

1 in them is bad. Just like Les Skelton told you, remember?
2 Doctors, lawyers accountants. But whoa, when you put them
3 together, they're all bad.

4 Remember what Mr. -- Detective Bennett told you? I
5 asked him what's the percentage of the Vagos that are
6 involved in criminal activity. Well, that would be a very
7 small percent. Maybe about 10 percent.

8 Mr. Rudnick's own testimony. Only an elite group
9 of the Vagos are involved in criminal conduct. Mr. Rudnick's
10 testimony, he's in the Vagos, for the first two or three
11 years he's not committing any crime. Reasonably, the Vagos
12 had one less criminal when they kicked Gary Rudnick out.
13 Because you also heard Mr. Rudnick tell you that he was
14 running kilos of methamphetamine and cocaine from Mexico to
15 sell to street gangs.

16 There's no investigation of that case, or maybe
17 there is. But certainly Mr. Rudnick is admitting involvement
18 in a multi-kilo smuggling ring. But according to
19 Mr. Rudnick, he's not charged for that.

20 There's also a discussion of running guns. Doesn't
21 appear to have been charged for anything along those lines,
22 either.

23 Sometimes we have a charging document, it's called
24 an indictment. That's what says who is charged and what the

1 charges are. But sometimes negotiations can actually involve
2 more than just what's on that piece of paper.

3 What we also know is that Mr. Rudnick, at the time,
4 given the choice of telling the truth or saving his behind,
5 chose the less honorable, although perhaps understandable,
6 method to do so. That's why Ernesto Gonzalez is getting the
7 story told against him he's told.

8 I'm going to ask to you do something in your
9 deliberations that's consistent with the evidence in this
10 case. I'm going to ask you to actually review the evidence
11 as it concerns whether or not Mr. Gonzalez fired that gun in
12 the lawful defense of another. Did he have a reasonable and
13 good faith belief that Robert Wiggins was going to come to
14 harm, possibly death. Can you see that on the video.
15 Because kind of what you see on the video, not quite as well
16 but to a certain degree, is what he sees.

17 And you know that from the POV footage, that shows
18 you exactly what he can see from the entrance, as he started
19 to walk through the disco, as he stops, pardon the
20 expression, oh, shit, I'm not going to let this happen, bang.

21 That's truly what the case is about. It's not
22 about the Vagos and whether you like them or don't like them.
23 State of Nevada versus Ernesto Gonzalez. Believe what you
24 see on the video, not what somebody tells you. Look at the

1 video, understand for yourself what it says, what it means.

2 We've heard a lot of narrations, but you want to
3 know who the most important narrator of that video is? All
4 of you.

5 When we look at all of the witnesses in this case
6 and we figure out who has testified to what, I can stand up
7 here for, you know, another 45 minutes or so, and probably
8 tell you what each of the witnesses has testified to.

9 I have tried as best I can to cover everything in a
10 legitimate cohesive fashion. I am hoping that I have
11 remembered everything, because I'm that guy who makes a lot
12 of notes and then frankly doesn't use them. Probably be in
13 my service if I could start looking down every now and then.
14 But I think it's important that you see the facts for what
15 they are, and truly what I tell you is just my belief.
16 You'll make that decision.

17 And we go through a great deal of preparation and
18 time to bring a case to you, and this is the final time. I
19 mean, it's up to you now. Really at this point we are where
20 I am required of course to turn Ernesto Gonzalez over to you
21 for your decision. It's that simple.

22 And regardless, I know I've forgotten things. No
23 matter how hard I might have tried, I know I've not included
24 everything that I wanted to say. I may not have answered all

1 the questions that might exist in your minds during
2 deliberations. But I ask you as jurors honoring the
3 presumption of innocence in this case, please, please, do
4 that during your deliberations. And answer the questions
5 yourself. And don't fall victim to this, assume this,
6 conject that, speculate this. If there's any questions,
7 they're all there, the answers are there. You don't have to
8 guess.

9 So I want to thank you. I know I probably have
10 repeated myself a couple of times, but it's that important.
11 And please don't hesitate to listen to those jail calls,
12 because I really think you need to get the true character of
13 Gary Rudnick and who he is before you base your decision on
14 how it's going to impact Mr. Gonzalez. Please understand who
15 that man is.

16 And if I did a good enough job on cross, then I'm
17 happy. If I didn't, then I'm asking you to go back and read
18 his stuff. Read his transcript. Listen to his calls.

19 And only if you are happy and satisfied with him
20 can you come back and suggest that defendant Ernesto Gonzalez
21 should be found guilty. Because other than that, it is a
22 shot any police officer would have taken to save a life or
23 save another from any sort of grievous bodily harm. And how
24 do we know that? Officer Walsh.

1 Thank you, ladies and gentlemen. I do sincerely
2 appreciate your attention. Thank you, your Honor.

3 THE COURT: Ladies and gentlemen of the jury, we've
4 been about an hour and a half, so we're going to take a short
5 recess before we have the State conclude their closing
6 argument. Remember the admonition I've given you at all the
7 other breaks, please go into the jury room for a few minutes.

8 Court is in recess.

9 (Recess.)

10 THE COURT: Thank you, please be seated. Please
11 bring the jury in.

12 (Jury present.)

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

15 MR. HALL: Yes, your Honor.

16 MR. HOUSTON: Yes, your Honor.

17 THE COURT: Thank you, please be seated. Mr. Hall,
18 you may conclude your argument.

19 MR. HALL: Thank you.

20 Defense counsel spoke for quite awhile about Gary
21 Rudnick, as though this whole case centered around Gary
22 Rudnick, it rose and fell on Gary Rudnick. This case isn't
23 about Gary Rudnick. This case is about Ernesto Gonzalez. As
24 he mentioned, it's about the Vagos, it's about gang warfare.

1 That's what this case is about, gang warfare. That's what
2 happened at the Nugget that night, was gang warfare. Now he
3 wants to say because there was some kicking back by the Hells
4 Angels, the defendant is justified. As though the defendant
5 didn't know what was going on. Didn't know what was going
6 on. And if he did know that Rudnick was starting it, which I
7 don't know how he could have missed that since he was with
8 Rudnick almost the entire night, for at least an hour where
9 we see him at the Oyster Bar and at the Trader Dick's.
10 If he didn't -- there was some kind of reason that he
11 couldn't or the president of the San Jose Vagos were unable
12 to pull Mr. Rudnick back for just a couple minutes while they
13 walked by? Does that make sense? Let's talk about what
14 makes sense in this particular case.

15 If he was so concerned about the relationship with
16 the Hells Angels, do you think they could have controlled one
17 person? One guy? You've got the whole San -- and we've got
18 pictures with the defendant in evidence that shows how close
19 and how tight he is with all the San Jose people. And if
20 their relationship was such a great relationship, then they
21 could have pulled Gary Rudnick back very easily. That didn't
22 happen.

23 Doesn't make sense why they didn't do that. As a
24 matter of fact, they supported him when he stopped and

1 confronted Jethro Pettigrew. They supported him after that
2 first punch was thrown. They supported him by smashing
3 bottles, kicking people, knocking people down, a concerted
4 effort to beat Hells Angels down. That's what this is about.

5 And we have a spotlight video, where you can watch
6 exactly what the defendant did. And if you want to question
7 the credibility of Gary Rudnick, who obviously isn't the
8 brightest bulb, read his statement. And let's just walk
9 through what happened in this particular case.

10 You have kind of an understanding of the -- I know
11 we went through it briefly, but just to refresh everybody's
12 recollection. September 23rd, we have the murder of
13 Mr. Pettigrew. Right? The police start searching for
14 people. They identify the defendant as a murderer by virtue
15 of the videotape that you saw. The videotape where he slinks
16 back, goes and hides behind the fish bar, pulls out his gun,
17 the gun that he just happened to find laying on the table,
18 and happened to be able to tuck it back in his pants before
19 he came back out. The gun that he didn't use when his fellow
20 San Jose gang member, Diego Garcia, is getting shot, and Leo
21 Ramirez are getting shot.

22 Now, why wouldn't he do that. Maybe because he
23 doesn't want anybody to shoot back at him. It's a lot easier
24 to sneak up behind somebody and shoot them in the back than

1 it is to actually engage in a gunfight. And you know, just
2 thought about this, when you look at all of the Vagos, when
3 they're fighting the Hells Angels, about every attack that
4 they perpetrate upon the Hells Angels was an attack from the
5 rear. You see anybody square off and fight like a man? Or
6 what I would call fighting like a man, squaring off? No.
7 It's all sucker punches from the back. That's what he is, he
8 was a coward, he ran up and shot a guy in the back.

9 Now, and then when they say he's justified, wait a
10 minute. It was out of the defendant's counsel's own mouth
11 that Gary Rudnick started this. Gary Rudnick, Gary Rudnick,
12 Gary Rudnick. There was no doubt that Gary Rudnick was
13 getting in Pettigrew's face down at the Oyster Bar, there was
14 no doubt that Gary Rudnick pulled Mr. Pettigrew over and said
15 are we okay. As though this isn't a challenge to fight. Are
16 we okay? Oh, yeah, we're okay. And then it was, you know,
17 and then you can see the argument, right? They're changing
18 FUs. Obviously they weren't okay. That's a challenge to
19 fight.

20 Who started that? Who is the initial aggressor in
21 this case, by their own admission? Gary Rudnick. So if Gary
22 Rudnick is the one that started this fight, he's not entitled
23 to self-defense. I'm going to go through those instructions
24 in a minute. But I wanted to go through the timing of this,

1 and I kind of got wound up a little bit there, so I apologize
2 for that.

3 So the officers get those pictures of the defendant
4 that they collect off of the videotape. They contacted the
5 law enforcement agencies and are able to identify
6 Mr. Gonzalez as the individual who you see on tape sneak in
7 or run into Trader Dick's area and shoot Mr. Pettigrew. So
8 they try and find him. They start pinging his phone. His
9 phone pings down in L.A. And if you recall the testimony
10 from Detective Patton, he indicated that he had a plane trip
11 ready to go down to Nicaragua. And so that would have been
12 on about the 27th of September, 2011.

13 He canceled that, you remember the defendant he
14 said yeah, I canceled that, didn't want to use my credit card
15 to purchase that ticket. And, you know, I went down to L.A.
16 to meet with some of my buddies. And of course if you go
17 through the telephone calls in Exhibit 64, you can see who's
18 calling who. You can see that Rudnick is calling Tata,
19 Dragon, the guys who could call the shots. There's one thing
20 I'd like correct, Tata didn't go down to settle this issue
21 down at the Oyster Bar at 11:04. Remember we had the video
22 at 11:04. That was Dragon Man and that was Cesar Morales.
23 So Cesar Morales is the same president, his president, San
24 Jose, who is smashing a bottle on Hells Angels Christopher

1 Knowlton's face. Why would he be doing that if they were
2 such good buddies and it was just Gary Rudnick?

3 That's what doesn't make sense. If they're such
4 good buddies and they don't want anything to erupt, why are
5 they smashing bottles and sucker punching everybody, and
6 drawing guns on them and fighting with them? That's what
7 doesn't make sense, that it was one guy? As people, as men,
8 as grown men, as lawyers, doctors, accountants? You know,
9 you saw those guys.

10 I mean, to sit there and say the people we're
11 dealing with in this particular case are lawyers, doctors and
12 accountants is ridiculous. You saw one of the head guys, the
13 Nomad, Mr. Rocky Siemer. Please. And the jacket that he was
14 wearing, and the things that those stood for, these are the
15 types of people that we're dealing with in this particular
16 case. You saw Rudnick testify.

17 You saw the defendant's good friend testify,
18 Mr. Nickerson, the ponytail. He's the one that said they had
19 a problem with the Hells Angels because they were surrounded
20 at the tattoo convention in Sacramento. And we don't have
21 to -- we also mentioned through the course of the trial the
22 fact that there was a murder in Oildale in 2010, a Hells
23 Angels murdered an 18-year-old Vago member. The shootout in
24 Yapapai later that year where over 50 shots were fired

1 between the Hells Angels and Vagos. You've got another
2 attack between the Hells Angels and Vagos in Santa Cruz, the
3 Starbuck's incident.

4 So there's a number of incidents in that area where
5 the rival -- the rivalry is clear. I mean, even the
6 defendant, when he's meeting with Matt Kirby, indicates that
7 they don't like us. From a lifestyle, I have to be armed and
8 dangerous. Once again I digress. So back to the timing of
9 this.

10 He's identified, he's found in San Francisco. He
11 had the three phones in his car, along with his bags packed,
12 his computer, and his passport, \$1700. So in between time he
13 had sent that text message which was deleted off of his phone
14 to Gary Rudnick.

15 Now, if you remember, he was friends with Gary
16 Rudnick. He used to go down there all the time, they'd go
17 down there and barbecue and hang out. So to sit there and
18 say that he didn't have the authority, the power, the
19 relationship with Gary Rudnick to intervene, if this was
20 going to be such a problem with the Vagos, that doesn't make
21 sense.

22 And why is he deleting these messages off of his
23 phone when he says my P, my president, has another plan for
24 me. All is good. That's what doesn't make any sense.

1 So after he goes back up and he gets arrested, this
2 case is presented to the grand jury.

3 Here's the indictment, the indictment was filed on
4 November 9th, 2011. Right? So that means that the grand
5 jury found that there was probable cause to believe that the
6 crimes contained in this document were committed by Gary
7 Rudnick, Cesar Villagrana, and Ernesto Gonzalez.

8 After that, Gary Rudnick was arrested. So was
9 obviously the defendant was arrested, and pursuant to a
10 warrant, and so was Cesar Villagrana. So Gary Rudnick was
11 provided with an attorney, and that attorney approached me
12 with a plea negotiation. I said well, if we're going to,
13 before anything happens, he's got to give a truthful
14 statement to the police. And then we'll evaluate that and
15 see if we can reach a negotiation. And if we do, then he's
16 going to have to tell the truth, right? So here's a
17 statement to the police. You have it, you can read it, you
18 can listen to the phone calls. Got nothing to hide, here it
19 is.

20 What's interesting is when you look at this
21 document, the indictment, the same charges are contained in
22 this document that are contained in the charges that you're
23 looking at today. Why do I think that that's important?
24 Because if you believe what you see on the video, the

1 defendant is guilty as charged. He's guilty of challenge to
2 fight, causing death. He's guilty of murder in the first
3 degree. He's guilty of carrying concealed weapons. He's
4 guilty of malicious discharge of a gun inside of a structure,
5 endangering the lives of all these people. And you know,
6 when we were talking about the trajectory of that gun, he
7 almost shot Mr. Wiggins. If you look at the photograph --
8 and I wanted to make this point, the photographs from Heather
9 Kohles, it's Heather Kohles that actually collected the
10 evidence, if you recall the photographs. All of those
11 photographs are on this disk, so if you want to find the
12 placards, there's a list of placards that you can easily look
13 at the evidence, put this in the computer.

14 If you look at the damage to the slot machine bank,
15 it's right over the head of Mr. Wiggins. So if this was
16 something where he was really reasoning, calculating -- he's
17 just in there blasting away. And one of those shots went all
18 the way across the casino, as we demonstrated, definitely
19 endangering the lives of everybody in that casino. It was
20 just by the grace of God that another individual didn't get
21 killed during this shooting that was started by Mr. Gonzalez
22 and his Vago co-conspirators, whom he aided and abetted in
23 this fight, by finishing the fight. They started the fight,
24 they finished the fight.

1 He finished the fight. There's no question who
2 started this fight, there's no question who the initial
3 aggressor is.

4 And let's talk about the law. One of the things
5 that I queued up, if you recall the testimony from -- before
6 I get to that, we were going through the -- and I'm sorry I'm
7 bouncing all over the place, but when we were talking about
8 the timeline. So the timeline was after they were indicted,
9 Eric Bennett came up and he interviewed Mr. Rudnick on
10 January 5th. You heard Detective Bennett testify as to the
11 purpose of his interview. His purpose of the interview was
12 to gather information on the Vagos. And so he did that on
13 January 15th. There was no promises there, he said that he
14 talked to him about -- about witness protection, there's no
15 witness protection in Nevada. There's nothing for me to do.
16 The only thing I can do here is say look, Mr. Rudnick, based
17 upon what you did in this particular case, which according to
18 your own testimony is conspire to murder Jeffrey Pettigrew,
19 and start a fight with the Hells Angels, I'll allow you to
20 testify to that. But there's no other negotiation other than
21 the 1 to 10 conspiracy to fight felony. That's it.

22 Now, he wasn't sentenced to that, and the defense
23 made a big deal out of that, saying oh, well, he should have
24 been sentenced. Well, if he comes in and lies or if there's

1 other evidence presented that would indicate he's lying to
2 you and to us, then there's recourse. Once he's sentenced,
3 there's no recourse. So there's only one way to test the
4 credibility, and that's put him on the stand. So you've got
5 to put him on the stand and test his credibility in
6 relationship to all the other evidence. Because until you
7 have trial, you don't know what the evidence is going to
8 show. I don't know how these people are going to testify,
9 there's no predetermined formulas as to what people are going
10 to say when they get on the stand. So that's why plea
11 negotiations work that way.

12 So then you have the February 15th interview with
13 Detective Patton, and he asks him, you know, essentially what
14 his story was. So that's that.

15 So next, Mr. Houston says well, why -- you know,
16 does it make sense that he's just walking and Mr. Gonzalez is
17 walking with a gun by his side if he's actually on his way to
18 go murder Mr. Pettigrew? That doesn't make sense. Well --

19 There we go. I thought I had it queued up. All
20 right.

21 You can see that the defendant is ready to do some
22 shooting when he comes around the corner heading towards the
23 Oyster Bar -- excuse me, heading back towards the Trader
24 Dick's dance area.

1 You can see he's got the gun in position, he's
2 heading down there, he's ready to go. Then he changes it
3 into his left hand and walks down there with a purpose. And
4 he was just -- his statement was I was just going down to see
5 what was going on. He's obviously not just going down there
6 to see what was going on, and he obviously didn't find that
7 gun sitting on the table. So if we're going to be testing
8 credibility, let's -- let's look at the video. And I will
9 admit that you can look at that video 100 times, and the
10 101st time you look at it you can probably see something else
11 going on that you missed the first time, especially when you
12 focus on, you know, different people during the course of the
13 playing of the video.

14 Now, there is a spotlight video, and I'll go over a
15 little bit of that with you just to orient you to this
16 evidence.

17 So you've got disk 48, which has all the different
18 cameras on it. So 3, 5, 7, are cameras that you're going to
19 want to look at, all right. Camera 45 is one you're going to
20 want to look at. And then 211 is that front of the bar area,
21 and you'll be able to see the defendant back in the upper
22 left-hand corner coming and going. Well, all of the 2
23 series. 211, 212, 213, 214, 215, those were all cameras
24 around the bar, right?

1 Then you've got camera B7 which is outside the 11th
2 Street doors, there's only one of those that really has any
3 relevant video, and I think that's the last one at about
4 23 -- 23:20 to 23:40 hours, and the next one might have a
5 little video on it. And of course monitor 1 has got the
6 defendant going in and out of his room. You know, that's
7 another thing. You can go ahead and turn on the lights if
8 you would, please. Thank you.

9 Another thing that doesn't make sense. If this was
10 all this kind of automatic thing, why is Dragon Man the one
11 that is coordinating getting all of the defendant's items out
12 of his room at 2 o'clock? I mean, he's already on the run,
13 they already know what has happened. Where's the sense in
14 Nickerson not knowing anything? Nickerson is his best
15 friend, and he doesn't mention anything to Nickerson that he
16 had to save his brother, that he shot in self-defense to save
17 his brother? And that's never mentioned to Nickerson? Where
18 is the sense in that?

19 Let's talk about jury instructions. Well, you're
20 not going to be able to read that. All right, I just want to
21 go over this, because this is -- this is the case, I mean, is
22 he entitled to self-defense or not. All right?

23 So, and as I said, the case isn't centered around
24 Gary Rudnick other than yes, he started the fight. He said

1 that there's a conspiracy, he said he met after that 8
2 o'clock meeting, and that there was a green light. And then
3 from there we know that Pettigrew was shot in the back by the
4 defendant, and that the defendant was there, the defendant
5 admitted doing it.

6 Even if you don't believe him, as I indicated, the
7 case does not rise and fall on him, it rises and falls on the
8 law in the case in the State of Nevada. In other words, was
9 the defendant justified in this particular case being
10 involved in starting the gang fight and finishing the gang
11 fight. Does the law condone gang fights in a public place.
12 No, it does not. And the defendant is not entitled to
13 self-defense under these circumstances. And here's the law
14 that applies.

15 So a bare fear of death or great bodily injury is
16 not sufficient to justify killing. A bare fear. So if he
17 just -- if that's all he had was a bare fear that there was
18 going to be injury, great bodily injury or death, that's
19 insufficient to justify a killing. That's second degree
20 murder. Okay?

21 To justify taking the life of another in
22 self-defense or defense of another, the circumstances must be
23 sufficient to excite the fears of a reasonable person.
24 That's not what's going on in his mind. That's what's going

1 on objectively, in everybody's mind. So at this point in
2 time would you be justified in shooting a guy five times in
3 the back, in shooting Jethro Pettigrew, based upon what you
4 see in the video. The one kick that Jethro Pettigrew did,
5 obviously a kick by Villagrana, under those circumstances.
6 Would you be justified in taking him out.

7 The person killing must act under the fears alone,
8 and not under the spirit of revenge.

9 Do you have a revenge factor in this particular
10 case? You saw the video. You see the fighting going on.
11 You heard the defendant's testimony on the stand, you saw his
12 demeanor on the stand. You saw the anger in his voice. I
13 meant to kill him, I wanted to kill both those guys, they
14 kicked my brother on the ground. That's the spirit of
15 revenge.

16 The right of self-defense or defense of another is
17 not available to an original aggressor. That is a person who
18 has sought a quarrel with a design to force a deadly issue,
19 and thus through his fraud, contrivance, or fault, to create
20 a real or apparent necessity for making a felonious assault.
21 So the original aggressor, and he is part of those aggressors
22 by virtue of his Vago relationship, his aiding and abetting
23 and his conspiracy. And when you look at their bylaws and
24 when you hear the testimony of Rocky, well, if somebody gets

1 in a fight, are you required to get in that fight too? Yes,
2 unfortunately. Out of the defendant's own mouth, out of
3 their own bylaws, they're required to participate. And
4 that's exactly what he did.

5 And the other portion of the law is if you find
6 that the defendant conspired and/or aided and abetted Gary
7 Rudnick in issuing or accepting a challenge to fight, and
8 that the respective parties involved in the fight voluntarily
9 entered into mutual combat, or having reason to believe that
10 it would probably or may result in death or serious bodily
11 injury to himself or others, no party having any agency in
12 causing a death, either by fighting or by giving or by
13 sending for himself or herself any other person or receiving
14 for himself or herself or for any other person the challenge
15 to fight, is entitled to claim self-defense or defense of
16 others.

17 So if you believe that I have proved that he was
18 part of the challenge to fight, by aiding and abetting, or
19 conspiring with his other Vago members to fight, and he was
20 part of that by virtue of what you see on the video, by what
21 you know from this case, your evaluation of the case and the
22 evidence, then the defendant is not entitled to self-defense.

23 So there's two ways that you can find the defendant
24 not entitled to defense. Are they the initial aggressors in

1 this particular case? Absolutely. Is there a challenge to
2 fight resulting in death, and is he part and parcel of that
3 fight? Hells Angels versus Vagos? No question about it.

4 Defendant is guilty as charged. Thank you.

5 THE COURT: Ladies and gentlemen of the jury, that
6 concludes the evidence and arguments of the case. In a few
7 minutes 12 of you will begin your deliberation. Two others
8 of you will not be deliberating at this time, but may be
9 called upon to be substituted back onto the jury in order
10 to -- if there's a vacancy on the jury.

11 For that reason, we will be having you stay here in
12 the courthouse, at least now in the beginning. I'm not sure
13 if it will be the whole day or not, I don't know exactly what
14 I'm going to do, but I am going to keep you here now for the
15 beginning.

16 Now, that means that the alternate will not be free
17 to begin to discuss or form any opinion about this case. And
18 our alternates are juror number 140 and 93. Gentlemen, the
19 two of you at the end of each of your rows.

20 And so you will be our alternates. So the
21 admonition that I've been giving to the whole jury all this
22 time still applies to you. You may not discuss the case
23 among yourself or with any other person. You may not form or
24 express any opinion about the case, and you may not allow

1 anyone to attempt to influence you with regard to it or speak
2 of the case in your presence.

3 Further, you cannot make any independent
4 investigation or inquiry into any of the facts and
5 circumstances surrounding the case. And you may -- this
6 includes internet activity. You still will not have any
7 access to your cell phones or personal devices.

8 I am going to swear the alternates -- or I mean
9 swear a bailiff to take charge of you, and then you will be
10 separated, you'll go into the jury room, gather up your
11 personal belongings with the bailiff, and you'll be taken to
12 a different jury room. And then you can get your things out
13 of our jury room. Yes.

14 ALTERNATE JUROR: But I won't hear what's going on.
15 If I have to --

16 THE COURT: Right.

17 ALTERNATE JUROR: If something happens and I have
18 to go in.

19 THE COURT: The jury has to start all over from
20 scratch.

21 ALTERNATE JUROR: Really.

22 THE COURT: With you present. Yes. So that is
23 what has to happen if we do need to substitute you onto the
24 jury. Okay, so gentlemen, you've received my admonition, go

1 ahead -- we'll swear the officer to take charge of you, and
2 then you'll go with the officer.

3 THE CLERK: Please raise your right hand. Do you
4 solemnly swear that you will conduct these alternate jurors
5 to some private and convenient place other than where the
6 jury is in deliberations, that you will suffer no persons in
7 any manner to speak or communicate with them, that you will
8 keep them in your charge until further order by this Court,
9 so help you God?

10 BAILIFF: I do.

11 THE CLERK: Thank you.

12 THE COURT: You may take the alternates.

13 Ladies and gentlemen, the 12 of you will begin your
14 deliberations. And the admonition that I've been giving at
15 all the breaks no longer applies to you. You will begin your
16 deliberations and can of course discuss the case amongst
17 yourselves. However, the other admonition about outside
18 influence, any independent recollection or knowledge on your
19 own part about facts and circumstances surrounding the case,
20 or any outside information, still applies to your
21 deliberation.

22 Now, in the jury room you will ultimately get all
23 the evidence that has been admitted in this case, copies of
24 the jury instructions that I have read to you, and verdict

1 forms for your consideration. Lunch is also there, so you
2 can begin there. It will take a few minutes for the clerk to
3 get all of the information into the jury room for to you look
4 at, but it will be coming very soon.

5 At this time, I'm going to order the clerk to swear
6 the officers to take charge of the jury.

7 THE CLERK: Please raise your right hand. Do you
8 and each of you solemnly swear that you will conduct this
9 jury to some private and convenient place for their
10 deliberations, there keep them together, that you will suffer
11 no persons in any manner to speak or communicate with them,
12 nor do so yourself, except to ask them if they have agreed
13 upon a verdict. And when they have agreed, you will again
14 conduct them into this court unless otherwise ordered by this
15 Court, so help you God?

16 OFFICERS: I do.

17 THE CLERK: Thank you.

18 THE COURT: Ladies and gentlemen of the jury,
19 please go into the jury room, we will be subject to your
20 call.

21 (At 11:45 a.m. the jury retired to the jury
22 room to begin deliberations.)

23 (Jury absent.)

24 THE COURT: Please be seated. Counsel approach.

1 I'm sorry, I told you to be seated and I meant to approach.

2 (Unrecorded discussion at the bench.)

3 THE COURT: Okay. We will be in recess subject to
4 the call of the jury. Court is in recess.

5 (At 12:47 p.m. the following proceedings were
6 held in chambers.)

7 THE COURT: Let the record reflect we're convened
8 in chambers with counsel for the State, counsel for the
9 defendant, and the court reporter.

10 We don't need them both. Counsel for the State,
11 Mr. Stege.

12 It's my understanding that the State would like 37B
13 1 through 166, the photographs, to go in, in addition to the
14 CD, or in lieu of the CD?

15 MR. STEGE: In addition to, your Honor. Our
16 concern is the jury might want to watch the video and look at
17 the photos at the same time.

18 MR. LYON: No objection, your Honor.

19 THE COURT: Okay, then I'll direct the clerk to
20 admit the photographs, also 37B-1 through 166, and provide
21 that to the jury. Thank you.

22 (At 2:15 p.m. the following proceedings were
23 held in chambers, counsel appearing
24 telephonically.)

1 THE COURT: Okay, counsel, this is the judge.

2 MR. HALL: Good afternoon, Judge Steinheimer. Karl
3 here.

4 MR. HOUSTON: Dave Houston here, Judge Steinheimer,
5 with Ken Lyon.

6 THE COURT: Okay, thank you, gentlemen. We have a
7 question from the jury, it reads: "Need to find video that
8 shows Trader Dick's bar fight. Cameras 3, 5, 7, 45, 211,
9 212, 213, 215."

10 The note was not signed.

11 MR. HOUSTON: Your Honor, do you think they're
12 asking which of those numbers represents the actual footage
13 of the bar fight? Because if so, I think that's camera 45.

14 MR. HALL: No, what I think they're asking, if I
15 understand correctly, is the computer didn't go in loaded
16 like we had it.

17 MR. HOUSTON: Oh, okay.

18 MR. HALL: Is that right, judge?

19 THE COURT: The computer went in, it's my
20 understanding that it has nothing on it.

21 MR. HOUSTON: Oh.

22 THE COURT: You admitted a zip -- a thumb drive.

23 MR. HALL: So we're going to tell them it's on the
24 thumb drive.

1 MR. HOUSTON: Right.

2 THE COURT: My understanding is it's what the
3 computer -- I think your people -- and I'd have to confirm
4 that with the bailiff, but it's my understanding from the
5 clerk that your people cleared off anything that was on that
6 computer before.

7 MR. HALL: I didn't realize they were going to do
8 that, or we would have gone through the thumb drive. So
9 yeah, I can see where they're kind of wondering where the
10 evidence is.

11 THE COURT: Yeah. Let me --

12 MR. HOUSTON: Looking for it, darn it.

13 THE COURT: Mr. Hall, I'm going to put you guys on
14 hold and confirm with the bailiff, because I wasn't in there.
15 So let me confirm with her what the computer looks like that
16 went into the courtroom -- or into the jury room. Hold on.

17 MR. HOUSTON: Okay.

18 (Attorneys placed on hold.)

19 THE COURT: Gentlemen?

20 MR. HALL: Yes.

21 THE COURT: Okay, this is -- you're back on with
22 the judge.

23 MR. HOUSTON: Oh, hello, judge.

24 THE COURT: Hello, Mr. Houston. I confirmed with

1 the bailiff that the computer that went into the courtroom is
2 as we had discussed earlier, completely cleaned, no access to
3 the internet, no ability to -- nothing on it. And it can
4 read CDs if they're put into it, and the thumb drive which
5 you admitted as Exhibit 151.

6 MR. HALL: Well, I thought it was clean before --

7 MR. HOUSTON: Yeah.

8 MR. HALL: -- we ever used it. I guess that was my
9 mistake. And I thought we did that before the trial started,
10 and then once we had it loaded up it was going to go to them.
11 So that's why I didn't go through all the thumb drive stuff
12 when I was telling them where the evidence was.

13 THE COURT: Oh, well, I think it was your guy, I
14 saw your computer guy in the courtroom this morning.

15 MR. HALL: Yeah, I wish the computer guy would have
16 said something to me before he started messing with the
17 computer. But so can we just tell them to plug in the thumb
18 drive?

19 MR. HOUSTON: Yes.

20 THE COURT: Gentlemen, do you think it makes sense
21 to get the computer and bring it into the courtroom and let
22 you look at it before we answer the question?

23 MR. HALL: Can we just load it up, get the computer
24 loaded up like it was, so they don't have to --

1 MR. HOUSTON: Yeah, why don't --

2 MR. HALL: If that's allowed?

3 MR. HOUSTON: Just tell them to load the thumb
4 drive.

5 MR. LYON: Shouldn't be that hard to just put the
6 thumb drive in. We don't need to be there.

7 THE COURT: Okay, that's Mr. Lyon.

8 MR. HALL: Yeah, that's right, I guess it will a
9 take a long time to load it. Just tell them to plug in the
10 thumb drive.

11 MR. HOUSTON: Yeah, tell them if they plug in the
12 thumb drive -- this is Dave Houston -- it should be available
13 to them, it shouldn't be any problem at all.

14 THE COURT: Will they know which cameras?

15 MR. HALL: Yeah, they have the numbers. They're
16 numbered.

17 MR. HOUSTON: There's a legend that you actually go
18 to, and then you click into that legend which camera you wish
19 to access.

20 THE COURT: And is it intuitive that they will find
21 that legend, or do you want me to tell them that?

22 MR. HOUSTON: It seems pretty easy to me, and I'm
23 the guy who doesn't know how to use computers.

24 MR. HALL: You know, I think you might want to just

1 add in there that everything on the thumb drive has been
2 admitted in evidence, so feel free to view everything on the
3 thumb drive.

4 THE COURT: Do you like that answer, Mr. Houston?

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

6 THE COURT: Okay, that will be the answer. Thank
7 you, gentlemen.

8 MR. HOUSTON: All right, take care.

9 MR. HALL: Okay.

10 (Attorneys hung up.)

11 THE COURT: The answer I'm directing the clerk to
12 type is: Exhibit 151 is a thumb drive which has the video
13 you want to review. If you are unable to operate the
14 computer, please send another note to me. Signed district
15 judge.

16 (Recess.)

17 (At 3:52 p.m. the following proceedings were
18 held in chambers, counsel appearing
19 telephonically.)

20 THE COURT: Hello, counsel.

21 MR. HALL: Yes.

22 THE COURT: The jury has sent out the following
23 question: Juror number 6: Legal question. Looking at
24 instruction number 17, colon, if a person has no, underlined,

1 knowledge of a conspiracy, but their actions contribute to
2 someone else's plan, comma, are they guilty of conspiracy,
3 question mark.

4 MR. HOUSTON: No.

5 THE COURT: And another question underlined, colon.
6 People in here are wondering if a person can only be guilty
7 of second degree murder, or first. Can it be both. Question
8 mark.

9 MR. HOUSTON: No.

10 THE COURT: Mr. Houston, legally your answer may be
11 correct as to the first question, but not the second.

12 MR. HALL: Right, it's --

13 THE COURT: Gentlemen, you have to identify when
14 you speak.

15 MR. HALL: This is Karl. They can't convict him of
16 both first and second. But if they have no knowledge of a
17 conspiracy, then they can't be guilty of conspiracy.

18 MR. HOUSTON: If they have no knowledge of the
19 conspiracy, we agree, they can't be guilty of the conspiracy.
20 But judge -- this is David Houston, I'm sorry. I was a
21 little confused. Did I hear the question correctly as to
22 whether the same person on the same, quote, victim could be
23 convicted of both second and first degree?

24 THE COURT: It is not indicating whether it's the

1 same -- the question doesn't enumerate that. The question
2 just says can you only be guilty of second degree murder or
3 first.

4 MR. HOUSTON: I think the answer to that would be
5 yes, you can only be guilty of second degree or first degree,
6 I don't think you could be guilty of both.

7 MR. HALL: Right. This is Karl, I would agree with
8 that. One or the other.

9 THE COURT: I'm just reviewing your charging
10 document. The second degree murder charge would be the count
11 5, which results from participating in an affray and
12 discharging a handgun. And the murder with a deadly weapon
13 charge, count 6, is -- results from willful, deliberate and
14 premeditated, or committed by lying in wait. Either by doing
15 the act or conspiring with others, through vicarious
16 liability.

17 So you want me to answer both questions no?

18 MR. HOUSTON: That would be our preference, your
19 Honor. Dave Houston here.

20 MR. HALL: Well, you could probably clarify it and
21 say that he could be guilty under any one of the three
22 theories. If he aids and abets, yes. If he did it as a --
23 as a principal who committed the crime. But if he has no
24 knowledge of the conspiracy, no. Not under a conspiracy

1 theory.

2 THE COURT: Correct.

3 MR. HOUSTON: Your Honor, Dave Houston here. Their
4 question is pretty simple in reference to the conspiracy, and
5 without editorializing and adding more, the answer
6 straightforwardly would be no.

7 THE COURT: Well, I have a little bit of a problem
8 with that, Mr. Houston, because 17 isn't a complete statement
9 of what they have to find for conspiracy.

10 MR. HOUSTON: Right, the question was if you have
11 no knowledge of the conspiracy, but somehow your actions may
12 assist, can you be found guilty of the conspiracy.

13 THE COURT: No, the first part of the question is
14 looking at instruction number 17. They're asking me to
15 interpret instruction number 17.

16 MR. HOUSTON: Right, and your Honor, Dave Houston
17 again, can you read the question one more time to us? On the
18 conspiracy issue?

19 THE COURT: It says: Looking at instruction number
20 17. If a person has no knowledge of a conspiracy, but their
21 actions contribute to someone else's plan, are they guilty of
22 conspiracy.

23 MR. HOUSTON: And I think the straightforward legal
24 answer to that is no.

1 MR. HALL: Right, and I'm saying that they -- if
2 they aid and abet in the plan, then the answer is yes.

3 MR. HOUSTON: Well, but that would be adding to an
4 answer that's not part of the question. They have an aiding
5 and abetting instruction.

6 THE COURT: I guess my feeling is that I should
7 have them look at instructions 16, 16A, and 17.

8 MR. HALL: Right.

9 MR. HOUSTON: Your Honor, Dave Houston again. We
10 would prefer if we weren't directing the jury's attention to
11 an instruction that's not part of a question. I think their
12 question is very straightforward. Without knowledge, can you
13 be guilty of a conspiracy. And the answer is, just in a
14 straightforward sense, no.

15 THE COURT: Okay. If I answer that question, I'm
16 instructing the jury further. If they're asking me to give
17 them an analysis of instruction number 17, I would have to
18 tell them they can't use instruction number 17 to make a
19 determination as to conspiracy, they must consider all of the
20 instructions. 16, 16A both are required.

21 I think it's very important that, since you all ask
22 me to do the intent instruction, that they review 16A, not
23 just 17.

24 MR. HALL: Right, I would agree with that.

1 MR. HOUSTON: Your Honor, I am not certain. I do
2 not have my jury instructions in front of me, can you tell me
3 again what 16A is, please?

4 THE COURT: In order for the defendant to be held
5 accountable for counts 5, 6 and/or 7 under theories of
6 vicarious liability, aiding and abetting and/or conspiracy,
7 the State must prove beyond a reasonable doubt the defendant
8 had the specific intent to commit the crime charged.

9 MR. HOUSTON: Okay. Yeah, that's fine, I thought
10 it was something else. Dave Houston here, sorry.

11 THE COURT: No, my concern is I can't instruct them
12 as to the law. I mean yes, I can say what we all think the
13 answer is under the law, but now I'm instructing them
14 further. What I normally can do is encourage them to read
15 the whole packet. I think 16, 16A and 17 should be read all
16 together. All of them should be read all together.

17 MR. HALL: I agree with that, and I would recommend
18 or request that that's the answer. This is Karl.

19 THE COURT: What would you say, Karl?

20 MR. HALL: I would say that 17, 17A, the
21 instructions that you just mentioned, should be read
22 together. And consider the whole packet when reaching your
23 decision on a verdict.

24 MR. HOUSTON: And your Honor, excuse me, this is

1 Houston. I know the Court is going to do what it will, but
2 just for the record purposes, we believe there's a
3 straightforward question. If there are additional questions
4 after the fact that may require additional instructions be
5 read to them, or advised they should read, then clearly that
6 can happen at this point. It seems to me to be a very
7 straightforward question regarding knowledge, and is it
8 required to be a conspirator. And the answer is it is
9 required to be a conspirator. If they don't have knowledge,
10 they're not a conspirator.

11 I don't think they're asking anything else. I
12 think what we're doing is assuming or anticipating -- and I
13 really don't think that's the purpose, if they haven't asked
14 the question. We're then leading their thought process. And
15 again, I don't think that's appropriate.

16 THE COURT: So Mr. Houston, if the question were if
17 a person has no knowledge of a conspiracy, but their actions
18 contribute to someone else's plan, are they guilty of
19 conspiracy, you think I can answer that question?

20 MR. HOUSTON: Yes. Because --

21 THE COURT: Why. Give me some law that says I can
22 give that kind of an answer.

23 MR. HOUSTON: Your Honor, the conspiracy law
24 requires knowledge.

1 THE COURT: I agree, but tell me where I can answer
2 the jury question like that.

3 MR. HOUSTON: I don't understand where, it's a very
4 simple answer, and the answer is no. It doesn't require
5 anything more than that. I think it's even in the
6 instruction, your Honor, concerning the conspiracy.

7 THE COURT: Okay, I will not do that. I think it's
8 improper for the Court to give an answer as to what the
9 verdict should be.

10 MR. HOUSTON: Well, I think what you're doing then,
11 your Honor, is you're anticipating a question and you're
12 leading their deliberation, and I think that's improper, as
13 well. So over my objection, I'm sure the Court will do
14 whatever it's comfortable with.

15 THE COURT: Well, I guess my -- if I can't get a
16 consensus of opinion on what to do, I'll tell the jury to
17 review all the instructions.

18 MR. HOUSTON: Well, I think Karl and I had a
19 consensus, your Honor, before you brought up the fact that
20 you wanted to read other instructions.

21 THE COURT: Well, I wasn't going to --

22 MR. HALL: We agreed on the law, in terms of
23 interpretation of it, but I agree that you're not supposed to
24 further instruct the jury on how to interpret it, when we

1 have sufficient instructions. So it's for the jury to
2 consider, to answer the question.

3 MR. HOUSTON: Well, I think the purpose is --
4 Houston again -- to answer the question with as least
5 disturbance as possible to the jury's deliberation process.
6 And quite frankly, I think that's easily done. If the Court
7 disagrees, certainly the Court will do as it sees fit. But I
8 truly believe, your Honor, you're guiding the deliberation at
9 that point. I don't think that's the purpose of answering a
10 question.

11 MR. HALL: I don't think you're guiding
12 deliberations when you're telling them to look at the
13 instructions and read them. This is Karl, and I disagree
14 with that.

15 MR. HOUSTON: Well, I'd certainly read the
16 instruction that pertains to the specific question, not what
17 we assume to be the thought process or problem.

18 THE COURT: Okay, do you all have any input on the
19 second question?

20 MR. HALL: Right. Well, he can only be convicted
21 of murder of the first degree or murder of the second degree.

22 MR. HOUSTON: I think we would agree, your Honor,
23 Houston again, that you can only be convicted of one or the
24 other, you can't be convicted of both.

1 THE COURT: Okay. Counsel, will you hold on,
2 please. Thank you.

3 (Recess.)

4 THE COURT: Gentlemen?

5 MR. HOUSTON: Yes.

6 THE COURT: This is the judge.

7 MR. HALL: Yes, your Honor.

8 THE COURT: We're back on the record. Can you both
9 hear me?

10 MR. HALL: Yes. This is Karl, I can hear your.

11 MR. HOUSTON: Yes, this is Ken and Dave, we can
12 hear you.

13 THE COURT: Okay. The first question was --
14 remember, it said legal question. And then it said looking
15 at instruction number 17. If a person has no knowledge of a
16 conspiracy, but their actions contribute to someone else's
17 plan, are they guilty of conspiracy, question mark. The
18 Court is going to answer it, "It is not proper for the Court
19 to give you additional instruction on how to interpret
20 instruction number 17. You must consider all the
21 instructions in light of all the other instructions."

22 Second question: And another question. People in
23 here are wondering if a person can only be guilty of second
24 degree murder or first, period. Can it be both, question

1 mark.

2 The Court proposes to answer that question: "You
3 must reach a decision on each count separate and apart from
4 each other count."

5 Counsel, I know that you both thought I should
6 answer that question no, but in reviewing the charging
7 document and the instructions, I do not believe that's a
8 proper answer for the Court. So I'm not going to follow
9 that, I'm going to give the answer that I just said.

10 You can lodge your objection.

11 MR. HOUSTON: Your Honor, on behalf of Gonzalez, we
12 would lodge our objections to question number 1. I think
13 it's a very straightforward question, with a very
14 straightforward answer. I think knowledge is required to be
15 a member of a conspiracy. I think failing to answer the
16 question doesn't provide the appropriate guidance the jury is
17 entitled to.

18 As far as question number 2, think it begs the rule
19 of logic to suggest an individual can be convicted of both
20 second degree and first degree murder concerning one victim.
21 And as a consequence, again I think the answer is easily
22 ascertained as a no, as opposed to failing to answer the
23 question in its most simplistic form. And I think it also
24 then presents again a problem of not appropriately guiding

1 the jury. And we would submit it on that basis.

2 MR. HALL: This is Karl. I think the answer to
3 question 1 is the proper answer. I think that is the usual
4 answer to questions regarding jury instructions, because it's
5 typically improper to reinstruct the jury once they have been
6 instructed. So they are typically required to consider each
7 instruction in light of all the other instructions. I think
8 that is totally proper and consistent with Nevada law.

9 With respect to question two, I think if we allow
10 them to find him guilty on each count, I think that's going
11 to create a problem later when trying to determine if we're
12 going -- whether they convicted him of first degree or second
13 degree. So I would propose that the answer to that question
14 be no, to avoid confusion and litigation down the road, or --
15 if there's a unanimous decision. I guess if there's a
16 unanimous decision on one, you have the lesser included, we
17 could argue which one we're going to sentence him on, whether
18 it's going to be second degree or first degree. That's my
19 issue. So.

20 THE COURT: Mr. Hall, I want to remind you that you
21 charged, as a separate and distinct offense, second degree
22 murder. It is not being considered by the jury as a lesser
23 included.

24 MR. HALL: Right. Right, then -- yeah. If they

1 convict him of first degree murder, then we'll sentence him
2 on the first degree murder, and -- I agree with the Court,
3 then, you're right. So I would agree with the Court's
4 proposed responses to questions 1 and 2.

5 THE COURT: Okay, thank you, gentlemen.

6 MR. HALL: Thank you.

7 MR. HOUSTON: Thanks.

8 (Jury absent.)

9 THE COURT: Deputy Butler, has the jury reached a
10 verdict?

11 BAILIFF: Yes, they have, your Honor.

12 THE COURT: Please bring the jury in.

13 (At 5:17 p.m. the jury returned to open court
14 with a verdict and the following proceedings
15 were held.)

16 THE COURT: Please be seated. Ladies and gentlemen
17 of the jury, the clerk is going to call the roll of you all,
18 and she's going to use your numbers, so please answer here or
19 present.

20 THE CLERK: Juror number 40.

21 JUROR NO. 40: Present.

22 THE CLERK: Juror number 116.

23 JUROR NO. 116: Present.

24 THE CLERK: Juror number 161.

1 JUROR NO. 161: Present.
2 THE CLERK: Juror number 136.
3 JUROR NO. 136: Present.
4 THE CLERK: Juror number 71.
5 JUROR NO. 71: Present.
6 THE CLERK: Juror number 145.
7 JUROR NO. 145: Present.
8 THE CLERK: Juror number 86.
9 JUROR NO. 86: Present.
10 THE CLERK: Juror number 69.
11 JUROR NO. 69: Here.
12 THE CLERK: Juror number 31.
13 JUROR NO. 31: Present.
14 THE CLERK: Juror number 38.
15 JUROR NO. 38: Here.
16 THE CLERK: Juror number 17.
17 JUROR NO. 17: Present.
18 THE CLERK: Juror number 169.
19 JUROR NO. 169: Here.
20 THE COURT: Ladies and gentlemen of the jury, the
21 bailiff has informed me that you've reached a verdict. Who
22 is jury foreperson? Sir, have you reached a verdict?
23 JUROR NO. 169: Yes, we have.
24 THE COURT: Do you have it with you?

1 JUROR NO. 169: Yes, I do.

2 THE COURT: Please hand the whole file to the
3 clerk. Bailiff, sorry.

4 The defendant will please rise. The clerk will
5 read the verdict of the jury.

6 THE CLERK: In the Second Judicial District Court
7 of the State of Nevada in and for the County of Washoe. The
8 State of Nevada, plaintiff, versus Ernesto Manuel Gonzalez,
9 defendant. Case number CR11-1718B, department number 4.

10 Verdict: We, the jury in the above entitled
11 matter, find the defendant Ernesto Manuel Gonzalez guilty of
12 count 1, conspiracy to engage in an affray.

13 Dated the 7th day of August, 2013. Juror number
14 169, foreperson.

15 Verdict: We, the jury in the above entitled
16 matter, find the defendant Ernesto Manuel Gonzalez guilty of
17 count 2, challenge to fight resulting in death. If you have
18 found the defendant guilty, you must answer the following
19 questions: Was a deadly weapon used to commit the crime?
20 Yes. Was the crime committed knowingly for the benefit of,
21 at the direction of, or in affiliation with a criminal gang,
22 with the specific intent to promote, further, or assist the
23 activities of the gang? Yes.

24 Dated the 7th day of August, 2013. Juror number

4941

1 169, foreperson.

2 Verdict: We, the jury in the above entitled
3 matter, find the defendant Ernesto Manuel Gonzalez guilty of
4 count 3, carrying a concealed weapon.

5 Dated the 7th day of August, 2013. Juror number
6 169, foreperson.

7 Verdict: We, the jury in the above entitled
8 matter, find the defendant Ernesto Manuel Gonzalez guilty of
9 count 4, discharging a firearm in a structure.

10 Dated the 7th day of August, 2013. Juror number
11 169, foreperson.

12 Verdict: We, the jury in the above entitled
13 matter, find the defendant Ernesto Manuel Gonzalez guilty of
14 count 5, murder of the second degree. If you have found the
15 defendant guilty, you must answer the following question:
16 Was a deadly weapon used to commit the crime? Yes. Was the
17 crime committed knowingly for the benefit of, at the
18 direction of, or in affiliation with a criminal gang with the
19 specific intent to promote, further, or assist the activities
20 of the gang? Yes.

21 Dated the 7th day of August, 2013. Juror number
22 169, foreperson.

23 Verdict: We, the jury in the above entitled
24 matter, find the defendant Ernesto Manuel Gonzalez guilty of

1 count 6, murder of the first degree. If you have found the
2 defendant guilty, you must answer the following question:
3 Was a deadly weapon used to commit the crime? Yes. Was the
4 crime committed knowingly for the benefit of, at the
5 direction of, or in affiliation with a criminal gang, with a
6 specific intent to promote, further, or assist the activities
7 of the gang? Yes.

8 Dated the 7th day of August, 2013. Juror number
9 169, foreperson.

10 Verdict: We, the jury in the above entitled
11 matter, find the defendant Ernesto Manuel Gonzalez guilty of
12 count 7, conspiracy to commit murder.

13 Dated the 7th day of August, 2013. Juror number
14 169, foreperson.

15 THE COURT: Are these your verdicts, say you one,
16 say you all?

17 (Affirmative responses.)

18 THE COURT: Does either party wish the jury polled?

19 MR. HALL: No, your Honor.

20 MR. HOUSTON: Yes, your Honor.

21 THE COURT: Please be seated. Ladies and gentlemen
22 of the jury, the clerk will now poll you with regard to these
23 verdicts.

24 THE CLERK: Juror number 140 -- I'm sorry, juror

1 number 40, are these your verdicts as read?

2 JUROR NO. 40: Yes.

3 THE CLERK: Juror number 116, are these your
4 verdicts as read?

5 JUROR NO. 116: Yes.

6 THE CLERK: Juror number 161, are these your
7 verdicts as read?

8 JUROR NO. 161: Yes.

9 THE CLERK: Juror 136, are these your verdicts as
10 read?

11 JUROR NO. 136: Yes.

12 THE CLERK: Juror number 71, are these your
13 verdicts as read?

14 JUROR NO. 71: Yes.

15 THE CLERK: Juror number 145, are these your
16 verdicts as read?

17 JUROR NO. 145: Yes.

18 THE CLERK: Juror number 86, are these your
19 verdicts as read?

20 JUROR NO. 86: Yes.

21 THE CLERK: Juror number 69, are these your
22 verdicts as read?

23 JUROR NO. 69: Yes.

24 THE CLERK: Juror number 31, are these your

1 verdicts as read?

2 JUROR NO. 31: Yes.

3 THE CLERK: Juror number 38, are these your
4 verdicts as read?

5 JUROR NO. 38: Yes.

6 THE CLERK: Juror number 17, are these your
7 verdicts as read?

8 JUROR NO. 17: Yes.

9 THE CLERK: Juror number 169, are these your
10 verdicts as read?

11 JUROR NO. 169: Yes.

12 THE COURT: The clerk will record the verdicts in
13 the record of the court. At this time, present in the
14 courtroom are jurors number 140 and 93. Counsel, I propose
15 to put them back into the jury box for the proceedings that
16 proceed from this point forward. Any objection?

17 MR. HALL: No objection, your Honor.

18 MR. HOUSTON: No, your Honor.

19 THE COURT: Okay, will 140 and 93 please retake
20 your place in the jury box.

21 Ladies and gentlemen of the jury, we have reached
22 the second stage of the proceedings in this matter. That
23 stage is what we call the penalty hearing, and that is going
24 to take place tomorrow.

1 Now, I have added the alternate jurors back into
2 the jury box with you because if there were to be an absence
3 of one of you after the penalty hearing began, or if I had
4 less than a full jury, one of them would be substituted back
5 onto the jury panel, and you would reach a verdict with them
6 present.

7 So from this point until the case is given to you
8 again, you must stop discussing the case among yourselves, or
9 forming or expressing any opinion about the ultimate outcome
10 of this case, nor may you speak of the case to anyone.

11 So I'm going to be giving you that admonition again
12 at the end of today. And then tomorrow morning you're going
13 to be coming back, and you'll be hearing new evidence, and
14 instructions from the Court. And then you will deliberate
15 again tomorrow.

16 So that is our schedule. Yes? Oh, anybody have a
17 question? Okay. That is our schedule for this evening, but
18 I am going to let you leave tonight, go home, get a good
19 night's rest. And I think we're just going to have the same
20 schedule we've always had. Counsel, are you comfortable with
21 that schedule again?

22 MR. HALL: Yes.

23 MR. HOUSTON: Yes, your Honor.

24 THE COURT: Okay. So ladies and gentlemen of the

1 jury, I am going to give you the admonition, then I'm going
2 to ask that you go get your things, and we'll see you back
3 tomorrow morning at 7:30 in the morning.

4 Now, during this recess you are admonished that you
5 may not form or express any opinion regarding the ultimate
6 outcome of this case. Further, you may not speak of the case
7 to anyone or allow anyone to speak of it or in your presence.
8 This includes discussing the case in internet chat rooms,
9 through internet blogs, internet bulletin boards such as
10 Facebook or Twitter, emails or text messaging. If anyone
11 tries to communicate with you about this case, you must
12 report it immediately to the Court.

13 Do not read, watch or listen to any news media
14 reports or any other accounts about the trial or about anyone
15 associated with it, including any online information. Do not
16 do any research on any of the parties or groups or law
17 involved in the case, including consulting dictionaries,
18 searching the internet, or other reference materials. Do not
19 make any independent investigation into the facts and
20 circumstances surrounding the case.

21 Ladies and gentlemen, I will see you tomorrow
22 morning. Thank you, you are excused at this time.

23 (At 5:27 p.m. the jury was excused.)

24 (Jury absent.)

1 THE COURT: Okay, please be seated. Counsel, I do
2 have some proposed instructions from you, but I do want to
3 review those with you. Counsel for the defense, would you
4 like to do that preliminarily without your client being
5 present, and then settle them ultimately on the record?

6 MR. HOUSTON: I think that would be a good idea,
7 yeah.

8 THE COURT: Okay. State, are you prepared to do
9 that now?

10 MR. HALL: Yes, I believe we just made the
11 corrections that -- some of the preliminary corrections that
12 needed to be made. I do have part of the instructions that
13 we made corrections on, but I don't have the rest. I can
14 go across and grab them. Make a quick copy.

15 THE COURT: Why don't we just plan on being on
16 being back here in chambers at 6 p.m.

17 MR. HALL: Yes.

18 THE COURT: And then we will continue to prepare
19 for tomorrow. Thank you.

20 MR. HOUSTON: Your Honor, are we going to establish
21 it on the record tomorrow morning, and do everything
22 informally this evening, or do it all this evening?

23 THE COURT: I think we'll do it all this evening.
24 Court is in recess.

1 (At 6:31 p.m. the following proceedings were
2 held in open court.)

3 THE COURT: Let the record reflect that we're
4 convened outside the presence of the jury. Counsel for the
5 defendant and the defendant are present, counsel for the
6 State are present.

7 Mr. Houston.

8 MR. HOUSTON: Thank you, your Honor. Your Honor,
9 in discussions with my client, Mr. Gonzalez, we have spoken
10 of waiving sentencing or mitigation reference to the jury,
11 and my client Mr. Gonzalez wishes to do so and be sentenced
12 by the Court. We've explained to him of course the
13 difference between the jury handling the process as opposed
14 to simply the Court handling it. He's doing so with full
15 knowledge of the fact that he's waiving out on something he
16 otherwise could request as concerns the jury's involvement in
17 the sentencing process.

18 As well, we explained to the client the client
19 would normally, if requesting, be present tomorrow morning
20 for the purposes of releasing the jury. Our client,
21 Mr. Gonzalez, has explained he does not wish to do so.

22 One of the reasons that he does not wish to do so
23 in reference to the jury actually involving in the sentencing
24 is a personal reason to him, as it concerns witness

1 presentation by his family. The end result is he waives out
2 for tomorrow morning for the purposes of releasing the jury,
3 and further, would waive further involvement by the jury in
4 the sentencing process.

5 THE COURT: As you presented this, something came
6 up that I had not discussed with you before, and that is my
7 belief that we need that in writing, and your client to sign
8 a written agreement to waive being sentenced by the jury. So
9 I have not researched that, but I do believe it has to be in
10 writing.

11 MR. HALL: I do believe there's a statute on that.
12 I would agree to stipulate to counsel's wishes, we'd prepare
13 a stipulation and have that on the record in the morning. So
14 certainly we'd agree to stipulate to waive, and we can
15 provide you with a written stipulation tomorrow. But do I
16 understand that the defendant does have to sign that?

17 THE COURT: I do. So what I'm going to do is I'm
18 going to -- and I'm sorry, Mr. Gonzalez, I understand that
19 you didn't want to have to come back down tomorrow morning.
20 But I am going to order that you do have to come back down,
21 so we have this written document here for you to review with
22 your attorney, sign it, if you feel comfortable still and
23 that's what you want to do, and then we'll go on the record
24 and it will be filed then.

1 I'm sorry, I should have told you when we were
2 meeting, I did not -- it just came to me.

3 MR. HALL: That's correct, your Honor. I could
4 actually type one out real quick.

5 MR. HOUSTON: We could actually bring it over right
6 now, your Honor, so we wouldn't have to come back.

7 MR. HALL: If we could wait a few minutes, if I
8 could get on Marci's computer I'll type one out.

9 THE COURT: Okay. Do you want us to be in recess
10 for a little while?

11 MR. HALL: Yes.

12 MR. HOUSTON: If we could.

13 THE COURT: Okay, we can do that. Court is in
14 recess.

15 (At 6:57 p.m. the following proceedings were
16 held in open court.)

17 THE COURT: The record will reflect that the
18 defense has provided to me a written stipulation to waive
19 separate penalty hearing, and I will inquire now of the
20 defendant.

21 Mr. Gonzalez?

22 DEFENDANT: Yes, your Honor.

23 THE COURT: Did you read this document?

24 DEFENDANT: Yes, I certainly did.

1 THE COURT: And did you understand the document?

2 DEFENDANT: Yes, I did.

3 THE COURT: Do you have any questions about it?

4 DEFENDANT: No, none whatsoever. I just wanted to
5 thank the prosecutor for doing that for me.

6 THE COURT: You understand that you have a right to
7 be sentenced by the trial jury, the people that made a
8 decision about guilt or innocence?

9 DEFENDANT: Yes, your Honor.

10 THE COURT: And do you understand that if you waive
11 the right to have them sentence you, you'll be sentenced by
12 me?

13 DEFENDANT: Correct.

14 THE COURT: Do you understand that you will be
15 sentenced by me after an interview with a representative from
16 the Department of Parole and Probation, who will make a
17 recommendation to me on all the charges that you were
18 convicted of?

19 DEFENDANT: Yes, your Honor.

20 THE COURT: Are you entering this waiver of having
21 the separate penalty hearing with the impaneled jury
22 voluntarily?

23 DEFENDANT: Yes, I am.

24 THE COURT: Has anyone made any threats to get you

1 to do this?

2 DEFENDANT: No.

3 THE COURT: Has anyone made any promises or
4 guarantees to you to get you to do this?

5 DEFENDANT: No, none whatsoever.

6 THE COURT: So have you decided to make this
7 decision on your own, with your own free will?

8 DEFENDANT: Yes, I have.

9 THE COURT: Do you have any questions about your
10 rights?

11 DEFENDANT: Regarding that document, what I've just
12 heard, no, your Honor.

13 THE COURT: And is this your signature on the
14 document?

15 DEFENDANT: Yes, it is.

16 THE COURT: And you dated it today?

17 DEFENDANT: Correct.

18 THE COURT: So with this stipulation to waive
19 separate penalty hearing, I will direct the clerk to file the
20 document into the case. And your attorney has told me that
21 you want to waive coming back down to the court tomorrow.

22 DEFENDANT: Yes, I do.

23 THE COURT: Do you understand that some of the
24 things that will be happening tomorrow are still part of your

1 case in that the jury will be present, and I will be excusing
2 the jury, and the attorneys may be making records with regard
3 to their findings in the jury verdict?

4 DEFENDANT: Correct. I'm in good hands, yes.

5 THE COURT: And so if you waive your appearance,
6 you can't complain that you weren't here, do you understand
7 that?

8 DEFENDANT: Yes, your Honor.

9 THE COURT: And are you freely and voluntarily
10 waiving your appearance?

11 DEFENDANT: Yes, I am.

12 THE COURT: Okay. Now, tomorrow the clerk is going
13 to set a date for your sentencing, and we'll make decisions
14 about bail and things like that. Do you understand all of
15 that?

16 DEFENDANT: Yes.

17 THE COURT: So it will be up to your attorneys to
18 notify you of those decisions.

19 DEFENDANT: Correct.

20 THE COURT: Because you're waiving your right to be
21 present.

22 DEFENDANT: Yes, your Honor.

23 THE COURT: Then I will accept your waiver of
24 having the jury make a decision in a penalty hearing, and I

1 will accept your waiver of appearing tomorrow.

2 DEFENDANT: All right, thank you.

3 THE COURT: You're welcome. Anything further for
4 this evening?

5 MR. HALL: State has nothing further, your Honor.

6 MR. HOUSTON: Nothing further, your Honor, thank
7 you.

8 THE COURT: And I'll see counsel tomorrow at 7:30.
9 Court is in recess.

10 (Proceedings concluded.)

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1 STATE OF NEVADA,)

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

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

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

16 Dated at Fernley, Nevada, this 10th day of February,
17 2014.

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/s/ Marcia L. Ferrell

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Marcia L. Ferrell, CSR #797

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CR11-17188 DC-9900048222-002
STATE VS ERNESTO MANUEL GO 55 Pages
District Court 08/07/2013 07:30 AM
Washoe County 1885
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FILED

AUG 07 2013

JOEY HASTINGS, CLERK
By: [Signature]
DEPUTY CLERK

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

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. CR11-1718

v.

Dept. No. 4

ERNESTO MANUEL GONZALEZ (B)

Defendant.

LADIES AND GENTLEMEN OF THE JURY:

It is my duty as judge to instruct you in the law that applies to this case, and it is your duty as jurors to follow the law as I shall state it to you, regardless of what you may think the law is or ought to be. On the other hand, it is your exclusive province to determine the facts in the case, and to consider and weigh the evidence for that purpose. The authority thus vested in you is not an arbitrary power, but must be exercised with sincere judgment, sound discretion, and in accordance with the rules of law stated to you.

Instruction No. 1

4957

1 If in these instructions, any rule, direction or idea is
2 stated in varying ways, no emphasis thereon is intended by me and
3 none must be inferred by you. For that reason, you are not to single
4 out any certain sentence, or any individual point or instruction, and
5 ignore the others, but you are to consider all the instructions as a
6 whole and to regard each in the light of all the others.

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26 Instruction No. 2

4958

1 If, during this trial, I have said or done anything which
2 has suggested to you that I am inclined to favor the position of
3 either party, you will not be influenced by any such suggestion.

4 I have not expressed, nor intended to express any opinion
5 as to which witnesses are or are not worthy of belief, what facts are
6 or are not established, or what inference should be drawn from the
7 evidence. If any expression of mine has seemed to indicate an
8 opinion relating to any of these matters, I instruct you to disregard
9 it.
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1 It is the duty of attorneys on each side of a case to object
2 when the other side offers testimony or other evidence which counsel
3 believes is not admissible.

4 When the court has sustained an objection to a question,
5 the jury is to disregard the question and may draw no inference from
6 the wording of it or speculate as to what the witness would have said
7 if permitted to answer.
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26 Instruction No. 4

4960

1 Nothing that counsel say during the trial is evidence in
2 the case.

3 The evidence in a case consists of the testimony of the
4 witnesses and all physical or documentary evidence which has been
5 admitted.

1 A reasonable doubt is one based on reason. It is not mere
2 possible doubt, but is such a doubt as would govern or control a
3 person in the more weighty affairs of life. If the minds of the
4 jurors, after the entire comparison and consideration of all the
5 evidence, are in such a condition that they can say they feel an
6 abiding conviction of the truth of the charge, there is not a
7 reasonable doubt. Doubt to be reasonable must be actual, not mere
8 possibility or speculation.
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1 In every crime there must exist a union or joint operation
2 of act and intent.

3 The burden is always upon the prosecution to prove both act
4 and intent beyond a reasonable doubt.
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1 Every person charged with the commission of a crime shall
2 be presumed innocent unless the contrary is proven by competent
3 evidence beyond a reasonable doubt. The burden rests upon the
4 prosecution to establish every element of the crime with which the
5 defendant is charged beyond a reasonable doubt.
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1 There are two kinds of evidence: direct and
2 circumstantial. Direct evidence is direct proof of a fact, such as
3 testimony of an eyewitness. Circumstantial evidence is indirect
4 evidence, proof of a chain of facts from which you could find that
5 another fact exists, even though it has not been proved directly.
6 Such evidence may consist of any acts, declarations or circumstances
7 of the crime. You are entitled to consider both kinds of evidence.
8 The law permits you to give equal weight to both, but it is for you
9 to decide how much weight to give to any evidence.

10 If you are satisfied of the defendant's guilt beyond a
11 reasonable doubt, it matters not whether your judgment of guilt is
12 based upon direct or positive evidence or upon indirect and
13 circumstantial evidence or upon both.

14 It is for you to decide whether a fact has been proved by
15 circumstantial evidence. In making that decision, you must consider
16 all the evidence in the light of reason, common sense and experience.

17 You should not be concerned with the type of evidence but
18 rather the relative convincing force of the evidence.
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1 Intent may be proved by circumstantial evidence. It rarely
2 can be established by any other means. While witnesses may see and
3 hear and thus be able to give direct evidence of what a defendant
4 does or fails to do, there can be no eyewitness account of a state of
5 mind with which the acts were done or omitted, but what a defendant
6 does or fails to do may indicate intent or lack of intent to commit
7 the offense charged.

8 In determining the issue as to intent, the jury is entitled
9 to consider any statements made and acts done or omitted by the
10 accused, and all facts and circumstances in evidence which may aid
11 determination of state of mind.

1 A Fourth Information Supplementing Indictment is a formal
2 method of accusing a defendant of a crime. It is not evidence of any
3 kind against the accused, and does not create any presumption or
4 permit any inference of guilt.

1 The defendant ERNESTO MANUEL GONZALEZ is being tried upon
2 anFourth Information Supplementing Indictment which was filed on the
3 22ndday of July, 2013, in the Second Judicial District Court,
4 charging the said defendant ERNESTO MANUEL GONZALEZ, with:

5 COUNT I. CONSPIRACY TO ENGAGE IN AN AFFRAY, a violation of
6 NRS 199.480 and NRS 203.050, a gross misdemeanor, in the manner
7 following, to wit:

8 That the said defendants, STUART GARY RUDNICK, also known
9 as "JABBERS" and ERNESTO MANUEL GONZALEZ, both Vagos gang members and
10 CESAR VILLAGRANA and JEFFREY PETTIGREW, both Hell's Angels gang
11 members did, at Sparks township, within the County of Washoe, State
12 of Nevada, on or about the 23rd day of September A.D., 2011, conspire
13 with their respective gang members and/or each other to engage in an
14 affray, and in furtherance of the conspiracy, defendant CESAR
15 VILLAGRANA and ERNESTO MANUEL GONZALEZ shot rival gang members.

16 COUNT II. CHALLENGE TO FIGHT RESULTING IN DEATH WITH THE
17 USE OF A DEADLY WEAPON, a violation of NRS 200.450, NRS 200.010, NRS
18 200.030, NRS 193.165, NRS 199.480, 195.020 and NRS 193.168, a felony,
19 in the manner following, to wit:

20 That the said defendants, STUART GARY RUDNICK, also known
21 as "JABBERS", CESAR VILLAGRANA and ERNESTO MANUEL GONZALEZ, did on or
22 about the 23rd day of September A.D., 2011, while within John
23 Ascuaga's Nugget, at Sparks Township, Washoe County, Nevada, cause,
24 give or send a challenge to fight and/or have agency in causing the

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1 death of another after a challenge to fight resulting in the death of
2 a human being.

3 The Defendants above named is responsible under one or more
4 of the following principles of criminal liability, to wit:

5 1) by the Defendants directly committing the acts constituting the
6 offense; and/or 2) by the Defendants, having the intent to commit
7 challenge to fight or to accept a challenge to fight, conspiring with
8 each other to commit the offense of challenge to fight or to accept
9 such a challenge to fight whereby each co-conspirator is vicariously
10 liable for the acts of the other co-conspirators when the acts are
11 done in furtherance of the conspiracy; and/or 3) by the Defendants
12 having the intent to commit the crime of challenge to fight, and
13 aiding and abetting each either directly or indirectly whether
14 present or not.

15 Specifically, that the said defendant, STUART GARY RUDNICK,
16 also known as "JABBERS", a Vagos gang member, did upon previous
17 concert and agreement, give or send a challenge to fight to Hell's
18 Angel gang member JEFFREY PETTIGREW and JEFFREY PETTIGREW's co-
19 conspirator and fellow Hell's Angel gang member and agent, defendant
20 CESAR VILLAGRANA. That JEFFREY PETTIGREW and his fellow gang
21 member(s) and co-conspirator accepted the challenge to fight and did
22 fight with defendant STUART GARY RUDNICK, also known as "JABBERS" and
23 his co-conspirators, other Vagos gang members, which fight involved
24 the use of deadly weapons. That said fight ended with the shooting
25 death of JEFFREY PETTIGREW, a human being who died on or about the

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1 24th day of September A.D., 2011, by Vagos gang member and co-
2 conspirator, defendant ERNESTO MANUEL GONZALEZ, and/or

3 That the said defendant, Vagos gang member, GARY STUART
4 RUDNICK, also known as "JABBERS" and Hell's Angel gang member JEFFREY
5 PETTIGREW did verbally challenge each other to fight and did directly
6 or indirectly, counsel, encourage, hire, command, induce or otherwise
7 procure other Vagos gang members and Hell's Angel gang members, and
8 ERNESTO MANUEL GONZALEZ and CESAR VILLAGRANA to fight and did either
9 by fighting or by giving or sending for himself or herself or for any
10 other person, the challenge to fight or by receiving for themselves
11 or for any other person, the challenge to fight, did cause a fight
12 where deadly weapons were used during said fight by STUART GARY
13 RUDNICK'S, also known as "JABBERS" and JEFFREY PETTIGREW'S respective
14 agents, defendants CESAR VILLAGRANA and ERNESTO MANUEL GONZALEZ
15 resulting in the death of JEFFREY PETTIGREW who died from a gunshot
16 wound on the 24th of September, 2011.

17 And that CESAR VILLAGRANA and ERNESTO MANUEL GONZALEZ,
18 being responsible as a principle to the fight, did aid and abet GARY
19 STUART RUDNICK, also known as "JABBERS" in the fight by said
20 defendants counseling each other in furtherance of issuing or
21 accepting a challenge to fight, and/or by providing backup to each
22 other, and/or congregating in a group in order to fight together,
23 and/or encouraging each other to engage in or accept the challenge to
24 fight, and/or each group encircling members of the opposing group,
25 and/or participating in a stand-off situation and/or

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1 intimidating members of the rival gang, and/or harassing members of
2 the rival gang, and/or otherwise acting in concert.

3 That said challenge to fight and the subsequent fight was
4 committed knowingly for the benefit of, at the direction of, or in
5 affiliation with, a criminal gang, with the specific intent to
6 promote, further or assist the activities of the criminal gang.

7 COUNT III. CARRYING A CONCEALED WEAPON, a violation of NRS
8 202.350, a felony, in the manner following, to wit:

9 That the said defendant, ERNESTO MANUEL GONZALEZ, on or
10 about the 23rd day of September A.D., 2011, at Sparks Township,
11 within the County of Washoe, State of Nevada, did willfully and
12 unlawfully, carry and have concealed upon his person a certain
13 handgun at John Ascuaga's Nugget located at 1100 Nugget Avenue in
14 Sparks, Washoe County, Nevada.

15 COUNT IV. DISCHARGING A FIREARM IN A STRUCTURE a violation
16 of NRS 202.287, a felony, in the manner following, to wit:

17 That the said defendant, ERNESTO MANUEL GONZALEZ, on or
18 about the 23rd day of September A.D., 2011, at Sparks Township,
19 within the County of Washoe, State of Nevada, did maliciously and
20 wantonly discharge a .40 caliber handgun while inside of John
21 Ascuaga's Nugget Hotel/Casino, located at 1100 Nugget Avenue in the
22 City of Sparks, Washoe County, Nevada, an area designated as a
23 populated area in Washoe County, Nevada.

24 COUNT V. MURDER OF THE SECOND DEGREE WITH THE USE OF A
25 DEADLY WEAPON, a violation of NRS 200.010, NRS 200.030, NRS 193.165
26 and NRS 193.168, a felony, committed in the manner following to wit:

1 That the said Defendants ERNESTO MANUEL GONZALEZ a Vagos
2 gang member and, CESAR VILLAGRANA, a Hell's Angel gang member, on or
3 about the 23rd day of September, 2011, did aid and abet GARY STUART
4 RUDNICK, also known as "JABBERS" a Vagos gang member and JEFFERY
5 PETTIGREW, a Hell's Angel gang member in the commission of an affray
6 with the use of a deadly weapon, that during the course of the affray
7 the said defendants did maliciously fire deadly weapons inside of
8 John Ascuaga's casino, located in a congested area in Sparks, Washoe
9 County, Nevada. That the said discharging of handguns during the
10 affray was in general malignant recklessness of others' lives and
11 safety of other people or in disregard of social duty and as a
12 foreseeable consequence of the shooting, JEFFREY PETTIGREW, a human
13 being, was killed and murdered suffering multiple gunshot wounds from
14 which he died on September 24th, 2011.

15 That said affray and discharge of a handgun inside of a
16 structure with the use of a deadly weapon was committed knowingly for
17 the benefit of, at the direction of, or in affiliation with, a
18 criminal gang, with the specific intent to promote, further or assist
19 the activities of the criminal gang.

20 COUNT VI. MURDER WITH A DEADLY WEAPON, a violation of NRS
21 200.010 and NRS 200.030, NRS 193.165, NRS 193.168 a felony, in the
22 manner following:

23 That the said defendant ERNESTO MANUEL GONZALEZ on the 23rd
24 day of September A.D., 2011, or thereabout, and before the filing of
25 this Information, at and within the County of Washoe, State of
26 Nevada, did willfully, unlawfully, and with malice aforethought, kill

1 and murder JEFFREY PETTIGREW, a human being, by means of shooting
2 into the body of JEFFREY PETTIGREW with a deadly weapon, to wit: a
3 pistol, thereby inflicting mortal injuries upon the said JEFFREY
4 PETTIGREW from which he died on September 24, 2011, said killing
5 being (1) willful, deliberate, and premeditated; and/or (2) committed
6 by Defendant lying in wait to commit the killing, said Defendant
7 being responsible under one or more of the following principles of
8 criminal liability, to wit: (1) by directly committing the act;
9 and/or (2) by Defendant conspiring with GARY RUDNICK and other Vagos
10 members or associates, with the specific intent that a killing occur,
11 whereby each conspirator is vicariously liable for the foreseeable
12 acts made in furtherance of the conspiracy.

13 Further, that the murder was committed knowingly for the
14 benefit of, at the direction of, or in affiliation with, a criminal
15 gang, and with the specific intent to promote, further or assist the
16 activities of the criminal gang, to wit: the Vagos.

17 COUNT VII. CONSPIRACY TO COMMIT MURDER, a violation of NRS
18 199.480, NRS 200.010, NRS 200.030, a felony, in the manner following:

19 That the said defendant ERNESTO MANUEL GONZALEZ on the 23rd
20 day of September A.D., 2011, or thereabout, and before the filing of
21 this Information, at and within the County of Washoe, State of
22 Nevada, did willfully, unlawfully, conspire with GARY RUDNICK and
23 other Vagos members or associates to kill and murder JEFFREY
24 PETTIGREW, a human being, and in furtherance of the conspiracy did
25 commit the acts in Count VI, said acts being incorporated by this
26 reference as though fully set forth here.

1 To the charges stated in the Fourth information Supplementing
2 Indictment, the defendant, ERNESTO MANUEL GONZALEZ, plead "NOT
3 GUILTY".
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26 Instruction No. 12

4974

1 "Knowingly," imports a knowledge that the facts exist which
2 constitutes the act or omission of a crime, and does not require
3 knowledge of its unlawfulness. Knowledge of any particular fact may
4 be inferred from the knowledge of such other facts as should put an
5 ordinarily prudent person upon inquiry.
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1 The word "willfully" when applied to the intent element of
2 the charges contained in Counts I, II, III, means an act done or
3 omitted and implies simply a purpose or willingness to commit the act
4 or to make the omission in question. The word does not require in
5 its meaning any intent to violate law, or to injure another, or to
6 acquire any advantage.

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26 Instruction No. 14

4976

1 The word "willfully" when applied in criminal statutes,
2 charged in Counts IV, V, VI and VII relates to an act or omission
3 which is done intentionally, deliberately or designedly, as
4 distinguished from an act or omission done accidentally,
5 inadvertently or innocently.
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Instruction No. 15

4977

1 A person may be found liable for the commission of a crime if
2 the State proves beyond a reasonable doubt that he or she committed
3 the crime; or by proving that the defendant is liable by virtue of
4 the doctrine of vicarious liability as an aider and abettor or as a
5 co-conspirator.

1 In order for the defendant to be held accountable for Counts V,
2 VI and/or VII under theories of vicarious liability (aiding and
3 abetting and/or conspiracy) the State must prove beyond a reasonable
4 doubt the defendant had the specific intent to commit the crime
5 charged.
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1 The defendant is charged in Count I (Conspiracy to Engage in an Affray), Count II (Challenge
2 to Fight Resulting in Death), Count VI (Murder with a Deadly Weapon), and Count VII (Conspiracy to
3 Commit Murder) with participation in a conspiracy.

4 A conspiracy is an agreement between two or more persons for an unlawful purpose. A person
5 who knowingly does any act to further the object of a conspiracy, or otherwise participates therein, is
6 criminally liable as a conspirator. Evidence of a coordinated series of acts furthering the underlying
7 offense is sufficient to infer the existence of an agreement and support a conspiracy conviction.
8 However, absent an agreement to cooperate in achieving the purpose of a conspiracy, mere knowledge
9 of, acquiescence in, or approval of that purpose does not make one a party to conspiracy.

10 The unlawful agreement or object is the essence of the crime of conspiracy. The crime is
11 completed upon the making of an unlawful agreement regardless of whether the object of the
12 conspiracy is effectuated.

1 Aider and Abettor liability Defined

2 Every person concerned in the commission of a felony, gross
3 misdemeanor or misdemeanor, whether the person directly commits the
4 act constituting the offense, or aids or abets in its commission, and
5 whether present or absent; and every person who, directly or
6 indirectly, counsels, encourages, hires, commands, induces or
7 otherwise procures another to commit a felony, gross misdemeanor or
8 misdemeanor is a principal, and shall be proceeded against and
9 punished as such.

1 The elements of the crime of Affray are:

- 2 1. Two or more persons;
- 3 2. By agreement;
- 4 3. Fight in a public place;
- 5 4. To the terror of the citizens of this state.

1 The Elements of the Crime of Challenge to Fight Resulting in
2 Death are:

- 3 1. A person;
- 4 2. Upon previous concert and agreement;
- 5 3. Fights with any other person, or;
- 6 4. Gives, sends or authorizes any other person to give or
7 send a challenge to fight verbally or in writing to any
8 other person and a fight occurs;
- 9 5. A person having any agency in causing the death by either
10 fighting, or by giving or sending or receiving for himself
11 or herself or any other person, the challenge to fight,
12 and
- 13 6. Death ensues to a person in such a fight, or dies from any
14 injuries received in such a fight.

1 The elements of carrying a concealed weapon are as follows:

2 1. The Defendant did unlawfully;

3 2. Carry concealed upon his or her person any;

4 3. Pistol, revolver or other firearm.

1 The crime of discharging a firearm within a structure
2 consists of the following elements:

- 3 1. A Defendant within a structure did;
- 4 2. maliciously or wantonly;
- 5 3. discharge a firearm within the structure; and
- 6 4. the structure was located in an area designated as a
7 populated area for the purpose of prohibiting the
8 discharge of weapons.

The elements of the crime of Murder are:

1. The defendant did willfully and unlawfully;
2. kill a human being;
3. with malice aforethought, either express or implied.

1 Murder is divided into two degrees.

2 Murder of the first degree is murder which is willful,
3 deliberate and premeditated.

4 Murder of the second degree is all other kinds of murder.
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26 Instruction No. 24

4987

1 Malice aforethought, as used in Counts IV, V and VI in this
2 case, means the intentional doing of a wrongful act without legal
3 cause or excuse, or what the law considers adequate provocation. The
4 condition of mind described as malice aforethought may arise, not
5 alone from anger, hatred, revenge or from particular ill will, spite
6 or grudge toward a person, but may also result from any unjustifiable
7 or unlawful motive or purpose to injure another, which proceeds from
8 a heart fatally bent on mischief, or with reckless disregard of
9 consequences and social duty.
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1 "Wanton conduct" is defined as reckless, heedless, malicious,
2 characterized by extreme recklessness, foolhardiness, recklessly
3 disregardful of the rights or safety of others or of consequences.
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26 Instruction No. 26

4989

1 Express malice is that deliberate intention to unlawfully
2 take away the life of a fellow creature, which is manifested by
3 external circumstances capable of proof.

4 Malice may be implied when no considerable provocation
5 appears or when all the circumstances of the killing show an
6 abandoned and malignant heart.

1 Murder of the first degree is murder which is perpetrated
2 by means of any kind of willful, deliberate, and premeditated
3 killing. All three elements--willfulness, deliberation, and
4 premeditation--must be proven beyond a reasonable doubt before an
5 accused can be convicted of first-degree murder.

6 Willfulness is the intent to kill. There need be no
7 appreciable space of time between formation of the intent to kill and
8 the act of killing.

9 Deliberation is the process of determining upon a course of
10 action to kill as a result of thought, including weighing the reasons
11 for and against the action and considering the consequences of the
12 action.

13 A deliberate determination may be arrived at in a short
14 period of time. But in all cases the determination must not be
15 formed in passion, or if formed in passion, it must be carried out
16 after there has been time for the passion to subside and deliberation
17 to occur. A mere unconsidered and rash impulse is not deliberate,
18 even though it includes the intent to kill.

19 Premeditation is a design, a determination to kill,
20 distinctly formed in the mind by the time of the killing.

21 Premeditation need not be for a day, an hour, or even a
22 minute. It may be as instantaneous as successive thoughts of the
23 mind. For if the jury believes from the evidence that the act
24 constituting the killing has been preceded by and has been the

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1 result of premeditation, no matter how rapidly the act follows the
2 premeditation, it is premeditated.

3 The law does not undertake to measure in units of time the
4 length of the period during which the thought must be pondered before
5 it can ripen into an intent to kill which is truly deliberate and
6 premeditated. The time will vary with different individuals and
7 under varying circumstances.

8 The true test is not the duration of time, but rather the
9 extent of the reflection. A cold, calculated judgment and decision
10 may be arrived at in a short period of time, but a mere unconsidered
11 and rash impulse, even though it includes an intent to kill, is not
12 deliberation and premeditation as will fix an unlawful killing as
13 murder of the first degree.
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1 Lying in wait is defined by law as watching, waiting, and
2 concealment from the person killed with the intention of killing or
3 inflicting bodily injury upon that person.
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1 If you find the defendant committed the offense of
2 Challenge to Fight Resulting in Death, First Degree Murder, or Second
3 Degree Murder then you must further determine whether the defendant
4 used a firearm. You should indicate your finding by checking the
5 appropriate box on the verdict forms. The burden is on the State to
6 prove beyond a reasonable doubt that a firearm or other deadly weapon
7 was used during the commission of the offenses.

8 You are instructed that a firearm is a deadly weapon.
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1 A criminal gang means:

2 1. Any combination of persons;

3 2. Organized formally or informally, so constructed that
4 the organization will continue its operation even if
5 individual members enter or leave the organization
6 which:

7 a. Has a common name or identifying symbol

8 b. Has particular conduct, status and custom indicative
9 of it; and

10 c. Has as one of its common activities engaging in
11 criminal activity punishable as a felony, other
12 than the conduct which constitutes the primary
13 offense.

1 The Elements of the Gang Enhancement are as follows:

2 1. The defendant committed the crime;

3 2. For the benefit of, at the direction of, or in
4 affiliation with a criminal gang;

5 3. With specific intent to promote, further or assist the
6 activities of the criminal gang.
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1 Gang evidence is not admissible to show that the defendant is a
2 bad person or has a criminal propensity. You may only consider such
3 evidence in your determination as to whether the Vagos is a criminal
4 gang and whether the Defendant committed the offenses in Count II, V,
5 and VI knowingly for the benefit of, at the direction of, or in
6 affiliation with, a criminal gang, with the specific intent to
7 promote, further or assist the activities of the criminal gang.
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1 The killing of another person in self-defense or defense of
2 another is justified and not unlawful when the person who does the
3 killing actually and reasonably believes:

4 1. That there is imminent danger that the assailant will either
5 kill him or any other person in his presence or company or cause
6 great bodily injury to him or any other person in his presence
7 or company; and

8 2. That it is absolutely necessary under the circumstances for him
9 to use in self-defense or defense of another force or means that
10 might cause the death of the other person, for the purpose of
11 avoiding death or great bodily injury to himself or any other
12 person in his presence or company.

13 A bare fear of death or great bodily injury is not sufficient to
14 justify a killing. To justify taking the life of another in self-
15 defense or defense of another, the circumstances must be sufficient
16 to excite the fears of a reasonable person placed in a similar
17 situation. The person killing must act under the influence of those
18 fears alone and not in revenge.

19 An honest but unreasonable belief in the necessity for self-
20 defense or defense of another does not negate malice.

21 The right of self-defense or defense of another is not available
22 to an original aggressor, that is a person who has sought a quarrel
23 with the design to force a deadly issue and thus through his fraud,
24 contrivance, or fault, to create a real or apparent necessity for
25 making a felonious assault.
26

1 However, where a person, without voluntarily seeking, provoking,
2 inviting, or willingly engaging in a difficulty of his own free will,
3 is attacked by an assailant, he has the right to stand his ground and
4 need not retreat when faced with the threat of deadly force.

5 Actual danger is not necessary to justify a killing in self-
6 defense or defense of another. A person has a right to defend from
7 apparent danger to the same extent as he would from actual danger.

8 The person killing is justified if:

- 9 1. He is confronted by the appearance of imminent danger which
10 arouses in his mind an honest belief and fear that he or
11 another in his presence, is about to be killed or suffer great
12 bodily injury; and
13 2. He acts solely upon these appearances and his fear and actual
14 beliefs; and
15 3. A reasonable person in a similar situation would believe
16 himself or another in his presence to be in like danger.

17 The killing is justified even if it develops afterward that the
18 person was mistaken about the extent of the danger.

19 If evidence of self-defense, or defense of others is present,
20 the State must prove beyond a reasonable doubt that the defendant did
21 not act in self-defense or defense of others. If you find that the
22 State has failed to prove beyond a reasonable doubt that the
23 defendant did not act in self-defense or defense of others, you must
24 find the defendant not guilty.

1 If you find that the defendant conspired and/ or aided and
2 abetted Gary Rudnick in issuing or accepting a challenge to fight and
3 that the respective parties involved in the fight voluntarily entered
4 into mutual combat knowing, or having reason to believe that it would
5 probably or may result in death or serious bodily injury to himself
6 or to others, no party having any agency in causing the death, either
7 by fighting or by giving or sending for himself or herself or any
8 other person, or in receiving for himself or herself or for any other
9 person, the challenge to fight is entitled to claim self-defense or
10 defense of others.
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Instruction 35

5000

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Nov 13 2014 03:26 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

★ ★ ★ ★ ★

ERNESTO MANUEL GONZALEZ,

CASE NO. 64249

Appellant.

v.

THE STATE OF NEVADA,

Respondent.

APPELLANT'S APPENDIX, VOLUME XX

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

**Second Judicial District
State of Nevada**

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IN THE SUPREME COURT OF THE STATE OF NEVADA

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No. 64249

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1 That's why it's probative.

2 THE COURT: Okay, I am going to review Dr. Clark's
3 testimony and the other pictures that were already marked to
4 see if it is -- if she did discuss it, and if it's shown in
5 the other pictures or not. So I'll let you know later this
6 afternoon.

7 With regard to 49P, that was admitted, I don't know
8 if your record shows that.

9 We have Exhibit 153A. Yesterday it was offered,
10 and over no objection was admitted. The clerk was told that
11 there might be an issue with it.

12 MR. HOUSTON: Well, there would be an issue with
13 certain redactions, your Honor, that the Court has already
14 approved as far as evidentiary objections. I can advise the
15 Court what those redactions would be.

16 THE COURT: Have you guys talked about this?

17 MR. HOUSTON: No.

18 THE COURT: Okay, well, I think you should talk
19 about it before we -- we should discuss this. It's my
20 understanding that defense believes that Exhibit 153A --

21 THE CLERK: I'm sorry. Mr. Lyon, when you were
22 talking about this with me, wasn't it 160?

23 MR. LYON: It was not the guilty plea memorandum,
24 it was the transcript of the interview, whatever --

1 THE COURT: The transcript of the guilty plea, or
2 the transcript of the --

3 MR. LYON: No, the transcript of the February 17th
4 interview.

5 THE COURT: Okay. That's marked 160.

6 MR. LYON: Yes.

7 THE COURT: Okay, so there's no problem with the
8 guilty plea memorandum, correct?

9 MR. LYON: Correct.

10 MR. HOUSTON: No, your Honor.

11 THE COURT: So then we have Exhibit 160, which
12 again was admitted. There was an objection, and then it was
13 withdrawn. I think that you all were having a little bit of
14 a heated discussion, and then if my memory is correct,
15 Mr. Houston offered the whole exhibit, and Mr. Hall said
16 okay, he'd like it too, and so it was completely admitted.
17 Now, do we have an issue?

18 MR. HOUSTON: Yes, your Honor. The exhibit as
19 admitted with the agreed-upon reda -- reference, what the
20 Court had said would not be allowed --

21 MR. HALL: There were no agreed-upon redactions.

22 MR. HOUSTON: Would you please not interrupt me?
23 What the Court had said would not be allowed in reference to
24 testimony by Mr. Rudnick as it concerned the interview, i.e.,

1 guns, coming to his house, dropping off guns, and the Court
2 ruled that inadmissible. And as a consequence, if the State
3 wishes to have the transcript admitted, then we would ask
4 that it be redacted according to this Court's previous
5 rulings.

6 THE COURT: Well, I think you should talk to
7 Mr. Hall.

8 MR. HOUSTON: Okay.

9 THE COURT: About that. And I'm not saying --
10 ruling one way or another on it, but the exhibit was offered
11 by the defense.

12 MR. HOUSTON: Actually, it was offered by Mr. Hall,
13 in parsing it out. And I said that's not right, if you're
14 going to use it, you should use the whole thing. Mr. Hall
15 then said that's fine, then we'll admit the whole thing, and
16 I said that's okay with me. And then the Court had a
17 question as to how long we were going to be then arguing by
18 way of using the transcript, i.e., does that mean you're
19 going to be reading the transcript to the jury. And Mr. Hall
20 and I had a few other --

21 THE COURT: I think that was in response to you
22 saying I want to use the transcript.

23 MR. HOUSTON: Well, at that point, of course.

24 THE COURT: Okay. So you need to talk to each

1 other about 160, figure out if you can agree if it does need
2 to be redacted. If you can't, we'll have to have an argument
3 on the legal issues involved in that.

4 MR. HOUSTON: Thank you, your Honor.

5 THE COURT: The CD that was played this morning had
6 a portion that in the State's case in chief, I said you
7 couldn't play. And we have a transcript to match that --
8 that CD. We do have a transcript of it, which is marked as
9 159. But we've never made a record, and I don't know what
10 else, if anything, you all want to do. Will you stop playing
11 it rather than redacting it?

12 MR. HALL: Right, so we can go burn off another one
13 real quick and replace it so that that is not -- oh, yeah,
14 that's right. But then -- yeah, but then he opened the door,
15 didn't he? So I guess we don't need to redact it now. Now
16 that I mention it.

17 THE COURT: I don't know. You need to do
18 something.

19 MR. HALL: So I would move to admit the entire CD,
20 unredacted, since the defense opened the door and discussed
21 the Steyr and the weapons.

22 MR. HOUSTON: Your Honor, I'm not sure how that
23 opened the door. I don't know, I thought the Steyr and the
24 magazine and bullets and brass knuckles were all depicted in

1 the picture according to --

2 MR. HALL: Well, what --

3 THE COURT: There was -- if you want to look at the
4 transcript, the transcript where I stopped and said that it
5 was not relevant, was how -- there was a discussion about the
6 gun being new, and a comment to your client where did you get
7 it, I don't know, my friend -- I think it said another person
8 in the club gave it to him, but he doesn't know who that
9 person is. I'd have to review that again. Which is
10 different than what we heard on the stand.

11 MR. HOUSTON: Right. I think Mr. Hall elicited
12 that you didn't tell the truth when you spoke to the police
13 officer, and the defendant said yes, I did not. I do
14 remember that.

15 MR. HALL: So that's why we're moving for the
16 admission of that document, for impeachment purposes.

17 THE COURT: Okay. So we've got the CD that was
18 played. So you want to play the rest of the CD, is that what
19 you're saying? And keep the transcript -- the transcript is
20 for the record.

21 MR. HALL: Right.

22 THE COURT: It's demonstrative, it's not going to
23 go to the jury.

24 MR. HALL: Right. So we want to admit the entire

1 CD.

2 MR. HOUSTON: Your Honor, if the witness admits,
3 then what are you impeaching? In other words, if the witness
4 is asked, you didn't tell the officer the truth about that,
5 did you, and the witness said no, I did not, then what are we
6 impeaching by way of playing the transcript?

7 THE COURT: You're asking me a legal question, or
8 are you arguing it?

9 MR. HOUSTON: No, I'm asking -- I guess that's my
10 rhetorical question of myself.

11 THE COURT: I'd rather not have rhetorical
12 questions, I'd rather have argument from you.

13 MR. HOUSTON: The argument is it shouldn't be
14 played in reference to impeachment by virtue of the fact that
15 the witness admitted candidly, I did not tell the police the
16 truth. So therefore why now would it be relevant as an
17 impeaching tool? It is not, and I would ask the Court to
18 exclude it. There's nothing to impeach.

19 THE COURT: Okay, so you all need to do something
20 with 160, and you need to talk about that. I'll look at
21 Exhibit 1 of the autopsy series, I'll look at the transcript
22 of 259, and there's some other information you need to give
23 me for the preliminary discussions.

24 Now, on jury instructions. When you told us today

1 that there were additional jury instructions, the law clerk
2 thought they were the ones you had already given us. But I
3 took the impression that you had even more for me.

4 MR. LYON: That is correct, your Honor, and I do
5 have a copy for counsel and the Court. What we have to
6 present would be it's a second proposed additional jury
7 instructions. I'm not sure if that's what had already been
8 put in, I don't think so. Then there was the third proposed,
9 and that one I think was just the limiting instruction. And
10 then we do have a packet which we've identified just as our
11 objections to the State's instructions that we would be
12 presenting to everybody.

13 THE COURT: That looks like about an inch.

14 MR. LYON: This is just the State's instructions.

15 THE COURT: With objections?

16 MR. LYON: With our objections, yeah. So.

17 THE COURT: Okay, go ahead and -- do you have
18 copies of that for everybody?

19 MR. LYON: I do.

20 THE COURT: Okay, go ahead and give it to the
21 clerk, the law clerk, to start.

22 MR. LYON: Those would be the originals, and I
23 have -- this would be counsel's copy.

24 THE COURT: Okay, then I think that's all the

1 issues that I wanted to put on the record. And then
2 Mr. Hall, I think you wanted to look at all the evidence to
3 see, because you reserved the right to move some things in,
4 so you need to go ahead and look at all of that. And then
5 we'll begin jury instructions preliminarily later this
6 afternoon.

7 I'm thinking you should all be back about a quarter
8 to 2:00, be a little -- I want to give you a little bit of a
9 lunch hour. Part of a lunch hour, half hour at least. So if
10 you can get back here about a quarter to 2:00, we'll begin
11 looking at all of this information. Thank you. Court is in
12 recess.

13 (Recess.)
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4 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

5 IN AND FOR THE COUNTY OF WASHOE

6 THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

7 -oOo-

8 STATE OF NEVADA,)

9 Plaintiff,) Case No. CR11-1718B

10 vs.)

11 ERNESTO MANUEL GONZALEZ,) Dept. No. 4

12 Defendant.)

13 _____)

14
15 TRANSCRIPT OF PROCEEDINGS

16 JURY TRIAL

17 TUESDAY, AUGUST 6, 2013

18 RENO, NEVADA

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20 COPY

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24 Reported By: MARCIA FERRELL, CCR No. 797

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1 RENO, NEVADA, TUESDAY, AUGUST 6, 2013, 10:00 A.M.

2 --oOo--

3 (Jury absent.)

4 THE COURT: Good morning.

5 MR. HALL: Good morning.

6 MR. HOUSTON: Good morning.

7 THE COURT: This is the time set for an argument on
8 motion to compel election between multiplicitious murder
9 counts. You may begin.

10 MR. HOUSTON: Thank you, your Honor. As the Court
11 is -- did you tell me to get started? I'm sorry, I was sort
12 of lost in my own hands. I didn't want to jump up and --

13 THE COURT: Go for it.

14 MR. HOUSTON: Thank you. Your Honor, as the Court
15 is aware, we had filed the motion. After reviewing the
16 facts, it became obvious to us on the fourth amended
17 information that there appeared to be some problem with
18 charging Mr. Gonzalez with three separate and what we call
19 distinct counts of murder, all allegedly arising out of one
20 wrongful act, which as we all at this point in time know is
21 shooting of Mr. Pettigrew.

22 The proposed jury instructions seem to ask the jury
23 to consider the murder charges in counts two, five and six
24 almost as a single count for the purpose of their

1 deliberation, and as a consequence, would permit a conviction
2 based on what we termed a crossover of the juror votes on the
3 different counts.

4 The State certainly can plead and argue alternative
5 theories of liability in a single count, and we agreed with
6 that. And that of course does not necessarily require juror
7 anonymity on one of the alternative theories. However, where
8 we have an indictment or information charging the same
9 offense in more than one count, we're submitting to the Court
10 it's multiplicitious, and as a consequence, defective.

11 The State's theory in mid-trial, in which multiple
12 counts become a single offense for the purpose of jury
13 consideration, we feel violates the rule against
14 multiplicity. The only way we avoid the unfair prejudice to
15 the defendant is to request the State to elect a theory. And
16 we then can avoid the multiplicitious charges, including
17 prejudice a jury may think by suggesting that a defendant has
18 committed not one, but several crimes.

19 If in fact they are truly separate counts, where we
20 see the problem is this: Either the charges are identical,
21 and as such multiplicitious, or they are not identical and
22 therefore not multiplicitious, but there cannot be a crossover
23 verdict in the sense that three of you think it happened this
24 way, three of you think it happened this way, six of you

1 think it happened this way, then you can combine all of that
2 to reach a unanimous verdict as it concerns any of the
3 counts.

4 And that's what we're trying to avoid with our
5 motion, and we ask the Court to require the State to elect,
6 to avoid the multiplicity we see existing in the latest,
7 which is I believe the fourth amended.

8 THE COURT: Thank you. Counsel.

9 MR. HALL: Good morning, your Honor. I was in the
10 process of drafting my formal opposition to the defendant's
11 motion this morning, and in light of our jury instruction
12 work I didn't get that drafted. However, I did do some
13 research on the issue and I'm ready to present some argument.

14 Now, clearly the State is allowed to present
15 different theories of liability with respect to murder. In
16 this case, as you know, we have alleged challenge to fight.
17 The facts in this case clearly support at least in our mind a
18 challenge to fight. We have two groups basically in a
19 standoff situation, the Hells Angels, Vagos, a challenge to
20 fight ensues. And this is based upon evidence that we
21 derived from lay witnesses at the Oyster Bar, indicating that
22 there was an altercation. When the Vagos rally to that
23 particular area, the air was sucked out of the room, there
24 was obviously tension. Then when the Hells Angels proceed to

1 Trader Dick's there is, we argue, a challenge to fight which
2 ultimately resulted in death. And we have alleged that
3 Gonzalez was a part of the conspiracy and aided and abetted
4 his other Vagos members in that challenge to fight which
5 ultimately resulted in death.

6 That charge is essentially felony murder, because
7 if we have proved there is a challenge to fight, and that
8 challenge results in death, and he, Mr. Gonzalez, is a
9 principal to that challenge, then he is guilty of a challenge
10 to fight.

11 We've also alleged murder in the first degree. And
12 of course, that charge includes the theory of lying in wait,
13 premeditation, and deliberation. Two different theories.

14 Now, with respect to the proof in that case, we can
15 see from the video that the defendant has ample opportunity
16 to think about what he was going to do. It looks like he's
17 approaching Pettigrew and Villagrana with purpose, and then
18 of course he sneaks up behind them and shoots Pettigrew in
19 the back. He admitted on the stand that he had the intent to
20 kill at the time that he fired those shots.

21 So we definitely have multiple theories of
22 liability. And when I look at the Crawford case and the
23 Schad case, the State is allowed to pursue varying theories
24 of liability. And the jury, under Nevada law and federal

1 law, is allowed to find the defendant guilty under any one of
2 those theories. And Schad allows the jury to consider all
3 theories, and it also states that the jury does not have to
4 be unanimous on any one of those theories. All those
5 theories are consistent.

6 Now, I'd like to address the authorities cited by
7 the defense. The defense cited a couple of federal cases,
8 and when I reviewed those cases, one, the first case that
9 they cited, I believe at footnote four, indicates that -- it
10 was a security frauds case. And in their security filing
11 there were several statements that were deemed to be false,
12 and so the prosecutor charged several counts based upon one
13 single securities fraud filing. And the court in that case
14 held, well, you can't charge multiple counts for one single
15 filing. The other case, the next case that they cited, dealt
16 with a situation where there was a theft and possession of
17 stolen property. And they were claiming that you can't
18 convict a person for both theft and possession of stolen
19 property, and that's multiplicitous, so it's not essentially
20 two crimes, it's one crime.

21 Now, I would agree that those crimes -- well, when
22 you have one crime and they're trying to multiply the
23 penalty, that that would be the multiplicitous. That's not
24 what we're trying to do here. What we're trying to do here is

1 explain the different theories, and clearly there are
2 different theories that apply to the facts of this case.

3 I would agree that the murder charges would merge,
4 you can only be convicted of murder one time, but the State
5 does not have to choose theories. They haven't cited one
6 case that states for -- that stands for the proposition that
7 the State has to choose theories, especially when we have
8 facts and evidence through the course of this trial that
9 supports all those theories.

10 In addition to that, we have Nevada Supreme Court
11 authority and U.S. Supreme Court authority which allows us to
12 proceed on those different theories, and allows the jury to
13 make a decision based upon those theories, and they don't
14 have to be unanimous on those theories. And of course that's
15 why I submitted the Schad instruction.

16 The Schad instruction has been approved by the
17 Nevada Supreme Court, it's allowable here, and I would ask
18 the Court to deny their motion requiring us to elect either a
19 challenge to fight theory or first degree murder theory based
20 upon lying in wait or premeditation and deliberation. They
21 don't have authority that supports that.

22 THE COURT: The Schad case did not deal with
23 multiple counts, it dealt with alternative theories within a
24 count.

1 MR. HALL: Right.

2 THE COURT: So the Court agrees with your argument
3 with regard to the individual counts.

4 MR. HALL: Yes.

5 THE COURT: The individual theories within each
6 count. And I agree with your argument with regard to the
7 multiplicity issue. My concern is that this motion was
8 brought because of an assumption on the part of the defense
9 that the State wanted the Court to instruct that it didn't --
10 the jury, that it didn't matter if they were unanimous as to
11 count two, or unanimous as to the murder count, which is I
12 think it's count four -- six, is murder in the first degree,
13 and count five is murder in the second degree. That the jury
14 could merge all three counts together in their deliberations
15 and not be unanimous as to anything, those three counts. In
16 other words, the argument, if I'm hearing the defense make is
17 it would be improper to have three people think he was guilty
18 of count two, three people think count five, and six people
19 think count six, and then find him guilty as to all three
20 counts.

21 MR. HALL: I think we can take second degree out of
22 the mix. With respect to counts two and count --

23 THE COURT: Six?

24 MR. HALL: Is count six the murder count?

1 THE COURT: Yes, it is.

2 MR. HALL: Right, well, I don't think they have to
3 be unanimous on those. On those two counts. I think if they
4 find them guilty of murder, I think both of them allege
5 murder under different theories, and I don't think it has to
6 be.

7 THE COURT: They actually don't allege murder.
8 Count two does not allege murder. It becomes murder by way
9 of penalty.

10 MR. HALL: Well, my reading of the statute would
11 indicate that death is an element of challenge to fight.
12 It's not an enhancement.

13 THE COURT: The challenge to fight statute --

14 MR. HALL: Challenge to fight resulting in death is
15 what makes it murder of the first degree. So my contention
16 is that it is first degree murder by virtue of the death. So
17 if there's a challenge to fight and a death occurs, which is
18 an element of the offense, then it's first degree murder.
19 It's not an enhancement --

20 THE COURT: Why is that an element as opposed
21 murder with a deadly weapon? Why in the challenge to fight
22 statute do you find it to be an element?

23 MR. HALL: Because I believe when you read the
24 statute it says if you have a challenge to fight, and that

1 challenge to fight results in death, then it's murder of the
2 first degree. It's just like felony murder. If you -- you
3 look at the felony murder statute, right?

4 THE COURT: But I think it says you will be
5 punished. It doesn't say there will be a finding, does it?
6 The challenge to fight statute? I know it's -- I do agree
7 it's analogous to the felony murder rule.

8 MR. HALL: Right.

9 THE COURT: And I would review the statute, I don't
10 have it up here, just my memory of the statute was that it
11 says if you have a challenge to fight, there's one penalty,
12 if there's with use of a deadly weapon, and another penalty
13 if death results.

14 MR. HALL: Right.

15 THE COURT: And the punishment for with death
16 results is the same as murder in the first degree. But I'm
17 not -- I'll have to reread it and see if it's really a
18 finding of murder.

19 MR. HALL: I think it does say punishment. I would
20 agree with that. But that delineates between first degree
21 murder, second degree murder, or other types of death.
22 Manslaughter, involuntary manslaughter. So that is the
23 penalty.

24 But it also says that if the challenge to fight

1 results in death, then it's murder of the first degree. And
2 that's similar to the felony murder rule that says if you're
3 committing a burglary, robbery, and death ensues, it's murder
4 of the first degree. So it also sets forth a punishment.
5 But as we know, the death is an element of felony murder.
6 And so I think that clearly is an indication that -- yes.
7 The statute -- counsel just provided me with a note that the
8 statute says is guilty of murder of the first degree.
9 Doesn't say shall be punished. So that would support our
10 contention that the death is an element of that offense.

11 So I think if you read Schad, I think that allows
12 us to proceed under those -- both counts as a single -- as
13 additional theory of murder. And so.

14 You know, the other alternative then would of
15 course be to include a challenge to fight theory in a murder
16 count. And obviously there are different elements in both,
17 although they are related to the fight, obviously, which
18 resulted in death. But I think that would be, you know, even
19 more confusing to the jury if you were to combine those two
20 counts. So.

21 THE COURT: Normally in felony murder, you do,
22 don't you? Normally charge an open murder, and it's either
23 premeditated or in furtherance of a felony?

24 MR. HALL: Right.

1 THE COURT: It's normally charged as one count.

2 MR. HALL: Right, and we could do that if the
3 challenge to fight was one of the enumerated felonies in NRS
4 200.010 and 030, then that would be the typical way that you
5 would do this. But as the Court is aware, we don't -- I
6 haven't seen a case or don't usually see a case where I have
7 gang fights in a casino which would indicate that this is in
8 fact a challenge to fight that results in death. So it
9 clearly has those elements in this particular case, which is
10 why we proceeded under that charge. And since death
11 resulted, it is murder of the first degree.

12 So they are different theories, they are all
13 consistent with law, and Schad allows us to proceed under all
14 of those theories, and it doesn't require the jury to be
15 unanimous on any one of those theories.

16 THE COURT: Okay. Thank you.

17 MR. HOUSTON: Thank you, your Honor. I think to
18 sum up very briefly, first of all, we haven't said this, but
19 we don't agree necessarily the prima facie case concerning
20 challenge to fight to include Rudnick's statement, "Are we
21 cool, are we cool," doesn't necessarily rise to that type
22 that we would normally think of a challenge to fight. But
23 the primary issue, because the elements are not identical,
24 there is no crossover possible, it requires unanimity on each

1 count. You cannot, absent identical elements as far as those
2 counts -- or those various roads you're saying lead to the
3 same place -- utilize the three here, the three here, the six
4 here, or whatever the count may be. It has to be something
5 other than that which Mr. Karl -- Mr. Hall, excuse me, has
6 argued. And I'd submit it.

7 MR. HALL: May I just make one other comment, your
8 Honor?

9 THE COURT: Yes.

10 MR. HALL: That would be if the Court disagrees
11 with my position with respect to Schad, then I believe that a
12 reasonable, or at least another alternative would be
13 unanimity -- requiring the jury to make a unanimous finding
14 with respect to either count, and then instruct them that it
15 would merge, that the two counts would obviously merge,
16 because we obviously have one killing.

17 So I think that would be, you know, an alternative.
18 If the Court feels that my position on Schad is unfounded
19 under Nevada law.

20 THE COURT: Now, you would suggest that we would
21 instruct the jury, or the Court would just merge if there
22 were a conviction on both counts?

23 MR. HALL: Well, you know, that's a good question.
24 And in light of the fact that we have to instruct the jury,

1 or that the jury would be making a determination as to
2 punishment, you know, I don't think -- you know, I don't
3 think you have to instruct the jury.

4 THE COURT: In the guilty phase.

5 MR. HALL: In the guilty phase.

6 THE COURT: But we would definitely have to
7 instruct the jury in the penalty phase.

8 MR. HALL: Yes, obviously.

9 THE COURT: If we get there.

10 MR. HALL: If we got there.

11 MR. HOUSTON: I'd close with unanimity is required,
12 your Honor. I think you should instruct the jury, even with
13 Mr. Hall's second theory.

14 MR. HALL: We have to be unanimous on the facts, on
15 one of those theories.

16 MR. HOUSTON: Right.

17 MR. HALL: I mean, there's no question about that.

18 MR. HOUSTON: We agree.

19 THE COURT: All right. Counsel, I want to reread
20 the Schad case, just I want to look at it again.

21 MR. HALL: And I would also mention Crawford v
22 State, it addresses Schad, it's a 2005 case. I believe it's
23 at -- I want to say 121 Nevada.

24 THE COURT: Okay.

1 MR. HOUSTON: And your Honor, we also offer Harris
2 and Suave and Walker, it's all in the pleadings.

3 MR. HALL: 121, 744. Is Crawford.

4 THE COURT: Yeah, I see all of your cites.

5 MR. HOUSTON: Thank you, your Honor.

6 THE COURT: Thank you. Now, counsel, I'm going to
7 take this under submission. We have a lot of other work to
8 do on the instructions, anyway. And we can get -- obviously
9 I have to rule on this before we can finalize the
10 instruction. But I would like to have a little bit more time
11 with you in the preliminary phase of looking at these
12 instructions before we're ready to try to finalize them on
13 the record.

14 MR. HOUSTON: Certainly, your Honor.

15 THE COURT: So we'll reconvene in chambers. Court
16 is in recess.

17 (Recess.)
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2 RENO, NEVADA, TUESDAY, AUGUST 6, 2013, 3:45 P.M.

3 --oOo--

4 (Jury absent.)

5 THE COURT: Let the record reflect we are convening
6 outside the presence of the jury with the defendant and
7 counsel present. First item of business will be to review
8 the jury instructions that are proposed.

9 Counsel, I have instructions 1 through 46 that we
10 have reviewed. I will go through now and give you the
11 numbers, make sure your record relates to mine. Ladies and
12 gentlemen of the jury, 1. If in these instructions, 2. If
13 during this trial, 3. If it is the duty of the attorneys, 4.
14 Nothing that counsel say, 5. A reasonable doubt is one based
15 on reason, 6. In every crime, 7. Every person charged with
16 the commission, 8. There are two kinds of evidence, 9.
17 Intent may be proved, 10. There are two kinds -- let me
18 double check I don't have two. Looks like I might have a
19 duplicate there, so I just want to double check that they're
20 exactly the same.

21 MR. LYON: Which one is number 10, your Honor?

22 THE COURT: Number 10 is intent may be proved by
23 circumstantial evidence. So 11 is a fourth information
24 supplementing. 12 is the actual restatement of the

1 information and the plea by defendant. 13 is knowingly. 14
2 is the word wilfully. 15, a person may be found liable.

3 MR. LYON: I thought there was another wilfully
4 instruction.

5 THE COURT: So did I, I was just looking. 13 is
6 knowingly. 14 is the word wilfully, and it applies to 1, 2
7 and 3. 15 is the word wilfully, it applies to 4, 5, 6 and 7.

8 16 is a person may be liable. 17, the defendant is
9 charged. 18, aider and abettor. 19, the elements of the
10 crime of.

11 MR. HALL: Do we have conspiracy in there? I
12 thought we had -- I thought we had aider and abettor and
13 conspiracy together, I could be wrong.

14 THE COURT: The defendant is charged in count 1
15 with all the conspiracies, and then the second paragraph says
16 a conspiracy is an agreement between two or more persons.
17 And so that was 17.

18 I think we used the retyped one for the defense --

19 MR. HALL: Oh, that's right, that's why I'm missing
20 it. I'm back on it.

21 THE COURT: 18 is your -- you typed one aider and
22 abettor.

23 MR. HALL: I got it now, sorry about that.

24 THE COURT: 19 are the elements of the crime of

1 affray. 20 is the elements of the crime of challenge to
2 fight. And it's my understanding the defense is stipulating
3 to death ensuing being an element of the offense as it's
4 charged in 20.

5 MR. LYON: Yes, your Honor.

6 THE COURT: 21, the elements of carrying a
7 concealed weapon. 22, the crime of discharging. 23, the
8 elements of murder. 24, murder is divided. 25, malice
9 aforethought as used in the definition of murder. My
10 understanding, the defense is stipulating to this language.

11 MR. LYON: Yes, your Honor.

12 THE COURT: As well as the State?

13 MR. HALL: Yes.

14 THE COURT: 26, wanton conduct. 27, express
15 malice. In this instruction, it is a restatement of the
16 statute, but the second paragraph, line 4, reads, "Malice may
17 be implied." My understanding, counsel for the State and the
18 defense are specifically requesting that we use the word
19 "may" rather than "shall," as contained in the statute.

20 MR. LYON: Yes, your Honor.

21 THE COURT: Murder in the first degree is
22 perpetrated by means of any kind of, that's instruction 28.

23 Lying in wait is defined, is 29. If you find the
24 defendant committed the offense of challenge to fight, 30. A

1 criminal gang means, 31. The elements of gang enhancement
2 are -- will be 32.

3 Gang evidence is not admissible to show, is 33. I
4 think that was the special instruction that we were giving
5 based on my earlier rulings on the gang enhancement evidence,
6 and the defense request.

7 The killing of another person in self-defense is
8 34. This is -- we have been calling this the Runyon
9 instruction, it has been modified to include changes that
10 relate to killing -- self-defense or in defense of another.
11 So there are several changes that were made, I think the
12 defense is stipulating to those changes.

13 MR. LYON: Yes, your Honor. And I think there was
14 also a redaction regarding the reduction of the offense from
15 murder to manslaughter?

16 THE COURT: Yes, that was reviewed, changed. Okay,
17 35, if you find that the defendant conspired and/or aided and
18 abetted. This has been modified, and it's my understanding
19 the defendant is stipulating to the content as it's now been
20 modified.

21 MR. LYON: Yes, your Honor.

22 THE COURT: 36, counts 2, 5 and 7 -- I'm sorry, 2,
23 5 and 6 contain multiple theories of liability. This
24 instruction has been provided to the Court jointly by

1 defendant and the State, is that correct?

2 MR. HALL: Yes.

3 MR. LYON: Yes, your Honor.

4 THE COURT: A witness who has special knowledge
5 will be 37. You are the sole judges of credibility,
6 instruction 38. 39, neither side is required. 40, you are
7 not called upon. 41, a separate crime is charged against the
8 defendant in each count. And it's my understanding that the
9 defense is requesting the last language, if you find the
10 State failed to prove an element of a particular count, you
11 must find the defendant not guilty as to that count?

12 MR. LYON: Yes, your Honor.

13 THE COURT: Applies to a person is 42. On arriving
14 at a verdict, 43. Although you are to consider, 44. It is
15 your duty as jurors, 45. Upon retiring to the jury room, 46.

16 State, do you have any additional instructions to
17 offer at this time?

18 MR. HALL: No, your Honor.

19 THE COURT: Defense, do you have additional
20 instructions to offer at this time?

21 MR. LYON: Yes, your Honor, we have -- I'm not sure
22 how best to identify them. We have what we -- what I've
23 characterized previously as our theory of defense
24 instruction. It reads: Defendant Ernesto Gonzalez asserts

1 as his theory of defense that he acted in lawful defense of
2 another. If you find that Defendant Ernesto Gonzalez acted
3 in lawful defense of another as set forth in these
4 instructions, you cannot convict him of counts 1, 2, we
5 included count 3, 4, 5, 6, and 7.

6 We would request that instruction based on the
7 authority under Carter and Crawford. The Carter decision
8 suggests that if a theory of defense instruction is offered,
9 that should be provided by the Court, and there is some
10 discussion about including within the theory of defense
11 instruction the duty to acquit language.

12 There is the citation to Runyon and Honeycutt and
13 Crawford, the rationale being it places the defendant on
14 equal footing with the State, because standard instructions
15 in criminal cases generally articulate the State's theory of
16 the case, and we think this is a more -- a clearer version of
17 the theory of defense.

18 THE COURT: State?

19 MR. HALL: Your Honor, I think the theory of the
20 defense is contained in the Runyon instructions and the other
21 instructions. And in addition, the last instruction about
22 deciding each count separately is also an instruction that
23 addresses that same issue. So we don't need an additional
24 instruction, I think it's redundant, repetitive, not

1 required. Thank you.

2 THE COURT: I'm going to have the clerk mark this
3 as Defendant's Rejected A. I am not going to give it because
4 I think the theory of the defense case has been instructed,
5 with regard to the instruction 28 as well as the wanton
6 conduct, 26, and the malice instruction, 27, that all deal
7 with the theory of the defense.

8 And also, the Court having given the Runyon
9 instruction regarding elements, and the finding of -- the
10 defendant not guilty, as well as the last instruction that
11 directs the clerk -- directs the jury to find the defendant
12 not guilty of an element that has not been proven. Therefore
13 I think it's the cumulative, and I'm going to deny it. Yes.

14 MR. LYON: Also we have it was in the original
15 stack as instruction 14, it's the instruction that talks
16 about circumstantial evidence, and if such evidence -- if one
17 conclusion can be looked at as guilt, and one conclusion can
18 be looked at as innocence, then the reasonable conclusion
19 should fall to the side of the defendant and an acquittal
20 should be rendered. I think the Court had issued that this
21 was a discretionary instruction, we would ask the Court to
22 exercise your discretion and issue that instruction.

23 THE COURT: Counsel?

24 MR. HALL: Your Honor, we oppose that instruction,

1 we think it increases the burden of proof beyond a reasonable
2 doubt, it is an unnecessary comment on circumstantial
3 evidence. I think the law is that circumstantial and direct
4 evidence are entitled to the same weight, and that that is a
5 question for the jury. And we would oppose that instruction
6 on that basis.

7 THE COURT: Okay, the clerk will mark this
8 instruction Defendant's Rejected E. The Court will not
9 exercise its discretion and give this instruction. I feel
10 that it's cumulative, unnecessary, and the jury is adequately
11 instructed as to all the theories of the case in the packet
12 that I propose giving. The Court has reviewed Bails, 96
13 Nevada 388, and Falkenberger.

14 MR. LYON: The next one we had was instruction 15
15 in the original packet, just again talking about
16 circumstantial evidence alone could be sufficient to sustain
17 a conviction. Again, I think this is a discretionary
18 instruction. Our belief is if we're dealing with
19 circumstantial evidence, there is a difference in the way the
20 jury may review that evidence. We think this instruction
21 should be given by the Court.

22 THE COURT: Mr. Hall.

23 MR. HALL: We'll oppose that instruction on the
24 same basis, it's redundant and not required, as it's covered

1 by the instructions.

2 THE COURT: Okay. The Court finds that I am going
3 to mark this Defendant's Rejected C. I do believe that the
4 instruction as written does impact on the reasonable doubt
5 instruction, does seem to give a different burden with regard
6 to circumstantial evidence, which would not be appropriate.
7 And the Court feels that the argument that can be made about
8 the evidence in this case can be made without the
9 instruction. In addition, this case does not involve just
10 circumstantial evidence, for all those reasons I'm denying
11 and rejecting the instruction.

12 MR. LYON: The next one we had was instruction
13 number 71 under the packet, it's the citation to Origel,
14 that's O-r-i-g-e-l, hyphen Candido, C-a-n-d-i-d-o versus
15 State, 114 Nevada 378, it's just language taken from that
16 case that we believe clarifies the gang enhancement charge in
17 this matter, and would request the Court to so instruct.

18 THE COURT: Mr. Hall.

19 MR. HALL: Your Honor, that cite, essentially what
20 they've cited is dicta. Your Honor, that case, it is not the
21 holding in the case, not the law of the case. I think it's
22 argument as opposed to a statement of law. And for those
23 reasons we oppose that instruction.

24 THE COURT: Court will mark this instruction

1 Defendant's Rejected -- E?

2 THE CLERK: D.

3 THE COURT: D as in David, and I am rejecting it
4 because I think although the case Origel does make a
5 statement, it is dicta. And the other instructions clearly
6 instruct as to what's necessary for an act to be benefiting a
7 gang. Therefore, I think it's adequately instructed in the
8 other instructions to allow the defense to enter their
9 arguments. I do find the last line especially to be
10 argument. It's rejected.

11 MR. LYON: The next one we had proposed was this
12 references 82B in the original packet. This was a proposed
13 instruction dealing specifically with the testimony, although
14 our proposed instruction was left -- it references a blank
15 name, this would be specific to the testimony of Mr. Rudnick,
16 and specifically the fact that we believe there was evidence
17 supporting the fact that he had received favorable treatment
18 for his testimony, that criminal charges had been dismissed
19 against him, and other similar type favorable treatment.

20 We think that this instruction is necessary to
21 specifically delineate those issues to allow the jury to
22 assess his credibility beyond the other credibility
23 instructions that the Court has provided. We would ask that
24 that be -- the jury be so instructed.

1 THE COURT: Mr. Hall.

2 MR. HALL: Your Honor, we oppose that instruction
3 based upon the fact that it unduly singles out one single --
4 singles out a witness, and requests that he be treated
5 differently than all the other witnesses, when in fact many
6 of the witnesses had a same bias, or a bias with respect to
7 their testimony. So we think it's unfair, it's -- that issue
8 is covered in other instructions, specifically a credibility
9 instruction, which does cover bias. And so for those reasons
10 we oppose that instruction.

11 THE COURT: The clerk will mark this instruction
12 defendant's instruction next in order.

13 THE CLERK: E.

14 THE COURT: And rejected. And I am finding that it
15 is unnecessary given instruction 38, which discusses all the
16 different elements to be considered by the jury in reaching a
17 credibility issue. I also find that it would be
18 inappropriate to single out any one witness, especially in a
19 case where most of the witnesses, the lay witnesses certainly
20 had interests other than solely being a lay witness here. So
21 based upon the allegations of the gang enhancement.
22 Therefore I find it to be inappropriate in this case, and
23 reject it.

24 MR. LYON: That was all the additional proposed

1 instructions we had, your Honor.

2 THE COURT: State have any objection to the packet
3 as I intend to give it now, the instructions?

4 MR. HALL: No objection.

5 THE COURT: Defendants, any objection to the packet
6 as I intend to give it?

7 MR. LYON: No, your Honor.

8 THE COURT: Now, with regard to instruction number
9 13, there was some discussion in chambers regarding that -- I
10 guess, I'm sorry, it's instruction 12. And it's my
11 understanding because of the length of that instruction, I
12 think it's seven pages, counsel is stipulating the Court will
13 not read that instruction to the jury. It will go to the
14 jury, but I won't read the instruction. Is that correct?

15 MR. LYON: That's correct, your Honor.

16 MR. HALL: Correct.

17 THE COURT: That stipulation will be granted, and
18 the Court will not read that instruction.

19 Okay, we have verdict forms. Counsel, you've been
20 provided with copies of the verdict forms. State, do you
21 have any corrections or changes to make to the verdict forms?

22 MR. HALL: No, your Honor.

23 THE COURT: Defense, do you have any changes,
24 corrections or objections to the verdict form?

1 MR. LYON: No, your Honor.

2 THE COURT: The verdict forms will be provided to
3 the clerk for presentation to the jury once they begin
4 deliberating.

5 Counsel, do you stipulate to the Court reading the
6 instructions prior to closing arguments?

7 MR. LYON: Yes, your Honor.

8 MR. HALL: Yes, your Honor.

9 THE COURT: With regard to a couple of -- we have
10 some evidentiary issues that I'd like to rule on and resolve.
11 One is the 28 series of photographs, they were marked 28A
12 through G as in George, but the clerk -- we thought on the
13 exhibit list it said 28 A through G George, but the clerk
14 actually marked 28 through H, Harry. So she has those
15 exhibits for your review at this time. You all stipulated to
16 the 28 series being admitted, and we didn't know what that
17 stipulation meant in light of the typographical error in the
18 trial exhibit list.

19 MR. LYON: We would stipulate to those exhibits,
20 your Honor.

21 MR. HALL: Same.

22 THE COURT: So you want H, is that correct?

23 MR. LYON: Yes. Yes, your Honor.

24 THE COURT: So the record will reflect 28A through

1 H, as in Harry, are admitted.

2 (Exhibit 28A-H admitted.)

3 THE COURT: There's a request from the State for me
4 to admit Exhibit 39-1, an autopsy photograph. There was an
5 objection by the defense. I'm denying the request of the
6 State, it will not be admitted. I think it's adequately
7 covered in the pictures that were provided previously and
8 utilized by the medical examiner.

9 With regard to Exhibit 62, and 66 through 69, there
10 are red and yellow flags on those exhibits. You all moved
11 their admission, but do you stipulate to the removal of the
12 red and yellow flags?

13 MR. LYON: Yes, your Honor.

14 THE COURT: Do you want to look at it?

15 MR. HALL: No, I know what they are. And --

16 THE COURT: I don't know if you want them off. We
17 don't know.

18 MR. HALL: I don't think they need to come off. I
19 think it's an aid to the jury if they want to track down
20 these particular calls. What they are is the raw phone
21 records that -- and so there's obviously a large stack of
22 paper, and to go through those and try and find a specific
23 telephone call would be almost impossible for our jurors. So
24 it doesn't necessarily highlight anything, but the calls

1 we've already highlighted by virtue of the compilation that
2 we have in Exhibit No. 64 and 66. So I don't think they need
3 to come off, it doesn't unduly highlight any testimony, which
4 is typically the objection.

5 MR. LYON: My understanding was those tabs were put
6 on there to facilitate the witness' testimony once those
7 binders were used during trial, not to comment on the
8 evidence or assist the jury in finding phone calls. And so
9 we would object on that basis. That wasn't what was
10 originally represented by the State as the purpose of those
11 flags.

12 THE COURT: Based upon that understanding when you
13 marked the exhibits, I'm going to direct the clerk to go
14 ahead and take the flags off.

15 Exhibit 117A through F, that is our four DVDs and
16 two diagrams. Those DVDs were not played during the course
17 of the trial, but you all stipulated to their admission. You
18 also stipulated to Exhibit 160, which we think is a
19 transcript of the fourth DVD. So my habit is usually not to
20 admit both oral statements as well as transcripts. The
21 transcripts are usually used for record keeping purposes, and
22 to allow the court reporters not to prepare a transcript of
23 the CD that's played, if it's admitted and played into the
24 record. So we usually mark those for demonstrative purposes

1 only. We're not sure what your intent was.

2 MR. LYON: The other issue, your Honor, is the
3 transcript, we do have some redactions that need to be made
4 to the transcript. Because there are references to -- within
5 the transcript. References, for example, to the gun issue
6 between Mr. Rudnick and Mr. Gonzalez that the Court has
7 previously ruled on. So I think it would be appropriate not
8 to admit the audio recordings, because that's going to be
9 virtually impossible to redact, and just put in the
10 transcript. But we do need to redact those -- Mr. Houston's
11 gone through those, I have a list of the page numbers and
12 lines that need to be redacted.

13 THE COURT: Counsel for the State?

14 MR. LYON: And we've given this to the State, I
15 believe.

16 MR. HALL: Right. We disagree with their
17 contention that it needs to be redacted. The defendant took
18 the stand. The transcript references the defendant meeting
19 with Gary Rudnick, it references him dropping off the gun
20 that he said he threw in the trash, it references -- it does
21 reference some drug trafficking down in Mexico, so we would
22 agree to redact the drug trafficking. Other than that, I
23 don't think it should redacted.

24 MR. LYON: The Court has already ruled on this, and

1 it would be unfair to have that information come in through
2 the back door, so to speak.

3 THE COURT: Well, I ruled prior to your client
4 taking the stand, so my ruling wouldn't stand if your client
5 testified to something different. This would certainly go to
6 impeachment. The problem --

7 MR. LYON: He wasn't asked these questions, though,
8 your Honor.

9 THE COURT: Well, the problem I have is you all
10 stipulated to this, so it's admitted. And now you want me to
11 unadmit it. Which if I have a good legal basis to do it,
12 maybe I can. But doesn't sound like if there's something in
13 the transcript that said -- that your client made a statement
14 to -- that Mr. Rudnick said your client gave him the weapon
15 and he disposed of it? Is that --

16 MR. HOUSTON: No, your Honor, this is about the
17 case where Rudnick claimed that the client had visited him in
18 the past, and when he would go into a foreign country he
19 would leave a gun at his house, and when he would return he
20 would pick the gun up. It had nothing to do with the
21 September 23rd incident.

22 THE COURT: Can I have the list of redactions that
23 you're asking for?

24 MR. HOUSTON: Sure.

1 MR. HALL: Your Honor, that in itself is a
2 misstatement. Because at page 170 one of the redactions that
3 they wanted it says, "This is where I get kind of confused,
4 okay, and I told --" I'm sorry, it says, "I just have one
5 question that I can think of." And this is Ron Bigby asking
6 Gary Rudnick. "What happened to the gun?"

7 "Romey called me up like a couple days later, like
8 after the meeting, he was going to come by my house and drop
9 off the gun. And that the gun was going to go to Tijuana, so
10 wherever -- whoever was running the run-down, because there
11 was a drug -- we had go down and get drugs soon, it was like
12 right after that we had to make a delivery, come back up to
13 California. So whoever was going to Tijuana was going to
14 take that drug and drop it off to Tijuana."

15 MR. HOUSTON: Your Honor, I think that's what he
16 certainly could have asked him on the witness stand, and he
17 didn't.

18 MR. HALL: We asked what happened to the gun and he
19 said he threw it in the trash.

20 THE COURT: That's all he has to do.

21 MR. HOUSTON: Well, when you impeach, I guess is
22 the point, then impeach at that time what the witness said.

23 THE COURT: This isn't purely impeachable, but you
24 have to remember this is a statement by a defendant who is on

1 trial, which means it's not hearsay. It's admissible. His
2 whole statement is admissible. Unless there's a basis to
3 exclude it because it is highly prejudicial, inflammatory,
4 irrelevant, and those things. Now, that statement, you all
5 stipulated to not use parts of this initially.

6 MR. HOUSTON: Right.

7 THE COURT: But once your client took the stand,
8 it's possible that statements he made prior become
9 admissible.

10 MR. HOUSTON: I agree.

11 THE COURT: And not just for impeachment.

12 MR. HOUSTON: I agree. The difference is if you
13 ask the witness while the witness is on the witness stand, he
14 has the opportunity to then clarify or in fact correct his
15 answer. So if it's being used for his impeaching theory,
16 then clearly that would be inappropriate. What would then be
17 the other theory?

18 THE COURT: It's a prior inconsistent statement,
19 that's not pure impeachment.

20 MR. HOUSTON: Well, your Honor, if you've got --

21 THE COURT: Against interest. This is a statement
22 against interest, isn't it?

23 MR. HOUSTON: If we're talking about the one
24 statement Mr. Hall is reading concerning the page 170, I

1 believe, that is his argument. But as the Court will note,
2 there are a number of redactions. And primarily I was
3 directing those redactions to the areas of concern regarding
4 Mr. Gonzalez's supposed visits in the past, before this event
5 even occurred. And I think you'll notice those are the
6 specifics of the first -- until we get to page 170, 171, 172
7 and 173, those deal exclusively with that area.

8 THE COURT: Okay, it's -- on your list it just says
9 page 171.

10 MR. HOUSTON: Right.

11 THE COURT: Is it the whole page?

12 MR. HOUSTON: Yes, your Honor, if there were no
13 page and line numbers, yes.

14 THE COURT: And that's based -- isn't all that
15 discussion about what was going to happen -- what was the
16 discussion afterwards, that relates to that text message that
17 was admitted?

18 MR. HOUSTON: Yes, your Honor, that would be
19 relating to that text message.

20 THE COURT: Okay. And what about 172?

21 MR. HOUSTON: Same issue, I believe, your Honor.
22 This also incorporated the statements of, quote, running
23 drugs, that I think the Court had also ruled inadmissible.
24 And again, no questions were asked of the defendant as far as

1 that issue.

2 THE COURT: Okay, Mr. Hall, when you said you
3 agreed about the drugs, are you referring -- are you agreeing
4 to, "so whoever was running the run-down, because that was
5 drugs," are you referring to that? Line 18, page 170?

6 MR. HALL: Right.

7 THE COURT: You're agreeing to redact that?

8 MR. HALL: I'll redact that. And that would
9 continue on, your Honor.

10 THE COURT: Okay now, 67, you asked for page 67,
11 line 3 through 19, is that correct?

12 MR. HOUSTON: Correct, your Honor. That's the way
13 he speaks. "We had a big meeting, after a couple of days he
14 was going to drop off a gun at my house. I don't know if it
15 was the gun that he used or just a gun that he always drops
16 off at my house."

17 I think that's where he's saying he doesn't even
18 know whether it's the same weapon that would have been
19 utilized on September 23rd.

20 THE COURT: And then page 26 is, "So when Romey
21 would go across the border all the time he would always stop
22 at my house and lock up his guns"?

23 MR. HOUSTON: Right, that one has no reference
24 point to September 23rd at all.

1 THE COURT: Okay, that was the subject of a request
2 to have a hearing before it was put out, and I think you
3 withdrew that request, Mr. Hall, after the testimony of
4 Mr. Rudnick, clarifying the statement. So I'm going to allow
5 for that to be redacted. That's page 26, the request,
6 page --

7 MR. HOUSTON: Your Honor, that's 23 through 24?

8 THE COURT: Yes.

9 MR. HOUSTON: Thank you, your Honor.

10 THE COURT: Page 67, that relates directly to the
11 conversations and testimony of the witness, of the accused,
12 therefore I'm going to deny your request to redact. Page
13 170 --

14 MR. HOUSTON: Your Honor, there's one portion that
15 says, "I don't know if it was the gun that he used or just
16 the gun that he always drops off at my house." And with
17 respect I would ask that we redact, "or just the gun that he
18 always drops off at my house," that doesn't relate to the
19 September --

20 MR. HALL: Well, it relates to him saying he didn't
21 have a gun. And this says he always has a gun.

22 THE COURT: I'm going to overrule that request.

23 MR. HOUSTON: Okay.

24 THE COURT: 170, lines 14 through 28. That will be

1 redacted to delete the discussion about drug trafficking.

2 MR. HOUSTON: Thank you, your Honor.

3 THE COURT: You'll have to figure out how to do
4 that. And then page 171, I haven't carefully read the entire
5 page of 171, 172, and 173, but I don't think there's anything
6 here about the drug trafficking, which was the subject of the
7 Petrocelli hearing.

8 MR. HOUSTON: No, your Honor.

9 THE COURT: And therefore your request is denied.
10 So what I'd like the State to do is make those redactions,
11 provide it to the defense, and then we will have Exhibit 160
12 as redacted marked as 160A. And that will be -- or mark it
13 as 160, and mark the unredacted version as 160A. So you're
14 going to have to recopy the whole thing. But for the jury it
15 won't have any highlights, it will just have the redaction.

16 MR. HALL: Okay.

17 THE COURT: Okay. Now, Mr. Hall, I need your
18 position with regard to 117. The defense is asking that we
19 use the transcript because it can be redacted easier than
20 117A. That was stipulated in also, but it's not usually my
21 policy to give a transcript to the jury and the DVD.

22 MR. HALL: We'd just go with the transcript.

23 THE COURT: Okay. Counsel?

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

1 THE COURT: So 117A through F are withdrawn. There
2 were also two diagrams contained in that package that were
3 written by Mr. Rudnick as he was being interviewed.

4 MR. HALL: Didn't use them.

5 THE COURT: Okay, so --

6 MR. HALL: Well, I would like the diagrams in since
7 the statement does reference the diagrams. So.

8 THE COURT: Okay, so 117A through D, the DVDs, will
9 be withdrawn. Held in the court record, but not admitted to
10 the jury. Exhibit E and F, which are diagrams, will remain
11 exhibits. And admitted to the jury.

12 Exhibit 159 was admitted for demonstrative purposes
13 while a CD was played. And it's a redacted transcript of an
14 interview between Ernesto Gonzalez and Detective Kirby. The
15 Court, based on the motion of the defense, asked the State to
16 not play that portion that dealt with the gun. And then I
17 think the State, after that, requested the ability to put
18 that evidence before the jury.

19 MR. HALL: Correct.

20 THE COURT: And I have not ruled on that, and I
21 don't know if the defense has made a record with regard to
22 your position. The CD is not redacted, we just stopped the
23 playing of the CD, and it's marked as 162, and it's admitted.
24 And the transcript has not been redacted, I just drew a line

1 through where to stop, and that was marked as Exhibit 159 and
2 admitted for demonstrative purposes.

3 Counsel, any objection to that portion of the
4 transcript now coming in?

5 MR. LYON: Yes, I think we did present the argument
6 that it was improper impeachment, similar to the argument we
7 just raised with Mr. Rudnick. If this was something that
8 Mr. Hall wanted to impeach Mr. Gonzalez with, the time to do
9 that was when he was testifying, not by way of now adding
10 this information in after the fact.

11 THE COURT: Mr. Hall?

12 MR. HALL: I recall asking the defendant about the
13 gun, what happened to the gun, and this goes directly to his
14 credibility, and that's why I think it's relevant and
15 probative and should be admitted.

16 MR. LYON: And I think the other issue, now that
17 I'm remembering it, was Mr. Gonzalez, when asked, did he lie
18 or mislead Officer Kirby, or not tell Officer Kirby the
19 truth, Mr. Gonzalez admitted that he did not tell Officer
20 Kirby the truth.

21 So there was no need to impeach that, because
22 Mr. Gonzalez was on the stand saying yes, I did not tell
23 Officer Kirby everything about the gun.

24 THE COURT: And the gun we're talking about is the

1 gun that he was arrested in possession of?

2 MR. LYON: Correct, it has nothing to do with the
3 September 23rd incident. This is all related to possession,
4 and what he did with the gun on -- this Steyr event.

5 THE COURT: I think it has do with how he got the
6 Steyr pistol, in that he said on the stand on direct
7 testimony that he bought it at a gun show, and he told
8 Detective Kirby that he didn't know where he had gotten it.
9 Maybe somebody had given it to him, one of his club members,
10 but he didn't know, and he didn't know where it came from.

11 MR. LYON: Right. And so I think the question
12 posed to him, were you being truthful with Detective Kirby or
13 Officer Kirby, and he said no, I wasn't truthful with him
14 when I was discussing how I got the gun.

15 And so he used this to -- I mean, that is the
16 truth, he wasn't being truthful with Officer Kirby. So for
17 impeachment purposes there's nothing to impeach.

18 THE COURT: This particular testimony is -- and I
19 guess I'll give the State an opportunity to tell me how it's
20 relevant in and of itself to this particular crime. Unlike
21 the other testimony that I'm letting in over the objection,
22 because it is relevant to the crime charged, and it's a prior
23 inconsistent statement made by the defendant against
24 interest.

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1 This is not necessarily a statement against
2 interest made by the defendant in and of itself, and it
3 impeaches on an extrinsic item, and it's -- he's admitted he
4 lied. So tell me why I'd let it in.

5 MR. HALL: I'll submit it, your Honor.

6 THE COURT: I'm going to leave it out, we'll redact
7 the transcript. 159, the clerk will redact -- will mark this
8 as 159A, and will redact the last pages after my red line,
9 and mark that 159, and that will be the one that goes to the
10 jury.

11 The actual interview that was played can't be
12 redacted on short notice, I don't think, can it?

13 MR. HALL: We could probably get it in.

14 THE COURT: It's up to you, whichever way you want
15 to do it. Do you want -- currently 159 in its redacted
16 format as admitted, but we don't have it redacted. And 160,
17 the transcript -- I'm sorry, 159 is the transcript. Sorry,
18 162 is the CD that has not been redacted.

19 MR. HALL: We can go with the transcript, I think
20 it's a good idea.

21 THE COURT: So we'll go with 159 and the transcript
22 instead. So the clerk will mark that as admitted, it will go
23 to the jury. 162 will remain part of the record but not go to
24 the jury because it's not redacted.

1 (Exhibit 159 admitted.)

2 THE COURT: Are we okay, Marci, on 164 and 165?
3 Okay, 164 and 165 were offered at the end of the day. So
4 they were marked. And then that was some of the discussion
5 at the bench that you wanted to go over all the evidence, and
6 the defense stipulated to letting you do whatever you asked
7 for stuff to be admitted. So all we have are 164 and 165
8 marked.

9 MR. HALL: Move for the admission.

10 MR. LYON: If we could see those again, your Honor.

11 THE COURT: Sure.

12 MR. LYON: I don't remember what they are.

13 THE COURT: Counsel.

14 MR. HOUSTON: Your Honor on Exhibits 164 and 165,
15 they constitute bits and pieces of the January 5th, 2012
16 debrief by Eric Bennett and Neil, Homeland Security, as it
17 concerns their debrief of Mr. Rudnick. And as a consequence,
18 I think what the State has done is pulled some pages out of
19 the transcript and asked the Court to allow them to be
20 introduced for the jury's use. Clearly, they can argue what
21 they need to argue. They had Bennett on the stand and
22 certainly could have asked him in reference to issues
23 concerning the transcript, if their worry was trying to
24 straighten out something Mr. Rudnick had said.

1 But again, we're being asked to accept a portion of
2 a transcript which we would object to on both counts, 64 and
3 65.

4 THE COURT: Has the whole transcript been marked in
5 its entirety?

6 MR. HOUSTON: No, your Honor, only these two
7 portions.

8 THE COURT: Okay.

9 MR. HOUSTON: I'm sorry.

10 THE COURT: Can I look at them? Thank you.
11 Mr. Hall.

12 MR. HALL: Your Honor, this goes to the statements
13 that were taken out of context by defense counsel.
14 Specifically, I think the pages in the 40 page area talk
15 about Mr. Rudnick, and Mr. Houston made a big deal out of
16 Gary Rudnick, he was trying to claim that Gary Rudnick was
17 extremely intoxicated on September 23rd. And that portion of
18 the transcript talks about Gary Rudnick being -- having a bad
19 day, his head being messed up when he was arrested. So he
20 totally took those out of context and put them on the wrong
21 day. And additionally, those talk about there not being any
22 kind of a negotiation, not talking about this case. When
23 Mr. Houston was trying to claim that Rudnick was getting a
24 deal from Bennett by not following through with charges

1 related to drug trafficking, and making a deal on this case,
2 and getting the benefit on this case.

3 So that's what those pages go to, under 47.020 I'm
4 entitled to admit those portions of the transcript, and if he
5 wants the whole transcript of the deal be admitted I would
6 certainly agree to that.

7 MR. HOUSTON: Your Honor, the problem with the
8 thought process is this. Mr. Hall had both Mr. Rudnick and
9 Detective Bennett to speak with, to clarify any issues or
10 questions he may have had as it concerned Mr. Rudnick's
11 testimony. And this is kind of an after the fact remedy,
12 because it was forgotten in reference of either direct of
13 Bennett or direct of Rudnick. And this is an attempt to
14 shore up something that should have been taken care of on his
15 redirect on one or both of these specific witnesses.

16 And at this point now we're being asked to allow
17 additional testimony essentially by virtue of the
18 transcripts.

19 MR. HALL: So clearly, he wants to continue with
20 his charade and deception, and when we try to correct it by
21 introducing the appropriate portions of the transcript, he
22 wants to object.

23 MR. HOUSTON: Well, your Honor, I think if you look
24 at the February 15th transcript, you'll see Mr. Rudnick says

1 he had a lot to drink that day. And if the Court wants to
2 give me a second, I'll give you a page and line cite. That's
3 hardly a charade.

4 MR. HALL: That's not what he's talking about,
5 though.

6 MR. HOUSTON: The concept is if he's concerned
7 about Rudnick being drunk that day, he's saying it repeatedly
8 in different areas. But all that being said, I think it's
9 another way of just trying to correct a mistake that occurred
10 during a portion of recross.

11 THE COURT: Okay, I'm reading this and I'm not
12 seeing what the relevance of these particular portions are.
13 So I think you're going to have to be more specific with me
14 to tell me what part Mr. Houston misled the jury about in his
15 direct questioning, or his cross-examination. And then I
16 guess the question is why should we admit the transcript
17 rather than a person to testify in rebuttal.

18 MR. HALL: Okay, let him talk about it, it doesn't
19 matter. Keep it out, let's just move on. I reserve the
20 right to introduce it if he starts lying about it.

21 THE COURT: Yeah. I would like you both to review
22 this and make sure there's nothing in here that was taken out
23 of context which you'll somehow argue --

24 MR. HALL: I'll tell you what's out of context,

1 specifically. I'll show you real quick.

2 THE COURT: Obviously a question, a leading
3 question isn't evidence. So if the question itself was taken
4 out of context --

5 MR. HALL: So first of all he was asking about
6 promises, and we asked about promises, and we did cover that
7 with Eric Bennett. But he says right here, "Obviously, well,
8 I can't make any promises, right?" And so that goes to
9 referring to page 42 of Exhibit 165. And they go on to
10 discuss the fact that there were no promises regarding that
11 or witness protection. Then I go to pages --

12 THE COURT: But didn't Eric Bennett say that on
13 the stand?

14 MR. HALL: He did say that. But just wait and see
15 what happens tomorrow when he starts arguing that there in
16 fact was promises from Eric Bennett. That's the purpose of
17 this.

18 MR. HOUSTON: Your Honor, my argument tomorrow is
19 not whether or not it was Eric Bennett's or whomever, it's
20 clear that Mr. Rudnick felt there were certain promises made
21 to him, and that's evidenced by the jail calls. I mean, I
22 don't create Mr. Rudnick's conversations with his wife, the
23 Court heard them.

24 MR. HALL: Well, there's conversations with his

1 wife, and there's conversations with the guy who can make the
2 deal, that's the point.

3 MR. HOUSTON: Actually, the guy said that he'd make
4 all of his cooperation known to Mr. Hall. That's what he
5 said. So the concept of whether there were promises or not,
6 we also know there's portions where this transcript actually
7 begins literally in the middle of -- excuse me, is shut off
8 in the middle of a debrief. It's not even a complete
9 transcript. Somebody realized they made a mistake and left
10 the recorder on and they went and turned it off. And so
11 really? That doesn't seem to sound too genuine as far as the
12 purpose of this transcript to begin with.

13 This transcript was a mistake, and I think the
14 Court may recall there was a lot of discussion about why it
15 wasn't turned over. And at first everyone was told this was
16 not a recorded event, and then they found the one half of the
17 transcript later. And that's when it got turned over.

18 So this -- everything we're speaking of, Bennett
19 had a chance to talk about. Bennett rebuffed it, Bennett
20 said it didn't happen, Bennett said he didn't make any
21 promises, and so be it. It is argument from that point.
22 Mr. Hall has in what he is now attempting to offer to put in,
23 and it's already been taken by way of testimony from live
24 witnesses. As opposed to a transcript, attempting now at

1 this point to somehow vouch or refurb the witness who has
2 already testified.

3 MR. HALL: Specifically at page 22, where -- in
4 Exhibit 165 where the defense was trying to claim that he was
5 making phone calls to buddies. This transcript goes
6 specifically to that. Where he says, quote, "I mean, I'm
7 going to do what I got to do, 'cause it's messed up my life
8 bad."

9 "Well, it's, like, should be pretty clear that,
10 you know, the club obviously did this shit to you."

11 "Yeah, so I think at this point in life --" so it
12 puts everything in context with respect to the interview of
13 Eric Bennett. So that's why I thought it was important.

14 THE COURT: Okay, I think Eric Bennett did testify
15 as to there were no promises, so that evidence can be argued
16 by you without the transcript coming in.

17 The question of why he was making a statement, is
18 that what you're referring to? That he was making the
19 statement because he was in outs with the Vagos? Is that
20 what that relates to?

21 MR. HALL: No --

22 THE COURT: The purpose --

23 MR. HALL: No, that was the question, the man
24 trying to get him to give them some information about the

1 Vagos. So it was kind of preliminary discussion.

2 THE COURT: Okay, at this point I am not going to
3 admit the exhibit. But I think there's enough evidence in
4 the record already from Detective Bennett to allow you to
5 argue the flip side of Mr. Houston's argument.

6 Okay, you all marked 158, which was an indictment.
7 I think you meant it to relate to Gary Rudnick, because you
8 also marked and stipulated to the admission of the transcript
9 of his guilty plea, and his guilty plea memorandum.

10 The problem is he did not plead to that indictment.
11 He pled to the --

12 MR. HALL: That's not the purpose of the
13 indictment.

14 THE COURT: Oh, okay. So which indictment did you
15 want?

16 MR. HALL: The original. The first one. November
17 9th.

18 THE COURT: Okay. And is that the one in this
19 book? Then that's the exhibit that was marked and admitted.
20 Thank you. Then there's nothing further with regard to --
21 that we have with regard to evidence.

22 Many of the exhibits that were stipulated admitted
23 were not shown to the jury, and they're weapons that are
24 contained in boxes of evidence.

1 MR. HALL: Right.

2 THE COURT: I would like to have a stipulation from
3 you that we can have the bailiff inspect all of those boxes
4 before they go into the jury room, confirming two things.
5 One, that they're not operable, that they've been rendered
6 safe; and two, that there's no bullets contained in the
7 envelopes or boxes that are going in.

8 Our normal process is to give the jury all the
9 tangible evidence except bullets, and retain the bullets. If
10 they want the bullets, we exchange them for the weapons,
11 that's our normal process.

12 MR. HOUSTON: That's stipulated, your Honor.

13 MR. HALL: Stipulate.

14 THE COURT: So we will do that, and the bailiff
15 will assist the court clerk in making those -- and so some of
16 the boxes will be -- have to be opened by the bailiff.

17 MR. HOUSTON: That's fine.

18 THE COURT: Because they haven't been opened so
19 far. Okay, I think that's everything that we had. Were
20 there any other exhibits that were not admitted or should
21 have not been admitted?

22 MR. HALL: I think we're okay.

23 MR. HOUSTON: I guess we're ready, your Honor.

24 THE COURT: Okay. And we're ready. We'll see you

1 tomorrow morning at --

2 MR. LYON: Your Honor, there was one other issue.

3 THE COURT: Okay.

4 MR. LYON: Regarding the rebuttal witness.

5 MR. HOUSTON: Oh, yes.

6 MR. LYON: It's our understanding that the witness
7 is coming in to basically say that -- to rebut Mr. Gonzalez's
8 testimony, reportedly, that there is -- that there was no
9 rivalry between the San Jose Vagos and the San Jose Hells
10 Angels. This is something that has been discussed numerous
11 times throughout the course of the trial. In our research
12 there's Sebastian versus State case at 113 Nevada 669, and
13 the Morrison case at 101 Nevada 233, that suggest that proper
14 rebuttal is for any new issue that has been raised in the
15 defense case.

16 It certainly wasn't a new issue that was raised by
17 Mr. Gonzalez -- or by us in the defense. The rivalry or
18 purported rivalry between the two clubs in San Jose, again,
19 has been replete throughout this case.

20 Additionally, Mr. Gonzalez's testimony to that I
21 believe is basically that they coexist with each other, and
22 we're uncertain as to whether this witness is -- you know,
23 how that's rebuttal to Mr. Gonzalez's testimony. So we would
24 request at least an offer of proof to get some understanding

1 before we get in the morning and go put this testimony on.

2 MR. HALL: I'm not going to call anybody.

3 THE COURT: Okay.

4 MR. HOUSTON: Thank you, your Honor.

5 THE COURT: Thank you, court is in recess.

6 (Recess.)

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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 REPORTER'S TRANSCRIPT OF PROCEEDINGS

17 JURY TRIAL

18 WEDNESDAY, AUGUST 7, 2013

19 RENO, NEVADA

20 COPY

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22
23
24 Reported By: MARCIA FERRELL, CCR No. 797

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1 RENO, NEVADA, WEDNESDAY, AUGUST 7, 2013, 7:40 A.M.

2 (Jury absent.)

3 THE COURT: Okay, the record should reflect we're
4 convened outside the presence of the jury. My understanding
5 is that we settled the instructions yesterday afternoon, and
6 we now have a substituted 25 that reflected the discussions.
7 Have you all had an opportunity to review that exhibit 25 --
8 instruction 25?

9 MR. HALL: Yes.

10 MR. LYON: Yes, your Honor.

11 THE COURT: And does it reflect the discussion?

12 MR. LYON: It does, your Honor.

13 THE COURT: Mr. Hall?

14 MR. HALL: Yes, it's fine.

15 THE COURT: Okay. So we'll use that. It's also my
16 understanding that Exhibit 78E was also admitted or should be
17 admitted. The series 78 was offered, and the Court
18 enumerated the alpha but did not realize there was a 78E
19 also. So that should have been admitted when you offered 78.
20 Any objection, Mr. Houston?

21 MR. HOUSTON: One second please, your Honor.

22 THE COURT: Okay.

23 MR. HOUSTON: Your Honor --

24 THE COURT: Clerk will show you.

1 MR. HOUSTON: I don't have a 78. Which number
2 again, your Honor? 78?

3 No objection, your Honor.

4 THE COURT: Okay, so any objection, Mr. Houston?

5 MR. HOUSTON: No, your Honor, thank you.

6 THE COURT: Mr. Stege?

7 MR. STEGE: No.

8 THE COURT: Okay, then that's handled. Also I
9 think it's appropriate to make a record with regard to the
10 settlement of the instructions, that the defense specifically
11 requested that no lesser included instructions be offered
12 with regard to any of the charges. It's my understanding
13 that was a specific request, and a strategic decision made by
14 the defense. Mr. Houston, would you make a record?

15 MR. HOUSTON: Yes, your Honor, we had the
16 opportunity to speak with Mr. Gonzalez and presented the
17 notion of either arguing for and hopefully then receiving
18 lesser includes. During the course of our discussion it was
19 Mr. Gonzalez's decision, and the counsel concur, that we do
20 not want lesser included in this case. It's either going to
21 be one way or another, as opposed to meeting in the middle.
22 He understands the significance of that, and so therefore we
23 had requested no lesser included. Mr. Gonzalez of course
24 concurs.

1 THE COURT: Mr. Gonzalez, you understand what's
2 going on here?

3 DEFENDANT: Yes, your Honor.

4 THE COURT: And you agree with what Mr. Houston
5 said?

6 DEFENDANT: Definitely I do, yes.

7 THE COURT: Is the State comfortable with the
8 record?

9 MR. STEGE: Yes, your Honor, including that he's
10 specifically not asking for a manslaughter lesser included.

11 MR. HOUSTON: Specifically, we're not asking for a
12 manslaughter lesser included.

13 THE COURT: Or any others that may have been
14 available.

15 MR. HOUSTON: Or any other.

16 THE COURT: Okay, thank you.

17 MR. HOUSTON: Thank you.

18 THE COURT: Also yesterday a motion to compel
19 election between multiplicitous murder counts was offered and
20 made by the defense, argued by the State. The Court at this
21 time is denying that motion. I think we dealt with any
22 issues that we found based upon the charging document in the
23 jury instruction, and I certainly will listen to your
24 arguments if we get to a penalty hearing.

1 MR. HOUSTON: Thank you, your Honor, and I think we
2 have corrected the situation by virtue of the instructions,
3 and we're satisfied.

4 THE COURT: Is there anything further?

5 MR. STEGE: Your Honor, the transcript that we
6 mentioned yesterday afternoon has been reviewed by the
7 defense, this is the transcript of Mr. Rudnick's interview.
8 It's been redacted, the redactions have been shown to defense
9 counsel, and I think it's ready to substitute, enter into
10 evidence.

11 THE COURT: Counsel, have you had an opportunity to
12 review the new Exhibit 160?

13 MR. LYON: I have, your Honor, and it appears to be
14 in accordance with what you ruled on last night.

15 THE COURT: Okay, so the clerk will substitute the
16 redacted version for 160. The nonredacted version is going
17 to be marked --

18 THE CLERK: 160A.

19 THE COURT: And it will remain part of the record
20 but not go to the jury. Okay. Anything further this
21 morning? Everyone ready? All right, let's bring the jury
22 in.

23 (Jury present.)

24 THE COURT: Counsel, will you stipulate to the

1 presence of the jury?

2 MR. HALL: Yes, your Honor.

3 MR. STEGE: Yes.

4 MR. HOUSTON: Yes, your Honor.

5 THE COURT: Thank you, please be seated.

6 Okay, I think we need to formally rest. Has the
7 State -- has the defense rested?

8 MR. HOUSTON: Yes, your Honor.

9 THE COURT: And then the State?

10 MR. HALL: State rests, your Honor.

11 THE COURT: Ladies and gentlemen of the jury, that
12 concludes the evidence that you are going to hear in this
13 case. Now at this stage in the proceedings you will receive
14 the law that applies to this case. Now, I wish that I could
15 just discuss the law with you, and give it to you in terms
16 that you might be able to understand better than the written
17 instructions, but the law does not permit me to do that. I
18 must read to you specific written instructions. Now, as I
19 read these instructions to you do not worry about taking
20 notes or keeping a record of it. You will have a set of
21 these instructions with you in the jury room while you
22 deliberate. Just sit back, relax, listen to the law. If at
23 any point you become confused by one particular instruction,
24 just wait and get back on track with the next one, and review

1 it in the jury room.

2 (The Court instructed the jury.)

3 Ladies and gentlemen of the jury, that is the
4 instructions of the Court. Mr. Hall is going to be making
5 his opening statement, but before I let him start I'm going
6 to ask that you all stand up and stretch, because I know that
7 was a long bit of reading you just heard.

8 MR. HALL: Your Honor?

9 THE COURT: Yes.

10 MR. HALL: May we approach?

11 THE COURT: Yes.

12 (Unrecorded discussion at the bench.)

13 THE COURT: Stretch everybody. Get the air going
14 in your mind.

15 Ladies and gentlemen of the jury, we spent all day
16 on these instructions and apparently we left one out, so I
17 want to read that to you now. And it will be in your packet,
18 it will be a part of the written instructions that you
19 received.

20 With respect to counts 5, 6 and 7, the application
21 of conspiracy and/or aiding and abetting liability, it must
22 be shown that the defendant had the specific intent to commit
23 the crime charged. And you will get that in your packet.

24 Okay, we are now ready for the State to make their

1 opening closing argument. Ladies and gentlemen of the jury,
2 the State has the burden, therefore they make the first
3 closing argument. Then the defense will make their closing
4 argument, and then the State will be allowed to conclude
5 their argument. Mr. Hall.

6 MR. HALL: Thank you, your Honor. May it please
7 the Court. Good morning, ladies and gentlemen. Before I get
8 started with my closing remarks, I'd like to thank each and
9 every one of you for your time and effort put into listening
10 this case, evaluating the evidence, considering the testimony
11 of the witnesses. I know it's not easy for you to sit here
12 for two hour stretches and listen to people talk and listen
13 to people argue over evidence. And I know some of it was
14 very dry, and it was a great effort, so I appreciate your
15 time and effort put into this case.

16 Now, this case, the crux of this case is a gang
17 fight at the Nugget between the Vagos and Hells Angels. You
18 know that this is a gang fight by virtue of all the witnesses
19 that testified. It was evident from the beginning of that
20 night, when the Hells Angels checked in. If you recall the
21 testimony of Donald Sandy, when they checked in there were
22 Vagos looking at them, giving them dirty looks. That was
23 consistent throughout the testimony.

24 When we get to the Oyster Bar, it is the Vagos that

1 are pressing the issue. It was quite clear from the
2 testimony and the statements that we heard from Greg Howell,
3 and the testimony from Tara Golbob, that the Hells Angels
4 were having a good time. They didn't want to engage in a
5 fight, but they were being confronted, and there was high
6 tension by virtue of the Vagos confronting the Hells Angels
7 in the Oyster Bar. The air was sucked out of the room.
8 There were issues between those two gangs based upon the
9 territorial aspects of the Hells Angels and the Vagos, that
10 was the Vagos national meeting. So the Vagos were pressing
11 the issue with respect to territory, and not wanting the
12 Hells Angels to be at the Nugget. That was an affront to
13 them.

14 So we move on to, from that area, we know that
15 there was high tension there -- and it wasn't just Gary
16 Rudnick. We know from all the testimony that there were 50
17 to 60 to 70 Vagos. We know the Hells Angels were not
18 planning on fighting at that time, because they're the ones
19 that called police. You recall the testimony of Frank
20 Pesarin, the individual who was running Road Shows, Inc., he
21 had conversations with Bobby Viera, the 72-year-old man that
22 was selling the T-shirts out in front. Said call the police,
23 these guys want to fight, they're fingering the president,
24 the P. The godfather, according to Mr. Emerson. Remember

1 Emerson, the confidential source. That's the person they
2 wanted. And when you think about this case and you evaluate
3 the evidence in whole, who is the focus of Mr. Gonzalez
4 during the course of that evening?

5 Where is Mr. Gonzalez in the Oyster Bar? Watching
6 his P, Cesar Morales, talk to Mr. Pettigrew. Who is Rudnick
7 talking to? Pettigrew. Who is everybody talking to?
8 Pettigrew. Who gets shot? Pettigrew. The guy with no gun,
9 who kicks Mr. Wiggins one time.

10 Now, the defendant, we have -- so we go from the
11 Oyster Bar, now we go over to Trader Dick's. And if you
12 recall the testimony that we had from Tara Golbob, she had
13 left the Oyster Bar, she's the bartender, and now we have all
14 of the Vagos congregated in front of Trader Dick's.

15 So after the first altercation, they go over to
16 Trader Dick's. And what does Rudnick say? They're not going
17 to get to the elevators. Dragon Man, the national
18 sergeant -- international sergeant of arms said don't let
19 them get to the elevators. And where are the Vagos
20 congregating? Right in front of Trader Dick's. They've got
21 numbers. They let most of the Hells Angels go, and then of
22 course Jabbers calls over Jeffrey Pettigrew.

23 They're face-to-face, you can see on the video, and
24 according to the testimony of -- or the statement that you

1 heard from Bobby Viera, they're right in each other's face
2 exchanging FUs. That's a challenge to fight. There was a
3 challenge and acceptance between these two parties, and a
4 fight ensued.

5 And what happens right after that first punch is
6 thrown? A concentrated, coordinated effort by the Vagos to
7 attack Hells Angels. We saw from the video that there were
8 at least four attacks, almost simultaneously, on different
9 members of the Hells Angels. This wasn't just Gary Rudnick,
10 this was the Vagos. This was the Vagos acting in concert, a
11 coordinated effort. A conspiracy, an agreement to commit an
12 unlawful act. An agreement to fight in a public place. And
13 they aided and abetted each other during the course of that
14 fight.

15 Now they want to say self-defense. Oh, I didn't do
16 anything wrong. This is an all or nothing case, right? I
17 mean it's either all or nothing, right? He says
18 self-defense. I was justified in doing this.

19 But the law says no, you are not entitled to
20 self-defense under these circumstances. Why not? Because
21 the Vagos were the initial aggressors. When you look at that
22 instruction, there's no question that the Vagos were the
23 initial aggressors. There's no question about his
24 involvement. From the Oyster Bar to Trader Dick's, when he

1 backs up to make sure his gun is there, his gun is in his
2 pocket, runs back over, watches what's going on, and then
3 he's on a mission to take out Pettigrew.

4 You can see from the video that he's on a mission.
5 You can see that he is moving with purpose. And the purpose
6 is to take out Pettigrew, to make a statement for the Vagos.

7 Now, he wanted to say oh, you know, I didn't want
8 to start any problems with San Jose. We're great buddies.
9 You know, we really get along well. Of course, we know that
10 that statement is belied by statements from Matt Kirby. When
11 he's talking to Matt Kirby, when he had the Steyr, the brass
12 knuckles and the knife for his lifestyle. Then it was like,
13 well, why do you have this? Well, for my lifestyle. Why?
14 Because we don't get along. They don't like us.

15 Of course when he gets up on the stand, oh, yeah,
16 yeah, we get along great. Now, let's analyze that for just a
17 moment. Did he know when he was at the Oyster Bar that there
18 was a problem with San Jose Hells Angels? Of course he did.
19 He knew who those guys were, he knew they were San Jose. And
20 that's why he said San Jose went to go talk to San Jose. So
21 he knew the consequences of a fight when they got to Trader
22 Dick's. He knew the consequences of that issue prior to
23 Pettigrew ever walking down that yellow brick road, that tile
24 walkway, on the way to his room. He knew.

1 So why is he standing there with all of his
2 buddies? It's interesting that Cocky Rocky, the Nomad that
3 Rudnick said he didn't care for, it's interesting, he said he
4 didn't know anything about this conspiracy to take out
5 Pettigrew. But Dragon Man comes up and takes Cocky Rocky
6 away. Then they send the girls away, they put on their
7 gloves, they rally around Rudnick.

8 Now, for the defendant to say we didn't know
9 anything about what was going on, and I didn't want to start
10 a fight with them, is not logical, it's not consistent with
11 the evidence. And it only takes one guy, it only would have
12 taken one guy to get Rudnick out of the mix. But they're not
13 getting Rudnick out of the mix, they're rallying behind him.
14 When he stops Pettigrew, they put the hand on the shoulder,
15 we've got the gloves on, and they get rallied behind him.
16 The defendant then takes a position, a tactical position,
17 where he can eventually take out Pettigrew.

18 Now, let's talk about self-defense. Are the Vagos
19 the initial aggressor? You saw after that first punch Bobby
20 V is kind of holding everybody back. But it's at that time
21 that the San Jose Vagos start attacking Hells Angels.
22 They're the initial aggressors. They were the initial
23 aggressors down at the Oyster Bar, they were the initial
24 aggressors down at Trader Dick's, they continued to fight

1 when they chased Jimmy Arnett -- not Jimmy Arnett, but Jimmy
2 Derosa and Eugene Anaya from the bathroom area, if you recall
3 those two. That wasn't just one Vago that was doing that,
4 that was a whole bunch of Vagos.

5 They continue to attack Hells Angels over at the
6 Oyster Bar when the Tyrell brothers are beaten by, you know,
7 eight to ten Vagos at that area. And now he wants to claim
8 self-defense? Now, let's think about that for just a moment.
9 I have a little dry mouth, do you mind if I get a little
10 drink of water?

11 If you want to assert self-defense, don't you have
12 to come with clean hands, essentially? I mean, would it
13 stand to reason you can provoke a fight, instigate a fight,
14 prepare for a fight, start a fight, and then shoot a guy in
15 the back and claim self-defense or defense of others? That's
16 not the law. And he's not entitled to self-defense when
17 there's a challenge to fight. You're instructed on that, and
18 in the instructions -- right here, and we'll go over those in
19 a little bit.

20 Instruction 34 and instruction 35. If you find
21 that the defendant conspired and/or aided and abetted Gary
22 Rudnick in accepting the challenge to fight and that the
23 respective parties involved in the fight voluntarily entered
24 into mutual combat -- this is a mutual combat, this is a gang

1 fight. We know that from Nancy Owens, when you heard the
2 9-1-1 calls, and the people are calling saying they're pinned
3 down, because people are shooting. We've got a gang fight
4 between the Hells Angels, get down here, help us out. It was
5 obvious that this was a gang fight to a casual observer when
6 they were watching it occur.

7 Or having reason to believe that it would probably
8 or may result in death or serious bodily injury to himself or
9 to others. And we talked about how all of these people are
10 armed and dangerous, you know that the defendant carries
11 guns, knives, brass knuckles for, you know, his lifestyle.
12 So you can anticipate it's probably going to happen when you
13 have a fight between the Hells Angels and the Vagos, that
14 it's going to escalate to the use of deadly force.

15 So any person having any agency in causing the
16 death is not entitled to claim self-defense. Is not entitled
17 to self-defense. They were the initial aggressors, he was
18 involved in the challenge to fight, he had agency in causing
19 the death. Self-defense doesn't apply. That's the case.

20 Now, what I'd like to do before some more comments,
21 i just want to go through the evidence with you a little bit.
22 So you've seen that we've had a lot of evidence over here,
23 and I want to just explain what we have over here, so you're
24 going to have an opportunity to take that back into the jury

1 room with you to look at it. So I don't want you to have to
2 reinvent the wheel here, so I want to run through that real
3 quick so you know what you're looking at.

4 Now, as you saw, there was a number of boxes over
5 there, so we've got vests that we collected from Cocky Rocky
6 and a couple of other Vago individuals that threw their vests
7 down after the shooting started. Those vests were found
8 outside the Nugget over by the parking at the valet parking
9 area. Remember Cocky Rocky was saying that he ran off, those
10 are vests that were found over there. There's other clothing
11 over there, for example the clothing that the defendant had
12 in his possession when he was arrested over in San Francisco.

13 We've got the two vests here, Exhibit 94A,
14 Pettigrew cut. You can see this is a Hells Angels cut,
15 wrapped in plastic because it's a biohazard. You can see the
16 San Jose president patch. And it was this patch that
17 attracted the attention of the Vagos, that attracted the
18 attention of the defendant in this particular case.

19 This was the target. This makes a statement for
20 the Vagos, taking out the president. This shows that they
21 are not, as Mr. Rudnick wanted to say, bitches.

22 And you notice we have a number of binders, and
23 these binders have tabs in them, and the tabs are separated
24 into different portions of evidence. So for example, in tab

1 38 we've got photographs of Villagrana and Pettigrew that
2 were taken by police officers and FIS, people that were
3 collecting the evidence. So for example, Pettigrew's shirt
4 was collected, photographed, as was the other clothing. So
5 you'll have that evidence to review.

6 In 30, for example, if you recall, we had the
7 photographs that were used by Dr. Clark when she was
8 explaining cause and manner of death. We have the Powerpoint
9 presentation, for example, of Kerri Heward, and so on.

10 So each tab has different information. So for
11 example, we have the hotel registration records, the phone
12 records that we talked about are in there. The photographs
13 of the defendant's home, his property, all of those are
14 contained in Trial Exhibit No. 2. Trial exhibit -- binder
15 number one has hotel registration records. We've got some
16 photographs over all the Nugget, and that's kind of how we
17 started off, if you recall. Acquainting everybody with the
18 Nugget. We've got some basic diagrams. If you remember I
19 believe it was Mr. Messina, I can't remember if it was
20 Mr. Messina, just review my records, but the individual that
21 identified the cameras.

22 So if we look at Exhibit 1, if you recall we have
23 the location of all the cameras, and you'll notice that there
24 is no camera inside the Trader Dick's area. So it was

1 interesting that the defendant ducked into Trader Dick's that
2 one time when the fight initially started. And that's when
3 he picked up his Glock, if you recall. And that was kind of
4 an interesting twist, where the defendant indicated he just
5 happened to find -- ducked in there, happened to find a
6 Glock, happened to get it tucked into his pants and run out
7 before anybody noticed. And of course this is when the
8 shooting is going on.

9 So when you start evaluating credibility in this
10 case, I'd like you to examine the case as a whole, and think
11 about that. You know right from the get-go that when he said
12 that he had found a Glock, a pistol that he's familiar with,
13 and that when he runs to the end of the bar that he doesn't
14 even have to check to see if it's loaded, see how it works,
15 he's totally familiar with that gun, it's interesting that he
16 just happens to find that gun. Just in the nick of time, so
17 he can run down and shoot Mr. Pettigrew in the back.

18 I have a box here. These are -- there's a lot of
19 other knives that were found, that I wanted to just indicate
20 that on each of these boxes -- and I'm not going to waste
21 your time in opening up the boxes, but we have a chain of
22 custody, and there's a description of what's in the box, and
23 where the box was found. Some of them are placards, but
24 you'll also be able to determine, you know, where these items

1 were found by virtue of the information on the evidence tag,
2 if we didn't talk about those.

3 Now, I wanted to talk a little bit about the
4 bullets and the bullet trajectory, all right? If you recall,
5 we have those diagrams that were prepared by Michael Ivers.
6 If you recall those, those were those diagrams with all the
7 arrows and circles going all over the place, let's talk about
8 that for a moment here.

9 Now, those diagrams would be in your evidence book,
10 and I believe that's in number 1, at the end of binder number
11 1. And that would be at tab 36. And there are a number of
12 different diagrams that he prepared, and I'd like to show you
13 a couple of those and discuss the forensic evidence. And
14 what I'm going to discuss is the bullet evidence that was
15 found, the number of shots, and the trajectory of those
16 bullets. And we're going to use the exhibits in 36 to go
17 over that.

18 All right, now, this exhibit is 36A. Now, 36A is
19 an overview of all of the different evidence that was
20 collected. And if your eyes are like mine, you're going to
21 need glasses to read this. So that's why we made other --
22 other diagrams, to break this out a little bit. But on this
23 one, the red placards are the red staining, the blood
24 evidence that was collected. The blue placards represent

1 guns or knives. The green placards represent ammunition
2 casings, cartridges or projectiles. Black placards represent
3 all other evidence.

4 So you can see, now, what we -- we also have a big
5 one. All right, and this large poster is 129. There's a
6 little different color coordination on this one, I thought
7 the yellow was a little hard to see, so we changed that up a
8 little bit. But you get an idea of where the evidence was
9 found. So let's walk through the ballistic evidence.

10 As you recall, at the beginning of the fight there
11 was the initial punch thrown, there were glasses smashed on
12 Christopher Knowlton, Eugene Anaya was hit, Mr. Pettigrew was
13 hit in the back of the head, Bobby Viera was knocked to the
14 ground, right? Then after Pettigrew was hit, he pulls his
15 gun, Mr. Villagrana pulls his gun, they back up.

16 Then Mr. Viera is knocked to the ground, and that's
17 when Mr. Pettigrew goes over and smacks Greg Fearn in the
18 face a couple of times. And then you can see that Bobby
19 Viera is knocked down to the ground a second time, and it
20 appears from the video that Jeffrey Pettigrew goes over to
21 protect Bobby Viera. So when he runs over to that area, that
22 is when he's attacked, according to Jimmy Emerson, according
23 to Donald Sandy, according to the video, by several of the
24 Vagos. If you remember, it was even the defendant when I

1 said, well, do you see Pettigrew over in this area when we
2 looked at I believe camera 7 confronting those five or six
3 Vagos right behind -- I believe this is slot 607. So when
4 Pettigrew was right in this area, that's when he gets his
5 nose almost sliced off. I mean, it's cut down to the bone,
6 and that's when he gets injured. We know that because we
7 have the blood on this kiosk here, and if you recall the
8 testimony from Brittany Bagley, that gives us a time frame
9 with respect to that injury.

10 Now, it is right after that confrontation with
11 those individuals that Mr. Pettigrew and Mr. Villagrana start
12 shooting. And if you look at the video, you can see Diego
13 Garcia with his arm extended towards Pettigrew. And if you
14 recall, when we went to I think camera number 3 or 7, that's
15 when you see Diego Garcia with that gun, after he shot,
16 running back towards or past the bathrooms.

17 That's when the shooting starts, right? Let's talk
18 about how many bullets. We know from Pettigrew's gun there
19 was only one shot fired. We know from the evidence that was
20 collected in this area -- and I say this area, basically
21 adjacent from the opening of Trader Dick's, we had three
22 shell casings, and one full bullet, right?

23 So we had two shots, one went into Leo Ramirez.
24 And if you watch the video you'll see Leo Ramirez in this

1 area right behind this slot bank throwing things at Hells
2 Angels. And if you recall that, Leo Ramirez was the VP of
3 Mr. Emerson, so he was supposed to take care of Mr. Emerson,
4 that was his job to follow him around and make sure he didn't
5 get in trouble. But when he saw this fight break out, he
6 runs down and starts attacking Hells Angels.

7 So by virtue of their code of conduct they are
8 required to engage in a fight, if a fight starts, and that's
9 exactly what happened in this particular case.

10 So Villagrana shoots two shots, one striking Leo
11 Ramirez, don't know where the other one went. And then
12 everything kind of stops. And it looks -- you'll also see on
13 the video, when you slow down that video in monitor 1, you
14 can actually see a flash out of Pettigrew's gun in the
15 westerly direction, which is believed to be the bullet that
16 struck Leo Ramirez. Because we've got the bullet out of
17 Diego Garcia's leg, and if you recall, Kerri Heward matched
18 that up to Cesar Villagrana's gun.

19 So everything kind of stops at that point in time.
20 At that point in time you see the Hells Angels regrouping,
21 picking up their stuff, putting their guns away, everything
22 seems to have calmed down. It appears as though the fighting
23 has stopped. But what happens at that point in time? That's
24 when we have that rush of people chasing Eugene Anaya and

1 Jimmy Derosa back from the bathrooms. And so when they
2 notice that there's Vagos rushing towards them, that's when
3 Villagrana pulls out his gun, and you see that shot fired
4 into the floor. So there's your third shell casing into the
5 floor at that point in time. And we've got that other shell
6 casing that is found right over here, I believe it's -- it
7 would probably be either 29 or 51, more likely 51. And then
8 we had another bullet evidence found by the chair, I believe
9 it was right over in this area.

10 Now, in that -- you can see that when we go through
11 the placards that Heather Kohles went through, I know that
12 was kind of a laborious process, but you can find all of the
13 photographs of all these placards in Heather Kohles' section
14 of the evidence binders.

15 So from there we've got Cesar Villagrana, Jeffrey
16 Pettigrew, the rest of the Hells Angels that are there, Jimmy
17 Derosa, Eugene Anaya, Andrew Danley. They start to walk down
18 towards the bathrooms, presumably on their way to the
19 elevator. And at that time they come across Wiggins. Now,
20 Wiggins is one of the people that was chasing the Hells
21 Angels. So he's part of the fight, he's part of the problem.
22 He's instigating this issue, he's the one that caused
23 Villagrana to pull -- one of the people that caused
24 Villagrana to re-draw his gun and shoot into the floor,

1 because they feel that they're still being under attack. I
2 mean, it's quite obvious from the video that that's what
3 happened.

4 So you can see from the video, when you put it on
5 slow motion, that they rush in there when that shot goes off,
6 everybody again gets scared, they retreat, and he falls
7 backwards. And he said he got hit in the back of the head,
8 it makes sense that -- it would make sense that's where he
9 bumped his head. So he's laying there on the floor, you can
10 see his head in the video, and that's when Villagrana and
11 Pettigrew approach. And granted, Pettigrew puts a boot to
12 him, but he tries to say he got kicked in the face and kicked
13 in the head. You saw the photographs of him, he didn't
14 appear to be credible when he was on the stand, he didn't
15 have any injuries. And you recall when Sergeant Walsh walked
16 up to him and said, you know, and started engaging him and
17 finding out what was going on, when he was playing possum
18 laying on the ground, he told her, you know, he said FU to
19 her, and starts yelling at her.

20 So this individual obviously was not laying with
21 his head sitting on the yellow brick road. He obviously had
22 retreated. If he was kicked, he was kicked on the ground. I
23 bring that up because the defendant, when we look at that
24 second degree murder charge, it was a reckless indifference

1 to the health, safety and welfare of people when he's
2 shooting at Mr. Pettigrew for kicking a guy in the foot.
3 When he doesn't have a gun out, there's no reasonable belief
4 that they're going to be shot, or that somebody is going to
5 be shot or seriously injured, based upon the short amount of
6 time that he had to evaluate that situation.

7 Although we believe under the facts and
8 circumstance of this case we have proved murder in the first
9 degree by virtue of the challenge to fight, and murder of the
10 first degree by virtue of his purpose in pulling that gun
11 well before he ever saw anybody kick anybody. When you see
12 him at the north end of the Trader Dick's bar, down at the
13 end of that fish tank, he has the gun out, cocked, ready to
14 go. He's on a mission when he heads down here. And when
15 he's walking behind this fish tank bar heading for Trader
16 Dick's, there's no way that he could see what was going on
17 with these individuals.

18 So when they finally come into view in that one
19 slot of opening, he goes in there and takes his shot. And
20 you know, think about it. Now, if they wanted to kill
21 Mr. Wiggins, they had the opportunity to just walk up and
22 shoot him. At this time it's apparent that they want to get
23 out of there, although they're still being under attack.

24 Let's not lose sight of the fact that there's still

1 that fight going on right down the way at the Horseshoe Bar,
2 where the Tyrell brothers are being attacked. Continue to be
3 attacked. This is an ongoing attack.

4 So when they walk down there and see Wiggins, who
5 has chased their buddy on the floor, you know, it would be
6 expected that they say hey, you know, are you going to be
7 another individual that's going to attack us? You're
8 obviously one of the Vagos that have been engaged in
9 attacking us all evening, you would expect they're going to
10 do something. But they weren't necessarily going to shoot.
11 As a matter of fact, they showed great restraint throughout
12 the evening in not shooting a lot of Vagos. The only time we
13 have shooting, which is why I went through this, is after,
14 right after Pettigrew gets his nose cut, and when they see,
15 when you see, Diego Garcia with the gun. So we have three
16 shots at that time. One shot when they see the Vagos chasing
17 the other Hells Angels down here, a shot into the ground, and
18 then there's one more shot.

19 After the defendant comes down and shoots Pettigrew
20 in the back five times, then we have Pettigrew going down,
21 and then there's another bullet strike over here on the
22 tables at 56. This is one of the gaming tables, remember the
23 bullet strike to the chip cover? All right, that --
24 remember, if you recall, there was a shell casing found over

1 here in that area, by one of the cleaning people, later the
2 next day. That shell casing matched Villagrana's gun.

3 So Villagrana, when they're under attack, obviously
4 ran over and shot in that direction. Not knowing, apparently
5 not knowing where the shots were coming from, and probably
6 being scared after hearing, you know, seven shots in
7 succession, boom, boom, boom, boom, boom, boom, boom, and
8 he's in panic mode.

9 Now, if they were of the mind to go kill somebody,
10 and kill a Vago just for -- for funs of it, they had plenty
11 of opportunity. Nothing happened to Wiggins. These guys did
12 not want to fight after the initial fight. And they, when
13 they were being attacked, they're going to fight back. They
14 accepted the challenge, they fought.

15 But after that, they wanted to put their guns away,
16 but it was the Vagos who were the aggressors. The Vagos were
17 the initial aggressors, they continued to aggress. And for
18 that reason they don't come with clean hands, they're not
19 entitled to self-defense. He's not entitled to self-defense.

20 Now, let's just take a moment and look at the
21 parties involved. Now, if you recall, we can just start with
22 Crusher. Obvious we know who -- and I'm looking at Exhibit
23 No. 132. We've got the defendant, San Jose, you know, we
24 have all the pictures of him with all his San Jose buddies,

1 you know he's closely related with the San Jose Vago chapter,
2 as well as the Nicaraguan chapter. Gary Rudnicks, L.A. His
3 P, his president, is Bradley Campos. Remember Bradley
4 Campos? What was significant about Bradley Campos?

5 If you recall testimony -- I want to make sure I
6 have these names correct, please bear with me. If you
7 remember the testimony from James Tipton, James Tipton was
8 the individual who made the video on his camera. And you
9 recall as he was walking closer to the area where Pettigrew
10 had been shot, it was Bradley Campos, Candy Man, who was the
11 person who confronted him and said hey, this is not -- you're
12 not showing respect. And he grabbed his phone, made him
13 delete those messages. He was scared out of his wits, if you
14 recall. And then they took his license out of his wallet and
15 took a photograph of that.

16 Bradley Campos is his president. That's more
17 evidence of a concerted effort in this particular case to
18 conceal evidence, to get away with a crime.

19 Dragon Man, if you recall Dragon Man, this is the
20 international president. According to Rudnick, this was the
21 man calling the shots. Right?

22 This is the man that came down and told Cocky
23 Rocky, let's go. It's apparent that Cocky Rocky didn't know
24 what was going on. But if Dragon Man did, you can see that

1 from the video that they don't sit there and discuss what's
2 going on with Gary Rudnick. They don't sit there and say
3 hey, Gary Rudnick, those Hells Angels are here, we want to
4 make sure we don't have a problem with the Hells Angels, so
5 you need to get out of here. That is not what happens. You
6 can see it on the video.

7 Pastor Palafox was the one who has the authority,
8 under all of the evidence that we heard, to make this kind of
9 call. He can make the call to take somebody out, to take out
10 a president, to make a statement for the benefit of the club.
11 For the benefit of the Vagos.

12 Top Hat was another Nomad, he was also working with
13 Mr. Emerson to try and break this up. So the Nomads
14 obviously weren't in the loop. And it makes sense, because
15 if you're going to have this type of an agreement to take
16 somebody out, you're certainly not going to tell everybody.
17 So there was a few people that were involved in this meeting,
18 according to Mr. Rudnick, that said yeah, let's go ahead and
19 start a fight. Apparently the numbers weren't right down at
20 the Oyster Bar; however, the numbers were right when they got
21 down to Trader Dick's.

22 Now, another instruction that you'll see is that
23 you can rely on your own common sense. And you can rely on
24 your common sense and life experiences to evaluate

1 credibility and evaluate the testimony of the witnesses to
2 determine who is telling the truth.

3 Now, you saw these fellows testify, right? You saw
4 Wiggins, you saw Fearn, you saw Cocky Rocky, you saw Gary
5 Rudnick. You know, these guys are not all that
6 sophisticated. You know, these are not people that you would
7 expect to have a very intricate plan if they were going to
8 attack somebody. It would be more of something that kind of
9 evolves during the course like yeah, we hate these guys, I
10 think we ought to send them a message. Yeah, I mean, can you
11 see somebody boast and say yeah, I'll take him out, let's do
12 it, let's get these guys. And sure enough, you know,
13 let's -- they go down there and they want to go into the bar
14 and say we don't respect you guys, don't touch my cut, you
15 know, I'm going to get in your face. And say, you know,
16 these guys need to get out of here.

17 If you remember Cocky Rocky, he said I told
18 Pettigrew you need to leave. I thought they were going to
19 leave. That tells you something about their territory, their
20 respect. So when we get down to Trader Dick's would you
21 expect some kind of coordinated effort? But what you do have
22 here is you have the perfect person to commit this crime.
23 Who else would you have take out the president than a guy
24 that's not drinking, got military experience, familiar with

1 weapons, got a passport to Nicaragua, president of the
2 Nicaraguan chapter of the Vagos, and he's ready to go.

3 Who would be better? And what does he do when this
4 fight breaks out? He takes the perfect position to take a
5 shot.

6 And when the opportunity presents itself, when he's
7 down at the other end watching where they're going, he runs
8 up behind him and he takes the shot. Now, was that for the
9 benefit of the gang? Was it in affiliation with the gang?
10 When you go through the elements of the instruction, you will
11 see that it totally supports the elements set forth in the
12 gang enhancement.

13 I know we spent a long time going over all the
14 evidence, and I know that you will be able to fairly evaluate
15 the evidence as represented to you. The State has proven the
16 elements of each and every count contained. But I would
17 indicate that a couple of those counts are going to merge.
18 So for example, there's first degree murder charged in two
19 different counts. First degree murder is the result of a
20 challenge to fight. If you find that there's a challenge to
21 fight and that the defendant aided and abetted or conspired
22 with Gary Rudnick and his other Vago members to engage in
23 that fight, and that he participated in that fight, and that
24 he had agency in causing the death, then he's guilty of first

1 degree murder.

2 And we've also charged in count six murder of the
3 first degree, that there's a couple different theories on
4 murder of the first degree. Two theories, two ways that you
5 can find the defendant guilty of murder in the first degree.
6 One is lying in wait, which is indicated in the video, where
7 he waits for the defendant -- excuse me, where he waits for
8 Mr. Pettigrew to get into a position where he can take a shot
9 at him without endangering himself, so he sneaks up behind
10 him. There's an instruction that details or defines lying in
11 weight.

12 The other way that you can find the defendant
13 guilty of first degree murder is by the evidence that the
14 defendant premeditated and deliberated his actions of killing
15 Mr. Pettigrew. The defendant admitted on the stand that he
16 had the intent to kill. We've proven that he had the intent
17 to kill when he fired those shots into the back of Pettigrew.
18 Now, did he think about it, did he weigh the consequences?
19 That's what the instruction talks about.

20 Obviously, he did. I mean, through his own
21 testimony he stated, well, you know, I weighed the
22 consequences. I didn't want to get in a fight with San Jose,
23 but in the end I said F it, is what he said. I went up, I
24 saw him on the ground, I said F it, I ran up and shot him in

1 the back.

2 That's premeditation and deliberation. Now, as a
3 juror you don't have to be unanimous on the theory. So for
4 example, if six of you believe that he was lying in wait and
5 six of you believe it's murder of the first degree by virtue
6 of premeditation and deliberation, then you can correctly
7 find the defendant guilty of murder in the first degree based
8 upon either one of those theories.

9 Likewise, in the count two, the challenge to fight,
10 there are two different theories. There's conspiracy, which
11 is an agreement to commit an unlawful act. And there's
12 aiding and abetting, which would be counseling, assisting,
13 helping, another in committing that act. Again, you don't
14 have to be unanimous in determining the theory, whether it's
15 conspiracy, aiding and abetting, or both, as long as you
16 unanimously agree that the crime of challenge to fight
17 resulting in death was committed. All right.

18 I thank you for your time. And I'll talk to you
19 shortly. Thank you, your Honor.

20 THE COURT: Thank you. Ladies and gentlemen of the
21 jury, we'll take a short recess now. Remember the admonition
22 that I've given you at the other breaks. Especially now, you
23 should not be forming or expressing any opinion about the
24 ultimate outcome of this case. You may not discuss the case

1 among yourselves or with any other person. You may not allow
2 anyone to speak of the case to you or in any way attempt to
3 influence with you regard to it. Should any person make such
4 an attempt, report it to the Court. And do not make any
5 independent investigation or inquiry into any of the facts
6 and circumstances surrounding this matter, or as to any
7 investigation, news media accounts or other accounts. Go
8 ahead and go into the jury room.

9 (Jury absent.)

10 THE COURT: Please be seated. Did you have
11 anything for the Court?

12 MR. HOUSTON: No, your Honor, I just thought it was
13 a good time.

14 THE COURT: And the record should reflect that the
15 additional requested instruction was suggested at the bench,
16 and counsel stipulated, correct?

17 MR. HOUSTON: Correct, your Honor.

18 THE COURT: We are typing it now, so we will give
19 it to you before it goes to the jury.

20 (Recess.)

21 THE COURT: Counsel, are you ready to proceed? Is
22 that a yes?

23 MR. HOUSTON: Yes, your Honor.

24 THE COURT: Please bring the jury in.

1 (Jury present.)

2 THE COURT: Counsel stipulate to the presence of
3 the jury?

4 MR. HALL: Yes, your Honor.

5 MR. HOUSTON: Yes, your Honor.

6 THE COURT: You may be seated. Mr. Houston, you
7 may proceed.

8 MR. HOUSTON: Thank you, your Honor. Good morning,
9 ladies and gentlemen, how are you? Everybody of course has
10 said thank you for your participation, and I certainly would
11 echo those sentiments. I'm sure each of us has other things
12 that we could do that might be a little more enjoyable than
13 sitting in this room listening to the lawyers and listening
14 to this case. But I think because you all are here you've
15 all appreciated the importance of what we term jury service.

16 And sometimes we hear it called civic duty, it's
17 our responsibility, and all those things are true, but I'm
18 hopeful after you've had a chance to sit through the
19 presentation of this case you've truly come to a conclusion
20 these proceedings are incredibly important. Because you now
21 sit in the position of literally being handed the case. The
22 lawyers, as you know through speaking in opening statements
23 and from asking questions, we don't provide evidence, we
24 provide argument, we provide our opinion, we tell you what we

1 think the evidence shows. But your importance is such that
2 you decide what the evidence shows. Because nothing any of
3 the lawyers say or do is really the evidence in this case.

4 And you've seen it, I mean, there's a lot. There's
5 a lot of evidence, there's a lot of disks, there's a lot of
6 documents. And what the prosecutor of course is attempting
7 to do is to remove or take away what we talked about as far
8 as that presumption of innocence. And you'll remember we
9 talked a little bit about that in opening, and it was so
10 important, in fact, in the voir dire phase I think you
11 probably all remember a question, if you had to vote right
12 now, what would you vote. And the answer was obviously,
13 well, we'd have to vote not guilty because we haven't seen
14 any evidence.

15 And the reason for that is because of the
16 presumption of innocence. Whenever an individual is brought
17 into a courtroom and they sit down in front of folks such as
18 yourself, the primary mission of our justice system is to
19 make certain that you understand that person as they sit
20 there is presumed innocent. And until and only until the
21 State convinces you beyond a reasonable doubt as to guilt may
22 you then remove that presumption of innocence.

23 And I bring that up for a couple of reasons. The
24 obvious is the most important, and I ask you to maintain that

1 presumption, and maintain that presumption throughout your
2 deliberation until you get to that point where you're
3 convinced beyond a reasonable doubt as to guilt.

4 But the other reason is I only am allowed to speak
5 with you one time. And I don't know whether -- of course
6 you've had a chance just by observation to observe my nature,
7 but it is so hard for me to sit and hear things that I
8 disagree with, and I'm unable, precluded, from responding.
9 And I bring that up for this reason. I will attempt to
10 discuss with you everything that I possibly can. I'm going
11 to try to stand up here and remember everything that I think
12 is important. Maybe I miss something. Maybe I don't give it
13 all of the attention it might deserve in your mind. And the
14 reason I'm saying that is because I'm going to ask you during
15 your deliberations, in honoring that presumption of
16 innocence, to continue that.

17 In other words, bring forth the factors that you
18 believe would tend to show that the presumption of innocence
19 should stand. I can't come back, I can't come back if
20 Mr. Hall comes forward and says something that I adamantly
21 disagree with. I can't come back if we see a video with
22 somebody saying this is what that means, this is what that
23 means. I can't come back and say well, no, this is what it
24 means, and that's what it means. I can't --

1 MR. HALL: Excuse me, your Honor, I'm going to
2 object. That's not what the evidence shows.

3 THE COURT: I'm not sure what you're referring to.
4 During the trial, or at this time.

5 MR. HOUSTON: During the trial. The evidence of
6 course showed certain things. There's going to be different
7 interpretations of those things. I'm not going to be able to
8 come back and discuss in rebuttal of the State's next
9 argument. So I ask you --

10 MR. HALL: Your Honor, I have the burden. So I go
11 first, I go last.

12 MR. HOUSTON: Right, that's what we're talking
13 about.

14 THE COURT: Okay, so you're just -- I'm sorry,
15 Mr. Houston. Are you arguing that you didn't get a chance to
16 put evidence on?

17 MR. HOUSTON: No, your Honor, I'm just --

18 THE COURT: Or just that you can't argue --

19 MR. HOUSTON: Yes, exactly. Thank you.

20 THE COURT: I'll allow to you argue that.

21 MR. HOUSTON: So anyway, to be clear, what I'm
22 saying is I can't come back after Mr. Hall finishes his
23 argument and have another chance to argue. So I'm asking to
24 you please take consideration of what's said and be mindful

1 of what the evidence showed during the course of this trial.

2 And that really is the honoring of the presumption
3 of innocence in this particular case, and it is dramatically
4 important, and that's why we do have the jury instruction.

5 There are a list or rather quite a few of these
6 jury instructions that you're going to have the opportunity
7 to regard during your deliberations. The obvious is the one
8 that I just spoke to you about concerning the presumption of
9 innocence, and the fact that are you not to find guilt unless
10 you are convinced by competent, competent, evidence beyond a
11 reasonable doubt, as to the guilt of the defendant.

12 And I want to make a point as it concerns this
13 particular case. This is the State of Nevada versus Ernesto
14 Gonzalez. It is not in the caption the State of Nevada
15 versus anyone else. And we've heard a lot of talk of Vagos
16 did this, Vagos did that. The fact of the matter remains I
17 ask you to focus and consider your deliberations as well on
18 what the State proved this defendant, Ernesto Gonzalez, did
19 throughout the course of September 23rd, 2011.

20 There is always the invitation offered for
21 speculation and conjecture, and I'm asking you to deny that
22 invitation. Do not speculate or guess a conviction. That is
23 not honoring the duty of proof beyond a reasonable doubt with
24 competent evidence.

1 Anyone can stand up here and tell you what
2 something means, and you're allowed of course to interpret
3 and inject your own opinion. When we have the situation
4 where you're evaluating the evidence, and I ask you to
5 remember back to the trial, there was a lot of narration of
6 video. Narration perhaps of what someone may or may not have
7 been thinking.

8 The fact of the matter is you are entitled to
9 regard anything as you so choose in the sense of viewing the
10 evidence and what it means to you. What it means in common
11 sense, what it means in logic, and what it means just based
12 upon your everyday experience.

13 And what I am not going to do during this closing
14 is continue to show video after video after video telling you
15 this is what it means, this is what it means, this is what it
16 means. You'll have the opportunity if you so choose, once
17 you get back to the jury room for deliberation, to view the
18 video and to make your own conclusions.

19 And I ask to you do that, to draw your own
20 conclusions. Not to be told by someone else necessarily what
21 it means. You have that authority, and that is your
22 province.

23 We have additional jury instructions, ladies and
24 gentlemen, and we have for instance the crime of affray. And

1 you'll note in most of these instructions you're going to see
2 things such as "by agreement." And I ask you to consider
3 back to the, quote, "crime of affray," and in fact the crime
4 of challenge to fight resulting in death. And I ask you to
5 remember what happened in this case.

6 Going back to the beginning of September 23rd, we
7 have an individual by the name of Gary Rudnick, and of course
8 you had a chance to meet him, you had a chance to hear his
9 testimony, and gauge for yourself exactly the value of that
10 testimony.

11 Mr. Rudnick has come before you and spun a
12 fantastic tale. And you would have to ask yourself, well,
13 why would someone do that? Why would someone like
14 Mr. Rudnick choose to come in here and be less than candid?

15 And in fact, I think you'll recall from the
16 cross-examination in this case, we had a chance to ask
17 Mr. Rudnick several questions as it pertained to what we had
18 called his deal. The deal that Mr. Rudnick was able to cut
19 by virtue of being able to come forward and provide the
20 testimony he's provided you, which I would submit to you is
21 wholeheartedly a fabrication.

22 If you regard the video, ladies and gentlemen, you
23 will see Mr. Rudnick is the primary player. He is the
24 primary player in not just one act of violence, but literally

1 involved in four.

2 You'll remember the first one, where he stops
3 Mr. Pettigrew with the question, "Are we cool? Are we cool?"
4 Mr. Pettigrew turns, and for some reason during the course of
5 the discussion, decides he's going to strike Mr. Rudnick.

6 You'll see Mr. Rudnick steps back out of the frame
7 to the point you don't immediately see him, and he seems to
8 go off somewhere else after this problem has been started.

9 We also showed Mr. Rudnick the video where it
10 appeared as though someone that looked a great deal like him,
11 with their finger pointed like this toward the HAS, was up by
12 the bathrooms up by Rosie's. And that again, if you'll
13 recall, is where Mr. Wiggins was hurt and fell, Mr. Rudnick
14 appears again on the video at this point, at least leading
15 the charge or certainly in the forefront of the charge as it
16 concerns the Hells Angels in that area.

17 But it didn't stop there. Because after that
18 episode appears to have concluded to some degree, where do
19 you see Mr. Rudnick again? Mr. Rudnick is seen again with
20 the HA prospects who were carrying the ice chest.

21 And you remember when he testified and recalled
22 somebody was screaming, get the cut, get the cut. What do we
23 see on the video? We see Mr. Rudnick bulling through the
24 people, and the fight begins at that point. Up to that point

1 on the video, if you'll remember, no one was assaulting the
2 two HAS carrying the cooler.

3 The consequence, again, of Mr. Rudnick's presence
4 was to create additional problems. It's similar to a person
5 with a flare running through the forest starting fires every
6 time they stop.

7 Mr. Rudnick, though, forgot something when he was
8 on the witness stand that the young man who was videotaping
9 seemed to remember. If you'll recall, when he was talking
10 about his cell phone and how people approached him in order
11 to complain that he was videotaping the events, he first
12 identifies Bradley Campos. Bradley Campos, the president of
13 the Los Angeles chapter. Subsequently he looks very closely
14 at the specific exhibit with all of the pictures on it, and
15 he looks for a minute or so, and he says, um, yeah, that guy,
16 Gary Rudnick, was also there.

17 And I bring this up to you for a number of reasons,
18 primarily because it demonstrates that Mr. Rudnick was the
19 pivot point of virtually everything that went on in there
20 that night.

21 Now, for Mr. Rudnick to be charged with challenge
22 to fight causing the death may well be a valid charge. But
23 Mr. Rudnick was offered an opportunity. Mr. Rudnick was
24 offered the opportunity that if you can give testimony

1 essentially that's valuable, we in turn are going to make a
2 deal.

3 The deal, as you've come to find out, is
4 Mr. Rudnick is pleading guilty to the one count, conspiracy,
5 in reference to the murder charge.

6 Now, there's been some disagreement amongst the
7 witnesses whether or not Mr. Rudnick received certain
8 promises. You will remember Detective Bennett testified, I
9 didn't make him any promises. However, when we began this
10 case, you were advised by me there were a number of jail
11 calls, being calls made by Mr. Rudnick while he was in
12 custody, to suggest that's not necessarily the way
13 Mr. Rudnick viewed the situation. And if you will remember
14 in specific -- and these are with you in the jury room, in
15 the form of exhibits you can regard during your
16 deliberations -- Mr. Rudnick, in speaking with his wife about
17 what is going to happen to him, says something to the effect
18 of, "No, baby, no, the thing is, I plead to that, that's the
19 process that I have to go through.

20 "They do that, and then I do everything Eric --"
21 meaning Eric Bennett, as Mr. Rudnick clarified -- "that I do
22 everything that Eric wants, everything that he wants me to
23 do, and Karl, and the judge will drop everything to
24 probation.

1 "He's agreed on everything. So because I don't go
2 to sentencing until after the trial in this case, you know
3 what I'm saying."

4 There's an expression in reference to plea
5 agreements or testimony of that nature, and the expression is
6 bought and paid for. Mr. Rudnick's testimony is directly
7 tied to the necessity of coming in here and creating a story
8 that in some ways absolves him of guilt for what happened.

9 Do you remember when I asked Mr. Rudnick the
10 question, are you responsible for any of this? To which he
11 replied no. I then asked him, then why did you plead? And
12 he said, "Because my lawyer told me to."

13 Mr. Rudnick is of the opinion, based upon this
14 story, that of course he has no responsibility. He didn't
15 really do anything. He was told to do everything.

16 And I want you to go back and remember the
17 cross-examination of Mr. Rudnick, when we talked about a
18 number of things, such as how did this all happen. In other
19 words, how did this agreement occur, who told you what to do,
20 when. And Mr. Rudnick advised there was the meeting at 8
21 o'clock. The meeting where all of the Vagos got together.

22 Now, according to Mr. Rudnick, at this meeting it
23 was filled with dissension and hostility towards the Hells
24 Angels for a number of events. And Mr. Rudnick is somewhat

1 angry because they're not doing anything about it, referring
2 to Tata and Dragon. And as a consequence, we look like
3 bitches. His word. He felt, pardon the expression, like
4 shit because he wasn't getting the respect that he felt he
5 was warranted by virtue of the simple fact that he's Gary
6 Rudnick.

7 Now, everybody else that the State called disagreed
8 with what happened during the course of that meeting, as it
9 concerns the other Vagos called by the State. And it's
10 somewhat surprising that witnesses are called by a party, and
11 then disputed during closing. But remember what Richard
12 Nickerson said. Remember what Evanson said. Remember what
13 the Vagos said who were asked the question, was there
14 anything hostile occurring at the meeting. No. Was there
15 some mention of this 99 issue. Only that we were all going
16 to ride down the 99 when we left.

17 Now, Rudnick of course had a different story. The
18 meeting was full of hostility, everybody is frustrated,
19 people want to do something. But Tata and Dragon won't do
20 it.

21 After the meeting, according to Mr. Rudnick, they
22 meet out in the hallway, and we call that the powwow. And
23 Mr. Rudnick claims that at the powwow now all of a sudden
24 there is a change. The hit on Mr. Pettigrew was green lit.

1 The consequence of this meeting, according to Mr. Rudnick, is
2 Dragon and Tata have changed their ways.

3 But when Mr. Rudnick was interviewed, in reference
4 to his February 15th interview, he tells us that he did not
5 have any sort of clearance after the powwow.

6 So if he doesn't have clearance, and there is no
7 green light after the powwow, you have to ask yourselves,
8 well, when did that occur. And I ask you, if you have any
9 questions about Mr. Rudnick and what he said during the
10 interview, to go ahead and regard the transcript of
11 Mr. Rudnick's interview. Because you're going to have it
12 during the course of your deliberations, and you can read it
13 for yourself to determine if there's any consistency or
14 continuity to his story.

15 As the story goes with the police officers
16 questioning him that day, it changes, it dramatically alters
17 in part, it will go from one point to another until it truly
18 represents the confusion that I hope I was able to
19 demonstrate for you during the course of Mr. Rudnick's
20 cross-examination.

21 According to Mr. Rudnick, he did not ask for
22 permission before things kicked off. He was supposed to
23 wait. Tata and Dragon had said let's just wait and see what
24 happens. Very, very frustrating for Mr. Rudnick, and he

1 explains it.

2 When Mr. Rudnick goes to the Oyster Bar, he also
3 tells police he doesn't even know who Pettigrew is. And he
4 testified to the same. He goes down at 10 o'clock
5 supposedly, according to the State's theory, to pick a fight
6 or to start the ball rolling because an assassination has
7 been approved on Jeffrey Pettigrew.

8 But according to Mr. Rudnick, he didn't even know
9 who Pettigrew was when he was in the Oyster Bar, as Evanson
10 said, taunting, taunting, and taunting Jethro Pettigrew.

11 He was even asked such questions about, well,
12 couldn't you see the president logo, or patch, on his cut,
13 and regarded, well, I really wasn't looking for that kind of
14 stuff.

15 But here's what we do know, at least from the
16 video. There was a concerted effort by the Vagos, and in
17 specific Evanson, who had been a Vago for a long time -- he
18 was also the federally paid informant, you'll recall him --
19 who indicated the amount of effort being taken by the folks
20 in charge to make certain there was not going to be a
21 problem.

22 The problem, as stated by witness after witness,
23 was Gary Rudnick. That name was repeated over and over again
24 as to what was happening and why. As to who was causing the

1 problem, and who was requiring others to try to make peace.
2 Gary Rudnick, over and over again.

3 Rudnick of course in his deal says well, yeah, I
4 was doing that, but it wasn't because I wanted to. I was
5 told to. I was told that I'm going to be part of this
6 assassination on Jeffrey Pettigrew at 8 o'clock. But when
7 I'm down there at 10 o'clock going after this specific
8 person, I don't know who he is.

9 I really can't make sense of that, and I ask you to
10 read the transcript to see if you can. What I do know is
11 that when Mr. Rudnick was ordered out of that bar, the Oyster
12 Bar, repeatedly, Mr. Rudnick would leave, and Mr. Rudnick
13 would come back. And what was it over? It was over the fact
14 that Mr. Pettigrew had patted him on the back. And to him,
15 that was a significant sign of disrespect. To him.

16 It had nothing to do with the other Vagos. And in
17 fact, I think as you heard from the witness stand, he was
18 advised by Mr. Seimers, what difference does it make.
19 There's hundreds of people here, people are going to be
20 touching you. Let it go. Go rest your neck.

21 There's been criticism leveled in the sense that,
22 well, how many Vagos does it take to remove a Vago. You'll
23 remember the testimony of Mr. Gonzalez talking about the fact
24 that one of his purposes was to be able to go get Cesar

1 Morales, the president of a club, out of a bad situation.
2 With the question then, well, so it only took one of you to
3 do that. And the answer being the obvious, yes. And the
4 reason is because a person will come with you, the person is
5 there to listen to you, and the person knows you're there to
6 protect them.

7 So now we hear that maybe the Vagos didn't do
8 enough as a collective group. But again I want to remind
9 you, this is the State of Nevada versus Ernesto Gonzalez. So
10 we're going to hear about well, the Vagos should have done
11 more. They should have, you know, knocked him down, they
12 should have punched him, they should have dragged him out.

13 If you'll remember, when I was speaking with
14 Mr. Evanson, I had actually asked him questions like that, to
15 the extent, well, you seem like a pretty big guy, you could
16 go ahead and take care of that, right? You remember
17 Mr. Evanson said no, I can't. He's a vice-president of a Los
18 Angeles charter. If I go in there and go after him, then
19 literally I'm going after the whole charter. I can't do
20 that.

21 The consequence was he was told over and over again
22 to get out. He was told to the point of frustration that
23 other members of the Vagos advised you, specifically Evanson,
24 that they felt like punching him in the head and dragging him

1 off, but they couldn't.

2 It's not a matter of criticism because they did not
3 attack Mr. Rudnick to get him out. To the contrary,
4 Mr. Rudnick agreed, and Mr. Rudnick would leave. But there
5 was a problem, you see. Mr. Rudnick told Mr. Evanson, if I
6 don't have my apology by the time I finish this beer, there's
7 going to be a problem. The problem, of course, he's speaking
8 of is he's going to go deal with Mr. Pettigrew himself. He
9 wants an apology.

10 Even though Pettigrew has told other people, hey,
11 I'm sorry, I didn't mean anything by it, I didn't mean any
12 offense, that wasn't enough. Rudnick was demanding one for
13 himself.

14 When he said that to Evanson, you'll recall what
15 Evanson testified he did? He calls upstairs. John Seimers,
16 Rocky, winds up with the phone. He hears you guys better get
17 down here, this guy is creating problems.

18 At that point, Dragon, Tata, Seimers, and several
19 others come down. And they come down to talk -- talk -- to
20 the HAs. Because as you learned from the testimony in this
21 case, when there is a problem, these folks get together, they
22 talk it out. And I think one of the witnesses for the State
23 said they actually handshake and hug it out, and that would
24 be the end of it.

1 And we know that's more likely than not because of
2 the 15 or 16 years of Street Vibrations preceding this, with
3 Hells Angels there, with Vagos there, it was never a problem.
4 If there was a dispute, they had their own mechanism for
5 resolving the same. As they said, we mutually respect one
6 another, and we coexist.

7 And that seems to be how they deal with problems.
8 Not what the State suggests to you, that you have armed
9 conflict with planned assassinations. And if you think about
10 that for a minute, if you think that the testimony you heard
11 about yeah, we really don't have a problem with each other,
12 meaning the Hells Angels and the Vagos, is incorrect, then
13 ask yourself why the Hells Angels would feel comfortable with
14 their president staying at the Nugget where all the Vagos are
15 located.

16 And you might think, well, maybe they didn't know
17 when they got there. Well, they sure knew after they checked
18 in. It's pretty obvious, according to all of the witnesses,
19 the casino is filled with a sea of green. So if they have
20 this hostile war-like setting, why on earth would the
21 president of the opposing organization then stay amongst them
22 unless he felt comfortable, unless he felt there wasn't a
23 threat, unless he felt there wasn't this hostility that the
24 prosecution seems to indicate must have existed in advance.

1 It would be akin to having George Bush bunk in with Saddam
2 Hussein immediately prior to the invasion. It doesn't make
3 sense, you wouldn't do it.

4 And there's a lot about the theory the prosecution
5 has offered you that quite simply just doesn't make sense.
6 We're going to plan an assassination, says the Vagos, but we
7 want to make sure we get it on camera, and we want to make
8 sure there's at least a couple hundred witnesses. It doesn't
9 make sense.

10 The fact that San Jose and San Jose Hells Angels
11 and Vagos got along is pretty evident by the fact that there
12 were no issues. But what's more evident is this. You'll
13 remember when this whole thing first started with Rudnick?
14 There was a request that the San Jose charter go and speak
15 with the HA charter, also from San Jose. The reason is
16 because they know each other, they mutually respect each
17 other.

18 You'll remember Richard Nickerson, who spoke with
19 Bobby Viera, the 41 year Hells Angel, and they both agreed,
20 hey, we're too old for this kind of stuff. They shook hands,
21 they talked together. You can see on the video the
22 resolution of the problem Rudnick had created.

23 You're going to hear, oh, that was just them being
24 tricksters so they could later come and attack them and

1 unbeknownst to them they would be overwhelmed and swarmed.
2 To accept that you would have to accept or believe that the
3 Hells Angels are awfully naive people. Because if they
4 thought there was a problem, they certainly, as we have
5 learned, could have summoned help with a phone call. But
6 they didn't.

7 When Rudnick first started the problem, the HAS
8 don't want to fight with the Vagos. So what do they do?
9 They contact security. And that's where we get the testimony
10 of the director of security, former lieutenant Sparks police
11 department, 28 years, retired. He walks through, he sees
12 there's a problem. But it is a problem made by Gary Rudnick.
13 It is not, quote, collectively the Vagos. And we keep
14 hearing that term thrown about, the Vagos did this, the Vagos
15 did that. What you didn't hear in the opening closing was
16 that Ernesto Gonzalez was part of that. He wasn't.

17 If you think there's a challenge to fight as
18 offered by Gary Rudnick, Ernesto Gonzalez had nothing to do
19 with it. If you think Gary Rudnick's words to Jethro
20 Pettigrew, are we cool, are we cool, amounts to an invitation
21 to fight, remember who did it. Remember who had the problem.
22 Remember who had expressed their frustration at not getting
23 an apology. Remember who said if something doesn't happen by
24 the time I finish this beer, to Mr. Evanson.

1 Now, we do know national comes down. You can see
2 it on the video. We do know that all the Vagos that were
3 there were asked to remove themselves, go to the next bar by
4 Mr. Evanson. Next bar happened to be down the yellow brick
5 road, was Trader Dick's. At that point, it opens the door
6 hopefully then for no more problems.

7 That wasn't Mr. Rudnick's plan. Do you remember
8 Mr. Rudnick, in his candor, said this to you: I just wanted
9 another souvenir, I wanted another trophy. That's his
10 mindset. That's not the Vagos. That's Gary Rudnick.

11 His baseball cap that he took from a Hells Angels
12 during some dispute he also created was nailed up in his
13 garage, but he wanted more. He wanted, as he said, a trophy.

14 And doesn't that fit nicely with his actions with
15 those two prospects carrying the ice chest, who up and to the
16 point Rudnick gets there are walking through that casino
17 unmolested. Just like Jethro Pettigrew was.

18 Get the cut, get the cut. And what does
19 Mr. Rudnick do on that video? Remember? He's the guy you
20 see pulling, trying to yank that cut off that kid who was on
21 the ground. And Mr. Rudnick was pretty successful kicking
22 that one off as well.

23 But we do know when national talked with
24 Mr. Pettigrew -- a man that, according to the witnesses, was

1 liked and respected by both groups -- and I think it was
2 Mr. Evanson that referred to him as an icon. It was
3 Mr. Nickerson, who also said he liked him. Mr. Evanson
4 actually showed a great deal of emotion when he was talking
5 about the loss of Mr. Pettigrew.

6 Now, how does that line up with the Vagos and Hells
7 Angels all hate each other and they're supposed to shoot each
8 other or fight each other on sight? When you have a man who
9 is a Vago sitting up there becoming emotional discussing the
10 loss of Jeffrey Pettigrew. Doesn't make sense. It doesn't
11 add up.

12 The idea of applying generalities to cover a trial
13 and a request for proof beyond a reasonable doubt, if you
14 evaluate this evidence, you will see is wholly inappropriate.
15 We cannot generalize a conviction. The fact of the matter is
16 you should be demanding evidence as it relates to Ernesto
17 Gonzalez. State of Nevada versus Ernesto Gonzalez.

18 The difference is this. The fulcrum, the pivot
19 point. Gary Rudnick. If you do not believe Gary Rudnick,
20 then you have to evaluate this case for what it truly is.

21 And when we started this case, and when I made an
22 opening to you, I told you I would make certain promises to
23 you. That I was going to show you certain things. I told
24 you that night that Ernesto Gonzalez fired a gun at Jethro

1 Pettigrew. I told you this was not a who dunnit, this was
2 not a situation where you were going to have to try to figure
3 out who pulled the trigger that evening. I told you
4 specifically exactly what had happened, and I told you why.
5 And I told you about Mr. Wiggins.

6 You've seen the video, I'm not going to show it to
7 you again. But one thing I ask you to do -- excuse me. One
8 thing I ask you to do is this. That what I call the point of
9 view video, where you can -- it was introduced by one of the
10 first witnesses, and it kind of shows the point of view you
11 would have from the disco. And if you regard that point of
12 view, I think at 8-10 would be the footage reel, you'll see,
13 you'll see, exactly what the defendant Gonzalez could see.
14 And you will see that defendant Gonzalez had an absolutely
15 perfect view of what was going on as it concerned
16 Mr. Wiggins.

17 What you don't see is Mr. Gonzalez firing anytime
18 before that. And I think the prosecution on their
19 examination of Mr. Gonzalez made a big point of, well, he
20 could have shot then. When it first kicked off, and
21 Mr. Pettigrew and Mr. Villagrana were shooting people. Or
22 you could have shot then, when Mr. Pettigrew and
23 Mr. Villagrana, Mr. Pettigrew in particular, pistol whipping
24 Greg Fearn. Or you could have shot then, when Mr. Villagrana

1 rushed Mr. Gonzalez, and you'll see thrusts at him with his
2 hand.

3 Now, Mr. Hall has indicated, well, you're reaching
4 for a gun. Look at the video. Because if there was ever a
5 time, if you had a firearm, to protect yourself or to
6 fake-shoot the president of the Hells Angels claiming
7 self-defense, it was right then and there.

8 What you do see on the video is you will see
9 Mr. Gonzalez's arm reach over to the bar, and you will see
10 him come back with a bottle. If you have a gun, and you can
11 shoot someone to protect yourself, why do you pick up a
12 bottle off the bar. What's the point.

13 You'll then see on that same video Mr. Gonzalez is
14 watching. If he wants to shoot, and has a gun, why isn't he
15 shooting?

16 You'll then see Mr. Gonzalez goes into the disco,
17 an area where I think you've heard testimony there were at
18 one point in time a number of people. You've also heard
19 testimony that people had a tendency to drop specific weapons
20 in reference to what they were carrying, and Mr. Gonzalez has
21 told you he picked up a firearm. He walks, runs, goes out,
22 looks. And then, as he told you on his testimony, as
23 Mr. Hall I think made clear in his argument, he's got
24 familiarity with firearms, he's got weapons training, and

1 instinctively he checks to see if it's loaded. If it's your
2 firearm and you just took it out of your pocket, you don't
3 certainly need to check. And then you see Mr. Gonzalez
4 actually go down and try to look down the yellow brick road
5 to see what they're doing. You know why? Because it got
6 quiet. And what did he tell you? I'm hoping it's over.

7 And you know what? It was. That situation right
8 then and there had terminated. In other words, the fight
9 Gary Rudnick started -- although he was not the initial
10 aggressor; the initial aggressor, in that case, if anybody
11 has got eyes, is Pettigrew, for punching Rudnick. But that
12 situation had calmed down. You remember, you can see it on
13 the video.

14 The Hells Angels are actually calm enough to stop,
15 bend over, pick up their bags. You'll see a couple of times
16 a guy is actually bending down on the floor picking things
17 up. And you can ask yourself whether or not they're picking
18 up the cartridge casings, so that there's no evidence of how
19 many shots had been fired. Watch the video, you'll see it.

20 But the important thing is you have Mr. Gonzalez
21 doing nothing. Because as he told you, I thought it was
22 over. I wanted it to be over, I just wanted them to go away.
23 And they were.

24 And Mr. Gonzalez follows over, and he's watching

1 things. If you're surveilling somebody to take a shot, why do
2 you let somebody get 30 feet away from you and shoot, when
3 you could shoot when they're 10 feet away? You'll see it on
4 the point of view video, that you can see the entire
5 walk-through as they walk by. And certainly, to be as close
6 as I am to you right now, and take a shot, is a much more
7 reliable shot than if I'm 30 feet away.

8 But something happened. What happened was
9 Mr. Wiggins was on the ground. And as Mr. Gonzalez told you,
10 he watched, he saw them, and they stopped. Now, I actually
11 heard during the State's open -- opening close, Mr. Pettigrew
12 was unarmed? He wasn't unarmed. I don't know whether he put
13 his gun in his waistband or wherever he kept it, but I do
14 know he was armed. Because you'll remember Officer Walsh
15 testified that one of the ladies next to Mr. Pettigrew held
16 up a gun and said, "Do you want this," and that was
17 Mr. Pettigrew's revolver. So I don't know where unarmed came
18 from, but it's pretty clear he wasn't unarmed.

19 Mr. Villagrana, on the other hand, actually had his
20 firearm out. Consider this in a thought process. You know
21 these two individuals have fired a number of shots. You know
22 that they have fired a number of shots throughout a brief
23 period of time. You know that they have shot Ramirez or
24 Garcia. You know that they're using the weapon to pistol

1 whip people. And you know it's all over, there's no longer a
2 reason for it, there's no dispute happening. It ended. At
3 this point in time, what you know is video proof, Gonzalez is
4 in movement. He's watching. He's seeing what's going on.
5 He certainly doesn't take the, quote, better shot. Because
6 as he told you, he didn't want to shoot.

7 What Gonzalez does is sit there and hope they're
8 just going to keep going, keep walking, keep walking.

9 They stop. No reason. As we know from Wiggins, as
10 we know from the video, Wiggins did not present a threat. To
11 the contrary, Wiggins was trying to pretend he was dead. And
12 we keep hearing this story of well, you know, they're kicking
13 him in the feet. Look at the video. His head is right there
14 when they, Pettigrew and Villagrana, approach.

15 This is the footware of Mr. Villagrana. You see
16 Mr. Villagrana deliver two, possibly more, kicks to
17 Mr. Wiggins. You see Mr. Pettigrew kick Mr. Wiggins, and
18 appear to step back.

19 Remember, he has a prosthetic leg, his right leg,
20 he has to balance in order to be able to kick with his left
21 foot. When he steps back is when Cesar Villagrana comes in
22 and starts kicking.

23 Who has a firearm in their hand? Cesar Villagrana.
24 Who has already used that firearm in reference to shoot

1 people? Cesar Villagrana.

2 The law and the instructions have told you that the
3 actions of the defendant, in the killing of another person,
4 in the defense of a person, is justified. If it's justified,
5 it means he's not guilty. And it virtually handles every
6 charge that he's confronted with, save and except the
7 concealed weapons count possibly.

8 What we do know is that if there's an honest,
9 reasonable belief on behalf of Mr. Gonzalez, by virtue of
10 what he is seeing, that Robert Wiggins could either be killed
11 or severely injured, he is allowed by law to take that shot.

12 Now, I want you to think of something two other
13 witnesses have told you. Do you remember Officer Walsh?
14 When Officer Walsh, first officer on the scene, comes in, she
15 sees Mr. Pettigrew -- or excuse me, sees Mr. Villagrana.
16 Mr. Villagrana still has the firearm in his hand. There is
17 someone in the crowd screaming, kill him, kill him. As it
18 references Mr. Villagrana.

19 Officer Walsh told you that she's looking right at
20 him, and was telling him to put the firearm down. Started to
21 move his hand. Put the firearm down. I asked Officer Walsh
22 what would you have done if he continued to move that firearm
23 in the direction of the fellow who was screaming kill him,
24 kill him? And she said I would have shot him.

1 You don't have to wait to determine whether a
2 genuine reasonable threat will manifest itself by virtue of
3 killing someone before you're allowed under our law to do
4 something about it. To stop it. Just like the witnesses for
5 the State said in reference to Mr. Pettigrew and
6 Mr. Villagrana, that were the lay witnesses, the citizens.
7 We just wanted them to stop. We wanted somebody to stop
8 them.

9 When the director of security testified, the
10 director of security said, I didn't intervene because I
11 wasn't armed. I asked him if you were armed, would you have
12 intervened? Yes. My next question was, and you wouldn't
13 want to get prosecuted for murder for doing that, would you.

14 Ladies and gentlemen, it is so, so easy for a
15 hindsight opinion, absent the stress, the strain, the panic,
16 the fear, or the presence, to criticize.

17 Mr. Gonzalez told you specifically what happened.
18 And if I may use his word, he said, oh, shit, when they
19 stopped. Because the only thing he wanted them to do was to
20 leave, to keep going.

21 The video supports that. The video supports it
22 because there was no attempt prior to that time to shoot.
23 And there was every opportunity before he went in the disco,
24 if he had a gun. There was every opportunity after he came

1 out of the disco and had the gun. But he didn't do it.

2 If he's not doing it and he's not taking the shot,
3 then that certainly should tell you a lot about what's going
4 on in Mr. Gonzalez's mind, and whether or not Mr. Gonzalez
5 was telling you the truth, or Gary Rudnick was telling you
6 the truth.

7 When the national officers left the Oyster Bar that
8 night -- Rocky, Nomad, Tata, Dragon -- it was settled. It
9 was resolved. Pettigrew, didn't have a problem, everything
10 is okay.

11 When you see this going on, and you understand the
12 relationship between these groups and the necessity of
13 coexisting together, it somewhat indicates any claim of
14 trickery and such good planning that they were just there to
15 trick them, to lull them into a false sense of security,
16 somewhat disingenuous.

17 When you listen to the State's witnesses that tell
18 you they got along, there was mutual respect. You saw
19 Evanson up there with his emotions on his sleeve talking
20 about the loss of Pettigrew. And he would be in a position,
21 as he told you, to know if something like that was going to
22 occur. He didn't know anything about it.

23 Rocky Seimers would have been in a position to
24 know. He didn't know anything about it. Nobody has come in

1 here and testified that occurred, except one guy. Gary
2 Rudnick. The one guy who has literally sold a story for a
3 hoped for probation. Because as you'll also have a chance to
4 do, there's quite a few more jail calls, and I read some of
5 the quotes to you in the opening, and I played some of the
6 jail calls for you. Where it is clearly obvious
7 Mr. Rudnick's plan of life after this case. Witness
8 protection program, they're going to pay me, they're going to
9 pay my rent.

10 But don't stop there, because you do have, as well,
11 another option. All of the jail calls are in evidence for
12 you to listen to. You can listen to those calls and ask
13 yourself, does this guy appear to be manipulative, does this
14 guy appear to be a liar, does this guy appear to have any
15 credibility or honor, does this guy care about anybody other
16 than himself?

17 If you really have any questions after you watched
18 his testimony, after you heard the jail calls I played for
19 you, after you read his interview, listen to some of those.
20 Take a sample, I don't even have to point you to any of them.
21 But the point of the matter is when you listen to those jail
22 calls, you'll get an understanding of who Gary Rudnick really
23 is.

24 When we have this issue where the matter is

1 squashed, the word, what happens then. Well, nothing until
2 Rudnick gets involved. But you remember Rudnick told you
3 something real interesting. He said I got a phone call
4 saying the HAs were on the way. Look at the video. But more
5 importantly, you remember when I asked him, well,
6 Mr. Rudnick, you didn't get any calls from 10:18 until 11:38,
7 and you didn't make any calls. So how did you get a phone
8 call? He didn't have an answer. And the reason he didn't
9 have an answer is because the problem with a lie is that it's
10 full of holes. And some people are better at it. He's not
11 one of them.

12 The fact is, despite the several meetings with law
13 enforcement before he gives his February 15th statement,
14 despite the fact law enforcement had given him a copy of the
15 grand jury transcript so he could read what the other
16 witnesses had said, despite the fact he was able to see the
17 videos and the diagrams, he couldn't hold it together.

18 But it makes you wonder why somebody has to be so
19 prepped in order to tell the truth. It shouldn't require
20 that kind of preparation.

21 That's something you get to decide throughout the
22 course of your deliberations. Because see, you've got a jury
23 instruction that talks about that. You have a jury
24 instruction that talks about the credibility of a witness,

1 and how it's up to you to regard or disregard that witness's
2 testimony.

3 If you make the decision that you do not feel
4 comfortable believing Gary Rudnick to the degree, to the
5 degree of extinguishing reasonable doubt, then Ernesto
6 Gonzalez deserves your vote of acquittal. Because that's
7 really what this whole case is about.

8 I mean, we can throw all the smoke out here you
9 like, but really that's what it boils down to, isn't it?
10 Either Gonzalez is telling the truth, or Rudnick is telling
11 the truth. Because that's what the case centers on.

12 If Rudnick isn't telling the truth, well, Gonzalez
13 didn't have any part of the challenge to fight. He certainly
14 wasn't in a conspiracy with him.

15 When you look at that video, the video right where
16 Rudnick stops Pettigrew, you'll see Mr. Gonzalez in the line.
17 And I want you to ask yourselves, if this is an
18 assassination -- we've all seen the old Jack Ruby, Lee Harvey
19 Oswald video, where Ruby steps out of the crowd and fires
20 several shots into Lee Harvey Oswald. Where is Ernesto
21 Gonzalez when Rudnick is going to stop him? He's at the far
22 end of a line.

23 But what's also very interesting, and you'll be
24 able to see it -- and I'm not telling you what people are

1 thinking, and that's the difference in what I consider the
2 defense approach to that video. I'm not going to sit here
3 and tell you, oh, look, that means he's thinking that. No.
4 Watch it, you can draw your own conclusion.

5 But when you see Mr. Gonzalez at the end of the
6 line and he's not paying attention by way of swiveling -- he
7 does when, as he told you, the voices get raised, they're
8 heated. You can see him step out and look, because the
9 person next to him was blocking the view.

10 Is this the positioning of your trained assassin
11 ready to strike? More importantly, when he sees what's
12 happening, what does Mr. Gonzalez do? He walks away.

13 Now, the State is going to tell you oh, well, he's
14 walking away to get in a better position to shoot
15 Mr. Pettigrew. What could be a better position than standing
16 next to Rudnick and pulling your gun and shoot him? And
17 disappear out the Victorian Street doors. What could be a
18 better position?

19 Certainly, walking across the way, where there is a
20 wall between you and where they're standing? And more
21 importantly, now you're going to get a fight going to where
22 everybody is on alert, to where people have pulled guns, to
23 where people are shooting people. Doesn't make sense.

24 If you're going to plan something like this, is

1 that the way you want to plan it? Well, let's get it going,
2 let's make sure they pull guns, let's make sure they shoot a
3 couple of us. Then Ernesto, that's when you go into action.
4 Think about that. Does it make any sense?

5 But I want you to consider one other thing. We had
6 Detective Bennett who spoke to you about an operation called
7 Simple Green. I think you probably all remember. Detective
8 Bennett said he was doing an investigation, and that part of
9 that investigation included 100,000 telephone calls.

10 You remember how many Ernesto Gonzalez was involved
11 in? Three where his name was mentioned, three where he
12 actually was making the call himself.

13 Do you remember what the six calls in total were
14 about? Trying to get patches for the club in Nicaragua, and
15 it could be in Spanish. Where can you get them.

16 Why is that important? Rudnick told you that
17 Ernesto Gonzalez, at the secret powwow meeting that everybody
18 else has said didn't happen, volunteers to be the shooter.
19 He volunteers to be the shooter, because Jethro Pettigrew has
20 stopped or created problems for him in creating charters in
21 San Jose and Santa Cruz. That's the reason that Rudnick
22 tells us.

23 Contrast that for me, if you would, to this. If
24 you are having such a problem you are willing to kill a man,

1 do you not think you might discuss that with your national
2 leaders? You might say hey, we're having some problems here.
3 And I'm not saying you get on the phone and say hey, I want
4 to kill this guy. I'm saying you get on the phone and talk
5 about it.

6 Because remember, these guys, when they have a
7 problem, voice their problems to one another, and then that
8 problem is carried to the other club, and then they have a
9 meeting and they try to squash it. That's what everybody
10 told you.

11 Now, you would think if there was a problem with
12 Pettigrew stopping charters from growing, certainly that
13 would have been a discussion. And if Ernesto Gonzalez is so
14 offended by it, you would think that Ernesto Gonzalez might
15 just might have mentioned it somewhere in the 100,000 calls
16 over 18 months.

17 It's not there. What does that tell you? I'm mad
18 enough to kill someone, but I'm not even going to talk about
19 it. Doesn't make sense.

20 When Ernesto Gonzalez walks away from this affray,
21 this fight created by Gary Rudnick, it doesn't make sense if
22 he's there to shoot Pettigrew.

23 And interestingly, the statute that you're given to
24 work with, you know, came about in the old days when dueling

1 was popular, or some saw it as appropriate. And, you know,
2 you would slap somebody in the face with gloves and challenge
3 them to a duel. And that's really our challenge to fight
4 statute, and that's what that about, it's about a person.
5 Who challenged Rudnick? Nobody. Who challenged Pettigrew?
6 Questionable whether Rudnick did.

7 Rudnick then gets punched in the head by Gary --
8 excuse me, by Jethro Pettigrew, and it's on.

9 Like Evanson, the State's witness told you, it was
10 spontaneous. The Vagos go into protective mode. But what's
11 also very interesting is we've heard, well, this Vago did
12 this, and this Vago smashed that Hells Angel in the head with
13 a bottle and this Vago hit that Hells Angel, that Hells Angel
14 shot that Vago, the other Hells Angel was shooting at other
15 Vagos. But do you know what's missing from the State's
16 argument? Ernesto Gonzalez.

17 Where is he? Is that just the attempt to say well,
18 hey, all Vagos are bad. Well, look, we heard that from what
19 was his name? Les Skelton, the man who in part watched the
20 1948 version of the Hollister raid on The Wild Ones as part
21 of his getting together for expert opinion.

22 It's the generalization that is dangerous, it is
23 the generalization that is unjustified, and it is the
24 generalization that is not just.

1 What is happening in this case is pretty simple.
2 Again, you either believe Gary Rudnick, and it happened. If
3 you believe Gary Rudnick, done.

4 If you don't believe Gary Rudnick, it's done.
5 There's not a lot of gymnastics to that. There's not a lot
6 of mental hoops to jump through. There certainly isn't a lot
7 beyond that.

8 Can shoot in the structure if he's saving the life
9 of another person. The only thing I think, as I said, that
10 wasn't covered was the carrying a concealed weapon. If you
11 think he came into the Nugget, had the concealed weapon or
12 was concealing it without any just reason. I think he told
13 you on the witness stand he put the weapon away because he
14 didn't want to get shot, he didn't want to be a target. In
15 other words, he didn't want to be a guy holding a gun and
16 have somebody like Pettigrew or Villagrana say oh, my God,
17 he's got a gun, let's take him, boom. I think the State told
18 you Garcia got shot because he had a gun.

19 But think about this. You can see this on the
20 video. When Mr. Gonzalez is carrying this gun, he's carrying
21 it not by the butt, like he's going to shoot with it, but
22 he's carrying it like he picked it up. Look at the video.
23 It's not being carried like a firearm.

24 When he comes by that bar walking to see where

1 Pettigrew and Villagrana are, he's carrying it in his left
2 hand as though he picked it up, not in the sense he's ready
3 to shoot or wants to shoot.

4 And then we did a little time deal for you in
5 reference to what happened and when it happened. And I think
6 it was their witness who said he was probably in there total
7 12 to 14 seconds.

8 And in some ways that actually does assist in
9 defining the case. Because as Mr. Gonzalez has told you,
10 Mr. Gonzalez walks in the disco -- now, understand, he can
11 see the whole time. There's nothing impeding his view, from
12 the point he comes around that fish tank aquarium section,
13 he's got a complete view of what Mr. Pettigrew and
14 Mr. Villagrana are doing. He's got a complete view to the
15 extent that he's able to feel it's over. And he's got a
16 complete view when it's not.

17 When he walks through that disco -- and I know the
18 prosecutor is going to say well, but I want you to look at
19 Exhibit No. 37, I think it is. No, Exhibit No. 129. And
20 he's going to say well, gee, I want you to look where the
21 shell casings are. That's going to tell you a lot.

22 Remember Heather Kohles, the gal who put the
23 placards out, took pictures of the evidence, what did Heather
24 Kohles tell you about the objects on the floor? Remember

1 when I dropped the pencil and we discussed the fact that if
2 you disturbed it from its original resting place, you
3 wouldn't know where it actually was when you come in later.

4 I think she told you she was there a couple hours
5 after the fact. I think she was also candid enough to admit
6 that there were, you know, certainly things that were
7 occurring that could have moved evidence as it laid on the
8 floor.

9 We had a chance to discuss the issue of static or
10 fixed evidence, like stains or the shot in the slot machine
11 glass, as representing perhaps evidence as, you know, pretty
12 reliable as to where it's located. However, the shell
13 casings, a different story.

14 Also not only do the shell casings come to rest on
15 the floor when people may be running to get away, get out in
16 a panic, or even just leaving by walking, if you kicked it,
17 it obviously changes where it was originally located.

18 We also had Heather Kohles tell us that the Glock
19 can eject this way, this way or this way. And we didn't know
20 the answer to that.

21 And we also had Heather Kohles tell us about once
22 the shell casing hits an object, obviously it can bounce.

23 So please don't fall victim to the theory of
24 speculation on, well, you've got a placard that shows shell

1 casing A is here, so therefore that means when shell casing A
2 was deposited in that specific location, the shooter must
3 have been here. You can't do that, and we can't use that
4 evidence for that, because that evidence doesn't stand for
5 that.

6 What that evidence stands for is where it was
7 located when they went onto the scene, took pictures hours
8 later, after potentially being disturbed in crowds of people.

9 You'll remember I kept asking about a crime scene
10 log, who was there, who kept track of people in and out. And
11 no one seemed to have one, or know who did one, if anybody
12 did one.

13 We did hear some testimony from Mr. Ivers, how
14 Mr. Ivers indicated that he had put up Crime Scene, and of
15 course in the way. I asked him well, did you put that up
16 before. And he goes no, of course not, you don't put it up
17 before the commission of a crime. You know what, he's right.
18 The fact of the matter is, it's put up afterward, after they
19 arrive. It doesn't certainly denote or secure a pristine
20 crime scene.

21 You remember when I talked to him about pristine
22 crime scene? And the difference between a crime scene that
23 may be trampled through versus a crime scene that's pretty
24 well locked down to where you can control what happens to

1 whatever evidence may exist on the premise?

2 But if you're being asked to look at diagrams and
3 to draw absolute conclusions, please remember that unless a
4 diagram itself represents an absolute, it would be
5 significantly wrong then to draft or draw an absolute
6 conclusion from a diagram that at best represents the best
7 efforts of a person who puts something together hours after
8 the fact.

9 The reason that's important, as well, is this.
10 We've heard a lot of people testify as to what they heard. A
11 lot of gunshots. Some said 20, some said less. And now
12 we've got the State saying, well, you've got this many
13 cartridge cases, and we found this many projectiles, so
14 therefore, that's the number.

15 You remember Mr. Rudnick's testimony? Mr. Rudnick
16 said that he saw Mr. Pettigrew shoot four times himself.
17 That's what Rudnick said.

18 Interesting, and that's why I asked about the speed
19 loader issue. And a speed loader very simply is a way to
20 load a revolver very quickly without having to take the time
21 to individually insert specific bullets into a specific
22 chamber of the revolver. So then the question is, well, if
23 that happened, where are the shell casings? Look at the
24 video. You'll watch the people were picking up the shell

1 casings. You'll have a chance to answer your own questions.
2 It's there. The video, absent the narration, absent the
3 willingness of the State to tell you what's being said. And
4 I think honestly Rudnick probably said it best: Mr. Hall,
5 can you answer that question one more time for me. Because
6 there's a lot of that that's gone on throughout the course of
7 this trial.

8 The fact of the matter is, witnesses have come to
9 you and testified to you of certain consistencies. One of
10 the consistencies was the Vagos and the HAs of San Jose got
11 along. Another of the consistencies was it would be
12 ridiculous for the Vagos of San Jose to do something like
13 this. You'll remember Mr. Evanson, the State's witness, who
14 said this would not help them.

15 I want you to tie that into something else for me,
16 because we're going to hear about this, too. After. After
17 the shooting, you'll remember our pivotal player,
18 Mr. Rudnick, told you, well, you know, after that thing
19 happened with the guys with the cut, a couple of the brothers
20 took me up to a room.

21 And supposedly at that point you'll remember
22 Mr. Rudnick is told that he's gone. But of course,
23 Mr. Rudnick forgot to tell you that he hung around long
24 enough to be with Bradley Campos to assault the tourist who

1 was taking the video, and to tell him that's not good enough
2 when he turned over the video and his driver's license. I
3 wonder what would have happened had the police not arrived.

4 But regardless of the fact that Rudnick and the
5 truth are seen as a moving target, Rudnick tells you he goes
6 up to his room, and the -- stays there, from what I can tell.
7 Gonzalez tells you he leaves, sees some individuals that he
8 recognizes across the street, and stays in their rooms. And
9 he tells you that he's afraid, and he tells you he's afraid
10 because of the Hells Angels and the potential for
11 retaliation.

12 At this point you've got to remember that the Hells
13 Angels were pretty well en masse themselves, perhaps in a
14 location not that far. And there were a number of Vagos, I
15 think Mr. Wiggins one, who indicated to you that he was very
16 afraid to even be there, and that's why he wanted to get up
17 off the ground and get out of there, to the dismay of Officer
18 Walsh, who kept him down on the ground.

19 The consequence of which is, is that a genuine
20 fear, is that a genuine reason to be worried? Because
21 something has happened, an individual has started what
22 amounts to a fight that involved now dozens of people, and
23 the consequence of which is if there wasn't a problem before,
24 there certainly is a problem now.

1 Wiggins finally, finally, laying on the ground, put
2 an end to that problem, at least to the extent of
3 Mr. Pettigrew. But that also created a horrendous problem.
4 What happens is this. You're going to be told that
5 Mr. Gonzalez flees out of guilt. His mind set is oh, my God,
6 I'm guilty, gosh, so therefore I'm going to run away.
7 Mr. Gonzalez has told you exactly what he did and why. And I
8 want to ask you, does it make sense. And again, I'm asking
9 for that application, that allocation of common sense in this
10 case.

11 Does it make sense that Mr. Gonzalez would leave
12 this area, meet with his club brothers, and try to figure out
13 what to do. You heard testimony, everybody went down to Los
14 Angeles. The San Jose charter. Because the San Jose charter
15 is the target in reference to where they live.

16 As Mr. Gonzalez told you, I would never do anything
17 like this. We've got mortgage payments, we've got kids,
18 we've got rent, we've got jobs, and we all had to leave. He
19 also told you that he certainly would have said no, if
20 anybody had asked him to do it. Does that make sense? Do
21 you throw away your life, your ability to be with your
22 children, your ability to run your business, because you plan
23 it out to do so? Do you think the other charter members
24 would be happy about doing the exact same thing?

1 Lose everything you have because Gary Rudnick got
2 patted on the back? And that's why the people from the Vagos
3 that testified for you saw it to be so absurd and so
4 ridiculous, nobody would do it. It doesn't make sense.

5 What does make sense, they tried to get ahold of
6 the HAs so they could have a sit-down and work this out. And
7 you'll remember Mr. Gonzalez told Mr. Hall, HAs, they weren't
8 interested in talking. Does that make sense? At that point
9 Mr. Gonzalez told you he couldn't simply leave, and leave his
10 kids at odds with the Hells Angels, so that's why he didn't
11 go. Canceled his flight.

12 But what you also heard from Detective Bennett
13 under cross was that Mr. Gonzalez did not appear to be taking
14 steps to avoid the police, i.e., using a phony name, using
15 throw away phones, things of that nature, booking tickets in
16 his own name with his own passport with his own credit cards.
17 To the contrary, as asked on cross, it appeared he was trying
18 to avoid more the HAs.

19 Mr. Gonzalez, when he returns to San Francisco, as
20 I think he told you he didn't know what to do, he was hoping
21 that there would be a way the guys, the national, the leaders
22 could get together with the leaders of the HAs and explain
23 what had happened.

24 Now, that's important for these reasons. The

1 State, through their examination, has attempted to suggest
2 that Mr. Rudnick getting kicked out of the club was some sort
3 of a phony part of the planned appeasement to the HAs. Or in
4 reality, it's because it was Gary Rudnick's fault, he
5 wouldn't listen to the fact that he had to get out of there,
6 he wouldn't listen to everybody senior to him that had told
7 him to get lost, quote, go rest your F'ing neck, according to
8 Mr. Seimer's.

9 So what happens. Mr. Rudnick gets, as they say,
10 kicked out bad. Now, that sort of plays in, you'll remember
11 the text message that's been mentioned to you, due to our
12 circumstances, my P says there's change of plans, blah, blah,
13 blah. And Rudnick of course wanted to imply it meant
14 something else totally different. Rudnick was being kicked
15 out of the club because Rudnick had created this entire
16 problem. Anybody around Rudnick at that point, according to
17 the witnesses, should not associate with him. It's the same
18 as being shunned almost. They take your patches back, the
19 whole story.

20 And you heard something, and I hope you didn't
21 forget, about the bike. You remember Gary Rudnick on
22 cross-examination, and we're talking about his motorcycle,
23 and he's talking on direct about how the guys came to take
24 his motorcycle away from him.

1 And on cross I said but Mr. Rudnick, isn't it true
2 that you said you would give them the motorcycle to, quote,
3 make things right. And I kept asking him, what have you got
4 to make right, Mr. Rudnick? If you're told by the club to do
5 this, what on earth do you have to make right?

6 Well, I don't know. Well, Mr. Rudnick, you said
7 it. What do you have to make right? He couldn't answer the
8 question. You know what he had to make right. The fact that
9 he caused this, he caused it on his own, he caused it against
10 everyone's request, against everybody's wishes, against
11 everybody's directive. And the State is not thinking that's
12 enough, they think they should have dragged him out of there
13 physically, or whatever the case may be. Even though you've
14 heard that's just not the way things work.

15 Rudnick knew he had to make it right. When you're
16 asking yourselves who do I believe in this case, ask
17 yourselves what on earth is this guy talking about, when he
18 himself feels he's got to do that to make it right.

19 Ask yourself why he keeps saying all that I wanted
20 them to do, national, Tata, Dragon, is listen to my side of
21 the story.

22 Well, Mr. Rudnick, why should they have to hear
23 your side of the story, because supposedly they're the ones
24 who told you to do this. He didn't have an answer for that,

1 either.

2 The fact is he didn't have an answer because he
3 truly did want somebody to listen to, quote, his side of the
4 story. But his side of the story has never been hey, you
5 guys, you told me to do this, why the heck are you making me
6 give up my bike. Why the heck are you kicking me out of the
7 club. And I asked him that. And he agreed, he never brought
8 that up.

9 Isn't that the first thing that somebody is going
10 to be bringing up? You guys told me to do this, and now
11 you're going to do something to me for me doing what you told
12 me to? It doesn't make sense.

13 The bike itself, I'm going to give it to them to
14 make it right, you know, he tells his wife that. Know what
15 his wife told him? You ain't giving up shit. And as a
16 consequence, what did Rudnick say? I told them I'm not going
17 to give it -- well, it's at the shop, or whatever lie he came
18 up with then.

19 The fact of the matter is, his intention was to
20 make it right. His intention was to make it right in the
21 sense of helping to pay for the moving costs for the families
22 from San Jose who had to leave their homes. To help
23 Mr. Gonzalez hire a lawyer because he didn't have the money
24 to do it. That's what he's trying to make right. Because he

1 behaved exactly as Richard Nickerson said, a drunken fool who
2 stirred up a hornets nest. It's on his back.

3 And he also didn't want to necessarily get kicked
4 out of that club. And I want you, and I'm sure you'll get
5 this chance on the prosecutor's second closing, consider the
6 phone calls. We're going to hear about triangulation. Well,
7 he called him and he called him, so therefore there must be a
8 conspiracy.

9 Rudnick would have been the guy calling everybody,
10 trying to tell his side of the story. Just like Mr. Gonzalez
11 told you. Listen to the jail calls, see what kind of a guy
12 he is.

13 He will want to tell you his side of the story
14 until he is blue in the face. Until you agree okay, Gary,
15 yeah, what you did is right, you know. Yeah, a guy really
16 did disrespect you, so yeah, I understand, it's okay for you
17 to have done this, and don't worry, we're not going to kick
18 you out of the club.

19 When Mr. Rudnick is kicked out of the club is when
20 Mr. Rudnick a short time later is arrested. Consider that
21 now as part of the equation as to what were Mr. Rudnick's
22 incentives or motives when he is first contacted by Detective
23 Eric Bennett in Glendora, California.

24 He's been kicked out of the club bad, is the word

1 we've heard. His president, Bradley Campos, kicked out of
2 the club bad. The reason is because Bradley Campos and Gary
3 Rudnick were vice-president, Gary, and president, Bradley, of
4 the Los Angeles charter, that created this whole -- Richard
5 Nickerson word -- hornets nest by virtue of their actions.

6 Bradley Campos is gone and moves about his way.
7 Gary Rudnick has been arrested. Gary Rudnick doesn't have
8 any loyalty to the club anymore. Gary Rudnick sees a way he
9 might be able to engineer perhaps a squeaker where he can
10 slide out the door.

11 So all of a sudden Gary Rudnick meets with a
12 detective who is somewhat involved, shall I say, in
13 investigating the Vagos. And all of a sudden, after
14 transcripts are shown, videos are shown, diagrams are shown,
15 meetings are held, we have a story.

16 This is the birth of a lie. This case is based on
17 a lie. The charges in this matter are based on a lie.

18 The witness who supports the charges is telling you
19 a lie. The hoped-for result is you do not see through the
20 cracks in his story, and because there's enough smoke in the
21 room regarding, oh, the Vagos are this and the Vagos are
22 that, that you convict an innocent man for something he
23 didn't do simply because maybe, just maybe, the State can
24 convince you the motorcycle clubs are all bad and everybody