

1 around to the side of the bar and he checks the slide on  
2 the firearm to see if it's even loaded.

3 Mr. Gonzalez then goes back, waits by the door of  
4 the disco, trying at this point to see where Mr. Pettigrew  
5 and Mr. Villagrana have gone.

6 Mr. Pettigrew and Mr. Villagrana in the meantime  
7 are walking through the casino. And you'll see it.  
8 They're shooting at people if they're wearing green.  
9 Mr. Villagrana and Mr. Pettigrew start to walk up what we  
10 call the "yellow brick road." That's the yellow tile  
11 walkway through the casino. As they're walking up this  
12 yellow brick road, we will see them come to the individual  
13 named Robert Wiggins.

14 You see, Mr. Wiggins had the misfortune to get  
15 caught up in a crowd that, again, Mr. Rudnick was part of,  
16 and this crowd was surging forward and surging backward  
17 depending on the gunfire and what was happening.

18 The crowd at one point surges forward;  
19 Mr. Wiggins is either hit by someone or falls down, hits  
20 the side of his jaw and literally is inert, immobile on  
21 the floor. And you saw it yesterday on the video.

22 And we're going to show it to you again, and  
23 you'll have a chance to see a lot of it, so I'm not going  
24 to play it for you now.

1           What you will see is this: You will see  
2 Mr. Pettigrew and Mr. Villagrana walking down the yellow  
3 brick road. They're not walking like this, worried that  
4 somebody's coming after them. They're simply walking  
5 down.

6           What happens is they see the body of Mr. Wiggins  
7 laying on the ground. You can see on the video exactly  
8 what Mr. Gonzalez saw -- this is truly that case you get  
9 to observe what the defendant will tell you he observed --  
10 and observed in this context: Shot, we know, two people,  
11 maybe others. Mr. Gonzalez of course wouldn't be in a  
12 position, as the evidence will show, to know all about the  
13 casino, whether there were other Vagos on the ground.

14          You will also see that Mr. Gonzalez, while in  
15 that disco, has a 15-second time window. 15 seconds.  
16 Count it out. It's a long time. He's in the discotheque  
17 15 seconds watching, watching Mr. Pettigrew, watching  
18 Mr. Villagrana. It looks like they're done; they're not  
19 going to hurt anybody.

20          They walk out. For 15 seconds get further and  
21 further away from Mr. Gonzalez. 15 seconds of time and  
22 distance, 15 seconds of difficulty, making some shot if  
23 you're an assassin. And you will contrast that to all of  
24 the opportunities that Mr. Gonzalez chose to shoot

1 Pettigrew that night where he could have simply walked up  
2 if he had a firearm and gone bang, bang, bang and  
3 disappeared. 15 seconds, 10 yards, 15 yards, further  
4 away, everything seems good.

5 One problem. Mr. Wiggins. Mr. Wiggins.  
6 Mr. Wiggins on the ground. When they walk up to where  
7 Mr. Wiggins is located, you will hear "This will teach  
8 you" -- pardon the expression -- "to fuck with the HAs,"  
9 at which point in time you will see Mr. Pettigrew kick at  
10 Mr. Wiggins's head. You will also see on the video  
11 Mr. Villagrana kick at Mr. Wiggins's head.

12 You will then see, unlike the video that was  
13 stopped yesterday, that Mr. Pettigrew literally braces  
14 because Mr. Pettigrew has a prosthetic limb. So  
15 Mr. Pettigrew braces to give one final shot.  
16 Mr. Pettigrew falls. That's what you're going to see on  
17 the video.

18 But what you won't see on the video, this is  
19 what's coming at the head of Mr. Wiggins (indicating).  
20 Mr. Wiggins, who lays on the ground, does nothing. Does  
21 not present a threat, does not vocalize his opinion, does  
22 not have a gun. Ernesto Gonzalez was put in a position,  
23 as the evidence will show, of making a decision: Do I do  
24 nothing and let that happen, knowing full well what

1 they've already done, or do I fire this gun?

2 And you will see from the evidence in this  
3 case -- no one's going to tell you differently -- he fired  
4 that gun. You're going to have a chance to hear from  
5 Mr. Wiggins. You will hear from Mr. Wiggins how, when he  
6 laid on the ground and saw them coming, he tried to play  
7 possum in the hopes they would leave him alone.

8 Mr. Wiggins will tell you he thought he heard a gunshot  
9 when they were standing near him, and his only thought was  
10 please kill me, don't wound me. I don't want to suffer.

11 You will see that we all are here in certain  
12 respects because of the actions of one man. That one man  
13 is Gary Rudnick.

14 Now, what happens to Mr. Rudnick? Mr. Rudnick,  
15 of course, managed to escape, to get away. But we all  
16 know in casinos there's security footage, and really  
17 putting it together ain't gonna be that hard.

18 Mr. Rudnick is then arrested in Southern  
19 California. Mr. Rudnick also has several visits from  
20 officers, of which you will learn there are no reports, no  
21 transcripts, no audiotape, no videotape, and Mr. Rudnick  
22 is spoken to. You will learn that there were several  
23 other interviews. There was one on January 5th, 2012.  
24 There was another on February 15th, 2012.

1           Interesting, you will learn before the  
2 February 15th complete-and-truthful interview Mr. Rudnick,  
3 by the police, was given a copy of the grand jury  
4 transcript with all the other witness' testimony to  
5 review. Prior to that truthful debrief of February 15th,  
6 Mr. Rudnick was also allowed to see the video footage.  
7 Prior to that truthful debrief he was also allowed to see  
8 pictures and diagrams.

9           And you're going to have to ask yourself: What  
10 happened on the other debriefs, and why don't we have a  
11 recording of those, why don't we have a report, why don't  
12 we have notes?

13           And I think you might be interested to learn  
14 this: Mr. Rudnick, of course, was allowed to avoid very  
15 serious charges that carried a very serious consequence.  
16 All that he had to do was cooperate with the State and the  
17 detective by the name of Eric Bennett. You'll meet  
18 Mr. Bennett. He has an unusual fascination with the Vagos  
19 and has spent a great deal of time investigating them.

20           Mr. Bennett had meetings unrecorded, unnoted,  
21 unreported with Mr. Rudnick. And from those meetings the  
22 defense will present evidence to suggest a lie blossomed,  
23 because you will learn that if Mr. Rudnick would have  
24 accepted the responsibility and said, hey, it's on me,

1 nobody made me do it, in fact, my club members said get  
2 out of here -- one of them will tell you he was so angry  
3 with him, if he could have, he would have hit him in the  
4 head with a bat because of all the problems he was  
5 causing.

6 Mr. Rudnick, because of his position as vice  
7 president, unfortunately had the ability to cause others  
8 to stand off. That's the hierarchy. You don't attack a  
9 vice president. You don't.

10 Mr. Rudnick couldn't or wouldn't accept  
11 responsibility. And Mr. Rudnick then comes with the story  
12 of, okay, let me tell you what happened. You see we had  
13 our 8:00 o'clock meeting, but then there was a special  
14 meeting out in the hallway, and it's in that meeting in  
15 the hallway that all 20 people who were standing there  
16 agreed: We're going to kill Jeffrey Pettigrew. Then  
17 after that meeting you'll see that all of those people  
18 that supposedly okayed this hit on Jeffrey Pettigrew are  
19 downstairs with Mr. Pettigrew trying to maintain the  
20 peace.

21 So you're going to have to ask yourself whether  
22 there's some consistency issues involved there.

23 But, more importantly, Mr. Rudnick's story  
24 blossoms, and we will be told by virtue of what's called

1 his guilty plea memorandum there's no deals on sentencing.  
2 He's going to plead to a conspiracy to commit murder, but,  
3 hey, there are no deals. We're free to argue, says the  
4 State.

5 Mr. Rudnick, though, seems to have a different  
6 opinion of the deal. We were fortunate enough to be able  
7 to recover some of the telephone calls of Mr. Rudnick to  
8 his significant other, Crystal Cobar. Oh, there were a  
9 bunch.

10 I want to read you one of Mr. Rudnick's comments  
11 in the process of being questioned by Crystal Cobar. It's  
12 interesting that Mr. Rudnick doesn't even know what he's  
13 pleading to, but, more importantly, Crystal: "The Court,  
14 the newspaper article said you pled guilty to second  
15 degree murder, which I don't know why you would fucking  
16 plead to guilty to second degree murder and, uh, you're  
17 going to testify against them at trial."

18 Mr. Rudnick: "Yeah, but that is because that is  
19 the deal that he's giving me. You know what I'm saying?"

20 Crystal: "So you still are going to jail for  
21 second degree murder?"

22 "No. No, baby. No. No. The thing is I plead  
23 to that. That is a process that I have to go through.  
24 And Rocco" -- public defender investigator -- "is going to

1 explain that to you, how that goes. They do that, then I  
2 do everything that Eric wants me to" -- Eric Bennett, the  
3 police officer he's met with -- "everything that he wants  
4 me to do and Karl and the judge will drop everything to  
5 probation. He already agreed on everything so -- because  
6 I don't go to sentencing until after the trial of that  
7 thing. You know what I'm saying? So it's hard to  
8 explain, so that's why you have to get ahold of Rocco."

9 Rudnick knows two things when he comes in here  
10 and testifies. His testimony, according to him, is tied  
11 in with the fact that he's going to get probation and go  
12 home. He says it.

13 It's interesting as well that he continually  
14 refers to the fact he's made a deal, and he wants them to  
15 live up to it. He wants out of jail now.

16 Rudnick: "No, I'm not waiting" -- he's just got  
17 the news he's got to sit in jail a bit longer -- "No, I'm  
18 not waiting. There's no way. There's no way I'm staying  
19 here until December, Crystal. There's no fucking way. He  
20 made a deal to us, and he's sitting there saying the house  
21 is safe, and Karl made a deal."

22 Part of that deal also included him getting out  
23 of jail so that he could, quote, go home. But when he's  
24 not getting released from jail, Mr. Rudnick decides:



1 Maybe it's time to stop the flow of information; maybe  
2 that's how I coerce the guys into living up to their end  
3 of the deal.

4 "Uh, yeah, I had the meeting on Thursday. It  
5 wasn't even a meeting, but we were going to have it  
6 Tuesday. They gave the runaround again, so Jennifer" --  
7 his lawyer -- "is all pissed off, so she's like trying to  
8 work something else out. But they have that trial in  
9 April, from April 2nd to the 15th, so we'll see what  
10 happens. I don't know nothing until next week.

11 "But, listen, don't give nobody nothing. Don't  
12 give Rocco no numbers that he wants. Tell him Gary told  
13 me not to give no numbers out, because they want a couple  
14 of numbers out of my phonebook. Don't give no one no  
15 information until they tell me something. None of this  
16 shit that we're working on. I want to know something.

17 "So okay? Don't give them no phone numbers out  
18 of my book, out of my phone, and tell them that's what I  
19 was going to tell Rocco" -- the public defender  
20 investigator -- "today. I was going to be like, look it,  
21 I'm not talking to nobody. I'm not gonna give out no  
22 information. I'm not doing nothing until I'm told what's  
23 going on because I keep hearing it's in the works, it's in  
24 the works."

1           The phrase "bought-and-paid-for testimony" will  
2 come to mind in this case. The reliability of that sort  
3 of testimony will certainly be something that you have an  
4 opportunity to question.

5           That is why I said please listen to what they  
6 say, analyze it carefully, come to a conclusion in your  
7 own mind whether it makes sense. And, above all, honor  
8 your promise, your duty, to presume the defendant, Ernesto  
9 Gonzalez, innocent.

10           One of the questions in voir dire yesterday --  
11 and I forgot to do this in the beginning, and I should  
12 have. First of all, thank you very much, because I know  
13 it was a long, drawn-out process. I know it's personal.  
14 I know it delves into areas sometimes that people don't  
15 want to talk about. But it's also exceptionally  
16 important, and it's important because we are trying as  
17 lawyers, both the State and defense, to achieve a jury  
18 that can regard a case fairly, with an open mind. And I  
19 think we've done that.

20           So the consequence of the voir dire, of course,  
21 is exceptionally important, but in that consequence is the  
22 duty and the presumption of innocence and the burden --

23           MR. HALL: Objection, Your Honor. This is not  
24 what the evidence is going to show.

1 THE COURT: You're getting a little bit into  
2 argument. Sustained.

3 MR. HOUSTON: I'm sorry, Your Honor.

4 Back to the evidence --

5 Thank you, Your Honor. I'm sorry.

6 Back to the evidence in reference to what we are  
7 going to show.

8 We are in a situation at this point to where we  
9 will also have the opportunity to present you with  
10 witnesses. We will have the opportunity to present you  
11 with witnesses that were there, that know what happened,  
12 that don't require regarding a video and assuming, well,  
13 maybe they're saying this, maybe they're saying that.

14 We're going to bring in people. You'll have a  
15 chance to hear them. You'll have a chance to talk to  
16 them. You will have a chance to learn that as early as  
17 the drive up, Mr. Rudnick was talking about how he wanted  
18 to create problems. You'll hear from the individual he  
19 spoke with. You'll hear the individual tell you that he  
20 told him knock it off, we're not here for that. You'll  
21 hear when they got here what happened.

22 Mr. Gonzalez will have a chance to tell you when  
23 he comes here and they're checking into the hotel, he sees  
24 Hells Angels. Been the same way for 15 years. No

1 difference.

2           You will hear from individuals who were standing  
3 in that line. You will hear from Mr. Fearn. You will  
4 hear from others that will give you a bit more background  
5 on what happened that evening, how there was no  
6 super-secret meeting upstairs where it was decided to  
7 assassinate someone in front of hundreds of witnesses on  
8 videotape. You will hear the absurdity and you will hear  
9 of the absolute fallacy in that story.

10           And you will have a chance to ask yourself: Does  
11 Mr. Rudnick have an interest? The evidence will show he  
12 most certainly does. Did Mr. Rudnick build this case on  
13 the foundation of a lie? And you will have the answer  
14 once you evaluate that question with the evidence and  
15 listen to him.

16           When we conclude this process, we'll have the  
17 opportunity, of course, to speak with you again. I will  
18 have the opportunity to provide what's called a closing  
19 argument. That's where we try to tie it all up and  
20 present you with what we believe the evidence has shown.

21           I won't have the opportunity really to address  
22 you again, and I certainly want to thank you for your  
23 patience. I didn't really want to go through all the  
24 video again because I didn't think we were going to have

1 enough time, but, as we do, please remember: Believe what  
2 you see, not what you're told.

3 Thank you very much.

4 THE COURT: Counsel, are you ready to call your  
5 first witness?

6 MR. HALL: Yes, I am, Your Honor. Thank you.

7  
8 NANCY OWENS,  
9 called as a witness on behalf of the Plaintiff,  
10 having been first duly sworn,  
11 was examined and testified as follows:

12  
13 DIRECT EXAMINATION

14 BY MR. HALL:

15 Q Good morning.

16 A Good morning.

17 Q Would you please state your name and spell your  
18 last name.

19 A Nancy Owens, O-w-e-n-s.

20 Q What's your occupation, Ms. Owens?

21 A I'm a communications supervisor for the Sparks  
22 Police Department.

23 Q And how long have you been so employed?

24 A For 29 years.

1 Q And what does an operator do there for Sparks?

2 A Well, we answer 911 calls, we dispatch police,  
3 fire, we start paramedics. We have a broad variety of  
4 things we do.

5 Q All right. And are you familiar with the  
6 recording that was made on or about September 23rd, 2011,  
7 in response to the Nugget incident?

8 A Yes.

9 Q Okay. And you've listened to that tape?

10 A I have.

11 MR. HALL: And that's -- for the record, I would  
12 indicate that that's Exhibit 142. It's been stipulated  
13 into evidence. I'd like to publish that to the jury.

14 THE COURT: Any objection?

15 MR. HOUSTON: No, Your Honor.

16 THE COURT: Exhibit 142 is admitted and may be  
17 published.

18 (Exhibit No. 142 admitted.)

19 (Audiotape played.)

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

22 THE COURT: Cross?

23 MR. LYON: No questions, Your Honor.

24 THE COURT: Thank you, ma'am. You may step down.

1 THE WITNESS: Thank you.

2 THE COURT: Call your next witness.

3 MR. HALL: Yes. We're getting him right now.  
4 Thank you, Your Honor.

5 THE COURT: Okay.

6  
7 BILL PRICHARD,

8 called as a witness on behalf of the Plaintiff,

9 having been first duly sworn,

10 was examined and testified as follows:

11  
12 DIRECT EXAMINATION

13 BY MR. HALL:

14 Q Good morning, Mr. Prichard. Sir, what's your  
15 occupation?

16 A Surveillance supervisor at John Ascuaga's Nugget.

17 Q And how long have you worked there?

18 A I've worked there since -- since 2004 or so.  
19 Nine years.

20 Q Can you tell the ladies and gentlemen of the jury  
21 about your training and experience with respect to  
22 surveillance in casinos.

23 THE COURT: I'm going to stop you there.

24 I'm sorry, sir, we didn't hear your name. What's

1 your name?

2 MR. HALL: Bill Prichard. Bill Prichard.

3 THE COURT: Thank you. You may proceed.

4 THE WITNESS: Thank you.

5 I started out at Harrah's in 1981 and worked my  
6 way up and into surveillance, was recruited to several  
7 other properties in town where I've built, redesigned, and  
8 improved and grown with the video system, started  
9 installing them and doing all that. So I've kind of grown  
10 up with all of those.

11 We went from catwalks to cameras basically  
12 through all these years, over 30 years.

13 BY MR. HALL:

14 Q Has the equipment developed over the years since  
15 you started?

16 A Oh, quite a bit. Yes.

17 Q I'm sorry, did it initially start with the  
18 VCR-type equipment or analog equipment?

19 A We started out basically with a single 20-minute  
20 Betamax camera, and we used to have to go out in the  
21 catwalks and film from there. And there's no time dates,  
22 no nothing on it. We just made a video of whatever we  
23 saw.

24 We went from there to installed equipment, pretty



1 large installed equipment, permanently placed in the  
2 ceiling and that, a lot of fixed cameras, and then some  
3 good old PTZs, pan-tilt-zooms, that move around and we can  
4 tighten up shots and stuff like that.

5 And they weren't all recorded. We only recorded  
6 those at that time when we were actually watching or were  
7 interested in a particular activity. Otherwise they  
8 weren't recorded because we didn't have a lot of recording  
9 equipment. It was extremely expensive relative to what it  
10 was doing.

11 But eventually we got recorders, VCRs,  
12 multiplexors, all those types of equipment to get as many  
13 cameras recorded as possible, up to today where we pretty  
14 much have everything recorded if we have a camera for that  
15 shot. And so they all have either multiplexors, which  
16 puts multiple cameras on one recording, and then we're  
17 migrating up to the digital recording, which the only  
18 difference there is the type of recording that's being  
19 made. It's a digital recording instead of an analog  
20 recording, which is what VCRs are. The old TV sets are  
21 analog; the new TV sets are the digital. So we have the  
22 analog.

23 Q All right. So can you just give me a brief  
24 description of the equipment that you have at the Nugget

1 or that was in place at the Nugget at least on  
2 September 23rd of 2011.

3 A We have some -- most everything we have is  
4 recorded on a VCR. Some cameras are recorded dedicated on  
5 one VCR, one camera to one VCR. We have most of the  
6 cameras going to what's called a multiplexor, which is 16  
7 cameras onto one multiplexor. So it's kind of like a  
8 time-lapsed recording. It's really not time lapsed, per  
9 se, but it records a little bit of each camera every  
10 second. And that's recorded. Each VCR -- or each  
11 multiplexor is recorded on one VCR, so we get 16  
12 recordings on one VCR, is the -- is the economy of using  
13 that.

14 And then we have some areas, which are usually  
15 the cash areas, that we have some of the -- well, now  
16 they're called -- older models of some digital video  
17 recording, which is done on -- just a computer recording  
18 with whatever software that's on there. We have a couple  
19 of older things there.

20 So it's either on a VCR, there's a few cameras on  
21 the digital recording, as I say, mostly the cash-handling  
22 areas, and then the rest are all on multiplexors.

23 Q All right. Now, we have several different pieces  
24 of evidence that we can walk through. We have the

1 overview of the Nugget, which is the diagram. You're  
2 familiar with the diagram?

3 A Yes.

4 Q And on that diagram is the location of various  
5 cameras that were used to capture some of the evidence in  
6 this case, the fight?

7 A Correct.

8 Q All right. So we have that. We have a  
9 walk-through video, which you were involved in; is that  
10 correct?

11 A That's correct.

12 Q All right. And so we started outside the casino  
13 and walked through, and you assisted us in identifying the  
14 location of the cameras as we walked from outside of the  
15 Oyster Bar doors; past the Oyster Bar, down through Trader  
16 Dick's, and over to the Horseshoe Bar; do you remember  
17 that?

18 A Yes.

19 Q All right. Then of course we have overhead  
20 photos, and those first exhibits are -- have been marked  
21 as Exhibit 1 for identification.

22 MR. HALL: Counsel, you're familiar with  
23 Exhibit 1.

24 /////

1 BY MR. HALL:

2 Q So just to orient everybody with the area that  
3 we're going to be talking about, I don't know if we can --  
4 all right. I think it's a little easier for everybody to  
5 see if we go to section by section. And I would indicate,  
6 sir, that you can identify areas on the screen by touching  
7 this screen. All right?

8 A Okay. Very good.

9 Q So you're familiar with Exhibit 1, which is  
10 obviously an overhead photograph of the Nugget. And the  
11 bottom, this area here, would be towards the north, faces  
12 north --

13 A This -- yes.

14 Q -- or opens towards the north?

15 A This area of the north end of the building,  
16 Victorian Avenue side.

17 THE COURT: Counsel, you're stipulating to  
18 Exhibit 1?

19 MR. HOUSTON: Yes, Your Honor.

20 THE COURT: It's admitted.

21 (Exhibit No. 1 admitted.)

22 BY MR. HALL:

23 Q All right. And where would the Oyster Bar be  
24 located?

1           A     Right at that entrance right here is the Oyster  
2 Bar entrance. The rest is all roof, but that's -- that's  
3 the first door on the west side.

4           Q     Right. So then if you walk through those doors  
5 and were going to proceed down to the Showroom, can you  
6 indicate which way you would walk so we have some  
7 bearings?

8           A     If you went in here, you're going to follow it  
9 around and go to the Showroom off towards the east there.

10          Q     All right. Where's the Oyster Bar?

11          A     The Oyster Bar is right here if you walk in here.  
12 That's the Oyster Bar right there.

13          Q     All right. So then if we can just continue on  
14 and if you can orient us from this photograph.

15          A     Okay. Well, I'll just start with the entrances.  
16 This is called the "Last Chance Joe" entrance with the  
17 statue there. It's the middle doors basically. Either  
18 one, if you're coming from the Oyster Bar here. The  
19 Showroom is over here, and as you walk up this way you go  
20 past The Steakhouse. And you go past up here and you'd  
21 end up somewhere right here where the Trader Dick's is.  
22 And then as you walk, you're actually going past up this  
23 way to where Trader Dick's and then the Rosie's and all  
24 that and then back towards the newer part of the club.

1 Q And then can you give us an indication as to  
2 where the elevators would be if we just continue south.  
3 So we went east -- we entered in from the north side,  
4 right, and then basically turned left going east, and now  
5 heading south towards Trader Dick's, Rosie's --

6 A That's all this area right in here. This is the  
7 east tower here. This building here is the east tower.  
8 So the east tower elevators are right over here, this  
9 building here. Come down through here, you end up going  
10 towards the lobby. You'll be walking through the lobby.  
11 This is the west tower, and there's west tower elevators  
12 over here.

13 That's all on the ground floor. So if you walk  
14 about one big circle going around the building.

15 Q All right. And then just over here to the east,  
16 on the east side of the building, we've got Victorian  
17 Plaza. Is that also known as 11th Street?

18 A Yeah. Actually, that's 11th Street. Victorian  
19 Plaza technically goes -- it starts across the street. So  
20 this is 11th Street. There's an 11th Street doorway here.  
21 There's also a doorway up at Victorian and 11th on that  
22 side.

23 This doorway here goes past the Horseshoe Bar and  
24 ties up with the main walkway, and then you can go back

1 this way over here to Trader Dick's and all that.

2 Q And then over to the left of the 11th Street on  
3 our diagram, is this the parking lot?

4 A That's the public parking building, yes.

5 Q All right. So then just to familiarize everybody  
6 with the evidence, we've got another aerial photograph  
7 from a different angle.

8 A This is south looking north.

9 THE COURT: What exhibit number is that?

10 MR. HALL: This is also Exhibit No. 1.

11 THE COURT: Okay.

12 BY MR. HALL:

13 Q So Exhibit No. 1 consists of three photographs,  
14 an overhead diagram, and then a list of cameras.

15 So I think it's difficult for everybody to see.  
16 I'm going to zoom in, and we're going to do this in  
17 sections like we did before so that we can actually see  
18 what we're talking about.

19 Do you recognize that diagram, sir?

20 A Yes, I do.

21 Q All right. And what does that diagram show?

22 A Well, this particular section is right -- the bar  
23 right here is bar 3, or the Broadway Bar, and this is The  
24 Steakhouse area.

1 Q Can you put a mark on what you're talking about.

2 A This is the -- or bar 3 right here.

3 Q Would that be the Broadway Bar or the Showroom  
4 bar --

5 A Broadway Bar. Some call it the Showroom, but I  
6 think the official name is Broadway Bar.

7 Q Broadway Bar?

8 A We refer to it as Bar 3 reference --

9 Q Okay.

10 A But The Steakhouse right here. If you walk past  
11 up this way, this is the way to the Oyster Bar. And if  
12 you go up this way, you go up towards Trader Dick's and --

13 Q We're talking about this way. I'm going the  
14 wrong way.

15 A Yeah. We just followed it up from here. We'd be  
16 coming up this way. This is the Trader Dick's bar area.  
17 This is the Noodle Hut area. This area right in here is a  
18 back-of-the-house hallway behind the Noodle Hut.

19 And if you could move it -- yeah, there you go.  
20 This is the Noodle Hut here. Trader Dick's is right here.  
21 We were just down at -- this way. This is The Steakhouse  
22 here. And this hallway is a back-of-the-house hallway  
23 that leads to the kitchen area.

24 You can go off inside The Steakhouse here or



1 behind the Noodle Hut or go back out and around the Trader  
2 Dick's. And this is the walkway that heads past Trader  
3 Dick's. This is the Slot Section 4 here, and once again  
4 Trader Dick's and...

5 Q Let's keep moving --

6 A Headed in the same direction there, yeah.

7 Q -- east.

8 A Trader Dick's here. Back here is the Trader  
9 Dick's restaurant. This is the Trader Dick's bar. Also  
10 the fish tank, the big fish tank that we have at Trader  
11 Dick's bar. But this is the restaurant here, Trader  
12 Dick's restaurant.

13 This is a dance floor, and they do karaoke and  
14 just invited -- you know, small group or a single band,  
15 whatever, for entertainment and dancing there.

16 We would be walking this way. From where we were  
17 before, we were walking up this way. The restrooms by  
18 Rosie's -- we call it Rosie's because Rosie's is right  
19 next to it right over here.

20 So you have Trader Dick's, the dance floor, the  
21 restrooms, and then, if you moved that over, we'd have  
22 Rosie's right there. That's just following this area up.

23 This is -- when you see the 600, 626, 618, that  
24 tells you -- that's what we call Section 6. Over here is

1 the 400, 414, 436. That's referred to as Section 5. So  
2 as we walk up, we went from Section 3 to Section 4 to --  
3 or Section 4 there is -- 400 is Section 4, so -- and then  
4 this is 600s when you see those on that map.

5 Q All right. And, now, these rectangles here that  
6 have the numbers on them, 628 --

7 A Those are slot banks.

8 Q Those are slot banks. And then this area that  
9 has the kind of the wall around it here?

10 A That's just considered the high limits slot area.  
11 That's where we have the hundred dollar machines and some  
12 \$25 machines and other, rather than just dollars and  
13 nickels and stuff like that. That's Section 4, but it's  
14 bounded. And that's the high limit area, is what we refer  
15 to it as.

16 Q And where did the fight occur?

17 A Approximately right in -- approximately right in  
18 here is where it started, in this -- in this section right  
19 in here (indicating).

20 Q Now, this exhibit has some camera numbers on it;  
21 is that correct?

22 A That's correct.

23 Q All right. Can you talk a little bit about the  
24 numbers on this exhibit, and we'll start at one end and

1 kind of work our way down, if we could do that.

2 A Sure. Okay. I have these labeled here Camera 37  
3 and 38. Those are fixed cameras, "fixed" meaning we can't  
4 move them around. They're fixed in one particular shot,  
5 one particular view. Most of the time they're covering a  
6 slot area or something that we needed to cover. So that's  
7 38 and 37.

8 As we go up here, this Camera 46 is a  
9 pan-tilt-zoom that's on the walkway there. This Camera  
10 261 right here is actually a cash register camera fixing  
11 on the Noodle Hut cash register area where you would be  
12 placing your order.

13 Q Can I interrupt you for one second. Now, when  
14 you made reference to Camera 46 --

15 A 46.

16 Q -- is that Monitor 1?

17 A That's on Monitor 1 on what we produce. It's on  
18 its own recording normally. But if we -- we have the  
19 ability to the call up any camera we have on any one of 16  
20 monitors that we have in the room. So any of these can  
21 appear on any of the monitors, whoever is operating the  
22 equipment at the time and whatever camera view they want  
23 to bring up.

24 Q Because there's essentially two views of the

1 beginning of the fight; is that correct?

2 A That's correct.

3 Q All right.. And so one is a view looking towards  
4 the south, and that would be consistent with Camera 46; is  
5 that accurate?

6 A Yes, I believe that was 46 that was zoomed in on  
7 that.

8 Q We'll go through those cameras in a little bit.

9 A That would be used to -- that can get that area.  
10 That area is just a few feet down this way.

11 Q All right.

12 A These cameras here, B58 and B59 -- B stands for  
13 back of the house. It's how we number them. And that  
14 covers basically this hallway here. The other camera  
15 that's on this view right now are these at the Oyster Bar  
16 where it says Camera -- put the Oyster Bar, if you  
17 would -- move -- there. Okay. The cameras around the  
18 Oyster Bar, they're labeled as 211.

19 Q The Oyster Bar or Trader Dick's?

20 A Trader Dick's. Sorry about that. These are the  
21 ones covering the -- primarily they're for the cash  
22 register and viewing of exchanging the drinks and cash at  
23 the bar. So we have Camera 211 -- 211, 212, 213, 214,  
24 215, and 216, and they're -- I have the arrows drawn in

1 there to show which direction the camera view is really  
2 going. Those are not movable cameras. So they're just  
3 basically covering around the bar so we can see activity  
4 at and around the bar. Usually the patron is sitting at  
5 it, and just whatever the view gives us.

6 Back over this way, down here at the end of  
7 Section -- this Section 4 here and before Section 6  
8 starts -- see, 603 is Section 6 -- there's Camera 45 right  
9 here. And that's a PTZ. That's a pan-tilt-zoom movable  
10 camera. And that, once again, just for demonstration,  
11 that would cover everything around -- PTZ goes all the way  
12 around -- wherever we want to use it and point it. So it  
13 covers a lot of area.

14 There's a Camera 7 right here, which is over by  
15 the pit. This is Pit 2, "pit" meaning the gaming pit. At  
16 that time we usually kept that pointed at the opening of  
17 Rosie's, just for traffic coming in and out of Rosie's and  
18 stuff like that. So even though the camera is down  
19 here -- it's a PTZ also, but we leave it honed or parked  
20 when not in use at the Rosie's entrance.

21 Down here in this corner -- we can barely see  
22 it -- it says Camera 3, and that's, again, a pit camera.  
23 It's over here for use in pit coverage when we need it.  
24 It's a PTZ, so it can cover all the way around,

1 360 degrees. We usually left this one pointed at the  
2 entrances to the -- these are Rosie's restrooms right  
3 here, men's and women's restroom. So it was covering --  
4 when not in use, it's pointed that way so we know where to  
5 fix. So it's pointed there. 7 is pointed towards  
6 Rosie's.

7 One other camera that we have here is Camera 61,  
8 which is a PTZ. And we leave that pointed generally in an  
9 opposite direction over into -- across Section 6 and get  
10 some of the slot machines in this area. It's a PTZ,  
11 covers -- it can go around and cover a lot of areas.

12 So those are the primary cameras that were there.  
13 Two of them are pit, identified in 45, 61 and Camera 3.

14 Q What is this area that I'm circling?

15 A That's the Gaming Pit 2 table games. Pit 2.

16 Q So that would be your poker, Pai Gow, 21, those  
17 types of -- not poker, but it would be 21 and Pai Gow?

18 A 21, Pai Gow, it's got roulette here, crap game,  
19 and then Three Card Poker; anything played in the pit.

20 Q So then if we kept traveling along the yellow  
21 brick road and past the bathrooms and past Rosie's?

22 A This area right here, as you passed Rosie's, you  
23 go past Rosie's, this is a keno lounge for the gold keno.  
24 And, once again, we're still at Section 6, around in

1 there. So as you're heading -- you're going to be heading  
2 up towards the Broadway Bar this way and another slot  
3 section, or Section 6.

4 Q All right. And then how does this pit area --

5 A We turned and headed east, so we're headed down  
6 towards the 11th Street side of the building. And this is  
7 Pit 1. Once again, same types of games as in Pit 2, just  
8 a smaller pit.

9 Q And where would the Horseshoe Bar be located  
10 relative to this area?

11 A Horseshoe Bar is -- can't see it, but it's right  
12 over here. Right next -- well, there's an aisleway there,  
13 but on this it's not there. It parallels this. It  
14 parallels this and then goes up around in a horseshoe  
15 shape.

16 Q All right. And then the 11th Street?

17 A Keep going -- this is the Cabaret, by the way.  
18 This is the Cabaret stage and that. And as we go over  
19 here, this is the 11th Street doors. And 11th Street or  
20 some -- I think you had it identified as Victorian Circle,  
21 but it's the -- this section of it's 11th Street.

22 Q All right. So then --

23 MR. HALL: May I have this marked as part of 1?

24 THE CLERK: Part of 1?

1 MR. HALL: Part of 1 would be fine.

2 THE CLERK: 1A?

3 MR. HALL: 1A.

4 (Exhibit No. 1A marked.)

5 BY MR. HALL:

6 Q Sir, when you filled out your report, you gave a  
7 complete list of the cameras and the camera areas that  
8 they were recording; is that correct?

9 A Yes, I gave you a list of...

10 Q All right. Let me show you what's been marked as  
11 1A. You wrote out your statement; we typed it out. Does  
12 that appear to be a true and accurate list of cameras and  
13 the areas that they were recording?

14 A That appears to be the complete list that I  
15 handed you, yes.

16 Q All right.

17 MR. HALL: Move for admission of 1A.

18 THE COURT: Any objection?

19 MR. LYON: No objection, Your Honor.

20 THE COURT: Admitted.

21 (Exhibit No. 1A admitted.)

22 BY MR. HALL:

23 Q Do you recall doing the walk-through video?

24 A Yes.



1 Q So since we just -- we videotaped what we just  
2 kind of walked through, so I'd like to play that.

3 THE COURT: Is that an exhibit, Mr. Hall?

4 MR. HALL: Yes, it is. And that has been marked  
5 I believe as Exhibit No. 152. Is that correct? Or 151?  
6 The thumb drive.

7 THE CLERK: It was 151.

8 THE COURT: Any objection?

9 MR. LYON: No objection, Your Honor.

10 THE COURT: Exhibit 151 is admitted.

11 (Exhibit No. 151 admitted.)

12 BY MR. HALL:

13 Q Sir, as we walk through this, if there's any time  
14 you want me to stop or slow down --

15 MR. HALL: I'd like permission to allow this  
16 witness to narrate what we're watching and what we're  
17 seeing on the video. And if you need me to pause it, I  
18 certainly can do that.

19 THE COURT: Any objection?

20 MR. HOUSTON: No objection.

21 THE COURT: You may do so.

22 THE WITNESS: Victorian Avenue looking towards  
23 the front from across the street, looking towards the  
24 front of the building. We're looking south at this time.

1 Just heading into the Oyster Bar doors.

2 BY MR. HALL:

3 Q Do you know where the Hells Angels had their  
4 booth?

5 A It was outside, as I recall. I don't know their  
6 exact -- just out front on the Victorian side.

7 That's the Oyster Bar we just passed on the  
8 right. This is called the Oyster Bar bar. That's just  
9 the outside bar, beverage bar, liquor, all that kind of  
10 stuff.

11 That's the Oyster Bar doors on the outside. And  
12 that was the -- just coming around.

13 That's pointed up at the ceiling up at Camera --  
14 that's a PTZ camera up there, PTZ 30.

15 Walking past the keno outstation that we were  
16 just -- heading east.

17 The tiled walkway that we're walking down takes  
18 us all the way through and through the club, and you just  
19 follow the whole -- through the whole club.

20 This is Section 2 walking into Section 3 here,  
21 all the slot sections. So we're in Section 3, it would be  
22 called.

23 Taking a look back north, there's the Victorian  
24 Street door, second set.

1           Still in Section 3. All the way to the  
2       Section 3 -- it would be all the way to the -- what you're  
3       looking at in those red lights above is the Showroom.  
4       That's where you'd be headed continuing this way.

5           Turning to the left, those doors are the Last  
6       Chance Joe doors, which are identified. It's the third  
7       set of doors going to Victorian Street.

8           The bar we're headed up to right now, that's  
9       Bar 3, or the Broadway Bar.

10          You're looking at -- straight ahead you're  
11       looking at the Showroom entrance.

12       Q     That's another exit?

13       A     Yeah. Going all the way through those -- I  
14       believe we turn right on this -- but going all the way  
15       through, we end up going past the branding iron display  
16       and out to the 11th Street/Victorian doors.

17       Q     So this is the Broadway Bar on the left?

18       A     This is the Broadway Bar, Bar 3, on the left.  
19       And coming up on the right is The Steakhouse.

20       Q     So we're four minutes into the video, just to  
21       identify the time on the video.

22       A     And that's just a show of the cook station at  
23       the --

24       Q     Directly ahead, is that the high stakes?

1           A     Yeah, just off to the left. We veer to the  
2 right, but all that to the left is the high limit slot  
3 area.

4                 To the right we're just passing the Noodle Hut,  
5 and the bar we see off to the right is Trader Dick's with  
6 the seating area for eating and drinking and whatever you  
7 get at Trader Dick's.

8                 As we're passing the high limit area, off to the  
9 left where that -- this is an e-ticket redemption box.  
10 And all those machines there are all in Section 6, which  
11 we saw that we had Camera 45 and 46 and 61 and that.  
12 We're in that area, those PTZs.

13                We come across here, the dance floor that we  
14 identified. That Trader Dick's dance floor is off to the  
15 right, but now we're looking back across from that over to  
16 Section 6.

17                Camera 45 is somewhere right up in here, which  
18 was looking at that time. Once again, we're looking back  
19 at Trader Dick's, just circling around. The dance floor  
20 is all in here. You can see -- there we go. We can see  
21 the seating around the dance floor and the small dance  
22 floor there.

23                We're looking up towards Rosie's now. The  
24 bathrooms are right up here, and then Rosie's was the next

1 restaurant.

2 That's the Noodle Hut. We've gone back to the  
3 north end of the -- Trader Dick's. So there's the Noodle  
4 Hut. Here's a little camera that's watching the Noodle  
5 Hut cash register area right here up in the ceiling there.

6 The cameras for Noodle Hut bar, they're going to  
7 be hard to see with the lighting, but they're all up under  
8 the overhang.

9 Q The Trader Dick's bar?

10 A The Trader Dick's, yeah. They're all up under  
11 the canopy under there, all fixed shots, just to cover  
12 that area. That's where the wine cabinet is for Trader  
13 Dick's.

14 We're on the back side of Trader Dick's. The  
15 restaurant is over here, and the Trader Dick's bar is over  
16 here, and this is seating for the bar area.

17 As we walk straight ahead, we're walking and  
18 looking into where dance floor is here. This is the  
19 restaurant entrance, and we're looking back towards slot  
20 Section 6 that way.

21 That's the restaurant entrance to Trader Dick's  
22 restaurant.

23 This is the dance hall, dance hall, dance floor,  
24 whatever, with some seating of the Trader Dick's dance

1 area.

2 We're looking through to the -- Section 6 and  
3 what's the -- we would be headed south here, and this is  
4 the south end of Section 6, and we're going to walk  
5 through there.

6 Okay. We'll walk right through there and --  
7 where this post is, Camera 61, out there across the way  
8 over in Section 6, it's posted right up over there looking  
9 off.

10 45 would look from over there and look straight  
11 in.

12 Q Now we're looking at 9:14 in the video and we're  
13 looking from Trader Dick's into the approximate area where  
14 Pettigrew was shot?

15 A Yes.

16 Q So that would be about the view that the  
17 defendant would have had when he was shooting? The bullet  
18 casings were found in the -- on the carpet there?

19 A Yes, that would be a -- we were looking right at  
20 that spot where Pettigrew was -- was hit.

21 Q Then this would depict the way the defendant ran  
22 after he shot Pettigrew in the back?

23 A Yes, the back side of Trader Dick's bar, that  
24 seating area.

1           That opening right there where this guy is  
2 standing is -- is a crossway that goes into The  
3 Steakhouse, or you can turn left or right and you would be  
4 in that back hallway that I pointed out several times  
5 between -- behind the Noodle Hut.

6           Here's the hallway. You can turn left, go down,  
7 and you would end up in the old kitchen back there, the  
8 kitchen that was originally for the Farmhouse or that.  
9 And those are the doors leading out into the casino area.

10          And, once again, now we're going into The  
11 Steakhouse. We passed just the short cooking area and  
12 then we're in the actual seating area for The Steakhouse.

13          Off to the right there, those are the aisleway  
14 exit. This is usually the customer entrance into The  
15 Steakhouse. It's not locked off or blocked off with doors  
16 or anything. We just have the rope and the sign there  
17 telling us when it's open and that.

18          Now we're out into the casino area. The bar,  
19 Bar 3, or Broadway Bar, is off to the left there as we  
20 walked out.

21          We're back at the view under the -- from the  
22 dance hall area walking back out to the aisleway.

23          And now we're headed south again.

24          This is the Section 6 and walking towards the pit

1 area.

2 And as you saw in the map, that's the roulette  
3 table that was depicted there. Camera 3 is over this way.  
4 That was looking out towards the restrooms, so behind us.

5 Q And that's table TC2. Can you see that?

6 A The one you went into was 3 card 2; 3 card, poker  
7 2.

8 Looking back towards the restrooms there.

9 Rosie's.

10 We're looking and headed south again, looking  
11 this way.

12 The slot sections on both sides, that's all  
13 Section 6.

14 360 degrees and we're at the restrooms again. We  
15 just passed the dance floor, passed the gold keno area.

16 We're headed south. We come to the junction  
17 where Bar 6, which is the Horseshoe Bar coming up -- the  
18 seating you see is one side of the Horseshoe Bar.

19 Q You have cameras in this area as well?

20 A We have cameras in a couple areas around the bar  
21 here. Of course, off to the left here where the pit was,  
22 Pit 1, south of the bar was to this side. We have pit  
23 cameras that cover that.

24 Right about where we're standing right now



1 looking down, we have a camera -- it zooms all the way  
2 around. We have a camera behind us here, PTZ70.

3 Q So the PTZs are the movable ones?

4 A Pan, tilt, and zoom, yeah. 360 degrees movable.  
5 They have lens controls so we can zoom in and out.

6 This is where -- Camera 70 was just up in the  
7 ceiling there. It looks down towards the east tower  
8 elevators, and then behind us is the Bar 6. That's John's  
9 Club Bar or John's Club club, the club desk for the  
10 players card.

11 That's all Section 6 there.

12 Coming around to your right, we will come back to  
13 the Bar 6, Horseshoe Bar. We're going to see -- this is  
14 the second side which we've already seen. We walked up to  
15 that second side prior to this.

16 We're headed around towards Pit 1. On the right  
17 is the first side that we talked about, the first side of  
18 the -- of the Horseshoe Bar. And the doors you see there  
19 are 11th Street doors.

20 The elevators there that you see go to bingo. We  
21 call them the bingo elevators. They go to the third floor  
22 only or down to the -- stop at the second floor and third  
23 floor and down to the basement where the bingo parlor is.

24 Q Do you have any cameras upstairs in the

1 convention area?

2 A We have a few cameras up in the Rose Ballroom  
3 area.

4 Q Did you search to see if you had any video of any  
5 of those meetings that the Vagos had that night?

6 A Yes. But the Vagos were in the Pavillion area,  
7 from what I understand. That's why we didn't find any  
8 meetings at all up there. The Pavilion is over in the new  
9 west tower area, and we don't have that covered. So  
10 that's a -- there's no cameras been placed up there.

11 Q So is your focus essentially in areas where  
12 there's gaming going on to protect the casino and the  
13 customers where typically your drinking and gambling is  
14 going on?

15 A Correct. Most of the money areas, uncounted  
16 money and counted monies and things that -- they ring up  
17 money, so that's our primary cameras. Other than that we  
18 fill it in as needed around as they built up the camera  
19 system.

20 Q Now, who was in charge of the cameras at 11:30,  
21 between 10:00 and 11:30, 12:00 o'clock?

22 A Depends on the day. But I have a staff that's  
23 on -- usually the graveyard shift is here by that time.

24 Q All right. And I was just referring to who was

1 working the cameras on the night in question, the 23rd.

2 A Margaret was working them that night.

3 Q Okay. And did you get a call?

4 A I got a call about 11:30 at home.

5 Q All right. And then did you come down?

6 A I got dressed and came down.

7 Q All right. When you got dressed and came down,  
8 what was your -- what were you trying to do at that time?

9 A Well, I came into the surveillance room where  
10 others were already gathered and reviewed the video that  
11 she had already. This was about -- I got there about ten  
12 till to 12:00 midnight. I got there pretty quick.

13 And so I reviewed what video she had of the  
14 incidents and we started from there.

15 Q All right. So did any police officers respond to  
16 the surveillance booth to assist you in looking at video?

17 A Yes. There was a number of, if you want to --  
18 don't ask me, by name, everybody, but there were -- on and  
19 off through the night there were police officers. I  
20 believe there was people from -- investigators from the  
21 DA's office, a couple of DAs in and out, in and out. I  
22 think we had some FBI there at one time. But it was a  
23 full room during the night.

24 We worked primarily with the -- an investigator

1 and a member of the Sparks P.D., and they were asking as  
2 many questions as I was finding answers to about different  
3 angles. And that's how we came up with all the camera  
4 angles and views, and we reviewed a lot more than those  
5 during that time.

6 Q All right. And so you made a recording or a  
7 compilation of the video that you thought depicted the  
8 crimes that we believe were committed?

9 A Correct. We have the ability there to take the  
10 video, play the video off of the videotapes through a --  
11 it's actually what's called a -- it's a brand of TV video  
12 equipment on our computers, on just PCs. And we can  
13 transfer the videotaped video onto digital through that  
14 PC. We burn those into digital video, and those are the  
15 copies that were made and gave to law enforcement and  
16 everything like that, with the statements.

17 Q All right. So the police collected the tapes,  
18 the raw tapes, which have been a series of approximately  
19 13 VHS tapes; is that right?

20 A I believe that's correct, yeah.

21 Q All right. But in the meantime, you made a  
22 compilation of the VHS tapes and put them on a digital  
23 format?

24 A Correct.

1 Q All right. And so that's what we're looking at  
2 now is the digital?

3 A Right. That's --

4 Q Copies --

5 A Right.

6 Q -- of the tapes from the Nugget?

7 A Correct.

8 Q All right. And one of the areas that we looked  
9 at -- so let me just go back for one second.

10 So I know it's -- nobody can see anything on that  
11 computer, but that -- just for reference, on the computer  
12 we've loaded the disc. It's a 48- -- or 16-gigabyte thumb  
13 drive, and that thumb drive contains many of the videos  
14 that were collected.

15 So as we walk through the diagram, we identified  
16 several cameras. For example, Camera 3. And do you  
17 remember what Camera 3 depicts?

18 A Camera 3 was primarily pointed at the restrooms,  
19 the Rosie's restrooms. They watched traffic in and out of  
20 the restrooms.

21 Q The next one would be Camera 5. What does Camera  
22 5 depict?

23 A Camera 5 is over in Pit 2, such as Camera 3 was,  
24 but it's the next camera over. It's a pan-and-tilt, and

1 that is one that was pointed towards a section of where  
2 the fight spilled into over through Section 6 and was  
3 looking towards where the fight initiated. It was pointed  
4 towards that direction.

5 Q All right. Just another visual reference here.  
6 So this is Exhibit No. 130, which is a similar diagram.  
7 Do you see that, sir?

8 A Yes.

9 Q All right.

10 MR. LYON: Your Honor --

11 THE COURT: He was just showing the witness.

12 MR. LYON: Okay. But if he's going to point to  
13 something, we'd like to be able to see it.

14 THE COURT: So Exhibit 130 is admitted; is that  
15 correct?

16 MR. LYON: It is, Your Honor.

17 (Exhibit No. 130 admitted.)

18 BY MR. HALL:

19 Q I think we can just use this as a reference for  
20 right now. I just wanted to make sure you could identify  
21 this as essentially the same --

22 A That's our CAD drawing --

23 Q -- schematic of the area that we've been using  
24 for reference.

1           A     That's correct.

2           THE COURT: Can you pull it back a little bit,  
3 Mr. Hall, so -- because I can't see it either. Can you  
4 put it over here in front of the clerk?

5           MR. HALL: Okay. It's just --

6           THE COURT: Is it too small?

7           MR. HALL: Yeah. I thought it would be easier  
8 for the jury to see if it was a little closer. That's why  
9 I had it in that area.

10          THE COURT: We'll see --

11          MR. HOUSTON: Do you mind if we walk over?

12          THE COURT: No problem.

13          Ladies and gentlemen of the jury, can you see it  
14 where it is now, or do you need it closer? Just tell me  
15 if you need it closer. Okay.

16          MR. HALL: Judge, the wheel came off the -- can  
17 we just have a break so I can put the wheel back on?

18          THE COURT: Do you have to hold it up? We're on  
19 a tight schedule, Mr. Hall.

20          MR. HALL: That tight?

21          THE COURT: The bailiff will take care of it for  
22 you.

23          Ladies and gentlemen of the jury, when you have a  
24 chance, call your county commissioners and tell them about

1 the fact that we don't have music to override the  
2 conversations at the bench and the wheels are literally  
3 falling off some of our equipment.

4 MR. HALL: The wheels are coming off.

5 THE COURT: Thank you.

6 Okay. Counsel, you may proceed.

7 MR. HALL: All right. I'm just going to show him  
8 where the cameras are.

9 BY MR. HALL:

10 Q All right. So using Exhibit 1, essentially we  
11 can overlay it like so.

12 So we just mentioned Camera 3, which would be  
13 down here in the 628 area; is that correct?

14 A No. It's over by the pit, over -- if you would  
15 like, I'll point them all out. I mean --

16 Q Okay. Why don't you just come down and point  
17 them all out. We can put our cameras on here.

18 A Camera 3 would be right over in this area right  
19 here in the pit area, and it was pointed up this way to  
20 the bathrooms.

21 Camera 7 is over down this way and, again,  
22 pointed over towards here.

23 Camera 5, which we mentioned, is right up in here  
24 over in this section and was pointed straight down here



1 towards Trader Dick's.

2 This is the dance area here that we talked about.

3 46 is in the aisleway right about here and is  
4 generally looking up the aisleway this way.

5 These are all the cameras around Trader Dick's  
6 bar, fixed cameras. A fixed camera on the Noodle Hut.

7 Q So 211 through 215 would be around --

8 A Around this area.

9 Q -- the fish tank?

10 A 261 is this view, which gets a little bit of  
11 this. This is the cashier area. And other than that,  
12 those were the primary cameras.

13 Camera 61 is over right about here, and it was  
14 facing this -- either this way or over this way. I'd have  
15 to look at what it was. But Camera 61 is a PTZ right  
16 about here, and it's looking back towards the pit. We saw  
17 that.

18 Q Then we have the Horseshoe Bar here?

19 A Horseshoe Bar. We've seen this side from the pit  
20 and then this side. We also went around to this side.

21 Camera 70 is over here generally pointed at the  
22 elevators, which are right here. And 70 is a PTZ, so it  
23 gets circled all the way around. We have several that can  
24 do that right in that area.

1 Q And then the last part of the walk-through video,  
2 we just walked back down past the Cabaret over to the  
3 cashier's cage?

4 A I didn't see -- we didn't see that part on that.  
5 I know we did that. We were up here, walked around down  
6 this way and then came back up. In fact, you stopped the  
7 video at that point.

8 Q I think I was talking and then distracted your  
9 attention. That's why I mentioned that.

10 A Okay. That's the area -- we followed the  
11 camera -- that walk-through went all the way here, and we  
12 followed it down all through here.

13 The Steakhouse is right here, which we followed  
14 through. We walked down the back side of the bar right  
15 here through the dance area and followed it all the way up  
16 and over here and looked at this area here. And then we  
17 were going back towards the 11th Street doors, which is  
18 right over here.

19 Q All right. Why don't you go ahead and have a  
20 seat. Thank you.

21 So Camera 3, this indicates it's 23:22. Now,  
22 does each camera view have a --

23 THE COURT: Excuse me. What?

24 MR. LYON: I apologize, Mr. Hall. Could you just

1 move your board back a little bit? I can't see the  
2 witness.

3 Thank you.

4 BY MR. HALL:

5 Q So Camera 3 looks towards the bathrooms; is that  
6 correct?

7 A That's correct.

8 Q All right. And we were talking about the time.  
9 So the time indicated on MUX 4 is 23:22:45; is that right?

10 A That's right.

11 Q Now, is the camera on -- is the time synced up on  
12 all the cameras?

13 A No. Each recording, each VCR recording, has its  
14 own time/date generator. They're not tied into anything  
15 that coordinates them. So we set them periodically to  
16 keep them as close as possible to each other.

17 The time/date there that's seen on this video is  
18 from a VCR that's recording a multiplexor, the  
19 Multiplex No. 4. So that's why that label is there. So  
20 it records 16 cameras at a time.

21 Q All right. So this is kind of jumpy video.  
22 Obviously it's only taking a picture every couple seconds?

23 A A multiplexor is usually -- the way these analog  
24 multiplexors are set up, they take about -- they take

1 about 16 cameras in a second, and it's about -- and then  
2 it jumps from recording the first camera to the second  
3 camera to the third camera to the fourth camera, 16, and  
4 then starts over again. So they're not all independent of  
5 each other.

6 So that's what the jumpiness is. It's just like  
7 time-lapse almost because it's just playing back wherever  
8 Camera 3 is, wherever that spot is in Multiplexor 4.

9 Q And did you make a list of the time differences  
10 between the various cameras?

11 A Yes. I used a -- it's in my statement, but I  
12 used a particular -- I believe the monitor time which was  
13 the closest to real time or -- you know, that you call up  
14 on the telephone and get a real time. And I took a  
15 similar event with each of the recordings that I could  
16 tell from the recording off of that one, my main --  
17 whatever the monitor was that I used as my time/date  
18 stamp, and I figured out an event from another view that I  
19 could see on the time/date and figured out how much drift  
20 there was in the time/dates, and I listed all of those.

21 I believe that each of those camera views that I  
22 turned over as evidence, and it's in my statement, but I  
23 believe -- I was really surprised it was less than a  
24 minute between any one of those cameras for the exact same

1 instance of an event. So there wasn't much time lag  
2 between each -- each video.

3 Q So do you recall what you put in your report in  
4 terms of the difference between the different video  
5 recordings?

6 A I believe it was just -- less than one minute. I  
7 forget the exact seconds of each one.

8 Q Well, if I showed you a copy of your report,  
9 would that refresh your recollection?

10 A Yes.

11 Q Is that a copy of your report, sir?

12 A Yes, it is.

13 Q And does that -- is that the portion of your  
14 report that reflects the time difference on the various  
15 cameras?

16 A Yes, it does. And MUX 4 had a time/date stamp  
17 approximately 15 seconds behind the baseline times, so it  
18 was 15 seconds before the baseline.

19 Q And what was our baseline?

20 A The Monitor 1 record time/date stamp, the  
21 recorder on that was the baseline for the event. I  
22 calculated all events happening from what was recorded on  
23 any of the Monitor 1 recordings.

24 Q All right. So you used Monitor 1 as your

1 baseline, and so then you calculated the difference  
2 between the other cameras using Monitor 1 as --

3 A Yes. So the event happened on Monitor 1, let's  
4 say 12 midnight, just for an example, and I found the same  
5 event by recording it on another -- from playing it back  
6 from whatever MUX or video recorder and said, well, that  
7 event happened 15 seconds earlier on this recording, but  
8 it's the same event. So that's how I came up with the  
9 time/date on each event and said they happened at this  
10 particular time.

11 Q All right. So what's the difference between  
12 Monitor 1 and, again, the cameras on --

13 A MUX 4?

14 Q -- the fish tank?

15 Well, we've got MUX 4, so let's talk about MUX 4.

16 A MUX 4 is what you have up here, and that was  
17 15 seconds less. So if I said it happened at 000 hours,  
18 it would have been 15 seconds left, and it happened  
19 15 seconds before the 000 hour.

20 Q Right. Can you tell what happens by people's  
21 reactions or -- give you a good time?

22 A Correct. Yeah. I find an event that I can say  
23 I've got it recorded here and he walked by that place at  
24 000, play back the recorded either VCR or multiplexor and

1 look at that same event when he walked by the same spot  
2 and say, oh, okay, the time was plus or minus --

3 Q All right.

4 A -- and gave you the listings for those.

5 Q Now, the 215 section or the 200s around the fish  
6 tank --

7 A The fish tank.

8 Q -- what's the time difference from --

9 A There's none -- on the 215 between those cameras,  
10 that's on a -- that's on a digital recorder. And that  
11 was -- let's see.

12 So all of those -- and each one of those  
13 individuals just at the bar, 211, 212, and the four that  
14 are around there that we talked about, they were on --  
15 they would each have the exact same timestamp because they  
16 were on one DVR.

17 I'm just checking. The bar DVR has two  
18 timestamps on it.

19 Okay. On the DVR, it has two timestamps that we  
20 ran across. One is called POS timestamp. We have a  
21 software that we record over the -- it's an overlay on the  
22 video that is connected to the register. So when the  
23 registers register a time, they have their time, and then  
24 we have the video time, which is at the bottom of the

1 video.

2           Once again, that software is not necessarily  
3 timed in. That's timed in to the registers, what their  
4 ticket time is, and then our video time is on our video.  
5 So they end up both -- I timed both of those on that DVR,  
6 and the point of sale, POS, timestamp is two minutes  
7 behind the baseline time and the DVR is 35 seconds behind  
8 the baseline time.

9           Q     Let's take a look at that for an example.

10          A     Up at the top right you see the 11:24:07, 08.  
11 That is the POS timestamp from the cash register that that  
12 is tied into.

13               And this red down here is the DVR timestamp  
14 that's being generated on every recording of that DVR.  
15 There's no time lapse or anything like that.

16               So those are two different timestamps. If you  
17 notice right down here, the DVR timestamp is 9/23/11.  
18 It's 23:29:56, and this says that it's 11:24:41. So  
19 there's a difference in those two timestamps. The one we  
20 have control of is the DVR time. This timestamp, the POS,  
21 was two minutes behind the baseline time and this was  
22 about 35 seconds behind the baseline time.

23          Q     So the point of sale time is the one on the top?

24          A     Uh-huh.



1 Q And then the one that you can adjust is the time  
2 on the bottom?

3 A Yes.

4 Q And then what's the difference between that time  
5 and Monitor 1? Did you use the one on the bottom to  
6 compare to Monitor 1?

7 A Well, I compared both of them. As I said, this  
8 one here is two minutes behind and this one is only  
9 35 seconds behind.

10 Q Okay.

11 A So...

12 Q Now, this is Camera 216?

13 A This is 216.

14 Q All right. But on our -- I believe on our list  
15 it's identified as 215.

16 Do you remember why you captured this portion of  
17 the video?

18 A This portion of the video is on the back side of  
19 the bar, of Trader Dick's bar, and it's looking up  
20 towards -- here is the entrance to the dance floor. If  
21 you're walking -- you see these patrons leaving off to the  
22 right. That's that aisleway between the restaurant and  
23 the dance floor.

24 If you look up here -- well, the detail might be

1 a little hard to tell, but up here, once those people move  
2 out of the way, you're looking into the dance floor with  
3 people in there and some posts and stuff. But all of this  
4 area is looking towards or into the dance floor area.

5 Q All right.

6 THE COURT: Is this a good time to stop maybe?

7 MR. HALL: Sure.

8 THE COURT: Okay. Ladies and gentlemen, we're  
9 going to take our first break this morning.

10 During this break do not discuss the case among  
11 yourselves or with any other person. Do not form or  
12 express any opinion about the ultimate outcome of this  
13 matter. Do not make any independent investigation or  
14 inquiry into any of the facts and circumstances  
15 surrounding the case. Do not allow anyone to speak of the  
16 case to you or in any manner attempt to influence you with  
17 regard to it. Should any person make such an attempt,  
18 report it to the Court immediately. Do not listen to,  
19 view, or read any news media accounts or any other  
20 accounts regarding this case.

21 Go ahead and go into the jury room.

22 Court's in recess.

23 (A recess was taken.)

24 (The following proceedings were held in open  
court, outside the presence of the jury.)

1 THE COURT: Counsel, are we ready to proceed?

2 MR. LYON: Yes, Your Honor.

3 MR. STEGE: Yes.

4 THE COURT: Go ahead and bring the jury in.

5 (The following proceedings were

6 held in open court, in the presence of the jury.)

7 THE COURT: Counsel, will you stipulate to the  
8 presence of the jury?

9 MR. HALL: Yes, Your Honor.

10 MR. LYON: Yes, Your Honor.

11 THE COURT: Thank you. Please proceed.  
12

13 CONTINUED DIRECT EXAMINATION

14 BY MR. HALL:

15 Q Where we left off, we were looking at Camera 216  
16 and we were briefly mentioning the time differences  
17 between the different cameras. And you indicated that you  
18 had documented that in your report; is that right?

19 A That's correct.

20 Q All right. And that's kind of an extensive list.  
21 Is that true?

22 A True.

23 Q All right.

24 MR. HALL: Your Honor, I'd like to have this

1 marked and admitted as State's next in order.

2 THE COURT: Do you want it like 1B?

3 MR. HALL: Yes, please.

4 THE CLERK: Exhibit 1B marked.

5 (Exhibit No. 1B marked.)

6 THE COURT: Mr. Lyon, any objection --

7 MR. LYON: No objection.

8 THE COURT: -- to its admission? It's admitted.

9 (Exhibit No. 1B admitted.)

10 BY MR. HALL:

11 Q So we were looking at the west side of the fish  
12 tank. So looking at Exhibit 130, we're looking at this  
13 area right up here; is that correct?

14 A That's correct.

15 Q All right. So you were trying to identify  
16 Gonzalez, right?

17 A That's correct.

18 Q You didn't know his name at that time. You were  
19 trying to figure out who shot Mr. Pettigrew; is that  
20 right?

21 A That's correct.

22 Q All right. And so you were able to capture  
23 Mr. Gonzalez running back behind the fish tank in this  
24 clip; is that right?

1 Just for reference, we're at 11:24:53. I'll just  
2 back it up a little bit.

3 So Mr. Gonzalez is right here?

4 A Correct. If you back it up one more time, I  
5 think you see him coming through a little bit squarer,  
6 more definitive.

7 Q So this is -- now, could you -- when you looked  
8 at the video, is this when the shooting started?

9 A This was -- the shooting had already started. I  
10 mean, if you're talking from the fight, it had already  
11 been in progress, so...

12 Q Right. The Pettigrew punch --

13 A All that --

14 Q -- the glasses being smashed --

15 A Yes.

16 Q -- all that stuff?

17 So when the shooting starts, he's not defending  
18 anybody at that time?

19 A He wasn't -- he wasn't in the area of where the  
20 fight started and all that. He had retreated.

21 Q So when all the shooting is going on, he's not  
22 shooting?

23 A Not out in the front area. This is...

24 Q So then there's a camera that depicts the -- I

1 guess it would be the north end of the fish tank; is that  
2 correct?

3 A Yes. Well, we have it on both sides, so  
4 whichever side you want to put up.

5 Q All right. So Camera 214 -- let me just hand you  
6 the diagram. That would be Exhibit 1. It has the camera  
7 references.

8 214 would be back in this area?

9 A 214 -- yeah, it's -- yes, it's back in that area.

10 Q All right. And so this is where we see the  
11 defendant pull his gun and check his gun?

12 A At that end of the bar.

13 Q All right. Let's go to 214.

14 So here we see Mr. Gonzalez. So he's retreated  
15 all the way to the north end of the -- so running from  
16 where Trader Dick's is all the way to the north end of the  
17 fish tank --

18 A Correct.

19 Q -- the fish tank bar?

20 All right. Then we see him check his gun in this  
21 area, monitor the situation?

22 A Yeah, if you start it up and just watch right at  
23 the end here.

24 Q Now, if we compare this to the video on Monitor 1

1 and Camera 45, we see that the shooting's already  
2 happened, right?

3 A We -- yeah, that's where it starts. We won't see  
4 him in that particular part of the melee. We see him  
5 there before, but not once -- once the -- it starts.

6 Q He goes back and gets his gun. So that's where  
7 he's checking his gun right there?

8 A That's what it appears is -- right there is where  
9 he...

10 Q So right there --

11 A He's headed back up.

12 Q He's headed back up to do some shooting?

13 A He's headed south past the same bar area -- back.

14 Q Did I go too far? Here we go.

15 So then if we go back to 215, he goes running by  
16 at 11:24:55?

17 A Uh-huh. He's at the other end of the bar right  
18 now, which we can't see on this video.

19 Q So this is a Friday night, so we'd expect there  
20 would be music playing on the dance floor and a lot of  
21 people in the casino that night?

22 A Correct.

23 Here he comes back into the view.

24 Q Now he's got his gun out?

1 A Yes.

2 Q You can see the gun in his left hand?

3 A Right.

4 Q So we see him walk back in a southerly direction  
5 towards --

6 A The dance floor.

7 Q -- the dance floor at 11:25:46?

8 A Uh-huh.

9 Q With gun in hand.

10 Now, can you see -- if you're walking behind this  
11 fish tank, can you see what's going on out in the casino  
12 if you were on the west side of the fish tank where he is?

13 A You can -- you cannot see -- you might be able to  
14 see through the fish tank, in a murky sort of way, some of  
15 the area out there. When you're at the south end, you'd  
16 have to almost look around the fish tank to be around and  
17 get to the east end of that to look around.

18 If you're in the corner, you don't really have a  
19 straight shot through the murky water, you know. So the  
20 only possible thing on this side, you might be able to see  
21 some activity through the fish tank. You know what I'm  
22 saying? Through that -- from this end of the bar you can  
23 see some people and activity if it's over there.

24 As it gets to the north -- as it gets to the



1 south side of the bar here, he's got an opening past the  
2 bar to look in that whole area in front of the bar in the  
3 aisleway. And as you look, you can look through the dance  
4 hall area, assuming no one's standing in your way or  
5 whatnot. But, yeah, you have a view of everything looking  
6 through the dance hall. It's not walled off or anything.  
7 It's all open.

8 Q Well, there is a wall on the corner of the dance  
9 floor, right?

10 A But if you're looking -- yeah, there's that one  
11 wall, but everything through just past that to the  
12 bathrooms, that's all wide open. As we saw when we did  
13 the walk-through, it was wide open.

14 Q Right. So as you're walking south, you can walk  
15 into the dance floor, over to the left is a wall of  
16 bushes, and then on the east side right next to the  
17 walkway is the --

18 A Menu.

19 Q -- menu. So there's a wall there that partially  
20 obstructs that view into that area?

21 A I'm just following with my finger what I see.  
22 And here he comes.

23 Q And there he goes running out after he's shot  
24 Pettigrew, right?

1           A     I believe so, because I observed flashes of light  
2 that were not flashing before he got there. You can see  
3 light flashes that would be either a light going off or it  
4 could be gunshots; either type of activity.

5           You can count while he's in that area. I know  
6 it's kind of dark there. I was following where he was  
7 going, that green line. Those flickers right there. And  
8 those stop and he comes running out.

9           Q     Right there at 11:26:02 or so?

10          A     Or so, yeah. Right there. And here he comes  
11 back around.

12          Q     Okay. Do you know how he got out of the casino?

13          A     Not particularly. I speculate because -- more of  
14 an extraction of where he wasn't and because of some of  
15 the areas that he would have covered. I believe he -- I  
16 know he did not go past the Oyster Bar because we have  
17 full coverage. If he passed by there or crawled past  
18 there, whatnot, we would have seen that. So we know that  
19 he did not go past by the wine rack because we have that  
20 view, and he did not go down that way.

21                The only other way between those two places would  
22 have been in the hallway just past the Noodle Hut that  
23 crosses into The Steakhouse. We did not see him go down  
24 the long kitchen hallway. We did not find him in the back

1 kitchen or anything.

2 If he went into The Steakhouse, we missed him  
3 crossing that aisle only because it was on the  
4 multiplexor. And so in the timeframe between pictures,  
5 it's two steps across the hallway. We would not have seen  
6 him. And we wouldn't have seen him in The Steakhouse. We  
7 have no coverage in The Steakhouse per se. And that's a  
8 quick, easy way out of there.

9 Q All right. Now -- so going now to Camera 3,  
10 which is MUX 4 which is in front of that bathroom, that's  
11 when we can see what's going on before Pettigrew gets  
12 shot; is that right? This is a view of the aisle where  
13 Pettigrew goes down, correct?

14 A No. Pettigrew goes down in the aisle right next  
15 to us, I believe. I don't believe we have that --

16 Q All right.

17 A -- that one right there.

18 Q Let's take a look at this and see what it shows.

19 (Videotape played.)

20 BY MR. HALL:

21 Q So your baseline time, does it show the actual  
22 fight break out at around 23:26?

23 A To my recollection, that's about right, 23:25  
24 something or -- right up to 25, 26, when you talk about

1 the punch being thrown and that --

2 Q - Yes.

3 A -- gunfire, you can observe from the patronage  
4 here, they react when they, obviously, hear gunfire and  
5 that. They're not strolling any longer.

6 Q So this is the first set of Hells Angels walking  
7 through? You can tell with the red hats and red attire?

8 A Yes.

9 Q So that's at 23:24:50 or so?

10 A Correct.

11 Q And you can see a group of females to the lower  
12 left-hand corner looking down towards Trader Dick's; is  
13 that correct?

14 A Correct. So they're gathering over there.  
15 They're --

16 Q And so they're kind of inspecting something.

17 A They're face-to-face right now, approximately.  
18 The fight had started, so...

19 Q People scrambling, right?

20 Do we know if shots have been fired at this time  
21 yet?

22 A I would assume some of the shots had been fired  
23 by this time because now they're starting to duck. At  
24 first they were just -- they were watching the fisticuffs,

1 a couple punches and things like that, and then they  
2 started ducking. They don't duck on punches; they duck  
3 when loud noises start happening.

4 MR. LYON: Your Honor, if counsel -- when he  
5 keeps using the term "shooting" and "shots fired," there's  
6 several individuals that shot. Maybe we could have a more  
7 specific description of what he's referring to.

8 THE COURT: Yes. Try to be specific, if you can.  
9 I'm not sure your question -- that question called for  
10 specificity.

11 MR. HALL: Okay.

12 BY MR. HALL:

13 Q All right. Now at 23:26:17 we can see one of the  
14 Hells Angels hangarounds or associates in the red there.  
15 And there's another one carrying the bags at 23:26:33.  
16 And then here come the Vagos after them.

17 A There's a group of Vagos. As they turn around,  
18 you can see their vestments that indicate that they're  
19 Vagos.

20 Q So pretty much all of these guys are Vagos,  
21 right?

22 A At least -- I might be off by one or two people  
23 back in there, but, yeah, there's a whole group of Vagos  
24 right in there, yes.

1 Q Chasing the Hells Angels?

2 A I assume that's who they're chasing. He's out of  
3 the picture there now. But, yes, that's -- they're coming  
4 in to help out is the way I would phrase it.

5 Q With Greg Fearn amongst them. Do you know who he  
6 is?

7 A No, I do not know specifically.

8 Oh, okay.

9 MR. LYON: Your Honor, first of all, I think  
10 that's a misidentification. That isn't Greg Fearn. And  
11 counsel should not be --

12 THE COURT: I'll sustain your objection.

13 Counsel, have the witness testify, please.

14 MR. HALL: Okay.

15 BY MR. HALL:

16 Q All right. Now, at 23:26:45 can you see an  
17 individual sitting down in this area right there? I'll  
18 back it up a little bit.

19 A Yeah, play it back there.

20 Right there.

21 Q I went the wrong way.

22 Now you see the guy --

23 A Down this way, yes.

24 Q Right here.

1 A Uh-huh. His head is bobbing around right now.

2 Q Okay. Let's just mark this spot, 23:26:55. All  
3 right. So let's go to Monitor 1.

4 Okay. So this is the beginning of the fight,  
5 correct?

6 A Correct.

7 Q All right.

8 A You just saw the punch.

9 Q Can you see the time on this? Let me play it a  
10 little bit and we can --

11 A 23:25:52 or 51 seconds.

12 Q Okay.

13 A 23 -- moving up to 23:26.

14 Q Okay. So we've got a Vago kicking a Hells Angel  
15 down, we've got a couple of glasses smashed on some Hells  
16 Angels' faces --

17 A That's a gun being --

18 Q -- a pistol whip there?

19 A Yeah. Another one. Same guy.

20 Q A little smack on Mr. Fearn --

21 MR. LYON: Your Honor, again, counsel is  
22 narrating.

23 THE COURT: Sustained.

24 THE WITNESS: We see there was -- this guy here

1 was -- had his gun and was facing that way (indicating).  
2 threatened someone.

3 BY MR. HALL:

4 Q All right. So what's the time there?

5 A That's 23:26 -- play it one more time. It's  
6 45 seconds or...

7 Q What time do we have the shooting here?

8 A 23:26 and 28 seconds.

9 Q So that's the shooting. All right.

10 A That's this guy out -- right there (indicating).

11 Q Now if we go to Camera 45?

12 A This is the man that we were following, and at  
13 the time of my date review and that, this is the guy that  
14 has now been -- has been afterwards identified to me as  
15 Ernesto, but that's the one that we were backtracking and  
16 looking for in the video because he appears to be the  
17 shooter on the video for -- that we were just watching at  
18 the Trader Dick's event, the back aisle there that we saw  
19 just previous.

20 We're at now before the shooting, and he's  
21 standing right there out in the front here, and he moves  
22 back here now.

23 Q So he's still back there watching?

24 A Yeah, he seems to be watching. He does not --



1 he's not participating in any of this melee and fighting  
2 and punching or whatever events had taken place here.  
3 He's backing himself up right here.

4 Q So then he runs off, and that's when we see him  
5 run off at about 23:26:30?

6 A Correct.

7 Q So now he's back at the east end -- excuse me,  
8 the north end of the --

9 A Now we're behind the bar, which we saw -- you  
10 were showing just previously.

11 Q All right.

12 A That was the melee -- that was the fight and the  
13 melee up front where he was here and started backing his  
14 way behind the bar there while all the -- the main attack  
15 with the guns and fist fights and everything else that you  
16 saw there.

17 Q All right. So now we're at 23:27 --

18 A And seven seconds.

19 Q And seven seconds.

20 Now, does it appear to you as though they were  
21 reacting to that incident that we just saw, that attack  
22 that we just saw in front of the bathrooms?

23 A In this view most of the fight and participants  
24 have dispersed from this area here. There are more events

1 going on off this camera, off to that side, which is over  
2 to the left as we're watching the video there.

3 Q Well, they put their guns away. And then?

4 A There's some more -- there's some more stuff  
5 going on because all of a sudden these people took notice  
6 of people over in this -- in front, between us, between  
7 what we're looking -- and this camera view. So obviously  
8 there's some events and fighting or threatening or  
9 whatever would cause them to all of a sudden take notice  
10 in that area.

11 Pettigrew was shot over -- since I don't have the  
12 video angle of what you're doing right now, it was shot  
13 over to our left is where the attention would be.

14 Q Well, we actually can look at that on Monitor 1.

15 A Oh, good.

16 This is Mr. Ernesto that was going -- working his  
17 way back here, just to point out that's -- and this is  
18 Pettigrew here, or that's who he's identified as.

19 Q So there's the shooting when -- at the beginning.  
20 So now the question is -- looks like Mr. Villagrana has  
21 put his gun away, right? Big guy there with the bandana?

22 MR. LYON: Counsel is continuing to narrate. I  
23 would ask that he ask the witness these questions.

24 THE COURT: I'll sustain the objection.

1 BY MR. HALL:

2 Q All right. Now, at this area, can you see  
3 they're responding to the ongoing melee in front of the  
4 bathrooms?

5 A It's in the Section 6 across from the bathrooms.

6 Q Is that what we just watched from Camera 3?

7 A They were looking in that direction. That's  
8 exactly the direction they were looking in.

9 Q That's where Mr. Fearn was, right in the middle  
10 of that, correct?

11 A Well --

12 Q That fellow on the ground, whoever that was?

13 A That fellow on the ground was in that section  
14 right there.

15 Q All right.

16 A Right in about here (indicating).

17 Q And can you see one of the Hells Angels people  
18 running northbound from the direction of Camera 3 and the  
19 bathrooms?

20 A Over in that section, yes, there are people  
21 running in that section there. They're running -- there's  
22 the fighting going on over in that section in front of the  
23 bathroom, which is in Section 6 across from the bathrooms.

24 And if you back it up, here goes Mr. Pettigrew

1 over into that area.

2 Q So at this point in time, this is -- we're at --  
3 can you see the time?

4 A That looks like 23:27 and 32 seconds. 27 and 32,  
5 yeah.

6 Q Okay. So how would this match up with  
7 Mr. Gonzalez heading towards the dance floor area?

8 A He would be -- if he's not right on the dance  
9 floor, he's already made his way back up to the dance  
10 floor, towards that area. He's not standing right in  
11 there that 32 seconds.

12 Q So he's got his gun out and he's on his way?

13 A We saw that on the other video. And...

14 Q So would this be about the area that we saw that  
15 fellow sitting there? You can see his head, the fellow  
16 with the glasses on?

17 A Okay. And...

18 Q All right. So it looked like one kick by each  
19 guy?

20 MR. LYON: Your Honor, counsel is narrating.

21 THE COURT: Counsel, no more leading questions,  
22 no more narration.

23 MR. HALL: All right.

24 THE WITNESS: Let's play that back, if you would,

1 please.

2 BY MR. HALL:

3 Q So what happens there?

4 A Well, the last thing just before you stopped it,  
5 I believe that was Mr. Pettigrew falling down, face down,  
6 from the aisleway off to our left, if you will. That's  
7 where -- and that's approximately the aisle looking this  
8 way is where he would have -- that he was shot down right  
9 there.

10 Q So at 23:27:50?

11 A Right. If you back it up just a ways, just a  
12 little bit, Mr. Pettigrew's got the -- you can see his top  
13 and long sleeves and his jacket.

14 Q All right. So now if we look at Camera 3?

15 A There Mr. Pettigrew is --

16 Q 23:27:13?

17 A He's got those distinctive white sleeves with the  
18 red on it.

19 Q All right. And that's where -- is that all you  
20 see of Mr. Pettigrew at that juncture of the video?

21 A Play it. I don't --

22 Q Okay.

23 A There he is. And then he's not. That's it.

24 Q All right. And then there was another angle.

1 Let's just go through a couple of these videos. This is a  
2 video --

3 A Camera 7.

4 Q -- of Camera 7. And what area does this depict?

5 A This depicts Rosie's, the opening of Rosie's  
6 restaurant area. The bathrooms are just to our right.  
7 This is a cross-view from the pit over the slot sections,  
8 slot Section 6 there.

9 Right now, that's before the melee started,  
10 before the fight started, just people milling around  
11 and...

12 Q 23:25:30, did you see any people dressed in red  
13 walk by?

14 A There's some now, right now. Here comes some  
15 more.

16 Q And who would you identify the people dressed in  
17 red with?

18 A The red were -- in those red hats and -- were  
19 Hells Angels members.

20 Now we have a couple people running towards it;  
21 some people running away from it.

22 Now some people backing away.

23 Now running.

24 Now more people running to -- if you notice, a

1 lot of these people are dispersing into Rosie's, and they  
2 end up in the back hallways. We found them all over the  
3 place.

4 Q Did you see anybody in red?

5 A Yes, there's some in red. And a lot of those  
6 were Vagos going that way. But there were some Hells  
7 Angels dressed in their uniforms or whatever you want to  
8 call it, markings. Here's a couple.

9 Q Do you see anybody in red right there?

10 A Yes. One just ran that way, ran to our right.  
11 Others...

12 Q So when we were looking south on Monitor 1, is  
13 that the group of people that are seen kind of  
14 congregating down there by the bathrooms?

15 A Well, there was a -- there were several groups  
16 congregating, I mean, from the bathrooms on up to the area  
17 that the punching started. And both those groups -- the  
18 Hells Angels went up this way (indicating).

19 There were some Vagos that went up that way  
20 (indicating), and then they returned, and it seemed to be  
21 dispersed by -- without knowing the exact firing order of  
22 things when guns were shot, when they run the most, you  
23 can figure that that's when there's a lot -- some shooting  
24 going on there. They were all dispersing that way. When

1 that quieted down, it looks like the crowd went back to  
2 our right, and then they all dispersed.

3 Q Well, what I'm asking, do you remember when you  
4 were looking at Monitor 1, you see what looks like the  
5 Hells Angels shooting, right?

6 A Correct.

7 Q All right. And then it looks like they put their  
8 guns away. Do you remember that?

9 A Yes. They were putting them in --

10 Q You don't see any guns in their hands, correct?

11 A Yeah. They disappeared.

12 Q All right. They're standing there. And do you  
13 remember we saw the one Hells Angel running north? Do you  
14 recall that?

15 MR. LYON: Your Honor, counsel is narrating a  
16 video and asking -- I mean, we're not seeing it on the  
17 screen.

18 MR. HALL: I'm trying to orient him to the one  
19 area of the video that I'm going to ask the question  
20 about.

21 THE WITNESS: Play the video for me, then, and  
22 I'll --

23 THE COURT: Yeah, play the video again.

24 MR. HALL: Okay.



1 THE COURT: Thank you.

2 BY MR. HALL:

3 Q For the record, we're looking at Monitor 1.

4 A Okay. This is where the fight started.

5 Q So now on Monitor 1 the time is approximately  
6 23:26:55?

7 A Correct. These are Hells Angels that you see  
8 right here on that part of the screen right in front here  
9 (indicating).

10 Q All right. Okay. Now, you remember when we were  
11 looking at this portion of the video earlier today?

12 A Yes.

13 Q And the question was: Did it appear as though  
14 the attention of the Hells Angels in the foreground is  
15 attracted to the area in front of the bathrooms?

16 A There's a group of people here (indicating)  
17 and -- yeah, they're going to be interested in that --  
18 these people here (indicating) will move up towards that  
19 group there. That group dispersed to the -- off to the  
20 left. These fellows are still watching them over that --  
21 over to the left.

22 And these (indicating), who are Hells Angels,  
23 they're moving up -- up the walkway, up to the area where  
24 we saw those other -- the group of people.

1 Q The guy on the floor?

2 A The guy on the floor is in that area right there  
3 (indicating). It's hard to detail them out.

4 Q We'll just refer to him as Wiggins.

5 A There's where Mr. Pettigrew just fell from being  
6 shot at that particular moment up in that same area.

7 Q All right. In the meantime, did you get some  
8 video of the Horseshoe Bar?

9 A Yeah, there's video of the Horseshoe Bar. That's  
10 further up from that.

11 We're now looking -- that view that we're getting  
12 right now is looking -- we would be looking down towards  
13 the -- where the original melee started. We're south of  
14 that, really, and that's where the Horseshoe Bar is off to  
15 the right here.

16 Q So the time on this is 23:27 --

17 A 7:21.

18 Q So this would have been after --

19 A Correct.

20 Q -- the initial fight in front of Trader Dick's,  
21 correct?

22 A Correct.

23 That's looking through to the hotel east tower  
24 lobby elevator area.

1 Q East or west?

2 A That's looking -- that would be west, because  
3 east is over towards the bar there. You're looking away  
4 from the bar. And here's a group.

5 Another fight breaks out right here.

6 The ones that are being beaten up there -- this  
7 one has the red colors on him and appear to be the -- a  
8 Hells Angel. The other one, because he was being  
9 protected by the other one, I assume that he's a Hells  
10 Angel or knows the person. But there were two of them  
11 that were being attacked there.

12 Now the police are here, and they have control of  
13 all the -- so that's what -- this is -- the police got  
14 there and they took over the scene.

15 These people were laying down and told not to  
16 move by the police. They weren't -- didn't appear to be  
17 shot or anything. They were just cooperating with what  
18 the police commands were. As I said, they're already on  
19 the scene there, so...

20 Q So, sir, can you tell me which area this --

21 A This is Camera 5 dubbed off of MUX 2, and it's --  
22 the melee started over in this area here (indicating). So  
23 I'm looking from -- we're looking east and looking  
24 northwest kind of towards the -- where -- the original

1 fight.

2 This area right here, you see that sign. That's  
3 the signboard on the outside of Trader Dick's. The dance  
4 hall is behind that. This area here is open from the  
5 dance hall. But this is a wall here with that signboard  
6 with the menu board on it.

7 So there's an opening right here next to that  
8 signboard, and that lets you into -- we were actually  
9 looking down that way whenever the melee started that  
10 looks back into the Trader Dick's restaurant area and  
11 the -- the south end of the bar there, so -- just to  
12 orient where it is.

13 You can kind of see that walkway that's through  
14 there right where that -- where I just put the line.

15 The restrooms are right up over here. The  
16 restrooms are up over that way (indicating).

17 At 24:43 with the time adjustment, this is just  
18 before -- this is before the fight broke out.

19 You can see the ruckus has started over here  
20 (indicating), drawing everybody's interest.

21 Q So at 23:26:23 on this camera, what's going on?  
22 Can you tell?

23 A Well, the fight's dispersing. There's some  
24 dispersement up over in here where you can see some more

1 Vagos and that gathering up here as this area clears out.

2 And in just a -- I was looking to see if I could  
3 see Mr. Pettigrew come up this way. He would have come up  
4 over here and walked past here since he was interested in  
5 the group assembling up in that area up to our -- top of  
6 the screen on the left.

7 Q So from this view, where would the fight have  
8 been occurring initially?

9 A The fight occurred -- the first punches were up  
10 here (indicating) behind those slot machines.

11 And this is kind of the open area there where  
12 they all backed into, and we saw them start to disperse in  
13 there, and we saw Pettigrew and a couple others over there  
14 that worked their way back up this way (indicating) to the  
15 left.

16 Q And Pettigrew was wearing that distinctive  
17 red-and-white shirt?

18 A Yeah, I don't know what -- if there's a style  
19 name, but it's like a long-sleeved T-shirt or, you know,  
20 heavier shirt that's long-sleeved, and he's got the red  
21 markings up on the sleeve and he's got his vest on.

22 Q Was there a little glitch on the video at that --

23 A Yeah. That's --

24 Q Is that a result of some old VHS tapes, or do you

1 know?

2 A A mix between the VHS tape and possibly the MUX  
3 player, the actual MUX itself.

4 Q Just to go back a little bit, can you identify  
5 Pettigrew in this section at 23:27?

6 A Let me look and see here.

7 Q Can you see what's going on right here?

8 A Here he comes right here (indicating).

9 Q All right. Can you tell who -- can you tell who  
10 the people are in this area?

11 A I can't identify them with any particular  
12 distinction, but...

13 Q Right about now?

14 A Now there's a couple of Hells Angels coming  
15 across it from left to right.

16 Q Can you identify those guys in the middle of the  
17 picture?

18 A That's, I believe -- I think he's got the Hells  
19 Angels rocker on his.

20 This is the glitch. It's just an old -- I  
21 believe we passed where -- because of that glitch, we're  
22 past where Pettigrew was up walking by there.

23 Q Do you recognize this fellow?

24 A Yes.

1 Q Who's that?

2 A That's Paul Ochs, the security director.

3 Q All right.

4 THE COURT: I'm going to stop you there for just  
5 a minute and ask the ladies and gentlemen of the jury to  
6 go ahead and stand up and stretch a little bit, get that  
7 blood circulating a little bit.

8 Attorneys, you're free to stand, too, if you'd  
9 like.

10 Okay. Thank you.

11 Mr. Hall, you may continue.

12 MR. HALL: Thank you, Your Honor.

13 BY MR. HALL:

14 Q All right. We looked at -- Camera 7 was the  
15 camera that looked into Rosie's; is that correct?

16 A Correct.

17 Q Camera 31?

18 A Camera 31 is looking towards the exit. It's  
19 called the roof garden exit, Victorian and 11th Street.

20 Q Do you recall anything significant in that  
21 portion of the video?

22 A We see people exiting. There are some Vagos that  
23 exited at one portion.

24 Q Camera 32?

1 A What time is that? That's 23 --

2 Q What area does this depict?

3 A This is the Last Chance Joe's doors, the third  
4 set of doors over on Victorian, kind of the middle of the  
5 street. It would just be people exiting. At 23:21 they  
6 would be coming and going.

7 Q All right. So that would've been this exit over  
8 here to the right side of Exhibit 130, right in the  
9 middle?

10 A Correct.

11 Q Camera 36?

12 A Camera 36 is looking north past the -- this is  
13 the sign, the menu sign, for The Steakhouse, and this is  
14 the entrance to The Steakhouse right here (indicating),  
15 so -- and this is Broadway Bar, or Bar 3, right over here.  
16 So this is the aisle leading up to go to Trader's and  
17 that. And they're heading this way. They're heading  
18 towards Trader's. And if they head this way they're  
19 heading towards Bar 3 or past Bar 3. It's north.

20 Q All right.

21 A Here's the entrance to The Steakhouse. And  
22 because -- this was on a MUX, so it's kind of a  
23 time-lapsed-type view.

24 Q All right. Can you tell who's walking down the



1 yellow brick road at this time, 23:25:18?

2 A Well, even though it's grainy, that looks to be  
3 Pettigrew right there with his sleeves and a bag. If not,  
4 at least it's -- I believe he was about the only one with  
5 those sleeves. That's one of the things I noticed was --  
6 in some of the other views.

7 But there's -- this looks like some -- well, a  
8 group of Hells Angels. They had -- now, red shirts come  
9 out kind of whitish-gray on black-and-white like here  
10 (indicating). So with him there, the red hats would be  
11 kind of whitish too. It's hard to tell the red from gray  
12 on the -- but that looks like the group of Hells Angels  
13 when they were walking up. They're carrying the ice  
14 chests and bags, a few things like that.

15 Q Camera 37?

16 A Camera 37 is placed to the right as we look north  
17 of the 36 that we were watching just before. We were  
18 looking over this way. This camera is across from The  
19 Steakhouse. This is going towards the showroom. This is  
20 the showroom side of the building over here.

21 Q Where would the cashier's cage be?

22 A Cashier's cage would be behind us and to the  
23 right. This aisle leads to the cashier cage.

24 That's looking away from -- looking at the slot

1 section that's in front of The Steakhouse. The Steakhouse  
2 is behind us.

3 This area here is where the cashier, main  
4 cashier, starts. You can see that little white area.  
5 That's the counter, beginning of the counter. These are  
6 doors leading into the cage. So that's where it is.  
7 You're looking -- and now you're looking southeast. The  
8 Steakhouse is behind us.

9 This is the main aisle that we were just looking  
10 at. I said that we had some Hells Angels walking up.  
11 These are the rockers for the Hells Angels on their vests.

12 Q Looking at 35?

13 A Camera 61 is the one that's over by the  
14 restrooms. And as I said before, it's looking towards --  
15 it is pointed straight to the pit. It's in the slot  
16 section.

17 Behind us are the restrooms. They're off to  
18 the -- actually the restrooms are off over this way  
19 (indicating) if you want to get the exact. So we're  
20 looking -- we're looking east on this.

21 Rosie's is up over this way (indicating). Trader  
22 Dick's is over there (indicating) to our left there.

23 And Camera 5 was up over this way and looking off  
24 to our left, as I indicated, across the lower level. So

1 that one view is that way, kind of a corollary view,  
2 reverse view, of that particular aisle.

3 Q So this area would be right about in slot area  
4 624, 620?

5 A Yeah, right in there.

6 Q Because we see there's little dots here. Would  
7 those be those poles?

8 A Those are -- that's this pole right here  
9 (indicating). And there's a --

10 Q So there's a big pole that's the dot, this big  
11 black dot, and then the little dot is the little -- the  
12 smaller pole?

13 A Yeah, there's two small poles. There's also a  
14 pole out on the aisle side of that.

15 Q Okay.

16 A That's the little black dot.

17 Q So we're looking, for the record, in between --  
18 on diagram 130 in between slot bank 624 and 618?

19 A Right. Bank 618 is where those poles are. This  
20 pole here is actually right by that bank 617. And we  
21 can't see the other pole, but it's -- that's a Hells Angel  
22 who pointed -- appeared to be pointing a gun up there and  
23 shot. I don't know if there's any -- then when he was  
24 getting back, it looked like the gun had jammed or

1 something. He was interested in the gun. I didn't see  
2 any flash on it. But he was just aiming it.

3 Q So would this be the aisle that Pettigrew was  
4 shot in?

5 A Yes. I believe this is the -- if I'm not  
6 mistaken, it's this aisle right here in front of 618.

7 Q Pettigrew would have been shot at the bottom of  
8 the --

9 A Way down here (indicating). He doesn't appear on  
10 this. Actually, here's the aisle right over here, because  
11 these are fixed chairs in front of the machines.

12 And if you notice, we see only -- we're looking  
13 at these two machines of 618 and then there's a gap and  
14 then there's this bank of machines, which is the 617. So  
15 there's about four more machines over in front of this --  
16 this way that we don't see. So that's -- that's how much  
17 we're not looking at.

18 This camera is up. If this camera had been  
19 pointed down it would have seen exactly that, but it's not  
20 pointing down. It's up and looking across the room.

21 Q Now, what's the time on this one? How does that  
22 match up with Pettigrew being shot? Can you tell if he's  
23 already been shot at this time?

24 A If you have that statement from MUX 3, we could

1 look it up, if you want the precise.

2 Q Well, I'm just wondering if you can tell if  
3 Pettigrew has been shot at 23:27:30 on this one.

4 A This is on MUX 3. If you're getting at what the  
5 actual time was from the other view that we timed it from,  
6 I don't know what the variance is.

7 Q Did I take that exhibit from you?

8 A Yes, you did.

9 Q If we can look at the tape -- if we look at the  
10 tape, can you tell?

11 A Okay. Are you going back to the --

12 Q Monitor 1?

13 A The 315? The Trader Dick's shot or Monitor 1?  
14 Either one, I guess.

15 Q So at 23:27:30.

16 A And -- there. That was 27:47?

17 Q Yes. So then we don't see Pettigrew in this.  
18 This is the same aisle, right?

19 A Right. We're at -- we don't see him at all in  
20 this shot. I mean, laying down there. So we're too --  
21 the camera doesn't --

22 Q So if we go to --

23 A It's plus whatever the time variance is.

24 Q So it would be fair to say that Pettigrew has

1 already been shot at this point?

2 A I would go with that. But he's hanging around  
3 down here, I don't -- I'd have to see. Because all I  
4 have -- I wasn't there at the particular time. But  
5 that's -- because it -- within 15, 20 seconds of time  
6 variance, that would put him as having been shot by this  
7 time.

8 Q Well, if we look at Monitor 1 --

9 A Uh-huh.

10 Q All right. So we have -- and then we're at  
11 23:27:40?

12 A And right there (indicating).

13 Q So at 23:27:45 --

14 A 45, right in there.

15 Q Right. Pettigrew gets shot, right?

16 A Correct. Using the Monitor 1 timeframe.

17 Q And then we saw the Hells Angel with him, Cesar  
18 Villagrana, in the frame; is that right?

19 A That's correct.

20 Q And that was on 61. And now that's him right  
21 there (indicating), right?

22 A Villagrana -- let me back up in the view here.

23 Q I mean, that aisle that we saw him pointing down,  
24 that would have been that aisle --

1 A Correct.

2 Q -- is that accurate?

3 A That's correct.

4 Q Okay. And the times jibe?

5 A Well, once again, if you want me to -- it's  
6 within the plus or minus.

7 Q Okay. All right. Camera 82?

8 A That's more west -- that's west of the area we  
9 were just in.

10 Q The valet area?

11 A This is the rotisserie, down here is Starbucks,  
12 and if you head down this way is the hotel and the west  
13 tower. So the east tower elevators are out to our right,  
14 out of view, which takes us over that way. That's just  
15 additional hours of the --

16 Q Rotisserie?

17 A Rotisserie.

18 Q So a couple hours of rotisserie video?

19 A We were looking for who was leaving, if we could  
20 identify anybody, how many people were -- a lot of them  
21 went into the back hallway through Rosie's. We were just  
22 trying to identify everybody that we could of who's  
23 leaving, who's not, which direction they went. They could  
24 get through the kitchen. So we have some of those shots.

1           This is the south end of the Trader Dick's bar,  
2 this is the Trader Dick's restaurant, and off to the side  
3 here is the dance area. You can see people coming out of  
4 the dance area right there.

5           And going down this way is that back aisleway  
6 that we saw the running up and down.

7           Q     All right. And a little discrepancy in the time  
8 here. We've got 11:23:41 on the top and 23:29 on the  
9 bottom?

10          A     Yeah. This is that one I told you we had the --  
11 this is within, what was it, 15 seconds, and this is  
12 within two minutes of the Monitor 1 time.

13          Q     Okay.

14          A     This is off of the bar register DVR. But this is  
15 coordinated at the same time of the 15 that showed the  
16 aisleway.

17                There's Ernesto running down the back of the bar.  
18 We should see him coming back up if this is the...

19          Q     So let's just document that. Using the clock at  
20 the top --

21          A     Right, that's what we...

22          Q     So --

23          A     11:22 -- 24:52. 11:24:52. And that's lagging  
24 Monitor 1, if I recall from what I read off there, by two



1 minutes.

2 Q So at that point it looks like everybody's  
3 cleared out, obviously?

4 A That's -- yeah, everybody seemed to -- the fight  
5 has started.

6 This is Ernesto coming back now.

7 Q So the time now is 11:25 --

8 A 44, 45.

9 Q 44, 45?

10 A That's where he goes into the dance area.

11 And here he comes running out at 11:28:08 --  
12 11:26:08. Sorry.

13 Q So Camera 213?

14 A 213, this is on the other side of the bar. This  
15 is the aisle over up in the upper right-hand corner.  
16 These are just seatings. This is the casino side of that  
17 bar.

18 Q 214 we looked at earlier; is that correct?

19 A Correct.

20 Q This would be the north end of the bar?

21 A And that's the other view that we had of the bar,  
22 of him, Ernesto, running down after -- and walking up the  
23 other way first.

24 This is the Noodle Hut register shot. It's

1 looking up the aisle towards where the fight started.  
2 Trader Dick's bar is off to the right. And, of course,  
3 the slots are off to the left there.

4 So we looked at this to see when he was leaving,  
5 if he came by this area here (indicating) at all because  
6 you see I would have seen him -- we would have been able  
7 to see the person going up or down or crossing there.

8 There's the Hells Angels carrying their bags up,  
9 and a few other patrons.

10 This is before the fight broke out.

11 Q All right. We're looking at 11:23:14 on the top?

12 A Okay. That's the POS. That's the POS time. And  
13 here's 23:25. Down below is the DVR time.

14 Things have started. This right here is a sign.  
15 It's in our way or we'd have a nicer view of what's up  
16 behind that sign a little bit further up the aisleway.

17 Q Then we have the B7 series?

18 A That's the 11th Street exit. That's down by the  
19 Horseshoe Bar.

20 Q All right. There are several of those --

21 A Uh-huh.

22 Q -- documenting the times? So this would be this  
23 exit here at the bottom of 130?

24 A Correct.

1           Pretty much just employees walking over to the  
2 smoking area.

3           Q     And this camera is also -- it's also engaged with  
4 Monitor 1 in terms of the time?

5           A     Yes. I believe I've got that noted. Yes.

6           Q     So we're looking at 23:29, it looks like?

7           A     Uh-huh.

8           Q     There's some action. All right. We can spend  
9 some more time on that later.

10          And just more video from outside?

11          A     Uh-huh.

12          Q     B119?

13          A     B11.

14          Q     Oh, B11? I'm sorry.

15          A     That's the bike rack out in the west end of the  
16 building from the main west end entrance.

17          Q     All right.

18          A     That's a hallway leading up to Rosie's from --  
19 well, a maze of hallways.

20          Q     All right.

21          A     That's the general area -- the hallway we were  
22 just looking at, you'd have to go down this bakery  
23 hallway.

24          This door here leads out to the compound. If you

1 go under here, you go into the Oyster Bar kitchen area  
2 pretty much, and that leads -- once you go in there, that  
3 leads from -- a hallway from Trader Dick's and from The  
4 Steakhouse, that one there.

5 Leading out into that hallway is an area that  
6 they could have left in. They would have had to go out  
7 that way to get outside. They would have been in the  
8 compound area, which was a gated area, and then tried to  
9 get out from there. So it was just a shot we were looking  
10 at to see if anybody dispersed through there.

11 Q All right.

12 A That's the kitchen that leads to the prior shot  
13 we just had, Camera 54.

14 Q All right. Just for the record, we were talking  
15 about 54. Now we're at 56, 58?

16 A 56 and -- that's the hallway that leads into The  
17 Steakhouse kitchen going to the left. That leads back  
18 over towards the Noodle Hut and Trader Dick's going off to  
19 the right.

20 That's a reverse view of the same shot.

21 Q That was 59?

22 A Uh-huh.

23 Q We've got 67?

24 A 67 is the hallway leading out to the west

1 entrance that goes out by the bike rack there. This is in  
2 the west end of the building, once again, leading from the  
3 main entrance.

4 Q We also have some -- you talked about rooms?

5 A These are them coming -- checking in from the  
6 hotel.

7 Q You've got different ones marked. So we've got  
8 the room at 16:04 to 2 o'clock?

9 A Okay. So that's a long dub of that.

10 Q And then we've got --

11 A This is him arriving at the hotel room with  
12 another friend, acquaintance, whoever. It's just him  
13 checking in the room and the time and then leaving the  
14 room.

15 Here he's coming out of the room. And he goes  
16 back in.

17 Q And then we have a couple shots of the Oyster  
18 Bar; is that right?

19 A Yeah. This is prior to them all meeting down  
20 at -- this is around 10 o'clock, just after 10 o'clock.

21 Q About 10:12? A little bit after 10:00?

22 A Yes, I believe that's it.

23 And off to the side here, the Hells Angels are  
24 meeting over in here. There's a lot of Vagos that arrived

1 over here, and then they -- several of them talked to  
2 Mr. Pettigrew over in here. And it's just the  
3 congregation of all of them mixing all of a sudden there  
4 that drew the interest.

5 Camera shot 30, opposite -- we were looking from  
6 over here (indicating). Now we've got the camera shot,  
7 opposite view.

8 Here's Ernesto there (indicating).

9 This is the Oyster Bar doors that are off that  
10 way. This is the Oyster Bar restaurant. It's closed at  
11 this time. You see the doors there.

12 And this is the keno outsection.

13 This is the west end of the building.

14 This is Mr. Pettigrew right there (indicating).  
15 He was talking to some. And there's some Vagos that go up  
16 and talk to him. I don't know who's -- what they're  
17 saying or anything, but -- that was all before the fight.

18 Q And then there's some additional footage? For  
19 example, Camera 215?

20 A Yeah. That's looking at the bar, the Trader  
21 Dick's bar, of course. We're looking down towards the --  
22 away from the dance floor. That goes into the -- that  
23 door there goes into The Steakhouse, if you will. They're  
24 all looking out towards the dance floor area right now.

1 If you look, that's the direction they're looking in.

2 23:17. So it's way before.

3 Now, this view, by the way, comes off MUX 15, not  
4 off of a DVR. If anybody goes off to the left here,  
5 that's by the Trader Dick's wine rack, and you end up in  
6 the kitchen -- well, you can get to the kitchen from that  
7 area too. So it gives us an idea, if someone turns right  
8 or left, which direction they went leaving that area.

9 Other than that, it's the north end of the -- the  
10 back side of the bar is what it's really looking at.

11 Q All right. So we should be able to see  
12 Mr. Gonzalez?

13 A Yes.

14 That's the view dubbed in to look at -- this is  
15 the wine rack for Trader Dick's. Walking up this way, you  
16 end up at Trader Dick's, that north end of the bar.

17 There's an entrance right here that goes into a  
18 little salad station/beverage station for the servers that  
19 you can get to the hallway that we've seen several times  
20 that could lead out to The Steakhouse or back to the  
21 kitchens there. So that's one little entrance for the  
22 servers. But if they run this way and run in to here, to  
23 the right, they would be in the Trader Dick's restaurant  
24 proper, the seating area.

1 Q This is a little extra --

2 A Of the Oyster Bar prior to. Different timeframe,  
3 but the same bar area.

4 Q Just a little later?

5 A Uh-huh. Correct.

6 Q Thank you. I have no further questions.

7 THE COURT: Will you turn the lights on, please.  
8 Mr. Lyon, cross-examination?

9 MR. LYON: Thank you, Your Honor

10  
11 CROSS-EXAMINATION

12 BY MR. LYON:

13 Q Good morning, Mr. Prichard.

14 A Good morning.

15 Q So as I understand it, there was a video that  
16 captured everything on the evening of the September 23rd  
17 shooting, correct?

18 A It captured everything they were aimed at. I  
19 mean, we weren't following any particular person or  
20 persons. We were -- they were just following events,  
21 so...

22 Q Okay. But it didn't record everything that was  
23 happening -- or were there cameras recording everything  
24 that was happening on the casino floor that night?



1 A Yeah, every camera that we had.

2 Q In some respect?

3 And you were called in after the shooting,  
4 correct?

5 A Correct.

6 Q So you weren't there that night?

7 A No.

8 Q And as far as what we see on the video, you don't  
9 know necessarily what people were thinking in the video?

10 A Absolutely.

11 Q You don't know necessarily anything that's being  
12 said amongst the individuals?

13 A Correct.

14 Q You had testified a little bit about shots being  
15 fired. That's all assumptions based on people's reactions  
16 within the video?

17 A Correct.

18 Q You don't know how many shots were fired that  
19 night, do you?

20 A Not --

21 Q -- based on the video?

22 A No. Correct.

23 Q Now, as I understand it, Monitor 1 was kind of  
24 your baseline video to start the timeframe sequencing?

1 A Just picking that up, yes.

2 Q Okay. And what caused you to use Monitor 1 as  
3 your baseline?

4 A She was -- well, there are 16 monitors in there.  
5 There's three work stations. She was at the station that  
6 was using Monitor 1, Monitor 2, Monitor 3. And the video  
7 that -- those monitors were probably on other things other  
8 than this area or that area. They could have had games on  
9 it or registers or anything else. So that -- but  
10 Monitor 1 through 16, any one of those are tied into the  
11 matrix that has the ability to put any of our cameras  
12 up -- views up on that.

13 So any of the -- all 16 of those monitors use the  
14 same timestamp. They were all coordinated out of the  
15 matrix that runs the whole -- that. So any video that we  
16 put up there is going to inherit that timestamp, which is  
17 pretty darn close to the official time.

18 Q Okay. So that's -- these 16 cameras, they're the  
19 closest to the actual time?

20 A 16 monitors.

21 Q 16 monitors.

22 A And anything recorded on there. We put 600  
23 cameras, one at a time, up on those, so any of those would  
24 carry the same timestamp.

1 Q And this syncing that you did with the other  
2 videos, that was all to Monitor 1, correct?

3 A Correct.

4 Q And that was based on events that you saw in  
5 common between various videos?

6 A Yeah. I can test Monitor 1, put similar videos  
7 up and see what time they vary from what Monitor 1 is at  
8 that time. I could do that today; I could do that  
9 tomorrow. But -- so any video I had that day I had to --  
10 afterwards, of course, I checked for that time  
11 differential.

12 Q And what event -- do you recall what events you  
13 used to help sync the timeframe?

14 A Not particularly.

15 Q Was it one single event or multiple events?

16 A Multiple events, multiple times, and whatever I  
17 was dubbing the tapes from and that, those views.

18 Q That's because some monitors wouldn't necessarily  
19 capture an event that were picked up on other monitors.  
20 True?

21 A Well, yeah. If they didn't have the same images,  
22 I wouldn't know it. But those images that we saw there we  
23 dubbed off of, like, MUX 15, MUX 3, MUX 5. So those are  
24 being recorded 24/7, and those time-dates have the drift.

1 So then I just have to find out -- I could take any shot  
2 on MUX 5, for example, and any of them are going to have  
3 the MUX 5 video timestamp on it generated actually from  
4 the VCR on that, and I could take that and say MUX 5 has a  
5 time drift of this amount.

6 Now, we adjust those and try to keep them tight.  
7 We don't do that every single day. There's different  
8 times we do that, but -- so I can take that. It doesn't  
9 matter if -- say camera 30 -- just making up one here --  
10 camera 30 was recorded on MUX 5. I can take Camera 45 if  
11 it was on MUX 5 and time that view because it doesn't  
12 matter; it's MUX 5. They all have the same time view on  
13 it, timestamp.

14 So just match it up and say, okay, put a similar  
15 view on Monitor 1 and say, okay, let's see, MUX 5 had a --  
16 you know, is two minutes faster than what the -- if I put  
17 it on Monitor 1.

18 Q And some of the events that you used to help sync  
19 these was like when you see people reacting, what you  
20 perceived, to gunfire and things of that nature?

21 A True.

22 Q Did you do that by yourself? Did you have help  
23 with law enforcement?

24 A I synced -- well, all the video that we gathered

1 was at the direction of law enforcement and the people  
2 there. We looked at a lot of different views and stuff  
3 like that.

4 Once we had all of those views and that, then I  
5 sat out and just delineated out the time differences.  
6 I've done that hundreds of times in 30 years.

7 Q So no one from law enforcement was sitting with  
8 you to do that part of the synchronization?

9 A No.

10 Q And no one from the DA's office was there as  
11 well?

12 A No. Not -- not for the actual synchronization.  
13 That's done after I gathered it all.

14 Q But law enforcement did play a role in gathering  
15 the evidence that evening?

16 A What they wanted to see; what events they were  
17 aware of or how they wanted to see, yes.

18 Q Okay. And, again, going back to my initial  
19 question, some video wasn't necessarily preserved or  
20 captured if law enforcement didn't think that it was --

21 A If it had no -- you saw several examples right  
22 there, like who's running out this door or things like  
23 that. And we were interested in did they go this way or  
24 that way down this hall, who left this way, trying to find

1 stuff like that. And there's a lot of videos we reviewed  
2 which had no relevance on anybody or situation that we  
3 were looking for.

4 Q Right. And it seems like you were primarily  
5 focused on tracking Mr. Gonzalez?

6 A Mr. Gonzalez.

7 Q And you also identified some other individuals in  
8 the video such as Mr. Pettigrew, Mr. Villagrana?

9 A Mr. Pettigrew, Mr. Villagrana. Those were -- in  
10 the videos, those were the persons of interest that  
11 interested law enforcement and what -- the events that  
12 took place.

13 Q Were you asked at all to pull video or track the  
14 movements of Gary Rudnick?

15 A I wouldn't know the name so I couldn't tell you,  
16 you know, specifically. If it was the one that we  
17 created, then I wasn't aware of every name that everybody  
18 was doing. We were just looking at the videos from the  
19 fights and on.

20 Q And I'll show you some video here in a little bit  
21 and see if you can identify Mr. Rudnick.

22 Now, the first video you showed us was this  
23 walk-through video?

24 A Uh-huh.

1 Q Were you the one that actually shot that video?

2 A No.

3 Q You were just there as a walk-through?

4 A Yes.

5 Q Now, it starts at the Oyster Bar? That's  
6 correct?

7 A Correct.

8 Q And as I understand it, there's an entrance right  
9 there to the outside of the casino at the Oyster Bar?

10 A Yeah. That's the one we walked through on that.

11 Q And so anybody going -- that's in the Oyster Bar  
12 could leave through that entrance?

13 A Correct.

14 Q Or they could walk down what's been classified as  
15 the yellow brick road?

16 A There you go. Yes.

17 Q Okay.

18 THE COURT: This is probably a good time for us  
19 to quit for our next recess.

20 During this break -- ladies and gentlemen of the  
21 jury, we are going to be in recess for about 20 minutes,  
22 and I want to remind you that you may not discuss the case  
23 among yourselves or with any other person. Do not form or  
24 express any opinion about the ultimate outcome of this

1 matter. Do not allow anyone to speak of the case to you  
2 or in any manner attempt to influence you. If any person  
3 should attempt to do that, report it to me.

4 Do not make any independent investigation or  
5 inquiry into any of the facts and circumstances regarding  
6 this case, and do not listen to, view, or review any news  
7 media accounts regarding this case or any other kinds of  
8 accounts regarding this case.

9 We'll see you back in the courtroom in  
10 20 minutes.

11 Court's in recess.

12 (A recess was taken.)

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STATE OF NEVADA, )  
 )  
COUNTY OF WASHOE. )

I, BECKY VAN AUKEN, Certified Shorthand Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify:

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

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

DATED: At Reno, Nevada, 07/31/2013.

  
BECKY VAN AUKEN, CCR No. 418, RPR, RMR, CRR

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27 ~~28~~

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

-oOo-

STATE OF NEVADA, )  
 Plaintiff, ) Case No. CR11-1718B  
 vs. )  
 ERNESTO MANUEL GONZALEZ, ) Dept. No. 4  
 Defendant. )  
 \_\_\_\_\_)

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, JULY 24, 2013

AFTERNOON SESSION

TESTIMONY OF BILL PRICHARD

AND GEORGE MESSINA

RENO, NEVADA

COPY

Reported By: MARCIA FERRELL, CCR No. 797

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18 WITNESS: DIR. CROSS. REDIR. RECROSS

19 BILL PRICHARD 4 39

20 GEORGE MESSINA 50 73

21

22

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24

1 RENO, NEVADA, WEDNESDAY, JULY 24, 2013, 12:10 P.M.

2 --o0o--

3 (Jury absent.)

4 THE COURT: Counsel, do you have anything for the  
5 Court outside the presence of the jury?

6 MR. HALL: Yes, your Honor, Rocky Triplet indicated  
7 he wanted to sit and watch. Apparently he's on the witness  
8 list, but we don't plan on calling him, and Mr. Houston  
9 indicated he doesn't have an objection to Rocky Triplet  
10 sitting in.

11 THE COURT: Okay, then Mr. Triplet will be removed  
12 from the witness list and he may attend. Anything further?

13 MR. HALL: No.

14 THE COURT: Okay, please bring the jury in.

15 (Jury present.)

16 THE COURT: Counsel, will you stipulate to the  
17 presence of the jury?

18 MR. LYON: Yes, your Honor.

19 THE COURT: Please be seated. Mr. Lyon, you may  
20 continue your inquiry.

21 MR. LYON: Thank you, your Honor.

22 //

23 //

24 //

## 1 CROSS-EXAMINATION

2 (Continued)

3 BY MR. LYON:

4 Q. Okay, Mr. Prichard, I think when we left off there  
5 was -- talking about the synchronization and the people that  
6 you were asked to identify in the video. I just had one  
7 follow-up with the synchronization issue. So in order for --  
8 the bottom line is we cannot look at all of this video and go  
9 by the time stamps that are there, to understand the  
10 relationship between each video, correct?

11 A. Well, if you're trying to pinpoint a timeline that  
12 has to jump between videos, in order to establish that  
13 timeline you're going to have to make those adjustments.  
14 Because I can't reedit the picture with the -- by altering  
15 the timeline.

16 Q. Understand. And those adjustments, which I think is  
17 Exhibit 1B, that was on your chart that you --

18 A. Yeah.

19 Q. That you went through. Okay. And then as far as  
20 the people that you pulled the video and tracking their  
21 movements through the casino, that was basically  
22 Mr. Gonzalez, Mr. Villagrana, Mr. Pettigrew.

23 A. Yes, there were -- and I couldn't tell you the  
24 names, but there were other videos of different interest at

1 times, depending on which person I was talking to, and so we  
2 looked up this or looked for this or looked for that.

3 Q. Okay.

4 A. I mean, to justify that, there were other arrests  
5 and people handcuffed and that, I don't know what all of  
6 the -- what the disposition of everybody that everybody else  
7 was interested in. It filtered down to these, in the end.

8 Q. Okay, and you don't recall being requested to sort  
9 out the video to track, for example, Gary Rudnick? That name  
10 doesn't ring a bell to you?

11 A. You know, the name kind of rings a bell, but I  
12 couldn't tell you why they were interested in him. Once  
13 again, there was different police officers or constabulary  
14 that they all had questions and interests, and I tried to  
15 serve each one as --

16 Q. Okay, so if he does show up on video, that's how he  
17 shows up.

18 A. That's correct.

19 Q. I want to walk through some of the video, and what I  
20 want to do is do it in somewhat chronological --

21 A. Sure.

22 Q. -- time frame order, and with respect to  
23 Mr. Gonzalez. If I understand things correctly, the first  
24 time Mr. Gonzalez shows up in video would be at the Oyster

1 Bar, correct?

2 A. Yes, and -- for these incidents. I mean, we have  
3 him on video checking into the hotel, so that's -- would be  
4 before.

5 Q. Okay, but we didn't see those videos.

6 A. He popped it up there showing him going in and out  
7 of the hotel room, yeah. But that wasn't --

8 Q. Okay, I see what --

9 A. That was arrival. So you're saying -- that's not  
10 the first time he was seen.

11 Q. Okay, and I stand corrected. Because you would be  
12 right, the first time he shows up on video is after he checks  
13 in, going -- just going --

14 A. Just going into the hotel, showing his arrival and  
15 even in the room, just -- nothing of that big of an interest,  
16 except he's there.

17 Q. And I appreciate that. And so then the next time he  
18 would show up would be when he shows up in the video at the  
19 Oyster Bar?

20 A. Yeah, pretty much the filming of this, the events  
21 started at the Oyster Bar, because all of a sudden there was  
22 a large gathering of the two groups there.

23 Q. And I guess just to put it in chronological time  
24 frame, do you recall when the video was showing him checking



1 into the room? I recall it being around 7 o'clock, 7:15,  
2 does that --

3 A. I'll go with that, yeah, it was earlier in that  
4 night.

5 Q. And so then we start -- we see the video of the  
6 Oyster Bar incident.

7 A. And that actually -- that started after 10 o'clock,  
8 is where that all really started, so.

9 Q. And is there -- are you able to identify the  
10 specific time that we're looking at here?

11 A. Yeah.

12 Q. The actual time?

13 A. Yeah, unfortunately you've got the -- it's a tape.  
14 At 12:55, 22:12:55 is what I see on this right now.

15 Q. So that's about --

16 A. 10 after 10:00.

17 Q. 10 after 10:00, so maybe about three hours after he  
18 checked in.

19 A. I'll go with that, if that's the time of checking  
20 in.

21 Q. And can you identify Mr. Gonzalez in this video?

22 A. As I see him I can highlight it, yeah.

23 Q. While it's panning around, it seems like this video  
24 kind of starts all of a sudden. Is that because someone had

1 to actually start the record button on this?

2 A. It was on monitor 1, the whole videotape of monitor  
3 1 is on there from -- monitor 1 was videotaped from 4:30 in  
4 the afternoon until 12:30 at night. That's -- it's an eight  
5 hour tape. This is taken -- this is a digital copy of it in  
6 the playback, we started it at 12:10 or whatever, you know,  
7 10:12, and that, for --

8 Q. What was the reason for starting it at that  
9 particular time? Versus earlier?

10 A. We went back -- actually, I know we reviewed some  
11 that was even a little bit earlier, but it was the -- the  
12 interest of the person that was gathering it, was more that  
13 all of a sudden, looking over in this area, that they had a  
14 larger gathering of Vagos, and some Hells Angels were mixed  
15 in all of a sudden, and it's just one of those -- let's start  
16 here.

17 As far as this particular one, they were starting  
18 to -- Mr. Pettigrew appears to be talking to some of the --  
19 the Vagos. Couldn't tell you what they were talking about,  
20 they weren't throwing punches or anything at that time, they  
21 were just talking face-to-face, and whatever they were  
22 saying.

23 Q. So that's what prompted the recording?

24 A. We didn't know Mr. Pettigrew, I'll say, at this

1 time, either. It wasn't that, it just turns out to be that  
2 particular guy. We didn't know him from anybody else.

3 Q. And that actually I think -- and as I understand it,  
4 there's this view of the Oyster Bar, and then there's another  
5 view, correct?

6 A. Correct.

7 Q. And what I want here is just go to that other -- so  
8 the one we were just at, for the record, is identified as  
9 Oyster Bar 1.

10 A. Correct, okay.

11 Q. This is Oyster Bar 2.

12 A. Yeah.

13 Q. Just a different angle of the same events.

14 A. Correct, yeah.

15 Q. And can you identify Mr. Gonzalez in this video?

16 A. Right here, with the glasses, the long sleeves. And  
17 he shows up in that, and he's right here right now.

18 Q. And this time frame again is about 10:12 in the --

19 A. 22:14 right now, is what that one is.

20 Q. So about 10:12 in the evening.

21 A. Correct.

22 Q. And can you identify Mr. Pettigrew?

23 A. Let's see. Where is Mr. Pettigrew? He's probably  
24 off to the left there a little bit. Yes, this is him talking

1 to the other --

2 Q. So he's talking to some Vagos?

3 A. Yes, that's a Vago, I believe. Yeah, if I see the  
4 back then I can verify for sure that it's a Vago. But yeah,  
5 he's got a couple of Vagos that he's talking to right here.

6 Q. Okay, so this is the video wherein Mr. Gonzalez --

7 A. First presence that I saw him in the group.

8 Q. I'm just going to fast forward a little bit. Still  
9 see him there, correct?

10 A. Right there, correct. He's in the same area,  
11 just -- there's people coming and going, they're greeting  
12 each other, doing their -- you know, a hug or handshakes or  
13 whatever their greeting method is.

14 Q. Just fast forward it. Do you still see him?

15 A. Right here. Here's Mr. Pettigrew.

16 Q. And this is -- looks like about 10:16?

17 A. Correct. You notice primarily speaking the Vagos  
18 are all outside the bar, and there were the Hells Angels in  
19 there, and then a couple behind the sign, just nothing --  
20 they weren't in any kind of defensive posture or anything,  
21 they were just all there.

22 Q. Can you identify that individual?

23 A. Not really from that view, I don't know.

24 Q. If I run the video will that help?

1           A. Yeah, let's give it a try. If that's Mr. Rudnick,  
2 who you had asked about, I wouldn't have picked him out of a  
3 lineup, so. By name and that.

4           Q. So you don't know him as Mr. Rudnick; I would  
5 represent that is Mr. Rudnick.

6           A. Okay, yeah, that's correct, that would be correct.

7           Q. Okay, and where is Mr. Gonzalez, we're now about  
8 10:17.

9           A. He's right here. Talking with a -- Vago is that?

10          Q. Let's fast forward a little bit, see him, now he  
11 leaves the view of the camera, correct?

12          A. Yeah, I would -- yeah, I don't see him right in  
13 my --

14          Q. I'll back it up.

15          A. Okay, yeah. Oh, no, here he is. He's right there.  
16 Yeah, he walked off.

17          Q. So that's about 10:17, 10:18 p.m.?

18          A. Correct.

19          Q. Now, there's no other video that you're aware of or  
20 that was captured showing Mr. Gonzalez's movements or  
21 whereabouts on the casino floor prior to him appearing on  
22 camera 45, and I'll get there in a minute. Is that your  
23 understanding?

24          A. He appears -- without going back over every single

1 one, first off, he wasn't followed around on the floor, we  
2 had no inkling or no one was sorting him out to begin with.  
3 I know he's over in the area by Trader Dick's.

4 Q. Yeah, let me jump to camera 45, because --

5 A. There you go.

6 Q. This is where Mr. Gonzalez next appears on the  
7 videos that you've talked --

8 A. 22:56, okay, this is coming up to 11. Yeah. So  
9 that's not before, I was -- so yeah. So this is after the  
10 video we had just viewed.

11 Q. Right, so he left the video at about 10:18 or so,  
12 there's no other video showing his whereabouts on the casino  
13 floor until he appears again here at 22:56:50, correct?

14 A. That I know of at this time.

15 Q. And again, you went through all the video with law  
16 enforcement looking for Mr. Gonzalez, true?

17 A. He was one of the men of interest. Yeah, most of  
18 that was also not really what was he doing all day long, it  
19 wasn't a question like that, if you know what I mean.

20 Q. But certainly if Mr. Gonzalez showed up on video, he  
21 would have been captured, true?

22 A. True.

23 Q. So it shows him -- and this is in front of Trader  
24 Dick's?

1 A. Correct.

2 Q. And just for the jury's edification, this is about  
3 in this area?

4 A. Yes, right at the opening of Trader Dick's, at the  
5 end of the bar, that -- yeah, right in there.

6 Q. Okay, and before, the prior video was down in the  
7 Oyster Bar?

8 A. Correct.

9 Q. And this time frame is about a little bit before 11  
10 o'clock?

11 A. Yes.

12 Q. So about maybe 35, 40 minutes later?

13 A. Okay, yeah, whatever we ended up there at.

14 Q. I'm going to fast forward through this. This video  
15 basically shows Mr. Gonzalez mulling in and about Trader  
16 Dick's.

17 A. Correct.

18 Q. And there's parts where he's not even visible.

19 A. Correct. This is the part where some of the -- they  
20 had all started walking down to this area. Here's 23:08, so  
21 why they picked this area, I have no idea. I mean, it's not  
22 a --

23 Q. You're just noticing Vagos --

24 A. Yeah, that they came down --

1 Q. Gathering in front of the Trader Dick's?

2 A. They vacated the Oyster Bar area, in fact, and that  
3 was they're following up here.

4 Q. And you don't know why they vacated the Oyster Bar.

5 A. No.

6 Q. Can you identify Mr. Gonzalez in this video at all?

7 A. Okay, I'm looking.

8 Q. I'll fast forward a little bit.

9 A. Okay. There he is right there.

10 Q. What do you see him doing there?

11 A. He's talking to some people. Has a drink in his  
12 hand or a beer or something in his hand that he appears to be  
13 drinking. I can clear that mark.

14 Q. And this is roughly 11:17?

15 A. 11:17.

16 Q. So he's been there about 20 minutes or so?

17 A. Sure.

18 Q. Can you identify him in a portion of this video?

19 A. Oh. Here he is. Over on the side, here. Talking  
20 to a group.

21 Q. This is just a little farther down, about 11:22 in  
22 the evening?

23 A. Correct.

24 Q. Is he at all in this video? I'll fast forward it.



1       A. The back of his head. I'm just judging from  
2 sleeves, this could be him. Don't ask me for a back of the  
3 head identification, but -- yes, that's -- he's got the  
4 glasses on, that's him.

5       Q. What do you see him doing at this point?

6       A. He's talking to, for lack of other things, other  
7 Vagos, other members or -- and has a drink still in his hand,  
8 it appears to be.

9       Q. Now, as far as timing goes, this is just prior to  
10 the fight, correct?

11       A. Correct. Now, here comes the Hells Angels walking  
12 down. See, they're walking in with -- and here's Pettigrew.

13       Q. What's Mr. -- what do you see Mr. Gonzalez doing  
14 now?

15       A. Mr. Gonzalez is standing over here, watching the  
16 events. I -- now he's walking away, out of camera view. If  
17 we had 46 in there maybe we could see where he went to. Then  
18 he walks up -- now he's going over towards -- there's the  
19 fight. And he was walking over towards here. And he backs  
20 away from this fight area.

21       Q. And what's he doing at this point? So backing away  
22 from the fight?

23       A. Backing away, appears to be watching the events. I  
24 don't know if anything is -- what his interest or what

1 he's --

2 Q. Can you identify him in this portion of the video?

3 A. I know where he was. I think that's him right  
4 there, but you're talking about a dark shadow, so. And he  
5 walks forward. That was him, he's right there.

6 Q. Now, is he in this view right here?

7 A. He's walked up to the bar, he's right there. Now  
8 he walked back over that way. This is still him right here.  
9 And he just walked into the -- he just walked into the bar  
10 area.

11 Q. Behind the bar?

12 A. Or the dance hall area, to the left there. I  
13 mean --

14 Q. Now, at this point in time Mr. Villagrana is  
15 shooting?

16 A. Yes, that's right here. 23:26:29.

17 Q. And so where is Mr. Gonzalez?

18 A. He appears to be back over in here. How far into  
19 the dance area I can't tell, but he's stepped that way, and  
20 there you go, that's all I can see right there. Now he just  
21 went down the back side of the bar. 23:26:35. If you want  
22 to back that up, you can see him -- he walks over to the bar  
23 right there, I can kind of -- he never went into the bar, I  
24 can still see him standing out there. Now he's in out of

1 view that I can tell. There he just went right across.

2 Q. Now, it's at this point in time, is it not, that he  
3 appears on the other videos --

4 A. Yeah, the 215 I think is the first one, yes, and 214  
5 after that.

6 Q. So kind of want to mark this spot here on monitor  
7 45. That's at 23:26:38.

8 A. It's right there, he's already down past that.

9 Q. And so he would next show up where?

10 A. Go with 215. Okay, and go up -- what did you say,  
11 23 -- what did you say, 23:28? Let's see where he shows up  
12 here.

13 Q. Before we -- just so I'm clear, which camera are we  
14 looking at right here? He was right here, correct?

15 A. Yes.

16 Q. And then he's behind --

17 A. He's coming down that way where --

18 Q. -- the fish tank bar? Which camera are we looking  
19 at right there?

20 A. This is 216, that's the bar camera from that. So.

21 Q. Which side of the bar, here? This side?

22 A. Yeah, the back side, it's looking -- that's looking  
23 south. Towards the dance area.

24 Q. So it's going to show him as he comes around the

1 bar?

2 A. Correct. On that board, on that board there, he's  
3 coming down to the right.

4 Q. Let me know when you see him.

5 A. He's going to come down -- he's going to come into  
6 the camera view over in this area here. Do you want me to  
7 yell stop when I see him?

8 Q. Yes. Do you want me to replay that?

9 A. Yeah, replay that.

10 Q. Can you identify him there?

11 A. Right there.

12 Q. So what -- the timing of this, when we see him in  
13 this video, what's the time frame in relation to the fight?  
14 Has the fight already occurred?

15 A. Yes, the fight's already occurred.

16 Q. Has the shooting of Villagrana already -- from  
17 Mr. Villagrana already occurred?

18 A. Yes, I believe so.

19 Q. Has the shooting from Mr. Pettigrew already  
20 occurred?

21 A. Mr. Pettigrew had taken out his gun by that time.  
22 He took that out and -- so.

23 Q. And you've seen the video of somebody getting hit  
24 with a gun, had that already occurred?

1           A. Yes, that was Mr. Pettigrew -- was that Pettigrew or  
2 was that Villagrana? Anyway, yeah, pistol whipping.

3           Q. On the one angle we saw, we saw him go over towards  
4 the dance hall for a bit.

5           A. Uh-huh.

6           Q. Was that before or after this angle?

7           A. That's before this -- before this one happened.

8           Q. So when we see him run across, this is the  
9 continuation of that video, correct?

10          A. Yes, that's where he came from, yes.

11          Q. Does he show up again in this portion of the video?

12          A. He should be coming back up after -- he goes down to  
13 the end of the bar, and then comes back up.

14          Q. What camera shows us the end of the bar?

15          A. First off, do you want to see him coming back up  
16 here, or do you want to see the end of the bar first? I  
17 think that's 214.

18          Q. Let me know when you see him come back.

19          A. There he is.

20          Q. Now, what's going on with respect to the fight at  
21 this point in time?

22          A. I've got to look at it to tell exactly, I didn't --  
23 I don't have it in front of me, but --

24          Q. Okay, let's -- what was the other camera angle that

1 we see him on?

2 A. 214.

3 Q. Before we roll this one --

4 A. Okay, this is --

5 Q. Where is this on the bar, here?

6 A. At the -- for you it's on the right-hand end of the  
7 bar, and the camera is on the south side of the bar, bottom  
8 of it, looking at an angle across.

9 Q. So looking up that direction?

10 A. Correct.

11 Q. And again, the fight is here, right?

12 A. Correct. And he's going to show up right in here.  
13 Here he is.

14 Q. What do you see him doing now?

15 A. He's walking out this way, he walked out to the open  
16 end of the bar.

17 Q. So would that be consistent with walking out this  
18 way?

19 A. Correct.

20 Q. What's he doing now? He walked back --

21 A. He's hanging around that end of the bar, he just  
22 walked to look up that aisle.

23 Q. And walked this way?

24 A. Correct.

1 Q. Now he's walking this way again?

2 A. Yeah. If it's of any consequence, walking this way  
3 he would have a view of up towards the other end to see what  
4 was going on up there.

5 Q. And then he walks back again this way.

6 A. Correct. Now he's headed up that back aisle again  
7 from which he came.

8 Q. And do you have an idea of what's going on with the  
9 fight at this time period?

10 A. No, I don't.

11 Q. We would have to go back and look at the time  
12 frames, do the syncing on your machines --

13 A. Right.

14 Q. -- and put it all together.

15 A. Correct.

16 Q. It's fair to say when we're looking at camera 45 and  
17 we don't see him for a period of time, this is what's going  
18 on?

19 A. Yes.

20 Q. And then when he leaves this video --

21 A. Go back to the 215 that we had.

22 Q. He comes back and he comes into view that we saw  
23 there?

24 A. Yeah, we saw him walk up -- kind of walk back when

IN THE SUPREME COURT OF THE STATE OF NEVADA

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ERNESTO MANUEL GONZALEZ,

CASE NO. 64249

Appellant.

v.

THE STATE OF NEVADA,

Respondent.

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**APPELLANT'S APPENDIX, VOLUME XI**

**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 Q And prior to that, you had or you also have SWAT  
2 experience; is that correct?

3 A Yes.

4 Q And tell us about that training.

5 A I've been on the Reno Police Department's SWAT team  
6 for approximately seven years. I've been through the Reno  
7 Police Department's SWAT school training. I've been through  
8 the FBI advanced SWAT school. And I've attended on-the-job  
9 training, as well as other outside agency training with  
10 regards to SWAT.

11 Q And the various principles within the SWAT or the  
12 various roles that are covered by the SWAT team?

13 A Yes. I'm currently an operator in explosive breach.

14 Q I'd like to direct your attention to this case.  
15 Were you asked to examine a computer that was impounded  
16 pursuant to a search warrant under Sparks PD number 11-8996?

17 A Yes, I was.

18 Q And walk us through the process of how you began the  
19 examination of the computer.

20 A Basically, the evidence is brought to me and along  
21 with a search warrant or consent, whatever may be in the case.  
22 This was a search warrant. I check over the search warrant to  
23 make sure that I'm within the dates, the proper dates, and  
24 it's a proper search warrant for the device I'm searching.

1 And then I photograph the evidence prior to any disassembly,  
2 if it requires me to take the computer apart. I photograph it  
3 prior to that. And then I photograph the stages as I take it  
4 apart.

5           Once I've taken a computer itself apart, I remove  
6 the hard drive and attach it to my computer forensic tower  
7 that I have that contains all my programs. The program that I  
8 use is FTK Imager. It's a forensic tool kit imager that  
9 creates an exact image of the hardware or the hard drive that  
10 I am imaging. It's a forensically sound image that I create,  
11 meaning that any time you turn on a computer or make any kind  
12 of access to the hard drive, there is a change made or there  
13 can be changes made to it. This program allows me to connect  
14 to the hard drive and make a duplicate of the hard drive  
15 without making any changes to it whatsoever.

16           I create the image of the hard drive. Then once the  
17 image is created and stored, I put the hard drive back in the  
18 computer. It's returned back to evidence. And then I take  
19 the image that's created and I plug it into another program.  
20 And I go through the image looking for any evidence that is  
21 requested by whoever is making the request for me to do the  
22 forensics.

23           Q     In this case, a Sparks police detective asked you to  
24 look for some specific --

1 A Yes.

2 Q -- type of things.

3 And what were those?

4 A Anything related to Vagos.

5 Q And so, tell us about the volume of data that is on  
6 this image that you made from the hard drive?

7 A Without going back into the program itself and  
8 looking at that, it's an extremely large amount of data. In  
9 the beginning, when I first started out, because they were  
10 asking for images, I went to a gallery view, which shows me  
11 all the pictures. It shows me icons. It shows me any kind of  
12 image that is on that computer hard drive at the time. And I  
13 believe there was somewhere over a million images that I was  
14 asked to start going through.

15 Q And so the process of creating a report for this  
16 case, you had to go through and individually look at those  
17 images?

18 A The way the program is set up, yes. I get a gallery  
19 view that could contain up to 25 small pictures on a computer  
20 screen on like a 21-inch monitor. And as I look through them,  
21 I have to click on each one of them to pull them up to get a  
22 full size or as close to a full-size picture. So, yes, I have  
23 to go through each individual picture one at a time.

24 Q You did that and created a report in this case; is

1 that correct?

2 A Yes, I did.

3 MR. STEGE: May I have the compact disk marked next  
4 in order?

5 THE COURT CLERK: Exhibit Q marked.

6 (Exhibit Q was marked for identification.)

7 BY MR. STEGE:

8 Q Tell us what is contained in your report.

9 A Basically in my report, there is a written document  
10 that outlines the forensic process that I went through in  
11 creating the image. And then in the report it also stores the  
12 information that I bookmark as I go through the examination of  
13 the hard drive.

14 Q And the bookmark contains information about what?

15 A The bookmarks, each one of the bookmarks contains  
16 information regarding the file path that the item was located  
17 in. It will show a creation and a modified and access date.  
18 It will show an actual thumbnail of the image that I was  
19 looking at or that I bookmarked at the time. And you can  
20 bookmark anything. You can bookmark an e-mail, a document, a  
21 picture, you can bookmark any of these things.

22 So in this case, I created videos or a video  
23 bookmark, a picture of interest bookmark or pictures of  
24 interest bookmark and images, I think. I'd have to look at it

1 again.

2 MR. STEGE: May I approach the witness?

3 THE COURT: You may.

4 BY MR. STEGE:

5 Q Prior to taking the stand today, you had an  
6 opportunity to review a copy of the report you created on  
7 disk; is that correct?

8 A Yes, I did.

9 Q And after viewing it, you recognize it to be a true  
10 and accurate depiction of your report?

11 A Yes.

12 Q And after doing so, you initialed it with your -- is  
13 that your badge number?

14 A Yeah. I place my initials, TC, and my badge number,  
15 2776, on the disk.

16 Q And is that the disk marked as Exhibit Q?

17 A Yes, it is.

18 MR. STEGE: I move to introduce Q.

19 MR. DOGAN: Your Honor, I would object. And my  
20 objection is a two-fold objection. The first and most  
21 important one is that this is a direct violation of the  
22 Court's order filed on October 30th, 2012. This is the same  
23 situation that we were in last week. This CD is quite  
24 voluminous, it's quite large and it's quite significant.

1           This Court's order stated that the State must file a  
2 motion and allege with specificity what the allegation of the  
3 other act evidence is going to be. This Court filed an order,  
4 Your Honor, requiring the State to also attach those -- the  
5 exhibits contemporaneously with its motions. The State failed  
6 to do that.

7           I have a motion for Other Acts Evidence in this case  
8 with three exhibits attached to that motion. I came into this  
9 courtroom, Your Honor, prepared to argue all the exhibits that  
10 were attached to their motion and the allegations contained  
11 therein. I've been following this Court's order. The State  
12 has not been following this Court's order. The entirety of  
13 the CD should be excluded. It should not be admitted into  
14 evidence, because it is a direct violation of this Court's  
15 order.

16           The State may argue that this was previously given,  
17 provided to the defense. And I will tell this Court with all  
18 candid honesty, I have two colleagues in this courtroom, in  
19 here today. They may have reviewed it, but I've never seen  
20 it. The discovery we have is voluminous. It's close to  
21 6,000 pages. The amount of DVD and CD audio recordings are  
22 quite hefty. They fill an entire box.

23           I haven't seen this CD. I came prepared to argue  
24 one thing, and one thing only. And that's what's contained

1 within the four corners of the State's Prior Bad Act Motion,  
2 not this, Your Honor.

3 THE COURT: Well, isn't the video showing  
4 Mr. Gonzalez firing a pistol? Is that contained on this CD?

5 MR. STEGE: It is contained, as well as the  
6 photographs, which are mentioned in my motion, Judge.

7 THE COURT: And there's two that you talked about?

8 MR. STEGE: There's two I talked about there. I  
9 also supplemented the -- this motion with respect -- on  
10 January 14th. Filed a supplement to that. The Court's order  
11 itself, which --

12 THE COURT: What's the supplement?

13 MR. STEGE: -- they're arguing is page 3 or line 3  
14 of page 2 says, "contemporaneously -- or prior, this disk was  
15 disclosed." I went back and looked on August 28th of 2012.  
16 And in fact, I drew their attention to it in my pleadings that  
17 it was contained on the report on Mr. Clarke.

18 THE COURT: Okay. What did you supplement on the  
19 14th? I don't have that in front of me.

20 MR. STEGE: I filed a -- it was filed January 14th,  
21 2013. We filed a motion requesting leave of the Court to  
22 supplement discovery. Leave of Court to Supplement Other Act  
23 Evidence Discovery as to Defendant Gonzalez. It starts on  
24 page two. It attaches the curriculum vitae of Detective

1 Clarke. It mentions the photographs that I want to get into,  
2 the video.

3 THE COURT: Does it mention different ones or the  
4 same ones?

5 MR. STEGE: It mentions both, as a matter of fact.  
6 It draws the defense's attention to the -- he will testify  
7 that the photographs appear to depict a Glock pistol. I also  
8 acknowledge that we will seek to introduce the balance of the  
9 photographs as they relate to, in our case-in-chief to show  
10 the defendant's affiliation with the Vagos.

11 THE COURT: So you -- there's only three things on  
12 this video for purposes of the hearings today?

13 MR. STEGE: For purposes of bad act evidence, yes.  
14 What I have identified as bad act evidence, yes.

15 THE COURT: Okay. Now -- and you're not trying to  
16 use it for enhancement purposes, but you do intend to admit or  
17 try to admit this CD or parts of the CD beyond the bad act  
18 evidence to show his affiliation as a Vago?

19 MR. STEGE: Right.

20 THE COURT: Vagos.

21 That issue is not before me today nor is my order  
22 relating to that. So as this request is being made to admit  
23 this evidence it's only admitted for today's purposes and it  
24 only relates to the Vagos, Mr. Gonzalez in a Vagos T-shirt



1 holding a gun, the semi-automatic, the video of him firing the  
2 pistol.

3 MR. DOGAN: And therefore the balance of the CD  
4 should not -- if it's just that, Your Honor, because what you  
5 just stated to me --

6 THE COURT: That's what I understand it to be.

7 MR. STEGE: That's the -- that is what this hearing  
8 is about, the bad acts portion as the Court just stated.

9 THE COURT: Okay. So for that -- with that  
10 understanding I'm going to overrule your objection. The CD is  
11 only being admitted for purposes of today's hearing and part  
12 of it so in fact what we are really doing is not requiring the  
13 State to create a new document to present, you're just  
14 presenting the evidence through the document you already have.

15 MR. STEGE: Right.

16 MR. SCHONFELD: And, Your Honor, it only is being  
17 admitted as to Mr. Gonzalez.

18 MR. STEGE: That sucks, but yes.

19 MR. DOGAN: There's a second objection. I would  
20 like to voir dire this witness on foundation. It will be  
21 short.

22 THE COURT: Okay. Go ahead.

23 MR. DOGAN: Thank you, Your Honor.

24

1 VOIR DIRE EXAMINATION

2 BY MR. DOGAN:

3 Q Sir, when were these photos taken, the photos that  
4 you examined?

5 A I don't -- I couldn't tell you the dates that they  
6 were taken unless I look back into the examination itself.  
7 And then I may not be able to tell you exactly.

8 Q And when was the video taken?

9 A I'd have to look.

10 Q Okay. But right now you don't know when the photos  
11 were taken, correct?

12 A I can't tell you off the top of my head, no, sorry.

13 Q And you don't know when the video was taken,  
14 correct?

15 A Not off the top of my head.

16 Q And you were not personally present when they were  
17 taken, correct?

18 A No.

19 Q And you don't know who took the videos, correct?

20 A No.

21 Q And you don't know who took the photographs,  
22 correct?

23 A No.

24 MR. DOGAN: Your Honor, I move to exclude this

1 evidence because the -- this witness cannot state whether they  
2 represent a fair and accurate representation of the events  
3 they depict, both in content and tone.

4 THE COURT: Okay. Overruled.

5 MR. DOGAN: Lack of foundation.

6 THE COURT: I'm going to overrule your objection. I  
7 think it goes to the weight.

8 Go ahead.

9 MR. STEGE: And the exhibit is admitted?

10 THE COURT: For purposes of today's hearing.

11 MR. STEGE: May I publish?

12 THE COURT: Those portions, yes.

13 (Exhibit Q was admitted into evidence.)  
14

15 DIRECT EXAMINATION RESUMED

16 BY MR. STEGE:

17 Q Let's get here to the body of your report which is  
18 labeled report.pdf; is that right?

19 A Yes.

20 Q We are looking at page one of this report. I think  
21 you testified earlier about the bookmarks that you created.  
22 Do you see those here in the bookmark portion?

23 A Yes, I do.

24 Ma'am, can I scoot over so I can see it a little

1 better?

2 MR. DOGAN: Your Honor, can I ask Mr. Stege to move  
3 a little bit so my client can see.

4 THE COURT: Can you back up and move a little to  
5 your left. No your left.

6 MR. STEGE: This is my left.

7 THE COURT: Stage left. Sorry.

8 BY MR. STEGE:

9 Q So you talked about the bookmarks you created after  
10 going through the images. And those are listed here on page  
11 1?

12 A Yes.

13 Q Let us go, then, to page -- I apologize there may be  
14 some offensive images I'm not seeking to introduce at trial or  
15 in this hearing, but they are contained. So let's look  
16 specifically at this image right here that we are about to  
17 click on.

18 What information -- let me just click on it here  
19 first. For the record, I guess we should read the name of  
20 this file into the record. It's 40042DF12FBA84C8A9A23D7FABD5B  
21 5715037B9V1; is that correct?

22 A Yes.

23 Q So this --

24 THE COURT: Can you rotate --

1 MR. STEGE: I'm sorry.

2 THE COURT: Can you rotate the picture?

3 BY MR. STEGE:

4 Q Yes, Your Honor. This is one of the photographs  
5 that was found on the computer; is that correct?

6 A Yes.

7 Q Now, draw your attention to the man on the left, the  
8 firearm in his back-right pocket. What, if anything, can you  
9 tell us about that firearm?

10 A It's -- it appears to me to be a Glock handgun.

11 Q And what is the basis of that?

12 THE COURT: Okay. The audience doesn't have a right  
13 to stand up and walk around, so please don't do that.

14 A I'm sorry.

15 BY MR. STEGE:

16 Q What is the basis for that statement?

17 A My familiarity with Glock handguns. I carry a Glock  
18 handgun. My experiences through firing and handling over the  
19 past 22 years.

20 Q What can you tell us this information above the  
21 thumbnail of the photograph? What is that information?

22 A It's file contents, basically. It's the information  
23 created in the file. You'll see there's a created date,  
24 modified date, access date, path. The created date is not

1 necessarily the created date of the picture, that the picture  
2 was created. It's actually the created date, the date that  
3 file was created in this computer.

4 Q So the date it was put onto the computer?

5 A Could be put onto the computer, could be viewed on  
6 the computer, could be loaded on the computer, yes.

7 And the path name is a long name. Basically, if you  
8 were to break that into files, each one separated by a slash  
9 is a different file. And that's usually the tree of how you  
10 get to that.

11 Q So if you were on the computer, you would click on  
12 the folder Fujits?

13 A If you were in the computer, it's stored at the end  
14 of the first line, it says "user." It's stored under the  
15 user's section of the computer. The user's section of the  
16 computer being when you purchase a computer and you first set  
17 it up, there's a section that says Tyler Clarke PC. So you  
18 give it a specific name, and this user name was Radio Flier.  
19 And then the subfolder that is inside is library, subfolder of  
20 application support, and subfolder of that would be mobile  
21 sync backup. So to me that tells me it was some type of  
22 mobile device that was attached to this computer. And that's  
23 where the pictures come from.

24 Q In fact, just below it, there's the same image, but

1 with different information relating to that?

2 A It could be a different type of that picture. There  
3 are thumbnails, thumbnail versions of the picture. The  
4 computers store pictures in different caches so you can look  
5 at them at different times. Sometimes it's readily available  
6 to you and pops right up. Sometimes the computer has to go  
7 find the picture in an area. So there are multiple pictures  
8 of the same thing that will show up in a computer.

9 Q Let's move now to page -- is there a date associated  
10 with this second -- let's go to the one just above. We have  
11 the created date of March 16th, 2011, a modify date same time,  
12 and access date 5-29-2011?

13 A Uh-huh.

14 Q Do you see that?

15 A Yes.

16 Q What is that information?

17 A The create date, modified date, and access date, it  
18 would be like I said before, the create date may be where it  
19 was put onto the computer or synced with the computer, loaded  
20 to the computer. That modified date is typically going to be  
21 the same. And then if it's -- you looked at or accessed the  
22 computer, then that's your access date.

23 Q With respect to the same image, but located just  
24 below, we have a created date of 7-1-2011, modified date,

1 same, as well as the access date 7-1-2011. Do you see that?

2 A Uh-huh. And that has to do with that additional  
3 file that ends after backup, I believe. It must be another  
4 file that picture was in, or moved to, or came out of.

5 Q All right. Let's move now to page 83 of your  
6 report. This file here, this is another file that you  
7 bookmarked. And what are we seeing -- the person on the far  
8 left, what are we seeing in that person's hand?

9 A It appears to be the same Glock handgun.

10 Q And your same basis for that?

11 A Based on my experience and the fact that I carry one  
12 myself, I would say that that is a Glock handgun.

13 Q Let's go back to the report. What information do  
14 you have with respect to the created date, modified date, and  
15 access date?

16 THE COURT: I'm going to stop you there. There  
17 appear to be two guns in that picture.

18 THE WITNESS: Yes.

19 THE COURT: Which one were you referring to?

20 THE WITNESS: I was referring to the person depicted  
21 on the left side.

22 THE COURT: Okay.

23 THE WITNESS: That's holding the gun in what appears  
24 to be the right hand.



1 THE COURT: Okay. Thank you.

2 BY MR. STEGE:

3 Q What information do we have about this particular  
4 photograph or this particular version of the photograph?

5 A Its created date, modified date, and an access date.  
6 Created and modified dates are the same. The access date,  
7 again, it could be somebody viewed that picture at that time  
8 on that date, or that picture was brought out to be sent  
9 someplace, moved. There's quite a few different things that  
10 could have happened on that access date. But the create date  
11 and the modified date is 3-16-2011 at the time it's listed on  
12 there.

13 Q And the access date here is May 29th, 2011?

14 A Yes.

15 Q You also bookmarked a video which you have under the  
16 video section at page 696. Let's go to that. And that file  
17 was exported as file/M000530.mpg; is that correct?

18 A Yes.

19 (A video was played.)

20 BY MR. STEGE:

21 Q Now, what did we just see here?

22 A It's video taken of the gentleman's firing a  
23 handgun.

24 Q Now, what, if anything, based on your training and

1 experience, can you see about the technique displayed by the  
2 shooter?

3 MR. DOGAN: Objection, Your Honor. Lack of  
4 foundation.

5 THE COURT: I don't know. I'm not sure what you  
6 mean by technique. Would you -- that question is vague as far  
7 as I'm concerned. Sustained.

8 MR. DOGAN: He's also not noticed for this purpose,  
9 Your Honor, this is only regarding what was retrieved from the  
10 hard drive.

11 MR. STEGE: As a matter of fact, Judge, the motion  
12 discusses this. It's one of the bases for the admission of  
13 this exhibit.

14 THE COURT: Go ahead and say what you said in your  
15 motion.

16 MR. STEGE: I reference it first at page 3 of my  
17 motion. I also discuss it in depth starting at page 6, line  
18 20, and specifically page 7 beginning at line 7. "In the  
19 instant case, the video defendant between the defendant's  
20 firearm skills explains how he was able to shoot at Pettigrew  
21 at a distance of approximately 25 feet hitting with an unusual  
22 level of accuracy. Five of the seven shots hit Pettigrew and  
23 all five struck him in the torso." This goes on from there.

24 THE COURT: Your question still was vague for me.

1 MR. STEGE: Okay.

2 BY MR. STEGE:

3 Q Were you able to see the technique or how the  
4 subject operated the firearm?

5 MR. DOGAN: Your Honor, objection. It's the same  
6 objection because this witness has not been noticed as an  
7 expert in firearm shooting technique and shooting firearms.

8 MR. STEGE: We haven't had to file an expert witness  
9 list yet.

10 MR. DOGAN: And it's argument, Your Honor.

11 THE COURT: I'm going to let you put on this  
12 evidence as part of your offer of proof. I'm not going to  
13 make a ruling whether or not it's admissible. I don't know if  
14 his answer is going to be admissible or not.

15 BY MR. STEGE:

16 Q Were you able to see the hand technique of the  
17 shooter?

18 A Yes.

19 Q And the stance of the shooter?

20 A Yes.

21 Q And how the shooter switches from going from one  
22 hand shooting to using two hands to fire the weapon?

23 A Yes, I could see that.

24 Q Have you ever fired a gun before, a pistol?

1           A     Yes, I have many times.

2           Q     And you're involved in SWAT. Do you receive any  
3 training in firing a pistol?

4           A     Yes, I am.

5           Q     Based on that experience and your years as a police  
6 officer, what can you tell us about the level of dexterity  
7 displayed by the shooter?

8           A     It appears to me watching that video that he's  
9 familiar with the operation of handguns and familiar with how  
10 to fire them and how to aim and fire them accurately.

11          Q     Does that --

12                THE COURT: Does it show somewhere that he was  
13 accurate? Is there --

14                THE WITNESS: Excuse me. I'm sorry. Fire them. To  
15 me, watching other operators on the SWAT team, watching other  
16 people within the police department fire, I've been an  
17 instructor at the range with building searches and other  
18 techniques and been around other officers that have fired  
19 weapons, he did not display, to me, fear of the gun or the  
20 inability to fire the gun. So I would say judging by how he  
21 does not flinch, he's not dipping with the weapon when he  
22 pulls the trigger, that if I could see the target, I would say  
23 that he's probably shooting accurately there.

24                THE COURT: But did you ever see the target?

1 THE WITNESS: No, I did not.

2 THE COURT: I won't consider the last bit about the  
3 target.

4 MR. DOGAN: This is all speculation, Your Honor.

5 THE COURT: Yes. Sustained.

6 BY MR. STEGE:

7 Q Is one of the things you do, you said you taught at  
8 the range. Is one of the things you do watch people's  
9 techniques for errors just as the ones you just described?

10 A Yes, we do.

11 Q And when you're able to correct some of the things  
12 like flinching or dipping the gun down, are you able to see an  
13 improvement in the result in accuracy?

14 MR. DOGAN: Objection. Leading, compound, vague,  
15 lack of foundation. He's not an expert.

16 THE COURT: Right. You haven't offered him as an  
17 expert.

18 MR. STEGE: Right. Well, I haven't been required to  
19 disclose my experts in the Court's order.

20 THE COURT: Right. But you are required to prove up  
21 your bad act evidence. If you want to use an expert to prove  
22 that up, you better disclose them or use them.

23 MR. STEGE: Right.

24 THE COURT: He has not been disclosed nor has he

1 been qualified as an expert. If that's part of the proof you  
2 need to put on, you haven't done it. So I'm going to sustain  
3 the objection.

4 BY MR. STEGE:

5 Q The subject in this video, does he appear to be the  
6 same subject in the previous photo?

7 A Yes.

8 MR. STEGE: Judge, I'd offer Mr. Clarke as an expert  
9 in the area of firearms training, technique.

10 MR. DOGAN: Your Honor, it's my understanding that  
11 when the State provided this CV to us he was only going to be  
12 offered to introduce this video and the photographs. Nothing  
13 more, nothing less. And now all of a sudden in a very bold  
14 and cavalier fashion, the State is trying to introduce this  
15 individual as an expert witness. He has no qualifications.  
16 He's stated no qualifications as being qualified as an expert  
17 in regards to firearm training, firearm shooting, firearm  
18 accuracy, nothing in regard to ballistics, period.

19 I would request that this request from the State be  
20 denied; that he's not qualified to offer this testimony and  
21 he's not -- he has not been noticed as such a witness.

22 THE COURT: Okay. He has not been noticed. The  
23 pleading, though, does say that the -- in the instant case,  
24 the video depicting the defendant's firearm skills explains

1 how he was able to shoot at Pettigrew at a distance, et  
2 cetera. That has to put you on notice that that's going to be  
3 the argument. They now want to bring in an expert to support  
4 that argument. You have not been given notice of that expert,  
5 but he's offering it now.

6 Do you want to voir dire him or do you just want to  
7 argue that he hasn't established his expertise?

8 MR. DOGAN: I would voir dire him, Your Honor.

9 THE COURT: Okay. Can we turn the lights back on  
10 while he's offering it.

11 Okay. Counsel.

12 MR. DOGAN: Your Honor, respectfully before I do go  
13 into my voir dire, because I wasn't noticed that he was going  
14 to be offering any testimony regarding expertise for firearms  
15 shooting, I'm kind of in an ambush here. I'm facing somewhat  
16 of a dilemma.

17

18 VOIR DIRE EXAMINATION

19 BY MR. DOGAN:

20 Q But sir, nowhere in your CV do you claim --

21 THE COURT: I'm sorry. Is the CV marked or that was  
22 probably the addendum?

23 MR. STEGE: Yes, Judge. It's Exhibit 1 to the --

24 THE COURT: Addendum?

1 MR. STEGE: Yes.

2 THE COURT: I'm sorry. The motion that was filed on  
3 the 14th.

4 MR. STEGE: Yes.

5 THE COURT: Okay. Thank you.

6 MR. DOGAN: If I can have the Court's indulgence.  
7 Your Honor, may I proceed?

8 THE COURT: You may.

9 MR. DOGAN: Thank you, Your Honor.

10 BY MR. DOGAN:

11 Q Sir, nowhere in your CV do you have any training or  
12 experience as being a firearms expert, correct?

13 A Correct.

14 Q And you have no expertise regarding ballistics,  
15 correct?

16 A Correct.

17 Q And you have never been qualified in court as a  
18 firearms expert, correct?

19 A Correct.

20 Q Nor as a ballistics expert, correct?

21 A Correct.

22 Q In the video you just watched, you don't even know  
23 what my client is shooting at, correct?

24 A Correct.



1 Q He can be shooting at a tree, correct?

2 A I have no idea what he's shooting at.

3 Q Okay. And he can be shooting at nothing, right?

4 A Could be.

5 Q And, therefore, you don't know whether there's a

6 target, right?

7 A I have no idea if there is or not.

8 Q And therefore you don't know the accuracy of any

9 shots?

10 A I do not.

11 Q Sir, the experience that you base your firearms, I

12 guess what the state is calling expertise is because you carry

13 a Glock, correct?

14 A That, and I've been on the police department for

15 over 22 years, and I've been a member of the SWAT team for

16 seven years, and I'm familiar with shooting a handgun, rifle,

17 those types of weapons, yes.

18 Q So you base your expertise on shooting firearms,

19 correct?

20 A Shooting firearms, yes.

21 Q And the photograph you saw, you stated to the Court

22 that it's a Glock, correct?

23 MR. STEGE: Judge, this goes beyond the scope of --

24 I offered him as an expert with respect to the video.

1 MR. DOGAN: I'm talking about the gun he saw and how  
2 he knows what it is. It goes to his expertise.

3 THE COURT: I'm -- you asked that question about the  
4 Glock, though, twice.

5 MR. DOGAN: This is the first time I'm asking him  
6 this question.

7 THE COURT: I'll let the question stand.

8 MR. DOGAN: Your Honor, did you sustain the  
9 objection?

10 THE COURT: Overruled.

11 MR. DOGAN: Overruled. Thank you.

12 BY MR. DOGAN:

13 Q Sir, you stated that the photograph depicts a Glock?

14 A The photograph that I was shown depicts a Glock,  
15 yeah.

16 Q Does the video depict a Glock as well?

17 A I cannot tell.

18 Q What kind of firearm does that other individual hold  
19 in the photograph?

20 A I'd have to look at it again. I have no idea.

21 THE COURT: I think that goes beyond his expertise.  
22 You're voir diring him on whether or not he can be an expert  
23 on -- I'm not exactly sure what you're -- would you repeat  
24 what you want to qualify him as?

1 MR. STEGE: He's an expert in the handling of  
2 firearms. He's involved in SWAT. He has expertise --

3 THE COURT: That's not -- an expert whose involved  
4 in SWAT, is not an expert. So what specifically?

5 MR. STEGE: Firearms technique, shooting stance,  
6 trigger control, as it relates to the video. The safe  
7 handling of firearms, and training, and firearms -- or I  
8 should say firearms training.

9 THE COURT: Okay. I don't really think there's an  
10 expert on trigger control. That seems very vague. If you're  
11 offering him as an expert on some of these, you said, safe --

12 MR. STEGE: The safe handling of firearms, the basic  
13 marksmanship.

14 THE COURT: An expert on safe handling of firearms,  
15 that's what you want to offer him as?

16 MR. STEGE: Firearms technique, shooting technique.

17 THE COURT: So we've got it down to firearms  
18 technique or shooting technique. Which one?

19 MR. STEGE: Shooting technique, as it relates to the  
20 video.

21 THE COURT: He can't be an expert on this one  
22 particular video. He's a shooting technique expert and then  
23 maybe you can talk about this or not. What is it you want him  
24 to be an expert on?

1 MR. STEGE: What I just said.

2 THE COURT: Shooting technique?

3 MR. STEGE: Right.

4 THE COURT: So your question, Counsel.

5 MR. DOGAN: I'm sorry, Your Honor?

6 THE COURT: You asked to voir dire on the admission  
7 of him as an expert, and we've got him down to shooting  
8 technique inequality expert. So you can ask any questions you  
9 want on that.

10 BY MR. DOGAN:

11 Q Sir, have you ever testified in court before  
12 regarding shooting techniques?

13 A No.

14 Q Have you is ever heard of shooting -- a shooting  
15 technique expert before?

16 A No.

17 Q Is today the first? Okay. Strike that.

18 MR. DOGAN: Your Honor, same objection. I don't  
19 know -- I'm scrambling right now. This is an ad hoc. They  
20 are just adding things for this witness to testify to. And I  
21 just don't appreciate being placed in this situation. I'm not  
22 prepared. I don't believe that this -- he's never heard of a  
23 shooting technique expert. He should not offer any testimony  
24 regarding this, Your Honor.

1 THE COURT: Okay. I don't know what a shooting  
2 technique expert is, either. So I'm having a lot of problems  
3 with that.

4 Sustained.

5 MR. STEGE: May I rehabilitate the--

6 THE COURT: You can ask more questions and see where  
7 you want to go with this.

8

9 DIRECT EXAMINATION RESUMED

10 BY MR. STEGE:

11 Q So how does someone get on the SWAT team?

12 A I go through a testing phase, both physical and  
13 mental and marksmanship.

14 Q And does part of your ongoing training on the SWAT  
15 team involve ongoing marksmanship classes and testing?

16 A Yes, and qualifications on a regular basis or at the  
17 range, probably at least twice, if not sometimes three times a  
18 month.

19 Q And is that above what a regular police officer,  
20 patrol officer has to go through to maintain their  
21 marksmanship skills?

22 A The standards that I go through are quite a bit  
23 higher than a normal police officers, yes.

24 Q And you mentioned earlier that you have taught at a

1 range?

2 A I've taught during Simunitions. I taught weapons  
3 handling during Simunitions courses, FX, enforcement training.  
4 I've been present during our training and critique other  
5 operators and other officers.

6 Q Have you been the person that qualifies owe people  
7 in shooting?

8 A No, I have not.

9 Q What about -- you did the 40-hour SWAT training here  
10 with the Reno Police Department, right?

11 A I attempted that, yes.

12 Q Was -- what portion of that was for the  
13 marksmanship, proper marksmanship, safe handling of firearms?

14 A Probably 75 percent if not higher than that. I  
15 mean, when we are doing that type of training, we are always  
16 handling a firearm. We are always -- we are either doing live  
17 fire exercises or dry fire exercises with the firearms.

18 Q What about when you went to the FBI advanced SWAT  
19 school for 40 hours?

20 A Again, about the only time we didn't have a weapon  
21 in our hand was maybe during repelling.

22 Q And so you see the advanced training in  
23 marksmanship, safe handling, and firearms, firearms  
24 techniques?

1 A Yes.

2 Q And you continue to -- well, you mentioned here in  
3 your resume that you were a police training officer. Is any  
4 of that in the field of firearms?

5 A Not specifically in the field of firearms, no.

6 Q What about this: You have 80 hours of instructing  
7 defensive tactics. Does that relate to firearms?

8 A That does not relate specifically to firearms, no.

9 Q Since you've been on the SWAT team, how many -- how  
10 often do you receive updated training in firearms, specific --  
11 let's talk specifically about handling

12 A Most recently, probably within the last two months I  
13 went to about a 24-hour course, handgun, basic hand, combat  
14 handgun course.

15 Q And what subjects are covered in that?

16 A Movement and shooting, shooting on the move.  
17 Multiple target engagement of the trigger control problem  
18 solving, trouble shooting, your own shooting techniques.

19 Q Are the basics of firearms technique covered or  
20 emphasized, reemphasized during any of this training we've  
21 been discussing?

22 A Yes.

23 Q Have you had the --- have you been at the range with  
24 new shooters?

1           A     Yes, I have. I have observed new shooters at the  
2 range.

3           Q     And have you observed -- based on this training  
4 you've had, the experience you've had, have you observed some  
5 of the common errors made by new shooters?

6           A     Yes, I have.

7           Q     Is that the basis for an opinion that you already  
8 stated or stating you already made about the shooting in this  
9 video?

10          A     Yes.

11               MR. STEGE: I renew my offer of Detective Clarke as  
12 an expert.

13               THE COURT: In?

14               MR. STEGE: As I described; firearms technique,  
15 basic marksmanship, an expert in shooting technique.

16               THE COURT: Counsel?

17               MR. DOGAN: Your Honor, I hunt. I've been in  
18 hunters safety. I've shot firearms. Many firearms. And a  
19 lot of rounds. Just because somebody has shot a gun does not  
20 make him or her an expert. If we were to qualify this  
21 individual as an expert today, we would be qualifying every  
22 single law enforcement officer who takes the stand in a Washoe  
23 County court as a shooting technique expert or shooting expert  
24 by virtue of how far the State is stretching their argument in



1 this case.

2 Any person can shoot a firearm without -- not any  
3 person, most people, without flinching or what have you. His  
4 opinion is not relevant without seeing the target. In this  
5 case, we don't have a target. We don't even know whether  
6 there is a target. His opinion is not relevant simply because  
7 he has some expertise in SWAT and shooting a firearm. I don't  
8 believe this witness even knew today that he was going to be  
9 treated as an expert in shooting technique until all of a  
10 sudden he took the stand and the State started to try to  
11 qualify him as an expert.

12 There has been no notice regarding this expert. As  
13 you can see, I'm kind of stammering and at a loss at how to  
14 proceed in this argument because I didn't even know that he  
15 was going to be treated as an expert today. In fact, when the  
16 State gave us the CV, they said he was being provided for one  
17 reason. And that is for what Your Honor saw on the TV screen,  
18 which is the video and the photographs. That's it. He's  
19 never been qualified as an expert in the State of Nevada  
20 regarding shooting technique or firearms or ballistics or  
21 anything of that nature. And a he's a fact witness only, Your  
22 Honor.

23 I would respectfully request that this request by  
24 the State to qualify this individual as an expert in this case

1 be denied.

2 THE COURT: Okay. At this time I am going to deny  
3 the request. Not that I don't think you're very skilled. And  
4 I assume that the -- that you might want to qualify him as an  
5 expert on forensic information in the computer issues, which I  
6 think you have shown, if that's what you're offering. But the  
7 shooting technique, it is not appropriate at this time. You  
8 haven't shown that he has some unusual, unique experience to  
9 present to the trier of fact.

10 Everything you're asking him to testify to is  
11 obvious on the video. And it's argument. So I don't think  
12 it's going to assist the trier of fact. And I don't see him  
13 as being a uniquely qualified person. I think all police  
14 officers are qualified with handguns, but that doesn't mean  
15 that he can -- certainly can't say what you asked him to say.

16 It's way beyond anybody's expertise, and  
17 speculative.

18 So I am going to sustain the objection.

19 MR. STEGE: What is the argument for the argument?

20 THE COURT: It looks that way to me. This is an  
21 evidentiary hearing, not a question on me ruling on what's  
22 going to come in or not come in at the trial.

23 MR. STEGE: Right.

24 THE COURT: Did you have anything else?

1 MR. STEGE: They haven't challenged his computer  
2 expertise, but I offer him as an expert in computer forensics.

3 THE COURT: Okay. Any objection?

4 MR. DOGAN: Your Honor, as far as authenticating the  
5 video and photographs, I have no objection.

6 THE COURT: Okay. I'll accept him, his expertise in  
7 the forensic computer work that arose for the securing of  
8 evidence off of a computer.

9 MR. STEGE: I'll pass the witness.  
10

11 CROSS-EXAMINATION

12 BY MR. DOGAN:

13 Q Sir, you stated that the photograph in the back  
14 pocket depicts a Glock pistol?

15 A Yes.

16 Q And you're familiar that it's a Glock because you  
17 yourself carry a Glock, correct?

18 A Yes.

19 Q Are you aware that Glock replicas are made?

20 A Not to my knowledge.

21 Q So you don't know whether Glock replicas are made,  
22 right?

23 A Not to my knowledge.

24 Q You don't know the caliber of that gun, correct?

1 A No.

2 Q And you stated you don't know the other firearm  
3 that's depicted in that photograph, correct?

4 A I'd have to look at it again.

5 Q You want to step down to look at that again?

6 A Okay. I --

7 THE COURT: You may, while they are trying to queue  
8 it up.

9 MR. DOGAN: That's the video. I need the photo.

10 MR. STEGE: Go to page 139 or page 83.

11 BY MR. DOGAN:

12 Q Sir, there is the gun.

13 THE COURT: You're going to have to rotate it and  
14 make it a little bit bigger. And you can step down and look.

15 THE WITNESS: Thank you.

16 BY MR. DOGAN:

17 Q Can you see that firearm, sir?

18 A Can you make it bigger for me? Down there on the  
19 slider by the zoom. Down on the right corner. If you slide  
20 it in and move it.

21 That picture, probably not.

22 Q That's --

23 MR. HALL: That's the wrong guy he showed you.

24 MR. FREY: You showed the right one.

1 MR. HALL: No, you didn't.

2 MR. STEGE: You showed the guy in the middle.

3 THE COURT: Okay. Talk to yourselves or speak to me  
4 on the record, because the court reporter can't differentiate  
5 whether you're talking amongst yourselves or you're speaking  
6 to the Court.

7 MR. STEGE: I object to what he was showing in the  
8 photograph or the person that he was previously directed to.  
9 So it misstates the evidence.

10 THE COURT: I'm sorry. What do you object to?

11 MR. STEGE: He's --

12 THE COURT: Isn't this the picture you just --

13 MR. STEGE: Right, but he directed the detective to  
14 the other gun held by the other guy.

15 THE COURT: That was the question. That was the  
16 whole point of his question, to identify the other gun. He's  
17 already identified the one held by Mr. Gonzalez. The point of  
18 the question was can the witness identify the other gun held  
19 by the other gentleman in this picture.

20 MR. STEGE: I didn't hear him say the other gun. I  
21 said this --

22 THE COURT: That's what they were asking about.

23 BY MR. DOGAN:

24 Q Okay. So for the record, I'm showing you a

1 photograph depicting three individuals, right?

2 A Yes.

3 Q And for the record, I asked you the brand or type of  
4 gun the person furthest to the right is holding, right?

5 A Yes. The person that has the silver wristwatch on,  
6 this person. (Indicating)

7 Q That's correct. And for the record, you stated you  
8 don't know what kind of gun that is, right?

9 A I cannot tell what kind of a gun that is, no.

10 THE COURT: Thank you. Please be seated.

11 BY MR. DOGAN:

12 Q Sir, is it -- when that person was shooting that  
13 firearm, do you know whether that individual has a CCW?

14 A In the video?

15 Q Yes.

16 A I have no idea.

17 Q And there is nothing unlawful about making a video  
18 of a person shooting a gun, correct?

19 MR. STEGE: Objection as to relevance.

20 THE COURT: It doesn't seem -- yes. We all know  
21 that.

22 MR. DOGAN: Okay. Thank you, Your Honor.

23 BY MR. DOGAN:

24 Q Have you conducted any tests regarding -- you

1 haven't conducted an autopsy in this case, right?

2 A I -- no. This is all I've done in this case is the  
3 computer forensics.

4 Q And you don't know whether that gun was used  
5 anywhere else, correct?

6 A I have no idea what that gun has been used for.

7 MR. DOGAN: Nothing further.

8 THE COURT: Anything else?

9 MR. STEGE: No, thank you.

10 THE COURT: May this witness be excused?

11 MR. STEGE: Yes, thank you.

12 THE COURT: You may step down. You are excused.

13 Would you retrieve the CD and return it to the  
14 clerk. Thank you.

15 MR. DOGAN: Your Honor, that CD has not been  
16 admitted, correct?

17 THE COURT: It was admitted for purposes of today's  
18 hearing.

19 MR. DOGAN: Because there's a lot of stuff on that  
20 CD. There should only be two things that should be admitted.

21 THE COURT: The CD was admitted for purposes of the  
22 two pictures and the video.

23 MR. DOGAN: Are we going to ignore everything else?

24 THE COURT: Are you talking about we meaning me? Am

1 I going to sit there and look at it? No. Nor would I  
2 consider anything else on that video for purposes of these  
3 hearings. I guarantee you, I'm not going to look at anything  
4 else on that.

5 MR. DOGAN: Well, Your Honor, it's kind of hard not  
6 to because you have to scroll to everything --

7 THE COURT: That would presuppose I have to look at  
8 it again. I've seen it.

9 MR. DOGAN: All right. Thank you.

10 THE COURT: Okay. Are you satisfied with that?

11 MR. DOGAN: Yes, Your Honor.

12 THE COURT: Okay. Good.

13 Counsel?

14 MR. STEGE: I think that concludes the hearing for  
15 today, Judge.

16 THE COURT: That's it for today?

17 MR. STEGE: We are back on the 29th.

18 MR. SCHONFELD: I spoke to Mr. Stege in reference to  
19 our reply to the Motion to Suppress. It would be due today.  
20 I believe the State has no opposition to me filing it  
21 tomorrow. I would ask the Court grant that request.

22 THE COURT: Okay. And when was it supposed to be  
23 submitted?

24 MR. SCHONFELD: I know the opposition was filed on



1 January 5th. I believe with the weekend, the five days would  
2 be up to today. So we are just asking for an additional day.

3 MR. STEGE: They have given me an extension, so I  
4 have no problem with that.

5 THE COURT: Who are you going to call as a witness  
6 in the Motion to Suppress? And I'm not going to have a  
7 problem with that, except as it relates to witnesses and who  
8 they plan to call.

9 MR. SCHONFELD: We talked about January 29th. And  
10 our position is, Your Honor, that we are making a facial  
11 challenge to the affidavit in support of the search warrant,  
12 and therefore there is no need for an evidentiary hearing and  
13 it should be legal argument.

14 THE COURT: Okay. So in case there's an evidentiary  
15 hearing -- I haven't reviewed the motion, so I don't know the  
16 basis of any of it. But if there were to be an evidentiary  
17 hearing, who would you call as a witness?

18 MR. STEGE: Judge, we have Detective Simpson here on  
19 the 29th, who was the affiant on the search warrant. And I  
20 think I heard some of the Court staff indicating that at the  
21 telephone conference we said we would argue it on the 31st.

22 THE COURT: So it's only Officer Simpson?

23 MR. STEGE: Right.

24 THE COURT: So the basis of the Motion to Suppress

1 is the search warrant was not adequate or not appropriately  
2 secured?

3 MR. SCHONFELD: The basis, Your Honor, is that the  
4 affidavit didn't swear out probable cause with which to search  
5 Mr. Villagrana's residence based upon a traffic accident 30  
6 miles away. There was no probable cause, no nexus, and no  
7 basis for the search.

8 THE COURT: Okay.

9 MR. SCHONFELD: In a nutshell. Obviously the motion  
10 is a lot more detailed.

11 THE COURT: Okay. All right. And so can you  
12 identify again -- I know we did in the telephone call, but I  
13 know things change -- who do you plan to have on the 29th as  
14 witnesses?

15 MR. STEGE: Officer Kirby, Eric Bennett, Les  
16 Skelton, Jeff Simpson. And that's what we discussed at the  
17 conference.

18 THE COURT: And no other witnesses? My concern is  
19 trying to get through that many witnesses. We are having a  
20 lot of trouble getting through some of these witnesses. So I  
21 am worried about the timing of only having the 29th scheduled.  
22 We do start at 8:30, but apparently I have an administrative  
23 hearing, e-filing committee meeting. It will take at least an  
24 hour and a half to two hours in the middle of the day, 12:00

1 to 1:00, 1:30, so you won't have a shortened lunch hour. So  
2 you think you can get through that many?

3 MR. STEGE: The way it's been going, no.

4 MR. SCHONFELD: But Kirby is subject to the  
5 codefendant's cross-examination.

6 THE COURT: Correct.

7 MR. SCHONFELD: Skelton has already also testified  
8 on direct.

9 THE COURT: And then Bennett is all new.

10 MS. PUSICH: Your Honor, that will be the longest  
11 witness of the ones we have left.

12 THE COURT: Is it going to be longer than we already  
13 have?

14 MS. PUSICH: I don't know, Your Honor. He's mine  
15 and I haven't been talking the last couple of days, so we have  
16 to see.

17 THE COURT: And then we have Mr. Simpson. Will  
18 Mr. Simpson be testifying to anything other than the search  
19 warrant?

20 MR. STEGE: As you recall, he was on the stand. I'm  
21 sure we'll finish up with that.

22 THE COURT: Oh, is there a cross on that?

23 MR. STEGE: I've supplemented -- I filed a  
24 supplement with regard to him.

1 THE COURT: With regard to Mr. Simpson?

2 MR. STEGE: Yes.

3 MR. SCHONFELD: When was that?

4 Your Honor, my recollection, and I could be  
5 completely off, is that we had also stated if we didn't finish  
6 with the testimony on the 29th that on the 31st we could have  
7 additional testimony before the argument. But again, I might  
8 just be making that one up in my mind. But I do think we  
9 did -- we discussed it.

10 MR. STEGE: The supplement was filed the 14th of  
11 January.

12 MR. SCHONFELD: That's why I haven't seen it.

13 THE COURT: Okay. So does that -- Mr. Schonfeld, do  
14 you have a better idea of what's going to happen with -- is it  
15 Skelton?

16 MR. SCHONFELD: Simpson.

17 THE COURT: Simpson.

18 MR. SCHONFELD: Well, Your Honor, the State's  
19 supplement is basically asking him to reverse your order  
20 denying the admission of certain exhibits at the last hearing.  
21 So I think it's completely inappropriate and not a supplement,  
22 so I don't know how the Court wants to address that. I don't  
23 think they can ask the Court to reconsider its ruling to  
24 exclude evidence at the end of the last hearing by filing a

1 supplement saying they want to introduce this evidence.

2 MR. STEGE: Because they said they hadn't had it,  
3 when in fact they had it for a long time when it was attached  
4 as an exhibit to Mr. Hall's motion.

5 MR. SCHONFELD: It wasn't attached. We did say we  
6 had it in discovery, but it was not attached. And the Court  
7 at that point after having addressed about four or five  
8 violations of this Court order said, "That's it, that's  
9 enough. I'm excluding it." You ruled on it. They want leave  
10 to file an appropriate motion to do that, it shouldn't just be  
11 a supplement. I'm asking you to reverse a decision you made a  
12 week ago. So we are prepared to cross-examine the witnesses  
13 that are going to be called on the 29th, and the only thing I  
14 was unclear on was whether or not we had discussed the  
15 potential of finishing up on the 31st in the event we don't  
16 conclude with witnesses on the 29th.

17 THE COURT: Well, I have the -- you all have my  
18 whole day after I'm finished with my stacked criminal  
19 calendar. So whatever needs to be done. I just know that we  
20 don't have time any other days except for what we've got  
21 scheduled.

22 MR. SCHONFELD: I think with those two days I think  
23 we should be able to finish the evidence and argument.

24 THE COURT: Okay.

1 MR. DOGAN: Your Honor, would I be asking too  
2 much --

3 THE COURT: If you ask if you're asking too much,  
4 you probably are.

5 MR. DOGAN: Just hear me out, Your Honor.

6 THE COURT: Okay. All right.

7 MR. DOGAN: If we were to close all evidence and all  
8 notice of witnesses after today's hearing so that the State  
9 doesn't all of a sudden give us new exhibits, additional  
10 discovery, and notice up new witnesses before the hearing on  
11 the 29th related to this hearing?

12 I tried, Your Honor.

13 THE COURT: Well, I don't think -- we've asked. The  
14 State has indicated that they have no other witnesses; is that  
15 correct?

16 MR. DOGAN: You never know with the way things are  
17 going.

18 MR. HALL: Other witnesses that are going to be  
19 addressing what issues, Your Honor?

20 THE COURT: Gang enhancement evidence.

21 MR. HALL: We've disclosed the witnesses we want to  
22 have, the experts that we want to have testify with respect to  
23 gang enhancement evidence. Obviously, there are other  
24 witnesses that are going to provide gang enhancement evidence

1 in terms of all of the evidence that was collected and  
2 provided to the defense during the course of this case. So  
3 there is, a, you know, other evidence that probably has  
4 crossover since we've got video of them wearing patches, they  
5 collect all types of evidence out of Mr. Gonzalez's house, all  
6 types of evidence from Mr. Villagrana's house. All that stuff  
7 is gang evidence, if you want to call it that, that was  
8 collected during the course of the case investigation.

9 So, you know, there was cuts, for example, that were  
10 collected at the Nugget. So all that evidence, we're going to  
11 use. So I hope you know or I hope they realize that the  
12 evidence is collected, and that's why we had that evidence  
13 viewing six months ago was to show all the evidence we  
14 collected. We plan on introducing that evidence during our  
15 case-in-chief. So I just want to make sure everybody is clear  
16 on that.

17 THE COURT: With regard to gang enhancement  
18 evidence, when we talk about gang enhancement evidence, we are  
19 talking NRS 193.168, what is admissible to prove up a gang  
20 enhancement which is an additional penalty and calls for  
21 certain conclusions. The evidence that's allowed for that  
22 purpose has been the subject of these hearings, and experts'  
23 testimony and what they rely upon has been the subject of this  
24 evidentiary hearing.

1           The Court has an absolute obligation to allow the  
2 State to notice their experts and what their experts are going  
3 to testify to and allow the defense an opportunity to traverse  
4 that. And I'm not going to do it in the middle of the trial.  
5 So we've been trying to get this processed through since  
6 October. I think we are at the point where you have finally  
7 identified everyone you want to call in that regard. I'm not  
8 making any rulings about the admissibility of evidence in the  
9 case-in-chief. It does not relate to bad act evidence or the  
10 enhancement, and the enhancement is allowing you to bring in  
11 hearsay and matters that don't have anything to do with the  
12 particular case before us and that's why it's requiring  
13 special and unique hearings and findings by this Court, as  
14 does bad act evidence or other act evidence. And those things  
15 must be done -- if you attempt to put something into the  
16 case-in-chief that has not been through that process that is  
17 other act evidence or bad act evidence and it's for that  
18 purpose, it's going to be excluded. If there's a basis for  
19 it, it's relevant and not in violation of any evidentiary  
20 rules, then I'm sure the defense is prepared to address those  
21 issues.

22           So that's where we are at as far as I know. We are  
23 not -- these hearings aren't about presupposing all the  
24 evidence that's going to come in the case. So I did exclude



1 it from the expert's testimony. I understand that you believe  
2 another expert maybe has previously identified it. That's  
3 what you were arguing, Mr. Hall. Maybe that expert will be  
4 allowed to use the exhibits. But that doesn't mean the expert  
5 on the stand can use them. And I ruled on that.

6 MR. SCHONFELD: The Court sustained our objection as  
7 it related to that expert as well?

8 THE COURT: I did.

9 So anything further for today.

10 MR. SCHONFELD: Nothing, thank you.

11 MS. PUSICH: No, thank you, Your Honor.

12 THE COURT: Okay.

13 MR. STEGE: I just have a question. Then you  
14 sustained the objection as far as Jorge Gil-Blanco.

15 THE COURT: No, it was Mr. Simpson that was on the  
16 stand.

17 MR. SCHONFELD: Also, they attempted to introduce  
18 that evidence with Mr. Gil-Blanco. We objected. The Court  
19 sustained the objection.

20 MR. STEGE: That was the basis of their -- excuse me  
21 for interrupting.

22 MR. SCHONFELD: It has not been admitted in evidence  
23 at this hearing. You sustained an objection and specifically  
24 excluded it as a result of the issues raised at the last

1 hearing at the end of the day.

2 MR. HALL: No. That's not true. The reason it  
3 excluded is because there's a suppression motion. So you're  
4 withholding admission of all of the photographs of all of the  
5 gang evidence at Villagrana's house, and that was Exhibit H  
6 that we had talked about when we kind of talked -- got this  
7 ball rolling. I'll show you what it is, just so you know what  
8 we're talking about. Exhibit D.

9 THE COURT: Okay. I thought H was admitted.

10 MR. HALL: Yeah. D was not. And there was an  
11 objection to that based upon the fact that they had filed a  
12 Motion to Suppress. But this was the exhibit --

13 THE COURT: An objection when when Mr. Gil-Blanco  
14 was on the stand or when Mr. Simpson was on the stand?

15 MR. HALL: I think originally when Gil-Blanco was on  
16 the stand. Because that's when I--

17 THE COURT: That's in October.

18 MR. HALL: Because you looked at all this evidence,  
19 and: Wow, you can't talk about that because you filed a  
20 Motion to Suppress. So I just want to make sure we are clear  
21 on what's going on here.

22 MR. SCHONFELD: Your Honor, that's not my  
23 recollection. And I'm sure the Court has the transcript. It  
24 was not admitted into evidence with Mr. Gil-Blanco. He did

1 not testify about it. When the State attempted to introduce  
2 it with Mr. Simpson, the Court excluded the evidence.  
3 Expressly excluded the evidence. And Mr. Hall suggested to  
4 the Court, "voila," in the middle of the testimony, "this was  
5 already admitted into evidence," interrupting the witness who  
6 wasn't even his witness. That's when it was presented to the  
7 Court. The clerk of the Court advised the Court that it had  
8 not been admitted in evidence. The Court said, "This is  
9 excluded. Enough." And that was the end of the day.

10 THE COURT: And I didn't know that. I just have to  
11 go back and review the Gil-Blanco situation. I don't remember  
12 that. I don't know why. It was October 29th. There was a lot  
13 of objections in between. I just don't have a recollection  
14 right now about what happened in October.

15 So I'll go back and review that and we'll keep on  
16 dealing with all of this when I see you back on the 29th at  
17 8:30 in the morning.

18 Court is in recess.

19 (Proceedings concluded.)  
20  
21  
22  
23  
24

1 STATE OF NEVADA       )  
2 COUNTY OF WASHOE     ) ss.  
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 15, 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 123, is a full, true and correct transcription  
19 of my stenotype notes of said proceedings.

20 DATED: At Reno, Nevada, this 28th day of  
21 January, 2013.

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

4/4

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

THE STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR11-1718A/B

CESAR VILLAGRANA, and  
ERNESTO MANUEL GONZALEZ,

Dept. No. 4

Defendants.

**ORDER REGARDING THE STATE'S MOTION FOR ORDER ADMITTING GANG  
ENHANCEMENT EVIDENCE AND TESTIMONY**

On November 26, 2012, the State filed *Motion for Order Admitting Gang Enhancement Evidence and Testimony* ("Gang Enhancement Motion") in both Villagrana's and Gonzalez's case numbers. Thereafter, supplements and addendums were filed associated with the State's Motion. Villagrana and Gonzalez opposed the respective Motion associated with each of them. The Motion was fully briefed by the parties. On January 11, 2013, the State filed *Motion Requesting Leave of Court to Supplement Gang Enhancement Discovery*. On January 14, 2013, the State filed *Motion Requesting Leave of Court to Supplement Discovery as to Defendant Villagrana*, as well as *Motion Requesting Leave of Court to Supplement Other Act Evidence Discovery as to Defendant Gonzalez*. On January 13, 2013, the State filed *Supplement in Support of State's Motion for Order Admitting Gang Enhancement Evidence and Testimony*. On January 17, 2013, Villagrana filed *Defendant Villagrana's Response to State's Motion to*

1 *Supplement Discovery as to Defendant Villagrana, as well as Defendant Villagrana's Response*  
2 *to State's Motion Requesting Leave of Court to Supplement Gang Enhancement Discovery.*<sup>1</sup> On  
3 January 18, 2013, Villagrana filed *Defendant Villagrana's Opposition/ Objection to State's*  
4 *Supplement in Support of State's Motion for Order Admitting Gang Enhancement Evidence and*  
5 *Testimony.* On January 23, 2013, the State filed *Motion Requesting Leave of Court to*  
6 *Supplement Gang Enhancement Discovery (Lake County Incident).* On January 23, 2013,  
7 Villagrana filed *Defendant Villagrana's Opposition/ Objection to State's Motion Requesting*  
8 *Leave to Supplement Gang Enhancement Evidence (Lake County Incident).* On January 28,  
9 2013, Gonzalez filed *Opposition to State's Motion for Leave to Supplement Gang Enhancement*  
10 *Discovery (Lake County Incident).* The Court heard evidence and oral argument on the State's  
11 Other Act Motion and Gang Enhancement Motion, among other things, on January 8, 9, 11, 14,  
12 15, 29, and 31. At the Conclusion of the hearing on January 31, 2013, the Court took the State's  
13 Other Act Motion and Gang Enhancement Motion, as well as the associated Motions to  
14 Supplement, under submission.

15 Initially, the Court must address the State's requests to supplement and the oppositions  
16 thereto. On October 30, 2012, the Court entered Order After October 29, 2012 Hearing  
17 ("October 30, 2012 Order"). In the October 30, 2012 Order, the Court set forth a briefing  
18 schedule for the parties related to gang enhancement and other act evidence. The Court Ordered  
19 the State to plead with specificity the evidence it wanted to introduce in its case in chief related  
20 to gang enhancement and other act evidence and disclose any discovery related to such evidence  
21 contemporaneously or prior to November 26, 2012. Villagrana and Gonzalez oppose the State's  
22 various motions to supplement on the general basis that the State has violated the Court's  
23 October 30, 2012 Order through its supplemental disclosures. The Court agrees with Villagrana  
24 and Gonzalez that the State has not completely complied with the Court's October 30, 2012  
25 Order; however, the Court finds exclusion of the evidence or testimony associated with the  
26

27 <sup>1</sup> Gonzalez filed a motion to join Villagrana's Response to State's Motion Requesting Leave of Court to  
28 Supplement Gang Enhancement Discovery. The Court granted Gonzalez's Motion to Join by Order on April 29,  
2013.

1 supplemental disclosures is not the proper remedy under the current circumstances of the case.  
2 Here, the trial has been continued and Villagrana and Gonzalez were given an opportunity to  
3 review the evidence associated with the supplemental disclosures before their counsel had to  
4 cross-examine the witnesses associated with the evidence. Under such circumstances, the Court  
5 finds Villagrana and Gonzalez were not prejudiced by the late disclosures. Thus, the Court finds  
6 such evidence and witnesses shall not be excluded or stricken from the record.

7 The Court begins by addressing the question raised by the parties regarding whether gang  
8 enhancement evidence is subject to NRS 48.045(2) and Petrocelli or whether it can be  
9 categorically classified as res geste evidence. The Court initially finds there cannot be a bright  
10 line rule regarding evidence that could be considered gang enhancement evidence. As the Court  
11 has observed through the hearings on this issue, the characterization of such evidence may  
12 depend on how it is presented, what is elicited, and its relationship to the other evidence  
13 presented. With that in mind, the Court finds gang enhancement evidence, of the type discussed  
14 in NRS 193.168, is not per se character evidence subject to NRS 48.045(2) and Petrocelli  
15 scrutiny. NRS 193.168 addresses the type of evidence that is admissible to prove the  
16 enhancement. See NRS 193.168(7). NRS 193.168 does not require a Petrocelli analysis for  
17 evidence admitted under subsection 7. The Nevada Supreme Court has not addressed the instant  
18 question. As the Court recently recognized in its Order regarding the State's Motion to Admit  
19 Other Crimes, Wrongs, and Acts, there is a dichotomy in Nevada law regarding how to  
20 characterize gang affiliation evidence, as either character or non-character evidence. See Lay v.  
21 State, 110 Nev. 1189, 1195-96 (1994); Tinch v. State, 113 Nev. 1170, 1176 (1997); Butler v.  
22 State, 120 Nev. 879, 888-89 (2004); but see Flores v. State, 116 Nev. 659, 663 (2000); Somee v.  
23 State, 124 Nev. 434, 446 (2008). The most recent case, Somee, is the only case listed above  
24 where the defendant was charged with the Nevada gang enhancement. 124 Nev. at 441. In  
25 Somee, the Court indicated gang affiliation evidence was not character evidence; instead, the  
26 Court found the evidence relevant to prove the charged crime. Id. at 446.

27 When considering Somee and NRS 193.168 together in relation to the instant case, the  
28



1 Court finds gang enhancement evidence admitted under NRS 193.168(7) will not necessarily  
2 trigger NRS 48.045(2). As the Court has indicated during the hearings in January related to the  
3 instant Motion, if the State seeks to admit specific prior conduct by Villagrana or Gonzalez under  
4 the theory that it is gang enhancement evidence under NRS 193.168(7), such a request would be  
5 denied unless the evidence satisfies NRS 48.045(2) and Petrocelli. If the State seeks to admit  
6 specific prior conduct of Villagrana or Gonzalez, the evidence would be subject to a Petrocelli  
7 analysis, even if the State attempts to use an expert to discuss the prior conduct. Allowing the  
8 State to use an expert in such a way would improperly circumvent NRS 48.045(2) and Petrocelli.  
9 However, as contemplated by NRS 193.168(7), general testimony regarding rivalries, customs,  
10 terminology, etc. associated with the Hells Angels or Vagos are appropriate areas for expert  
11 testimony. See NRS 193.168(7). Thus, the testimony admissible under NRS 193.168(7) will not  
12 be subject to the scrutiny of Petrocelli, unless the State raises specific instances of prior conduct  
13 of Villagrana or Gonzalez.

14 The Court next considers the State's assertion that gang enhancement evidence is by its  
15 very nature res geste evidence. NRS 48.035(3) provides, in relevant part, "evidence of another  
16 act or crime which is so closely related to an act in controversy or a crime charged that an  
17 ordinary witness cannot describe the act in controversy or the crime charged without referring to  
18 the other act or crime shall not be excluded...." The res geste doctrine must be construed  
19 narrowly. Bellon v. State, 121 Nev. 426, 444 (2005). In the instant case, the Court cannot  
20 categorically find that evidence admissible under the gang enhancement statute, NRS 193.168, is  
21 res geste evidence. Evidence of prior criminal conduct of members of the Hells Angels or  
22 Vagos, for example, is not necessary to describe the incident at the Nugget. Information  
23 regarding the alleged rivalry between the Hells Angels and the Vagos may provide more context  
24 to the Nugget incident and help explain the motive of individuals involved; however, a  
25 discussion of such evidence is not necessary to explain the events that actually occurred at the  
26 Nugget. In other words, a witness will be able to describe the actions taken by Villagrana and  
27 Gonzalez at the Nugget without having to refer to prior incidents between the Vagos and Hells  
28

1 Angels. It is possible that some of the evidence encompassed under NRS 193.168 is res geste  
2 evidence in the instant case. However, the Court cannot per se find evidence related to the gang  
3 enhancement is res geste evidence.

4 The Court next considers who is permitted to testify to gang enhancement evidence under  
5 NRS 193.168(7). NRS 193.168(7) specifically indicates that expert testimony is admissible to  
6 show particular conduct, status, and customs indicative of a criminal gang. See NRS 193.168(7).  
7 Lay witness testimony is not specifically included within NRS 193.168. Because NRS 193.168  
8 specifically provides expert witness testimony is admissible, and because the statute does not  
9 specifically provide for lay witness testimony on matters identified in the statute, the Court finds  
10 lay witness testimony is not permitted as to the particular conduct, status, and customs of the  
11 Vagos and Hells Angels. See NRS 193.168(7).

12 The Court next considers a related issue raised by the parties regarding who can qualify  
13 as an expert witness under NRS 193.168. Villagrana and Gonzalez generally argue police  
14 officers cannot qualify as experts under NRS 193.168. Villagrana and Gonzalez have also  
15 argued that the proposed experts in the instant case do not offer the type of testimony that would  
16 assist the trier of fact in this case. In order to testify as an expert witness under NRS 50.275, the  
17 witness must satisfy three requirements: (1) he or she must be qualified in an area of scientific,  
18 technical, or specialized knowledge; (2) his or her specialized knowledge must assist the trier of  
19 fact to understand the evidence or determine a fact in issue; and (3) his or her testimony must be  
20 limited in scope to matters within his or her specialized knowledge. Hallmark v. Eldridge, 124  
21 Nev. 492, 498 (2008); NRS 50.275. While Villagrana and Gonzalez argue individuals like Jorge  
22 Gil-Blanco and police officers cannot assist the trier of fact as experts with respect to motorcycle  
23 clubs/ gangs, or more specifically the Hells Angels or the Vagos, the Court finds otherwise. The  
24 Ninth Circuit has recognized that a law enforcement officer with years of experience working  
25 with gangs, who knew their "colors", signs, and activities could testify as an expert. See U.S. v.  
26 Hankey, 203 F.3d 1160, 1167-70 (9<sup>th</sup> Cir. 2000). In cases where a gang enhancement, similar to  
27 NRS 193.168, has been charged, California Courts have also permitted police officers to testify  
28

1 as gang experts where the foundation for their opinions were based on personal observations of  
2 and discussions with gang members, as well as information obtained from other officers and  
3 department files. See e.g. People v. Olguin, 31 Cal.App.4<sup>th</sup> 1355, 1370-71 (C.O.A. 4<sup>th</sup> Dist.  
4 1994). The Court finds the Ninth Circuit and California cases persuasive regarding law  
5 enforcement officer testimony as experts in cases involving alleged criminal gangs and Nevada's  
6 gang enhancement statute. Thus, the Court finds law enforcement officers can qualify as experts  
7 in the instant case in order to provide testimony under NRS 193.168(7), so long as they provide  
8 sufficient foundation for their opinions. See In re Alexander L., 149 Cal.App.4<sup>th</sup> 605, 612  
9 (C.O.A. 4<sup>th</sup> Dist. 2007) (finding a gang expert's testimony lacked adequate foundation when he  
10 simply stated that the gang had been involved in certain crimes, but no specifics were elicited as  
11 to the circumstances of those crimes, or where, when, or how the alleged expert had obtained the  
12 information). The Court does not intend to indicate that only law enforcement officers can  
13 qualify as experts in the instant case. The parties focused their arguments related to expert  
14 qualifications on police officer testimony generally. Each proposed expert will be assessed by  
15 the Court in light of Hallmark and the discussion above prior to providing opinion testimony in  
16 the instant case.

17 The Court next considers the Confrontation Clause issue raised by Villagrana and  
18 Gonzalez regarding hearsay statements relied on by gang enhancement experts to form a basis  
19 for their opinions. During the January hearings in this case, Villagrana and Gonzalez repeatedly  
20 argued that the introduction of statements of what other Hells Angel or Vagos members have  
21 told Jorge Gil-Blanco, and other proposed experts, violate their Sixth Amendment rights under  
22 Crawford v. Washington, 541 U.S. 36 (2004). The Court disagrees. As appellate courts in  
23 California have recognized, "*Crawford* does not undermine the established rule that experts can  
24 testify to their opinions on relevant matters, and relate the information and sources upon which  
25 they rely in forming those opinions... because an expert is subject to cross-examination about his  
26 or her opinions... and the materials on which the expert bases his or her opinion are not elicited  
27 for the truth of their contents; they are examined to assess the weight of the expert's opinion."

1 People v. Ramirez, 153 Cal.App.4th 1422, 1427 (C.O.A. 2<sup>nd</sup> Dist. 2007) (quoting People v.  
2 Thomas, 130 Cal.App.4<sup>th</sup> 1202, 1210 (C.O.A. 4<sup>th</sup> Dist. 2005). The Crawford Court also  
3 recognized that the rule announced in the case does not apply to the use of testimonial statements  
4 for purposes other than establishing the truth of the matter asserted. 541 U.S. at 59. Thus, the  
5 Court finds the Confrontation Clause and the Crawford rule are not generally implicated by gang  
6 enhancement expert testimony.

7 With respect to the specific incidents identified by the State in its Motion and during the  
8 January hearings in relation to gang enhancement evidence, the Court generally finds that the  
9 State's experts, to form the basis of their opinions, can rely on such evidence. However, the  
10 State will not be permitted to put forth the substantive evidence of each incident, such as, eye-  
11 witness testimony regarding what occurred during the Laughlin incident, Costa Mesa incident,  
12 etc. As discussed above, the State's gang enhancement expert(s) can rely on reports, discussions  
13 with members of the Vagos or Hells Angels, etc. to support opinions on admissible matters under  
14 NRS 193.168(7). The State need not prove up each incident relied on by its proposed expert(s)  
15 to support their opinions elicited under NRS 193.168(7), nor will the Court permit the  
16 presentation of such evidence. The Court finds the evidence offered in this case to support the  
17 charged gang enhancement must be limited to the type of evidence contemplated in NRS  
18 193.168(7).

19 Based on the foregoing, good cause appearing, and in the interest of justice,

20 IT IS SO ORDERED.

21 DATED this 20 day of May, 2013

22 Connie J. Stunneberg  
23 DISTRICT JUDGE  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

CASE NO. CR11-1718A/B

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 20 day of May, 2013, I filed the **ORDER REGARDING THE STATE'S MOTION FOR ORDER ADMITTING GANG ENHANCEMENT EVIDENCE AND TESTIMONY** with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

       Personal delivery to the following: [NONE]

X I electronically filed with the Clerk of the Court, using the ECF which sends an immediate notice of the electronic filing to the following registered e-filers for their review of the document in the ECF system:

DAVID CHESNOFF, ESQ. for CESAR VILLAGRANA  
DIV. OF PAROLE & PROBATION  
RICHARD SCHONFELD, ESQ. for CESAR VILLAGRANA  
KARL HALL, ESQ. for STATE OF NEVADA  
AMOS STEGE, ESQ. for STATE OF NEVADA  
KENNETH LYON III, ESQ. for ERNESTO GONZALEZ  
DAVID HOUSTON, ESQ. for ERNESTO GONZALEZ

       Deposited in the Washoe County mailing system in a sealed envelope for postage and mailing with the United States Postal Service in Reno, Nevada: [NONE]

       Placing a true copy thereof in a sealed envelope for service via:

       Reno/Carson Messenger Service – [NONE]

       Federal Express or other overnight delivery service [NONE]

DATED this 20 day of May, 2013.



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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE  
8

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

Case No. CR11-1718A/B

12 CESAR VILLAGRANA, and  
13 ERNESTO MANUEL GONZALEZ,

Dept. No. 4

14 Defendants.  
15

**ORDER GRANTING IN PART AND DENYING IN PART THE STATE'S MOTION TO  
ADMIT EVIDENCE OF OTHER CRIMES, WRONGS OR ACTS**

16 On November 26, 2012, the State of Nevada (hereinafter, "the State") filed *Motion to*  
17 *Admit Evidence of Other Crimes, Wrongs or Acts* ("Other Act Motion") in both Defendant Cesar  
18 Villagrana's (hereinafter, "Villagrana") and Defendant Ernesto Manuel Gonzalez's (hereinafter,  
19 "Gonzalez") case numbers. Villagrana and Gonzalez opposed the respective Motion associated  
20 with each of them.<sup>1</sup> The Motion was fully briefed by the parties. On January 14, 2013, the State  
21 filed *Motion Requesting Leave of Court to Supplement Other Act Evidence Discovery as to*  
22

23 <sup>1</sup> In Gonzalez's Opposition, filed on December 11, 2012, he includes a "Motion to Strike". Gonzalez argues  
24 all reference to gang evidence in the State's Motion should be stricken as non-responsive because the Motion was  
25 supposed to address NRS 48.045(2) evidence. Gonzalez also requests that his criminal history be stricken because  
26 the State has refused to provide his criminal history. Initially, the Court finds that it is improper to raise a new  
27 Motion within an opposition. For that reason the Court could deny Gonzalez's Motion. Additionally, the Court  
28 finds the requested relief is inappropriate in the instant case because the gang enhancement is charged and the  
related evidence is intertwined with the incidents the State has identified in its Motion. The Court ordered the State  
to file such a Motion related to the gang enhancement and any prior bad acts. It is evident from the Motions filed by  
the State that it took caution to include material that may not be considered gang enhancement or bad act evidence  
by the Court. Additionally, the Court finds the criminal history issue to be moot given the recent file comparison  
between Gonzalez and the State.

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1 *Defendant Gonzalez.*<sup>2</sup> The Court heard evidence and oral argument on the State's Other Act  
2 Motion and Gang Enhancement Motion, among other things, on January 8, 9, 11, 14, 15, 29, and  
3 31. At the Conclusion of the hearing on January 31, 2013, the Court took the State's Other Act  
4 Motion, as well as the associated Motion to Supplement, under submission.

5 NRS 48.045(2) prohibits the use of other crimes, wrongs or acts to prove the character of  
6 a person in order to show that he acted in conformity therewith; however, such evidence "may...  
7 be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan,  
8 knowledge, identity, or absence of mistake or accident." NRS 48.045(2). To be deemed  
9 admissible under NRS 48.045(2), "the trial court must determine, outside the presence of the  
10 jury, that: (1) the incident is relevant to the crime charged; (2) the act is proven by clear and  
11 convincing evidence; and (3) the probative value of the evidence is not substantially outweighed  
12 by the danger of unfair prejudice." Fields v. State, 125 Nev. 785, 713 (2009) (citing Tinch v.  
13 State, 113 Nev. 1170, 1176 (1997)).

14 The Court notes there is a dichotomy in Nevada law regarding whether gang affiliation  
15 evidence should be analyzed under Petrocelli or is non-character evidence that does not require a  
16 Petrocelli analysis. See Lay v. State, 110 Nev. 1189, 1195-96 (1994); Tinch v. State, 113 Nev.  
17 1170, 1176 (1997); Butler v. State, 120 Nev. 879, 888-89 (2004); but see Flores v. State, 116  
18 Nev. 659, 663 (2000); Somee v. State, 124 Nev. 434, 446 (2008). The most recent case, Somee,  
19 is the only case listed above where the defendant was charged with the Nevada gang  
20 enhancement. 124 Nev. at 441. In Somee, the defendant objected to the admission of evidence  
21 related to his prior contact with police officers as impermissible character evidence. Id. at 440-  
22 41. The district court found the information was relevant to prove the charged gang  
23 enhancement after the State clarified that it only wanted to introduce the defendant's admissions  
24 that he was a member of the Horney Boyz gang and that officers had previously found him in  
25

26 <sup>2</sup> Gonzalez orally opposed the State's Motion. Gonzalez argued the State's evidence should be excluded  
27 because the State violated the Court's October Order regarding disclosure. The Court finds any prejudice to  
28 Gonzalez as a result of the untimely disclosure by the State of evidence and witnesses related to proposed NRS  
48.045(2) evidence against Gonzalez was cured when the Court allowed Gonzalez counsel additional time to review  
the discovery prior to conducting cross-examination of Detective Tyler Clarke.



1 possession of weapons. Id. The Supreme Court found that the district court did not make an  
2 error under Petrocelli and reasoned that the evidence was not admitted to prove a trait of  
3 character; instead, the evidence was relevant to prove a charged crime. Id. at 446. Because  
4 Villagrana and Gonzalez have been charged with the gang enhancement, the Court finds the  
5 Somee case instructive in conducting its analysis of the State's Motion.

6 **I. The State's Motion Regarding Other Acts of Villagrana**

7 The State seeks to admit other act evidence against Villagrana relating to two incidents,  
8 which the State entitles "the Pink Poodle" and "Carrying a Concealed Weapon". With respect to  
9 the Pink Poodle, the State relies on an incident that occurred on June 15, 2012, in which officers  
10 responded to a disturbance call at a strip club in San Jose, California, called the Pink Poodle.  
11 When the police arrived, they made contact with Villagrana and four other individuals, who were  
12 wearing material indicating they were members of the Hells Angels. Four of the people,  
13 including Villagrana, had been previously identified as Hells Angels. One of the individuals,  
14 Angelo Wilkins, was wearing a "president" patch on his vest over the San Jose patch. There  
15 were five motorcycles associated with the men parked at the club, including a motorcycle known  
16 to belong to Steve Tausan, who was killed at Jeffrey Pettigrew's funeral. The motorcycle was  
17 registered to Villagrana. The five men were cooperative and no arrests were made. The State  
18 argues the Pink Poodle incident is admissible to show Villagrana's connection and membership  
19 in the Hells Angels. The State asserts the evidence also is relevant to show that the gang  
20 continues even after its leader was killed, Villagrana continues to be in good graces with the  
21 gang, and Villagrana is a key figure in the Hells Angels. Further, the State asserts the act is  
22 proven by clear and convincing evidence and the probative value of the evidence is not  
23 substantially outweighed by the danger of unfair prejudice.

24 With respect to the Carrying a Concealed Weapon incident, the State relies on a March  
25 17, 2011 traffic accident involving Villagrana in Santa Cruz, California. After the accident, a  
26 bystander found an unregistered .40 caliber semi-automatic pistol in the debris from the accident.  
27 Forensic testing indicated Villagrana's DNA was on the pistol. At the time of the accident,  
28

1 Villagrana was wearing Hells Angels clothing, including a leather motorcycle vest.  
2 Subsequently, officers obtained a search warrant for Villagrana's residence. During execution of  
3 the search warrant, officers recovered Hells Angel clothing, jewelry, rosters, posters and  
4 paperwork, as well as ATF reports and transcripts related to the casino shootout in Laughlin in  
5 2002. The State argues Villagrana's possession of a firearm, while wearing Hells Angel  
6 clothing, is relevant to show his level of commitment to the Hells Angels. The State asserts the  
7 evidence is also relevant to show the violent artwork, clothing, and culture of intimidation  
8 associated with the Hells Angels is a reality. Additionally, the State argues Villagrana's  
9 possession of the concealed firearm goes to the intent element of the carrying a concealed  
10 weapon charge in the instant case because it disproves any claim that the pistol he was carrying  
11 was concealed inadvertently. Further, the State asserts the act is proven by clear and convincing  
12 evidence and the probative value of the evidence is not substantially outweighed by the danger of  
13 unfair prejudice.

14 Villagrana opposes the admission of any evidence related to the Pink Poodle or Carrying  
15 a Concealed Weapon. Villagrana argues the evidence is not relevant, its admission would be  
16 more prejudicial than probative, and it has not been proven by clear and convincing evidence.  
17 Additionally, Villagrana argues the evidence should not be admitted because it would cause  
18 delay, waste of time, and confusion among members of the jury.

19 The Court finds the evidence related to Villagrana's affiliation with the Hells Angels,  
20 including, that he had been previously identified as a Hells Angel member and was wearing  
21 Hells Angels clothing during the Pink Poodle incident and Carrying a Concealed Weapon  
22 incident, is gang affiliation evidence that is directly relevant to the charged gang enhancement.  
23 See NRS 193.168. The Court finds such evidence of Villagrana's affiliation with the Hells  
24 Angels is admissible non-character evidence under Nevada law. See Somee, 124 Nev. at 446.  
25 While the Court finds such evidence is admissible, the Court does not find the evidence is per se  
26 admissible in the instant case. The admission of affiliation evidence in the instant case against  
27 Villagrana will be subject to other appropriate evidentiary objections.

1           Additionally, it is unclear to the Court whether the State intends to introduce the factual  
2       circumstances surrounding the Pink Poodle incident and the Carrying a Concealed Weapon  
3       incident, or whether the State presented the evidence related to the factual circumstances out of  
4       an abundance of caution. Because it is unclear, the Court will analyze each incident discussed  
5       above under NRS 48.045(2).

6           The Court will first consider the Pink Poodle incident. The Court is cognizant of  
7       Villagrana's argument that there is no bad act, or simple act, associated with the Pink Poodle that  
8       qualifies under NRS 48.045(2); however, in Nevada gang affiliation has been interpreted as an  
9       act for the purposes of NRS 48.045(2). See Butler, 120 Nev. at 889, n. 9. Initially, the Court  
10      finds, after reviewing the evidence presented by the State related to this incident, the Pink Poodle  
11      incident has been proven with clear and convincing evidence. The Court next turns to whether it  
12      is relevant and to a consideration of its probative value.

13           The Court finds the majority of the factual information related to the Pink Poodle is  
14      relevant to the charged crimes, particularly, the gang enhancement. The Court finds the  
15      information regarding Villagrana riding Steve Tausan's motorcycle and the motorcycle being  
16      registered in Villagrana's name is of little, if any, relevance to the crimes charged in the instant  
17      case and would be overly prejudicial if admitted against Villagrana. The other information  
18      related to the Pink Poodle is relevant and highly probative. In order to support a finding by the  
19      jury that the Hells Angels are a "criminal gang" for sentencing enhancement purposes, the State  
20      must put forth evidence demonstrating, among other things, that the organization will continue  
21      operation even if individual members enter or leave the organization. See 193.168(8). The State  
22      must also demonstrate that the Hells Angels has a common name or identifying symbol and has  
23      particular conduct, status, and customs indicative of it. See id. The Court finds the fact that  
24      Villagrana was with other members of the Hells Angels, including, an individual who appeared  
25      to be the successor President of the San Jose chapter after Jeffery Pettigrew's death, is directly  
26      relevant to proving the Hells Angels is a criminal gang within the meaning of the statute, since it  
27      relates to the group continuing after a leader of the group was no longer a part of the group. See  
28



1 id. The information about the men wearing Hells Angels clothing and having Hells Angels  
2 indicia on their motorcycles is relevant to proving the Hells Angels have a common name or  
3 identifying symbol and may also show Hells Angels have particular conduct or customs  
4 indicative of the group. See id. In addition, the gang affiliation evidence could be relevant to  
5 proving motive. See NRS 48.045(2); Butler, 120 Nev. at 889. The Court finds the probative  
6 value of the Pink Poodle incident, with the exception of the information related to Steve  
7 Tausan's motorcycle, is not substantially outweighed by the danger of unfair prejudice. Any  
8 prejudice can be addressed through a limiting instruction. Therefore, the Court finds the Pink  
9 Poodle incident, with the exception of any information related to Steve Tausan or his motorcycle,  
10 is generally admissible in the upcoming trial, unless another applicable objection applies.

11 The Court next considers the Carrying a Concealed Weapon incident. After reviewing  
12 the evidence and testimony related to the Carrying a Concealed Weapon incident, the Court finds  
13 there has been clear and convincing evidence that the incident occurred. Thus, the Court next  
14 turns to whether the Carrying a Concealed Weapon incident is relevant and to a consideration of  
15 its probative value. The Court disagrees with the State's assertion that the circumstances of the  
16 incident show lack of mistake, intent, or necessity in the instant case. In Nevada, carrying a  
17 concealed weapon is a general intent crime, in which a person is not permitted to carry a pistol or  
18 other deadly weapon upon his or her person. See NRS 202.350(1)(d)(3). In the incident in  
19 question, the gun was not on Villagrana's actual person, it was found in debris of the accident.  
20 Before the accident, it was believed to be contained in a pouch on Villagrana's motorcycle, not  
21 on his person. While the Court does not agree with the State's arguments concerning lack of  
22 mistake, intent, or necessity, the Court finds the fact that Villagrana has previously been found in  
23 possession of a loaded firearm and identified himself with the Hells Angels, through his clothing  
24 and the stickers on his motorcycle, is relevant to the gang enhancement. See Somee, 124 Nev. at  
25 441; NRS 193.168. The evidence related to Villagrana's association with the Hells Angels is  
26 also relevant to motive in the instant case. The Court finds the circumstances of the incident,  
27 specifically, the motorcycle accident, would not cause Villagrana unfair prejudice. The potential  
28

1 prejudice from the incident stems from Villagrana's possession of a firearm and his affiliation  
2 with the Hells Angels. The Court finds information regarding Villagrana's prior possession of a  
3 firearm and his affiliation with the Hells Angels would be admissible under the holding in  
4 Somee, even if the circumstances of incident was not presented. See Somee, 124 Nev. at 440-41.  
5 The Court finds the probative value of the incident is not substantially outweighed by a danger of  
6 unfair prejudice. The potential prejudice of the evidence can be addressed with a limiting  
7 instruction. Therefore, the Court finds the Carrying a Concealed Weapon incident is generally  
8 admissible in the upcoming trial, unless another applicable objection applies.

9 The Court next considers the information gained in the search of Villagrana's home. The  
10 evidence obtained was previously subject to a Motion to Suppress, which the Court has denied.  
11 [See Order Denying Mtn. to Suppress, filed April 9, 2013]. Thus, the Court can consider the  
12 admissibility of such evidence. In the State's Motion, it specifically identifies the following  
13 evidence: 26 re-writeable cd-r's containing ATF reports and information related to the 2002  
14 Laughlin case, Hells Angels paraphernalia (including, clothing, jewelry, rosters, and corporate  
15 paperwork), a letter from Tom Schmidt, Hells Angel "Filthy Few San Jose" wood framed  
16 banner, and a framed poster from 2010 Hells Angels Monterey Toy Run. The Court finds such  
17 evidence is relevant to show Villagrana's membership and involvement in the Hells Angels. The  
18 information is also relevant to proving certain aspects of the gang enhancement, such as,  
19 formality, common conduct, common name or identifying symbol, common terminology, etc.  
20 See NRS 193.168. Because the information is relevant to the charged gang enhancement, the  
21 Court finds the information is not character evidence. See Somee, 124 Nev. at 446. The Court  
22 finds any potential for impermissible inferences can be addressed with a limiting instruction to  
23 the jury. Because it is not clear to the Court how the State intends to use the evidence or how it  
24 will attempt to introduce such evidence, the Court is only conditionally finding that the material  
25 is admissible and relevant. The introduction of such evidence will be subject to other appropriate  
26 objections at trial.

27 ///

## II. The State's Motion Regarding Other Acts of Gonzalez

The State seeks to admit other act evidence under NRS 48.045 against Gonzalez related to four incidents, which the State entitles "Airport Case", "Steyr Pistol Case", "Posing with Glock February 22, 2011", and "May 25, 2007". The Airport Case relates to an incident at San Francisco Airport, where police found a 9 mm Glock magazine in Gonzalez's luggage during a customs search. The magazine was loaded with 13 live rounds. The charges against Gonzalez related to that incident were ultimately dismissed. The State argues the possession of the Glock magazine shows Gonzalez's possession of a gun of the same kind and type used in the instant case and is relevant to prove identity as the shooter. The State argues the incident also shows Gonzalez is a member of the Vagos and is not simply a casual member. The State asserts the act is proven by clear and convincing evidence and the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice.

The Steyr Pistol Case relates to a February 13, 2010 police stop of Gonzalez, while he was riding his motorcycle in San Jose, California for failing to use a turn signal and having an amplified exhaust. Gonzalez was wearing Vagos related clothing, including a full patch, and had an exposed switchblade knife on the outside of his jacket. Gonzalez was arrested for the knife violation. A search of Gonzalez's motorcycle revealed a 9mm Steyr Mannlicher semiautomatic pistol. As Gonzalez was being transported to jail, he made the following statement, "I ain't gonna lie, I carry that for my protection 'cause of my lifestyle." The semiautomatic weapon was later determined to be stolen. Gonzalez was convicted of traffic offenses related to the incident. The State argues Gonzalez's possession of a loaded pistol while dressed in Vagos attire is probative of his commitment to the Vagos, that he is not a casual member, and knowledge and access to firearms. The State also argues it goes to elements of the gang enhancement, such as, that the Vagos regularly commit felonies and is evidence of rivalry because he carried it for protection. The State asserts the act is proven by clear and convincing evidence and the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice.

The Posing with Glock February 22, 2011, and May 25, 2007, acts related to information

1 discovered as a result of a search warrant. When Gonzalez was arrested related to the instant  
2 case he had a laptop computer in his possession. Officers discovered two pictures and a video.  
3 The State identifies the pictures as the Posing with Glock February 22, 2011 incident and the  
4 video as the May 25, 2007 incident. The pictures show Gonzalez posing with two other men,  
5 who are all wearing Vagos related t-shirts. The men are hugging each other in the photos. In  
6 one photo, the men are facing the camera. In the photo Gonzalez and another individual are  
7 holding pistols. In the other photo, the men have their backs to the camera and Gonzalez has a  
8 pistol visible in his back pocket. The State argues the photographs show actual possession of a  
9 Glock pistol, which is possibly the one used at the Nugget. The State argues the pictures are  
10 highly probative because they are months before the Nugget incident and puts a Glock pistol in  
11 Gonzalez's possession. The State asserts the incident is proven by clear and convincing  
12 evidence and the probative value of the evidence is not substantially outweighed by the danger of  
13 unfair prejudice. The video, or May 25, 2007 incident, is of Gonzalez firing a black pistol.  
14 Gonzalez fires 13 rounds, while he alternates between a one-handed and two-handed grip. The  
15 State argues the video shows opportunity to commit crime and demonstrates his firearm skills.  
16 The State argues the video explains how Gonzalez was able to shoot at Pettigrew from 25 feet  
17 away with unusual accuracy. The State asserts the video is proven by clear and convincing  
18 evidence and the probative value of the evidence is not substantially outweighed by the danger of  
19 unfair prejudice.

20 Gonzalez argues the prior acts must be excluded because they are not relevant to the  
21 instant case and they are more prejudicial than probative. Gonzalez argues identity is not an  
22 issue in the instant case and none of the incidents demonstrate opportunity. Gonzalez asserts the  
23 Airport Case is not relevant because the forensic analysis in the instant case indicates that a .40  
24 caliber semiautomatic Glock pistol was used to shoot Jeffrey Pettigrew, not a 9 mm. Gonzalez  
25 argues possession of the gun magazine and the Steyr pistol do not demonstrate gang  
26 membership. Gonzalez asserts his alleged statement is vague and highly prejudicial because the  
27 State is intending to use it to reference prior criminal lifestyle or gang evidence. Additionally,  
28



1 Gonzalez argues the State fails to identify why the pictures should be admitted under NRS  
2 48.045(2). Gonzalez also argues the video is not relevant to show accuracy because the target is  
3 not viewable. Further, Gonzalez argues the acts are not proven by clear and convincing  
4 evidence.

5 Similar to Villagrana, the Court finds the evidence related to Gonzalez's affiliation with  
6 the Vagos, including, wearing Vagos clothing is directly relevant to the charged gang  
7 enhancement in the instant case. See NRS 193.168. The Court finds such evidence of  
8 Gonzalez's affiliation with the Vagos is admissible non-character evidence under Nevada law.  
9 See Somee, 124 Nev. at 446. While the Court finds such evidence is admissible, the Court does  
10 not find the evidence is per se admissible in the instant case. The admission of affiliation  
11 evidence in the instant case against Gonzalez will be subject to other appropriate evidentiary  
12 objections.

13 Additionally, it is unclear to the Court whether the State intends to introduce the factual  
14 circumstances surrounding the four incidents at trial, or whether the State presented the evidence  
15 related to the factual circumstances out of an abundance of caution. Because it is unclear, the  
16 Court will analyze each incident discussed above under NRS 48.045(2).

17 The Court will first consider the Airport Case. After reviewing the evidence and  
18 testimony related to the incident, the Court finds the incident was not proven by clear and  
19 convincing evidence. In addition, the Court disagrees with the State's arguments that the  
20 incident is evidence of identity in the instant case, is some evidence that Gonzalez is the shooter,  
21 or is evidence that Gonzalez is not a casual member of the gang. The weapon used at the Nugget  
22 in relation to Jeffrey Pettigrew's death is believed to be a .40 caliber semiautomatic Glock pistol,  
23 not a 9 mm; thus, the Court finds Gonzalez possession of a 9 mm Glock magazine does not have  
24 a significant connection to the incident at the Nugget. In addition, there is no information that  
25 when Gonzalez was found with the magazine he was wearing Vagos material or otherwise  
26 identified himself as a Vagos member. Therefore, the Court finds the incident is not admissible.



1 The Court next considers the Steyr Pistol Case. After reviewing the evidence and related  
2 testimony, the Court finds there has been clear and convincing evidence that the incident  
3 occurred. Thus, the Court next considers whether the Steyr Pistol Case is relevant and if the  
4 probative value of the incident is substantially outweighed by the danger of unfair prejudice.  
5 The Court finds the fact that Gonzalez was previously found in possession of weapons, both a  
6 firearm and a switchblade knife, while identifying himself with the Vagos, through his clothing,  
7 is relevant to the charged gang enhancement in the instant case. See Somee, 124 Nev. at 441;  
8 NRS 193.168. In addition, the Court finds Gonzalez's association with the Vagos is also  
9 relevant to prove motive in the instant case. Because the Court finds the factual circumstances of  
10 the incident are not particularly relevant to the instant case, the Court finds the State's  
11 presentation of evidence related to the Steyr Pistol Case should be limited to affiliation evidence  
12 and that Gonzalez was found in the possession of a firearm and a switchblade knife. With  
13 respect to Gonzalez's statement—"I ain't gonna lie, I carry that for my protection 'cause of my  
14 lifestyle"—the Court finds it is relevant to the instant case in relation to evidence regarding  
15 rivalry and Gonzalez's theory of defense.<sup>3</sup> The Court finds the probative value of the statement  
16 is not substantially outweighed by the danger of unfair prejudice. Indeed, as mentioned above,  
17 the statement could be interpreted in a manner that supports Gonzalez's theory of self-defense.  
18 Therefore, the Court finds the Steyr Pistol Case—specifically, the affiliation evidence and that  
19 Gonzalez was found in possession of two weapons—and Gonzalez's related statement are  
20 generally admissible in the instant case, unless other applicable objections apply.

21 The Court next considers the Posing With a Glock photos and video. After reviewing the  
22 evidence and testimony related to the photos and video, the Court finds there has been clear and  
23 convincing evidence of the acts depicted. Thus, the Court must next address whether the photos  
24 and video are relevant and whether their probative value is substantially outweighed by a danger  
25 of unfair prejudice. The Court will begin by addressing the February 2011 Photographs. The  
26 Court finds the photos—depicting Gonzalez and other individuals visibly displaying firearms

27 <sup>3</sup> The Court notes Gonzalez has previously moved to suppress other statements he has made; however,  
28 Gonzalez has not filed a Motion to Suppress the statement made in relation to the Steyr Pistol Case.

1 while wearing Vagos attire—are relevant to motive and the gang enhancement in the instant  
2 case. See Somee, 124 Nev. at 441; NRS 193.168. The Court finds the probative value of the  
3 photographs is not substantially outweighed by the danger of unfair prejudice. Prejudice to  
4 Gonzalez can be minimized through a limiting instruction. Therefore, the Court finds the  
5 photographs are generally admissible in the upcoming trial, unless another applicable objection  
6 applies.

7 With respect to the video of Gonzalez firing a semiautomatic weapon, the Court finds  
8 there is some relevance to the incident at the Nugget. The video does demonstrate a familiarity  
9 with the firearm he is shooting and is evidence that Gonzalez has previously shot a firearm.  
10 However, the Court does not agree with the State's assertion that the video demonstrates that  
11 Gonzalez has particular skill with firearms or an unusual level of accuracy. The video only  
12 shows Gonzalez shooting. The target is not visible. There is no way to assess Gonzalez's  
13 accuracy. Nor is it clear that the firearm in the video was of the same type used at the Nugget.  
14 The Court finds the video has little probative value in the instant case and has the potential to  
15 significantly prejudice Gonzalez. Because the video is of little probative value and there is a  
16 substantial danger of unfair prejudice from the video, the Court finds the May 25, 2007 video is  
17 not admissible in the upcoming trial.

18 Based on the foregoing, good cause appearing, and in the interest of justice,

19 IT IS HEREBY ORDERED that the State's Motion to Admit Evidence of Other Crimes,  
20 Wrongs or Acts is GRANTED in part and DENIED in part consistent with this Order .

21 DATED this 16 day of May, 2013

22 Connie J. Steinheimer  
23 DISTRICT JUDGE  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 16<sup>th</sup> day of

May, 2013, I filed the attached Order with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

       Personal delivery to the following: [NONE]

X I electronically filed with the Clerk of the Court, using the ECF which sends an immediate notice of the electronic filing to the following registered e-filers for their review of the document in the ECF system:

Karl Hall, Esq.  
Chief Deputy District Attorney

Amos Stege, Esq.  
Deputy District Attorney

David Chesnoff, Esq.  
Richard Schonfeld, Esq.  
Attorneys at Law

David Houston, Esq.  
Kenneth Lyon, Esq.  
Attorneys at Law

       Deposited in the Washoe County mailing system in a sealed envelope for postage and mailing with the United States Postal Service in Reno, Nevada:  
[NONE]

DATED this 16<sup>th</sup> day of May, 2013.

Maud Stone

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3  
4 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
5 IN AND FOR THE COUNTY OF WASHOE  
6

7 THE STATE OF NEVADA,

8 Plaintiff,

9 vs.

Case No. CR11-1718B

10 ERNESTO MANUEL GONZALEZ,

Dept. No. 4

11 Defendant.  
12 \_\_\_\_\_ /

13 **ORDER GRANTING MOTION TO JOIN SELECT LEGAL PLEADINGS**

14 On February 4, 2013, Ernesto Manuel Gonzalez (hereinafter, "Gonzalez") filed *Mr.*  
15 *Gonzalez's Motion to Join Select Legal Pleading*. On February 15, 2013, the State of Nevada  
16 (hereinafter, "the State") filed *Opposition to Gonzalez's Motion to join Select Legal Pleadings*.  
17 On February 21, 2013, Gonzalez filed *Reply to Opposition to Gonzalez's Motion to Join Select*  
18 *Legal Pleading*. Thereafter, the matter was submitted and is now before the Court for review.<sup>1</sup>

19 Gonzalez seeks to join the following Motions filed by his Co-Defendant Cesar Villagrana  
20 (hereinafter, "Villagrana"), to the extent they offer equally applicable relief to Gonzalez and the  
21 Vagos: (1) Defendant Villagrana's Response to State's Motion Requesting Leave of Court to  
22 Supplement Gang Enhancement Discovery (Jan. 17, 2013); (2) Defendant Villagrana's Motion  
23 in Limine to Preclude Reference to the Hells Angels Motorcycle Club as a Gang (Jan. 29, 2013);  
24 (3) Defendant Villagrana's Motion for Order Regarding Normal Security Proceedings During  
25 Trial (Jan. 30, 2013); (4) Defendant Villagrana's Motion in Limine to Allow Hells Angels  
26

27 <sup>1</sup> The Court heard oral argument on other Motions in Limine on March 12, 2013; however, no argument was  
28 presented on the instant Motion. The Court simply took the matter under submission following argument on all the  
Motions in Limine.

2574A

1 Members to Wear Hells Angels-Related Clothing in the Courtroom During Trial (Jan. 30, 2013);  
2 and (5) Defendant Villagrana's Motion to Exclude Testimony of State's Proposed Expert  
3 Witness Jorge Gil-Blanco (Jan. 30, 2013). The State argues joinder was inappropriate because  
4 the deadline for filing Motions in Limine was January 30, 2013, and Gonzalez's joinder was  
5 filed five days later. Additionally, the State argues the Motion should not be considered because  
6 Gonzalez fails to advance arguments specific to his circumstances.

7 The Court finds Gonzalez's Motion to Join was not filed timely. However, under the  
8 circumstances of this case—particularly given that Gonzalez and Villagrana will be tried  
9 together, the hearing on the above referenced Motions was continued until March 11- 12, 2013,  
10 and the trial has been continued until July 2013—the Court finds it appropriate to allow  
11 Gonzalez to join the Motions discussed above. The State has not identified any prejudice by  
12 allowing Gonzalez to join such Motions, nor can the Court find any prejudice to the State when it  
13 had over a month from the time the joinder was filed to prepare for oral argument on the matter.  
14 Additionally, to the extent an independent analysis of how Villagrana's Motions are applicable to  
15 Gonzalez was not provided by him, either in briefing or at oral argument, the Court will not hold  
16 such a fact against the State. Therefore, the Court finds Gonzalez's Motion must be granted.

17 Based on the forgoing, good cause appearing, and in the interest of justice,

18 IT IS HEREBY ORDERED that Defendant Ernesto Manuel Gonzalez Motion to Join  
19 Select Legal Pleadings is GRANTED.

20 DATED this 28 day of April, 2013.

21  
22 Connie J. Steinheimer

23 DISTRICT JUDGE  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

CASE NO. CR11-01718B

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 29 day of April, 2013, I filed the **ORDER GRANTING MOTION TO JOIN SELECT LEGAL PLEADINGS** with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

       Personal delivery to the following: [NONE]

☒ I electronically filed with the Clerk of the Court, using the ECF which sends an immediate notice of the electronic filing to the following registered e-filers for their review of the document in the ECF system:

AMOS STEGE, ESQ. for STATE OF NEVADA

KARL HALL, ESQ. for STATE OF NEVADA

DIV. OF PAROLE & PROBATION

KENNETH LYON III, ESQ. for ERNESTO GONZALEZ

DAVID HOUSTON, ESQ. for ERNESTO GONZALEZ

☒ Deposited in the Washoe County mailing system in a sealed envelope for postage and mailing with the United States Postal Service in Reno, Nevada:

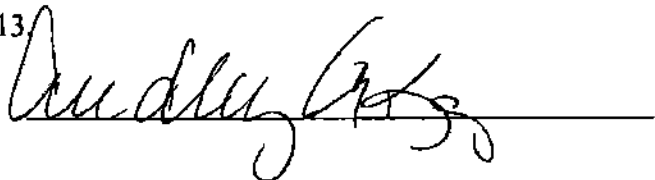
David Z. Chesnoff, Esq.  
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Chesnoff & Schonfeld  
520 S. Fourth St., 2<sup>nd</sup> Flr.  
Las Vegas, NV 89101

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       Reno/Carson Messenger Service – [NONE]

       Federal Express or other overnight delivery service [NONE]

DATED this 29 day of April, 2013



2574C

46



08-06-2013:07:58:16 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3905048

1  
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5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF WASHOE

7 THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

8 -oOo-

9 STATE OF NEVADA, )

10 Plaintiff, ) Case No. CR11-1718A

11 vs. ) CR11-1718B

12 CESAR VILLAGRANA and )

13 ERNESTO MANUEL GONZALEZ, ) Dept. No. 4

14 Defendants. )

15 \_\_\_\_\_ )

16  
17 TRANSCRIPT OF PROCEEDINGS

18 CHANGE OF PLEA

19 MONDAY, JULY 22, 2013

20 RENO, NEVADA

21  
22  
23  
24 Reported By: MARCIA FERRELL, CCR No. 797

## APPEARANCES:

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1 RENO, NEVADA, MONDAY, JULY 22, 2013, 9:00 A.M.

2 --o0o--

3 THE COURT: Thank you, please be seated. Okay,  
4 this is the time set for the case of CR11-1718A and B.  
5 Mr. Hall?

6 MR. HALL: Your Honor, the State has had an  
7 opportunity to negotiate the case with Mr. Villagrana and his  
8 counsel, and I understand that he will be changing his plea  
9 today to guilty to two counts, challenge to fight with use of  
10 a deadly weapon, and battery with a deadly weapon, and they  
11 are alleged in the fourth information supplementing  
12 indictment under CR11-1718A.

13 THE COURT: And you filed that with the clerk?

14 MR. HALL: Yes.

15 THE COURT: Okay, go ahead.

16 MR. HALL: And the negotiations are that -- the  
17 negotiation of the defendant's plea, that we will recommend a  
18 sentence of 4 to 10 on count two, and a minimum sentence of  
19 12 years on count two, to run consecutively --

20 MR. CHESNOFF: 12 months.

21 MR. HALL: Excuse me, did I say 12 years? 12  
22 months. 12 months on count two, to run consecutively to  
23 count one.

24 THE COURT: A minimum of --

1           MR. HALL: Excuse me, I have it backwards. Count  
2 one is one to five, and count two is four to 10.

3           MR. CHESHNOFF: But the recommendation, your Honor,  
4 is a minimum of 12, maximum of 30 months, and the other one  
5 is minimum of four years, maximum of 10 years. It's a  
6 conditional plea, your Honor, requiring that the Court accept  
7 the sentence. Otherwise, Mr. Villagrana would have  
8 permission to withdraw his plea.

9           THE COURT: Okay. And is that a complete statement  
10 of the negotiations between the two parties?

11          MR. HALL: Yes.

12          MR. CHESHNOFF: No additional charges, your Honor,  
13 and the balance of the charges will be dismissed.

14          THE COURT: Okay, and --

15          MR. CHESHNOFF: In the third indictment. They'll  
16 all be --

17          THE COURT: Okay, so all the parties agree that the  
18 fourth information supplementing indictment, which contains  
19 two counts, will be the only charges pending against  
20 Mr. Villagrana, and he is pleading to both those counts.

21          MR. CHESHNOFF: That's correct, your Honor. The  
22 murder count is no longer there.

23          THE COURT: Okay. And if he were to withdraw his  
24 plea in the future, the fourth information supplementing

1 indictment would be dismissed, and it would proceed on the  
2 third information.

3 MR. CHESHNOFF: That's correct, your Honor.

4 THE COURT: And do you have a signed guilty plea  
5 memorandum?

6 MR. CHESHNOFF: Yes we do, your Honor. I think we  
7 gave it to your clerk.

8 THE COURT: Okay, then I have a document here, and  
9 I just wanted to make sure it was the original document.

10 MR. CHESHNOFF: That's correct, your Honor, and it  
11 contains the full description of the negotiations, your  
12 Honor.

13 THE COURT: Okay. And now we'll go forward with  
14 the arraignment on the fourth information supplementing  
15 indictment. Mr. Villagrana, do you understand what's going  
16 on here today?

17 DEFENDANT VILLAGRANA: Yes, your Honor.

18 THE COURT: Do you have any questions about what's  
19 happening?

20 DEFENDANT VILLAGRANA: No, your Honor.

21 THE COURT: Are you comfortable with the  
22 representation you've received from your attorneys so far?

23 DEFENDANT VILLAGRANA: Yes, your Honor.

24 THE COURT: Do you waive the reading of the fourth

1 information supplementing indictment?

2 DEFENDANT VILLAGRANA: Yes.

3 THE COURT: Do you understand that if you go  
4 forward and enter a guilty plea to this information  
5 supplementing indictment, there will be no jury trial?

6 DEFENDANT VILLAGRANA: Yes, your Honor.

7 THE COURT: For you, anyway.

8 DEFENDANT VILLAGRANA: Yeah.

9 THE COURT: And do you understand that we will move  
10 forward with the case without any other pretrial decisions.  
11 Any decisions I took under submission, I will not be ruling  
12 on as it relates to you in this case, and any decisions I've  
13 reached previously will still be the law of the case.

14 DEFENDANT VILLAGRANA: Yes, your Honor.

15 THE COURT: Do you understand that you have a right  
16 to plead not guilty, have a trial by jury, be confronted by  
17 the witnesses against you, bring witnesses here on your own  
18 behalf, and testify or not testify at that jury trial?

19 DEFENDANT VILLAGRANA: Yes.

20 THE COURT: Do you understand you have a right  
21 against self-incrimination; you may assert that right by  
22 refusing to testify, and the State must prove you guilty  
23 beyond a reasonable doubt?

24 DEFENDANT VILLAGRANA: Yes.

1 THE COURT: Are you aware that you'll be giving up  
2 all of these rights if you plead guilty today?

3 DEFENDANT VILLAGRANA: Yes, your Honor.

4 THE COURT: Do you understand there will be no  
5 jury?

6 DEFENDANT VILLAGRANA: Yes.

7 THE COURT: I'm going to ask the clerk to read the  
8 fourth information supplementing indictment to you, and then  
9 I will ask you if you understand it.

10 THE CLERK: Count one, challenge to fight with the  
11 use of a deadly weapon, a violation of NRS 200.450(1)(b), NRS  
12 193.165, NRS 199.480, 195.020, a felony in the manner  
13 following, to wit: That the said defendant Cesar Villagrana  
14 did on or about the 23rd day of September A.D. 2011 while  
15 within John Ascuaga's Nugget at Sparks Township, Washoe  
16 County, Nevada, did cause, give or send a challenge to fight  
17 to one or more members of the Vagos and/or did accept a  
18 challenge to fight from one or more members of the Vagos  
19 and/or have agency in accepting a challenge to fight from one  
20 or more members of the Vagos, and the resulting fight  
21 involving the use of a deadly weapon, to wit, a firearm.

22 The defendant above named is responsible under one  
23 or more of the following principals of criminal liability, to  
24 wit, number one: By the defendant directly committing acts

1 constituting the offense and/or by the defendant having the  
2 intent to commit challenge to fight or to accept a challenge  
3 to fight with a deadly weapon, conspiring with others to  
4 commit the offense of challenge to fight with a deadly weapon  
5 or to accept such a challenge to fight, whereby each  
6 co-conspirator is vicariously liable for the acts of the  
7 other coconspirators, when acts are done in furtherance of  
8 the conspiracy; and/or, number three, by the defendant having  
9 the intent to commit the crime of challenge to fight with a  
10 deadly weapon and aiding and abetting each other, either  
11 directly or indirectly, whether present or not. The  
12 defendant committed the above stated conduct by shooting  
13 Diego Garcia, a member of the Vagos, with a firearm in the  
14 leg, as alleged in count two.

15 Count two. Battery with a deadly weapon, a  
16 violation of NRS 200.4812(e)(1), a felony in the manner  
17 following, to wit: That the said defendant, Cesar  
18 Villagrana, on or about the 23rd day of September A.D. 2011  
19 at Sparks Township within the County of Washoe, State of  
20 Nevada, did wilfully and unlawfully use force and violence  
21 upon the person of Diego Garcia at John Ascuaga's Nugget,  
22 1100 Nugget Avenue, in the City of Sparks, Washoe County,  
23 Nevada, with a deadly weapon, to wit, a firearm, by shooting  
24 Diego Garcia, a member of the Vagos, in the leg.



1 THE COURT: Is there anything about those two  
2 counts you do not understand?

3 DEFENDANT VILLAGRANA: No, your Honor.

4 THE COURT: With regard to count one, did you  
5 commit the charge as it's described in the information?

6 DEFENDANT VILLAGRANA: Yes, your Honor.

7 THE COURT: And as to count two, did you do what it  
8 says you did in the charge as is described in the  
9 information?

10 DEFENDANT VILLAGRANA: Yes, your Honor.

11 THE COURT: Have your attorneys told you a possible  
12 maximum penalty for these offenses?

13 DEFENDANT VILLAGRANA: Yes.

14 THE COURT: Can you tell me what that is? For  
15 count one?

16 DEFENDANT VILLAGRANA: Count one is one to five and  
17 count two is two to 10.

18 THE COURT: Okay, the possible maximum penalty for  
19 count one is two to 10 years in the Nevada State Prison.  
20 Even though there's a negotiation that the State and your  
21 attorney are stipulating to one to five. Is that wrong?

22 MR. CHESHNOFF: That's wrong, your Honor.

23 THE COURT: Okay. Call your attention, counsel, to  
24 page four of the guilty plea memorandum.

1 MR. CHESHNOFF: Which page?

2 THE COURT: Four, top of the page, line one.

3 MR. CHESHNOFF: I don't think that's accurate, your  
4 Honor.

5 THE COURT: Okay.

6 MR. CHESHNOFF: We all must have missed the number.

7 MR. SCHONFELD: My understanding is the challenge  
8 to fight with a weapon not resulting in death is a five year  
9 maximum, your Honor.

10 MR. STEGE: That is correct, your Honor, I believe  
11 we have the counts transposed in that particular draft.  
12 Count two is the two to 10, the battery with a deadly weapon  
13 is a two to 10. We've made an error in calling count two,  
14 one to six. It should be count one, one to five.

15 THE COURT: Okay. Mr. Stege, will you approach,  
16 please.

17 MR. STEGE: Yes.

18 THE COURT: Ask that you collect the guilty plea  
19 memorandum, make the corrections to it, initial those  
20 changes, by defense counsel as well as Mr. Villagrana and the  
21 State, and then return it to the Court.

22 MR. CHESNOFF: Your Honor, would you like  
23 Mr. Villagrana to initial as well?

24 THE COURT: Yes, I would, thank you.

1 MR. CHESNOFF: Some kind of lawyer joke, here. How  
2 many lawyers does it take to --

3 THE COURT: All right. Now, Mr. Villagrana, let's  
4 go ahead and look at the guilty plea memorandum, and I can  
5 start by asking you, did you read this document?

6 DEFENDANT VILLAGRANA: Yes, your Honor.

7 THE COURT: And did you understand it?

8 DEFENDANT VILLAGRANA: Yes.

9 THE COURT: Okay. And did you sign the document  
10 earlier today?

11 DEFENDANT VILLAGRANA: Yesterday.

12 THE COURT: Yesterday.

13 DEFENDANT VILLAGRANA: Yes.

14 THE COURT: Okay. Now, with regard to some changes  
15 that have been made to the document on page four, do you see  
16 those handwritten changes?

17 DEFENDANT VILLAGRANA: Yes.

18 THE COURT: And they show count two, a penalty of  
19 from two to 10 years?

20 DEFENDANT VILLAGRANA: Yes.

21 THE COURT: And count one, a penalty from one to  
22 five years?

23 DEFENDANT VILLAGRANA: One to five, yes.

24 THE COURT: Okay. Now, I see some initials on

1 these changes, are your initials -- did you initial these  
2 changes?

3 DEFENDANT VILLAGRANA: My CV, yes.

4 THE COURT: You're CV?

5 DEFENDANT VILLAGRANA: In black ink.

6 THE COURT: So you initialed the change as to count  
7 two on line one, and then you initialed for both of the  
8 changes with regard to line four and five, you initialed it  
9 once, is that right?

10 DEFENDANT VILLAGRANA: I initialed one on each,  
11 yes.

12 THE COURT: Okay.

13 MR. CHESHNOFF: Your Honor, just before you finish.  
14 That means, your Honor, that the references in paragraph  
15 seven have to be changed, too.

16 THE COURT: Okay. Do you mind if we take just a  
17 short recess? I hand you back this guilty plea memorandum,  
18 and you all kind of get it all cleaned up and then we'll be  
19 back on the record in a few minutes.

20 MR. CHESHNOFF: You got it, your Honor.

21 THE COURT: Okay. Mr. Stege, here's your document,  
22 we'll be in recess.

23 (Recess.)

24 THE COURT: Okay, counsel, you've had an

1 opportunity to review the guilty plea memorandum, are we  
2 ready to proceed?

3 MR. CHESHNOFF: Yes, thank you, your Honor.

4 MR. STEGE: Yes, your Honor.

5 THE COURT: Okay. So Mr. Villagrana, we were  
6 discussing your plea before we took the recess, and I was  
7 asking you if you understood the possible potential  
8 penalties. The maximum potential penalties in these charges.  
9 And can you tell me what those are now?

10 DEFENDANT VILLAGRANA: Count two is two to 10, and  
11 count one is one to five.

12 THE COURT: Okay, and do you understand that's two  
13 to 10 years in prison, and a fine up to \$10,000?

14 DEFENDANT VILLAGRANA: Yes, your Honor.

15 THE COURT: Do you also understand that the count  
16 one is one to five years in prison and a fine up to \$5,000?

17 DEFENDANT VILLAGRANA: Yes, your Honor.

18 THE COURT: Now, do you understand that the plea  
19 negotiations in this case have -- what those plea  
20 negotiations were? You understand all the discussion about  
21 the plea negotiations?

22 DEFENDANT VILLAGRANA: Yes.

23 THE COURT: Do you have any questions about them?

24 DEFENDANT VILLAGRANA: No, your Honor.

1 THE COURT: Do you understand although the plea  
2 negotiations are silent in this regard, restitution could be  
3 part of your penalty?

4 DEFENDANT VILLAGRANA: Yes, I do understand that.

5 THE COURT: Has anyone made any threats to get you  
6 to enter this plea?

7 DEFENDANT VILLAGRANA: No. No, your Honor.

8 THE COURT: Has anyone told you you would be  
9 guaranteed any particular result if you pled guilty?

10 DEFENDANT VILLAGRANA: Only if you were to accept  
11 it, your Honor.

12 THE COURT: Okay. Do you understand that if I'm  
13 not -- if I do not accept it, you would withdraw your plea?

14 DEFENDANT VILLAGRANA: Yes, your Honor.

15 THE COURT: However, you understand that the  
16 ultimate decision will be up to me and no one else?

17 DEFENDANT VILLAGRANA: Yes, your Honor.

18 THE COURT: Has anyone made any statements to get  
19 you to enter this plea that you haven't told me about?

20 DEFENDANT VILLAGRANA: No, your Honor.

21 THE COURT: In light of all my questions and your  
22 answers, do you still wish to go forward?

23 DEFENDANT VILLAGRANA: Yes, your Honor.

24 THE COURT: Are you a veteran in the United States

1 Armed Forces?

2 DEFENDANT VILLAGRANA: No, your Honor.

3 THE COURT: Are you entering this plea of your own  
4 free will?

5 DEFENDANT VILLAGRANA: Yes, my own free will.

6 THE COURT: Now, with regard to paragraph seven in  
7 the guilty plea memorandum, there were additional changes  
8 made to that paragraph while we were in recess. Did you see  
9 those changes?

10 DEFENDANT VILLAGRANA: Yes.

11 THE COURT: And did you initial those changes as  
12 well?

13 DEFENDANT VILLAGRANA: Yes, your Honor.

14 THE COURT: And do you wish this guilty plea  
15 memorandum, as it has been changed, with the handwriting and  
16 your initials, to be controlling in this matter?

17 DEFENDANT VILLAGRANA: Yes, your Honor.

18 THE COURT: Okay. With all of these things in  
19 mind, do you still wish your plea to stand?

20 DEFENDANT VILLAGRANA: Yes.

21 THE COURT: And how do you plead to count one?

22 DEFENDANT VILLAGRANA: Guilty, your Honor.

23 THE COURT: How do you plead to count two?

24 DEFENDANT VILLAGRANA: Guilty, your Honor.

1           THE COURT: Court finds that your pleas are  
2 voluntary, that you fully understand the nature of the  
3 offenses charged and the consequences of your plea.  
4 Therefore, I will accept your pleas of guilt and will set a  
5 date for sentencing.

6           MR. CHESHNOFF: Thank you, your Honor.

7           DEFENDANT VILLAGRANA: Thank you, your Honor.

8           THE COURT: How long do you think this sentencing  
9 will take?

10          MR. HALL: Probably an hour. Well, actually it  
11 should be pretty quick.

12          THE COURT: Okay, we're looking at September 4th at  
13 4:00 p.m. Counsel, can you make those times?

14          MR. STEGE: Yes, your Honor.

15          MR. CHESHNOFF: We'll be here, your Honor.

16          THE COURT: Okay. Mr. Villagrana, the court clerk  
17 has a packet of information for you that gives you directions  
18 on what you have to do with the division of parole and  
19 probation. You'll have to meet with them, they will be  
20 makinging a recommendation to me about sentencing, and your  
21 attorneys stay in touch with them during the course of this  
22 process.

23               Do you understand that you have to return to court  
24 on the date and time we've given you?



1 DEFENDANT VILLAGRANA: Yes, your Honor.

2 THE COURT: Anything further with regard to  
3 Mr. Villagrana?

4 MR. STEGE: No, your Honor.

5 MR. CHESHNOFF: His present conditions of release  
6 will remain in effect then, your Honor?

7 THE COURT: They will remain in effect.

8 MR. CHESHNOFF: Thank you.

9 THE COURT: Okay.

10 MR. SCHONFELD: Thank you, your Honor.

11 THE COURT: Okay, Mr. Houston -- counsel, you can  
12 be seated for just a minute. Mr. Houston, I think there are  
13 a few more -- a little bit more information with regard to  
14 the jury questionnaires.

15 MR. HOUSTON: Yes, your Honor.

16 THE COURT: That the clerk is preparing for you.  
17 So we should go through that before we bring the jury up and  
18 proceed with the rest of the case.

19 MR. HOUSTON: Thank you, your Honor.

20 THE COURT: Okay, so we'll see you in chambers in a  
21 few minutes. Court is in recess.

22 (Proceedings concluded.)

23 --o0o--

24

1 STATE OF NEVADA, )

2 )

3 COUNTY OF LYON. )

4

5

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

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

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

16 Dated at Fernley, Nevada, this 6th day of August, 2013.

17

18

19 /s/ Marcia L. Ferrell\_\_\_\_\_

20 Marcia L. Ferrell, CSR #797

21

22

23

24

47

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,

vs.

ERNESTO MANUEL GONZALEZ,

Defendant.

Case No. CR11-1718B

Dept. No. 4

TRANSCRIPT OF PROCEEDINGS

JURY TRIAL

MORNING SESSION

WEDNESDAY, JULY 24, 2013

RENO, NEVADA

COPY

Reported By: BECKY VAN AUKEN, CCR No. 418

## APPEARANCES:

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I N D E X

WITNESSES:	DIRECT	CROSS
NANCY OWENS	34	--
BILL PRICHARD	36	125

<u>EXHIBITS:</u>	<u>MARKED:</u>	<u>ADMITTED:</u>
142	--	35
1	--	41
1A	53	53
151	--	54
130	--	67
1B	81	81

1 RENO, NEVADA, WEDNESDAY, JULY 24, 2013, 7:30 A.M.

2 -o0o-

3  
4  
5  
6 THE COURT: Are we ready, counsel?

7 MR. HOUSTON: Yes, Your Honor.

8 MR. HALL: State's ready.

9 THE COURT: Is the jury all here?

10 THE BAILIFF: Yes, they are, Your Honor.

11 THE COURT: Please bring the jury in.

12 We expect the lawyers to stand for jury, but the  
13 audience does not have to. You may be seated. We'd  
14 rather have less confusion.

15 Counsel, will you stipulate to the presence of  
16 the jury?

17 MR. STEGE: Yes, Your Honor.

18 MR. HOUSTON: Yes, Your Honor.

19 THE COURT: Thank you. Please be seated.

20 Good morning, ladies and gentlemen of the jury.  
21 Bright and early here together. As I told you yesterday  
22 before you left, you would now hear the opening statements  
23 of the defense. So we will now proceed with that process.

24 MR. HOUSTON: Thank you, Your Honor.

1 THE COURT: You're welcome, Mr. Houston.

2 MR. HOUSTON: Good morning, ladies and gentlemen.  
3 I'm David Houston. I had the chance to meet you en masse.  
4 As you know, I am the attorney, along with Mr. Lyon,  
5 representing Ernesto Gonzalez, and I wanted to start the  
6 opening statement just with some information about why we  
7 do an opening and what we hope to accomplish, because I  
8 think, if I do that, you'll get a much better  
9 understanding of where I'm going and why I'm doing what  
10 I'm doing.

11 We do an opening statement in large because when  
12 we have witnesses that testify, witnesses each know a  
13 portion of what happened. So, of course, one witness  
14 can't come in with what we like to call the entire  
15 picture. As a consequence, if I alert you in advance to  
16 what we expect the evidence to prove -- and I want to put  
17 a proviso with that: Everything I'm going to tell you is  
18 what we expect the evidence to show.

19 And I say that because, as a lawyer, I don't  
20 provide you with evidence. Evidence comes in primarily in  
21 one way. It will come in from people who will raise their  
22 right hand, get on the witness stand, and they'll swear to  
23 tell you the truth.

24 When they do that, I'm going to ask you to listen



1 to what they say, to analyze what they say very carefully  
2 based not only upon what each of us has told you in this  
3 opening statement but based upon what you see as well.  
4 Because this is one of those cases where we are fortunate.  
5 We have security video footage, and we have quite a bit of  
6 it. And you saw some of it yesterday, and I'll discuss  
7 some of that with you today as well. But this is truly a  
8 case of believe what you see, not what you're told.

9         Once we have that opportunity to have the  
10 witnesses presenting these bits and pieces of the picture,  
11 one thing is going to become apparent. And this, as some  
12 cases may be, is not what we call a "who done it." In  
13 other words, the defense is not coming to you saying,  
14 well, the prosecutor can't prove the fact that Ernesto  
15 Gonzalez fired a gun at Jeffrey Pettigrew. That's not the  
16 defense in this case.

17         As you may have been able to pick up through the  
18 time spent in voir dire and that special little  
19 questionnaire you filled out, the question in this case is  
20 going to be whether when Ernesto Gonzalez fired a gun at  
21 Jeffrey Pettigrew, he did so in order to prevent an  
22 individual by the name of Robert Wiggins -- and you'll see  
23 Mr. Wiggins up here on the board -- whether or not he  
24 actually did that for the purpose of preventing

1 Mr. Wiggins, this gentleman here, from sustaining serious  
2 injury or death.

3 So very simple. This is not a complex case. And  
4 it is not a case that's going to involve a great deal more  
5 than viewing the video, understanding what the facts of  
6 the case may be, and then in turn applying the law the  
7 Court will give you at the conclusion of this case to  
8 those facts.

9 I would also like to start off a bit by advising  
10 you a little about who Ernesto Gonzalez is. Ernesto  
11 Gonzalez, as he sits in court today, is a 55-year-old man.  
12 He's the father of two. He came from the country of  
13 Nicaragua at a very young age, achieved his citizenship,  
14 and joined the Navy.

15 MR. HALL: I'm going to object, Your Honor. This  
16 is not evidence.

17 MR. HOUSTON: Your Honor, it's what we expect the  
18 evidence to show.

19 THE COURT: If you have a witness who is going to  
20 testify to it.

21 MR. HOUSTON: Thank you, Your Honor.

22 When, again -- thank you for Mr. Hall. He's  
23 again reminded you that what I'm telling you I'm required  
24 to show you. Of course, that is my obligation.

1           Once Mr. Gonzalez gets out of the Navy, he gets a  
2 job. He works that job for a period of time until he's  
3 able to buy the business. He decides he wants to relocate  
4 his family to the state of Hawaii and actually branch out.

5           He goes to the State of Hawaii and opens his  
6 business, a second branch, there. He meets individuals in  
7 the state of Hawaii that also share a passion for  
8 motorcycles and riding motorcycles, and he joins the  
9 Vagos. He finds them to be the type of folks that he  
10 actually enjoyed being with, the barbecues, social  
11 camaraderie, and the things that you can imagine come from  
12 fraternal organizations. You'll also hear testimony in  
13 this case that this is a group that includes doctors,  
14 lawyers, accountants. And, of course, as in every group,  
15 you will have certain individuals that perhaps are not the  
16 type of people you would definitely like as your best  
17 friends.

18           But one thing will become clear throughout this  
19 case. This is the State of Nevada vs. Ernesto Gonzalez.  
20 You're going to hear talk of other people, you're going to  
21 hear talk of groups, you're going to hear talk of what  
22 other people may have done, and you're going to have a  
23 chance to weigh that against the facts as to whether or  
24 not Ernesto Gonzalez was truly involved in what the

1 prosecution will insist was some sort of plan, whether  
2 there was a plan, and in fact whether or not Ernesto  
3 Gonzalez was even involved.

4 Ladies and gentlemen, you saw a great deal of  
5 video yesterday, and I'd like to show you some of that  
6 video because I think the video truly is a situation where  
7 one picture does speak a thousand words. And if it will  
8 save me the opportunity of having to say the thousand  
9 words, then I think it's a benefit to both of us.

10 I want to show you the video as it concerns the  
11 collection of individuals, I believe we called it, at the  
12 Oyster Bar early on in the evening.

13 There's a reason this is important. And the  
14 reason it's important is because, as this case progresses,  
15 you will learn that this entire episode is a result of the  
16 efforts of one man. That one man is the name of Gary  
17 Rudnick. And the State is going to call Mr. Rudnick to  
18 testify for you.

19 Now, you had a chance yesterday to see  
20 Mr. Rudnick on the film. He's also called Jabbers. He's  
21 this individual right here.

22 You will learn through the testimony that  
23 Mr. Rudnick for whatever reason bore a great deal of  
24 animosity towards the Hells Angels.

1           What we do know -- and we know this from the  
2 video yesterday and from the discussions of the  
3 prosecutor -- is that Mr. Rudnick, the individual who  
4 continually attempted to aggravate Mr. Pettigrew, was  
5 doing it on his own. Not only was he doing it on his own,  
6 but, as you learned yesterday, a good many Vagos were in  
7 there with Mr. Rudnick exchanging handshakes, exchanging  
8 drinks, laughing with one another, until Mr. Rudnick  
9 decided he was going to make a point.

10           The individual right here, you will come to meet  
11 him on the witness stand as well. This individual played  
12 the role of the peacemaker because of Mr. Rudnick's  
13 activity.

14           What happened, the evidence will show, is  
15 Mr. Rudnick proceeded into the Oyster Bar where he met  
16 Mr. Pettigrew. Did not know him in advance. Here's  
17 Mr. Rudnick. And I know it's kind of hard sometimes to  
18 distinguish the folks, but Mr. Rudnick is right here.

19           And you will see that Mr. Rudnick goes in and  
20 meets Mr. Pettigrew. Mr. Pettigrew, as he does with  
21 virtually everyone he's meeting, pats them on the back.  
22 Mr. Rudnick felt this is a great sign of disrespect to me.  
23 I want an apology. And Mr. Rudnick continued to confront  
24 Mr. Pettigrew about the fact that Mr. Pettigrew had

1 somehow dishonored him. And, of course, if you can see,  
2 Mr. Rudnick again pats others on the back but felt because  
3 he touched my cut, my jacket, my patch, that constituted  
4 the type of disrespect that now warranted a personal  
5 apology.

6 You'll learn from the evidence in this case that,  
7 quite frankly, that was an excuse. You'll learn from the  
8 evidence in this case how Mr. Rudnick spoke to others  
9 about the fact that he wanted to get, quote, another  
10 souvenir. Mr. Rudnick had prided himself on having a  
11 Hells Angels baseball cap nailed up in his garage that he  
12 was able to take from some other Hells Angel in the past.  
13 And you will learn each time that he brought that up to a  
14 member that he spoke with, that member will tell you we  
15 told him to knock it off, we're not here for that,  
16 everybody just wants to have a good time.

17 You will hear the evidence that the San Jose  
18 Vagos and the San Jose Hells Angels never had a problem  
19 with one another. They coexisted peacefully. Remember,  
20 Mr. Rudnick was from a charter that we call the Vagos of  
21 Los Angeles, and he occupied the vice presidency of that  
22 charter.

23 You'll see Mr. Cancelli here -- or, excuse me,  
24 the individual here who has actually soothed things over

1 repeatedly, and he soothed them over repeatedly because of  
2 Mr. Rudnick's continued action with Mr. Pettigrew  
3 continuing to start trouble time and time again.

4 You're going to hear from the evidence in this  
5 case how that individual soothed it over as many times as  
6 he could, and finally a telephone call is made upstairs  
7 where they're involved in other meetings concerning club  
8 business. The national leaders are asked to come down and  
9 to speak to Mr. Pettigrew because they understand the  
10 problems that Mr. Rudnick have created.

11 So now we have the Vagos who were on the floor  
12 attempting to keep things calm and attempting to offset  
13 what Mr. Rudnick is doing. Then we have the national  
14 leaders coming down, again, to meet with Mr. Pettigrew to  
15 assure him there is no problem, we're all here to get  
16 along, let's take the tension out of the air.

17 You're going to see the video where in fact the  
18 national leaders come downstairs. They have an  
19 opportunity to meet with Mr. Pettigrew. And you'll  
20 understand these people have known each other for years.  
21 We're not talking younger men; we're talking men in their  
22 late forties and early fifties that have managed to  
23 coexist peacefully together for quite some time.

24 Now, that's not to say that throughout the course

1 of this trial you're not going to hear information of  
2 isolated instances where there have been problems, but you  
3 will come to understand those were problems between  
4 individuals, not problems between groups or clubs or  
5 organizations.

6 You will understand out of the vast many Hells  
7 Angels and the numbers of Vagos throughout the country,  
8 the amount of incidents that you will hear of are truly  
9 infinitesimal. And it doesn't represent, as you will come  
10 to learn, any philosophy, organized hostility, or rivalry  
11 between these groups.

12 Now, interestingly, the night of September 23rd  
13 this occurs. The story that you will hear, as I  
14 understand Mr. Rudnick's version, there was an  
15 8:00 o'clock meeting upstairs. It was not -- excuse me,  
16 it was not a meeting for officers only; it was a general  
17 organizational meeting to discuss what are we going to do,  
18 what's the social itinerary, where are the people going to  
19 be. There were also other meetings to occur after that  
20 for different reasons involving different people,  
21 prospects. Those are people who want to join the club,  
22 things of that nature.

23 However, Mr. Rudnick will tell you after the  
24 original 8:00 o'clock meeting the San Jose charter in



1 their totality meets with the national leaders, not in the  
2 room, not anywhere secure, but outside in a hallway.

3 The San Jose group, which included Mr. Gonzalez,  
4 according to Mr. Rudnick, meets with an individual who's  
5 referred to as Pastor Palafox and an individual also known  
6 as Albert Perez. They're the leaders, according to  
7 Mr. Rudnick. Mr. Rudnick claims that the San Jose charter  
8 was up in arms and they wanted something done. Again,  
9 Mr. Rudnick, of course, is from Los Angeles.

10 Regardless, according to Mr. Rudnick, they  
11 claimed they want something done, they're disrespecting  
12 us, they're treating us like, quote, bitches. As a  
13 consequence, something has to be done so that we can  
14 garner our respect. How dare they be in our hotel.

15 You're also going to learn that the Hells Angels  
16 have been staying in that hotel for upwards of 15 years.  
17 The Vagos had stayed in that hotel. Every Street  
18 Vibrations event they mixed together and there were no  
19 problems. The difference in this Street Vibrations event,  
20 as you will come to see from the evidence, was Gary  
21 Rudnick and Gary Rudnick's attitude and Gary Rudnick's  
22 desire.

23 So when the evidence will demonstrate to you this  
24 was the actions of one man, not a concerted action or plan

1 of others, you will have an opportunity to then review the  
2 law as it concerns what you do in that situation.

3 When Mr. Rudnick says there's this meeting, he  
4 claims that Mr. Gonzalez steps out of nowhere and says, "I  
5 will be the one to do the shooting." Mr. Rudnick will  
6 tell you that Mr. Gonzalez did so because he was  
7 personally offended and affronted the San Jose Hells  
8 Angels were stopping his expansion, meaning Mr. Gonzalez's  
9 desire to open other charters in San Jose and Santa Cruz.

10 And I want you to consider something very  
11 important when it comes to that. You're also going to  
12 hear about an investigation that was going on in the state  
13 of California as it concerned the Vagos. They called it  
14 Operation Simple Green. During the course of Operation  
15 Simple Green, they monitored over 100,000 telephone calls  
16 over a period of a year. During the course of monitoring  
17 those phone calls, you're going to learn that  
18 Mr. Gonzalez's name was mentioned three times. Three  
19 times. Out of over 100,000.

20 Do you know what the mention was about? The  
21 evidence will tell you the mention was about  
22 Mr. Gonzalez's efforts to start a Vagos charter in his  
23 homeland of Nicaragua where he could get patches in  
24 Spanish, where he could get literature published in

1 Spanish.

2 It will also show you that, of the 100,000 phone  
3 calls, Mr. Gonzalez was actually on three of them  
4 personally. Of those three telephone calls, again, all  
5 that was discussed was his desire to start his charter,  
6 how he could do it. Because, you have to remember, to  
7 start the charter, you have to get the permission of the  
8 folks here in reference to the ability to go ahead and do  
9 it, Pastor Palafox and Albert Perez.

10 Not surprisingly, according to the defense in  
11 this case, there's not one mention by Mr. Gonzalez to  
12 anyone about, hey, I'm having a lot of trouble with these  
13 San Jose Hells Angels and it's time we did something about  
14 it. And the reason, you will discover, is because it was  
15 complete fabrication.

16 Mr. Rudnick will tell you that Mr. Gonzalez at  
17 this point, without even knowing Jeffrey Pettigrew,  
18 decides he's going to step forward and he is going to  
19 commit a crime on videotape in front of hundreds of  
20 witnesses in the Nugget downstairs.

21 And you'll have a chance to evaluate whether or  
22 not that sort of plan or idea makes even the slightest bit  
23 of sense. But if you still have a question, you'll have a  
24 chance to watch Mr. Gonzalez on the video. If

1 Mr. Gonzalez is this supposed assassin, watch where he is.  
2 Watch where he actually stands. Watch what he does. And  
3 you will see, if he had that desire, Mr. Gonzalez most  
4 certainly could have stood next to Mr. Rudnick when  
5 Mr. Rudnick stops Mr. Pettigrew as Mr. Pettigrew walks by.  
6 But he doesn't.

7 You will see on the video, and you saw it  
8 yesterday and we'll point it out when we have a chance to  
9 do examination, Mr. Gonzalez is at the tail end of a group  
10 of Vagos. He's at the tail end of the group of Vagos not  
11 talking to anyone. When you do see him talk to anyone, he  
12 is shaking hands and smiling.

13 You will see that Mr. Gonzalez, when he stands at  
14 the tail end of everybody, looks over and notices, notices  
15 that Mr. Rudnick has stopped Mr. Pettigrew in his literal  
16 tracks. You will see how the Vagos were told to get off  
17 the path, to let the guys through, to let the HAs walk by.

18 When Mr. Gonzalez sees there's something coming  
19 up, he looks like this on the video. He sees it  
20 happening, he turns and walks away. He turns and walks  
21 away, as you will learn, because at the age of 55 he  
22 really doesn't think it appropriate that he be involved in  
23 any kind of problem.

24 What he did know was that Mr. Rudnick had ranted

1 and raved all night long. He wanted a problem. He got  
2 it. He wanted the problem so badly that, despite the fact  
3 everyone had calmed it down, everyone had appeased the  
4 situation, everyone had agreed to take the tension out of  
5 the room that Rudnick caused, he wasn't going to let it  
6 go.

7 You'll see him lean over to a fellow called Diego  
8 Garcia, Boo Boo. Diego Garcia is told something by  
9 Mr. Rudnick that causes Diego Garcia to put on his gloves  
10 and stand there like this.

11 Watch the rest of the folks in the line that the  
12 State has told you represent a concentrated effort to  
13 create problems. One of them, not a San Jose charter  
14 member, is a fellow by the name of Greg Fearn. And  
15 Mr. Fearn, you will learn, is this individual here.

16 Mr. Fearn is standing in the group socializing.  
17 He's got his children with him. And, clearly, you will  
18 have a chance to ask yourselves, if Mr. Fearn was aware  
19 there was about to be some sort of a war, would he keep  
20 his girls there?

21 You'll have a chance to watch what happens to  
22 Mr. Fearn once this problem Mr. Rudnick creates gets  
23 started, and it gets started because of this: Are we  
24 okay? Are we okay?

1 Mr. Pettigrew, for whatever reason, had about had  
2 enough of Mr. Rudnick. Words are exchanged.  
3 Mr. Pettigrew punches Mr. Rudnick in the head, and chaos  
4 breaks out.

5 You will come to understand that Mr. Rudnick not  
6 only created the tension earlier but Mr. Rudnick now got  
7 what he wanted. He wanted a dispute, he wanted the  
8 problem, because he, Mr. Rudnick, felt disrespected. He,  
9 as you will learn, was a drunk, out of control, that  
10 nobody could seem to muzzle that night.

11 The consequence of his actions are this: Two  
12 Vagos were shot, several others were hurt, one on video  
13 was pistol whipped, and Mr. Pettigrew lost his life.

14 We view the video -- and you'll have a chance to  
15 analyze this -- almost as two separate incidents. When  
16 Mr. Rudnick is punched in the head, Mr. Rudnick of course  
17 adopts a "fight at a later date" routine and takes off  
18 running.

19 Mr. Rudnick starts it or, as we have heard the  
20 phrase, kicks it off. Mr. Rudnick then disappears back  
21 into the crowd and allows somebody else like Mr. Fearn,  
22 who didn't know anything about it, to get pistol whipped  
23 and one of the other guys to get shot in the stomach.

24 You'll see that Mr. Rudnick disappears, but

1 Mr. Rudnick's not done. He then goes up by the bathroom,  
2 and Mr. Rudnick is integral in an attack on another Hells  
3 Angel. But it's not over there. Mr. Rudnick leaves that  
4 group. And you'll see a very good video demonstration of  
5 who Mr. Rudnick is when he will tell you by way of his  
6 prior interview, oh, hey, I just got pushed into that  
7 fight. You're going to have a chance to see the video  
8 where Mr. Rudnick rushes into the fight and when  
9 somebody's down on the ground, starts trying to kick them.

10 But he does have one point, one major point  
11 that's important for you to look at in that section of  
12 video. Mr. Rudnick is seen trying to rip the jacket off a  
13 Hells Angel who's on the ground. And why is that  
14 important? Because -- I want you to remember back to what  
15 I said a while ago -- Mr. Rudnick was coming up here to  
16 get another souvenir. That was going to be his other  
17 souvenir. Unfortunately somebody beat him to it. And as  
18 soon as Mr. Rudnick's not able to get this jacket, you'll  
19 see him again disappear off the frame.

20 The police then come in at that point, and they  
21 put everybody on the ground except for Mr. Rudnick,  
22 because Mr. Rudnick, as he has been known to do throughout  
23 this evening, disappears to avoid the responsibility for  
24 what he has created.

1           What happens at that point again in some ways is  
2 captured on video, and we're going to call it the second  
3 incident. You'll see Mr. Gonzalez, once the fight starts  
4 and Mr. Gonzalez has distanced himself, literally walking  
5 backwards. He's standing on the wood floor with the bar  
6 on one side and the wall to the disco on the other, and  
7 he's watching. You'll see Mr. Villagrana approach him and  
8 do something like that (indicating). Mr. Gonzalez does  
9 not make a move. He does not produce a firearm and start  
10 to shoot.

11           Understand this is after Mr. Pettigrew and  
12 Mr. Villagrana have already produced weapons and they are  
13 shooting people. Mr. Gonzalez, the supposed assassin who  
14 forgot his regular glasses and had to wear his sunglasses,  
15 doesn't pull a firearm. He backs away from  
16 Mr. Villagrana. He continues to watch what is happening.  
17 He is seeing people shot, he is seeing people get hurt, he  
18 is seeing people get pistol whipped, and he runs away.  
19 You'll see.

20           Mr. Gonzalez will tell you that he kept hearing  
21 "They're killing them, they're killing them," and he could  
22 hear the gunfire.

23           Mr. Gonzalez stepped into the disco.  
24 Mr. Gonzalez retrieved a firearm. Mr. Gonzalez runs