 or professor from one of the universities in Nova Scotia was
24 in attendance, and based on the conversations I had with him

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1 and based on the conversation that we all had with him, by the
2 time he left the course --

3 MR. SCHONFELD: Your Honor, I'm going to object
4 based on hearsay. I know the Court denied our motion to
5 sever, but this is spilling over to our client and not
6 questions I would ask or would ask --

7 THE COURT: Okay. I'm -- this is an expert.
8 Hearsay evidence he relies upon is admissible; therefore, I'm
9 going to overrule your objection.

10 Ms. Pusich, I think the question was asked.

11 Were you through with your answer?

12 THE WITNESS: Almost. Just that the professor that
13 was there, an expert on organized crime who originally stated
14 that the Hells Angels were not -- he didn't consider them an
15 organized crime group. By the end of this seminar, he was
16 convinced otherwise.

17 BY MS. PUSICH:

18 Q What qualifications did you have to have to attend?

19 A To be an investigator, specifically Hells Angels, to
20 be provided expert testimony, be providing expert testimony
21 specifically on Hells Angels. This included all the experts
22 across Canada and myself from the U.S.

23 Q Was there any sort of a test or anything that you
24 were required to go through to be allowed to attend?

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1 A No.

2 MS. PUSICH: Court's indulgence, Your Honor.

3 Thank you, Your Honor.

4 BY MS. PUSICH:

5 Q Sir, with respect to the sources that you said you
6 have interviewed, have any of those been specifically with
7 respect to your anticipated testimony in this case?

8 A Was it specifically --

9 Q Related to this case?

10 A No.

11 Q So you've spoken to no one as the basis of your
12 opinion here that was specifically tied to this case?

13 A Correct.

14 Q You indicated that one of the people that you would
15 provide contact information regarding had achieved the
16 prospect level in the Vagos, correct?

17 A That was ATF Agent Darrin Kozlowski.

18 Q So Agent Kozlowski would have had access to the
19 information of a club prospect, correct?

20 A Actually, would he know what it would take to become
21 a prospect?

22 Q Right.

23 A Yeah. He became a prospect, so I would assume he
24 would know what it would take.

1 Q But prospects themselves are limited in their access
2 to the organization, correct?

3 A Correct.

4 Q So he doesn't have a tremendous amount of
5 information with respect to a higher or deeper level of
6 involvement in the club, correct?

7 A As of that time. Now I don't know what information
8 he's gained since then as far as the Vagos. I couldn't tell
9 you that.

10 Q But as a result of his infiltrate to the level of
11 being a prospect, that would be the extent of his knowledge at
12 that time, correct?

13 A I couldn't tell you that. You would have to ask
14 him.

15 Q But you spoke to him in preparation for your
16 testimony here?

17 A No, I did not.

18 Q I'm sorry. You spoke to him as the basis of part of
19 the opinion you're expressing here?

20 A I spoke to him, yeah. I was going to use that as
21 the basis for my opinion as to what type of activities they
22 are involved in.

23 Q Are there any confidential sources that form the
24 basis of your opinion here today that you decline to disclose

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1 with respect to the Vagos?

2 A With respect to the Vagos, no.

3 Q So we are talking about the three that you've
4 discussed, correct?

5 A Correct.

6 MS. PUSICH: Thank you, Your Honor.

7 MR. SCHONFELD: Your Honor, I just want to know the
8 name of this professor in Canada, if I can find that out.

9 THE WITNESS: I can get you the name. I don't have
10 it off the top of my head.

11 MR. SCHONFELD: If you can give it to Mr. Hall and
12 Mr. Stege, they can provide it to me. Thank you.

13 THE COURT: Redirect?
14

15 REDIRECT EXAMINATION

16 BY MR. HALL:

17 Q Mr. Gil-Blanco you have rendered an opinion that the
18 Hells Angels are an outlaw motorcycle gang; is that correct?

19 A I believe I did.

20 Q All right. And you testified that during the course
21 of your career, you've had the opportunity to review -- well,
22 what have you had the opportunity to review which has allowed
23 you to render or enabled you to render an opinion regarding
24 the Hells Angels being an outlaw motorcycle gang?

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1 A Reviewing west coast office minutes, east coast
2 office minutes, reports of investigations involving Hells
3 Angels, speaking with investigators that have investigated or
4 actively investigating or have investigated Hells Angels'
5 activities, my investigations of the Hells Angels while
6 assigned as a police officer for the City of San Jose,
7 reviewing affidavits from other investigators, and speaking to
8 and debriefing former members.

9 Q All right. How many cases involving the Hells
10 Angels criminal cases have you been involved in?

11 MR. SCHONFELD: Your Honor, this is asked and
12 answered. We are going to be here for three days.

13 THE COURT: I hope not.

14 MR. SCHONFELD: I can read the portion the
15 transcript where he answered this question. He testified 29
16 times.

17 THE COURT: Okay. Why don't you read it. Go ahead,
18 because I don't have a transcript in front of me.

19 Do you agree he testified to that? All right.

20 MR. HALL: Sounds good to me.

21 BY MR. HALL:

22 Q How many criminal cases involving the Hells Angels
23 have you reviewed?

24 A Over a hundred.

1 Q How many times have the Hells Angels been deemed an
2 outlaw criminal gang or a member of the Hells Angels have been
3 found guilty of acting in furtherance at the direction of or
4 in association with the Hells Angels as an outlaw motorcycle
5 gang? In other words, the gang enhancement, how many times
6 has that been proven in California?

7 A Three cases that I'm aware of: The Kings County
8 case where several members were found guilty of the gang
9 enhancement, the recent one in Riverside County, the president
10 of the Orange County charter was found guilty by a jury of
11 being an active participant in a criminal street gang along
12 with criminal threats, and also in San Diego County, a member
13 was found guilty of assault with a deadly weapon with a gang
14 enhancement.

15 Q Were you privy to the guilty plea memorandum issued
16 in the federal cases regarding the convictions out of
17 Laughlin?

18 A I've seen them. I'm not totally involved in the
19 wording on it.

20 Q Do those threats predicate or the defendants admit
21 they were members of an outlaw criminal gang?

22 A I don't know. I don't know.

23 Q You indicate that you had talked to a number of
24 Hells Angels; is that right?

1 A Yes.

2 Q Now, there were -- let's call them witnesses 6
3 through 10. Were they percipient witnesses to the case that
4 we're trying right now?

5 A No.

6 Q Okay. Did they have any information regarding this
7 case?

8 A Not that I'm aware of.

9 Q The shooting at the Nugget, any information -- did
10 you derive any information from any of those witnesses about
11 this case?

12 A No.

13 Q Now, one of the Hells Angels that you spoke to was
14 Mr. Pettigrew; is that right?

15 A I spoke to Mr. Pettigrew, but not debriefed him, no.

16 Q So you talked to him, right?

17 A Yes.

18 Q And did you talk to him about any Hells Angels
19 business?

20 A I tried to, but he wouldn't talk about it.

21 Q Okay. And he's -- he was the president of the San
22 Jose chapter, right?

23 A Not when I spoke to him. When I spoke to him he was
24 a member.

1 Q Is he a member of Hells Angels?

2 A Yes.

3 Q Is he associated with the defendant, Mr. Villagrana?

4 A Yes.

5 Q So is it your opinion Mr. Villagrana is a member of
6 the Hells Angels?

7 A Yes.

8 Q And were you aware of any criminal activity that
9 Mr. Pettigrew was involved in?

10 A Yes.

11 Q All right. What kind of criminal activity was he
12 involved in?

13 MR. SCHONFELD: Objection. Beyond the scope.

14 MR. HALL: He talked about criminal activity. He
15 wants to say he's not involved in criminal activity. That's
16 what we are talking about.

17 THE COURT: No. I'll sustain the objection. It's
18 beyond the scope of cross.

19 MR. HALL: Okay.

20 BY MR. HALL:

21 Q Now, with respect to the Hells Angels and criminal
22 activity, you were a police officer for a number of years; is
23 that right?

24 A Yes, sir.

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1 Q All right. Now everybody who is involved in
2 criminal activity, do they kind of advertise the fact that
3 they are involved in criminal activity?

4 A No.

5 Q All right. Now a lot of people that are involved in
6 crimes have jobs; is that right?

7 A Yes.

8 Q All right. And people who embezzle for example,
9 they wouldn't tell anybody. Aren't most crimes secret by
10 nature?

11 A Yes.

12 Q All right. And one of the ways that you would
13 conceal criminal activity is by having a job; is that right?

14 A That could be one way, yes.

15 Q And based on your training and experience and the
16 information that you've gathered over your years, would it be
17 fair to say that the Hells Angels have tried to or gotten
18 smarter in trying to conceal any criminal activity that they
19 may be involved in?

20 MR. SCHONFELD: Your Honor, I'm going to object.
21 Speculation. Beyond the scope. Lack of foundation.

22 THE COURT: And leading.

23 MR. SCHONFELD: And leading.

24 THE COURT: I'm going to sustain certainly on the
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1 leading grounds. You're leading the witnesses.

2 MR. HALL: All right.

3 BY MR. HALL:

4 Q In your opinion, have the Hells Angels become more
5 sophisticated with respect to concealing any criminal activity
6 that they may be involved in?

7 MR. SCHONFELD: Still leading, Your Honor. Requires
8 a yes or no.

9 THE COURT: Sustained.

10 BY MR. HALL:

11 Q Can you render an opinion regarding Hells Angels and
12 criminal activity and whether they wanted to conceal their
13 criminal activity?

14 A Yes.

15 Q All right. And what is your opinion?

16 A That they are involved in criminal activity.

17 Q All right. Now to become a member of Hells Angels,
18 do you know whether or not that member has to have some value
19 to the gang?

20 MR. SCHONFELD: Your Honor, it's still leading.

21 THE COURT: You are leading questions. Sustained.
22 It requires a yes or no answer.

23 BY MR. HALL:

24 Q What is required to become a member of the Hells
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1 Angels by virtue of a person's value to the gang?

2 A It can be anything. Depending on what the
3 individual has to bring to the table such as involvement in
4 drug dealing. Does he have a distribution network? Does he
5 have access to drugs? Does he have access to firearms,
6 explosives? What kind of training, background does he have
7 such as, excuse me, military training is very -- is looked at
8 also. Especially, we are getting a lot more people back from
9 the war in Afghanistan and Iraq that are -- have military
10 training. We see more individuals being recruited with
11 military backgrounds into the Hells Angels.

12 Q All right. Well, if you had -- if a person was an
13 attorney and they could defend Hells Angels, would that be a
14 value to the club?

15 A That could be a value to the club, yes.

16 Q If a person had access to DMV records so they could
17 track people down, would that be a value to the club in your
18 opinion?

19 MR. SCHONFELD: Your Honor, this is still leading.
20 Objection. Leading.

21 THE COURT: It is. I'm not sure what the relevance
22 of the DMV record, even if we get there, how that refutes any
23 of the cross-examination, and that's what your purpose is now,
24 right? On redirect?

1 MR. HALL: Right. Well, on cross-examination, is
2 everybody -- every Hells Angel involved in a crime? And my
3 point here is that, you know, as long as you have some value
4 to the club, you don't necessarily have to be involved in
5 trafficking drugs, or beating people up, or murdering people.
6 There's other value that a Hells Angel member can have to the
7 club which isn't necessarily -- so I'm trying to develop that
8 line of question. That's where I'm going.

9 THE COURT: Okay. And I guess there's some point to
10 the DMV issue? You're not just speculating out there? This
11 witness has something to say about that or not? I mean, we
12 know of attorneys that are members of Hells Angels, so I
13 understood he made the comment about professionals. Okay.

14 MR. HALL: It's more of a hypothetical question,
15 Your Honor.

16 THE COURT: Okay. Then ask it as a hypothetical.
17 BY MR. HALL:

18 Q Hypothetically speaking with respect to potential
19 members of the Hells Angels having value to the gang, if they
20 could, for example, access DMV records, or police records, or
21 monitor police communications, or access ATF records for
22 example, would that be a benefit to the club?

23 A Yes, it would be.

24 MR. SCHONFELD: Your Honor, I'm going to --
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1 MR. HALL: With respect to --

2 MR. SCHONFELD: If I may make a record. .

3 I object to the hypotheticals as to what potential
4 members could access such as ATF. I think it's improper.

5 THE COURT: I might sustain the objection if the
6 jury were here. But it's not going to inflame me. We are
7 really talking about now whether or not this witness is
8 credible, is able to testify. And so we may deal with things
9 differently with a jury.

10 MR. SCHONFELD: Okay.

11 THE COURT: So overruled.

12 BY MR. HALL:

13 Q So are you aware of other experts who have testified
14 with respect to the Hells Angels being an outlaw motorcycle
15 gang?

16 A Yes.

17 Q All right. And are you aware of what information
18 other experts would rely upon to render an opinion as to
19 whether or not the Hells Angels are an outlaw motorcycle gang?

20 A Yes.

21 Q And what information would other experts who have
22 testified that the Hells Angels are an outlaw motorcycle gang
23 rely on?

24 A Same information I relied on to make an opinion or
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1 give an opinion. All the investigations involving outlaw
2 motorcycle gangs, specifically Hells Angels, the review of
3 reports, interviews with prior members or current members,
4 infiltrations that have been conducted on outlaw motorcycle
5 gangs, speaking to the individuals that have infiltrated those
6 organizations.

7 Q So is there any treatise, learned treatise, or any
8 kind of a book which outlines what you have to consider in
9 order to define the Hells Angels or the Vagos as an outlaw
10 motorcycle gang?

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

12 Q Now, Sandy Barger has written a book. Are you
13 familiar with Sandy Barger?

14 A Yes.

15 Q Who is he?

16 A He is what I would call the Godfather of the Hells
17 Angels. He's the one that brought them together and made them
18 what they are today.

19 Q Have you read his book?

20 A Yes, I have.

21 Q Are there other Hells Angels that have written
22 books?

23 A Yes.

24 Q Have you read their books?

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1 A Yes.

2 Q And did they assist you in forming an opinion
3 whether or not the Hells Angels are an outlaw motorcycle gang?

4 A Yes.

5 Q Sandy Barger committed a number of crimes; is that
6 right?

7 MR. SCHONFELD: Your Honor, I'm going to object.
8 Beyond the scope.

9 THE COURT: Overruled.

10 THE WITNESS: Yes, he did.

11 BY MR. HALL:

12 Q Went to prison for drug trafficking as well as
13 conspiring to bomb a rival gang member; is that right?

14 A The Outlaws in Janesville, Ohio, yes.

15 Q Now, speaking of rival gangs, are you familiar with
16 the rivalry between the Hells Angels and the Vagos?

17 A Yes, I am.

18 Q All right. And have you reviewed any case files
19 with respect to the rivalry which exist between the two outlaw
20 motorcycle gangs?

21 A Yes.

22 Q Are you familiar with the case involving the brawl
23 at the swap meet down in southern California in Costa Mesa in
24 2001?

1 A Yes. Yes, I am.

2 Q All right. And was that -- can you tell me what you
3 know about that?

4 MR. SCHONFELD: Your Honor, I'm going to object.
5 Beyond the scope. The incidents that I asked this witness
6 about on cross-examination were the ones that were raised on
7 direct. I don't believe this has been in any portion of his
8 testimony up until this point of time, so it would be beyond
9 the scope of the cross. And I know the Court made it
10 abundantly clear that when the State rested on their direct,
11 that this would not be an opportunity to broaden the scope of
12 that.

13 MS. PUSICH: Your Honor, we join in that objection.

14 THE COURT: I did say I wanted to end his direct and
15 I didn't want to recess in October and come back in January
16 and hear a whole bunch more of new incidents and new support
17 for his testimony.

18 What is the basis of raising this particular issue
19 now?

20 MR. HALL: Well, Your Honor, the basis of raising
21 this now is all of this information is contained in my motion,
22 and all that discovery has been provided to the defense. And
23 on cross-examination, the defense asked him, you know, they
24 tried to impugn his integrity and ability to testify regarding

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1 his opinion and limit his opinion to what they brought forth
2 on cross-examination. But his opinion isn't limited to the
3 information they brought up on cross-examination.

4 With respect to their motion to limit my ability to
5 rehabilitate my witness, I would ask the Court for a little
6 leeway. If you recall, the information that Jorge Gil-Blanco
7 provided, had been provided to the defense well before that
8 motion. He testified before the grand jury. They had their
9 PowerPoint. They had the benefit of almost all of the
10 discovery that he is relying on. And in addition, the reason
11 that we are going forward --

12 THE COURT: I just don't remember, was this Costa
13 Mesa brawl of 2001 discussed by the witness in his -- in his
14 testimony at the grand jury?

15 MR. HALL: No.

16 THE COURT: Was it discussed in anything prior to
17 the supplementations that happened recently?

18 MR. HALL: What do you mean discussed?

19 THE COURT: I mean, did you raise it in a motion?
20 When did you discuss it first?

21 MR. HALL: In my motion.

22 THE COURT: Filed? I mean, I have a motion to
23 supplement and the addendum.

24 MR. HALL: I think it was filed after the 29th of
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1 October.

2 THE COURT: Of October.

3 And the purpose of this is to indicate there is
4 other information that your witness relied upon in making his
5 opinion?

6 MR. HALL: Right.

7 THE COURT: And you disclosed that to the defense at
8 least sometime before today?

9 MR. HALL: Yes.

10 THE COURT: I did say I didn't want to go over a lot
11 of extra, but this does go to rehabilitate him with regard to
12 the foundation of opinion which was the cross-examination of
13 -- tenor of the cross-examination by both Mr. Villagrana and
14 Mr. Gonzalez that he did not have sufficient information to
15 render an opinion.

16 MR. SCHONFELD: Your Honor, just so the record is
17 clear, this is in the form of an opinion really to the State
18 of Nevada for not having provided us with discovery prior to
19 the October 29th hearing. The Court advised it would not
20 require us to perform our cross-examination without being
21 adequately prepared and having adequate notice.

22 THE COURT: Let me hear what he says. I do remember
23 that. So I'm not completely immune to your concerns.

24 MR. HALL: Well, it's interesting, Your Honor. I
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1 was penalized because I tried to consider getting this
2 evidence before the Court and expediting this matter so that
3 we could get this thing going so it didn't drag on into this
4 year. So as opposed to continuing it out, and if you recall,
5 I was hit with a number of motions just weeks before which
6 hindered my ability to respond or to file my motion. I'm
7 acting in good faith and giving them all the information
8 before we get to trial, and I'm the one that's getting
9 penalized. So I'm really at a loss trying to figure out why
10 I'm being penalized when I'm the one doing all the work in
11 trying to move this along.

12 THE COURT: I don't think the Court sanctioned you.
13 Were you sanctioned, Mr. Hall?

14 MR. HALL: There was mention of penalty by the
15 defense.

16 THE COURT: That's what the defense called it.

17 MR. HALL: I just say if there is a limitation of
18 it, I would ask for some consideration based upon my good
19 faith.

20 THE COURT: As I said, I'll let you inquire and
21 we'll see how far I'm going to let this go and how it relates
22 to their cross-examination.

23 MR. HALL: Well, and I would also indicate now that
24 I'm looking at my exhibit that was admitted at the grand jury,
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1 and I can just probably rephrase my question.

2 Counsel, you're familiar with the Exhibit J,
3 correct? All right.

4 THE COURT: So let the record reflect you're
5 approaching the witness with Exhibit J from the grand jury?

6 MR. HALL: Yes. Would you like me to ask your
7 permission?

8 THE COURT: No. I want to make sure we know what's
9 shown him.

10 BY MR. HALL:

11 Q I'm showing you what's been marked for
12 identification Exhibit J, it's the last couple pages. It's
13 entitled HA versus Vagos violent incidents.

14 Sir, would you please review that document?

15 A Yes.

16 Q All right. Now are there a number of violent
17 incidences between the Hells Angels and Vagos that we've
18 documented in that exhibit?

19 A Yes, sir.

20 Q Would you walk us through those, please?

21 A The first one was the Orange County incident that
22 you're referring to which I did include in the PowerPoint.
23 It's the Hells Angels, and Mongols, and Vagos involved in a
24 fight at swap meet. Several injuries resulting using gas

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1 tanks, shock absorbers, and handlebars at the swap meet.

2 Q Let's stop right there. Now that criminal activity
3 would include crimes that would be punishable as a felony; is
4 that right?

5 A Yes. Assault with a Deadly Weapon.

6 Q Assault with a Deadly Weapon, Assault with a Deadly
7 Weapon, that type of thing?

8 A Yes, sir.

9 Q All right. What's your next crime?

10 A Next one was Bullhead City, Arizona. That's the
11 Hells Angels and Desert Road Riders assaulted a -- actually
12 the Hells Angels assaulted a Vago at a bar in Bullhead City.
13 That was June 19th of 2009.

14 Q All right. And what's the next one?

15 A Santa Cruz, California. It's where the Hells Angels
16 assaulted Vagos over them establishing a new chapter in Santa
17 Cruz. That was January 27th, 2010.

18 Q All right. Next one?

19 A Oildale, California. Hells Angel stabs, kills a
20 Vagos prospect, stabs a full-patch Vago. That was May 30th,
21 2010.

22 Number five. Yavapai County, Arizona. Hells Angels
23 ambush Vagos as they drive by the clubhouse. 50 shots
24 exchanged. Four injured on both sides. Five Hells Angels

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1 charged as primary aggressors. That was August 21st, 2010.

2 Number six, Lake County, California. Sonoma Hells
3 Angels associate saw some piece Vagos member in Lakeport,
4 California, April 16th, 2011.

5 And number 7, Lake County, California, Sonoma Hells
6 Angels members assault and beat a Vagos member in the Konocti
7 Vista Casino. That was June 4th, 2011.

8 Q Now, were those incidences documented by police
9 reports?

10 A Yes, they were.

11 Q All right. Did they involve crimes that could be
12 punished as felonies?

13 A Yes.

14 Q And they were committed by Hells Angels?

15 A Yes.

16 Q All right. And --

17 MR. SCHONFELD: Your Honor, I'm just going to make a
18 record that we established on cross-examination that a number
19 of the bases upon which this witness forms his opinion, the
20 question was could these be charged as felony conduct. For
21 example, the Yavapai County where the exhibit says 50 shots
22 exchanged, four injured, five Hells Angels charged as primary
23 aggressors. That was a case that was dismissed.

24 THE COURT: So what is the record you're making?
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1 MR. SCHONFELD: It's inaccurate testimony. It's
2 cumulative and irrelevant to this point, Your Honor. If he's
3 going to talk about cases where people are acquitted or
4 dismissed.

5 THE COURT: I'm going to overrule your objection.
6 It's not irrelevant for an expert to consider the conduct
7 irrespective of what a jury result is. The jury result goes
8 to the weight of that information and what maybe an expert
9 should consider, but it does not go to its exclusion. So I am
10 going to overrule your objection if that's the basis.

11 MR. HALL: Thank you. And to clarify the record, it
12 wasn't dismissed by a jury. It was dismissed pursuant to a
13 discovery issue.

14 THE COURT: Whatever.

15 MR. HALL: Whatever.

16 MR. CHESNOFF: I know this is Mr. Schonfeld's
17 witness, but this is on a legal point, Your Honor.

18 THE COURT: No. One person.

19 MR. CHESNOFF: I'm going to share it with him.

20 THE COURT: Sure.

21 MR. SCHONFELD: Your Honor, the distinction is that
22 you as the judge presiding over this hearing will make the
23 ultimate decision about whether or not this witness can
24 testify as an expert. As a result of that, the Court needs to

1 know when there are cases that are dismissed or they're
2 acquittals, that they were in fact acquittals or dismissals so
3 the Court can give it whatever weight is appropriate in making
4 the determination as to whether or not this witness has an
5 appropriate basis with which he would be admitted as an expert
6 and render the opinions he's attempting to render.

7 THE COURT: Absolutely. It goes to the weight of
8 the expert's opinion and whether or not he is an expert, but
9 it doesn't go to specifically its exclusion.

10 BY MR. HALL:

11 Q David La Brava?

12 A Yes.

13 Q Who is he?

14 A He is a full-patch member of the Hell's Angels, the
15 Oakland charter.

16 Q All right. And does he have some legitimate
17 business?

18 A He was a consultant originally and also an actor for
19 the show.

20 Q *Sons of Anarchy*?

21 A *Sons of Anarchy*. Thank you.

22 Q Has he been involved in criminal activity?

23 A Yes.

24 Q And what type of criminal activity has he been

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1 involved in?

2 A He was arrested during one of the USA runs. I can't
3 recall what state, what city it was in. I can get the
4 information, but he was arrested for a sexual assault and
5 possession of controlled substances.

6 Q Now, with respect to, you know, there was a question
7 that a lot of Hells Angels members have legitimate jobs and
8 family; is that right?

9 A Yes, sir.

10 Q All right. Does Mr. Villagrana have a family or a
11 job?

12 A I don't know what his status is exactly at this
13 point, sir.

14 Q Now, you were asked regarding the Vagos, you were
15 given a hypothetical, so I would like to give you a
16 hypothetical. If you had a situation given the information
17 that you have in Exhibit J regarding the prior incidences of
18 violence between the Vagos and the Hells Angels, would that
19 indicate to you that there is a rivalry?

20 A Yes.

21 Q All right. And has the rivalry been documented
22 through Operation Simple Green for example?

23 A Yes.

24 Q And has it been documented through other courses?

1 A Yes.

2 Q All right. And you testified earlier that
3 there's -- you have information that incidences of violence as
4 communicated throughout the country with respect to the Vagos
5 and the Hells Angels; is that correct?

6 A That's correct.

7 Q All right. So now this particular case where you
8 have Vagos having a national meeting at the Nugget and Hells
9 Angels being at that location, would that be viewed based upon
10 your opinion as a showing of disrespect for the Vagos?

11 MR. SCHONFELD: Your Honor, I object. It's leading.

12 MS. PUSICH: And beyond the scope, Your Honor.

13 THE COURT: Okay. It is.

14 Did you have him testify as to his opinion before
15 with regard to the Vagos -- we have -- I have heard testimony,
16 I don't remember where, about the national meeting and the
17 Hells Angels being there and who considered the Nugget theirs.
18 Was it in this hearing that you heard this testimony
19 previously?

20 MR. HALL: Yes, I believe so.

21 MS. PUSICH: And, Your Honor, we would simply ask
22 that the Court review the transcript after the hearing because
23 we don't believe it was.

24 THE COURT: Okay. It was a different hearing.

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1 MS. PUSICH: Correct.

2 THE COURT: It's kind of hard at this point to
3 separate all the information and where the source is. The
4 objection is beyond the cross. I don't know exactly if you're
5 eliciting a new opinion now. Are you going for a new opinion?

6 MR. HALL: No. I wouldn't say it's a new opinion.
7 This is at the directive of in conjunction with in affiliation
8 with outlaw criminal gang regarding this fight. That's what I
9 was going for.

10 THE COURT: Go ahead and reask the opinion and you
11 can ask the basis for that opinion.

12 BY MR. HALL:

13 Q Okay. Do you have an opinion that the fight that
14 occurred at the Nugget, including the murder of Jeffrey
15 Pettigrew and the shooting of Leonard Ramirez and Diego Garcia
16 allegedly by Villagrana and Mr. Gonzalez, was that at the
17 direction of or in affiliation with or --

18 MS. PUSICH: Your Honor, first I object that it's
19 compound. But beyond that, Your Honor, I think the
20 characterization is inappropriate. Ultimately a jury will
21 decide whether or not there was a murder here, there's a
22 homicide.

23 THE COURT: Okay. You can talk about the death.

24 BY MR. HALL:

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1 Q With the specific intent to assist the activities of
2 the respective outlaw criminal gangs?

3 A Yes.

4 Q And what's the basis of that opinion?

5 A Based on the rivalry that I've seen, observed, the
6 information that I have from various reports, and also
7 including the debriefing of one of the individuals involved in
8 this case, Jabbers, that yes, it was done as a gang --

9 MS. PUSICH: Objection with respect to testimony
10 from Mr. Rudnick coming into this hearing.

11 MR. HALL: Your Honor, we've admitted it as an
12 exhibit in this hearing.

13 THE COURT: I'm not exactly sure what the basis of
14 the objection is. If he's an expert and he's relied on
15 testimony.

16 MS. PUSICH: Your Honor, we don't know if he's an
17 expert yet.

18 THE COURT: Right. But for purposes of today's
19 hearing, he should be allowed to testify as though he were so
20 that I can make a decision. He has enough information to
21 support an opinion, so I'm going to overrule your objection.

22 You said -- you were saying --

23 BY MR. HALL:

24 Q The basis of your opinion regarding these crimes
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1 being committed with the specific intent to further or assist
2 the activities of the respective Hells Angels and Vagos?

3 A Based on the incidence of violence that I delineated
4 earlier that I put in my PowerPoint at the grand jury. Based
5 on the reports that I reviewed, based on the conversation I've
6 had with former members of the Vagos, and the -- again, I
7 reviewed the statements made by Jabbers on his debriefing on
8 this particular case which goes into the cases that I also
9 testified in like the Santa Cruz case, things like that, in
10 which I think play a big part in it.

11 Q All right. So how would the prior incidences of
12 violence between the Hells Angels and Vagos be related to this
13 case?

14 A It's a build-up of continuing and build-up of
15 rivalry over territory. And then also in the -- in reading
16 the debriefing of Mr. -- of Jabbers, Mr. Rudnick, when he
17 states in there as far as the -- one of the reasons that he
18 was --

19 MS. PUSICH: Your Honor, excuse me. I apologize.
20 But I think that the State may be mistaken. My recollection
21 is that during the last hearing, they moved for the admission
22 of the transcript of Mr. Rudnick. We objected and you
23 sustained our objection and did not admit it because we don't
24 have the opportunity, we have not had, to cross-examine him.

1 He was questioned specifically in the context of anticipating
2 his testimony in this case, being negotiated on the basis of
3 that. That's not the same as an expert relying on outside
4 sources or independent investigations. I think it implicates
5 our confrontation rights, and I think the State is incorrect
6 that it's already been admitted as an exhibit.

7 MR. HALL: Well, it was continued so that they could
8 have a chance to review whatever they needed to review and
9 cross-examine him. So now I'm moving for the admission of it.
10 He's relied on it. And if they wanted to cross-examine him on
11 it, they could have.

12 THE COURT: Okay. It was not admitted previously,
13 but I don't think I ruled on it. I don't think I denied the
14 admission. I think I continued it for the opportunity for you
15 to review. You do have it now, right?

16 MS. PUSICH: We have had it for some time. The
17 issue is whether or not it should be coming in through this
18 witness. We contend it should not.

19 THE COURT: For purposes of today's hearing and
20 purposes of this witness's testimony, I'm not going to object
21 to it coming in for purposes of -- basis of his relying upon
22 it.

23 Now, whether or not we are going to have a different
24 ruling, evidentiary ruling at a trial before a jury is very

1 significant. The issue of the confrontation clause is
2 important, and we do need to explore that in its entirety with
3 regard to this particular report, and I know there's been
4 allegations raised as to all of them.

5 MR. SCHONFELD: Your Honor, we would join the
6 objections raised.

7 THE COURT: Okay. I understand. But for purposes
8 of today's hearing, it is certainly admissible to show what
9 he's relying and basing his opinion on.

10 So I is admitted.

11 MS. PUSICH: And, Your Honor, for purposes of this
12 hearing only, correct?

13 THE COURT: Correct. Everything is marked Alpha.
14 That means nothing admitted has been admitted for purposes of
15 the trial.

16 MS. PUSICH: Thank you.

17 MR. HALL: Did you finish your answer?

18 THE WITNESS: I think I did.

19 MR. HALL: All right. Thank you. I have no further
20 questions.

21 THE COURT: Yes?

22 MR. SCHONFELD: Usually when I say it will be brief
23 I really am brief, so this will be brief.

24 THE COURT: Okay.

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RECROSS-EXAMINATION

BY MR. SCHONFELD:

Q Mr. Gil-Blanco, it is not your testimony that in order to become a Hells Angel you have to have access to guns, is it?

A That is not my testimony, no.

Q It is not in your testimony in order to become a member of Hells Angels you have to have a military background, is it?

A No.

Q It is not your testimony in order to become a member of the Hells Angels you have to have access to illegal drugs, is it?

A No.

Q It is not your testimony that in order to become a member of the Hells Angels you have to have some form of professional licensing background is it?

A No.

Q It is not your testimony that in order to become a member of the Hells Angels, you have to have access to the department of motor vehicle records, is it?

A No.

Q In fact, members are admitted to the Hells Angels Motorcycle Club as a result of their love for motorcycles,
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1 correct?

2 A I disagree with that saying just in itself, no.

3 Q Members are admitted because they like a
4 brotherhood, they like to drink beer, they like to hang out,
5 and they like to drive motorcycles, correct?

6 A I think some members get into it for that
7 originally, but things change.

8 Q And just for that, correct?

9 A Some members, yes.

10 MR. SCHONFELD: Nothing further, Your Honor.

11

12 RE CROSS-EXAMINATION

13 BY MS. PUSICH:

14 Q Sir, with respect to the Vagos, the same answers to
15 the same questions would apply, correct?

16 A Exactly.

17 Q You described -- discussed an exhibit that came out
18 of the grand jury that documented seven incidents of prior
19 contact between the Hells Angels and the Vagos, correct?

20 A Yes, ma'am.

21 Q And in each of the seven that I've described here
22 today, I've described them as the Hells Angels instigating or
23 causing the incident and the Vagos essentially being on the
24 receiving end?

1 A I don't know if I classify it specifically like
2 that.

3 Q Well, you said with respect to Orange County, the
4 Hells Angels and the Mongols attacked the Vagos.

5 With respect to Bullhead City, the Hells Angels
6 attacked the Vagos.

7 With respect to Santa Cruz, the Hells Angels
8 attacked the Vagos.

9 With respect to Oildale, the Hells Angels attacked
10 the Vagos and killed one and another was injured.

11 With Yavapai, which the counsel has indicated was
12 dismissed, the allegation was that the Hells Angels ambushed
13 the Vagos.

14 With Lake County, that the attack was against the
15 Vagos.

16 And with the casino incident in Lake County, that
17 the attack was against the Vagos, correct?

18 A Except for the first one. You said the Mongols and
19 Hells Angels. Did not affect the Vagos. The Mongols were
20 present at this incident, but it was primarily between the
21 Vagos and Hells Angels. As to who initiated, I couldn't tell
22 you.

23 Q But when you first testified, it was characterized a
24 little bit differently, correct?

1 A I didn't intend it to be characterized as that.

2 Q And that forms the basis for your concluding that
3 there's rivalry?

4 A That's one of the things, those incidents, yeah,
5 absolutely.

6 MS. PUSICH: Thank you.

7 THE COURT: Anything further for this witness?
8 Okay. You may step down.

9 THE WITNESS: Thank you, ma'am.

10 THE COURT: You're welcome.

11 I think this is a good time to rest for the lunch
12 hour. We'll be in recess until 1:30 and we'll continue on at
13 that time.

14 MR. CHESNOFF: Your Honor, can you tell us what you
15 anticipate we are going to do this afternoon so that we can be
16 prepared to do it?

17 THE COURT: We have some issues with regard to the
18 gang enhancement evidence that's going to be presented, so I
19 think we are going to deal with that. We have it scheduled
20 for today and tomorrow.

21 MR. CHESNOFF: I understand. I don't believe that
22 involves evidence. I think it's just argument.

23 THE COURT: Well it certainly does with regard to
24 the Petrocelli issues, and you all have argued that most of
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1 this is Petrocelli. So yeah, that involves witnesses. We
2 better have some evidence. I can't rule on it without the
3 witness.

4 MR. HALL: I think I'll go ahead and call witnesses.

5 MR. FREY: Are we going to argue on the
6 admissibility of Mr. Gil-Blanco's testimony?

7 THE COURT: Sometime.

8 MR. FREY: Not after lunch?

9 THE COURT: Probably not right after lunch. I would
10 like to get all the evidence out and see where we are.

11 MR. CHESNOFF: That helped me.

12 THE COURT: All right. Great. Thank you.

13 Court is in recess.

14 (A lunch recess was taken.)

15 THE COURT: Thank you. Be seated.

16 MR. CHESNOFF: Your Honor, before we took a break, I
17 asked the Court a question about where we were headed, and the
18 Court said that we were going to commence a Petrocelli
19 evidentiary portion of the proceedings, but here is where I'm
20 confused, Your Honor. As the Court knows, Petrocelli and --
21 applies to prior bad acts. And before prior bad acts can be
22 admitted, the State has to show by plain, clear, and
23 convincing evidence that the defendant committed the offense.
24 And that goes back as far as the Tucker case which is 82

1 Nevada 107.

2 What I'm trying to figure out, Your Honor, is the
3 only two events that involve my client in any of the pleadings
4 that we've read are the incident where he was in a traffic
5 accident and a gun was found. And the second one where he was
6 involved in a fight on a street. On the street fight, no one
7 was arrested, no one was charged, no one was prosecuted. And
8 on the second one, there was no connection at all with any
9 club activity save and except for the fact I think my client
10 may have been wearing a leather jacket with the insignia of
11 the Hells Angel on it. The rest of the events that we've seen
12 in the motion relate to some of the underlying material that
13 the proposed expert has relied upon. So, I don't understand
14 for what evidentiary purpose these witnesses are being called
15 that relate to a gamut of events over a 12-year period
16 involving multiple jurisdictions in which my client was not
17 present by lay witnesses who are not being offered as experts,
18 or in some instances are. But we don't understand how it
19 relates to this particular offense that occurred in Reno,
20 Nevada. So that's why I was trying to figure out what we were
21 doing, Your Honor, because I don't understand why we are
22 hearing from all of these people, especially since, if it's
23 not prior bad act and it's only being used for the gang
24 enhancement, there's no need to address any of it if either,

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1 one, we're not convicted; or two, at least at a minimum at the
2 time of a bifurcation as we requested.

3 So with that said, Your Honor, I just don't know why
4 these people are testifying, and I would object to them
5 testifying in support of anything that the State has
6 presented, Your Honor.

7 THE COURT: Okay. Before I hear from the State, let
8 me make -- perhaps in my desire to move forward with as much
9 evidentiary information as we could get, I should have told
10 you that I've reached a decision on the bifurcation motion,
11 and I'm going to deny it. So the bifurcation motion is going
12 to be denied. I haven't written the order yet, but I can tell
13 you today that I reviewed the arguments presented by the
14 defendant in the motions to bifurcate, and I do intend to deny
15 it. And that can be a very brief written decision that will
16 explain my analysis.

17 But that being said, we have two issues. One is bad
18 act evidence for either defendant that the State may want to
19 present. The other is the defendants are charged with an
20 enhancement that requires proof of the gang activity and that
21 it is a gang. And the statute is very clear as to what's
22 required under 193.168. That enhancement has to be proven to
23 the trier of fact, the jury, and a decision will have to be
24 reached by them. Now, the question you've raised is whether

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1 or not all these instances can come in by lay witnesses or
2 experts. I think the statute is very clear that expert
3 testimony is meant to show particular conduct, status and
4 customs indicative of criminal gangs and including but not
5 limited to, and then there's a laundry list which is what the
6 State is trying to present.

7 Now, if the State is presenting lay witnesses to
8 present this information, you certainly can object. I'll
9 probably hear whatever their presentation is and then I'll
10 rule on whether or not the evidence and the witnesses is
11 admissible to prove the gang enhancement.

12 But we have two issues: Whether or not the evidence
13 is gang related for the enhancement proof, or whether or not
14 it is bad act evidence.

15 With regard to your client, I agree, it seems clear
16 that the Pink Poodle incident and the Santa Cruz affray are
17 the two issues that they want to raise as gang enhancement
18 evidence which is also bad act evidence with regard to your
19 client, and that I would need to make a determination on those
20 two.

21 With regard to Mr. Gonzalez, there are four issues
22 that are going to have to be resolved through a Petrocelli
23 analysis at a minimum. Now, I know you all have argued that
24 all of the enhancement evidence is bad act evidence, that all

1 it needs is that analysis. I'm not sure I'm going to agree
2 with that and the State has certainly objected, but I have
3 identified at least four for Mr. Gonzalez and at least two for
4 Mr. Villagrana.

5 We need to get the evidence out, hear the witnesses
6 they are going to present. Obviously lay witnesses can talk
7 about bad act evidence if it's being presented for bad act
8 evidence, but they can't for the gang enhancement purposes.

9 So we've got two things going on. My point is let
10 me hear what the State wants to do. I don't know any more
11 than you do about exactly what they plan to present and who
12 they plan to present, and whether or not they are planning on
13 identifying more experts than they have. If some of these
14 people they want to call in as experts, ultimately, and that's
15 part of what they are presenting today, I don't know.

16 MR. CHESNOFF: Thank you, your Honor.

17 THE COURT: That's kind of where I'm at. So I
18 thought we could move forward, and I would like to hear at the
19 very least we have to hear the testimony with regard to those
20 six incidents or so.

21 And then beyond that, depending on how the State
22 wants to present the evidence of the gang enhancement. Okay.

23 MR. HALL: May I proceed?

24 THE COURT: Okay.

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1 MR. STEGE: State calls Rob Dimel.

2 THE COURT: Could you repeat the last name for me.

3 MR. STEGE: Rob Dimel, D-I-M-E-L.

4

5 ROBERT DIMEL,

6 having been first duly sworn, was examined

7 and testified as follows:

8

9 DIRECT EXAMINATION

10 BY MR. STEGE:

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

12 A Yes. It's Robert Dimel. D-I-M-E-L.

13 Q I was mispronouncing it. Sorry about that.

14 How are you employed?

15 A I'm a police officer with the city of Costa Mesa.

16 Q How long have you been with the Costa Mesa Police
17 Department?

18 A About 17 years.

19 Q What is your current assignment?

20 A A patrol officer.

21 Q Let me direct your attention back to October of
22 2001. What was your assignment at that time?

23 A I was assigned to the gang unit.

24 Q And at that point, how much time had you spent with
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1 the gang unit?

2 A Approximately four to five years.

3 Q Would you orient the Court, I guess, where in
4 California is Costa Mesa generally?

5 A It's in Orange County.

6 Q And what sort of training did you have in
7 gang-investigation stuff at the point of October 26th?

8 MR. FREY: I object. If they are not offering the
9 witness as an expert, I don't think we need to get into
10 training and qualification. I believe he's a fact witness.
11 That's how they noticed him up in the pleading.

12 THE COURT: I don't know.

13 MR. FREY: Well, I hope you would know and I hope I
14 would know.

15 THE COURT: They can notice an expert. They are
16 still within the time frame to notice an expert.

17 MR. FREY: I understand. But with respect to
18 everyone else they purported to be an expert, they've given us
19 a CV and they identified them as such. They have not
20 identified Mr. Dimel as an expert.

21 THE COURT: Your objection is premature at this
22 point. I'm going to hear what he has to say. I don't know if
23 they are going to try to identify him as an expert.

24 MR. CHESNOFF: Your Honor, I would like to know most
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1 respectfully so I know how to cross him, whether as a lay
2 person or an expert.

3 THE COURT: I think we'll find out. Let's keep
4 going. I'll let you renew the objection.

5 MR. CHESNOFF: Okay. Thanks.

6 BY MR. STEGE:

7 Q Tell us about your training in gang investigation,
8 training and experience leading up to October of 2001.

9 A At that point, I had gone to the basic gang
10 investigators' course put on by the LA County Sheriff's
11 Department and various in-service trainings through the Orange
12 County Gang Investigators Association.

13 Q Have you had a focus within gang investigations with
14 your agencies?

15 A I did.

16 Q And what types of gangs did you look at?

17 A My focus primarily was with the Hispanic street
18 gangs.

19 Q Did you have at the time or leading up to the event
20 we are here to talk about, did you have much experience in
21 outlaw motorcycle gangs, Hells Angels, Mongols, Vagos,
22 anything like that?

23 A Very little.

24 Q But had you had exposure to any of those groups?

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1 A Yes.

2 Q Can you tell us briefly about that?

3 A Just through training, some of the training that was
4 put on, there was various classes on that.

5 Q So you were sort of aware of what outlaw motorcycle
6 gangs were, but not a lot of experience in Orange County or
7 Costa Mesa?

8 A Correct.

9 Q Did you have, leading up to October of 2001, any --
10 did you yourself investigate any crimes against either of
11 those two groups I just mentioned?

12 A No.

13 Q How about outlaw motorcycle gangs up to that point?

14 A No.

15 Q So you focused on the Hispanic street gangs?

16 A Yes.

17 THE COURT: Okay. So Mr. Stege, that kind of gives
18 us some background on Mr. Dimel.

19 MR. STEGE: Yes.

20 THE COURT: What is the purpose of this testimony?

21 MR. STEGE: This -- we had testimony by Jorge
22 Gil-Blanco about the Costa Mesa swap meet or the Orange County
23 incident in 2001. It's the large fight between Vagos, Hells
24 Angels, and Mongols. And all the pleading papers, they denied
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1 that it either happened or it has any significance, except
2 this witness was present when it happened.

3 THE COURT: Okay. But --

4 MR. STEGE: And can explain the gang aspects to it.

5 THE COURT: What is the evidentiary purpose for this
6 testimony?

7 MR. STEGE: To prove up the gang enhancement. It
8 goes to the gang enhancement. It supports Jorge Gil-Blanco's
9 testimony.

10 THE COURT: How do you do that?

11 MR. STEGE: How --

12 THE COURT: How do you present this evidence to
13 prove up the gang enhancement?

14 MR. STEGE: By having him say, "I was there. This
15 is what I saw happening. I saw the Vagos and Hells Angels
16 have this gigantic brawl in the middle of a motorcycle swap
17 meet."

18 THE COURT: Okay. So you're trying to show a
19 specific instance --

20 MR. STEGE: Right.

21 THE COURT: -- of an act, a custom of some sort --

22 MR. STEGE: Right.

23 THE COURT: -- through a lay witness.

24 MR. HALL: In addition to.

1 MR. STEGE: Right. In addition to the felonies that
2 they commit during the course of this. It also explains the
3 rivalry. This is a first in the four that the expert
4 identified, events leading up to this ongoing rivalry, violent
5 rivalry between the two gangs.

6 THE COURT: Okay. So you want to present evidence
7 that this witness has personal knowledge of a crime that was
8 committed?

9 MR. STEGE: Crime, yeah. He himself witnessed
10 felonies being committed by the groups.

11 THE COURT: Okay.

12 MR. CHESNOFF: Your Honor, this is what I -- having
13 read the reports, this is what I anticipated and I object to
14 his testimony as a lay witness for purposes of providing, one,
15 corroboration for an expert, that's improper; and two, he
16 cannot testify about the felonies that he witnessed that are
17 not other crimes evidenced by my client. My client was not
18 present.

19 MR. STEGE: We have to prove the gang enhancement,
20 that's one of the things they do is commit felonies.

21 MR. CHESNOFF: A lay witness, as the Court observed,
22 cannot testify for the gang enhancement purposes.

23 MR. HALL: Why can't he?

24 THE COURT: Mr. Hall, this really isn't a
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1 free-for-all dialogue here.

2 MR. FREY: Your Honor, I agree. Given your ruling
3 five minutes earlier that lay witness testimony is
4 inappropriate with respect to the gang enhancement. Given the
5 fact it's obvious they are offering Mr. Dimel as a lay
6 witness, I move to strike his testimony to the extent it goes
7 to the gang enhancement, Your Honor.

8 To make my position clear with respect to
9 Mr. Gonzalez, we do believe and insist the gang evidence needs
10 to be analyzed as prior bad act in essence. I know it
11 presents something as a sticky issue for Your Honor. I don't
12 know where we are going to go on that particular issue. But I
13 would request any PBAs be subject to Petrocelli scrutiny,
14 particularly the Tinch factors, et cetera, because I believe
15 it is prior bad act evidence simply enshrined in the statute
16 that it is a penalty statute.

17 THE COURT: Of course, the Nevada Supreme Court has
18 ruled differently. And I know it is not a holding of the case
19 but it certainly is very strong dicta that they do not believe
20 that it is all gang enhancement evidence, it -- prior bad act
21 evidence, and that's Justice Hardesty who is still there.

22 MR. FREY: He's still there. I think you're
23 referencing Selmi, I think frankly that isn't the Court
24 holding of that case.

1 But for purposes of my objection, I echo what
2 Mr. Chesnoff said and I don't think the lay witness can
3 testify to the gang enhancement.

4 MR. CHESNOFF: Based on your ruling you're not
5 bifurcating, they are trying to call this witness at trial
6 that's why it's improper at this juncture based on what we
7 previewed and what we found out since we've been here, Your
8 Honor. It's going get to the point, Your Honor, we are going
9 to lose sight of the crime that is charged and we are going to
10 be trying some historical crusade here.

11 THE COURT: Well, the gang enhancement certainly
12 does change the tenor of the case. It does allow for a lot
13 more information to be presented to the jury because the jury
14 has that obligation to make that determination. The question
15 is, what is reliable and admissible evidence to prove the gang
16 enhancement? And that's my question for the State, is how is
17 this reliable information that can be utilized to prove the
18 gang enhancement in light of the statute which specifically
19 says expert testimony can be used --

20 MR. STEGE: Right.

21 THE COURT: -- to bring in these things, but it does
22 not make any indication that specific instances can be brought
23 in by lay witnesses.

24 MR. STEGE: Well, we just had cross-examination for
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1 this entire morning on specific instances.

2 THE COURT: Because he was an expert.

3 MR. STEGE: Right.

4 THE COURT: I mean, there's a difference between an
5 expert and a lay witness.

6 MR. STEGE: Right. But from the beginning they've
7 said, "Well, this guy has no idea what he's talking about.
8 That Gil-Blanco has no idea what he's talking about. He
9 wasn't investigating. He wasn't an uncover person there. He
10 has no idea. He's taken these things entirely out of
11 context."

12 Here is a person who gives the Court and the jury
13 ultimately context then it also -- context of what happened.
14 They can't have it both ways, because if the Court recalls, we
15 had -- the reason we filed this motion was because the defense
16 invited it. They wanted us to know, "Hey, tell us what your
17 gang evidence is." Now we presented it, they say Gil-Blanco
18 has no idea what he's talking about and neither do all the
19 other people there who witnessed it and experienced gang
20 evidence and can give us the context of what it meant, some of
21 these customs, culture, felonies that they routinely commit,
22 the reasons they commit them, all these things that are called
23 for in the statute.

24 MR. CHESNOFF: Your Honor, I feel like --
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1 MR. HALL: We are not done yet.

2 MR. STEGE: Court's brief indulgence. If I can have
3 a minute?

4 THE COURT: Just sit down for a minute.

5 MR. STEGE: All right. So I mentioned the question
6 of prior felonies committed by the gangs. That is within the
7 gang statute. Two, he's not giving an opinion, but really
8 what he's doing is providing a foundation for Gil-Blanco's
9 expert opinion in the case as they relate to both of these
10 gangs.

11 THE COURT: Okay.

12 MR. FREY: With respect to foundation, Judge, I
13 think they have to demonstrate that Jorge Gil-Blanco actually
14 relied upon the work product of this gentleman before they can
15 lay a foundation.

16 THE COURT: Well, we gave testimony about that this
17 morning.

18 MR. FREY: About the same event, certainly.

19 THE COURT: The police reports he said he reviewed.

20 MR. FREY: That's my position, Your Honor. I think
21 Mr. Chesnoff, perhaps, had an objection he wanted to complete.
22 My objection still stands. I don't believe the lay witness
23 can testify to the gang enhancement and in particular
24 everything that was enumerated by Mr. Stege all of which

1 correlates to subsection 7A through G.

2 THE COURT: Of 193.168 correct.

3 MR. FREY: 193.168 subsection A through G.

4 MR. CHESNOFF: Your Honor, I feel I'm in Alice in
5 Wonderland. Of course we were trying object to their proposed
6 witness. That's our job. You were going to rule on whether
7 he is, he isn't, how much he can testify to. We accept that.
8 But that doesn't prevent us from pointing out clearly that the
9 law in Nevada is you cannot have a lay witness testify about
10 the things they want this person to testify to for purposes of
11 the gang enhancement at a trial. And what is frustrating,
12 Your Honor, is we are objecting, we are doing it properly, we
13 are briefing it, we are bringing it up here, and we are like
14 an Oxford at the -- you know, having a debate.

15 I'm asking you to rule, Your Honor, it's totally
16 improper, it's not acceptable, and it may be frustrating to
17 the State, but that's not the standard. So I ask you, Your
18 Honor to -- that's what I was trying do before we started
19 because I knew this is what was going to happen. Now we've
20 seen it. They've had their chance, and I object, Your Honor.

21 THE COURT: Did you have anything else?

22 MR. STEGE: Where are they pulling this that a lay
23 person cannot testify to the gang statute? The statute
24 says --

1 THE COURT: Wait a minute. Wait. Wait. Wait.

2 MR. STEGE: Section 7 says experts may testify.

3 THE COURT: Wait a minute. Either this evidence is
4 admissible by an expert pursuant to the statute, or it's bad
5 act evidence and it's a mini-trial within the trial as all bad
6 act evidence. Otherwise the confrontation clause is really
7 thrown out the window.

8 So, either it is as one side over here believes, bad
9 act evidence, and you have to prove it and they can confront
10 it and they can address it. Or it's gang enhancement evidence
11 which allows you to bring an expert in to talk about things
12 that normally you can't bring in. The reason the statute says
13 that is because without the statute you couldn't bring it in.
14 But it specifically says you can use an expert to testify to
15 these things to prove your gang enhancement. But that doesn't
16 mean you can bring a police officer in and put on essentially
17 bad act evidence, a crime that was committed by people who are
18 not in the courtroom, and do it under the gang enhancement if
19 the person is not an expert.

20 Now, the reason I allowed you to continue to go is
21 you have not reached your deadline for designating experts.

22 MR. STEGE: Right.

23 THE COURT: And I don't know how you all are
24 preparing your case, nor do I think the defense, and none of

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1 us are here to judge how you prepare it. So I didn't know
2 what you were going to try to do. If this person is an
3 expert, he could testify to what you want him to testify to.
4 If he's not an expert, he's not going to testify to what you
5 want him to testify to. Now, I don't know if perhaps in a
6 rebuttal case after the cross-examination of an expert, I'm
7 not sure, I haven't thought about that about where that may
8 go, but I do know in the case-in-chief. So do you want to --
9 is there some way he's an expert?

10 MR. HALL: May I inquire, Your Honor?

11 MR. CHESNOFF: Your Honor, I was prohibited -- I'm
12 not going to get tagged.

13 MR. STEGE: This is on the general issue of this
14 entire trial, so I ask -- or this entire two days of hearing,
15 so I ask that Mr. Hall be able to be heard on this issue.

16 THE COURT: No. We don't tag team it. Otherwise
17 I'm going to hear from three lawyers for Mr. Gonzalez and two
18 lawyers for Mr. Villagrana and two of you. You take a subject
19 and you do it. You're certainly welcome to talk to Mr. Hall
20 and discuss it further if there's some other basis. I'm
21 giving you the opportunity to provide that basis.

22 MR. STEGE: Already-held Condido says we have to
23 talk about prior felonies committed by the gang. This is a
24 person who witnessed a prior felony committed by the Hells

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1 Angels and the Vagos. Now, they've also said in the moving
2 papers that's part of the subject of this -- the argument we
3 are having is whether we can prove that by clear and
4 convincing evidence or prove it by some quantum of evidence.
5 Unless they are stipulating to that particular issue, because
6 already-held *Condido* says we need to talk more about not just
7 yes, they commit felonies. Unless they are stipulating to
8 what this witness would testify to, what the facts were that
9 these felonies were committed, then we are entitled to put it
10 before the Court in order to support the gang enhancement and
11 support it as a foundation to Gil-Blanco's testimony.

12 THE COURT: Are you saying you're adopting their
13 argument that this is bad act evidence and has to be proven?

14 MR. STEGE: No, no. But I think that was a big
15 subject of the moving papers on the gang enhancement --

16 THE COURT: Yes.

17 MR. STEGE: -- in terms of what quantum of evidence
18 this Court needs or that needs to be presented to be able to
19 go forward with the gang enhancement. And that was the
20 question for the Court, I think, at the end of the last
21 hearing was, well, what's the difference? Where is this line
22 between bad act evidence which is, you know, we have a lot of
23 case law on, and the gang enhancement, which there is some
24 natural sort of overlap or some relationships.

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1 THE COURT: Okay. It's going to be my ruling that
2 bad act evidence relates to individual acts of the individual
3 people who are on -- charged with a crime here. So those acts
4 that are part of the gang enhancement that you're trying to do
5 that involve these particular players, that's bad act
6 evidence. It has to be proven by clear and convincing
7 evidence to get it in. And it has to be relevant, et cetera.
8 The relevance of issues like prior crimes that have been
9 committed by a particular motorcycle club or gang, that is
10 relevant under the enhancement. It can come in through an
11 expert.

12 So I'm sustaining your objection with regard to this
13 witness testifying to these issues today.

14 So I'm not -- I certainly did not exclude your
15 expert from testifying to it, to the specifics of what he --
16 what his opinion was based upon and nor would I.

17 MR. STEGE: So what's the recourse, then, like as
18 they did today said, "Well, you have no idea what you're
19 talking about because you were only in San Jose, you were
20 never in Orange County. You have no idea. You're
21 misreading." What happened there?

22 THE COURT: As with all experts, your recourse is to
23 be sure they are prepared to talk about what they relied upon.
24 They can testify as to what they base their opinion on.

1 MR. STEGE: And what are we to do with this Orihula
2 Candido pronouncement that says you can't say, "Yes, I'm aware
3 they have committed prior felonies"?

4 MR. CHESNOFF: What is this, Your Honor? When I get
5 a few questions that are troubling me, can I ask you?

6 THE COURT: It is a little uncomfortable for me at
7 this point. Thank you.

8 MR. STEGE: Well, that supports the entire -- the
9 reasoning for calling this person to support this prior
10 incident or support the -- this culture, this rivalry that
11 started with -- this arc starts with this Mr. Dimel, what he
12 witnessed all the way up until what happened in this case.

13 THE COURT: It's in the police report.

14 MR. STEGE: Right.

15 THE COURT: Your expert said he relied on it. So
16 I'll sustain the objection.

17 I don't know if he has anything else you want him to
18 testify to.

19 BY MR. STEGE:

20 Q In your opinion, was the events you witnessed at the
21 Costa Mesa swap meet gang related?

22 MR. CHESNOFF: Objection.

23 MR. FREY: Objection, Your Honor. Not qualified to
24 opine.

1 THE COURT: Do you want to try to establish him?

2 Sustained.

3 BY MR. STEGE:

4 Q At the time we are talking here about the -- this
5 melee that happened at the Costa Mesa swap meet, right, which
6 you were a witness?

7 A Yes.

8 Q At the time, did you have much gang -- outlaw
9 motorcycle gang experience or training or really know what to
10 look for?

11 MR. FREY: Asked and answered, Your Honor.
12 Objection.

13 THE COURT: Overruled. He's trying to establish his
14 qualification.

15 THE WITNESS: At the time, not much.

16 BY MR. STEGE:

17 Q After the fact, once you witnessed these events and
18 got involved in the subsequent investigation, did you come to
19 learn more about these two groups?

20 A Yes.

21 Q And tell us about that. What did you learn about
22 them, for example?

23 A Again, through training through the Orange County
24 Gang Investigators Association.

1 Q What did you learn, for instance, about the Vagos.
2 Did you learn about the symbolism of the --

3 MR. FREY: Objection. Leading, Your Honor.

4 THE COURT: Sustained.

5 MR. STEGE: Foundational. Well --

6 THE COURT: It was leading.

7 MR. STEGE: Okay.

8 MR. FREY: Thank you.

9 BY MR. STEGE:

10 Q What did you learn about the Vagos gang?

11 A Specifically? That's kind of nebulous. I'm not
12 sure what the --

13 Q Did you learn anything about their customs, their
14 manner of dress, their structure, their hierarchy, their
15 culture?

16 A Their manner of dress and general identification,
17 yes.

18 Q What about the -- you mentioned you had some
19 experience with Hells Angels. Did you learn more through the
20 course of the investigation about the Hells Angels?

21 A Yes.

22 Q As they related to the same things, dress, culture,
23 hierarchy or structure, things like that?

24 A Yes.

1 Q Tell us about the Hells Angels manner of dress
2 and --

3 MR. FREY: Objection.

4 MR. CHESNOFF: Lack of foundation, Your Honor.

5 MR. FREY: There's no qualifications in the record
6 yet.

7 THE COURT: Okay.

8 MR. FREY: Thank you.

9 THE COURT: You stated you learned something. You
10 haven't said what you learned, how you learned it.

11 THE WITNESS: Again, Your Honor, it was all through
12 training. I would say that outlaw motorcycle gangs were not
13 my area of expertise. It's been a long time since I've done
14 gang investigations, but I can probably answer specific
15 questions if you have them.

16 MR. CHESNOFF: Your Honor, I move to end this.

17 MR. FREY: We join.

18 THE COURT: Let's take a recess. You can talk to
19 your witness and see where you're going with it.

20 Court is in recess.

21 THE BAILIFF: All rise.

22 MR. CHESNOFF: Your Honor, may I --

23 THE COURT: No. We are in recess.

24 (A break was taken.)

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1 THE COURT: Thank you. Please be seated.

2 Counsel?

3 MR. STEGE: Thank you.

4 BY MR. STEGE:

5 Q Let's go back a little bit. When you were working,
6 let's talk in the gang unit, was there a working definition or
7 what qualified as a gang in California when you were working
8 in the gang unit?

9 A Yes.

10 MR. CHESNOFF: Your Honor, I don't want to interrupt
11 now. There was something I wanted to put on the record, but I
12 can wait until later.

13 THE COURT: I'm sorry. I forgot.

14 MR. CHESNOFF: As long as it's noted I would have
15 done it now.

16 THE COURT: Okay.

17 MR. CHESNOFF: Thanks.

18 BY MR. STEGE:

19 Q What was the definition of a gang in California when
20 you were working in the gang unit?

21 A Three or more persons with a common sign, symbol, or
22 name gathered together for the purpose of committing specific
23 crimes.

24 Q And those specific crimes in California under
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1 California law are enumerated; is that right?

2 A Correct.

3 Q And what's the -- can you give me some examples of
4 those crimes?

5 A Assault, Assault With a Deadly Weapon, Homicide,
6 specific threats.

7 Q As it relates to this case, the Costa Mesa melee at
8 the Costa Mesa swap meet involving the Hells Angels, Vagos,
9 and the Mongols, did you see any of those groups exhibiting
10 that behavior, common sign or symbol, gathered together to
11 commit this one -- enumerated crimes?

12 A Yes.

13 Q Describe that as it relates to the Vagos.

14 A As it relates to the Vagos, the -- many of the
15 members that came in were wearing their cuts or displaying the
16 Vagos logo, the patch. And also they typically, based on my
17 training and experience, identified with the color green.
18 Those that weren't wearing a cut had green items on to
19 identify them as being with the group.

20 Q And what about the -- well, what was the sort of the
21 enumerated crime that you observed?

22 MR. CHESNOFF: Objection, Your Honor. In order to
23 get into that, he has to be qualified as an expert. He can't
24 talk -- you can't bootstrap it by talking about the thing that
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1 he's trying to talk about until he's qualified as an expert.
2 You gave them a break to try to do that even though he said
3 he's not an expert already on the record, and clearly so.

4 I object to continuing with questions about events
5 that occurred that my client was not present at, Your Honor.

6 MR. FREY: Same objection.

7 MR. STEGE: I'm trying to establish his expertise
8 here, Judge.

9 THE COURT: Sustained.

10 MR. STEGE: As well, Judge, I would make this
11 argument. I previously made the argument that Candido says we
12 have to show the prior felonies committed.

13 THE COURT: I know. But that was an expert.

14 MR. STEGE: Right. And I have to show a foundation
15 for the gang enhancement --

16 THE COURT: Yes.

17 MR. STEGE: -- as it relates to Jorge Gil-Blanco. I
18 would ask that I be able to present this evidence in the event
19 that -- so we can proceed, if necessary, to the Supreme Court
20 on this issue so that we can basically make an offer of proof
21 or make a record on this issue of what we would have
22 presented.

23 THE COURT: Well, you can make an offer of proof.
24 You don't have to -- we don't have to have an evidentiary

1 hearing over their objection to make an offer of proof. If
2 you -- I think you've got plenty now. You've got a police
3 report. You've got testimony that he's clearly not an expert.
4 I gave you a break, you couldn't prove him up as an expert.
5 You want to put it on anyway. You've got plenty to go to the
6 Supreme Court. And if the Supreme Court tells us I have to
7 let him testify whether he's an expert or not on gang
8 enhancement, I think you're fine. You've got plenty to go to
9 the Supreme Court on. And I have no problem you doing that,
10 Mr. Stege. I mean, that's --

11 MR. STEGE: Okay. Can I ask a question about the
12 felonies that he saw committed in his presence?

13 MR. CHESNOFF: Objection, Your Honor.

14 THE COURT: For purposes of today's hearing, we need
15 to move our hearing along and our trial along. So you've got
16 that, I've got the police reports. They are a part of your
17 pleadings. It's clear what this person is testifying to.
18 It's in the -- it's one of your exhibits. You can identify
19 which exhibit to your pleading the police report is and I
20 think I've got everything you need.

21 MR. STEGE: Okay. May I have the police report that
22 I have here marked?

23 THE COURT: Is that different than the one you
24 attached?

1 MR. STEGE: I'm not sure if it's the -- if we put
2 all the reports -- I think we might have just put the
3 essential ones, but I ask that they all be marked as a
4 proposed exhibit.

5 THE COURT: Which exhibit does that relate to?

6 MR. STEGE: That would be Mr. Hall's motion, so I'm
7 not --

8 THE COURT: Okay. I'm sorry.

9 Mr. Hall?

10 MR. HALL: Exhibit 1.

11 THE COURT: Exhibit 1 to your motion or the
12 addendum? No. It would be the motion.

13 Okay. You can mark it next in order.

14 Do you have copies for the defense?

15 MR. HALL: They already have copies.

16 MR. STEGE: They have copies.

17 THE COURT: It's the same? Then you don't have to
18 mark it. It's Exhibit 1 to the motion which was filed
19 November 26, 2012.

20 MR. STEGE: Okay.

21 Nothing further of the witness.

22 THE COURT: Okay. Anything, Counsel?

23 MR. CHESNOFF: No, thank you, Your Honor.

24 MR. FREY: Nothing further.

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1 THE COURT: Thank you, sir. You may step down.

2 THE WITNESS: Thanks, Your Honor.

3 MR. STEGE: Court's indulgence. State calls officer
4 Barry Barner.

5

6 BARRY ALAN BARNER,

7 having been first duly sworn, was examined

8 and testified as follows:

9

10 DIRECT EXAMINATION

11 BY MR. STEGE:

12 Q Sir, please state and spell your name.

13 A Barry Alan Barner. B-A-R-R-Y, A-L-A-N, B-A-R-N-E-R.

14 Q Back in June, specifically June 25th, 2011, were you
15 a police officer with the San Jose Police Department?

16 A Yes, I was.

17 Q At that time, how much time had you with the police
18 department?

19 A With the city of San Jose, approximately 14 years.

20 Q Are you currently still employed by the San Jose
21 Police Department?

22 A No. I retired in November of this year. I'm sorry,
23 last year.

24 Q 2012?

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1 A Yes.

2 Q On June 25th, 2011, were you working an event in San
3 Jose that's called Dancing on the Avenue?

4 A Yes, I was.

5 Q What is Dancing on the Avenue?

6 A It's basically a street festival where they close
7 down the street on Lincoln Avenue in San Jose and they have
8 bands, boots, they serve alcohol, arts and crafts, that type.

9 Q And what were you doing down at the Dancing on the
10 Avenue?

11 A I was working a traffic control detail on Lincoln
12 Avenue at Willow Avenue.

13 Q And as you're doing that, approximately 2015 hours,
14 did something happen that brings you here today?

15 A Yes, at approximately 2045 hours, 8:45 p.m., the
16 officer who I was working with, somebody advised him there was
17 a large fight going on close to our location. He put it out
18 over the radio that there was a fight. I saw him running
19 over, so I joined him in going over toward the fight.

20 Q When you ran over there, what did you see?

21 A I saw approximately five individuals on the ground
22 fighting, hitting, punching.

23 Q Did you see any weapons involved in the fight?

24 A Not in anybody's hands, but I saw that some of the
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1 subjects involved in the fight had the knife sheaths
2 containing the knives on their person on their belts.

3 Q Would you describe these knives the sheathed knives
4 in more detail?

5 A There were different types. There were the type
6 where the longer fixed-blade knives where they were stuck
7 inside the sheaths. And there were other types that appeared
8 to be like what I would describe as a buck knife, a folding,
9 locking-blade knife, and that was in some of the sheaths.

10 Q And a sheath would be on the belt?

11 A On the belts, correct.

12 Q What happened next?

13 A I utilized my pepper spray. First of all, I told
14 them to stop fighting, to disperse, and nobody followed that
15 order. So the other officer and I started pepper spraying all
16 the involved parties.

17 Q Up to this point, could you tell who was involved,
18 like who was fighting who within this?

19 A I saw one subject who was at the bottom of the pile,
20 and it seemed like the rest of them were going after him,
21 throwing punches. But mostly I just saw a lot of punches
22 being thrown in general directions.

23 Q What happened once you pepper sprayed the group
24 after they refused to stop fighting?

1 A The people on the top of the pile started running
2 away. And then finally, the bottom of the pile was one
3 subject who was left at the scene who did not get up and run
4 away. And so we handcuffed him.

5 Q Did you later identify him as Cesar Villagrana?

6 A Yes, I did.

7 Q How was Cesar Villagrana dressed?

8 A He was wearing a black leather vest with the Hells
9 Angels California logo on the back.

10 Q Based on some of your training and experience, is
11 that indicative of the Hells Angels?

12 A Yes.

13 Q Did you find that Mr. Villagrana lived in the San
14 Jose area?

15 A Yes. He lived in -- I believe it was Gilroy.

16 Q Did you identify -- what happened to the other folks
17 that were involved in this fight?

18 A We weren't able to identify them because they fled
19 the scene.

20 Q Is it fair to say that Villagrana was dressed in
21 biker attire besides the Hells Angels vest? Was he otherwise
22 dressed in biker attire?

23 A Yeah, based on my training and experience, yes.

24 Q What about the other folks, the other four who had
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1 run off?

2 A They were not wearing what I would call biker
3 attire.

4 Q Were any of them wearing any gang attire like Vagos
5 colors or any other motorcycle gang colors?

6 A No. They were not.

7 Q Or any street gang colors?

8 A No.

9 Q Describe your interaction with Villagrana.

10 A First thing we did is he had some friends that were
11 standing by and they asked if they could put water in his eyes
12 to get the pepper spray out, so we let them come over try to
13 clear the pepper spray out of his face, kind of get him
14 cleaned up. I asked him if he wanted to give a statement as
15 far as what was going on, and he refused to give a statement
16 saying he could take care of himself.

17 Q What else? What happened next?

18 A At that point, some other people who were standing
19 around the area made the statement that Mr. Villagrana was
20 jumped and he was the victim in this. So what I did is we
21 took the handcuffs off of him after we identified them and
22 then I just -- he was released at the scene. And I took the
23 report and submitted it to our district attorney's office to
24 review for a charge of fighting in public.

1 MR. STEGE: Pass the witness.

2 THE COURT: Cross?

3 MR. CHESNOFF: Thank you, Your Honor. Can I --

4 THE COURT: Yes, you can stay there.

5 MR. CHESNOFF: Thank you.

6

7 CROSS-EXAMINATION

8 BY MR. CHESNOFF:

9 Q Sir, you described Mr. Villagrana as the victim,
10 correct? Just now when you testified?

11 A What I said is some other people at the scene made
12 the statement.

13 Q About three questions ago, you said that
14 Mr. Villagrana was the victim, correct? And it was before you
15 told about the other people identified him as a person who had
16 been jumped; is that right?

17 A I don't recall saying he was a victim. I have him
18 listed in my report as a suspect. He was involved in a fight.

19 Q So you're telling her honor that within the last two
20 minutes, you didn't tell her that he was the victim, correct?

21 A Other people at the scene referred to him as being
22 jumped and being the victim.

23 Q Okay. He was on the bottom of the pile, correct?

24 A Correct.

1 Q There were five other people on top of him punching
2 him, correct?

3 A Four, I believe. Yes.

4 Q The other people ran away, correct?

5 A Yes.

6 Q Even though you asked them to stay, correct?

7 A I asked them all to stay, yes.

8 Q Right. And the only person who stayed was the
9 fellow that was on the bottom being punched by five guys, and
10 you don't want to describe him as the victim?

11 A He was fighting in public which is a violation of
12 the law in California and listed in my report. He's listed as
13 a suspect, as all of them were.

14 Q Let me ask you a question, Officer. Five guys
15 jumped you and you fought back. Would you want to get charged
16 with fighting in public?

17 A I --

18 Q If you got jumped?

19 A No.

20 I didn't have any independent witnesses.

21 Q I'm not asking you that. I'm asking you if you got
22 jumped and fought back, would you want to be charged with
23 public fighting?

24 A I would hope that I would not.

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1 Q Okay. Did you ever wind up testifying against
2 Mr. Villagrana in court?

3 A No.

4 Q No charges were ever brought against him, correct?

5 A Not that I'm aware of.

6 Q A good citizen when asked by a policeman to remain
7 at the scene remains, correct?

8 A Well, he -- we.

9 Q Is that right?

10 A He was handcuffed. He didn't have that choice.

11 Q Well, he stayed. You said it in your report, didn't
12 you?

13 A He was the last one that didn't get up to run and we
14 were able to stop him.

15 Q Detective, do you think you're here to hurt
16 Mr. Villagrana or tell her honor the story?

17 A Tell the story.

18 Q So do you remember writing a report about this?

19 A I do.

20 Q Remember reading the report?

21 A I do.

22 Q Remember writing in the report that Mr. Villagrana
23 remained and everyone else took off?

24 A I don't remember my exact words.

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1 Q Do you have it in front of you?

2 A I do.

3 Q Why don't you read it?

4 THE COURT: Mr. Chesnoff, just be very careful. Let
5 the witness finish.

6 MR. CHESNOFF: Okay, Your Honor.

7 THE COURT: The court reporter can only take one
8 person at a time.

9 THE WITNESS: May I read it?

10 BY MR. CHESNOFF:

11 Q Sure you can read it.

12 A Okay. "All of the suspects fled on foot and
13 remained unidentified except for Suspect 1, Villagrana.
14 Suspect 1, Villagrana, was handcuffed and detained."

15 Q Right. So he stayed. As a result of staying, you
16 were able to put handcuffs on him and detain him, correct?

17 MR. STEGE: Objection. Asked and answered. I think
18 it's --

19 THE COURT: Sustained.

20 MR. STEGE: -- clear.

21 BY MR. CHESNOFF:

22 Q Sir, did you have to tackle Mr. Villagrana to put
23 the handcuffs on?

24 MR. STEGE: Asked and answered. He didn't tackle
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1 him.

2 MR. CHESNOFF: I never asked -- Your Honor, a little
3 leeway. I mean, I'm actually asking real questions.

4 THE COURT: Let's try not to be too sarcastic.

5 MR. CHESNOFF: I'll try, Your Honor.

6 THE COURT: I deal with that at home with my
7 husband. I don't need to deal with it here, okay.

8 The first objection was sustained.

9 The second objection, there weren't any discussions
10 about tackling or not, so I'm not going to sustain that.

11 So you can answer the question.

12 THE WITNESS: Can you repeat it?

13 BY MR. CHESNOFF:

14 Q Did you have to tackle him in order to put the
15 handcuffs on him?

16 A No. He was already on the ground, so we grabbed him
17 while he was on the ground and handcuffed him.

18 Q Okay. But he did not take off from the scene,
19 correct?

20 A He had a lot of pepper spray in his face and he had
21 a hard time breathing and he was going nowhere.

22 Q The other people had pepper spray as well, correct?

23 A They did. But they were able to get up and run.

24 Q And at some point in time, you took the handcuffs

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1 off, correct?

2 A Correct.

3 Q Because you no longer view Mr. Villagrana as a
4 threat, correct?

5 A Because he was released pending a review of the DA,
6 yes.

7 Q Plus, people had told you that he got jumped,
8 correct;

9 A That definitely helped in my decision-making of just
10 submitting it to the district attorney's office.

11 Q And to removing the handcuffs, correct?

12 A Yes.

13 Q And you also permitted friends of his to help him
14 clean his eyes, correct?

15 A Correct.

16 Q And you did not view his friends as a threat to you
17 or other people, correct?

18 A By that time, there were numerous officers at the
19 scene, so I did not deem them a threat to us.

20 Q Okay. And when you submitted to the district
21 attorney the report that you just read, is that what you
22 submitted?

23 A Yes.

24 Q And based on that, a decision was made not to
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1 prosecute Mr. Villagrana, correct?

2 A I never heard any further, so I don't know.

3 Q Nobody ever called you in to interview you or ask
4 you any questions?

5 A That's correct.

6 Q And so it's clear, the people that ran away were not
7 members of a motorcycle club called the Vagos, correct?

8 A They did not appear to be.

9 Q And you're familiar with what Vagos wear? For
10 example, green clothing, rockers with California or Vagos on
11 it, nothing like that, correct?

12 A They did not have that.

13 MR. CHESNOFF: Nothing further. Thank you, Your
14 Honor.

15 THE COURT: Mr. Stege?

16

17 REDIRECT EXAMINATION

18 BY MR. STEGE:

19 Q Sir, you were asked a hypothetical about, well, if
20 you were in this situation, would you want to be charged with
21 fighting in public. Do you remember that question?

22 A I remember that question.

23 Q What about if you were jumped by four guys while you
24 were out doing whatever you were doing? Would you want to

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1 give a statement as to what happened?

2 A Absolutely. I would want prosecution against
3 people.

4 Q Would you want to cooperate with the police officers
5 and say, "Hey, you know, this is what was happening. I was
6 minding my own business, these four guys jumped me," stuff
7 like that?

8 A Absolutely.

9 Q Would you have ever said, "No, don't worry about it,
10 I can take care of myself"?

11 A I wouldn't say that.

12 Q And how did you take that statement, "No, I can take
13 care of myself. I can take care of myself"?

14 MR. CHESNOFF: Objection, Your Honor, as to how he
15 took the statement.

16 THE COURT: What's the relevance of his
17 interpretation of that?

18 MR. STEGE: It goes to the gang aspect of
19 Mr. Villagrano's statement. It goes to the gang culture of
20 not cooperating with police.

21 THE COURT: I think it calls for speculation.
22 Sustained.

23 MR. STEGE: Nothing further.

24 THE COURT: Okay.

1 MR. FREY: Just for the record, Your Honor, this is
2 testimony that corresponds to Exhibit 6 in the State's motion.
3 It has absolutely nothing to do with Mr. Gonzalez, nor to do
4 with the Vagos, so I don't have any questions for the witness.
5 I would note I believe the State is offering this witness as a
6 fact witness, so my objection is the same as the previous
7 objection. I don't believe the testimony is relevant to the
8 gang enhancement as to the fact witness.

9 THE COURT: I think I described it earlier as prior
10 bad act evidence because it relates to a specific defendant
11 who's on trial here.

12 MR. FREY: I must have been confused by the
13 captioning of the motion. It was under gang enhancement.

14 THE COURT: I know where it is.

15 Anything else?

16 Thank you, sir. You may step down.

17 MR. HALL: Sir, would you step forward and be sworn.

18 (The witness was sworn.)

19 THE COURT: You may proceed.

20

21 JASON FERGUSON,

22 having been first duly sworn, was examined

23 and testified as follows:

24

1 DIRECT EXAMINATION

2 BY MR. HALL:

3 Q Thank you, sir. Would you state your name and spell
4 your last name?

5 A Jason Ferguson. F-E-R-G-U-S-O-N.

6 Q What is your current occupation, sir?

7 A I am currently a lieutenant for the Lakeport Police
8 Department, City of Lakeport, County of Lake.

9 Q Where is that located?

10 A From here, it's about four hours west on Highway 20.
11 We border Sonoma and Napa County.

12 Q Okay. And you're currently a lieutenant?

13 A Correct.

14 Q And can you give us a history of your background
15 with respect to law enforcement training, experience?

16 A Yes, I've been employed with the city of Lakeport
17 for nearly 16 years. Prior to that, I worked for the Lake
18 County Sheriff's Department in the corrections division for
19 approximately two and a half years.

20 During my time in 2002, I began a -- working for the
21 Lake County Narcotics Task Force, Bureau of Narcotics
22 Enforcement Regional Task Force. During that time, I
23 attended -- between the years 2002 and 2006, I attended five
24 California Narcotics Officers Association conferences of which

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1 I attended blocks of training in outlaw motorcycle gangs as
2 well as criminal street gang activity.

3 I've also attended to -- in that same time frame
4 between 2002 and 2006, I attended two international outlaw
5 motorcycle gang conferences where they specifically covered
6 criminal trends and activities of outlaw motorcycle gangs.

7 Q Are you familiar with the Hells Angels gang?

8 A I am.

9 Q How are you familiar with that gang?

10 A I am familiar with that gang because there are
11 several individuals who do not reside but are actively around
12 Lake County. They currently have an OG Riders chapter in Lake
13 County where the Hells Angels are frequently seen as well as a
14 lot of training that I received covering the Hells Angels
15 Motorcycle Club.

16 THE COURT: I'm sorry, what kind of chapter?

17 THE WITNESS: OG Riders.

18 THE COURT: Okay. Thank you.

19 BY MR. HALL:

20 Q Are you familiar with the Vagos?

21 A Yes.

22 Q And how are you familiar with the Vagos?

23 A I'm familiar with the Vagos, again, from several
24 individuals who ride locally within Lakeport and the County of
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1 Lake. And there is a Lake County chapter of the Vagos.

2 Q All right. Have you had any contact with any of the
3 members of the Hells Angels or the Vagos during the course of
4 your employment as a police officer?

5 A Yes. On the Vagos.

6 Q All right. And can you describe that contact?

7 A Yes. In April of 2011, I was patrolling the streets
8 of Lakeport in a marked patrol unit. I was travelling
9 northbound on Main Street in my town and I observed
10 approximately 50-plus motorcycles parked alongside both sides
11 of Main Street in front of an establishment called the
12 Clearlake Club Bar. As I was patrolling --

13 MR. CHESNOFF: Your Honor, at this time I object.
14 He hasn't been qualified as an expert. Mr. Villagrana was not
15 present at this particular scene, Your Honor.

16 THE COURT: Overruled. This goes to bad act
17 evidence.

18 MR. FREY: Same objection.

19 MR. CHESNOFF: This is --

20 THE COURT: Overruled. Bad act.

21 MR. CHESNOFF: Yeah, but he wasn't there.

22 THE COURT: It's bad act.

23 MR. CHESNOFF: Well, you can't introduce at his
24 trial.

1 THE COURT: We'll talk about that later. Overruled
2 your objection.

3 MR. CHESNOFF: I'm just making a record, Your Honor.

4 THE COURT: Later.

5 Proceed.

6 MR. CHESNOFF: Is this being admitted as to
7 Mr. Villagrana potentially, your Honor?

8 THE COURT: The evidence is being admitted. I will
9 determine the purpose for it. Your objection is overruled at
10 this point.

11 MR. CHESNOFF: Okay. I just don't understand why
12 the Court is frustrated with me.

13 THE COURT: I'm just frustrated.

14 MR. CHESNOFF: I understand. But most respectfully,
15 Your Honor --

16 THE COURT: You're arguing with me, I guess that's
17 why I'm frustrated. Usually when a judge rules on it, you say
18 thank you and sit down.

19 MR. CHESNOFF: I thought you already ruled the other
20 way, that's why I think it's confusing, Your Honor.

21 THE COURT: No, I don't think it's confusing.
22 You can answer the question.

23 THE WITNESS: I also noted along with the 50
24 motorcycles along both sides of the Main Street several

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1 individuals, Hells Angels, wearing full-patch colors as well
2 as some OG Riders and another group which I was not familiar
3 with, but had similar colors, that was mixed in with females
4 standing in and outside the bar entrance area.

5 As I continued northbound --

6 THE COURT: I'm going to stop you.

7 You're right. Mr. Gonzalez -- Mr. Gonzalez wasn't
8 present. I had it in the wrong category. So this is
9 enhancement evidence.

10 MR. CHESNOFF: I --

11 THE COURT: Sorry. You're right. You're right.

12 So the question is whether or not he's an expert.
13 Did you want to put any more evidence on with regard to him
14 being an expert?

15 MR. HALL: Sure, I can do that.

16 THE COURT: Okay.

17 BY MR. HALL:

18 Q Are you familiar with the colors or cuts that the
19 Hells Angels wear?

20 A Yes.

21 Q All right. And can you describe their customs with
22 respect to colors, clothing, and paraphernalia?

23 A Yes. For full-patch members of the Hells Angels, it
24 is a three-piece patch. The top rocker, what they call a

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1 rocker is the top portion, will say Hells Angels in red and
2 white colors.

3 The center patch is a death head which is a skull
4 with wings. It's considered a death head.

5 And on the bottom is another rocker, the third part
6 of the patch, which actually establishes the State for which
7 the Hells Angels chapter is, associated with the colors red
8 and white.

9 There's typically a patch with the numbers 81. 81
10 is associated, eight with the 8th the letter of the alphabet,
11 H, for Hells. The number one associated with the letter A for
12 Angels. That will be common that you see that on there.
13 Again, colors are red and white predominantly.

14 Other patches you'll see are AFFA, Angel Forever,
15 Forever Angel, similar patches like that.

16 Also, you'll see side rockers that will indicate
17 what chapter the individual is from, for instance, Oakland
18 chapter. You see a side rocker for Oakland.

19 Q All right. Are you familiar with gang trends
20 including rivalries, alliances, customs, and habits?

21 A Yes.

22 Q And can you explain that, please?

23 A In this particular case, the Hells Angels, I'm
24 familiar with the rivalry they currently have going with the
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1 Vagos Motorcycle Club. This has been established from prior
2 cases that I have not been involved in but have been familiar
3 with that occurred before any incidents happened in the city
4 of Lakeport. I was familiar with crimes against both
5 individuals where violent assaults occurred in different
6 states as well as in the state of California in different
7 counties.

8 Q All right. And specifically what violent incidents
9 were you aware of that concerned you with respect to this
10 particular incident?

11 A I had knowledge through intelligence that there were
12 stabbings, shootings that had occurred in various counties
13 between the two organizations. What concerned me about this
14 particular day in Lakeport was a full-patch member of the
15 Vagos traveling on his motorcycle past the bar where these
16 full-patch members of the Hells Angels and the other clubs who
17 align themselves with the Hells Angels were present.

18 Q Now, we talked a little bit about the customs,
19 practices, current trends with respect to the Hells Angels.
20 Do you have information, similar information regarding the
21 Vagos outlaw motorcycle gang?

22 A Yes.

23 Q Can you explain that to her honor, please?

24 A Would you like me to start with like the patches?

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1 Q Yes, please.

2 A Okay. The Vagos Motorcycle Club predominantly is
3 green in color. On the center patch they have a red
4 comic-type character, I guess would be the best definition.

5 MR. CHESNOFF: Your Honor, I'm going to object. To
6 qualify someone as an expert is not to ask him questions about
7 clothing that is familiar to everybody. If he's an expert,
8 Your Honor, it requires education. I mean the things that
9 were done, I might not agree that the first witness was an
10 expert, but at least he provided information to Your Honor
11 regarding training, et cetera. My --

12 THE COURT: What is your objection?

13 MR. CHESNOFF: Lack of foundation, Your Honor, for
14 continuing the testimony with him as an expert, Your Honor.

15 THE COURT: Okay. At this point, I see this as
16 foundational to prove up that he is an expert; therefore, I'm
17 going to overrule your objection.

18 You may continue.

19 THE WITNESS: Again, I'll reiterate, the Vagos
20 motorcycle organization is commonly seen with green colors,
21 like a lime green color. There is a red -- I consider it like
22 a character on the back, it's the Vago, that is a one-piece
23 patch with the word Vagos at the top.

24 They have a bottom rocker which also represents the
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1 state in which the organization is from. In this case, it
2 would be California.

3 They are also associated with a side rocker for the
4 chapter from which they come from, and in this case particular
5 case, this member had a side rocker indicating Lake County.

6 BY MR. HALL:

7 Q All right. And you testified that you have had a
8 number of classes with respect to outlaw gangs; is that
9 correct?

10 A Yes.

11 Q In Lakeport, is that an area specifically that Hells
12 Angels and Vagos frequent on a regular basis?

13 A Yes.

14 Q Are there other outlaw motorcycle gangs or
15 motorcycle clubs that frequent that area?

16 A Yes.

17 Q All right. And during the course of your tenure as
18 a police officer, have you had opportunities to observe the
19 various clubs on a number of occasions?

20 A Yes.

21 Q You share information with other police agencies and
22 other experts; for example, Jorge Gil-Blanco or other
23 California police officers regarding current trends of outlaw
24 motorcycle training, specifically the Vagos and Hells Angels?

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1 A Yes.

2 Q What types of -- go ahead.

3 A If I may back up. During those similar conferences
4 that I discussed earlier, Jorge Gil-Blanco was the instructor
5 for the outlaw motorcycle gang conference. I have been to
6 other courses where Jorge Gil-Blanco was the instructor. The
7 International Outlaw Motorcycle Gang Conference have a lot of
8 different instructors who are well versed in this field of
9 expertise and discuss their current trends.

10 As for the intelligence gathering, I regularly
11 receive intelligence from one of our officers in our police
12 department who is an expert in the field of outlaw motorcycle
13 gangs, on trends that are occurring, crimes in different cases
14 that have occurred throughout the state. So I'm very much
15 aware of those.

16 Q Have you had any contacts with any of the Hells
17 Angels or Vagos?

18 A Yes on the Vagos.

19 Q All right. And were you able to obtain any
20 information regarding inner workings of the Vagos or rivalries
21 that are currently the rivalry between the Vagos and the Hells
22 Angels?

23 A They didn't -- they were reluctant to provide
24 information. They don't talk about that information.

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1 Q Now, is that something that outlaw motorcycle --
2 well, specifically members of the Hells Angels and Vagos, is
3 that part of their custom and habit, not cooperate with law
4 enforcement?

5 A Yes.

6 Q It's also their custom and habit not to provide any
7 information regarding crimes that they may be involved in or
8 fights that they may be involved in?

9 MR. FREY: Judge, I object. That's a leading
10 question.

11 MR. CHESNOFF: Objection.

12 THE COURT: Sustained.

13 MR. FREY: Thank you.

14 BY MR. HALL:

15 Q Well, can you tell me about the customs and habits
16 of the Hells Angels and the Vagos that you're aware of with
17 respect to cooperation or noncooperation with law enforcement?

18 MR. CHESNOFF: Your Honor, I object. This is not a
19 foundational question. We haven't qualified him yet as an
20 expert. This begins him telling us about that which he has
21 not been established as an expert in, Your Honor.

22 MR. FREY: I agree. It's putting the cart before
23 the horse.

24 THE COURT: Okay. Do you want to offer him as an
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1 expert, Mr. Hall? Are you ready?

2 MR. HALL: Yes, I'll offer him as an expert.

3 THE COURT: Objection?

4 MR. CHESNOFF: Yes. Take him on voir dire, Your
5 Honor?

6 THE COURT: As to his expert qualification, yes.

7

8 VOIR DIRE EXAMINATION

9 BY MR. CHESNOFF:

10 Q These courses that you went to, sir, you went to
11 learn not teach, correct?

12 A Correct.

13 Q And of course since that time, have you ever taught
14 large groups of law enforcement officers about outlaw
15 motorcycle gangs?

16 A No.

17 Q Is there someone else in your department who is
18 designated as the expert on outlaw motorcycle gangs?

19 A There is another individual who has, yes, testified
20 as an expert in my agency.

21 Q Okay. But you haven't, correct?

22 A Not as it relates to motorcycle gangs, but other
23 gangs, yes.

24 Q So you've never been qualified as an expert in any
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1 court of law anywhere in the United States to testify as to
2 outlaw motorcycle gangs, correct?

3 A None, yes.

4 Q You've never infiltrated a motorcycle gang, have
5 you, as an undercover agent?

6 A No.

7 Q You never debriefed any member of a motorcycle gang,
8 specifically the Hells Angels, correct?

9 A Correct.

10 Q You've never published any articles in any
11 publication whatsoever on motorcycle gangs; is that correct?

12 A Correct.

13 Q I've already asked you if you lecture. Do you have
14 any advanced degrees in criminal organizations from any
15 university?

16 A None.

17 Q From any junior college?

18 A No.

19 Q From anywhere?

20 A No.

21 Q Would it be fair to tell her honor that your
22 knowledge of motorcycle gangs is as a result of your
23 investigation of criminal acts that have been committed by
24 people who are members of motorcycle gangs?

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1 A I believe it reaches beyond that, given my training.

2 Q Going to a couple of classes is that what you mean?

3 A Not a couple.

4 Q Okay. How many?

5 A Several.

6 Q Well --

7 A Again, to reiterate, from 2002 to 2006, I attended
8 California Narcotics Officer Association conferences which
9 provided extensive training in outlaw motorcycle gangs. The
10 two conferences, I believe they were three days at the
11 International Outlaw Motorcycle Gang Conference which
12 specifically and exclusively deals with outlaw motorcycle
13 gangs, their activity, their cases that were being currently
14 investigated, and the actions and trends of outlaw motorcycle
15 gangs at the time.

16 Q You don't purport to be an expert on the Hells
17 Angels Motorcycle Club, do you?

18 A I purport to know more than the average person on
19 the Hells Angels Motorcycle Club.

20 Q Would you call yourself an expert?

21 A I would say I have expertise in that specific area.

22 Q Sir, it's a specific question.

23 A Yes.

24 Q You would consider yourself an expert?

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1 MR. HALL: I think it's asked and answered.

2 THE COURT: Sustained.

3 BY MR. CHESNOFF:

4 Q So as an expert, would you please describe this 81
5 patch that you say exists on jackets worn by the Hells Angels?

6 THE COURT: That's beyond the scope.

7 MR. CHESNOFF: Your Honor --

8 THE COURT: It's beyond the scope.

9 MR. CHESNOFF: Why, Your Honor? I don't want to do
10 what they are doing.

11 THE COURT: Yeah, yeah, okay.

12 MR. HALL: What are we doing?

13 MR. CHESNOFF: First of all, there's no objection.

14 THE COURT: I saw them stand up. I presupposed it.
15 Do you not object?

16 MR. HALL: I object, yes. I was in the process of
17 objecting. But it's beyond the scope.

18 MR. CHESNOFF: He claims he's an expert and I make
19 an offer of proof now, Your Honor.

20 THE COURT: Okay.

21 MR. CHESNOFF: The gentleman has testified that on a
22 Hells Angel member there is an insignia of 81. That is a
23 complete fabrication, Your Honor. It does not exist on a
24 member. So I would like to ask him, since he just told you

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1 he's an expert, to describe what he's talking about.

2 THE COURT: Okay. I'm sustaining Mr. Hall's
3 objection. I think that's beyond taking someone on voir dire
4 to determine whether or not they are an expert. Certainly
5 goes to weight to be given to his testimony perhaps.

6 BY MR. CHESNOFF:

7 Q How many members of the Hells Angels exist in the
8 United States?

9 A I don't have that answer.

10 Q How many charters are there?

11 A I don't have that answer.

12 Q How many charters are there in Denmark?

13 A I don't have that answer.

14 Q How about Germany?

15 A I don't have that answer.

16 Q Can you name ten members?

17 A Not currently.

18 Q Is there a national president of the Hells Angels?

19 A Yes.

20 Q Who is it?

21 A It was at one time Sonny Barger. I do not know who
22 the national president is currently.

23 Q So your testimony is to her honor as an expert in
24 the hierarchy of the Hells Angels, there is a national

1 president. Is that your testimony?

2 A There has been a national president.

3 Q Is there presently a national president?

4 A I believe so.

5 Q Who is that?

6 A I don't know his name.

7 Q Who is the national vice president?

8 A Don't know his name.

9 Q National treasurer?

10 A Don't know his name.

11 Q National sergeant-at-arms?

12 A Don't know his name.

13 Q Do you know the sergeant-at-arms of the Oakland
14 chapter?

15 A No.

16 Q Do you know the sergeant-at-arms of the Mesa chapter
17 in Arizona?

18 A No.

19 Q Can you name a president of the chapter besides the
20 one in the town you live in?

21 A There is not one in the town I live in.

22 Q Can you name a president of a chapter?

23 A I believe there is of the Ventura chapter, George.

24 You have to forgive me on his last name.

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1 Q You're sure George is still in the club?

2 A I believe so.

3 Q Let me ask you this. If you're wrong about George
4 being in the club, would you consider yourself much of an
5 expert?

6 A Again, when I think of an expert, I think about the
7 trends that the motorcycle club does. I may not know every
8 single individual and every chapter and every president of
9 every chapter. I may not know that. I know more than the
10 average person, which I believe makes me an expert in the
11 gang.

12 Q I watch Dr. Oz, but I don't propose to be --

13 MR. HALL: Objection. Argumentative.

14 THE COURT: Sustained.

15 MR. CHESNOFF: Nothing further.

16

17 VOIR DIRE EXAMINATION

18 BY MR. FREY:

19 Q If I asked you all the same questions Mr. Chesnoff
20 asked you about the HAs with respect to the Vagos, for
21 example, can you name ten members? Do you know the head of
22 the chapter in Germany? Would I get the responses?

23 A As far as the outside countries, yes.

24 Q How about naming ten members nationally?

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1 A I could probably name ten members just from my own
2 chapter.

3 Q Your own chapter locally?

4 A Lake County chapter.

5 Q Give it a shot.

6 A We have the one-time president was James Fernley.
7 Then the second vice president was -- James Holly was the
8 president. Gregory Fern, Mike Burns, Roger Wheeler, James
9 Oiler, James Fitzgerald, Steven Cutright. Those are the ones
10 that I currently know of my agency right now.

11 Q Do you know if they are current members or former
12 members?

13 A Some of them are former members, yes.

14 Q Can you name who the national treasurer is?

15 A No.

16 Q How about the national sergeant-at-arms?

17 A No.

18 Q How about any of the international officers?

19 A No.

20 Q With respect to your training, that really consists
21 of attendance at conferences; is that right?

22 A Yeah.

23 Q And as you've just previously testified, you have
24 been a student at those conferences in essence?

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1 A Correct.

2 Q Never a presenter?

3 A No.

4 Q So you've been in essence a student, never a
5 teacher?

6 A Correct.

7 Q And you're purporting to teach the Court today about
8 outlaw motorcycle gangs?

9 A As it relates to the trends, not necessarily all the
10 members or individuals across the country.

11 Q But this is a position that's new to you because
12 you've never been in an instructor-type position?

13 A Correct.

14 Q You've never been qualified as an expert?

15 A Not in outlaw motorcycle gangs.

16 Q In any jurisdiction?

17 A In any jurisdiction.

18 Q Never published an article, correct?

19 A Correct.

20 Q Never obtained any sort of advanced degree as you
21 already answered, correct?

22 A Correct.

23 Q No training in social sciences?

24 MR. HALL: I object. He's asking the same
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1 questions.

2 MR. FREY: I'm going beyond it, your Honor.

3 THE COURT: You have to let him finish talking
4 before you interrupt.

5 And I understand your objection, but he does have
6 the right to make -- ask the same questions as
7 Mr. Villagrana's counsel because he is separate.

8 So you can continue.

9 MR. FREY: Thank you, Judge. I'm going to go a bit
10 beyond what they talk about.

11 BY MR. FREY:

12 Q No training, advanced training in social sciences?

13 A Correct.

14 Q No advanced training in anthropology?

15 A No.

16 Q Psychology?

17 A No.

18 Q Sociology?

19 A No.

20 Q Do you have a high school diploma?

21 A Yes.

22 Q What's your education beyond that?

23 A I have some college.

24 Q Okay. How many credits?

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1 A 60.

2 Q How many credits do you need to obtain a degree?

3 A I believe associate's is right at 60.

4 Q You don't have an associate's yet?

5 A No.

6 Q When you attended these conferences and the
7 presenter is Jorge Gil-Blanco, then you were in essence
8 relying on the information that he provides?

9 A It's -- yes, I use his information.

10 Q And are you familiar with the sources of his
11 information?

12 A No.

13 Q So you just believe in what you're told?

14 A He is an instructor, so certainly whatever he
15 teaches and whatever he trains, certainly I would use that
16 information to my advantage.

17 Q You're believing what you're told, to use that to
18 your advantage?

19 A And a lot of that information is corroborated.

20 Q And you don't know by whom?

21 A Well, if your -- let me give you another for
22 instance. Some of the --

23 Q Do you know by whom the information that Mr. --

24 MR. HALL: Your Honor, he was trying an answer the
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1 question. I ask he be allowed to answer the question about
2 any corroboration of Jorge Gil-Blanco.

3 THE COURT: Sustained.

4 You can answer the question.

5 THE WITNESS: In some of the cases where he talks
6 about information and he's instructing that, I also get the
7 intelligence on the case. That's what I mean by
8 corroboration. So he's instructing us on that, telling us
9 about that, it's also corroborated that that actually existed.
10 So that's information that I take from that. So, yes, when he
11 instructs, I do use that information.

12 BY MR. FREY:

13 Q And that's information you incorporated to form the
14 opinion that may or may not be elicited today by the State?

15 A I definitely take into consideration things he has
16 instructed on.

17 Q But that's the information that you've used, right,
18 to formulate your opinion that you are -- you're going to
19 render today?

20 A And also my own experience of dealing with the
21 outlaw motorcycle gangs in my own city, cases I've been
22 involved in.

23 Q But you're going to use the information provided to
24 you at the conferences?

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1 MR. HALL: Asked and answered.

2 MR. FREY: No. There was no answer.

3 THE COURT: It's argumentative. Sustained.

4 MR. FREY: I'm asking him a simple question: Are
5 you going to use the information provided to you at the
6 conference as a basis of your opinion?

7 THE COURT: Objection sustained.

8 MR. FREY: Thank you.

9 BY MR. FREY:

10 Q Do members of the Vagos refer to their patch as a
11 comic book character?

12 A No.

13 Q That's how you just referred to it?

14 A I believe I said it -- it looks somewhat of a
15 comic-type character on there.

16 MR. FREY: I don't have any -- no further questions,
17 Judge.

18 THE COURT: Okay. Traverse on him being an expert.
19 Do you want to -- do you want to enumerate? I think it might
20 help, Mr. Hall, if you want to enumerate what you want to
21 offer him as an expert in.

22 MR. HALL: Yes, Your Honor, I would like to offer
23 him as an expert on the issue of rivalries that exist between
24 the Hells Angels and the Vagos based upon not only his

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1 training and experience, not only on the training that he's
2 had, specifically going to the different conferences and such,
3 but also his hands-on experience which we were aware we were
4 getting into in terms of his involvement with the Hells Angels
5 and Vagos during the course of his employment as lieutenant
6 for the Lakeport Police Department. So he's going to
7 specifically address that issue, then render an opinion with
8 respect to the rivalry existing between the two gangs.

9 THE COURT: Okay. Counsel?

10 MR. CHESNOFF: Your Honor, he doesn't qualify as an
11 expert. He has no formal training, no degree. He does not
12 know specifics, contradicted the other expert that the State
13 called who testified specifically that the Hells Angels are a
14 one-man-one-vote with no national president, page 55 of the
15 prior transcript that we received, Your Honor. He does -- has
16 never interviewed, never debriefed. He doesn't qualify as an
17 expert. He's gone to some classes. The classes are over six
18 years old. There's no current information. He's never
19 testified as an expert. He's never lectured as an expert.
20 He's never written as an expert. And most respectfully, Your
21 Honor, what the State is attempting to do is to present him as
22 an expert in order to get in information that they can only
23 get in through an expert, no other way, and he's not an
24 expert, Your Honor. He certainly doesn't compare in terms of

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1 the presentations that was made to somebody who spent his
2 entire law enforcement career even studying, interviewing,
3 reading, lecturing.

4 So with that said, Your Honor, I just don't believe
5 that we need to go further because he's not an expert.

6 MR. FREY: Same objection with respect to
7 Mr. Gonzalez. I think all the points Mr. Chesnoff just made
8 apply equally to us.

9 I would note, Your Honor, that I think it's pretty
10 plain here that, you know, the intent here is to circumvent
11 the ruling, really, because if you look at the way that Mr. --

12 What was your name, sir?

13 THE WITNESS: Ferguson.

14 MR. FREY: The way he's noticed up is as a fact
15 witness, not an expert. They didn't attach a CV. So we all
16 attempted here to cross-examine the expert without the
17 forewarning and notice that really should be accorded to us
18 frankly by your written order and under the statute that
19 contemplates disclosure 21 days before a hearing like this. I
20 know this isn't trial, so he's noticed up as fact witness now,
21 they try to convert him as an expert only so they could funnel
22 him with the predicate that would be excluded by your ruling.
23 I think circumvention, that shouldn't be tolerated. I move to
24 exclude him. He doesn't have the qualifications. Certainly