IN THE SUPREME COURT OF THE STATE OF NEVADA

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ERNESTO MANUEL GONZALEZ,

Appellant.

v.

THE STATE OF NEVADA,

Respondent.

_____/

CASE NO. 64249

APPELLANT'S APPENDIX, VOLUME XXIII

APPEAL FROM JUDGMENT AFTER JURY TRIAL AND SENTENCING

Second Judicial District
State of Nevada

THE HONORABLE CONNIE J. STEINHEIMER, PRESIDING

Richard F. Cornell, Esq.
Attorney for Appellant
150 Ridge Street
Second Floor
Reno, NV 89501
775/329-1141

Washoe County District Attorney's Office
Appellate Division
Attorney for Respondent
1 Sierra St., 7th Floor
Reno, NV 89501
775/337-5750

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

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

TRANSCRIPT OF PROCEEDINGS

SENTENCING

THURSDAY, OCTOBER 3, 2013

RENO, NEVADA

Reported By: MARCIA FERRELL, CCR No. 797

APPEARANCES:

For the Plaintiff: AMOS R. STEGE
KARL S. HALL
DEPUTY DISTRICT ATTORNEYS
1 S. Sierra St., 4th Floor
RENO, NEVADA 89520

For the Defendant Gonzalez: DAVID R. HOUSTON
ATTORNEY AT LAW
432 Court St.
RENO, NEVADA 89501
KENNETH E. LYON III
ATTORNEY AT LAW
10389 Double R. Blvd.
RENO, NEVADA 89521

RENO, NEVADA, THURSDAY, OCTOBER 3, 2013, 9:00 A.M.

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THE COURT: Let the record reflect the defendant and counsel are present, the State is represented by counsel. This is the time set for oral argument on motions prior to sentencing. Motion to strike?

MR. LYON: Thank you, your Honor. Your Honor, we filed a motion to strike redundant convictions on the concept that Nevada has a long history of authority that redundant convictions should be stricken from the record prior to sentencing.

The case law suggests that a redundant conviction is a conviction that arises out of one course of conduct, but results in multiple charges and multiple convictions.

There's one case, it's the State of Nevada versus the Eighth Judicial District, talks about the gravamen of offense being the material act which is being punished. And in this case we have three convictions for one material act, that being the killing of Mr. Pettigrew.

We have count two, which was the challenge to fight charge resulting in the death of Mr. Pettigrew. We have count five, which is the second degree murder, that reckless disregard charge. And then we have count six, which was the premeditated murder based on the concept that Mr. Gonzalez

was part of some conspiracy to assassinate Mr. Pettigrew, and that was primarily promoted at the trial through the testimony of Mr. Rudnick.

All three of those charges follow one gravamen of offense, meaning the material act that's being punished, again, is the killing of Mr. Pettigrew. Because those are redundant convictions, they should be struck.

The Jenkins case, which is cited at 109 Nevada 337, talks about that when there are alternative theories, the State is certainly free to pursue those theories in a charging document. But if in fact there are convictions based on all theories, then the appropriate remedy is to strike the conviction.

Now, in their opposition, the State basically says that the appropriate remedy is a merger of the offenses for purposes of sentencing. And while I would tend to agree that Mr. Gonzalez certainly cannot be punished multiple times for the same act, neither should a conviction exist for those three -- for those three charges. We cited the Ball decision and the Rutledge decision that talks about that convictions are just another form of punishment beyond the actual sentencing itself.

So just because the Court may merge the actual sentencings for those three charges, that is not the

appropriate remedy in this case. The appropriate remedy, by way of Jenkins and the State of Nevada versus Eighth Judicial District, is to strike those convictions.

The State also talks about the fact that, well, these were just alternative theories, they could have been charged within a single count, and therefore really merger is appropriate. Again, the problem is the State did not charge these in a single count. They were charged as each separate, three separate and distinct counts.

The Court will recall we addressed this issue prior to going to the jury when we asked the -- when we made the motion for the State to elect which theory it was going to choose. And the Court found that the State did not have to elect one theory by virtue of the fact that that could be cured through the jury instructions, which required a unanimous decision on each of those counts.

Because of that, this isn't a situation where we have one specific count, and multiple theories within that one count. We do have multiple charges and multiple convictions. And therefore the State's remedy -- or the State's argument on that point isn't sufficient.

Again, if they were correct, and this was all charged under one single count, we would have one conviction. But we don't have that, we have three separate convictions.

Finally, the State argues that the Jackson decision has somehow abrogated this redundancy argument, and that it's no longer required. That as long as there is a separate act for each particular charge, then it's appropriate that all the charges and convictions stand.

While it's true that Jackson did go in and denounce some of the redundancy argument, the Jackson decision is very clear that it did not affect what they call the alternative offense redundancy. Which -- and they talk about alternativety refers to the mutually exclusive quality of certain offenses; the application of one logically excludes the application of another to the same factual situation.

So when you have alternate offense redundancy, Jackson itself says the body of this case law is unaffected by our approval of the same conduct test.

Really what they're talking about in that situation is this multiplicity, and whether the charges should be charged in one single charge or multiple charges. Again, we are past that. The State charged three separate charges, the jury was instructed on three separate charges, the jury returned a verdict on three separate charges. So we are now left with three separate charges that are alternative offense redundancy, meaning they are mutually exclusive. You can't have a challenge to fight verdict that is consistent with

this theory of premeditation and some sort of conspiracy to assassinate. Those are mutually exclusive. And as well as the second degree murder. You can't have second degree murder, reckless disregard, as well as the first degree murder. Those are all mutually exclusive, and the remedy is to strike the convictions, the redundant convictions. And we would ask that remedy be applied in this case.

THE COURT: Thank you. Mr. Stege.

MR. STEGE: Well, to start, your Honor, where we left off in the trial, which is them agreeing that these counts merge. And there's no reason that this Court should not hold them to their agreement on the record which is attached as an exhibit to our opposition, that the counts in question, the challenge to fight, the second degree, and the first degree, would merge for purposes of sentencing. There's no reason that they should not be held to that.

And I agree with Mr. Lyon that there is a long history of case law regarding this subject, but one that is totally ignored by the defendant's briefs. They didn't address it in their opening brief or in their reply to the State's opposition. And that's the Jackson case, which gets rid of this gravamen test or this same conduct test and talks about legislative authority. And absent -- or if there's any question or vagueness in legislative authority, you look to

the Blockburger test.

So they agreed to merger, and then they ignore the 2012 law on the subject. And under our analysis, or I think the proper analysis laid forth in our briefs, is that it really gets to this argument made by the defense that, well, they could have charged all these under one theory, right? Let us suppose that first, that challenge to fight as a theory of first degree murder. We could have charged it in our first degree murder count as an alternative theory, right? Just as we did. We charged it as premeditated or liability pursuant to a conspiracy. We could have added a third alternative, being the challenge to fight. Which would be no problem under Schad, and we had some argument about that during the course of the trial.

And if we would have done that, we would have been arguing, well, we don't know which one of the three they came back with. And the effect is ultimately what we did, we spotted that, we did not need to charge them as separate offenses. But by doing so we increased our burden under that Schad analysis. And if we would have thrown it in there, they would have been making that argument.

But there's no problem with charging them as separate offenses.

Now, looking under the Jackson test to the

legislative -- to the plain meaning of the statute, there's no indication that multiple punishments would be prohibited. Even though, your Honor, we are not asking for multiple punishments, we're asking for a merger analysis, whereby the challenge to fight, second degree, and the first degree convictions would merge. There's on their face, on the legislative reading of it, there's no issue with it.

But let us assume that there is a problem with it. If there were some vagueness or ambiguity in the statutes, we would go to a Blockburger test. And as pointed out in our briefs, the challenge to fight and first degree have different elements. Mainly, that first degree requires malice, which is not required by challenge to fight. As well as the challenge to fight requires a challenge, sending, receiving a challenge to fight, which is not an element required by first degree murder.

So in conclusion, your Honor, we're -- even though multiple punishments under the Jackson analysis would be proper, we are not asking for that, we're asking that the Court merge the counts as we had agreed to on the record. And as a matter of fairness, given what the -- what the jury's verdict was. So we would ask that the challenge to fight, first degree, and second degree convictions merge for purposes of sentencing.

THE COURT: With regard to your argument, I understand your argument with regard to the count two, the challenge to fight, and murder in the first degree, count six, not being mutually exclusive. But what about murder in the second degree, count five, and murder in the first degree, count four, for the death of Mr. Pettigrew?

MR. STEGE: Well, under the -- with the Court's indulgence. I would argue that the second degree, they have different -- they do have different elements in that the -- they both contain the malice element, where first degree having the added element of the premeditation and deliberation.

I think we argued during the course of the trial that that would be treated as a lesser. In fact we had a long discussion about that, and the Court -- that was the subject of the jury question. And ultimately, because they did not ask for lesser includes, the verdict should stand as to the second degree, not be subsumed, or not be stricken; but rather, be merged with the first degree count.

THE COURT: Okay, thank you. Mr. Lyon.

MR. LYON: You know, we did discuss and did agree that the sentencings should merge, but that is a different issue than what the motion presents to the Court.

We're not talking about purposes of sentencing,

we're talking about the actual convictions themselves. And when you're talking the Blockburger analysis and the Schad analysis, we're past all of that. Because there were three separate charges. This isn't a question of whether they should have been charged separately or assumed into one particular charge. We're beyond that. There were three separate charges presented to the jury, the jury came back and found -- and convicted on all three charges, based on the same gravamen of conduct.

Because of that, these convictions are redundant, and the convictions themselves have to be struck. A merger at sentencing is not the appropriate remedy. And again, I'd go back to Ball that talked about that. A separate conviction, apart from concurrent sentencing, has potential adverse collateral consequences. It could affect the defendant's eligibility for parole. It could result in an increased sentence under a future offense. A second conviction could be used to impeach the defendant.

While they may not necessarily be applicable to Mr. Gonzalez, these are still issues that the courts look at, and as an example of how the conviction is, in and of itself, punishment beyond just the sentence. In fact, they say the second conviction, even if it results in no greater sentence, is an impermissible punishment.

So we're not here talking about sentencing and merging of sentences, we're here about convictions, and what this jury did with respect to three charges that all arise out of the same conduct. And Nevada law that says that when that happens, it's the redundant convictions that need to be struck from the record. I think that's the appropriate relief, and that's the relief we're asking for in this case.

THE COURT: Ball and Rutledge aren't from the Ninth Circuit, correct?

MR. LYON: They're U.S. Supreme Court decisions, your Honor.

THE COURT: And they do not deal with this particular circumstance, you're extrapolating it.

MR. LYON: Correct. I mean, I think they're more in tune with whether you should have concurrent sentences or not. And in that situation, the court is saying a concurrent sentence isn't necessarily the appropriate remedy. So extrapolating into this situation, if we were to have concurrent sentences it might be more applicable.

We've agreed to merge the sentences, which I think is appropriate, but it's not enough of a remedy. And I think those cases show the importance of why that's true.

THE COURT: And Nevada has never adopted a theory that the mere conviction is prejudice to the defendant.

MR. LYON: Not that I've found, your Honor.

THE COURT: All right, thank you. We'll move into the next argument, motion for new trial.

MR. HOUSTON: Thank you, your Honor. And the motion for new trial has been of course filed with the appropriate exhibits. Your Honor, I wanted to not necessarily go through each point as brought forth in the pleading. I know the Court reads them, I know the Court would have a chance to review the exhibits. And as a consequence, I wanted to try to confine my remarks to what I felt were the primarily important aspects of each argument.

As the Court is aware, we had filed a motion for a new trial based upon three different principles. The first being the fact that we discussed jury instructions at great length in the motion for new trial, we discussed the questions from the jury during the course of deliberation and the Court's response, and then finally, we discussed the multiplicious charges.

And I wanted for background purposes to I guess illustrate the importance of the instructions in this case, to bring forward the method of charging Mr. Gonzalez. As the Court will recall, there were four informations supplementing the original indictment. That in and of itself, just by the title, seems to indicate there was a great deal of legalese

that was utilized in the charging of Mr. Gonzalez, to the point that Mr. Gonzalez of course was charged with a number of different theories on how he supposedly had committed the crimes as contained in the indictment. The first information supplementing, the second information supplementing, the third information supplementing, and the fourth information supplementing.

The end result was the charges theorized that Mr. Gonzalez, number one, laid in wait and killed Mr. Pettigrew. Number two that, well, maybe if we didn't prove that one, we'll try this. Mr. Gonzalez conspired with other members of the Vagos to kill Mr. Pettigrew. And maybe if that one isn't quite enough, let's go for a third one. Mr. Gonzalez was actually a party to a duel involving Mr. Pettigrew. And then because that may not sell it either, we go to the fourth, that being Mr. Gonzalez aided and abetted Mr. Rudnick and Mr. Pettigrew in a fist fight by shooting Mr. Pettigrew, and then Mr. Gonzalez maliciously and recklessly fired a pistol in a crowded room, disregarding danger to others.

And then of course, on top of that, we had the issue that if members of the jury did not unanimously agree to any one of the four, nonetheless, if the 12 would agree to one of the four, that they could still find Mr. Gonzalez

guilty, in that sort of fashion.

In other words, we've got essentially three to four different theories flowing into one river.

THE COURT: Wait. You're mixing, in the Court's mind, what was the charging documents. Your analysis that you've just talked about, you merged several counts.

MR. HOUSTON: Correct.

THE COURT: The Court instructed the jury specifically that they could not cross over from one count to the other.

MR. HOUSTON: Correct.

THE COURT: They had to be unanimous as to the count.

MR. HOUSTON: Correct.

THE COURT: So they could not find -- be not unanimous as to the theory. In other words, one person couldn't decide that he was guilty of count two, and 11 people decide he was guilty of count six, and return a verdict of guilt as to both count two and six.

MR. HOUSTON: No, and your Honor, I'm sorry if that was a misstatement on my part. My point being is there were several different methods in which to achieve the goal which would require a unanimous verdict.

The problem being -- and I think the problem

created by such a charging document, you create so many different areas of the law, that certainly in my opinion we as the counsel, and hopefully the Court as well, would understand the complexity of the case, and perhaps provide the necessary guidance or the necessary answers that might assist in working your way through as a juror what amounts to a very technically charged case.

That being my point, I know that we provided the Court with a number of issues in the motion for new trial that we felt were compelling as it concerned the jury instructions issue. And of course, we gave a conspiracy instruction. And naturally, the conspiracy instruction led to the first question as provided by the jury.

And I'll deal with those questions, but I bring up the confusion only because it seems to indicate to me that the instructions as a whole, albeit instructions that are trying to deal with a very complex matter, certainly in and of themselves also presented a great deal of confusion.

And again, I relate that back to the jury questions specifically.

But one issue as far as the jury instructions that I found most troubling was the fact the defense, as the Court will recall, had requested what we referred to as a confidential informant instruction. In other words, the

short version being that you've heard testimony from an individual, in our case Gary Rudnick, that may be considered as confidential informant. As such, you should examine that testimony perhaps with extra caution.

And I know the Court did not give us that instruction. And in the process of not giving us that instruction, indicated that Mr. Rudnick in fact during the Petrocelli hearing had testified, well, I fully expect to go to prison.

Now, I find that very interesting, in light of the fact that Mr. Lyon and I also chose to attend Mr. Rudnick's sentencing. Lo and behold, there seemed to be a whole different thing going on that certainly defense counsel was not made aware of. And it seems to also have pointed out the necessity, perhaps, of honoring the request of defense counsel to give that specific instruction to the jury about Mr. Rudnick.

And I know, having attended the sentencing, that there was a great deal of, shall I say, animosity on behalf of defense counsel, that somehow the State has not honored what was referred to as their, quote, tacit agreement.

Now, I've had years and years to work with Mr. Hall, and frankly, I don't have any reason to doubt Mr. Hall's word. What I do have reason to doubt is the

sincerity of Mr. Rudnick's claim, as made during the Petrocelli hearing, that he fully expected to go to prison. And quite frankly, there then would be nothing to impeach him on as it concerned his supposed negotiations with the State.

And I don't really have to reach too far to go through his sentencing transcript to repeat over and over again by both Mr. Rudnick and his counsel that there was a wink and a nod agreement as far as they were concerned. The issue isn't necessarily for the purpose of my argument whether the State believed it. The issue is whether the witness testifying for a cause or for a purpose believed it.

THE COURT: However, your argument is after the fact.

MR. HOUSTON: Well, your Honor, it's only --

THE COURT: So if you want to argue that evidence that you secured after the fact is somehow new evidence that would support a new trial, that's different than arguing whether or not the refusal of the instruction, given the state of the case at the time the instruction was refused, requires a new trial.

MR. HOUSTON: Well, your Honor, I --

THE COURT: I understand the arguments that you're making with regard to Mr. Rudnick. I'm a little concerned, obviously, by that. I'm concerned that Ms. Lunt sat through

some if not all of Mr. Rudnick's Petrocelli hearing, and never corrected the record that he was creating that you just talked about.

So I don't know, I have no knowledge, but I do know that the Court had evidence before it, sworn testimony that was not refuted, that he expected to go to prison. And that's the basis of the refusal, plus some other things that was wrong with the instruction. But that is the knowledge the Court had.

Now, if you want to argue that newly discovered evidence supports a motion for new trial, then that's a different argument than the one that you presented in your pleadings.

MR. HOUSTON: Thank you, your Honor, and I would combine that argument certainly with what I'm advising the Court. And I bring that up not necessarily because we knew that at the time, but it was because at the time of arguing jury instructions, my comments to the Court was really quite simple, and really more in agreement with what the defendant, Mr. Rudnick, had set forth on the record at his sentencing, as well as his counsel, that obviously one could certainly infer or imply by what had happened that the defendant Rudnick had received a substantial benefit.

And in fact, Mr. Rudnick, as the Court will recall,

was allowed to plead guilty to one count. One count was the conspiracy to commit murder.

If we then evaluate whether or not Mr. Rudnick's plea resulted in a benefit in exchange for his testimony, then certainly above and apart from this wink and a nod tacit agreement -- which, by the way, was also contrary to the affidavit that was filed in support of the prosecutor's motion in reference to our I think last discovery motion in this case, where Ms. Lunt again assured us that no such agreement existed -- the consequence of that sort of behavior certainly results in an argument, as far as additional information that should support a new trial.

But simply on the instruction itself, your Honor, it was very clear that Mr. Rudnick had received a substantial benefit by virtue of his willingness to cooperate, to give statements, whether it be one, two, three or four, and to stand in front of the jury and provide testimony.

That benefit was found in the form of a sentence that was subject to probation, a sentence that arguably would not land him in prison, and a sentence that arguably certainly didn't carry a life imprisonment as its sanction.

To me that was a substantial benefit. And of course, despite the fact that we could not prove at the time of jury instructions Mr. Rudnick certainly was under the

impression he was going to receive a lot more, we did provide the Court with his telephonic communication with his then-spouse, or whatever, Crystal, wherein he was very clear. And in fact, there was evidence before the court that he was receiving a tacit deal by virtue of his statements to his significant other on the telephone. Something to the effect of, well, you don't understand, this is just the way it works. I have to enter the plea to this, and then as a consequence of me entering the plea to this, and me testifying, they're going to give me probation.

So obviously we did have evidence in front of the Court that suggested at least -- and most importantly, in Mr. Rudnick's mind, he was going to receive a benefit for his testimony.

And as such, I think in fairness to Mr. Gonzalez and the due process issues of fundamental fairness, we should have had that instruction, among the others that we have discussed that I'm not going to spend a great deal of time on because I think they're adequately noted in the pleading.

Again, your Honor, I think -- and I said it in closing. I believe that Mr. Rudnick's argument, or rather his testimony, was in fact the basis of the State's charges against Mr. Gonzalez in large part.

Absent that, I think as Ms. Lunt referred to in the

sentencing of Mr. Rudnick, the State was stuck with this antiquated challenge to fight theory based upon some notion of inviting somebody out at dawn for a duel with pistols. Quite frankly, as Ms. Lunt indicated in her sentencing argument, she believed the outcome of this trial would certainly have been different, had the State been required to proceed on the original indictment and the original counts as set forth.

They were not required to proceed in that fashion, and allowed to supplement in the manner they did, by virtue of their interviews with Mr. Rudnick and Mr. Rudnick's providing of additional information.

So when it was suggested at the sentencing that Mr. Rudnick was certainly a key witness for the prosecution, I would most certainly have to agree. As such, his testimony then was testimony I think that would either support or not support the State's theories in this case, save and except the challenge to fight, which would have left them with an entirely different problem.

On that basis, your Honor, I think in fairness, Mr. Gonzalez should have had that instruction, and it was a critical component.

And as we have now learned after the fact, there has been certainly discussion that there was some sort of

tacit, wink and nod type agreement. And in fact, there was characterization of certain conduct that was not disputed as having occurred in reference to the State seeking some form of asylum for Mr. Rudnick through a federal and/or state of California witness protection program, with the question repeatedly asked, why would somebody do that if it was their intention to send him to prison.

Then coupled with the OR release of Mr. Rudnick, which again I kind of looked at as a benefit for his testimony.

But again, that I would leave in the Court's hands, and ask that on that reason alone, your Honor, we should receive the new trial. That certainly doesn't rule out the other issues, it certainly doesn't mean they shouldn't be considered, but that is something that really has impacted, I think, the course of the jury and the resulting verdict.

Your Honor, leading from that point into the jurors' questions, I know the Court certainly is well familiar with those questions, I'm not going to try to quote them. But I do recall as Mr. Lyon and I sat in my office awaiting the jury, we did receive a telephone call of course from the Court wherein the Court advised us, quote -- and I think they titled it legal question, which I thought of some significance. But it was then, "If a person has no knowledge

of a conspiracy, but their actions contribute to someone else's plan, are they guilty of a conspiracy?"

And I recall my comment, in reference to those -- that question on the telephone was -- my immediate response was you have to tell them no. And not surprisingly, Mr. Hall agreed with me.

Coincidentally, Mr. Hall, according to the transcript, actually agreed with me not once, not twice, but I think three times throughout our discussion, that the jurors must be advised that knowledge is an element of a conspiracy. And obviously, we didn't go into it in that length, because we said the simple answer to that question is no.

We cannot have this jury think that they can convict Ernesto Gonzalez based upon the fact that he didn't have any knowledge, but the final outcome of his actions did in fact contribute to the benefit of what the coconspirators wish to accomplish.

THE COURT: And is it your argument that instruction number 17 did not do that? Did not make that an element?

MR. HOUSTON: Your Honor, apparently it didn't, because the jury asked the question. And I know --

THE COURT: I don't think you can assume that. It

may have been misunderstood by a juror, and reviewing -- the question is, did the instruction adequately cover the knowledge element.

MR. HOUSTON: You know, your Honor, sometimes that old expression proof is in the pudding is really the best way to approach an answer. The proof in the pudding in this particular case is we don't know how many jurors were confused. We know at least one was. And how many does it take? The fact of the matter is, if one was confused, it's significant. It doesn't matter if all twelve --

THE COURT: But you don't know if they were confused after they read it.

MR. HOUSTON: I don't know what happened after they read it, other than in less than, what, 38 minutes we had a verdict. Would certainly suggest to me that that may in fact have been a point of contention.

But I guess the Court is bringing up my whole concern. We don't know. And because we don't know, I can't look at my client and say look, we lost, and we lost because the jury considered the evidence. We did our best, but that's the way it is. And if I could do that comfortably, I would. I can't. Because I don't know the answer.

And I know the Court's questioning of me, well, how many, did they understand later, we'll never know the answer

to that, your Honor, because --

THE COURT: That isn't really my question, my question was did the instruction give the element of knowledge.

MR. HOUSTON: In a legal sense, to me, I don't think it was clear. In a sense to the jury, I think the question definitely sets forth it was not clear, or they would not have asked the question.

And I guess my concern is, it was so much simpler to say no. A one word answer. And surprisingly, the State agreed.

The failure to do so I think leads us to this problem. The answer, as simplistic as it was, was not given. The resulting answer, however, was simply, essentially, not quoting, go back and read the instructions. Which is kind of like getting an instruction page to do something you don't understand, and you ask for help, and you're told go back and read your instructions.

Well, if I understood the instruction in the first place I guess I wouldn't have asked the question in the second place.

And I appreciate the Court's question in the sense of, well, is this instruction legally sufficient under the case law as established in the State of Nevada, or the Ninth

Circuit. I appreciate that. But trials are so often, as in this case, about more than just the straight standard legalese. Sometimes I think jurors, when not inquiring of a question of fact, are entitled to -- or if not entitled, certainly capable of asking for help.

And that was my point in the discussion telephonically, that they were asking for guidance. And for us to fail to give guidance -- and I say us, collectively -- I think deprives them of the ability to make the best decision under the best law, and it deprives the defendant of the notion of receiving the due consideration of a person who is on trial for the rest of their life.

There's really not much more important than that. And I believe, and I've set it forth with all the respect I could muster, that we could have done better. And I say collectively, I'm not pointing a finger. But collectively means my client, my defendant, maybe deserved a better shake as far as that answer.

We had a second question, and that second question I think also goes to the heart of the objections concerning the method in which this case was charged, as well as Mr. Lyon's statements referencing his argument. And that second question was, where we had a jury knowing full well we had one decedent, believed that they should, could, or would,

convict of both a second degree count, a first degree count. And of course, again, Mr. Hall and I agreed in majority as to how that question should be answered. In other words, no, you shouldn't convict of second and first. And I think in our pleading we indicated maybe even add a little more. No, you shouldn't convict of second and first, because truly there's one decedent. The fact that a jury would come back and convict a defendant of what amounts to three separate methods of committing the same crime is again somewhat startling to me and perhaps indicates that just maybe the jury had confusion and didn't understand the instructions, or the theories of charging. Or in fact, the method in which to proceed under the instructions.

Obviously, you cannot have a conviction for different types of homicide with one individual, as a logical conclusion to the trial. And we did.

And if that suggests anything, it suggests to me that their unanimous verdict of guilty on all counts perhaps was influenced, again, by the inability of the jury to adequately understand exactly what was being suggested or demanded of them, pursuant to the instructions and the matter of law.

I think in and of itself, your Honor, as previously discussed, the method of charging in this case was unduly

prejudicial. And that goes to the multiplicious charges.

I believe we had a distinct danger of prejudice in this case, just by virtue of the character and the cast of characters. The idea was that we had two rival motorcycle gangs, not clubs, that were savagely and viciously attacking each other as a method of operation in their general charters. Which hopefully at least that came out, that's not true.

But what we did have then is the alternative of the jury regarding everything they would have seen since 1949, when they made the first motion picture concerning the savagery of the motorcycle gang, and applying all of that in their approach to this particular case. And when we look at the multiplicious charges that charge the unlawful killing of Mr. Pettigrew in three separate and different murder counts, I think we established or added to that prejudice. And in fact, Mr. Gonzalez presented really as a middle aged man who ran a business and supported his family, but nonetheless, according to the charging document, he was a one man crime wave.

The Nevada Supreme Court has not directly confronted that issue. The federal courts, however, have recognized that allowing the government to prosecute multiplicious charges may in fact prejudice a defendant by

falsely suggesting to a jury that the defendant has committed not one, but several offenses, and therefore stands as an individual of a certain degree of savagery and brutality.

And the message then that in my opinion conveyed to the jury is the risk of acquitting a defendant like that is substantial. And as a consequence, I think it also diverts the jury from the actual consideration of the issues. And as such, it at least renders it more likely that they would find a verdict of guilty on all counts.

Your Honor, in closing, I would suggest that the defendant believes he was prejudiced by the State's proliferation of charges in this case. And that what started as a risk became a reality, with the jury's second question. "People in here are wondering if a person can be guilty of second degree murder or first, or can it be both."

The Court's answer: "You must reach a decision on each count separate and apart from each other." The verdict in this case, your Honor, at least to me confirms that the jurors thought of Mr. Gonzalez as a one man crime wave, and literally thought they should throw the book at him.

I would be hopeful that the Court may, after some reflection, agree that we could have perhaps answered the questions in a method that may have satisfied the jurors' perhaps confusion, or certainly their inability to understand

exactly what was expected of them under the instructions in this case and the charging document.

And the issue as to whether or not we were entitled to that confidential informant instruction, I think certainly at this point should be abundantly clear. And at the very least we know at this point, right now, we had a witness testifying up there that had perjured himself to the court in the Petrocelli hearing, an affidavit had been filed that was either disingenuous or not correct, and finally, the intent of that witness and what that witness felt necessary in order to achieve his goal of getting probation, was certainly foremost in his mind.

We were not allowed that. And if that is then an ingredient for the request of a new trial, I would certainly ask the Court to consider that as such. Thank you, your Honor.

THE COURT: Thank you. The Court notes that Mr. Hall has been sworn in as a special prosecutor for -- and deputy district attorney for this purpose, and you may proceed with your argument.

MR. HALL: Thank you, your Honor. First of all, I'd like to talk a little bit about the facts and the charging document. As you recall, at the end of the trial we introduced the original indictment, and that indictment

contained all the charges which were contained in the final document, the fourth amended supplemental indictment. So those charges were the same, those charges did not evolve after Mr. Rudnick provided the statement to the police.

And let me just digress for a moment, there. And Mr. Rudnick did not give a statement to the police until well after he was arrested and in jail for several months, pursuant to an investigation and an interview conducted by the police department. Particularly Detective Patton.

So traditionally, my point there is traditionally, he was not an informant that was working with the police before the case ever got started. This was a negotiated plea afterwards. But back to the charging document.

Now, the defense claims that there was a lot of confusion, the jury must have been confused. And I would suggest that a verdict in 38 minutes, as Mr. Houston suggests, would indicate that there was not a lot of confusion.

Now I want to go through the facts that support each individual theory that the State propounded in its charging document.

In count two, of course, the Court is aware that we alleged a challenge to fight. Not a duel, as the defense has liked to couch that, or term, the particular murder in this

particular case. That's a different statute.

The challenge to fight is a separate statute where it is envisioned that multiple parties can be either aiding, abetting, conspiring, and helping each other commit. And in this particular case we did have a challenge to fight. As a matter of fact, the evidence in this case showed that everybody in the casino was aware that there was a problem between the Hells Angels and the Vagos. It started an hour before the murder of Mr. Pettigrew, it escalated. There were a number of people involved, the police were involved.

In addition to that, when he says that the jury was confused with respect to the animosity between these two gangs, we had extensive hearings regarding multiple violent incidences between the Vagos and Hells Angels, and a number of eyewitnesses and investigating officers who documented gun fights, murders, knife fights, beatings, and we even brought in videotapes of many of those altercations.

So the point of count one was there was a challenge to fight. Everybody knew there was a problem, we established that there was an extensive rivalry between those two gangs. That was shown while the parties were at the Oyster Bar. And Mr. Gonzalez was there at the Oyster Bar, at the initial confrontation between Mr. Pettigrew, and members of the Hells Angels and the Vagos.

Later, when they were in front of Trader Dick's, we know that Mr. Gonzalez' San Jose club members were there, it was primarily the San Jose club members that engaged the Hells Angels. After that first punch was thrown by Pettigrew, it was a coordinated attack, and it resulted with Mr. Gonzalez sneaking up behind Mr. Pettigrew and shooting him in the back.

Was there a challenge to fight? Clearly, by virtue of the videotape, we had Mr. Rudnick calling Mr. Pettigrew over, confronting him. They were clearly arguing, getting in each other's face, which was clearly consistent with a challenge to fight in modern day parlance. And to say that this is an antiquated statute also isn't true. When we look at the Willmeth case, which I believe was decided in 1986, so it obviously has applicability today. The supreme court reviewed it by virtue of the writ that was filed by both parties, and that document that was examined by the supreme court and approved by the supreme court was almost identical, except for a couple of typographical changes, to the indictment that was presented to the jury in this case for their consideration. That's count two.

The second, whether or not we have consistent theories, as opposed to inconsistent theories or theories that are -- I'm forgetting the word that I want to use, but

going back to my first degree murder theory. Do we have premeditation, deliberation, along with malice. The essential elements along with, of course, a killing of a human being.

The defendant from the witness stand admitted that he had the intent to kill both Mr. Pettigrew and Mr. Villagrana. He thought about it, he said he saw the fight, he was watching the fight, and he said -- you recall what he said, dropped an F bomb and said I made my decision, I'm going to shoot these individuals.

That's a totally separate theory. However, it is consistent with the challenge to fight. We had a challenge to fight, and then we had an individual testify that he had premeditated and deliberated his actions before shooting Mr. Pettigrew in the back.

Are those mutually exclusive, was the word I was looking for, are these mutually exclusive theories? Absolutely not. They are totally consistent with the facts and evidence of this case.

So when we get -- just to digress a little bit, when they're asking to strike these theories, essentially what they're trying to do is say hey, we don't want to have to fight all of these theories at the supreme court, we'd like to narrow it down so we can just talk about challenge to

fight, or murder in the first degree, and then argue about our instructions.

That is not appropriate in this case, when we had theories that were consistent with the facts and the evidence that was presented in this case.

Now, with respect to second degree murder, do we have an individual acting with reckless indifference, callous indifference, to the health, safety and welfare of individuals and engage in a course of conduct which is likely to result in death of a human being? Absolutely. And we don't have to go into that in any detail, by virtue of the fact that we had a videotape of the incident.

Now, let's talk about the jury instructions. Now, you know, a knee jerk reaction to a question posed by a jury is one thing, an analysis is something else.

Now, in this particular instance, when they said, well, can you have conspiracy if he doesn't have any knowledge of the conspiracy? Well, no. But when you think about it, and that was the knee jerk -- of course you can. Was the jury properly instructed on that? Absolutely. They had a jury instruction number 17, they had numerous instructions that discussed knowledge and specific intent in this particular case.

Now, is knowledge a legal question, or is knowledge

a factual question? And when we analyze the jury's question, it's crystal clear that it is a factual question that needed to be determined by the jury. And was there sufficient evidence to satisfy that? Absolutely. That's why we played that tape many, many times, so that the jury could see the relationship between the San Jose Vagos, the leadership of the Vagos, their action, prior to starting that fight in front of Trader Dick's. Because that was the evidence that showed the knowledge that there was going to be a fight. And we knew that he had the knowledge when Gonzalez went over and put his drink down before they started the fight. He knew there was going to be a fight there.

So, and we also had circumstantial evidence to show that he was a co-conspirator. We had evidence from the stand showing that -- from I think some of the higher-ups in the Vagos organization, indicating that they've got to stand by their fellow Vago and defend them when they engage in this type of altercation. So you had multiple ways to find evidence of a conspiracy and a concerted action to engage the Hells Angels in a deadly confrontation.

The point here is that question of knowledge is a factual question that had to be determined by the jury. They were properly instructed, the Court properly told the jury to refer to the instructions to resolve that question, which

they did in short order. So to now claim that there was confusion is basically silly.

Now let's talk about Rudnick. Rudnick -- the defense was not entitled to the instruction that they requested regarding Mr. Rudnick being a confidential informant. He was never a confidential informant. One point that I thought was very important when Mr. Lunt -- Ms. Lunt was trying to throw me under the bus, saying there was some kind of tacit agreement, was that Rudnick never testified. The only testimony we got from Rudnick when he was on the stand and he was asked, was there any agreement that I was going to recommend any particular sentence for you. No. There never was.

And I would also indicate that the defense had ample opportunity to cross-examine Mr. Rudnick. Not only did they have the opportunity to cross-examine, but they had the benefit of a six hour interview of Mr. Rudnick that was tape recorded and videotaped, in addition to another interview with other officers from San Bernardino, Detective Bennett. So they had multiple sources of information that they could use to cross-examine Mr. Rudnick.

They have the benefit, as you also might know, that they also had the benefit of a number of witnesses from the Vagos that they had subpoenaed that never came in and

traversed Mr. Rudnick's testimony.

The jury had all the information regarding Mr. Rudnick working with the State, being given bail consideration, being out on an ankle bracelet, they had all that information. They had the benefit of every bit of information that Mr. Houston had regarding any bias or opportunity to fabricate.

And they made a decision based upon the videotape, his testimony, the testimony of all the witnesses that the State presented. And certainly when you put all that together, you've got more than sufficient evidence to prove each case, or each count, each theory of our case, beyond a reasonable doubt.

So the defense is not entitled to a new trial. There was no violation of the defendant's rights or violation of due process. The jury was properly instructed, there was sufficient evidence to prove each count. The theories were not multiplicious, duplicitous, should not be stricken, and the case was properly tried. The defense had an ample opportunity to present their case, they presented their case. And the defense of self-defense was rejected.

That was the defense. The kind of losing side of what was their whole defense here, it was self-defense. Saying Rudnick is a liar, Rudnick started it, and

Mr. Gonzalez was just acting in self-defense. The jury rejected that defense in short order, because the evidence was overwhelming in this particular case.

And I would also indicate that the jury, in addition, had the benefit of Crystal's -- the tape recordings between Gary Rudnick and his wife Crystal. They could have listened to all that. If that was such a strong evidence, they had it. It was rejected.

I might also add that in light of the fact that the State alleged both a conspiracy and aiding and abetting, the Schad case would allow us, and that doctrine, would allow the jury to find liability based upon aiding and abetting theory. Perhaps they did say that we didn't have sufficient evidence of a conspiracy, but we certainly had aiding and abetting. And the defense has not alleged that they were improperly instructed on aiding and abetting, which was another theory that was incorporated in both the challenge to fight count and the murder count.

So based upon that, your Honor, we'd ask you to deny the defense motion. Thank you.

THE COURT: Thank you.

MR. HOUSTON: Thank you, your Honor. And just starting off where Mr. Hall stopped, he indicated that obviously the jury had rejected the defense not of self, but

defense of another. And quite frankly, they, under the logic of the instructions and the charges, would never have reached that analysis by virtue of the fact if one is a co-conspirator or an aider and abettor, or in fact a principal, of course they do not avail themselves of that defense.

You can't get the defense, as Mr. Hall is well aware, if you are a conspirator in reference to the commission of a crime of murder, or an aider and abettor.

But what is also interesting is not only is knowledge an element and required in reference to a conspiracy count, but it's also required in reference to an aider and abettor issue. Which takes us back full circle to the question that was asked in reference to knowledge concerning the conspiracy.

On that basis, your Honor, I don't know. And of course I would suggest that the jury did not actually analyze the defense of another by virtue of their finding concerning Mr. Gonzalez with or without knowledge becomes a member of the conspiracy.

And I do want to talk about the questions a little bit. Because it was not a knee jerk reaction by the State when they agreed with me. I'm sure the Court has had an opportunity to review Exhibit 4, which is the transcript of

the telephonic communication between the Court and Mr. Hall and Mr. Lyon and myself and Mr. Stege. And in fact, repeatedly Mr. Hall agreed that, in fact, in reference to the conspiracy question, that we should tell the jury the answer is no.

And in fact, Mr. Hall not only agreed with it once, but twice, three times, and I think four times, in reference to our entire conversation. And it went throughout the conversation. So it wasn't --

THE COURT: Seriously, the Court thought Mr. Hall and you were wrong.

MR. HOUSTON: Well, your Honor, that's the unfortunate aspect of my argument at this point, because obviously I'm somewhat swimming upstream. But I'm hopeful if the Court had a chance to view everything in its totality that perhaps the wisdom of Mr. Hall -- frankly, I wouldn't question that wisdom on this issue, I think he was over and above with the legal acumen. But your Honor, the fact of the matter is, if I could close out on Mr. Rudnick's issues, your Honor, if it's not part of this record, and I would assume it is because it was a codefendant, but the transcript of proceedings, the sentencing on Wednesday, August 24th, 2013, repeatedly refers to this tacit agreement.

And it's not what Mr. Hall thought. Mr. Hall

wasn't testifying. Mr. Rudnick was testifying. The Court knows he perjured himself at this point in his Petrocelli hearing, but more importantly, the Court knows that Mr. Rudnick felt that there was an agreement. And what I found to be particularly troubling was the statements on page 26, lines 12 through 18, where Ms. Lunt says, "But in order to keep Gary's credibility good, in order to make Gary the best possible witness they needed for the prosecution, he couldn't be promised anything. There couldn't be any covert or underhand agreement. But there was a tacit understanding and a tacit agreement if Rudnick did the right thing, they would do the right thing."

Then she again says on page 37, lines 23 through 24. "They didn't say, 'Gary Rudnick we promise you probation,' but that agreement is there. There is a tacit agreement based on their actions. Actions are louder than words. There was a tacit agreement that they would stand up and do the right thing if Rudnick did, and he did.

"And I'm going to ask you to honor that tacit agreement," the Court, "and give him the opportunity for probation. I'm --"

THE COURT: I don't know if that is in the record of this case.

MR. HOUSTON: If it's not, your Honor, may we

introduce this?

THE COURT: The Court can take judicial notice of that transcript from the other case.

MR. HOUSTON: Thank you.

THE COURT: They do have separate case numbers.

MR. HOUSTON: I'm sorry, your Honor. I wanted to make sure then that this is a part of the record. I do have a copy, if the Court would like it, for purposes of consideration.

THE COURT: We can do judicial knowledge. It's a record of the court. It also reflects that the Court did not accept that invitation.

MR. HOUSTON: I'm aware of that, your Honor, and certainly I appreciate that fact, and I know what occurred at the sentencing. But again, it's not what you did, your Honor. It's not what Mr. Hall promised, or even Mr. Stege promised. It's what this witness thought when this witness was testifying. And as a consequence, additional motivation for what this witness may have done as it concerned the witness stand.

But as stated three times now, what you do know is that witness was a perjurer. Because you heard that witness at the Petrocelli hearing, you saw a disingenuous affidavit, and now you've had the chance to listen to the arguments at

sentencing of Mr. Rudnick. Which of course, as the Court pointed out, is after-acquired information. We did not know that then. Had we known, certainly I think the Court probably would have given us that instruction.

But if it is a fact now, and a known fact now, then it shouldn't operate to the prejudice of the defendant that Mr. Rudnick chose to conceal what was truly going on in his brain behind the scenes. As evidenced not only by Ms. Lunt's statement, but by Mr. Rudnick's statement.

MR. HALL: I'm going to have to object. Mr. Rudnick never admitted that he lied on the stand. There's no evidence that his testimony was false when he testified.

THE COURT: I don't remember Mr. Rudnick testifying.

MR. HOUSTON: No, your Honor, I'm talking about at the time of his sentencing argument.

THE COURT: Right, I don't think he testified at that time.

MR. HOUSTON: No, actually he made a statement to the Court.

THE COURT: A statement in allocution.

MR. HOUSTON: Yes, your Honor. And if that, of course legally he wasn't sworn to tell the truth, and the

whole story. But the fact of the matter is he did allocute, and throughout the course of that I certainly believe indicated his thought process concerning his proceeding and the result.

THE COURT: The refusal of the instruction, whether it was based on good determination at the time or whether or not it could still be done now, is only prejudicial if, one, you were not able to argue that theory; and two, the Court did not adequately instruct the jury on the theory of the credibility of witnesses.

Both of those issues fail in your argument, Mr. Houston. You did argue this, and you did have an instruction that you could point to and show the bias of the witness. And so how can there be any prejudice to your client?

MR. HOUSTON: Your Honor, the statement and the argument advanced by the Court flies in the face of the fact that both the Ninth Circuit, the U.S. Supreme Court, perhaps I'd even think the supreme court in the State of Nevada has recognized a need for a separate and distinct instruction beyond the credibility instruction of a witness as it concerned a witness who was testifying for a benefit. If that be the case --

THE COURT: Are you talking about the Crowe case?

MR. HOUSTON: Your Honor, I'm sorry, I do not have that in front of me, and I don't want to misstate on the record. But the general principle is we are entitled as defense counsel to a specific instruction referencing an individual testifying for what he perceives to be a benefit, as opposed to the standard credibility instruction. And I know the Court brought that up during the course of our jury instruction argument, the Court felt that to be sufficient.

Unfortunately, in light of what we at least now know, yes, I was able to argue that Mr. Rudnick was a liar. And quite frankly, I think his cross-examination demonstrated it. However, what we also know is he definitely in his mind had a perception of a benefit to be received by virtue of his testimony, which kicks into gear the greater caution instruction that's represented by the confidential informant language instruction.

Because it's a little bit more. And I'm sure the Court is aware, otherwise the Court would have simply given it to us along with the credibility, although it may have been somewhat redundant.

But because, as the Court indicated, there did not appear to be anything in the record save and except his own voice on his own telephone calls to his spouse suggesting that he was going to get a benefit --

THE COURT: I didn't say that, you said that.

MR. HOUSTON: I'm sorry, I thought you did. But the consequence of the entire thing, your Honor, is -- again, I don't want to belabor the point. I believe in fairness to Mr. Gonzalez, he should have had the instruction. It wasn't a less than critical witness.

On that basis, your Honor, we submit the request for motion for new trial. Thank you.

THE COURT: Thank you. Okay, the Court is going to take a recess to consider your oral arguments that you presented now, along with the written pleadings that I've already reviewed. So we'll probably be about 15 minutes or so while I make a final decision. And then will make a decision, based on my decision, whether or not we'll proceed with sentencing. Court is in recess.

(Recess.)

THE COURT: The Court, in reviewing the defendant's motion to strike redundant convictions, notes that the Court has already granted the stipulation to merge counts 2, 5 and 6. That was granted on August 8, 2013. That's in the minutes of the clerk of the court where she indicates that the Court was merging those counts. It's also in the rough draft transcript, and the clerk has it in their notes that it was done back then. So these convictions have already been

merged. The argument of defendant that the verdict should now be stricken as redundant, should be procedurally barred.

However, the Court will address the merits of the argument in that the counts are not mutually exclusive, as is argued by the defendant. Further, the mere fact that the convictions exist in this case cannot support the argument of prejudice when they have been, as in this case, merged, and there is not multiple punishments for the same offense.

At this stage in the proceedings, the Court finds it unnecessary and inappropriate to strike the verdicts of the jury. Therefore, the defendant's motion to strike is denied.

In defendant's motion for new trial, he argued that the trial resulted in a violation of his due process rights because of errors resulting in an unfair trial. He argues that he was not allowed an instruction on the theory of defendant's case; further, that he submitted more than 60 instructions which were ignored by the Court; and the Court's instructions were inadequate or wrong; and the charging document was prejudicial.

In the reply to the State's opposition, defendant argues that he objected to certain instructions and offered other instructions, attaching Exhibit 7, 8 9, 10, 11 and 12 to the reply as proof. Also, alleging the documents are part

of the trial record pursuant to NRS 175.1615.

These documents were first presented in the reply. However, the documents in these exhibits are not part of the trial record. They were never filed with the court, nor were they offered in open court when the instructions were settled.

Once the preliminary discussions concluded, the Court provided a set of instructions that the Court proposed be given to the jury to counsel for the defendant and the State in open court, with the defendant present and on the record.

While on the record, the Court numbered the instructions, and asked the State if they had additional instructions to offer. The State declined.

The Court did not curtail the defendant's presentation of additional instructions to be considered. The defendant was asked if he had any instructions to offer, the defendant did not offer what he now presents in the exhibits to his reply. He offered five instructions.

As each instruction was offered, the Court entertained argument in support for including the instructions from the defendant and argument against including from the State.

The Court then ruled on the offer, making the

instruction defendant offered A rejected, B rejected, C rejected, D rejected, and E rejected, in turn, as offered and ruled upon.

Further, the defendant misstates the basis for the rejection of Exhibits A through E in both his motion for new trial and the reply to the State's opposition to the motion. Defendant's A was rejected because it was substantially covered in other instructions, specifically 34, and the cited authority did not support the instruction in the form presented, as it was presented.

The Court also noted instruction 28, 27 and 28, all dealt with the theory of the defendant's defense. And noted that there was a running instruction included in the packet, as well as an instruction specifically directing a not guilty verdict if any element is not -- was not proven beyond a reasonable doubt. Therefore, this instruction was cumulative.

B was rejected because circumstantial evidence was properly covered in other instructions, specifically 9 and 10. The Court noted that it was at the Court's discretion that this instruction be included, and the Court declined to exercise that discretion.

C was rejected because it impacted the definition of reasonable doubt, which is improper. Further, the

instruction has not been approved for use in a case such as this, and reasonable doubt was properly instructed in instruction number 6.

D was rejected because the legal theory regarding what is necessary for an act to benefit a gang, thus supporting a gang enhancement, was substantially covered in other instructions, particularly instruction 32. In addition, the cited authority was not proper, the language was dicta of the case cited.

Defendant's E was rejected because the legal theory of credibility was substantially covered in another instruction, specifically 38. Further, E did not provide any Nevada authority requiring the Court to give this particular instruction in the form as it was presented, which was not in the Ninth Circuit form. The model form was different.

Under the facts of this case, the Court ruled that it was not necessary to give this particular instruction; specifically, because Rudnick did not prove -- did not appear to have any expectation of favorable treatment.

However, the Court allowed extensive argument on this by the defendant and felt that the instructions that were provided could allow for that argument.

The Court offered the parties the opportunity to notify the Court and make a record of any objections within

the packet that was proposed. The defendant had no objection to the instructions other than the five additional instructions discussed above.

The attempt to supplement the record now with objections to instructions 10, 13, 16A, 18, 17, 20, and 35, is improper. The defendant argues in its reply that he submitted written objections to 17 of the State's proposed instructions.

Again, it is improper to attempt to supplement or create a record that does not exist in this manner. Further, it is not important as to what defendant may have thought of instructions initially proposed by the State. No written objections were ever filed in the record to the Court's proposed instructions, which were the instructions given.

In addition, when asked on the record to state any objections to the instructions as proposed, the defendant stated he had none. Thus, no objections to the instructions cited in the motion or reply were presented at trial.

Further, the Court finds the instructions given to the jury did not violate the defendant's due process rights. The Court's instructions were clear, concise statements of law, and were finalized after giving the defendant a full and complete opportunity to be heard. The defendant has an unfettered ability to preserve on the record any objections

he may have had, which he declined to do.

As to the argument in the motion for new trial made by the defendant that the Court committed error in answering the jury's deliberation questions, the motion misstates the answer given by the Court. The actual answer was, quote, "It is improper for the Court to give you additional instruction on how to interpret instruction number 17. You must consider all the instructions in light of all the others -- all the other instruction," end quote.

In answering the jury questions, the Court complied with NRS 175.451, Telles v. State, 84 Nevada 587, and Jackson v. State, 128 Nevada Advanced Opinion 55. No error was committed.

Defendant also argues error was made by allowing the State's charging document to stand. The Court reviewed the charging document and carefully analyzed the potential for prejudice based upon the number and wording of the charges. In the Court's pretrial decisions, of specific interest is the order on bifurcation and the -- bifurcation request, and the order regarding the limiting of the words "outlaw motorcycle gang" during trial.

The argument presented by the defendant regarding prejudice created by the allegation involving multiplicious charges is without merit, and has been previously considered

and rejected by the Court.

Further, both parties stipulated to merger if the defendant was convicted of counts 2, 5 and 6, for sentencing purposes.

The Court agreed to instruct the jury on that issue if there was a penalty phase. After the defendant was convicted, he waived the penalty phase with the impaneled jury. In a subsequent hearing, the request to merge was renewed, as right, and the Court granted merger and, by stipulation, excused the jury.

The Court will impose one sentence for murder on the defendant when he is sentenced. Thus, as discussed previously by the Court and as practically occurring at sentencing, the Court finds no prejudice resulting in violation of defendant's right to due process, or violations of his due process rights.

The Court does not find the defendant was deprived of a fair trial. There are not various errors as described by the defendant in his motion for new trial and reply to the State's opposition. The record is not as he has presented, the facts are not as they were argued.

Therefore, for reasons discussed herein, and the interest of justice, the defendant's motion for new trial is denied.

We will proceed with sentencing.

Counsel for the State, do you have a copy of the presentence investigation prepared in this matter?

MR. HALL: Yes, your Honor.

THE COURT: Counsel for the defendant, do you have a copy of that?

MR. HOUSTON: Yes, your Honor.

THE COURT: Are you ready to proceed?

MR. HOUSTON: Yes, your Honor.

MR. HALL: Yes, we are.

THE COURT: Thank you. I'll allow the defense to proceed first.

MR. HOUSTON: Your Honor, thank you. And just for the record, we have received a copy of the presentence investigation report. We are familiar with the content. The defendant has not asked that I make any corrections, therefore we would not offer any corrections.

Your Honor, the report itself of course goes into an offense synopsis as far as what the synopsis seems to indicate had occurred in this case. I do note while the synopsis itself is not such that it requires correction, I think certainly a great deal was left out.

Specifically, there does not appear to be much mentioned, if any, as it concerns what happened immediately

prior to the time Mr. Gonzalez shot Mr. Pettigrew. For the Court's consideration, I know the Court has seen the video, I think it would be certainly repetitive of me to go back over and over and over again what the Court has certainly had a chance to review.

What appeared to happen, in short, is simply there was the initial confrontation, that initial confrontation seemed to subside. As the two individuals, Mr. Villagrana and Mr. Pettigrew, were then walking down the tiled walkway, Mr. Wiggins was seen on the floor. And proceeded then to, at least appearingly without provocation, attack Mr. Wiggins.

This is what I think, as the video amply displayed, the defendant saw. The defendant took action, and as a consequence of that action, Mr. Pettigrew is dead.

I certainly have had the opportunity, based upon what the prosecution has submitted concerning the character and nature of Mr. Pettigrew, to suggest that we don't disagree with that. Quite to the contrary, I have nothing to suggest Mr. Pettigrew was not a good man. I only know what happened that night, and what this defendant saw allowed him brief seconds to make a decision. Those seconds of course resulted in the death of Mr. Pettigrew.

Your Honor, I know the jury found that it was not really necessary to consider this defense of others in

reference to determining what happened in this particular case, based upon the idea that there was some sort of conspiracy. Albeit one that we really don't know, as far as the jury verdict, which they were relying upon. All that I can say at this time, your Honor, is that it would be disingenuous of me to stand before you and apologize and take responsibility, because it's my client's intentions of course to appeal, and I don't want to appear as anything other than sincere when I say it seems as though under the circumstances of this case I would ask the Court not to impose a life without sentence, as has been suggested and recommended by the PSI in this particular matter.

I would ask the Court to consider the following sentence: A 20 to 50 year sentence in reference to count 2. Obviously we have two enhancements, both the gang enhancement and the deadly weapon enhancement. As I understand it, those two will merge into one. I ask the Court to consider a 12 to 36 month sentence consecutive to the 20 to 50 year sentence.

In reference to count 3, I ask the Court to consider a 24 to 60 month sentence, concurrent. Count 3 being I believe the concealed weapon matter.

In reference to count 4, the discharge of a firearm in a structure, I ask the Court to consider a 24 to 60 concurrent with count 3 and count 2.

In reference to count 1, which would be the gross misdemeanor, conspiracy to engage in an affray, I ask the Court to consider a 12 month sentence to again run concurrent to all other matters.

In reference to count 7, I ask the Court to consider the 24 to 96 month sentence as it concerns a conspiracy to commit murder, and I ask again that that sentence be ordered by the Court to run concurrent.

I regard Mr. Gonzalez as an individual who found himself certainly in a position that obviously resulted in his conviction, and certainly standing before you for sentencing. I also understand that Mr. Gonzalez has represented throughout his life as a veteran, an individual that worked, raised a family successfully, ran his own business. And despite the statements of certain witnesses on the stand, I don't believe all members of the Vagos are criminals or thugs or gangsters, neither do I believe all members of the Hells Angels would stand as such. I think in this trial that perhaps may have been a misrepresentation to the public as to what these organizations or clubs stand for.

That all being said, I know you're not sentencing Mr. Gonzalez because he's a Vago, I know you're sentencing him because of what happened in this case. If we regard who he is, what his life surrounds in the circumstances of this

event, I'm hopeful the Court will agree that the sentences as recommended by the defense are appropriate.

THE COURT: I'm going to make you go over those again. You were talking very quick, Mr. Houston.

MR. HOUSTON: I'm sorry.

THE COURT: Which you're known for, but I think I have count 1, you're offering the same as the division of parole and probation?

MR. HOUSTON: Correct, your Honor. 12 months on count one, the gross misdemeanor, conspiracy to engage.

THE COURT: Correct.

MR. HOUSTON: In reference to count 2 I was asking the Court for 20 to 50. As far as the enhancements for the gang enhancement and the deadly weapon enhancement, I was asking the Court on each to sentence to 12 to 36, but as I understand it, they merge into one. That would of course be consecutive to any other counts.

In reference to count 3, I was asking the Court to consider 24 to 60 months, and have count 3 run concurrent to count 2.

THE COURT: Now -- okay. The division is recommending 12 to 48 months?

MR. HOUSTON: Yes, your Honor.

THE COURT: On count 3?

MR. HOUSTON: I was actually offering the Court an opportunity for a heavier sentence on the theory that it was a concurrent sentence. If the Court was considering a consecutive sentence, then certainly I would agree with the division. The division I do know has recommended concurrent sentences across the board, and as a consequence we agree with the division's analysis for concurrent. If the Court was somewhat concerned about the length of the sentence as a consequence of it not being consecutive, I was suggesting to the Court that we would not oppose a 24 to 60 month.

THE COURT: Okay.

MR. HOUSTON: Your Honor --

THE COURT: And count 4 is the same?

MR. HOUSTON: And count 4, your Honor, was the same thing. And count 7 was the conspiracy to commit, and we could suggest a concurrent sentence of 24 to 96.

THE COURT: Okay, thank you.

MR. HOUSTON: Thank you, your Honor.

THE COURT: Do you have any witnesses to present?

MR. HOUSTON: No, your Honor, we do not. I know Mr. Gonzalez would like the opportunity to speak to the Court at the appropriate time.

THE COURT: Okay. Mr. Hall.

MR. HALL: Thank you, your Honor. Your Honor,

initially I'd like to indicate to the Court that there are a number of family and friends of Mr. Pettigrew present today. We have Jeri Pettigrew, who was Jeffrey Pettigrew's mother. Summer Pettigrew, Jeffrey Pettigrew's daughter. Janine Moreno, his sister. Joe Pettigrew, his brother. Chris Pettigrew, who is Mr. Pettigrew's ex-wife, Summer's mother. Josh Pettigrew, a cousin. And Katrina Scowling, a fiance. Also a friend of the family is Bobby Lozano. And Mr. Lozano would like to provide the Court the victim impact statement. I conferred with counsel, defense counsel, regarding him representing the family with respect to a victim impact statement. So essentially I'd like to inform the Court that I have two people who would like to make an victim impact statement, that being Mr. Lozano on behalf of the family, as well as Jeri Pettigrew. She has a brief statement that she would like to advise the Court of.

So I'd like to present that evidence first, if I may.

THE COURT: You may.

MR. HALL: Mr. Lozano. Step forward to me, sir, I'm going to have you sworn in.

THE CLERK: Please raise your right hand.

BOBBY LOZANO

Called as a witness by the State

who, having been first duly sworn,
testified as follows:

THE CLERK: Thank you, please be seated at the witness stand.

DIRECT EXAMINATION

BY MR. HALL:

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

A. My name is Bobby Lozano.

Q. And are you a friend of the Pettigrew family?

A. I've been a friend of theirs for about 36 years.

Q. And can you tell us a little bit about your relationship with the family, and Mr. Pettigrew specifically?

A. Yes, sir. I've known Jethro for just over 37 years, and every for the last 30 years he will come to my house Christmas Eve about 10:00 in the morning to pick me up to go Christmas shopping for our wives. That was a routine that we did every single year. We stopped at like a Cheesecake Factory, have a nice breakfast with a nice Corona, and then we go shopping for our wives.

We used to go pheasant hunting together, we used to do so many things together. And now like I said, this will be my third year without him picking me up to go shopping. I knew Summer when she was just a baby, I held her in my arm

when she was just a baby. And I know the whole family, I know the mother, Joe, Jethro's brother, we all became good friends. And apparently this has got us closer than ever because, you know, we're always thinking about Jethro.

Q. Can you tell me what impact Jethro's death has had upon the family?

A. It's a big old hole in our -- in the system right there that you can't fill it up. Every day, every day we think about him. I'm pretty sure the whole family just thinks about the same things like I do. I have no -- like where we used to go for pizza, we can't do that no more. We can't go over to his house and have dinner with them no more. We can't have our kids playing around together no more. You know, it's a great loss that happened to our family.

Q. Was Mr. Pettigrew close to his daughter Summer?

A. Oh, that was his pride and joy, that was his love. He always talked about her. Like I said, when we went Christmas shopping, boy, he had to get her the best clothes or whatever. Jewelry, everything. That was his life, his daughter. You know, he loved her a lot.

Q. And was he a long time resident of the San Jose area?

A. Yes, he was. Like I said, I've known him for 37 years in San Jose. So yeah, he was well known, well liked.

Q. And what was his occupation?

A. He worked for the City of San Jose, he was a truck driver. He was a good driver with, you know -- worked for 37 years -- for 27 years, I think.

Q. And can you describe the relationship Mr. Pettigrew had with the rest of his family? His mother, his brothers, his sisters?

A. Oh, he loved his parents. He loved his mother. Summer, Chris. He was a good -- he was a good son. He was a good uncle, he was a good brother. He was just -- he was loved by the whole family. And, you know, we all miss him.

Q. And is there any other thoughts that you'd like to convey to her Honor regarding the sentencing in this case?

A. Well, your Honor, just hope you do the right thing for us. And I'm going to miss my brother forever. So I thank you very much for letting me talk. Okay?

THE COURT: You have to stay there for just a minute.

THE WITNESS: Thank you.

THE COURT: Any cross-examination?

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

THE COURT: Okay, now you may step down.

THE WITNESS: Okay, thank you. Thank you.

THE CLERK: Please raise your right hand.

JERI PETTIGREW

Called as a witness by the State

who, having been first duly sworn,

testified as follows:

THE CLERK: Thank you, please be seated at the witness stand.

DIRECT EXAMINATION

BY MR. HALL:

Q Ma'am, will you state your name and spell your last name?

A. Jeri Pettigrew, P-e double t-i-g-r-e-w.

Q. And you're Jeffrey Pettigrew's mother?

A. I'm Jeffrey Pettigrew's mother.

Q. Now, one of the exhibits that we had presented to the Court and to defense counsel were a number of letters that were given to us from family and friends. Are you familiar with any of these?

A. Yes, I am.

Q. All right, and can you tell us just a brief overview of these letters that we have provided to the Court?

A. Jeff worked for the City of San Jose for 22 years. He was very well liked, very well known. He was I guess the crew supervisor, and all these guys worked for him. And at the funeral, every one of them showed up. And they couldn't

say enough good things about him. In front of the plant on Monterey Road in San Jose they have a plaque, brass plaque, that they had made, and had it put on a big rock right there in front, in his memory.

When I told them about the hearing coming up here, they said, "Do you need anything?" I said, "Well, if you'd like to write some letters, I'll take them with me." And I believe there was seven of eight letters that they wrote and mailed to me, because they couldn't be here.

Q. And I read those letters, and most of them describe the relationship with Mr. Pettigrew, and how kind he was, and how he would help each individual develop his skills with respect to operating heavy machinery, and how he was very kind in his direction and his manner with his fellow employees. Is that fairly accurate with respect to those letters?

A. Very accurate. What he would do, whosever birthday it was, he would buy a cake and bring in a half gallon of milk. And that's what they did for that day. And in the letters the guys had told me they're going to keep doing that. Whosever birthday it is, they will get a cake and bring in the milk.

Q. I'm sure that his passing has had a significant impact upon you and your family, and of course this is an

opportunity where you can describe the impact that Jethro's passing has had upon you and your family. I know you've written a letter.

A. I've written a little -- if I may read it.

Q. Yes, you may, with the Court's permission.

THE COURT: Yes. Have you seen this letter, counsel?

MR. HOUSTON: Yes, your Honor, we have.

THE COURT: Do you have any objection?

MR. HOUSTON: No --

MR. HALL: I don't think we have provided that letter, although I have read the letter, it's a victim impact letter that she plans to read into the record. So it's essentially a victim impact statement. And as an officer of the Court, I had not seen anything objectionable in the letter.

THE COURT: Okay.

MR. HOUSTON: Your Honor, in reference to what I was referring to were the letters that Mr. Hall had given me.

THE COURT: Any objection to those being filed?

MR. HOUSTON: No, your Honor.

THE COURT: Okay. You may proceed, ma'am.

THE WITNESS: Thank you. My name is Jeri Pettigrew, Jeff Pettigrew was my youngest son. I will never

get to tell my son how much I love him. You have ruined our families. Yours, mine, my other children's. My granddaughter will not have her father to walk her down the aisle when she gets married, and he was -- she was the love of his life. He lived for her. He'll never get to see his grandchildren. I'm sure you have grandchildren. They'll get to come and visit you. He'll never get to visit his grandchildren.

I'm sorry, but I consider you a coward, shooting someone in the back. Not one time, but four or five times. You killed someone who had a big, big heart. Someone who was there for everyone who needed something. Jeff lost his right leg -- his left leg in an accident in 1991. Every four years he would get a new leg. He would send the old one down to Mexico for someone who could not afford to get a leg. He was always there to help someone in need.

The man you killed believed in paying it forward everyone he could. He had a million friends and no enemies. He was a hard worker, he worked for the City of San Jose for 22 years. He loved his job and he loved all the guys that he worked with.

He was my baby boy, and he was always there for me. Nothing I can say will ever bring him back, but I'd like for you to remember what you have done to both families. Not

just to my family, but to your family, too. And I'm sorry. I wish I could say right now that I forgive you, but I think it's going to take a little more time than this.

MR. HALL: Thank you, Ms. Pettigrew.

THE COURT: Any questions?

MR. HOUSTON: No questions, thank you.

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

THE WITNESS: Thank you. And I did it without crying.

MR. HALL: Your Honor, with respect to our recommendation, we would follow the recommendation of the division of parole and probation save and except for the recommendation on the enhancement. We believe the enhancement should be 8 to 20 consecutive, based upon the severity of the offense, the threat to the health, safety and welfare of the community and the people inside of the Nugget. So we would ask you to follow our recommendation, and follow the division's recommendation. Thank you.

THE COURT: Division.

PROBATION OFFICER: Thank you, your Honor. Shane Lees for the division, we stand by our recommendation.

THE COURT: What is your credit for time served?

PROBATION OFFICER: 736 days as of today, your Honor.

THE COURT: Mr. Gonzalez, the law affords you an opportunity to be heard. Is there anything you would like to say?

DEFENDANT: Yes, I would.

THE COURT: You may proceed.

DEFENDANT: After hearing Mr. Pettigrew's mother and friend, I want to convey my condolences. I no longer have a mom and dad, so I know the feeling of not having, you know. That's what I wanted to say to you.

What I wanted also, in light of what I witnessed on 9-23, seeing Mr. Pettigrew and Mr. Villagrana, what I witnessed, they left me no choice but to act as I did in defense of my brother. That's what I saw. And that's what I wanted to say. Thank you.

THE COURT: The law requires the Court to make certain findings with regard to the enhancement. The Court has reviewed the evidence in this case, as well as the recommendations by counsel, and the findings by the Court.

The jury in this matter specifically found that a deadly weapon was used in the commission of this offense. In addition, they specifically found that the offense was in furtherance of gang activity. And therefore the gang enhancement would apply, as well as the deadly weapon enhancement.

The legislature has said, however, that only one enhancement can be added to the charge that defendant will be sentenced to, with regard to count 6.

The legislature and the case law has not discussed how to analyze the gang enhancement, but the Court takes the opportunity to utilize the direction found in the analysis of the weapons charge.

The Court has considered, with regard to both enhancements, the facts and circumstances of the crime, the defendant's criminal history, as well as the impact of this crime on the victim.

Any mitigating factors presented by Mr. Gonzalez would have been considered. Very little mitigation has been offered, although the defendant does offer the mitigation of his belief of defense of others.

The Court in analyzing this enhancement also looks to the extreme danger to the community that was possible in the use of a deadly weapon in the commission of this offense. And it's for those reasons, after considering all of those factors, that the Court will be making -- entering its decision with regard to the deadly weapon enhancement.

The same factors relate and are considered by the Court in making a decision with regard to the gang enhancement.

The Court has previously noted in the hearings that we've had on the motions that count 2 was ordered merged into count 6 previously, as was count 5. So the Court will be sentencing the defendant today as to counts 1, 3, 4, and 6, and 7.

With regard to administrative issues, the defendant will pay a $25 administrative assessment fee, a $3 DNA analysis fee that was imposed in July, and a DNA testing fee of $150. And subject himself to a DNA analysis test for the purpose of determining genetic markers.

As to count 1, the defendant is sentenced to a maximum term of 12 months in the Washoe County Jail.

As to count 3, the defendant is sentenced to a maximum term of 48 months in the Nevada Department of Corrections, with minimum parole eligibility of 12 months. This sentence will run concurrent to count 1.

As to count 4, the defendant is sentenced to 156 months in the Nevada Department of Corrections, with minimum parole eligibility of 35 months, concurrent to count 3.

As to count 6, the Court will announce its decision in a moment.

As to count 7, the defendant is sentenced to 96 months in the Nevada Department of Corrections, with minimum parole eligibility of 24 months. This count will run

concurrent to that which will be imposed in count 6.

Death is never considered by the community an acceptable result. And for a defendant to have an opportunity to be sentenced by the Court, the Court must look at the three options available to it. The option of life without the possibility of parole; the option of life with the possibility of parole, although in your case may not be particularly realistic because of the minimums that are required if you were to receive that penalty; and the possibility of a term of years.

Although your counsel has argued for the term of years, the Court declines to follow that recommendation. The Court finds that you are necessarily subject to an imprisonment in the Nevada Department of Corrections for life.

However, the Court does not find at this time that that should be without ever the possibility of parole. So I will allow that you will be eligible for parole after you serve a minimum of 20 years.

In addition, consecutive to that sentence, you will be sentenced to an additional 20 years in prison, with minimum parole eligibility of 8 years, for the weapons enhancement. And consecutive for the gang enhancement of 20 years, with a minimum of 8. However, the gang enhancement

sentence and the weapons enhancement are merged for purposes of sentencing.

The Court is in no way condoning your behavior. I find that it was abhorrent, and that there is no justification for it. And I find that there was overwhelming evidence of your guilt.

Anything further for the Court?

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

THE COURT: Any reason judgment should not enter?

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

THE COURT: The defendant is remanded to the custody of the sheriff for transportation to the warden and imposition of the sentence.

MR. LYON: Your Honor?

THE COURT: Yes.

MR. LYON: Could we ask for a delay in transport to NNC, because Mr. Gonzalez is still in the process of securing an appeal. We've been talking to other counsel, we're not sure whether it's going to go to the PD's office. His ability to stay here in Reno at least until we can get that taken care of would be most helpful.

MR. HOUSTON: We don't believe it would be more than three weeks, your Honor.

THE COURT: The Court is not going to interfere

with the sheriff's and the warden's transportation arrangements, that's up to them. It's not that difficult for him to file his appeal.

You know the requirements, Mr. Gonzalez, for your appeal, it must be filed within 30 days. You have counsel that could file it on your behalf if you can't secure other counsel. So that deadline is not one that can be missed, but I'm going to decline your request.

MR. HOUSTON: Thank you, your Honor.

THE COURT: Anything further? Court is in recess.

(Proceedings concluded.)

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STATE OF NEVADA,)
)
COUNTY OF LYON.)

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

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

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

Dated at Fernley, Nevada, this 16thh day of October, 2013.

/s/ Marcia L. Ferrell
Marcia L. Ferrell, CSR #797

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FILED
Electronically
10-03-2013:02:55:58 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4042590

CODE 1850

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Plaintiff,

vs.

ERNESTO MANUEL GONZALEZ,

Defendant.

/

Case No. CR11-1718B

Dept. No. 4

JUDGMENT

The Defendant, having been found guilty by a Jury of the following charges contained in the Fourth Information Supplementing Indictment: Conspiracy To Engage In An Affray, a violation of NRS 199.480 and NRS 203.050, a gross misdemeanor, as charged in Count I; Challenge to Fight Resulting In Death With The Use Of A Deadly Weapon With Gang Enhancement, a violation of NRS 200.450, NRS 200.010, NRS 200.030, NRS 193.165, NRS 199.480, NRS 195.020 and NRS 193.168, a felony, as charged in Count II; Carrying A Concealed Weapon, a violation of NRS 202.350, a felony, as charged in Count III; Discharging a Firearm In A Structure, a violation of NRS 202.287, a felony, as charged in Count IV; Murder Of The Second Degree With The Use Of A Deadly Weapon With Gang Enhancement, a violation of NRS 200.010, NRS 200.030, NRS 193.165 and NRS 193.168, a felony, as charged in Count V; Murder Of The First Degree With The Use Of A Deadly Weapon With A Gang Enhancement, a violation of NRS 200.010, NRS 200.030, NRS 193.165 and NRS 193.168, a felony, as charged in

Count VI; and Conspiracy To Commit Murder, a violation of NRS 199.480, NRS 200.010 and NRS 200.030, a felony, as charged in Count VII, and no sufficient cause being shown by Defendant as to why judgment should not be pronounced against him, the Court renders judgment as stated below.

The Court finds that Counts I and V are merged with Count VI. Further, that Ernesto Manuel Gonzalez is guilty of the crimes as found by the Jury and determines punishment as follows:

The Defendant is punished by imprisonment in the Washoe County Jail for the term of twelve (12) months for Count I; by imprisonment in the Nevada Department of Corrections for the maximum term of forty-eight (48) months with the minimum parole eligibility of twelve (12) months for Count III; by imprisonment in the Nevada Department of Corrections for the maximum term of one hundred fifty-six (156) months with the minimum parole eligibility of thirty-five (35) months for Count IV; and by imprisonment in the Nevada Department of Corrections for the maximum term of ninety-six (96) months with the minimum parole eligibility of twenty-four (24) months for Count VII. The sentences for Counts I, III, IV and VII shall be served concurrently with each other. Further, by imprisonment in the Nevada Department of Corrections for the term of Life with the possibility of parole after twenty (20) years has been served for Count VI, to be served concurrently with sentences imposed in Counts I, III, IV and VII, with a consecutive term of imprisonment in the Nevada Department of Corrections for the maximum term of twenty (20) years with minimum parole eligibility of eight (8) years for the weapons enhancement, the gang enhancement penalty is not imposed pursuant to NRS 193.169. The Defendant shall receive credit for Seven Hundred Thirty-Six (736) days time served. The Defendant shall submit to DNA Analysis Testing for the purpose of determining genetic markers. Defendant is further Ordered to pay a Three Dollar ($3.00) administrative assessment for obtaining a biological specimen and conducting a genetic marker analysis, a Twenty-Five Dollar ($25.00) administrative assessment fee and a One Hundred Fifty Dollar ($150.00) DNA analysis fee to the Clerk of the Second Judicial District Court.

The above listed fees are subject to removal from the Defendant's books at the Washoe County Jail and/or Nevada Department of Corrections.

Dated this 3 day of October, 2013.

Connie J. Steinheimer
DISTRICT JUDGE

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FILED
Electronically
10-04-2013:11:45:04 AM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4044669

CODE 1860

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Plaintiff,

vs.

ERNESTO MANUEL GONZALEZ,

Defendant.

/

Case No. CR11-1718B

Dept. No. 4

CORRECTED JUDGMENT

This Corrected Judgment corrects clerical error to page 2 line 5 of the original Judgment.

The Defendant, having been found guilty by a Jury of the following charges contained in the Fourth Information Supplementing Indictment: Conspiracy To Engage In An Affray, a violation of NRS 199.480 and NRS 203.050, a gross misdemeanor, as charged in Count I; Challenge to Fight Resulting In Death With The Use Of A Deadly Weapon With Gang Enhancement, a violation of NRS 200.450, NRS 200.010, NRS 200.030, NRS 193.165, NRS 199.480, NRS 195.020 and NRS 193.168, a felony, as charged in Count II; Carrying A Concealed Weapon, a violation of NRS 202.350, a felony, as charged in Count III; Discharging a Firearm In A Structure, a violation of NRS 202.287, a felony, as charged in Count IV; Murder Of The Second Degree With The Use Of A Deadly Weapon With Gang Enhancement, a violation of NRS 200.010, NRS 200.030, NRS 193.165 and NRS 193.168, a felony, as charged in Count V; Murder Of The First

Degree With The Use Of A Deadly Weapon With A Gang Enhancement, a violation of NRS 200.010, NRS 200.030, NRS 193.165 and NRS 193.168, a felony, as charged in Count VI; and Conspiracy To Commit Murder, a violation of NRS 199.480, NRS 200.010 and NRS 200.030, a felony, as charged in Count VII, and no sufficient cause being shown by Defendant as to why judgment should not be pronounced against him, the Court renders judgment as stated below.

The Court finds that Counts II and V are merged with Count VI. Further, that Ernesto Manuel Gonzalez is guilty of the crimes as found by the Jury and determines punishment as follows:

The Defendant is punished by imprisonment in the Washoe County Jail for the term of twelve (12) months for Count I; by imprisonment in the Nevada Department of Corrections for the maximum term of forty-eight (48) months with the minimum parole eligibility of twelve (12) months for Count III; by imprisonment in the Nevada Department of Corrections for the maximum term of one hundred fifty-six (156) months with the minimum parole eligibility of thirty-five (35) months for Count IV; and by imprisonment in the Nevada Department of Corrections for the maximum term of ninety-six (96) months with the minimum parole eligibility of twenty-four (24) months for Count VII. The sentences for Counts I, III, IV and VII shall be served concurrently with each other. Further, by imprisonment in the Nevada Department of Corrections for the term of Life with the possibility of parole after twenty (20) years has been served for Count VI, to be served concurrently with sentences imposed in Counts I, III, IV and VII, with a consecutive term of imprisonment in the Nevada Department of Corrections for the maximum term of twenty (20) years with minimum parole eligibility of eight (8) years for the weapons enhancement, the gang enhancement penalty is not imposed pursuant to NRS 193.169. The Defendant shall receive credit for Seven Hundred Thirty-Six (736) days time served. The Defendant shall submit to DNA Analysis Testing for the purpose of determining genetic markers. Defendant is further Ordered to pay a Three Dollar ($3.00) administrative assessment for obtaining a biological specimen and conducting a genetic marker analysis, a Twenty-Five

Dollar ($25.00) administrative assessment fee and a One Hundred Fifty Dollar ($150.00) DNA analysis fee to the Clerk of the Second Judicial District Court.

The above listed fees are subject to removal from the Defendant's books at the Washoe County Jail and/or Nevada Department of Corrections.

Dated this 4 day of October, 2013.
NUNC PRO TUNC to October 3, 2013.

Connie J. Steinheimer
DISTRICT JUDGE

81

CODE 2515
David R. Houston, Esq.
State Bar #2131
432 Court St.
Reno, NV 89501
Attorney for Defendant

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

STATE OF NEVADA,

Plaintiff,

vs.

ERNESTO MANUEL GONZALEZ,

Defendant.
_____/

Case No. CR11-1718B

Dept. No. 4

NOTICE OF APPEAL TO THE SUPREME COURT

To: The State of Nevada, Plaintiff; and

To: The Washoe County District Attorney's Office, its counsel:

Please take notice that Ernesto M. Gonzalez, Defendant above named, hereby appeals to the Supreme Court of Nevada from the final judgment entered in this action on the 4th day of October, 2013.

///

///

5578

Please take notice: This is not a Fast-track Appeal, as Defendant was sentenced to life imprisonment.

DATED this 15th day of October, 2013

Law Office of David R. Houston
432 Court Street
Reno, NV 89501

By: _____
David R. Houston
Attorney for Defendant

5579

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 15th day of October, 2013

Emily A. Heavrin

CERTIFICATE OF SERVICE

The undersigned does hereby affirm that I am an Employee of the Law Office of David R. Houston and that on this date, I caused to be delivered via US Postal Mail a true and correct copy of the within document, to the below-named:

Karl Hall, Esq.
District Attorney's Office
One S. Sierra Street
4th Floor
Reno, NV 89501

DATED this 15th day of October, 2013

Emily A. Heavrin

5580