

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.

APPELLANT'S APPENDIX, VOLUME XIX

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

**Second Judicial District
State of Nevada**

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1 Exhibit 161 marked.

2 (Marked Exhibit No. 161.)

3 DIRECT EXAMINATION

4 BY MR. HALL:

5 Q. Sir, would you state your name and spell your last
6 name?

7 A. Eric Bennett, B-e-n-n-e-t-t.

8 Q. And what is your occupation, sir?

9 A. I'm a detective with the San Bernardino Police
10 Department.

11 Q. And how long have you been so employed?

12 A. With San Bernardino Police Department a little over
13 11 years, total 13 years.

14 Q. What is your current assignment?

15 A. I'm currently assigned to the uniform patrol
16 division.

17 Q. And prior to that had you ever been -- why don't you
18 just tell us a little bit about your career in general.

19 A. Spent the first five years on patrol, I went to a
20 kind of a special enforcement team in uniform, where we
21 targeted high crime areas, primarily looked for narcotics,
22 guns, gangs. After that I went back to patrol as a training
23 officer, and then went to narcotics in 2008, and just got out
24 of narcotics two weeks ago.

4501

1 Q. All right, and were you ever part of the Inland
2 Crackdown Allied Task Force?

3 A. I spent four years on a major narcotics task force,
4 which was with the California Department of Justice, Bureau
5 of Investigation.

6 Q. All right, and can you tell us a little bit about
7 that?

8 A. Primary function, working there, was major
9 narcotics. So we would target major Mexican drug trafficking
10 organizations, moving anywhere from five kilograms of
11 cocaine, and conducted wiretap investigations, search
12 warrants, surveillance, and undercover operations.

13 Q. Did you ever get involved with the Vagos? An
14 investigation involving the Vagos?

15 A. I did. While working the narcotics investigation,
16 it took an interesting turn to the Vagos motorcycle gang.

17 Q. All right, and can you tell us a little bit about
18 that investigation into the Vagos?

19 A. Started in April of 2010. I was working a narcotics
20 investigation, where we had seized -- we had conducted -- in
21 California we can sell narcotics, provided that we don't let
22 them go. So we sell them for the money, and at that time we
23 had done a narcotics reverse where we seized 700 pounds of
24 marijuana and approximately \$900,000 in U.S. currency.

1 Continuing with that investigation, a gentleman
2 that was part of the Vagos asked us for 40 kilograms of
3 cocaine. Again, in California we can accommodate those
4 requests, so I wrote an order to be able to sell a portion of
5 cocaine, or some cocaine, to him. And we had given him a
6 sample of cocaine, and in return he had given us a sample of
7 some white heroin.

8 During that time there was a meeting at a Denny's
9 restaurant that we had learned through some confidential
10 sources where a murder for hire or a solicitation for murder
11 had occurred. So at that point we wrote an emergency wire to
12 attempt to investigate that solicitation for murder.

13 When we started intercepting telephone calls, we
14 learned quickly that the guy that was bragging about being a
15 member of the Vagos, was really a member of the Vagos. He
16 was talking to people throughout Southern California. And at
17 that point we just moved our investigation towards the Vagos
18 motorcycle gang, and kind of dropped the narcotics side of
19 it. And the wiretap orders we write for 30 day periods.
20 During that 30 days we didn't get any additional criminal
21 activity reference the murder, so we had to drop that murder
22 for hire wire, and do a gang wire.

23 Q. All right, and during the gang wire, how long was
24 that up?

1 A. We were up for a total of 12 months.

2 Q. All right, so you were intercepting phone calls
3 during that 12 month period?

4 A. We did.

5 Q. All right, and did you target certain individuals to
6 listen to their phone calls?

7 A. Well, we targeted 12 individuals over the course of
8 the 12 months.

9 Q. Who was that?

10 A. The first one was Mario Ayall, which was a sergeant
11 at arms for the Berdoo chapter. We targeted Charlie Vaden
12 out of Riverside. Bob LaGuardia, who was a Nomad who was
13 prior to with Riverside. John Siemer, they called him Rocky.
14 Pastor Palafox, who is the international president. We
15 targeted Javier Rodriguez, Thomas Gibson. I think that might
16 be it. John Siemer had two phones that we wrote for, and
17 Thomas Gibson did, too.

18 Q. All right, and so you have those wires up for you.
19 Did you become familiar with the Vagos organization and other
20 people that -- other people associated with the Vagos?

21 A. I did, I became very familiar not only with wire
22 taps, but talking about officers that had done
23 investigations, and through training and those kinds of
24 things, I became very familiar with them.

1 Q. All right. And had you been to seminars and share
2 information with other law enforcement agencies and law
3 enforcement agents regarding Vagos and outlaw motorcycle
4 gangs?

5 A. I was a member of three organizations, and all three
6 of them there were monthly meetings where we did sharing of
7 information, basically networking. One was a local Southern
8 California association. The other one was a tristate which
9 covered California, Arizona, Nevada and Utah.

10 And we would share information, referenced all
11 motorcycle gangs. It wasn't just the Vagos in particular, it
12 was all of them. And then I was involved in an international
13 group as well.

14 Q. How many Vagos do you think they are nationwide?

15 A. I estimate worldwide it would be probably around a
16 thousand. I know there's probably 500 or so down in Mexico,
17 and then we have numerous members throughout the country, and
18 they've started up in Switzerland and Germany.

19 Q. Now, is it one of the goals or purposes of the Vagos
20 to expand? Or do you know?

21 A. Sure. That's part of their operation is to kind of
22 open their ability to be able to funnel criminal activity,
23 money, narcotics, gun trafficking, all the different crimes
24 that I've investigated personally.

1 Q. All right, can you tell us about some of the
2 characteristics of typical Vago members?

3 A. The first big thing with the Vagos is their cuts.
4 And when I say cut, I'm referring to their either denim or
5 leather jacket. Primarily you'll see them with the dark blue
6 denim.

7 Q. All right, and you're familiar with what the little
8 Lokis mean?

9 A. I'm familiar with there is seven. You don't see
10 many people wearing seven, but there's a -- one guy at least
11 that does.

12 Q. So are there some colors, or do the colors have any
13 particular significance?

14 A. Yes, every -- every Loki has a significance.
15 They're not -- and the Loki being -- if you look at the
16 leather jacket, the one in the middle that's facing you guys,
17 the little Loki diamond on front, is what I'm referring to.

18 MR. LYON: Your Honor, can we get a description? I
19 think there's three jackets up there. The identity --

20 THE COURT: Okay, the leather in the middle is what
21 he was talking about.

22 MR. LYON: The identity of the owner of the cut?

23 MR. HALL: Yeah, this one belongs to Ernesto
24 Gonzalez.

1 MR. LYON: Is that the one he was referring to?

2 MR. HALL: Yes.

3 THE WITNESS: Yes, sir.

4 Okay? The red one is for some sort of fight for
5 the club. It can be given in any different way, but normally
6 it's for fighting. There's a white one, it will be on the
7 similar green background, and the Loki head is actually
8 white, and that's for opening up new territory. For
9 instance, they've opened up Nicaragua being one, New York, a
10 lot of areas back east where they've opened up new
11 territories. So that's one.

12 There's a dark emerald green, and that one is for
13 kind of doing high service for the club. The guy that wears
14 it actually did a murder for the club, and he had spent 20
15 years on -- in prison up in Idaho. And that's -- he's the
16 one that wears all seven.

17 There's a gold and silver one which is for being a
18 national officer. There's a light green one, I can't
19 remember exactly what the light green one is. I have my
20 notes, if I could refer to that.

21 THE COURT: Do you have them with you?

22 THE WITNESS: I do.

23 BY MR. HALL:

24 Q. Would that refresh your recollection?

1 A. Yes, sir.

2 MR. HOUSTON: Do we have a copy?

3 BY MR. HALL.

4 Q. I think we already have a copy of the -- wasn't the
5 information provided regarding the meaning of the different
6 Lokis provided in a report?

7 A. I have turned it over in an email, and I'm sure it's
8 in a report.

9 Q. Okay.

10 A. The light green one is for being injured in the
11 club.

12 Q. Okay. And you mentioned the black with red outline?

13 A. I do not think I did. That one is for donating -- I
14 believe that one is for donating \$2500 or a bike to a member.

15 Q. All right. And we've talked about, during the
16 course of the trial we've talked about the hierarchy, the
17 president, the vice-president, the sergeant of arms,
18 security, so on and so forth, so I think we can kind of skip
19 over that part. What I would like to do is talk a little bit
20 about communication, how these clubs communicate, and with
21 relation to protecting themselves from law enforcement
22 infiltration. Can you address that subject?

23 A. Monitoring the 12 telephones, monitoring the actual
24 intercepted live telephone calls, you get a pretty good idea

1 of how they function, and how they operate. They're pretty
2 smart about being on the phone, they don't like to talk too
3 much about criminal activity. If we hear that maybe an
4 incident occurred in -- we'll say Lake County, California,
5 we'll hear of some sort of fight where one was beat up.
6 You'll hear it on the phone that somebody got beat up, and
7 what they do is they'll hold special meetings, they'll call a
8 meeting. They used a Denny's restaurant at the 210 freeway
9 in a little city called Irwindale, and they would use that a
10 lot for meetings, it was kind of a central location.

11 So something would happen, they would all jump on
12 the phone, hey, we need to meet at Denny's at 6 o'clock. So
13 we would never get what that meeting was about, we could only
14 reference that we had prior knowledge that there was somebody
15 that was hurt. So they communicated a lot on phone, text
16 messages was a big thing. We monitored some text messages on
17 some of the phones, and we also monitored some emails through
18 search warrants and that stuff.

19 Q. Now, why was there this investigation? Why were you
20 listening in on these phone calls and investigating the
21 Vagos?

22 A. Primarily for criminal activity. We knew that they
23 were involved in narcotics trafficking, firearms trafficking.
24 We knew that there was a big issue with the Hells Angels. In

1 between, we wrote three state wires and ultimately went
2 through to a federal wire. And in between the time where we
3 were on a state wire to the time we started our federal wire,
4 a Vago member was killed. We knew that that was going to
5 pose some problems, so we were monitoring phone calls to --
6 to catch some of that -- be able to catch some of that
7 criminal activity. Be able to intercept it, as well as be
8 able to charge it later.

9 Q. Now, what evidence do you have that there's a
10 rivalry between the Hells Angels and the Vagos?

11 A. Since we've been -- or since I've been investigating
12 them starting in 2010, there was numerous incidents through
13 the time that we monitored telephones, and even when we were
14 not monitoring telephones, that there were incidents
15 involving the two clubs. All the way through to today.

16 Q. All right, and can you give us an example of some of
17 those?

18 A. Memorial Day weekend of 2010 there was a fight in a
19 little city called Oildale, which is in Kern county near
20 Bakersfield. A Vago member was stabbed to death, or a Vago
21 prospect, excuse me, was stabbed to death and another Vago
22 member was hurt.

23 In September 4th, 2010, there was -- I'm sorry,
24 I'll go back a little bit. In June or July of 2010 there was

1 a shoot-out in Chino Valley, Arizona. September, there were
2 two incidents. One in Lake County, and one in Williams,
3 Arizona.

4 In -- I'm sorry, September 4th was Hollister, I'm
5 sorry, I'm trying to remember these dates. September 4 was
6 in Hollister, there was a bar fight between the Hells Angels
7 and Vagos. September 5th, Andy Lozano, which at the time was
8 a national sergeant at arms, was surrounded by some Hells
9 Angels in a little city called Williams, Arizona. We
10 intercepted some telephone calls with that that indicated
11 that he did have three firearms and some ammunition.

12 And then in April of 2011 was the Lake County
13 incident, where a Vago was beat up in a casino. And he was
14 actually beat up twice on different occasions. And
15 ultimately culminated in why we're here today.

16 Q. Now, did you ever intercept any conversations from
17 Rocky Siemer, where he indicated that some HAS needed to be
18 beat down?

19 A. It was immediately following the April 2011
20 incident. John Siemer and Pastor Palafox, which he's
21 referred to as Tata, he's the international president, so
22 he's one of the -- the head guys of the Vagos. There was a
23 telephone call between them that indicated Rocky had said
24 that they needed to beat some up down here, referring to

1 Southern California.

2 Q. All right. Now, did you have an opportunity to
3 interview Gary Rudnick?

4 A. I did.

5 Q. And how did that come about?

6 A. Once the -- once his arrest warrant was issued up
7 here, he lived down in Southern California, and we were
8 informed that the warrant was for him, that we had an arrest
9 warrant, and we went out and arrested him. And sat down and
10 talked with him, see if he wanted to talk about the club.
11 And we were contacted later, after the extradition to Nevada,
12 that he did want to meet with us.

13 Q. All right, did you make him any promises before that
14 interview which took place on or about January 5th, 2012?

15 A. No. No promises.

16 Q. Were you aware of any promises made to him by
17 anybody else?

18 A. No.

19 Q. By me?

20 A. No.

21 Q. Did you talk about the case at the Nugget when you
22 interviewed Mr. Rudnick on January 5th?

23 A. No. I was specifically instructed to not discuss
24 anything to do with Nevada, so my -- when I was talking with

1 him and interviewing him was just about California issues
2 that we were having.

3 Q. All right, and so what types of issues were you
4 discussing with Mr. Rudnick?

5 A. We started out discussing how he had gotten into the
6 club. There's a lot of different ways that people become
7 members of the club, and I was interested in how he became a
8 member, and what drew him to the club. So we talked about
9 that for probably a couple of hours. How he got in the club,
10 how he changed chapters. The chapter he began with was a
11 clean and sober chapter, and how he moved to a little more
12 criminal type chapter, and ultimately ended up in Los
13 Angeles. So that was a good chunk of the interview.

14 Q. Do you know who his president was at the time of the
15 Nugget fight?

16 A. It was Bradley Campos, they call him Candyman.

17 Q. Candyman? Now, we had some testimony that Candyman
18 was the individual that approached this person that was at
19 the Nugget who was trying to videotape the Nugget incident,
20 and he grabbed the phone, took a photograph of that
21 individual's driver's license, deleted the video of the
22 Nugget incident. How would that benefit the Vago
23 organization?

24 A. All comes down to intimidation. They work in

1 numbers, and they work in trying to intimidate the general
2 public from calling the police. That's a big part of
3 their -- the way that they act. The way that they ride their
4 motorcycles in big groups. They do all those things to try
5 and intimidate people like yourself.

6 Q. And what role does respect play in the -- in this
7 incident at the Nugget?

8 A. Respect is -- there's respect between clubs. This
9 event was an event that was not only -- people didn't go to
10 that were just members of motorcycle gangs, it was regular
11 citizens that were at this event. And there is normally some
12 sort of agreement that says hey, we're going to stay over
13 here, you need to stay over there, so that way we don't have
14 any problems. Because we don't get along.

15 And that was part of the agreement. That agreement
16 ultimately was broken when the Hells Angels showed up to the
17 Nugget. So at that point it's a disrespect to the Vagos.
18 Kind of a slap in the face, you could say.

19 Q. Now, do members of the Vagos come and go?

20 A. Members? Oh, yes. Yes. Very regularly.

21 Q. But the club keeps going even though members come
22 and go?

23 A. Yes.

24 Q. Obviously they have a common identifying symbol,

1 correct?

2 A. They do, they have the -- it's a Loki, which is the
3 red devil looking guy in the middle.

4 Q. All right, can you talk a little bit about their
5 codes of conduct and criminal conduct?

6 A. The stuff that I've investigated during the course,
7 since April of 2010, had to do a lot with narcotics
8 trafficking and firearms trafficking. We did investigate
9 some robberies, extortion. We did investigate a rape. And
10 then we gave our help up here when needed on the murder.

11 Q. And now, that operation where you had the wire, that
12 was Operation Simple Green, is that correct?

13 A. Yes, it was.

14 Q. And were there arrests made during the course of
15 that, or at the end of that investigation?

16 A. We did make some arrests during, not directly
17 related to the wire, and then we made arrests after. And in
18 fact, we're still working on that. It was probably close to
19 50 people that were arrested, about 20 Vagos members.

20 Q. All right. And were those for felony crimes?

21 A. They were. All but two. Two were misdemeanor,
22 lower. Possessing steroid type cases.

23 Q. So do the Vagos commit crimes on a regular basis
24 when they get together, or what's your opinion on that? Is

1 that one of their common activities, engaging in activities
2 punishable as a felony?

3 A. They do engage in criminal activity. It's not all
4 the time. There's plenty of times where we watched them
5 where they didn't do anything, where they attended a bar and
6 went on a run and everybody got along and everybody left.
7 But there are those instance where, you know, they're moving
8 firearms, where they're trying to set up robberies on dope
9 dealers, where they're trying to extort motorcycles from
10 people. The rape at a bar. And narcotics trafficking.

11 Q. Do they carry concealed weapons?

12 A. In California we have a concealed weapons law, so
13 they wear -- they wear their kind of knives in a sheath on
14 the outside of their cuts. You'll see it a lot, sewn in the
15 bottom parts of their cut. You know, if you look at the cut
16 on the -- looking at from your guys' angle on the left. They
17 would do it on the -- on the outside, on that kind of that
18 bottom seam. Yeah. Down, down in there, they would sew on
19 like a bit of a sheath. And that gun -- not the gun, but the
20 knife would be on the outside, exposed. Because if it's
21 covered, in California, they know it's a possession of a
22 dangerous weapon concealed, chargeable as a felony, and
23 they'll go to jail.

24 THE COURT: Mr. Hall, is that Exhibit 76B that

1 we've admitted?

2 MR. HALL: That is indeed 76.

3 THE COURT: B.

4 MR. HALL: Thank you, your Honor, yes.

5 THE COURT: Okay, thank you.

6 BY MR. HALL:

7 Q. Do you want to take a drink?

8 A. No, good.

9 Q. Okay. All right, do members carry firearms?

10 A. During the course of our investigation we did
11 collect a significant amount of firearms. Upwards of about
12 260 various firearms.

13 Q. All right, is it legal to carry a weapon, a firearm,
14 concealed on your person in California?

15 A. No, it's not.

16 Q. Do you know if it's legal to do that here in Nevada?

17 A. I don't know if it is.

18 Q. Now, you're familiar with the facts and
19 circumstances of the case at the Nugget, is that true?

20 A. That's correct.

21 Q. All right, so you're familiar with what happened at
22 the Oyster Bar and the people involved at the initial
23 confrontation between the two groups?

24 A. Correct.

1 Q. All right. And do you have an opinion as to why
2 that occurred?

3 A. It starts with respect, and that respect was
4 violated by the Hells Angels. That respect was violated when
5 somebody, Mr. Pettigrew, placed his hand on Gary Rudnick's
6 cut. That was a sign of disrespect. And that kind of
7 elevated that tenseness that you can kind of see in the video
8 at the bar.

9 Q. Okay. And then did you see what happened down at
10 the Trader Dick's bar?

11 A. I did.

12 Q. All right. Now, if you just take into consideration
13 the defendant's activity, that would be Mr. Gonzalez, how
14 would his activity benefit the Vagos organization?

15 A. He, through the video, based on what I was watching,
16 it appeared that he was almost stalking Mr. Pettigrew. It
17 appeared that he didn't want to let him out of his sites.
18 And then as it all culminated near that Trader Dick's bar,
19 the Vagos are lined up on both sides, you can clearly see a
20 guy putting on gloves as if somebody is getting ready to
21 fight. You can clearly see somebody -- I don't want to say
22 shoo away, but ask -- and there's no disrespect to women, but
23 they call their Vagos, their women, Vagos old ladies, you can
24 see the women kind of moving as if something was going to

1 happen. So you can really feel that tension.

2 Kind of at the beginning of that you see a couple
3 of either members or hang-arounds of the Hells Angels walk by
4 freely. No confrontation at all. Mr. Pettigrew gets to Gary
5 Rudnick, and that's where that confrontation -- either
6 something was said or a hand was grabbed, something was said
7 there. And that's when -- you could almost see that that was
8 a target of theirs.

9 And once that initial punch was thrown, kind of all
10 hell broke loose. The bottles were seen thrown, and then you
11 see some guns pull out, and then you can see Mr. Gonzalez
12 kind of moving to the back of the bar, ensuring -- at least
13 from my vantage point, and what I was watching, that he
14 wanted to make sure that he knew where Mr. Pettigrew was.

15 And when that opportunity came to commit that
16 crime, he took it. And that shows, in the motorcycle
17 culture, that you're willing to stand up and take care of
18 business. If there's an issue between you and a rival club,
19 that you're willing to stand up and ultimately commit that
20 act of murder.

21 Q. In your opinion, was it significant that the primary
22 people involved in this fight were San Jose Hells Angels and
23 San Jose Vagos?

24 A. That's -- you get that tension when you're in the

1 same area, and they're -- you know, you have issues between
2 those clubs, and that just culminates when you put them into
3 a small space.

4 Q. Now, we've had several Vagos come in here and say
5 hey, we didn't have a problem, we like the Hells Angels. We
6 never had an issue. How would you address that testimony?

7 A. Anytime you're conducting a wiretap investigation,
8 whether it's narcotics trafficking or gang trafficking or
9 whatever you're investigating, people don't know that their
10 phones are being listened to. If they did, they obviously
11 wouldn't use their telephones.

12 You get a real sense of what they're doing and what
13 they're involved in. And those telephone calls are very --
14 they're very open about their hatred towards the Hells
15 Angels. They -- a lot of times they won't even refer to them
16 as the Hells Angels, they'll call them featherheads or
17 they'll always refer to them in different names, maybe even
18 just the red and white. But you always know who they're
19 talking about.

20 Q. Now, you intercepted a couple of calls that
21 Mr. Gonzalez had made to Pastor Palafox or Tata?

22 A. He did, he called Pastor Palafox and he called -- or
23 vice versa, a guy named John Juarez out of Missouri.

24 Q. All right, and the substance of those phone calls

1 didn't address any HA hatred or rivalry, did they?

2 A. No, they did not.

3 Q. Did it involve expansion of the Vago -- the Green
4 Nation?

5 A. It did, it involved the expansion into Nicaragua.

6 Q. Okay, and who is Quickie John?

7 A. He's a -- a long time member, originally from the
8 Norco area in Southern California. He's moved around a lot
9 for expansion. He moved to Hawaii and got Hawaii started,
10 and then he moved out to Missouri when they opened up the
11 chapters in Missouri.

12 Q. Who makes all these patches that they wear?

13 A. Well, Quickie was making some of them out in
14 Missouri. But there's -- they use a company out in the LA
15 area, and all of that goes through a guy named Bob LaGuardia,
16 who owns a motorcycle shop in Diamond Bar.

17 Q. You know, when you mention those Vago arrests at the
18 culmination of Simple Green, those weren't all from one
19 chapter, were they?

20 A. No.

21 Q. How many different chapters were members involved?

22 A. You had some Nomad members, you had a member from
23 back east, you had Felony Flats, you had Inland Empire
24 chapter, you had an L.A. chapter. I think that was about it.

1 Q. Now, we talked about how the activities of taking
2 out Pettigrew would be -- would benefit the club. Would
3 Mr. Gonzalez's action be in affiliation with the Vagos?

4 A. Yes, he's clearly wearing a Vagos vest, and the only
5 way to wear a Vago cut is to be a full patch member.

6 Q. All right, and then the other element of that, would
7 it be at the direction of the club? And what I'm asking you,
8 to consider Mr. Rudnick's statement to police. Have you read
9 that?

10 A. I have.

11 Q. And that would be to John Patton, that statement?

12 A. Yes.

13 Q. Where he said there was a green light, he said go
14 ahead, if you want to kill him, kill him. And Mr. Gonzalez
15 said I'll do it, according to Rudnick.

16 A. Yes.

17 Q. So would that be at the direction of the Vagos?

18 A. Yeah, you're -- somebody is going to be doing a task
19 such as killing another human being, they know, the Vagos
20 know, that that's going to bring extreme pressure from law
21 enforcement. So it does have to be outside of a heat of the
22 moment kind of one-on-one fight, it would have to be from the
23 higher ups. Whether Tata makes that call or Rocky or the
24 international -- or the national sergeant at arms. It would

1 have to come from a ranking member of the Vagos.

2 Q. So Gary Rudnick wouldn't be allowed, pursuant to the
3 rules of the Vagos, just to go up and start a fight with a
4 president of the Hells Angels? With a bunch of his buddies?

5 A. Not -- not at an event like the Street Vibrations.
6 That's -- because they know the pressure that's going to come
7 from law enforcement when something like that happens.

8 Q. And that brings me back to Mr. Rudnick being out
9 bad, along with Bradley Campos being out bad. Why would they
10 be kicked out bad if he was actually doing something for the
11 club, to benefit the club by initiating -- starting the fight
12 with Pettigrew?

13 A. They kind of know what's coming. You just killed a
14 very well-respected member of the Hells Angels. And with
15 that being said, they knew that retaliation was going to be
16 coming. In fact, there were orders given not to be wearing
17 their colors, there were orders given not to be riding on
18 motorcycles. So there was a fear there that something might
19 happen. And one of the ways to kind of calm that fear is to
20 dismiss somebody from the club.

21 Q. All right, would that be a message, would that --
22 putting Jabbers out bad or Rudnick out bad and Campos out
23 bad, would that information be passed along to the Hells
24 Angels?

1 A. Oh, sure. Through a face-to-face meeting or even a
2 telephone call.

3 MR. HALL: All right, so -- thank you, I have no
4 further questions.

5 THE COURT: Cross.

6 CROSS-EXAMINATION

7 BY MR. LYON:

8 Q. Good afternoon, Detective Bennett.

9 A. Good afternoon, sir.

10 Q. So you're an officer with San Bernardino Police
11 Department as of today?

12 A. I'm a detective with San Bernardino Police
13 Department, correct.

14 Q. A detective, excuse me. So your primary area where
15 you work is down in Southern California?

16 A. That's correct, sir.

17 Q. And you're here to testify about your understanding
18 and your knowledge of the Vagos.

19 A. That's correct, sir.

20 Q. And it's my understanding from what your testimony
21 has been here today and prior testimony in this case, there's
22 the basis of your understanding involves talking with
23 Mr. Rudnick, correct?

24 A. Correct.

1 Q. Talking with an individual known to this court as
2 Mr. Everson?

3 A. That's correct.

4 Q. And Operation Simple Green, that you have discussed
5 here this afternoon.

6 A. That's correct.

7 Q. And that's the basis for your understanding of the
8 Vagos.

9 A. That's correct, sir.

10 Q. And you've testified you believe there's about a
11 thousand Vagos worldwide?

12 A. That's my estimation, yes, sir.

13 Q. Okay, how many charters are there?

14 A. Probably -- I counted them out one time, and I think
15 there was 70.

16 Q. 70 charters?

17 A. Yeah.

18 Q. Do you know who the president of each charter is?

19 A. No, sir.

20 Q. So if I asked you who the president of Lake County
21 charter is, do you know that?

22 A. No, sir.

23 Q. Do you know the president of the Reno charter?

24 A. No.

1 Q. Carson City?

2 A. No, sir.

3 Q. Are you able to give us an idea of how many Vago
4 members have committed a serious felony, charged within, say,
5 the last five years?

6 A. Can I give you an estimation of all members that
7 have done that, or -- I have an estimation of cases that I've
8 been involved in, and then some predicate cases that have
9 been used going back, well, 2007.

10 Q. Yeah.

11 A. Probably 15 to 20. Maybe 20 to 25, maybe.

12 Q. Okay. So over the course of you said back to 2007,
13 so maybe five or six years, you've got 15 or 20 Vagos that
14 have committed felonies.

15 A. That I know of.

16 Q. That you know of.

17 A. Obviously that number could be way higher or -- but
18 yeah -- or, well, I guess may --

19 Q. Or about accurate.

20 A. Or about accurate, yeah.

21 Q. And we know that Vagos members come and go over the
22 years, correct?

23 A. Oh, yes.

24 Q. So that thousand number that you provided, that

1 would just be your estimation for what we currently have in
2 the Vago membership, correct?

3 A. That's correct.

4 Q. Okay, and that doesn't include the members that have
5 maybe come into the Vagos over the last five or six years or
6 funneled out of the Vagos, correct?

7 A. Yeah. I mean, it's extremely difficult when they
8 start expanding, especially out of country, to really keep an
9 accurate tab. I try to monitor as much as I can, but without
10 talking to people you don't get a good solid number. Or
11 seeing a roster or seeing stuff like that. So people come
12 and go, and it's hard to -- it's really difficult to keep
13 track of.

14 Q. Understand. And the point of being that of these 20
15 Vagos that have committed crimes in your experience over the
16 last five or six years, in relation to the number of Vagos,
17 it would be -- not necessarily in relation to one thousand
18 Vagos, but probably a higher number, correct?

19 A. Yeah. Fair to say.

20 Q. Because Vagos have come in and come out.

21 A. Yes.

22 Q. So if we're looking at a percentage of Vagos that
23 have committed crimes, in your experience, we're talking a
24 pretty small percentage, true?

1 A. Sure.

2 Q. Now, when you talked with Mr. Rudnick, you would
3 agree with me, wouldn't you, that the quality of the
4 information that you obtained from Mr. Rudnick depended on
5 his truthfulness, correct?

6 A. Well, sure.

7 Q. And in some part for his motivation for talking with
8 you.

9 A. Sure, and some questions I ask to gauge
10 truthfulness. So there might be questions that I already
11 know the answer to that I -- that I look for at the beginning
12 of interviews to see if they're actually telling me the
13 truth. Because if they're not, I'm out. I'm just not going
14 to sit there and waste my time.

15 Q. Okay. And you first met Mr. Rudnick when he was
16 arrested back in November 25th, 2011?

17 A. That is when I first met him, yes.

18 Q. And you spoke with him at that time?

19 A. Yeah, very -- very briefly. He was fairly
20 distraught. Over the charges.

21 Q. Okay, and when you first -- when he was arrested he
22 was actually the target of a criminal investigation
23 concerning Operation Simple Green, correct?

24 A. No. He was a -- following the shooting up here?

1 Q. No, this was --

2 A. I added him to the search warrants that I was doing,
3 because I was in -- when this shooting occurred I was in the
4 middle of writing a 50 -- at that point it was 50 locations,
5 search warrants down in Southern California, looking for just
6 additional evidence for the case that we were working. And
7 following the shooting, I added Mr. Rudnick. So prior to
8 that, he was not a target of mine.

9 Q. Okay, well, hadn't his name come up in the
10 surveillance of all of these phone calls?

11 A. His name came up, just like Mr. Gonzalez's name came
12 up.

13 Q. And it's true, is it not, that over that year period
14 of surveillance you reviewed approximately 100,000 phone
15 calls?

16 A. There was 100,000 phone calls that we did receive
17 and reviewed.

18 Q. And you personally reviewed all of those phone
19 calls?

20 A. There were calls that weren't pertinent that we
21 don't review. There's calls with attorneys, as you know, we
22 can't review. So there's calls that we cannot review. But
23 if they had to do with the Vagos, part of managing that kind
24 of operation, there was three of us, and it was our job to

1 know what was going on.

2 Q. And Mr. Rudnick came up in those 100,000 phone
3 calls.

4 A. He did, he came up -- I mean, he would make a lot of
5 phone calls to the telephones that we were on. But again, it
6 wasn't -- didn't fit that criminal -- where we could charge a
7 crime, just like at the time, Mr. Gonzalez.

8 Q. And you learned that he was a vice-president of the
9 LA chapter through those phone calls, correct?

10 A. I don't know if it was through the phone calls or
11 through other means, but I did learn it through the
12 investigation.

13 Q. But you did ultimately execute a search warrant on
14 his house, correct?

15 A. That's correct.

16 Q. And then was that before or after he was arrested on
17 this matter?

18 A. It was October 6th, 2011 was the search warrant.

19 Q. Okay, so --

20 A. What is that, a month and a half before?

21 Q. Before his arrest?

22 A. Yeah, just followed -- following the shooting.

23 Q. So you spoke with him at the time of his arrest, and
24 you spoke with him again on January 5th, 2012, I think you

1 testified about that interview?

2 A. Correct.

3 Q. That interview was with Matthew Neil from Homeland
4 Security?

5 A. That's correct.

6 Q. And through that investigation or that interview,
7 you learned that Mr. Rudnick had been involved in smuggling
8 cocaine from Mexico into California?

9 A. He did talk about that, yep.

10 Q. He admitted that to you guys, correct?

11 A. He did talk, yes.

12 Q. Admitted smuggling methamphetamine from Mexico
13 into --

14 A. I don't know if it was meth, but I remember cocaine.

15 Q. And also talked with you about how he would bribe
16 border guards?

17 A. Very common, sir. Yes.

18 Q. So when you're testifying to some degree about Vagos
19 that are committing crimes, you're also referring to
20 Mr. Rudnick, and what you learned in your interview of
21 January 5th, 2012, correct?

22 A. Sure.

23 Q. Isn't it correct Mr. Rudnick has not been prosecuted
24 for those crimes?

1 A. Didn't have evidence to prosecute.

2 Q. Well, isn't that part of his deal in cooperating in
3 this matter?

4 A. Is what?

5 Q. Not to be prosecuted on the crimes that he spoke
6 with you about.

7 A. I don't know where you're getting that, sir. That
8 wasn't -- that wasn't my agreement.

9 Q. Okay, well, did you follow up and investigate on who
10 the border guard was that he was bribing?

11 A. We actually still are, sir.

12 Q. So your ongoing investigation --

13 A. It is an ongoing investigation, sir.

14 Q. Now, you were promising things for Mr. Rudnick, were
15 you not?

16 A. No, I didn't promise anything, sir.

17 Q. So if Mr. Rudnick says that you were trying to get
18 him out of jail, that would be untrue?

19 A. If he said that, then yeah, it would have to be
20 untrue, because I didn't -- that agreement with him getting
21 out of jail is between himself and the Washoe County DA's
22 Office and his defense attorney, it didn't have anything to
23 do with me.

24 Q. You were talking with him quite a bit while he was

1 in custody, weren't you?

2 A. I talked to him about stuff going on in Southern
3 California. I did not talk to him at all about what occurred
4 up here.

5 Q. Right, but you were -- you were in a lot of
6 communication with him while he was in jail here in Washoe
7 County.

8 A. Sure, I talked to him -- I don't know, half a dozen,
9 maybe more.

10 Q. You were on a first name basis with him, at least
11 from his perspective?

12 A. Do I call him Gary? I call him Gary.

13 Q. And you were also talking with his wife quite
14 frequently while he was in Washoe County Jail.

15 A. I was in communication with her, yes.

16 Q. And would it surprise you that they talked amongst
17 themselves about your efforts to try to get him out of jail?

18 A. Well, again, I can't control what he says. But I
19 did not make any promises to him.

20 Q. Didn't you promise him you would try to get him
21 in -- located in the witness protection program?

22 A. No. I did say, however -- he came to us and he
23 talked about himself being a victim of an attempt robbery,
24 with other members of the Vagos. And I did tell him that I

1 will take that information, I would put it in a report, I
2 would go to Glendora Police Department, where that crime
3 occurred. And his wife came and met with the Glendora Police
4 Department, and at that time a crime report was taken for the
5 attempted robbery. And in California if you're a victim of a
6 crime, and that case goes forward and gets prosecuted, that
7 we can look at witness protection as being an option.

8 So when that case was ultimately turned down by the
9 L.A. County District Attorney's Office, at that point there's
10 nothing else I can do.

11 Q. So at least while that case was pending you were
12 having discussions with Mr. Rudnick and his wife of going
13 into witness protection, potentially?

14 A. I don't remember --

15 Q. So if Mr. Rudnick believed that he was going to get
16 out and go in witness protection, that's not your
17 understanding?

18 A. No, that did not come from me. I -- there's no way
19 for me to be able to kind of forecast whether or not a
20 district attorney is going to file a case. The only thing I
21 can do, as an officer, as a detective, is take that
22 information to the district attorneys, let them figure it
23 out, and if they decide to decline it, then it's kind of out
24 of my hands.

1 Q. Mr. Rudnick was talking some pretty specific
2 information, he was saying he was going to get a new house to
3 live in, a monthly paycheck, all those sorts of things coming
4 from you.

5 A. I'm sorry, sir, but that did not come from me.

6 Q. Ultimately --

7 A. I may have -- well, I'll take that back. Maybe I
8 did explain what the witness protection program entailed.
9 But I didn't make a promise of a new house and all that
10 stuff. So I probably did explain, because I'm familiar with
11 the program, I probably did explain it at some point to him.

12 Q. Okay, well, and weren't you talking of it in context
13 of if he would help you guys, you would help him?

14 A. He came to me as a victim of a crime, sir. I went
15 to the DA's office as him being a victim of a crime. And
16 that's my job to do. And whether or not ultimately it gets
17 filed or not, is not in my hands.

18 Q. At least his story of what happened with respect to
19 this motorcycle, that was all presented to the district
20 attorney down there in California. The district attorney
21 said what, not enough here to prosecute?

22 A. I don't -- they turned it down to Glendora PD. So I
23 don't know what -- what the actual disposition was, other
24 than it was turned down. The officer that I was talking to

1 called and said that they weren't going to move forward on
2 it, and they were going to turn it down.

3 Q. Suggesting what Mr. Rudnick had told everybody
4 didn't happen, correct?

5 A. No, there was -- probably some hiccups with some
6 dates and that kind of stuff. There was some clarification
7 that just couldn't get on the crime report, and that's what I
8 kind of foresaw as maybe being the reason. Because we
9 couldn't narrow down when that happened. So makes it
10 difficult to do a crime report when you don't have kind of
11 specific information. When you're using time frames, let's
12 say.

13 Q. Isn't it true you were also talking with Mr. Rudnick
14 to try to get his cooperation in this case? During this
15 period of time he's incarcerated?

16 A. Again, my -- I was specifically instructed not to
17 discuss anything to do with Arizona -- or with Nevada. So my
18 hands were out of Arizona -- or I'm sorry, Nevada. It was
19 all -- anything that I discussed had to do with Southern
20 California.

21 Q. So Mr. Rudnick has testified, at least there's
22 evidence suggesting that if he did what you were asking him
23 to do, he would get probation in this case.

24 A. Again, that didn't come from me, sir.

1 Q. So he's not being truthful when he talks about that?

2 A. I wasn't --

3 MR. HALL: Objection, your Honor. I would ask the
4 jury to recall if he said that he was working for him to get
5 a deal with me. That never happened.

6 THE COURT: Okay, well, the objection is to the --

7 MR. HALL: The question is misstating the evidence.

8 THE COURT: Thank you. I'm not going to rule on
9 whether it's misstating the evidence, but I am going to rule
10 that you should move on.

11 MR. LYON: I will do so, your Honor.

12 BY MR. LYON:

13 Q. You were aware that Mr. Rudnick was talking to
14 Mr. Hall, correct?

15 A. I was.

16 Q. And that led up to this February 15th interview of
17 Mr. Rudnick here in Washoe County? I don't think you were a
18 part of that interview, true?

19 A. Yeah, I don't remember coming up here and --

20 Q. But you reviewed that -- his statement?

21 A. Yes. The one with Detective Patton, is that what
22 you're referring to?

23 Q. Correct.

24 A. Okay.

1 Q. And again, the quality of the information depends on
2 how truthful Mr. Rudnick was during his interview.

3 A. Correct, sir.

4 Q. And if it turns out he wasn't all that truthful
5 that, could impact your opinion and what -- or could impact
6 your opinions in this case, at least the information that you
7 gained from Mr. Rudnick, true?

8 A. I think it would impact a portion of it, correct.

9 Q. Now, when you were talking with Mr. Rudnick and his
10 wife, you never did any reports, correct?

11 A. No, because there wasn't -- outside of the January
12 5th, there wasn't any reason for me to write a report that I
13 talked to somebody. I talk to people all the time, sir.

14 Q. Well, you're talking with him about information
15 about -- at least could impact this case, correct?

16 A. I didn't talk to him about this case, sir.

17 Q. You didn't talk to him about this case at all.

18 MR. HALL: Your Honor, I thought we just said we
19 were going to move on from this. Now we're -- this is the
20 same question that he just asked, which he's answered --
21 asked and answered, thank you.

22 THE COURT: Thank you. Sustained.

23 BY MR. LYON:

24 Q. Let's go on to Operation Simple Green, this is the

1 other source of the information that you're relying on for
2 your opinions here today, correct?

3 A. Sure.

4 Q. Okay. That as I understand it, it started out with
5 one guy that was a member of the Vagos and kind of turned
6 into this more expansive investigation?

7 A. That's correct, sir.

8 Q. Okay, it was primarily a narcotic investigation?

9 A. Started out that way, sir.

10 Q. Okay, and it involved monitoring of these 100,000
11 phone calls that we've talked about?

12 A. That's correct, sir.

13 Q. Okay, and ultimately resulted in about 67 search
14 warrants?

15 A. Total, correct.

16 Q. And through all of that, that's how you got the
17 information about the Vagos.

18 A. I've got a lot of historical information and various
19 documentation through these search warrants.

20 Q. Basically, you had a year in the life of the Vagos,
21 fair characterization?

22 A. I probably had two years of the life of a Vago.
23 Without being in the Vagos, sir.

24 Q. Now, you have talked about the fruits of Operation

1 Simple Green, you said that there were about 20 -- or about
2 50 arrests, is that what you said?

3 A. Total.

4 Q. Total? And then about 20 of those were Vagos?

5 A. Yes, sir, it was about.

6 Q. Is that as of today?

7 A. Yes.

8 Q. The 20?

9 A. I don't know -- we have some still -- some stuff
10 still pending, and those aren't included in there. So.

11 Q. I just have a press release from the California
12 Attorney General's Office saying that there were 12 members
13 of the Vagos arrested, that was back on October 6th of 2011.

14 A. That was just that day.

15 Q. Okay.

16 A. The day of the search warrants.

17 Q. And how many of those arrested have been prosecuted?

18 A. Everybody but one, and then there's still like three
19 outstanding that we haven't sent over to a DA's office. So.

20 Q. One of those individuals was Thomas Gibson, I think
21 you said he was a subject of one of the wire taps?

22 A. He pled out a long time ago. There's just one
23 that's still making its way through the trial courts in
24 San Bernardino County.

1 Q. Mr. Gibson's was for a possession of marijuana
2 charge?

3 A. And a gang enhancement, sir.

4 Q. Gang enhancement was dismissed, wasn't it?

5 A. No.

6 Q. How about Mr. Lozano, evading an officer?

7 A. Yes, I believe his gang enhancement was dismissed.

8 Q. His gang enhancement was dismissed. And there were
9 some other resulting in some misdemeanor charges of Scott
10 Randall Rivera?

11 A. You know what, I do apologize, his did get reduced
12 to a misdemeanor. So there was three.

13 Q. Okay, and Cesar Rodriguez?

14 A. Cesar is the one that's still --

15 Q. Still out there?

16 A. -- making its way through the court system.

17 Q. And there was a charge against Pastor Palafox that
18 was dismissed, correct?

19 A. That one was dismissed, yes, sir.

20 Q. So after a year of investigation, 100,000 phone
21 calls, 67 search warrants, we have what, what out of that?
22 Maybe 12 -- 12 convictions?

23 A. No, there's some narcotics stuff that we did that
24 there's not much in there -- I mean, they weren't members of

1 Vagos, but that were convictions. Yeah, there's --

2 Q. I'm just talking Vagos at this point in time. Now,
3 you talked about some guns being collected out of Operation
4 Simple Green?

5 A. That's correct.

6 Q. Isn't it true -- and I think you said something like
7 260

8 A. It was 260, yeah.

9 Q. Isn't it true a vast majority of that was collected
10 at one house?

11 A. There was one house that had 80, one house that had
12 50, and then the rest were collected either through the
13 investigation, various traffic stops and that kind of stuff,
14 or at other people's houses. So I guess you could say half
15 is probably pretty accurate.

16 Q. And the one -- the one seizure that resulted in the
17 large number, the 80 number, that was a non-Vago, correct?

18 A. No, sir, that was --

19 Q. Wasn't that the brother of Mr. Campos?

20 A. Well, they have three houses there, but yes, it was
21 at his brother's house.

22 Q. Okay, and he's not a Vago.

23 A. His brother is not a Vago, that is correct, sir.

24 Q. And he's a gun collector, actually, isn't he?

1 A. He hasn't been exactly forthcoming with me, so I
2 haven't been able to get a lot of information. And I haven't
3 talked to him in probably a year, maybe.

4 Q. Now, you said that these telephone calls involving
5 Operation Simple Green were productive because the
6 individuals didn't know that they were being recorded.

7 A. Sure, you get kind of a telling story of --

8 Q. They're going to be a lot more open in their
9 discussions.

10 A. Sure. It's not like stopping them and trying to
11 talk to them.

12 Q. Now, isn't it correct that out of those 100,000
13 phone calls there's only three of those phone calls involving
14 Mr. Gonzalez, personally?

15 A. Yeah, three, maybe four.

16 Q. And then there's three others where he's referenced,
17 correct?

18 A. Yes.

19 Q. You have one call from a Mr. Baden to Mr. LaGuardia
20 regarding patches?

21 A. That's correct, I do recall that.

22 Q. One from Tata to a Nick regarding Mr. Gonzalez's
23 efforts to open up the Nicaragua chapter?

24 A. That's correct.

1 Q. You have one from a Juarez to Max, basically where
2 they were just -- they were just talking normal information
3 about -- or Mr. Gonzalez contacting this Max to go for a ride
4 on the motorcycles, correct?

5 A. That's correct.

6 Q. You have Mr. Gonzalez calling Mr. Juarez, again,
7 opening a Facebook account.

8 A. That's correct.

9 Q. Then you have one where -- the conversation between
10 Mr. Gonzalez and Tata, Pastor Palafox, again looking at where
11 Mr. Palafox is asking Mr. Gonzalez to look up another Vago
12 member when he was down in Nicaragua.

13 A. It was a brother of a Vago member or something.
14 Down in Costa --

15 Q. In that conversation Mr. Gonzalez is actually
16 introducing himself to Tata at that time, correct?

17 A. I don't remember that so much, but I remember him
18 saying something about his -- Romeo, or something to that
19 effect.

20 Q. Suggesting that they had never talked before.

21 A. Well, Mr. Palafox would change his phone number kind
22 of quite frequently, so when we would get those phone calls
23 in, it was a lot of where we didn't recognize the number. So
24 I don't know, I can't tell you if it was he didn't know him

1 or he just didn't recognize the area code.

2 Q. And then the final call I think was Mr. Gonzalez and
3 Mr. Juarez again talking about patches and -- patches
4 specific to Nicaragua, true?

5 A. Correct.

6 Q. Okay, so no illegal activity discovered on the part
7 of Mr. Gonzalez in these 100,000 phone calls?

8 A. That's correct.

9 Q. No conversations about any criminal enterprise or
10 anything illegal with respect to opening the chapter of
11 Nicaragua.

12 A. That's correct, it was just merely expansion into
13 new territory.

14 Q. And it's not illegal to be a member of the Vagos,
15 true?

16 A. That's correct.

17 Q. Not illegal to want to start a new chapter of the
18 Vagos, true?

19 A. That's correct.

20 Q. Mr. Gonzalez wasn't a part of any of these 67 search
21 warrants that you've talked about.

22 A. Nope.

23 Q. In fact, those search warrants weren't even executed
24 up in San Jose, were they?

1 A. That's correct, the furthest north was Santa Barbara
2 County.

3 Q. And you haven't identified any phone calls to us
4 where Mr. Gonzalez was complaining about expanding the San
5 Jose chapter and being shut down by the Hells Angels?

6 A. No, sir.

7 Q. Never came up in those 100,000 phone calls?

8 A. No, sir.

9 Q. Now, when were those phone calls monitored, what
10 period of time?

11 A. About end of April, 2010, through would have been
12 Memorial Day weekend of 2011.

13 Q. Okay.

14 A. Just prior to Memorial Day weekend.

15 Q. So a few months before the incident at the Nugget?

16 A. Correct, about four months.

17 Q. So no telephone calls that you monitored where
18 Mr. Gonzalez is expressing his anger at Mr. Pettigrew for
19 quashing his efforts with the San Jose Vagos?

20 A. That's correct, sir.

21 Q. Or that he was upset with the San Jose Hells Angels
22 in general?

23 A. That's correct, sir.

24 Q. Now, is it your opinion that the Vagos are a

1 criminal gang as defined by Nevada law?

2 A. Yes, sir.

3 Q. What's the statute that controls that?

4 A. I -- I don't know the number. I discussed it with
5 Mr. Hall.

6 Q. When did you discuss that with Mr. Hall?

7 A. Well, we've discussed the statute I think on two
8 different occasions. One yesterday, we talked about -- we
9 talked about it in pretrial, and then maybe --

10 Q. So as you sit there, you don't know the statute.

11 A. I don't know the statute.

12 Q. Do you know what elements have to be determined
13 before you can find a criminal gang in Nevada?

14 A. I believe it has to do with characteristics, common
15 signs or symbols.

16 Q. That's one, uh-huh.

17 A. They have to have committed crimes punishable by a
18 felony. And I believe they have to be acting at the
19 direction or for benefit of the gang.

20 Q. Okay, well, let me kind of refresh your memory on
21 this. You have to have a common name or identifying symbol.

22 A. Okay.

23 Q. You have to have particular conduct, status or
24 customs indicative of a criminal gang. That refresh your

1 recollection?

2 A. Okay.

3 Q. And then has to have one of its common activities as
4 engaging in criminal activity punishable as a felony, other
5 than the conduct which constitutes the primary offense. Does
6 that sound familiar?

7 A. Okay.

8 Q. Now, this common name or common identifying symbol,
9 that's pretty indicative of a lot of clubs, correct?

10 A. Yes, sir.

11 Q. Not necessarily criminal gangs, but just clubs in
12 general.

13 A. Yes, there's riding clubs and there's family clubs
14 and there's --

15 Q. Sure. Rotary Club, Elks Club, things like that.
16 Doesn't mean they're a criminal gang, true?

17 A. Correct, sir.

18 Q. And same with the particular conduct or status or
19 customs, that doesn't automatically qualify a club as a
20 criminal gang, true?

21 A. Correct.

22 Q. The primary factor in determining a criminal gang in
23 Nevada, at least, is that there's a common activity --

24 MR. HALL: Objection, your Honor, argumentative.

1 THE COURT: Sustained.

2 BY MR. LYON:

3 Q. What distinguishes those clubs from a criminal gang
4 then, in -- as far as Nevada's definition goes?

5 MR. HALL: Objection, calls for a legal conclusion.

6 THE COURT: Sustained.

7 BY MR. LYON:

8 Q. Have you made any determination as to whether a
9 common activity -- that the Vagos are engaging in a common
10 activity as far as felonies go?

11 A. Since I began investigating them, they were involved
12 in narcotics trafficking, they were involved in firearm
13 trafficking, they were involved in stolen vehicles, they were
14 involved in rape, robbery, extortion. And --

15 Q. But when you're talking they, you're talking 20
16 people. Right? According to your prior testimony?

17 A. Well, there's cases, sir, that haven't gone -- that
18 haven't been filed. There's cases that sure, they got turned
19 down by the DA's office. That happens.

20 And then there's -- there's cases that we haven't
21 been able to move forward with. But the information that I
22 got investigating those crimes is those crimes occurred, but
23 it's whether or not I can prosecute them.

24 Q. Well, are you counting in that all the crimes that

1 are dismissed or they're found not guilty?

2 A. We haven't had any not guilty, but there's cases --
3 there's a robbery that -- there's a robbery that the DA's
4 office did not prosecute.

5 Q. Well, for example, wasn't there -- I don't know if
6 you testified to this, but there was an incident in
7 Santa Cruz between the Vagos and the HAs, a fight, correct?

8 A. That was before I began my investigation, but yes,
9 there was, back in think January of 2010.

10 Q. And the Vago was acquitted, right?

11 A. I don't know the outcome of that one, sir.

12 Q. But you wouldn't include that in your statistics.

13 A. I do not include that. I only included stuff that I
14 did.

15 Q. Can you tell us what percentage of Vagos are
16 engaging in criminal activity?

17 A. I think that's a pretty difficult statistic. Do I
18 think it's low? Yeah, it's probably maybe 10 percent. But
19 to give a hard number would be -- that would be fairly
20 difficult.

21 Q. And that 10 percent, that's just a guess, right?

22 A. That's -- well, I don't -- I guess it would be kind
23 of a guess.

24 Q. I wanted to talk -- you commented a little bit on

1 this case based on what you reviewed of the videos, I think.

2 A. That's correct, sir.

3 Q. And you said that this matter, at least when it was
4 over in the Oyster Bar, started out of respect or disrespect.

5 A. That's correct, sir.

6 Q. And that involved the touching of Mr. Rudnick's
7 patch by Mr. Pettigrew.

8 A. That's correct, sir.

9 Q. And that was a sign of disrespect, at least with
10 respect to Mr. Rudnick?

11 A. That's correct, sir.

12 Q. You didn't talk to anybody else about whether they
13 thought that was a sign of disrespect.

14 A. I did not talk to anybody else.

15 Q. Then you also indicated that at least by virtue of
16 your observation of the video, that I think in your opinion
17 Mr. Gonzalez seemed to be stalking Mr. Pettigrew. What was
18 your basis for that opinion?

19 A. It just seemed his back was against the wall or
20 against the bar, and it just seemed like he always kind of
21 knew where Mr. Pettigrew was. And then when we get down to
22 Trader Dick's, he's at -- on the -- I don't know what side,
23 he was on the opposite side of where Mr. Rudnick and
24 Mr. Pettigrew started, so I guess it would be the north

1 side, I'm not really sure. But he places down a drink and
2 he's kind of in the background. It just really seemed that
3 he was paying attention to where Mr. Pettigrew was.

4 Q. Let's go back to the Oyster Bar. I think the jury
5 has seen the video enough times, where Mr. Gonzalez is
6 sitting there -- do you know who is talking to Mr. Pettigrew,
7 while Mr. Gonzalez has got his kind of his back to that wall?

8 A. I know that Mr. Siemer I believe talked to him. I
9 believe Mr. Pizel talked to him --

10 Q. I'm talking during this period where Mr. Gonzalez
11 is, in your terms, stalking Mr. Pettigrew. Do you remember
12 who was talking to him --

13 A. I do not recall.

14 Q. Do you know that it's Cesar Morales?

15 A. I do not.

16 Q. And it's pretty common for -- and you know who Cesar
17 Morales is, don't you?

18 A. I know he's with San Jose.

19 Q. Do you know he's the president of the San Jose
20 charter?

21 A. I don't know he's the president.

22 Q. If I represented to you that he's the president of
23 the San Jose charter, it wouldn't be unusual for members --
24 other members of the San Jose charter to be kind of there

1 watching -- watching their P, so to speak, correct? That's
2 common?

3 A. Mr. Gonzalez had already started Nicaragua, so he
4 wasn't necessarily his P. But they were -- had been around
5 together through the club, so yes.

6 Q. So it's your understanding Mr. Gonzalez wasn't
7 affiliated with the San Jose chapter?

8 A. No, his affiliation goes back to the San Jose
9 chapter. At the time of the shooting, though, it's clear he
10 was wearing the Nicaragua bottom rocker, and he -- I mean,
11 he's got a business and all of that stuff up in Northern
12 California.

13 THE COURT: Counsel approach.

14 (Unrecorded discussion at the bench.)

15 BY MR. LYON:

16 Q. I've been given one last question, let me see if I
17 can make it a good one. If in fact Mr. Rudnick's testimony
18 is untrue, then what occurred on November -- or September
19 23rd of 2011 would not have been at the direction of the
20 club, correct?

21 A. Based on my investigations into the Vagos and -- I
22 would still believe that if you're going to do something, if
23 another member is going to do a crime like this, in such a
24 high profile type of event, right, because it's not -- we're

1 not talking about an event where just a few people are there
2 and it's just them, they're at a bar. We're talking an event
3 where there's thousands of people that have come in here, of
4 all walks of life.

5 If you're going to do a crime like that in the
6 middle of a casino, it's going to be sanctioned by somebody
7 with some sort of juice in that club. And that's
8 irregardless of if Mr. Rudnick is found to be not true.

9 Q. Couldn't it have just been a spontaneous event and
10 people were reacting to the event?

11 A. I do not believe that was a spontaneous event, sir.

12 MR. LYON: That's all I have, your Honor.

13 THE COURT: Okay, did you have anything? Okay.
14 Thank you, sir.

15 THE WITNESS: You're welcome, ma'am.

16 THE COURT: Are you okay with me excusing him?

17 MR. HALL: Yes.

18 THE COURT: Okay, you may step down, you are
19 excused.

20 THE WITNESS: Thank you, ma'am.

21 THE COURT: Ladies and gentlemen of the jury, that
22 concludes the testimony you're going to hear today. I am
23 still kind of playing with the schedule for Monday, so I
24 really don't know what time to tell you to come back yet.

1 I'm going to talk to the attorneys a little bit, so
2 what I'd like to do right now is I'm going to send you into
3 the jury room with the admonition you will be back Monday, I
4 don't know what time, but you're going to stay in the jury
5 room for a few minutes so that I can talk to the attorneys,
6 and then the bailiff will tell you report time for Monday.

7 Now remember, during this break do not form or
8 express any opinion about the ultimate outcome of this case.
9 You may not speak of the case to anyone or allow anyone to
10 speak of it to you or in your presence. This includes
11 discussing the case in internet chat rooms, through internet
12 blogs, internet bulletin boards such as Facebook or Twitter,
13 emails, or text messaging. If anyone should attempt to
14 communicate with you about this case in any way, you must
15 report it immediately to the Court.

16 Do not read, watch or listen to any news reports or
17 any other accounts regarding this trial, or anyone associated
18 with it. And do not make any online information or inquiry.
19 Do not do any research as to any parties or groups or law
20 involved in this case, including consulting dictionaries,
21 searching the internet, or other reference materials.

22 And I did sort of make a joke about the movie that
23 was mentioned, but do not rent any movies, view any movies,
24 read any books, even if they're not documentaries, nothing.

1 No -- nothing about these subject matters.

2 And do not make any investigation into this
3 particular case or the parties. Which means you may not go
4 to the Sparks Nugget, either personally or through the
5 internet.

6 I'll see you back on Monday, and we'll tell you in
7 a few minutes what time.

8 (Jury absent.)

9 THE COURT: Please be seated. Counsel, the clerk
10 just reminded me that I had suggested that we would have
11 Mr. Kirby this afternoon. Do you have him available?

12 MR. HALL: No but, you know, we have the
13 transcripts, I thought we could use his transcripts since
14 he's already testified and been cross-examined.

15 THE COURT: So your thought was you would make an
16 offer of proof through the transcripts?

17 MR. HALL: Yes.

18 THE COURT: That he wouldn't testify any opinion
19 differently than what is contained in the transcripts?

20 MR. HALL: Right. It's pretty simple, he made the
21 stop, found the knife, thought it was illegal, arrested him,
22 found the gun, found the knuckles, interview.

23 THE COURT: Okay. The Court has had an opportunity
24 to review a lot of transcripts about Mr. Kirby. There was an

1 indication in a transcript early on that the Court ordered
2 the State to provide the records of that arrest. And I don't
3 know if you ever did that.

4 MR. STEGE: The records of the arrest or the
5 records of the dispo --

6 THE COURT: The disposition.

7 MR. STEGE: Yeah, I believe those were emailed to
8 the public defender's office or handed to them in court,
9 because we do have them.

10 THE COURT: Okay. Why don't -- why don't we make
11 sure that they're there. Mr. Houston, do you have those?

12 MR. HOUSTON: No, your Honor.

13 MR. HALL: I remember seeing them, and in my
14 recollection it never went to motion hearing, there was never
15 a suppression hearing, the DA decided not to proceed on that
16 case. That's what happened.

17 THE COURT: And so there was never any judicial
18 ruling on it.

19 MR. HALL: No.

20 THE COURT: And in the last 24 hours, counsel, have
21 you discovered anything different?

22 MR. HOUSTON: Well, yeah, your Honor, I have. I
23 actually have been in contact with the public defender's
24 office and --

1 THE COURT: Are you reading from something your
2 investigator just handed to you?

3 MR. HOUSTON: Well, not reading from it, I'm trying
4 to read it while I'm talking. Doing two things at once. But
5 the end result of my discussions with the public defender's
6 office as late as this afternoon was that actually provided a
7 document to the Court on a supplemental that represented the
8 case in California had been dismissed by virtue of a motion
9 to suppress.

10 Apparently, Ms. Whalen believes that was provided
11 as an attachment. And I'm looking at what I've received, and
12 I cannot read it, but it says hearing on motion, and then it
13 has something I can't read, resulted in a dismissal of all
14 counts.

15 So I -- this unfortunately, as the Court can
16 probably tell by looking at it, is not the best fax copy.
17 But this was, I'll advise the Court, provided me by
18 Mr. Gonzalez's then attorney, Edward Sousa, from California,
19 that handled the case. I left him very extensive voice mail
20 messages twice.

21 THE COURT: Wait a minute, you're really mixing up
22 this case. You told me just now that you spoke with
23 Ms. Pusich?

24 MR. HOUSTON: Yes.

1 THE COURT: Or Mr. Dogan?

2 MR. HOUSTON: Yes, both.

3 THE COURT: Today?

4 MR. HOUSTON: Well, Mr. Dogan today, Mr. Ms. Pusich
5 prior to today.

6 THE COURT: And Mr. Dogan told you that he
7 attached --

8 MR. HOUSTON: No, Ms. Pusich had attached -- and I
9 believe I called her Ms. Whalen, I'm sorry, that was her
10 maiden name. Ms. Pusich, sorry, I'm going back.

11 THE COURT: Right, I knew who you were talking
12 about.

13 MR. HOUSTON: According to Mr. Dogan, Ms. Pusich
14 had attached the information to a supplemental as it
15 concerned the PVA hearings. And he was trying to reach
16 Ms. Pusich in order to determine where that would be at their
17 office, because he thought he might have a copy of it. As
18 the Court is probably aware of, I have not received a copy of
19 that.

20 THE COURT: Well, you have a complete record of the
21 court's record. You're attorney of record, and you have the
22 complete electronic record.

23 MR. HOUSTON: Yeah, your Honor, I've been a little
24 busy, I haven't had a chance to go back and search through

1 the thousands of pages to see if I could find it. But what I
2 have relied upon is the people that did attach, to tell me
3 they did attach it. On top of that --

4 THE COURT: Well, we don't see it. When we looked
5 yesterday we didn't find it. So we'll look right now and see
6 if something was attached to a supplemental pleading.

7 MR. HOUSTON: According --

8 THE COURT: We did not see any attachments
9 yesterday. But now if you're telling us that they have told
10 you as officers of the court that they attached something,
11 we'll see what we've got.

12 MR. HOUSTON: And your Honor, just so I might
13 advise, according to the document I was given, the Court
14 heard motions, so it was Judge Jerome Nadler N-a-d-l-e-r, and
15 a consequence of that hearing on motion was the dismissal of
16 the counts as charged against Mr. Gonzalez. And there was
17 also then a motion to return property, and that was granted.

18 THE COURT: You're reading off of an email from
19 some lawyer?

20 MR. HOUSTON: Actually it's not an email, it
21 appears to be some sort of a docket sheet in California or
22 court sheet.

23 THE COURT: Show it to counsel. We'll take a short
24 recess while you look at that. I still have the jury cooling

1 their heels, so we'll be in recess.

2 (Recess.)

3 (Jury absent.)

4 THE COURT: Okay. I guess we'll just start, here.
5 The first thing is the public defender's office represented
6 Mr. Gonzalez, and we had numerous hearings on Mr. Kirby.
7 Mr. Kirby testified January 8th, January 9th, and January
8 29th.

9 They -- the public defender's office on behalf of
10 Mr. Gonzalez filed a motion to deny, an opposition to State's
11 motion for prior bad act evidence.

12 On January 24th, five days before this last time
13 Mr. Kirby testified, the public defender's office filed a
14 supplemental exhibits to motion for discovery and motion to
15 strike. That motion to strike was requesting that I strike
16 the testimony of Mr. Kirby for Brady violations, and attached
17 a document, which you have a copy of.

18 The Court ruled on the Brady violations and the
19 motion to strike, and denied those requests. Later, the
20 defense never called the Court's attention to this document,
21 they did not ask that I consider this document as documentary
22 proof of a motion to suppress being granted, which is now
23 what you are arguing.

24 MR. HOUSTON: And your Honor, if I can interrupt?

1 During the break I had an opportunity to speak personally
2 with Mr. Sousa, and I'd like to make a record as to what
3 Mr. Sousa advised me. And I was standing with Mr. Hall, so
4 that he might be able to at least hear some of it.

5 Mr. Sousa advised he had met with the district
6 attorney, presented what he considered to be his oral motion
7 to suppress, and if the case wasn't dismissed he would
8 proceed with a formal filing. The DA agreed, and the case
9 was dismissed. There was never a motion to suppress filed.
10 There was never a motion to suppress argued or ruled upon by
11 the Court.

12 THE COURT: Okay.

13 MR. HOUSTON: So I hope that shortcuts a little
14 bit.

15 THE COURT: Yes, thank you. So we -- the court
16 found that Mr. -- initially, that Mr. Kirby was -- his
17 testimony with regard to the stop and the spontaneous
18 statement from Mr. Gonzalez would be admissible pursuant to
19 prior bad acts or other act evidence.

20 Now, the question is, for today, if there's
21 something else the State wants to put in with regard to
22 Mr. Kirby. That was not part of the motion initially,
23 previously ruled on, made by the State, or previously ruled
24 on by the Court.

1 MR. HALL: Yes, your Honor. Based upon the
2 testimony of Mr. Kirby, we would like to admit the transcript
3 that we presented to the Court yesterday.

4 THE COURT: And that was marked as Exhibit --

5 THE CLERK: 159.

6 THE COURT: 159.

7 MR. HALL: And then I think we narrowed it down to
8 four pictures that we would agree to, but there was one
9 photograph that depicted the gun, the knife, and the brass
10 knuckles that was objected to.

11 And we also have the CD, the audio CD that has been
12 redacted to reflect the transcript.

13 MR. HOUSTON: Your Honor?

14 THE COURT: Just a sec. Seems to me there was a
15 problem with those pictures. I'm going to ask the clerk to
16 pull the 49 series so I can look at those photographs.

17 THE CLERK: Yes, as of last night, 49A, everybody
18 was saying that the letter was D, but it's really O. And R.
19 Were agreed to.

20 THE COURT: Okay, so last night you all stipulated
21 to 49A, D as in dog, and R being admitted. The clerk, in
22 reviewing the pictures you actually were holding up, it's an
23 O, not a D. So. Those are the three exhibits that you all
24 wanted.

1 MR. HALL: Right.

2 THE COURT: Right?

3 MR. HOUSTON: Can I see that last one, your Honor?

4 MR. HALL: Plus we want the gun.

5 THE COURT: So the Court at this time is going to
6 make the record 49A, O, and R are admitted. Not A, D, and R.

7 Okay, and then the exhibit that you all were still
8 talking about is 49P. Right?

9 MR. HALL: Correct.

10 MR. HOUSTON: Right.

11 THE COURT: Okay. And that exhibit relates to some
12 of the testimony that we previously said would be admissible.
13 So at this time are you asking that the whole -- the
14 transcript, or just the officer be allowed to testify
15 consistent with the transcript?

16 MR. HALL: Well, we'd like to play the audio.
17 However, we could, you know, go either way. We figured if we
18 played the transcript, then there wasn't anything lost in
19 translation.

20 THE COURT: You mean if --

21 MR. HALL: If we played the redacted videotape
22 portion of the interview then there wouldn't be anything lost
23 in translation.

24 THE COURT: Is it video or audio?

1 MR. HALL: I'm sorry, the audio.

2 THE COURT: That's fine. So the transcript of the
3 redactions was marked as 159 yesterday.

4 And Mr. Houston, did you get a chance to read 159
5 to see what was on the redacted version?

6 MR. HOUSTON: May I look at yours, your Honor? I
7 know we went back and forth a lot.

8 THE COURT: Yes.

9 MR. HOUSTON: Thank you.

10 THE COURT: You're welcome.

11 MR. HOUSTON: Okay, I have had a chance to look at
12 it, your Honor.

13 THE COURT: Your objection?

14 MR. HOUSTON: Your Honor --

15 THE COURT: If any.

16 MR. HOUSTON: Your Honor, and again, not having
17 been party to the case, we did review the order granting in
18 part and denying in part the State's motion to admit evidence
19 of other crimes, wrongs or acts. And that appears to have
20 been filed under our province, we weren't there when the
21 hearing was necessarily briefed. But I note that the Court's
22 ruling on page 11 appears to indicate that the Court found
23 the factual circumstances of the incident not particularly
24 relevant to this case. However, the Court did allow the

1 State to present evidence related to the Style pistol. The
2 Court the indicated it should be limited to affiliation
3 evidence, and that Gonzalez was found in possession of a
4 firearm, switchblade or knife.

5 Now, you then also considered the statement that I
6 guess was being discussed, and you advised with respect to
7 the Gonzalez statement, and then you made a quote, "I ain't
8 gonna lie, I carry that for my protection because of my
9 lifestyle." The Court indicated you found that to be
10 relevant to the instant case, in relation to evidence
11 regarding rivalry.

12 THE COURT: I know, Mr. Houston, what I ordered.
13 Get to your point, please.

14 MR. HOUSTON: My point is it seems as though the
15 Court has already considered this statement, and at least by
16 this order appears to have limited it, unless the Court
17 wasn't presented with the entire transcript. Not having been
18 here, I don't know.

19 THE COURT: As I said yesterday, the Court ruled on
20 the motions that were before it. There was no motion to
21 bring in any statements other than the one I admitted.

22 I did not reach any ruling, as I said yesterday,
23 about any other statements, because no one at that hearing,
24 from the State, asked me to admit them. So I did not sua

1 sponte start looking for admissible evidence.

2 Now, I said that yesterday.

3 MR. HOUSTON: Right. In fact --

4 THE COURT: So I have not ruled on the second part
5 of the statements.

6 MR. HOUSTON: Your Honor, the record is not clear
7 as to what was presented the Court. Doesn't say so in the
8 order. All it says is you made a ruling on the --

9 THE COURT: The motion is very clear.

10 MR. HOUSTON: If the State didn't present that to
11 the Court for consideration, then I would ask the State to be
12 limited to that which the Court has approved, and that's
13 contained in the order.

14 Finally, the Court said that the pistol, et cetera,
15 was not really relevant to the incident, but you'd let it in
16 for affiliation purposes. Which I think is certainly
17 overburdened in that concept by the admission of all of the
18 pictures displaying the weapon with the ammunitions, with the
19 brass knuckles, with the knife. I don't think, if I read
20 this correctly, that if it's limited to affiliation evidence
21 we need to even do that. I thought it was going to be
22 allowed in the testimonial form, where the officer could say
23 I found him with a gun and a knife.

24 At least that's the impact or the import that I

1 received from this. I could be wrong.

2 THE COURT: You mean you didn't expect a picture to
3 be admitted, is that what you're saying?

4 MR. HOUSTON: Not a picture beyond what the Court
5 had indicated would be admitted, that being a pistol and a
6 knife. There we have magazines, ammunitions, brass knuckles,
7 pistol, and a knife.

8 THE COURT: Okay.

9 MR. HOUSTON: And that's the one picture, in
10 specific, of course, that we've disagreed on.

11 THE COURT: Right. Okay, Mr. Hall.

12 MR. HALL: Your Honor, I believe the Court's order
13 was limited to what was requested in the motion. Obviously,
14 when we presented by Mr. Kirby we did play, if my
15 recollection serves correctly, we did play the transcript --
16 or we did play the audio tape, which did include the
17 statements contained in the transcript that we provided as
18 Exhibit 51. Or excuse me, 159.

19 So in light of the fact that the Court has found
20 that it is relevant, and it certainly has become even more
21 relevant during the course of this trial, with respect to the
22 rivalry evidence, the defendant being in Santa Cruz, which is
23 close to San Jose, and establishing rivalry through his own
24 testimony, it's become extremely relevant and probative of

1 the issue of whether or not there was a rivalry in this
2 particular case.

3 And the fact that he was in possession of those
4 items is certainly probative and goes to motive and intent
5 with respect to the murder of Mr. Pettigrew.

6 So we would contend that this evidence should be
7 admitted. Those four photographs, in addition to the audio
8 recording.

9 And I believe the CD was admitted on January 9th as
10 Exhibit L.

11 THE COURT: The nonredacted CD.

12 MR. HALL: The nonredacted CD, yes, your Honor.

13 THE COURT: And you think this evidence goes -- I'm
14 sorry, to --

15 MR. HALL: To motive and intent, as well as the
16 rivalry, establishment of a rivalry. And his knowledge of
17 the rivalry.

18 THE COURT: And did -- was 49P identified by
19 Mr. Kirby in his prior testimony?

20 MR. HALL: I believe so. I know that -- I know
21 that he can authenticate that photograph.

22 THE COURT: But we're not sure if he authenticated
23 it previously.

24 MR. HALL: I can't remember.

1 THE COURT: Okay. Mr. Houston.

2 MR. HOUSTON: Your Honor, just in closing, I think
3 the event occurred sometime around February of 2010. I don't
4 know how it could even come close to showing motive in this
5 particular case, in reference to something that occurs over a
6 year later.

7 But more importantly, the Court did not find it
8 relevant, the Court found it not particularly relevant to
9 this incident. That being said, it seems we already have
10 that ruling, so if it's going to be allowed for affiliation
11 purposes only, then I ask that it be allowed for what the
12 Court felt it to be important for that purpose, as contained
13 in the language of your order, referencing they can present
14 the fact that he was found with a pistol and a switchblade
15 knife.

16 That seems to be what the intent and purpose was at
17 a time when perhaps I was not here, I could be mistaken.

18 THE COURT: All right. And I'm going to think
19 about this for a minute.

20 With regard to Exhibit 46, we're having little
21 issues here. Exhibit 46. Mr. Stege, last night you said
22 that you would not be using Exhibit 46. But Exhibit 46A,
23 which was admitted, is an excerpt from 46. Was that your
24 intent?

1 MR. STEGE: Right, I hadn't realized last night
2 that I think there are three separate things within --
3 contained in 46. The sole one we want to introduce was
4 introduced today. The remainder we did not --

5 THE COURT: Was 46A.

6 MR. STEGE: Yes.

7 THE COURT: Which we marked separately on the
8 record. And so okay, everybody is in agreement with that?

9 MR. HOUSTON: Yes, your Honor.

10 THE COURT: Okay. Exhibit 104. You identified the
11 clothing today, and you mentioned the toiletry item, but you
12 didn't separately mark any of those things. You did -- our
13 records are that you offered it, it was one of the ones you
14 all agreed to, and the clothing came out of box 104, but you
15 never talked about the toiletries which are also contained in
16 box 104. So was it your intent to stipulate, defense, to the
17 entire contents of box 104?

18 MR. LYON: I believe so, your Honor.

19 THE COURT: And is that your intent to offer that?

20 MR. STEGE: Yes, your Honor.

21 THE COURT: So the entire contents of 104 are
22 admitted, in case there's any question about that.

23 (Exhibit No. 104 admitted.)

24 With regard to Exhibit 106 and 107, was it your

1 intent to offer Exhibit 107?

2 MR. STEGE: Yes.

3 THE COURT: And was it the defense's intent to
4 stipulate to that?

5 MR. LYON: Yeah, this was the one where as long as
6 it's just the phone and not the contents of the phone, we
7 were okay.

8 THE COURT: Okay, and that's -- I'm having a little
9 issue, because I don't have these exhibits in front --
10 they're in front of me literally, but I can't see them. So
11 107, based on the description, seems to be a cell phone
12 without a battery. Which would tend to mean that you can't
13 get into it. But is that your -- is everybody in agreement
14 with that?

15 MR. LYON: Yeah, and I think -- but the Samsung was
16 what was primarily all the information came from. I think as
17 testified to by Detective Patton.

18 THE COURT: Okay, so one of those --

19 MR. LYON: And we wanted to address that -- the
20 information he obtained from the phone separately, and I
21 think we have.

22 THE COURT: You have. So Exhibit 107 is admitted,
23 and in its -- in the form that it is in now.

24 MR. LYON: Yes.

1 THE COURT: Okay. Is that your intent, Mr. Stege?

2 MR. STEGE: Yes. Yes, your Honor.

3 THE COURT: Just trying to clean these up.

4 Exhibit 152A is a transcript, and there was some discussion
5 about whether or not we had that. The clerk indicates she
6 does have a transcript. That will be admitted for
7 demonstrative purposes, to keep the record clear about what
8 was played. And I think we all thought it was yesterday, but
9 there was some question about what it looked like. Have you,
10 Mr. Lyon, seen what has been marked now as 152A?

11 MR. LYON: We don't have the last --

12 THE CLERK: 152A is the transcript of Mr. Rudnick's
13 jail call records that you marked at the time it was being
14 played, just so we had what was being played for the record.

15 THE COURT: So it's yours, you gave it to us.

16 MR. LYON: Correct, yes, so we're okay with it.

17 MR. STEGE: And we never got it.

18 THE COURT: I think that maybe the clerk gave you,
19 Mr. Lyon, the copy that should have gone to the State.

20 That's the one you copied without Mr. Lyon's and
21 Houston's notes on it.

22 THE CLERK: I'm sorry, I haven't had a chance to
23 copy that. We don't have it in copy.

24 THE COURT: We'll get you a copy of that.

1 MR. STEGE: But it does not go to the jury.

2 THE COURT: It does not go to the jury, just so
3 it's clear. It is admitted, but it will not go to the jury.
4 And on your sheets it will say demonstrative, and that means
5 it does not go to the jury. Okay.

6 Okay, so 153 A has been received by the clerk. And
7 it is a valid copy, certified by the court reporter. And she
8 has received it as of this morning. And I think you all
9 wanted that admitted for substantive purposes, is that
10 correct?

11 MR. HOUSTON: Yes, your Honor.

12 MR. STEGE: Yes, your Honor.

13 THE COURT: Okay, so that will be the order, 153A
14 is admitted.

15 (Exhibit No. 153A admitted.)

16 THE COURT: We need to make a record with regard to
17 Exhibit 110C. That was the photograph that was offered with
18 the Warlock indication on it that the defense objected to.
19 So when it was shown to the jury, a sticky was put over the
20 Warlock vest, and you had no objection to that?

21 MR. LYON: In the redacted form, correct, your
22 Honor.

23 THE COURT: So I'm going to direct the clerk to
24 make a color copy or a copy of the 110C, so that the one that

1 is in the record is the redaction. Is everyone in agreement
2 with that?

3 MR. LYON: Yes, your Honor.

4 MR. STEGE: Yes.

5 THE COURT: So. And then we have Exhibit 107 and
6 106. Sorry, I just didn't mark it off. Got a long list
7 here.

8 Okay. The Court shows there is a little bit of
9 confusion about what you all were offering with regard to the
10 39 series. Those were the autopsy photos.

11 It was my understanding that you reduced the 69
12 that you had originally marked and only offered about 12.

13 MR. HALL: That's right.

14 THE COURT: Okay. And so the 39 1 through 69 are
15 not admitted. You offered, and there wasn't any objection,
16 to 48, 51, 52, 55 through 59, 61 through 64, 66, 67, 69.

17 The Court looked at those and there does seem to be
18 some redundancy, and perhaps some pictures that are not
19 necessarily appropriate to be put in. And they -- I'm
20 talking about pictures that were not used by the medical
21 examiner.

22 MR. HALL: Pull them out.

23 THE COURT: So maybe we can look at those and you
24 all can stipulate to pulling those that are inappropriate.

1 MR. HALL: Sure.

2 MR. HOUSTON: That's fine, your Honor.

3 THE COURT: All right. So those were all of my
4 housekeeping issues. Is there any others that you all have?

5 MR. HOUSTON: Your Honor, what do you want to do
6 with the chart?

7 THE COURT: Right, we need to talk about that,
8 maybe we can do that in chambers?

9 MR. HOUSTON: Your Honor, I think we would
10 stipulate --

11 THE COURT: Just a second.

12 The clerk reminds me there's a box marked as 75A
13 through M. Those were offered, and no objection was lodged.
14 However, they're VHS tapes, and I don't think you want VHS
15 tapes to go to the jury.

16 MR. HALL: Well, we thought it would be appropriate
17 to have those admitted, because those are the originals from
18 the Nugget. So if there's any discrepancy, we think it would
19 make a much better record down the road. So that was why we
20 sought to have those admitted, so they didn't get lost in
21 translation or go somewhere, and then somebody need to review
22 them later.

23 THE COURT: All right. I'm not debating the wisdom
24 of that, I just want to let everyone know, every document

1 that was marked in this case will remain part of the evidence
2 custodian's record unless it's ordered released to a party.
3 Whether it's admitted or not.

4 MR. HALL: Right.

5 THE COURT: Now, 75A through M was admitted, and is
6 it your desire to have it admitted only for recordkeeping
7 purposes, and not to go into the jury room?

8 MR. HALL: Yes, I don't think we have the equipment
9 to play many of those tapes, anyway. Because they're on
10 multiplexors or time lapse recorders, so they would be of no
11 use, most of them would be of no use to the jury anyway.

12 MR. LYON: We would agree.

13 THE COURT: Okay, so I'm going to direct the clerk
14 that 75A through M will be marked and held for the record
15 only, and not go to the jury. And will not be shown as
16 evidence the jury reviews. And then maybe over the weekend
17 you all can look at the rest of the things you stipulated and
18 see if there's anything else that you stipulated to being
19 admitted because you want it to be part of the record, but
20 not that you intended it to go to the jury. That would be
21 very helpful, to help us with so many documents.

22 MR. HALL: True.

23 THE COURT: Okay, so what I'd like to do,
24 Mr. Houston, I'm sorry I interrupted you with that last

1 little bit.

2 MR. HOUSTON: I think the State and counsel for
3 Mr. Gonzalez would stipulate to the juror we've spoken of
4 being released.

5 THE COURT: Mr. Hall?

6 MR. HALL: Yes, that's correct.

7 THE COURT: Is it your feeling that the more
8 pressing matters for that juror need to be handled?

9 MR. HOUSTON: I do, your Honor, and I think the
10 juror has made it clear that they're certainly subject to a
11 different concern than this trial at the moment, that may be
12 in fact that's of such great importance they're losing sight
13 here.

14 THE COURT: Since there's a stipulation from both
15 parties we will excuse that juror, and the clerk will handle
16 that, and the bailiff. And we will proceed -- we've directed
17 the jury to come back at 7:30. I'm going to take a short
18 recess, and then I'll come back with my ruling on 159 and the
19 testimony, as well as 49P, I'll put that on the record in
20 just a few minutes.

21 So we'll be in recess for a few minutes. Thank
22 you.

23 (Recess.)

24 (Jury absent.)

1 THE COURT: The Court did want to clarify with
2 regard to the prior order admitting some evidence that the
3 comment made by the Court that Mr. Houston was asking about
4 was talking about the stop, that that's what wasn't
5 particularly relevant, as how the stop occurred, et cetera.
6 The Court wasn't making a comment on the evidence.

7 At the hearing, Exhibits K1 through 9 were admitted
8 and considered by the Court for purposes of that hearing, and
9 K-1 was an exact duplicate of what's now marked as 49P.

10 The Court did not find this to be evidence of
11 any -- admissible under 48. We found the evidence admissible
12 under the gang enhancement charge as substantive evidence
13 under the Somee case, and the analysis of the Somee case.

14 Therefore, the Court's ruling with regard to the
15 gun and the knife extends to the bullets and the magazine.
16 And although the State did not offer to the Court the request
17 to include the brass knuckles specifically, the Court finds
18 the brass knuckles are the same kind of evidence as the gun
19 and knife, which was previously ruled upon.

20 The redacted version of 159 goes to the elements --
21 the direct elements of the charged crime in the gang
22 enhancement, and therefore the evidence will be admitted.

23 MR. HOUSTON: Your Honor, will it be admitted with
24 any kind of a limiting proviso that it should be considered

1 only for?

2 THE COURT: That charge?

3 MR. HOUSTON: Yes.

4 THE COURT: Certainly.

5 MR. HOUSTON: Okay. We'll do that.

6 THE COURT: Just provide me with that limiting
7 instruction, absolutely. Any of the evidence that's been
8 admitted, we can do -- we should, deal with in the
9 instructions. So provide me with your draft first thing in
10 the morning.

11 MR. HOUSTON: First thing Monday morning?

12 THE COURT: Yes. Not tomorrow morning.

13 The housekeeping issues that we also have, that is
14 in the State's trial memorandum. The State requested a
15 Petrocelli hearing before evidence of the cellphone video of
16 James Tipton would be presented. And it wasn't -- there was
17 no offer made outside the presence of the jury, it was made
18 in front of the jury. There was no objection on the part of
19 the defense, and the defense actually I think cross-examined
20 on it, et cetera.

21 So I wasn't sure what you all wanted to do about
22 that evidence.

23 MR. HALL: Let's just remove my request. Withdraw
24 my request.

1 THE COURT: Yes. I wasn't sure if you all had kind
2 of -- I knew you've been stipulating to things back and
3 forth, and I just didn't know how this evidence came in.

4 MR. HOUSTON: I think the picture of Mr. Rudnick is
5 fairly important to keep it in as per the State's offer.

6 THE COURT: Okay, so this was -- and I think the
7 trial statement was prepared when there was also other people
8 involved in the case. But from the tenor of the courtroom, I
9 thought you were all stipulating that this was admissible.

10 But the case law is very clear, I should make a
11 finding that the evidence is appropriate to be presented
12 before I allow it to come in. And/or if you all want any
13 kind of a limiting instruction, we need to talk about it.

14 So you want it in as much as the State,
15 Mr. Houston?

16 MR. HOUSTON: I agree with Mr. Hall, it should come
17 in, your Honor.

18 THE COURT: So this was admitted without objection.
19 At this time I am hearing from the defense, and you tell me
20 if that's correct, you are not requesting any kind of
21 limiting instruction with regard to the evidence, and you're
22 not contesting its reliability or its relevance with regard
23 to -- as it relates to this case.

24 MR. HOUSTON: May I have one moment, your Honor?

1 No, your Honor, we're not, thank you.

2 THE COURT: And you are strategically not
3 requesting -- specifically requesting that I give no
4 instruction with regard to limiting the testimony?

5 MR. HOUSTON: No, your Honor.

6 THE COURT: Okay. Anything else with regard to the
7 record, Mr. Hall, you would like to make?

8 MR. HALL: No, your Honor.

9 THE COURT: Okay.

10 MR. HALL: Well, I would just say that I don't
11 think it is 48.045 evidence at all. Just out of an abundance
12 of caution I wanted to let everybody know that that evidence
13 was out there, so if there was a request, at least we had
14 informed the Court that there was a possible issue. And if
15 deemed appropriate, then we could address it at that time.
16 But obviously it wasn't deemed appropriate, or we didn't need
17 to have a Petrocelli hearing based on the evidence.

18 THE COURT: And the Court was comfortable with the
19 way it was presented.

20 The other issue that was -- there was discussion
21 about the brandishing of gun by the Hells Angels against
22 Vagos traveling to Reno, and there was some discussion about
23 that perhaps needing to be reviewed by the Court outside the
24 presence of the jury. The State did not raise that with

1 Mr. Rudnick, I think Mr. Lyons -- I don't remember, did you
2 raise that issue, is that how we heard about it?

3 MR. HOUSTON: It was Mr. Rudnick, your Honor.

4 THE COURT: Okay. You brought it up, didn't you?

5 MR. HOUSTON: Well, I think he brought it up, but I
6 did ask the question.

7 THE COURT: So elicited it?

8 MR. HOUSTON: No, I actually somehow -- and I can't
9 remember, your Honor, I'd be telling you something that's not
10 true. I don't remember, to be honest with you.

11 THE COURT: I don't either. But I didn't -- the
12 State didn't raise it, and so we didn't do any hearings
13 beforehand, and then you all raised it.

14 Do you want any limiting -- do you feel any issue
15 about it? It was something that I just want to make sure
16 we're all comfortable with the way it was handled.

17 MR. HOUSTON: I think what came out is there were a
18 lot of rumors going around, that was one of the rumors. I
19 don't think it was offered as a testimonial to the extent
20 that the witness was indicating he saw it, he knew what had
21 happened. He agreed there were a bunch of rumors floating
22 around, and he named that as one of them.

23 THE COURT: Okay, and then the last issue that was
24 raised in a pretrial was the attempted -- what was

1 characterized as an attempted robbery of Rudnick of the
2 motorcycle. That did not come up in the State's case either,
3 it came up during cross-examination of -- by the defense.
4 But it really didn't come out necessarily as an attempted
5 robbery, it just was whether or not he should turn his
6 motorcycle in to pay for legal fees. But that did come out
7 by the defense. And there was no request for the Court -- a
8 hearing outside of the presence of the jury.

9 MR. HOUSTON: And again, your Honor, I think the
10 witness actually was somewhat helpful when he indicated that
11 the district attorney's office refused to prosecute. Also on
12 the witness stand with Mr. Rudnick, Mr. Rudnick made clear
13 that it was in reference to that episode.

14 He didn't certainly refer to it as an attempted
15 robbery on the stand. So I think as it exists now, it's
16 neither that important, or something anyone was paying
17 attention to, and we don't need a limiting instruction.

18 THE COURT: Okay, thank you. So juror number 14,
19 you have the paperwork I gave you. Can you return that to
20 the Court?

21 MR. LYON: It was the two letters?

22 THE COURT: Yes. And I'm going to have the clerk
23 mark the originals in the triple A series. And we will
24 destroy the copies we provided to you.

1 I only gave you one copy each, right?

2 MR. HOUSTON: I thought we had one copy, I don't
3 remember having a separate copy other than Mr. Lyon's.

4 THE CLERK: They'll be marked as triple B 1 and 2,
5 and they will be maintained with the record of the case. And
6 I will direct that the bailiff to notify juror number 14 that
7 he will be excused, with our thanks and appreciation and our
8 hopes that he can get everything resolved if he has a little
9 more time on his hands. Okay, anything else? Is the State
10 going to be able to rest on Monday?

11 (Marked Exhibit No. BBB1-2.)

12 MR. HALL: Yes.

13 THE COURT: How many hours into Monday?

14 MR. HALL: One.

15 THE COURT: So Mr. Houston, you will have your
16 witnesses present?

17 MR. HOUSTON: Yes, your Honor, I've spoken to the
18 State and given the State an idea who we would have present
19 on Monday.

20 THE COURT: Okay. I'm just going to do -- I don't
21 know what's going to happen on Monday. I assume we will have
22 lots of time, but because we're on this sort of tight
23 schedule I'm going to go ahead and notify your client of his
24 right against self-incrimination now, and then we can move

1 forward and get a decision quickly.

2 Mr. Gonzalez, do you understand you have a right to
3 testify in this trial or not?

4 DEFENDANT: Yes, your Honor.

5 THE COURT: And do you understand if you assert
6 your right not for testify then the State still has to prove
7 you guilty beyond a reasonable doubt without any testimony
8 from you?

9 DEFENDANT: Yes, your Honor.

10 THE COURT: Now, do you understand that if you
11 waive your right against self-incrimination and begin to
12 testify, you cannot stop testifying in the middle of your
13 testimony?

14 DEFENDANT: Correct. Yes, your Honor.

15 THE COURT: In other words, you have to not just
16 answer your attorney's questions, the ones you want to
17 answer, but you will have to answer all of the questions put
18 to you by the defense.

19 DEFENDANT: Yes, I will.

20 THE COURT: So you understand that it's not a
21 halfway thing.

22 DEFENDANT: Yes, I do, your Honor. I want to do
23 that.

24 THE COURT: Now, you won't be waiving your right to

1 have your right not to testify until you actually take the
2 oath and sit down in the witness stand and answer the first
3 question.

4 DEFENDANT: Yes, I do understand that right now.

5 THE COURT: But the minute you answer that first
6 question, you've waived and it you're subject to
7 cross-examination, you can't change your mind in the middle.

8 DEFENDANT: Yes, I do understand that.

9 THE COURT: And have you had a chance to talk to
10 your attorneys about it?

11 DEFENDANT: Yes, I have.

12 THE COURT: And you don't have to tell me right now
13 what your decision is going to be. But what I want to tell
14 you is that when you do make that decision, your attorney
15 will tell me. If you disagree with that, in other words, if
16 he says defense rests, without calling you as a witness, and
17 you want to testify, you can get my attention just by saying,
18 your Honor, I have something. And then I'll send the jury
19 out and we'll talk about whatever your concern is. Okay? Do
20 you understand that?

21 DEFENDANT: Yes, I do.

22 THE COURT: And then if your attorney calls you as
23 a witness, and you don't want to testify, before you take the
24 oath you have to say, your Honor, I have something for you.

1 DEFENDANT: I will, your Honor.

2 THE COURT: And we'll do it the same way, okay?

3 DEFENDANT: Yes, your Honor.

4 THE COURT: All right. And so then tomorrow --
5 Monday, Tuesday morning at the latest, we'll get your
6 decision, okay?

7 DEFENDANT: Yes, your Honor.

8 THE COURT: All right. Thank you.

9 MR. HALL: Thank you, your Honor.

10 THE COURT: Anything else on either parties
11 request? Okay, then counsel, we'll see you Monday at 7:30,
12 and I think we should plan on Monday afternoon doing a
13 preliminary review of jury instructions. And I would note
14 now the verdict forms have to be modified to just be for
15 Mr. Gonzalez, because the original jury forms -- verdict
16 forms all had the other defendant in them, as well as
17 instruction number 1.

18 And I don't know if we have any -- and the
19 information, we need a new information instruction. Just all
20 the ones that relate to the parties that are charged, and the
21 charges in the case. You need to clean those up and make
22 sure they match the fourth supplementing information
23 supplementing the indictment, whatever that last document is.
24 And only have it relate to Mr. Gonzalez.

1 So if you can get that done and get those to us on
2 Monday morning, so we can review it. It's really important,
3 because Monday afternoon we'll be looking at those
4 instructions. Okay?

5 MR. HOUSTON: Thank you, your Honor.

6 THE COURT: Have a nice weekend. Thank you,
7 counsel. Court is in recess.

8 (Recess.)
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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

August 5, 2013

RENO, NEVADA

COPY

Reported By: DENISE PHIPPS, CCR No. 234

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I N D E X

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS
JAY CHELIN	4			
MATTHEW KIRBY	12	19	21	
ERNESTO GONZALEZ	25	62		

<u>EXHIBITS:</u>	<u>MARKED:</u>	<u>ADMITTED:</u>
162	--	11
163	--	19
164	25	--
165	25	--

1 RENO, NEVADA, AUGUST 5, 2013, 2013, 7:30 A.M.

2 -o0o-

3
4 (Hearing outside the presence of the jury)

5
6 THE COURT: It's my understanding we have a few
7 things to go over but we can do it at the end of the day;
8 is that correct?

9 MR. HALL: Yes.

10 THE COURT: Then we'll go ahead and bring the
11 jury in if there's nothing else. Please bring the jury
12 in.

13 (Jury present)

14 THE COURT: Counsel, will you stipulate to the
15 presence of the jury?

16 MR. HALL: Yes, Your Honor.

17 MR. HOUSTON: Yes, Your Honor.

18 THE COURT: Thank you. Please be seated. Call
19 your next witness.

20 MR. HALL: Officer Chelin.

21 (Witness sworn.)
22
23
24

1 JAY CHELIN

2 called as a witness on behalf of the State,

3 having been first duly sworn,

4 was examined and testified as follows:

5
6 DIRECT EXAMINATION

7 BY MR. HALL:

8 Q Officer, would you please state your name, spell
9 your last name.

10 A Jay Chelin, C-h-e-l-i-n.

11 Q How are you employed?

12 A By the Sparks Police Department.

13 Q How long have you been working with the Sparks
14 Police Department?

15 A 14 years.

16 Q And in what capacity?

17 A At this time I'm a general assignment detective.
18 In the past I've worked patrol. I've been a detective
19 with the DEA Task Force, training officer, SWAT officer.

20 Q Directing your attention back to September 23rd,
21 2011, in what capacity were you working for the Sparks
22 Police Department at that time?

23 A As a patrol officer.

24 Q So were you operating a marked patrol vehicle, in

1 uniform?

2 A Yes, I was.

3 Q Did you respond to the Nugget that evening?

4 A Yes.

5 Q About what time did you arrive?

6 A Approximately 11:30 p.m.

7 Q And can you tell the ladies and gentlemen of the
8 jury what you did when you arrived?

9 A Officers, as I came into the area, asked for help
10 on the 14th Street side of the Nugget as numerous people
11 were filing out of some employee doors.

12 As I came into that area, I responded over to
13 them. There were, I believe, three officers in the area
14 of the employee doors who had four subjects wearing green
15 who I believed to be Vagos, handcuffed.

16 As I approached the officers, they advised that
17 they saw somebody run that they were going to chase after.
18 And those officers took off after them. So at that point
19 I stayed on those doors.

20 As numerous other subjects came out, mostly
21 wearing green Vagos jackets or shirts, I one by one
22 contacted them, had them sit down on the curb. The area
23 we were at had a U-shaped parking lot, a driveway. So I
24 lined them up along the curb as they came out.

1 As other officers from Reno, NHP and the county
2 responded, we basically set up just a little system that
3 when people would initially come out of those doors,
4 officers would pat them down, and then they would move to
5 the curb where I would collect their ID, write down their
6 name, date of birth and driver's license number and ask
7 them if they had seen anything that happened inside the
8 Nugget.

9 Q Now, the west side of the Nugget would be where?
10 Let me just orient you with Exhibit No. 130. So if the
11 top of Exhibit 130 would be the east -- so east would be,
12 of course, to my left. So at the top would be east and
13 the bottom would be west?

14 A Yes.

15 Q All right. And there's an employee exit and a
16 little parking area there?

17 A Yes, there is.

18 Q Do you recall making contact with Cesar Morales
19 and Rigoberto Garcia?

20 A Yes, I do.

21 Q Could you tell me about that contact?

22 A That was towards the latter part of when --
23 basically there weren't very many people coming out
24 anymore. They had come out, initially were contacted by a

1 Reno officer who they told that they were -- one of their
2 brothers had been shot and they were going to try to get
3 to the hospital.

4 So I walked over, got their IDs, copied their
5 information again, and asked them about what had happened.
6 They said they had told or spoke with Detective Patton
7 already inside and that he had told them that they were
8 good to go leave.

9 So I confirmed with Detective Patton that they
10 had talked with him and they were released.

11 Q Did you ask them if they saw anything?

12 A I did initially, but their only response was that
13 they had already talked to somebody inside.

14 Q Did you check with Detective Patton to determine
15 whether or not they had in fact spoken with him?

16 A Yes.

17 Q He confirmed that he had made contact with them
18 on the other side of the Nugget on the 11th Street side?

19 A I'm not exactly sure where he made contact with
20 them, just I know inside in the Nugget.

21 Q And then after that what did you do? Let me back
22 up. How many Vagos did you identify during the course of
23 your -- at the time you were over there on the 14th?

24 A I'm not sure the exact amount. I just -- they

1 were all lined up on the curb and at this point I remember
2 maybe like 20 to 25.

3 Q About 24?

4 A Okay.

5 Q You filled out a witness list?

6 A Yes, I did.

7 Q And those were all Vagos?

8 A Yes.

9 Q Now, did you secure from that area and do
10 anything else?

11 A Yes. I responded to meet with Lieutenant Thomas
12 on the 11th Street doors of the Nugget, and he asked me to
13 transport Cesar Villagrana back to the police department.

14 Q Is there a procedure that you follow before
15 transporting somebody?

16 A Yes. Every time before I put someone in my car,
17 I pat them down for weapons and search their pockets to
18 make sure there's no contraband, anything illegal or any
19 weapons.

20 Q So would you try and determine whether or not
21 they had anything like bullets or clips or guns or knives?

22 A Yes.

23 Q Did you find anything on Mr. Villagrana?

24 A No.

1 Q Any clips?

2 A No.

3 Q You know, a magazine --

4 A Magazine, no.

5 Q -- for a gun?

6 A No.

7 Q Is the Nugget in an area designated as a

8 populated area by ordinance for the purpose of prohibiting

9 discharge of a firearm?

10 A Yes, it is.

11 Q And did you look at a map -- let me show you

12 what's been marked as Exhibit 163. Do you recognize 163?

13 A Yes, I do.

14 Q What is 163?

15 A It's a county map that shows the areas of

16 congestion within the Reno/Sparks area.

17 Q So if you're within the Sparks area of the Nugget

18 that's a congested area and to discharge a firearm in a

19 casino there, that's a crime?

20 A Yes.

21 THE COURT: This is Exhibit 163; is that correct?

22 THE CLERK: That's correct.

23 THE COURT: Counsel, any objection?

24 MR. HALL: Move for admission.

1 MR. HOUSTON: No, Your Honor.

2 THE COURT: Exhibit 163 is admitted.

3 (Exhibit No. 163 admitted.)

4 BY MR. HALL:

5 Q Can you identify on the map where the Nugget is?

6 A Needs to go up just a little bit. Okay. Want me
7 to point it out up here?

8 Q You can actually draw on this.

9 A The Nugget would be in this area (drawing). The
10 map right here shows the railroad yard in that area. But
11 the streets are kind of --

12 Q But you're familiar with the City of Sparks,
13 right?

14 A Yes.

15 Q And the Nugget is in the City of Sparks?

16 A Yes.

17 Q Designated as a congested area?

18 A Yes.

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

21 THE COURT: Cross-examination.

22 MR. HOUSTON: No questions, Your Honor.

23 THE COURT: May this witness be excused?

24 MR. HALL: Yes.

1 THE COURT: You may step down. You're excused.
2 (Witness sworn.)
3

4 MATTHEW KIRBY

5 called as a witness on behalf of the State,
6 having been first duly sworn,
7 was examined and testified as follows:
8

9 DIRECT EXAMINATION

10 BY MR. STEGE:

11 Q Good morning. Please state and spell your name.

12 A Good morning. First name is Matthew,
13 M-a-t-t-h-e-w. Last name is Kirby, K-i-r-b-y.

14 Q Are you a police officer?

15 A Yes.

16 Q What agency do you work for?

17 A San Jose Police Department.

18 Q How long have you worked for the San Jose Police
19 Department?

20 A About five years.

21 Q I'm going to direct your attention back to
22 February 13th of 2010. Were you working as a patrol
23 officer on that date?

24 A Yes.

1 Q Did you find yourself in the area of Campbell and
2 Fallbrook?
3 A Yes.
4 Q Is that within San Jose, California?
5 A Yes.
6 Q Now, prior to that date, had you received a
7 briefing regarding an incident in Santa Cruz on January
8 27, 2010?
9 A Yes.
10 Q And what was the general nature of that briefing?
11 A There was an altercation between the Vagos and
12 Hells Angels.
13 Q And did it involve weapons?
14 A Yes, it did.
15 Q Which type of weapons?
16 A It was a knife.
17 Q Now, how close is Santa Cruz from San Jose?
18 A It's about 30 minutes away.
19 Q Now, on this date, February 13th, did you come
20 into contact with Ernesto Manuel Gonzalez?
21 A Yes.
22 Q Do you see that person in the courtroom right
23 now?
24 A Yes.

1 Q Would you identify him for the record, describe
2 what he's wearing?

3 A He's sitting there with glasses (Pointing) and
4 peppery hair and a suit.

5 MR. STEGE: May I ask the record reflect the ID
6 of the defendant?

7 THE COURT: Where did you say he was?

8 THE WITNESS: Sitting in the middle between the
9 two gentlemen at the defendant's table.

10 THE COURT: The record will so reflect.

11 BY MR. STEGE:

12 Q When you came into contact with the defendant,
13 was he driving or riding anything?

14 A He was riding a motorcycle.

15 Q And what was he wearing?

16 A He was wearing a jean jacket with a two-piece
17 patch labeled Vagos on the back.

18 Q What kind of shirt was he wearing?

19 A Black shirt.

20 Q And anything distinct about that shirt?

21 A Yes, there was green writing that also had
22 labeled "Vagos" on it as well.

23 Q Now, during your contact with the defendant, did
24 you have an opportunity to inventory his belongings?

1 A Yes.

2 Q And what did the defendant have on him?

3 A I discovered a switchblade knife. Further
4 incident was brass knuckles were revealed along with a
5 loaded Uzi-style pistol.

6 Q Where was the switchblade?

7 A The switchblade was on his person.

8 Q Where were the metal knuckles?

9 A In the motorcycle bags.

10 Q Where was the gun?

11 A Below the brass knuckles.

12 Q Do you recognize -- if I can approach the
13 witness -- Officer, what is depicted in Exhibits 49-A, D,
14 R and B?

15 THE COURT: Counsel, approach.

16 (Bench conference between Court and counsel.)

17 BY MR. STEGE:

18 Q I correct myself. 49-A, O, R and P. I'll ask
19 you to review these photographs.

20 A Okay.

21 Q Flip through those, please.

22 A (Witness complied.)

23 Q Do you recognize what is collectively contained
24 in those exhibits as the defendant and the items that you

1 just testified about?

2 A Yes.

3 MR. STEGE: Move to introduce this series, Your
4 Honor.

5 THE COURT: You want -- it's admitted previously.
6 You want to publish it?

7 MR. STEGE: Yes.

8 THE COURT: Any objection to publication?

9 MR. HOUSTON: No, Your Honor.

10 THE COURT: You may publish.

11 BY MR. STEGE:

12 Q We'll start with A. What are we seeing in this
13 photograph?

14 A That is the clothing that the defendant was
15 wearing at the day of contact.

16 Q R, what are we seeing here, in R?

17 A That's the back of the vest that he was wearing
18 while riding the motorcycle.

19 Q O?

20 A That's the front of the vest that he was wearing
21 when he was riding the motorcycle.

22 Q Did you notice what side rocker the defendant
23 had?

24 A San Jose chapter.

1 Q Let's look finally at P. Describe what we're
2 seeing here.

3 A That's a collective shot of the weapons and
4 ammunition that was on either the person or in the
5 motorcycle.

6 Q So here on the left, what's that?

7 A That was the knife that was discovered that was
8 on his person himself.

9 Q And down here?

10 A Those were the knuckles that were revealed when
11 the saddlebag was opened, those were sitting on top.

12 Q Can you describe the condition of the gun when it
13 was found?

14 A It had multiple rounds in the magazine and there
15 was one round in the chamber.

16 Q What type of rounds were in the magazine?

17 A Hollow point ammunition.

18 Q You said there was one in the chamber?

19 A Yes.

20 Q What was the caliber of this weapon?

21 A Nine millimeter.

22 Q What is this here?

23 A That is a bag of ammunition that was also in the
24 same saddlebag on the motorcycle.

1 Q So as we see it here, the weapon had a round in
2 the chamber, rounds in the magazine; is that right?

3 A Yes.

4 Q And then a bag of extra rounds?

5 A Yes.

6 Q All nine millimeter?

7 A All nine millimeter.

8 Q Now, you later heard a spontaneous statement of
9 the defendant; is that correct?

10 A Yes.

11 Q And what was that spontaneous statement?

12 A He said: "I ain't gonna lie; I carry that for
13 protection because of my lifestyle."

14 Q Did you later have an opportunity to do a
15 recorded interview with the defendant?

16 A Yes.

17 Q And how soon after this spontaneous statement did
18 you do that interview?

19 A Roughly 20 minutes.

20 Q And the defendant voluntarily agreed to speak
21 with you?

22 A Yes.

23 Q And prior to taking the stand, you did have an
24 opportunity to review a copy of what has been marked as

1 Exhibit 162; is that correct?

2 A Yes.

3 Q Did you recognize that as a true and accurate
4 depiction of the interview?

5 A Yes.

6 MR. STEGE: Your Honor, I move to introduce 162.

7 MR. HOUSTON: No objection, Your Honor.

8 THE COURT: I'm sorry?

9 MR. HOUSTON: No objection.

10 THE COURT: Counsel approach.

11 (Bench conference between Court and counsel.)

12 THE COURT: Exhibit 162 is admitted.

13 (Exhibit No. 162 admitted.)

14 MR. STEGE: May I publish this, Your Honor?

15 THE COURT: You may.

16 (Audiotape played)

17 MR. STEGE: Thank you. Pass the witness.

18 THE COURT: Cross-examination.

19

20 **CROSS-EXAMINATION**

21 BY MR. HOUSTON:

22 Q Thank you, Your Honor.

23 Good morning, Officer Kirby.

24 A Good morning.

1 Q Officer Kirby, you're aware that this case wasn't
2 prosecuted, correct?

3 A Yes.

4 Q And in fact charges were dismissed, right?

5 A I don't know the details of what happened after.

6 Q Okay. You indicated this happened on
7 February 13th, 2010; is that correct?

8 A Yes.

9 Q And that's about, what, a year and seven months
10 before September 23rd, 2011, give or take?

11 A Yes.

12 Q And I noted you in the statement continually
13 asked about the Hells Angels, correct?

14 A Yes.

15 Q Did you want information on the Hells Angels that
16 evening?

17 A Not about the Hells Angels, no.

18 Q The defendant's comment is, I kind of heard was,
19 "they don't like us," right?

20 A Yes.

21 Q The defendant never made any comment he didn't
22 like them, correct?

23 A Yes.

24 Q Yes, he didn't make that comment?

1 A No, I'm sorry, no, he did not.

2 Q And, as a matter of fact, he never indicated he
3 had a problem with them, correct, in the sense of not
4 liking them?

5 A Not directly, no.

6 MR. HOUSTON: Thank you. I have nothing further.
7 And this was a voluntary statement to you?

8 THE WITNESS: Yes.

9 MR. HOUSTON: Thank you.

10 THE COURT: Anything further?

11 MR. STEGE: Yes, thank you.

12

13 **REDIRECT EXAMINATION**

14 BY MR. STEGE:

15 Q Why did you ask about the Hells Angels?

16 A Because I knew of the situation that happened
17 about two weeks prior, the rival attack from the Hells
18 Angels.

19 Q And that is why the defendant stated he was
20 carrying --

21 MR. HOUSTON: Objection; leading, Your Honor.

22 THE COURT: Sustained.

23 BY MR. STEGE:

24 Q What did the defendant say when you brought up

1 this prior incident?

2 A He said he was carrying it for his protection.

3 Q And didn't in fact the defendant go further than
4 saying they don't like us?

5 A Yes.

6 Q Did he say why?

7 A He did not say why.

8 Q Didn't he say something --

9 MR. HOUSTON: Objection; leading, Your Honor.

10 THE COURT: Sustained.

11 BY MR. STEGE:

12 Q What did he say, if anything, about territory?

13 A That there's two chapters and there's a Hells
14 Angels chapter in San Jose and there's a Vagos chapter in
15 San Jose as well. So they both have territory over San
16 Jose.

17 MR. STEGE: Thank you. Nothing further.

18 MR. HOUSTON: Nothing further, Your Honor. Thank
19 you.

20 THE COURT: You may step down. May this witness
21 be excused?

22 MR. STEGE: Yes, thank you.

23 THE COURT: You're excused.

24 THE WITNESS: Thank you, Your Honor.

1 MR. HALL: Yes, Your Honor, we wanted to publish
2 74-A and 74-B.

3 THE COURT: Ladies and gentlemen of the jury, at
4 this time the State is presenting a witness through
5 testimony that was taken outside of the courtroom
6 previously. So as you listen to this CD, it's as though
7 you were hearing the testimony here in the courtroom.

8 Beginning with 74-A?

9 MR. HALL: Yes, Your Honor.

10 Do you have them in order? I should have asked
11 you to help me locate them earlier. I apologize.

12 (Audiotape played)

13 THE COURT: May I ask you to pause that for just
14 a moment, and notify the jury of an identifier as to whose
15 testimony.

16 MR. HALL: I believe this is Ms. Goldboth, I
17 believe it's a Russian woman. These are the two witnesses
18 that were bartenders at the Oyster Bar.

19 THE COURT: You may proceed.

20 (Audiotape played)

21 MR. HALL: Might I indicate for the record that
22 I'm advancing it so we can get to the actual interview as
23 opposed to hearing nothing.

24 THE COURT: Okay. Thank you.

1 (Audiotape played)
2 MR. HALL: This is Mr. Gregory, the other
3 bartender.
4 (Audiotape played)
5 This is Greg Howell for the record.
6 (Audiotape played)
7 MR. HALL: I think that's it. Let me
8 double-check to make sure.
9 (Audiotape played)
10 MR. HALL: That was 74-A to 16. Greg Howell.
11 THE COURT: Thank you.
12 MR. HALL: This is 74-B, disk 31. This is Tara
13 Goldboth.
14 (Audiotape played)
15 MR. HALL: Your Honor, those are all the
16 witnesses that the State intends to call in its case in
17 chief. We did have a couple of portions of the
18 January 5th interview between Eric Bennett, Matt Neil and
19 Gary Rudnick that I provided to counsel. I'd like to have
20 those marked and move for their admission. One portion is
21 pages 42 through 45. And the other --
22 MR. HOUSTON: Can we approach, Your Honor?
23 THE COURT: Yes.
24 (Bench conference between Court and counsel.)

1 MR. HOUSTON: Thank you, Your Honor.

2 THE COURT: Did you leave those for the court
3 clerk to be marked?

4 MR. HALL: I did. Not handily. With that, the
5 State rests its case in chief.

6 THE CLERK: Exhibit 164 and 165 marked.

7 (Exhibit No. 164 and 165 marked.)

8 MR. LYONS: Thank you. We'd call Mr. Gonzalez.
9 (Witness sworn.)

10
11 **ERNESTO GONZALEZ**

12 called as a witness in his own behalf,

13 having been first duly sworn,

14 was examined and testified as follows:

15
16 **DIRECT EXAMINATION**

17 BY MR. LYON:

18 Q Good morning, sir.

19 A Good morning, Ken.

20 Q State your name and spell it for the record.

21 A Ernesto Gonzalez. E-r-n-e-s-t-o. Last name
22 Gonzalez, G-o-n-z-a-l-e-z.

23 Q How old are you, Mr. Gonzalez?

24 A 55.

4814

1 Q Where were you born?
2 A Nicaragua.
3 Q How old were you when you came to the United
4 States?
5 A Six years old.
6 Q And who did you come to the United States with?
7 A With my sister and my mom.
8 Q And when did you become a U.S. citizen?
9 A My mom became a citizen in -- I was about 15, 16
10 years old, that she became a naturalized citizen.
11 Automatically, because I was a minor, I became a citizen.
12 Q Did you attend school here in the United States?
13 A Yes, I did.
14 Q Did you graduate from high school?
15 A No, I didn't.
16 Q Did you get a GED?
17 A Yes, I did.
18 Q Do you recall what year you got your GED?
19 A '75.
20 Q How old were you?
21 A I was 16.
22 Q What did you do after getting your GED?
23 A I enlisted in the service, the Navy.
24 Q How old were you when you enlisted?

1 A I was 16.

2 Q Why did you enlist in the Navy?

3 A I wanted to travel. Also I had heard or I read
4 about the Seals. I wanted to be a part of that and that
5 was one of my dreams to do that.

6 Q Did you ever go through Seal training?

7 A No, because I was too young.

8 Q Did you go through Basic Training?

9 A Yes, I did.

10 Q Where were you stationed?

11 A San Diego.

12 Q What was your assignment?

13 A After I got out of boot camp, I was on leave and
14 then I was onboard a ship. I was a gunner's mate.

15 Q What's the responsibilities of a gunner's mate?

16 A It varies. It's anything from weaponry functions
17 to inventory of ordnance, moving -- since we were on a
18 nuclear cruiser, we were to move the missiles from aft to
19 midship.

20 Q How long did you serve in the Navy?

21 A Two years.

22 Q And what rank did you achieve?

23 A In those two years, the most you can get is an
24 E-3.

1 Q And you were discharged?

2 A Yes, I was.

3 Q And what type of discharge did you obtain?

4 A Honorable discharge.

5 Q What did you do after being discharged from the

6 Navy?

7 A I got back home, I didn't -- I wasn't sure what I

8 wanted to do. So I don't know how long it took, but I

9 used the GI Bill for vocational school, Sako's Automotive

10 Institute out of, I think it was, Redwood City,

11 California.

12 Q How long did you do that?

13 A The school was for about nine months. It was

14 basically engine work, transmission, electrical, chassis

15 work, front end work, brakes.

16 Q And what did you do after finishing school?

17 A After I finished school, I got employed at a gas

18 station starting at the bottom and worked myself up to

19 being a full-time mechanic there.

20 Q How long did you do that?

21 A Maybe two to three years.

22 Q What did you do after that?

23 A I had met up with someone who had owned a

24 janitorial service, and at the time I wasn't sure whether

1 I wanted to go into it, but they needed help on the
2 weekend. I needed extra money, so I started working for
3 them.

4 They offered me the same amount of payment that I
5 was working as a mechanic and then I subsequently started
6 working for them.

7 Q How long did you do that?

8 A Well, up until the last 25 years, 22 years.

9 Q And did you eventually start your own business?

10 A I bought the business about four years later.

11 Q And about four years after you started?

12 A Correct.

13 Q Where was your business located?

14 A Out of the Bay Area in San Francisco, we worked a
15 lot of areas, anywhere from Palo Alto, Los Gatos Hills,
16 Pacific Heights.

17 Q Did you have family? Do you have family?

18 A Yes.

19 Q Kids?

20 A Yes, I do.

21 Q How many kids?

22 A Well, I have four. Two from her previous
23 marriage and then two that we had ourselves.

24 Q And your business was located in San Francisco?

1 A Correct.

2 Q And was there a time when you moved to Hawaii?

3 A We moved to Hawaii in '07. We wanted to just

4 change the scenery for our kids. So we moved out to

5 Hawaii.

6 Q And what did you do out there?

7 A They started going to school. I started a

8 business there also.

9 Q What kind of business did you start?

10 A The same thing, janitorial business.

11 Q And how long did you live in Hawaii?

12 A About two years.

13 Q And where did you move after that?

14 A Back to the Bay Area, because I had a business

15 here also.

16 Q Why did you do that?

17 A The girls wanted to go to a larger school. They

18 were going into high school. They wanted to go into the

19 arts and music. So we moved back.

20 Q As of today, how old are your kids?

21 A The oldest is 28. The other one's 23. 21 and

22 18.

23 Q Now, you are a member of the Vagos, true?

24 A That's correct.

1 Q Tell us how you became a member of the Vagos.

2 A I was in Hawaii when I first came across the
3 Vagos. I had seen it before. I mean, we had gone to
4 barbecues, to parks. Hawaii's pretty small, out of Hilo.
5 Hilo is a pretty small community. There aren't a lot of
6 parks. So that's where I first begun to meet the Vagos.

7 Q Why did you want to become a member of the Vagos?

8 A Well, I met John first.

9 Q John --

10 A John Juarez, who I met, and then we just sparked
11 up a friendship, conversation. I started to meet his
12 wife, his kids. He met mine. And subsequently it just
13 became a relationship between him and I.

14 Q And about what time was this that you first
15 became a member of the Vagos, what year?

16 A Latter part of '07.

17 Q And you're still in Hawaii?

18 A Correct.

19 Q How was it that you became a member of the San
20 Jose charter of the Vagos?

21 A Well, it wasn't until a later point that I became
22 a member. We had moved back into California. So
23 basically I was living here more so than I was in Hawaii.

24 So the closest charter to me was San Jose. So I

1 went down, I'm in San Jose. I had a choice where I wanted
2 to go as an independent -- you get choices which charter
3 you want to go to. So I met up with them. I liked them.

4 Some of them were self-employed. They had kids.
5 I liked them. It was mostly that.

6 Q Now, you know Cesar Morales is or was the
7 president of the San Jose charter. Did you hold any
8 particular position?

9 A Not at that time. I was still Hawaii.

10 Q You were still Hawaii?

11 A Correct.

12 Q And how did it -- what does that mean?

13 A That means that I'm from another state and if I'm
14 going to come to -- and I was on the mainland. So I just
15 had to change the name from Hawaii to California.

16 Q And when did that happen?

17 A Somewhere in '09.

18 Q Can you tell us a little bit about what you would
19 do with the San Jose charter, what type of activities you
20 guys would do?

21 A Anywhere from -- with Ritchie -- when I first got
22 together with San Jose, it's like anything else, you click
23 with a person more so than someone else.

24 So I started hanging around with Ritchie a lot

1 more.

2 Q By Ritchie, you mean Richard Nickerson?

3 A Correct. I started to meet his family, his kids,
4 so on and so forth. We spend Christmas or Thanksgiving
5 together or the day after. We wouldn't do Thanksgiving
6 together because we were with our own families.

7 And we would go on runs, meaning that we would go
8 from here to another city, maybe another state, and join
9 together with other members and have barbecues, poker
10 runs. Just things between friends.

11 Q I want to go through -- bear with me for a
12 second.

13 THE COURT: I'd like to find it.

14 BY MR. LYON:

15 Q I just want to go through the patches on your
16 vest. I think the jury's seen it before. I think you had
17 there, on there an American flag patch?

18 A Sure.

19 Q How did you get that patch?

20 A Well, you have a choice whether to wear your
21 state patch where you're from, California. I chose to use
22 the U.S.

23 Q And is that a patch that you earned or that's
24 given to you; how does that work?

1 A No, it's just something that is given to you.

2 Q And then there were other patches, looked like
3 other countries' flags?

4 A Correct, there's two of them.

5 Q What countries do those represent?

6 A One of them is Mexico. You have to ride with a
7 brother in Mexico, I should get on a motorcycle with him
8 in order to get that flag. The same with Nicaragua. You
9 have to ride with a brother from that state or country in
10 order to get that flag or state flag.

11 Q And then we have the big loci patch?

12 A The centerpiece, yes.

13 Q How did you get that?

14 A That comes with membership.

15 Q Is that something you earned or was that given to
16 you?

17 A Well, there's a couple of ways that you can get
18 that patch, is there's two ways. One you start as a
19 hangaround. You go as a prospect and then you become a
20 full member.

21 On my cut, you can see where it says charter
22 member, and basically that is significance of an original
23 member from Hawaii. If you're the first eight that have
24 started a charter, you automatically get the centerpiece

1 and the name of the state that you're in.

2 Q And I think that on your name patch or what they
3 call the rocker, that's Nicaragua?

4 A Correct.

5 Q There's been some reference that you're the
6 president of the Nicaraguan chapter, is that accurate?

7 A You cannot be a president of a club or a charter
8 unless you're physically living there. You can be a
9 president. So to answer your question, no, I'm not the
10 president of the Nicaragua charter.

11 Q Who is?

12 A Carlos Ramirez.

13 Q How was it that you then have the Nicaragua
14 rocker?

15 A Well, originally I had always intended to retire
16 in Nicaragua, I have property down there, a home down
17 there. And we were on a run -- in 2011 we were on a run
18 in Hawaii, and we were at a restaurant in Kona.

19 And we were at the restaurant, and Tata was
20 there, Jimbo was there, some of the other fellows were
21 there. We were sitting somewhere in the restaurant. They
22 were seated at the other end of the restaurant.

23 And as we mingled, I was called over and I was
24 talking to Tata and Jimbo and they were asking me about

1 Nicaragua, how it was going, all those things.

2 And then Jimbo says to me that they wanted me to
3 wear the Nicaragua rocker. And not that I was opposed to
4 it, but I'm from California. And for somebody to be
5 wearing Nicaragua and then somebody to be wearing San
6 Jose, it's kind of weird. But they had known that I had
7 wanted to move to, I was going to retire in Nicaragua.

8 So because I started Nicaragua, they gave me the
9 honor of wearing the Nicaragua name, the rocker.

10 Q Now, I think that you had some other patches.
11 There's what -- I think there was something "in memory
12 of"?

13 A "In memory of," you must ride with brothers at a
14 brother's funeral to get that patch.

15 Q Do you recall how you got that patch?

16 A Yeah, I went to -- I've been to several. But I
17 went to one particular one in LA to bury a brother, and
18 that's how I got that memory patch.

19 Q And I think there was some discussion about the
20 little red loci patch?

21 A Yes, the red loci.

22 Q What does that signify?

23 A There's two things. Getting in a fight and
24 drawing blood in a fight. It is what it is. That's why

1 it is red.

2 Q How did you end up with that patch?

3 A Originally we were in San Jose. We had gone to a
4 bar and we had gone in there. Couple of our brothers were
5 playing pool. I was just mingling around. I saw this
6 girl at the bar and subsequently I checked her out for a
7 little bit. Nobody was talking to her. I went over
8 there, talked to her, and I don't know how long that was I
9 was talking to her, and so I approached her more, more
10 closely, and then all of a sudden I get this hit on the
11 back of my head.

12 And I turned around and it's this guy. We get in
13 a tussle. It didn't last really long. We got split up.
14 Subsequently my brothers decided to give me that loci.
15 You just don't ask for it. You just get it whether you
16 get it or not because that happens. It's up to the
17 members.

18 Q Did you get hurt in that fight?

19 A No.

20 Q Anybody else get hurt in that fight?

21 A No.

22 Q It was just something that they gave you with
23 because of that event?

24 A Correct.

1 Q Now, I think you also have what's been designated
2 as an MF patch?

3 A Yes.

4 Q What does that signify?

5 A Well, there's actually two things you can look at
6 it. For the old-timers, or the older guys, it's My
7 Family. For the newer guys, you know, it's, excuse my
8 language, "mother fucker."

9 Q What does it signify to you?

10 A "My family," originally.

11 Q How do you get that patch?

12 A You receive it. You don't have to earn that
13 patch.

14 Q Was there any other patches that you can recall
15 being on your vest or your cut that we haven't gone
16 through since we don't have it here?

17 THE COURT: Let's stop. The clerk is sure it's
18 in 76. Why don't you look.

19 (Bench conference between Court and counsel.)

20 MR. HALL: Here it is.

21 BY MR. LYON:

22 Q Okay. So we have on the back, we have the loci,
23 we talked about that. The Nicaragua name patch, the
24 American flag. Which one is this one, (pointing)?

1 A That's my home country, Nicaragua.

2 Q And this one is the Mexico patch?

3 A Correct.

4 Q And then on this we have the memory patch, we

5 talked about that?

6 A Yes.

7 Q The red loci. The Vagos patch, how do you get

8 that?

9 A That's representing the Vagos from the front,

10 that's all.

11 Q Is that just something that's given to you?

12 A You actually buy that from the store.

13 Q And then MF patch we talked about.

14 A Right.

15 Q And this patch, Charter Member?

16 A Charter Member, that's one of the original out of

17 Hawaii member.

18 Q Is that something that's given to you, you

19 earned?

20 A No, that one's exclusive to the first eight

21 people. It depends on the charter who actually start the

22 charter. So it depends. Nothing is set in concrete with

23 the Vagos. You know, this is a clarification that I need

24 to make, as much for myself as for my brothers, is that

1 not every charter --

2 MR. HALL: I'm going to object. This isn't the
3 question.

4 THE WITNESS: Not every charter is the same.

5 THE COURT: Sustained. Sorry, you have to answer
6 the questions that your attorney asks.

7 BY MR. LYON:

8 Q I think we've discussed the patches that are on
9 your vest.

10 A Correct.

11 Q So I want to talk about, a little bit, there was
12 some patches that were found at your house. We've seen
13 some pictures of them. They were in a box. Were those
14 your patches also?

15 A No. The previous trip I had gone to Nicaragua,
16 they don't have anyone that makes any patches at all,
17 whether it's the Vago, forever Vagos or so on and so
18 forth, I purchased them to bring down there.

19 Q Okay. Now, earlier this morning we heard
20 testimony from Officer Kirby about an incident where you
21 were pulled over and found in possession of a gun, a
22 knife, some brass knuckles, et cetera.

23 A That's correct.

24 Q You recall that event?

1 A Yes, I do.

2 Q And you made some statement to the effect that
3 you were carrying those items due to your lifestyle?

4 A That's correct.

5 Q What did you mean by that?

6 A For my own protection.

7 Q And what do you mean by that?

8 A Previous to I think it was around maybe October
9 of 2010, I was on 101-on-one south heading down to San
10 Jose.

11 Q This is February of 2010 -- you mean October of
12 2009?

13 A Correct, correct. October 2009, I was heading to
14 San Jose. And somewhere between around the airport, a
15 truck pulled up to me, rolled down the windows. So I
16 looked over. I didn't think anything of it. And then I
17 heard -- and people started to say stuff like, "You're a
18 biker, we don't like you," I can't really recall all the
19 words, I got a couple of bottles thrown at me. I hit the
20 throttle. I split. I went to the city. I lost them.

21 Since then, I said to myself I was never going to
22 get caught alone or unprotected. They had a gun show at
23 the Cow Palace which I went to a month or so later. That
24 was where I bought that firearm.

1 Q And what kind of firearm was it?
2 A Starts with an S. Stoeger, I believe, or
3 Stoeger.
4 Q And what about the knife, what type of knife were
5 you carrying?
6 A It was a regular saw knife, I bought it at North
7 Face.
8 Q What happened with the gun and the knife?
9 A The gun was -- it wasn't given back to me by the
10 San Jose Police Department.
11 Q From Officer Kirby's testimony, that case was
12 dismissed?
13 A Correct.
14 Q Did you ever replace that gun?
15 A No, I did not.
16 Q Now, we've seen photographs of you with a gun
17 down in Nicaragua.
18 A Yes.
19 Q Do you have a gun in Nicaragua?
20 A Yes, I do.
21 Q What kind of gun is that?
22 A It's a nine millimeter Glock.
23 Q Why do you have a gun in Nicaragua?
24 A Well, traveling in Nicaragua, even though I'm

1 from there, it's totally different. It depends where you
2 go.

3 If you go to a different city, there's parts of
4 the city in Managua where you'll come to a stop sign or --
5 you just don't know. There's a lot of things that have
6 happened. There's been shootings, a lot of holdups. So I
7 carry that for my own protection.

8 Q Is there any special process in obtaining a gun
9 in Nicaragua?

10 A Yes, there is.

11 Q Can you explain that?

12 A You have to have a psychological profile done on
13 you. You need to make sure --

14 MR. HALL: Objection, Your Honor. What's the
15 relevance of this? Objection, relevance. Thank you.

16 THE COURT: Counsel?

17 MR. LYON: I think it's relevant as to why he has
18 a gun in those pictures that the State's introduced and
19 how he came about obtaining that weapon.

20 THE COURT: I'm going to sustain the objection to
21 this question. I don't think it's relevant to go into all
22 the details.

23 BY MR. LYON:

24 Q I want to move on to Street Vibrations. Prior to

1 2011, had you been to Street Vibrations here in Reno?

2 A Yes, I have.

3 Q And how often?

4 A Each year. '09, '10. Subsequently 2011.

5 Q What was the purpose of coming to Street
6 Vibrations?

7 A To get together with the brothers. We have --
8 you just get together. It's like family getting together.
9 You get together. You shoot the breeze, what's going on
10 here. You see brothers you don't see often enough from
11 other states. You get to meet new brothers.

12 There's meetings that are held there. Usually a
13 general meeting is held there to inform us what's going on
14 around, with our different charters.

15 Q Now, we've heard that Street Vibrations is the
16 Vagos national run?

17 A Correct.

18 Q And what is the national run?

19 A National run means exactly that, you just --
20 everyone goes from the states or from different countries.

21 Q Where would you stay prior to 2011?

22 A We had stayed -- the previous years, I had stayed
23 at the Nugget on two occasions and an outside hotel before
24 that.

1 Q And where would your meetings normally take
2 place?

3 A Well, this particular year, it was always in the
4 same. It was up on the second floor.

5 Q Now, I'm talking prior to 2011. Would you recall
6 where your meetings were held in those years?

7 A I couldn't be specific of where it was. But we
8 had meetings.

9 Q Would you ever see other motorcycle clubs at
10 Street Vibrations?

11 A Yes, we did. I did.

12 Q And would that include One Percent Club, such as
13 the Hells Angels?

14 A Correct. Also Mongols were there.

15 Q Was there ever a problem in your experience in
16 the prior Street Vibrations?

17 A No. We never had a problem.

18 Q Now, we've heard testimony that there's a rivalry
19 between the Vagos and the Hells Angels. In your
20 experience, how would you describe your experience with
21 the Hells Angels?

22 A Out of San Jose, you have two charters. You live
23 in the same area, in the same vicinity, and you co-exist.
24 You see one riding and that's it. I mean, it's not

1 something that has ever grown out of hostilities or
2 anything between us. We were always respectful towards
3 each other.

4 Q We heard Officer Kirby's statements and your
5 prior statements to him basically to the effect that the
6 Hells Angels aren't your friends. What did you mean by
7 that?

8 A Well, yeah, I mean, I'm not going to -- I mean,
9 I've gotten a phone number from an HA before, but it's out
10 of if there's -- for an example, I'm out of San Francisco.
11 And I think this is the best example I can give you. I'm
12 out of San Francisco. There isn't any Vagos in San
13 Francisco.

14 So I would be given a phone number to call and
15 say, hey, you know what, I'm in the city, this is where I
16 live. So if you see me around, it's not out of
17 disrespect, it's just that I live here and this is where I
18 work.

19 And then that's it. It's just a mutual respect
20 that you give the guy. You just don't brash around with
21 your cut on without letting somebody know in that area.

22 Q Did you know any of the San Jose Hells Angels?

23 A No, I did not.

24 Q Did you know Jethro Pettigrew?

1 A I had never met him.

2 Q Did you know Bobby V?

3 A On an occasion we met him up in Sacramento at an
4 Easy Rider.

5 Q Now, in 2011, you came to Street Vibrations?

6 A Correct.

7 Q Who did you come up with?

8 A My charter. There were eight of us. We joined
9 with some others as we were heading up to Reno. We headed
10 with other brothers out of maybe Sacramento, other various
11 little cities that are around.

12 Q And you were staying at the Nugget?

13 A Correct.

14 Q And what time did you guys check in, do you
15 recall?

16 A 4:30, 5:30, something around that time.

17 Q Did you see any other motorcycle clubs when you
18 were checking in?

19 A Yes, I did. Well, not right away. It wasn't
20 until I was in line that I noticed that there was other
21 clubs there.

22 Q What type of other clubs did you see?

23 A Some RCs, some Riding Clubs, and the HAs.

24 Q Was that unusual?

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1 A No, not in a large event like that, no.

2 Q Did it offend you in any fashion?

3 A No, I mean -- no.

4 Q So what did you do after you checked in?

5 A Ritchie and I went upstairs. We put our stuff

6 away. We came back downstairs. We mingled. We gambled

7 somewhat. And we were just around.

8 Q Now, we've heard what's been characterized as the

9 8:00 meeting upstairs. Did you attend that meeting?

10 A Yes, we did.

11 Q And do you recall what was discussed?

12 A Just general things: Who was opening up

13 charters; who wanted to become part of the Vagos;

14 situations just around our club.

15 Q Do you recall how long you were at the meeting?

16 A 30, 45 minutes. I'm sure -- I mean I can't

17 clarify with you exactly the amount of time I was in

18 there.

19 Q What did you do after the meeting?

20 A Well, we got together. We went downstairs.

21 Everyone kind of split up. Ritchie and I just went to do

22 some gambling, check out some other things and just hung

23 around.

24 Q Did you participate in some sort of secret powwow

1 or secret meeting where Dragon and Tata green lit a hit on
2 Jethro Pettigrew?

3 A No.

4 Q Did you volunteer to assassinate Jethro
5 Pettigrew?

6 A No, I did not.

7 Q There's been some discussion that you were trying
8 to open a charter or chapter in San Jose or Santa Cruz; is
9 that accurate?

10 A No, it's not. I was busy with the Nicaragua
11 chapter. It takes a lot to open up a charter. So it's
12 not like you're going to open up three to four charters at
13 one time.

14 Q Now you're with Mr. Nickerson after you leave the
15 8:00 meeting?

16 A Yeah, we're close, Ritchie and I.

17 Q Did there come a time when you went over to the
18 Oyster Bar?

19 A Yeah. After we were at the roulette tables,
20 while I was doing some other things, we went over to Cesar
21 and Cesar said there was a problem down at the Oyster Bar.

22 Q Did you go to the Oyster Bar?

23 A That's correct, we did.

24 Q What happened when you got there, what did you

1 observe?

2 A Well, it was -- it's really hard to say exactly
3 what transpired from minute to minute. The thing that I
4 still want to say is that when we started walking down, we
5 saw the Oyster Bar. We saw there were HAs in there.

6 If we had been called down there, there was a
7 problem. So I followed my PN, which is Cesar, and I had
8 heard from Cesar prior that Jabbers was high or drunk and
9 had started something with the HAs. So we were there as
10 the San Jose, they called us in because it was San Jose
11 HAs. So there was some mutual thing.

12 You wouldn't want to call somebody from
13 Bakersfield or another area to talk to somebody because
14 they wouldn't know them. But Cesar and Rigo knew them.
15 That's why we were called in there.

16 Q By Jabbers, you mean Gary Rudnick?

17 A Gary, yes.

18 Q Did you know Gary Rudnick before that evening?

19 A Yes, we had gone on runs, that's how I met him.

20 Q Had you ever been to his house before?

21 A Yes, on a couple of occasions I had, yes.

22 Q And for what purpose?

23 A Whether it was -- we had been there for a
24 barbecue on an occasion. And then we just dropped by for

1 another one.

2 Q Did you have any conversations with Mr. Rudnick
3 at the Oyster Bar that evening?

4 A No, none at all.

5 Q How about Mr. Pettigrew?

6 A No, none at all.

7 Q So what were you doing there, what was your
8 purpose being there?

9 A My purpose there was to be with Cesar.

10 Q And just -- I don't want to go through the video,
11 but can you just recall what you did while you were over
12 there at the Oyster Bar?

13 A Once I got into the Oyster Bar, knowing that
14 there was some tension going on, I knew they were talking
15 to the HAs. So I just -- I looked around. I saw that
16 there wasn't any sort of tension building up more so
17 than -- yeah, there was a tension now, they're talking
18 about it, they're going to table it, see what's going on.

19 At some point I know there's going to be a
20 handshake. When that is, I don't know. I came outside
21 and I just -- I was staying towards the back and I was
22 just checking out to see how my "P" was.

23 Q And did there come a time when you left the
24 Oyster Bar?

1 A Yes. After Cesar said everything was cool in
2 there, Ritchie and I decided to leave and we went to In
3 and Out.

4 Q Do you recall how long you were over at In and
5 Out?

6 A From the time it takes from where we were at to
7 there, I couldn't -- 35 minutes, maybe, 40. I'm not
8 really sure.

9 Q What did you do then? Did you return to the
10 Nugget?

11 A Yes, we did.

12 Q And now we've seen on the video again kind of
13 what was going on leading up to the fight between
14 Mr. Rudnick and Mr. Pettigrew. Again, what do you recall
15 doing during that time period?

16 A We had gone into the disco, Ritchie and I had. I
17 had gotten a phone number from a girl. I had come back
18 out. I was socializing. At some point midway through all
19 that I was just standing around. I was talking to this
20 other girl, a friend of mine came to me and we were just
21 hanging out.

22 Q And I think on the video you're seen talking to
23 Greg Fern. Do you know who Greg Fern was?

24 A Yes.

1 Q And what were you guys discussing?

2 MR. HALL: Objection, hearsay.

3 THE COURT: Sustained.

4 MR. HALL: Irrelevant.

5 BY MR. LYON:

6 Q What was the subject of your conversation?

7 A How things were, when we were coming up, how he
8 was up in Lake County. Just general men things.

9 Q Now, at one point prior to the fight you go over
10 to, looks like you go over to the bar. Do you recall
11 that?

12 A Yes, I do.

13 Q And what do you recall?

14 A I went over to the bar to get some juice and then
15 Cesar was behind me. I bought him a beer.

16 Q Now, just before the fight, looks like you're
17 standing to the side of what we call the Yellow Brick
18 Road. Do you recall that?

19 A Yes, I do.

20 Q Just want you to recall or tell us what you
21 recall about the fight and the subsequent events, if you
22 could.

23 A I recall that we were all standing, milling
24 around, and I recall Brian saying to me something like

1 "move back" -- he said something about move back.

2 MR. HALL: Objection, hearsay.

3 THE COURT: Sustained.

4 BY MR. LYON:

5 Q Just what you recall. If you could not include
6 what people were telling you, just what you were thinking,
7 what you recall doing.

8 A I stayed where I was at. I saw that the HAs were
9 coming.

10 Q What were you thinking at that point in time?

11 A That it had been squashed; there wasn't a
12 problem, there wasn't anything else going on with us. So
13 they started going by, you know, and then I didn't see
14 when Pettigrew stopped with Jabbers. I didn't see that
15 initial stop.

16 When I turned around, I saw them verbally talking
17 to each other. So I looked around. And from their body
18 postures I could see that there was something going on
19 between both of them. I decided that -- I had a glass in
20 my hand. I went to set it down. And then from there I
21 started walking away.

22 And then that's when all of a sudden -- I mean,
23 it's like -- it just happened.

24 I didn't see the actual punch. All I saw was

1 just like everybody backed up, you know. I backed up
2 towards the bar. I recall Cesar coming to me. This dude
3 is big.

4 Q Cesar who?

5 A Cesar Villagrana. So I stepped back. And he
6 came towards me. He has a bottle. I go back. I'm going
7 to take a stance. He backs off. I go back. Then
8 somewhere along the line I see Pettigrew. He has his gun
9 and he hits Greg. He hits Greg twice, man, you know, and
10 so he hits him twice and I'm thinking: Ah shit.

11 So I walked over, I grabbed the bottle from the
12 bar. I remember that I walked towards the disco. I
13 entered the disco. I saw a firearm on a counter. I threw
14 the bottle away. I picked up the firearm. I put it in my
15 pants. I came back out.

16 I heard some more shots. I went back towards the
17 bar. I heard, fucking, people screaming. I came back. I
18 looked. I saw Pettigrew doing this thing with the gun
19 (demonstrating). I moved back and then on that last pass,
20 I was going to leave.

21 And then I started heading back. And at some
22 point they were picking up their stuff. I saw them
23 picking up their stuff. I started watching them walk.
24 They went past the disco. And from there you could see

1 where they were at.

2 And I thought it was done. I thought it was
3 done, you know. I thought it had stopped. So at some
4 point I had seen someone on the ground. I looked and I
5 could see the back of his vest.

6 And so I thought: You know what, just keep
7 walking by. I mean, it's all done. It's done. And then
8 all of a sudden I see him start kicking him. And I said:
9 Fuck that, and I saw him with the gun and that's when I
10 shot. And I shot at both of them, trying to hit both of
11 them, because I didn't know which one. And then as soon
12 as I thought it was out of bullets, it came back and I ran
13 back.

14 Q Do you recall how many shots you fired?

15 A No, I don't.

16 Q What did you do after you ran away?

17 A I left. And -- and -- I left out some doors and
18 I -- I mean, you know what, I don't know what I was
19 thinking, I don't know what was going on at that time. So
20 I remember just throwing the gun away.

21 I went to a hotel across the street, because I
22 had seen some brothers, and that's where I had stayed that
23 night with them. I didn't want to go back to the Nugget
24 because I knew that there were a lot of HAs down in Reno.

1 And so I spent the night there.

2 Q When you were running away, who were you running
3 from?

4 A The HAs.

5 Q Did you eventually tell anybody about what had
6 happened?

7 A No. No, I did not.

8 Q When did you find out that Mr. Pettigrew had been
9 shot and actually killed?

10 A It -- it had to be Sunday is when I heard.

11 Q And what did you do on Sunday, after hearing this
12 information?

13 A I had made a call. And I had made a call to
14 Cesar and informed him that --

15 Q That would be Cesar Morales?

16 A Right, that what had happened. And it was
17 suggested -- since after this had happened, everybody left
18 San Jose. And we met down in Los Angeles.

19 Q Why did you leave San Jose?

20 A Well, in fear of reprisals from the HAs to us. I
21 moved both of my daughters out of state. And it just
22 happened that way.

23 Q And you went down to LA?

24 A Correct.

1 Q What was the purpose of going down to LA?

2 A To squash it.

3 Q What do you mean by that?

4 A Well, we had to table things with the HAs. We
5 had to figure out and tell them what actually happened,
6 how it happened and what was subsequently going to happen
7 with San Jose and their families, my family.

8 Q Now, were you receiving any communication from
9 Gary Rudnick during this time?

10 A Yeah. He had called me several times. He had
11 called me regarding that he had messed up and that he
12 wanted to make things right --

13 MR. HALL: Objection, hearsay.

14 THE WITNESS: -- with us.

15 THE COURT: Sustained. Okay. This is probably a
16 good place to take our morning recess. During this break,
17 do not discuss the case among yourselves, Ladies and
18 gentlemen of the jury. Do not allow anyone to speak of
19 the case to you or in any way attempt to influence you
20 with regard to it.

21 Should any person make such an attempt, report it
22 to the Court immediately. Do not listen to view or read
23 any news media accounts or any other accounts regarding
24 the trial. Do not make any independent investigation into

1 any of the facts and circumstances regarding this case.
2 And do not make any independent inquiry into anything
3 about the groups or Sparks Nugget. We'll be in recess.

4 (Recess taken at 9:32 a.m.)

5 (Jury not present)

6 THE COURT: Can we bring the jury back in?

7 MR. LYON: Yes.

8 THE COURT: Bring the jury back in.

9 (Jury present)

10 THE COURT: Counsel stipulate to the presence of
11 the jury?

12 MR. HALL: Yes, Your Honor.

13 MR. HOUSTON: Yes, Your Honor.

14 THE COURT: Please be seated.

15 Mr. Lyon, you may continue your inquiry.

16 BY MR. LYON:

17 Q Thank you. I believe when we left off, I believe
18 you indicated that you had gone down to LA, and there was
19 efforts to try to quash it or to talk with the Hells
20 Angels about what had happened?

21 A Correct.

22 Q There was some evidence that you had actually
23 booked a flight to leave the country?

24 A Yes. On Tata.

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1 Q Why did you do that?

2 A My intention was to get as far away from the U.S.
3 as possible.

4 Q Why?

5 A Because of the repercussions that were in effect,
6 and also if I wasn't close by my family, nothing would
7 happen to them either.

8 Q And that flight was cancelled?

9 A I called and I had mileage. And then I decided
10 not to call back with a credit card because I mean what
11 was going to happen to my kids.

12 Q So what did you do after that?

13 A We all -- a lot of my brothers stayed in LA.
14 Subsequently some are still living there. I headed back
15 with Ritchie to San Francisco.

16 I dropped him off in San Jose. And I went on to
17 San Francisco.

18 Q And you were subsequently arrested in San
19 Francisco?

20 A That's correct.

21 Q And we've heard the statements that you made to
22 the officers. Why were you making those statements to the
23 officers?

24 A Because that's what was going to happen. It's

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1 like that. It's just -- do it, man, it's not something
2 that you don't think about, you know? So that's what I
3 said to him.

4 Q Did you shoot Mr. Pettigrew as some sort of
5 assassination plan?

6 A No, I did not.

7 MR. HALL: Objection; leading.

8 THE COURT: Sustained.

9 MR. HALL: Move to strike.

10 THE COURT: The answer is stricken.

11 BY MR. LYON:

12 Q Why did you shoot Mr. Pettigrew?

13 A On that last time, when I was in the disco and I
14 was able to see him, I thought it was all over. I mean,
15 it was quiet. Everybody had gotten their stuff. They
16 were walking down the aisle. And when I saw my brother
17 down, I thought: You know what, just keep on going.

18 Q What did you see at that point in time?

19 A I -- I -- I -- I remember him -- that bright
20 green, you can see it. It's pretty bright. So I saw him.
21 I saw them walking towards my brother. I thought, okay,
22 they're just going to go by. Nothing else had happened,
23 you know.

24 And I thought it was done. And then as I got

1 closer and they started to kick him, I said: Oh -- it was
2 like they're going to kill him or they're going to hurt
3 him real bad. I saw one with a gun. And it was like a
4 split second. There's no way that you can at that precise
5 moment figure out other than a reaction, when you see
6 something like that.

7 So I just let go, man. I just shot. The gun
8 clicked back. Whether it jammed or whatever happened, and
9 I ran.

10 MR. LYON: Thank you. That's all I have, sir.

11 THE WITNESS: Thank you.

12 THE COURT: Cross-examination.

13
14 **CROSS-EXAMINATION**

15 BY MR. HALL:

16 Q So you were carrying a concealed weapon that
17 night; is that correct?

18 A That's correct.

19 Q You had it concealed on your person to hide it
20 from other people?

21 A Pardon me?

22 Q You had it hidden on your person to conceal it
23 from other people, correct?

24 A I did not have a weapon that evening.

1 Q Okay. So it's your testimony you just picked it
2 up off the table?

3 A Correct.

4 Q So what were you doing when that fight broke out,
5 you started grabbing at your, had your pocket right here,
6 why were you doing that?

7 A I don't recall that I took my hand literally and
8 I placed it inside of my pocket or any part of my person.

9 Q You know what a furtive gesture is?

10 A Depends on what kind you're making, yes.

11 Q The kind I'm talking about is it looked like you
12 were going to retrieve a gun from inside your pants, the
13 one that you had concealed on your person, and then you
14 decided not to. Do you want to look at that, tell me what
15 you were reaching for?

16 A I'm not sure if that's a question or a statement
17 that you're making, sir.

18 Q I said: Would you like to look at that and then
19 you can explain what you're reaching for?

20 A Sure.

21 Q Camera 45, we're going at 22:25. Now, these were
22 all San Jose guys at 23:25:04. Are those San Jose people
23 that are standing?

24 A Not everyone in that picture is from San Jose.

1 Q Most of them are, right, a lot of them?

2 A Most of them. There's like one, two, three --

3 there's five of them.

4 Q Why don't you identify those folks for me.

5 A This one is Rigo. That's myself. Cesar. Brian.

6 Diego. This is LA -- I think these are from LA. This is

7 Greg. And that's all I can see in that picture.

8 Q Greg was from Lake County?

9 A Yes, that's correct.

10 Q Did he tell you about that little beef that the

11 Hells Angels had up at Lake County, the Knocketie

12 [phonetic] thing?

13 A There?

14 Q Yeah.

15 A No.

16 Q But you heard about it, right?

17 A Correct, that's true.

18 Q You knew there was that problem in Knocketie

19 [phonetic] at Lake County with a Hells Angels beating up a

20 Vago?

21 A I had some information that something had

22 happened there, yes.

23 Q Now, you're claiming defense of others; that's

24 your defense, right?

1 A I know what happened. I mean, I'm not sure.

2 Q I'm asking you're claiming defense of others.

3 You're claiming you shot Pettigrew and you wanted to kill
4 him, right; your intent was to kill him?

5 A Had he not or they not proceeded to kick my
6 brother with a gun standing over him, I would not have
7 shot, if that had not happened. Had they just walked
8 through, you and I wouldn't even be here today.

9 Q All right. The question was, you intended to
10 kill Pettigrew, right?

11 A No, I did not.

12 Q And you intended to kill Villagrana, correct?

13 A No, I did not.

14 Q You were just trying to wound him?

15 A Well, I'm a little confused. If the question
16 that you're asking me is did I believe that I wanted to do
17 that before I saw them kicking my brother and had a gun
18 over him, is that what you're asking me? Or --

19 Q I'm asking, when you pulled that gun and pointed
20 it at his back and pulled the trigger seven times, were
21 you trying to kill him?

22 A I was trying to kill both of them, because they
23 were over my brother. And they were kicking him and they
24 had a piece on them, yes, I did.

1 Q Okay. Well, that was the question. Thank you.

2 Now, you said that you carry the Steyr, the brass

3 knuckles, the knife, that's for your lifestyle?

4 A Protection, yes.

5 Q Lifestyle as a biker requires you to be armed,

6 correct?

7 A Not necessarily, no.

8 Q Well, it was interesting: At the beginning of

9 your comment you said: Well, I had that problem on the

10 freeway.

11 A Correct.

12 Q And it was after that you said: I was not going

13 to be in a situation where I'm not armed?

14 A Prior to that I had never carried.

15 Q Then you started carrying?

16 A After a situation that happened to me, you're

17 absolutely right.

18 Q Then miraculously, when you get in here, you

19 said, oh, no gun?

20 A That's correct.

21 Q So this wasn't a situation where you thought you

22 needed a gun?

23 A Why would I?

24 Q Well, how about when you went down to the Oyster

1 Bar and you had to protect your "P", you were protecting
2 Cesar Morales when you went to confront the Hells Angels
3 because there was an issue, correct?

4 A Yeah, that's normal.

5 Q All right. Well, you're not going to box with
6 them, are you? You're 55 years old?

7 A I'm pretty --

8 Q You're not going to -- you an MMA guy or
9 something, or are you going to pull out a gun and shoot
10 somebody?

11 A I don't know which question to answer because
12 there was several of them. So which one --

13 Q Try answering one of them and we'll work our way
14 through.

15 A Okay. I appreciate that. Could you reask that
16 first question, please?

17 Q All right. You went down to the Oyster Bar to
18 protect Cesar Morales who was the president of the San
19 Jose chapter, correct?

20 A Initially, it was that there was a problem down
21 there. As soon as I got closer, yes, yes, I would say yes
22 to that, yes, you're absolutely right.

23 Q Now if you were going to protect your "P", right,
24 in a situation where there may be a confrontation with

1 Hells Angels, you would want to be armed, correct?

2 A No, because what normally happens is somebody who
3 was protecting a "P" will get him out of the situation,
4 yank him out and take him out of the area. That's normal.

5 Q How many people would it take to get that "P" out
6 of the area?

7 A I can take him out myself.

8 Q You can take him out yourself.

9 A Yes, if there was a situation that became
10 volatile, I have that ability.

11 Q It would take only one person to get Cesar
12 Morales or another Vago out of that situation?

13 A Yes, I would say that's true.

14 Q And the next question would be, with respect to
15 the Hells Angels, you knew that if there was a
16 confrontation with those individuals, that it would likely
17 involve the use of deadly force, right?

18 A Not necessarily, sir.

19 Q Very well could escalate to that, right?

20 A That's really hard to say, because there weren't
21 a lot of HAs. There wasn't a fear that it was going to
22 involve a large mass of things to happen.

23 Q Well, we'll get to that part in a minute.

24 A Sure.

1 Q What I'm asking about, it would be common
2 knowledge that your lifestyle requires you to carry
3 weapons, right?

4 A No.

5 Q Well, didn't you just say that you told Kirby you
6 carry weapons because of your lifestyle?

7 A As a result of an incident that happened to me.
8 Prior to that I hadn't carried any firearm.

9 Q Was that a lifestyle as a biker?

10 A I don't understand the question.

11 Q Was that a life -- does a lifestyle as a biker or
12 Vago, is that the lifestyle that requires you to be armed
13 with brass knuckles, knives and guns?

14 A For me personally, for what happened to me, if
15 you're asking personally for me, I would say yes. I
16 couldn't speak for anybody else.

17 Q Okay. Now, Hells Angels would carry weapons,
18 they would probably carry weapons for their lifestyle as
19 well, correct?

20 A I couldn't get into that. That's something that
21 I don't want to speculate.

22 Q It's interesting, everybody who has testified in
23 this trial has indicated that it's common knowledge that
24 everybody's, that these biker gangs carry weapons, and you

1 saw how many knives were all over the casino, right? You
2 saw knives in the Hells Angels' hands, they had guns.

3 Are you kidding me?

4 A What's the question?

5 Q The question is: You knew and you know that
6 Hells Angels and Vagos typically walk around with weapons,
7 right?

8 A The answer is no.

9 Q Now, if you're attacked you want to be able to
10 defend yourself, right?

11 A Correct.

12 Q And you know I'm going to kind of switch gears
13 here for a minute. Now, at the end of your testimony, you
14 said that it was -- Rudnick was saying, oh, I'm sorry for
15 starting it; is that right?

16 A Correct, yes.

17 Q Essentially?

18 A Yeah, he was the principal advocate that night.
19 You take Rudnick out, I wouldn't even be here.

20 Q How many Vagos did it take to stop Rudnick? You
21 told me it was just one.

22 A I wasn't present at the time that individuals
23 were either trying to pull him away or I didn't hear a
24 conversation that happened. I knew that at the Oyster Bar

1 that there was an incident.

2 I went down -- I knew something was going on. I
3 knew that Cesar, my P, Rigo my VP.

4 Q The question is how many Vagos would it take to
5 remove Gary Rudnick from the situation? You said it would
6 take one, one, right?

7 A I was talking -- if you're going to reference
8 what I said in regards to Cesar, I know Cesar. He's my
9 "P". He's my friend.

10 If I said to him, hey, we gotta go because
11 there's something going on, you take him out, but
12 Rudnick -- it would have needed to be either somebody that
13 is higher up or either somebody who knew him from his own
14 charter.

15 Q Well, you've been to his house, you've been to
16 barbecues, you're texting each other, you couldn't go up
17 and say: Hey, Gary, let's step back five feet, let these
18 guys go back, then we won't have a deadly gunfight and I
19 won't have to shoot a guy in the back and kill him, was
20 that out of the realm of possibility?

21 A I wasn't thinking that at that time that that was
22 going to happen. Although --

23 Q No, you weren't thinking that, were you, you were
24 thinking about let's beat down some HAs, right? Let's

1 sneak back behind them and take a tactical position?

2 MR. LYON: Objection, Your Honor. There's
3 multiple questions. It's becoming argumentative.

4 THE COURT: Sustained. I'm not sustaining
5 argumentative, but the multiple questions.

6 BY MR. HALL:

7 Q That's what you were thinking, right, taking a
8 position behind the Hells Angels where you could get a
9 clear shot at Pettigrew, right?

10 A Why would I do such a thing in the middle of a
11 casino with cameras?

12 Q It's interesting you ask me that question,
13 because where you shot, there were no cameras.

14 A Okay.

15 Q When you snuck into the Trader Dicks bar there's
16 no cameras in there, are there?

17 A I had no idea.

18 Q Where you retrieved the gun off the table
19 miraculously, someone thought they'd leave one there for
20 you to grab, there was no camera in there to capture that,
21 right?

22 A Viewing the video now, I understand that, yes.

23 Q Now, with respect to -- so you're looking right
24 at them, right, earlier your testimony was you didn't even

1 understand what was going on, right; it was like I didn't
2 hear anything, I didn't even notice they stopped; is that
3 correctly paraphrasing your testimony?

4 A What I recall saying was that I didn't see when
5 they started the altercation with each other. I would say
6 that would be correct.

7 Q Okay. And did you know that Diego Garcia put on
8 his gloves, you didn't notice that?

9 A No.

10 Q You didn't know he had a gun?

11 A I was unaware of that.

12 Q But he's a San Jose brother, correct?

13 A Oh, definitely, yes, he is.

14 Q And you're tied with Diego, Brian Marquez and
15 Cesar Morales?

16 A Absolutely right. I know them quite well, all of
17 them.

18 Q You were communicating with them all evening,
19 correct?

20 A Yeah, we were around together, you're absolutely
21 right, yes.

22 Q Now you clearly know what's going on, right; you
23 walked over, you're watching Pettigrew and Rudnick's face,
24 I mean, they're yelling at each other, right?

1 A I notice --

2 Q At this point in time, at 23:25:37, they are face
3 to face, just inches away screaming at each other,
4 correct?

5 A I couldn't verbally hear what they were saying.
6 I knew from what was going on and their interaction that
7 it was heated, yes.

8 Q So the music was so loud that you couldn't hear
9 what they were saying?

10 A I don't know whether the music was too loud, but
11 I wasn't close enough to hear them.

12 Q How far do you think you were?

13 A That's -- you put me at a disadvantage because
14 I'm not good with distances. I couldn't tell you. I know
15 from this picture I'm one, two, three, four guys away and
16 I have another guy that's in front of me that blocks my
17 view a little bit until I move away.

18 Q 10, 15 feet, something like that?

19 A If you wish to say that, I couldn't estimate.

20 Q Nickerson said he could hear what people were
21 saying. Where was he?

22 A I have no idea where he was.

23 Q He said he was way over at the bar, right?

24 A If my brother said that that's what he was doing,

1 then that's what he was doing.

2 Q All right. Now, is it your testimony today that
3 Rudnick did everything?

4 MR. LYON: Objection. Vague.

5 THE COURT: I'm going to sustain. This is a
6 vague question.

7 BY MR. HALL:

8 Q Okay. Rudnick started the fight; is that right?

9 A This is what I know: And --

10 Q Did the brother start the fight, yes or no, what
11 is your answer to that question?

12 A I would say he antagonized and he put pressure on
13 the situation to make it volatile, I would say, that he
14 did that.

15 Q So it would be fair to say that he provoked it;
16 he caused it?

17 A See, where Rudnick is coming from is that he felt
18 disrespected. So I give him that. He feels disrespected,
19 fine.

20 The guy comes, he taps you on your back, you're
21 there, you're drinking. He's drinking a little too much
22 or however much you want to say.

23 He felt personally disrespected. He felt that
24 since we were there, who was there, whatever he thought I

1 have no idea, he felt that because we had so many
2 brothers, that he could go ahead and do that and be backed
3 up by us. But it didn't happen that way.

4 There isn't any way that you're going to commit
5 something like that with two major clubs going between
6 each other for, what, for a pat on the back? To disrupt
7 my family, right, their family, from being there. You
8 think that's worth it? A pat on the back, just for that?
9 For me it wasn't.

10 Q You know, that's the interesting dynamic, is all
11 you had to do was go up and move him back a couple of feet
12 and let him walk by. I asked you how many Vagos it would
13 take to do that. I mean, you had 400 in there. And we
14 had an hour to think about the problem with the Hells
15 Angels from the Oyster Bar to 11:30, right?

16 And 400 Vagos or how many Vagos are standing
17 there, couldn't move Gary Rudnick, the drunk and
18 out-of-control guy, back five feet and let them come by?

19 A So if I hear you correctly, what you're asking me
20 is why didn't more of us move Rudnick from that area, is
21 that your question, so I can be clear?

22 Q No, my question is that would have been an easy
23 solution, correct?

24 A I think that was attempted. Because they had

1 asked them to come out. He came out. Yeah, he came out.

2 And then we thought, okay, so he's out.

3 Q I don't understand what you're talking about.

4 He's out, what do you mean "he's out"?

5 A He's out from the area where the initial contact
6 with the HA happened. He came out.

7 Q You heard those last -- those last -- remember
8 Greg Howell and Tanya Goldboth?

9 A Who, I'm sorry?

10 Q Remember the two tapes we just played a moment
11 ago at the Oyster Bar?

12 A Yes, I do recall.

13 Q They said you guys left the Oyster Bar and
14 everybody congregated right here in front of Trader Dicks
15 is what that Tara Goldboth said.

16 A In the beginning, when we first approached?

17 Q No. After you left the Oyster Bar, after
18 everybody assured Mr. Pettigrew that everything was going
19 to be okay --

20 A Right.

21 Q Right, Pettigrew was assured everything would be
22 okay, right?

23 A It was a mutual deal between -- yeah, you're
24 right. Definitely, yeah.

1 Q So he thought he could walk through the casino
2 without being confronted, right?

3 MR. LYON: Objection; speculation.

4 THE COURT: Sustained.

5 BY MR. HALL:

6 Q If he was assured, and you're stating that he was
7 assured that everything was going to be fine, right, you
8 knew that?

9 A Yeah, Cesar said everything was squashed,
10 everything was good, yes, yes.

11 Q You know what I'd like to do -- I'd like to --
12 now, one of your brothers goes up and puts his arm on
13 Rudnick's shoulder. That would be a showing of support,
14 correct, backing up your brother in this altercation
15 that's about to kick off?

16 A From what I know?

17 Q From what you see on the video.

18 A I couldn't tell you what Buddy was doing, he's
19 the "P" from Sacramento, at that particular time why he
20 did that. From my perspective, with an altercation like
21 that, a brother puts a hand on me like that, it's like
22 check yourself, because automatically when somebody puts
23 your hand on you, you react. So it's not -- yeah, I would
24 say that.

1 Q And if you wanted to break up a fight, if he was
2 going to go break it up, you'd walk in and you'd go, hey,
3 right, go in between them and separate the parties?

4 A No, you wouldn't do that.

5 Q You wouldn't do that?

6 A No.

7 Q Why wouldn't you do that?

8 A Because what happens then is you're going to
9 touch the HA and you're going to touch both of them. So
10 basically you have to talk it through. This is not like a
11 bar where you can just go in and do that.

12 You have two major clubs, which is, you know --
13 so out of respect for both of them, you have to verbally
14 whatever it is that you want to say to them, to knock it
15 off, because if you rub the wrong guy this way while
16 you're stopping it because you're being more towards your
17 brother, he's going to take it as, oh, you're in his
18 favor.

19 So for me, when somebody, if somebody were to put
20 a hand on me like that, it would be to check me.

21 Q So if I understand you, there's a code of conduct
22 that you have to follow if you're a Vago or a Hells Angels
23 if you want to break up a fight?

24 A I can't speak for the HAs. If you direct

1 questions towards me, I'll give you the answer. I mean,
2 so are you asking me is there a protocol for me to -- I'm
3 not sure what the question is so that I can answer it.

4 Q Well, the question I thought was pretty simple.
5 The Vagos have a code of conduct that is particular to the
6 Vago organization, correct?

7 A Of what?

8 MR. LYON: Objection; vague.

9 THE COURT: Overruled.

10 BY MR. HALL:

11 Q Didn't you just tell me that you can't just touch
12 somebody, because if you touch somebody that could be
13 viewed as disrespect?

14 A Oh sure. If it's somebody else, between us, it's
15 not disrespectful if I hug my brother or touch my brother
16 or pat him on the back or do any of that.

17 Q Now, the other person walks up to support
18 Mr. Rudnick, is this fellow right here, right, did you see
19 him walk up?

20 A I don't know whether I see him walk up.

21 Q Do you see him walk up now?

22 A Are you referring to this gentleman right here?

23 Q That brother.

24 A Okay.

1 Q Let's stop right there.

2 A Yes.

3 Q So now we have Rudnick got punched in the face,

4 right?

5 A I didn't see that, but from viewing this video so

6 many times now, yes.

7 Q Now, does Rudnick punch anybody after he gets

8 punched in the face?

9 A When viewing this video, no.

10 Q How many Vagos then attack Hells Angels?

11 A I don't know about attacking -- okay. Easier to

12 explain a fight. Something like this, right?

13 I mean, as soon as this guy's hit, he goes back,

14 everybody goes back like -- I mean, it was like what --

15 what's going on? So everybody just separates to figure

16 out what's going on.

17 Q Oh, okay. So let's watch your "P" right here.

18 Let's watch his separation move. Let's focus on his

19 separation move.

20 A Okay.

21 Q You call that separation?

22 A You're going to have to ask Cesar why he did

23 that. You're going to have to ask him personally, because

24 that's something independent of whatever is going on.

1 Q That's a totally separate thing; that's not part
2 of this gang fight between the Hells Angels and the Vagos?

3 A I understood your previous question that you
4 asked me, if I heard you correctly, was why did something
5 about why did he hit him with the bottle. And I said,
6 well, that would be up to Cesar why it sparked in his
7 head, hey, let me go hit this guy over the head with a
8 bottle.

9 Q He wasn't -- Rudnick didn't make him do that, did
10 he?

11 A Oh, most certainly he did.

12 Q Okay.

13 A Okay. If you look at this video, right, for me,
14 viewing it, Rudnick is the one that stops him. All
15 Rudnick had to do was let them go wherever they were
16 going. It was as easy as that.

17 So if you're asking me was this his fault that
18 this action happened, I'm going to tell you, yeah, that it
19 was. Whose else is it? Is it Cesar because he's standing
20 over here? Is it all these other brothers of mine? Is it
21 their fault that this started?

22 Q I don't know. That's what the jury is going to
23 decide. So let's look at a little more video. We've got
24 that attack. And now if we back up a little bit, you'll

1 see that that fellow that got the glass smashed on his
2 face was punched from behind before that happened. And
3 why would Vagos be punching Hells Angels in the back of
4 the head and kicking a 72-year-old man on the ground, why
5 were they doing that?

6 MR. LYON: Objection; speculation.

7 THE COURT: I'm going to overrule that.

8 MR. HALL: He knows what everybody else is doing
9 and why that's --

10 THE COURT: I'm going to overrule the objection.
11 If you can answer it.

12 THE WITNESS: Ask me again, please.

13 BY MR. HALL:

14 Q Does it appear to you, I mean, would it be --
15 it's readily apparent, isn't it, when Diego Garcia is
16 putting on the gloves, that he's getting ready to fight?

17 A See, this is hard for me to say, because it's
18 confusing, because why would he put on gloves from this
19 video when he's talking to Rudnick? Did Rudnick tell him
20 to put it on. I have no idea. I can't say that. I can't
21 say that.

22 Q That wasn't the question. The question was he
23 was putting on gloves to get in a fight, right?

24 A You would have to ask him personally.

1 Q If you were going to get in a fight, would you
2 rather be punching somebody with gloves on or without?

3 A I fight with my hands. I don't put gloves on.

4 Q If you had a gun in your hand, you want to make
5 sure who got dropped, didn't want to have fingerprints on
6 it, you would want gloves on there, right?

7 A I don't wear gloves, or else to say that I would
8 have done that, if in fact that was true with supposedly,
9 as you had said, if I had been carrying a firearm. Why
10 would I bring something like that?

11 Q Where did you throw the firearm?

12 A In that heated up moment, I don't know. There
13 was a lot that was going on.

14 Q So your answer on putting on the gloves as
15 preparation for a fight, what's your answer to that? Yes,
16 no? Maybe so?

17 A I really don't have an answer for that. It's
18 hard to say. If he felt -- if he felt that that's what he
19 wanted to do to put on the gloves to prepare for a fight,
20 then that's what he did.

21 Q And that's what it looks like?

22 A Well, after viewing all this that was happening,
23 yes to your answer, yes. Yeah.

24 Q Now, if you were going to pick a fight with Hells

1 Angels, it would be smart to let most of them walk on by,
2 right?

3 A No. You get into it then. Why would you want to
4 isolate with a large crowd of people and feel weak and be
5 heard about that Vagos jumped a few HAs. No, you just go
6 all out all at once. Why would you want to do that?

7 Q So that's how you do it. You want to make sure
8 it's a fair fight?

9 A You asked me a question in regards to why let
10 them pass and it resulted in the answer that I gave you.

11 Q Well, if you were going to make a statement, a
12 Vagos statement saying we're not tolerating disrespect by
13 the Hells Angels being in our casino, you wouldn't beat up
14 some hangaround or somebody that is merely associated, you
15 wanted to make a statement with the president, correct?

16 A No, you're incorrect.

17 Q Well, wouldn't you make a bigger statement if you
18 took out the president than if you took out a hangaround?

19 A I'd have to reflect on the fact that they had
20 been there previous years. They have booths outside.

21 Q That's not the question.

22 A Why would Vagos, after knowing that HAs are
23 there, after knowing that San Jose is isolated in their
24 area with -- the closest Vago charter to us, San Jose, is

1 150 miles. Everywhere around us are HAs. You've got
2 Richmond. You've got Salinas, San Francisco, San Jose.
3 You've got Fresno. So why would we, San Jose, jeopardize
4 that relationship that we had with San Jose HAs to start a
5 fight like this?

6 Q You're the one that said that the Hells Angels
7 don't like you. So what's --

8 A They don't have to like -- I don't have to
9 like -- there are some brothers that I don't particularly
10 like.

11 Q Wait a minute. Every question I have you don't
12 have to go off and start talking about -- just try and
13 answer the question, okay?

14 A Certainly.

15 Q So the question is: You said that the Hells
16 Angels don't like you, right?

17 A Correct, yes.

18 Q So on the one hand you say we've got this great
19 relationship, but when you're interviewed by the police
20 you said they don't like us, which would indicate there's
21 no relationship, correct?

22 A May I elaborate on one of your questions that you
23 asked?

24 Q That would indicate that there's no relationship,

1 correct, sir? Answer that question.

2 A No, not entirely, honestly, no. I disagree.

3 Q All right. So when Nickerson said there was a
4 fight and you were surrounded by Hells Angels in
5 Sacramento --

6 A At the Easy Rider.

7 Q -- that improved the relationship; you were
8 feeling pretty good after that, your relationship with the
9 Hells Angels, good, mutual?

10 A As a matter of fact, everybody walked away fine.
11 It was good. Yes, I would say that.

12 Q What about Hollister, the San Jose campout?

13 A What about it?

14 Q Where Gary Rudnick got his souvenir, you were
15 there, right?

16 A That's interesting you asked, because San Jose
17 was the one that spearheaded all of that. So if what I
18 hear is totally incorrect. What actually happened -- if
19 you would like to hear what actually happened.

20 Q Let's talk about this case.

21 A Certainly.

22 Q Let's talk about what happened here.

23 A Certainly.

24 Q So that's Chris Knowlton right there. So before

1 he gets the glass smashed in his face by Cesar Morales,
2 he's going to get punched in the back of his head. And
3 Bobby V is going to get beaten down from behind. And so
4 is Pettigrew. So there's going to be about -- and then
5 Eugene Anaya's is going to be attacked. So there's going
6 to be a series of four attacks. Were you able to see
7 them?

8 A I was able to see the reaction of a fight that
9 started. It becomes animated. They threw the first
10 punch. It's automatic. It's something that -- if you
11 were to ask me what I would do if in fact I was near and
12 Pettigrew had hit what's his name in the face, either I
13 would have hit Pettigrew or anybody close by because I
14 wouldn't have known -- it was too heated, man, it was too
15 heated. I would have punched somebody if I had been that
16 close. It's a fight.

17 Q It's a fight. So there's a challenge and an
18 acceptance, right, to fight?

19 A Your terminology of and words that you're using
20 as for me to what happened here on a reaction that was --
21 just took a life of its own, I would disagree with you.

22 Q Well, let's just put it in different terms, then.
23 So you testified earlier that Rudnick was taunting
24 Pettigrew, right, that he was in his face, taunting him,

1 trying to get a reaction out of Pettigrew, correct?

2 A I don't know about this word "taunting." It's
3 hard to give you an answer to something that I'm wanting
4 to process to give you an answer when I felt that -- he
5 was drunk pretty much, Jabbers.

6 If he went in taunting, he just wanted to get
7 this thing from him about like I'm sorry. And so
8 taunting, okay, all right, I can't find any other words
9 for that. As you can see I'm confused about that
10 question.

11 Q Let me put it another way. Was he trying to
12 start a fight?

13 MR. LYON: Objection. Who is "he"?

14 THE COURT: I'm going to sustain that. I'm not
15 sure. Was Mr. Pettigrew? Mr. Rudnick?

16 BY MR. HALL:

17 Q Was Mr. Rudnick trying to start a fight with
18 Mr. Pettigrew?

19 A That's hard to say, because if he's trying to get
20 an "I'm sorry" from him at that point, I believe he wanted
21 to be self-righteous to be able to get, "hey, I'm sorry."
22 That was his own personal thing. Yes?

23 Q You don't have to give me a half-hour answer to a
24 question.

1 Was he trying to start a fight? Yes or no?

2 MR. LYON: Objection; argumentative.

3 THE COURT: Overruled. You may answer the

4 question.

5 THE WITNESS: Okay, yes, he was trying to start a

6 fight.

7 BY MR. HALL:

8 Q Okay.

9 A Yes.

10 Q And once the fight started, your brothers

11 willfully engaged; they accepted that challenge and

12 started fighting, right? The Vagos started fighting the

13 Hells Angels, correct?

14 A It became automatic, sir.

15 Q By virtue of the code of conduct with the Vagos,

16 correct?

17 A No, that's incorrect.

18 Q Okay. Well, then why did everybody have to jump

19 in and start beating up Hells Angels?

20 A Why did Mr. Pettigrew -- okay. Let me answer

21 that question. When there's an initiation of somebody

22 punching a brother and there's other HAs with them,

23 there's going to be a fight.

24 Q Now, when you have a fight between the Hells

1 Angels and Vagos, you can anticipate deadly force being
2 introduced, correct?

3 A I have never been in one. This is my first one
4 that I've actually been in. You're asking me for my
5 experience from this personal here? Quite possibly.

6 Q So that's a yes?

7 A I can't say a definite every single one of them
8 was carrying, I couldn't honestly tell you.

9 Q The Hells Angels were definitely outnumbered by
10 the Vagos, correct?

11 A Well, since we were having our national run in
12 the Nugget, yeah, that's a fair statement, yes.

13 Q And this is you. Remember, we were talking about
14 those furtive gestures?

15 A Yes, I do recall in the beginning, yes, I do.

16 Q What are you reaching for here?

17 A I'm going backwards. I'm about to take a stance.

18 Q I'm wondering what you're reaching for in your
19 pants there. Right there. Aren't you reaching for
20 something there?

21 A Personally I would say that I'm going back, I'm
22 going back in the posture where I would defend myself. I
23 see Cesar. I see Cesar.

24 Q So this is the posture where you're defending

1 yourself like this, (demonstrating), isn't that what
2 you're doing here?

3 A No, it is.

4 Q Typically defensive posture, you would have your
5 hands up.

6 A No, not if you're taking kung fu or --

7 Q So that's a kung fu move there?

8 A No, it is not.

9 Q So, you go back there. So that's your excuse --
10 that's your excuse for not shooting anybody when they're
11 shooting, right, is because you don't have the gun yet,
12 right?

13 A Why would I bring a beer bottle to a gunfight?

14 Q You brought a gun to a gunfight, didn't ya?

15 A No, I did not.

16 Q But that's -- that's why -- well, let me --
17 that's why you said you didn't have the gun at this point
18 in time because then you really wouldn't have an excuse
19 for not shooting when the shooting was going on, right?

20 A I don't understand the question.

21 Q Well, if you're actually going to exercise some
22 semblance of self-defense, even though the Vagos, you
23 know, escalated this fight, you would expect that you
24 would shoot when the Hells Angels are shooting? I mean,

1 if it's a real gunfight and you see these guys shooting
2 you'd think, oh, my God, they're shooting my brothers, I
3 better jump in there; that would be kind of the reasonable
4 time to be shooting people?

5 A If I would have had a piece I would have shot
6 both of them. Then and there. No qualms about it.

7 Q You weren't worried about all those other
8 hundreds of people inside the casino?

9 A If in fact -- yeah, I -- of course I would have
10 if that would have transpired, of course I would have.

11 Q You would have shot them right then, right?

12 A Not at that particular moment. Probably as I got
13 closer, because I remember him wielding his firearm.

14 Q Nobody had fired any shots at that time, correct?

15 A I don't recall that.

16 Q Watching the video over and over, you don't see
17 anybody shooting, do you?

18 A Well, it's hard to say from the video. When all
19 this is going on, it's fast. I saw him with the gun. Had
20 I had a gun and an opportunity, when I was closer to him
21 now and with him facing me and with the firearm, I would
22 have taken a shot.

23 Q So nobody's fired a shot. You're right here.
24 You would have shot right then; right? That's what you

1 just said?

2 A Hmm, okay.

3 Q So now you're over at the bar. Now you go over
4 to Trader Dicks, right?

5 A That's correct.

6 Q That's the area where you shot earlier, right --
7 I'm sorry, you shot later. That's the area where you took
8 the shot and killed Pettigrew?

9 A That's correct.

10 Q And now it's your testimony that you went in
11 there and lo and behold the gun's sitting right there on
12 the table?

13 A There was a counter. I saw the weapon. I threw
14 the bottle down and I picked it up and I put it in my
15 pants, yes, I did.

16 Q So then you had it concealed on your person?

17 A Yes, yeah, I would say --

18 Q You stuck it in your pants, made sure nobody
19 could see it, right?

20 A Well, I don't know if I thought all that. But I
21 did grab it and I put it in my pants, yes, you're
22 absolutely right.

23 Q Well, if you got people with guns and you thought
24 there was going to be some shooting going on, why don't

1 you go out there and say, hey, stop this craziness?

2 A Because I thought I would have gotten shot.

3 Q So that's why you snuck up behind these guys and
4 shot them in the back, right?

5 A There's a little bit more to that, to honestly
6 answer your question.

7 Q So you have the gun now.

8 A I wasn't paying attention to that. I was more
9 waiting for you.

10 Q All right.

11 A So to actually give you an answer to -- there
12 isn't any way that I can remember exactly -- I do recall
13 that I had the bottle in my hand.

14 Q Where did you get the bottle?

15 A From the bar.

16 Q So you got a bottle so you could hit somebody
17 with it?

18 A Yeah, because I wasn't carrying. Yeah. Yeah.
19 Yeah, I would have hit somebody. I mean, not someone, I
20 would have hit HA, of course. I wouldn't hit a civilian.

21 Q So there's some shooting, right?

22 A I believe I'm still inside and I heard shots.

23 Q And there you go?

24 A Yes, sir.

1 Q This is you?

2 A Correct.

3 Q Running back?

4 A Correct.

5 Q Now you've got the gun concealed on your person,

6 right?

7 A Yes, to your answer, yes.

8 Q So this is where you think everything's stopped,

9 right, everything's over?

10 A Yeah, yeah, and -- yes, you're absolutely right.

11 Q But it wasn't over, was it?

12 A I couldn't have known that then.

13 Q Well, you were down at the end of the bar

14 looking, watching these people, weren't you?

15 A Yes, I was. I was specific to watching the two

16 that had the guns, yes.

17 Q And they had put their guns away at this point in

18 time, right?

19 A You know, to go back almost two years and answer

20 that honestly, I couldn't.

21 Q Well, you have a grand jury transcript; you have

22 all the discovery, right?

23 A No, did not. The grand jury, yes, I did have

24 that yes.

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1 Q You watched the video a number of times, right?
2 A Yes, I have.
3 Q So you could tell from watching the video they
4 had put their guns away at this point in time, correct;
5 and at this point in time it's 23:26:47?
6 A I don't believe Cesar had totally put his firearm
7 away. I'd have to see that video again.
8 Q Here it is.
9 A I may be incorrect.
10 Q Here it is. Do you see a gun in his hand?
11 A Not at this time, no.
12 Q Put away?
13 A No, he didn't.
14 Q No gun?
15 A That's correct.
16 Q They obviously have put their guns away; looks
17 like it's over, right?
18 A Yes, sir, you're right.
19 Q Then Vagos, but Vagos are attacking Hells Angels
20 up at the bathroom area, right?
21 A From this video and the videos I've subsequently
22 seen, yes.
23 Q So after that first punch, we have multiple Vagos
24 attacking Hells Angels, right?

1 A From the videos, yes.

2 Q Now, the Hells Angels have pulled out their guns
3 to defend themselves, right?

4 A Come again?

5 Q The Hells Angels, while being attacked, pulled
6 their guns to defend themselves, didn't they?

7 A From the video, when it depicts them from when
8 they're ducking down, you mean, is that what you're
9 referring to?

10 Q I'm talking about when Pettigrew gets punched in
11 the back of the head, when Knowlton gets the glass smashed
12 in his face, when Bobby V gets, Bobby Viera gets kicked
13 and knocked to the ground, that's when Pettigrew, when
14 Pettigrew gets punched in the back of the head, that's
15 when he pulls out his gun and starts waving it around?

16 A From the video, yes.

17 Q When Bobby V gets kicked to the ground, it
18 appears as though he thinks it was Fern that did it and he
19 goes over and smacks Fern in the face with a gun, right?

20 A I don't know. That's kind of iffy, because what
21 I see is he's kicked. He goes over to my brother, an
22 older guy, with a beer in his hand.

23 He has a weapon and starts bashing it in the side
24 of his head. That's not cool, man.

1 Q You already said that they were outnumbered,
2 greatly outnumbered, correct, the Hells Angels were?

3 A Yes, I would say.

4 Q And we know that Pettigrew's got an amputated leg
5 and he's 51 years old. So he's not exactly a spring
6 chicken, right?

7 A At that time I didn't even know that. I didn't
8 even know that until afterwards.

9 Q So just to kind of set the tone and the dynamics
10 of this fight: So he's getting punched from behind. He's
11 surrounded by Vagos. And so there was multiple attacks.
12 We're all on the same page as far as that goes, right?

13 A Yes, we are.

14 Q So he pulled his gun and smacked the guy who he
15 thought kicked Bobby V down, right?

16 MR. LYON: Objection; speculation.

17 THE WITNESS: No, incorrect, because --

18 THE COURT: I'm going to let the answer stand.
19 He can answer it, and he has.

20 THE WITNESS: Thank you, Your Honor.

21 From the video, he gets hit. He turns around.
22 He takes out his firearm. He points. Points. Sees
23 something. He comes to. Bam, bam. My brother. That's
24 what I -- I don't remember seeing that that day. But from

1 what I have seen in the video, yeah.

2 BY MR. HALL:

3 Q Right. With respect to Villagrana, he backs up
4 and he's just standing there basically doing nothing
5 except having beer, beer bottles and things thrown at him,
6 right?

7 A Not when a fight like that occurs. It's not as
8 simple as that, Mr. Hall. It's --

9 Q I'm just asking what Mr. Villagrana did. I
10 didn't say it was as simple as that. But I'm talking
11 about -- we won't play it again. We can play it 50 times.
12 But no shooting starts until Pettigrew goes over to assist
13 Bobby V a second time; do you remember that? Did you see
14 that?

15 A Right. He hits him and then his wife comes and
16 picks him up.

17 I'm describing what I've seen. This is not what
18 I remember but what we're seeing.

19 Q So then that's when Pettigrew goes over at the
20 end of that slot bank and has his nose cut off, and he's
21 fighting -- you can see him fighting with at least three
22 other Vagos, correct?

23 A You know what, you would have to play that for me
24 so I could answer that question.

1 Q Okay. We'll go to Monitor 1. So this you can
2 get a better view of Pettigrew getting punched in the back
3 of the head before he pulls out his pistol at 23:25:47, is
4 where we're starting. He's standing there. They haven't
5 done anything. Pettigrew is standing there. Villagrana
6 is standing there?

7 A Right.

8 MR. LYON: I'm going to object to this line of
9 questioning. Is he having Mr. Gonzalez narrate the video?
10 Mr. Gonzalez wasn't there.

11 MR. HALL: I think he was there. That's why
12 we're here.

13 MR. LYON: There's a question of whether what he
14 saw on the video or whether he's asking Mr. Gonzalez to
15 narrate the video.

16 THE COURT: I'm not sure, but I think I'll allow
17 the question and we'll find out which one Mr. Gonzalez is
18 doing.

19 MR. LYON: Thank you, Your Honor.

20 BY MR. HALL:

21 Q So Mr. Pettigrew is just standing there right
22 now, right; he hasn't done anything? Is that obvious to
23 you? Can you discern that from the video?

24 A Yes. From this video that I'm watching right

1 now -- well, I actually haven't seen him get hit. But,
2 yes, I viewed this -- yes to your answer.

3 Q How about to right here?

4 A Yes to your answer.

5 Q Did you see him get hit there?

6 A Yes, most definitely.

7 Q So that's when he pulls out his gun, right, when
8 he gets attacked from behind by a Vago brother?

9 A From the video, yes, you're right.

10 Q So there's -- remember we talked about Bobby V.
11 So we're kind of walking through this fight.

12 A Okay.

13 Q So Bobby V just gets knocked down, right?

14 A Yes.

15 Q Looks like Pettigrew saw that?

16 MR. LYON: Objection.

17 THE WITNESS: I don't know.

18 MR. LYON: I think now we're narrating the video.

19 THE COURT: I'm not sure. Is this -- did you
20 want to establish that the witness saw this?

21 BY MR. HALL:

22 Q Yes. Did you see that?

23 A No, I did not.

24 Q Could you see that after Bobby Viera goes down,

1 that's when Pettigrew runs over to Mr. Viera's location?

2 A From this video that I see?

3 Q Yes.

4 A He had streaked into that area, yes.

5 Q That would be consistent with him going to
6 Mr. Viera's aid based upon what you've seen on the video?

7 A Yeah, to your answer, yes.

8 Q Very good. And here's where he strikes --

9 A Right.

10 Q Your friend Mr. Fern?

11 A But he has a beer in his hand; he's standing
12 there. He hits him again. I mean, if that was the fact
13 he should have hit him, he popped him once, leave the guy
14 alone. You pop him once. Why -- that's just my own --

15 Q You think maybe he's a little upset about being
16 attacked by a number of Vagos?

17 MR. LYON: Objection; speculation.

18 THE COURT: Sustained.

19 THE WITNESS: Yes. Thank you.

20 BY MR. HALL:

21 Q This wasn't a fight between Pettigrew and
22 Rudnick, was it?

23 A Oh, yes, it was.

24 Q I haven't seen Rudnick doing anything yet. Have

1 you? Have you seen Rudnick do one other thing in the
2 video that we've watched other than get punched in the
3 face?

4 A He started the fight.

5 Q No. The question was: Have you seen him do one
6 other thing as far as being involved in the fight other
7 than get punched in the face?

8 A That's a trick question.

9 Q What's so tricky about that?

10 A Because you're asking me two things. First,
11 you're asking me if in fact the fight started. But how
12 did it start?

13 Q We already covered that.

14 A Okay.

15 Q So now the question is: Did you see Rudnick do
16 anything else other than get punched in the face?

17 A From the video, no, sir.

18 Q So it's all other Vagos that have been doing all
19 the punching, smashing, hitting, kicking?

20 A Out of reflexes, I would say, yes, definitely.

21 Q Now, remember when I was talking about people
22 throwing stuff at Mr. Villagrana?

23 A Yes.

24 Q This is the part I was talking about right here.

1 A I see that.

2 Q Okay. So you see that. So you see that bottle
3 go flying by, see --

4 A Right, it hit the post right there and exploded.

5 Q It actually hit Eugene Anaya. All right. So
6 this is the part that we were talking about. So now they
7 run over -- remember, I said Bobby V was down on the
8 ground again?

9 A Yes.

10 Q You said his wife picked him up?

11 A Picked him up once, yes, I do recall.

12 Q Here he's down again?

13 A In this video, yes.

14 Q And now Pettigrew is over in that area. Remember
15 this is a 72-year-old guy, right, the guy on the ground,
16 this guy?

17 A He's 72 now, yes.

18 Q 74 now.

19 A 74, yes.

20 Q So here's the part that I was talking about where
21 Pettigrew is fighting with three other Vagos; you've got
22 Vagos here. I know it's a blurry picture right now,
23 but --

24 A But there isn't any of my brothers around him.

1 Q Who is this guy throwing bottles at him?
2 A Pardon me?
3 Q You didn't see any Vagos in that area?
4 A From the video? Yes, there were Vagos on the
5 right-hand side, yes.
6 Q Then if we go to Camera 5, do you know any of
7 those girls, these women here? Back it up a little.
8 A No, I do not.
9 Q You weren't talking to any of those women earlier
10 that evening?
11 A Not that I recollect, no. But if --
12 Q At 23:25:06, they kind of move off the tile
13 walkway there. Would you agree with that?
14 A They were coming from that same direction, yes.
15 I would agree that they were coming from that direction,
16 yes.
17 Q Those were girls you could see Mr. Rudnick waving
18 away, correct?
19 MR. LYON: Objection; speculation. Again, are we
20 narrating a video, or going with this person's perceptions
21 at the time?
22 MR. HALL: We're going with a little bit of both.
23 I'm asking his perception now, counsel, is what I intend
24 to do.

1 THE COURT: You may ask your question.

2 Overruled.

3 BY MR. HALL:

4 Q So what I'm trying to get to here is just as a
5 background. So you see Mr. Rudnick waving those girls
6 around. We saw that earlier in the video, correct?

7 A Yes.

8 Q So these are the girls, right, at least I think
9 those are the girls.

10 A All right. I'm following you.

11 Q So he waved them away. And I want you to watch
12 the video and see if it appears as though they're trying
13 to watch what's going on over on the tile walkway as
14 though they know something's going to happen.

15 A Okay.

16 MR. LYON: Your Honor, I guess at this point in
17 time he's asking the witness to infer what these women are
18 doing from a video that everybody can see.

19 THE COURT: Is the question whether or not he saw
20 the women doing this?

21 MR. HALL: No. The question is: Can you see the
22 women looking over to where --

23 THE COURT: That's a predicate for what question?

24 MR. HALL: Predicate for the question is would it

1 be consistent with them being aware that a fight was going
2 to happen.

3 THE COURT: You can ask that question.

4 THE WITNESS: I'm thinking, if I'm viewing this
5 as a movie, I would say that they're heading back to see
6 something that is going on.

7 BY MR. HALL:

8 Q Now, you remember earlier when we were looking at
9 Monitor 1 as Pettigrew retreats -- just for the record I
10 would like to indicate we're looking at Camera 5, and
11 we're at 23:25. And this is the area that looks back
12 towards Trader Dicks.

13 A Okay.

14 Q So if we were looking at Exhibit 130, we'd be
15 looking back to Slot Bank 603. 603 and 605.

16 A This is what this shows?

17 Q So this would be, I think, 603, or -- yes, 606 I
18 think right here. That's the 605 right there.

19 A Where is that at there then?

20 Q Right here (pointing).

21 A So what I hear you saying is that the girls are
22 there?

23 Q No. What you hear me saying is that when
24 Pettigrew goes back and starts shooting and gets his nose

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1 almost cut off, that's where he is.

2 A All right. I'm following you now.

3 Q That's why I'm identifying that area.

4 A Okay.

5 Q What we want to do now is count the number of
6 Vagos that he's fighting in that area.

7 Can you cut the lights for me, please?

8 How many Vagos can you count in that area I just
9 asked you about?

10 A One, two, three, four -- four that I can count.

11 Q At least four, right?

12 A Yeah, you're correct, yeah.

13 Q That's four-on-one, would you agree with that?

14 A Are you saying --

15 Q I'm saying Pettigrew is fighting with four guys,
16 one guy, Pettigrew, the 51-year-old guy, fighting four
17 guys?

18 A I don't depict that.

19 Q You think there's other Hells Angels there that
20 they're fighting with or what?

21 A It's hard to say. If this was clearer and it
22 showed me more, then I could elaborate more on that.

23 Q All right. So that's where he gets his nose cut,
24 right?

1 A I couldn't tell from that, Mr. Hall.

2 Q You know how we know, because remember the lady

3 that came in here and Dr. Baguley, Baguley, she talked

4 about the DNA. Remember that?

5 A Yes, I do recall.

6 Q So on the end of that -- see that, the little

7 kiosk that I'm circling?

8 A Yes, sir.

9 Q Remember what she was talking about DNA or

10 different blood samples?

11 A Right, right, the splatter, right.

12 Q That was his blood on that.

13 A Oh.

14 Q Okay. And he's going to pass that -- so Bobby

15 V's up. 25:26:10 or so. Now he's down. We saw that

16 Pettigrew was fighting with a number of individuals. So

17 the 23:26:35, the shooting's over, right; then you

18 remember the forensic evidence, remember Heather Coles

19 that came in?

20 A Yes, sir.

21 Q And so what we had was three shell casings from

22 Villagrana's gun, right?

23 A If that's what is said and done, yes.

24 Q Three shell casings and one cartridge, one full

1 bullet that were found right in this area right there,
2 correct?

3 A From whom?

4 Q From Villagrana's gun.

5 A Okay.

6 Q So we had --

7 A I'm following you, okay.

8 Q Right?

9 A I'm following you.

10 Q Casings in this general area, three of them, one
11 bullet. That's where we see them. And we had evidence of
12 the gun jamming because he had the wrong bullets in there?

13 A I do recall that, yes.

14 Q And we had Mr. Pettigrew shooting one time,
15 correct; there was one fired --

16 A I can't attest to that.

17 Q That was the evidence, you remember that, right?

18 A No, that's not -- that's not what I recall.

19 Q When Heather Coles picked up the gun there was
20 only one bullet that had been fired?

21 A Right from that instance.

22 Q Five full bullets and one empty one.

23 A From that instance that you showed, yes, you're
24 absolutely right.

1 Q All right. Now, in this video, at 23:26:50, you
2 can see Mr. Pettigrew, they put away their guns, right;
3 we've pretty much established that guns are put away and
4 you see Mr. Pettigrew keep grabbing his nose as if
5 something's wrong with it?

6 A I agree with that.

7 Q And at 23:27:05, now these guys have their guns
8 away; we've established that, right?

9 A Correct.

10 Q There's another attack on Hells Angels going on
11 in front of the bathrooms now, right?

12 A Depicted by what I've seen, yes.

13 Q And as a matter of fact, 23:27:06, so now would
14 it be fair to say that the Hells Angels are under attack
15 once again by Vagos. So we have two attacks?

16 A Yes, I agree with you.

17 Q So we have two attacks now, right, Vagos
18 initially attacking the Hells Angels?

19 A Where? When?

20 Q At the beginning of the fight, right?

21 A No. At the beginning of the fight, an HA swung
22 at a Vago, which initiated a reaction. So I'm not sure
23 what else --

24 Q And the swing at the Vago was provoked by

1 Rudnick, correct?

2 A That is correct.

3 Q Okay. So Rudnick tries to pick a fight. He
4 gives one. And then the Vagos react, and multiple Vagos
5 attack Hells Angels; is that fair? That's accurate?

6 A I don't know if Jabbers -- coming to his defense,
7 you know what, I don't think Jabbers intended for a fight
8 to happen.

9 Q You heard him testify, didn't you?

10 A Pardon me?

11 Q You heard him testify, didn't you? That was the
12 whole reason?

13 A But you're asking me.

14 Q That was the whole reason for stopping Pettigrew?

15 A But you're asking me. So I can only answer that,
16 you know. I think he was still wanting to either in some
17 way like make something mutual where he still got what he
18 wanted, the I'm sorry, and then he could feel better about
19 that and he wouldn't be maybe looked at differently, that
20 he felt bad or whatever.

21 And then so it's really hard to say why, you
22 know.

23 Q But we know after the initial punch by Pettigrew
24 that there was multiple people attacking various Hells

1 Angels, right?

2 A Yes, to your question, yes.

3 Q So now shots fired, everything stopped. But now
4 we have a second attack.

5 A Okay.

6 Q Right?

7 A Yes, from this video, I agree with you.

8 Q And here comes Mr. Pedrosa, and you can see
9 Eugene Anaya there. So those two were under attack?

10 A Yes.

11 Q And Villagrana responds to that?

12 A Right.

13 Q Now things are over, right?

14 A I think you've missed a big part of this video.

15 Q What part's that?

16 A If you can backtrack, it's interesting to me how
17 you're depicting to me how they're just walking and like
18 there's nobody in the way. And that's really unfair.
19 Because if you roll it back, you'll see my brother on the
20 ground. And you'll see two HAs heading towards him.
21 That's what I saw.

22 If you go back and you show that, then I honestly
23 would think that you're doing something honest and showing
24 me everything that's actually transpired at that moment.

1 Q Did I skip part of the video?

2 A I would say so, yes.

3 If you backtrack further back before --

4 Q Go back as far as you want --

5 A If I may just ask.

6 Q It's your brother that was chasing these two

7 guys, Jimmy DeRosa and Eugene Anaya, that brother that was

8 attacking Hells Angels, it was that brother, right,

9 Mr. Wiggins?

10 A May I answer that?

11 Q Was it Mr. Wiggins that was attacking, your

12 brother attacking the Hells Angels?

13 A Was I aware that my brother was doing that? No,

14 I did not. It was impossible for me to have that. I

15 wasn't even in that area.

16 But what's interesting is that when this is

17 happening, you can see my brother clearly because you can

18 see the green patch. That green patch, you can see that a

19 mile away, man. And I saw it. And you can see it right

20 there. That's the part that's important.

21 Q That's interesting. I just want to stop right

22 there. So you said the part that's important is 23: --

23 this part right here 23:27?

24 A No, back more.

1 Q Back more.

2 A I see my brother down.

3 Q That's the part that's important?

4 A I see my brother down. I see there's a lot of
5 commotion. The only reason I have a clear thoughts is
6 because I'm watching a video.

7 At that precise moment that I first see that and
8 I see them walking at the same time and it all came
9 together, I couldn't really tell you. What I do know is
10 that when I saw them from the disco walking down, I
11 thought, okay, it's finally done. It's over. They're
12 going home. Then as they got closer --

13 Q You're getting beyond -- you just said that this
14 was the period, this was the point in time where you
15 thought you had to do something, right?

16 A No, I did not.

17 MR. LYON: Objection; misstates his testimony.

18 BY MR. HALL:

19 Q I'm just trying to get an accurate answer out of
20 him. Because you said I skipped through the video --

21 THE COURT: Whoa, whoa.

22 BY MR. HALL:

23 Q Excuse me. You said I skipped through the video
24 and I missed an important part. So we went back to this

1 part.

2 A You're absolutely right.

3 Q Because you said this is the part that you said
4 you needed to go do something.

5 A What I was referring to, and it's clear, is that
6 as you're describing this video, it's interesting to me
7 that the HAs are walking down. And then it's like there's
8 nobody there and I just shot them. That's the reference
9 that I got.

10 Because I'm looking and I'm saying, well, there's
11 definitely something else different than just they just
12 got their shove and everything was good and then they were
13 just walking. And then it doesn't show anything else
14 other than that. I was reviewing the video with what you
15 were saying.

16 Q You haven't heard anybody say that Mr. Wiggins
17 wasn't there, did you?

18 A Pardon me?

19 Q I said everybody has acknowledged Mr. Wiggins, we
20 called Mr. Wiggins. He testified that he was there. It's
21 not like it's some kind of a secret, right?

22 A Visual -- I'm a visual person. Seeing visual
23 things is much clearer to me than actually verbalizing.

24 Q Camera 214, we're at 23:30:05. At the bottom.

1 This is you. You just came into view right here?

2 A Yes, that's me.

3 Q You got your gun out, ready to go here?

4 A I didn't know whether that firearm had any
5 ammunition in it. So when you slide lock it, if it locks
6 back, there's nothing in it. And so there was ammunition
7 in it. But I don't remember that, doing that. I can see
8 that now.

9 But if you were to ask me without seeing any
10 video, I would have said I had never done that.

11 Q That was kind of a fortuitous event, wasn't it,
12 that it was a Glock 40, that was kind of a lucky find,
13 huh?

14 A That's what actually happened.

15 Q You had that Glock down in Nicaragua, right?

16 A You're absolutely right.

17 Q So just happened to be a gun that you're totally
18 familiar with, loaded with deadly ammunition, right?

19 A The other firearm was a Stoeager, it was not a
20 Glock.

21 Q You've got all kinds of guns?

22 A Yeah, yeah, I have that and the nine millimeter,
23 yes.

24 Q And when you were talking to Mr. Matt Kirby, you

1 weren't entirely truthful when you were talking to him
2 about that Steyr, were you?

3 A Which part?

4 Q About where you got it, how long you had it,
5 those kinds of things.

6 A I don't recall that.

7 Q Would you like me to refresh your recollection?

8 A Sure.

9 MR. HALL: Do you have that transcript? The
10 Kirby transcript.

11 THE COURT: I think it's 159.

12 MR. HALL: I'll move on. We'll track it down in
13 a bit.

14 BY MR. HALL:

15 Q We were talking about it was a lucky find that
16 somebody just left a Glock 40 on the table.

17 A I didn't know, that's what it was at that time.

18 Q Didn't you tell Kirby that you didn't even know
19 where that Steyr gun came from?

20 A If that's what it says, then I would definitely
21 agree that I had said that, yes.

22 Q That wasn't true, was it?

23 A I didn't want to give him information, no.

24 Q And you didn't know what it cost, told him that,

1 right?

2 A If in fact I -- he asked me how much it cost? I
3 don't recall him asking me that. But I know I wouldn't
4 tell him where I got it from.

5 Q Why not?

6 A There's some things I don't tell the police.

7 Q Is there some things you're not telling us?

8 A Well, when my life is on the line and all of the
9 stuff that I've heard with Jabbers' story, it's impossible
10 to have happened, it's not right.

11 Q You know, that's a good point you bring up. If
12 anybody has the motivation to fabricate, it would be you,
13 right, more than anybody?

14 A If I so choose, I could honestly say, yes, to
15 that.

16 Q And if we started looking at Jabbers' story, he
17 said there was a meeting between you and Campo, the San
18 Jose guys, right?

19 A Yes.

20 Q And Tata and Jimbo. So you know Tata and Jimbo,
21 right?

22 A Correct.

23 Q The San Jose guys?

24 A Of course they're my brothers.

1 Q And the San Jose guys are the ones that rally
2 down to the Oyster Bar initially that evening, correct?

3 A Yes. Went down there.

4 Q Along with a lot of other Vagos who got the call
5 that there's an issue at the Oyster Bar, right?

6 A Yes, we did go down there.

7 Q And there was a call that went out to, I guess
8 you guys had cell phones, and you communicate that way,
9 cell phones, texts, whistles; is that what you guys do?

10 A I mean, I think everyone communicates through
11 texts and phones.

12 Q Okay. And the same with the Vagos, correct?

13 A Sure, we do. Sure I talk to my brothers over the
14 phone, sure.

15 Q So the message went out however, and a lot of
16 Vagos went down there. So that was consistent with
17 Mr. Rudnick's statement, right, that everybody got the
18 call and everybody went down to the Oyster Bar because
19 there was an issue?

20 A You said a lot, and so you'll have to give me the
21 actual question that you want me to answer.

22 Q Okay. The actual question is: A lot of Vagos
23 responded to the Oyster Bar; we already established that,
24 correct?

1 A That is correct.

2 Q That is consistent with Mr. Rudnick's testimony
3 that a lot of Vagos went down to the Oyster Bar, right?

4 A Yes, yeah.

5 Q And everybody agrees on that, right, everybody in
6 there?

7 A Correct.

8 Q Right?

9 A Yes.

10 Q And there was tension between the Hells Angels
11 and the Vagos, right?

12 A Correct. As a result of Jabbers, yes.

13 Q And then your president assured Mr. Pettigrew
14 that there weren't going to be any problems, correct?

15 A Yeah, yeah. Yes, he did.

16 Q Now, that would be a good way to ensure that more
17 Hells Angels don't show up at the Nugget, correct?

18 A No.

19 Q Well, if there was a problem --

20 A We're both from San Jose. I mean, there's a
21 mutual respect between San Jose charter and San Jose
22 Vagos.

23 Q Listen to the question, please.

24 A Certainly.

1 Q You knew that there were a lot of Hells Angels in
2 town, right?

3 A Yes.

4 Q Now, if there's going to be a fight that the
5 Hells Angels are going to be in, they would get their
6 reinforcements?

7 A If there was an incident that happened, they
8 would be called, yes.

9 Q So if you want to make sure that the numbers in a
10 fight are in your favor, you wouldn't want them to call
11 all of their Hells Angels buddies to come down to help
12 them in a fight, correct?

13 A You're incorrect.

14 Q Oh, you would -- if you were a Vago and you were
15 going to fight with the Hells Angels, you would want all
16 the other Hells Angels in there, too, so could you really
17 go at it?

18 A You don't want any problems with another club.
19 There's too much at stake. You have people who have
20 families, who work, who own homes, who have car payments,
21 all that stuff.

22 Q That gets us right back to the first question or
23 one of the questions I asked you is how many Vagos does it
24 take to pull one Gary Rudnick out of a mix? Just one,

1 right? That was your testimony, right? Just one?

2 A The right -- I don't know how to answer that.

3 Q So initially the testimony that we have from Gary
4 Rudnick seems to make sense, right, seems to fit, correct,
5 in terms of everybody assuring the Hells Angels --

6 A The portions that you have depicted to those
7 items only, yes, in general, yes.

8 Q Okay. And you know Mr. Rudnick would know Tata
9 and Dragon, correct?

10 A Yes.

11 Q You know Tata and Dragon, right?

12 A I met Dragon. Yes, yes to your question.

13 Q And you would agree that if somebody were going
14 to authorize a fight with the Hells Angels, or something
15 such as taking some action for a perceived disrespect of
16 the Vagos, that Tata or Dragon have the authority to
17 authorize that --

18 A It would be done.

19 Q I didn't ask you -- I asked you if they had the
20 authority. That was the question. Did they have the
21 authority?

22 A That's a hard question. In actuality, you have
23 Tata saying to us, okay, with another major club, all
24 right, where San Jose is, you know, basically with a lot

1 of HAs, that we're going to go fight the HAs and we're not
2 going to give a hoot about San Jose at all and their
3 families and everything else, so we're going to say let's
4 go fight the HAs.

5 How am I supposed to answer that question?
6 Because it wouldn't be done.

7 Q Well, there's a difference between fighting the
8 Hell's Angels and just going up and shooting the president
9 in the back, right? Those are kind of two different
10 things?

11 A No, it's along the same line. If I understand
12 you correctly, and if I heard you right, you had asked me
13 if a higher up had sanctioned this, why would they go to
14 such extremes to do that over something that's petty?

15 When you expand a charter to another charter,
16 you're going to kill a man over expanding, over another
17 charter with a bunch of other guys with more HAs around?
18 That -- it's something that doesn't make sense.

19 It doesn't fit. So this is why I can't say, oh,
20 yeah -- if Tata said to me, hey, you're going to do this,
21 I have a choice. The choice is I'm not going to do that,
22 take my cut.

23 You know what, so what? I lose my cut. But I'm
24 not going to do something that I know that's wrong.

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1 There's just no way. I got too much to lose. I'm not
2 going to do it.

3 Q Well, you're going to move to Nicaragua anyway,
4 right?

5 A What does that have to do with me saying to you,
6 hey, I'm not going to do that, man?

7 Q Had on your Nicaragua cut. You had your
8 passport, your 1700 bucks, you were ready to go, right?

9 A I've always carried large sums of money.

10 Q Are you telling me you weren't on your way to
11 Nicaragua when you were arrested up in San Francisco?

12 A No. You want to know why? Would you like to
13 know?

14 Q Yeah, might as well hear it all. Sounds like
15 you've got this all pretty well rehearsed.

16 A Okay. If you wish to think that way. I said
17 goodbye to my daughter already in San Francisco. My other
18 daughter lived in another state.

19 Q Well, none of those daughters lived with you,
20 right?

21 A You know why I get so frustrated and --

22 Q Didn't you live alone in San Francisco?

23 A And actually angry, that you would think to
24 believe that I would allow, right, my daughters to be in

1 jeopardy, right?

2 Q Stop.

3 A My uncles to be in jeopardy and all my brothers.

4 THE COURT: Which one of you -- do you want to
5 object?

6 THE WITNESS: To do something like that, there's
7 no way. I stand to lose everything and gain nothing from
8 doing something like that.

9 BY MR. HALL:

10 Q Oh, you don't think you'd be a national or an
11 international person in the Vagos?

12 A With the HAs after me, after my life?

13 Q That's why you had the meeting with the Hells
14 Angels, right, and you explained how that happened?

15 A No.

16 Q It was like, oh, we had that meeting so we had
17 the politics, because I was concerned about my daughters.
18 We went down and talked to them, had the meeting.

19 So we kicked out Campos and we kicked out
20 Rudnick, right? That's what you testified to earlier on
21 direct; you said we had the meeting?

22 A Would you like -- would you like to hear?

23 Q You had the meeting with the Hells Angels in LA,
24 correct?

1 A No, we did not.

2 Q So I guess --

3 A I would like to tell you, given a chance, if I

4 may.

5 Q Let's switch gears here and go back to watching

6 you hunt down Mr. Pettigrew. All right. You got your gun

7 out at 23:30:40, correct?

8 A I'm not even paying attention right now.

9 Q Because you're so upset?

10 A To think that --

11 Q There's no question before you. So you can't

12 just -- the rule is I ask a question and you answer. You

13 don't just get to sit there and --

14 A Sure.

15 Q -- and talk. Okay.

16 So from this point, you know where you are

17 depicted in the video here?

18 A Yeah.

19 Q Where is that?

20 A Right in front of the video.

21 Q And you can't see anything that's going on from

22 that point from where you're standing in this video, can

23 you?

24 MR. LYON: I guess objection, vague. Vague. I'm

1 not sure --

2 THE WITNESS: I couldn't tell you.

3 MR. LYON: I'm not sure we've even established
4 where we're at in all this video here.

5 BY MR. HALL:

6 Q This would be the north end of the Trader Dicks
7 bar with the fish tank on it. So this would be down by
8 the Noodle Hut. So to put it in, to direct your attention
9 to Exhibit 130, you would be right here. (Pointing).
10 Does that look about right to you?

11 A From what you showed me, yes.

12 Q So from that location, you would agree that you
13 can't see anything that's going on over here on the tile
14 walkway on the Yellow Brick Road, correct?

15 A I would have to play through in order to see that
16 more clear.

17 It appears that I looked down that way.

18 Q That's on the backside.

19 A What I see, I couldn't tell you.

20 Q So the frontside is over here. So the Yellow
21 Brick Road is over on this side.

22 A Okay.

23 Q So right there that's where you pull out the gun
24 and you're ready to go shooting?

1 A I heard more shots, you're absolutely correct.

2 Q Right. That's why I was showing you the video
3 earlier where you could see the Vagos attacking those
4 Hells Angels, Jimmy DeRosa and Eugene Anaya, because
5 there's another shot that does go off right there.

6 A Okay.

7 Q I'll show it to you. I'll show it to you right
8 now.

9 A Sure. (Playing video).

10 Q So we're looking at Camera 45 at 23:26:45.
11 Remember there's that shooting. Remember we saw
12 Villagrana didn't have a gun. And then we were talking
13 about those two Hells Angels being chased from the
14 bathroom area, remember?

15 A Correct.

16 Q So that attracts Villagrana's attention and
17 Pettigrew's attention. And you're going to see him
18 shooting to the floor right there, if you watch. See it?
19 See the flash?

20 A No, I did not.

21 (Playing video)

22 Yes.

23 Q So when you say you heard that gunshot, that's
24 the one, right, that's in response to another Vago, that

1 Vago attack at the bathrooms, right?

2 A I don't know. I didn't see that.

3 Q You can see it from the other direction. So this
4 is 23:27:09.

5 MR. LYON: Your Honor, I think the witness said
6 he didn't see it in real life, not versus the video. I
7 think that's the confusion. So if counsel could --

8 THE WITNESS: Right. I'm watching --

9 MR. LYON: If counsel could clarify what the
10 question is, again, video versus what he's recalling.

11 THE COURT: Okay. Counsel go ahead and ask
12 another question.

13 BY MR. HALL:

14 Q Did you hear that gunshot? Because remember
15 that's where we were -- we were looking at the video of
16 you with the gun out, back behind the fish tank, right,
17 remember that, just a moment ago?

18 A When I cocked it to see if anything was in the
19 chamber?

20 Q You cocked it and you put it away. And then you
21 went out and you looked around and then you pulled it out.
22 Okay. And you said, oh, I think that's when I heard more
23 gunfire, is what you said?

24 A Quite possibly, yes. Quite possibly. Yes.

1 Q (Playing video). So there you go. This is you
2 running back.

3 A Yeah, one among other times, yes.

4 Q So you run back about 23:30 and zero seconds,
5 something like that. And then you appear again at
6 23:30:04, and you're a man on a mission, right? And
7 you've got a gun out. That's a gun in your left hand,
8 right?

9 MR. LYON: If counsel could let the witness
10 answer the question.

11 THE COURT: Okay. You can answer that question.

12 THE WITNESS: You --

13 BY MR. HALL:

14 Q You're a man on a mission?

15 A No.

16 Q You're a man going to kill Pettigrew?

17 A Absolutely not.

18 Q Why do you have the gun in your hand ready to go
19 shoot somebody?

20 A I would say that in all the confusion I have it
21 in my left hand -- why -- now in reality, looking at this
22 and thinking why the hell do I have a gun in my left when
23 I'm right-handed, if I'm going to go shoot someone?

24 So in all clarity right now, I couldn't fathom to

1 tell you precisely what my thoughts are right then and
2 there. Why would I have a gun in my -- I can't tell you.
3 I can't formulate something that I don't have words for.

4 Q You practice shooting all the time, right?

5 A That's incorrect.

6 Q Is it difficult -- if you wanted to keep a gun
7 concealed from other people that were in the casino, you
8 might see fewer people on the left than on the right, you
9 might want to --

10 A Based on what I see, that's incorrect, because if
11 I'm depicting the same thing that I remember off the
12 sketches, this is facing all the booths. So there's
13 nobody there.

14 So in actuality, from this particular video here,
15 then they would actually see me walking because it's
16 coming this way and people are from -- if this is the
17 Yellow Brick Road, then they would be seeing me more with
18 my left hand.

19 So I wouldn't -- I'm only going by -- I'm only
20 going by this. I'm not saying that I remember explicitly
21 that I did this. I couldn't honestly tell you that I had
22 it on my left hand. But this, definitely I agree with
23 you, I have it in my left hand.

24 Q Well, this is the bar right here, right?

1 A Yes.

2 Q Do you see anybody here?

3 A No, not at this time, no.

4 Q Is it hard to move that gun from this hand to
5 this hand (demonstrating)?

6 A No, sir.

7 Q If we could just play this at regular speed. Now
8 at 23:31:10 you don't see where those guys are because
9 they're walking down the Yellow Brick Road at this time
10 and your view is obstructed, so you have to wait for them
11 to come into view, to come into that one slot where you
12 can see them through the Trader Dicks bar, right?

13 A Well, to get to this point, when I was on the
14 other side here, I saw them. Everything was quiet. Came
15 back around from here. I don't know exactly where they
16 were at. How many seconds passed by before they come into
17 view, I couldn't tell you.

18 I did see them walk through, right. Once they
19 passed, there's that wall that you can't see. Remember,
20 at the disco. So then I went further into the disco so I
21 could see.

22 Q So when you're back behind the fish tank here,
23 over here you can't see those guys at all, right?

24 A Well, knowing that I had seen them from this area

1 here when I turned around, I had a clear shot down that
2 aisle, knowing that they're going to go that way, in order
3 for me to see them, to see where they're going, yes, I did
4 come this way, yeah, I agree with you.

5 Q So why are you chasing them down the hallway
6 there? I mean you look like you've got the gun out and
7 you're moving (demonstrating), you're going down to watch
8 these guys, right? And then as soon as they come into the
9 clearing, you run in, according to Donald Sandy, and shoot
10 them right in the back, right?

11 Obviously they're kicking him, I'll give you
12 that, kind of fortuitous that your buddy, after chasing
13 them, fell down, but that's what happened, right?

14 A I agree to some, to not all of what you said.

15 Q So you agree you couldn't see them at all until
16 they came into view through that one slit, when we did the
17 walk through video?

18 A No, that's incorrect.

19 Q So you saw them before that?

20 A I saw them when I was on this side, when I peeked
21 through and I saw them down the hallway, and then I saw
22 them walking. So I wanted to make sure that nothing else
23 was going to happen. I knew people had gotten shot. I
24 knew there was a lot of civilians.

1 I didn't know who got shot, how many got shot. I
2 had heard a lot of gunfire. This is in the moment kind of
3 thing. This isn't something right now that you're
4 breaking down for me to think and give you answers to.

5 When you're in it, it's impossible to formulate
6 step-by-step, to break it down and give you these answers.
7 So now I have to think to myself, okay, what did I do
8 there? What did I see?

9 I'm going back almost two years to recollect
10 exactly what I was thinking when all this stuff in a
11 matter, for me, of minutes happened. This is why I can't
12 answer you fully on questions.

13 Q Okay. Why don't you answer me this one: If the
14 Vagos provoked the fight --

15 A A Vago. Rudnick provoked the fight.

16 Q And then multiple Vagos attack Hells Angels,
17 right; we established that?

18 A We established that -- I don't want to make
19 myself right. Yes, you're right.

20 Q And then we have Vagos attacking Hells Angels
21 after the Hells Angels put all their guns away, right,
22 after a lull in the action?

23 A Depicted by what you have shown me these last ten
24 days, yes.

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1 Q How do you justify shooting a Hells Angels in the
2 back; aren't they entitled to self-defense?

3 A That doesn't make sense because --

4 Q So you provoke it; you attack them; you attack
5 them again, and then you go and shoot them in the back.
6 How is that justified?

7 MR. LYON: Objection. He's using the term "you."
8 I don't think Mr. Gonzalez was a part of that.

9 THE COURT: Overruled.

10 BY MR. HALL:

11 Q You and your Vago buddies, you and your fellow
12 Vagos, and that's what you were doing, protecting your
13 Vago. So you were part of it, right? That's what you
14 were doing, was participating as a Vago, right?

15 A No. No. I'm going to disagree with you, because
16 when this all happened, it was for me self-preservation.
17 When the fight ensued, I backed up. I didn't want any
18 part of it.

19 I had backed up to -- I was checking things out.
20 It got worse. I came to point where I had seen them. I
21 thought, hey, you know what, it's done. It's over. So I
22 thought they were going home. You know? And then as I
23 approached inside the disco, after they passed, I could
24 still see them walking.

1 At the same time, same moment, here I have a
2 brother on the ground and I'm thinking, okay, then they're
3 going home. It's done. There's no one there. Then they
4 start approaching him and they start kicking. I see one
5 of them have a firearm.

6 I shot. It was either that or my brother would
7 have gotten killed or them. All right. He was
8 defenseless. He was on the floor. What did you want me
9 to do? Did you want me -- hold on a minute.

10 Did you want me to walk away and let that man to
11 be shot? And then what happens to me afterwards? I have
12 to live with it. I'm not going to do that. That's not
13 the frame of mind I was in.

14 Q It's much easier to live with shooting a guy in
15 the back, right? Live with that?

16 A Sir, did you want me to tell Mr. Pettigrew, hold
17 on, turn around, let me shoot you?

18 Q Let me ask a question. Those guys could have
19 shot Mr. Wiggins anytime, right? They could have shot
20 him. And after you shot Pettigrew, they could have shot
21 him.

22 A I was shooting at both of them.

23 Q They could have shot a whole bunch of Vagos, but
24 they didn't, did they?

1 A I was shooting at both of them because they were
2 over my brother with a weapon.

3 Q That was unreasonable. They didn't shoot anybody
4 unless they were confronted with deadly force; isn't that
5 true?

6 MR. LYON: Objection; argumentative.

7 THE WITNESS: I will disagree with you.

8 THE COURT: Overruled.

9 THE WITNESS: Because of the fact that I knew
10 that they had guns. I knew that they had fired. I didn't
11 know who got hit. I got a brother on the ground. Right?

12 I see a firearm. And I shoot.

13 BY MR. HALL:

14 Q Then, why weren't -- you had the gun, you had the
15 40, why weren't you doing anything when they were
16 shooting?

17 A Because I didn't have a firearm at that time.

18 Q Oh, okay. So then you just thought you'd wait
19 until they come in a clearing and then go shoot them?

20 A Come at me again? How is that?

21 Q So you wanted to wait? You have this -- you were
22 telling me you were so sure they were going to shoot other
23 people after they put their guns away, that you had to
24 come up, and they were going to shoot him?

1 A I didn't say that.

2 Q That's not what you just said?

3 A No. That's a mis -- no, I don't believe I said
4 that.

5 Q Okay.

6 THE COURT: This might be a good time to take our
7 next recess. Ladies and gentlemen of the jury, during
8 this break, remember the admonition you've been given at
9 the other breaks. We will take our usual 20-minute
10 recess. Court's in recess.

11 (Recess taken at 11:52 a.m.)

12 (End of morning session)

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STATE OF NEVADA)
)
COUNTY OF WASHOE)

I, DENISE PHIPPS, 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, this 18th day of
September, 2013.

/s/ Denise Phipps

DENISE PHIPPS, CCR No. 234, RDR, CRR

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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. CR11-1718B
11 vs.)
12 ERNESTO MANUEL GONZALEZ,) Dept. No. 4
13 Defendant.)
14 _____)
15

16 TRANSCRIPT OF PROCEEDINGS

17 MONDAY, AUGUST 5, 2013

18 AFTERNOON SESSION

19 RENO, NEVADA

COPY

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24 Reported By: MARCIA FERRELL, CCR No. 797

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1 RENO, NEVADA, MONDAY, AUGUST 5, 2013, 12:15 P.M.

2 --oOo--

3 (Jury absent.)

4 THE COURT: I can't see everybody, so. Is
5 everybody ready to go?

6 MR. HOUSTON: Yes, your Honor.

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

8 (Jury present.)

9 THE COURT: Counsel, will you stipulate to the
10 presence of the jury?

11 MR. HALL: Yes, your Honor.

12 MR. HOUSTON: Yes, your Honor.

13 THE COURT: Thank you, you may continue.

14 CROSS-EXAMINATION

15 (Continued)

16 BY MR. HALL:

17 Q. Now, this vest over here has a built-in holster,
18 doesn't it?

19 A. Yes, you're absolutely right. Yes.

20 Q. Now, do you remember that email about my P has a
21 different plan for me, what was that different plan?

22 A. Well, originally we were to head down south.

23 Q. Like to Nicaragua or Mexico?

24 A. Oh, no, that one is to -- we were heading down

1 towards L.A., Richie and I. And I had sent that text out
2 because I was called and told that Jabbers was on his way
3 out, and we didn't want anything to do with him anymore, and
4 to side-step him.

5 Q. Okay, and that would be a good political move if you
6 wanted to send the Hells Angels a message that you had taken
7 care of business on your end, right?

8 A. No, that had to do with us, and stopping someone
9 from that, ever causing something like that ever again. For
10 the Vagos. He injured a lot of us.

11 Q. That gets me back to that question. How many Vagos
12 does it take to stop one guy?

13 A. One, Mr. Hall.

14 Q. Yeah. And this was the same guy that you knew an
15 hour before had started something with them, correct?

16 A. Whom? Can you rephrase that?

17 Q. Gary Rudnick was the same guy that started the
18 problem down at the Oyster Bar, right?

19 A. Oh, he most definitely did, yes, he did.

20 Q. So you knew that he was the problem, right?

21 A. I was -- once I got down to the Oyster Bar, yes,
22 you're absolutely right.

23 Q. And you were over at Trader Dick's for a half an
24 hour before those guys ever came down, right? Before the

1 Hells Angels ever walked past, correct?

2 A. Are you referring to after the Oyster Bar?

3 Q. I am referring to after the Oyster Bar, yes.

4 A. Yeah, I was there, yes. We were at the roulette
5 table and blackjacks, yes.

6 Q. So you knew that there was the potential problem
7 there --

8 A. It was squashed --

9 Q. Could have easily stopped it, correct?

10 A. It was already squashed, sir.

11 Q. And that's why so many Vagos congregated in that
12 area and attacked the Hells Angels in unison, correct,
13 because it was squashed?

14 A. I would definitely disagree with you. Last year we
15 were around the Horseshoe area --

16 Q. I'm talking about this incident. I'm talking about
17 this incident, that day, 9-23, 2011, at 10:25.

18 A. In order for me --

19 Q. Or 11:25.

20 A. In order for me to give you a more concrete
21 answer --

22 Q. Well, give me an answer about this date. This is
23 the date that is important.

24 A. Yes, at that time we chose Trader Dick's to hang

1 around instead of the Horseshoe, as last year.

2 Q. Because you didn't want Pettigrew to get to the
3 elevators, right?

4 A. I never knew anything was going down with Pettigrew.

5 Q. Now, you say you just found that gun?

6 A. Correct.

7 Q. Remember when we were looking at the video over on
8 monitor -- excuse me, camera 45, that looks straight in, and
9 at the beginning of the fight you back up and you're going
10 like this, remember that?

11 A. I remember a movement, yes. Defensive move, yes.

12 Q. All right. Well, let's look at camera 214. I have
13 a few questions when we look at this. One is if this is the
14 gun you just found, how come you didn't have to look at it to
15 see if it was loaded and how it worked?

16 A. That's what I did then. I mean, if you had asked me
17 before, I would have told you I never had done that. Not
18 until this point that I'm visually reviewing this, then
19 that's what -- that's what did happen, yes.

20 Q. And when we watch the video, I want you to tell me
21 if that's the same area where you're reaching, in this video,
22 as you were reaching when we were watching you --

23 A. Sure.

24 Q. Okay.

1 A. Well, that particular one looks like I'm putting it
2 in my pocket, more so than -- than where you have said here.
3 From what --

4 Q. We can compare them.

5 A. Well, it's -- it's difficult for me to give you a
6 narration. Based on what I see, sure, I can tell you that's
7 what it looks like --

8 Q. I'm not asking for a narration, I'm just asking if
9 that's the same area that you were reaching the first --

10 A. Yes, I would agree with that, yes.

11 Q. And that was before you picked up the gun, right?
12 The first time.

13 A. To answer your question --

14 MR. LYON: Objection, vague.

15 THE COURT: Sustained.

16 BY MR. HALL:

17 Q. The first furtive gesture that we were looking at on
18 camera 45.

19 A. Yes.

20 Q. You were reaching for the same area as we're seeing
21 here on camera 214 at 23:30:27, correct?

22 A. Yes.

23 Q. Now, your justification for shooting Pettigrew and
24 trying to kill Villagrana was that you saw your brother on

1 the ground, right?

2 A. Correct.

3 Q. When did you see your brother on the ground?

4 A. It's -- it's an imaginable question for me, because
5 to be at that precise moment, and to actually tell you, I
6 would mislead you to give you an answer, to say oh, yes, I --
7 I specifically saw my brother here, and then I saw him here,
8 and then collectively -- it came together. I -- I can't
9 formulate that for you. Although --

10 Q. So when you were down at this end of the bar you
11 didn't see him on the ground, did you?

12 A. Where, this end? There isn't any way --

13 Q. 214, where I see you here in this video, where you
14 just checked your gun at 23:30:33, you didn't know that
15 Wiggins had fallen as he was chasing Hells Angels through the
16 casino.

17 A. No. No, I didn't --

18 Q. You didn't know that?

19 A. No, I did not, sir, no.

20 Q. All right, so at 23:30:39, you just get out your gun
21 and start running that way for nothing.

22 A. I -- you know what, I don't know whether I heard a
23 lot -- a lot of voices, a lot of yelling, and that alerted
24 me. There had to have been something that alerted me to go

1 back, as I was on my way out.

2 Q. It couldn't be that you wanted to kill Pettigrew.

3 A. No, there's no way.

4 Q. And you would agree that it looks like you're on a
5 mission when you're running back there with your gun out.

6 You would agree with that, wouldn't you?

7 A. Well, the way that you put it, it's --

8 Q. You're definitely going there with purpose. You're
9 definitely headed that way with purpose with that gun in your
10 hand, correct?

11 A. No.

12 Q. And you would agree that there's only one window of
13 opportunity to go in and take a clear shot at Pettigrew, and
14 that was when they stopped where Wiggins was, correct?

15 A. Incorrect.

16 MR. HALL: Thank you, no further questions.

17 MR. LYON: Nothing further, your Honor.

18 THE COURT: Okay, you may step down.

19 THE WITNESS: Thank you.

20 MR. LYON: We have no further witnesses, your
21 Honor. The defense would rest at this point in time.

22 THE COURT: Okay. Counsel?

23 MR. HALL: Yes. We would have rebuttal. We have
24 one witness, but I'd like a brief recess, I don't know if the

1 witness is here.

2 THE COURT: Okay.

3 MR. HALL: I'd like to meet with him, so if I may
4 have the Court's indulgence to assess the situation a little
5 bit.

6 THE COURT: Okay. Ladies and gentlemen of the
7 jury, we are -- I'm going to have you stay, not leave. I'm
8 not sure what's going to happen this afternoon, and if we are
9 going to have a witness or not. So while we make that
10 decision, I'm going to have you wait in the jury room and
11 wait for us to give you further direction about what's going
12 to happen for the remainder of today.

13 Remember the admonition that I've given you at all
14 the other breaks. You may not form or express any opinion
15 about the ultimate outcome of this case. You may not begin
16 discussing the case among yourselves or with any other
17 person. Should any person attempt to influence you or
18 discuss the case with you, you report it immediately to me.

19 Do not make any independent investigation or
20 inquiry into any of the facts and circumstances surrounding
21 this case. Do not listen to, view or read any news media
22 accounts or any other accounts regarding the case.

23 Go ahead and go into the jury room and await us,
24 please.

1 (Jury absent.)

2 THE COURT: Okay, counsel, I know you thought there
3 might be more witnesses, so I'll go ahead and we'll take a
4 recess now for you to decide. We also have some issues, and
5 we should make a record now that prior to you resting on the
6 record there was a bench conference and defense stipulated to
7 allowing you to reopen to admit any evidence that you deemed
8 appropriate to admit that had not been. And I think we have
9 some evidentiary issues that probably need to be resolved,
10 there were a couple of things marked. So we need to talk
11 about about that, too, when we -- at some point.

12 So we'll take a short recess now for you to decide
13 what's going to happen. Maybe -- I don't know how long you
14 need, 10, 15 minutes.

15 MR. HALL: 10 minutes, perhaps.

16 THE COURT: Okay, and then we'll be back on the
17 record outside the presence of the jury, and resolve some
18 other things, too. Thank you, court is in recess.

19 (Recess.)

20 (Jury present.)

21 THE COURT: Counsel stipulate to the presence of
22 the jury?

23 MR. HOUSTON: Yes, your Honor.

24 MR. STEGE: Yes.

1 THE COURT: Thank you, please be seated.

2 Ladies and gentlemen of the jury, the timing has
3 gone a little bit faster than we originally anticipated. So
4 we do not have any more witnesses for today, so you're going
5 to get to go home for the day. Tomorrow morning we're going
6 to hear more witnesses.

7 Now, I don't know yet what our schedule will be
8 tomorrow for sure, but I think it would be a good idea for
9 you to make arrangements to stay. It's possible that you
10 could end up staying tomorrow. So by way of -- what I'm
11 saying is once you begin deliberating, you will not be able
12 to go and come while you're deliberating. So you'll begin
13 your deliberations, and you'll stay here while you
14 deliberate. It won't stop at 2:10, like we have been, or
15 2:30.

16 So I don't know for sure that that's going to
17 happen tomorrow, but it's possible. So you should tell your
18 family and friends that you won't be home -- you may not be
19 home at the same time that you expected to be.

20 Now, I'll know more tomorrow after we get started
21 and we see how the day goes, but I just want to give you that
22 warning so you can make arrangements if you will not be able
23 to do something tomorrow evening, for instance. So does
24 anyone have any questions about that?

1 Okay. Now, during this break you have not heard
2 all the evidence in the case, you haven't heard closing
3 arguments, you haven't received the law as I will instruct
4 you. So it is absolutely not the time to begin forming or
5 expressing any opinions about the ultimate outcome of this
6 case. So do not do that.

7 Do not speak of the case to anyone or allow anyone
8 to speak of it to you or in your presence. This includes
9 discussing the case in internet chat rooms or through
10 internet blogs, internet bulletin boards such as Facebook or
11 Twitter, email, or text messaging. If anyone should try to
12 communicate with you, report that to the Court immediately.

13 Do not read, watch, or listen to any news reports
14 or other accounts about the trial, or anyone associated with
15 it, including any online information.

16 Do not do any research on any of the parties or
17 groups or law involved in this case, including consulting
18 dictionaries, searching the internet, or other reference
19 works. Do not make any investigation about this case on your
20 own. Thus you may not go to the Sparks Nugget either in
21 person or through the internet.

22 We'll see you you back tomorrow morning at 7:30.
23 You may step out. Thank you.

24 (Jury absent.)

1 THE COURT: Please be seated. I wanted to give you
2 all an opportunity to take a little break before we get back
3 together this afternoon, but I thought we should take this
4 opportunity to resolve a couple of the evidentiary issues
5 that seemed to come up this morning. I don't know exactly
6 where you might want to start, but I would want to start at
7 Exhibits 39 series. And we reviewed that on Friday before
8 the end of the day.

9 MR. HALL: Would those be autopsy photos?

10 THE COURT: Yes, they are. So I showed that
11 Exhibits 39-1 through 69 were not admitted, there was some
12 confusion, we talked about that. And then there were some
13 that had been admitted along with Dr. Clark's testimony. And
14 I didn't know if we're set on the 39 through -- 39 through
15 48, 51, 52, 55 through 59, 61 through 64, 66, 67, and 69.

16 MR. HALL: So the ones that Dr. Clark used are in?

17 THE COURT: Yes.

18 MR. HALL: And those are the ones you just
19 referenced?

20 THE COURT: Yes.

21 MR. HALL: All right, so then the question is the
22 other ones, and so -- no, I'd withdraw those except for the
23 one with his nose hanging off.

24 THE COURT: And which number is that?

1 MR. HALL: Here it is. That one. Item 1.

2 THE COURT: Counsel, any objection?

3 MR. HOUSTON: Yes, your Honor.

4 THE COURT: Go ahead and tell me what it is.

5 MR. HOUSTON: Your Honor, I mean the obvious is
6 true, the forensic pathologist testified, it was not used
7 during the course of her testimony, it was not necessary
8 during the course of her testimony to prove any relevant
9 point to the jury. So as a consequence, to put it in at this
10 point in time is really to inflame the jury as opposed to
11 accomplishing any goal. And where I really have some
12 difficulty is was this situation created as depicted by way
13 of medical manipulation in order to treat at some other
14 point, or was it actually pulled away during the course of
15 the autopsy in order to get a better idea of the depth of the
16 cut and the cut itself? We don't have any testimony that is
17 the way Mr. Pettigrew looked; rather, we have an autopsy
18 photo with what the nose appears to be intact. And so the
19 consequence of this particular photograph then is not only
20 prejudicial, but I would suggest to the Court there's a
21 question as to its authenticity referencing what he truly
22 looked like when he was later put into the ambulance or
23 originally delivered to the hospital. I don't know the
24 answer to that, no witness has testified to it.

1 But I think the primary would be the fact that it's
2 very clear it was not necessary in the State's case in chief
3 to utilize it with the forensic pathologist for any
4 legitimate purpose. On that basis I'd ask the Court to keep
5 it out, I think it's highly inflammatory and serves no
6 relevance.

7 THE COURT: Mr. Hall.

8 MR. HALL: Your Honor, I think it is relevant to
9 show the amount of violence that was perpetrated upon
10 Mr. Pettigrew at that point where he was behind slot machine
11 bank I think it was 605.

12 The testimony -- or the photograph was certainly
13 described by Dr. Clark, and she said that his -- part of his
14 nose or half of his nose was hanging on by merely a piece of
15 skin.

16 So I think to clearly depict how much violence was
17 perpetrated on him, to show his actions after that, and to
18 put those actions in context, since we don't have audio of
19 this particular incident, although we do have corroboration
20 of the injury by virtue of the DNA testimony from Brittany
21 Baguley of the crime lab, so I think that gives a clear
22 indication of how injured he was at that point in time.

23 And even though he was that injured, they did put
24 their weapons away until there was that second attack.

1 And then I think the point was highlighted by
2 defense counsel, when he said, oh, that could have been
3 manipulation by the doctor, and his nose really wasn't that
4 hurt, I think bolsters my argument for the probativeness of
5 that photograph. Not necessarily to inflame the jury, but to
6 accurately inform the jury to the extent of that injury.
7 Because that is a serious injury.

8 When you don't see that flap of skin pulled back,
9 you might infer it was just a mere cut, as opposed to cutting
10 his nose off, which I've been indicating throughout this
11 trial. So I think it is very probative of that. I mean,
12 we're just talking about a flap of nose, it's not -- and it's
13 an injury that occurred during the course of the fight.

14 So it's very probative of the extent of the injury,
15 it was testified to by Dr. Clark, and it avoids any
16 inaccurate information in closing argument about the extent
17 of that injury. So those are the reasons that I'm requesting
18 the admission of that photograph.

19 THE COURT: Yes.

20 MR. HOUSTON: Your Honor, in summing up, the only
21 inaccurate information provided concerning the injury would
22 be provided by Mr. Hall to the jury, because he keeps saying
23 the same thing over and over. That picture has nothing to do
24 in essence with this defendant. The defendant is not charged

1 or even alleged to have been near Pettigrew, caused any sort
2 of a cut to the nose. It really only goes to serve the
3 prosecutor's hope to inflame the jury. It was not necessary
4 for the purposes of the forensic pathologist's testimony,
5 wasn't necessary, or now.

6 And we don't know when the nose became in that
7 condition. We don't from any testimony. We know there's a
8 cut, we have a picture of that. But to proceed further down
9 the road and introduce a picture, the origin of which as far
10 as timing is concerned in the injury, is unknown. No
11 testimony. Dr. Clark was here, prosecutor could ask, they
12 didn't. And now they want you to assume that that is the
13 condition it was in prior to the time they did anything to it
14 in order to display, perhaps, the cut in a better sense or
15 the purposes of their records.

16 So I do think it's inflammatory, but for every
17 other reason set forth. This defendant isn't accused of
18 having done that. So what's really the purpose at this
19 point, to say that Jethro Pettigrew had a right to shoot
20 people? Well, that's really where we're going with this.
21 And quite frankly, I'm assuming that's going to be the
22 argument. Look at his nose, gee, he had a right to start
23 shooting people. But also kind of remember the Hells Angels
24 were being prosecuted in this case before Mr. Villagrana pled

1 guilty. So obviously the State even had a different theory.

2 That in and of itself seems to strike me as a bit
3 disingenuous at this point. So I would rest on that, your
4 Honor.

5 MR. HALL: Well, as far as being disingenuous, I
6 think we're talking about a gang fight here. And the
7 defendant is trying to assert defense of others and trying to
8 claim that he was justified in shooting that individual in
9 the back for kicking a guy on the ground. So I think that
10 goes directly to intent, motive, everybody's state of mind at
11 the time that this fight was going on.

12 And as far as the defense argument that we don't
13 know when that happened, that's disingenuous. We know from
14 the evidence that Pettigrew starts grabbing his nose after he
15 confronts those individuals back behind the slot machines
16 that are referenced earlier, and that it's right after that
17 incident that the shooting starts. And then we know since
18 there's blood on that kiosk on the end of that slot machine,
19 it's Pettigrew's blood, we know that he was bleeding at that
20 time. So we know what time it happened. You can see it in
21 the video, it's clear. That's when he starts grabbing his
22 nose, we've talked about that. So it's definitely probative
23 to the extent of the injury, where the injury occurred, and
24 it goes directly to self-defense and defense of others.