

IN THE SUPREME COURT FOR THE STATE OF NEVADA

DEANGELO R. CARROLL,
Appellant,
v.

THE STATE OF NEVADA,
Respondent.

No. 64757

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Tracie K. Lindeman
Clerk of Supreme Court

Appeal

From the Eighth Judicial District Court
Clark County
The Honorable Valerie Adair, District Judge

APPELLANT'S APPENDIX
(Volume 2)

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ORIGINAL

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FILED IN OPEN COURT

CHARLES J. SHORT
CLERK OF THE COURT

BY PHYLLISIRBY DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA

Plaintiff,

vs.

DEANGELO CARROLL

Defendant.

Case No. C212667

Dept. No. XIV

**MOTION TO STRIKE DEATH PENALTY AGGRAVATORS OR IN THE ALTERNATIVE
MOTION FOR CONTINUANCE AND/OR MOTION FOR STAY**

COMES NOW, DAYVID J. FIGLER, attorney for the above-captioned person, and respectfully moves this Honorable Court to set dismiss the two aggravators set forth in the State's Notice of Intent to Seek Death Penalty or in the alternative, Defense Motion to Continue and/or Motion for Stay. This motion incorporates all pleadings filed and proceedings that have transpired in this case. This motion is further based upon the attached points and authorities and any oral argument this Court may deem necessary.

Respectfully submitted by:

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1 robbery a crime of violence under NRS 200.033(2)(b) and was it plead
2 with sufficient notice as required?

3 Capital punishment is reserved for the most heinous of murders.
4 Not all murders qualify for death as the punishment. "Death is
5 different" goes the famous and oft-quoted citation of the United
6 States Supreme Court. Not surprising, the United States Supreme Court
7 has relied upon this principle and its application to Eight Amendment
8 implications for decades. See Gregg v. Georgia, 428 U.S. 153, 188
9 (1976); Ring v. Arizona, 536 U.S. 584, 606 (2002).

10 The Nevada Supreme Court also recognized its "obligation to
11 ensure that aggravators are not applied so liberally that they fail
12 to perform their constitutionally required narrowing function."
13 Redeker v. Eighth Judicial District Court, 122 Nev. ____, 127 P.3d
14 520, 526 (2006) (citations omitted). In interpreting the statute at
15 issue, the Nevada Supreme Court looks to the plain language of the
16 statute. State v. Colosimo, 122 Nev. ____, 142 P.3d 352
17 (2006) (citing State v. Washoe County, 6 Nev. 104, 107 (1870)). If a
18 penal statute is ambiguous, "rules of statutory
19 interpretation...require that provisions which negatively impact a
20 defendant must be strictly construed, while provisions which
21 positively impact a defendant are to be given a more liberal
22 constructions." Colosimo, 122 Nev. At ____, 142 P.3d at 359 (quoting
23 Mangarella v. State, 117 Nev. 130, 134, 17 P.3d 989, 992 (2001)).

24 **1. Prior conviction involving the use or threat of violence to**
25 **the person of another.**

26 Defendant Carroll was convicted of conspiracy to commit robbery,
27 not robbery. Understandably, the State has alleged in the Notice of
28 Intent to Seek the Death Penalty the "underlying" facts of the

1 conviction to which the Defendant plead guilty, however, the State
2 does not allege how a conspiracy, the crime for which the judgment of
3 conviction was entered is a crime of violence in and of itself which
4 is required to proceed under the death penalty. See Redeker v. Eighth
5 Judicial District Court, 122 Nev. _____, 127 P.3d 520(2006).

6 Conspiracy is defined as "an agreement between two or more
7 persons for an unlawful purpose." Bolden v. State, 121 Nev. 908, 124
8 P.3d 191 (2005). Simply stated, and irrespective of the underlying
9 facts averred in the information, an agreement cannot contain an actus
10 reus of violence by definition. The act of violence, or the threat
11 of violence is not an element of the offense of conspiracy.

12 The State cannot offer any authority for the proposition that the
13 Nevada Supreme Court has authorized a conspiracy charge to stand for
14 the narrowing required to make it an death eligible aggravator.
15 Indeed, to the contrary, the Nevada Supreme Court seems to have
16 indicated that the moment of striking aggravators for failure to
17 narrow is at hand. See Leslie v. Warden, 118 Nev. 773, 59 P.3d 440
18 (2002) (Maupin concurring opinion).

19 NRS 200.033(2)(b) is unconstitutionally vague both on its face
20 and in its application to this case. Under these circumstances the
21 aggravating factor of conspiracy to commit robbery is invalid.
22 Further, the State cannot provide any meaning to "use or threat of
23 violence" and whether that phrase provides a principled guide for the
24 choice between death and a lesser penalty as required by Maynard v.
25 Cartwright, 486 U.S. 356, 361-364 (1988) and Godfrey v. Georgia, 446
26 U.S. 429 (1980).

27 A statute violates due process if it is so vague that it fails
28 to give persons of ordinary intelligence fair notice of what conduct

1 is prohibited and fails to provide law enforcement officials with
2 adequate guidelines to prevent discriminatory enforcement." Hernandez
3 v. State, 118 Nev. 513, 524 (2002).

4 **2. Murder for Hire / Pecuniary Gain**

5 From the onset it should be noted that this aggravator (albeit
6 plead differently at least at it relates to the co-defendants) has
7 already been challenged by the co-defendants, Luis Hidalgo III and
8 Anabel Espindola, in this court and now on appeal as a writ of
9 mandamus, or in the alternative, as a writ of prohibition. To the
10 extent that this court will allow, Defendant Carroll, incorporates by
11 reference the legal argument set forth in the co-Defendants motion to
12 strike aggravating circumstances. Additionally, Defendant Carroll
13 would set forth that at least one portion of the State's averment must
14 be stricken from the record in that he is listed as both hirer and
15 hiree and the plain language of the statutory aggravator at issue, NRS
16 200.033(6) cannot be applied on both ends of the equation. Also,
17 there is no dispute that Defendant Carroll did not physically kill
18 Timothy Hadland, nor is it alleged that it was his plan to kill
19 Timothy Hadland. Rather the State is seeking to establish liability
20 for murder under aiding and abetting and conspiracy theories, though
21 there is no authority that a go-between who did not do the original
22 hiring or who did not do the actual killing is exposed to this
23 aggravator.

24 **3. MOTION FOR A STAY OR IN THE ALTERNATIVE A MOTION TO CONTINUE**

25 In that there are two aggravators at issue in the Notice of
26 Intent to Seek the Death Penalty, and both are potentially infirm,
27 statutorily and constitutionally - and since the Nevada Supreme Court
28 is currently considering the validity of both the "act of or threat

1 of violence" aggravator as well as the "murder for hire/pecuniary
2 gain" aggravator - it only makes sense to stay these proceedings under
3 at least word comes down from the Nevada Supreme Court on these
4 issues. Further, the Defendant intends to appeal this Court's ruling
5 if it is denied to grant the specific relief sought. Defendant
6 Carroll will suffer irreparable harm by having to stand trial for a
7 capital case despite the invalid Notices of Intent to Seek the Death
8 Penalty. Because this is currently a capital case, he is being held
9 without bail and may not be released from custody and is therefore
10 unable to assist his counsel in preparation for his defense in an
11 effective manner. Further, court resources will be unnecessarily
12 expended by the potentially lengthy proceedings concerning the capital
13 penalty hearing, a lengthy and complicated jury selection process,
14 transcript expenses and other costs incurred by this case which would
15 not be incurred if the Notices of Intent to Seek the Death Penalty are
16 dismissed. Finally, there is a prejudice to the Defendant in facing
17 a "death-qualified" jury. To the contrary, the State in the interest
18 of justice should be sure that the aggravators being used to
19 potentially execute a human being are valid.

20 Finally, in any event, the Defense requests anew another
21 continuance in this matter in that there have been a number of changes
22 since the Court last set the trial date approximately two months ago.
23 **First**, co-Defendant Kenneth Counts did not get tried as was set.
24 **Second**, co-Defendant Jason Taoipu has apparently changed his mind and
25 will not be waiving his 5th Amendment rights after entering a guilty
26 plea though his testimony was generally favorable to the Defendant.
27 **Third**, it has become apparent to the Defense that there were meetings
28 that took place with the Defendant with various members of the

1 Metropolitan Police Department, the FBI and the Clark County District
2 Attorneys office which resulted in numerous statements by the
3 Defendant and the Defendant's agreement to cooperate with the
4 investigation to the extent that he wore a wire and risked his own
5 personal safety to assist the prosecution. As it turns out one of
6 those representatives of the District Attorneys office was the current
7 prosecutor in this case. What's new between the last court date and
8 the current one is that no statements of the Defendant have been
9 produced by the State and they did not exist in the homicide detective
10 notebooks or the DA's "open file" which was inspected by the Defense
11 attorneys. **Fourth**, an alternative suspect was identified and a
12 deposition was apparently taken although defense counsel's request to
13 be involved and a modest accommodation were denied by Judge Stewart
14 Bell. **Fifth**, the Defendant was only recently provided with hundreds
15 of hours of jailhouse telephone calls. **Sixth**, the Defense has yet to
16 file numerous motions in the District Court in addition to those
17 suggested by the above-referenced reasons for a continuance. **Seventh**,
18 the Defense has not yet completed the mitigation investigation and
19 anticipates that it will take approximately 60 days to do that -
20 Defendant has not yet seen a psychologist nor have subpoenas been
21 served on any individuals the Defense team has been seeking to call
22 on the Defendant's behalf. **Eighth**, the Defense has not yet been able
23 to utilize its investigator to interview witness offered by the State
24 as evidence in support of aggravation as there were numerous events,
25 many of which if not most of which include when the Defendant was a
26 juvenile. This is vital as the Defendant is placed in the position
27 to defend again against these allegation and offer mitigating evidence
28 regarding the facts and circumstances of these events. **Ninth**, a

1 "snitch" witness has been listed as a witness on August 13, 2007, who
2 has apparently provided information to the State that DeAngelo Carroll
3 was the shooter in the case.

4 EDCR 7.30 (a) allows the court for good cause to grant an order
5 continuing the day set for trial.

6 CONCLUSION

7 It's hard to understand why the State has asked for death penalty
8 against all the adult defendants in this particular case when
9 typically the death penalty is reserved for the "worst of the worst."
10 Clearly within a group of five people, four of whom never pulled a
11 trigger - the State would be hard pressed to call them all "the worst
12 of the worst." Nonetheless, the State has chosen to embark upon this
13 costly and potentially irreversible venture and by their actions
14 provide fodder for many future cases to come to show that a real
15 narrowing is not important to the State. In other words, what kind
16 of "narrowing" takes place when every adult defendant in a case is
17 facing the death penalty?

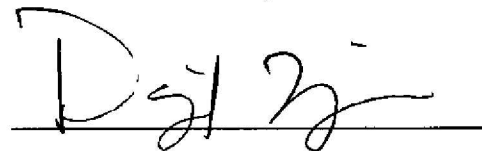
18 In any event, the two aggravating circumstances ostensibly
19 designed to narrow the class of persons against who the death penalty
20 is sought is infirm in the present case. The Nevada Supreme Court
21 will likely rule on this issue, hopefully soon, but this may not be
22 a death penalty case at all against the Defendant and that makes
23 thinks very difficult if he gets a death qualified jury.

24 Hopefully this court will strike the two aggravators and as a
25 result many of the reasons necessary for a stay (and to an extent --
26 the continuance) will disappear. Nonetheless, the Defendant has
27 offered numerous reasons why it is in the interest of justice to
28 continue this matter. Mostly, it is because despite the two years

1 since the offense occurred, the case has not been dormant. As this
2 Court is well aware, there have been a number of rapidly changing
3 events and new information produced in just the last 60 days. As a
4 result, the Defense chooses to do nothing except for make sure that
5 DeAngelo Carroll gets a fair trial and is not sentenced to death.
6 Some additional time to ensure that by the part of Defense counsel
7 does not seem to be an unreasonable request.

8 DATED this 16th day of August, 2007.

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)

Plaintiff,)

-vs-)

DEANGELO RESHAWN CARROLL,)
#1678381)

Defendant.)

CASE NO: C212667

DEPT NO: XXI

STATE'S OPPOSITION TO DEFENDANT CARROLL'S MOTION TO STRIKE

DEATH PENALTY AGGRAVATORS

DATE OF HEARING: October 9, 2007

TIME OF HEARING: 9:30 am

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through MARC DiGIACOMO, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion To Strike Death Penalty Aggravators.

This Opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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The Phone Call and Offer

During his interview with police, Defendant Carroll explained that prior to arriving at work on May 19, 2005 he received a call from Luis Hidalgo III.¹ Defendant Hidalgo told Carroll to bring two garbage bags and a baseball bat. (Exhibit 1, 58). Upon arrival at the Palomino Club, Carroll was called into the office by Mr. H. In the presence of Espindola, Mr. H. explained that the victim “was puttin’ bad shit on his club and didn’t like, so he tried to tell us, what, what, what he said is if you guys don’t knock him out, at first he wanted us to beat him up, then he said that he wanted T.J.² knocked off.” (Exhibit 1, 56). Mr. H explained that Hidalgo was very upset with the victim and wanted Carroll to “go take care of T.J.” (Exhibit 1, 88). Additionally, Mr. H was offering cash for the people who actually killed T.J. (Exhibit 1, 61).

During the ride to the lake, Espindola contacted Carroll and told him “if [T.J.’s] by himself, then do him, if he isn’t by himself, then just fuck him up, fuck him up and fuck up whoever’s with him. (Exhibit 1, 92). Thereafter, the victim was lured to a remote location and executed by Kenneth Counts. After the killing, Counts demanded \$6000.00 for his services. Espindola provided the money to Carroll to pay Counts.

Carroll indicated that the motive behind killing T.J. was the allegation that T.J. was stealing from the club. (Exhibit 1, 59). Carroll received \$100 for his participation.

Rontae Zone is a nineteen year old friend of Deangelo Carroll. (R.T. 16). In May 2005, Rontae began working with Carroll as a flyer boy for the Palomino Club. (RTP, 17). A flyer boy passes out flyers and pamphlets to cab stops. The flyers come in a variety of colors. (RTP, 18). Rontae worked with Defendant Carroll approximately four (4) to five (5) times. In order to distribute the flyers, Defendant Carroll drove a white Chevy Astro van. On the first night, Rontae worked with Defendant Carroll and his cousin, Michael. (RTP, 19). Rontae received twenty dollars (\$20) for his services. After work was over, Rontae stayed at Defendant Carroll’s home. (RTP, 20).

¹ Also known as “Little Lou”

² T.J. is the victim Timothy Hadland.

1 On May 19th, Rontae and Defendant Carroll were joined by “J.J.,” later identified as
2 Defendant Jayson Taoipu. (RTP, 25). While out promoting, Defendant Carroll told Rontae
3 and Jayson that “Mr. H” wanted Defendant Carroll to kill someone. (RTP, p. 26). Rontae
4 told Defendant Carroll that he was not willing to participate and specifically told him he
5 would not participate. (RTP, 27). Defendant Taoipu, on the other hand, stated that he was
6 willing to do it. (RTP, 28). Based upon that, Defendant Carroll gave Defendant Taoipu a
7 .22 caliber revolver. Defendant Carroll tried to give Rontae the bullets to the gun, but
8 Rontae wanted nothing to do with it and gave the bullets back to Defendant Taoipu. (RTP,
9 29).

10 Thereafter, the group went out to promote and pass out flyers. After passing out
11 flyers, the group returned to Defendant Carroll’s house. (RTP, 30). After a while,
12 Defendant Carroll said it was time to go back to work. Concerned that he did not want to be
13 involved in anything illegal, both Rontae and his girlfriend asked Defendant Carroll what
14 they were leaving to do. (RTP, 31). Defendant Carroll told Rontae that they were only
15 going to promote. The three, Rontae, Defendant Taoipu, and Defendant Carroll got into the
16 white Chevy Astro Van. When they left, Defendant Carroll began driving to the west side,
17 near E Street. (RTP, 31). On the way, Defendant Carroll told Defendant Taoipu and Rontae
18 that “Mr. H’s” son, Defendant Hidalgo, wanted the victim dead too, and that Defendant
19 Carroll should grab baseball bats and trash bags. (RTP, 34).

20 Defendant Carroll stopped the van on E Street across the street from Defendant
21 Carroll’s mom’s house. (RTP, 35). Defendant Carroll got out of the van and went into the
22 house. Defendant Carroll spent approximately ten minutes inside the house. When he
23 exited, he had “KC,” later identified as Defendant Kenneth Counts, with him. Defendant
24 Counts and Carroll got into the van. (RTP, 37). Defendant Carroll was driving, Defendant
25 Taoipu was in the front passenger seat, Defendant Counts was in the rear passenger side seat
26 and Rontae was behind the driver. (RTP, 40). From the west side, Defendant Carroll drove

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1 the van toward Lake Mead. As he was driving, Defendant Carroll was talking to the victim,
2 Timothy Hadland, on the phone. (RTP, 38). During this time period, the group smoked
3 marijuana.³

4 While smoking the marijuana, Defendant Counts asked Rontae if he had a “burner,”
5 referring to a gun. (RTP, 59). Rontae told Defendant Counts that he did not have one.
6 Defendant Counts then asked Defendant Taoipu if he had a gun however, Rontae did not
7 hear Defendant Taoipu’s response. (RTP, 60).

8 **The Murder**

9 As the van drove down the hill to the lake, Timothy began to approach them in his
10 Kia Sportage. When Defendant Carroll saw Timothy, he pulled the van over and parked.
11 Timothy did a U-turn and pulled in front of the van by about thirty (30) feet. (RTP, 62).
12 Timothy then got out of his vehicle and walked back to the van. (RTP, 64). As Timothy
13 approached the van, Defendant Counts “sneaked” out the sliding passenger door of the van.
14 (RTP, 66). As he was sliding out of the van, Rontae saw Defendant Counts holding a black
15 .357 firearm. After creeping out of the van, Defendant counts crept quietly around the front
16 of the van, snuck up behind Timothy, raised up and shot Timothy as he was standing at the
17 driver’s side window. (RTP, 68). After Timothy fell, Defendant Counts fired another round
18 into him when he hit the ground. (RTP, 69). After returning to the van, Defendant Counts
19 instructed Defendant Carroll to drive. (RTP, 71). Defendant Carroll drove away.

20 **Payment at the Palomino**

21 As they were driving away, Defendant Counts confronted Defendant Taoipu about
22 why he did not shoot. Defendant Taoipu said he was going to shoot, however Defendant
23 Carroll was in the way. (RTP, 72). Thereafter, Defendant Counts asked Rontae where he
24 lived. Defendant Carroll drove the van back to the Palomino Club.

25 Once back at the Palomino, Defendant Carroll and Counts entered the club. (RTP,
26

27 ³ It was at this point in the testimony where Defendant Counts’, Hidalgo’s and Espindola’s attorneys demanded that the
28 Court advise Rontae his rights and appoint counsel. After the appointment of Special Public Defender Randy Pike,
Rontae continued his testimony as he wasn’t the part of any conspiracy.

73). After about thirty (30) minutes, Defendant Counts exited the club and left in a cab. Thereafter, Defendant Carroll left the club and told Rontae and Defendant Taoipu that Defendant Counts got paid. (RTP, 75). Thereafter, Defendant Carroll, Taoipu and Rontae left and stayed at Defendant Carroll's house.

The next morning, Defendant Taoipu drove the van to a tire shop while Defendant Carroll followed in another vehicle. (RTP, 77). Defendant Carroll stabbed the tires on the van and had the tire shop replace the tires. (RTP, 78). Defendant Carroll paid and told Rontae that Defendant Espindola had given him a hundred dollars (\$100) to replace the tires. (RTP, 79).

Later in the day, Defendant Carroll went to Simone's Auto Plaza. (RTP, 84). Defendant Taoipu and Rontae went with him. At Simone's Auto Plaza, Defendant Carroll met with "Mr. H." (RTP, 95). The group then left in the Palomino Shuttle. (RTP, 96). Thereafter, Defendant Carroll went to work. (RTP, 99). The next time Rontae saw Defendant Carroll, he was with homicide detectives. Defendant Carroll, in the presence of homicide detectives, told Rontae to tell the truth.

Confirmation of Deangelo and Rontae's Story

Defendant Jayson Taoipu was located and interviewed. Taoipu confirmed most of the information provided by Defendant Deangelo Carroll; including calling the attack on T.J. a hit ordered by Mr. H; indicating that Defendant Luis Hidalgo, III called Defendant Deangelo Carroll and told him to bring garbage bags and baseball bats; confirming that Defendant Anabel Espindola called Defendant Deangelo Carroll as they were driving to the lake; and that Defendant Kenneth Counts and Deangelo Carroll were paid for their participation in the murder.

After interviewing Rontae and Defendant Taoipu, detectives set out to identify, locate and arrest "KC." Detectives knew from the description of where he was located that "KC," lived at 1676 E Street. (RTP, 167). Based upon this information, a search warrant was drafted for the residence. During the execution of the search warrant, "KC" was not located at 1676 E Street. (RTP, 171). During the execution of that warrant, detectives received

1 information from Defendant Carroll that Defendant Counts was across the street at 1677 E
2 Street. Contact was made with the occupants of 1677 E Street, however, efforts to contact
3 Defendant Counts were unsuccessful. Therefore, a second search warrant was drafted and
4 executed at that residence. (RTP, 172). After entry, Defendant Counts was found hiding in
5 the attic. (RTP, 176). It took several hours and use of explosive devices to eventually get
6 him out of the attic. Eventually, a hole in the ceiling had to be cut to extricate Defendant
7 Counts. (RTP, 178).

8 After Defendant Counts was removed, a search was conducted of 1677 E Street.
9 During the search, a black satchel containing several one hundred dollar (\$100) bills was
10 found along with Defendant Counts' identification in front of a couch. (RTP, 181).
11 Underneath the couch, in approximately the same general area as the satchel, were more
12 money, some peach cigars as well as several VIP card from the Palomino Club.

13 **Hidalgo and Espindola Solicit Carroll to Kill Co-conspirators**

14 After the search, detectives once again met with Defendant Carroll. (RTP, 183).
15 Defendant Carroll consented to wear a body recorder and he was provided one on May 23rd.
16 (RTP, 184). After placing the body recorder on Defendant Carroll, Defendant Carroll was
17 surveilled as he entered Simone's Auto Plaza. After a while, Defendant Carroll exited
18 Simone's Auto Plaza and was surveilled back to his meeting with detectives. (RTP, 186).
19 At that time, the body recorder was collected and analyzed. In addition, Defendant Carroll
20 was in possession of fourteen hundred dollars (\$1400) in cash as well as a bottle of
21 Tanqueray.

22 An enhanced version of the body recording was admitted at the preliminary hearing.
23 (RTP, 250). On the recording, Defendant Espindola, Defendant Carroll and Defendant
24 Hidalgo discuss the crime as well as request Defendant Carroll to kill Defendant Taoipu and
25 Rontae Zone. In one part, Defendant Espindola indicates that Defendant Carroll was
26 supposed to beat the victim. In another section, Defendant Hidalgo asks Defendant Carroll
27 whether "KC" would be willing to kill Taoipu and Rontae:

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1 left Simone's Auto Plaza, he had approximately eight hundred dollars (\$800) in cash which
2 was recovered from him. After Defendant Carroll left Simone's Auto Plaza, detectives
3 waited for the other suspects to leave before executing various search warrants. (RTP, 191).
4 The first suspect to leave was Defendant Hidalgo. After leaving, Defendant Hidalgo was
5 stopped by a patrol officer. (RTP, 192). After that he was contacted by detectives and a
6 special agent of the Federal Bureau of Investigation and Defendant Hidalgo agreed to
7 accompany them to the homicide offices for an interview. (RTP, 193). After receiving his
8 Miranda warnings, Defendant Hidalgo was interviewed for several hours. (RTP, 210).

9 Sometime thereafter, Defendant Espindola left Simone's Auto Plaza with "Mr. H."
10 (RTP, 211). Eventually, she was brought down to the homicide offices and read her Miranda
11 warnings. (RTP, 212). Thereafter, Defendant Espindola admitted that she had spoken to
12 Defendant Carroll on the two previous days at Simone's Auto Plaza. (RTP, 215).

13 The recording from the May 24th encounter at Simone's Auto Plaza where
14 Defendant's Espindola, Carroll and Hidalgo can once again be heard discussing the crime,
15 was admitted into evidence.

16 During this recording, Defendant Espindola tries to explain how she tried to call
17 Defendant Carroll and change the plan from killing the victim to only beating the victim:

18 **DEANGELO:** You know what I'm saying I did everything you guys asked me
19 to do you told me to take care of the guy and I took care of him

20 **ANABEL:** OK ____ listen, listen

21 **DEANGELO:** I'm not...

22 **ANABEL:** ____ talk to him not fucking take care of him _____ god damn it I
23 fucking called you

24 **DEANGELO:** Yeah and when I talked to you on the phone Ms. Anabel I said
25 I specifically said I said if he is by himself do you still want me to do him in.
26 You said yeah

27 **ANABEL:** I _____

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1 **DEANGELO:** if he is with somebody you said if he is with somebody then
2 just beat him up

3 **ANABEL:** I said go to plan B fucking Deangelo and Deangelo you're just
4 minutes away___ I told you no I fucking told you no, and I kept trying to
5 fucking call you but you turned off your mother fucking phone

6 **DEANGELO:** I never turned off my phone

7 **ANABEL:** I couldn't reach you

8 **DEANGELO:** I never turned off my phone, my phone was on the whole
9 fucking night Ms. Anabel

10 **ANABEL:** Shh... I couldn't fucking reach you as soon as ___spoken ___knew
11 where you fucking were I fucking tried calling you again and I couldn't
12 fucking reach you.

13 (State's Return to Writ Exhibit 2). After this discussion, Defendant Espindola got more
14 money for Defendant Carroll. Moreover, Defendant Espindola told Defendant Carroll to
15 deny everything and that if she is ever contacted; she is just going to deny any knowledge.

16 During the subsequent search of Simone's Auto Plaza, numerous items were located
17 which were relevant to the investigation. In room six (6), numerous pieces of identification
18 in the name of Defendant Hidalgo were located. In addition, thousands of dollars in United
19 States' saving bonds were located, all in the name of Defendant Hidalgo, along with a
20 variety of bottles of liquor. In Defendant Espindola's office, a check made out to Defendant
21 Carroll for twenty-four (24) hours of work was located. (RTP, 318).

22 During the recording of May 23rd, Defendant Espindola told Defendant Carroll why
23 he is getting a check for twenty-four hours:

24 **ANABEL:** Right, _____ fill out your time card from last week cause I didn't
25 get it, _____ your time card last week, 3 days Monday, Tuesday,
26 Wednesday, 8 hours a day that's 24 hours, I'm gonna give you a check for that
27 **because obviously there gonna be asking to see our records** so It'll be much
28 easier that way I can prove you were there because Thursday you weren't there

1 because that was the day all the shit happened _____ Friday

2 Thursday of the week before was the day that Timothy Hadland was killed. In
3 addition, inside a common area of Simone's Auto Plaza, a handwritten note was located
4 which stated, **"Maybe we are being under surveill. Keep you mouth shut!!"** (RTP, 315).
5 Outside Simone's Auto Plaza, the white Chevy Astro van was located. (RTP, 319).

6 **Notice of Intent to Seek the Death Penalty**

7 On July 6, 2005, Notices of Intent to Seek the Death Penalty were filed against all
8 four adult charged Defendants. As to Defendants Espindola and Hidalgo, there were three
9 aggravating circumstances alleged. The first two aggravating circumstances alleged were:

10 *The murder was committed by a person who, at any time before a penalty*
11 *hearing is conducted for the murder pursuant to NRS 175.552, is or has been*
12 *convicted of a felony involving the use or threat of violence to the person of*
13 *another and the provisions of subsection 4 do not otherwise apply to that*
14 *felony, to-wit: Solicitation to Commit Murder. . .*

15 See NRS 200.033(1). The basis for these two aggravating circumstances was that both
16 Defendants solicited Defendant Deangelo Carroll to kill Witness Rontae Zone and
17 Defendant Jayson Taoipu. The final aggravating circumstance alleged was:

18 *The murder was committed by a person, for himself or another, to receive*
19 *money or any other thing of monetary value*

20 See NRS 200.033(6). The basis for this aggravating circumstance is that this is clearly a
21 case of murder for hire in which both the people doing the hiring as well as the people
22 receiving the money are subject to the aggravating circumstance.

23 Much like Defendants Hidalgo and Espindola, Defendant Carroll is alleged to have
24 the same two aggravating circumstances. However, the prior crime of violence as it applies
25 to Defendant Carroll stems from a prior felony conviction which Defendant Carroll sustained
26 and had just been released from probation shortly before the instant murder.

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1 information. Additionally, he entered a plea to this crime and was sentenced to probation.
2 During the entry of plea, Defendant's attorney acknowledged that the Conspiracy portion of
3 the crime was fictitious and in fact he was admitting to a robbery. (See Exhibit 1, p. 6).

4 **POINTS AND AUTHORITIES**

5 Defendant Carroll asserts that the notice of intent to seek the death penalty should be
6 stricken as the pecuniary gain aggravator does not apply to him (despite that he received
7 money for engaging in the killing of the victim) and that his robbery of Stephen Blodgett
8 does not qualify as a prior crime of violence. The majority of his argument appears to be an
9 incorporation by reference to the arguments of Defendant Hidalgo and Espindola. Those
10 Defendants' arguments are much more detailed and substantially different than that which
11 can be asserted by Defendant Carroll, however, as he incorporates them, a response it
12 necessary.

13 **I.** 14 **THE CHARGES AGAINST DEFENDANTS SUPPORT THE NOTICE OF INTENT** 15 **TO SEEK THE DEATH PENALTY AS THE QUESTION OF WHETHER** 16 **DEFENDANTS CONSPIRED TO COMMIT FIRST DEGREE MURDER IS A** 17 **QUESTION FOR THE JURY**

18 Defendants Hidalgo and Espindola argued that the Eighth Amendment to the United
19 States Constitution precludes the imposition of the death penalty as Defendants Hidalgo and
20 Espindola did not intend that a killing take place or intend that lethal force be employed.
21 This argument would not seem to apply to Defendant Carroll as he claims the exact opposite,
22 that there was a specific intent to kill by Hidalgo and Espindola, and that he was ordered to
23 carry out that plan.

24 The case law is clear that if a person does not kill and never intended that a killing
25 occur or deadly force be employed, then that Defendant is not eligible for the death penalty.
26 See Enmund v. Florida, 458 U.S. 782, 797 (1982); Tison v. Arizona, 481 U.S. 137 (1987);
27 and Doleman v. State, 107 Nev. 409, 418, 812 P.2d 1287, 1292-3 (1991). Unfortunately for
28 Defendants Hidalgo and Espindola, even viewing the evidence in a light most favorable to
the Defendants, both of them at the very least joined a conspiracy where they intended that
deadly force would be used. Defendant Carroll obviously intended a killing to occur.

1 However, this argument is moot after the Supreme Court's decision in Bolden v.
2 State, 121 Nev.____, 124 P.3d 191 (2005). Prior to Bolden, (which was decided after the
3 commencement of these proceedings), entering a conspiracy to commit a Battery With a
4 Deadly Weapon which resulted in one (1) co-conspirator committing First Degree Murder,
5 all co-conspirators would have been liable for 1st Degree Murder even though they did not
6 meet all of the specific intent requirements. This is due to the fact that the killing would be
7 the natural and probable consequences of the conspiracy. In that situation, there would be a
8 possibility that a defendant not specifically intending to kill would fact the death penalty.
9 Under the current state of the law, that factual scenario is impossible, because the state will
10 be required to prove a specific intent to kill.

11 **A. Evidence of Conspiracy to Use Lethal Force**

12 Defendant Hidalgo specifically told Defendant Deangelo Carroll to come to work
13 with baseball bats and garbage bags to beat T.J. As Rontae Zone testified at the preliminary
14 hearing, "Well, he said that [Petitioner Hidalgo, III] wanted him dead also." (RTP, 34).
15 Defendant Hidalgo's own father, Mr. H, indicated that Defendant Hidalgo was very upset
16 and wanted Defendant Carroll to "go take care of T.J." In addition, on the recordings,
17 Defendant Hidalgo expresses that he wants to hire Defendant Kenneth Counts to kill Zone
18 and Taoipu **"TOO."** Thereafter, he provided Defendant Deangelo Carroll the method by
19 which he is to have these two killed, i.e., rat poisoning in a gin bottle.

20 The evidence that Defendant Espindola intended for T.J. to be killed is even stronger.
21 Defendant Espindola was present when Mr. H instructed Defendant Deangelo Carroll to kill
22 T.J. While Defendant Carroll was driving the executioner to the scene of the murder,
23 Defendant Espindola called Defendant Carroll. It was at this point that Defendant Espindola
24 learned that T.J. was not at home as the original plan contemplated but out at the lake with
25 potential witnesses. Upon learning this information, Defendant Espindola told Defendant
26 Carroll, "If [T.J.'s] by his self, then do him, if he isn't by his self, then just fuck him up ____,
27 fuck him up and fuck up whoever's with him." This information was confirmed by
28 Defendant Espindola on the surreptitious recording when Defendant Carroll confronted her

1 with this statement, Defendant Espindola stated, "I told you to go to plan B!" Later in the
2 recordings, Defendant Espindola confirmed that her concern with killing T.J. in public was:

3 Well the bastards fucking right what about it, what about everything might as
4 well to lose it all, and if I lose the shop and I lose the club I can't help you or
5 your family... God Damn it _____ your not that stupid you were playing
6 with the _____ in the car you should have fucking turned back **YOU HAD**
7 **TOO MANY FUCKING EYES ON YOUR ASS WHAT THE FUCK**
8 **WERE YOU THINKING?**

9 (State's Return to Writ Exhibit 2, p. 14). There is absolutely no question that all Defendants
10 intended deadly force to be utilized. Whether they intended to kill is a question for the jury.

11 B. Specific Intent to Kill is a Jury Question

12 It is well settled that it is the responsibility of the jury, not the court, to assess the
13 weight of the evidence and credibility of the witnesses. McNair v. State, 108 Nev. 53, 56,
14 825 P.2d 571, 573 (1992). The question of whether a defendant has formed the requisite
15 intent to kill is a question for the jury. Zessman v. State, 94 Nev. 28, 573 P.2d 1174 (1978).

16 In Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002), this Court examined the theory
17 of aiding and abetting as a basis for criminal liability, in relation to the "natural and probable
18 consequence doctrine." In Sharma, this Court disavowed the natural and probable
19 consequence doctrine since it permitted a defendant to be convicted of a specific intent crime
20 where that defendant did not actually possess the statutory intent to commit that particular
21 offense. Id. The Court reasoned: "[I]n order for a person to be held accountable for the
22 specific intent crime of another under an aiding or abetting theory of principal liability, the
23 aider or abettor must have knowingly aided the other person with the intent that the other
24 person commit the charged crime." Sharma v. State, 118 Nev. 648, 655, 56 P.3d 868, 872
25 (2002). In other words, for a defendant to be found guilty of a specific intent crime of
26 another, under an aiding or abetting theory of liability, the defendant must have knowingly

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aided the other person with intent that the other person actually commit the charged crime. The focus is on whether a defendant who aids and abets has the specific intent to carry out the specific criminal act which occurs.

In Bolden v. State, 121 Nev. __, 124 P.3d 191 (2005), the Court extended its holding in Sharma to defendants charged under a theory of coconspirator liability.⁵ This Court held that to prove a specific intent crime, under a vicarious co-conspirator liability theory, the “State must show that the defendant actually possessed the requisite statutory intent” to commit that particular offense. Bolden, 124 P.3d at 200-01. The Court cited Sharma and stated:

[O]ur overarching concern in Sharma centered on the fact that the natural and probable consequences doctrine regarding accomplice liability permits a defendant to be convicted of a specific intent crime where he or she did not possess the statutory intent required for the offense. We are of the view that vicarious coconspirator liability for the specific intent crimes of another, based on the natural and probable consequences doctrine, presents the same problem addressed in Sharma, and we conclude that Sharma's rationale applies with equal force under the circumstances of the instant case.

Bolden, 124 P.3d at 200.

In short, a defendant cannot be held liable for his cohort’s specific intent crime, unless the defendant had the requisite intent to aid that individual in the commission of the charged crime. However, the Court limited its holding to specific intent crimes only. The Court reasoned that:

The mental state required to commit a general intent crime does not raise the same concern as that necessary to commit a specific intent crime. General intent is "the intent to do that which the law prohibits. It is not necessary for the prosecution to prove that the defendant intended the precise harm or the precise result which eventuated." On the other hand, **specific intent is "the intent to accomplish the precise act which the law prohibits." To hold a defendant criminally liable for a specific intent crime, Nevada requires proof that he possessed the state of mind required by the statutory definition of the crime.** Although we affirm Bolden's conviction for the general intent crimes of home invasion and robbery, we conclude that in future prosecutions, **vicarious coconspirator liability may be properly imposed for**

⁵ In the present case, the information was filed prior to the Bolden decision. However, the State recognizes that Bolden requires a jury finding that co-conspirator possessed the requisite intent.

1 however, once again missed the facts in arguing to the Court that there aren't specific facts
2 contained in the notice upon which the State will rely. See SCR 250(4)(c).

3 Initially, Defendants argued that the notice of intent is defined by a statute which
4 requires certain language in Informations and Indictments. See NRS 173.075. How that
5 statute is relevant to the discussion is never explained. Next, Defendants argued that cases
6 related to Informations and Indictments somehow control the language necessary for a
7 Notice of Intent to Seek an Indictment. In fact, statutorily, no notice need be provided if, as
8 here, the aggravating circumstance is based upon the aggravating nature of the crime itself.
9 See NRS 175.552(3) (...The State may introduce evidence of additional aggravating
10 circumstances as set forth in NRS 200.033, **other than the aggravated nature of the**
11 **offense itself**, only if it has been disclosed to the defendant before the commencement of the
12 penalty hearing). However, Supreme Court Rule 250 requires that even where the
13 aggravator is based on the crime itself, notice must be provided to Defendant. However,
14 Defendants confused the requirements of SCR 250(4)(c) with the notice requirement which
15 is found in SCR 250(4)(f) which requires a detailed list of evidence be submitted at least
16 fifteen (15) days prior to trial.

17 Additionally, Defendants misapprehended the Notice of Intent to Seek the Death
18 Penalty. Defendants asserted that the Notice provides theories of criminal liability which do
19 not support an intent to kill. Pursuant to SCR 250(4)(C), theories are not in the Notice but
20 "allege(s) with specificity the facts on which the state will rely to prove each aggravating
21 circumstance." The State alleged that it will prove that they hired Deangelo Carroll to "beat
22 or kill" T.J. Hadland because those are the facts. They were to kill him if he was alone, or
23 beat him severely if he was will someone else. If the trial reaches the point where a penalty
24 phase occurs, then the State will have proven beyond a reasonable doubt that Defendants
25 held the specific intent to kill.

26 The aggravating circumstance upon which the State is relying is that this was a
27 situation where there was a murder for hire as well as where some of the participants were
28 seeking financial gain from the killing. NRS 200.033(6) states that an aggravating

1 circumstance is appropriate where, “The murder was committed by a person, for himself or
2 another, to receive money or any other thing of monetary value.”

3 As opposed to Defendants Hidalgo and Espindola, Defendant Carroll appears to be
4 arguing that he cannot be held to the aggravating circumstance because he was not the
5 person doing the hiring, and he did not do the killing. In fact, both of those assertions are
6 false. Defendant was hired to kill Timothy Hadland. In furtherance of his employment, he
7 acquired at least two people to assist him in the killing. Defendant Carroll created a ruse to
8 lure T.J. to the deserted area. Defendant Carroll drove the vehicle to the location and had
9 T.J. approach the driver’s side of the car, as Defendant Counts exited the side of the van,
10 snuck up next to T.J. and executed him. As such, he was an active participant in the crime
11 and liable as being the person contracted to commit a killing.

12 However, that is not all of the liability for the aggravator that Defendant Carroll is
13 subjected. Defendant Carroll not only was the person contracted to commit the killing, he
14 hired the gunman to commit the crime. Much like a sub-contractor, Defendant Carroll not
15 only was the hiree, he was the hiror. As such, he is liable for the aggravator. See Wilson v.
16 State, 99 Nev. 362, 664 P.2d 328 (1983).

17 Defendant Hidalgo and Espindola’s argument was that they merely hired Defendant
18 Carroll to commit a beating, and therefore the aggravator did not apply. Defendant Carroll’s
19 argument is that he merely passed along the information that Defendants Hidalgo and
20 Espindola wanted a killing done so the aggravator does not apply. All persons involved in a
21 murder for hire are liable for the aggravator.

22 **B. The Murder was a “Contract Type Killing”**

23 Here, Defendants Hidalgo and Espindola appear to be arguing that they should not be
24 subject to the death penalty because they had the financial ability to pay another person to do
25 their dirty work, and that Defendant Carroll is not liable as he was able to pass some of the
26 responsibility for some of the acts to a third person. In this case, Defendants argue that
27 Kenneth Counts should face the death penalty for a murder conceived, solicited, planned,
28 and purchased by the Defendants.

1 This court has held that the offer to pay a person to assist in the commission of a
2 murder is sufficient to support the aggravating circumstance of NRS 200.033(6). Wilson v.
3 State, 99 Nev. 362, 664 P.2d 328 (1983). In Wilson, **Defendant offered to pay** two other
4 conspirators \$3500.00 to assist in the murder of an undercover police officer. Id. Pursuant
5 to their agreement **Defendant gave** two co-conspirators \$3500.00 for stabbing the victim.
6 Id. The court stated, “Under these circumstances, we find that the killing of Hoff was in the
7 nature of a ‘hired gun’ situation; therefore we decline to consider whether the issue is
8 **limited** to contract-type killings.” Id. (emphasis added). Much like Wilson, Defendant
9 Carroll actually participated in the crime, and his ability to get co-conspirators was directly
10 tied to his ability to get them compensation for the crime. In this case, as in Wilson,
11 Defendants Hidalgo and Espindola procured the murder by paying money to the person who
12 physically committed the crime, both Defendant Carroll and Defendant Counts.
13 Additionally, as in Wilson, Defendant Carroll was able to acquire his confederates by a
14 promise of money. As such, his is also person who committed the hiring, and is therefore
15 liable under Wilson. Therefore, they are eligible for the death penalty under NRS
16 200.033(6).

17 In addition, other courts have held that where a person is convicted of murder-for-
18 hire, the one who does the hiring is subject to the financial gain aggravating circumstance in
19 a capital case.⁸ People v. Padilla, 11 Cal 4th 891, 906 P.2d 388 (1995); *See also*, State v.
20 Austin, 87 S.W.3d 447 (Tenn. 2002)(holding that Gunman's and accomplice's testimony that
21 defendant hired the gunman to kill the murder victim established that defendant employed
22 another to commit the murder for remuneration or the promise of remuneration, as
23 aggravating circumstance at capital murder sentencing). *See also*, Harris v. State, 632 So.2d
24 503 (where a defendant has been convicted of the capital offense of murder for hire, even
25 though that person was the hirer and was convicted of the offense as an accomplice pursuant
26 to the complicity statute, the aggravating circumstance that the capital offense was

27
28 ⁸ California’s financial gain aggravator reads “The murder was intentional and carried out for financial gain.” Cal. Penal Code 190.2(1).

1 committed for pecuniary gain is established as a matter of law). In fact, the California
2 Supreme Court has held that it's financial gain statute, does not require that the murderer
3 receive a direct financial gain as long as a financial gain is received by someone. See People
4 v. Michaels, 49 P.3d 1032 (Cal. 2002).

5 **C. The Legislature Intended the Person who Conceived and Planned a**
6 **Contract Killing to Face the Death Penalty**

7 The Nevada financial gain statute that provides one of the circumstances that
8 aggravate First Degree Murder states, "The murder was committed by a person, for himself
9 or another, to receive money or any other thing of monetary value." NRS 200.033(6). When
10 the language of the statute is plain, its intention must be deduced from the language and the
11 court has no right to go beyond it. State v. Colosimo, 122 Nev. ___, 142 P.3d 352 (2006).
12 Where the language of the statute is susceptible of a sensible interpretation, it is not to be
13 controlled by extraneous considerations. Id. When a statute is susceptible to reasonable but
14 inconsistent interpretations, the statute is ambiguous and the court will resort to statutory
15 interpretation to discern legislative intent. State v. Kopp, 118 Nev. 199, 43 P.3d 340 (2002).
16 A statute should be construed in light of public policy and the spirit of the law, and the
17 interpretation should avoid an absurd result. Id. Moreover, this court has consistently held
18 that it will resolve any doubt concerning the legislature's intent in favor of what is
19 reasonable versus what is unreasonable. Id.

20 Here, it is clear that the Nevada Legislature intended to include murder for hire in the
21 narrow class of crimes eligible for the death penalty. However, they did not differentiate
22 between the payer and the payee. Nor did they attempt to exclude the payer, or in this case,
23 a sub-contractor. In subsections (a) and (b) of NRS 200.033(4), the legislature qualified the
24 general language of the statute to specifically exclude a person who did not either kill,
25 attempt to kill, or have reason to know that a life would be taken or lethal force would be
26 used from facing the death penalty. Clearly, this represents a decision by the legislature to
27 further narrow the class of defendants eligible for the death penalty. In NRS 200.033(6) no
28 such exclusion exists. Therefore, it is clear that the legislature intended that any person who

1 is found culpable in a murder for hire be subject to the death penalty.

2 Finally, it would be absurd to conclude that the Nevada Legislature intended to punish
3 the hit man greater than the affluent person who conceived, planned, and organized the
4 murder, or his employee who found someone else willing to pull the trigger. In the case that
5 halted capital punishment in the United States, Justice Douglas observed, "One searches our
6 chronicles in vain for the execution of any member of the affluent strata of our society."
7 Furman v. Georgia, 408 U.S. 238, 252, 92 S.Ct. 2726, 2733 (1972)(Douglas, J. concurring).
8 This court has heard countless appeals that assert that the death penalty is disproportionately
9 applied to the socioeconomically disadvantaged. To determine that those who can afford to
10 hire a hit man can escape punishment would result in a disproportionate and disparate
11 treatment between individuals based solely on their economic status.

12 **D. Defendants' Motive was Pecuniary Gain**

13 The State need not prove, although there is support for it in the evidence, that the
14 motive for the murder was for Defendants Espindola and/or Hidalgo to receive money. The
15 State need only prove that there was pecuniary gain by **someone** in the murder. Here,
16 Kenneth Counts received \$6000.00 to kill the victim, and Defendant Carroll received \$100
17 for the killing. Moreover, the evidence demonstrates that Mr. H. wanted T.J. killed because
18 he was hurting the business of the Palomino Club. Both Defendants Espindola and Hidalgo,
19 as well as Defendant Carroll agreed and participated in the killing to help support the
20 business, its owner and employees, of which Defendants are all three.

21 **III.**

22 **DEFENDANT CARROLL'S CONVICTION FOR CONSPIRACY TO COMMIT** 23 **ROBBERY FOR A ROBBERY WHICH OCCURRED ON MAY 18, 2002 QUALIFIES** **AS A PRIOR CRIME OF VIOLENCE**

24 Defendant Carroll asserts that his prior crime of violence does not qualify for an
25 aggravator as his charge was conspiracy to commit robbery. In support, he asserted during
26 argument that the the arguments presented by Defendants Hidalgo and Espindola that the
27 Supreme Court is reviewing on the Solicitation To Commit Murder counts contained in the
28 Information apply to him as well. The legal analysis for the solicitation charge is completely

different from that of the crime for which Defendant Carroll is subject to the aggravator.⁹ However, even if the Supreme Court were to strike the aggravators based upon Defendant Hidalgo and Espindola's argument, the aggravator would still be valid against Defendant Carroll.

A. NRS 200.033(2) is not Vague or Ambiguous

Defendants Hidalgo and Espindola argued that because Justice Maupin stated in a dissenting opinion that NRS 200.033(4) is vague and ambiguous, it must mean that a statute less specific must also be vague and ambiguous. Unfortunately, Defendants missed the import of Justice Maupin's conclusions. Justice Maupin, of which he eventually got a majority on the Court in McConnell v. State, 120 Nev. ____, 102 P.3d 606 (2004), was concerned that NRS 200.033(4) removed the intent requirement for a First Degree Murder conviction. As such, NRS 200.033(4) was unconstitutionally vague and ambiguous because it allowed the execution of someone who did not have the requisite intent to be eligible for the death penalty, as well as did not narrow the category of individuals who did have such intent. Such a concern does not underlie NRS 200.033(2) because none of the factors which concerned Justice Maupin are part of NRS 200.033(2).

NRS 200.033(2) is premised on the fact that it is relevant to sentencing whether or not an individual was violent in an isolated incident or whether there was violence in the past or present:

In general, "[a] defendant's character and record are relevant to the jury's determination of the appropriate sentence for a capital crime." Pellegrini v. State, 104 Nev. 625, 630, 764 P.2d 484, 488 (1988). Accordingly, a murder is aggravated if it is committed by an individual previously convicted of a felony involving the use or threat of violence to the person of another. NRS 200.033(2). Such a conviction **evinces a propensity for violence** and is relevant to a determination of the appropriate sentence; more than one such conviction is likewise relevant.

Riley v. State, 107 Nev. 205, 808 P.2d 551 (1991)(emphasis added). Certainly, a rule

⁹ The main difference is that Defendants Hidalgo and Espindola argued that because the crime was merely a solicitation, and Defendant Carroll was now an agent of the State, no real threat of violence existed to the victims. Such doesn't hold true for Defendant Carroll who beat a man and stole his wallet.

promulgated to determine whether a person has a propensity for violence is not unconstitutionally vague or ambiguous. Moreover, it significantly limits the number of people eligible for the death penalty as this circumstance isn't usually tied to the facts underlying the murder charge.

B. Solicitation To Commit Murder Is Clearly A Crime Involving The Threat of Violence To A Person

Defendants Hidalgo and Espindola argued that merely asking someone to kill another person is not a threat of violence against the person who may be killed based upon the request. They assert "solicitation is a crime of communication, not violence, and the nature of the crime solicited does not transform the crime of solicitation into an aggravating circumstance." *citing State v. Ysea*, 956 P.2d 499 (Ariz. 1998)(superseded by statute as stated in *State v. Martinez*, 999 P.2d 795 (2000)).¹⁰

NRS 199.500 expressly categorizes the punishment for solicitation by the nature of the crime solicited. The statute provides "A person who counsels, hires, commands, or otherwise solicits another to commit murder, if no other criminal act is committed as a result of the solicitation, is guilty of a category B felony." NRS 199.500(2). In contrast, a person who solicits another to commit kidnapping or arson is guilty of a gross misdemeanor in the same circumstances. NRS 199.500(1). Examples of other crimes punishable as a Category B felony include: Robbery, NRS 200.380(2); Burglary, NRS 205.060(2); Kidnapping, NRS 200.310; First Degree Arson, NRS 205.005; and Home Invasion, NRS 205.067. Notably, these crimes are identified in NRS 200.033(4) as crimes involving the threat or use of violence. Other crimes which are deemed to be Category B felonies include: Aggravated Stalking, NRS 200.575¹¹; Mayhem, NRS 200.280; and Battery with the Intent to Kill, NRS 200.400. Clearly, the categorization of solicitation to commit murder along with these

¹⁰ As opposed to Defendants Hidalgo and Espindola, Defendant did commit an act of violence in his prior crime. Additionally, unlike solicitation, the crime is not complete upon the making of the request but continues until the co-conspirators have successfully concealed their crime. See *Crew v. State*, 100 Nev. 38, 675 P.2d 986 (1984).

¹¹ A person who commits the crime of stalking and in conjunction therewith **threatens the person with the intent to cause him to be placed in reasonable fear of death or substantial bodily harm** commits the crime of aggravated stalking.

1 crimes against a person¹² which all manifest the threat or use of violence, demonstrates the
2 legislature's belief that the solicitation to kill another person is a crime of violence.

3 As discussed above, NRS 200.033(2) was enacted so that individuals who have a
4 higher propensity to engage in dangerous violent activity are more eligible for the death
5 penalty. *See Riley v. State*, 107 Nev. 205, 808 P.2d 551 (1991). In addition, NRS
6 200.033(2)(a) makes it an aggravating circumstance if you are guilty of another murder.
7 Obviously, the conception, planning, and hiring of another person to commit the murder
8 does not militate the propensity for violence. The mere fact that a person has the resources
9 to use a "hired gun" as a weapon of violence, rather than pulling the trigger themselves does
10 not speak to that person's lack of violent propensities. Rather, it speaks to financial
11 resources to carry out the threat.

12 If a person solicits another to commit murder, and the solicitation is carried out, then
13 NRS 200.033(2) would demand an aggravating circumstance. However, Defendants assert
14 that that the interruption of the crime by police which prevented the murder from occurring
15 entitled them to a finding that they should not face an aggravating circumstance. Clearly, the
16 solicitation to commit murder manifests a criminal intent to kill and an inherent danger to
17 society, regardless of whether the act of murder is carried out by the person solicited. As
18 such, agreeing that Solicitation to Commit Murder is not a felony involving a threat to a
19 person would lead to an unreasonable application of NRS 200.033(2) and defeat its
20 purposes.

21 Notwithstanding, Defendants argued to the Supreme Court that non-binding Florida
22 and Arizona cases support the proposition that Solicitation To Commit Murder is not a
23 violent felony, while analysis of those cases clearly distinguishes them from the instant
24 matter. In *Lopez v. State*, 864 So.2d 1151 (Fla.App.2d Dist. 2003), an intermediate appellate
25 Florida state court interpreted a Florida state statute that defined the violent habitual criminal
26

27 ¹² The State notes that other crimes, which are not crimes against a person, are categorized as category B felonies. These
28 crimes are not relevant as they manifest other legislative goals. i.e.; protection of financial interests, protection of certain
industries.

1 allegation to mean that, Solicitation To Commit Murder did not qualify under the catch-all
2 provision. To support their conclusion, the Lopez court relied upon Elam v. State, 636 So.2d
3 1312 (Fla.1994). In Elam, the Florida Supreme Court ruled that Florida law required actual
4 force inherent in the crime which is aggravated. The Elam court reasoned that actual force is
5 not a necessary component of a solicitation, and then even a solicitation to do a violent act
6 didn't qualify under Florida law.

7 The Nevada Supreme Court has rejected requiring force to be inherent in the
8 aggravating crime. See Weber v. State, 121 Nev. ___, 119 P.3d 107 (2005). In Weber,
9 Defendant had been convicted of a Sexual Assault. The Supreme Court noted that a Sexual
10 Assault as defined in Nevada does not require actual force inherent in its commission.
11 However, because of the implied force, the Sexual Assaults did qualify for use as prior
12 violent felonies. The implication of the Nevada Supreme Court as well as the purpose behind
13 the statute, NRS 200.033(2), would appear to require Solicitation to Commit Murder to be a
14 prior violent conviction.

15 Moreover, in reviewing all of the authority relied upon by Florida, it doesn't appear
16 that any other jurisdiction has referenced, let alone followed the referenced cases. Other
17 States allow for a conviction for Solicitation to Commit Murder to be used as a prior felony
18 conviction involving the threat of force on a person for purposes of an aggravating
19 circumstance. See, e.g., Woodruff v. State, 846 P.2d 1124, 1143 (Okla.Cr.1993) and People
20 v. Edelbacher, 47 Cal.3d 983, 1032, 254 Cal.Rptr. 586, 616 (Cal.,1989).¹³

21 Likewise, Defendants' reliance of Ysea is misplaced. In Ysea, the Arizona Supreme
22 Court examined whether defense counsel was ineffective when he recommended to the
23 defendant that he plead guilty to avoid a possible death sentence. Ysea, at 501. The court
24 held that it was unreasonable, in 1986, for counsel to believe that a prior solicitation
25 conviction could serve as an aggravating factor. Id. The Ysea court noted that its case law
26 required that "to constitute an aggravating circumstance, the prior conviction must be for a
27

28 ¹³ Federal law also considers solicitation to commit murder a prior violent felony based on the federal habitual criminal
statute 18 U.S.C. § 924(e). See U.S. v. Kaluna, 192 F.3d 1188 (C.A.9 HI.1999).

1 felony *which by its statutory definition* involves violence or a threat of violence to another
2 person. Id. at 502 (emphasis in original). At the time, Arizona’s solicitation statute¹⁴ only
3 referred to non-specific felony and misdemeanor crimes. A.R.S. 13-1002. In Nevada, the
4 solicitation statute clearly delineates the crime solicited to be murder. NRS 199.500(2).

5 In addition, the Ysea court noted that the crime solicited, aggravated assault, is not
6 always a crime of violence because it may be committed recklessly or negligently and
7 without either the intention or knowledge about injuring anyone. Therefore, an attorney’s
8 assumption that aggravated assault was automatically a crime of violence was not supported
9 by any authority. Ysea, at 503. However, in this case, it cannot be credibly maintained that
10 murder is not a crime of violence.

11 Further, the Arizona statute of solicitation is distinct from the Nevada statute and this
12 particular case in one glaring respect. Hidalgo and Espindola did not merely communicate
13 their desire to kill Taoipu and Zone; they “hired” the person to commit murder. Under every
14 definition of the word “hire” there is a payment of money for a particular service. See The
15 American Heritage Dictionary of the English Language, 4th Ed; Merriam Webster’s
16 Dictionary of Law; Blacks Law Dictionary, 8th Ed. The service in this case is the
17 commission of murder. The act of hiring the person was not complete until the payment of
18 money was made.

19 Finally, this Court, unlike the Ysea court, is not limited to the statutory definition of
20 the crime to determine whether the crime is a crime of violence. Dennis v. State, 116 Nev.
21 1075, 13 P.3d 434 (2000); (holding that second degree arson was a crime involving the
22 threat of violence where the state presented documentary evidence and the testimony of
23 victims.); *cf.* Redeker v. Eighth Judicial District, 122 Nev. ____, 127 P.3d 520, 526
24 (2006)(holding that second degree arson was not an aggravating circumstance where there
25 was no evidence presented to support the “threat” of violence). In criminal law, a threat

26
27 ¹⁴ The Arizona statute read, “A person commits solicitation if, with the intent to promote or facilitate the commission of
28 a felony or misdemeanor, such person commands, encourages, requests, or solicits another person to engage in specific
conduct which would constitute a felony or misdemeanor or which would establish the other’s complicity in its
commission.” A.R.S. 13-1002.

1 requires actual intent: “a threat includes almost any kind of expression of *intent* by one
2 person to do an act against another person, ordinarily indicating an *intention* to do harm.”
3 Id. (emphasis in original). The question of whether a defendant has formed the requisite
4 intent is a question for the jury. Zessman v. State, 94 Nev. 28, 573 P.2d 1174 (1978).

5 The facts of the present case demonstrate Defendants’ specific intention to harm the
6 victims, Taoipu and Zone. First, the Defendants solicited an individual who had only days
7 before committed a violent murder based upon their solicitation. They suggested that he use
8 the same triggerman that he had used in the prior homicide. They provided their hit man
9 with an instrumentality to cause the death of the victims. Thereafter, they paid their hit man
10 for his services. In addition, they told their hit man that if the witnesses talked, Mr. H would
11 kill everyone, providing substantial motivation over and above that associated with
12 remuneration for their hit man to complete the job. Clearly, the jury could conclude that, in
13 this case, the solicitation to commit murder constituted a threat of violence.

14 **C. The Status of the Person Solicited is not Relevant**

15 Defendants additionally argue that because they did not know that the person they
16 were soliciting to kill two people was working for the police; they should receive a benefit
17 from their ignorance. Such an argument would not give effect to the purposes behind NRS
18 200.033(2), and is unsupported by hundreds of years of jurisprudence in this country.
19 Mistake of fact is not a defense to a crime unless it negates a state of mind. See Model Penal
20 Code Sec. 2.04(1)-(2); Adler v. State, 95 Nev. 339, 594 P.2d 725 (Nev.1979). The mere fact
21 that they believed they were actually hiring a hit man as opposed to an agent of the police
22 does not in any manner negate their intent. Moreover, as discussed above, it is the
23 Defendants propensity for violence which allows for the convictions to be used as
24 aggravating circumstances, not whether the violence in fact occurred. Therefore, to agree
25 with Defendants would allow for Defendants who got lucky to receive a different sentence
26 than Defendants that got unlucky. Nothing in any of the jurisprudence of capital cases
27 suggests that embracing such a construction would further the objects of the sentencing
28 scheme.

1 Finally, Defendants argue that this Courts holding in Myatt should be extended to the
2 crime of Solicitation to Commit Murder. In Myatt, this Court held that an informant is a
3 feigned accomplice and therefore cannot be a coconspirator. Myatt v. Nevada, 101 Nev.
4 761, 763, 710 P.2d 720, 722 (1985). Myatt is not relevant in this case. Conspiracy requires
5 an agreement between two or more people for an unlawful purpose. Id. Solicitation to
6 Commit Murder does not require an agreement. Therefore, the status of the person solicited
7 is irrelevant. Therefore, Defendants arguments should be rejected.

8 **D. Defendant Carroll's Prior Conspiracy To Commit Robbery Is An**
9 **Aggravating Circumstance Under Redeker**

10 Unlike the argument made by Defendants Hidalgo and Espindola, Defendant Carroll
11 can not make an argument that his crime is merely a crime of communication. Defendant
12 Carroll committed the crime of Robbery, and as a plea negotiation, pled to Conspiracy to
13 Commit Robbery. However, in the plea, Defendant Carroll admitted to the use of force or
14 violence. Therefore, under Redeker, by definition, it is a crime of violence.

15 As discussed, *supra*, Nevada does not require that the crime being alleged to qualify
16 necessarily have the use or threat of violence in its elements pursuant to Dennis and
17 Weber.¹⁵ Where a crime is such that it may or may not involve crimes of violence, more
18 than the elements may be utilized. In Redeker, the Court explain which secondary sources
19 must be reviewed. In Redeker, the Court held that for purposes of circumstance aggravating
20 first degree murder that the accused had been convicted of a felony involving the use or
21 threat of violence to the person of another, in determining whether a felony involved use or
22 threat of violence to person of another, court may consider the prior felony's statutory
23 definition, charging document, jury instructions, written plea agreement, transcript of plea
24 colloquy, and any explicit factual finding by the trial judge to which the defendant assented,
25 and cannot consider police reports or complaint applications. Redeker v. Eighth Judicial

26
27 ¹⁵ Although, certainly, a Conspiracy To Commit Robbery, by its very elements requires such use or threat of violence.
28 Nobody disputes that a robbery must involve the use or threat of violence. A conspiracy requires an agreement to use
force or violence. As such, a threat of violence always exists in a conspiracy to commit robbery. Particularly one that
results in a robbery.

1 Dist. Court, 122 Nev. 164, 127 P.3d 520, 526 (2006).

2 Here, not only is the charging document clearly indicate that Defendant Carroll did
3 commit force or violence upon the person of Mr. Blodgett. He acknowledged it in the guilty
4 plea agreement. He acknowledged that act he committed utilized force during the plea
5 canvass. (See Exhibit 1, pp. 5-6). Additionally, Defendant's attorney acknowledged that the
6 conspiracy portion of the plea was fictitious. In other words, he was pleading to committing
7 a robbery, but getting sentenced under a Conspiracy to avoid a harsher punishment.
8 Certainly, that qualifies not just under Redeker but as exactly the type of crime anticipated
9 by the Court in Riley.¹⁶

10 Moreover, the "threat of force" is inherent in a Conspiracy to Commit Robbery.
11 Robbery is the taking by use or threat of force. A Conspiracy is an agreement to take
12 property by the use or threat of force. As threat is merely an indication of intent, clearly that
13 intent is established by the elements. That, combined with the fact that a Conspiracy extends
14 beyond the agreement to the acts committed in furtherance, including efforts to conceal the
15 crime, clearly establishes that at least the "threat" of force is always a necessary element in
16 any Conspiracy to Commit Robbery. However, even if the Court were to consider that some
17 Conspiracy to Commit Robbery may not include the use or threat of force, the records
18 conclusively demonstrates that force was used in the instant matter.

19 **CONCLUSION**

20 Defendant Carroll is not similarly situated as Defendants Hidalgo and Espindola, as
21 even those Defendants agree Defendant Carroll clearly is eligible for the pecuniary gain
22 aggravator. Additionally, the basis for Defendants Hidalgo and Espindola's argument that
23 Solicitation to Commit Murder does not qualify as an aggravating circumstance is a
24

25 ¹⁶ Defendant asserted during argument that State should be required to establish a case where the Nevada Supreme Court
26 has conclusively determined that a Conspiracy count can be a prior crime of violence. No Court that could be found has
27 ever directly addressed this issue in either direction. The only discussion is whether the force is necessary under the
28 elements of the offense or whether the underlying facts are appropriate to consider. However, the distinction in either
case is irrelevant in this case as by definition, force or the "threat" of force is inherent in the elements of a Conspiracy to
Commit Robbery. In addition, in this case, actual force was used, which is an appropriate consideration under Nevada
law.

1 substantially different argument than Defendant Carroll's argument as it relates to his prior
2 violent felony conviction. Defendant Carroll not only committed the murder of T.J. Hadland
3 for his own pecuniary gain, he was aware that all the other individuals involved were
4 committing the murder for pecuniary gain. He is not only a person hired to commit the
5 murder, but he procures associates to help in the murder for pecuniary gain. Additionally,
6 his prior felony conviction involved actual violence upon his victim. As such, the Court
7 should deny his Motion To Strike Death Penalty Aggravators.

8 DATED this 4TH day of October, 2007.

9 Respectfully submitted,

10 DAVID ROGER
11 Clark County District Attorney
Nevada Bar #002781

12 BY /s/MARC DiGIACOMO

13 MARC DiGIACOMO
14 Chief Deputy District Attorney
Nevada Bar #006955

15 CERTIFICATE OF FACSIMILE TRANSMISSION

16 I hereby certify that service of the above and foregoing, was made this 4th day of
17 October, 2007, by facsimile transmission to:

18 BUNIN & BUNIN
19 ATTN: DAYVID FIGLER, ESQ.
20 FAX #386-0344

21 /s/L. GUDEMAN

22 Employee, District Attorney's Office
23
24
25
26

27 05FB0052D/MVU/lg
28

CASE NO. C184573

DEPT. NO. 16

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CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

THE STATE OF NEVADA,

PLAINTIFF,

VS.

DEANGILO CARROL,
AKA DEANGELO RESHAWN CARROLL,

DEFENDANT.

REPORTER'S TRANSCRIPT

OF

PLEA

BEFORE THE HONORABLE JUDGE JOHN McGROARTY
DISTRICT COURT JUDGE

DATED TUESDAY, JUNE 18, 2002

FOR THE PLAINTIFF: MARY BROWN

FOR THE DEFENDANT: JEANNIE HUA

REPORTED BY: PEGGY ISOM, RMR, CCR NUMBER 541

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1 APPEARANCES:

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12 * * * * *

1 LAS VEGAS, NEVADA; TUESDAY, JUNE 18, 2002

2 8:45 A.M.

3 P R O C E E D I N G S

4 * * * * *

5 THE COURT: Deangilo Carrol? He's in
6 custody.

7 Is that your true name, sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: How old are you?

10 THE DEFENDANT: 21.

11 THE COURT: How far did you go in school?

12 THE DEFENDANT: Graduated.

13 THE COURT: Do you read, write, and
14 understand the English language?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand what you're
17 being charged with?

18 THE DEFENDANT: Yes, sir.

9:45A 19 THE COURT: Do you waive a formal reading of
20 the charges against you?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Are you prepared to enter a
23 plea?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Did you sign a guilty plea

1 agreement?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Did you read it before you
4 signed it?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Did you understand it before you
7 signed it?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you think signing this is in
10 your best interests?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Did you sign it freely and
13 voluntarily?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: State retains the right to argue
16 at sentencing; do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Has no opposition to dismissal
19 of case number 02F07421X. And do you understand that your
20 agreement is contingent upon three additional conditions,
21 a violation of any one of which would allow the state to
22 argue at the time of sentencing?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you also understand, sir,
25 that as a result of your plea today you're looking at up

1 to six years in prison?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And/or you'd be required to pay
4 an administrative assessment fee, restitution if
5 appropriate; do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Did you sign this on page 5?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: We note that fact.

10 We note the district attorney has signed off
11 on the same page.

12 We note your attorney has signed off on the
13 next page.

14 What did you do on or about May 18th of this
15 year that caused you to plead guilty to the crime of
16 conspiracy to commit robbery?

17 THE DEFENDANT: We attempted to take a
18 wallet, sir.

9:46A 19 THE COURT: By means of force or fear?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Without the consent and against
22 the will of the owner of that wallet?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Here in Clark County, State of
25 Nevada?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: This is a fictitious plea?

3 MS. HUA: Yes, your Honor.

4 THE COURT: All right. The Court finds your
5 entry of guilty plea is freely and voluntarily made.

6 We further find that you understand the
7 nature of the offense and the consequences of your plea.

8 We, therefore, accept your guilty plea.

9 MS. HUA: Your Honor, I have a question
10 about his bail status. The justice court had lowered his
11 bail down from \$10,000 to \$5,000.

12 However, I don't think the computer shows
13 that. Furthermore, Mr. Carrol would like the Court to
14 consider an O.R. for him. I don't have an intake service
15 report. We ordered one. I don't know if the Court has
16 one. But Mr. Carrol has no felony priors and according to
17 his scope he has only one failure to appear.

18 MS. BROWN: Your Honor, well, certainly, we
19 won't oppose enforcing the order of justice court if that
20 was, in fact, the order. I don't have it in my notes.
21 But we would request that any further reduction be put in
22 writing and we have a chance to respond in light of the
23 serious nature of the charges.

9:47A 24 THE CORRECTIONAL OFFICER: I'm still showing
25 bail \$10,000.

1 THE COURT: Make if \$5,000. Since he
2 entered a guilty plea.

3 And you say you didn't get anything from
4 intake.

5 MS. HUA: We ordered intake but we haven't
6 received a report yet.

7 THE COURT: Why don't we order an intake and
8 pass it to Thursday.

9 Thank you very much.

10 MS. BROWN: Request the motion be put in
11 writing so we can respond in writing.

12 THE COURT: Sure. Will do you that?

13 MS. HUA: Sure.

14 THE COURT CLERK: June 20th at 8:45 for
15 sentencing as well as intake service for O.R. release.

9:48A 16

17
18 (WHEREUPON, THE PROCEEDINGS WERE
19 CONCLUDED)

20 * * * * *

21

22

23

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25

REPORTER'S CERTIFICATE

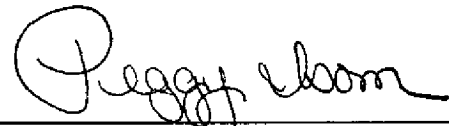
STATE OF NEVADA)

:SS

COUNTY OF CLARK)

I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER,
DO HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL OF THE
PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE TIME
AND PLACE INDICATED, AND THAT THEREAFTER SAID STENOGRAPHY
NOTES WERE TRANSCRIBED INTO TYPEWRITING AT AND UNDER MY
DIRECTION AND SUPERVISION AND THE FOREGOING TRANSCRIPT
CONSTITUTES A FULL, TRUE AND ACCURATE RECORD TO THE BEST
OF MY ABILITY OF THE PROCEEDINGS HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO
SUBSCRIBED MY NAME IN MY OFFICE IN THE COUNTY OF CLARK,
STATE OF NEVADA.



PEGGY ISOM, RMR, CCR 541

1 TRAN

2 FILED

3 JAN 22 4 04 PM '08

4 *ORIGINAL*

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 *CR. 105*
8 CLERK OF THE COURT

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 vs.)

12 CASE NO. C212667

13 DEPT. XXI

14 DEANGELO RESHAWN CARROLL,)

15 Defendant.)

16 BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

17 TUESDAY, OCTOBER 9, 2007

18 RECORDER'S TRANSCRIPT OF HEARING RE:
19 DEFENDANT CARROLL'S MOTION TO STRIKE
20 DEATH PENALTY AGGRAVATORS

21 APPEARANCES:

22 FOR THE STATE:

23 MARC DIGIACOMO, ESQ.
24 Deputy District Attorney

25 FOR THE DEFENDANT:

DAYVID J. FIGLER, ESQ.

RECEIVED

RECORDED BY: JANIE L. OLSEN, COURT RECORDER/TRANSCRIBER

JAN 22 2008

CLERK OF THE COURT

1 LAS VEGAS, CLARK COUNTY, NV., TUES., OCT. 9, 2007

2
3 THE COURT: This is the Deangelo Carroll matter. I've reviewed everything.

4 Does anyone have anything they'd like to add to what's already been
5 provided to the Court?

6 MR. FIGLER: I would, Your Honor, just like to respond orally to the State's
7 opposition. We did receive it on Thursday. I honestly didn't expect it was going to
8 be 30 pages long, but I have had the opportunity to review it.

9 THE COURT: I know. I thought they kind of outdid themselves this time.

10 MR. FIGLER: I thought they did, but maybe just they protest a little too
11 lengthily.

12 THE COURT: Well, actually, Mr. Figler, I have to tell you, everything I thought
13 of, I thought, well, what about this, well, what about that, was addressed in the
14 State's response.

15 MR. FIGLER: Well, I would like to point out two things, Your Honor, and then
16 whatever order Your Honor was going to give and then obviously this is what we've
17 been waiting for --

18 THE COURT: And go rushing upstairs.

19 MR. FIGLER: -- to go rush upstairs. I have an oral argument there tomorrow
20 so maybe I'll just kill two birds with one stone.

21 Nonetheless, Judge, there's two things I wanted to point out to Your
22 Honor before Your Honor was to rule.

23 With regard to the State's averment of facts, they do a really
24 outstanding job in giving a record citation to pretty much every fact except for the
25 one where they suggest that the pecuniary gain for Mr. Carroll was \$100. There is

1 no fact or record citation for that particular averment, and yet for every other
2 averment that they make they do have a record citation, and that's because I believe
3 it's at best implied and certainly doesn't fit in with any sort of realistic analysis of the
4 actual facts of the case or something that would put someone on the hook for
5 receiving money.

6 They have the allegation that Mr. Counts had received \$9,000 to do this
7 murder, and then as an afterthought they state that Mr. Carroll received a hundred
8 dollars, and yet there is no record citation as I'm looking through it yet again.
9 There's just no record citation that Mr. Carroll received a hundred dollars for his
10 participation. They actually state it twice, and both times there's no record citation
11 for it.

12 Secondly, you know, in this case at the crux of it is that Mr. Carroll was
13 the conduit. Mr. Carroll is not accused of doing the murder, and Mr. Carroll is not
14 accused of being the person who was going to receive or who put it in motion --

15 THE COURT: But as I understand the State's theory is that Mr. Carroll was
16 retained, if you will, to do this, and then Mr. Carroll either wanted help or decided,
17 well, hey, I'm not going to do it myself; I'm going to get these other people to do it,
18 and so was -- I mean, is essentially that.

19 So to me I don't know that that's really a defense that, well, he didn't
20 want to do it himself for whatever reason, or he needed help to do it, and so he got
21 these other people to do it.

22 MR. FIGLER: Well, and here's the thing is that if you -- a strict reading of the
23 statute even by its plain language doesn't contemplate a conspirator or an aiding or
24 abettor liability.

25 It's very straight, a person for lawful money, etcetera. If they can't

1 prove that Mr. Carroll was to receive the pecuniary gain or that Mr. Carroll was the
2 one who was paying the money, then I think it does fall into an ambiguity which by
3 interpretation of the statute would have to go towards the defendant's favor.

4 So first of all factually --

5 THE COURT: Well, I agree with you, Mr. Figler. I mean, I think that they
6 have to prove that Mr. Carroll stood to gain somehow financially by this. It's not a
7 threshold amount of any particular amount.

8 But I disagree that, you know, to me if he, you know, gets asked to do it
9 and then asks someone else to do it, I don't know that that necessarily is outside of
10 the --

11 MR. FIGLER: Well, I mean, and that's the ultimate question which we're
12 asking Your Honor to rule on with regard to the interpretation as far as it goes to the
13 favor of defendant when there's any ambiguity.

14 I think when they are talking about that hundred dollars, they're talking
15 about a hundred dollars that the codefendant Espindola gave to Mr. Carroll which
16 later in the factual pleading by the State they said was to replace the tires on the van
17 that was owned by the Palomino Club.

18 So above and beyond that hundred dollars that there is a record citation
19 to that was given to Mr. Carroll to replace the tires on the vehicle with the facts most
20 favorable to the prosecution, that's where that hundred dollars comes from.

21 So there's no averment with any record citation above and beyond that
22 hundred dollars which was to the benefit of the Palomino Club. This wasn't even
23 Mr. Carroll's personal van. This was a van that was registered to the club itself.

24 They just don't have any actual gain on the part of Mr. Carroll. Now,
25 they do talk about later when Mr. Carroll was in a different situation after there was

1 police surveillance, etcetera, that he had received some money to go kill the
2 coconspirators, but that's not the aggravator for this particular case.

3 So with regard to that issue, I just don't think factually they have it, and I
4 think there's enough of an ambiguity that the conduit by way of a conspirator or an
5 aider and abettor-type liability doesn't apply to Mr. Carroll, and therefore, that
6 aggravator shouldn't apply to Mr. Carroll.

7 And then secondly or finally, with the regard to the other aggravator that
8 Mr. Carroll had previously been convicted of a crime of violence, there's a lot of
9 problems with that in that first of all the plea was a fictional plea.

10 Secondly --

11 THE COURT: Right because --

12 MR. FIGLER: -- but there were other people who were involved, and if you
13 look at the actual language in the plea agreement, what Mr. Carroll basically says is,
14 I attempted to take the wallet. I attempted to take the wallet.

15 And then the Court asked, Was that by use -- by means of force or
16 fear, and he said, Yes, sir.

17 So quite frankly, a conspiracy or an attempt to take somebody's wallet
18 by use of fear versus force to qualify that person because of that factual averment to
19 get the death penalty seems to be a little far fetched as well, Your Honor, which
20 makes me go back to my original, you know, very simple expression of
21 dissatisfaction with the way that the State has proceeded in this case and that this is
22 not a death penalty case, that Mr. Carroll did not kill anybody by his hand, that Mr.
23 Carroll did not put the wheels in motion with regard to the desire to have Mr.
24 Hadland dead and that Mr. Carroll's prior conviction was for something relatively so
25 minor that it should not qualify him for the death penalty in this particular case.

1 THE COURT: I don't know if his conviction is something -- is for something
2 relatively minor.

3 I mean, here's the thing, Mr. Figler. I would agree with you totally that if
4 all it was was a conspiracy and nothing ever happened in furtherance of that, they
5 just -- or the minimal -- something minimal happened in furtherance of that, you
6 didn't get to actually violence or fear or something like that then, yeah, I think you
7 might have a question.

8 But here, you know, the State did get him to admit to these various
9 things that I think pushes you beyond just simply having an agreement and some
10 simple steps toward furthering that.

11 Mr. DiGiacomo, do you have anything you want to add?

12 MR. DIGIACOMO: Just briefly. Judge, the only reason for the length of it is I
13 know Mr. Figler's going to take this up, and clearly both the other codefendants have
14 completely separate arguments from Mr. Figler.

15 As to the hundred dollars, so the record's completely clear, a good
16 lawyer saying there's no citation in the record, well, he waived his prelim so his
17 statement isn't in the record where he says, I got two, 100 dollar bills, one to pay for
18 the tires and the hundred bucks where I took all the other co-conspirators or one co-
19 conspirator and one witness out to breakfast with it. So there's substantial evidence
20 of him actually receiving money.

21 And the last thing on that subject matter, if it only applied to the guy
22 receiving money, then the aggravator wouldn't say, Or any other person received
23 something of value. So obviously the aggravator includes more than that, and the
24 Supreme Court has said so.

25 And lastly as to the conspiracy argument, well, he says, I attempted to

1 take it in the actual plea canvass. His plea agreement which he signed says, I admit
2 all the facts which is, I did take it by force or violence, and that's in the Information,
3 and I'll submit it to the Court.

4 THE COURT: All right. A couple of things. I'm going to consider this as to
5 both further. I mean, I think I've sort of indicated my opinion, but I'm going to think
6 about it. So you won't be able to run upstairs today, Mr. Figler, or to Carson City or
7 wherever it is you need to go.

8 MR. FIGLER: Well, the fact that you're giving thought to it, Judge, is
9 encouraging to the defense.

10 THE COURT: All right. Now, having said that, assuming you don't prevail,
11 I'm not inclined to stay the case against Mr. Deangelo Carroll down here. So, I
12 mean, obviously you can seek a stay in the Supreme Court if you want to do that,
13 but assuming that's not granted, Mr. Figler, are you actively still preparing to go
14 forward with the date that we had last set?

15 MR. FIGLER: We're actively doing that, Judge, and we will give you status
16 updates --

17 THE COURT: Have there been any monkey wrenches thrown in your active
18 preparation that you need to make either Mr. DiGiacomo or the Court aware of at
19 this point in time so there's no surprises?

20 MR. FIGLER: We have retained Dr. Roitman. He is reviewing what he needs
21 to do. He is setting a schedule with regard to Mr. Carroll.

22 The FBI did send us a Go-to-H letter with regard to our request for any
23 access to the special agent who -- Shields -- who was involved in the -- in the
24 investigation latter part with regard to Mr. Carroll. We felt that we had an absolute
25 right to that discovery. They said, no, you don't.

1 We're going through the hoops with regard to the Freedom of
2 Information Act. We're going through the hoops with regard to affidavit support for
3 discovery and for information.

4 We're also going to be submitting an order to Your Honor to see if all
5 that will allow them to loosen up for Special Agent Shields to at a minimum talk to
6 us.

7 THE COURT: Yeah, it may just be that they want a court order on that. I
8 don't know what the State's position is going to be, and --

9 MR. FIGLER: But we'll jump through all those hoops, and I'll keep --

10 THE COURT: -- they obviously have a right to be heard on that issue before
11 the Court signs anything, I mean, it's not going to be an ex parte thing clearly.
12 And --

13 MR. FIGLER: No, and I'll keep Mr. DiGiacomo apprised --

14 THE COURT: -- you know, they may have someone from the US Attorney's
15 office that wants to weigh in on that and not rely solely on Mr. DiGiacomo.

16 No disrespect, Mr. DiGiacomo.

17 MR. DIGIACOMO: That's fine. They've ignored my subpoenas before too,
18 Judge.

19 THE COURT: So anyway, Mr. Figler, you're going forward on that in a timely
20 manner?

21 MR. FIGLER: We're doing everything we can, and we'll keep the Court
22 apprised of everything as it occurs.

23 THE COURT: All right. We'll make sure to have something decided by
24 Thursday, but nobody needs to come back.

25 MR. FIGLER: Thank you. As long as we're informed of that so we can act

1 appropriately. I appreciate it, Your Honor. Appreciate your time.

2 THE COURT: Absolutely.

3 Thank you, Mr. DiGiacomo.

4 MR. DIGIACOMO: Thank you, Judge.

5 -oOo-

6 ATTEST: I hereby certify that I have truly and correctly transcribed the
7 audio/video proceedings in the above-entitled case to the best of my ability.

8 
9 JANIE L. OLSEN
10 RECORDER/TRANSCRIBER
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CLERK OF THE COURT

NISD
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
MARC DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #006955
200 Lewis Avenue
Las Vegas, Nevada 89155-2211
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DEANGELO CARROLL,
#1678381

Defendant.

CASE NO: C212667

DEPT NO: XXI

AMENDED NOTICE OF EVIDENCE IN AGGRAVATION

COMES NOW, the State of Nevada by Clark County District Attorney DAVID ROGER, through MARC DIGIACOMO, Chief Deputy District Attorney, pursuant to Rule 250(4)(f) of the Nevada Supreme Court, hereby gives notice of the existence of the following evidence in aggravation to be presented at the penalty phase of the trial:

1. The murder was committed by a person who, at any time before a penalty hearing is conducted for the murder pursuant to NRS 175.552, is or has been convicted of a felony involving the use or threat of violence to the person of another and the provisions of subsection 4 do not otherwise apply to that felony, to-wit: CONSPIRACY TO COMMIT ROBBERY.

The evidence will consist of certified copies of judgments of conviction showing that Defendant DEANGELO CARROLL was convicted in Clark County, Nevada, on September 9, 2002, of the felony offense of CONSPIRACY TO COMMIT ROBBERY in case number

1 C184573. The testimony of the victim Steven Blodgett and/or police officers and/or other
2 witnesses and/or exhibits, will be offered in support of this aggravating circumstance.
3 Furthermore, the underlying facts of the conviction indicate that on or about May 18, 2002,
4 Defendant DEANGELO CARROLL did, then and there, willfully, unlawfully, and
5 feloniously take personal property, to-wit: a wallet, contents and lawful money of the United
6 States, from the person of Steven Blodgett, or in his presence, by means of force or violence,
7 or fear of injury to, and without the consent and against the will of the said Steven Blodgett,
8 to-wit: by Defendant DEANGELO CARROLL beating Steven Blodgett with his fists;
9 thereafter, by his co-conspirator continuing to beat Steven Blodgett while defendant
10 DEANGELO CARROLL removed a wallet from the boot of Steven Blodgett, thereafter,
11 Defendant DEANGELO CARROLL fleeing from the scene with the property. [See NRS
12 200.033(2)(b)].

13 2. The murder was committed by a person, for himself or another, to receive money
14 or any other thing of monetary value, to-wit: by ANABEL ESPINDOLA (a manager of the
15 PALOMINO CLUB) and/or LUIS HILDAGO, III (a manager of the PALOMINO CLUB)
16 and/or LUIS HILDAGO, JR. (the owner of the PALOMINO CLUB) procuring Defendant
17 DEANGELO CARROLL (an employee of the PALOMINO CLUB) to beat and/or kill
18 TIMOTHY JAY HADLAND; and/or LUIS HILDAGO, JR. indicating that he would pay to
19 have a person either beaten or killed; and/or by LUIS HILDAGO, JR. procuring the injury or
20 death of TIMOTHY JAY HADLAND to further the business of the PALOMINO CLUB;
21 and/or LUIS HIDALGO, III telling Defendant DEANGELO CARROLL to come to work
22 with bats and garbage bags; thereafter, Defendant DEANGELO CARROLL procuring
23 KENNETH COUNTS and/or JAYSON TAOIPU to kill TIMOTHY HADLAND; thereafter,
24 by KENNETH COUNTS shooting TIMOTHY JAY HADLAND; thereafter, LUIS
25 HIDALGO, JR. and/or ANABEL ESPINDOLA providing six thousand dollars (\$6,000.00)
26 to Defendant DEANGELO CARROLL to pay KENNETH COUNTS, thereafter, KENNETH
27 COUNTS receiving said money; and/or by ANABEL ESPINDOLA providing two hundred
28 dollars (\$200.00) to Defendant DEANGELO CARROLL and/or by ANABEL ESPINDOLA

1 and/or LUIS HIDALGO, III providing fourteen hundred dollars (\$1400.00) and/or eight
2 hundred dollars (\$800.00) to Defendant DEANGELO CARROLL and/or by ANABEL
3 ESPINDOLA agreeing to continue paying Defendant DEANGELO CARROLL twenty-four
4 (24) hours of work a week from the PALOMINO CLUB even though DEANGELO
5 CARROLL had terminated his position with the club and/or by LUIS HIDALGO, III
6 offering to provide United States Savings Bonds to Defendant DEANGELO CARROLL
7 and/or his family. [See NRS 200.033(6)].

8 The basis for this aggravator is the aggravated nature of the crime itself. The
9 evidence upon which the State will rely is the testimony and exhibits introduced during the
10 guilt or penalty phase of the trial, as well as the verdicts from the guilt phase.

11 Regarding the establishment of aggravating circumstances under **Subsection 6 of**
12 **NRS 200.033**, the State will rely upon the evidence to be adduced at the Guilt Phase of the
13 Jury Trial. The State will file one or more witness lists in conformance with the Nevada
14 Revised Statutes. The State has provided full discovery in this matter regarding said
15 witnesses in this case. Rule 250(4)(f) requires filing of this Notice to summarize the
16 evidence which the State intends to introduce at the “Penalty Phase” of the trial. Therefore,
17 regarding establishment of aggravating circumstances under **Subsection 6 of NRS 200.033**,
18 said Notice need not and does not summarize any evidence in addition to that which has
19 already been identified and disclosed to the defense, and/or to be introduced or disclosed
20 during the Guilt Phase of the Jury Trial.

21 The Defense is hereby invited to re-examine the file of the Clark County District
22 Attorney for any and all discoverable information and evidence.

23 In addition to the evidence to be offered to establish the statutory aggravating
24 circumstances, the State hereby also gives notice of evidence of other relevant circumstances
25 in the Penalty Phase of the Jury Trial. Below, is a list of names of the individuals that will
26 give testimony in support of the aggravating circumstance under NRS 200.033(2)(b) and the
27 other circumstances and specifically what they will testify to:

28 ///

1 1. ALAN HADLAND, the victim's son, may appear and testify pursuant to NRS
2 176.015. Photographs of the victim and his family may be admitted during the testimony of
3 this witness.

4 2. ALEX HADLAND, the victim's son, may appear and testify pursuant to NRS
5 176.015. Photographs of the victim and his family may be admitted during the testimony of
6 this witness.

7 3. ELENA HADLAND, the victim's daughter, may appear and testify pursuant to
8 NRS 176.015. Photographs of the victim and his family may be admitted during the
9 testimony of this witness.

10 4. JENNIFER HADLAND, the victim's daughter, may appear and testify
11 pursuant to NRS 176.015. Photographs of the victim and his family may be admitted during
12 the testimony of this witness.

13 5. DORI LUKKER, the victim's former wife, may appear and testify to
14 circumstances relative to the victim as provided in NRS 175.552. Photographs of the victim
15 and his family/friends may be admitted during the testimony of this witness.

16 6. PAJIT KARSON, the victim's girlfriend at the time of his murder, may appear
17 and testify to circumstances relative to the victim as provided in NRS 175.552. Photographs
18 of the victim and his family/friends may be admitted during the testimony of this witness.

19 7. CUSTODIAN OF RECORDS – CLARK COUNTY DETENTION CENTER
20 - May testify and admit disciplinary records of Defendant while at the Clark County
21 Detention Center pending trial. Specifically, the records reflect a number of rules violations,
22 including the harassment of a fellow prisoner and a statement of intent to assault and/or
23 batter another inmate in December of 2005.

24 8. CORRECTIONS OFFICER DENTON, P#8228 – May testify to his
25 involvement in the investigation of Defendant for rules violation including, but not limited
26 to, his harassment of a fellow inmate and a statement of intent to assault and/or batter
27 another inmate in December of 2005.

28 9. LVMPD OFFICER D. VERSHALL, P#6350 and A. ECKEL, P#6929 – May

1 testify to their investigation of a Conspiracy to Commit Robbery and Robbery under
2 LVMPD event number 020518-0793, to which Defendant was convicted pursuant to a guilty
3 plea of Conspiracy to Commit Robbery in C184573. Said testimony will incorporate and
4 admit all discovery and records regarding said case, including but not limited to all records,
5 physical evidence, photographs, reports, or interviews in the possession of the LVMPD
6 and/or the Clark County District Attorney's Office, including a certified copy of the
7 judgment of conviction in case number C184573 and/or records of the Department of Parole
8 and Probation, including a copy of the pre-sentence investigation report.

9 10. STEPHEN BLODGETT – Victim, may appear and testify regarding the
10 Conspiracy to Commit Robbery and Robbery under LVMPD event number 020518-0793, to
11 which Defendant was convicted pursuant to a guilty plea of Conspiracy to Commit Robbery
12 in C184573. Said testimony will incorporate and admit all discovery and records regarding
13 said case, including but not limited to all records, physical evidence, photographs, reports, or
14 interviews in the possession of the LVMPD and/or the Clark County District Attorney's
15 Office including a certified copy of the judgment of conviction in case number C184573
16 and/or records of the Department of Parole and Probation, including a copy of the pre-
17 sentence investigation report.

18 11. CAVE CHRISTOPHER, RICHARD HARDMAN, JERRY FERGUSON,
19 LELAND HEN and SHARICE LOUKISHA – Witnesses, may appear and testify regarding
20 the Conspiracy to Commit Robbery and Robbery under LVMPD event number 020518-
21 0793, to which Defendant was convicted pursuant to a guilty plea of Conspiracy to Commit
22 Robbery in C184573. Said testimony will incorporate and admit all discovery and records
23 regarding said case, including but not limited to all records, physical evidence, photographs,
24 reports, or interviews in the possession of the LVMPD and/or the Clark County District
25 Attorney's Office, including a certified copy of the judgment of conviction in case number
26 C184573 and/or records of the Department of Parole and Probation including a copy of the
27 pre-sentence investigation report.

28 12. LVMPD N. CHIO, P#5109 and J. PANNULLO, P#5455 – May testify to their

1 investigation of a Possession of Stolen Vehicle under LVMPD event #000316-1323, in
2 which Defendant was in possession of a stolen water truck, CA license CP59107. Said
3 testimony will incorporate and admit all discovery and records regarding said case, including
4 but not limited to all records, physical evidence, photographs, reports, or interviews in the
5 possession of the LVMPD. This case not proceeded upon by the Clark County District
6 Attorney's Office.

7 13. LVMPD OFFICER HICKS, P#6419 – May testify to his investigation of a
8 Possession of an Unregistered Firearm and Discharge of that Firearm under LVMPD event
9 number 00119-2091, in which Defendant was in possession of an unregistered 9mm
10 Parabellum, serial number R41512, which he discharged at 4817 Boulder Highway, Las
11 Vegas, Nevada, which Defendant claimed he purchased off the street. Said testimony will
12 incorporate and admit all discovery and records regarding said case, including but not
13 limited to all records, physical evidence, photographs, reports, or interviews in the
14 possession of the LVMPD as well as records of the Clark County District Attorney's Office
15 or the Las Vegas Justice Court in case number 00M25388X. On June 7, 2001, Defendant
16 pled guilty to the misdemeanor charge of possession of an unregistered firearm in
17 00M25388X.

18 14. CITY OF LAS VEGAS MARSHALL'S OFFICERS D. MAJOR, P#653,
19 PEQUEEN, P#215 and R. ADAMS, P#603 – May testify as to their investigation under
20 event number 20020424-0003, in which Defendant was found to be in possession of
21 marijuana, one bag of which Defendant claimed was his "personal stash," eight bags of
22 individually wrapped marijuana, and a bag of twenty-four (24) pink pills, Defendant claimed
23 were ecstasy. Officers may further testify that he responded to the Downtown
24 Transportation Center in a response to a call from BILL BETTS, claiming that a person was
25 attempting to sell drugs at that location. Said testimony will incorporate and admit all
26 discovery and records regarding said case, including but not limited to all records, physical
27 evidence, photographs, reports, or interviews in the possession of the LVMPD and/or Clark
28 County District Attorney's Office. This case was dismissed pursuant to plea negotiations in

1 C184573.

2 16. LVMPD OFFICER LEDBETTER P#4984 – May testify to his investigation of
3 a Conspiracy to Commit Robbery and Robbery With Use of a Deadly Weapon under event
4 number 970125-0827 where Defendant, and two co-conspirators robbed JASON BRANDT
5 and MICHAEL PARRISH with a small black handgun. Said testimony will incorporate and
6 admit all discovery and records regarding said case, including but not limited to all records,
7 physical evidence, photographs, reports or interviews in the possession of the LVMPD
8 and/or the Clark County District Attorney's Office. On May 20, 1997, Defendant was
9 adjudicated a delinquent for Conspiracy to Commit Robbery With A Deadly Weapon and
10 was committed to the Nevada Youth Training Center in Elko for one year. On May 20,
11 1998, Defendant was released on parole. In November 1998, his parole was revoked. In
12 November of 1999, he was released on parole again, and three months later, his parole was
13 terminated.

14 17. JASON BRANDT and MICHAEL PARRISH – Victims, and may testify to
15 Defendant and two co-conspirators robbing them at gunpoint on January 25, 1997, which
16 was documented under LVMPD event number 970125-0827. Said testimony will
17 incorporate and admit all discovery and records regarding said case, including but not
18 limited to all records, physical evidence, photographs, reports, or interviews in the
19 possession of the LVMPD, the Clark County District Attorney's Office, and/or the Nevada
20 Department of Parole and Probation.

21 18. LVMPD OFFICER CANNON, P#6620 – May testify to his investigation of
22 Defendant for speeding, suspended driver's license and possession of marijuana under
23 LVMPD event number 020516-2841. Said testimony will incorporate and admit all
24 discovery and records regarding said case, including but not limited to all records, physical
25 evidence, photographs, reports, or interviews in the possession of the LVMPD, the Clark
26 County District Attorney's Office and/or the North Las Vegas Justice Court. Defendant pled
27 guilty to speeding in case number 02MN0578X.

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1 19. CUSTODIAN OF RECORDS – LAS VEGAS METROPOLITAN POLICE
2 DEPARTMENT: During the penalty phase, copies of records of the Las Vegas Metropolitan
3 Police Department may be admitted including any report, statement or physical evidence
4 related to event numbers 970125-0827, 000316-132, 001119-2091, 020516-2841 and
5 020518-0793.

6 20. CUSTODIAN OF RECORDS – NEVADA DEPARTMENT OF PAROLE
7 AND PROBATION and/or NEVADA PAROLE AND PROBATION OFFICER BRENDA
8 LEWIS, P#560: During the penalty phase, it is anticipated that the pre-sentence
9 investigation report from C184573 will be admitted.

10 21. CUSTODIAN OF RECORDS – CITY OF LAS VEGAS MARSHALL'S
11 OFFICE: During the penalty phase, copies of records of the City of Las Vegas Marshall's
12 Office may be admitted including any report, statement or physical evidence related to event
13 number 20020424-0003.

14 22. JAYSON TAOIPU - May appear and testify to not only his knowledge of the
15 crime, but the actions taken by Deangelo Carroll which influenced his decisions to cooperate
16 or not cooperate with authorities during the various different time periods of this case.

17 23. Howard Saxon - May appear and testify to his investigation of the instant matter
18 on behalf of Jayson Taoipu.

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1 As to all of the items referenced in this notice are part of the Clark County District
2 Attorney's file. This notice hereby incorporates by reference all discovery in the case
3 submitted to counsel. Defendant's counsel is invited to come to the Office of the District
4 Attorney and review the file to ensure that they have all items listed in this notice.

5 DATED this 14th day of November, 2007.

6 Respectfully submitted,

7 DAVID ROGER
8 Clark County District Attorney
9 Nevada Bar #002781

10 BY /s/ MARC DIGIACOMO
11 MARC DIGIACOMO
12 Chief Deputy District Attorney
13 Nevada Bar #006955

14 CERTIFICATE OF FACSIMILE TRANSMISSION

15 I hereby certify that service of **AMENDED NOTICE OF EVIDENCE IN**
16 **AGGRAVATION**, was made this 14TH day of November, 2007, by facsimile
17 transmission to:
18

19 DAYVID FIGLER, ESQ.
20 386-0344

21 /s/D. Daniels
22 Secretary for the District Attorney's
23 Office
24
25
26
27
28

1 **ORDR**
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 MARC DIGIACOMO
6 Chief Deputy District Attorney
7 Nevada Bar #006955
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

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FILED

Nov 27 9 43 AM '07

[Signature]
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

DEANGELO CARROLL,
#1678381

Defendant.

Case No. C212667
Dept No. XXI

**ORDER DENYING DEFENDANT'S MOTION TO STRIKE DEATH PENALTY
AGGRAVATORS**

DATE OF HEARING: 10/11/07
TIME OF HEARING: 9:00 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 11th day of October, 2007, the Defendant being present, REPRESENTED BY DAYVID FIGLER, ESQ., the Plaintiff being represented by DAVID ROGER, District Attorney, through MARC DIGIACOMO, Chief Deputy District Attorney, and the Court having heard the arguments of counsel and good cause appearing therefor,

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RECEIVED

NOV 27 2007

CLERK OF THE COURT

1 IT IS HEREBY ORDERED that the Defendant's Motion To Strike Death Penalty
2 Aggravators, shall be, and it is Denied.

3 DATED this 27 day of November, 2007.

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6 DISTRICT JUDGE

7
8 DAVID ROGER
9 DISTRICT ATTORNEY
Nevada Bar #002781

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11 
12 MARC DIGIAZOMO
13 Chief Deputy District Attorney
14 Nevada Bar #006955
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CLERK OF THE COURT

NISD
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
GIANCARLO PESCI
Chief Deputy District Attorney
Nevada Bar #007135
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DEANGELO CARROLL
#1678381

Defendant.

Case No. C212667

Dept No. XXI

**AMENDED NOTICE OF EVIDENCE IN SUPPORT OF
AGGRAVATING CIRCUMSTANCES**

COMES NOW, the State of Nevada, through DAVID ROGER, Clark County District Attorney, by and through GIANCARLO PESCI, Chief Deputy District Attorney, pursuant to Supreme Court Rule 250, NRS 175.552 and NRS 200.033, and declares its intention to present the following evidence in support of aggravating circumstance at a penalty hearing. Furthermore, the State of Nevada discloses that it will present evidence of the following aggravating circumstances:

1. The murder was committed by a person who, at any time before a penalty hearing is conducted for the murder pursuant to NRS 175.552, is or has been convicted of a felony involving the use or threat of violence to the person of another and the provisions of subsection 4 do not otherwise apply to that felony, to-wit: CONSPIRACY TO COMMIT ROBBERY.

1 The evidence will consist of certified copies of judgments of conviction showing that
2 DEFENDANT DEANGELO CARROLL was convicted in Clark County, Nevada, on
3 September 9, 2002, of the felony offense of CONSPIRACY TO COMMIT ROBBERY in
4 case number C184573. The testimony of the victim Steven Blodgett and/or police officers
5 and/or other witnesses and/or exhibits, will be offered in support of this aggravating
6 circumstance. Furthermore, the underlying facts of the conviction indicate that on or about
7 May 18, 2002, DEFENDANT DEANGELO CARROLL did, then and there, willfully,
8 unlawfully, and feloniously take personal property, to-wit: a wallet, contents and lawful
9 money of the United States, from the person of Steven Blodgett, or in his presence, by means
10 of force or violence, or fear of injury to, and without the consent and against the will of the
11 said Steven Blodgett, to-wit: by DEFENDANT DEANGELO CARROLL beating Steven
12 Blodgett with his fists; thereafter, by his co-conspirator continuing to beat Steven Blodgett
13 while DEFENDANT DEANGELO CARROLL removed a wallet from the boot of Steven
14 Blodgett, thereafter, DEFENDANT DEANGELO CARROLL fleeing from the scene with
15 the property.

16 2. The murder was committed by a person, for himself or another, to receive money
17 or any other thing of monetary value. to-wit by :

18 On or about May 19, 2005, the owner of the Palomino Club, Luis Hidalgo, Jr., located
19 at 1848 North Las Vegas Boulevard, made it known to Deangelo Carroll, an employee of the
20 Palomino Club, that he would pay someone to kill Timothy Jay Hadland, who was a former
21 employee of the club. Luis Hidalgo, Jr., was angry with the victim, Timothy Jay Hadland,
22 because after his firing from the club, Timothy Jay Hadland was hurting the club's business
23 by "bad mouthing" the club by spreading rumors about Luis Hidalgo Jr., and about the club.
24 Timothy Jay Hadland had a lot of contact with cab drivers and was telling cabbies not to
25 bring their fares to the club in retaliation for his firing. The Palomino Club is not located on
26 the Strip and its business relies heavily on customers being brought to the club by cabs. The
27 club was losing money because of Timothy Jay Hadland's actions and as such Luis Hidalgo
28 Jr., wanted him killed so that he, his business, and his employees would be better off

1 financially by the increased flow of clients after Timothy Jay Hadland was silenced. Based
2 upon this initial conversation, Deangelo Carroll procured the assistance of Jayson Taoipu to
3 commit the murder.

4 On the same date, after the initial conversation, Luis Hidalgo, III, a manager of the
5 Palomino Club, called Deangelo Carroll and told him to come to the club and “bring baseball
6 bats and garbage bags.” When Defendant Carroll arrived at the Palomino Club, Defendant
7 Espindola and Luis Hidalgo, Jr., hired Deangelo Carroll to kill Timothy Jay Hadland. After
8 conveying this information and procuring Deangelo Carroll, Deangelo Carroll went to 1676
9 “E” Street to the residence of Kenneth Counts and enlisted Defendant Kenneth Counts to kill
10 Timothy Jay Hadland. Defendant Deangelo Carroll then drove Defendants Kenneth Counts
11 and Jayson Taoipu, as well as witness Rontae Zone, out to the area of North Shore Road at
12 Lake Mead, where Defendant Kenneth Counts shot and killed Timothy Jay Hadland.

13 After the killing, the group drove back to the Palomino Club and Defendant Deangelo
14 Carroll entered the club with Defendant Kenneth Counts. Defendant Deangelo Carroll went
15 into Luis Hidalgo Jr.’s office and met with him and Defendant Anabel Espindola. At that
16 time Defendant Deangelo Carroll announced that, “it was done” and that Defendant Kenneth
17 Counts wanted to be paid. Luis Hidalgo Jr., then told Defendant Anabel Espindola to get the
18 money, which Defendant Anabel Espindola did and which she provided to Defendant
19 Deangelo Carroll who then provided the six thousand dollars (\$6,000) to Defendant Kenneth
20 Counts. Defendant Kenneth Counts then left the club in a cab and Luis Hidalgo Jr., and
21 Defendant Anabel Espindola then discussed with Defendant Deangelo Carroll what he
22 should say if the police spoke to him. Additionally, Defendant Anabel Espindola and/or
23 Luis Hidalgo, III, provided hundreds of dollars to Defendant Deangelo Carroll for his part in
24 the crime.

25 These facts support the aggravator because the murder was committed for the purpose
26 of improving the profits to the business and the employees of the Palomino Club. The owner
27 of the club, Luis Hidalgo Jr., perceived that profits were being hurt by the victim, Timothy
28 Jay Hadland “bad mouthing” him and the club. As such, Luis Hidalgo Jr., used employees,

1 Defendants Anabel Espindola, Luis Hidalgo, III, and Deangelo Carroll to carry out his
2 wishes. Defendant Deangelo Carroll, as an employee of the Palomino Club would receive,
3 “money or any other thing of monetary value” by the profits going back up by the silencing
4 of Timothy Jay Hadland. Furthermore, Defendant Deangelo Carroll also was directly paid
5 for his role in the killing of Timothy Jay Hadland. In addition, these facts support murder
6 for hire under the aggravator as Defendants Kenneth Counts and Deangelo Carroll received
7 money for killing Timothy Jay Hadland.

8 The basis for this aggravator is the aggravated nature of the crime itself. The
9 evidence upon which the State will rely is the testimony and exhibits introduced during the
10 guilt or penalty phase of the trial, as well as the verdicts from the guilt phase.

11 In filing this AMENDED NOTICE, the State incorporates all pleadings, witness lists,
12 notices and other discovery materials already provided to Defendant by the Office of the
13 District Attorney as part of its open-file policy as well as any future discovery received and
14 provided to Defendant.

15 DATED this 9TH day of January, 2008.

16 Respectfully submitted,

17 DAVID ROGER
18 Clark County District Attorney
19 Nevada Bar #002781

20 BY /s/ GIANCARLO PESCI
21 GIANCARLO PESCI
22 Chief Deputy District Attorney
23 Nevada Bar #007135
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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of AMENDED NOTICE OF INTENT TO SEEK DEATH PENALTY, was made this 9TH day of January, 2008, by facsimile transmission to:

DAYVID FIGLER, ESQ.
386-0344

/s/ D. Daniels
Secretary for the District Attorney's Office

ORIGINAL

1 **INFO**

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 MARC DIGIACOMO
6 Chief Deputy District Attorney
7 Nevada Bar #006955
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

FILED IN OPEN COURT
JAN 29 2008 20
CHARLES J. SHORT
CLERK OF THE COURT
BY Denise Husted DEPUTY
DENISE HUSTED

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 -vs-)

12 KENNETH COUNTS, aka
13 Kenneth Jay Counts II, #1525643)

14 Defendant.)

Case No: C212667
Dept No: XIV

SECOND AMENDED
INFORMATION

15 STATE OF NEVADA)
16 COUNTY OF CLARK) ss.

17 DAVID ROGER, District Attorney within and for the County of Clark, State of
18 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

19 That KENNETH COUNTS, aka Kenneth Jay Counts II, the Defendant above named,
20 having committed the crimes of CONSPIRACY TO COMMIT MURDER (Felony - NRS
21 200.010, 200.030, 193.165); and MURDER WITH USE OF A DEADLY WEAPON
22 (Felony - NRS 200.010, 200.030, 193.165), on or between May 19, 2005, and May 24, 2005,
23 within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes
24 in such cases made and provided, and against the peace and dignity of the State of Nevada,

25 COUNT 1 - CONSPIRACY TO COMMIT MURDER

26 Defendant KENNETH JAY COUNTS, aka Kenneth Jay Counts, II, and Co-
27 Defendants LUIS ALONSO HIDALGO, aka, Luis Alonso Hidalgo III, ANABEL
28 ESPINDOLA, DEANGELO RESHAWN CARROLL and JAYSON TAOIPU did, on or

1 between May 19, 2005 and May 24, 2005, then and there meet with each other and/or Co-
2 Conspirator Luis Hildago, Jr. and between themselves, and each of them with the other,
3 wilfully, unlawfully, and feloniously conspire and agree to commit a crime, to-wit: murder,
4 and in furtherance of said conspiracy, the Defendant and/or his Co-Conspirators, did commit
5 the act as set forth in Count 2, said acts being incorporated by this reference as though fully
6 set forth herein.

7 COUNT 2 - MURDER WITH USE OF A DEADLY WEAPON

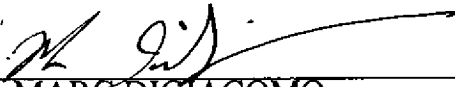
8 Defendant KENNETH JAY COUNTS, aka Kenneth Jay Counts, II, and Co-
9 Defendants LUIS ALONSO HIDALGO, aka, Luis Alonso Hidalgo III, ANABEL
10 ESPINDOLA, DEANGELO RESHAWN CARROLL and JAYSON TAOIPU did, on or
11 about May 19, 2005, then and there wilfully, feloniously, without authority of law, and with
12 premeditation and deliberation, and with malice aforethought, kill TIMOTHY JAY
13 HADLAND, a human being, by shooting at and into the body and/or head of said
14 TIMOTHY JAY HADLAND, with a deadly weapon, to-wit: a firearm, the Defendant and/or
15 their Co-Conspirators being liable under one or more of the following theories of criminal
16 liability, to-wit: (1) by directly or indirectly committing the acts with premeditation and
17 deliberation and/or lying in wait; and/or (2) by aiding and abetting the commission of the
18 crime by, directly or indirectly, counseling, encouraging, hiring, commanding, inducing or
19 otherwise procuring each other to commit the crime, to-wit: by Co-Conspirators ANABEL
20 ESPINDOLA and/or LUIS HILDAGO, III and/or Luis Hildago, Jr. procuring Co-
21 Conspirator DEANGELO CARROLL to beat and/or kill TIMOTHY JAY HADLAND;
22 thereafter, Co-Conspirator DEANGELO CARROLL procuring Defendant KENNETH
23 COUNTS and/or Co-Conspirator JAYSON TAOIPU to shoot TIMOTHY HADLAND;
24 thereafter, Co-Conspirator DEANGELO CARROLL and Defendant KENNETH COUNTS
25 and Co-Conspirator JAYSON TAOIPU did drive to the location in the same vehicle;
26 thereafter, Co-Conspirator DEANGELO CARROLL calling victim TIMOTHY JAY

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1 HADLAND to the scene; thereafter, by Defendant KENNETH COUNTS shooting
2 TIMOTHY JAY HADLAND.

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4
5 BY



6 MARE DIGIACOMO
7 CHIEF DEPUTY DISTRICT ATTORNEY
8 Nevada Bar #006955
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26 DA#05FB0052A/dd
27 LVMPD EV#0505193516
28 CONSP MURDER;MWDW - F
(TK7)

ORIGINAL

FILED IN OPEN COURT

FEB 04 2008

20

CHARLES J. SHORT
CLERK OF THE COURT

BY Denise Husted DEPUTY
DENISE HUSTED

1 INFO

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 MARC DIGIACOMO
6 Chief Deputy District Attorney
7 Nevada Bar #006955
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 -vs-)

12 ANABEL ESPINDOLA,)
13 #1849750)

14 Defendant.)

Case No: C212667
Dept No: XIV

THIRD AMENDED
INFORMATION

15 STATE OF NEVADA }
16 COUNTY OF CLARK } ss.

17 DAVID ROGER, District Attorney within and for the County of Clark, State of
18 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

19 That ANABEL ESPINDOLA, the Defendant above named, having committed the
20 crime of VOLUNTARY MANSLAUGHTER WITH USE OF A DEADLY WEAPON
21 (Category B Felony - NRS 200.040, 200.050, 200.080, 193.165), on or about May 19, 2005,
22 within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes
23 in such cases made and provided, and against the peace and dignity of the State of Nevada,
24 did then and there without authority of law, wilfully, unlawfully, and feloniously, without
25 malice and without deliberation kill TIMOTHY JAY HADLAND, a human being, by
26 shooting at and into the body and/or head of said TIMOTHY JAY HADLAND, with a
27 deadly weapon, to-wit: a firearm, the Defendant and KENNETH JAY COUNTS, aka
28 Kenneth Jay Counts, II, and LUIS ALONSO HIDALGO, aka, Luis Alonso Hidalgo III,

1 JAYSON TAOIPU, DEANGELO RESHAWN CARROLL, and/or Luis Alonso Hidalgo, Jr.,
2 being liable under one or more of the following theories of criminal liability, to-wit: (1) by
3 aiding and abetting the commission of the crime by, directly or indirectly, counseling,
4 encouraging, hiring, commanding, inducing or otherwise procuring each other to commit the
5 crime, to-wit: by Defendant and/or LUIS HILDAGO, III and/or Luis Hildago, Jr. procuring
6 DEANGELO CARROLL to beat and/or kill TIMOTHY JAY HADLAND; thereafter,
7 DEANGELO CARROLL procuring KENNETH COUNTS and/or JAYSON TAOIPU to
8 shoot TIMOTHY HADLAND; thereafter, DEANGELO CARROLL and KENNETH
9 COUNTS and JAYSON TAOIPU did drive to the location in the same vehicle; thereafter,
10 DEANGELO CARROLL calling victim TIMOTHY JAY HADLAND to the scene;
11 thereafter, by KENNETH COUNTS shooting TIMOTHY JAY HADLAND; and/or (2) by
12 conspiring to beat and/or kill TIMOTHY JAY HADLAND.

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14
15 BY



DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

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25 DA#05FB0052C/
26 LVMPD EV#0505193516
27 CONSP MURDER;VMWDW - F
(TK7)
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1 **GMEM**
2 DAVID ROGER
3 DISTRICT ATTORNEY
4 Nevada Bar #002781
5 MARC DIGIACOMO
6 Chief Deputy District Attorney
7 Nevada Bar #006955
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

FILED IN OPEN COURT
FEB 04 2008 20

CHARLES J. SHORT
CLERK OF THE COURT

BY Denise Husted
DENISE HUSTED DEPUTY

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 ANABEL ESPINDOLA,
13 #1849750

14 Defendant.

CASE NO: C212667
DEPT NO: XXI

15 GUILTY PLEA AGREEMENT

16 I hereby agree to plead guilty to: VOLUNTARY MANSLAUGHTER WITH USE
17 OF A DEADLY WEAPON (Category B Felony - NRS 200.040, 200.050, 200.080), as more
18 fully alleged in the charging document attached hereto as Exhibit "1".

19 My decision to plead guilty is based upon the plea agreement in this case which is as
20 follows:

21 The State agrees to make no recommendation at sentencing. Additionally, both sides
22 agree, as a condition of the plea, to fulfill their obligations contained in Exhibit two (2) to
23 this agreement.

24 CONSEQUENCES OF THE PLEA

25 I understand that by pleading guilty I admit the facts which support all the elements of
26 the offense(s) to which I now plead as set forth in Exhibit "1".

27 I understand that as a consequence of my plea, the Court must sentence me to
28 imprisonment in the Nevada Department of Corrections for a minimum term of not less than

1 ONE (1) year and a maximum term of not more than TEN (10) years, plus an equal and
2 consecutive minimum term of not less than ONE (1) year and a maximum term of not more
3 than TEN (10) years for the use of a deadly weapon enhancement. The minimum term of
4 imprisonment may not exceed forty percent (40%) of the maximum term of imprisonment.
5 I understand that I may also be fined up to \$10,000.00. I understand that the law requires me
6 to pay an Administrative Assessment Fee.

7 I understand that, if appropriate, I will be ordered to make restitution to the victim of
8 the offense(s) to which I am pleading guilty and to the victim of any related offense which is
9 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
10 reimburse the State of Nevada for any expenses related to my extradition, if any.

11 I understand that I am eligible for probation for the offense to which I am pleading
12 guilty. I understand that, except as otherwise provided by statute, the question of whether I
13 receive probation is in the discretion of the sentencing judge.

14 I understand that if more than one sentence of imprisonment is imposed and I am
15 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order
16 the sentences served concurrently or consecutively.

17 I also understand that information regarding charges not filed, dismissed charges, or
18 charges to be dismissed pursuant to this agreement may be considered by the judge at
19 sentencing.

20 I have not been promised or guaranteed any particular sentence by anyone. I know
21 that my sentence is to be determined by the Court within the limits prescribed by statute.

22 I understand that if my attorney or the State of Nevada or both recommend any
23 specific punishment to the Court, the Court is not obligated to accept the recommendation.

24 I understand that if the State of Nevada has agreed to recommend or stipulate a
25 particular sentence or has agreed not to present argument regarding the sentence, or agreed
26 not to oppose a particular sentence, or has agreed to disposition as a gross misdemeanor
27 when the offense could have been treated as a felony, such agreement is contingent upon my
28 appearance in court on the initial sentencing date (and any subsequent dates if the sentencing

1 is continued). I understand that if I fail to appear for the scheduled sentencing date or I
2 commit a new criminal offense prior to sentencing the State of Nevada would regain the full
3 right to argue for any lawful sentence.

4 I understand if the offense(s) to which I am pleading guilty to was committed while I
5 was incarcerated on another charge or while I was on probation or parole that I am not
6 eligible for credit for time served toward the instant offense(s).

7 I understand that as a consequence of my plea of guilty, if I am not a citizen of the
8 United States, I may, in addition to other consequences provided for by federal law, be
9 removed, deported, excluded from entry into the United States or denied naturalization.

10 I understand that the Division of Parole and Probation will prepare a report for the
11 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
12 sentencing, including my criminal history. This report may contain hearsay information
13 regarding my background and criminal history. My attorney and I will each have the
14 opportunity to comment on the information contained in the report at the time of sentencing.
15 Unless the District Attorney has specifically agreed otherwise, then the District Attorney
16 may also comment on this report.

17 WAIVER OF RIGHTS

18 By entering my plea of guilty, I understand that I am waiving and forever giving up
19 the following rights and privileges:

20 1. The constitutional privilege against self-incrimination, including the right to refuse
21 to testify at trial, in which event the prosecution would not be allowed to comment to the
22 jury about my refusal to testify.

23 2. The constitutional right to a speedy and public trial by an impartial jury, free of
24 excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the
25 assistance of an attorney, either appointed or retained. At trial the State would bear the
26 burden of proving beyond a reasonable doubt each element of the offense charged.

27 3. The constitutional right to confront and cross-examine any witnesses who would
28 testify against me.

4. The constitutional right to subpoena witnesses to testify on my behalf.

5. The constitutional right to testify in my own defense.

6. The right to appeal the conviction, with the assistance of an attorney, either appointed or retained, unless the appeal is based upon reasonable constitutional jurisdictional or other grounds that challenge the legality of the proceedings and except as otherwise provided in subsection 3 of NRS 174.035.

VOLUNTARINESS OF PLEA

I have discussed the elements of all of the original charge(s) against me with my attorney and I understand the nature of the charge(s) against me.

I understand that the State would have to prove each element of the charge(s) against me at trial.

I have discussed with my attorney any possible defenses, defense strategies and circumstances which might be in my favor.

All of the foregoing elements, consequences, rights, and waiver of rights have been thoroughly explained to me by my attorney.

I believe that pleading guilty and accepting this plea bargain is in my best interest, and that a trial would be contrary to my best interest.

I am signing this agreement voluntarily, after consultation with my attorney, and I am not acting under duress or coercion or by virtue of any promises of leniency, except for those set forth in this agreement.

I am not now under the influence of any intoxicating liquor, a controlled substance or other drug which would in any manner impair my ability to comprehend or understand this agreement or the proceedings surrounding my entry of this plea.

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1
2 My attorney has answered all my questions regarding this guilty plea agreement and
3 its consequences to my satisfaction and I am satisfied with the services provided by my
4 attorney.

5 DATED this 2nd day of January, 2008.

6 
7 ANABEL ESPINDOLA
8 Defendant

9 AGREED TO BY:

10 
11 MARC DIGIACOMO
12 Chief Deputy District Attorney
13 Nevada Bar #006955
14
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1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of
3 the court hereby certify that:

4 1. I have fully explained to the Defendant the allegations contained in the charge(s)
5 to which guilty pleas are being entered.

6 2. I have advised the Defendant of the penalties for each charge and the restitution
7 that the Defendant may be ordered to pay.

8 3. All pleas of guilty offered by the Defendant pursuant to this agreement are
9 consistent with the facts known to me and are made with my advice to the Defendant.

10 4. To the best of my knowledge and belief, the Defendant:

11 a. Is competent and understands the charges and the consequences of pleading
12 guilty as provided in this agreement.

13 b. Executed this agreement and will enter all guilty pleas pursuant hereto
14 voluntarily.

15 c. Was not under the influence of intoxicating liquor, a controlled substance or
16 other drug at the time I consulted with the defendant as certified in paragraphs
17 1 and 2 above.

18 Dated: This 2 day of January, 2008.

Feb.



ATTORNEY FOR DEFENDANT

1 **INFO**

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 MARC DIGIACOMO
6 Chief Deputy District Attorney
7 Nevada Bar #006955
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 -vs-)

12 ANABEL ESPINDOLA,
13 #1849750)

14 Defendant.)

Case No: C212667
Dept No: XIV

THIRD AMENDED
INFORMATION

15 STATE OF NEVADA }
16 COUNTY OF CLARK } ss.

17 DAVID ROGER, District Attorney within and for the County of Clark, State of
18 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

19 That ANABEL ESPINDOLA, the Defendant above named, having committed the
20 crime of VOLUNTARY MANSLAUGHTER WITH USE OF A DEADLY WEAPON
21 (Category B Felony - NRS 200.040, 200.050, 200.080, 193.165), on or about May 19, 2005,
22 within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes
23 in such cases made and provided, and against the peace and dignity of the State of Nevada,
24 did then and there without authority of law, wilfully, unlawfully, and feloniously, without
25 malice and without deliberation kill TIMOTHY JAY HADLAND, a human being, by
26 shooting at and into the body and/or head of said TIMOTHY JAY HADLAND, with a
27 deadly weapon, to-wit: a firearm, the Defendant and KENNETH JAY COUNTS, aka
28 Kenneth Jay Counts, Jr. and LUIS ALONSO HIDALGO, aka, Luis Alonso Hidalgo III,

EXHIBIT 1

\\SUPERMAN\DIGIACMS\MYDOCS\MVU\PALOMINO\AMEND INFO ESPINDOLA

1 JAYSON TAOIPU, DEANGELO RESHAWN CARROLL, and/or Luis Alonso Hidalgo, Jr.,
2 being liable under one or more of the following theories of criminal liability, to-wit: (1) by
3 aiding and abetting the commission of the crime by, directly or indirectly, counseling,
4 encouraging, hiring, commanding, inducing or otherwise procuring each other to commit the
5 crime, to-wit: by Defendant and/or LUIS HILDAGO, III and/or Luis Hildago, Jr. procuring
6 DEANGELO CARROLL to beat and/or kill TIMOTHY JAY HADLAND; thereafter,
7 DEANGELO CARROLL procuring KENNETH COUNTS and/or JAYSON TAOIPU to
8 shoot TIMOTHY HADLAND; thereafter, DEANGELO CARROLL and KENNETH
9 COUNTS and JAYSON TAOIPU did drive to the location in the same vehicle; thereafter,
10 DEANGELO CARROLL calling victim TIMOTHY JAY HADLAND to the scene;
11 thereafter, by KENNETH COUNTS shooting TIMOTHY JAY HADLAND; and/or (2) by
12 conspiring to beat and/or kill TIMOTHY JAY HADLAND.

13
14
15 BY



16 DAVID ROGER
17 DISTRICT ATTORNEY
18 Nevada Bar #002781
19
20
21
22
23
24

25 DA#05FB0052C/
26 LVMPD EV#0505193516
27 CONSP MURDER;VMWDW - F
28 (TK7)

DISTRICT COURT
CLARK COUNTY, NEVADA

ORIGINAL

FILED IN OPEN COURT

FEB 07 2008 20

CHARLES J. SHORT
CLERK OF THE COURT

BY Denise Husted
DENISE HUSTED DEPUTY

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
KENNETH COUNTS, aka KENNETH)
JAY COUNTS II, LUIS ALONSO)
HIDALGO, aka LUIS ALONSO)
HIDALGO III, ANABEL ESPINDOLA)
DEANGELO RESHAWN CARROLL,)
JAYSON TAOIPU,)
)
Defendants.)
_____)

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

Monday, February 4, 2008

RECORDER'S TRANSCRIPT OF HEARING RE:
Espindola Plea

APPEARANCES:

FOR THE STATE: MARK DIGIACOMO, ESQ.
Deputy District Attorney
GIANCARLO PESCI, ESQ.
Deputy District Attorney

FOR DEFENDANT ESPINDOLA: CHRISTOPHER ORAM, ESQ.

RECORDED BY: JANIE OLSEN, COURT RECORDER

KARReporting and Transcription Services
720-244-3978

TRANSCRIBED BY: KARReporting and Transcription Services

LAS VEGAS, NEVADA, MONDAY, FEBRUARY 4, 2008, 9:02 A.M.

P R O C E E D I N G S

THE COURT: All right. The record will reflect the presence of the Defendant Anabel Espindola, along with her attorney, Mr. Oram; the presence of Mr. Pesci and Mr. DiGiacomo on behalf of the State.

And my understanding is that this matter has been resolved; is that correct?

MR. ORAM: Yes, Your Honor.

THE COURT: And the Court is in possession of a written guilty plea and the third amended information. And was that filed this morning in open court?

MR. DIGIACOMO: It was, Judge.

THE COURT: All right. Very good.

All right. Ms. Espindola, the Court, as I have stated, is in possession of a written plea of guilty which was signed by you. Before I may accept your plea of guilty, I must be satisfied that your plea is freely and voluntarily given.

Are you making this plea freely and voluntarily?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. Other than what's contained in the written plea of guilty and the exhibits affixed thereto, have any

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720-244-3978

1 promises or threats been made to induce you to enter your plea?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: All right. Before you sign the written plea of
4 guilty, did you read it?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Did you understand everything contained in the
7 written plea of guilty and the attachments thereto?

8 THE DEFENDANT: Yes.

9 THE COURT: All right. Did you have a full opportunity to
10 discuss your plea of guilty with your attorney Mr. Oram?

11 THE DEFENDANT: Yes.

12 THE COURT: Before the Court accepts your plea of guilty,
13 is there anything you would like to ask me about your plea or the
14 charge of voluntary manslaughter with use of a deadly weapon to which
15 you are pleading guilty?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: All right. We'll go through this then. Tell
18 me in your own words what you did on or about May 19, 2005 within
19 Clark County, Nevada that causes you to plead guilty to the reduced
20 charge of voluntary manslaughter with use of a deadly weapon.

21 MR. ORAM: Your Honor, this --

22 THE COURT: And this is a fictional plea.

23 MR. ORAM: It is a fictional plea.

24 THE COURT: All right. I'm going to have her plea -- and
25 the reason you're pleading fictionally is this is obviously a lesser

1 charge than the original charges which the State would be proceeding
2 against you on; is that correct?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And after discussing this with your attorney,
5 Mr. Oram, you have concluded that it's in your best interest to enter
6 this fictional plea; is that right?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: All right. The way we're going to do this is
9 I'm going to have you tell me what you did and that will be the basis
10 for the plea to be reduced charge of voluntary manslaughter with use
11 of a deadly weapon.

12 THE DEFENDANT: I assisted all the co-conspirators.

13 THE COURT: Okay. So you conspired and aided and abetted
14 the following individuals: Kenneth Counts, Luis Hidalgo, Jayson
15 Taoipu, and Deangelo Carroll; is that correct?

16 THE DEFENDANT: Yes, ma'am.

17 MR. DIGIACOMO: Judge, both Luis Hildalgos.

18 THE COURT: Oh, all right.

19 MR. DIGIACOMO: You can ask her as to both Luis Hildalgos.

20 THE COURT: All right. All right.

21 MR. DIGIACOMO: The third and Junior.

22 THE COURT: The third and Luis Hidalgo, Sr.; is that
23 correct?

24 THE DEFENDANT: Junior.

25 MR. DIGIACOMO: Junior.

1 THE COURT: I'm sorry. Junior and the third.

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: All right. And together you counseled,
4 encouraged, hired, commanded, or induced one or all of these
5 individuals to be and/or kill Timothy J. Hadland; is that correct?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: And Deangelo Carroll actually procured Kenneth
8 Counts and/or Jayson Taoipu to actually shoot Timothy Hadland; is
9 that correct?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: All right. And as a result of this conspiracy
12 and Mr. Deangelo Carroll procuring Mr. Counts and/or Jayson Taoipu,
13 Timothy Hadland was actually fatally shot in the head; is that
14 correct?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Is that acceptable with the State?

17 MR. DIGIACOMO: Yes, Judge.

18 THE COURT: All right. Ms. Espindola, the Court finds that
19 your plea of guilty has been freely and voluntarily given and hereby
20 accepts your plea of guilty.

21 Do we want a sentencing date in 60 days or what are we
22 doing?

23 MR. DIGIACOMO: Why don't you give us a status check in 60
24 days, Judge.

25 THE COURT: All right. So we won't refer it to P&P right

1 now?

2 MR. DIGIACOMO: That's correct, Judge.

3 THE COURT: Okay.

4 MR. DIGIACOMO: We won't refer it over to P&P. And what
5 I'd ask is that the guilty plea agreement be filed under seal with
6 the exception that I'm allowed to provide it to the defense attorneys
7 that are associated with the various people elicited in the amended
8 information with the understanding that they're not supposed to pass
9 it on. They certainly can discuss the contents, but they're not
10 supposed to pass it on to their clients or any other witnesses in the
11 case, Judge.

12 THE COURT: I'll see counsel at the bench.

13 MR. ORAM: Judge, also for the record, we waive any defect
14 in any of the pleadings.

15 THE COURT: Oh, thank you. I thought I'd already said
16 that, but I must have forgotten.

17 MR. ORAM: I'm sorry.

18 THE COURT: No, you're probably right.

19 (Off-record bench conference)

20 THE COURT: What we're going to do is we are going to file
21 the guilty plea agreement and the third amended information. Those
22 will be public records. The attachments will be temporarily sealed
23 until further order of the Court in the interest of justice and the
24 ongoing matters relating to the totality of the case.

25 MR. DIGIACOMO: Thank you, Judge.

1 THE COURT: All right. Thank you. We're going to set this
2 out for a status check.

3 THE CLERK: April 8th at 9:30.

4 MR. ORAM: Thank you, Your Honor.

5 MR. DIGIACOMO: Thank you, Judge.

6 MR. ORAM: Your Honor, could we go any day before or after
7 that?

8 THE COURT: Of course. We're flexible.

9 THE CLERK: April 15th --

10 MR. ORAM: Thank you very much.

11 THE CLERK: -- or the 31st. Which one?

12 THE COURT: Tax day or April Fool's day.

13 MR. ORAM: Tax day is fine. Tax day is fine.

14 THE COURT: Which is it, Mr. Oram?

15 MR. ORAM: Tax day, Your Honor.

16 THE CLERK: April 15th at 9:30.

17 MR. ORAM: Thank you, Your Honor.

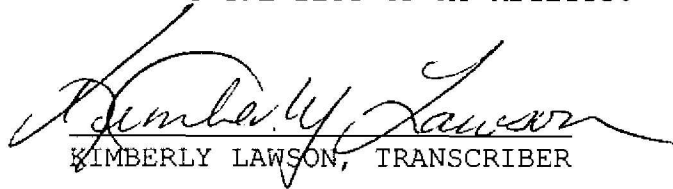
18 THE COURT: All right. Is there anything else relating to
19 Ms. Espindola's matter we need to do at this time?

20 MR. ORAM: No, Your Honor.

21 THE COURT: All right. Thank you.

22 (Proceedings concluded at 9:09 a.m.)
23
24
25

ATTEST: I HEREBY CERTIFY THAT I HAVE TRULY AND CORRECTLY
TRANSCRIBED THE AUDIO/VIDEO PROCEEDINGS IN THE
ABOVE-ENTITLED CASE TO THE BEST OF MY ABILITY.


KIMBERLY LAWSON, TRANSCRIBER

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KARReporting and Transcription Services
720-244-3978

Volume 2 – 341

1 VER

2 ORIGINAL

FILED IN OPEN COURT
FEB 08 2008

5:40pm

CHARLES J. SHORT
CLERK OF THE COURT

BY Denise Husted
DISTRICT COURT DENISE HUSTED DEPUTY

CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,)

8 Plaintiff,)

9 -vs-)

10 KENNETH JAY COUNTS,)

11 Defendant.)

CASE NO: C212667

DEPT NO: XXI

12
13 VERDICT

14
15 We, the jury in the above entitled case, find the Defendant KENNETH JAY
16 COUNTS, as follows:

17 COUNT 1 – CONSPIRACY TO COMMIT MURDER

18 *(please check the appropriate box, select only one)*

19 ☒ Guilty of Conspiracy To Commit Murder

20 ☐ Not Guilty

1
2
3 We, the jury in the above entitled case, find the Defendant KENNETH JAY
4 COUNTS, as follows:

5 **COUNT 2 - MURDER WITH USE OF A DEADLY WEAPON**

6 *(please check the appropriate box, select only one)*

7 ☐ Guilty of First Degree Murder With Use of a Deadly Weapon

8 ☐ Guilty of First Degree Murder

9 ☐ Guilty of Second Degree Murder With Use of a Deadly Weapon

10 ☐ Guilty of Second Degree Murder

11 ☒ Not Guilty

12 DATED this 8 day of February, 2008

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15 FOREPERSON
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Chaf
CLERK OF THE COURT

1 IND
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 MARC DIGIACOMO
6 Deputy District Attorney
7 Nevada Bar #006955
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 THE STATE OF NEVADA,
15
16 Plaintiff,

17 -vs-

18 LUIS HIDALGO, JR., aka Luis Alonso
19 Hidalgo,
20 #1579522

21 Defendant(s).

Case No. C241394
Dept. No. XIV

INDICTMENT

22 STATE OF NEVADA }
23 COUNTY OF CLARK } ss.

24 The Defendant(s) above named, LUIS HIDALGO, JR., aka Luis Alonso Hidalgo,
25 accused by the Clark County Grand Jury of the crime(s) of CONSPIRACY TO COMMIT
26 MURDER (Felony - NRS 200.010, 200.030, 199.480); and MURDER WITH USE OF A
27 DEADLY WEAPON (Felony - NRS 200.010, 200.030, 193.165), committed at and within
28 the County of Clark, State of Nevada, on or about the 19th day of May, 2005, as follows:

COUNT 1 – CONSPIRACY TO COMMIT MURDER

did, on or about May 19, 2005, then and there, meet with Deangelo Carroll and/or
Luis Hidalgo, III and/or Anabel Espindola and/or Kenneth Counts and/or Jayson Taoipu and
between themselves, and each of them with the other, wilfully, unlawfully, and feloniously
conspire and agree to commit a crime, to-wit: murder, and in furtherance of said conspiracy,

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CLERK OF THE COURT

1 Defendant and/or his co-conspirators, did commit the acts as set forth in Count 2, said acts
2 being incorporated by this reference as though fully set forth herein; and/or by Anabel
3 Espindola and/or Luis Hidalgo, III soliciting Deangelo Carroll to commit murder on or
4 between May 23 and May 24, 2005.

5 COUNT 2 - MURDER WITH USE OF A DEADLY WEAPON

6 did, on or about May 19, 2005, then and there wilfully, feloniously, without authority
7 of law, and with premeditation and deliberation, and with malice aforethought, kill
8 TIMOTHY JAY HADLAND, a human being, by shooting at and into the body and/or head
9 of said TIMOTHY JAY HADLAND, with a deadly weapon, to-wit: a firearm, the Defendant
10 being liable under one or more of the following theories of criminal liability, to-wit: (1) by
11 directly or indirectly committing the acts with premeditation and deliberation and/or lying in
12 wait; and/or (2) by aiding and abetting the commission of the crime by, directly or indirectly,
13 counseling, encouraging, hiring, commanding, inducing or otherwise procuring another to
14 commit the crime, to-wit: by defendant along with LUIS HIDALGO, III procuring
15 DEANGELO CARROLL to beat and/or kill TIMOTHY JAY HADLAND; thereafter,
16 DEANGELO CARROLL procuring KENNETH COUNTS and/or JAYSON TAOIPU to
17 shoot TIMOTHY HADLAND; thereafter, DEANGELO CARROLL and KENNETH
18 COUNTS and JAYSON TAOIPU did drive to the location in the same vehicle; thereafter,
19 DEANGELO CARROLL calling victim TIMOTHY JAY HADLAND to the scene;
20 thereafter, by KENNETH COUNTS shooting TIMOTHY JAY HADLAND; defendant
21 paying \$5000.00 or \$6000.00 to DEANGELO CARROLL for the killing of TIMOTHY JAY
22 HADLAND; and/or (3) by conspiring to commit the crime of battery and/or battery resulting
23 in substantial bodily harm and/or battery with use of a deadly weapon on the person of
24 TIMOTHY JAY HADLAND whereby each and every co-conspirator is responsible for the

25 //

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1 reasonably foreseeable general intent crimes of each and every co-conspirator during the
2 course and in furtherance of the conspiracy and/or (4) by conspiring to commit the crime of
3 murder of TIMOTHY JAY HADLAND whereby each and every co-conspirator is
4 responsible for the specific intent crime contemplated by the conspiracy.

5
6 DATED this 13TH day of February, 2008.

7
8 DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

9
10 BY


11 MARC DIGIACOMO
12 Deputy District Attorney
Nevada Bar #006955

13 ENDORSEMENT: A True Bill

14 
15
16 Foreperson, Clark County Grand Jury
17
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1 Names of witnesses testifying before the Grand Jury:

2 ZONE, RONTAE, C/O CCDA, 200 LEWIS AVENUE, LVN 89101

3 ESPINDOLA, ANABEL, C/O CCDA, 200 LEWIS AVENUE, LVN 89101

4 TELEGENHOFF, DR. GARY, CCME, 1704 PINTO LANE, LVN

5 MCGRATH, MICHAEL, LVMPD P#4575

6 WILDEMANN, MARTIN, LVMPD P#3516

7 Additional witnesses known to the District Attorney at the time of filing this Indictment:

8 KYGER, TERESA, LVMPD P#4191

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CLERK OF THE COURT

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DISTRICT COURT

6

CLARK COUNTY, NEVADA

7

8

THE STATE OF NEVADA,

9

Plaintiff,

CASE#: C212667

10

vs.

DEPT. XXI

11

12

KENNETH JAY COUNTS II,

13

Defendant.

14

15

BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE

16

THURSDAY, MARCH 20, 2008

17

**TRANSCRIPT OF PROCEEDINGS
SENTENCING**

18

19

APPEARANCES:

20

For the State:

GIANCARLO PESCI, ESQ.
MARC DIGIACOMO, ESQ.
Deputy District Attorneys

21

22

For the Defendant:

BRET O. WHIPPLE, ESQ.
KRISTINA M. WILDEVELD, ESQ.

CLERK OF THE COURT
MAY 20 2008

RECEIVED

RECORDED BY: JANIE OLSEN, COURT RECORDER

5
1 THURSDAY, MARCH 20, 2008 AT 10:42 A.M.

2
3 THE COURT: All right. You're here on Counts. I didn't see Mr. -- how could I
4 forget? Mr. Whipple. And for the record, Mr. Counts is on which page?

5 THE COURT CLERK: Twelve.

6 THE COURT: Thank you. All right. Mr. Counts is present in custody with his
7 attorneys, Ms. Wildeveld and Mr. Whipple. And we have Mr. Pesci and Mr.
8 DiGiacomo representing the State. And this is the time set for rendition of sentence.
9 Is everyone prepared to go forward?

10 MR. DIGIACOMO: Yes, Your Honor.

11 THE COURT: All right. State, after seeing a jury verdict, you have a right to
12 argue.

13 MR. DIGIACOMO: Thank you, Judge. I have in my hands certified copies of
14 Judgments of Convictions for Mr. Counts from both California case BA133814 and
15 BA171370, as well the plea and sentencing transcript from both of those Judgments
16 of Convictions.

17 I also have a certified copy of the Department of Parole and Probation
18 or Department of Probation in Los Angeles County, certified copies of all their
19 records [indiscernible] his behavior on that probation over a period of 12 years now,
20 Judge. I'd ask to approach and mark.

21 THE COURT: And yes -- and just for the record, those would be the two
22 convictions that are referenced in the PSI; is that correct?

23 MR. DIGIACOMO: That's correct. And, also, the two that are referenced in
24 our Notice of Intent to Seek Habitual Criminal Treatment for Mr. Counts, Judge.
25 There are also the two convictions that the Defendant admitted during his testimony

1 to before this Court during the jury trial, Judge.

2 MR. WHIPPLE: Your Honor, those --

3 THE COURT: Yes; just on that.

4 MR. WHIPPLE: On that limited issue. They need to be certified. I haven't
5 seen 'em. I'd like to confirm myself that they're in fact--

6 THE COURT: Your may approach --

7 MR. WHIPPLE: Thank you.

8 THE COURT: -- and look at the judgments and I believe Mr. DiGiacomo did
9 state that they were certified.

10 MR. DiGIACOMO: That's correct. And they've been previously provided to
11 the defense as part of the discovery in the case. They're -- were also in the 15 Day
12 Notice that was provided 15 days prior to trial, and so they have copies. I have
13 additional certified copies back in my office if you needed certified copies. I know
14 that they've seen those before, Judge.

15 THE COURT: I'll just let 'em look at 'em.

16 MR. DiGIACOMO: Thank you, Judge. Judge, based upon -- I'm not to argue
17 the facts of this case considering how much time you spent looking at the facts of
18 this case, Judge. What I'd like to discuss, basically, is this Defendant and why
19 habitual criminal treatment applies to this particular Defendant.

20 This Defendant has been sentence -- under sentence of felony
21 imprisonment for 12 years now. He received his first felony conviction in 1996. He
22 fled the jurisdiction after receiving probation, picked up a second felony -- first he get
23 arrested here for selling dope and a stolen gun in a car. That gets pled out to a
24 gross so he can go back to California where he picks up a second felony sale of
25 drug conviction. He then flees that jurisdiction again, gets transported back from our

1 jurisdiction to California, again, and is placed back on probation again; comes here
2 and is now involved in the crimes in which he's convicted before this Court.

3 Any individual who is -- got qualifying felonies who can never get off
4 probation who has been under sentence of imprisonments for 12 years straight,
5 since 1996 to day, that warrant is still active out of California. I checked it yesterday
6 to make sure that that's in fact true. He still has an active warrant on that underlying
7 case, Judge, out of California from 1999.

8 I would submit to the Court he is eligible for habitual criminal treatment.
9 I would submit to the Court that based upon the facts that you heard in this case,
10 he's eligible for the maximum possible sentence of 96 to 240, which is the
11 recommendation of the Department of Parole and Probation, and I'll submit it to the
12 Court.

13 THE COURT: All right. Mr. Counts, is there anything you would like to state
14 to the Court before I pronounce sentence against you?

15 MR. WHIPPLE: Your Honor, with the Court's permission, could we speak
16 first? Is that okay?

17 THE COURT: That's fine.

18 MR. WHIPPLE: I want to address the issue of the habitual criminal filing.
19 First of all, the State has several hurdles as this Court is aware. The first one is a
20 Certification, which Ms. Wildeveld's looking at right now. The second is that they
21 have to show that the felonies that occurred out of state would be felonies in this
22 state. As the Court's aware, the second felony is for a marijuana charge. I'm not
23 even sure if that would be a felony in this state. That's something they have to
24 prove.

25 THE COURT: I believe it's marijuana for sale.

1 MR. DiGIACOMO: One and two. It's the crime in which the state it was
2 committed. If it's a felony conviction, it's a felony conviction.

3 THE COURT: Or it's a felony here if it's not a felony in the other state. So, it
4 was a felony not only in that state, but would be a felony in this state as well,
5 particularly since it occurred in 1999 before all of the recent changes in the drug
6 laws.

7 So, had it he been convicted of that crime in 1999 in this state, it would
8 -- possession, whether it was for sale or not, was still a felony back then.

9 MR. DiGIACOMO: Correct.

10 MR. WHIPPLE: So, we got two hurdles; the Certification. We got the fact
11 whether that's felony in this State as well. Again, we're looking at those issues.

12 The third one, Your Honor, is there's a due process requirement for
13 notice. And I don't know if this Court had an opportunity to look at the notice in this
14 case but, in fact, the notice that we received only occurred after Mr. Counts'
15 acquittal, on majority of counts, and a conviction on one count in a trial that lasted
16 two weeks. And, in fact, if you look at that actual notice it says: In the event of
17 conviction of some of all of the counts, they should have filed this ahead of time.
18 We should have been put on notice from the beginning. In their own notice, it's
19 inconsistent. Look at the date it was faxed to us, look what it says in the notice
20 itself. It's facially defective. This notice should have been -- we should have known
21 this ahead of time. They only did this was an after the fact issue they faxed to us
22 after the conviction.

23 THE COURT: I don't know what Mr. DiGiacomo's going to say, but I
24 anticipate that they're going to say that they were thinking he was going to get
25 convicted of the murder and be sentenced to life with the possibility of parole with

1 the death penalty, somewhere in that range, and that why then would you seek to
2 adjudicate someone as a habitual criminal on the small habitual criminal which is
3 less than what he would have gotten had he been convicted of first degree murder
4 even if the jury had imposed the most lenient sentence possible.

5 MR. DiGIACOMO: Judge, in additional to that, the 15 Day Notice had both of
6 these convictions in the judgment -- or in the 15 Day Notice. The statute requires
7 one of two things: Either the filing of an Amended Information, which I rarely do in
8 case because there's the possibility that there may be some error and then the jury
9 winds up hearing 'cause, you know, you put that big: Do not Read, or the Legislature
10 passed a notice requirement so long as it's 15 days prior to sentencing.

11 This notice is more than 15 days prior to sentencing and it certainly
12 conforms to all the due process requirements. The suggestion from Mr. Whipple
13 that he didn't even know about the felonies or that we would seek adjudication when
14 the statute clearly indicates that you would is something I don't think is really going
15 to fall on deaf ears at this Court, Judge, and I'll submit.

16 THE COURT: All right. Mr. Whipple?

17 MR. WHIPPLE: Judge, if this Court's position is: Well, we thought he was
18 going to get the death penalty so we didn't even take the time.

19 THE COURT: No; I didn't think he was going to get the death penalty. You
20 spoke to why the State didn't file it previously and I'm suspecting that that's why. It
21 wouldn't have been an issue had they gotten a conviction that they were seeking.
22 That's all I was surmising.

23 MR. WHIPPLE: But I think the State agrees with that.

24 MR. DiGIACOMO: I don't know that I necessarily agree with that. But I would
25 think that the Court would be less inclined to provide habitual criminal treatment on a

1 conspiracy count to the underlying murder and not run a concurrent to whatever the
2 sentence the jury imposed for the case. So, likely it would not have had any legal
3 moment whether or not we did it or did not do it.

4 MR. WHIPPLE: The fact remains if they anticipated, which I think they
5 admitted after this Court's suggestion, if they're either get a life sentence or a --
6 potentially the death penalty, they failed to give us notice timely, Your Honor. This
7 didn't come until February 11th and in their own notice itself, it starts talking about if
8 he's convicted. I mean, we're going to -- I believe, under due process, we have a
9 right to notice. And if they believe: Well, you know what? We don't even have to
10 give them notice about a habitual criminal 'cause we're going to get the kid on the
11 murder anyway. Well they do that at their own peril. And that's what happened in
12 this case. They were so sure of their fact that they were going to get the murder
13 conviction, they didn't follow through with the habitual criminal aspect of it and they
14 did that at their peril. They had an option, they waived it, and then they realized
15 they've missed it during the trial. So, then they -- this was after the fact.

16 THE COURT: Well that -- you've misconstrued what the Court suggested. I
17 was just saying I think you were suggesting, maybe I misunderstood you, that they
18 were somehow trying to pay hide the ball, and dump this on you at the last minute.
19 And just in view of the history of this case, that does not appear to the Court to be at
20 all what they were doing and whether that was their motivation or not, it makes
21 rational sense to me as to why things progressed the way they did. That's all I'm
22 saying.

23 MR. WHIPPLE: But it begs the question: Why didn't they file this timely?
24 Why didn't they file it before it went to trial with the original Information like they do
25 every other habitual criminal, at least that I've ever represented. It begs the

1 question: Why did it take 'em three years? I'm sorry. I just don't understand it.

2 MR. DiGIACOMO: I don't know why that would even be relevant, Judge.

3 So --

4 MR. WHIPPLE: Well I mean --

5 MR. DiGIACOMO: Well there's simply no relevance to the argument. The
6 statute allows for it to be filed within 15 days prior to sentencing. It was filed well
7 before that 15 days. I don't know what the issue with the -- are they suggesting to
8 the Court that they would have done something differently? And it is what it is.

9 THE COURT: Right. I know. It is what it is. I mean if you felt you needed
10 more time, then you could ask for more time to do whatever it is you feel that you
11 need to do. That would be the remedy here, not striking the notice or striking the
12 convictions from the record. I mean, to me, that's your remedy if, in fact, the timely
13 timeliness caused you some kind of prejudice. But I -- you're not suggesting that the
14 defense needed to do anything else. They are certified copies. Obviously, if it
15 turned out down the road that there was some fraud involved, you could raise that
16 any time. So, you know, Ms. Wildeveld's looking them over and they've represented
17 they're certified. There's no reason to believe that they're not certified. I don't know
18 what else --

19 MR. WHIPPLE: Well I think that --

20 THE COURT: -- the defense feels they need to do. I mean, if there's
21 something you feel you need to do, let me know.

22 MR. WHIPPLE: Yeah. I think the Notice of Habitual Criminal should be
23 struck under due process violations. They had three years to file it. They didn't.
24 After the conviction of one count of a multi-count Information, they then decide to file
25 it. And it speaks for itself. We'll submit it on the record.

1 One last thing with regard to the Habitual Criminal Notice, Your Honor,
2 and that is they do have to prove it would be a felony in this State. There's no facts
3 from what we've seen; that would be the marijuana charge. The marijuana charge
4 is eight years, nine years old. They have a requirement to prove that that marijuana
5 charge would be a felony in this State. I believe, and I'm going to submit to the
6 Court, from the information that they've provided to you, that they have not carried
7 the burden on that issue.

8 THE COURT: Well I just pulled the statute. I read it yesterday but I'll read it
9 again: Any felony who has previously been three times convicted, whether in this
10 state or elsewhere, of any crime which under the laws of the situs of the crime or of
11 this state, would amount to a felony. So, I -- it was a felony in California and at the
12 time, it would have been a felony and if it's marijuana for sale, it would still to my --
13 to the best of my knowledge, be a felony. And so any three ways you cut it, it's a
14 felony. And I think if it's within the clear language of 207.010, paragraph 1b, as I
15 understand it. If I'm reading that incorrectly, then certainly you can raise that issue
16 as an appellate issue if the Court's misinterpreting the statute. But to me, I think the
17 language of the statute is pretty clear, and like I said, no matter how you slice it, it
18 comes up, in my view, a felony.

19 MR. WHIPPLE: I understand, Your Honor. We preserved it. We made an
20 issue --

21 THE COURT: I understand what you -- I mean I'm --

22 MR. WHIPPLE: -- we object to it. We'll submit it on the record on what exists
23 at this point.

24 THE COURT: All right.

25 MR. WHIPPLE: The next issue, of course, is -- and we've moved, Your

1 Honor, you know, right past the actual recommendation, the original -- what should
2 have been the recommendation of the Parole and Probation. They reported to this
3 Court -- you know, they go out there to do a job. They're given a scale that they use
4 with all these individuals, and they used the scale on Mr. Counts. And the
5 sentencing recommendation selection scale came back and said: You know what?
6 This individual deserves 26 months, a sentence of 26 to 10. All right. That's what
7 their sentencing selection scale with one that they use with every other individual,
8 what it comes back with Mr. Counts. And if that's what this Court's inclined is to
9 follow the Parole and Probation recommendations on that issue, then we'll submit it.
10 But its moved right past that issue to the habitual criminal issue. And if this Court
11 wants me to address that, I'll be happy to address that as well.

12 THE COURT: Whatever you feel you need to address. Just so you know, I
13 mean, these are a guideline. Obviously, you weren't present at the criminal judges
14 meeting yesterday; Mr. Ponticello was. And pretty much the criminal judges
15 indicated that they don't put a lot of stock in those numbers. It's a guideline. The
16 PSI's are certainly useful but -- and you know what, the -- so that's my feeling about
17 those numbers, and I think they're echoed by the majority of the criminal judges
18 so --

19 MR. DiGIACOMO: And just to correct the record, the Division feels that the
20 habitual treatment is appropriate and recommends same as the last line of that
21 collusion.

22 MR. WHIPPLE: And that's what I want to address, Your Honor. Because the
23 standard scale that they used for Mr. Counts, and every other person that's in his
24 position, would have recommended 26 months. I think it's completely inappropriate
25 for them -- there's no place that I see in the statute that allows them to make any

1 recommendation with regard to the habitual criminal. In fact, there has to be a
2 weighing with this Court has nothing to do with the Parole and Probation
3 recommends, and I ask that that portion of the PSI be stricken. There's no basis for
4 them to be recommending a habitual criminal for this individual or any individual for
5 that matter, because there's no statutory requirement. In fact, there's a statutory
6 requirement that this Court take the considerations and not anybody but this Court.
7 And I think it's completely inappropriate for them to be even making that -- bringing
8 that up as an issue on the P and P report, and I ask that it be stricken.

9 MR. DiGIACOMO: I don't know if that's appropriate. It's a recommendation
10 of the Department.

11 THE COURT: I don't care if it's stricken or not. I -- like I said. The Court -- I
12 don't know how many sentences you've sat in here on but the Court makes its own
13 determination whether it's a grand larceny or a conspiracy to commit murder. I am
14 certainly not bound by what P and P says and, you know, I rely more on the crime
15 and the background of the person than on any recommendation from some report
16 writer that I don't even know so --

17 MR. WHIPPLE: Next I want to address the issue of how remote these
18 felonies are, Your Honor. I'm sure this Court's already aware -- you know, Mr.
19 DiGiacomo made great play of the fact: Oh my gosh, you know, he committed these
20 felonies, 12 and nine years ago and he's still -- somehow this magic thing -- he still
21 -- he's never resolved them. He's still under this threat or this [indiscernible] issue of
22 imprisonment which is something we addressed during the trial. The fact of the
23 matter is he's lived here in this State being a productive member; working, pulled
24 over by officers numerous times and nobody else cared, Judge.

25 Look at -- you know what's amazing is this comments of how he's been

1 under this imprisonment and hasn't cleaned up his record in California and then you
2 look at all the arrests. Look at all the arrests. How many times has he been
3 arrested? And they never took him and transported him back to California. You
4 know if Las Vegas Metropolitan Police Department -- they don't care if he goes back
5 to California and cleaned up. I don't understand why -- that's the whole theory of
6 their case, why it should be used against him today because nobody else cared, in
7 all those arrests, to take the time and arrest him and send him back.

8 THE COURT: Now Mr. Counts thought they cared if you believe his
9 testimony because that's why he was hiding in the attic. He didn't care. He thought
10 they were going to send him back to California if you accept what he testified to
11 because his version of events was that's why he was hiding, and why they had to
12 send a flare up, and why they had to send a dog up, and why they had to Taser him.
13 So, maybe Las Vegas Metro wasn't concerned but Mr. Counts was clearly
14 concerned.

15 MR. WHIPPLE: Yes, Your Honor. It's his state of mind. But that's not what
16 they're arguing. They're not arguing his state of mind. They're arguing the state of
17 mind --

18 THE COURT: Well you just argued that nobody cared about these other
19 convictions that's all I'm saying.

20 MR. WHIPPLE: Well let me clarify it then. Mr. Counts cared. Mr. Counts,
21 obviously, as a father, as a coach to young children, he cared. Okay. But society
22 didn't care. Society, at large, didn't care at all. And look at all the arrests that he's
23 had here in Nevada with all this allegedly under imprisonment that stood out, that
24 still stands today in California and none of them cared. All right. So, Mr. Counts
25 cares and now Mr. DiGiacomo cares but it seems like they're the only in the State,

1 up to this point, that really cares.

2 You know, Your Honor, you have this saying and I've heard it several
3 times, I think you call it the elephant in the room, the white elephant. I forget what it
4 is. The only reason we're here --

5 THE COURT: I never mentioned the color of the elephant.

6 MR. WHIPPLE: Okay. The elephant [indiscernible].

7 MS. WILDEVELD: But it's not me anymore.

8 THE COURT: Now a pink elephant would indicate that some of us under the
9 influence.

10 MR. WHIPPLE: The only reason we're here, the only reason we're here is
11 because he acquitted on murder. He acquitted on a murder that was not just any
12 murder. It's the murder that captured the attention of this community for the last
13 couple years. And you know what? He should walk out of here just like any other
14 person who is convicted of conspiracy. That's what the recommendation is, without
15 taking into consideration all the hostility and all the emotion. The recommendation is
16 26 months, and that's what he should do, Your Honor. And what the white elephant,
17 the pink elephant, or whatever that elephant is, that only reason that they filed this,
18 the only reason we're here is because people think he got away with murder. Well,
19 you know, that was a separate proceeding, Your Honor. And to hold him
20 accountable for suspicions and suggestions and hopes and believes and maybes is
21 incorrect, and it's unfair. And you know what? Those jurors know that. Those
22 jurors knew that 'cause they looked at all the evidence. He took the stand and
23 testified. His family took the stand and testified, and they -- you know what, they
24 acquitted him.

25 And now for this Court to hold it -- to second guess them, I think's unfair

1 and it's inappropriate. And I don't blame the State to doing that. You know what? I
2 would do the same thing. I'd be damn pissed I let a murderer go free. Right?
3 'Cause that's what they think. But he's not, that's not. I would expect nothing less.
4 But he's not. I expect more of the Court. I expect the Court to be like the jury and
5 be fair and equitable and I think it should be 26 months and nothing more.

6 THE COURT: All right. Mr. Counts, is there anything you would like to state
7 to the Court before I pronounce sentence against you?

8 THE DEFENDANT: [Indiscernible] respected Your Honor.

9 I would like request Court's mercy and Your Honor's mercy to have
10 another chance at my life and to restoration and reconciliation with my children and
11 family and become a productive member of society once again. If anything, if not,
12 Your Honor, let me off with a third suspended sentence or probation or intensive
13 supervision, house arrest; anything like that just so I can -- I've been here three
14 years. My oldest son has started and will be finishing middle school this year. I've
15 missed all that time in his life. My second son is in his first year of middle school.
16 My youngest, which is my daughter and my youngest son, they're in elementary;
17 proceeding through. I want to be there for guidance and direction and be the good
18 father that I am to them. And, also, I'd would just like to continue on with my life and
19 my family's life who have supported me all through this trial and through my years of
20 being in this incarceration.

21 I just ask for a -- mercy from the State and not sentence me
22 [indiscernible].

23 THE COURT: All right. Thank you. Well you know, I think he does qualify.
24 And he gets in trouble in 1996. He gets in trouble again in 1999, which is reduced to
25 a misdemeanor; trouble again a month later in 1999, which takes a felony. You

1 know, I know we're going to say: Well, that's old. He doesn't get into trouble until
2 2005 but, you know, to me six years out of trouble really is not that long a time.
3 Something happened in 2004 where his probation was modified and he gets jail
4 time. So, there is some contact in 2004 and a lot of minor contacts along the way,
5 as referenced on page number 5 of the PSI.

6 Therefore, accordingly, based upon the verdict of the jury, Mr. Counts,
7 you are adjudged guilty of the felony crime of conspiracy to commit murder and you
8 are adjudged a habitual criminal, pursuant to NRS 207.010.

9 In addition to the \$25 administrative assessment, the \$150 DNA
10 analysis fee, and the fact that you have to submit to testing for genetic markers, you
11 are sentenced to a minimum term of 96 months in the Nevada Department of
12 Corrections, a maximum term of 240 months in the Nevada Department of
13 Corrections. By statute, that would be imposed consecutively or I would impose it
14 anyway consecutively to whatever time you have in California on that case. It looks
15 like that may be over and closed out. I can't tell from the PSI. But Mr. DiGiacomo
16 says there's an active warrant.

17 And you are entitled to your full credit of time served, which I am
18 showing to be 1,029 days credit for time served.

19 MR. WHIPPLE: You Honor, may I inquire? There's two habitual criminals,
20 there's the lower -- the small one and the larger one, is my understanding; right?

21 THE COURT: He's the small habitual criminal.

22 MR. WHIPPLE: That is the small; right?

23 THE COURT: Right. That's what I adjudged him as is the small.

24 MR. WHIPPLE: Okay.

25 MS. WILDEVELD: Your Honor, for bookkeeping purposes, may I just let the

1 Court know that on page 5, 4th -- one of the felonies is not -- one of those charges is
2 not [indiscernible], ADW not firearm. That count does not belong to him nor does
3 the grand theft count belong to him.

4 THE COURT: Yeah. And the point of that was just he had had at least a
5 couple of other contacts just to say, you know, like I said a lot of times: Oh, 1999,
6 he's been out of trouble. Well I don't think that's that long to be out of trouble,
7 number one. And number two, you know, he's having negative contacts with law
8 enforcement even though they don't result in adjudications of guilt. He, you know, is
9 not living for six years as a totally upstanding member of our society. That's all the
10 Court's comment was intended to reflect. All right. Thank you.

11 MR. DiGIACOMO: Can I collect the judgments and bring them back to the
12 Clerk?

13 THE COURT: Oh, yes. Thank you.

14 MR. DiGIACOMO: And the Court admits these for purposes [indiscernible].
15 Thank you, Judge.

16 THE COURT: All right. We'll do Ms. Brooks matter.

17 MS. WILDEVELD: And, Your Honor, can we be appointed to Mr. Counts'
18 appeal at this time?

19 MR. DiGIACOMO: I don't think both gets appointed, but one -- certainly one
20 person needs to be appointed.

21 THE COURT: One can be appointed. Would you like to do that, Ms.
22 Wildeveld? All right. Ms. Wildeveld is appointed.

23 MR. WHIPPLE: May I just --

24 THE COURT: Absolutely.

25 MS. WILDEVELD: Thank you, Your Honor.

1 THE COURT: All right. Thank you.

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3 [Proceedings concluded at 11:05 a.m.]
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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio/video recording in the above-entitled case.

23 
24 PATRICIA SLATTERY
25 Court Recorder/Transcriber

JOC

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DISTRICT COURT

Chaf
CLERK OF THE COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

KENNETH COUNTS
aka KENNETH JAY COUNTS II
#1525643

Defendant.

CASE NO. C212667

DEPT. NO. XXI

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crime of COUNT 1 - CONSPIRACY TO COMMIT MURDER (Category B Felony) in violation of NRS 199.480, 200.020, 200.030, and COUNT 2 - MURDER WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.010, 200.030; and the matter having been tried before a jury and the Defendant having been found guilty of the crime of COUNT 1 - CONSPIRACY TO COMMIT MURDER (Category B Felony) in violation of NRS 199.480, 200.010, 200.030 and NOT GUILTY to COUNT 2; thereafter, on the 20TH day of March, 2007, the Defendant was present in court for sentencing with his counsel BRETT WHIPPLE, ESQ., and good cause appearing,

MAR 31 2008

CLERK OF THE COURT

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Volume 2 - 365

1 THE DEFENDANT IS HEREBY ADJUDGED guilty of said crime under the
2 SMALL HABITUAL Criminal Statute as set forth in the jury's verdict and, in addition to
3 the \$25.00 Administrative Assessment Fee, \$150.00 DNA Analysis Fee including
4 testing to determine genetic markers, the Defendant is SENTENCED as follows: TO A
5 MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM parole
6 eligibility of NINETY-SIX (96) MONTHS in the Nevada Department of Corrections
7 (NDC), with ONE THOUSAND TWENTY-NINE (1,029) DAYS credit for time served.
8 SENTENCE to run CONSECUTIVE to Defendant's California time.
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12 DATED this 24th day of March, 2007.

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14 Valerie Adair
15 VALERIE ADAIR
16 DISTRICT JUDGE
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DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAYSON TAOIPU,
#1970800

Defendant.

Case No: C212667

Dept No: XXI

JUDGMENT OF CONVICTION
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime(s) of COUNT 1 - CONSPIRACY TO COMMIT MURDER (Category B Felony) and COUNT 2 - VOLUNTARY MANSLAUGHTER WITH USE OF A DEADLY WEAPON (Category B Felony), in violation of NRS 199.480, 200.030, 200.040, 200.050, 200.080; thereafter, on the 25th day of March, 2008, the Defendant was present in court for sentencing with his counsel, TERRANCE JACKSON, ESQ., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, in addition to the \$25.00 Administrative Assessment Fee and \$150 DNA Analysis Fee, the Defendant is SENTENCED on Count 1 to a MINIMUM of FORTY-EIGHT (48) MONTHS in the Nevada Department of Corrections with a MAXIMUM term of ONE-HUNDRED TWENTY (120) MONTHS; Count 2 to a MINIMUM of SIXTEEN (16) MONTHS with a MAXIMUM term of SIXTY (60) MONTHS with an equal and consecutive term of

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Volume 2 - 367

1 SIXTEEN (16) MONTH with a MAXIMUM term of SIXTY (60) MONTHS for the deadly
2 weapons enhancement; Count 2 to RUN CONCURRENTLY with Count 1, SUSPENDED;
3 placed on PROBATION for an indeterminate period not to exceed FIVE (5) YEARS,
4 CONDITIONS:

- 5 1. Obtain/maintain lawful full time employment unless Defendant is a full time student;
- 6 2. Defendant placed on House Arrest for a period not to exceed one year;
- 7 3. Submit to counseling evaluation and any counseling deemed necessary by the
8 evaluator; submit to random urinalyses;
- 9 4. Complete GED/high school diploma;
- 10 5. Complete vocational training as deemed necessary by the Division of Parole and
11 Probation.
- 12 6. The Defendant shall submit to a test administered by the Division to determine
13 genetic markers and pay a \$150 DNA Analysis Fee to the Clerk of the Court.

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15 DATED this 26 day of March, 2008.

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17 DISTRICT JUDGE
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CLERK OF THE COURT

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DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
MARC DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #006955
200 Lewis Avenue
Las Vegas, Nevada 89155-2211
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

LUIS ALONSO HIDALGO, III,
#1849634
LUIS HIDALGO, JR.,
#1579522

Defendant.

Case No.

C212667
C241394

Dept No.

XXI

NOTICE OF MOTION AND MOTION TO CONSOLIDATE CASE NO.

C241394 INTO C212667

DATE OF HEARING: 7/10/08

TIME OF HEARING: 9:30 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through MARC DIGIACOMO, Chief Deputy District Attorney, and files this Notice of Motion and MOTION TO CONSOLIDATE CASE NO. C241394 INTO C212667.

This Motion is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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CLERK OF THE COURT

JUN 25 2008

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DATED this 24th day of June, 2008.

BY

STATEMENT OF THE CASE

STATEMENT OF THE FACTS

2

1 by Defendant Deangelo Carroll who worked at the Palomino. The cell phone was traced
2 back to Simone's Auto Plaza which is owned by Luis Hidalgo, Jr. and run by Defendant
3 Anabel Espindola. The bill to the phone was addressed to Anabel Espindola at 6770
4 Bermuda Road. A records check of Defendant Espindola revealed that she had a work card
5 as the general manager at the Palomino.

6 Detectives made contact with Defendant Carroll at the Palomino and after Miranda
7 warning obtained a statement from Defendant Carroll. Defendant Carroll worked at the
8 Palomino for Mr. Hidalgo, Jr. hereinafter "Mr. H", where he did various jobs including
9 handing out pamphlets and flyers to cab drivers and potential customers. Defendant Carroll
10 explained that Rontae Zone and Jayson Taoipu helped him pass out flyers. On the night of
11 the murder, Defendant Luis Hidalgo, III, also known as "Little Lou," called Defendant
12 Carroll, telling him to come to the club and to bring baseball bats and garbage bags with
13 him. When Defendant Carroll got to the Palomino he spoke to Mr. "H" who told him he
14 wanted to hire someone to "take care of" Timothy Hadland who used to work at the club.
15 Hadland was said to have been "bad mouthing" the Palomino, particularly with the contacts
16 he knew among the cab drivers. As a result the Palomino was losing thousands of dollars in
17 business so Mr. "H" said he would pay anyone who killed Hadland.

18 Defendant Carroll explained that on May 19, 2005 at about 11:00 p.m. he, Rontae
19 Zone, and Jayson Taoipu picked Defendant Kenneth Counts (KC) in a white Chevy Astro
20 van that was owned by the Palomino Club. Defendant Carroll told Defendant Counts that
21 Mr. "H" wanted to pay someone to kill someone. Defendant Counts agreed to do it.
22 Defendant Carroll called the victim and set up a meeting at Lake Mead. On the way to the
23 meeting a discussion ensued regarding killing the victim. During the drive to the Lake,
24 Defendant Espindola called Defendant Carroll and told him that Mr. "H" said, "If Hadland
25 was alone, then go through with the plan." Defendant Espindola also told Defendant Carroll
26 that if Hadland was not alone then Defendant Carroll was only to beat Hadland badly, or "go
27 to plan B." When they arrived at the Lake, the victim got out of his car and approached
28 Defendant Carroll, who was driving the van. When the victim approached, Defendant

1 Counts got out of the van and came around the front of the van and shot Timothy Hadland
2 two times in the head. Defendant Counts then jumped back in the car and told Defendant
3 Carroll to drive.

4 The group then drove back to the Palomino and Defendant Carroll and Defendant
5 Counts went inside. Defendant Carroll went into Mr. "H's" office and spoke with Mr. "H"
6 and Defendant Espindola. Defendant Carroll indicated that the job was done and that
7 Defendant Counts wanted six thousand dollars. Mr. "H" told Defendant Espindola to get the
8 money, which she did. Defendant Carroll then gave the money to Defendant Counts who
9 left in a cab. Defendant Carroll told police that Mr. "H" and Defendant Espindola told him
10 what he should tell police if he was questioned. Sometime later Mr. "H" contacted
11 Defendant Carroll and told him that the police were looking for him.

12 Sometime on May 20th, Defendant Carroll was told to take the van used and get the
13 tires changed. The co-conspirators were afraid that Defendant Carroll drove over either the
14 body or some blood at the scene. Defendant Carroll took the van to Simone's Auto Plaza
15 and changed the tires. The cut tires were thrown in a dumpster. Those tires have since been
16 recovered.

17 On May 21, 2005, Detectives spoke with Rontae Zone. Rontae confirmed that he had
18 accompanied Defendant Carroll, Taoipu, and Defendant Counts to Lake Mead. Rontae told
19 police that he saw Defendant Counts shot the victim twice in the head with a .357 revolver.
20 Since a revolver was used there were no casings found at the scene.

21 On May 21, 2005, Detectives also spoke with Jayson Taoipu. Jayson confirmed what
22 the others did. Specifically, Jason indicated that he accompanied Defendant Carroll, Rontae,
23 and Defendant Counts. Jayson told the police that killing the victim was discussed and that
24 he saw Defendant Counts shoot the victim with a revolver two times. Defendant Counts was
25 taken into custody on May 21, 2005 by members SWAT. At the time, Defendant Counts
26 fled from police and hid in an attic in an effort to avoid the police.

27 On May 23, 2005, Defendant Carroll told police that he was contacted by Mr.
28 Hidalgo III, "Little H", who told Defendant Carroll to pick up the Palomino shuttle bus and

1 drive it to Simone's Auto Plaza. Defendant Carroll then met with police and prepared to set
2 up a recorded conversation with Mr. "H", Defendant Hidalgo, and Defendant Espindola.
3 When Defendant Carroll arrived Defendant Espindola met him and told him to go to "Little
4 Lou's" office, which he did. In "Little Lou's" office, Defendant Hidalgo told Defendant
5 Carroll that the phones and room was bugged so he whispered to Defendant Carroll.
6 Defendant Espindola then came in the room and told Defendant Carroll to remove his
7 clothing to make sure that he was not wearing a wire. Defendant Carroll took his clothes off
8 and then Defendant Hidalgo and Defendant Espindola spoke to him in whispers.

9 Defendant Hidalgo had a large sword which was part of a wood cane that he was
10 swinging during the conversation. Defendant Hidalgo told Defendant Carroll that if he told
11 him what happened he would cut him up. Defendant Hidalgo further explained to Defendant
12 Carroll that if he had to go to jail he, Defendant Hidalgo, would take care of Deangelo's
13 wife. Defendant Espindola also told Defendant Carroll that Mr. "H" indicated that he would
14 pay for an attorney for him. Defendant Carroll explained that Defendant Counts, Taoipu,
15 and Zone wanted more money. Defendant Espindola then gave Defendant Carroll one
16 thousand dollars to keep the other two quiet and gave Defendant Carroll four hundred more
17 dollars. Defendant Hidalgo then gave Defendant Carroll a bottle of gin and Defendant
18 Espindola and Defendant Hidalgo talked to Defendant Carroll about killing Zone and
19 Taoipu. Specifically, they told Defendant Carroll to put rat poisoning in the gin and give it
20 to Zone and Taoipu. Defendant Hidalgo then told Defendant Carroll to put more rat
21 poisoning in a marijuana cigarette and have them smoke it in order to kill them. Defendant
22 Espindola then told Defendant Carroll that he needed to resign from the Palomino but they
23 would still pay him and after a few months he could come back to work when the
24 investigation died down.

25 When the conversation ended, Defendant Carroll exited the Palomino and told the
26 police what happened. The recording was analyzed and confirmed what Defendant Carroll
27 said the other parties had said.

28 On May 24, 2005, Defendant Carroll once again entered Simone's Auto Plaza

1 wearing a recording device. Like the day before, a meeting between Defendant Hidalgo,
2 Defendant Espindola and Defendant Carroll occurred in room 6 of Simone's Auto Plaza
3 which is a bedroom where Defendant Hidalgo resided. During this conversation, Defendant
4 Espindola can be heard on the tape acknowledging that Mr. "H", Defendant Espindola and
5 Defendant Hidalgo hired Defendant Carroll to harm Hadland. In addition, more money was
6 given to Defendant Carroll to keep quiet.

7 After this recording, contact was made with Defendant Hidalgo and Defendant
8 Espindola. In a mirandized conversation, Defendant Hidalgo told the police to talk to his
9 father, Mr. "H," and he would explain everything. Defendant Espindola acknowledged
10 talking to Defendant Carroll on May 23rd and 24th at Simone's but terminated the interview
11 before substantive information about the conversations were obtained.

12 While the interviews were taking place, search warrants were executed at both the
13 Palomino Club and Simone's Auto Plaza. A number of incriminating items were recovered.
14 One of those items was a note found in a recreation room with a pool table in near Defendant
15 Hidalgo's bedroom. On the table was a bullet proof vest. Next to the table were bar stools.
16 On one of the bar stools, a note which said, "MAYBE WE ARE BEING
17 UNDERSERVAILLE, KEEP YOUR MOUTH SHUT!" The State previously sought
18 handwriting samples and an order was filed as to Anabel Espindola, Deangelo Carroll and
19 Luis Hidalgo, III. The note was not identified. As Luis Hidalgo Jr. was not charged, we
20 did not take an exemplar from him. At the grand jury, Anabel Espindola indicated that she
21 believed the handwriting was Mr. H's. Subsequent testing determined the note was written
22 by Luis Hidalgo, Jr.

23 In addition, the State learned that the victim, Timothy Jay Hadland, had been fired
24 from the club for allegedly stealing money that was related to promotions given to cab
25 drivers who brought clients to the club. Earlier on the 19th of May, Defendant Carroll called
26 Anabel at Simone's Auto Body to tell her that Mr. Hadland had been bad mouthing the club
27 to cab drivers. When Ms. Espindola relayed what she heard in the presence of Luis Hidalgo,
28 Jr. and Luis Hidalgo, III, a discussion occurred between the two men. During the discussion,

1 Luis Hidalgo, III, told his father that he would never make as much money as other strip club
2 owners if he, Luis Hidalgo, Jr., did not do something to Mr. Hadland. Thereafter, Luis
3 Hidalgo, III left Simone's. Phone records reflect that Luis Hidalgo, III called Deangelo
4 Carroll's home after he left Simone's.

5 POINTS AND AUTHORITIES

6 NRS 173.115 provides in part:

7
8 Two or more offenses may be charged in the same indictment or
9 information in a single count for each offense if the offenses charged,
10 whether felonies or misdemeanors, are ... based on two or more acts or
11 transactions connected together or constituting parts of a common scheme
12 or plan.

13 NRS 174.155 provides:

14 The Court may order two or more indictments or informations or both to
15 be tried together if the offenses, and the defendant, if there is more than
16 one, could have been joined in a single indictment or information. The
17 procedure shall be the same as if the prosecution were under such single
18 indictment or information.

19 Conversely, if the Court was considering the separation of various charges in one pleading
20 document, the defendant would have to show that prejudice would result from a single trial
21 or more than one count. Ex parte Groesbeck, 77 Nev. 412 (1961). Mere anticipatory
22 conclusions are insufficient. White v. State, 83 Nev. 292 (1967); Anderson v. State, 81 Nev.
23 477 (1965). See also NRS 174.165.

24 It is important to not that NRS 174.165 uses the words may order. By use of the word
25 "may" it is obvious that the legislature has intended to give the court broad discretion in
26 applying the statute. Citing NRS 174.155, the Court in Lovell v. State, 92 Nev. 128 (1976),
27 held that "joinder is within the discretion of the trial court and its action will not be reversed
28 absent an abuse of discretion." Moeller v. United States, 378 F.2d 14 (5th Cir. 1967).
Where no prejudice will result from the joinder of two informations, no abuse of discretion is
committed by a court who orders such a joinder. See Lovell v. State, supra.

The Nevada Statutes cited above are taken from the Federal Rules of Criminal
Procedure. NRS 174.155 is the same as Federal Rule 13 and NRS 173.135 is the same as

1 Federal Rule 8(b). In considering whether to allow consolidation, the courts have looked at
2 the conflicting policies of economy and efficiency in judicial administration by looking to
3 control overcrowded court calendars and avoidance of multiple trials, and any resulting
4 prejudice to a defendant which might arise from being prosecuted at trial by presentation of
5 evidence of other crimes flowing from two or more interconnected transactions. Cantano v.
6 United States, 167 F.2d 820 (Ca. 4th, 1948); United States v. Fencher, 195 F. Supp. 634 (D.
7 Conn. 1960).

8 The interests of both justice and economy support the consolidation of these two
9 cases. Moreover, consolidation of both cases would avoid the possibility of inconsistent
10 verdicts. As an initial starting point, all of the evidence admissible against one co-defendant
11 will also be admissible against the other. Through review of the case, there doesn't appear to
12 be any cross-admissibility issues. It also does not appear that Defendants have antagonistic
13 defenses. Both defendants have the same lawyer, something which would not be possible if
14 there interests were adverse. Additionally, where two co-conspirators commit crimes
15 together, the law favors consolidation.

16 The general rule favoring joinder has evolved for a specific reason – there is a
17 substantial public interest in joint trials of persons charged together because of the judicial
18 economy involved. Jones v. State, 111 Nev. at 853. Joint trials of persons charged with
19 committing the same offense expedites the administration of justice, reduces the congestion
20 of trial dockets, conserves judicial time, lessens the burden upon citizens to sacrifice time
21 and money to serve on juries, and avoids the necessity of recalling witnesses who would
22 otherwise be called upon to testify only once. Jones, 111 Nev. at 853-854 (citations
omitted). Consequently, the doctrine of severance is a very limited one.

23 In Marshall v. State, 118 Nev. 642, 56 P.3d 376 (2002), for example, codefendants
24 Marshall and Currington were tried and convicted together of first degree murder, robbery,
25 and conspiracy to commit robbery. At trial, Marshall's defense strategy was to blame
26 Currington; Currington's defense strategy was to blame Marshall. Id. at 644-645. Both
were convicted.

27 On appeal, Marshall contended the district court erred in refusing to sever his trial
28 from Currington's. Id. at 644. Marshall contended he and Currington had antagonistic

1 defenses in that each argued the other was responsible for the murder. Id. at 645. Marshall
2 relied on the standard articulated in Rowland v. State, 118 Nev. 31, 39 P.3d 114 (2002),
3 which stated that, "defenses must be antagonistic to the point that they are 'mutually
4 exclusive' before they are to be considered prejudicial," requiring severance. Marshall, 118
5 Nev. at 646 (citation omitted). Rowland further stated that defenses are mutually exclusive
6 when the core of the codefendant's defense is so irreconcilable with the core of the
7 defendant's own defense that the acceptance of the codefendant's theory by the jury
8 precludes acquittal of the defendant. Marshall, 118 Nev. at 646 (citations omitted).

9 The Court in Marshall was concerned that the language in Rowland was too broadly
10 stated. Consequently, the Court clarified - - and limited - - the standard articulated in
11 Rowland which requires severance.

12 "To the extent that this language suggests that prejudice requiring
13 severance is presumed whenever acceptance of one defendant's defense
14 theory logically compels rejection of another defendant's theory, **it is too**
15 **broadly stated.** As we have explained elsewhere, while there are
16 situations in which inconsistent defenses may support a motion for
17 severance, **the doctrine is a very limited one.** A defendant seeking
18 severance must show that the codefendants have conflicting and
19 irreconcilable defenses and there is danger that the jury will unjustifiably
20 infer that this conflict alone demonstrates that both are guilty. We take this
21 opportunity to further clarify this issue.

22 Marshall, 118 Nev. at 646 (emphasis added). The Court then went on to explain the
23 standard articulated in Rowland.

24 The decisive factor in any severance analysis remains prejudice to the
25 defendant. NRS 174.165(1) provides in relevant part: 'If it appears that a
26 defendant ... is prejudiced by a joinder ... of defendants ... for trial together,
27 the court may order an election or separate trials of counts, grant a
28 severance of defendants or provide whatever other relief justice requires.'
29 Nevertheless, prejudice to the defendant is not the only relevant factor: a
30 **court must consider not only the possible prejudice to the defendant**
31 **but also the possible prejudice to the State resulting from expensive,**
32 **duplicative trials.** Joinder promotes judicial economy and efficiency as
33 well as consistent verdicts and is preferred as long as it does not
34 compromise a defendant's right to a fair trial. Despite the concern for
35 efficiency and consistency, the district court has a continuing duty at all
36 stages of the trial to grant a severance if prejudice does appear. Joinder of
37 defendants is within the discretion of the district court, and its decision will
38 not be reversed absent an abuse of discretion. To establish that joinder was
39 prejudicial requires more than simply showing that severance made
40 acquittal more likely; misjoinder requires reversal only if it has a
41 substantial and injurious effect on the verdict.

1 Marshall v. State, 118 Nev. at 646-647 (emphasis added) (citations omitted).

2 Most importantly, the Court stated that “**antagonistic defenses are a relevant**
3 **consideration but not, in themselves, sufficient grounds for concluding that joinder of**
4 **defendants is prejudicial.**” 118 Nev. at 648 (emphasis added). In fact, the Court in
5 Marshall ruled that the defenses were antagonistic; nevertheless, joinder was proper. The
6 fact that codefendants at a joint trial offer mutually exclusive defenses, the Court recognized,
7 is not, in itself, sufficient to establish that joinder was prejudicial. Id. at 648. Marshall failed
8 to demonstrate that the joint trial compromised a specific trial right or prevented the jury
9 from making a reliable judgment regarding guilt or innocence. Marshall, 118 Nev. at 648.
10 Moreover, the State’s case was not dependent on either defendant’s testimony, and the
11 prosecution presented evidence linking both to the murder. Id. Accordingly, the Court
12 affirmed Marshall’s conviction.

13 A similar analysis was offered by the highest court of the land in Zafiro v. United
14 States, 506 U.S. 534, 113 S.Ct. 933 (1993). In that case, petitioners contended it is
15 prejudicial whenever two defendants both claim they are innocent and each accuses the other
16 of the crime. 506 U.S. at 538. The United States Supreme Court rejected their contention,
17 holding that “mutually antagonistic defenses are not prejudicial *per se*.” 506 U.S. at 538. A
18 court should grant a severance *only* if there is a serious risk that a joint trial would
19 compromise a specific trial right of one of the defendants, or prevent the jury from making a
20 reliable judgment about guilt or innocence. 506 U.S. at 539. It is *not* prejudicial for a
21 codefendant to introduce relevant, competent evidence that would be admissible against the
22 defendant at a severed trial. Id. The Government offered sufficient evidence against all four
23 petitioners, and the district court cured any possibility of prejudice by properly instructing
24 the jury that it had to consider the case against each defendant separately. 506 U.S. at 540-
25 541. Thus, the U.S. Supreme Court held it was not an abuse of discretion to deny
petitioners’ motions to sever. Id. at 541.

26 CONCLUSION

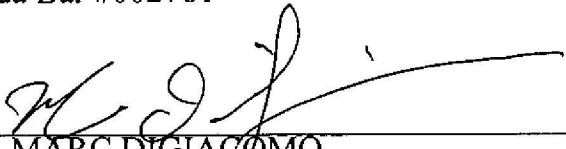
27 The defendants are both charged with conspiring to kill Timothy Jay Hadland, as well
28 as the killing itself. While Defendant Luis Hidalgo, III is also charged with solicitation to

1 kill the witnesses, the evidence demonstrates not only was Defendant Luis Hidalgo, Jr. being
2 kept abreast of the subsequent meetings with Defendant Deangelo Carroll, but that he was in
3 the same building while they were going on. Additionally, these conversations were part of
4 the ongoing conspiracy to conceal the crime. As such, all of the evidence against both
5 Defendants would be admissible in separate trials. Based on the foregoing, the State's
6 Motion to Consolidate should be granted.

7 DATED this 24th day of June, 2008.

8 DAVID ROGER
9 Clark County District Attorney
10 Nevada Bar #002781

11 BY


12 MARC DIGIACOMO
13 Chief Deputy District Attorney
14 Nevada Bar #006955

15
16
17 CERTIFICATE OF FACSIMILE TRANSMISSION

18 I hereby certify that service of the above and foregoing, was made this 24th day of
19 June, 2008, by facsimile transmission to:

20 Dominic Gentile, Esq.
21 369-2666

22
23 /s/D.Daniels
24 Secretary for the District Attorney's
25 Office
26
27
28

*** TX REPORT ***

TRANSMISSION OK

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DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
MARC DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #006955
200 Lewis Avenue
Las Vegas, Nevada 89155-2211
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

LUIS ALONSO HIDALGO, III,
#1849634
LUIS HIDALGO, JR.,
#1579522

Defendant.

Case No. C212667
C241394

Dept No. XXI

NOTICE OF MOTION AND MOTION TO CONSOLIDATE CASE NO.

C241394 INTO C212667

DATE OF HEARING: 7/10/08

TIME OF HEARING: 9:30 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney through

Volume 2 - 380

*** TX REPORT ***

TRANSMISSION OK

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1 0001

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
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8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2211
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,)

11 Plaintiff,)

12 -vs-)

13 LUIS ALONSO HIDALGO, III,
14 #1849634
15 LUIS HIDALGO, JR.,
16 #1579522

16 Defendant.)

Case No. C212667
C241394

Dept No. XXI

17 NOTICE OF MOTION AND MOTION TO CONSOLIDATE CASE NO.

18 C241394 INTO C212667

19 DATE OF HEARING: 7/10/08

20 TIME OF HEARING: 9:30 A.M.

21 COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney through

22 Volume 2 - 381


CLERK OF THE COURT

NISD
DAVID ROGER
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MARC DIGIACOMO
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200 Lewis Avenue
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(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

| | | | |
|----------------------|---|----------|---------|
| THE STATE OF NEVADA, |) | | |
| |) | Case No. | C212667 |
| Plaintiff, |) | | |
| |) | Dept No. | XXI |
| -vs- |) | | |
| |) | | |
| DEANGELO CARROLL, |) | | |
| #1678381 |) | | |
| |) | | |
| Defendant. |) | | |

AMENDED NOTICE OF INTENT TO SEEK DEATH PENALTY

COMES NOW, the State of Nevada, through DAVID ROGER, Clark County District Attorney, by and through MARC DIGIACOMO, Chief Deputy District Attorney, pursuant to NRS §175.552 and NRS §200.033, Nevada Supreme Court Rule 250, and Nevada Supreme Court Order 50576 declares its intention to seek the death penalty at a penalty hearing. Furthermore, the State of Nevada discloses that it will present evidence of the following aggravating circumstances:

1. The murder was committed by a person, for himself or another, to receive money or any other thing of monetary value, to-wit, by:

On or about May 19, 2005, the owner of the Palomino Club, Luis Hidalgo, Jr., located at 1848 North Las Vegas Boulevard, made it known to Deangelo Carroll, an employee of the Palomino Club, that he would pay someone to kill Timothy Jay Hadland, who was a former employee of the club. Luis Hidalgo, Jr., was angry with the victim, Timothy Jay Hadland,

1 because after his firing from the club, Timothy Jay Hadland was hurting the club's business
2 by "bad mouthing" the club by spreading rumors about Luis Hidalgo Jr., and about the club.
3 Timothy Jay Hadland had a lot of contact with cab drivers and was telling cabbies not to
4 bring their fares to the club in retaliation for his firing. The Palomino Club is not located on
5 the Strip and its business relies heavily on customers being brought to the club by cabs. The
6 club was losing money because of Timothy Jay Hadland's actions and as such Luis Hidalgo
7 Jr., wanted him killed so that he, his business, and his employees would be better off
8 financially by the increased flow of clients after Timothy Jay Hadland was silenced. Based
9 upon this initial conversation, Deangelo Carroll procured the assistance of Jayson Taoipu to
10 commit the murder.

11 On the same date, after the initial conversation, Luis Hidalgo, III, a manager of the
12 Palomino Club, called Deangelo Carroll and told him to come to the club and "bring baseball
13 bats and garbage bags." When Defendant Carroll arrived at the Palomino Club, Defendant
14 Luis Hidalgo, Jr., hired Deangelo Carroll to kill Timothy Jay Hadland. After conveying this
15 information and procuring Deangelo Carroll, Deangelo Carroll went to 1676 "E" Street to
16 the residence of Kenneth Counts and enlisted Defendant Kenneth Counts to kill Timothy Jay
17 Hadland. Defendant Deangelo Carroll then drove Defendants Kenneth Counts and Jayson
18 Taoipu, as well as witness Rontae Zone, out to the area of North Shore Road at Lake Mead,
19 where Defendant Kenneth Counts shot and killed Timothy Jay Hadland.

20 After the killing, the group drove back to the Palomino Club and Defendant Deangelo
21 Carroll entered the club with Defendant Kenneth Counts. Defendant Deangelo Carroll went
22 into Luis Hidalgo Jr.'s office and met with him and Defendant Anabel Espindola. At that
23 time Defendant Deangelo Carroll announced that, "it was done" and that Defendant Kenneth
24 Counts wanted to be paid. Luis Hidalgo Jr., then told Defendant Anabel Espindola to get the
25 money, which Defendant Anabel Espindola did and which she provided to Defendant
26 Deangelo Carroll who then provided five thousand dollars (\$5,000) to Defendant Kenneth
27 Counts. Defendant Deangelo Carroll also received some money for his involvement.

28 These facts support the aggravator because the murder was committed for the purpose

1 of improving the profits to the business and the employees of the Palomino Club. The owner
2 of the club, Luis Hidalgo Jr., perceived that profits were being hurt by the victim, Timothy
3 Jay Hadland “bad mouthing” him and the club. As such, Luis Hidalgo Jr., used employees,
4 Defendants Anabel Espindola, Luis Hidalgo, III, and Deangelo Carroll to carry out his
5 wishes. Defendant Deangelo Carroll also was directly paid for his role in the killing of
6 Timothy Jay Hadland. In addition, these facts support murder for hire under the aggravator
7 as Defendants Carroll enlisted the help of others, including Defendant Counts by offer of
8 renumeration from the owners and managers of the Palomino Club.

9 The basis for this aggravator is the aggravated nature of the crime itself. The
10 evidence upon which the State will rely is the testimony and exhibits introduced during the
11 guilt or penalty phase of the trial, as well as the verdicts from the guilt phase.

12 In filing this NOTICE, the State incorporates all pleadings, witness lists, notices and
13 other discovery materials already provided to Defendant by the Office of the District
14 Attorney as part of its open-file policy as well as any future discovery received and provided
15 to Defendant.

16 DATED this 20th day of October, 2008.

17 Respectfully submitted,

18 DAVID ROGER
19 Clark County District Attorney
Nevada Bar #002781

20
21
22 BY /s/MARC DIGIACOMO
23 MARC DIGIACOMO
24 Chief Deputy District Attorney
25 Nevada Bar #006955
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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of the above and foregoing, was made this 20th day of
October, 2008, by facsimile transmission to:

DAYVID FIGLER, ESQ.
FAX: 386-0344

/s/D.Daniels
Secretary for the District Attorney's
Office

dd-mvu

12
FILED

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Adam L. Blum
CLERK OF COURT

1 TRAN

2 DISTRICT COURT

3 **ORIGINAL**

CLARK COUNTY, NEVADA

4
5 THE STATE OF NEVADA,)

6 Plaintiff,)

7 vs.)

CASE NO. C212667

CASE NO. C241394

DEPT. XXI

8 KENNETH COUNTS, LUIS ALONSO)

9 HIDALGO, aka LUIS ALONSO)

HIDALGO, III, LUIS HIDALGO JR., aka)

10 LUIS A. HIDALGO,)

11 Defendants.)

12 BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

13 FRIDAY, JANUARY 16, 2009

14 RECORDER'S TRANSCRIPT OF HEARING RE:
15 MOTIONS

16
17 **APPEARANCES:**

18 FOR THE STATE:

MARC DIGIACOMO, ESQ.

Chief Deputy District Attorney

19 GIANCARLO PESCI, ESQ.

Chief Deputy District Attorney

20
21 FOR THE DEFENDANTS:

DOMINIC P. GENTILE, ESQ.

22 PAOLA M. ARMENI, ESQ.

JOHN L. ARRASCADA, ESQ.

23 CHRISTOPHER W. ADAMS, ESQ.

24
25 RECORDED BY: JANIE L. OLSEN, COURT RECORDER/TRANSCRIBER

1 LAS VEGAS, CLARK COUNTY, NV., FRI., JAN. 16, 2009

2
3 THE COURT: Good morning.

4 MR. DI GIACOMO: Judge, it's my understanding after discussions with Mr.
5 Gentile as well as Mr. Arrascada and Mr. Adams as well as my office that there has
6 been an agreement reached as it relates to the conflict issue. And the agreement is
7 as such:

8 The State of Nevada on the record here this morning is willing to
9 withdraw its notice of intent to seek the death penalty against both defendants,
10 whether they be original or amended notices. Both defendants have executed or
11 are in the process of executing a waiver of a right to a jury trial as it relates to
12 penalty should they be convicted.

13 THE COURT: All right.

14 MR. DI GIACOMO: It is the State's understanding that -- the effect of that will
15 essentially resolve any conflict issue. I've asked Mr. Arrascada and Mr. Adams to
16 acknowledge that there is no, and they've acknowledged to me that they find no
17 conflict issue as it relates to this case --

18 THE COURT: The guilt phase.

19 MR. DI GIACOMO: And based upon all those representations, it's my
20 understanding that the Court is going to sign the order to consolidate, which I've
21 also brought as well.

22 THE COURT: All right. And my understanding based on the last hearing
23 was, Mr. Gentile and Mr. Arrascada, that that was both of your positions that there
24 was no conflict in the guilt phase.

25 MR. GENTILE: There's no conflict in the guilt phase.

1 THE COURT: All right.

2 MR. GENTILE: It's still our position, and we've been working every day.

3 THE COURT: All right.

4 MR. ARRASCADA: Your Honor, just for the record, that's correct.

5 THE COURT: All right, thank you.

6 MR. DI GIACOMO: Judge, may I approach?

7 THE COURT: Yes, you may.

8 MR. DI GIACOMO: There's one issue as it relates to consolidation as to what
9 the charging document will be.

10 THE COURT: Okay.

11 MR. DI GIACOMO: I've had some discussions with Mr. Arrascada and Mr.
12 Adams and Mr. Gentile this morning of what we've essentially agreed to do is we
13 have a limited agreement as of right now. It's just to have it on for calendar call, and
14 we'll work out whether we -- I think Mr. Gentile's position is we just do two
15 documents. Obviously, there needs to be an amended filed as to Little Lou because
16 his is still the original information that has all the other codefendants in it.

17 I don't think there needs to be an amended filed as it relates to Mr. H.
18 We are going to look legally whether or not there needs to be one document or two.
19 I originally had an amended information, slash, indictment which is the way I've
20 done it in the past. Mr. Gentile thought that there might be concerns about changing
21 the nature of the charges and those types of things. And so to resolve that issue, I
22 think we can probably work out a resolution.

23 THE COURT: Okay. And it may just be that there's two different charging
24 documents, and we can just read one, this is the charging document pertaining to
25 the first defendant, and this is, you know, obviously using their names.

1 MR. GENTILE: Thank you.

2 THE COURT: Okay. So my --

3 MR. GENTILE: We have the original; it is signed. I'm handing it to -- this is
4 the original of the waiver of rights.

5 MR. ARRASCADA: We've also executed that and provided it to Mr.
6 DiGiacomo.

7 MR. DI GIACOMO: And I am just exec --

8 MR. ARRASCADA: That's the last time I say execute.

9 THE COURT: So we're planning on going to trial on January 26th; is that
10 right?

11 MR. DI GIACOMO: What, the 26th?

12 MR. ARRASCADA: Yes, Your Honor.

13 THE COURT: And now that it's no longer a death case we don't need to do a
14 questionnaire.

15 MR. GENTILE: We don't need a questionnaire.

16 THE COURT: What I would like -- I don't always request this -- but what I
17 would like is if both sides could give me their proposed voir dire questions.

18 MR. GENTILE: We're going to get attorney voir dire in this case?

19 THE COURT: Yes. Basically the way I do it is I'll ask a few general
20 questions. You know, I go through all of them, you know, what do you do for a
21 living, are you married, children, that kind of thing, ever been a juror before. I may
22 ask them, you know, arrested or charged, just a few of those sort of basic questions.
23 And then typically I turn it over to the State and then the defense to follow up.

24 Because this is a non-death case, what I'd like to do if everyone's in
25 agreement with this is I don't like the alternates to know that they're alternates until

1 right before they go to deliberate. And the way I do it is I don't have them in chairs
2 13 and 14 -- I think two alternates is sufficient -- I have them in chairs 6 and 7 so
3 there's really nobody knows who the alternates are.

4 And basically the -- I kind of do it I've been told the old-fashioned way --
5 the perempts are exercised publically. So once we qualify 14 in the box for cause,
6 the State would say, I'll thank and excuse Juror No. 2, and then the next in order
7 would take Chair No. 2, and then we all question, and then you exercise your
8 challenge. You'll obviously have nine challenges a side; one challenge is for the
9 alternates, but I don't care in which order you do it.

10 So if you do all nine, one and only one has to be on chair 6 or 7, which
11 is your alternate.

12 MR. GENTILE: Okay. Great.

13 THE COURT: And then it's next in order. So there's some randomness in
14 terms of who the alternates are, but you definitely know they're the two in chairs 6
15 and 7.

16 MR. DI GIACOMO: So, Judge, you have 14 up there, and then when you fill,
17 you fill from the pool out here.

18 THE COURT: Right.

19 MR. DI GIACOMO: So someone in 6 is always either be an alternate or be
20 perempted. They're never going to move into your spot.

21 THE COURT: Right, they're never going to move up.

22 MR. ARRASCADA: Your Honor, one issue regarding voir dire. We filed a
23 very extensive motion regarding voir dire from a death perspective, but there's
24 several principles in there that we'd like the Court to look at regarding pretrial
25 publicity, things of that nature, and ask the Court to give us the consideration of

1 having some extended voir dire with the potential jurors.

2 THE COURT: Yeah. What I normally do on the publicity issue is at the
3 beginning, you know, when you go through anybody know the lawyers, anybody --
4 and then I'll say has anybody heard about the case, and obviously we don't want
5 people discussing what they may have read or seen about the case in front of the
6 rest of the panel.

7 So I may say, you know, in front of everybody, was that in the
8 newspaper or on the news, and then anyone who thinks they know something about
9 the case from the media or from, you know, talking to their neighbor or whatever, we
10 bring them in and we do their questioning privately.

11 MR. ARRASCADA: That's exactly what I was --

12 THE COURT: Yeah, and that's the only -- typically, those are the only
13 situations. So we'll kind of look at who's raised their hand. There may be a lot of
14 people in this particular case. We'll bring in, like, the first ten, you know, excuse the
15 rest of the jurors for a break and bring those people in individually till I think we have
16 enough covered.

17 MR. GENTILE: When you ask about voir dire questions, I think there are
18 many different ways that lawyers pick juries, and I have changed my ways --

19 THE COURT: I've seen you pick a jury years ago.

20 MR. GENTILE: Yeah, and I've changed my ways over the years.

21 THE COURT: 'Cause you used to do a lot of what books do you read and --

22 MR. GENTILE: Well, what I look for -- what I look for these days is what I
23 anticipate being hot-button issues that might come up in a case that could cause
24 someone to be prejudiced. In this particular instance, that's going to be strip clubs.
25 And so there's no particular question, but it's an area of inquiry.

1 THE COURT: Right. So you might say, does anyone patronize strip clubs.

2 Those questions I'll let you ask. I won't ask those.

3 MR. GENTILE: Okay. Good.

4 THE COURT: I kind of also like to see the questions because sometimes
5 they're ones that I feel like I can ask with follow up from the lawyers. The reason I
6 like to do it that way is it speeds up the process. Obviously, any question I ask, the
7 lawyers are free to follow up on any answer that may have -- but I just kind of like to
8 streamline the process.

9 MR. GENTILE: Okay.

10 THE COURT: Some questions I feel are not appropriate for the Court to be
11 asking or I don't feel comfortable asking; obviously those questions I let the lawyers
12 ask.

13 MR. GENTILE: Sure. No problem.

14 MR. DI GIACOMO: Judge, just one last issue. Apparently we have some
15 motions set for Tuesday, some motions set for Thursday in this case. I know that
16 Ms. Armeni had emailed me about moving it all to calendar call. I've talked to Mr.
17 Arrascada and Adams, if we could put it all on the 22nd. I actually have to be in
18 Henderson for the SWAT shooting prelim on Tuesday. So it would be easier for me
19 certainly, if we could accommodate the Court to do it on calendar call.

20 THE COURT: Is that fine?

21 MR. GENTILE: That's fine. Just put it at the end of the calendar.

22 THE COURT: All right. Why don't we just say -- I don't know how long my
23 calendar is. Let's say we'll just put everything on at 10:15.

24 Is that it for me?

25 MR. DI GIACOMO: Thank you, Judge.


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MR. GENTILE: Thank you, Your Honor.

MR. ARRASCADA: Thank you.

-oOo-

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



JANIE L. OLSEN
Recorder/Transcriber

ORIGINAL

FILED IN OPEN COURT

1-16-2009

EDWARD A. FRIEDLAND
CLERK OF THE COURT

By Beluaca Holley
DEPUTY

1 **ORDR**

2 **DAVID ROGER**

3 **Clark County District Attorney**

4 **Nevada Bar #002781**

5 **MARC DIGIACOMO**

6 **Chief Deputy District Attorney**

7 **Nevada Bar #006955**

8 **200 Lewis Avenue**

9 **Las Vegas, NV 89155-2212**

10 **(702) 671-2500**

11 **Attorney for Plaintiff**

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 **THE STATE OF NEVADA,**

15 **Plaintiff,**

16 **-vs-**

17 **LUIS HIDALGO, III,**
18 **#1849634**

19 **and**

20 **LUIS HIDALGO, JR.**
21 **#1579522**

22 **Defendants.**

Case No. **C212667/C241394**
Dept No. **XXI**

23 **ORDER GRANTING THE STATE'S MOTION TO CONSOLIDATE C241394 INTO**
24 **C212667**

25 **DATE OF HEARING: 1/16/2009**

26 **TIME OF HEARING: 9:30 A.M.**

27 **THIS MATTER having come on for hearing before the above entitled Court on the**
28 **16th day of January, 2009, the Defendants being present, represented by John Arrascada for**
29 **LUIS HIDALGO, III and Dominic Gentile for LUIS HIDALGO, JR., the Plaintiff being**
30 **represented by DAVID ROGER, District Attorney, through MARC DIGIACOMO, Chief**
31 **Deputy District Attorney, and the Court having heard the arguments of counsel and good**
32 **cause appearing therefor,**

33 **///**


34 **///**

1 IT IS HEREBY ORDERED that the STATE'S MOTION TO CONSOLIDATE
2 C241394 INTO C212667, shall be, and it is Granted.

3 DATED this 16th day of January, 2009.

4
5 
6 DISTRICT JUDGE

7
8 DAVID ROGER
9 DISTRICT ATTORNEY
10 Nevada Bar #002781

11 
12 MARC DIGIACOMO
13 Chief Deputy District Attorney
14 Nevada Bar #006955
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ORIGINAL

FILED IN OPEN COURT
EDWARD A. FRIEDLAND
CLERK OF THE COURT

JAN 26 2009

BY: Denise Husted
DENISE HUSTED, DEPUTY

1 INFO
2 DAVID ROGER
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DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 -vs-)

12 LUIS ALONSO HIDALGO, III,)
13 #1849634)

14 Defendant.)
15)

16 STATE OF NEVADA)
17 COUNTY OF CLARK) ss.

Case No: C212667
Dept No: XXI

FOURTH AMENDED
INFORMATION

18 DAVID ROGER, District Attorney within and for the County of Clark, State of
19 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

20 That LUIS ALONSO HIDALGO, III, the Defendant above named, having committed
21 the crimes of CONSPIRACY TO COMMIT MURDER (Felony - NRS 200.010, 200.030,
22 193.165); MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010,
23 200.030, 193.165), and SOLICITATION TO COMMIT MURDER (Felony - NRS
24 199.500), on or between May 19, 2005, and May 24, 2005, within the County of Clark,
25 State of Nevada, contrary to the form, force and effect of statutes in such cases made and
26 provided, and against the peace and dignity of the State of Nevada,

27 //

28 //

1 COUNT 1 - CONSPIRACY TO COMMIT MURDER

2 Defendant LUIS ALONSO HIDALGO, III, along with co-conspirators KENNETH
3 JAY COUNTS, ANABEL ESPINDOLA, DEANGELO RESHAWN CARROLL and
4 JAYSON TAOIPU did, on or about May 19, 2005, then and there meet with each other
5 and/or Luis Hildago, Jr. and between themselves, and each of them with the other, wilfully,
6 unlawfully, and feloniously conspire and agree to commit a crime, to-wit: the murder of
7 TIMOTHY JAY HADLAND, and in furtherance of said conspiracy, the Defendants and/or
8 their co-conspirators, did commit the act as set forth in Count 2, said acts being incorporated
9 by this reference as though fully set forth herein.

10 COUNT 2 - MURDER WITH USE OF A DEADLY WEAPON

11 Defendant LUIS ALONSO HIDALGO, III, along with co-conspirators KENNETH
12 JAY COUNTS, ANABEL ESPINDOLA, DEANGELO RESHAWN CARROLL and
13 JAYSON TAOIPU did, on or about May 19, 2005, then and there wilfully, feloniously,
14 without authority of law, and with premeditation and deliberation, and with malice
15 aforethought, kill TIMOTHY JAY HADLAND, a human being, by shooting at and into the
16 body and/or head of said TIMOTHY JAY HADLAND, with a deadly weapon, to-wit: a
17 firearm, the Defendant being liable under one or more of the following theories of criminal
18 liability, to-wit: (1) by aiding and abetting the commission of the crime by, directly or
19 indirectly, counseling, encouraging, hiring, commanding, inducing or otherwise procuring
20 each other to commit the crime, to-wit: by DEFENDANT Luis Hidalgo, III and/or Luis
21 Hidalgo, Jr., procuring Defendant DEANGELO CARROLL to beat and/or kill TIMOTHY
22 JAY HADLAND; thereafter, Defendant DEANGELO CARROLL procuring KENNETH
23 COUNTS and/or JAYSON TAOIPU to shoot TIMOTHY HADLAND; thereafter, Defendant
24 DEANGELO CARROLL and KENNETH COUNTS and JAYSON TAOIPU did drive to the
25 location in the same vehicle; thereafter, Defendant DEANGELO CARROLL calling victim
26 TIMOTHY JAY HADLAND to the scene; thereafter, by KENNETH COUNTS shooting
27 TIMOTHY JAY HADLAND; and/or (2) by conspiring to commit the crime of battery
28 and/or battery with use of a deadly weapon and/or battery resulting in substantial bodily

1 harm and/or to kill TIMOTHY JAY HADLAND whereby each and every co-conspirator is
2 responsible for not only the specific crime intended, but also for the natural and foreseeable
3 general intent crimes of each and every co-conspirator during the course and in furtherance
4 of the conspiracy.

5 COUNT 3 – SOLICITATION TO COMMIT MURDER

6 Defendant LUIS ALONSO HIDALGO, III did, on or between May 23, 2005, and
7 May 24, 2005, then and there willfully, unlawfully, and feloniously counsel, hire, command
8 or other solicit another, to-wit: DEANGELO CARROLL, to commit the murder of
9 JAYSON TAOIPU; the defendant being liable under one or more theories of criminal
10 liability, to-wit: (1) by directly or indirectly committing the acts constituting the offense;
11 and/or (2) by aiding and abetting the commission of the crime by, directly or indirectly,
12 counseling, encouraging, hiring, commanding, inducing or otherwise procuring ANABEL
13 ESPINDOLA to commit the crime.

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1 COUNT 4 – SOLICITATION TO COMMIT MURDER

2 Defendant LUIS ALONSO HIDALGO, III did, on or between May 23, 2005, and
3 May 24, 2005, then and there willfully, unlawfully, and feloniously counsel, hire, command
4 or other solicit another to-wit: DEANGELO CARROLL, to commit the murder of
5 RONTAE ZONE; the defendant being liable under one or more theories of criminal liability,
6 to-wit: (1) by directly or indirectly committing the acts constituting the offense; and/or (2) by
7 aiding and abetting the commission of the crime by, directly or indirectly, counseling,
8 encouraging, hiring, commanding, inducing or otherwise procuring ANABEL ESPINDOLA
9 to commit the crime.

10
11
12 BY


13 MARC DIGIACOMO
14 CHIEF DEPUTY DISTRICT ATTORNEY
15 Nevada Bar #006955
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27 DA#05FB0052A/dd
28 LVMPD EV#0505193516
CONSP MURDER;MWDW - F
(TK7)

ORIGINAL
DISTRICT COURT
CLARK COUNTY, NEVADA

FILED
NOV 24 2009
Clerk of Court

STATE OF NEVADA,

Plaintiff,

vs.

LUIS ALONSO HIDALGO, aka
LUIS ALONSO HIDALGO, III, and
LUIS ALONSO HIDALGO, JR.,

Defendants.

CASE NO: C212667/C241394
DEPT NO: XXI

Transcript of
Proceedings

C212667

BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 9

FRIDAY, FEBRUARY 6, 2009

APPEARANCES:

FOR THE STATE:

MARC DiGIACOMO, ESQ.
Chief Deputy District Attorney
GIANCARLO PESCI, ESQ.
Deputy District Attorney

FOR LUIS ALONSO HIDALGO, JR.:

DOMINIC P. GENTILE, ESQ.
PAOLA M. ARMENI, ESQ.

FOR LUIS ALONSO HIDALGO, III:

JOHN L. ARRASCADA, ESQ.
CHRISTOPHER ADAMS, ESQ.

RECORDED BY: JANIE OLSEN, COURT RECORDER

TRANSCRIBED BY: KARReporting and Transcription Services

KARReporting & Transcription Services

RECEIVED

NOV 24 2009

Volume 2-400

I N D E X

WITNESSES FOR THE STATE:

ANABEL ESPINDOLA

Direct Examination By Mr. Digiacommo 4

Cross-Examination By Mr. Gentile 167

E X H I B I T S

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220 and 221 Card and Letter 160

DEFENDANT HIDALGO JR'S EXHIBITS ADMITTED:

B Blueprint of Simone's Auto Plaza 167

1 LAS VEGAS, NEVADA, FRIDAY, FEBRUARY 6, 2009, 9:38 A.M.

2 P R O C E E D I N G S

3 (In the presence of the jury.)

4 THE COURT: All right. Court is now in session.

5 The record will reflect the presence of the State through the
6 deputy district attorneys, the presence of the defendants and
7 their counsel, the officers of the Court and the members of
8 the jury.

9 Before we swear in the witness, ladies and
10 gentlemen, I know some of you asked my marshal if we could
11 work late tonight. I know there's frustration that we're not
12 getting a lot done each day. We cannot stay past about
13 1:00 o'clock today. However, what I am doing is for Monday
14 and Tuesday of next week, I'm trying to find another judge to
15 hear my calendars so we can start at 9:00 a.m., and if
16 everyone's available, we will work until 7:00 p.m. Monday and
17 Tuesday.

18 So if anyone has conflict with that, you're directed
19 to inform my marshal at the break. That's what I'm trying to
20 do, because I understand for people who take off, if we only
21 get three hours in, it's not a very productive day. So that's
22 my plan and hopefully that will work out.

23 And having said that, the State has called as their
24 next witness...

25 MR. DIGIACOMO: Anabel Espindola.

KARReporting & Transcription Services

1 THE COURT: All right. Ms. Espindola, I need you to
2 stand up and face this lady right here who will be
3 administering the oath to you.

4 ANABEL ESPINDOLA, STATE'S WITNESS, SWORN

5 THE CLERK: Please be seated and please state and
6 spell your name.

7 THE WITNESS: Anabel Espindola, A-n-a-b-e-l,
8 E-s-p-i-n-d-o-l-a.

9 THE CLERK: Thank you.

10 THE COURT: All right. Thank you.

11 DIRECT EXAMINATION

12 BY MR. DIGIACOMO:

13 Q Good morning, Ms. Espindola.

14 A Good morning.

15 Q What I need you to do is roll up right to that
16 microphone because I know you have a soft voice and not
17 everybody's going to hear you at all times, okay.

18 A Yes, sir.

19 Q I'm going to ask you to speak up when you're
20 talking, okay?

21 A Yes.

22 Q All right. You said your name is Anabel
23 Espindola, correct?

24 A Correct.

25 Q Okay. Can you tell the ladies and gentlemen of

1 the jury where you've been living for the better part of the
2 last four years.

3 A Clark County Detention Center.

4 Q And you're hear to testify about the events
5 that put you in that place?

6 A Correct.

7 Q All right. I want to talk to you a little bit
8 about your life before May 19th of 2005. Let's start with
9 the -- when you turned 18, where were you living?

10 A San Fran -- the bay area, California.

11 Q Bay area, California?

12 A Mm-hmm.

13 Q Is that a yes?

14 A Yes.

15 Q Okay. And what were you doing for a living?
16 Were you working?

17 A Yes, I was.

18 Q What were you doing?

19 A I worked for Mr. Hidalgo.

20 Q All right. How long prior to you turning 18
21 did you start working for Mr. Hidalgo?

22 A I was -- about six months after I turned 18.

23 Q Okay. So about six months after you turned 18,
24 you started working for Mr. Hidalgo?

25 A Yes.

1 Q And when we use the term Mr. Hidalgo, how did
2 you refer to Mr. Hidalgo?

3 A As Louie.

4 Q Louie?

5 A Mm-hmm, yes.

6 Q Is that a yes?

7 A Yes.

8 Q And is Louie here in court today?

9 A Yes, he is.

10 Q Can you point to him and describe something
11 he's wearing?

12 A He's wearing a black jacket.

13 Q So when you use the term Louie --

14 MR. GENTILE: May the record reflect that
15 Mr. Hidalgo stood for identification.

16 THE COURT: It will. Thank you.

17 MR. GENTILE: Thank you.

18 BY MR. DIGIACOMO:

19 Q And when you use the term Louie, you're
20 referring to Mr. Hidalgo, I guess, Jr.?

21 A Yes.

22 Q And had you ever heard other people refer to
23 him as something else?

24 A Yes.

25 Q What was that?

1 A Mr. H.
2 Q So he's Mr. H?
3 A Yes.
4 Q Okay. When you're working for Mr. H, what kind
5 of business was it?
6 A Auto shop, automotive repair.
7 Q And what were you doing for him?
8 A I was the secretary for him when I worked in
9 California.
10 Q And how long did you work for him in
11 California?
12 A Up until we moved to Las Vegas.
13 Q And when was that approximately?
14 A The beginning of 1999.
15 Q The beginning of 1999?
16 A Correct.
17 Q And I apologize for asking you your age, but
18 how old were you in 1999?
19 A I was 19 -- no, I'm sorry. I was --
20 Q I guess I could do this easier --
21 A Like 27, I'm sorry.
22 Q I apologize. So you're 36 today?
23 A Correct.
24 Q Okay. So you worked for Mr. H for eight years
25 approximately while you're in California, some of that time?

1 A Yes.

2 Q During that time period, were you solely an
3 employee of Mr. H?

4 A No.

5 Q How long after you started working for Mr. H
6 did your relationship with him change?

7 A I -- it was immediate.

8 Q Immediate?

9 A Mm-hmm, yes.

10 Q So you were with Mr. H from the time you were
11 18 kind of forward?

12 A Yes.

13 Q And how would you describe the relationship
14 that you had with Mr. H?

15 A I was his girlfriend.

16 Q Did you know about what his family life --
17 well, what -- do you know what his marital status was at the
18 time?

19 A Yes.

20 Q What was that?

21 A He was married. He was currently married.

22 Q Up until -- well, even after your arrest, but
23 at least up until your arrest in May of 2005, were you still
24 his girlfriend?

25 A Yes.

1 Q At any point during that time period, did you
2 physically live with Mr. H?

3 A No.

4 Q So you maintained your own residence and he
5 maintained his?

6 A Yes.

7 Q At some point in time did you learn about
8 Mr. H's children?

9 A Yes.

10 Q Okay. Let's talk about -- how many children
11 does Mr. H have?

12 A Three.

13 Q And let's -- can you name the oldest one for
14 me?

15 A Angelina Hidalgo.

16 Q Angelina?

17 A Yes.

18 Q Okay. And who's the second oldest?

19 A Luis Hidalgo, III.

20 Q And do you see Luis Hidalgo, III here in court
21 today?

22 A Yes, I do.

23 Q Is he the guy standing up?

24 A Yes.

25 MR. DIGIACOMO: May the record reflect the

1 identification of Luis Hidalgo, III.

2 THE COURT: It will.

3 BY MR. DIGIACOMO:

4 Q When you would refer to Luis Hidalgo, III, how
5 would you refer to him?

6 A As Luis or Little Luis.

7 Q Luis or Little Luis?

8 A Yes.

9 Q Have other people used the term Little Lou
10 before?

11 A Yes.

12 Q All right. What about -- is there a Spanish
13 term that you would sometimes use for him?

14 A Yes.

15 Q What is that?

16 A Luisito.

17 Q Luisito?

18 A Yes.

19 Q And then after Little -- after Little Lou or
20 Little Luis, who's the next child in Mr. --

21 A Rosa Hidalgo.

22 Q Rosa Hidalgo?

23 A Yes.

24 Q Can you tell me in -- maybe in relation to --
25 or maybe you know. Do you know the exact age of Little Lou?

1 A I think 27.

2 Q Okay. So he's younger than you?

3 A Yes.

4 Q Okay. You said that in 1999 you moved to Las

5 Vegas, correct?

6 A Yes.

7 Q And you indicated that Mr. H moved to Las

8 Vegas?

9 A Yes.

10 Q Did Little Lou and the rest of the family come

11 as well?

12 A Yes.

13 Q Okay. What -- what prompted the move to Las

14 Vegas?

15 A Louie wanted to -- we used to come and visit

16 quite often and he wanted to move.

17 Q And what was the plans for when you moved here?

18 What was going to happen?

19 A To open up another body shop.

20 Q How was the -- how was the body shop here --

21 and that's Simone's we've heard testimony about?

22 A Yes.

23 Q How was that financed?

24 A Through a friend of his, Dr. Simon Stertzner.

25 Q Who is Dr. Simon Stertzner? Do you know him at

1 all?

2 A Yes.

3 Q Who is he?

4 A He is a personal friend of Mr. Hidalgo's.

5 Q Now, in the time that you were with
6 Mr. Hidalgo, did he ever talk to you about his history?

7 A Yes.

8 Q Okay. Let's talk a little bit about -- did you
9 have discussions with him about the police and his involvement
10 with the police?

11 A Yes.

12 Q What did he tell you?

13 A That he was a retired police officer from the
14 San Bruno Police Department. He went to work for the
15 sheriff's department for a short period of time. His father
16 needed help at the body shop so he retired from the police
17 force and went to work at the body shop.

18 Q And his father, what did you call -- what was
19 his father's name?

20 A Luis Hidalgo, Sr.

21 Q And what did you call him?

22 A Pops.

23 Q Pops?

24 A Yes.

25 Q And has Pops passed on at this point?

1 A Yes.

2 Q And approximately when did he pass away?

3 A I believe it was two years ago.

4 Q Two years -- it's 2009. So 2007, 2006,
5 somewhere in that range?

6 A Yes.

7 Q Okay. Once you moved here -- let me ask you
8 this: Did you know about the finances of Mr. Hidalgo when you
9 moved -- when you moved here?

10 A Yes.

11 MR. ARRASCADA: Your Honor, I would just ask for
12 clarity of the record that we -- perhaps Mr. Hidalgo, Jr.,
13 Mr. Hidalgo, III, that we --

14 THE COURT: All right.

15 MR. ARRASCADA: -- put some qualifiers because we do
16 have the same names.

17 MR. DIGIACOMO: I'll call him Mr. H. How's that?

18 THE COURT: All right. And Mr. H refers to Hidalgo,
19 Jr. .

20 MR. DIGIACOMO: Correct.

21 BY MR. DIGIACOMO:

22 Q Mr. H -- were you aware -- well, let me ask you
23 this: Mr. -- Dr. Stertzner -- and do you know what? I never
24 got you to answer that question. Who is Dr. Stertzner?

25 A He's a doctor -- he's a heart surgeon. He

1 works at Stanford now or -- as far as I know.

2 Q And at some point, him and Mr. Hidalgo or Mr. H
3 got -- formed a relationship?

4 A Yes.

5 Q And when Mr. Hidalgo moved from San Bruno -- or
6 Mr. H moved from San Bruno to Las Vegas, you said something
7 about Mr. Stertzner financing Simone's.

8 A Correct.

9 Q How did that work?

10 MR. GENTILE: Foundation. Objection. Foundation.

11 THE COURT: All right. Lay a foundation.

12 BY MR. DIGIACOMO:

13 Q Did Mr. H tell you how the financial
14 transaction related to Simone's worked?

15 A All I know is that --

16 MR. GENTILE: Objection.

17 BY MR. DIGIACOMO:

18 Q Let me ask you this --

19 MR. GENTILE: Foundation.

20 THE COURT: Well --

21 BY MR. DIGIACOMO:

22 Q -- did Mr. H ever describe to you how the
23 financial transaction for Simone's worked? Just answer yes or
24 no.

25 A No.

1 Q Okay. You never talked to him about it?
2 A No.
3 Q Okay. What capacity did you have at Simone's?
4 A I was the business administrator.
5 Q The business administrator?
6 A Yes.
7 Q Okay. And what does that mean you did at
8 Simone's?

9 A I ran the body shop. I took care of the
10 vehicles that were coming in, the paperwork, all billing. I
11 dealt with the customers, the insurance companies, the
12 employees.

13 Q When you left San -- or when there was a body
14 shop at San Bruno, did you have a similar job?

15 A Yes.

16 Q Okay. Were you involved or did you -- based
17 upon your financial involvement with the San Bruno shop, did
18 you know about how much money the San Bruno shop had or -- let
19 me rephrase this. Did they sell the San Bruno shop?

20 A Yes.

21 Q Okay. And ultimately their family moved here
22 and there was nothing left at San Bruno financially related to
23 the auto shop?

24 A Correct.

25 Q Okay. Were you aware of how much money the San

1 Bruno auto shop sold for?

2 MR. GENTILE: Objection. Foundation.

3 THE COURT: All right.

4 THE WITNESS: I don't remember.

5 MR. GENTILE: I'll withdraw the objection.

6 THE COURT: She doesn't know anyway, so...

7 BY MR. DIGIACOMO:

8 Q You don't remember?

9 A No.

10 Q Okay. When you got to Simone's -- well, let me
11 ask you this: Was it a dirt lot?

12 A No.

13 Q Was there already a building there?

14 A Yes.

15 Q Okay. You move into the building, you're doing
16 the billing, correct?

17 A Yes.

18 Q All right. Let's talk about the money coming
19 into Simone's. Well, let me ask it this way: Was Simone's
20 making money?

21 A No.

22 MR. GENTILE: Objection. Foundation.

23 THE COURT: All right. Lay a foundation as to how
24 she would know and then ask the question.

25 BY MR. DIGIACOMO:

1 Q Okay. Did you not testify that you -- you were
2 doing the books for Simone's?

3 A I did the books for Simone's.

4 Q Okay. You did all the -- you took -- you paid
5 the bills out and you found out the money coming in, correct?

6 A Yes.

7 Q All right. Was Simone's making money?

8 A No.

9 MR. GENTILE: Again, objection. Simone's was in
10 business for six years.

11 THE COURT: All right. I think the basis of the
12 objection is during what period of time are you inquiring
13 about as to whether or not Simone's was making money.

14 Is that your objection, Mr. Gentile?

15 MR. GENTILE: That's the objection.

16 THE COURT: All right. Mr. DiGiacomo, if you will
17 lay a foundation as to time frame, whether you're talking
18 about the entire six-year period or year by year or whatever.
19 Okay.

20 MR. DIGIACOMO: I could do it that way.

21 BY MR. DIGIACOMO:

22 Q Let's talk about it this way: When Simone's
23 first opened and it's the first couple of months, is Simone's
24 making any money?

25 A No.

1 Q At any point in time does it get to a point
2 where it's clearing a profit?

3 A It progressively got better.

4 Q Progressively got better?

5 A Yes.

6 Q At some point -- let's talk all the way up to
7 May of 2005 -- was it making enough money to sustain itself?

8 A We were sustaining ourselves. We were paying
9 all our bills.

10 Q You were paying your bills?

11 A Yes.

12 Q Okay. Was there any -- how much money was
13 there left over after paying all the bills?

14 A None.

15 Q Okay. Were you -- were you at all involved in
16 Mr. H's finances or was it just Simone's?

17 A I deposited his checks and wrote out all his
18 billing.

19 Q Okay. Did you have access to his bank
20 accounts?

21 A Yes.

22 Q Okay. And at some point in time did there come
23 a point in time in the years that you were living in Las Vegas
24 you learned about something happening up at the Palomino Club?

25 A Yes.

1 Q Okay. How did you initially find out that
2 something -- that somehow Mr. H or somebody else was going to
3 be involved in the Palomino Club?

4 A Mr. H was looking to start another business.

5 Q And who did -- what happened -- did he contact
6 anybody?

7 A He contacted Alex Gurde (phonetic) and they
8 were looking into a different types of business.

9 Q Okay. And who's Alex Gurde?

10 A He's a realtor.

11 Q What's -- is -- did Alex Gurde grow up an
12 American -- in America?

13 A Not as far as I know. He's Romanian.

14 Q Did he have an accent?

15 A Yes.

16 Q Okay. You said he contacted Alex but for a
17 different type of business. Did he ever wind up getting
18 involved in some other type of business?

19 A Yes.

20 Q What was it?

21 A A strip club.

22 Q And what strip club?

23 A The Palomino Club.

24 Q Okay. And who did he -- well, do you know who
25 he wound up getting into the strip club business with?

1 MR. GENTILE: Objection. Foundation. Also, add a
2 time predicate. I mean --

3 THE COURT: All right. Lay a bit of a foundation.
4 BY MR. DIGIACOMO:

5 Q What are we talking about? When does Mr. H
6 first get involved with the Palomino Club?

7 A 2000, 2001. I don't remember the exact year.

8 Q Okay. When Mr. H first gets involved in the
9 Palomino Club, is he the owner?

10 A No.

11 Q Okay. So at the point that Mr. H goes to the
12 Palomino Club, who's the owner?

13 A Dr. Stertzner.

14 Q Dr. Stertzner?

15 A Yes.

16 Q And did you learn through the conversations
17 through Mr. H about how Dr. Stertzner came into possession of
18 the club?

19 A Yes.

20 Q How was that?

21 A Dr. Stertzner purchased the club outright from
22 the Perrys.

23 Q Okay. And did you learn from Mr. H how much he
24 had paid for it?

25 A Yes.

1 Q How much?

2 A 13 million.

3 Q \$13 million?

4 A Yes.

5 Q And then you said Mr. H became involved. What
6 was his position at the Palomino Club at that point?

7 A He was a general manager.

8 Q Okay. And did you have anything to do with the
9 Palomino Club at that point?

10 A Yes.

11 Q What was that?

12 A I did all the books for the Palomino.

13 Q You did the books for the Palomino Club?

14 A Yes.

15 Q Even when Dr. Stertzner owned it?

16 A Yes.

17 Q Okay. How much was Mr. H getting paid to be
18 the general manager? Do you recall?

19 A I believe it was 2,500 a week. I'm not quite
20 sure. I know it was between 2,000 to 2,500.

21 Q Okay. Somewhere between 2,000 and 2,500 a
22 week, so -- okay. At some point in time, is there discussions
23 that you've had with Mr. H related to him getting the title of
24 owner?

25 A Yes.

1 Q Can you describe that for the ladies and
2 gentlemen of the jury?

3 MR. GENTILE: Can we have a time predicate?

4 BY MR. DIGIACOMO:

5 Q All right. Approximately when is that?

6 A Maybe a year after, a year and a half after
7 Dr. Stertzer had owned it.

8 Q So a year, year and a half. And let me ask you
9 this -- let's go backwards a little bit. From the time that
10 you're arrested, how long had Mr. H been the owner of the
11 Palomino Club?

12 A Maybe a year --

13 Q Okay.

14 A -- or so.

15 Q And what were -- what did Mr. H tell you about
16 the arrangements for the Palomino Club to pass from
17 Dr. Stertzer to Mr. Hidalgo or Mr. H?

18 MR. GENTILE: We have a -- Your Honor, again,
19 foundation. Was anybody present? That's appropriate
20 foundation. If he's going to talk about people talking about
21 things, there should be a time, place, and who was there.

22 THE COURT: Well, he --

23 MR. DIGIACOMO: I was asking -- I'll rephrase.

24 THE COURT: I mean, he can do it that way or -- I
25 mean, if --

1 MR. DIGIACOMO: And he's free to ask on cross
2 every --

3 THE COURT: I agree with you in terms of when the
4 conversation occurred, but I don't think Mr. DiGiacomo has to
5 find out everybody that was there as long as he indicates who
6 the speaker was and that she was the listener.

7 So go on, Mr. DiGiacomo.

8 MR. DIGIACOMO: Thank you, Judge.

9 BY MR. DIGIACOMO:

10 Q What did Mr. H tell you about the arrangement
11 between the passing of the club from Dr. Stertzner to Mr. H?

12 MR. GENTILE: Same objection. When?

13 THE COURT: All right. When did you have a
14 conversation with Mr. H about the passing of the Palominc Club
15 from Dr. Stertzner to Mr. H?

16 THE WITNESS: We spoke at the body shop. He
17 expressed that Dr. Stertzner no longer wanted the club.

18 THE COURT: And about when was this? When did he
19 start talking about that?

20 THE WITNESS: Like I said, maybe about a year after
21 Dr. Stertzner had owned it.

22 THE COURT: All right. Thank you.

23 Mr. DiGiacomo.

24 BY MR. DIGIACOMO:

25 Q So he told you that Dr. Stertzner no longer

1 wanted to own the club?

2 A Correct.

3 Q Did he tell you why Dr. Stertzler didn't -- no
4 longer wanted to own the club?

5 A Yes.

6 MR. GENTILE: Double hearsay. Objection.

7 THE COURT: Overruled.

8 BY MR. DIGIACOMO:

9 Q And what did Mr. H tell you was the reason why
10 Dr. Stertzler didn't want to own the club?

11 A Publicity. Dr. Stertzler didn't want any.

12 Q Okay. And did Mr. H tell you what the
13 arrangement was going to be with him and Dr. Stertzler?

14 A Yes.

15 Q And describe that for the ladies and gentlemen
16 of the jury.

17 A Dr. Stertzler was going to go ahead and do the
18 note for 15 -- 13 million, and on a weekly basis the club was
19 scheduled to pay the loan back.

20 Q On a weekly basis?

21 A On a weekly basis.

22 Q And what was the payment on a weekly basis?

23 A It was scheduled to be 10,000 a week.

24 Q So \$10,000 a week would be paid to Dr.
25 Stertzler?

1 A Correct.

2 Q And how did this work? Did you do the books
3 for the Palomino?

4 A Yes.

5 Q Okay. So explain to the ladies and gentlemen
6 how, let's say, at the end of the week when you've got to make
7 the payment, explain to them how the finances would work.

8 A I would make the deposits to the bank. I would
9 deposit all the money into the Bermuda Sands account. From
10 there, I would transfer the money into the Palomino and I
11 would transfer \$10,000, or if the club wasn't doing as well,
12 whatever was available to Dr. Stertzler which would be the
13 Windrock account.

14 Q Okay.

15 A That was Dr. Stertzler's account.

16 Q Let's back up a little bit because you talked
17 about a bunch of things. You said Bermuda Sands. What's the
18 Bermuda Sands account?

19 A It was a holding account for the Palomino,
20 Satin Saddle and Lacy's.

21 Q All right. And so you said that the money that
22 was made from those properties would be placed into that
23 account?

24 A Correct.

25 Q Okay. Then you talked about some earnings

1 being transferred to other accounts, and I'm sorry, I missed
2 those.

3 A It was to another account which was Windrock
4 Enterprises.

5 Q What's Windrock Enterprises?

6 A It was Dr. Stertzner's account.

7 Q Okay. And so you take the money from one, move
8 it to the other --

9 A Yes.

10 Q -- to pay Dr. Stertzner?

11 A Yes.

12 Q Now, you just mentioned the Satin Saddle and
13 Lacy's. What are you talking about?

14 A It was part of the purchase. They are two
15 other clubs.

16 Q And where are they located?

17 A Lacy's is within the Palomino Club.

18 Q Same building?

19 A Same building.

20 Q Okay.

21 A It's inside the same building.

22 Q And what's the Satin Saddle?

23 A Satin Saddle is a topless club and it's like
24 two doors down. Mm-hmm.

25 Q Is that a yes?

1 A Yes.

2 Q And what about their addresses? Were they the
3 same or different addresses?

4 A Different addresses.

5 Q Okay. And did you know anything about the
6 property that those two clubs sat on?

7 A Yes.

8 Q Okay. How did you know about the property that
9 those two clubs sat on?

10 A It all -- when Dr. Stertzger had purchased the
11 club, the whole block went with it.

12 Q So the whole block was this area that has both
13 Satin Saddle, Lacy's and Palomino on it?

14 A Correct. It also has Easy Pawn and a loan
15 shop.

16 Q Okay. Now, the Easy Pawn and the loan shop,
17 were they run by Dr. Stertzger?

18 A No.

19 Q Okay. They were leased out?

20 A Yes.

21 Q And did you have anything to do with the money
22 that came out of those or what happened to the money that came
23 out to those?

24 A They would pay their monthly rent. It would
25 be -- the check would be made out to Windrock. It would be

1 made to Simone's. Simone's Autoplaza was the corporate office
2 for the Palomino Club, and I would make the deposits.

3 Q I guess my question is: The money that's
4 coming out of this pawnshop and the other business that's
5 there, is that part of the 10,000 that's got to be paid from
6 the Palomino and Lacy's and Satin Saddle?

7 A No.

8 Q You mentioned something to the effect of every
9 month the 10,000 wasn't getting put into Dr. Stertzter's
10 account -- or every week. Sorry.

11 MR. GENTILE: Objection. Is that a question?

12 MR. DIGIACOMO: I was just directing her back to it.

13 THE COURT: He was -- I think he was setting up a
14 question.

15 MR. DIGIACOMO: Thank you.

16 BY MR. DIGIACOMO:

17 Q Did you -- all right. I'll make it a question.
18 Did you mention that not every week \$10,000 was going into
19 Dr. Stertzter's account?

20 A Yes.

21 Q Okay. Well, describe that. What did you mean
22 by that?

23 A If the club was doing poorly that week, I had
24 already spoken to Dr. Stertzter and less money would be
25 deposited. When the club was doing better, I would make up

1 the difference.

2 Q Okay. Let's talk about the time period gumming
3 up to May of 2005. Was the club ever -- almost always able to
4 cover the \$10,000 a week that was being paid out to
5 Dr. Stertzner?

6 A No.

7 Q Were you able to make up all of the money that
8 you were short for one week to cover Dr. Stertzner?

9 A No.

10 Q I didn't ask this, but other than the \$10,000 a
11 week that was being put into Dr. Stertzner's account, was there
12 any other monies paid for the Palomino Club?

13 A I don't understand the question.

14 Q Did Mr. H have to give Dr. Stertzner any
15 principle or was he just paying the \$10,000 a week?

16 A Just the 10,000 a week.

17 Q And once he took over -- well, let me ask you
18 this: Is it -- at what point does he become owner on the
19 documents that the jury's now seen? What date does that
20 occur?

21 MR. GENTILE: Objection. What documents?

22 THE COURT: All right. What exhibits are you
23 referring to?

24 MR. DIGIACOMO: The phone list that says Mr. H,
25 owner.

1 THE COURT: Okay. So -- and that's exhibit number?
2 MR. DIGIACOMO: I don't know off the top of my head.
3 THE COURT: All right. You're talking about the
4 phone list that was highlighted and testified to by the --
5 MR. DIGIACOMO: No. It was the phone list that was
6 hanging on the wall --
7 THE COURT: All right.
8 MR. DIGIACOMO: -- in the Palomino.
9 THE COURT: That was recovered in the search warrant
10 by Sergeant McGrath. So we're clear what you're talking
11 about.
12 MR. GENTILE: I object to the form of the question.
13 I mean, ownership documents referred to --
14 THE COURT: Right. That would refer to --
15 MR. GENTILE: -- deeds and mortgages and --
16 THE COURT: -- something filed with the business
17 licensing --
18 MR. GENTILE: Right.
19 THE COURT: -- and whatnot. So if it's clear that
20 that's what you're referencing.
21 MR. DIGIACOMO: Okay.
22 THE COURT: And, Deniece, why don't you find that.
23 BY MR. DIGIACOMO:
24 Q Were you involved at all in records having to
25 be filed that Dr. Stertzner was no longer the owner and

1 somebody else was the owner?

2 A I took care of all the paperwork.

3 Q All of the paperwork?

4 A Yes. I would hand it to the accountant.

5 Q Okay. And does title pass from one company to
6 the another or do you know?

7 MR. GENTILE: Objection. Foundation.

8 MR. DIGIACOMO: She said she handled all the
9 paperwork. I'm asking her whether or not there was paperwork
10 filed passing title from the Windrock account to another --

The remainder of this transcript has been omitted.

12

ORIGINAL
DISTRICT COURT
CLARK COUNTY, NEVADA

FILED
NOV 24 2009

Shirley L. Williams
CLERK OF COURT

STATE OF NEVADA,

Plaintiff,

vs.

LUIS ALONSO HIDALGO, aka

LUIS ALONSO HIDALGO, III, and

LUIS ALONSO HIDALGO, JR.,

Defendants.

CASE NO: C212667/C241394

DEPT NO: XXI

**Transcript of
Proceedings**

BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE

**JURY TRIAL - DAY 14
VERDICT**

MONDAY, FEBRUARY 17, 2009

APPEARANCES:

FOR THE STATE:

MARC DiGIACOMO, ESQ.
Chief Deputy District Attorney
GIANCARLO PESCI, ESQ.
Deputy District Attorney

FOR LUIS ALONSO HIDALGO, JR.:

DOMINIC P. GENTILE, ESQ.
PAOLA M. ARMENI, ESQ.

FOR LUIS ALONSO HIDALGO, III:

JOHN L. ARRASCADA, ESQ.
CHRISTOPHER ADAMS, ESQ.

RECORDED BY: JANIE OLSEN, COURT RECORDER

TRANSCRIBED BY: KARReporting and Transcription Services

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CLERK OF THE COURT

Volume 2 - 431

1 LAS VEGAS, NEVADA, MONDAY, FEBRUARY 17, 2009, 3:03 P.M.

2 P R O C E E D I N G S

3 (Outside the presence of the jury.)

4 THE COURT: All right. Is everyone here? Are we
5 all ready?

6 All right. You can go ahead and bring the jury in.

7 THE MARSHAL: The jury is entering.

8 THE COURT: All right. Everyone can be seated.
9 Court is now back in session. The record will reflect the
10 presence of the defendant, Mr. Hidalgo Jr., along with his
11 attorneys, Ms. Armeni and Mr. Gentile; the presence of the
12 defendant, Mr. Hidalgo, III, along with his attorneys
13 Mr. Adams and Mr. Arrascada; the presence of the State through
14 the Deputy District Attorneys, Mr. DiGiacomo and Mr. Pesci;
15 the officers of the Court and the members of the jury.

16 Who's the foreperson of the jury? All right. Juror
17 No. 10, Mr. Wallace, has the jury reach a verdict in this
18 case?

19 JUROR NO. 10: We have.

20 THE COURT: All right. Will you please hand the
21 forms of verdict to our bailiff.

22 All right. The clerk will now read the verdict out
23 loud and inquire if this is the verdict of the jury.

24 THE CLERK: Yes, Your Honor.

25 The State of Nevada, plaintiff, versus Luis Hidalgo,

KARReporting & Transcription Services

1 III, defendant. Case No. C212667, Department No. XXI.

2 Verdict.

3 We, the jury in the above-entitled case, find the
4 defendant Luis Hidalgo, III, as follows:

5 Count 1, conspiracy to commit murder. Guilty of
6 conspiracy to commit a battery with a deadly weapon or battery
7 resulting in substantial bodily harm.

8 Count 2, murder with use of a deadly weapon. Guilty
9 of second-degree murder with use of a deadly weapon.

10 Count 3, solicitation to commit murder. Guilty of
11 solicitation to commit murder.

12 Count 4, solicitation to commit murder. Guilty of
13 solicitation to commit murder.

14 Dated the 17th day of February 2009, juror,
15 foreperson.

16 The State of Nevada, plaintiff, versus Luis Hidalgo
17 Jr, defendant. Case No. C241394, Department XXI. Verdict.

18 We, the jury in the above-entitled case, find the
19 defendant Luis Hidalgo Jr. as follows:

20 Count 1, conspiracy to commit murder. Guilty of
21 conspiracy to commit a battery with a deadly weapon or battery
22 resulting in substantial bodily harm.

23 Count 2, murder with use of a deadly weapon. Guilty
24 of second-degree murder with use of a deadly weapon.

25 Dated this 17th day of February 2009, juror,

KARReporting & Transcription Services

1 foreperson.

2 Ladies and gentlemen of the jury, is this your
3 verdict as read, so say you one, so say you all?

4 (Jurors responded in the affirmative)

5 THE COURT: All right. Before the verdicts are
6 recorded in the minutes of the Court, does either side desire
7 to have the jury polled?

8 MR. GENTILE: Your Honor, we do.

9 MR. ARRASCADA: Yes, Your Honor.

10 THE COURT: All right. Ms. Husted.

11 THE CLERK: Juror No. 1, is this your verdict as
12 read?

13 JUROR NO. 1: Yes.

14 THE CLERK: No. 2, is this your verdict as read?

15 JUROR NO. 2: Yes.

16 THE CLERK: No. 3, is this your verdict as read?

17 JUROR NO. 3: Yes.

18 THE CLERK: No. 4, is this your verdict as read?

19 JUROR NO. 4: Yes.

20 THE CLERK: No. 5, is this your verdict as read?

21 JUROR NO. 5: Yes.

22 THE CLERK: No. 6, is this your verdict as read?

23 JUROR NO. 6: Yes.

24 THE CLERK: No. 7, is this your verdict as read?

25 THE COURT: Seven was an alternate. It's now No. 8.

1 THE CLERK: That's right. I meant to say eight.

2 No. 8, is this your verdict as read?

3 JUROR NO. 8: Yes.

4 THE CLERK: No. 9, is this your verdict as read?

5 JUROR NO. 9: Yes.

6 THE CLERK: No. 10, is this your verdict as read?

7 JUROR NO. 10: Yes.

8 THE CLERK: No. 12, is this your verdict as read?

9 JUROR NO. 12: Yes?

10 THE CLERK: No. 13, is this your verdict as read?

11 JUROR NO. 13: Yes.

12 THE CLERK: And No. 14, is this your verdict as

13 read?

14 JUROR NO. 14: Yes.

15 THE CLERK: Thank you.

16 THE COURT: All right. The Court will now record

17 the verdicts in the minutes of the court.

18 Ladies and gentlemen, this concludes your service as

19 jurors. The prohibition on speaking about the case is now

20 lifted. You're free to speak about the case with each other

21 or anyone else you choose.

22 The attorneys often like to speak with members of

23 the jury to get your feedback and comments. If these

24 attorneys wish to speak with you and you're willing to speak

25 with them, that's fine. Obviously, if you don't wish to speak

1 with them, that -- they'll respect that as well.

2 I want to thank you for your service as jurors.
3 This was obviously a much longer trial than what had been
4 initially promised to you. I was very impressed,
5 notwithstanding that, with your attentiveness as evidenced by
6 the many questions throughout the course to have trial.

7 I want to thank you for your willingness to serve
8 and your attentiveness and participation. In a moment I'm
9 going to have our bailiff escort you back into the jury room,
10 and we will call down and make arrangements to make sure your
11 vouchers are available.

12 So take them through the back.

13 THE MARSHAL: Yes, ma'am.

14 THE COURT: All right.

15 (Jury recessed at 3:09 p.m.)

16 THE COURT: All right. The matter's referred to the
17 Department of Parole and Probation for presentence
18 investigation.

19 MR. DIGIACOMO: May we be heard as to Mr. Hidalgo,
20 Judge -- Jr.

21 THE COURT: Are you seeking remand?

22 MR. DIGIACOMO: I am, Judge. He's facing now 20 to
23 life, and he has substantial assets, Judge. At this point we
24 ask for him to be remanded, as well as Luis Hidalgo, III, to
25 be remanded. I know that he has bail set, but I'd ask that he

1 be remanded without bail at this time.

2 MR. GENTILE: Your Honor, there's nothing about this
3 man to indicate that he's going to flee. He's been here a
4 long time.

5 THE COURT: I feel like based on the conviction I
6 have to remand him today. So he is remanded, held without
7 bond. Mr. Hidalgo, III, will also be held without bond,
8 pending sentencing. And your sentencing date is. . .

9 THE CLERK: May 5th and May 30th.

10 THE COURT: If anyone would like -- of the lawyers
11 would like to speak to the jury, typically our bailiff escorts
12 them to the third floor for them to pick up their vouchers, so
13 if you want to go down to the third floor, you'd be able to
14 speak with them down there.

15 MR. GENTILE: Thank you.

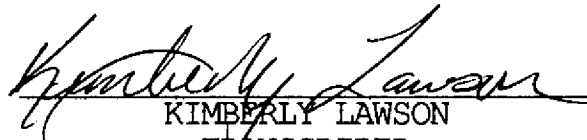
16 MR. DIGIACOMO: Thank you, Judge.

17 THE MARSHAL: Court is adjourned.

18 (Court adjourned at 3:10 p.m.)
19
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-oOo-

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.


KIMBERLY LAWSON
TRANSCRIBER

1 VER

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3 ORIGINAL

FILED IN OPEN COURT
EDWARD A. FRIEDLAND
CLERK OF THE COURT

FEB 17 2009

5 DISTRICT COURT

BY: Denise Husted 3:05pm

6 CLARK COUNTY, NEVADA DENISE HUSTED, DEPUTY

7 THE STATE OF NEVADA,)

8 Plaintiff,)

9 -vs-)

10 LUIS HIDALGO, III,)

11 Defendant.)

CASE NO: C212667

DEPT NO: XXI

12
13 VERDICT

14 We, the jury in the above entitled case, find the Defendant LUIS HIDALGO, III, as
15 follows:

16 COUNT 1 – CONSPIRACY TO COMMIT MURDER

17 (please check the appropriate box, select only one)

18 ☐ Guilty of Conspiracy To Commit Murder

19 ☒ Guilty of Conspiracy To Commit A Battery With A Deadly Weapon or
20 Battery Resulting In Substantial Bodily Harm

21 ☐ Guilty of Conspiracy To Commit A Battery

22 ☐ Not Guilty

1 We, the jury in the above entitled case, find the Defendant LUIS HIDALGO, III, as
2 follows:

3 **COUNT 2** – MURDER WITH USE OF A DEADLY WEAPON

4 *(please check the appropriate box, select only one)*

- 5 ☐ Guilty of First Degree Murder With Use of a Deadly Weapon
6 ☐ Guilty of First Degree Murder
7 ☒ Guilty of Second Degree Murder With Use of a Deadly Weapon
8 ☐ Guilty of Second Degree Murder
9 ☐ Guilty of Involuntary Manslaughter
10 ☐ Not Guilty

11
12 We, the jury in the above entitled case, find the Defendant LUIS HIDALGO, III, as
13 follows:

14 **COUNT 3** – SOLICITATION TO COMMIT MURDER

15 *(please check the appropriate box, select only one)*

- 16 ☒ Guilty of Solicitation To Commit Murder
17 ☐ Not Guilty

18
19 We, the jury in the above entitled case, find the Defendant LUIS HIDALGO, III, as
20 follows:

21 **COUNT 4** – SOLICITATION TO COMMIT MURDER

22 *(please check the appropriate box, select only one)*

- 23 ☒ Guilty of Solicitation To Commit Murder
24 ☐ Not Guilty

25
26 DATED this 17 day of February, 2009

27 
28 FOREPERSON

ORIGINAL

FILED

2009 FEB 18 P 5:07

E. Espindola
CLERK OF THE COURT

0001

CHRISTOPHER R. ORAM, ESQ.
Nevada State Bar #004349
520 S. Fourth Street, 2nd Floor
Las Vegas, Nevada 89101
(702) 384-5563

Attorney for Defendant
ANABEL ESPINDOLA

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ANABEL ESPINDOLA,

Defendant.

CASE NO. C212667
C241394
DEPT. NO. XXI
DOCKET NO.

C212667

MOTION FOR OWN RECOGNIZANCE RELEASE,
FOR HOUSE ARREST

COMES NOW the Defendant, ANABEL ESPINDOLA, by and through her attorney,
CHRISTOPHER R. ORAM, ESQ., and moves this Court for an Order releasing the Defendant on
her own recognizance release for house arrest.

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CHRISTOPHER R. ORAM
520 South Fourth Street, Second Floor
Las Vegas, Nevada 89101

M.C.

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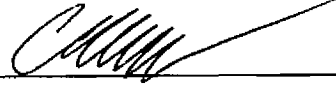
FEB 18 2009

CLERK OF THE COURT

1 This motion is made and based pleadings and papers on file herein, the affidavit of counsel
2 attached hereto, as well as any oral arguments of counsel adduced at the time of hearing.

3 DATED this 18 day of February, 2009.

4
5 Respectfully submitted


6
7 
8 CHRISTOPHER R. ORAM, ESQ.
9 Nevada Bar #004349
10 520 S. Fourth Street, 2nd Floor
11 Las Vegas, Nevada, 89101
12 Attorney for Defendant
13 ANABEL ESPINDOLA

14 **NOTICE OF MOTION**

15 PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing
16 **MOTION TO CONTINUE TRIAL SETTING** on for hearing before the above-entitled Court
17 on the 24 day of Feb, 2008, at 9:30 o'clock a.m. of said day, or as soon
18 thereafter as counsel can be heard in Department No V.

19 DATED this 18 day of February, 2009.

20 Respectfully submitted

21 
22 CHRISTOPHER R. ORAM, ESQ.
23 Nevada Bar #004349
24 520 S. Fourth Street, 2nd Floor
25 Las Vegas, Nevada, 89101
26 Attorney for Defendant
27 ANABEL ESPINDOLA
28

CHRISTOPHER R. ORAM
520 South Fourth Street, Second Floor
Las Vegas, Nevada 89101

POINTS AND AUTHORITIES

Ms. Espindola testified for the State in the instant case. The State and Ms. Espindola have entered into an Agreement to Testify. The State agreed, "[A]fter Anabel Espindola has testified subject to cross-examination, the State agrees to request her release from custody in jail to house arrest for her own protection." The undersigned has spoken with both prosecutors and both have agreed to Ms. Espindola's release on house arrest. Therefore, the undersigned places this Motion on the Court's calendar for the release of Ms. Espindola on House Arrest.

CHRISTOPHER R. ORAM
520 South Fourth Street, Second Floor
Las Vegas, Nevada 89101

AFFIDAVIT OF CHRISTOPHER R. ORAM, ESQ.
IN SUPPORT OF MOTION TO PLACE ON CALENDAR

STATE OF NEVADA)

)ss:

COUNTY OF CLARK)

CHRISTOPHER R. ORAM, ESQ., having been duly sworn, deposes and says:

1. Your Affiant is an attorney duly licensed to practice law in the State of Nevada.
2. Ms. Espindola testified for the State in the instant case.
3. Ms. Espindola testified for the State in the instant case. The State and Ms.

 Espindola have entered into an Agreement to Testify. The State agreed, "[A]fter Anabel Espindola has testified subject to cross-examination, the State agrees to request her release from custody in jail to house arrest for her own protection." The undersigned has spoken with both prosecutors and both have agreed to Ms. Espindola's release on house arrest. Therefore, the undersigned places this Motion on the Court's calendar for the release of Ms. Espindola on House Arrest.

4. That this motion is being made in good faith and not for purposes of delay.

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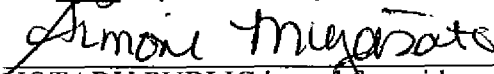
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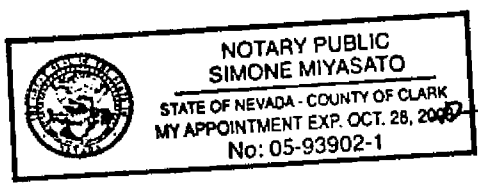
5. Further your affiant sayeth naught.

DATED this 18 day of February, 2009.


CHRISTOPHER R. ORAM, ESQ.

SUBSCRIBED AND SWORN to before me
this 18 day of February, 2009.


NOTARY PUBLIC in and for said
County and State



CHRISTOPHER R. ORAM
520 South Fourth Street, Second Floor
Las Vegas, Nevada 89101

1 **ROC**
2 CHRISTOPHER R. ORAM, ESQ.
3 Nevada State Bar #004349
4 520 S. Fourth Street, 2nd Floor
5 Las Vegas, Nevada 89101
6 (702) 384-5563

7 Attorney for Defendant
8 ANABEL ESPINDOLA

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 * * * * *

12 THE STATE OF NEVADA,
13 Plaintiff,

14 vs.

15 ANABEL ESPINDOLA,
16 Defendant.

CASE NO. C212667
DEPT. NO. XXI
DOCKET NO.

17 **RECEIPT OF COPY**

18 The above **MOTION TO PLACE ON CALENDAR** is hereby acknowledged this _____
19 day of February, 2009.

20
21
22 DAVID ROGER, District Attorney

23
24 By _____

25 200 Lewis Avenue
26 Las Vegas, Nevada 89155
27
28

CHRISTOPHER R. ORAM
520 South Fourth Street, Second Floor
Las Vegas, Nevada 89101

1 TRAN

2
3 ORIGINAL

4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

FILED
2009 JUL 13 P 3:35

E. J. [Signature]
CLERK OF THE COURT

6 THE STATE OF NEVADA,)

7 Plaintiff,)

8 vs.)

CASE NO. C212667

CASE NO. C241394

DEPT. XXI

9 LUIS ALONSO HIDALGO, aka LUIS)
10 ALONSO HIDALGO, III, LUIS HIDALGO)
11 JR., aka LUIS A. HIDALGO,)

12 Defendants.)

13 BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

14 TUESDAY, JUNE 23, 2009

15 RECORDER'S TRANSCRIPT OF HEARING RE:
16 SENTENCING

17 APPEARANCES:

18 FOR THE STATE:

19 MARC DIGIACOMO, ESQ.
20 Chief Deputy District Attorney
21 GIANCARLO PESCI, ESQ.
22 Chief Deputy District Attorney

23 FOR THE DEFENDANTS:

24 DOMINIC P. GENTILE, ESQ.
25 PAOLA M. ARMENI, ESQ.
JOHN L. ARRASCADA, ESQ.
CHRISTOPHER ADAMS, ESQ.

RECORDED BY: JANIE L. OLSEN, COURT RECORDER/TRANSCRIBER

RECEIVED

JUL 13 2009

CLERK OF THE COURT

1 LAS VEGAS, CLARK COUNTY, NV., TUES., JUNE 23, 2009

2
3 THE COURT: All right. This is the time for State of Nevada versus Luis
4 Hidalgo III and Luis Hidalgo Jr., both of whom are present in custody with all of their
5 attorneys. This is the time set for the rendition of sentencing.

6 Is there any reason we cannot proceed with sentencing at this time?
7 And then I have some preliminary matters to address.

8 Before we do that, Mr. Adams, you had an issue with an order?

9 MR. ADAMS: Yes, ma'am, related to a matter which we'd previously
10 addressed about U.S. savings bonds belonging to Mr. Hidalgo III were introduced
11 into evidence. The parties have reached a stipulation to release those into the
12 custody of Mr. Arrascada on behalf of Mr. Hidalgo III. We're making copies of the
13 stipulation and our proposed order for the Court, and we will work on that. We'll
14 substitute in either photocopies or actual photographs of the evidence, and we
15 agree that nothing about the authenticity of the savings bonds is an issue related to
16 our case.

17 THE COURT: All right.

18 MR. DI GIACOMO: And Mr. Bunin has signed that on behalf of Mr. Figler --
19 on behalf of Mr. Carroll, which is the outstanding defendant set for trial.

20 THE COURT: All right. As soon as that's presented to the Court, the Court
21 will sign that releasing the bonds.

22 Before we move into the sentencing, there are some outstanding
23 matters that I just want to address on the record. This is not a substitute for the
24 more detailed written decision which will be forthcoming and has not been filed yet
25 with the clerk.

1 The defense raised some interesting and important issues with respect
2 for the motion for judgment of acquittal and the motion for new trial which the Court
3 has spent some time carefully considering. I want to address just on the record right
4 now the most important points and the Court's reasoning, and again, this is not a
5 substitute.

6 With respect to the purported juror misconduct with -- according to the
7 defense -- misusing the jury instructions and the consideration of the words of
8 Deangelo Carroll on the audiotape reconciling that with the, I believe it's the Meyer
9 decision, which says, Misuse of the instructions is juror misconduct and then goes
10 on in the same sentence, I believe, to say, But you can't consider the thoughts and
11 deliberations.

12 I think that this case is distinguishable in that that case it was clear that
13 they had considered punishment, and the Court said, Well, that could have impacted
14 their deliberations. It did not require the individual jury members or the jury foreman
15 to come in and to say how that had impacted their consideration of guilt.

16 The Court said, Well, it might have, and that was something that -- in
17 terms of them having considered the punishment, that was something that was
18 disclosed publicly.

19 This case, I think, goes to the very heart of how the jurors evaluated the
20 evidence, what evidence they found to be important, and I think that goes to the
21 essence of the deliberative process, and I think that that exactly is the kind of thing
22 that our statute seeks to prevent.

23 Additionally, with respect to the purported misconduct in considering the
24 statement of Deangelo Carroll, I would just note that that could even be considered
25 an adoptive admission by Ms. Espindola and Mr. Hidalgo III in their response or lack

1 of response to that comment made by Mr. Carroll. So to that extent it could be
2 considered as the Court had previously ruled -- again, that's an issue for appeal
3 rightly or wrongly -- that for purposes of the conversation of the cover-up the
4 conspiracy was still ongoing and that there was a new conspiracy with respect to the
5 solicitation for murder allegations relating to Kenneth Counts.

6 With respect to the verdict form where we separated battery and then
7 battery with substantial bodily harm and/or battery with a deadly weapon, perhaps
8 the better verdict form would have been battery with substantial bodily harm with a
9 deadly weapon, battery with substantial bodily harm without a deadly weapon. That
10 was not, according to my recollection, offered.

11 I think that if you consider the totality of the jury instructions with respect
12 to the use of a deadly weapon, any potential problem in not separating those out I
13 don't think is fatal to the verdict because again, there were other instructions relating
14 to the use of a deadly weapon and what not, and I think that that takes care of it.

15 Again, no one gave a verdict form saying battery with substantial bodily
16 harm with a deadly weapon, battery with substantial bodily harm without a deadly
17 weapon. To just separate it out other than that wouldn't have made any sense
18 because you could have found both obviously that they intended battery with
19 substantial bodily harm and battery with a deadly weapon.

20 With respect to the interpretation of the evidence to support the verdict
21 which was raised, obviously, by both, you know, defendants, I certainly think that
22 there was enough evidence here to support, you know, at the end of the day I don't
23 know whether or not they conspired to kill Timothy Hadland. I don't know whether or
24 not they conspired to commit substantial bodily harm or not. That's me personally,
25 but I think there certainly was sufficient evidence that the conspiracy went beyond a

1 simple battery and that the conspiracy went to do significant harm to Mr. Hadland or
2 to utilize a deadly weapon.

3 So, you know, the Court is not inclined to overturn the verdict or to sit
4 as the thirteenth juror and say, no, there's not enough evidence. I don't think that
5 this is the kind of case that cries out for the Court's intervention because, again, I
6 think certainly a reasonable interpretation of the evidence while -- is that they
7 wanted significant harm to come to Mr. Hadland.

8 With respect to the Jayson Taoipu prior testimony that the Court
9 refused to admit, I stand by that decision because as we argued and as came out
10 during the trial, the State did not really have an effective opportunity to -- they could
11 have cross-examined him on that issue, the bats and bags and who said what, but it
12 wasn't important at all in the Kenneth Counts case, and it would have made
13 absolutely no sense for the State to have nitpicked on that point with Mr. Taoipu,
14 And to me even though it was testimony, it's more like a statement he may have
15 made to police that the Court would not have admitted.

16 And finally -- well, I think that covers the essential points.

17 MR. GENTILE: Your Honor, there's one other one that's a very important
18 one, and that's the one where the Court instructed over our objection that the jury
19 could use a slight evidence standard with respect to the hearsay that they weren't
20 supposed to listen to in the first place, but nevertheless the slight evidence --

21 THE COURT: Well, again, you're disagreeing with the use of any of the
22 hearsay on the tape, and again, that's obviously an appellate issue. As I indicated,
23 the Court stands by its determination that the conspiracy was still ongoing with
24 respect to Mr. Hidalgo III and Ms. Espindola in engaging in the cover-up.

25 I think that the instructions were clear that the slight evidence was only

1 to be used as to whether or not there was an existence of a conspiracy for
2 evidentiary purposes. I don't find that it confused the jury. I don't think that there's
3 reason to believe that it confused the jury or in any way reduced the State's burden
4 of proof in this case. So I think those are the critical, I guess, issues that were
5 raised.

6 All right. Anything else, Mr. DiGiacomo, before I move into sentencing?

7 MR. DI GIACOMO: The only thing is is that the Court -- I had sent an order
8 over to P&P and then copied the Court on that order, and the Department of Parole
9 and Probation attempted to do a supplemental PSI as to both defendants.

10 THE COURT: Right.

11 MR. DI GIACOMO: They were successful as to Luis Hidalgo III. As to Luis
12 Hidalgo Jr., there was a couple of words and in one phrase that they failed to correct
13 despite the fact that it's in the order. And my suggestion to the Court is, one, that
14 we attach a copy of the order itself to Luis Hidalgo Jr.'s PSI, and we can do any
15 corrections by interlineation.

16 THE COURT: I was going to say we can interlineate both the Court's copy
17 and we can interlineate the copy that goes to the prison to reflect --

18 MR. DI GIACOMO: The changes that should have been made that were not
19 made.

20 THE COURT: And also in terms of the credit for time served, obviously the
21 Court can independently calculate the correct credit for tiuniorme served.

22 MR. DI GIACOMO: And in fact, as to Mr. H. I calculated two more days than
23 even Mr. Gentile did. I have it at 184 for Mr. Hidalgo Jr., and I think it's 1492 as it
24 relates to Luis Hidalgo III.

25 THE COURT: Okay. And my understanding is as to Mr. Hidalgo III, there's

1 no dispute as to the credit for time served.

2 MR. ARRASCADA: At the 1492 that Mr. DiGiacomo --

3 THE COURT: Right, at the 1492.

4 MR. ARRASCADA: And, Your Honor, just one item. They must have missed
5 this. They still have Ms. Armeni listed as their defense counsel on their revised
6 presentence report, and it's Mr. Adams and myself.

7 THE COURT: All right. We can also correct that by way of interlineation.

8 MR. GENTILE: Am I to understand then that our objections to the
9 supplemental presentence investigation report is basically being granted?

10 THE COURT: That is correct. It seems --

11 MR. GENTILE: We focused on the misspellings, the specific offense
12 summary and the credit for time served.

13 THE COURT: Right. My understanding of what Mr. DiGiacomo is saying is
14 he does not dispute those corrections and agrees to both attach this with the PSI as
15 well as have the interlineation take place.

16 MR. DI GIACOMO: I actually have an order of the Court to sign that directs
17 that those corrections were in the order. For whatever reason P&P just didn't get
18 them into the PSI. So there's no dispute among the parties.

19 THE COURT: And I understand we have four family members that will be
20 speaking today; is that correct?

21 MR. DI GIACOMO: We're currently at three, Judge, who actually want to
22 speak. We may actually only be at two depending on what their choice is at the time
23 of their turn to speak.

24 THE COURT: Okay. And I'm assuming the State would like them to speak
25 last?

1 MR. DI GIACOMO: That's correct, Judge.
2 THE COURT: All right. Mr. Adams.
3 MR. ADAMS: Judge, I do now have the hard copy of the stipulation of
4 proposed order. Would you like me to hold those to the end or to tender those now?
5 THE COURT: Either way.
6 MR. ADAMS: I'll go ahead and get that done.
7 THE COURT: You can approach.
8 MR. GENTILE: Your Honor, there is one other thing I'd like to call to the
9 Court's attention before we start.
10 THE COURT: Yes.
11 MR. GENTILE: We filed a sentencing memorandum.
12 THE COURT: Yes, and I have reviewed that.
13 MR. GENTILE: All right. If you'd take a look at page 2, lines 18 through 21.
14 THE COURT: I'm sorry, which page?
15 MR. GENTILE: Page 2, lines 18 through 21.
16 THE COURT: Yes.
17 MR. GENTILE: I'd ask you to read it, not aloud, please.
18 THE COURT: Okay.
19 MR. GENTILE: We'd ask that those lines be sealed, that they -- either a
20 redacted copy of this be placed in the official file with a sealed copy -- if this
21 becomes -- you can appreciate why.
22 THE COURT: I understand why.
23 Any objection?
24 MR. DI GIACOMO: I don't, Judge, although it's already been filed as a public
25 record, so someone's going to have to notify the clerk's office to seal it.

1 THE COURT: That would be the clerk's -- my preference would be to redact
2 those lines so that we have a copy that is publicly accessible and then to have a
3 complete copy placed under as a, like a Court's exhibit or placed under seal.

4 MR. DI GIACOMO: I'm just saying that someone needs to withdraw it
5 currently from the file.

6 THE COURT: All right. Ms. Husted will do that.

7 MR. DI GIACOMO: 'Cause it's on Blackstone currently.

8 THE COURT: Do you understand the order, Ms. Husted?

9 THE CLERK: I do.

10 THE COURT: And just for the record it's lines --

11 THE CLERK: 18 through 21, page 2.

12 THE COURT: Yeah, 18 starting with Luis Jr., and 21 --

13 MR. DI GIACOMO: The whole line would be fine.

14 THE COURT: All right. The whole line.

15 Those housekeeping matters aside, is the State ready to proceed with
16 their argument?

17 MR. DI GIACOMO: And I'm going to be somewhat brief. I have a few items
18 to give to the Court; I've shown the defense counsel. The family has photos of Mr.
19 Hadland in real life, and there is a letter from the family that we've provided to the
20 defense related to their position of sentencing.

21 Obviously, the choice for the Court is really from the State's point of
22 view whether or not you give him a life sentence or you give him a term of years.

23 I'd like to address Luis Hidalgo III first because there's an additional
24 sentencing consideration for the Court. I'm not going to get lengthy into arguing for
25 substantials, consecutive time from the solicitation to commit murder counts, but

1 those counts are wholly independent of the murder in this case, and the fact that the
2 defendant committed those at a separate period of time is indicative that there are
3 different victims, and while the Court may not see them as victims certainly he
4 solicited an individual that he knows has already committed a murder to kill two
5 more people and certainly consecutive time would be appropriate.

6 So that leads us to the murder count. I recognize that the legislature as
7 to both defendants provides the Court the possibility of giving a term of years in a
8 case that involves second degree murder, and as the Court knows, second degree
9 murder is a broad range of activity, and that activity can be as minor as an inherently
10 dangerous felony that never intended harm to an individual all the way up to
11 intentional murder without premeditation and deliberation, and I heard the Court
12 earlier say that these individuals intended to commit substantial harm to Timothy
13 Hadland. I can't imagine the legislature thought that a term of years is appropriate
14 for that type of behavior.

15 It's certainly the position of the State of Nevada that Timothy Hadland's
16 life had more value than a term of years, and it's our position that they both deserve
17 a life sentence.

18 As to their sentencing memorandum, there are two issues I'd like to
19 correct to the Court. It has always been the State's position, and I don't think the
20 Court would dispute this, had a jury determined that Kenneth Counts was the
21 shooter, he would have not received a term of years.

22 In addition to that, they represent that the Court is going to give Anabel
23 Espindola probation at some future point in time. It's my belief based upon the
24 times that I've been in this courtroom that that statement is not an accurate
25 probability of occurrence, and I do not think that it's appropriate to sentence these

1 two individuals based upon either the sentence of Ms. Espindola or the sentence of
2 Mr. Counts. They are responsible and accountable for their actions they took in this
3 case, and certainly Mr. Hadland and his family are entitled to a life sentence for the
4 individuals for the actions that they took, and I'll submit it to the Court.

5 THE COURT: All right. Thank you.

6 Who would like to speak -- well, would the attorneys like to address the
7 Court first, or would you like to have your clients address the Court first?

8 MR. GENTILE: Your Honor, I'll address the Court first.

9 THE COURT: All right. Thank you.

10 MR. GENTILE: It's almost four decades I've been doing this, and I can't
11 remember another day that I've dreaded as much as I did this morning because
12 candidly I didn't anticipate it in advance.

13 It is rare in my career that I would allow a person to testify in his own
14 behalf at trial, but that happened here for two reasons. Number one, because from
15 the very beginning, day one, when I flew back from San Diego and met with Mr.
16 Hidalgo and Anabel Espindola and from what I was told by Mr. DePalma and Don
17 Dibble about what occurred the day before I met with them, this account of what
18 occurred never changed, not once.

19 The jury's acted. Nothing's going to change that now and certainly not
20 in this courtroom, but I looked at two things here that just don't warrant a life
21 sentence. One, the fact of the matter is even according to Anabel Espindola whose
22 credibility not only did we assail, but I don't think anybody really believes that she
23 told the truth in this courtroom, but even with all of her bias she conceded that she
24 was the one who learned from Deangelo Carroll that Timothy Hadland had been
25 talking badly about the Palomino Club and that she was the one who told Luis

1 Hidalgo Jr., about that.

2 His response to that and his testimony about his response to that has
3 never been refuted. Nobody testified that there was some discussion that took
4 place between him and anybody else wherein a murder or a serious beating was
5 even discussed. The jury, of course, found not enough evidence for a conspiracy
6 that an agreement was made to murder him. They did find that either one or the
7 other of the objectives of the conspiracy --

8 THE COURT: Or possibly both.

9 MR. GENTILE: Or possibly both, kind of hard to have both, I think, but
10 maybe. You can maybe pistol whip somebody, I guess. That's what they came
11 back with, and I look to Luis Hidalgo Jr.'s testimony in this case, which was never
12 refuted. Anabel Espindola didn't come in and say, no, that didn't happen. And what
13 did he say? He said that he told Deangelo Carroll to tell his friend to stop spreading
14 shit, specifically talk badly about the club.

15 I have to tell you I doubt very much that there's a business person in
16 any business who if confronted with such a communication, that being that
17 someone's talking badly about the club, and if they knew that the person who was
18 reporting it was a friend of that person as was the facts here, wouldn't tell that
19 person, well, tell him to stop it, and from that coupled with Timothy Hadland's not
20 saying no to making a trip to get drunk -- Timothy Hadland is dead today, that's a
21 shame. We all feel that way. I think you're going to hear that from Mr. Hidalgo
22 when he speaks to you, but it was not intended, and a life sentence really should be
23 reserved for those situations where it was.

24 This is a second degree murder. The legislature has spoken to second
25 degree murder in allowing a life sentence, but on the facts that are before you on

1 this case where there is no evidence, there is no evidence that there was a
2 deliberate murder that took place here or that there was anything in the nature of
3 something that was foreseeable that this man would die, and with the absence of
4 those facts in this case, it seems to me that the proper and just sentence in this case
5 should be a term of years of 10 to 25 years.

6 There has to be a consecutive sentence because of the enhancement
7 with the weapon. We, of course, recognize that the Supreme Court has spoken to
8 the starting date of the new statute and its application. Hopefully someday maybe
9 some federal court, maybe a supreme court, if we are not successful on appeal, will
10 see it differently. And so we are asking you, recognizing that as it stands right now
11 you can't, but we are asking you to make his consecutive sentence also the
12 minimum. This man is old and sick.

13 By the way, I don't know that you are going to do this so I'm going to
14 ask you to do it. Would you please attach our sentencing memo to the presentence
15 report so that it goes with him to the institution. The reason for that --

16 THE COURT: It indicates the prescriptions that he's taking and his --

17 MR. GENTILE: Exactly.

18 THE COURT: -- diagnosis.

19 MR. GENTILE: Exactly.

20 And so that having been said, I can honestly say, and it doesn't matter,
21 and I couldn't say this to a jury 'cause ethics prohibit that, but I can say it to you, I
22 believe in the innocence of my client, even today, even with the jury having said
23 what they said.

24 Hopefully someday this verdict will be changed. It's not going to bring
25 Timothy Hadland back. Nobody wanted him dead in the first place, most certainly

1 not Luis Hidalgo Jr., and we're asking essentially for the most lenient sentence that
2 you can impose.

3 He would like to address the Court and the family at this time.

4 THE COURT: All right. Thank you.

5 Mr. Hidalgo Jr., what if anything would you like to say?

6 THE DEFENDANT HIDALGO JR: Well, first of all, I would like to sympathize
7 with the family, and I'm going to say I've been hearing a lot of things, you know, from
8 the Court about evidence and so on and so forth. But I stand firm today like I did at
9 the very beginning.

10 Mr. Hadland and I only came in contact three or four times. I never
11 disliked the man simply enough because I never knew the man. All I ever did was to
12 say hello. He greeted me well. It was fine with me. I did not know very much about
13 him at all whatsoever, none. I had no reason at all whatsoever to go ahead and do
14 any harm to this gentleman at all whatsoever. None.

15 I don't function that way. I'm not that kind of person. He was a good
16 man. All I know is that what happened, what was offered to me was information that
17 he was talking about the club which to me didn't mean a damn thing. It didn't bother
18 me at all whatsoever. None. Absolutely not at all.

19 I sympathize with the fact that he died, definitely. I'm sorry about that,
20 but I can definitely assure you that I had nothing to do with his death or beating
21 suggestions and all whatsoever to do any harm at all to him at all whatsoever. And I
22 know that there's conversations that talk about evidence this and evidence that.
23 What evidence?

24 Three years later I get arrested. I'm not the one that got caught on
25 tape. I was never on tape. Ms. Espindola was. She definitely is deeper in this

1 situation than anybody else is. The way I look at it personally, a trophy needed to
2 be obtained; the prosecution got it. There was nobody else more important in this
3 case other than to go after me. If not, you would have gone ahead and done it way
4 before that.

5 Ms. Espindola was facing a death penalty. She was facing two or three
6 conspiracies. What happened? And then she gets to go home free because she
7 turns State's evidence against me, and I'm the one that the least had anything to do
8 with it. And I don't understand why it is, but I just sincerely hope, please, if you have
9 to push the issue with somebody, find out who actually killed Mr. Hadland, because
10 the other gentleman who was accused he got off. He got acquitted. The other two
11 weren't even charged.

12 So I really don't understand, really, is this justice? No. The other two
13 gentlemen were in the van when all this occurred. They weren't even charged.
14 Everybody got probation or otherwise. My son and I are the ones that are getting
15 the rap for it.

16 I stand firm again today telling you the same thing I would have, and I
17 would have told the same story two days after this occurred when we sent,
18 obviously, the first letter to the prosecution and tell them that I wanted to come down
19 and tell them what I knew of the case. But here we are before you.

20 I understand that what I'm saying is not going to change your mind,
21 Your Honor. I'm 58 years old. I'm sick. Okay. I ask for leniency for my son for
22 being stupid, for thinking, obviously, the gentleman was his friend. They know it.
23 They know that my son all he did was just converse, talk. Other than that,
24 somebody else put this thing together, and it wasn't me.

25 And we have a gentleman, obviously, who keeps eluding everybody,

1 and his trial hasn't started, his trial which should have been the first one. Now it's
2 into next year. What's going on? I don't know. But I can assure you I had nothing
3 to do with it. I didn't suggest, direct it, anybody, and I was not a thump in the law.

4 THE COURT: All right. Thank you.

5 Just to correct the record, Mr. Counts was sentenced to prison. The
6 Court gave him the maximum sentence that I could give given the charge for which
7 he was convicted by the jury, and as is clear on the record, he was adjudged a
8 habitual criminal. The Court imposed the maximum prison sentence the Court could
9 impose.

10 With respect to Mr. Carroll, the State has been trying and wanted Mr.
11 Carroll to be the first trial out, and there's a separate record that has been made on
12 the issue with why Mr. Carroll did not go to trial that I don't need to, I think, address
13 here.

14 With respect to Ms. Espindola, she has not been sentenced. The
15 negotiation that Ms. Espindola received is up to the State. The sentence will be up
16 to me, and as Mr. DiGiacomo pointed out, I think the Court's opinion has already
17 been made on that.

18 Now moving to Mr. Hidalgo III, would -- Mr. Arrascada, would you like to
19 address the Court first or would you like your client?

20 MR. ARRASCADA: No, Your Honor, I'd like to address the Court.

21 THE COURT: All right. Thank you.

22 MR. ARRASCADA: Your Honor, regarding Luis Hidalgo III, what we'd like the
23 Court to do regarding sentencing is focus on what is a just sentence as we did in our
24 sentencing memorandum that we provided the Court. We're not going to argue
25 facts or lack thereof. That's when we go up to the Supreme Court.

1 Mr. Hidalgo III on our advice is not going to be making a statement to
2 the Court, but I can tell the Court that myself, Mr. Adams, Mr. Hidalgo III and
3 throughout -- throughout our representation and throughout this entire trial have felt
4 and expressed our sincerest condolences to the Hadland family --

5 THE COURT: And I just have to interrupt you. I was just going through
6 everything to make sure I hadn't overlooked the sentencing memo. We did not
7 receive a sentencing memo on behalf of Mr. Hidalgo III. We received the
8 sentencing memo on behalf of Mr. Hidalgo Jr., and the objections on behalf of Mr.
9 Hidalgo Jr., but that's all that we have. And like I said, I just went through my stack
10 to make sure it wasn't my oversight, but we don't have anything.

11 MR. DI GIACOMO: Judge, I'll just give you my copy if you want to -- it's fairly
12 short if the Court wants to read it.

13 MR. ARRASCADA: Your Honor, we'd ask that you review it before we
14 continue.

15 THE COURT: Okay. Do you want us to take a break for the Court to review
16 it?

17 MR. ARRASCADA: If you would, please.

18 THE COURT: All right. I'm now reading the letters that have been attached
19 in support of Mr. Hidalgo III, just so you know why it's taking a few minutes. There
20 are a number of letters that have been written in response of Mr. Hidalgo III, and I'm
21 now reading those.

22 I've read all the letters as well as the memo.

23 MR. ARRASCADA: Your Honor, just for the record, it was filed with the court
24 clerk downstairs. A courtesy copy was not provided to you for delay.

25 THE COURT: There's a delay, just so you know, between the time -- we are

1 now paperless, so there is a delay between the time the documents are filed and
2 they're actually scanned into the system and available for review by the Court, but
3 there's no harm because I have taken the time to read the -- a lot of the things
4 frankly I was aware of. Many of the things in the letters from people that grew up
5 and have known Mr. Hidalgo III are consistent with the behavior the Court has
6 observed during the trial and the numerous hearings. There's no prejudice. I have
7 read everything and considered it.

8 MR. ARRASCADA: Thank you, Your Honor. Your Honor, then I'd like to
9 proceed with my sentencing argument on behalf of Mr. Hidalgo III.

10 Your Honor, I agree to a point with the recommendation from the
11 division, but as you can see in our memorandum and the presentation I'm about to
12 make that we do disagree regarding the sentence they recommend for the second
13 degree murder with the weapon enhancement.

14 We believe based on the argument I'm about to present that Mr.
15 Hidalgo III, should receive in his youth, and his ability to rehabilitate warrants the
16 term of years of 10 to 25 years. We do believe the division is very correct and
17 accurate when they recommend on Counts 3, 4, and 5 that that time run concurrent
18 to the second degree murder conviction or Count 1, and we're going to urge the
19 Court that you do so.

20 Your Honor, when I said we're not going to reargue facts today, it's as I
21 said, that's an issue now for the Supreme Court, but what we'd like you to focus on
22 is the four principles of sentencing which are rehabilitation, retribution, deterrence
23 and incapacitation.

24 As the Court knows, Mr. Hidalgo has been incapacitated for over four
25 years in this matter, and from what I understand, the time in the Clark County

1 Detention Center it's like serving time in dog years. It -- there is no yard time. There
2 is no programming. Mr. Hidalgo has not seen sunlight above his head in four years,
3 but during all that time he has not had any major infractions. He has done his time.
4 The goals of incapacitation and deterrence and even retribution have already been
5 met regarding Luis Hidalgo III.

6 What I'd like the Court to focus on is rehabilitation, and that is a
7 significant factor regarding any sentencing, and what we're asking you to do by
8 imposing the term of years and running all of the other offences concurrent provides
9 to Mr. Hidalgo a degree a hope. And when you're looking at rehabilitation, hope is
10 significant, and a term of years indicates to Mr. Hidalgo as I believe the Court has
11 just even stated, that you've noticed all of these tremendously good qualities and
12 characteristics about Mr. Hidalgo III while he's been present through these
13 numerous years in court.

14 THE COURT: I don't think that's what I said. I said some of the things
15 regarding his behavior are consistent. I mean that he tries to be affable. He tried to
16 be affable with court staff. He tried to be affable and was affable with the correction
17 officers. You know, he tried to make jokes and things like that, and that was
18 consistent with what I observed. He was a compliant prisoner. He was respectful to
19 the correction officers, things like that, and I noticed that.

20 MR. ARRASCADA: And, Your Honor, that respect that you're noticing is an
21 indication of through rehabilitation that Mr. Hidalgo III can be a functioning,
22 productive member of our society. Because of that, Your Honor, we're going to ask
23 that you impose the term of years -- he's 27 years old, and what does a term of
24 years actually do? As I said, it gives hope of release, but regardless, if you follow
25 the sentence we're recommending that you do, at a minimum, at a minimum Mr.

1 Hidalgo will serve 20 years in prison before he even gets to see the parole board, at
2 a minimum.

3 And we need to look at his age, 27, the fact that he has no prior history
4 whatsoever contacts with law enforcement and the fact of how will he -- who will he
5 be and how will he do when he's reintegrated into society, and through the most
6 trying of times the Court, as you put on the record, has noticed some characteristics
7 or qualities, I'd like to call them, that are indicative of what he will do or how he will
8 do when he is released.

9 And the term of years accomplishes all of the goals, Your Honor, of
10 incapacitation, deterrence, retribution. It becomes a sentence that is equitable in
11 light of all the other players involved, and it provides to Mr. Hidalgo the incentive to
12 continue to program in the prison to do all the right things, to get a -- take college
13 classes if available, to work his way towards being a model prisoner so that he's
14 going through rehabilitation because he will have hope of someday not being
15 incarcerated with the term of years if you impose it.

16 We're going to urge that you impose the term of years based on these
17 reasons, and with that we submit, Your Honor.

18 THE COURT: All right. Thank you, Mr. Arrascada.

19 MR. GENTILE: Your Honor, there's one other thing.

20 And thank you, Mr. Pesci, for bringing it to our attention, and I mean
21 that sincerely.

22 In the sentencing memorandum for Mr. Hidalgo Jr., a couple of the
23 exhibits make reference to the same subject matter that we sealed, Exhibit 3, the
24 first large paragraph, and Exhibit 9, the last paragraph.

25 THE COURT: All right. So you're --

1 MR. GENTILE: And so we're making this -- whoa, first and last paragraph,
2 first full paragraph. It starts off with, Luis Hidalgo was --

3 THE COURT: So you want the first full paragraph as well as the last
4 paragraph redacted?

5 MR. GENTILE: Right. Exactly.

6 THE COURT: And, Ms. Husted, did you get that?

7 The State has no objection to that?

8 MR. DI GIACOMO: That's correct, Judge.

9 THE COURT: And again, the redacted will be public record and the
10 unredacted will be sealed and be part of the total record in the case, and that's for --

11 MR. GENTILE: Thank you.

12 MR. ARRASCADA: Your Honor, I'm sorry, one other issue I do want to bring
13 up regarding the weapon enhancement. We do recognize the Nevada Supreme
14 Court has spoken. Having been counsel in the Petrocelli case I don't see how it
15 jibes with the ruling regarding the weapon enhancement. Notwithstanding that, Your
16 Honor, we would ask that you impose the term of 4 to 10 years on the weapon
17 enhancement, which would be under the new statute realizing the Supreme Court
18 has spoken, and this may be an issue someday for a federal court.

19 THE COURT: Okay. And I would just put on the record that with respect to
20 those areas that defense has sought to have redacted, the State has made no
21 opposition to that. That is all information that has come out during the trial and
22 during the various hearings of this case. So that information already is out there for
23 purposes of the record in this case. That was all -- I think most of that came out in
24 the trial, most if not all came out in the trial. So that information is public.

25 All right. We can hear from the speakers.

1 MR. DI GIACOMO: Yes.

2 THE COURT: Ma'am, please come on up here to the witness stand and just
3 remain standing facing our court clerk who will administer the oath to you.

4 (Speaker sworn.)

5 THE CLERK: Please be seated and please state and spell your name.

6 THE WITNESS: Doris Emily Gibbs, G-i-b-b-s.

7 THE COURT: What would you like to say to me?

8 THE WITNESS: First I'd like to thank the Courts for their time and allowing
9 me to speak today on behalf of my children and my extended Hadland family.

10 When the Hidalgo father-son team chose to do this crime, there were
11 more victims than just Tim, also known as T.J. There are the family members that
12 T.J. left behind. I'd like the Court to visualize a little four-year-old boy dressed in a
13 yellow rain coat covered in soot with a little plastic red fireman hat watching and
14 acting out the movies from Backdraft sceneries every day. And then last April this
15 child fulfilled his dream and graduated third in his class from the fire academy.

16 On his way home that day, he called me up all excited because he was
17 now a fireman. He said, I wish I could call dad and tell him. This entire great
18 moment was tainted because his dad was not there to share this moment or to even
19 share the memories of his childhood.

20 Then there's my daughter. I'd like you to imagine a young girl going
21 through some major medical problems, no father to call or come and stay with you.
22 Imagine that young girl going through a divorce, major medical and dealing with the
23 murder of her father.

24 When she was born he had planted a tree in our backyard, an apple
25 tree because she was the apple of his eye. She's in the military based far from

1 either side of her family, going through and dealing with all this all on her own.

2 And then there's my oldest son. He worked with his dad pouring
3 concrete out here in Vegas, and he also worked at Home Depot. He got a major
4 promotion a few months ago, and he could not call his dad or share this great news.
5 I could not even imagine being 21 years old and getting a call that your dad is at the
6 morgue.

7 This was a good child, respected, hard-working kid with good morals,
8 good citizenship who's had, I believe, one speeding ticket his entire life, and these
9 men who thought they were above the law dealt him a life sentence.

10 My mother passed away 39 years ago, and last year I got married, and
11 on that day I missed my mother terribly. She died of an aneurysm, something that is
12 explainable.

13 My kids will still miss their father, and this will still make no sense to any
14 of them in 40 years. They still will not be able to explain it to their family. They will
15 not be able to explain it to their children because in Girl Scouts you learn sticks and
16 stones may break your bones, but words will never harm you. But this makes no
17 sense. My kids will never experience another joy, reason to celebrate or just need
18 to speak with their dad ever again because of these men's actions.

19 When their children are born, when they get married, when they
20 experience life's great moments and sad times, they will never be able to share
21 these moments with their dad ever again. These men handed them a life sentence.

22 I had the privilege to sit in this courtroom during trial, and I watched the
23 Hidalgos and the way that they acted during trial, but when the jury left the
24 courtroom, I saw different Hidalgos. They were joking, laughing; they showed no
25 respect for the families that was sitting in the room. They were arrogant. At one

1 point, Hidalgo III even called his lawyers the dream team.

2 I don't know who these men thought they are, but I do know that after
3 what I witnessed in this courtroom that they have no remorse of their crimes. They
4 might act like they are, but it's not for their crime; it's for themselves. They're
5 remorseful because they were caught, tried and found guilty.

6 One prime example is that after Tim was murdered, they then began to
7 plan the murder of two more people, young kids, and if they would have succeeded,
8 they would have had two more families dealt life sentences.

9 I know Mr. H has some medical issues, and I'm sure his family will
10 plead to this; however, please remember that when Mr. Hadland, my beloved father-
11 in-law had a stroke last fall, his son could not be there to support his father or his
12 mother, and when he passed away a few weeks ago, Tim wasn't there to console
13 his mother or his grieving children, and I'm sure that Hidalgo III has family, brothers
14 and sisters, but please remember their family, friends, and neighbors, whoever, can
15 visit them in prison, and that's a whole lot more than Tim or Tim's family can do.

16 That night on that desert road they handed Tim a death sentence, and
17 they handed his loved ones a life sentence. What was once fiction to my children is
18 now a reality, something that they will have to live with and deal with for the rest of
19 their lives.

20 I ask the Court today for -- after a long four years to hand these two
21 men the same that they handed my children. Please remember they aren't
22 remorseful for their actions, only that they were caught, tried and found guilty. Their
23 family can still visit them in prison, which is a whole lot more than Tim's family can
24 do.

25 I ask that you please give them the maximum sentence that this Court

1 is allowed to give, and I'd like to thank you for your time.

2 THE COURT: All right. Thank you.

3 Please, to the witness stand just up those couple of stairs, and just
4 remain standing facing that lady right there.

5 (Speaker sworn.)

6 THE CLERK: Please be seated. And please state and spell your name.

7 THE WITNESS: Allana, A-l-l-a-n-a, Hadland, H-a-d-l-a-n-d.

8 THE COURT: Thank you. What would you like to say to me?

9 THE WITNESS: My father was and still is the love of my life. He may not
10 have been the most wonderful man in the world. He did do drugs and everything
11 else, but he was the best father I could have ever asked for. He always told me that
12 the happiest day of his life was the day that I was born, and as my mom stated, he
13 planted me an apple tree, and I was his angel, and I have a tattoo on my back of an
14 angel for him.

15 One of the proudest moments he had as a father was signing my pre-
16 enlistment papers into the military. He had a sticker on the back of his truck that
17 said, "My daughter's in the Air Force." He bragged about me being in the military all
18 the time.

19 After I moved to Nebraska we talked every -- every day before I went to
20 bed. Sometimes in the mornings when he would be on his way home from work at
21 the Palomino Club I would be on my way to work, and we would talk for the drive.
22 When I would iron my uniform we would talk and iron together. When I had a bad
23 day, somehow he had ESP and knew, and even if it was just the sound of him
24 singing to my voicemail, it made me feel better. It always helped.

25 On May 19, 2005, I talked to my dad for the last time before I went to

1 bed. He was excited about going camping, and we were making plans for him to
2 come and see me that summer in Nebraska to see where I lived and what I did. I
3 woke up about 12 -- 2 o'clock in the morning Nebraska time, which would be 12
4 here, freezing cold and shaking. Mind you, the weather's the same here as it is
5 there, just more humid there. So for me to be cold is not right, and I knew
6 something was wrong.

7 I went to work the next day and at 11 o'clock I went to lunch, and the
8 coroner's office called and told me that my father was found dead at the lake last
9 night. I was 19, and I was the first person to know that my dad was dead, and I
10 didn't know what to do or who to talk to. And then I went home and I called my
11 uncle because I wasn't going to be the one to call my grandma and say, hey, guess
12 what, we're living a movie.

13 I don't believe it. At the time I told them that they were crazy and
14 playing a very dirty joke on me, and today I still don't believe it. I still sit by the
15 phone on my birthday four years later waiting for my dad to call. I sit in my office at
16 work waiting for flowers because he sent me flowers at work every year, at school or
17 work.

18 After he died I couldn't make that drive to work anymore. I had to move
19 because driving the route that I took to talk to him I couldn't take it. I didn't iron my
20 uniform for almost a year because ironing was not an option for me. For the first
21 couple of months I called voicemail, and I'd listen to his voice. It would help a little
22 bit, and then his phone got turned off, and now I'll never hear the sound of my
23 father's voice again. My father will never tell me that he loves me again. He'll never
24 sing to my voicemail. He'll never answer the phone and say, Hey, baby.

25 He wasn't there with me when I got married; he didn't walk me down

1 the aisle. When I found out my husband had a girlfriend, he wasn't there to do what
2 dad's usually do and have a talk with their son-in-laws. He wasn't there when I got
3 divorced. I have reoccurring bone tumors in my arm, and I'm in extreme pain 24
4 hours a day, and my dad's not there to comfort me.

5 Because of the murder and the constant back and forth with courts, I
6 have officially been diagnosed with post-traumatic stress disorder. I take
7 antidepressants, antianxiety pills, sleep aids, probably more medication than any 23-
8 year-old person should take just to keep myself from having a nervous breakdown.
9 And every time I start getting better, somehow there's an appeal done, and court is
10 delayed a few more months, and it sets me back. It brings back all the pain every
11 time, and usually it's worse, and it's like all the victims become -- keep becoming
12 victims and the defendants are just sitting back laughing because they're just
13 hanging out, in my opinion.

14 I don't understand how someone's life can be valued at \$5,000. My
15 father's life wasn't -- could not be valued in dollar amounts. To me it -- nothing will
16 ever replace what was taken from me. I will always look at the picture that I have of
17 my father and miss him. I'll always have to tell my children about my dad and how
18 much all he wanted was for us to have kids, four of us each because he had four
19 children so he wanted us to all have four kids so that he could have grandbabies out
20 the wazoo.

21 To me a couple years in prison isn't -- doesn't justify what was done to
22 my father. Nobody can play God but God, and to shoot somebody in the head,
23 that's playing God. Nobody should have that right. The rest of my life I have to deal
24 with the fact that I live in a movie because to me all this ever was was a movie and
25 then only in movies do people get murdered, not in real life. And then on May 20th,

1 2005, I woke up and I was in a movie.

2 And that's all.

3 THE COURT: Thank you.

4 Just please remain standing facing our court clerk.

5 (Speaker sworn.)

6 THE CLERK: Please be seated, and please state and spell your name.

7 THE WITNESS: Jennifer Hadland, J-e-n-n-i-f-e-r, H-a-d-l-a-n-d.

8 THE COURT: Thank you. What would you like to say to me?

9 THE WITNESS: I was 14 years old when my dad was killed, and I graduated
10 from high school two weeks ago on his birthday. I'm not going to say much because
11 I'm going to start crying, but like my sister said, \$5,000 doesn't put a price on my
12 dad's life, and I will never have him back.

13 When I get married, I won't have my father there. When my sister was
14 married he wasn't there. He wasn't there to teach me how to drive. He won't be
15 there when I have kids. I don't think it's right that they got to do what they did and
16 get away with it, and just because they're in jail doesn't mean that they're getting
17 away with it, but it doesn't mean that I'll have my father back 'cause they're in jail.

18 People can say whatever they want; it will never bring my dad back. I'll
19 never be able to have him hug me. I'll never be able to see him. He'll never tell me
20 that he loves me again.

21 They can still talk to their family. They can still see their family. They
22 can live, they can breathe, they can eat. Yeah, it's from a jail cell, but it's better than
23 nothing. The pain that they have brought to me and my family is more than anybody
24 will ever have in this world. I've sat in here every single day for their trial, for the
25 Kenneth Counts trial, and I'll do it again for Deangelo's trial, and I still don't believe.

1 I still wake up on my dad's birthday and want to call him. I still wake up
2 on Father's Day and want to call him. I've actually woken up dialing his number. I
3 woke up that day, and I saw it on the news. I saw his girlfriend's car, and I knew he
4 had gone to the lake that night, and I went to school anyways. I got told by my
5 mother and a counselor that I would never see my father again. I was supposed to
6 go to this house that weekend. I was going to stay with him that summer, and I
7 couldn't.

8 I'm the youngest of four children, and I love my brothers and my sister
9 with all my heart, and they loved my father and we -- and I loved him too. He'll
10 never be completely gone. He'll always be loved. He'll always be missed.

11 My entire family sits here, and we've all gone through these trials, and
12 it's still unbelievable. I have nothing else to say. I'm going to break.

13 THE COURT: Thank you for coming and speaking to me.

14 MR. DI GIACOMO: That's it, Judge.

15 THE COURT: Mr. Hidalgo Jr., and Mr. Hidalgo III, if you'll please stand.

16 All right. Mr. Hidalgo Jr., pursuant to the jury's verdict in this case, you
17 are hereby adjudged guilty of Count No. 1, Second degree murder with use of a
18 deadly weapon and Count No. 2, Conspiracy to commit battery with a deadly
19 weapon or Conspiracy to commit battery with substantial bodily harm, a gross
20 misdemeanor.

21 In addition to the \$25 administrative assessment, the \$150 DNA
22 analysis fee and the fact that you have to submit to a test for genetic markers on
23 Count No. 1, you're sentenced to a minimum term of 120 months in the Nevada
24 Department of Corrections and a maximum term of life and an equal and
25 consecutive 120 months to life.

1 On Count No.2, the Conspiracy, you are sentenced to 12 months in the
2 Clark County Detention Center. That is imposed concurrently with the time you
3 received on Count No. 1. And you are entitled to --

4 What is the correct credit for time served?

5 MR. DI GIACOMO: It's 184, Judge, but it's actually -- Count 1 is the
6 Conspiracy, Count 2 is the murder.

7 THE COURT: I'm sorry. It was wrong in the PSI.

8 MR. DI GIACOMO: Okay.

9 THE COURT: So it should be corrected to Count 1 being the Conspiracy and
10 Count 2 being the Second degree murder with use of a deadly weapon which is
11 imposed concurrently.

12 As to Mr. Hidalgo III --

13 So Count 1 is the conspiracy, Count 2 is the Second degree murder,
14 and Counts 3 and 4 are the solicitation; is that right?

15 MR. DI GIACOMO: That's correct, Judge.

16 THE COURT: Okay. That was also incorrect in the PSI.

17 Mr. Hidalgo III, by virtue of the jury's verdict, you are hereby adjudged
18 guilty of Count No. 1, Conspiracy to commit battery with a deadly weapon or
19 Conspiracy to commit battery with substantial bodily harm, a gross misdemeanor.
20 Count No. 2, Second degree murder with use of a deadly weapon, Count No. 3,
21 Solicitation to commit murder, and Count No. 4, Solicitation to commit murder.

22 In addition to the \$25 administrative assessment, the \$150 DNA
23 analysis fee and the fact that you must submit to a test for genetic markers, on
24 Count No. 1, Conspiracy, you're sentenced to 12 months in the Clark County
25 Detention Center.

1 On Count No. 2, Second degree murder with use of a deadly weapon,
2 you're sentenced to a minimum term of 120 months in the Nevada Department of
3 Corrections and a maximum term of life with an equal and consecutive 120 to life.
4 That is imposed concurrently with the time I gave you on Count No. 1.

5 On Count 3, Solicitation to commit murder, you're sentenced to a
6 minimum term of 24 months in the Nevada Department of Corrections, a maximum
7 term of 72 months in the Nevada Department of Corrections. That is imposed
8 concurrent with the time I gave you on Counts No. 1 and 2.

9 On Count No. 4, Solicitation to commit murder you're sentenced to a
10 minimum term of 24 months in the Nevada Department of Corrections, a maximum
11 term of 72 months. That is also imposed concurrently with the time you were given
12 on the other counts. And the correct credit for time served is 1,492 days.

13 MR. DI GIACOMO: That's correct, Your Honor.

14 THE COURT: All right. Thank you.

15 MR. GENTILE: Your Honor, I don't believe you read the credit for time served
16 with respect to Mr. Hidalgo Jr.

17 THE COURT: Oh, I apologize.

18 MR. DI GIACOMO: 184

19 THE COURT: And the correct time is 184 days credit for time served.

20 MR. DI GIACOMO: Judge, one housekeeping matter. Do you want a short
21 order on the motion for new trials, or do you want a written order drafted up on the
22 findings here?

23 THE COURT: If you would do a draft that would be great.

24 MR. DI GIACOMO: Can I send an order down for the transcripts so I can
25 have a transcript of it?

1 THE COURT: Of course.

2 MR. DI GIACOMO: Thank you, Judge.

3 -oOo-

4 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/video
5 proceedings in the above-entitled case to the best of my ability.

6 
7 JANIE L. OLSEN

8 Recorder/Transcriber
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JOC.

ORIGINAL

DISTRICT COURT

CLARK COUNTY, NEVADA

FILED
2009 JUL 10 A 8:27
CLERK OF THE COURT

THE STATE OF NEVADA,

Plaintiff,

-vs-

LUIS ALONSO HIDALGO, III
#1849634

Defendant.

CASE NO. C212667

DEPT. NO. XXI

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – CONSPIRACY TO COMMIT MURDER (Category B Felony) in violation of NRS 199.480, 200.010, 200.030, COUNT 2 – MURDER WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.010, 200.030, 193.165, COUNT 3 – SOLICITATION TO COMMIT MURDER (Category B Felony) in violation of NRS 199.500, COUNT 4 – SOLICITATION TO COMMIT MURDER (Category B Felony) in violation of NRS 199.500; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 1 – CONSPIRACY TO COMMIT A BATTERY WITH A DEADLY WEAPON OR BATTERY RESULTING IN SUBSTANTIAL BODILY HARM (Gross Misdemeanor) in violation of NRS 199.480, 200.481, COUNT 2 – SECOND DEGREE MURDER WITH USE OF A DEADLY

1 WEAPON (Category A Felony) in violation of NRS 200.010, 200.030, 193.165, COUNT
2 3 – SOLICITATION TO COMMIT MURDER (Category B Felony) in violation of NRS
3 199.500, COUNT 4 – SOLICITATION TO COMMIT MURDER (Category B Felony) in
4 violation of NRS 199.500; thereafter, on the 23rd day of June, 2009, the Defendant was
5 present in court for sentencing with his counsel, JOHN ARRASCADA, ESQ., and
6 CHRIS ADAMS, ESQ., and good cause appearing,
7

8 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in
9 addition to the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis Fee
10 including testing to determine genetic markers, the Defendant is SENTENCED to the
11 Nevada Department of Corrections (NDC) as follows: AS TO COUNT 1 - TO TWELVE
12 (12) MONTHS in the Clark County Detention Center (CCDC); AS TO COUNT 2 - TO
13 LIFE with a MINIMUM Parole Eligibility of ONE HUNDRED TWENTY (120) MONTHS,
14 plus an EQUAL and CONSECUTIVE term of LIFE with a MINIMUM Parole Eligibility of
15 ONE HUNDRED TWENTY (120) MONTHS for the Use of a Deadly Weapon, COUNT 2
16 to run CONCURRENT with COUNT 1; AS TO COUNT 3 - TO A MAXIMUM of
17 SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR
18 (24) MONTHS, COUNT 3 to run CONCURRENT with COUNTS 1 & 2; AS TO COUNT 4
19 - TO A MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility
20 of TWENTY-FOUR (24) MONTHS, COUNT 4 to run CONCURRENT with COUNTS 1, 2
21 & 3; with ONE THOUSAND, FOUR HUNDRED, NINETY-TWO (1,492) DAYS credit for
22 time served.
23
24
25

26 DATED this 25th day of June, 2009

27 
28 VALERIE P. ADAIR
DISTRICT JUDGE 

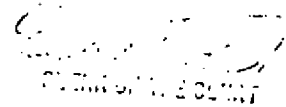
JOC

ORIGINAL

DISTRICT COURT

2009 AUG 18 A 9 19

CLARK COUNTY, NEVADA



THE STATE OF NEVADA,

Plaintiff,

CASE NO. C241394

-vs-

DEPT. NO. XXI

LUIS HIDALGO, JR.
aka Luis A. Hidalgo
#1579522

Defendant.

AMENDED JUDGMENT OF CONVICTION

(JURY TRIAL)

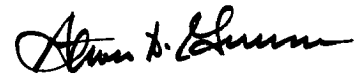
The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – CONSPIRACY TO COMMIT MURDER (Category B Felony), in violation of NRS 199.480, 200.010, 200.030, and COUNT 2 – MURDER WITH USE OF A DEADLY WEAPON (Category A Felony), NRS 200.010, 200.030, 193.165; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 1 – CONSPIRACY TO COMMIT A BATTERY WITH A DEADLY WEAPON (Gross Misdemeanor), in violation of NRS 199.480, 200.481, COUNT 2 – SECOND DEGREE MURDER WITH USE OF A DEADLY WEAPON (Category A Felony), NRS 200.010, 200.030, 193.165; thereafter, on the 23RD day of June, 2009, the Defendant was present in court for sentencing with his counsel, DOMINIC GENTILE, ESQ., and PAOLO ARMENI, ESQ., and good cause appearing,

1 THE DEFENDANT WAS ADJUDGED guilty of said offenses and, in addition to
2 the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis Fee including
3 testing to determine genetic markers, the Defendant was SENTENCED to the Nevada
4 Department of Corrections (NDC) as follows: AS TO COUNT 1 - TO TWELVE (12)
5 MONTHS in the Clark County Detention Center (CCDC); AS TO COUNT 2 - TO LIFE
6 with a MINIMUM parole eligibility of ONE HUNDRED TWENTY (120) MONTHS, plus an
7 EQUAL and CONSECUTIVE term of LIFE with a MINIMUM parole eligibility of ONE
8 HUNDRED TWENTY (120) MONTHS for the Use of a Deadly Weapon, COUNT 2 to
9 run CONCURRENT with COUNT 1, with ONE HUNDRED EIGHTY-FOUR (184) DAYS
10 credit for time served.
11

12
13 THEREAFTER, on the 11th day of August, 2009, a Minute Order was prepared
14 reflecting: It having been brought to the attention of the Court by Defense Counsel in
15 this matter that the Judgment of Conviction, filed on July 10, 2009, contained an error
16 as to the exact count the Defendant was found guilty of at time of trial, the Court does
17 HEREBY ORDER that an AMENDED JUDGMENT OF CONVICTION be filed to reflect
18 that the Defendant was found GUILTY of COUNT 1 – CONSPIRACY TO COMMIT A
19 BATTERY WITH A DEADLY WEAPON OR BATTERY RESULTING IN SUBSTANTIAL
20 BODILY HARM, in place and stead of Conspiracy to Commit Battery with a Deadly
21 Weapon.
22
23

24
25 DATED this 14th day of August, 2009
26
27

28
Valerie Adair
VALERIE ADAIR
DISTRICT JUDGE



CLERK OF THE COURT

1 DAVID ROGER
Clark County District Attorney
2 Nevada Bar #002781
MARC DIGIACOMO
3 Chief Deputy District Attorney
Nevada Bar #006955
4 200 Lewis Avenue
Las Vegas, Nevada 89155-2211
5 (702) 671-2500
Attorney for Plaintiff
6

DISTRICT COURT
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,
8 Plaintiff,

9 -vs-

10 DEANGELO CARROLL,
11 #1678381

12 Defendant.
13

CASE NO: C212667

DEPT NO: XXI

14 **SECOND AMENDED NOTICE OF EVIDENCE IN AGGRAVATION**

15 COMES NOW, the State of Nevada by Clark County District Attorney DAVID
16 ROGER, through MARC DIGIACOMO, Chief Deputy District Attorney, pursuant to Rule
17 250(4)(f) of the Nevada Supreme Court, hereby gives notice of the existence of the
18 following evidence in aggravation to be presented at the penalty phase of the trial:

19 1. The murder was committed by a person, for himself or another, to receive money or any
20 other thing of monetary value, to-wit by:

21 On or about May 19, 2005, the owner of the Palomino Club, Luis Hidalgo, Jr., located
22 at 1848 North Las Vegas Boulevard, made it known to Deangelo Carroll, an employee of the
23 Palomino Club, that he would pay someone to kill Timothy Jay Hadland, who was a former
24 employee of the club. Luis Hidalgo, Jr., was angry with the victim, Timothy Jay Hadland,
25 because after his firing from the club, Timothy Jay Hadland was hurting the club's business
26 by "bad mouthing" the club by spreading rumors about Luis Hidalgo Jr., and about the club.
27 Timothy Jay Hadland had a lot of contact with cab drivers and was telling cabbies not to
28 bring their fares to the club in retaliation for his firing. The Palomino Club is not located on

1 the Strip and its business relies heavily on customers being brought to the club by cabs. The
2 club was losing money because of Timothy Jay Hadland's actions and as such Luis Hidalgo
3 Jr., wanted him killed so that he, his business, and his employees would be better off
4 financially by the increased flow of clients after Timothy Jay Hadland was silenced. Based
5 upon this initial conversation, Deangelo Carroll procured the assistance of Jayson Taoipu to
6 commit the murder.

7 On the same date, after the initial conversation, Luis Hidalgo, III, a manager of the
8 Palomino Club, called Deangelo Carroll and told him to come to the club and "bring baseball
9 bats and garbage bags." When Defendant Carroll arrived at the Palomino Club, Defendant
10 Luis Hidalgo, Jr., hired Deangelo Carroll to kill Timothy Jay Hadland. After conveying this
11 information and procuring Deangelo Carroll, Deangelo Carroll went to 1676 "E" Street to
12 the residence of Kenneth Counts and enlisted Defendant Kenneth Counts to kill Timothy Jay
13 Hadland. Defendant Deangelo Carroll then drove Defendants Kenneth Counts and Jayson
14 Taoipu, as well as witness Rontae Zone, out to the area of North Shore Road at Lake Mead,
15 where Defendant Kenneth Counts shot and killed Timothy Jay Hadland.

16 After the killing, the group drove back to the Palomino Club and Defendant Deangelo
17 Carroll entered the club with Defendant Kenneth Counts. Defendant Deangelo Carroll went
18 into Luis Hidalgo Jr.'s office and met with him and Defendant Anabel Espindola. At that
19 time Defendant Deangelo Carroll announced that, "it was done" and that Defendant Kenneth
20 Counts wanted to be paid. Luis Hidalgo Jr., then told Defendant Anabel Espindola to get the
21 money, which Defendant Anabel Espindola did and which she provided to Defendant
22 Deangelo Carroll who then provided the five thousand dollars (\$5,000) to Defendant
23 Kenneth Counts. Defendant Deangelo Carroll also received some money for his
24 involvement.

25 These facts support the aggravator because the murder was committed for the purpose
26 of improving the profits to the business and the employees of the Palomino Club. The owner
27 of the club, Luis Hidalgo Jr., perceived that profits were being hurt by the victim, Timothy
28 Jay Hadland "bad mouthing" him and the club. As such, Luis Hidalgo Jr., used employees,

1 Defendants Anabel Espindola, Luis Hidalgo, III, and Deangelo Carroll to carry out his
2 wishes. Defendant Deangelo Carroll also was directly paid for his role in the killing of
3 Timothy Jay Hadland. In addition, these facts support murder for hire under the aggravator
4 as Defendants Deangelo Carroll enlisted the help of others, including Defendant Counts by
5 offer of renumeration from the owners and managers of the Palomino Club.

6 The basis for this aggravator is the aggravated nature of the crime itself. The
7 evidence upon which the State will rely is the testimony and exhibits introduced during the
8 guilt or penalty phase of the trial, as well as the verdicts from the guilt phase. [NRS
9 200.033(6)].

10 Regarding the establishment of aggravating circumstances under **Subsection 6 of**
11 **NRS 200.033**, the State will rely upon the evidence to be adduced at the Guilt Phase of the
12 Jury Trial. The State will file one or more witness lists in conformance with the Nevada
13 Revised Statutes. The State has provided full discovery in this matter regarding said
14 witnesses in this case. Rule 250(4)(f) requires the filing of this Notice to summarize the
15 evidence which the State intends to introduce at the “Penalty Phase” of the trial. Therefore,
16 regarding establishment of aggravating circumstances under **Subsection 6 of NRS 200.033**,
17 said Notice need not and does not summarize any evidence in addition to that which has
18 already been identified and disclosed to the defense, and/or to be introduced or disclosed
19 during the Guilt Phase of the Jury Trial.

20 The Defense is hereby invited to re-examine the file of the Clark County District
21 Attorney for any and all discoverable information and evidence.

22 In addition to the evidence to be offered to establish the statutory aggravating
23 circumstances, the State hereby also gives notice of evidence of other relevant circumstances
24 in the Penalty Phase of the Jury Trial. Below is a list of the names of the individuals that
25 will give testimony in support of the other circumstances and specifically what they will
26 testify to:

27 ///

28 ///

1 1. ALAN HADLAND, the victim's son, may appear and testify pursuant to NRS
2 176.015. Photographs of the victim and his family may be admitted during the testimony of
3 this witness.

4 2. ALEX HADLAND, the victim's son, may appear and testify pursuant to NRS
5 176.015. Photographs of the victim and his family may be admitted during the testimony of
6 this witness.

7 3. ELENA HADLAND, the victim's daughter, may appear and testify pursuant to
8 NRS 176.015. Photographs of the victim and his family may be admitted during the
9 testimony of this witness.

10 4. JENNIFER HADLAND, the victim's daughter, may appear and testify
11 pursuant to NRS 176.015. Photographs of the victim and his family may be admitted during
12 the testimony of this witness.

13 5. DORI LUKKER, the victim's former wife, may appear and testify to
14 circumstances relative to the victim as provided in NRS 175.552. Photographs of the victim
15 and his family/friends may be admitted during the testimony of this witness.

16 6. PAJIT KARSON, the victim's girlfriend at the time of his murder, may appear
17 and testify to circumstances relative to the victim as provided in NRS 175.552. Photographs
18 of the victim and his family/friends may be admitted during the testimony of this witness.

19 7. CUSTODIAN OF RECORDS – CLARK COUNTY DETENTION CENTER
20 - May testify and admit disciplinary records of Defendant while at the Clark County
21 Detention Center pending trial. Specifically, the records reflect a number of rules violations,
22 including the harassment of a fellow prisoner and a statement of intent to assault and/or
23 batter another inmate in December of 2005 (Updated records have been ordered).
24 Additionally, jail phone calls involving Defendant Carroll may be offered.

25 8. CORRECTIONS OFFICER DENTON P# 8228 – May testify to his
26 involvement in the investigation of Defendant for rules violation including, but not limited
27 to, his harassment of a fellow inmate and a statement of intent to assault and/or batter
28 another inmate in December of 2005.

1 9. LVMPD OFFICER D. VERSHALL P#6350 and A. ECKEL P#6929 – May
2 testify to their investigation of a Conspiracy to Commit Robbery and Robbery under
3 LVMPD event number 020518-0793 to which Defendant was convicted pursuant to a guilty
4 plea of Conspiracy to Commit Robbery in C184573. Said testimony will incorporate and
5 admit all discovery and records regarding said case, including but not limited to all records,
6 physical evidence, photographs, reports, or interviews in the possession of the LVMPD
7 and/or the Clark County District Attorney’s Office including a certified copy of the
8 judgment of conviction in case number C184573 and/or records of the department of parole
9 and probation including a copy of the pre-sentence investigation report.

10 10. STEPHEN BLODGETT – Victim, may appear and testify regarding the
11 Conspiracy to Commit Robbery and Robbery under LVMPD event number 020518-0793, to
12 which Defendant was convicted pursuant to a guilty plea of Conspiracy to Commit Robbery
13 in C184573. Said testimony will incorporate and admit all discovery and records regarding
14 said case, including but not limited to all records, physical evidence, photographs, reports, or
15 interviews in the possession of the LVMPD and/or the Clark County District Attorney’s
16 Office including a certified copy of the judgment of conviction in case number C184573
17 and/or records of the department of parole and probation including a copy of the pre-
18 sentence investigation report.

19 11. CAVE CHRISTOPHER, RICHARD HARDMAN, JERRY FERGUSON,
20 LELAND HEN and SHARICE LOUKISHA – Witnesses, may appear and testify regarding
21 the Conspiracy to Commit Robbery and Robbery under LVMPD event number 020518-
22 0793, to which Defendant was convicted pursuant to a guilty plea of Conspiracy to Commit
23 Robbery in C184573. Said testimony will incorporate and admit all discovery and records
24 regarding said case, including but not limited to all records, physical evidence, photographs,
25 reports, or interviews in the possession of the LVMPD and/or the Clark County District
26 Attorney’s Office including a certified copy of the judgment of conviction in case number
27 C184573 and/or records of the department of parole and probation including a copy of the
28 pre-sentence investigation report.

1 12. LVMPD N. CHIO P#5109 and J. PANNULLO P#5455 – May testify to their
2 investigation of a Possession of Stolen Vehicle under LVMPD event number 000316-1323,
3 in which Defendant was in possession of a stolen water truck, CA license CP59107. Said
4 testimony will incorporate and admit all discovery and records regarding said case, including
5 but not limited to all records, physical evidence, photographs, reports, or interviews in the
6 possession of the LVMPD. This case was not proceeded upon by the Clark County District
7 Attorney’s Office.

8 13. LVMPD OFFICER HICKS P#6419 – May testify to his investigation of a
9 Possession of an Unregistered Firearm and Discharge of that Firearm under LVMPD event
10 number 001119-2091, in which Defendant was in possession of an unregistered 9mm
11 Parabellum, serial number R41512, which he discharged at 4817 Boulder Highway, Las
12 Vegas Nevada, which Defendant claimed he purchased off the street. Said testimony will
13 incorporate and admit all discovery and records regarding said case, including but not
14 limited to all records, physical evidence, photographs, reports, or interviews in the
15 possession of the LVMPD as well as records of the Clark County District Attorney’s Office
16 or the Las Vegas Justice Court in case number 00M25388X. On June 7, 2001, Defendant
17 pled guilty to the misdemeanor charge of possession of an unregistered firearm in
18 00M25388X.

19 14. CITY OF LAS VEGAS MARSHALL’S OFFICERS D. MAJOR P#653,
20 PEQUEEN P#215, and R. ADAMS P#603 – May testify as to their investigation under event
21 number 20020424-0003, in which Defendant was found to be in possession of marijuana,
22 one bag of which Defendant claimed was his “personal stash,” eight bags of individually
23 wrapped marijuana, and a bag of twenty-four (24) pink pills, Defendant claimed were
24 ecstasy. Officers may further testify that he responded to the Downtown Transportation
25 Center in response to a call from BILL BETTS, claiming that a person was attempting to sell
26 drugs at that location. Said testimony will incorporate and admit all discovery and records
27 regarding said case, including but not limited to all records, physical evidence, photographs,
28 reports, or interviews in the possession of the LVMPD and/or the Clark County District

1 Attorney's Office. This case was dismissed pursuant to plea negotiations in C184573.

2 15. BILL BETTS – May testify as to his witnessing of Defendant attempting to
3 sell street drugs at the Downtown Transportation Center on April 24, 2002, which resulted in
4 the investigation under City of Las Vegas Marshall's event number 20020424-0003. Said
5 testimony will incorporate and admit all discovery and records regarding said case, including
6 but not limited to all records, physical evidence, photographs, reports, or interviews in the
7 possession of the LVMPD and/or the Clark County District Attorney's Office. This case
8 was dismissed pursuant to plea negotiations in C184573.

9 16. LVMPD OFFICER LEDBETTER P#4984 – May testify to his investigation of
10 a Conspiracy to Commit Robbery and Robbery With Use of a Deadly Weapon under event
11 number 970125-0827 where Defendant, and two co-conspirators robbed JASON BRANDT
12 and MICHAEL PARRISH with a small black handgun. Said testimony will incorporate and
13 admit all discovery and records regarding said case, including but not limited to all records,
14 physical evidence, photographs, reports, or interviews in the possession of the LVMPD
15 and/or the Clark County District Attorney's Office. On May 20, 1997, Defendant was
16 adjudicated a delinquent for Conspiracy to Commit Robbery With A Deadly Weapon and
17 was committed to the Nevada Youth Training Center in Elko for one year. On May 20,
18 1998, Defendant was released on parole. In November of 1998, his parole was revoked. In
19 November of 1999, he was released on parole again, and three months later, his parole was
20 terminated.

21 17. JASON BRANDT and MICHAEL PARRISH – Victims, and may testify to
22 Defendant and two co-conspirators robbing them at gunpoint on January 25, 1997 which was
23 documented under LVMPD event number 970125-0827. Said testimony will incorporate
24 and admit all discovery and records regarding said case, including but not limited to all
25 records, physical evidence, photographs, reports, or interviews in the possession of the
26 LVMPD, the Clark County District Attorney's Office, and/or the Nevada Department of
27 Parole and Probation.

28 //

1 18. LVMPD OFFICER CANNON P#6620 – May testify to his investigation of
2 Defendant for speeding, suspended driver's license and possession of marijuana under
3 LVMPD event number 020516-2841. Said testimony will incorporate and admit all
4 discovery and records regarding said case, including but not limited to all records, physical
5 evidence, photographs, reports, or interviews in the possession of the LVMPD, the Clark
6 County District Attorney's Office and/or the North Las Vegas Justice Court. Defendant pled
7 guilty to speeding in case number 02MN0578X.

8 19. CUSTODIAN OF RECORDS – LAS VEGAS METROPOLITAN POLICE
9 DEPARTMENT: During the penalty phase, copies of records of the Las Vegas Metropolitan
10 Police Department may be admitted including any report, statement or physical evidence
11 related to event numbers 970125-0827, 000316-1323, 001119-2091, 020516-2841 and
12 020518-0793.

13 20. CUSTODIAN OF RECORDS – NEVADA DEPARTMENT OF PAROLE
14 AND PROBATION and/or NEVADA PAROLE AND PROBATION OFFICER BRENDA
15 LEWIS P#560: During the penalty phase, it is anticipated that the pre-sentence investigation
16 report from C184573 will be admitted.

17 21. CUSTODIAN OF RECORDS – CITY OF LAS VEGAS MARSHALL'S
18 OFFICE: During the penalty phase, copies of records of the City of Las Vegas Marshall's
19 Office may be admitted including any report, statement or physical evidence related to event
20 number 20020424-0003.

21 22. JEFF KENNETH BREMER – May appear and testify to conversations he had
22 with Deangelo Carroll about Defendant's involvement in the murder of Timothy Jay
23 Hadland.

24 23. ANABEL ESPINDOLA – May appear and testify to her knowledge of
25 Defendant Deangelo Carroll not only in the charged crime, but other activities at the
26 Palomino Club, including, but not limited to, one occasions where Defendant Luis Hidalgo
27 Jr. had procured Defendant Carroll to harm the boyfriend of Defendant Hidalgo's daughter.

28 24. JAYSON TAOIPU – May appear and testify to his knowledge of Defendant

1 Deangelo Carroll including but not limited to the circumstances surrounding the crime.

2 All of the items referenced in this notice are part of the Clark County District
3 Attorney's file. This notice hereby incorporates by reference all discovery in the case
4 submitted to counsel. Defendant's counsel is invited to come to the Office of the District
5 Attorney and review the file to ensure that they have all items listed in this notice.

6 DATED this 19th day of April, 2010.

7 Respectfully submitted,

8 DAVID ROGER
9 Clark County District Attorney
Nevada Bar #002781

10 BY /s/MARC DIGIACOMO
11 MARC DIGIACOMO
12 Chief Deputy District Attorney
13 Nevada Bar #006955
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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of the above and foregoing, was made this 19th day of April, 2010, by facsimile transmission to:

THOMAS ERICSSON, ESQ.
FAX: 658-2502

/s/Deana Daniels
Secretary for the District Attorney's
Office