

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****August 11, 2009**

08C241394

The State of Nevada vs Luis Hidalgo Jr

August 11, 2009**3:30 PM****Minute Order**

**MINUTE ORDER
RE: JUDGMENT OF
CONVICTION
Court Clerk: Denise
Husted Heard By:
Valerie Adair**

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- It having been brought to the attention of the Court by defense counsel in this matter that the Judgment of Conviction, filed on 7/10/09, contained an error as to the exact count the Deft. was found guilty of at time of trial, the Court does HEREBY ORDER, that an AMENDED JUDGMENT OF CONVICTION be filed to reflect that the Deft. was found GUILTY of COUNT I - CONSPIRACY TO COMMIT A BATTERY WITH A DEADLY WEAPON OR BATTERY RESULTING IN SUBSTANTIAL BODILY HARM (F), in place and stead of Conspiracy to commit a battery with a deadly weapon.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 29, 2009

08C241394

The State of Nevada vs Luis Hidalgo Jr

December 29, 2009

9:30 AM

Motion

**DEFT'S PRO PER
MTN TO
WITHDRAW
CNSL/283 Court
Clerk: Denise Husted
Reporter/Recorder:
Janie Olsen Heard
By: Valerie Adair**

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:

Adams, Danae

Attorney

JOURNAL ENTRIES

- COURT ORDERED, matter CONTINUED as the motion on calendar has not been scanned and is unavailable to the Court.

NDC

1/19/10 9:30 AM STATUS CHECK: DEFENDANT'S PRO PER MOTION TO WITHDRAW COUNSEL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 19, 2010

08C241394

The State of Nevada vs Luis Hidalgo Jr

January 19, 2010

9:30 AM

Status Check

**STATUS CHECK:
DEFENDANT'S PRO
PER MOTION TO
WITDRAW Court
Clerk: Denise Husted
Reporter/Recorder:
Janie Olsen Heard
By: Valerie Adair**

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Matter on in error. COURT ORDERED, OFF CALENDAR.
NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****November 09, 2010**

08C241394

The State of Nevada vs Luis Hidalgo Jr

November 09, 2010 9:30 AM**Motion to Amend****HEARD BY:** Adair, Valerie**COURTROOM:** RJC Courtroom 11C**COURT CLERK:** Denise Husted**RECORDER:** Janie Olsen**REPORTER:****PARTIES****PRESENT:**

Armeni, Paola M.

Attorney

Gentile, Dominic P.

Attorney

Pesci, Giancarlo

Attorney

State of Nevada

Plaintiff

JOURNAL ENTRIES

- The Court noted that the issue is regarding notes from investigators; all Court's exhibits have previously been sent to the vault. Mr. Gentile advised that these notes are not among the Court's exhibits and this is an important appellate issue. The Court directed the Clerk to review the records and advise if the notes are found. Mr. Gentile requested that after the search, the Court indicate whether or not the notes are found. Mr. Pesci stated that the record is clear that the Court review the notes. The Court recollected that the notes were on one sheet of legal paper.

NDC

CLERK'S NOTE: Upon review of exhibits, the note on the yellow sheet of legal paper was not among exhibits. dh

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 11, 2011

08C241394

The State of Nevada vs Luis Hidalgo Jr

January 11, 2011

9:30 AM

Motion to Amend

HEARD BY: Adair, Valerie

COURTROOM: RJC Courtroom 11C

COURT CLERK: Denise Husted

RECORDER: Janie Olsen

REPORTER:

PARTIES

PRESENT:

Di Giacomo, Marc P.
Gentile, Dominic P.
State of Nevada

Attorney
Attorney
Plaintiff

JOURNAL ENTRIES

- COURT FINDS, it is not necessary to amend the record as it is clear that the note (on one sheet of yellow legal paper) has not been recovered, therefore ORDERED, motion DENIED. FURTHER, the 2/4/08 transcript is to be unsealed.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 21, 2014

08C241394

The State of Nevada vs Luis Hidalgo Jr

January 21, 2014

9:30 AM

Request

HEARD BY: Adair, Valerie

COURTROOM: RJC Courtroom 11C

COURT CLERK: Billie Jo Craig

RECORDER: Janie Olsen

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Deputy District Attorney Ofelia Monje present. Defendant not present.

Court stated its findings, and ORDERED, Defendant's Pro Per Motion for Appointment of Counsel is GRANTED. The Court will contact Drew Christensen's office. Matter SET for Status Check: Confirmation of Counsel. The State to prepare an Order to Transport.

NDC

2/4/14 9:30 AM STATUS CHECK: CONFIRMATION OF COUNSEL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 04, 2014

08C241394

The State of Nevada vs Luis Hidalgo Jr

February 04, 2014

9:30 AM

Status Check

HEARD BY: Adair, Valerie

COURTROOM: RJC Courtroom 11C

COURT CLERK: Denise Husted

RECORDER: Janie Olsen

REPORTER:

PARTIES

PRESENT:

McLetchie, Margaret A., ESQ

Attorney

JOURNAL ENTRIES

- Michelle Sudamo appearing for the Sate. Mr. Kampschror appearing for attorney of record Maggi McLetchie. He stated that all notices should be sent to her. Pursuant to request of counsel, COURT ORDERED, briefing schedule set as follows:

Defendant to file supplemental record by 8/5/14;

State to file reply by 10/714;

Reply and hearing set on:

11/4/14 9:30 AM PETITION FOR WRIT OF HABEAS CORPUS

CLERK'S NOTE: Motions set on 3/11/14 are vacated.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****June 30, 2015**

08C241394

The State of Nevada vs Luis Hidalgo Jr

June 30, 2015**9:30 AM****Motion for Order
Extending Time****HEARD BY:** Adair, Valerie**COURTROOM:** RJC Courtroom 11C**COURT CLERK:** Denise Husted**RECORDER:** Susan Schofield**REPORTER:****PARTIES****PRESENT:**Pandukht, Taleen R.
State of NevadaAttorney
Plaintiff**JOURNAL ENTRIES**

- Alina Shell appearing for the defendant. She requested addition time to file a supplement. COURT SO ORDERED. Supplement due by 11/9/15, Reply due by 1/8/16; Response due by 2/8/16 and Hearing Date SET.

2/16/16 9:30 AM HEARING: PETITION FOR WRIT OF HABEAS CORPUS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****November 10, 2015**

08C241394

The State of Nevada vs Luis Hidalgo Jr

November 10, 2015 9:30 AM Motion**HEARD BY:** Adair, Valerie**COURTROOM:** RJC Courtroom 11C**COURT CLERK:** Denise Husted**RECORDER:** Susan Schofield**REPORTER:****PARTIES**

PRESENT:	McLetchie, Margaret A.	Attorney
	Pandukht, Taleen R.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- The Court noted that the opening was due by 11/9/15; counsel will be allowed an additional thirty days to file an opening brief. Ms. McLetchie informed the Court that she cannot prepare this within that time period. The Court informed counsel that a great deal of time has already been given and over these many months something should have been done. Counsel requested sixty days. COURT ORDERED, GRANTED. Briefing schedule set as follows:

Opening due by: 1/22/16;

Opposition due by: 3/31/16;

Reply due by: 4/29/16, and matter set for hearing.

NDC

5/10/16 9:30 AM HEARING: PETITION FOR WRIT OF HABEAS CORPUS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****January 21, 2016**

08C241394

The State of Nevada vs Luis Hidalgo Jr

January 21, 2016**9:30 AM****Motion****HEARD BY:** Adair, Valerie**COURTROOM:** RJC Courtroom 11C**COURT CLERK:** Denise Husted**RECORDER:** Susan Schofield**REPORTER:****PARTIES****PRESENT:**

Pandukht, Taleen R.

Attorney

Shell, Alina

Attorney

State of Nevada

Plaintiff

JOURNAL ENTRIES

- Ms. Shell requested additional time on behalf of Ms. McLetchie. Upon Court's inquiry, Ms. Shell stated that she visited with the defendant on Tuesday and he is aware of the pending motion. She further stated that the appendix is ready, but she wants to send everything to the Supreme Court as one package. Colloquy regarding when this was not done sooner.

COURT ORDERED, briefing schedule set as follows:

Opening due by - 2/29/16;

Opposition due by - 5/24/16;

Response due by - 6/21/16.

6/28/16 9:30 AM HEARING: PETITION FOR WRIT OF HABEAS CORPUS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****July 28, 2016**

08C241394

The State of Nevada vs Luis Hidalgo Jr

July 28, 2016**9:30 AM****Petition for Writ of Habeas
Corpus****HEARD BY:** Adair, Valerie**COURTROOM:** RJC Courtroom 11C**COURT CLERK:** Nora Pena**RECORDER:** Susan Schofield**REPORTER:****PARTIES****PRESENT:**Di Giacomo, Marc P.
Shell, Alina
State of NevadaAttorney
Attorney
Plaintiff**JOURNAL ENTRIES**

- Court noted Deft is in prison and she didn't have an opposition. Mr. DiGiacomo advised their response was filed 5/18th and the Defense filed a reply recently. COURT ORDERED, matter CONTINUED two weeks.

NDC

8/11/16 9:30 AM PETITION FOR WRIT OF HABEAS CORPUS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****August 11, 2016**

08C241394

The State of Nevada vs Luis Hidalgo Jr

August 11, 2016**9:30 AM****Petition for Writ of Habeas
Corpus****HEARD BY:** Adair, Valerie**COURTROOM:** RJC Courtroom 11C**COURT CLERK:** Jill Chambers**RECORDER:** Susan Schofield**REPORTER:****PARTIES****PRESENT:**Di Giacomo, Marc P.
Hidalgo Jr, Luis
Shell, Alina
State of NevadaAttorney
Defendant
Attorney
Plaintiff**JOURNAL ENTRIES**

- Court provided a letter to defense counsel regarding the disclosure of the department's law clerk.

Court noted Deft. not present, WAIVED presence. Argument by counsel. Court advised counsel matter will be decide based upon the merits contained in the briefs and issue the decision from chambers.

NDC

8/15/16 CHAMBERS CALENDAR

CLERK'S NOTE: Minutes corrected to reflect the correct counsel for the State, jmc 9/12/16

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 15, 2016

08C241394

The State of Nevada vs Luis Hidalgo Jr

August 15, 2016

3:00 AM

**Petition for Writ of Habeas
Corpus**

HEARD BY: Adair, Valerie

COURTROOM: RJC Courtroom 11C

COURT CLERK: Jill Chambers

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Petition for Writ of Habeas Corpus is DENIED for the reasons set forth by the State in its Opposition. The Court further finds that there is no reason to expand the record through an evidentiary hearing.

The State is to prepare a detailed order.

CLERK S NOTE: Counsel is to ensure a copy of the forgoing minute order is distributed to all interested parties; additionally, a copy of the foregoing minute order was distributed to the listed Service Recipients in the Wiznet E-Service system. jmc 8/15/16

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 23, 2016

08C241394

The State of Nevada vs Luis Hidalgo Jr

August 23, 2016

9:30 AM

**Motion for Appointment of
Attorney**

HEARD BY: Adair, Valerie

COURTROOM: RJC Courtroom 11C

COURT CLERK: Jill Chambers

RECORDER: Susan Schofield

REPORTER:

PARTIES

PRESENT:

Jones, Tierra D.

Attorney

Shell, Alina

Attorney

State of Nevada

Plaintiff

JOURNAL ENTRIES

- Court ORDERED Motion DENIED for reasons set forth by the State.

C 241394

GRAND JURY INDICTMENTS RETURNED IN OPEN COURT FEBRUARY 13, 2008
(From Grand Jury sessions held on February 12, 2008)

CHIEF JUDGE KATHY A. HARDCASTLE

FOREPERSON JOHN WHESDOS

CHIEF DEPUTY DISTRICT ATTORNEY CHRISTOPHER J. LAURENT
DEPUTY DISTRICT ATTORNEY MARC DIGIACOMO

C 241394
XIV

Defendant(s): HIDALGO, LUIS, JR., aka Hidalgo, Luis Alonso

Case No(s): 07AGJ101X (PREVIOUSLY TRACKED TO DEPT. XIV)

Charge(s): CONSPIRACY TO COMMIT MURDER;
MURDER WITH USE OF A DEADLY WEAPON

Def. Counsel(s): DOMINIC GENTILE, ESQ.

WARRANT –
SET FELONY ARRAIGNMENT (ONE WEEK) -
(DEFENDANT IN CUSTODY – CCDC)

Exhibits:

1. Proposed Indictment
2. Instructions
3. Photo
4. Plea Agreement
5. Subpoena - Nextel
6. Subpoena – Nextel
7. Dialog
8. Dialog
9. CD
10. Photo
11. Photo
12. Photo
13. Photo
14. Photo
15. Photo
16. Photo

Exhibits 1-16, to be lodged with the Clerk of the Court.

STATE'S EXHIBITS

CASE NO. C212667/C241394 (cons.)

	Date Offered	Objection	Date Admitted
1. Autopsy Photo - 05-3984	2/2/09 ✓	no	✓ 2/2/09
2. Autopsy Photo - 05-3984	" ✓	no	✓ "
3. Autopsy Photo - 05-3984	" ✓	no	✓ "
4. Autopsy Photo - 05-3984	" ✓	no	✓ "
5. Crime scene photo	" ✓	no	✓ "
6. Crime scene photo - body in street	" ✓	no	✓ "
7. Crime scene photo - body in street	" ✓	no	✓ "
8. Crime scene photo - body in street	" ✓	no	✓ "
9. Crime scene photo - body in street	" ✓	no	✓ "
10. Crime scene photo - body in street	" ✓	no	✓ "
11. Crime scene photo - body in street	" ✓	no	✓ "
12. Crime scene photo - body in street	2/2 ✓	no	✓ 2/2/09
13. Photo - bloody glasses	2/2 ✓	no	✓ 2/2/09
14. Photo - street/with evidence	2/2 ✓	no	✓ 2/2/09
15. Photo - street /with evidence	2/2 ✓	no	✓ 2/2/09
16. Photo - street/with evidence	✓	"	✓
17. Photo - street/with evidence	✓	"	✓
18. Street - evidence 4	✓	"	✓
19. Street - evidence 5	✓	"	✓
20. Street - evidence 6	✓	"	✓
21. Photo - Kia Sportage	✓	"	✓
22. Photo - Kia Sportage	✓	"	✓
23. Photo - Kia Sportage interior	✓	"	✓
24. Photo - Interior of car - cell phone	✓	"	✓
25. Photo - Interior of car - cooler	✓	"	✓
26. Photo - Interior of car - bag	✓	"	✓
27. Photo - Trunk of car - items inside	✓	"	✓
28. Photo - cell phone	✓	"	✓
29. Photo - bag & contents	✓	✓	✓

STATE'S EXHIBITS

CASE NO. C212667/C241394 (cons.)

30. Photo – bank deposit case	2/2	✓	no	✓	2/2/09
31. Photo – beer can	2/2	✓	no	✓	2/2/09
32. Photo – interior of van		✓		✓	
33. Photo – back of Chevy van – 363NKS		✓		✓	
34. Photo – side of vehicle		✓		✓	
35. Photo – side of vehicle		✓		✓	
36. Photo – interior of van		✓		✓	
37. Photo – interior of van		✓		✓	
38. Photo – vehicle window – print lifts		✓		✓	
39. Photo – interior of van		✓		✓	
40. Photo – interior of van		✓		✓	
41. Photo – Palomino cards/spoons		✓		✓	
42. Photo – seat w/Palomino card		✓		✓	
43. Photo – ash tray		✓		✓	
44. Photo – interior of van		✓		✓	
45. Photo – ash tray		✓		✓	
46. Photo – back seat of van		✓		✓	
47. Photo – back seat of van		✓		✓	
48. Photo – interior of van		✓		✓	
49. Photo – interior of van-cupholder/ashtray		✓		✓	
50. Photo – interior of van		✓		✓	
51. Photo – dash of van		✓		✓	
52. Photo – windshield of van		✓		✓	
53. Photo – cupholders		✓		✓	
54. Photo – dash/ashtray/glove box		✓		✓	
55. Photo – DMV/insurance papers		✓		✓	
56. Photo – DMV envelope-Deangelo Carroll		✓		✓	
57. Photo – DMV envelope –Deangelo Carroll/Palomino cards		✓		✓	
58. Photo – driver's seat		✓		✓	
59. Photo – front seats		✓		✓	

STATE'S EXHIBITS

CASE NO. C212667/C241394 (cons.)

60. Photo - house	2-4-09	no obj	2-4-09
61. Photo - house - address 1676			
62. Photo - Black Chevy			
63. Photo - cluttered patio			
64. Photo - shelves w/items			
65. Photo - black metal			
66. Photo - bags of bullets			
67. Photo - fax machine/messy floor			
68. Photo - dining area			
69. Photo - dining table			
70. Photo - checkbook - Irene & Kenneth Counts			
71. Photo - Sprint bill - photos			
72. Photo - messy hallway			
73. Photo - clothes on floor			
74. Photo - clothes on floor			
75. Photo - black shirt			
76. Photo - black cap - item 6			
77. Photo - black glove - item 7 (left)			
78. Photo - black glove - item 7 (left)			
79. Photo - black pants			
80. Photo - blue jeans - item 2	✓	✓	✓
81. Photo - curb - address 1677	2-4-09	no obj	2-4-09
82. Photo - house			
83. Photo - garage			
84. Photo - hallway/ladder			
85. Photo - disheveled living room			
86. Photo - disheveled living room			
87. Photo - disheveled living room			
88. Photo - disheveled living room			
89. Photo - TV remote/ID card	✓	✓	✓

STATE'S EXHIBITS

CASE NO. C212667/C241394 (cons.)

90. Photo – floor/items on floor	2-4-09		no obj	2-4-09
91. Photo – floor/items on floor				
92. Photo – misc. items				
93. Photo – pouch w/cash				
94. Photo – wallet – NDL – Irene Counts				
95. Photo – Palomino cards				
96. Photo – cash		↓	↓	↓
97. Photo – Simone's Auto	2/6	✓	no	✓ 2/6/09
98. Photo – Photo SAP 6770		✓		✓
99. Photo – interior of building		✓		✓
100. Photo – interior of building		✓		✓
101. Photo – interior of building		✓		✓
102. Photo – desk		✓		✓
103. Photo – brief case		✓		✓
104. Photo - desk		✓		✓
105. Photo – check to Deangelo Carroll		✓		✓
106. Photo – pool table		✓		✓
107. Photo – two red chairs		✓		✓
108. Photo – pool table/point black apron		✓		✓
109. Photo – magazine/note on front		✓		✓
110. Photo – cash		✓		✓
111. Photo – interior of building	↓	✓	↓	✓ ↓
112. Photo – door/hallway	2/9	✓	obj	✓ 2/9/09
113. Photo – door #6		✓	obj	✓ 2/9/09
114. Photo – hall/dishveled room		✓	obj	✓ 2/9/09
115. Photo – dishveled room		✓	obj	✓ 2/9/09
116. Photo – dishveled desk	↓	✓	obj	✓ 2/9/09
117. Photo – dishveled desk	2/6	✓	obj	
118. Photo – birth certificate of Luis Hidalgo	2/6	✓	obj	✓ 2/6/09
119. Photo – order for savings bonds	2/9	✓	obj	✓ 2/9/09

STATE'S EXHIBITS

CASE NO. C212667/C241394 (cons.)

120. Photo – disheveled room	2/9	✓	obj	✓	2/9
121. Photo – disheveled room	2/9	✓	obj		
122. Photo – disheveled room	2/6	✓	obj		
123. Photo – bed/items on bed	2/6	✓	obj		
124. Photo – disheveled room	2/9	✓	obj		
125. Photo – disheveled room	2/9	✓	obj		
126. Photo – paperwork/notebook	2/9	✓	obj	✓	2/9/09
127. Photo – savings bond – Luis Hidalgo	2/9	✓	obj	✓	2/9/09
128. Photo – social security card	2/9	✓	obj	✓	2/9/09
129. Photo – bathroom	2/9	✓	obj	✓	2/9/09
130. Photo – bathroom	2/9	✓	obj	✓	2/9/09
131. Photo – item on tile	2/9	✓	obj	✓	2/9/09
132. Photo – toilet	2/9	✓	obj	✓	2/9/09
133. Photo – toilet	2/9	✓	obj	✓	2/9/09
134. Envelope	2/2	✓	no	✓	2/2/09
134 A – bullet fragment	"	✓	no	✓	"
134 B – bullet fragment – upper brain	"	✓	no	✓	"
134 C – bullet fragment – lower brain	"	✓	no	✓	"
135. Photo – Palomino Club	2/5	✓	no	✓	2/5/09
136. Photo – Palomino Club blueprint	↓	✓	↓	✓	↓
137. Photo – money	↓	✓	↓	✓	↓
138. Photo – money	↓	✓	↓	✓	↓
139. Photo – money/jewelry	↓	✓	↓	✓	↓
140. Photo – money	↓	✓	↓	✓	↓
141. Photo – money	↓	✓	↓	✓	↓
142. Photo – payroll 5/14/04	↓	✓	↓	✓	↓
143. Photo – bulletin board	↓	✓	↓	✓	↓
144. Photo – box of cards	↓	✓	↓	✓	↓
145. Metro Print Card (four pages)	2/2	✓	no	✓	2/2/09
146. Metro Print Card (two pages)	2/2	✓	no	✓	2/2/09

STATE'S EXHIBITS

CASE NO. C212667/C241394 (cons.)

147. Photo - \$100.00 dollar bill/front and back (photo)	2/10	✓	obj.	✓ 2/10/09
148. Event #050519-3516 - list of evidence	2/2	✓	no	✓ 2/2/09
149. Evidence bag and contents	2/2	✓	no	✓ 2/2/09
149 A - #27 Farmers Ins. Cert (Simone's Auto), Letter from DMV (Deangelo Carroll) DMV; Reg (Anabel Espindola, envelope w/Simone's Auto Plaza on front; containing DMV reg (Anabel Espindola, Bank of America cashier's check (Deangelo Carroll); Envelope from DMV (Deangelo Carroll)	2/2	✓	no	✓ 2/2/09
150. Evidence Envelope	2/2	✓	no	✓ 2/2/09
150 A - 42 Palomino Business Cards	2/2	✓	no	✓ 2/2/09
151 - Evidence Envelope	2/2	✓	no	✓ 2/2/09
151 A - one Palomino Club matchbook	2/2	✓	no	✓ 2/2/09
152 - Evidence Envelope	2/2	✓	no	✓ 2/2/09
152 A - 33 Palomino Club ad cards	2/2	✓	no	✓ 2/2/09
153 - Evidence Bag	2/2	✓	no	✓ 2/2/09
153 A - black wallet and contents <i>not opened</i>				
154 - Evidence Envelope				
154 A - 28 Palomino Club VIP cards				
155 - Evidence Bag	2/2	✓	no	✓ 2/2/09
155 A - one pneumatic tube w/DI on the side	2/2	✓	no	✓ 2/2/09
156 Metro Print Card	2/10	✓	no	✓ 2/10/09
157. Video (VHS)				
157 A - voluntary statement				
158. Aerial street map	2-4-09		no obj.	2-4-09
159. Aerial map	2/2	✓	no	✓ 2/2/09
160. Evidence envelope	2-4-09		no obj.	2-4-09
160 A - one business card "The Scooter Guy"				
160 B - six "Palomino VIP Cards"				
160 C - one "Palomino VIP Card"				
160 D - ten "Palomino VIP Cards"				

STATE'S EXHIBITS

CASE NO. C212667/C241394 (cons.)

161. Evidence Envelope and Contents	2-4-09	no obj	2-4-09
161 A - five \$100.00 bills			
162. Evidence Bag and Contents	2-4-09	no obj	2-4-09
162 A - six bills equaling \$95.00			
163. Evidence Envelope	2-4-09	no obj	2-4-09
163 A - black cloth pistol case	↓	↓	↓
164. Evidence Envelope and Contents <i>not opened</i>	2-4-09	obj (res. ruling)	2/4/09
164 A - 18 "Win 9 m Luger Cart.			
164 B - 59 RIM fire cartridges			
165. Evidence Envelope and Contents <i>(not opened)</i>	2-4-09	no obj	2-4-09
165 A Misc. items			
166. Evidence Envelope and Contents			
167. Evidence Envelope and Contents			
168. Evidence Envelope and Contents	2-4-09	no obj	2-4-09
169. GPA - Jayson Taoipu - 6/6/07			

STATE'S EXHIBITS

CASE NO. C212667/C241394 (cons.)

170. Cab trip sheet	2/3	✓	no	✓	2/3/09
171. VIP cards – Palomino	2/10	✓	no	✓	2/10/09
172. Latent print lifts	2-4-09		no 2/10	✓	2/10/09
173. Latent print lifts	↓		no 2/10	✓	2/10/09
174. Latent print lifts	↓		no 2/10	✓	2/10/09
175. Prints	2/10	✓	no	2/10	2/10/09
176. Prints	2/10	✓		✓	2/10/09
177. Prints	2/10	✓		✓	2/10/09
178. Prints	2/10	✓		✓	2/10/09
179. Prints	2/10	✓		✓	2/10/09
180. Prints	2/10	✓	↓	✓	2/10/09
181. \$100.00 bill and prints	2/10	✓	no	✓	2/10/09
182. Photo – K.J. Counts					
183. Contact sheet – 6/20/05					
184. Call det. Exhibits					
185. CD 2/1/08					
186 CD 2/1/08					
187. Kenneth Count's phone calls					
188. Sprint document – 4/26/06	2/3	✓	no	✓	2/3/09
189. Call log	2/3	✓	no	✓	2/3/09
190 Nextel document	2/3	✓	obj	✓	2/3/09
191. CD	2-4-09		obj		2-4-09
191 A – CD Transcript					
191 B – Transcript					
192 A – CD	2-4-09		obj		2-4-09
192 B – CD	↓		↓		↓
193. Evidence Envelope	2/3	✓	no	2/3	2/3/09
193 A – two pieces of paper stapled together	2/3	✓	no	✓	2/3/09
194. Evidence Bag and contents					
195. Evidence Env. (Not opened)	2/2	✓	no	✓	2/2/09

STATE'S EXHIBITS

CASE NO. C212667/C241394 (cons.)

✓195 A Lake Mead Receipt <i>not opened</i>				
✓196 Badge Photo - Larry Mathewy	2/2	✓	no	✓ 2/2/09
✓197 - Nextel Sector Layout	2/3	✓	no	✓ 2/3/08
✓198 Photo - Deangelo Carroll	2/3	✓	no	✓ 2/3/08
✓199 Photo - Tapiwa	2/3	✓	no	✓ 2/3/08
✓200 Evidence Bag				
200 A Large Yellow Pad w/handwriting				
200 B Yellow Pad w/handwriting				
200 C Paper sheets				
200 D Several notepads w/handwriting				
200 E Small Yellow Paper Pad				
200 F Small White paper pad				
200 G SS card # 615-18-0771				
200 H Two notes w/handwriting				
200 I Grid Env. : 200 I-A Note	2/9	✓	Slip	✓ 2/9/09
200 J Checkbook Box 200 K-Num. Sav. Bond forms	2/9	✓	Slip	✓ 2/9/09
✓201 Evidence Bag	2/9	✓	obj.	✓ 2/9/09
✓202 Evidence Envelope containing (10) ^{\$100.00} \$100.00 bills + (20) \$20 bills	2-4-09		no obj.	2-4-09
✓203. Evidence bag containing Tanqueray bottle	2-4-09		no obj.	2-4-09
✓204. Evidence bag	2/5	✓	no	✓ 2/5/09
✓204A. Black Purse				
✓204B. Miscellaneous credit cards and personal items				
205 Photo - Office	2/5	✓	no	✓ 2/5/09
206 Photo		✓		✓
207 Photo "		✓		✓
208 Photo "		✓		✓
209 Photo Bulletin Board		✓		✓
210 Photo "		✓		✓
211 Photo TV/Equipment		✓		✓
212 Photo File drawer/open	↓	✓	↓	✓ ↓
201 A - Notebook	2/9	✓	obj.	✓ 2/9/09
201 B 7/10, 100 Bonds, U.S.	2/9	✓	obj.	✓ 2/9/09
✓203 A Gin Bottle	2/9	✓	no	✓ 2/9/09

STATE'S EXHIBITS

CASE NO. C212667/C241394 (cons.)

213	Photo	File drawer / Open	2/5/09	✓	no	✓	2/5/09
214	Photo	FF - "		✓		✓	
215	Photo	TV		✓		✓	
216	Photo	Office		✓		✓	
217	Photo	Money		✓		✓	
218	Photo	Office		✓		✓	
219	Photo	Computer Equipment	✓	✓	✓	✓	✓
220	Envelope		2/6	✓	no	✓	2/6
220 A	Letter			✓	no	✓	
221	Envelope			✓	no	✓	
221 A	Card		✓	✓	no	✓	✓
222	Envelope						
222 A	Card						
222 B	Letter						
223	Envelope		2/10	✓	no	✓	2/10/09
223 A	Card		2/10	✓	no	✓	2/10/09
224	Document	- Carroll					
225	Document	- Counts					
226	JOC	- Carroll					
227	Correspondence		2/6	✓	obj		
228	GPA	- Anabel Espindola	2/6	✓	obj		
229	Note	- Keep Your Mouth Shut					
230	Silverton Receipt		2/6	✓	obj	✓	2/6/09
231	Photo		2/9	✓	obj no	✓	2/9/09
232	Photo		2/9	✓	obj no	✓	2/9/09
233	Photo		2/9	✓	obj no	✓	2/9/09
234	Photo	Hidalgo Jr.	2/10	✓	obj		
235	Photo	- Anabel Espindola	2/10	✓	obj	✓	2/19/09
236	Photo	- Hidalgo III	2/10	✓	obj		

STATE'S EXHIBITS

CASE NO. C212667/C241394 (cons.)

[illegible]

Deft's (Luis Hidalgo, Jr.)
EXHIBITS

EXHIBITS

CASE NO. C212667

[illegible]

★ - Admitted as Δ's L. Hidalgo III's. AA

VAULT EXHIBIT FORM

CASE NO: <u>C241394</u>	HEARING DATE: <u>6/23/09</u>
DEPT. NO: <u>21</u>	JUDGE: <u>Valerie Adair</u>
	CLERK: <u>Denise Husted</u>
	RECORDER: <u>Janie Olsen</u>
PLAINTIFF: <u>State of Nevada</u>	JURY FEES:
	COUNSEL FOR PLAINTIFF: <u>G. Pesci / M. DiGiacomo</u>
DEFENDANT: <u>Luis Hidalgo, Jr.</u>	COUNSEL FOR DEFENDANT: <u>D. Gentile / P. Armeni</u>

	Date Offered	Objection	Date Admitted
1 San Bruno Co. document	6/23/09	No	6/23/09
2 SF 49ers document			
3 Letter - Rodolfo Villalta			
4 Proclamation -			
5 NFL Alumni			
6 Letter			
7 List of medications			
8 CVS Caremark			
9 Letter			
10 Misc			

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; DISTRICT COURT MINUTES; EXHIBITS LIST

STATE OF NEVADA,

Plaintiff(s),

vs.

LUIS HIDALGO, JR.
AKA LUIS A. HIDALGO,

Defendant(s).

Case No: 08C241394

Consolidated with 05C212667

Dept No: XXI

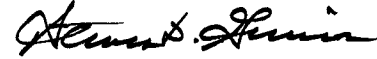
now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 5 day of October 2016.

Steven D. Grierson, Clerk of the Court

Chaunte Pleasant

Chaunte Pleasant, Deputy Clerk


CLERK OF THE COURT

NEO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LUIS HIDALGO, JR.,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: 08C241394
Consolidated with
05C212667
Dept No: XXI

**NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW AND
ORDER**

PLEASE TAKE NOTICE that on September 16, 2016, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on September 19, 2016.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Chaunte Pleasant

Chaunte Pleasant, Deputy Clerk

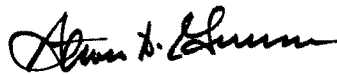
CERTIFICATE OF MAILING

I hereby certify that on this 19 day of September 2016, I placed a copy of this Notice of Entry in:

- ☒ The bin(s) located in the Regional Justice Center of:
Clark County District Attorney's Office
Attorney General's Office – Appellate Division-
- ☒ The United States mail addressed as follows:
Luis Hidalgo, Jr. # 1038133 Margaret A. McLetchie, Esq.
1200 Prison Road 701 E. Bridger Ave., Ste. 520
Lovelock, NV 89419 Las Vegas, NV 89101

/s/ Chaunte Pleasant

Chaunte Pleasant, Deputy Clerk



CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JONATHAN VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528
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-

LUIS HIDALGO, JR.,
aka, Luis Alonso Hidalgo, #1579522
Defendant.

CASE NO: 08C241394

DEPT NO: XXI

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: AUGUST 11, 2016 & AUGUST 15, 2016
TIME OF HEARING: 3:00 AM

THIS CAUSE having come on for hearing before the Honorable VALERIE ADAIR, District Judge, on the 11th day of August, 2016, the Petitioner not being present, being represented by ALINA SHELL, Esq., the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through MARC DIGIACOMO, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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1 FINDINGS OF FACT, CONCLUSIONS OF LAW

2 STATEMENT OF FACTS

3 In May of 2005, Defendant ("Mr. H") was the owner of the Palomino Club ("Palomino"
4 or "the club"), which is Las Vegas's only all-nude strip club licensed to serve alcohol. On the
5 afternoon of May 19, 2005, Mr. H's romantic partner of 18 years, Anabel Espindola
6 ("Espindola"), received a phone call from Deangelo Carroll ("Carroll"); Carroll was an
7 employee of the Palomino serving as a "jack of all trades" handling promotions, disc
8 jockeying, and other assorted duties. Espindola was the Palomino's general manager and
9 handled all of the club's financial and management affairs. During the call, Carroll informed
10 Espindola that the victim in this case, T.J. Hadland ("Hadland"), a recently fired Palomino
11 doorman, had been "badmouthing" the Palomino to taxicab drivers. A week prior to this news,
12 Mr. H's son and co-defendant, Luis Hidalgo, III ("Little Lou"), had informed Mr. H that
13 Hadland had been falsifying Palomino taxicab voucher tickets in order to generate
14 unauthorized kickbacks from the drivers.¹ In response, Mr. H ordered that Hadland be fired.²

15 The Palomino was not in a good financial state and Mr. H was having trouble meeting
16 the \$10,000.00 per week payment due to Dr. Simon Sturtzer from whom he purchased the club
17 in early 2003. Taxicab drivers are a critically important form of advertising for strip clubs
18 generally. Because of the Palomino's location in North Las Vegas, revenue generated through
19 taxicab drop-offs was very important to the club's operation. Due to a legal dispute among the
20 area strip clubs regarding bonus payments to taxicab drivers, all payments were suspended
21 during the period encompassing May 19-20, 2005; the Palomino was the only club permitted
22 to continue paying taxi drivers for dropping off customers.

23 //

24
25 ¹ The Palomino paid cash bonuses to taxi drivers for each person a driver dropped off. The club accomplished this by
26 having a doorman, such as Hadland, provide a ticket or voucher to the driver, which reflected the number of passengers
(customers) dropped off. Apparently, Hadland was inflating the number of passengers taxi drivers dropped off in exchange
for the driver agreeing to kick back to Hadland some of the bonus paid out by the club for these phantom customers.

27 ² Mr. H had also received prior reports that, at other times, Hadland was selling Palomino VIP passes to arriving customers
28 in exchange for cash, which deprived the taxicab drivers of bonuses for bringing customers to the club, and diverted the
passes from their intended purpose of attracting patrons local to the club. This practice created a problem for the club
because taxi drivers would begin disputing their entitlement to be paid bonuses.

1 At the time Espindola took Carroll's call, she was at Simone's Auto Body, which was
2 a body-shop/collision repair business also owned by Mr. H and managed by Espindola.³ After
3 taking Carroll's call, Espindola informed Mr. H and Little Lou of Carroll's news about
4 Hadland disparaging the club. Upon hearing the news, Little Lou became enraged and began
5 yelling at Mr. H, demanding of Mr. H: "You're not going to do anything?" and stating "That's
6 why nothing ever gets done." Little Lou told Mr. H, "You'll never be like Rizzolo and Galardi.
7 They take care of business."⁴ He further criticized Mr. H by pointing out that Rizzolo had once
8 ordered an employee to beat up a strip club patron.⁵ Mr. H became angry, telling Little Lou to
9 mind his own business. Little Lou again told Mr. H, "You'll never be like Galardi and
10 Rizzolo," and then stormed out of Simone's heading for the Palomino.

11 Visibly angered, Mr. H walked out of Espindola's office and sat on Simone's reception
12 area couch. At approximately 6:00 or 7:00 pm, Espindola and a still visibly-angered Mr. H
13 drove from Simone's to the Palomino. Once at the Palomino, Espindola went into Mr. H's
14 office, which was her customary workplace at the club. Approximately half an hour later,
15 Carroll arrived at the club and knocked on the office door, which Mr. H answered. Mr. H and
16 Carroll had a short conversation and then walked out the office door together. A short time
17 later, Mr. H came back into the office and directed Espindola to speak with him out of earshot
18 of Palomino technical consultant, Pee-Lar "PK" Handley, who was nearby. Mr. H instructed
19 Espindola to call Carroll and tell Carroll to "go to Plan B."

20 Espindola went to the back of the office and attempted to contact Carroll by "direct
21 connect" ("chirp") through her and Carroll's Nextel cell phones. Carroll called Espindola back
22 on Count's cellular phone, and Espindola instructed Carroll that Mr. H wanted Carroll to
23 "switch to Plan B." Carroll protested that "we're here" and "I'm alone" with Hadland, and he
24

25 ³ Financially, Simone's was breaking even at the time of this case's underlying events, but the business never turned a
profit.

26 ⁴ Frederick John "Rick" Rizzolo was the owner of a Las Vegas strip club known as Crazy Horse Too, and Jack Galardi is
the owner of Cheetah's strip club as well as a number of other clubs in Atlanta, Georgia.

27 ⁵ Mr. H had previously enlisted his own employee, Carroll, to physically harm the boyfriend of Mr. H's daughter whom
28 the boyfriend had caused to use methamphetamine; Espindola later intervened to stop Carroll from harming the boyfriend.
This evidence came in after Mr. H attempted to suggest to the jury that he was unlike Gillardi and Rizzolo. The evidence
was not admitted as to Little Lou.

1 told Espindola that he would get back to her. Espindola and Carroll's phone connection was
2 then cut off. At that point, Espindola knew "something bad" was going to happen to Hadland.
3 She attempted to call Carroll back, but could not reach him. Espindola returned to the office
4 and informed Mr. H that she had instructed Carroll to go to "Plan B," after which Mr. H left
5 the office with Handley.

6 Earlier in the day, May 19, 2005, at approximately noon, Carroll was at his apartment
7 with Rontae Zone ("Zone") and Jayson Taoipu ("Taoipu"), who were both "flyer boys"
8 working unofficially for the Palomino. Zone and Taoipu worked alongside Carroll and
9 performed jobs Carroll delegated to them in exchange for being paid "under the table" by
10 Carroll. Zone and Taoipu would pass out Palomino flyers to taxis at cabstands. Zone lived at
11 the apartment with Carroll, Carroll's wife, and Zone's pregnant girlfriend, Crystal Payne. Zone
12 and Taoipu had been friends for several years.

13 While at the apartment, Carroll informed Zone and Taoipu that Little Lou had told him
14 Mr. H wanted a "snitch" killed. Carroll asked Zone if he would be "into" doing something like
15 that, and Zone responded "No," he would not. Carroll also asked the same question of Taoipu
16 who indicated he was "down," *i.e.*, interested in helping out. Later when Taoipu and Zone
17 were in the Palomino's white Chevrolet Astro Van with Carroll, Carroll told them that Little
18 Lou had instructed Carroll to obtain some baseball bats and trash bags to use in aid of killing
19 the person. After the initial noontime conversation about killing someone on Mr. H's behalf,
20 Zone observed Carroll using the phone, but he could not hear what Carroll was talking about.
21 At some point after the noon conversation and after Zone observed him using the phone,
22 Carroll informed Zone and Taoipu that Mr. H would pay \$6,000.00 to the person who actually
23 killed the targeted victim.

24 A couple hours later while the three were still in the van, Carroll again discussed on the
25 phone having an individual "dealt with," *i.e.*, killed, although Zone did not know the specific
26 person to be killed. Carroll produced a .22 caliber revolver with a pearl green handle and
27 displayed it to Zone and Taoipu as if it were the weapon to be utilized in killing the targeted
28 victim. Carroll attempted to give the revolver to Zone who refused to take it. Taoipu was

1 willing to take the revolver from Carroll and did so. Carroll also produced some bullets for the
2 gun and placed them in Zone's lap, but Zone dumped the bullets onto the van's floor where
3 Taoipu picked them up and put them in his own lap.⁶

4 The three then proceeded back to Carroll's apartment where Carroll instructed Zone
5 and Taoipu to dress in all black so they could go out and work promoting the Palomino. The
6 three then used the Astro van to go out promoting, returned briefly to Carroll's apartment for
7 a second time, and again left the apartment to go promoting. On this next trip, however, Carroll
8 took them to a residence on F Street where they picked up Kenneth "KC" Counts ("Counts").
9 Zone had no idea they were traveling to pick up Counts whom he had never previously met.
10 Once at Counts' house, Carroll went inside the house and emerged ten minutes later
11 accompanied by Counts who was dressed in dark clothing, including a black hooded sweatshirt
12 and black gloves. Counts entered the Astro van and seated himself in the back passenger seat
13 next to Zone who was seated in the rear passenger seat directly behind the driver. Taoipu was
14 seated in the front, right-side passenger seat.

15 At the time, Zone believed they were headed out to do more promoting for the
16 Palomino. As Carroll drove onto Lake Mead Boulevard, Zone realized they were not going to
17 be promoting because there are no taxis or cabstands at Lake Mead. Carroll told Zone and the
18 others that they were going to be meeting Hadland and were going to "smoke [marijuana] and
19 chill" with Hadland.⁷ Carroll continued driving toward Lake Mead.

20 On the drive up, Zone observed Carroll talking on his cell phone and he heard Carroll
21 tell Hadland that Carroll had some marijuana for Hadland. Carroll was also using his phone's
22 walkie-talkie function to chirp. Little Lou chirped Carroll and they conversed. Carroll spoke
23 with Espindola who told him to "Go to Plan B," and then to "come back" to the Palomino.
24 Zone recalled Carroll responding "We're too far along Ms. Anabel. I'll talk to you later," and
25 terminated the conversation. After executing a left turn, Carroll lost the signal for his cell
26

27 ⁶ Carroll would attempt a second time, unsuccessfully, to give the bullets to Zone when they were back at Carroll's
28 apartment.

⁷ Zone had been smoking marijuana throughout the day; on the ride to Lake Mead, Zone, Carroll, Counts, and Taoipu
smoked one "blunt" or cigar of marijuana.

1 phone and was unable to communicate with it, so he began driving back to areas around the
2 lake where his cell phone service would be re-established.

3 Carroll was able to describe a place for Hadland to meet him along the road to the lake.
4 Hadland arrived driving a Kia Sportage, executed a U-turn, and pulled to the side of the road.
5 Hadland walked up to the driver's side window where Carroll was seated and began having a
6 conversation with Carroll; Zone and Taoipu were still seated in the rear right passenger's seat
7 and front right passenger's seat, respectively. As Carroll and Hadland spoke, Counts opened
8 the van's right-side sliding door and crept out onto the street, moving first to the front of the
9 van, then back to its rear, and back to its front again. Counts then snuck up behind Hadland
10 and shot him twice in the head. One bullet entered Hadland's head near the left ear, passed
11 through his brain, and exited out the top of his skull. The other bullet entered through
12 Hadland's left cheek, passed through and destroyed his brain stem, and was instantly fatal.

13 A stack of Palomino Club flyers fell out of the vehicle near Hadland's body when
14 Counts re-entered or exited the vehicle. Counts then hurriedly hopped back into the van and
15 Carroll drove off. Counts then questioned both Zone and Taoipu as to whether they were
16 carrying a firearm and why they had not assisted him. Zone responded that he did not have a
17 gun and had nothing to do with the plan. Taoipu responded that he had a gun, but did not want
18 to inadvertently hit Carroll with gunfire.

19 Carroll then drove the four through Boulder City and to the Palomino, where Carroll
20 exited the van and entered the club. Carroll met with Espindola and Mr. H in the office. He sat
21 down in front of Mr. H and informed him "It's done," and stated "He's downstairs." Mr. H
22 instructed Espindola to "Go get five out of the safe." Espindola queried, "Five what? \$500?,"
23 which caused Mr. H to become angry and state "Go get \$5,000 out of the safe." Espindola
24 followed Mr. H's instructions and withdrew \$5,000.00 from the office safe, a substantial sum
25 in light of the Palomino's financial condition. Espindola placed the money in front of Carroll
26 who picked it up and walked out of the office. Alone with Mr. H, Espindola asked Mr. H,
27 "What have you done?" to which Mr. H did not immediately respond, but later asked "Did he
28 do it?"

1 Ten minutes after entering the Palomino, Carroll emerged from the club, got Counts,
2 and then went back in the club accompanied by Counts. Counts then emerged from the club,
3 got into a yellow taxicab minivan driven by taxicab driver Gary McWhorter, and left the
4 scene.⁸ Carroll again emerged from the Palomino about thirty minutes later and drove the van
5 first to a self-serve car wash and then back to his house, all the while accompanied by Zone
6 and Taoipu. Zone was very shaken up about the murder and did not say much after they
7 returned to his and Carroll's apartment.

8 The next morning, May 20, 2005, Espindola and Mr. H awoke at Espindola's house
9 after a night of gambling at the MGM. Mr. H appeared nervous and as though he had not slept;
10 he told Espindola he needed to watch the television for any news. While watching the news,
11 they observed a report of Hadland's murder; Mr. H said to Espindola, "He did it." Espindola
12 again asked Mr. H, "What did you do?" and Mr. H responded that he needed to call his
13 attorney.

14 Meanwhile, that same morning, Carroll slashed the tires on the van and, accompanied
15 by Zone, used another car to follow Taoipu who drove the van down the street to a repair shop.
16 Carroll paid \$100.00 cash to have all four tires replaced. Carroll, Zone, and Taoipu
17 subsequently went to a Big Lots store where Carroll purchased cleaning supplies, after which
18 Carroll cleaned the interior of the Astro van. Carroll, Zone, Taoipu, Zone's girlfriend, Carroll's
19 wife and kids, and some other individuals ate breakfast at an International House of Pancakes
20 restaurant later that day; Carroll paid for the party's breakfast. At some point also, Carroll,
21 accompanied by Zone, went to get a haircut.

22 Carroll then drove himself, Zone, and Taoipu in the Astro van to Simone's where Mr.
23 H, Little Lou, and Espindola were present. Carroll made Zone and Taoipu wait in the van while
24 he went into Simone's; Carroll emerged about thirty minutes later and directed Zone and
25 Taoipu inside where they sat on a couch in Simone's central office area. While at Simone's,
26 Zone observed Carroll speaking with Mr. H in between trips to a back room, and he also

27
28 ⁸ Counts had to go back into the Palomino to obtain some change because McWhorter did not have change for the \$100.00 bill Counts tried to pay him with.

1 observed Carroll speaking with Espindola. Carroll then went into a back room of Simone's,
2 but emerged later to direct Zone and Taoipu into the bathroom. Carroll expressed
3 disappointment in Zone and Taoipu for not involving themselves in Hadland's murder, and he
4 told them they had missed the opportunity to make \$6,000.00. He informed Zone and Taoipu
5 that Counts received \$6,000.00 for his part in Hadland's murder. After Carroll, Zone, and
6 Taoipu left Simone's, Carroll told Zone that Mr. H had instructed Carroll that the "job was
7 finished and that [they] were just to go home."

8 Las Vegas Metropolitan Police Department ("LVMPD") detectives identified Carroll
9 as possibly involved in the murder after speaking with Hadland's girlfriend, Paijik Karlson,
10 and because his name showed as the last person called from Hadland's cell phone. On May
11 20, 2005, Detective Martin Wildemann spoke with Mr. H and inquired about Carroll,
12 requesting any contact information Mr. H might have for Carroll; Mr. H told Detective
13 Wildemann he had no contact information for Carroll and that Wildemann should speak with
14 one of the Palomino managers, Ariel aka Michelle Schwanderlik, who could put the detectives
15 in touch with Carroll.

16 At approximately 7:00 pm, the detectives returned to the Palomino where they found
17 Carroll who agreed to accompany them back to their office for an interview. After the
18 interview, the detectives took Carroll back to his apartment where they encountered Zone who
19 agreed to come to their office for an interview. Carroll then told Zone within earshot of the
20 detectives: "Tell them the truth, tell them the truth. I told them the truth." Zone recalled Carroll
21 also saying: "If you don't tell the truth, we're going to jail." Zone interpreted Carroll's
22 statements to mean that Zone should fabricate a story that tended to exculpate Carroll, himself,
23 and Taoipu. Zone gave the police a voluntary statement on May 21, 2005. Also on that day,
24 Carroll brought Taoipu to the detectives' office for an interview.

25 Meanwhile on May 21, 2005, Mr. H and Espindola consulted with attorney Jerome A.
26 DePalma, Esq., and defense attorney Dominic Gentile, Esq.'s investigator, Don Dibble. The
27 next morning, May 22, 2005, a completely distraught Mr. H said to Espindola, "I don't know
28 what I told him to do." Espindola responded by again asking Mr. H, "What have you done?"

1 to which Mr. H responded, "I don't know what I told him to do. I feel like killing myself."
2 Espindola asked Mr. H if he wanted her to speak to Carroll and Mr. H responded affirmatively.
3 Espindola arranged through Mark Quaid, parts manager for Simone's, to get in touch with
4 Carroll.

5 On the morning of May 23, 2005, LVMPD Detective Sean Michael McGrath and
6 Federal Bureau of Investigation (FBI) agent Bret Shields put an electronic listening device on
7 Carroll's person; the detectives intended for Carroll to meet at Simone's with Mr. H and the
8 other co-conspirators. Prior to Carroll arriving at Simone's, Mr. H and Espindola engaged in
9 a conversation by passing handwritten notes back and forth. In this conversation, Mr. H
10 instructed Espindola that she should tell Carroll to meet Arial and resign from working at the
11 Palomino under a pretext of taking a leave of absence to care for his sick son. He further
12 instructed Espindola to warn Carroll that if something bad happens to Mr. H then there would
13 be no one to support and take care of Carroll. After the conversation, Espindola tore the notes
14 up and flushed them down a toilet in the women's bathroom at Simone's.

15 When Carroll arrived at Simone's, Espindola directed him to Room 6 where he met
16 with Little Lou. Espindola joined them and asked Carroll if he was wearing "a wire," to which
17 Carroll responded, "Oh come on man. I'm not fucking wired. I'm far from fucking wired,"
18 and he lifted his shirt up. Mr. H was present in his office at Simone's while the three met in
19 Room 6. In the course of the conversation among Carroll, Espindola, and Little Lou, Espindola
20 informed Carroll: "Louie is panicking, he's in a mother fucking panic, cause I'll tell you right
21 now . . . if something happens to him we all fucking lose. Every fucking one of us." Little Lou
22 informed Carroll that "[Mr. H]'s all ready to close the doors and everything and hide go into
23 exile and hide." Espindola emphasized the importance of Carroll not defecting from Mr. H:

24 "Yeah but . . . if the cops can't go no where with you, the shits
25 gonna have to, fucking end, they gonna have to go someplace else,
26 they're still gonna dig. They are gonna keep digging, they're
27 gonna keep looking, they're gonna keep on, they're gonna keep on
28 looking. [pause] Louie went to see an attorney not just for him but
for you as well, just in case. Just in case . . . we don't want it to get
to that point, I'm telling you because if we have to get to that point,
you and Louie are gonna have to stick together."

1 Carroll, who had been prepared by detectives to make statements calculated to elicit
2 incriminating responses, initiated the following exchange:⁹

3 Carroll: Hey what's done is done, you wanted him fucking taken
4 care of we took care of him . . .

5 Espindola: Why are you saying that shit, what we really wanted
6 was for him to be beat up, then anything else, _____ mother
fucking dead.

7 Carroll also stated to Little Lou: "You . . . not gonna fucking[. . .] what the fuck are you talking
8 about don't worry about it . . . you didn't have nothing to do with it," to which Little Lou had
9 no response.

10 Espindola again emphasized that Carroll should not talk to the police and she would
11 arrange an attorney for him:

12 Espindola: _____ all I'm telling you is all I'm telling you is stick
13 to your mother fucking story _____ Stick to your fucking story.
14 Cause I'm telling you right now it's a lot easier for me to try to
15 fucking get an attorney to get you fucking out than it's gonna be
16 for everybody to go to fucking jail. I'm telling you once that
happens we can kiss everything fucking goodbye, all of it . . . your
kids' salvation and everything else . . . It's all gonna depend on
you.

17 Little Lou also instructed Carroll to remain quiet and what Carroll should tell police if
18 confronted: "[whispering] . . . _____ don't say shit, once you get an attorney, we can
19 say _____ TJ, they thought he was a pimp and a drug dealer at one time _____ I don't
20 know shit, I was gonna get in my car and go promote but they started talking about drugs and
21 pow pow." He also promised to support Carroll should Carroll go to prison for conspiracy:

22 Little Lou: . . . How much is the time for a conspiracy _____

23 Carroll: [F]ucking like 1 to 5 it aint shit.

24 Little Lou: In one year I can buy you twenty-five thousand of those
25 [savings bonds], _____ thousand dollars _____ one year, you'll come out
26 and you'll have a shit load of money _____ I'll take care of your
27 son I'll put em in a nice condo _____

28 _____
⁹ The audio recordings of Carroll's conversations are of poor quality and inaudible portions are indicated by blanks.

1 During this May 23rd wiretapped conversation, Little Lou also solicited Zone and
2 Taoipu's murder. In response to Carroll's claims that Zone and Taoipu were demanding money
3 and threatening to defect to the police, Little Lou proposed killing both young men:

4 Carroll: They're gonna fucking work deals for themselves, they're
5 gonna get me for sure cause I was driving, they're gonna get KC
6 because he was the fucking trigger man. They're not gonna do
anything else to the other guys cause they're fucking snitching.

7 Little Lou: Could you have KC kill them too, we'll fucking put
something in their food so they die rat poison or something.

8 Carroll: We can do that too.

9 Little Lou: And we get KC last.

10 ...

11 Little Lou: Listen ____ You guys smoke weed right, after you have
12 given them money and still start talking they're not gonna expect
13 rat poisoning in the marijuana and give it to them ____

14 Espindola: I'll get you some money right now.

15 Little Lou: Go buy rat poison ____ and take ____ back to the
club...Here, [d]rink this right.

16 Carroll: [W]hat is it?

17 Little Lou: Tanguerey, [sic] you stir in the poison ____

18 Espindola: Rat poison is not gonna do it I'm telling you right
19 now ____

20 Little Lou: [Y]ou know what the fuck you got to do.

21 Espindola: ____ takes so long ____ not even going to fucking
kill him.

22 At the end of the meeting, Espindola stated she would give Carroll some money and promised
23 to financially contribute to Carroll and his son, as well as arrange for an attorney for Carroll.
24 After the meeting, Carroll provided the detectives \$1,400.00 and a bottle of Tanqueray, which
25 he stated were given to him by Espindola and Little Lou, respectively.¹⁰

26
27
28 ¹⁰ Espindola would later testify Mr. H gave her only \$600 to give to Carroll, which she did in fact give to Carroll on the
23rd.

1 On May 24, 2005, the detectives again outfitted Carroll with a wire and sent him back
2 to Simone's. After Carroll's unexpected arrival, Espindola again directed him to Room 6 where
3 the two again meet with Little Lou while Mr. H was present in the body shop's kitchen area.
4 During the conversation, Carroll and Espindola engaged in an extended colloquy regarding
5 their agreement to harm Hadland:

6 Carroll: You know what I'm saying, I did everything you guys asked me to do.
7 You told me to take care of the guy; I took care of him.

8 Espindola: O.K. wait, listen, listen to me (Unintelligible)

9 Carroll: I'm not worried.

10 Espindola: Talk to the guy, not fucking take care of him like get him out of the
11 fucking way (Unintelligible). God damn it, I fucking called you.

12 Carroll: Yeah, and when I talked to you on the phone, Ms. Anabel, I specifically
13 I specifically said, I said "if he's by himself, do you still want me to do him in."

14 Espindola: I I . . .

15 Carroll: You said Yeah.

16 Espindola: I did not say "yes."

17 Carroll: you said if he's with somebody, then beat him up.

18 Espindola: I said go to plan B, -- fucking Deangelo, Deangelo you just told
19 admitted to me that you weren't fucking alone I told you 'no', I fucking told you
20 'no' and I kept trying to fucking call you and you turned off your mother fucking
21 phone.

22 Carroll: I never turned off my phone.

23 Espindola: I couldn't reach you.

24 Carroll: I never turned off my phone. My phone was on the whole fucking night.

25 . . .

26 Carroll: Ms. Anabel
27
28

Espindola: I couldn't fucking reach you, as soon as you spoke and told me where you were I tried calling you again and I couldn't fucking reach you.

At some point in this May 24 meeting, Espindola left the room to go speak with Mr. H. She informed Mr. H that Carroll wanted more money and Mr. H instructed her to give Carroll some money. After Carroll returned from Simone's, he gave the detectives \$800.00, which Espindola had provided to him.¹¹ After Carroll's second wiretapped meeting, detectives took Little Lou and then Espindola into custody for the murder of Hadland.

STATEMENT OF THE CASE

On February 13, 2008, the State filed an Indictment charging Defendant Luis Hidalgo, Jr., aka, Luis Alonso Hidalgo (“Defendant”) as follows: Count 1 – Conspiracy to Commit Murder (Felony – NRS 200.010, 200.030, 199.480); and Count 2 – Murder With Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165). On March 7, 2008, the State filed a Notice of Intent to Seek Death Penalty.

The State filed an Amended Indictment on May 1, 2008, which made changes to the language of the Indictment but did not modify the substance of the counts against Defendant. The State similarly filed an Amended Notice of Intent to Seek Death Penalty on June 18, 2008.

On June 25, 2008, the State filed a Motion to Consolidate Case No. C241394 into Case No. C212667, seeking to join Defendant's case with that of his son, Luis Hidalgo, III, a co-conspirator in the murder. On December 8, 2008, the Hidalgo defendants jointly filed an Opposition to the Motion to Consolidate. The State filed a Response on December 15, 2008. On January 16, 2009, Defendant withdrew his Opposition to the Motion to Consolidate, the State withdrew its Notice of Intent to Seek Death Penalty, and the District Court issued an Order Granting State's Motion to Consolidate.

The joint trial of the Hidalgo defendants began on January 27, 2009. On February 17, 2009, the jury returned the following verdict as to Defendant: Count 1 – Guilty of Conspiracy

¹¹ If Carroll had these amounts of cash on him prior to detectives sending him out on the surveillance operations, Detective McGrath would have noticed because that amount of currency would have made Carroll's wallet much bigger. Espindola testified at trial that she thinks she gave Carroll \$500.00 on the 24th.

1 to Commit a Battery with a Deadly Weapon or Battery Resulting in Substantial Bodily Harm;
2 and Count 2 – Guilty of Second Degree Murder with Use of a Deadly Weapon.

3 On March 10, 2009, Defendant filed a Motion for Judgment of Acquittal, or in the
4 Alternative, a New Trial. The State filed its Opposition on March 17, 2009. Defendant filed
5 a Reply to the State's Opposition on April 17, 2009. Defendant filed his Supplemental Points
6 and Authorities on April 27, 2009. On May 1, 2009, the Court deferred its ruling on the Motion
7 for Judgment of Acquittal and invited additional briefing on the Motion. On June 23, 2009,
8 the court found that there was sufficient evidence to warrant not upsetting the jury verdict and
9 denied Defendant's Motion for Judgment of Acquittal, or in the Alternative, a New Trial. On
10 the same date, the matter proceeded to sentencing.

11 On June 23, 2009, Defendant was adjudged guilty and sentenced as follows: Count 1
12 – 12 months in the Clark County Detention Center; and Count 2 – life imprisonment in the
13 Nevada Department of Corrections with parole eligibility beginning after 120 months, plus an
14 equal and consecutive term of 120 months to life for the deadly weapon enhancement, Count
15 2 to run concurrent with Count 1. Defendant was given 184 days credit for time served. The
16 Judgment of Conviction was filed on July 10, 2009.¹²

17 Defendant filed a Notice of Appeal on July 16, 2009. The Nevada Supreme Court
18 issued its Order of Affirmance on June 21, 2012. On July 27, 2012, the Nevada Supreme
19 Court issued an Order Denying Rehearing. The Nevada Supreme Court issued an Order
20 Denying En Banc Reconsideration on November 13, 2012. Remittitur issued on April 10,
21 2013.

22 On December 31, 2013, Defendant filed a Petition for Writ of Habeas Corpus
23 ("Petition"), a Memorandum of Points and Authorities In Support of Petition for Writ of
24 Habeas Corpus ("Memorandum"), a Motion to Proceed in Forma Pauperis and a Motion for
25 Appointment of Counsel. On January 21, 2014, the Court appointed post-conviction counsel.
26 On February 4, 2014, Margaret A. McCletchie, Esq., confirmed as counsel.

27 ¹² An Amended Judgment of Conviction was filed on August 19, 2009, in order to reflect that on Count 1, Defendant was
28 adjudged guilty of Conspiracy to Commit Battery with a Deadly Weapon or Battery Resulting in Substantial Bodily Harm,
rather than Conspiracy to Commit Battery with a Deadly Weapon.

1 On February 29, 2016, Petitioner, through counsel, filed the instant Supplemental
2 Memorandum of Points and Authorities in Support of Petition for Writ of Habeas Corpus
3 (Post-Conviction) ("Supplement"). The State filed its Response to the Supplement on May 18,
4 2016. On August 11, 2016, this Court heard argument. On August 15, 2016, this Court denied
5 habeas relief.

6 The Court now orders that Petitioner's Petition be DISMISSED, as Petitioner received
7 effective assistance of trial and appellate counsel.

8 **I. Defendant Received Effective Assistance of Counsel**

9 Claims of ineffective assistance of counsel are analyzed under the two-pronged test
10 articulated in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), wherein the
11 defendant must show: (1) that counsel's performance was deficient, and (2) that the deficient
12 performance prejudiced the defense. Id. at 687, 104 S. Ct. at 2064. "A court may consider the
13 two test elements in any order and need not consider both prongs if the defendant makes an
14 insufficient showing on either one." Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107
15 (1997).

16 "Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559
17 U.S. 356, 371, 130 S. Ct. 1473, 1485 (2010). The question is whether an attorney's
18 representations amounted to incompetence under prevailing professional norms, "not whether
19 it deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86,
20 88, 131 S. Ct. 770, 778 (2011). Further, "[e]ffective counsel does not mean errorless counsel,
21 but rather counsel whose assistance is '[w]ithin the range of competence demanded of
22 attorneys in criminal cases.'" Jackson v. Warden, Nevada State Prison, 91 Nev. 430, 432, 537
23 P.2d 473, 474 (1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441,
24 1449 (1970)).

25 The court begins with the presumption of effectiveness and then must determine
26 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
27 ineffective. Means v. State, 120 Nev. 1001, 1011-1012, 103 P.3d 25, 32-33 (2004). The role
28 of a court in considering alleged ineffective assistance of counsel is "not to pass upon the

1 merits of the action not taken but to determine whether, under the particular facts and
2 circumstances of the case, trial counsel failed to render reasonably effective assistance.”
3 Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (citing Cooper v. Fitzharris,
4 551 F.2d 1162, 1166 (9th Cir. 1977)).

5 In considering whether trial counsel was effective, the court must determine whether
6 counsel made a “sufficient inquiry into the information . . . pertinent to his client’s case.”
7 Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996) (citing Strickland, 466 U.S. at
8 690–91, 104 S. Ct. at 2066). Then, the court will consider whether counsel made “a reasonable
9 strategy decision on how to proceed with his client’s case.” Doleman, 112 Nev. at 846, 921
10 P.2d at 280 (citing Strickland, 466 U.S. at 690–91, 104 S. Ct. at 2066). Counsel’s strategy
11 decision is a “tactical” decision and will be “virtually unchallengeable absent extraordinary
12 circumstances.” Doleman, 112 Nev. at 846, 921 P.2d at 280.

13 This analysis does not indicate that the court should “second guess reasoned choices
14 between trial tactics, nor does it mean that defense counsel, to protect himself against
15 allegations of inadequacy, must make every conceivable motion no matter how remote the
16 possibilities are of success.” Donovan, 94 Nev. at 675, 584 P.2d at 711 (citing Cooper, 551
17 F.2d at 1166 (9th Cir. 1977)). In essence, the court must “judge the reasonableness of counsel’s
18 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s
19 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. However, counsel cannot be deemed
20 ineffective for failing to make futile objections, file futile motions, or for failing to make futile
21 arguments. Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

22 In order to meet the second “prejudice” prong of the test, the defendant must show a
23 reasonable probability that, but for counsel’s errors, the result of the trial would have been
24 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999). “A reasonable
25 probability is a probability sufficient to undermine confidence in the outcome.” Strickland,
26 466 U.S. at 694, 104 S. Ct. at 2068.

27 Claims asserted in a petition for post-conviction relief must be supported with specific
28 factual allegations, which if true, would entitle the petitioner to relief. Hargrove v. State, 100

1 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” or “naked” allegations are not sufficient, nor
2 are those belied and repelled by the record. Id.; see also NRS 34.735(6).

3 **A. Counsel Was Not Encumbered With an Unwaived Actual Conflict of**
4 **Interest**

5 A defendant has a constitutional right under the Sixth Amendment to the effective
6 assistance of counsel unhindered by conflicting interests. Holloway v. Arkansas, 435 U.S. 475,
7 98 S. Ct. 1173 (1978); Coleman v. State, 109 Nev. 1, 3, 846 P.2d 276, 277 (1993); Harvey v.
8 State, 96 Nev. 850, 619 P.2d 1214 (1980). Where the trial court is unaware of the potential
9 conflict of interest, to establish a claim of ineffective assistance of counsel based on a conflict
10 of interest, a defendant must show that the conflict of interest adversely affected his attorney’s
11 performance. Mickens v. Taylor, 535 U.S. 162, 173, 122 S. Ct. 1237, 1244-45 (2002). “[U]ntil
12 a defendant shows that his counsel actively represented conflicting interests, he has not
13 established the constitutional predicate for his claim of ineffective assistance.” Cuyler v.
14 Sullivan, 446 U.S. 335, 350, 100 S. Ct. 1708, 1719 (1980). An actual conflict of interest which
15 adversely affects a lawyer’s performance will result in a presumption of prejudice to the
16 defendant. Id.; Mickens, 535 U.S. at 166, 122 S. Ct. at 1237. Mannon v. State, 98 Nev. 224,
17 226, 645 P.2d 433, 434 (1982).

18 The United States Supreme Court has defined an actual conflict under the Sixth
19 Amendment as “a conflict of interest that adversely affects counsel’s performance.” Mickens,
20 535 U.S. at 172, 122 S. Ct. at 1244. Quoting the Second Circuit’s definition of an actual
21 conflict as defined in United States v. Levy, 25 F.3d 146, 155 (2d Cir. 1994), the Ninth Circuit
22 Court of Appeals has stated:

23 An attorney has an actual, as opposed to a potential, conflict of
24 interest when, during the course of the representation, the
attorney’s and the defendant’s interests diverge with respect to a
material factual or legal issue or to a course of action.

25 United States v. Baker, 256 F.3d 855, 860 (9th Cir. 2001). Similarly, in Clark v. State, 108
26 Nev. 324, 326, 831 P.2d 1374, 1376 (1992), the Nevada Supreme Court defined an actual
27 conflict as one where the personal interests of the attorney are in clear conflict with that of the
28

1 client, such as in dual representation situations or in instances when the attorney has a personal
2 interest in the outcome of his client's case such that it adversely affects his representation. Id.

3 Conflicts relating to dual representation can be waived. "Under the Sixth Amendment,
4 criminal defendants 'who can afford to retain counsel have a qualified right to obtain counsel
5 of their choice.'" Ryan v. Eighth Judicial Dist. Ct., 123 Nev. 419, 426, 168 P.3d 703, 708
6 (2007) (quoting United States v. Ray, 731 F.2d 1361, 1365 (9th Cir. 1984)). However, this
7 interest, in cases of dual representation, often conflicts with the right to conflict-free counsel.
8 Id.

9 Despite this potential conflicts between the right to choose retained counsel and the
10 right to conflict-free counsel, "[b]ecause there can be a benefit in a joint defense against
11 common criminal charges, there is no per se rule against dual representation." Ryan v. Eighth
12 Judicial Dist. Ct., 123 Nev. 419, 426, 168 P.3d 703, 708 (2007) (citing Holloway v. Arkansas,
13 435 U.S. 475, 482-83, 98 S. Ct. 1173 (1978)). And, on balance of the two conflicting interests,
14 "there is a strong presumption in favor of a non-indigent criminal defendant's right to counsel
15 of her own choosing . . . [and] [t]his presumption should rarely yield to the imposition of
16 involuntary conflict-free representation." Id. at 428, 168 P.3d at 709. That being said, "when
17 a defendant knowingly, intelligently, and voluntarily waives her right to conflict-free
18 representation, she also waives her right to seek a mistrial arising out of such conflicted
19 representation. Further, the waiver is binding on the defendant throughout trial, on appeal, and
20 in habeas proceedings. Thus, the defendant cannot subsequently seek a mistrial arising out of
21 the conflict that he waived and "cannot . . . be heard to complain that the conflict he waived
22 resulted in ineffective assistance of counsel." Id. at 429, 168 P.3d at 710.

23 In Ryan, the Nevada Supreme Court directed district courts, in assessing joint
24 representation cases, to conduct extensive canvasses to (1) determine whether each of the
25 defendants have made a knowing, intelligent, and voluntary waiver of their right to conflict-
26 free representation; and (2) advise each defendant that a waiver of the right to conflict-free
27 representation means that they cannot seek a mistrial or raise claims of ineffective assistance
28 of counsel based on any conflict caused by the dual representation. There is also a third

1 requirement, imposed on defense counsel – attorneys must advise the defendants of their right
2 to consult with independent counsel to advise them on the potential conflict of interest and the
3 consequences of waiving the right to conflict-free representation, and must advise the clients
4 to seek the advice of independent counsel before the attorney engages in the dual
5 representation. Id. at 430, 168 P.3d at 710-11. If the clients choose not to seek the advice of
6 independent counsel, the clients must expressly waive the right to do so before agreeing to any
7 waiver of conflict-free representation. Id.

8 Prior to Little Lou's representation by separate counsel, the Nevada Supreme Court
9 determined that Gentile's pre-arrest representation of Defendant and his representation of
10 Little Lou did not create a conflict of interest. Hidalgo v. Eighth Judicial Dist. Court, 124 Nev.
11 330, 333, 184 P.3d 369, 372 (2008) ("Based on the affidavits submitted by Hidalgo, his
12 counsel, and Hidalgo's father, we perceive no current or potential conflict sufficient to warrant
13 counsel's disqualification at this time."). Additionally, after this decision, this Court conducted
14 an extensive evidentiary hearing on whether he knowingly and voluntarily waived any conflict
15 resulting from joint representation and whether he was informed of the necessary
16 requirements.

17 Defendant first provided background concerning his work experience and his
18 relationship with Mr. Gentile. He testified that although he was born in El Salvador, he
19 received schooling in the United States and reads and writes the English language. Recorder's
20 Transcript Re: Hearing: Potential Conflict, February 13, 2013, at 83 (filed under seal). He had
21 extensive experience in the justice system, and worked at a Sheriff's Office in Northern
22 California. Id. at 81. He cited an experience in his twenties with law enforcement where he
23 was initially arrested but the charges were ultimately dismissed. Id. at 85. He cited the specific
24 section of the California Penal Code (Cal. Penal Code § 849(a)) under which his case was
25 dismissed. Id. He met trial counsel through prior litigation, when he was representing an
26 opposing party. Id. at 88. Initially, he retained Gentile to counsel him, considering the potential
27 that criminal charges would be filed against him. Id. at 92-93. Gentile then involved himself
28 in Little Lou's case when Little Lou's case was before the Nevada Supreme Court during

1 litigation of a writ of mandamus. Id. at 93. He asked Mr. Gentile to represent his son. Id. at
2 150. Defendant acknowledged he was waiving his rights to raise a claim relating to the dual
3 representation and any impact it had on Defendant's defense. Id. at 152-53. He determined
4 that it was in his best interest to waive the conflict and continue dual representation. Id. at 154.

5 Subsequently, Defendant testified that he spoke to two independent counsel concerning
6 potential conflicts of interest – Michael Cristalli, Esq., and Amy Chelini, Esq. Id. at 102. He
7 spoke to these attorneys after he learned Espindola would be testifying. Id. at 104. He was
8 advised by these attorneys as to the fact he could not claim ineffective assistance based on any
9 conflicts of interest. Id. at 105-06. He understood what the attorneys were telling him. Id. at
10 106.

11 Mr. Cristalli testified that he spoke with Defendant about the potential conflicts that
12 would result from joint representation. Id. at 108-09. Cristalli was not compensated for his
13 advice. Id. at 111. He focused on the issues raised in Ryan. Id. at 114. Ms. Chelini testified to
14 the same effect. Id. at 116-18. She also noted that Defendant was "more than confident with
15 Mr. Gentile and is more than happy to sign any waiver and understands the consequences of
16 doing such." Id. at 117.

17 Thus, Defendant effectively waived any claim arising from Mr. Gentile's dual
18 representation of him and his son. Accordingly, this claim is denied.

19 Also, based on the discussion below, Mr. Gentile did not have a conflict of interest
20 based on the grounds raised in the Supplement.

21 **i. Counsel and Defendant's Fee Agreement, Involving the Purchase**
22 **of Bermuda Sands LLC by Counsel, Was Not Improper**

23 Defendant first claims that Mr. Gentile rendered ineffective assistance due to a conflict
24 of interest relating to Defendant's agreement to sell his interest in Bermuda Sands LLC to
25 Gentile in exchange for legal representation. Supplement at 31. The claim in essence is that
26 Gentile committed an ethical violation by allegedly violating Nevada Rule of Professional
27 Conduct ("NRPC") 1.8(a) which states:

28 A lawyer shall not enter into a business transaction with a client or
knowingly acquire an ownership, possessory, security or other

pecuniary interest adverse to a client unless:

- (1) The transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
- (2) The client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
- (3) The client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

Supplement at 30.

First, and most importantly, even if Defendant could show a violation under the Nevada Rules of Professional Conduct by Gentile, it is irrelevant to a claim of ineffective assistance due to an actual conflict of interest under the Sixth Amendment standard. Nix v. Whiteside, 475 U.S. 157, 165, 106 S. Ct. 988, 993 (1986) (“[B]reach of an ethical standard does not necessarily make out a denial of the Sixth Amendment guarantee of assistance of counsel.”). Also, the professional obligations of the Nevada Rules of Professional Conduct, by their plain language, do not create an independent basis for relief in a criminal case. NRPC 1.0A provides guidance on interpreting the rules and specifically indicates that the rules are not meant to be used in litigation outside the context of a bar complaint:

Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, since the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct.

1 NRPC 1.0A(d). Instead, Defendant is required to show that any conflict of interest "adversely
2 affect[ed] counsel's performance," Mickens, 535 U.S. at 172, 122 S. Ct. at 1244, and were in
3 clear conflict with the Defendant's interests, Clark, 108 Nev. at 326, 831 P.2d at 1376.
4 Defendant has failed to show that Mr. Gentile's representation was adversely affected by his
5 business dealings with Defendant or that Gentile's interests were in *clear* conflict with
6 Defendant's interests. He instead focuses only on whether Gentile's conduct violated NRPC
7 1.8(a).

8 Defendant does not even establish a violation of NRPC 1.8(a).¹³ He claims that because
9 Gentile entered into a purchase agreement with Defendant to transfer Defendant's interest in
10 Bermuda Sands LLC, in exchange for \$500,000, and because this agreement was done without
11 a valuation of the asset prior to the transaction, there was a violation of the rule. Supplement
12 at 31. He also points to sale of other LLCs to Mr. Gentile's son for \$30,000, and use of
13 Defendant as a consultant, as evidence that this ethical rule was violated. Id. However, at the
14 evidentiary hearing concerning Gentile's joint representation of Defendant and Little Lou,
15 Defendant testified that *he* had offered to enter a property transaction to pay the fee for legal
16 representation of him, Little Lou and Espindola. Recorder's Transcript Re: Hearing: Potential
17 Conflict, February 13, 2013, at 96-101. Defendant consulted independent counsel, Mark
18 Nicoletti, who he had known previously and had used for business transactions. *Nicoletti*
19 drafted the fee agreement. Id. The agreement was to transfer Defendant's interest in the LLCs
20 controlling the club and owning the property, as well as the note on the property in exchange
21 for Gentile's representation and the legal fees of Espindola and Little Lou. Id. This testimony
22 clearly establishes that Defendant entered into this business transaction knowingly and
23 voluntarily, with advice from independent counsel, and that he proposed the transaction
24

25 ¹³ Also, if Defendant's counsel was actually concerned as to whether Mr. Gentile violated the NRPC, the State imagines
26 she would have reported his conduct to the State Bar of Nevada. In fact, the rules *impose* a duty to report, as "[a] lawyer
27 who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial
28 question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate
professional authority." NRPC 8.3(a). ~~It is professional misconduct to violate this rule and any other rule as contained in~~
~~the NRPC. NRPC 8.4. One would think that if counsel indeed thought Mr. Gentile strong-armed Defendant into an unfair~~
~~transaction, it would raise a substantial question as to his honesty and trustworthiness as an attorney. Yet, no evidence of~~
~~a bar complaint has been shown.~~ *cc*

1 himself in order to pay for legal fees. Defendant was a sophisticated businessman who
2 conducted an arms-length transaction with Gentile in order to secure his representation. Both
3 parties assumed risks but obtained benefits in the transaction – Defendant assumed the risk
4 that he was paying less for the property than fair market value, in exchange for an open line of
5 credit to fund his, Little Lou’s and Espindola’s defenses, while Gentile assumed the risk that
6 the property would be unprofitable or that legal fees would exceed the value of the property.
7 Accordingly, the testimony at the evidentiary hearing alone satisfies the rule and shows that
8 the transaction was entirely fair.

9 Also, the terms of the agreement were fair. That the property was not subjected to a
10 valuation is irrelevant. And Defendant’s allegation that this transaction was unfair because the
11 property was undervalued, is a bare, naked assertion that should be summarily rejected by this
12 Court. Hargrove, 100 Nev. at 502-03, 686 P.2d at 225.

13 Defendant received another substantial benefit from the fee agreement, beyond that of
14 legal representation. Notably, trial testimony established that pre-Hadland’s murder, the
15 Palomino was not in a good financial state and Defendant was having trouble meeting the
16 \$10,000.00 per *week* payment due to Dr. Simon Sturtzer (through Windrock LLC) from whom
17 he purchased the club in early 2003. Recorder’s Transcript of Proceedings: Jury Trial – Day
18 9, February 6, 2009, at 20-29, 80; Recorder’s Transcript of Proceedings: Jury Trial – Day 10,
19 February 9, 2009, at 5. As Defendant acknowledges, Gentile through an LLC acquired the note
20 on which Defendant was obligated to pay and negotiated a new note to Windrock LLC with a
21 much lower principal and monthly payment. Defendant’s Appendix for Supplemental Petition
22 for Writ of Habeas Corpus Under Seal (“Sealed App’x”) at 8; Recorder’s Transcript Re:
23 Hearing: Potential Conflict, February 13, 2013, at 77. Accordingly, Defendant was relieved
24 from an obligation to pay the exorbitant weekly payment due on the note, that he had trouble
25 making even before the murder mired the Palomino Club in scandal. Defendant clearly
26 received this benefit in addition to the benefit of legal representation through his fee agreement
27 with Gentile. The additional agreements between Gentile, Gentile’s son, and Defendant do not
28

1 contradict this, and just show that Defendant found creative ways to satisfy his debts for legal
2 services provided by Gentile.¹⁴

3 Additionally, once again, Defendant fails to show that any unfairness within the
4 business deal created an *actual* conflict under the Sixth Amendment, as he cannot show that
5 this transaction affected counsel's representation in the instant criminal matter. Mickens, 535
6 U.S. at 172, 122 S. Ct. at 1244; Clark, 108 Nev. at 326, 831 P.2d at 1376. All claims of a
7 violation of NRPC 1.8(a) and the Sixth Amendment right to counsel are bare allegations that
8 are undeserving of relief or an evidentiary hearing. Accordingly, they are denied by this Court.

9 **ii. Counsel's Alleged Failure to Fully Fund Little Lou's and**
10 **Espindola's Defenses Fails to Show a Conflict of Interest or**
Ineffective Assistance

11 Defendant next claims that Gentile's "apparent failure" to fully fund Little Lou's and
12 Espindola's defenses prejudiced him, because "Espindola's belief that Mr. Gentile was not
13 paying for her defense led to her decision to testify against [Defendant] and his son."
14 Supplement at 32.

15 Defendant provides no authority for the proposition that Gentile was required under the
16 Sixth Amendment of the United States Constitution to monetarily placate Defendant's co-
17 conspirators so as to induce them not to testify. This failure is fatal, and is thus construed as
18 an admission that he was not, and is not, entitled to an evidentiary hearing on this issue. District
19 Court Rule 13(2); Eighth Judicial District Court Rule 3.20(b); Polk v. State, 126 Nev. ___,
20 ___, 233 P.3d 357, 360-61 (2010). Further, this Court need not address arguments that are not
21 supported with precedent. Edwards v. Emperor's Garden Rest., 122 Nev. 317, 330, n.38, 130
22 P. 3d 1280, n.38 (2006) (court need not consider claims unsupported by relevant authority);
23 State, Dept. of Motor Vehicles and Public Safety v. Rowland, 107 Nev. 475, 479, 814 P.2d
24 80, 83 (1991) (unsupported arguments are summarily rejected on appeal); Maresca v. State,
25 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant
26 authority and cogent argument; issues not so presented need not be addressed by this court.");

27 ¹⁴ One would think that had Defendant considered the bargain between him and Gentile unconscionable, he would seek
28 relief under contract law for rescission or reformation of the agreement, or otherwise seek excusal of his performance under
the agreement on this ground. Yet, a review of Odyssey reveals no such contract action.

1 Randall v. Salvation Army, 100 Nev. 466, 470-71, 686 P.2d 241, 244 (1984) (court may
2 decline consideration of issues lacking citation to relevant legal authority); Holland Livestock
3 v. B & C Enterprises, 92 Nev. 473, 533 P.2d 950 (1976) (failure to offer citation to relevant
4 legal precedent justifies affirmation of the judgment below).

5 Nonetheless, the claim is meritless. First, it is belied by the record. Hargrove, 100 Nev.
6 at 502-03, 686 P.2d at 225. During the evidentiary hearing on the issue of dual representation,
7 Mr. Gentile, as an officer of the court, stated that Espindola was distraught by the loss of JoNell
8 Thomas to the defense team. While Oram represented that Espindola wanted certain
9 investigation done, Gentile recommended that they not yet spend funds on penalty-phase
10 investigation, considering that the Nevada Supreme Court had not yet ruled on the mandamus
11 issue concerning the alleged aggravating circumstances. Recorder's Transcript Re: Hearing:
12 Potential Conflict, February 13, 2013, at 76. He also represented that Oram was paid \$60,000
13 for his work. Id. Gentile disbursed money, when it became available, to the other attorneys,
14 not to himself. Id. at 77. These representations belie the claim that Espindola's defense was
15 underfunded.

16 Second, Defendant unreasonably assumes that the Joint Defense Agreement and
17 funding of the defenses of his co-defendants meant that they could never testify against him.
18 This expectation cannot be supported by the Joint Defense Agreement, as it informed
19 Defendant, through his independent counsel at the time (Gentile), of the consequences of a
20 joint defense. Gentile had authority to execute this agreement from Defendant. Sealed App'x
21 at 35.

22 The Joint Defense Agreement informed Defendant that any member of the Joint
23 Defense Agreement could become a witness in the criminal case. Id. It also informed
24 Defendant that any member could withdraw from the agreement. Sealed App'x at 36. Finally,
25 it explicitly informed Defendant that each client had independent counsel and each counsel
26 had a duty to represent his or her client zealously, even if this meant advising the client to
27 cooperate with the State. Sealed App'x at 37.

28 Finally, Mr. Oram's testimony during the evidentiary hearing on the issue of dual

1 representation does not establish that Espindola turned on Defendant due to any failure to fund
2 her defense. Instead, Espindola was concerned about the independence of Oram and the fact
3 that Defendant held the power of the purse. Recorder's Transcript Re: Hearing: Potential
4 Conflict, February 13, 2013, at 44-45. She also was dissatisfied when JoNell Thomas left the
5 case and believed that it was for a lack of financing (however, Ms. Thomas in fact left the case
6 after taking a position with the Clark County Special Public Defender). Id. at 45-46. This
7 testimony indicates that Defendant's *control* of the financing of her defense, rather than the
8 funding itself, was what she was concerned about. She wanted independent counsel, not a
9 puppet who acceded to the demands of Gentile and Defendant. She wanted assurances that her
10 attorney was acting in her best interest rather than Defendant's or Little Lou's.

11 Oram had an ethical obligation to act in Espindola's best interest and abide by her
12 wishes concerning the ultimate resolution of the matter, whether it be to take a negotiation
13 offered by the State or proceed to trial. See NRPC 1.2(a) ("[A] lawyer *shall* abide by a client's
14 decision concerning the objectives of representation and, as required by Rule 1.4, shall consult
15 with the client as to the means by which they are to be pursued. . . . In a criminal case, the
16 lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to
17 be entered, whether to waive jury trial and whether the client will testify.") (emphasis added);
18 NRPC 1.8(f)(2) (attorney receiving compensation for representation by a third-party must
19 exercise independence of professional judgment and not allow interference with the attorney-
20 client relationship). Oram would have an *actual* conflict under the Sixth Amendment were he
21 to set aside Espindola's best interest and accede to Defendant's desire to use Espindola for
22 Defendant's defense.

23 Oram represented Espindola's best interest by securing her an extremely beneficial
24 negotiation with the State. The State allowed her to plead guilty to Voluntary Manslaughter
25 With Use of a Deadly Weapon (Category B Felony – NRS 200.040, 200.050, 200.080), and
26 agreed to make no recommendation at sentencing in exchange for her testimony against
27 Defendant and Little Lou. See Guilty Plea Agreement, Case No. 05C212667-3, filed February
28 4, 2008, at 1. Prior to this agreement, Espindola was facing the potential of a life sentence as

1 she was charged with Murder with Use of a Deadly Weapon. Information, Case No.
2 05C212667-3, filed June 20, 2005, at 2-3. Instead of a life sentence, Espindola was sentenced
3 to 24 to 72 months in the Nevada Department of Corrections, plus an equal and consecutive
4 term of 24 to 72 months for use of a deadly weapon. Judgment of Conviction, Case No.
5 05C212667-3, filed February 17, 2011. With the 1,379 days credit for time served granted to
6 her, she was very close to parole eligibility even with the consecutive sentences. Id. She
7 received an enormous benefit from the negotiation with the State and received superb
8 representation from Oram. Accordingly, Defendant cannot show a causal connection between
9 the alleged failure to fund Espindola's defense and the deficiency and prejudice prongs as
10 required by Strickland – Espindola and Oram acted in Espindola's best interest, rather than
11 Defendant's, in securing the negotiation, and the negotiation was not fueled by vindictiveness
12 or resentment toward Defendant. This claim is denied.

13 In addition, Defendant provides nothing but a naked assertion in relation to the funding
14 of Little Lou's defense. Defendant fails to show that the defense was underfunded, and fails to
15 show how any failure to fund his son's defense prejudiced him, especially considering that
16 father and son proceeded to trial together. Pursuant to Hargrove, this claim is denied.
17 Hargrove, 100 Nev. at 502-03, 686 P.2d at 225.

18 **iii. Espindola's Alleged Participation in the Joint Defense Agreement**
19 **and Her Subsequent Decision to Turn State's Evidence Did Not**
20 **Create an Irreconcilable Conflict of Interest**

21 Defendant also claims that the Joint Defense Agreement and Espindola's ultimate
22 decision to testify against Defendant and Little Lou created an irreconcilable conflict of
23 interest. Supplement at 32-33. This claim has no merit and is accordingly denied.

24 First, Defendant provides only mere speculation in his claim that "Espindola's counsel
25 undoubtedly participated in joint defense meetings, during which Mr. Gentile could have
26 gleaned information which prevented him from effectively cross-examining Espindola when
27 she testifies as a State's witness" and "[i]t is possible that Mr. Gentile had learned information
28 during the joint defense meetings which would have provided fertile ground for
impeachment." Supplement at 34. While Defendant points to specific meetings between he,

1 Oram, Espindola, and Gentile, he does not establish that the subject matter of these meetings
2 constituted fodder for cross-examination. In fact, the substance of these meetings appear to be
3 the funding requests outlined above and instruction for Espindola not to speak with DeAngelo
4 Carrol, which would not be important for cross-examination.

5 Second, Defendant waived any conflict of interest that could be asserted in the event a
6 co-defendant testified. Even after the Ninth Circuit decided United States v. Henke, 222 F.3d
7 633, 637 (9th Cir. 2000), courts bound by its precedent have found that conflicts of interest
8 arising from an agreement may be waived. In United States v. Stepney, 246 F. Supp. 2d 1069,
9 1085 (N.D. Cal. 2003), the United States District Court for the Northern District of California
10 found appropriate the following waiver provision, taken from the American Law Institute-
11 American Bar Association model joint defense agreement:

12 Nothing contained herein shall be deemed to create an attorney-
13 client relationship between any attorney and anyone other than the
14 client of that attorney and the fact that any attorney has entered
15 this Agreement shall not be used as a basis for seeking to
16 disqualify any counsel from representing any other party in this or
17 any other proceeding; and no attorney who has entered into this
18 Agreement shall be disqualified from examining or cross-
19 examining any client who testifies at any proceeding, whether
20 under a grant of immunity or otherwise, because of such attorney's
21 participation in this Agreement; and the signatories and their
22 clients further agree that a signatory attorney examining or cross-
23 examining any client who testifies at any proceeding, whether
24 under a grant of immunity or otherwise, may use any Defense
25 Material or other information contributed by such client during the
26 joint defense; and it is herein represented that each undersigned
27 counsel to this Agreement has specifically advised his or her
28 respective client of this clause and that such client has agreed to
its provisions.

22 The court specifically noted the advantages of this sort of provision:

23 Under this regime, all defendants have waived any duty of
24 confidentiality for purposes of cross-examining testifying
25 defendants, and generally an attorney can cross-examine using any
26 and all materials, free from any conflicts of interest. This form of
27 waiver also places the loss of the benefits of the joint defense
28 agreement only on the defendant who makes the choice to testify.
Defendants who testify for the government under a grant of
immunity lose nothing by this waiver. Those that testify on their
own behalf have already made the decision to waive their Fifth
Amendment right against self-incrimination and to admit evidence

1 through their cross-examination that would otherwise be
2 inadmissible.

3 The conditional waiver of confidentiality also provides notice to
4 defendants that their confidences may be used in cross-
5 examination, so that each defendant can choose with suitable
6 caution what to reveal to the joint defense group. Although a
7 limitation on confidentiality between a defendant and his own
attorney would pose a severe threat to the true attorney-client
relationship, making each defendant somewhat more guarded
about the disclosures he makes to the joint defense effort does not
significantly intrude on the function of joint defense agreements.

8 Id. at 1085-86; see also United States v. Almeida, 341 F.3d 1318, 1326 (11th Cir. 2003) (“We
9 hold that when each party to a joint defense agreement is represented by his own attorney, and
10 when communications by one co-defendant are made to the attorneys of other co-defendants,
11 such communications do not get the benefit of the attorney-client privilege in the event that
12 the co-defendant decides to testify on behalf of the government in exchange for a reduced
13 sentence.”); United States v. Reeves, 2011 U.S. Dist. LEXIS 139127, *42 (D.N.J. Dec. 2,
14 2011) (accepting a waiver of conflict of interests in a joint defense agreement).¹⁵

15 Here, while not a verbatim form of the ALI-ABA waiver, the Joint Defense Waiver
16 provided for a waiver to the same effect. Defendant and his co-defendants agreed in the Joint
17 Defense Agreement that, in the event that one of them became a witness for the State, that
18 would *not* create a conflict of interest so as to require disqualification. Sealed App’x at 35. The
19 Joint Defense Agreement also acknowledged that each client was informed that if a member
20 defected, his or her counsel could be in possession of information previously shared, including
21 confidences. Id. Also, the Agreement specified that nothing in it was intended to create an
22 attorney-client relationship and information obtained pursuant to the Agreement could not be
23 used to disqualify a member of the joint defense group. Id. Defendant then knowingly and
24 intelligently waived *any* conflict of interest that might otherwise be available based upon the
25 sharing of information pursuant to the Agreement. He was advised of the risks but determined

26
27 ¹⁵ Citation to Reeves is permissible pursuant to Rule 32.1(a) of the Federal Rules of Appellate Procedure, which prohibits
28 a court from restricting citation to “federal judicial opinions, orders, judgments, or other written dispositions that have
been ... issued on or after January 1, 2007.” Accord Gibbs v. United States, 865 F. Supp. 2d 1127, 1133 n.3 (M.D. Fla.
2012), aff’d, 517 Fed. App’x. 664 (2013) (although an unpublished opinion is not binding, it is persuasive authority).

1 that the benefits of the Agreement outweighed the risks. Id. Thus, this agreement constituted
2 a knowing and voluntary waiver of any claim of a conflict of interest based on Espindola's
3 previous membership within the joint defense group. Defendant cannot now claim that there
4 was an irreconcilable conflict of interest, because his informed choice to enter the Joint
5 Defense Agreement extinguished any claim of such.

6 While Henke is merely persuasive, see Blanton v. North Las Vegas Mun. Ct., 103 Nev.
7 623, 633, 748 P.2d 494, 500 (1987) (decisions of federal courts not binding), and Nevada
8 courts have not determined whether a Joint Defense Agreement can create an attorney-client
9 relationship between a lawyer and another member of the joint defense agreement, the case is
10 nonetheless distinguishable. Notably, a limited attorney-client relationship was *implied* from
11 the joint defense agreement in Henke. Here, however, the plain language of the joint defense
12 agreement provided that *no such relationship was created* from the joint defense group.
13 "[A]bsent some countervailing reason, contracts will be construed from the written language
14 and enforced as written." Ellison v. California State Auto. Ass'n, 106 Nev. 601, 603, 797 P.2d
15 975, 977 (1990). There is no reason the law should imply an attorney-client relationship when
16 Defendant has explicitly agreed that no such relationship existed.

17 Further, in Henke, the parties asserted confidentiality and threatened legal action if
18 confidences were not protected. Henke, 222 F.3d at 638. In contrast, here the Joint Defense
19 Agreement waived all conflicts of interest and acknowledged that information obtained during
20 joint defense meetings could be in the hands of a defecting member should he or she choose
21 to testify.

22 Finally, the court in Henke relied on the fact that the confidential information *had* in
23 fact been exchanged, and distinguished cases where joint defense meetings would not create a
24 conflict of interest:

25 There may be cases in which defense counsel's possession of
26 information about a former co-defendant/government witness
27 learned through joint defense meetings will not impair defense
28 counsel's ability to represent the defendant or breach the duty of
confidentiality to the former co-defendant. Here, however, counsel
told the district court that this was not a situation where they could

1 avoid reliance on the privileged information and still fully uphold
2 their ethical duty to represent their clients.

3 Henke, 222 F.3d at 638. Here, as stated above, Defendant has not shown that his counsel
4 obtained confidential information from the joint defense meetings. Thus, he cannot establish
5 a conflict of interest, even under Henke, that would have disqualified Gentile from
6 representing him.

7 Finally, Defendant again fails to satisfy the Sixth Amendment test for determining an
8 actual, rather than a potential, conflict of interest, as he fails to show that counsel's
9 performance was hindered. Clark, 108 Nev. at 326, 831 P.2d at 1376. Instead, Mr. Gentile
10 vigorously cross-examined Espindola. He questioned Espindola's motives to testify, including
11 the possibility of the death penalty, her mother's illness, and Defendant's infidelity.
12 Recorder's Transcript of Proceedings: Jury Trial – Day 10, February 9, 2009, at 102-20, 146-
13 47. Further, he specifically asked her about joint defense meetings and meetings that lead to
14 the joint defense. He questioned Espindola about a meeting where Gentile and Oram were
15 present and where Espindola listened to the Carroll recordings. Id. at 81. He questioned
16 Espindola about the meeting with his partner, Jerry DePalma, Esq., and questioned her veracity
17 when she claimed that she said nothing of substance to DePalma that day. Id. at 85-87. He also
18 cross-examined her about another meeting between him and her, along with Defendant and
19 Oram, directly citing the Joint Defense Agreement. Id. at 135-36. Gentile was in no way
20 hindered in his cross-examination by the Joint Defense Agreement, and Defendant has failed
21 to meet his burden of showing an actual conflict of interest. Accordingly, this claim is denied.

22 **B. Counsel Made a Reasonable Strategic Decision in Conceding the State's
23 Motion to Consolidate Defendant's and Little Lou's Cases**

24 Defendant next complains that his counsel rendered ineffective assistance because he
25 conceded the State's Motion to Consolidate and withdrew his Opposition. Supplement at 35.

26 Notably, the Nevada Supreme Court recently rejected Little Lou's claim regarding his
27 counsel's conceding the consolidation motion in his appeal from the denial of his habeas
28 petition. See Hidalgo, III (Luis) v. State, No. 67640 (Order of Affirmance, filed May 11, 2016,
at 3-4) (attached as State's Exhibit B). While Little Lou's claim was raised on different

1 grounds, concerning the exclusion of evidence he claims would have been admitted were the
2 cases not tried together, this recent denial is persuasive. Id.

3 However, Defendant acknowledges that this decision was made in exchange for the
4 State's withdrawal of its Notice of Intent to Seek the Death Penalty. Id.; Recorder's Transcript
5 of Hearing Re: Motions, January 16, 2009, at 1. This bargain was clearly a reasonable strategy
6 decision that must be respected by this Court. After lengthy efforts to attempt to remove
7 execution as a possible punishment, including the writ proceedings before the Nevada
8 Supreme Court, Gentile's conceding the Motion to Consolidate won the war by taking death
9 off the table and sparing Defendant the ultimate punishment. While Defendant now states that
10 "[t]he limited impact of the removal of the death penalty is evident in the jury's conviction of
11 both Hidalgos for Second Degree Murder, rather than First Degree Murder," he speaks with
12 the benefit of hindsight – at the time, the threat of the death penalty was real, and efforts to
13 strike all statutory aggravators had fallen short. Notably, the Strickland standard does not ask
14 counsel to act with clairvoyance – it asks counsel to act reasonable at the time the decision in
15 question is being made. At the time the Motion to Consolidate was before this Court, the death
16 penalty remained a possibility, and counsel's decision was well-reasoned.

17 In addition, the decision was a sound one, considering that the Motion to Consolidate
18 would likely succeed.¹⁶ In order to promote efficiency and equitable outcomes, Nevada law
19 favors trying multiple defendants together. Jones v. State, 111 Nev. 848, 853, 899 P.2d 544,
20 547 (1995). As a general rule, defendants who are indicted together shall be tried together,
21 absent a compelling reason to the contrary. Rowland v. State, 118 Nev. 31, 44, 39 P.3d 114,
22 122 (2002). "A district court should grant a severance only if there is a serious risk that a joint
23 trial would compromise a specific trial right of one of the defendants, or prevent the jury from
24 making a reliable judgment about guilt or innocence." Chartier v. State, 124 Nev. 760, 765,
25 191 P.3d 1182, 1185 (2008) (quoting Marshall v. State, 118 Nev. 642, 646, 56 P.3d 376, 378

26
27 ¹⁶ Defendant appears to complain of efforts to move this case to the same department as Little Lou's case. Supplement at
28 35. This decision was reasonable in light of Defendant's initial desire to have the same attorney as Little Lou. In addition,
Defendant cannot show any prejudice, as the State could have sought consolidation even absent the case being sent to the
same department.

1 (2002)); see also NRS 174.165.

2 Generally speaking, severance is proper only in two instances. The first is where the
3 codefendants' theories of defense are so antagonistic that they are "mutually exclusive" such
4 that "the core of the codefendant's defense is so irreconcilable with the core of the defendant's
5 own defense that the acceptance of the codefendant's theory by the jury precludes acquittal of
6 the defendant." Chartier, 124 Nev. at 765, 191 P.3d at 1185 (quoting Rowland, 118 Nev. at
7 45, 39 P.3d at 122-23) (alteration omitted). The second instance is "where a failure to sever
8 hinders a defendant's ability to prove his theory of the case." Id. at 767, 191 P.3d at 1187.

9 Even when one of the above situations are presented, a defendant must also show that
10 there is "a serious risk that a joint trial would compromise a specific trial right . . . or prevent
11 the jury from making a reliable judgment about guilt or innocence." Marshall, 118 Nev. at 647,
12 56 P.3d at 379 (quoting Zafiro v. United States, 506 U.S. 534, 539, 113 S. Ct. 933, 938 (1993)).
13 To show prejudice from an improper joinder "requires more than simply showing that
14 severance made acquittal more likely; misjoinder requires reversal only if it has a substantial
15 and injurious effect on the verdict." Chartier, 124 Nev. at 764-65, 191 P.3d at 1185 (quoting
16 Marshall, 118 Nev. at 647, 56 P.3d at 379). Further, "some level of prejudice exists in a joint
17 trial, error in refusing to sever joint trials is subject to harmless-error review." Id.

18 Defendant claims that he suffered spill-over prejudice due to his being tried along with
19 Little Lou. Supplement at 36. However, there was no such effect. While he claims that "more"
20 evidence implicated Little Lou than him, Carroll's conversations with Espindola and
21 Espindola's testimony implicate Defendant and would have been entirely admissible at a trial
22 where he was the sole defendant. Espindola's testimony served as the connection between
23 Little Lou's actions and Defendant's orders, as she established that Defendant had ordered
24 Carroll to switch to "Plan B." Recorder's Transcript of Proceedings: Jury Trial – Day 9,
25 February 6, 2009, at 70. While Defendant tries to undercut Espindola's testimony as
26 "circumstantial at best," this testimony was damning, specific, and showed that Defendant was
27 part of the conspiracy to cause harm to Hadland. There was no spill-over prejudice that would
28

1 warrant severance, and Defendant was proven equally culpable within the conspiracy so as to
2 make any lack of severance benign.

3 In addition, while Defendant claims that his defense was antagonistic to his son's, they
4 were not. Supplement at 38. Both defendant's closing arguments focused on claiming that
5 neither joined the conspiracy or aided and abetted Carroll in killing Hadland. Recorder's
6 Transcript of Proceedings: Jury Trial – Day 13, February 12, 2009, at 145-79, 180-24. At no
7 point in the argument did Little Lou's counsel claim that Defendant had joined the conspiracy
8 and Little Lou had not.

9 Defendant again focuses on the evidence implicating Little Lou, but this evidence
10 equally implicated Defendant, along with Espindola's testimony, and would have been
11 admissible were Defendant tried alone. Also, Defendant's complaints about the father-son
12 relationship resulting in guilt by association are mere speculation and would have been
13 insufficient to show antagonistic defenses or spill-over warranting severance. Finally,
14 Defendant's claim that Little Lou's defense team "would essentially be tasked with defending
15 [Defendant] at the expense of their client's child," clearly cannot establish prejudice to
16 *Defendant*, considering that he would be the beneficiary of such divided attention. Supplement
17 at 38.

18 Therefore, it is clear that severance would have been unwarranted and counsel's efforts
19 to prevent it would have been futile. Ennis, 122 Nev. at 706, 137 P.3d at 1103. Instead of
20 losing the Motion to Consolidate outright, counsel instead secured Defendant a windfall by
21 conceding the Motion and removing death as a sentencing option. These tactics were entirely
22 reasonable in light of the threat of execution, and should be respected by this Court. This claim
23 is accordingly denied.

24 **C. Defendant Received Effective Assistance of Appellate Counsel**

25 Defendant also alleges counsel was ineffective while the case was in appellate posture.
26 Supplement at 39-41. However, appellate counsel is not required to raise every issue that
27 Defendant felt was pertinent to the case. The United States Supreme Court has held that there
28 is a constitutional right to effective assistance of counsel in a direct appeal from a judgment of

conviction. Evitts v. Lucey, 469 U.S. 387, 396-97, 105 S. Ct. 830, 835-37 (1985); see also Burke v. State, 110 Nev. 1366, 1368, 887 P.2d 267, 268 (1994). The federal courts have held that in order to claim ineffective assistance of appellate counsel, the defendant must satisfy the two-prong test of deficient performance and prejudice set forth by Strickland. Williams v. Collins, 16 F.3d 626, 635 (5th Cir. 1994); Hollenback v. United States, 987 F.2d 1272, 1275 (7th Cir. 1993); Heath v. Jones, 941 F.2d 1126, 1130 (11th Cir. 1991).

There is a strong presumption that counsel's performance was reasonable and fell within "the wide range of reasonable professional assistance." See United States v. Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990). All appeals must be "pursued in a manner meeting high standards of diligence, professionalism and competence." Burke, 110 Nev. at 1368, 887 P.2d at 268. Finally, in order to prove that appellate counsel's alleged error was prejudicial, a defendant must show that the omitted issue would have had a reasonable probability of success on appeal. Duhamel v. Collins, 955 F.2d 962, 967 (5th Cir. 1992); Heath, 941 F.2d at 1132; Lara v. State, 120 Nev. 177, 184, 87 P.3d 528, 532 (2004); Kirksey, 112 Nev. at 498, 923 P.2d at 1114.

The defendant has the ultimate authority to make fundamental decisions regarding his case. Jones v. Barnes, 463 U.S. 745, 751, 103 S. Ct. 3308, 3312 (1983). However, the defendant does not have a constitutional right to "compel appointed counsel to press nonfrivolous points requested by the client, if counsel, as a matter of professional judgment, decides not to present those points." Id. In reaching this conclusion the United States Supreme Court has recognized the "importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most on a few key issues." Id. at 751-752, 103 S. Ct. at 3313. In particular, a "brief that raises every colorable issue runs the risk of burying good arguments . . . in a verbal mound made up of strong and weak contentions." Id. at 753, 103 S. Ct. at 3313. The Court also held that, "for judges to second-guess reasonable professional judgments and impose on appointed counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy." Id. at 754, 103 S. Ct. at 3314. The Nevada Supreme Court has similarly concluded that

1 appellate counsel may well be more effective by not raising every conceivable issue on appeal.
2 Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

3 **1. Counsel Was Not Ineffective For Any Failure to Raise the Severance Issue on**
4 **Appeal**

5 Defendant complains that, after counsel conceded the Motion to Consolidate in order
6 to take death off the table, counsel did not raise the issue on appeal. Supplement at 39. As
7 discussed above, the decision to concede the Motion to Consolidate was a reasonable strategy
8 in light of the State's agreement to withdraw its Notice of Intent to Seek the Death Penalty and
9 the lack of merit to any opposition to the Motion to Consolidate. Additionally, there was no
10 ineffective assistance of appellate counsel because, in light of counsel's agreement to withdraw
11 opposition to the Motion to Consolidate, the doctrine of invited error precluded raising this
12 issue on appeal. LaChance v. State, 130 Nev. ___, ___, 321 P.3d 919, 928 (2014); Pearson v.
13 Pearson, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994). Further, this issue would have been
14 considered waived on appeal since it was not litigated in the trial court. Dermody v. City of
15 Reno, 113 Nev. 207, 210-11, 931 P.2d 1354, 1357 (1997); Guy v. State, 108 Nev. 770, 780
16 839 P.2d 578, 584 (1992), cert. denied, 507 U.S. 1009, 113 S. Ct. 1656 (1993); Davis v. State,
17 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991). Nor will the Nevada Supreme Court consider
18 an issue that is initially raised before the lower court but then abandoned. Buck v. Greyhound
19 Lines, Inc., 105 Nev. 756, 766, 783 P.2d 437, 443 (1989). Considering this, counsel's failure
20 to raise this issue on direct appeal did not constitute deficient performance nor cause Defendant
21 prejudice. This is especially true in light of the lack of any prejudice suffered due to the
22 consolidation, as discussed *supra* and incorporated here. Accordingly, this claim is denied.

23 **2. Counsel Was Not Ineffective For Not Raising Claims of Error Relating to the**
24 **"Hearsay" During Zone's Testimony**

25 Defendant next contends that counsel should have raised as a claim of error the Court's
26 overruling the objection to Zone's testimony concerning Carroll's statement to him while in
27 presence of the police. Supplement at 40-42. The statement was, "if you don't tell the truth,
28 we're going to jail." Recorder's Transcript of Proceedings: Jury Trial – Day 6, February 3,
29 2009, at 137. Defendant also notes that Detective McGrath testified to the same statement, that

1 Carroll told Zone, “tell them the truth, tell them the truth. I told them the truth.” Recorder’s
2 Transcript of Proceedings: Jury Trial – Day 7, February 4, 2009, at 180-81.

3 Hearsay is defined as an out-of-court statement “offered in evidence to prove the truth
4 of the matter asserted.” NRS 51.035. Here, Defendant claims the statement was “clearly to
5 establish the credibility of Zone’s own testimony.” Supplement at 41. That is not the test – the
6 test is whether the statement is offered in evidence to prove the truth of the matter asserted.
7 NRS 51.035. The truth of the matter of Carroll’s statement, as testified to by Zone, is that if
8 Zone did not tell the truth, Zone and Carroll would go to jail. That was not relevant to the
9 State’s case, nor was it relevant to the jury’s determination of the Defendant’s guilt. Instead,
10 as revealed during cross-examination by Little Lou’s counsel, the statement was shown
11 relevant for its effect on the listener (Zone), because Zone interpreted the statement to mean
12 Zone should fabricate a story that tended to exculpate Carroll, himself, and Taoipu. Recorder’s
13 Transcript of Proceedings: Jury Trial – Day 7, February 4, 2009, at 97-99. It was *not* introduced
14 to show that Zone’s testimony was truthful, as Defendant states, but rather to explain why
15 Zone was hesitant to tell the truth at first. Id. at 97. Because the statement was not introduced
16 for the truth of the matter asserted, it was non-hearsay and entirely admissible.

17 The second statement, as testified to by McGrath, comprises of two commands (“tell
18 them the truth”) and one declarative statement (“I told them the truth”). The commands are in
19 the imperative form, and of necessity *assert nothing*. They do not operate to state a fact, but
20 rather encourage the listener to do something. Thus, the statements were non-hearsay and were
21 clearly introduced for their effect on Zone. While the final statement is in declarative form,
22 and asserts that Carroll told the truth, it was not relevant for that purpose – again, it was
23 relevant to the effect on the listener (Zone) and that it encouraged him to withhold the true
24 story at first. Therefore, none of these statements constituted hearsay.

25 Even if they did constitute hearsay, their admission was harmless, especially in light of
26 Espindola’s testimony which established that Carroll was acting pursuant to Defendant’s
27 directions when he killed Hadland. Knipes v. State, 124 Nev. 927, 935, 192 P.3d 1178, 1183
28 (2008) (to warrant reversal, evidentiary error must have substantial and injurious effect or

1 influence on the jury's verdict). Because any error would not have warranted reversal, briefing
2 the issue would have been futile and expended space which could be used for issues with a
3 greater likelihood of success. Therefore, Defendant cannot show deficient performance or
4 prejudice and this claim is denied.

5 **D. Defendant's Pro Per Claims Must Be Denied**

6 Within his initial Petition, Defendant made eight claims for relief. Each are insufficient
7 to warrant relief and must be denied.

8 First, Defendant claims that counsel was ineffective for failing to request a verdict form
9 that separated the two alternate theories relating to the Conspiracy charge: "Conspiracy to
10 Commit Battery with Substantial Bodily Harm" and "Conspiracy to Commit Battery with a
11 Deadly Weapon," rather than "Conspiracy to Commit Battery with a Deadly Weapon or With
12 Substantial Bodily Harm." Memorandum at 5-6. The jury was fully instructed as to the status
13 of this charge as a lesser-included offense, was instructed that it had to find Defendant guilty
14 beyond a reasonable doubt to convict him of this crime, and this minor difference in the verdict
15 form would not have made a difference in the trial. Instructions to the Jury: Instructions Nos.
16 15, 22-24, filed February 17, 2009. As such, Defendant cannot show deficient performance or
17 prejudice in relation to this claim and it is therefore denied.

18 Second, Defendant claims that counsel was ineffective in conflating "context" with
19 "adoptive admission" in relation to Carroll's statements, and that his statements were
20 erroneously admitted. Memorandum at 6-7. While he cites the Nevada Supreme Court's
21 acknowledgement of this conflation, it was in regard to a jury instruction given by the Court,
22 and the discussion did not concern the admissibility of the statements. Hidalgo, Jr. (Luis) v.
23 State, No. 54209 (Order of Affirmance, filed June 21, 2012, at 3 n.4). As the Nevada Supreme
24 Court determined that the statements were admissible (*see infra*), this conflation did not result
25 in the admission of Carroll's statements, and Defendant cannot show deficient performance or
26 prejudice. Accordingly, this claim is denied.

27 Third, Defendant claims that he was not identified at trial, there was confusion between
28 him and Little Lou, and his conviction must be reversed because the State failed to meet its

1 burden. This claim is not appropriate for post-conviction review and was appropriate for direct
2 appeal. See NRS 34.810(1)(b)(2) (providing that a post-conviction petition must be dismissed
3 if “the grounds for the petition could have been raised in a direct appeal”); NRS 34.724(2)
4 (stating that a post-conviction petition is not a substitute for the remedy of a direct review);
5 Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (“[C]laims of ineffective
6 assistance of trial and appellate counsel must first be pursued in post-conviction proceeding .
7 . . . [A]ll other claims that are appropriate for a direct appeal must be pursued on direct appeal,
8 or they will be *considered waived in subsequent proceedings.*”) (emphasis added). In any
9 event, Espindola had a long-term sexual relationship with Defendant, clearly knew who he
10 was, and implicated him in the plot to kill Hadland. This claim is denied.

11 Fourth, Defendant complains of his counsel’s concession of the severance issue. This
12 claim is disposed of *supra*.

13 Fifth, Defendant complains about Espindola’s testimony and the use of conversations
14 between him and her against him. These claims are considered waived in the instant
15 proceedings for failure to raise them on direct appeal, and are generally not legal arguments
16 but rather complaints that Espindola turned on him and her motives for testifying. This claim
17 relates to the sole province of the jury – credibility – and must be denied. To the extent
18 Defendant complains that counsel failed to impeach Espindola with evidence of a jailhouse
19 romance between her and another woman, the decision on how to cross-examine a witness is
20 one of strategy, and best left to counsel. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002)
21 (“[T]he trial lawyer alone is entrusted with decisions regarding legal tactics such as deciding
22 what witnesses to call.”). The record reveals that Mr. Gentile vigorously cross-examined
23 Espindola and Defendant cannot show deficient performance or prejudice. Therefore, this
24 claim is denied.

25 Sixth, Defendant repeats his direct appeal complaint that his Confrontation Clause
26 rights were violated by use of Carroll’s statements during his trial. The Nevada Supreme Court
27 rejected this claim:

28 //

1 Hidalgo's Confrontation Clause rights were not violated

2 In the days following Hadland's murder, law enforcement officers
3 procured the cooperation of one of Hidalgo's coconspirators,
4 Deangelo Carroll. Namely, Carroll agreed to tape-record his
5 conversations with other coconspirators in an attempt to obtain
6 incriminating statements from the coconspirators.

7 At trial, the State sought to introduce two tape-recorded
8 conversations between Carroll, Anabel Espindola, and Luis
9 Hidalgo, III. Because Carroll was unavailable to testify at trial,
10 Hidalgo objected to Carroll's statements being introduced into
11 evidence. The district court admitted Carroll's statements but
12 instructed the jury that it should consider Carroll's statements for
13 context only. On appeal, Hidalgo contends that this limiting
14 instruction was insufficient to avoid a violation of his
15 Confrontation Clause rights. We disagree.

16 "[W]hether a defendant's Confrontation Clause rights were
17 violated is 'ultimately a question of law that must be reviewed de
18 novo.'" Chavez v. State, 125 Nev. 328, 339, 213 P.3d 476, 484
19 (2009) (quoting United States v. Larson, 495 F.3d 1094, 1102 (9th
20 Cir. 2007)).

21 In Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L.
22 Ed. 2d 177 (2004), the Supreme Court held that the Confrontation
23 Clause prohibits introduction of testimonial hearsay when the
24 declarant is unavailable to testify. *Id.* at 51, 59 n.9; see also NRS
25 51.035(1) (defining "[h]earsay" as an out-of-court statement that
26 is used "to prove the truth of the matter asserted"). Thus, if a
27 testimonial statement is introduced for a purpose other than its
28 substantive truth, no Confrontation Clause violation occurs.
Crawford, 541 U.S. at 59 n.9 ("The Clause . . . does not bar the use
of testimonial statements for purposes other than establishing the
truth of the matter asserted.").

29 In light of Crawford, several federal courts have addressed the
30 identical issue presented here. These courts have held that no
31 Confrontation Clause violation occurs if a non-conspirator's
32 statements are introduced simply to provide "context" for the
33 coconspirators' statements. See, e.g., United States v. Hendricks,
34 395 F.3d 173, 184, 46 V.I. 704 (3d Cir. 2005) ("[I]f a Defendant
35 [6] or his or her coconspirator makes statements as part of a
36 reciprocal and integrated conversation with a government
37 informant who later becomes unavailable for trial, the
38 Confrontation Clause does not bar the introduction of the
39 informant's portions of the conversation as are reasonably
40 required to place the defendant or coconspirator's nontestimonial
statements into context."); United States v. Tolliver, 454 F.3d 660,
666 (7th Cir. 2006) ("Statements providing context for other
admissible statements are not hearsay because they are not offered
for their truth."); United States v. Eppolito, 646 F. Supp. 2d 1239,
1241 (D. Nev. 2009) ("[The informant's] recorded statements
have been offered [to] give context to Defendants' statements.

1 Because [the informant's] statements are not hearsay, the
2 Confrontation Clause and Crawford do not apply.”).

3 Consequently, Hidalgo's Confrontation Clause rights were not
4 violated when the district court instructed the jury to consider
5 Carroll's statements for context only.

6 Hidalgo, Jr. (Luis) v. State, No. 54209 (Order of Affirmance, filed June 21, 2012, at 2-5).

7 Where an issue has already been decided on the merits by the Nevada Supreme Court, the
8 Court's ruling is law of the case, and the issue will not be revisited. Pellegrini v. State, 117
9 Nev. 860, 884, 34 P.3d 519, 535 (2001); see McNelton v. State, 115 Nev. 396, 990 P.2d 1263,
10 1276 (1999); Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975); see also Valerio
11 v. State, 112 Nev. 383, 386, 915 P.2d 874, 876 (1996); Hogan v. Warden, 109 Nev. 952, 860
12 P.2d 710 (1993). A Defendant cannot avoid the doctrine of law of the case by a more detailed
13 and precisely focused argument. Hall, 91 Nev. at 316, 535 P.2d at 798-99; see also Pertgen v.
14 State, 110 Nev. 557, 557-58, 875 P.2d 316, 362 (1994). Therefore, consideration of this ground
15 is partially barred by the doctrine of law of the case and the claim is denied.

16 Seventh, Defendant claims that trial counsel was ineffective for failing to request a jury
17 instruction that prohibited finding the use of a deadly weapon if the jury found him guilty of
18 murder under a conspiracy liability theory. The Nevada Supreme Court recently rejected the
19 same claim in Little Lou's appeal from the denial of his habeas petition. Hidalgo v. State,
20 Docket No. 67640 at 2-3 (Order of Affirmance, May 11, 2016) (“Because the deadly weapon
21 enhancement was not applied to the conspiracy conviction, appellant failed to demonstrate that
22 counsel was ineffective.”).

23 Defendant conflates the crime of conspiracy, with the commission of a crime pursuant
24 to a theory of liability of conspiracy. Given that the instruction he asserts trial counsel should
25 have requested would have been an inaccurate statement of law, it would have been rejected.

26 “It is not error for a court to refuse an instruction when the law in that instruction is
27 adequately covered by another instruction given to the jury.” Rose v. State, 123 Nev. 194,
28 205, 163 P.3d 408, 415 (2007) (quoting Doleman v. State, 107 Nev. 409, 416, 812 P.2d 1287,
1291 (1991)). Further, district courts are not required to give misleading, inaccurate, or
duplicious instructions, and defendants are not entitled to dictate the specific wording of the

1 instructions. Crawford v. State, 121 Nev. 746, 754, 121 P.3d 582, 589 (2005). A jury may not
2 be given instructions which are a misstatement of law. Id. at 757, 121 P.3d at 591; see also
3 Barron v. State, 105 Nev. 767, 773, 783 P.2d 444, 448 (1989) (while a defendant has a right
4 to a jury instruction on his theory of the case, the instruction “must correctly state the law”).

5 Here, Defendant failed to demonstrate that his trial counsel erred in not offering a jury
6 instruction, or filing a NRS 175.381(2) motion, pursuant to Moore v. State, 117 Nev. 659, 662-
7 663, 27 P.3d 447, 450 (2001), arguing that Moore prevented an enhancement under NRS
8 193.165 for his conviction for Second Degree Murder. In Moore, the jury found Moore guilty
9 of First Degree Murder with Use of a Deadly Weapon, Robbery with Use of a Firearm, and
10 Conspiracy to Commit Robbery with Use of a Firearm. Moore, 117 Nev. at 660-61, 27 P.3d
11 at 448. Moore was sentenced to equal and consecutive terms on each of the 3 counts pursuant
12 to NRS 193.165, including his conviction for Conspiracy to Commit Robbery. Id. The Nevada
13 Supreme Court concluded and ruled as follows:

14 Following the plain import of the term “uses” in NRS 193.165(1),
15 we conclude that it is improper to enhance a sentence for
16 conspiracy using the deadly weapon enhancement. Accordingly,
17 we reverse Moore’s sentence in part and remand this case to the
district court with instructions to vacate the second, consecutive
term of Moore’s sentence for conspiracy. We affirm Moore’s
conviction and sentence in all other respects.

18 Id. at 663, 27 P.3d at 450. The Nevada Supreme Court affirmed the deadly weapon
19 enhancement on the Murder and Robbery convictions, and only reversed its application to the
20 Conspiracy conviction. Id. Notably, the Nevada Supreme Court found Moore was guilty of
21 robbery and murder under a conspiracy theory, stating, “Moore conspired with three others to
22 rob the occupants of an apartment at gunpoint. While carrying out the armed robbery, one of
23 the conspirators shot and killed a man who the conspirators believed was delivering drugs to
24 the apartment.” Id. at 660, 27 P.3d at 448.

25 Defendant’s claim is premised upon a conflation of the crime of conspiracy, with
26 liability for the commission of a crime pursuant to a conspiracy. Conspiring to commit a crime
27 is separate and distinct from conspiracy liability for committing a crime. See Bolden v. State,
28 121 Nev. 908, 912–13, 915–23, 124 P.3d 194, 196–201 (2005) (affirming a conviction for

1 conspiracy to commit robbery and/or kidnapping, but reversing charges including robbery and
2 kidnapping for insufficient evidence to sustain those convictions under conspiracy liability)
3 receded from on other grounds, Cortinas v. State, 124 Nev. 1013, 1026–27, 195 P.3d 315, 324
4 (2008); Batt v. State, 111 Nev. 1127, 1130–31 & n.3, 901 P.2d 664, 666 & n.3 (1995)
5 (declining to extend a conspiracy charge to encompass notice of conspiracy liability because
6 they involve two distinct crimes). Although a defendant has committed the crime of
7 conspiracy, and may be liable therefor, upon making the agreement, Nunnery v. Eighth
8 Judicial Dist. Ct., 124 Nev. 447, 480, 186 P.3d 886, 888 (2008), a defendant is not liable for
9 committing a crime, under a liability theory or otherwise, until the crime has been completed.
10 Further, the State may proceed upon a conspiracy theory without including an additional
11 charge of conspiracy. Walker v. State, 116 Nev. 670, 673–74, 6 P.3d 477, 479 (2000).

12 Thus, the instruction Defendant claims counsel was ineffective for not requesting is
13 based upon a misinterpretation of Nevada law, because Moore only prohibits a deadly weapon
14 enhancement on a conviction and sentence for a charge of conspiracy, not a conviction for
15 murder on a conspiracy theory of liability. Moore, 117 Nev. at 663, 27 P.3d at 450. Also,
16 Fiegehen v. State, 121 Nev. 293, 301-305, 113 P.3d 305, 310-312 (2005), merely held that
17 where a jury convicts a defendant of first-degree murder, via a felony-murder theory, as a
18 matter of law, the verdict was sufficient under NRS 200.030(3) even though it did not
19 designate between 1st and 2nd degree murder. Fiegehen, 121 Nev. at 301-305, 113 P.3d at 310-
20 312. To the extent Defendant asserts that the jury could not have found him guilty of murder
21 under an aiding and abetting theory because he was convicted of second degree murder, and
22 Counts was convicted of first degree murder, the State notes that Defendant and Counts were
23 tried separately, and Defendant has offered no proof that the jury knew the result of Counts'

24 trial. *Additionally, ~~Count~~ Defendant presumably means Deangelo Carroll*
as Kenneth Counts was acquitted of Murder with use of a Deadly weapon.

25 Accordingly, even if counsel had proffered the now-requested instruction, the Court
26 would have properly rejected it because the Court is not required to give jury instructions
27 containing inaccurate or incorrect statements of law. Crawford, 121 Nev. at 754, 757, 121
28 P.3d at 589, 591; Barron, 105 Nev. 767, 773, 783 P.2d 444, 448. Therefore, Defendant cannot

1 demonstrate that his trial counsel's conduct fell below an objective standard of reasonableness
2 and also cannot demonstrate that there was a reasonable probability that the outcome of the
3 trial would have been different if counsel had offered any Moore instruction or filed a NRS
4 175.381(2) motion on the same basis. Strickland, 466 U.S. at 687–688, 694, 697, 104 S.Ct.
5 at 2065, 2068–2069; Kirksey, 112 Nev. 980, 987, 923 P.2d 1102, 1107. Had he done so, his
6 actions would have been futile, and counsel is not ineffective for failing to take futile actions.
7 Ennis, 122 Nev. at 706, 137 P.3d at 1103. Accordingly, this claim is denied.

8 Eighth, Defendant alleges that trial and appellate counsel should have challenged Jury
9 Instruction No. 40 on the basis that the Nevada Supreme Court should reevaluate the
10 McDowell standard due to Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354 (2004), and
11 Davis v. Washington, 547 U.S. 813, 126 S. Ct. 2266 (2006), and their alleged effect on United
12 States v. Bourjaily, 483 U.S. 171, 107 S. Ct. 2775 (1987). The Nevada Supreme Court recently
13 rejected Little Lou's claim of error on this ground. See Hidalgo v. State, Docket No. 67640 at
14 3 (Order of Affirmance, May 11, 2016).

15 Defendant appears to argue that co-conspirator statements should no longer be
16 admissible because they are either inherently unreliable, and thus subject to Crawford's
17 Confrontation Clause requirement of cross-examination, or inherently unreliable and thus
18 inadmissible hearsay. However, Defendant misconstrues the holdings in Crawford and the
19 other cases to which he refers.

20 McDowell ruled:

21 According to NRS 51.035(3)(e), an out-of-court statement of a co-
22 conspirator made during the course and in furtherance of the
23 conspiracy is admissible as nonhearsay against another co-
24 conspirator. Pursuant to this statute, it is necessary that the co-
25 conspirator who uttered the statement be a member of the
26 conspiracy at the time the statement was made. It does not require
27 the co-conspirator against whom the statement is offered to have
28 been a member at the time the statement was made.

The federal position is consistent with our interpretation. In
construing Federal Rule of Evidence 801(d)(2)(E), which is
analogous to NRS 51.035(3)(e), the federal courts have
consistently held that extra-judicial statements made by one co-
conspirator during the conspiracy are admissible, without
violation of the Confrontation Clause, against a co-conspirator

1 who entered the conspiracy after the statements were made. See
2 U.S. v. Gypsum, 333 U.S. 364, 68 S.Ct. 525, 92 L.Ed. 746 (1948);
3 U.S. v. Davis, 809 F.2d 1194 (6th Cir.1987).

4 103 Nev. at 529–30, 746 P.2d at 150 (1987). In Bourjaily, the United States Supreme Court
5 similarly concluded that co-conspirator statements did not invoke the protections of the
6 Confrontation Clause. 483 U.S. at 181-84, 107 S. Ct. at 2782-83 (1987). The decision in
7 Bourjaily was based on the Confrontation Clause test set forth in Ohio v. Roberts, 448 U.S.
8 56, 63, 100 S. Ct. 2531, 2537 (1980), and concluded that no independent inquiry into the
9 reliability of co-conspirator statements was necessary prior to admission because they
10 qualified under a deeply rooted hearsay exemption. Bourjaily, 483 U.S. at 181-84, 107 S. Ct.
11 at 2782-83. Defendant alleges that Crawford and Davis somehow change the long-standing
12 rule that co-conspirator statements are not subject to the Confrontation Clause requirement for
13 cross-examination but his argument is meritless.

14 In Crawford, the United States Supreme Court replaced the Roberts Confrontation
15 Clause test, which provided that a hearsay statement from a declarant was admissible when “it
16 falls under a “firmly rooted hearsay exception” or bears “particularized guarantees of
17 trustworthiness.” 448 U.S. at 66, 100 S. Ct. 2531. The Court ruled that:

18 Where nontestimonial hearsay is at issue, it is wholly consistent
19 with the Framers’ design to afford the States flexibility in their
20 development of hearsay law—as does Roberts, and as would an
21 approach that exempted such statements from Confrontation
22 Clause scrutiny altogether. Where testimonial evidence is at issue,
23 however, the Sixth Amendment demands what the common law
24 required: unavailability and a prior opportunity for cross-
25 examination. We leave for another day any effort to spell out a
26 comprehensive definition of “testimonial.” Whatever else the term
27 covers, it applies at a minimum to prior testimony at a preliminary
28 hearing, before a grand jury, or at a former trial; and to police
interrogations. These are the modern practices with closest kinship
to the abuses at which the Confrontation Clause was directed.

24 Id. at 68, 124 S. Ct. at 1374. The Court further noted that without a prior opportunity to cross-
25 examine the framers did not intend to allow the admission of testimonial hearsay; therefore,
26 the only exceptions/exemptions to the hearsay rule which should continue to be exempt from
27 the Confrontation Clause were those that existed historically and did not involve testimonial
28 hearsay “for example, business records or *statements in furtherance of a conspiracy*.” Id. at

1 55-56, 124 S. Ct. 1354, 1366-67 (emphasis added). Thus, Crawford specifically excluded co-
2 conspirator statements from the reach of the Confrontation Clause. Id.

3 Given that any request by counsel or argument on appeal would have been futile,
4 Defendant has not shown he received ineffective assistance. Ennis, 122 Nev. at 706, 137 P.3d
5 at 1103. Therefore, this claim is denied.

6 Lastly, Defendant alleges cumulative error. While the Nevada Supreme Court has noted
7 that some courts do apply cumulative error in addressing ineffective assistance claims, it has
8 not specifically adopted this approach. See McConnell v. State, 125 Nev. 243, 250 n.17, 212
9 P.3d 307, 318 n.17 (2009). However, the Eighth Circuit Court of Appeals has concluded that
10 "a habeas petitioner cannot build a showing of prejudice on a series of errors, none of which
11 would by itself meet the prejudice test." Middleton v. Roper, 455 F.3d 838, 851 (8th Cir. 2006),
12 cert. denied, 549 U.S. 1134, 127 S. Ct. 980 (2007) (quoting Hall v. Luebbers, 296 F.3d 685,
13 692 (8th Cir. 2002)).

14 Even if the Court applies cumulative error analysis to Defendant's claims of ineffective
15 assistance, Defendant fails to demonstrate cumulative error warranting reversal. A cumulative
16 error finding in the context of a Strickland claim is extraordinarily rare and requires an
17 extensive aggregation of errors. See, e.g., Harris By and Through Ramseyer v. Wood, 64 F.3d
18 1432, 1438 (9th Cir. 1995). Because Defendant fails to demonstrate that any claim warrants
19 relief under Strickland, there is nothing to cumulate.

20 Defendant fails to demonstrate cumulative error sufficient to warrant reversal. In
21 addressing a claim of cumulative error, the relevant factors are: (1) whether the issue of guilt
22 is close; (2) the quantity and character of the error; and (3) the gravity of the crime charged.
23 Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845, 854-5 (2000). As demonstrated by the facts
24 *supra*, the evidence against Defendant was strong and eliminates the possibility of prejudice
25 from any omission by counsel (should deficient performance be found by this Court). Further,
26 even assuming that some or all of Defendant's allegations of deficiency had merit, he has failed
27 to establish that, when aggregated, the errors deprived him of a reasonable likelihood of a
28 better outcome at trial. Therefore, even if counsel was in any way deficient, there is no

1 reasonable probability that Defendant would have received a better result but for the alleged
2 deficiencies. Further, even if Defendant had made such a showing, he has certainly not shown
3 that the cumulative effect of these errors was so prejudicial as to undermine the Court's
4 confidence in the outcome of his case. Therefore, Defendant's cumulative error claim is
5 denied.

6 II. Defendant Is Not Entitled to an Evidentiary Hearing

7 Defendant requests an evidentiary hearing throughout his Petition. NRS 34.770
8 determines when a defendant is entitled to an evidentiary hearing:

9 1. The judge or justice, upon review of the return, answer and all
10 supporting documents which are filed, shall determine whether
11 an evidentiary hearing is required. A petitioner must not be
12 discharged or committed to the custody of a person other than the
13 respondent *unless an evidentiary hearing is held*.

12 2. If the judge or justice determines that the petitioner is not
13 entitled to relief and an evidentiary hearing is not required, he
14 shall dismiss the petition without a hearing.

13 3. If the judge or justice determines that an evidentiary hearing
14 is required, he shall grant the writ and shall set a date for the
hearing.

15 The Nevada Supreme Court has held that if a petition can be resolved without expanding the
16 record, then no evidentiary hearing is necessary. Mann v. State, 118 Nev. 351, 356, 46 P.3d
17 1228, 1231 (2002); Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603, 605 (1994). A
18 defendant is entitled to an evidentiary hearing if his petition is supported by specific factual
19 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled
20 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; Hargrove, 100 Nev. at 503, 686
21 P.2d at 225 (holding that "[a] defendant seeking post-conviction relief is not entitled to an
22 evidentiary hearing on factual allegations belied or repelled by the record"). "A claim is
23 'belied' when it is contradicted or proven to be false by the record as it existed at the time the
24 claim was made." Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

25 Here, an evidentiary hearing is unwarranted because the petition may be resolved
26 without expanding the record. Mann, 118 Nev. at 356, 46 P.3d at 1231; Marshall, 110 Nev. at
27 1331, 885 P.2d at 605. As explained above, Defendant's claims are bare/belied by the record,
28 and otherwise fail to sufficiently allege ineffective assistance of counsel. Additionally, this

1 Court has already held an evidentiary hearing on potential conflicts of interest and there is a
2 sufficient record to deny the claims alleging a conflict of interest presented in the Supplement.
3 Therefore, no evidentiary hearing is warranted in order to deny such claims. Hargrove, 100
4 Nev. at 503, 686 P.2d at 225. Accordingly, Defendant's request for an evidentiary hearing is
5 denied.

6 **III. Defendant is Not Entitled to Discovery**

7 Rules regarding post-conviction discovery are found in NRS 34.780(2). NRS 34.780(2)
8 reads:

9 *After the writ has been granted and a date set for the hearing, a*
10 *party may invoke any method of discovery available under the*
11 *Nevada Rules of Civil Procedure if, and to the extent that, the*
12 *judge or justice for good cause shown grants leave to do so.*

13 (emphasis added). Post-conviction discovery is not available until "after the writ has been
14 granted." Id. Here, the Petition and Supplement are denied without an evidentiary hearing.
15 Therefore, Defendant is not entitled to discovery.

16 **ORDER**

17 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief
18 shall be, and it is, hereby denied.

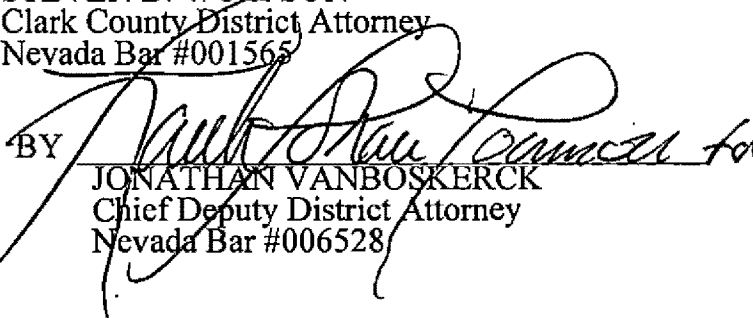
19 DATED this 8th day of September, 2016.

20 

21 VALERIE ADAIR
22 DISTRICT JUDGE

23 STEVEN B. WOLFSON
24 Clark County District Attorney
25 Nevada Bar #001565

26 BY

27 
28 JONATHAN VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528

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MARGARET A. MCLEITCH, Esq.
maggie@nvlitigation.com

tgdl/M-1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****February 11, 2008**

08C241394

The State of Nevada vs Luis Hidalgo Jr

February 11, 2008**11:30 AM****Grand Jury Indictment**

**GRAND JURY
INDICTMENT
Court Clerk: Denise
Trujillo
Reporter/Recorder:
Kristen Lunkwitz
Heard By: Kathy
Hardcastle**

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Laurent, Christopher J.
Pesci, Giancarlo

Attorney
Attorney

JOURNAL ENTRIES

- John Whesdos, Grand Jury Foreman, stated to the Court that at least twelve members had concurred in the return of the true bill during deliberation, but had been excused for presentation to the Court. The State presented Grand Jury Case Number 07AGJ101X to the Court. COURT ORDERED, the indictment may be filed and is assigned Case Number C241394, Department XIV. COURT ORDERED, BENCH WARRANT WILL ISSUE, NO BAIL and bail can be revisited by Judge Mosley. Exhibit(s) 1-16 lodged with Clerk of District Court.

CUSTODY**2/20/08 1:30 PM ARRAIGNMENT**

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****February 20, 2008**

08C241394

The State of Nevada vs Luis Hidalgo Jr

February 20, 2008**1:30 PM****Initial Arraignment**

**INITIAL
ARRAIGNMENT
Court Clerk:
Roshonda Mayfield
Reporter/Recorder:
Kiara Schmidt Heard
By: Kevin Williams**

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Armeni, Paola M.	Attorney
Di Giacomo, Marc P.	Attorney
Gentile, Dominic P.	Attorney
Hidalgo Jr, Luis	Defendant
Pesci, Giancarlo	Attorney

JOURNAL ENTRIES

- Counsel advised it is requested that this matter be remanded to Department 21 with also being set for a status check. COURT SO ORDERED. DEFT. HIDALGO ARRAIGNED, PLED NOT GUILTY and INVOKED THE 60-DAY RULE. COURT FURTHER ORDERED, matter set for trial; counsel is allowed 21 days from the filing of the preliminary transcript to file any writs.

CUSTODY

2/26/08 9:30 A.M. STATUS CHECK: TRIAL SETTING

3/27/08 9:30 A.M. CALENDAR CALL (DEPT. 21)

3/31/08 10:00 A.M. JURY TRIAL (DEPT. 21)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****February 26, 2008**

08C241394

The State of Nevada vs Luis Hidalgo Jr

February 26, 2008**9:30 AM****Status Check**

**STATUS CHECK:
TRIAL SETTING
VC 3/10/08 Court
Clerk: Denise Husted
Reporter/Recorder:
Janie Olsen Heard
By: Adair, Valerie**

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Di Giacomo, Marc P.
Gentile, Dominic P.
Hidalgo Jr, Luis
Pesci, Giancarlo

Attorney
Attorney
Defendant
Attorney

JOURNAL ENTRIES

- Mr. Gentile requested that a bail hearing be set for his client. Colloquy regarding scheduling of hearing. COURT ORDERED, matter set for bail hearing; matter on this day also CONTINUED.
CUSTODY
3/3/08 9:30 AM DEFENDANT'S MOTION FOR BAIL HEARING...STATUS CHECK TRIAL
SETTING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****March 20, 2008**

08C241394

The State of Nevada vs Luis Hidalgo Jr

March 20, 2008**9:30 AM****Motion to Compel**

**PLTF'S MTN TO
COMPEL
HANDWRITING
EXAMPLARS/10
Court Clerk: Denise
Husted
Reporter/Recorder:
Janie Olsen Heard
By: Valerie Adair**

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Gentile, Dominic P.
Hidalgo Jr, Luis
Pesci, Giancarlo

Attorney
Defendant
Attorney

JOURNAL ENTRIES

- Colloquy regarding Plaintiff's Motion to Compel Handwriting Exemplars. COURT ORDERED, GRANTED. Mr. Gentile state that his client has been in custody approximately six weeks and has been on single cell lock-down. The informed the Court that makes it difficult to communicate with his client. COURT ORDERED, the Judicial Executive Assistant is to phone the jail and inform them that the Defendant is to be removed from the single cell lock-down; if there is a reason from the jail that precludes the Court's order, the matter may be put back on calendar. Mr. Gentile stated his will not be ready for trial on 3/31/08 and there are many motions calendar and others that will be placed on calendar. COURT ORDERED, trial date VACATED and RESET.

CUSTODY

4/24/08 9:30 AM CALENDAR CALL

08C241394

4/24/08 10:00 AM JURY TRIAL

CLERK'S NOTE: At the request of Mr. Gentile, COURT ORDERED, motions calendared on 3/27/08 are CONTINUED to 4/1/08. dh

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****March 27, 2008**

08C241394

The State of Nevada vs Luis Hidalgo Jr

March 27, 2008**9:30 AM****Motion**

**DEFT'S MTN FOR
PRETRIAL RELEASE
ON BAIL WITH
CONDITIONS OF
HOME
CONFINEMENT/21
Court Clerk: Denise
Husted
Reporter/Recorder:
Cheryl Carpenter
Heard By: Valerie
Adair**

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Di Giacomo, Marc P.

Attorney

Gentile, Dominic P.

Attorney

Hidalgo Jr, Luis

Defendant

Pesci, Giancarlo

Attorney

JOURNAL ENTRIES

- Mr. DiGiacomo argued that bail should be set at \$2,000,000.00 and that he surrender his passport. He further advised that Mr. Hidalgo has been visiting Ms. Espindola at the jail using the false identification of his father. Mr. Pesci provided the Court with visitation records. COURT ORDERED, matter CONTINUED for Decision.

CUSTODY**4/1/08 9:30 AM DECISION: BAIL AMOUNT**

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 01, 2008

08C241394

The State of Nevada vs Luis Hidalgo Jr

April 01, 2008

9:30 AM

Decision

**DECISION: BAIL
AMOUNT Court
Clerk: Denise Husted
Reporter/Recorder:
Janie Olsen Heard
By: Valerie Adair**

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES**PRESENT:**

Di Giacomo, Marc P.
Gentile, Dominic P.
Hidalgo Jr, Luis
Pesci, Giancarlo

Attorney
Attorney
Defendant
Attorney

JOURNAL ENTRIES

- Mr. Gentile stated that Mr. Hidalgo Jr. never used his father's identification when visiting the jail. He stated that after investigating the situation, there was a problem with the jails computer system, and once the mistake was made, it continually defaulted to the wrong Hidalgo. Following further arguments by Mr. Gentile and Mr. DiGiacomo, COURT ORDERED, BAIL IS SET at \$650,000.00 with House Arrest. FURTHER, the Defendant is to SURRENDER HIS PASSPORT and is to have NO CONTACT WHATSOEVER with Ms. Espindola. Colloquy regarding trial date. Counsel advised the State will be moving to consolidate this case with the other case. Mr. Gentile advised he will maintain the passport until he finds out where it is to be surrendered.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****April 17, 2008**

08C241394

The State of Nevada vs Luis Hidalgo Jr

April 17, 2008**9:30 AM****All Pending Motions**

**ALL PENDING
MOTIONS 4/17/08
Court Clerk: Denise
Husted
Reporter/Recorder:
Debra Winn Heard
By: Valerie Adair**

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Di Giacomo, Marc P.
Gentile, Dominic P.
Hidalgo Jr, Luis
Pesci, Giancarlo

Attorney
Attorney
Defendant
Attorney

JOURNAL ENTRIES

- DEFENDANT'S MOTION FOR COURT TO ALLOW PRESENTATION OF EVIDENCE TO THE JURY...DEFENDANT'S MOTION TO PROHIBIT ARGUMENT ON DETERRENCE OR TO PERMIT EVIDENCE OF LACK OF DETERRENCE...MOTION TO PROHIBIT THE STATE OF NEVADA FROM INTRODUCING EVIDENCE AND ARGUMENT REGARDING MITIGATING CIRCUMSTANCES THAT ARE NOT APPLICABLE TO LUIS HIDALGO JR...DEFENDANT'S MOTION TO DECLARE AS UNCONSTITUTIONAL THE UNBRIDLED DISCRETION OF PROSECUTION TO SEEK THE DEATH PENALTY...DEFENDANT'S MOTION FOR DISCLOSURE OF THE EXISTENCE OF ELECTRONIC SURVEILLANCE...STATE'S NOTICE OF MOTION AND MOTION TO CONDUCT VIDEOTAPED TESTIMONY OF A COOPERATING WITNESS...DEFENDANT'S MOTION FOR DISCLOSURE OF INTERCEPTED COMMUNICATIONS...DEFENDANT'S MOTION TO STRIKE THE DEATH PENALTY AS

UNCONSTITUTIONAL BASED ON ITS ALLOWANCE OF INHERENTLY UNRELIABLE EVIDENCE...DEFENDANT'S MOTION TO STRIKE NOTICE OF INTENT TO SEEK DEATH PENALTY...DEFENDANT'S MOTION TO STRIKE DEATH PENALTY BASED UPON UNCONSTITUTIONALITY...DEFENDANT'S MOTION TO STRIKE NOTICE OF INTENT TO SEEK DEATH BASED UPON UNCONSTITUTIONAL WEIGHING EQUATION...DEFENDANT'S MOTION TO DISMISS COUNT ONE OF THE INDICTMENT FOR DUPLICITY OR, IN THE ALTERNATIVE, FOR AN ELECTION...DEFENDANT'S MOTION TO BIFURCATE PENALTY PHASE PROCEEDINGS

COURT ORDERED, as follows:

Defendant's Motion for Court to Allow Presentation of Evidence to the Jury was not addressed; Defendant's Motion to Prohibit Argument on Deterrence or to Permit Evidence of Lack of Deterrence is DENIED so long as the State contends they are not going to argue deterrence;

Motion to Prohibit the State of Nevada from Introducing Evidence and Argument Regarding Mitigating Circumstances that are not Applicable to Luis Hidalgo Jr. is GRANTED;

Defendant's Motion to Declare as Unconstitutional the Unbridled Discretion of Prosecution to Seek the Death Penalty is DENIED;

Defendant's Motion for disclosure of the Existence of Electronic Surveillance and Defendant's Motion for Disclosure of Intercepted Communications cannot be decided without an Affidavit from Christopher Lalli in the District Attorney's Office. Mr. Digiacoimo stated he has no knowledge that the State ever uses electronic surveillance or intercepted communications. COURT ORDERED, motions CONTINUED and matter set for a Status Check regarding affidavit;

State's Notice of Motion and Motion to Conduct Videotaped Testimony of a Cooperating Witness is CONTINUED;

Defendant's Motion to Strike the Death Penalty as Unconstitutional Based on its Allowance of Inherently Unreliable Evidence, Defendant's Motion to Strike Notice of Intent To Seek Death Penalty, Defendant's Motion to Strike Death Penalty Based Upon Unconstitutionality, Defendant's Motion to Strike Notice of Intent to Seek Death Based Upon Unconstitutional Weighing Equation and Defendant's Motion to Bifurcate Penalty Phase Proceedings are DENIED.

As to Defendant's Motion to Dismiss Count One of the Indictment for Duplicity or, in the Alternative, for an Election; Court directed the State to prepare and file and amended indictment taking duplicate language out.

CUSTODY

5/1/01 9:30 AM DEFENDANT'S MOTION FOR DISCLOSURE OF THE EXISTENCE OF ELECTRONIC SURVEILLANCE...DEFENDANT'S MOTION FOR DISCLOSURE OF INTERCEPTED COMMUNICATIONS...STATE'S MOTION OF MOTION AND MOTION TO CONDUCT VIDEOTAPED TESTIMONY OF A COOPERATING WITNESS...STATUS CHECK: AFFIDAVIT OF CHRISTOPHER LALLI...STATUS CHECK: RESET TRIAL DATE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****May 01, 2008**

08C241394

The State of Nevada vs Luis Hidalgo Jr

May 01, 2008**9:30 AM****All Pending Motions**

**ALL PENDING
MOTIONS 5/1/08
Court Clerk: Denise
Husted
Reporter/Recorder:
Janie Olsen Heard
By: Valerie Adair**

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Di Giacomo, Marc P.
Gentile, Dominic P.
Hidalgo Jr, Luis

Attorney
Attorney
Defendant

JOURNAL ENTRIES

- DEFENDANT'S MOTION FOR DISCLOSURE OF THE EXISTENCE OF ELECTRONIC SURVEILLANCE...DEFENDANT'S MOTION FOR DISCLOSURE OF INTERCEPTED COMMUNICATIONS...STATE'S MOTION TO CONDUCT VIDEOTAPED TESTIMONY OF A COOPERATING WITNESS...STATUS CHECK: AFFIDAVIT/C. LALLI...STATUS CHECK: TRIAL SETTING

Opposition to State's Motion to Conduct Videotaped Testimony, Affidavit of Christopher Lalli and Amended Indictment FILED IN OPEN COURT.

Argument by Mr. DiGiacomo. Court advised the State did make some good arguments; however, did not see the difference from any other informant or accomplice who was going to give testimony. Typically, the Court's procedure is to allow the video taped testimony as this is done with the Court and all parties present. The only drawback to this is that the jury does not get to evaluate the demeanor of the witness personally. Colloquy between Court and counsel regarding this being a

deposition or preservation of testimony. Mr. Gentile argued this was in fact a deposition to preserve testimony; however, the statute should apply and there was no judicial empowerment to preserve this testimony. Further, Mr. Gentile argued that what the State was failing to recognize was that no inherent power existed, that there were strict guidelines as to when a deposition could take place, and more importantly, that an accomplice was an exemption to the statute. Mr. Gentile advanced the proposition that the only reason the State wanted to depose this witness was so that they could keep their promise to release her from custody. Regardless, the Court had a duty and the motivation to see that the statute was complied with. State argued they had the right to preserve this testimony. Court advised the State made a tactical decision in not calling this witness at the preliminary hearing of Hidalgo III but the Court did not see any extraordinary risk or reason for a video deposition to be done; the same situation exists as at the time prior to the preliminary hearing and the State elected not to present the testimony. COURT ORDERED, motion to CONDUCT VIDEOTAPED TESTIMONY of cooperating witness DENIED as to both Hidalgo Jr. and Hidalgo III, although the reasoning did not apply to both, as one case was an indictment; the facts and circumstances of both cases were the same.

Mr. DiGiacomo presented the Affidavit of Christopher Lalli to the Court and advised the statute required Mr. Roger and Mr. Roger only to order the wiretap, but Mr. Lalli was the Assistant District Attorney and prepared the affidavit which the State believed complied with the Court's Order. Mr. Gentile stated he didn't know if the affidavit complied or not as he was just now seeing it. Court inquired where Mr. Roger's affidavit was as in looking at this affidavit it may not be sufficient, it's lacking with regard to knowledge. Mr. Gentile requested a continuance with regard to this matter to determine whether or not there is compliance with the Court's order and the statute. COURT SO ORDERED.

Colloquy between Court and Counsel regarding a trial date for the Hidalgo Jr. (C241394) case. Mr. DiGiacomo stated the Hidalgo III case (C212667) still showed a trial date, but that it had been stayed by the Nevada Supreme Court. COURT ORDERED, that trial date (C212667) would be VACATED; case C241394 SET FOR TRIAL.

6/3/08 9:30 AM STATUS CHECK: AFFIDAVIT...DEFENDANT'S MOTION FOR DISCLOSURE OF THE EXISTENCE OF ELECTRONIC SURVEILLANCE...DEFENDANT'S MOTION FOR DISCLOSURE OF INTERCEPTED COMMUNICATIONS

8/14/08 9:30 AM CALENDAR CALL

8/18/08 10:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****June 03, 2008**

08C241394

The State of Nevada vs Luis Hidalgo Jr

June 03, 2008**9:30 AM****All Pending Motions**

**ALL PENDING
MOTIONS 6-3-08
Relief Clerk:
REBECCA FOSTER
Reporter/Recorder:
Janie Olsen Heard
By: Valerie Adair**

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:**

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- DEFT'S MOTION FOR DISCLOSURE OF THE EXISTENCE OF ELECTRONIC
SURVEILLANCE...DEFT'S MOTION FOR DISCLOSURE OF INTERCEPTED COMMUNICATIONS
CLERK'S NOTE: Matters were previously continued to 6-17-08.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****June 17, 2008**

08C241394

The State of Nevada vs Luis Hidalgo Jr

June 17, 2008**9:30 AM****All Pending Motions**

**ALL PENDING
MOTIONS 6/17/08
Court Clerk: Denise
Husted
Reporter/Recorder:
Janie Olsen Heard
By: Valerie Adair**

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Armeni, Paola M.

Attorney

Di Giacomo, Marc P.

Attorney

Gentile, Dominic P.

Attorney

Hidalgo Jr, Luis

Defendant

JOURNAL ENTRIES

- DEFENDANT'S MOTION FOR DISCLOSURE OF THE EXISTENCE OF ELECTRONIC SURVEILLANCE...DEFENDANT'S MOTION FOR DISCLOSURE OF INTERCEPTED COMMUNICATIONS...STATUS CHECK: AFFIDAVIT

Mr. DiGiacomo advised that the ruling from the Supreme Court was issued and the State will file amended an amended notice to conform with the ruling. He further stated the ruling is very narrow as to what the State can do, which may necessitate a briefing schedule. He informed parties that the State does not have electronic surveillance or intercepted communications. COURT ORDERED, Defendant's motions are OFF CALENDAR. Colloquy regarding filing of motion to consolidate this case with C212667. Mr. DiGiacomo stated that if the cases are consolidated, there will be trial strategy problems; Mr. Hidalgo III is speaking with other counsel, just in case. He further stated that if consolidated, this case will not be ready for trial on 8/18/08. Mr. DiGiacomo brought up the subject

of Mr. Gentile's request for evidence and that he is free to view it at the vault. Also, the issue regarding the hard drives and whether they are available in pristine condition is in question. The Court directed the State to file a written motion regarding consolidation and Mr. Gentile may file an opposition. Mr. Gentile state that if the cases are consolidated, it raises issues regarding the trial date and whether or not he will be able to represent both Defendants; Mr. Hidalgo III is now speaking with other counsel in case there is a consolidation. Mr. Gentile stated the Supreme Court ruling was very narrow in terms of what the State will be permitted to do; he believes the State will seek an opportunity to include information in their notice that wasn't there originally, specifically information from Annabella. He further advised he will challenge a new notice of intent that will require briefing, answer and a Court's ruling before deciding on a final motion to consolidate. The Court informed Mr. Gentile that should the State add information regarding Annabella, he can file an opposition to the amended notice. Upon further inquiry, Mr. DiGiacomo stated the notice will be filed within two days. Mr. DiGiacomo stated he received a letter regarding the evidence view. He further stated that he has invited the defense team to view the file and evidence at Metro; there is an issue regarding the hard drive and whether or not it is in pristine condition. Mr. DiGiacomo advised he will provide the hand writing exemplars as requested, as well as the Silverton records. He informed parties that the State does not have electronic surveillance or intercepted communications. Colloquy regarding trial date in case C212667. COURT ORDERED, trial date STANDS in this case and trial set in January, 2009 for case C212667. If the cases are not consolidated, Mr. Gentile will try one case in January and the other case in August.

BOND

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 22, 2008

08C241394

The State of Nevada vs Luis Hidalgo Jr

July 22, 2008

9:30 AM

Motion to Consolidate

DEFT'S MTN TO
CONSOLIDATE
WITH
C241394/39 Court
Clerk: Denise Husted
Reporter/Recorder:
Janie Olsen Heard
By: Valerie Adair

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES**PRESENT:**

Armeni, Paola M.

Attorney

Gentile, Dominic P.

Attorney

Pesci, Giancarlo

Attorney

JOURNAL ENTRIES

- Defendant Hidalgo Jr. not present. COURT ORDERED, his presence is WAIVED for this hearing. Mr. Gentile requested more time to respond to the State's Motion to Consolidate. Upon Court's inquire Mr. Gentile stated he is still willing to represent both Hidalgo defendants as long as the cases are not consolidated. He further stated he will be filing a challenge regarding seeking the death penalty as to Luis Hidalgo, III, but he is uncertain regarding this issue as to Luis Hidalgo, Jr. Colloquy regarding trial dates. COURT ORDERED, States' Motions to Consolidate are OFF CALENDAR. FURTHER, trial date VACATED and RESET in case C241294. The Court informed counsel that the cases will be tried back to back, with the in-custody Defendant being tried first, as long as the cases are not consolidated.

BOND

1/22/09 9:30 AM CALENDAR CALL

08C241394

1/26/09 10:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****November 20, 2008**

08C241394

The State of Nevada vs Luis Hidalgo Jr

November 20, 2008**9:30 AM****Request****STATE'S REQUEST
STATUS CHECK ON
MTN TO
CONSOLIDATE
C212667 Court Clerk:
Denise Husted
Reporter/Recorder:
Janie Olsen Heard
By: Adair, Valerie****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Armeni, Paola M.

Attorney

Di Giacomo, Marc P.

Attorney

Gentile, Dominic P.

Attorney

Hidalgo Jr, Luis

Defendant

Pesci, Giancarlo

Attorney

JOURNAL ENTRIES

- Mr. Gentile introduced Chris Adams, Esq. from Atlanta, who will be substituting in as counsel for Luis Hidalgo, III; also John Arascata, Esq. from Reno will be appearing later. He further stated that these attorneys will be representing Hidalgo, III because of the issues that can be raised between Hidalgo, III and Hidalgo, Jr. and because of the Nevada Supreme Court's narrow mandate in their ruling. Mr. Gentile advised he will continue to represent Hidalgo, Jr. and requested additional time to file oppositions for the Motions to Consolidate cases C212667 and C241394. Mr. Digiacomo requested time for the State to file replies to Mr. Gentile's opposition. COURT ORDERED, Mr. Gentile's opposition is due by 12/4/08 and the State's reply is due by 12/11/08. FURTHER, Motions to

08C241394

Consolidate CONTINUED in cases C212667 and C241394.
BOND

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****December 19, 2008**

08C241394

The State of Nevada vs Luis Hidalgo Jr

December 19, 2008**9:30 AM****All Pending Motions**

**ALL PENDING
MOTIONS 12/19/08
Relief Clerk: Carole
D'Aloia
Reporter/Recorder:
Janie Olsen Heard
By: Valerie Adair**

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Armeni, Paola M.

Attorney

Di Giacomo, Marc P.

Attorney

Gentile, Dominic P.

Attorney

Hidalgo Jr, Luis

Defendant

Pesci, Giancarlo

Attorney

JOURNAL ENTRIES

- STATE'S REQUEST STATUS CHECK ON MOTION TO CONSOLIDATE C241394 WITH C212667...DEFENDANTS' MOTIONS TO STRIKE THE AMENDED NOTICE OT SEEK DEATH PENALTY

Christopher W. Adams, Esq., from Atlanta, Georgia, also present on behalf of Defendant Hidalgo III. Mr. Arrascada advised he has filed an Order for association of counsel on behalf of Mr. Adams, Court advised it did not see a problem with this and it will sign the Order. Mr. DiGiacomo advised that when he picked-up his copy of Defendants' opposition to the State's motion to consolidate, there were two (2) additional motions to strike the amended notice to seek death penalty on behalf of both Defendants and the State has not had an opportunity to respond and requested time to do so, noting he spoke to Mr. Gentile regarding this matter. Court informed counsel that if the motion is granted,

and the notice to seek the death penalty is stricken for either Defendant, the motion to consolidate will not be granted. COURT ORDERED, Defendants' Motions to Strike the Amended Notice to seek Death Penalty CONTINUED. As to the State's motion to consolidate, Mr. Gentile stated his objections on the record. Mr. Gentile informed, if Court grants this motion, it would deprive Defendants their right to eight (8) preemptory challenges each. Mr. Adams advised he is joining in this motion on behalf of Defendant Hildalgo III. Response by Mr. DiGiacomo. Court advised the biggest problem it foresees in granting the motion to consolidate would be during the penalty phase of the trial, where possibly family members would have to choose which of the two (2) Defendants they would testify on behalf of and, then if called upon to testify as to the other Defendant, they could not testify to the contrary. Court advised Mr. Gentile his argument was very interesting and, ORDERED, RULING RESERVED to continuance date.

BOND

1/9/09 9:30 AM ALL PENDING MOTIONS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****January 09, 2009**

08C241394

The State of Nevada vs Luis Hidalgo Jr

January 09, 2009**9:00 AM****All Pending Motions**

**ALL PENDING
MOTIONS 1/9/09
Court Clerk: Denise
Husted
Reporter/Recorder:
Janie Olsen Heard
By: Valerie Adair**

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Di Giacomo, Marc P.
Gentile, Dominic P.
Hidalgo Jr, Luis

Attorney
Attorney
Defendant

JOURNAL ENTRIES

- STATE'S REQUEST STATUS CHECK ON MOTION TO CONSOLIDATE C241394...DEFENDANT'S MOTION TO STRIKE THE AMENDED NOTICE TO SEEK DEATH PENALTY

Christopher Adams, Esq. appearing pro hoc vice for Luis Hidalgo, III.

COURT ORDERED, State's Request Status Check on Motion to Consolidate C241394 is CONTINUED.

Following arguments by counsel, COURT ORDERED, Defendant's Motion to Strike the Amended Notice to Seek Death Penalty is GRANTED IN PART as to the agreed upon stricken portions.

CUSTODY (HIDALGO III)

BOND (HIDALGO JR.)

1/16/09 9:30 AM STATE'S REQUEST STATUS CHECK ON MOTION TO CONSOLIDATE C241394

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 16, 2009

08C241394

The State of Nevada vs Luis Hidalgo Jr

January 16, 2009

9:30 AM

All Pending Motions

**ALL PENDING
MOTIONS 1-16-09
Relief Clerk:
REBECCA FOSTER
Reporter/Recorder:
Janie Olsen Heard
By: Valerie Adair**

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES**PRESENT:**

Di Giacomo, Marc P.
Gentile, Dominic P.
Hidalgo Jr, Luis
Pesci, Giancarlo

Attorney
Attorney
Defendant
Attorney

JOURNAL ENTRIES

- STATE'S MOTION TO REMOVE MR. GENTILE AS ATTORNEY OR REQUEST WAIVERS AFTER DEFENDANTS HAVE HAD TRUE INDEPENDENT COUNSEL...STATE'S REQUEST STATUS CHECK ON MOTION TO CONSOLIDATE C212667...DEFT'S MOTION FOR FAIR AND ADEQUATE VOIR DIRE

WAIVER OF RIGHTS TO A DETERMINATION OF PENALTY BY THE TRIAL JURY FILED IN OPEN COURT. ORDER GRANTING THE STATE'S MOTION TO CONSOLIDATE C241394 INTO C212667 FILED IN OPEN COURT. Mr. DiGiacomo advised the Court an agreement has been reached between parties as it relates to conflict issue and Notice to Seek Death Penalty against both defts will be withdrawn. Further defense counsel acknowledged there is no conflict as to the guilt phase. Colloquy between Court and counsel regarding charging documents and voir dire process. COURT ORDERED, State's Motion to Remove Mr. Gentile is MOOT; Motion to Consolidate with

C241394 is GRANTED; and Deft'S Motion for Fair and Adequate Voir Dire is MOOT. Upon request of Mr. DiGiacomo and there being no objection, COURT ORDERED, State's Motion in Limine to Exclude Testimony scheduled on 1-20-09 is CONTINUED to 1-22-09 at 10:15 A.M. COURT FURTHER ORDERED, Deft's Motion to Suppress scheduled for 1-20-09 (C212667) will be heard at 10:15 A.M. with the State's Motion To Exclude.
CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****January 22, 2009**

08C241394

The State of Nevada vs Luis Hidalgo Jr

January 22, 2009**9:30 AM****All Pending Motions****HEARD BY:** Adair, Valerie**COURTROOM:** RJC Courtroom 11C**COURT CLERK:** Denise Husted**RECORDER:****REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- Christopher Adams, Esq. appearing in case C212667; Dominic Gentile, Esq. and Paola Armeni, Esq. appearing in consolidated case C241394, with Defendant Luis Hidalgo Jr. Colloquy regarding trial date. Counsel announced ready for trial which should last two weeks with 26 witnesses. Mr. Arrascada stated opposition to parts of the State's Fourth Amended Information. Mr. Digiacommo stated that the Jury must be advised there are two different conspiracies and that he believes it was addressed as to Luis Hidalgo Jr. He further advised that it will require a special verdict form, which is not before the Court at this time.

Consolidated case C241394:

STATE'S MOTION IN LIMINE TO EXCLUDE THE TESTIMONY OF VALERIE FRIDLAND...DEFENDANT'S MOTION TO SUPPRESS EVIDENCE...CALENDAR CALL

Arguments by Mr. Gentile regarding the linguistics expert, Valerie Fridland. He stated that the use of pronouns employed by Ms. Espindola in the tapes in which she didn't know she was being recorded and the Grand Jury tapes were different and that the expert will be able to evaluate what was said in order to assist the jury. Opposition by Mr. Digiacommo. The Court stated that this matter will be reviewed further and a ruling will be made on 1/23/09. As to Defendant's Motion to Suppress Evidence, Mr. Gentile submitted on the pleadings. He added that this was a general warrant; the issue regarding Family Court signing the warrant needed to be raised now, or it can't be raised later in front of the Supreme Court. COURT FINDS, Family Court has jurisdiction to sign warrants. Mr.

Gentile stated the warrant left too much to the discretion of the searching officers, which violates the Fourth Amendment. Mr. Digiacomio argued that each and every one of the witnesses is tied to a specific crime and there was probable cause for each item listed. COURT FINDS, it was not so general as to be considered a general warrant and ORDERED, Defendant's Motion to Suppress is DENIED. Colloquy regarding pleadings and whether or not new Information would be filed. Additionally, discussion ensued as to possibly striking parts of the Information/Indictment. COURT ORDERED, a ruling will be given on 1/23/09 following further review of the Court's minutes and transcripts.

COURT ORDERED, ORDERED, trial date VACATED and RESET for a firm setting.

1/27/09 12:30 PM JURY TRIAL (C212667 AND C241394)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****January 23, 2009**

08C241394

The State of Nevada vs Luis Hidalgo Jr

January 23, 2009**10:50 AM****Decision**

**DECISION: MATTER
S ADDRESSED ON
1/22/09 Court Clerk:
Denise Husted
Heard By: Valerie
Adair**

HEARD BY: Adair, Valerie**COURTROOM:****COURT CLERK:** Denise Husted**RECORDER:** Janie Olsen**REPORTER:****PARTIES****PRESENT:**

Armeni, Paola M.
Di Giacomo, Marc P.
Gentile, Dominic P.
Hidalgo Jr, Luis
Pesci, Giancarlo
State of Nevada

Attorney
Attorney
Attorney
Defendant
Attorney
Plaintiff

JOURNAL ENTRIES

- COURT ORDERED, the State's Motion in Limine to Exclude the Testimony of Valerie Fridland is GRANTED. FURTHER, as to Hidalgo III's oral objection to the conspiracy count in the Fourth Amended Indictment, the COURT ORDERS that the language objected to be STRICKEN. Additionally, the COURT FINDS that there were two conspiracies; one relating to Timothy Hadland and one relating to Kenneth Counts.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****January 26, 2009**

08C241394

The State of Nevada vs Luis Hidalgo Jr

January 26, 2009**10:00 AM****Request**

**STATE'S REQUEST
FOR
CLARIFICATION**

HEARD BY: Adair, Valerie**COURTROOM:****COURT CLERK:** Denise Husted**RECORDER:** Janie Olsen**REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- Dominic Gentile, Esq. and Paola Armeni, Esq. appearing for Luis Hidalgo, Jr. in consolidated case C241394.

Hidalgo, Jr. presence WAIVED. Mr. Digiacomio stated that questions arose pertaining to the 4/17/08 transcript; there are multiple meanings as to what order on 1/23/19 means. He asked if the Court made a legal determination that Hidalgo, III is not admissible. The Court stated that right now it cannot say automatically that this is an ongoing part of conspiracy and part of the cover up of the conspiracy; not prepared to say this is a conspiracy. If the evidence ties it in, the State can argue they are not able to say factually that this is part of intentional conspiracy. Case law shows there may have been a second conspiracy; the initial conspiracy involved payment; the second conspiracy involved getting rid of Mr. Counts. Mr. Digiacomio read the Federal case law; Nevada law relates to ongoing acts of concealment. Following further arguments by counsel, COURT FINDS, the issue of Hidalgo, III solicitation of murder is up to the defense to bring in; the Court cannot say for certain that is was part of the first conspiracy.

CUSTODY (HIDALGO III)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****January 27, 2009**

08C241394

The State of Nevada vs Luis Hidalgo Jr

January 27, 2009**12:30 AM****Jury Trial**

TRIAL BY JURY
Court Clerk: Denise
Husted
Reporter/Recorder:
Janie Olsen Heard
By: Adair, Valerie

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Armeni, Paola M.

Attorney

Di Giacomo, Marc P.

Attorney

Gentile, Dominic P.

Attorney

Hidalgo Jr, Luis

Defendant

Pesci, Giancarlo

Attorney

JOURNAL ENTRIES

- IN THE PRESENCE OF THE JURY. Introductions by Court and counsel. Roll of jurors called by the Clerk. Jury selection proceeded. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding for cause challenges. Evening recess. MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****January 28, 2009**

08C241394

The State of Nevada vs Luis Hidalgo Jr

January 28, 2009**10:30 AM****Jury Trial**

TRIAL BY JURY
Court Clerk: Denise
Husted
Reporter/Recorder:
Janie Olsen Heard
By: Adair, Valerie

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Armeni, Paola M.

Attorney

Di Giacomo, Marc P.

Attorney

Gentile, Dominic P.

Attorney

Hidalgo Jr, Luis

Defendant

Pesci, Giancarlo

Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY. The Court noted that juror number fifteen said the stress of this process exacerbated a medical condition and provided a prescription. The Court excused this juror. Discussion regarding transcripts provided by the State; Mr. Adams objected to this. Mr. Gentile stated an audibility hearing was previously held regarding the tape. He requested that the Court listen to the tape and see if the transcript is reasonable decision regarding Anabel's debriefing. He further requested that he be provided the State's notes in order to determine if there may be a Brady issue. Mr. Digiacomo stated the admissibility hearing came before Anabel's plea. Following further discussion, the Court informed counsel that jury selection is to proceed. IN THE PRESENCE OF THE JURY. Roll of jurors called by the Clerk. Jury selection proceeded. OUTSIDE THE PRESENCE OF THE JURY. Discussion regarding juror challenges. IN THE PRESENCE OF THE JURY. Jury selection proceeded. CONFERENCE AT BENCH. Evening recess. MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****January 29, 2009**

08C241394

The State of Nevada vs Luis Hidalgo Jr

January 29, 2009**9:30 AM****Jury Trial****TRIAL BY JURY****Court Clerk: Denise
Husted****Reporter/Recorder:
Janie Olsen Heard
By: Adair, Valerie****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Armeni, Paola M.

Attorney

Di Giacomo, Marc P.

Attorney

Gentile, Dominic P.

Attorney

Hidalgo Jr, Luis

Defendant

Pesci, Giancarlo

Attorney

JOURNAL ENTRIES

- IN THE PRESENCE OF THE JURY. Jury selection continued. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding jury panel and possible conversations between some of them regarding the case. Jurors 018 and 052 questioned separately regarding this issue. IN THE PRESENCE OF THE JURY. Jury selection continued; voir dire questioning held one at a time outside the presence of the others in the panel. OUTSIDE THE PRESENCE OF THE JURY. Luis A. Hidalgo Jr's Trial Memorandum (Redacted) in case C212667 and consolidated case C241394 FILED IN OPEN COURT. Colloquy regarding differences in transcripts of Ms. Espindola. The Court noted it may be better to play the tape. Mr. Gentile agreed and Mr. Digiacomo opposed the suggestion. Discussion regarding the interview of Ms. Espindola. Mr. Adams requested copies of the notes of the interview. Following further discussion, the Court directed counsel to provide highlighted copies of the first and second transcripts showing the differences; the Court will review these prior to making a decision. Evening

recess. MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****January 30, 2009**

08C241394

The State of Nevada vs Luis Hidalgo Jr

January 30, 2009**10:00 AM****Jury Trial**

TRIAL BY JURY
Court Clerk: Denise
Husted
Reporter/Recorder:
Janie Olsen Heard
By: Adair, Valerie

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Armeni, Paola M.

Attorney

Di Giacomo, Marc P.

Attorney

Gentile, Dominic P.

Attorney

Hidalgo Jr, Luis

Defendant

Pesci, Giancarlo

Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding jury selection. Jury selection continued. Voir Dire questioning took place with individual jurors apart from the others. OUTSIDE THE PRESENCE OF THE JURY. The Court read the case provided by counsel regarding the transcript issue. COURT ORDERED, parties are not precluded from allowing use of the transcript pursuant to case law provided by Mr. Arrascada. IN THE PRESENCE OF THE JURY. Jury selection continued. Introductions by Court and counsel. Information read by the Clerk. Evening recess. MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****February 02, 2009**

08C241394

The State of Nevada vs Luis Hidalgo Jr

February 02, 2009**10:30 AM****Jury Trial**

TRIAL BY JURY
Court Clerk: Denise
Husted
Reporter/Recorder:
Janie Olsen Heard
By: Adair, Valerie

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Armeni, Paola M.

Attorney

Di Giacomo, Marc P.

Attorney

Gentile, Dominic P.

Attorney

Hidalgo Jr, Luis

Defendant

Pesci, Giancarlo

Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding jury selection. IN THE PRESENCE OF THE JURY. Jury selection continued; voir dire questioning took place with individual jurors apart from the others. OUTSIDE THE PRESENCE OF THE JURY. Mr. Adams argued Batson challenge. Opposition by the State. COURT FINDS, the release of the juror was with good cause. IN THE PRESENCE OF THE JURY. Jury selection continued. Voir dire questioning took place with individual jurors apart from the others. Jury selected and SWORN. Opening arguments counsel. Testimony and exhibits presented per worksheet. Evening recess. MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****February 03, 2009**

08C241394

The State of Nevada vs Luis Hidalgo Jr

February 03, 2009**10:30 AM****Jury Trial**

TRIAL BY JURY
Court Clerk: Denise
Husted
Reporter/Recorder:
Janie Olsen Heard
By: Adair, Valerie

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Armeni, Paola M.

Attorney

Di Giacomo, Marc P.

Attorney

Gentile, Dominic P.

Attorney

Hidalgo Jr, Luis

Defendant

Pesci, Giancarlo

Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding the State amending the witness list to include Christopher Oram. Mr. Gentile stated that Ms. Espindola will have to waive attorney client privilege should Mr. Oram testify. The Court informed counsel that the law regarding this issue will be reviewed. Further statements regarding jail phone records between Deangelo Carroll and his wife. IN THE PRESENCE OF THE JURY Testimony and exhibits presented per worksheet.

Carol Donahoo (3:45 p.m.)

Testimony and exhibits presented (see worksheet).

COURT ORDERED, trial CONTINUED and recessed for the evening.

OUTSIDE THE PRESENCE OF THE JURY: Arguments by counsel with respect to the legal issues surrounding the tape recording of Deangelo Carroll. Counsel will revisit this matter tomorrow.

Evening recess. MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****February 04, 2009**

08C241394

The State of Nevada vs Luis Hidalgo Jr

February 04, 2009**10:30 AM****Jury Trial**

TRIAL BY JURY
Court Clerk: Denise
Husted
Reporter/Recorder:
Janie Olsen Heard
By: Adair, Valerie

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Armeni, Paola M.

Attorney

Di Giacomo, Marc P.

Attorney

Gentile, Dominic P.

Attorney

Hidalgo Jr, Luis

Defendant

Pesci, Giancarlo

Attorney

JOURNAL ENTRIES

- Testimony and exhibits presented per worksheet. Evening recess. MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****February 05, 2009**

08C241394

The State of Nevada vs Luis Hidalgo Jr

February 05, 2009**9:00 AM****Jury Trial**

TRIAL BY JURY
Court Clerk: Denise
Husted
Reporter/Recorder:
Janie Olsen Heard
By: Adair, Valerie

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Armeni, Paola M.
Di Giacomo, Marc P.
Gentile, Dominic P.
Hidalgo Jr, Luis
Pesci, Giancarlo

Attorney
Attorney
Attorney
Defendant
Attorney

JOURNAL ENTRIES

- IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding proper questioning of Detective McGrath. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. Evening recess. MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****February 06, 2009**

08C241394

The State of Nevada vs Luis Hidalgo Jr

February 06, 2009**9:30 AM****Jury Trial**

TRIAL BY JURY
Court Clerk: Denise
Husted
Reporter/Recorder:
Janie Olsen Heard
By: Adair, Valerie

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Armeni, Paola M.

Attorney

Di Giacomo, Marc P.

Attorney

Gentile, Dominic P.

Attorney

Hidalgo Jr, Luis

Defendant

Pesci, Giancarlo

Attorney

JOURNAL ENTRIES

- IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet.
CONFERENCE AT BENCH. OUTSIDE THE PRESENCE OF THE JURY. Discussion regarding
exhibits. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet.
CONFERENCE AT BENCH. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented
per worksheet. Evening recess. MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 09, 2009

08C241394

The State of Nevada vs Luis Hidalgo Jr

February 09, 2009

9:00 AM

Jury Trial

TRIAL BY JURY
Court Clerk: Denise
Husted
Reporter/Recorder:
Janie Olsen Heard
By: Adair, Valerie

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES**PRESENT:**

Armeni, Paola M.	Attorney
Di Giacomo, Marc P.	Attorney
Gentile, Dominic P.	Attorney
Hidalgo Jr, Luis	Defendant
Pesci, Giancarlo	Attorney

JOURNAL ENTRIES

- IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding scheduling of witnesses. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Mr. Espindola with anyone during the lunch break. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Discussion regarding jury questions. Mr. Adams made stated on the record the people that Ms. Espincola conspired with. Now, one of the juror questions shows that the information they were told to consider is on the note. He MOVED for a mistrial. COURT ORDERED, DENIED; the matter will be cured by a statement by the Court. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. Evening recess. MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****February 10, 2009**

08C241394

The State of Nevada vs Luis Hidalgo Jr

February 10, 2009**9:30 AM****Jury Trial****TRIAL BY JURY**
Court Clerk: Denise
Husted
Reporter/Recorder:
Janie Olsen Heard
By: Adair, Valerie**HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Armeni, Paola M.

Attorney

Di Giacomo, Marc P.

Attorney

Gentile, Dominic P.

Attorney

Hidalgo Jr, Luis

Defendant

Pesci, Giancarlo

Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY. Discussion regarding evidence. Discussion regarding article in the Review Journal. Following discussion by counsel, the Court stated it will ask jurors if anyone has seen anything about this case in the news media. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. State rested. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Opposition by counsel to being served with notice of witnesses this morning; he needs time to prepare for cross-examination. COURT ORDERED, said witness is to be excluded as there is another witness that may be called. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. CONFERENCE AT BENCH. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Juror number eleven excused as the trial is going longer than expected and he informed the Court and counsel at jury selection that he has to be out of town. Evening recess.

08C241394

MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****February 11, 2009**

08C241394

The State of Nevada vs Luis Hidalgo Jr

February 11, 2009**9:30 AM****Jury Trial**

TRIAL BY JURY
Court Clerk: Denise
Husted
Reporter/Recorder:
Janie Olsen Heard
By: Adair, Valerie

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Armeni, Paola M.	Attorney
Di Giacomo, Marc P.	Attorney
Gentile, Dominic P.	Attorney
Hidalgo Jr, Luis	Defendant
Pesci, Giancarlo	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding witness being called who was in the Clark County Detention Center at the same time as Ms. Espindola. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Discussion regarding testimony of P.K. Handley. Mr. Gentile requested receipt of evidence given to the Court to find if there is exculpatory evidence. Following further discussion regarding this issue. COURT ORDERED, Mr. Digiacomo is to provide the defense with a copy of the information, and if not, the State will be precluded from recalling Mr. Handley. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. CONFERENCE AT BENCH. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Mr. Digiacomo read Mr. Handley's stated and advised there is no need to ask any other questions. Discussion regarding testimony of Ms. Perez. Mr. Digiacomo informed the Court that Mr.

Gentile is requesting Mr. Oram's notes from interviewing Ms. Espindola. Mr. Oram advised he has no problem showing the Court his work product in camera, but feels it would be inappropriate to have to testify. Mr. Gentile argued there is a joint defense argument with Ms. Espindola before she pled. The Court excused Mr. Handley with the caveat that he is to leave his cell phone on in case he has to be called back to Court. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. The Court advised Mr. Hidalgo, Jr. and Mr. Hidalgo, III of their constitutional rights to not be compelled to testify on their own behalf. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. CONFERENCE AT BENCH. Mr. Gentile RESTED. Mr. Arrascada RESTED. OUTSIDE THE PRESENCE OF THE JURY. Discussion regarding rebuttal testimony and what witnesses will be called and how they will be questioned. IN THE PRESENCE OF THE JURY. testimony and exhibits presented per worksheet. CONFERENCE AT BENCH. IN THE PRESENCE OF THE JURY Testimony and exhibits presented per worksheet. CONFERENCE AT BENCH. IN THE PRESENCE OF THE JURY. The State RESTED. OUTSIDE THE PRESENCE OF THE JURY. Counsel directed to provide jury instructions by disc to the Judicial Executive Assistant for modification. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding admission of Taoipu's affidavit in lieu of live testimony, as he has absconded. COURT STATED FINDINGS and ORDERED, that one exculpatory statement may not be used without discussing Hidaldgo, III and his involvement. Evening recess. MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****February 12, 2009**

08C241394

The State of Nevada vs Luis Hidalgo Jr

February 12, 2009**9:30 AM****Jury Trial****TRIAL BY JURY**
Court Clerk: Denise
Husted
Reporter/Recorder:
Janie Olsen Heard
By: Adair, Valerie**HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Armeni, Paola M.

Attorney

Di Giacomo, Marc P.

Attorney

Gentile, Dominic P.

Attorney

Hidalgo Jr, Luis

Defendant

Pesci, Giancarlo

Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY. Jury instructions settled on the record. IN THE PRESENCE OF THE JURY. Jurors instructed on the law of the case. OUTSIDE THE PRESENCE OF THE JURY. Mr. Adams requested that any testimony regarding "bats and bags" be stricken from the testimony. He sited his reason as being issues regarding due process and trial rights. Mr. Digiacomo stated there is no legal basis for this request. IN THE PRESENCE OF THE JURY. Closing arguments by Mr. Pesci. Closing arguments by Mr. Gentile. Closing arguments by Mr. Adams. Closing arguments by Mr. Digiacomo.

At the hour of 6:45 PM, the jury retires to deliberate. Officer Wooten sworn to take charge of the jury. The Court released alternates in chairs seven and fifteen and asked them to provide Officer Wooten with their phone numbers in case the have to fill in for another juror. Evening recess. MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 13, 2009

08C241394

The State of Nevada vs Luis Hidalgo Jr

February 13, 2009

9:30 AM

Jury Trial

**TRIAL BY JURY
Court Clerk: Denise
Husted
Reporter/Recorder:
Janie Olsen Heard
By: Adair, Valerie**

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:

Armeni, Paola M.
Di Giacomo, Marc P.
Gentile, Dominic P.
Hidalgo Jr, Luis
Pesci, Giancarlo

Attorney
Attorney
Attorney
Defendant
Attorney

JOURNAL ENTRIES

- Deliberation by juror. Evening recess. MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****February 17, 2009**

08C241394

The State of Nevada vs Luis Hidalgo Jr

February 17, 2009**9:30 AM****Jury Trial**

TRIAL BY JURY
Court Clerk: Denise
Husted
Reporter/Recorder:
Janie Olsen Heard
By: Valerie Adair

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Armeni, Paola M.

Attorney

Di Giacomo, Marc P.

Attorney

Gentile, Dominic P.

Attorney

Hidalgo Jr, Luis

Defendant

Pesci, Giancarlo

Attorney

JOURNAL ENTRIES

- IN THE PRESENCE OF THE JURY. At the hour of 3:05 PM the jury returned with the following verdict: Count 1 - GUILTY of CONSPIRACY TO COMMIT A BATTERY WITH A DEADLY WEAPON OR BATTERY RESULTING IN SUBSTANTIAL BODILY HARM (F) Count 2 - GUILTY of SECOND DEGREE MURDER WITH USE OF A DEADLY WEAPON (F).

The Court thanked and excused the jurors from service. Mr. Digiacomo requested that Luis Hidalgo Jr. be remanded to custody. COURT SO ORDERED. FURTHER, the matter is referred to the Division of Parole and Probation for a presentence investigation report and SET for sentencing.

CUSTODY

5/5/09 9:30 AM SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****February 24, 2009**

08C241394

The State of Nevada vs Luis Hidalgo Jr

February 24, 2009**9:30 AM****Motion for Own
Recognizance
Release/Setting Reasonable
Bail****DEFT ANABEL
ESPINDOLA'S MTN
FOR OWN RECOG
RELEASE, FOR
HOUSE ARREST/56
Relief Clerk: Sharon
Chun
Reporter/Recorder:
Janie Olsen Heard
By: Valerie Adair****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT ORDERED, OFF CALENDAR; on in error.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****April 21, 2009**

08C241394

The State of Nevada vs Luis Hidalgo Jr

April 21, 2009**10:30 AM****Motion for Judgment**

**DEFT'S MTN FOR
JUDGMENT OF
ACQUITTAL/273
Court Clerk: Denise
Husted
Reporter/Recorder:
Janie Olsen Heard
By: Adair, Valerie**

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Armeni, Paola M.

Attorney

Di Giacomo, Marc P.

Attorney

Gentile, Dominic P.

Attorney

Hidalgo Jr, Luis

Defendant

Pesci, Giancarlo

Attorney

JOURNAL ENTRIES

- Marc Digiacomo, Esq. and Giancarlo Pesci, Esq. appearing for the State in consolidated case C212667.

Following arguments by counsel, COURT ORDERED, CONTINUED.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 01, 2009

08C241394

The State of Nevada vs Luis Hidalgo Jr

May 01, 2009

10:30 AM

Motion for Judgment

DEFT'S MTN FOR
JUDGMENT OF
ACQUITTAL/273
Court Clerk: Denise
Husted
Reporter/Recorder:
Janie Olsen Heard
By: Valerie Adair

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES**PRESENT:**

Armeni, Paola M.

Attorney

Di Giacomo, Marc P.

Attorney

Gentile, Dominic P.

Attorney

Hidalgo Jr, Luis

Defendant

JOURNAL ENTRIES

- J. Arrascada, Esq appearing in consolidated case C212667. The Court noted that the question is regarding DeAngelo Carroll's statement. Statement by Ms. Armeni regarding Carroll's statement and his use of the pronoun "you". Mr. Digiacomo argued that what the jury acted appropriately with what the Court instructed them to do. Mr. Gentile advised that a Crawford problem now exists as Carroll never took the stand in this trial. Additionally, the question is what is the magnitude of error of the jury not following their instructions. The Court stated its belief that there was no intentional misconduct. Mr. Gentile cited the Valdez case, which was decided last November by the Nevada Supreme Court; the Nevada statute is based on the advisory committees first draft of the code. Mr. Digiacomo argued that the law is on the State's side in this issue and the Court should not consider what happened in the jury room during deliberations. COURT FINDS, it is very clear that if anything

is considered, there will be an Evidentiary Hearing or a ruling at a later date. COURT ORDERED, parties are to brief the issue; objections are due by 5/15/09 and the response is due by 5/22/09. Mr. Gentile requested that the sentencing be continued as the presentence investigation report was sent to the wrong law firm. Additionally, once the report was received, he found several mistakes in the report. COURT ORDERED, it will reluctantly continue the sentencing, however counsel must file a motion with the Court identifying the alleged errors in the presentence investigation report.

CUSTODY
6/2/09 9:30 AM SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 02, 2009

08C241394

The State of Nevada vs Luis Hidalgo Jr

June 02, 2009

9:30 AM

Status Check

STATUS CHECK:
SENTENCING
Relief Clerk: Shelly
Landwehr/sl
Reporter/Recorder:
Janie Olsen Heard
By: Valerie Adair

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES**PRESENT:**

Armeni, Paola M.	Attorney
Di Giacomo, Marc P.	Attorney
Gentile, Dominic P.	Attorney
Hidalgo Jr, Luis	Defendant
Pesci, Giancarlo	Attorney

JOURNAL ENTRIES

- Following conference at the bench, Court advised it addressed the previous Motions in chambers and prepared a minute order. Regarding the corrected pre-sentence investigation report (PSI), COURT ORDERED, both counsel to prepare an Order directing P & P to make the necessary changes. Following conference at the bench, State advised they are willing to accept the changes Deft's attorneys are referring to and suggested the State prepare the Order and to include 6/16/09 as the due date for the PSI; COURT SO ORDERED and matter SET for sentencing.

CUSTODY

06/23/09 10:00 AM SENTENCING (HIDALGO)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****June 23, 2009**

08C241394

The State of Nevada vs Luis Hidalgo Jr

June 23, 2009**10:00 AM****Sentencing****SENTENCING****Court Clerk: Denise
Husted****Reporter/Recorder:
Janie Olsen Heard
By: Valerie Adair****HEARD BY:** Adair, Valerie**COURTROOM:** RJC Courtroom 11C**COURT CLERK:** Denise Husted**RECORDER:** Janie Olsen**REPORTER:****PARTIES****PRESENT:**

Armeni, Paola M.

Attorney

Di Giacomo, Marc P.

Attorney

Gentile, Dominic P.

Attorney

Hidalgo Jr, Luis

Defendant

Pesci, Giancarlo

Attorney

JOURNAL ENTRIES

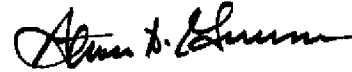
- Discussion regarding juror misconduct and misuse of jury instructions. COURT FINDS, there was enough evidence that the conspiracy went beyond simple battery and the Court is not inclined to overturn the verdict. FURTHER, the Court stands by its decision to disallow the testimony of Jayson Taoipu.

Parties argued and submitted. Statement by Defendant. Victim Witnesses Doris Gibbs, Allana Hadland and Jennifer Hadland SWORN AND TESTIFIED. Colloquy regarding redaction of certain section of sentencing memorandum. DEFENDANT HIDALGO JR. ADJUDGED GUILTY of Count I - Conspiracy to Commit Battery with a Deadly Weapon or Battery Resulting in Substantial Bodily Harm (GM) and Count II - Second Degree Murder with use of a Deadly Weapon (F). COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, Defendant SENTENCED as follows: Count I - TWELVE (12) MONTHS in the Clark County Detention Center (GM); Count II -

Second Degree Murder with Use of a Deadly Weapon (F), plus an EQUAL and CONSECUTIVE term of 120 Months to Life for the deadly weapons enhancement.
BOND, if any EXONERATED. Defendant to receive 184 DAYS CREDIT for time served.

1 NOAS

2 Luis Hidalgo, Jr., ID # 1038134
3 Northern Nevada Correctional Center
4 1721 E. Snyder Ave
5 Carson City, NV 89701
6 *Pro Se Petitioner*



CLERK OF THE COURT

Electronically Filed
Oct 10 2016 01:57 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 LUIS HIDALGO, JR.,
10
11 Petitioner,

CASE NO.: 08C241394

DEPT. NO.: XXI

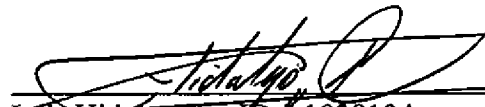
12 vs.

NOTICE OF APPEAL

13 STATE OF NEVADA,
14
15 Respondent.

16 NOTICE IS HEREBY GIVEN that LUIS HIDALGO, JR., Petitioner in the above
17 entitled case, hereby appeals to the Nevada Supreme Court from the denial of his Petition for
18 Writ of Habeas Corpus on August 19, 2016 pursuant to Nevada Rule of Appellate Procedure
19 4(b)(1)(A).

20 DATED this 28 day of SEPTEMBER, 2016.



21 Luis Hidalgo, Jr., ID # 1038134
22 Northern Nevada Correctional Center
23 1721 E. Snyder Ave
24 Carson City, NV 89701
25 *Pro Se Petitioner*

RECEIVED

OCT 03 2016

24

CLERK OF THE COURT

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b)(2)(B) I hereby certify that on the ____ day of _____, 2016, mailed a true and correct copy of the foregoing NOTICE OF APPEAL by depositing the same in the United States mail, first-class postage pre-paid, to the following addresses:

STEVEN B. WOLFSON
Office of the District Attorney
200 Lewis Ave.
P.O. Box 552212
Las Vegas, Nevada 89155

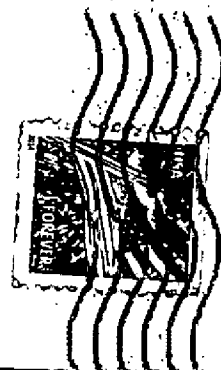
JONATHAN VANBOSKERCK
Office of the District Attorney
301 E. Clark Avenue # 100
Las Vegas, NV 89155
Counsel for Respondent

CLERK OF THE COURT
200 LEWIS AVE.
LAS VEGAS, NEV.

Certified by: 
Pro Se Petitioner

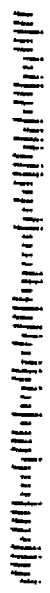
LUIS HIDALGO JR. 103834
N.N.E.E.
P.O. Box 1000
CARSON CITY, NEVADA 89102

RENO NV 895
29 SEP 2016 PM 2 L



*CLERK OF THE COURT
200 LEWIS AVENUE
LAS VEGAS, NEV. 89155*

8910136300



NORTHERN NEVADA CORRECTIONAL CENTER

SEP 29 2016


CLERK OF THE COURT

1 ASTA

2
3
4
5
6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**
9

10 STATE OF NEVADA,

11 Plaintiff(s),

12 vs.

13 LUIS HIDALGO, JR.
14 AKA LUIS A. HIDALGO,

15 Defendant(s),

Case No: 08C241394

Consolidated with 05C212667

Dept No: XXI

16
17 **CASE APPEAL STATEMENT**
18

19 1. Appellant(s): Luis Hidalgo, Jr.

20 2. Judge: Valerie Adair

21 3. Appellant(s): Luis Hidalgo, Jr.

22 Counsel:

23 Luis Hidalgo, Jr. #1038134
24 P.O. Box 7000
Carson City, NV 89702

25 4. Respondent: The State of Nevada

26 Counsel:

27 Steven B. Wolfson, District Attorney
28 200 Lewis Ave.

Las Vegas, NV 89101
(702) 671-2700

5. Appellant(s)'s Attorney Licensed in Nevada: N/A
Permission Granted: N/A

Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A

6. Appellant Represented by Appointed Counsel In District Court: Yes

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

9. Date Commenced in District Court: February 13, 2008

10. Brief Description of the Nature of the Action: Criminal

Type of Judgment or Order Being Appealed: Post-Conviction Relief

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 54209, 54272

12. Child Custody or Visitation: N/A

Dated This 4 day of October 2016.

Steven D. Grierson, Clerk of the Court

/s/ Chaunte Pleasant

Chaunte Pleasant, Deputy Clerk

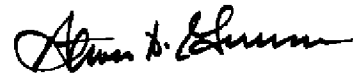
200 Lewis Ave

PO Box 551601

Las Vegas, Nevada 89155-1601

(702) 671-0512

cc: Luis Hidalgo, Jr.



CLERK OF THE COURT

ASTA
Luis Hidalgo, Jr., ID # 1038134
Northern Nevada Correctional Center
1721 E. Snyder Ave
Carson City, NV 89701
Pro Se Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

LUIS HIDALGO, JR.,

Petitioner,

vs.

STATE OF NEVADA,

Respondent.

CASE NO.: 08C241394

DEPT. NO.: XXI

CASE APPEAL STATEMENT

1. **Name of appellant filing this case appeal statement:** Luis Hidalgo, Jr.
2. **Judge issuing the decision, judgment, or order appealed from:** The Honorable Valerie Adair.

3. **Name and address of appellant's counsel:**
Luis Hidalgo, Jr., ID # 1038134
Northern Nevada Correctional Center
1721 E. Snyder Ave
Carson City, NV 89701
Pro Se Petitioner

4. **Name and address of respondent's counsel:**
STEVEN B. WOLFSON
Nevada Bar No. 1565
Office of the District Attorney
200 Lewis Ave.
P.O. Box 552212
Las Vegas, Nevada 89155

///

RECEIVED

OCT 03 2016

CLERK OF THE COURT

24

JONATHAN E. VANBOSKERCK
Nevada Bar No. 6528
Office of the District Attorney
301 E. Clark Avenue # 100
Las Vegas, NV 89155
Counsel for Respondent

5. **Attorneys not licensed to practice law in Nevada:** None

6. **Whether appellant was represented by appointed or retained counsel in the district court:** Appellant was represented by appointed counsel in the district court.

7. **Whether appellant is represented by appointed or retained counsel on appeal:** Appellant is not represented by appointed counsel on appeal.

8. **Whether appellant was granted leave to proceed in forma pauperis:** yes

9. **Date the proceedings commenced in the district court:** February 13, 2008.

10. **A brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:** Appellant submitted his Petition for Writ of Habeas Corpus (post-conviction relief) on December 13, 2013 arguing that his trial and appellate counsel was ineffective, and a Supplemental Memorandum of Points and Authorities in Support of Petition for Writ of Habeas Corpus (Post-Conviction) on February 29, 2016. The district court denied the Petition on September 16, 2016, and entered a Notice of Entry of Order on September 19, 2016. Appellant appeals from this denial of Post-Conviction Relief.

11. **Whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:** Yes, the trial proceeding stage of the case has been the subject of appeals to the Nevada Supreme Court: *Luis Hidalgo, Jr. vs. The State of Nevada*, docket number 54209.

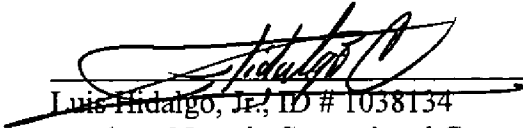
12. **Whether the appeal involves child custody or visitation:** This case does not involve child custody or visitation.

///

///

1 13. In civil cases, whether the appeal involves the possibility of settlement: N/A

2
3 DATED this 28 day of SEPTEMBER, 2016.

4
5
6 
7 Luis Hidalgo, Jr., ID # 1038134

8 Northern Nevada Correctional Center

9 1721 E. Snyder Ave

10 Carson City, NV 89701

11 Pro Se Petitioner

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b)(2)(B) I hereby certify that on the 28 day of SEPTEMBER, 2016, mailed a true and correct copy of the foregoing CASE APPEAL STATEMENT by depositing the same in the United States mail, first-class postage pre-paid, to the following addresses:

STEVEN B. WOLFSON
Office of the District Attorney
200 Lewis Ave.
P.O. Box 552212
Las Vegas, Nevada 89155

JONATHAN VANBOSKERCK
Office of the District Attorney
301 E. Clark Avenue # 100
Las Vegas, NV 89155
Counsel for Respondent

CLERK OF THE COURT
200 LEWIS AVE.
LAS VEGAS, NEV

Certified by
Pro Se Petitioner

DEPARTMENT 21
CASE SUMMARY
CASE NO. 08C241394

The State of Nevada vs Luis Hidalgo Jr

§ Location: **Department 21**
§ Judicial Officer: **Adair, Valerie**
§ Filed on: **02/13/2008**
§ Case Number History:
§ Cross-Reference Case **C241394**
§ Number:
§ Defendant's Scope ID #: **1579522**
§ Lower Court Case Number: **07GJ00101**
§ Supreme Court No.: **54209**

CASE INFORMATION

Offense	Deg	Date	Case Type:	Felony/Gross Misdemeanor
1. CONSPIRACY TO COMMIT A CRIME	G	01/01/1900		
1. MURDER.	G	01/01/1900	Case Flags:	Bail Set
1. DEGREES OF MURDER	G	01/01/1900		<i>Bail Set at \$650000</i>
2. MURDER.	F	01/01/1900		Appealed to Supreme Court
2. DEGREES OF MURDER	F	01/01/1900		Custody Status - Nevada
2. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	F	01/01/1900		Department of Corrections
				Consolidated - Criminal

Related Cases

05C212667-1 (Consolidated)
05C212667-2 (Consolidated)
05C212667-3 (Consolidated)
05C212667-4 (Consolidated)
05C212667-5 (Consolidated)

Statistical Closures

05/31/2010 USJR Reporting Statistical Closure
06/04/2010 USJR Reporting Statistical Closure

Warrants

Bench Warrant - Hidalgo Jr, Luis (Judicial Officer: Adair, Valerie)
04/07/2008 Quashed
02/13/2008 Issued
Fine: \$0
Bond: \$0

Bonds

Converted Surety Bond #AS1M1155 \$650,000.00
4/3/2008 Posted
8/11/2009 Exonerated
Counts: 1, 1, 1, 2, 2, 2

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	08C241394
Court	Department 21
Date Assigned	03/01/2008
Judicial Officer	Adair, Valerie

PARTY INFORMATION

Defendant **Hidalgo Jr, Luis**



Lead Attorneys
McLetchie, Margaret A.
Retained
702-728-5300(W)

Plaintiff **State of Nevada**







Wolfson, Steven B

DEPARTMENT 21
CASE SUMMARY
CASE NO. 08C241394

702-671-2700(W)

DATE	EVENTS & ORDERS OF THE COURT	INDEX
01/01/1900	Plea (Judicial Officer: User, Conversion) 1. CONSPIRACY TO COMMIT A CRIME Not Guilty PCN: Sequence:	
01/01/1900	Plea (Judicial Officer: User, Conversion) 1. MURDER. Not Guilty PCN: Sequence:	
01/01/1900	Plea (Judicial Officer: User, Conversion) 1. DEGREES OF MURDER Not Guilty PCN: Sequence:	
01/01/1900	Plea (Judicial Officer: User, Conversion) 2. MURDER. Not Guilty PCN: Sequence:	
01/01/1900	Plea (Judicial Officer: User, Conversion) 2. DEGREES OF MURDER Not Guilty PCN: Sequence:	
01/01/1900	Plea (Judicial Officer: User, Conversion) 2. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Not Guilty PCN: Sequence:	
02/11/2008	Grand Jury Indictment (11:30 AM) <i>GRAND JURY INDICTMENT Court Clerk: Denise Trujillo Reporter/Recorder: Kristen Lunkwitz Heard By: Kathy Hardecastle</i>	
02/13/2008	 Indictment <i>(GRAND JURY) INDICTMENT Fee \$0.00</i>	08C2413940001.tif pages
02/13/2008	Hearing <i>GRAND JURY INDICTMENT</i>	08C2413940002.tif pages
02/13/2008	Hearing <i>INITIAL ARRAIGNMENT</i>	08C2413940003.tif pages
02/13/2008	Bench Warrant <i>NO BAIL BENCH WARRANT ISSUED</i>	08C2413940004.tif pages
02/13/2008	Order <i>ORDER OF INTENT TO FORFEIT</i>	08C2413940005.tif pages
02/13/2008	 Warrant <i>INDICTMENT WARRANT</i>	08C2413940006.tif pages




DEPARTMENT 21
CASE SUMMARY
CASE NO. 08C241394

02/14/2008	 Warrant <i>INDICTMENT WARRANT RETURN</i>	08C2413940008.tif pages
02/20/2008	Initial Arraignment (1:30 PM) Events: 02/13/2008 Hearing <i>INITIAL ARRAIGNMENT Court Clerk: Roshonda Mayfield Reporter/Recorder: Kiara Schmidt Heard By: Kevin Williams</i>	
02/21/2008	 Reporters Transcript <i>REPORTER'S TRANSCRIPT OF PROCEEDINGS- GRAND JURY</i>	08C2413940012.tif pages
02/22/2008	Hearing <i>STATUS CHECK: TRIAL SETTING VC 3/10/08</i>	08C2413940009.tif pages
02/26/2008	Status Check (9:30 AM) Events: 02/22/2008 Hearing <i>STATUS CHECK: TRIAL SETTING VC 3/10/08 Court Clerk: Denise Husted Reporter/Recorder: Janie Olsen Heard By: Adair, Valerie</i>	
02/26/2008	Status Check (9:30 AM) <i>STATUS CHECK: VA 3/1/08</i>	
02/26/2008	Motion <i>DEFT'S MOTION FOR BAIL HEARING VC 3/10/08</i>	08C2413940013.tif pages
02/26/2008	Motion <i>DEFT'S MOTION FOR BAIL HEARING VY 3/26/08</i>	08C2413940036.tif pages
03/01/2008	Hearing <i>STATUS CHECK: VA 3/1/08</i>	08C2413940015.tif pages
03/03/2008	Status Check (9:30 AM) <i>STATUS CHECK: TRIAL SETTING VC 3/10/08</i>	
03/03/2008	Motion (9:30 AM) Events: 02/26/2008 Motion <i>DEFT'S MOTION FOR BAIL HEARING VC 3/10/08 Heard By: Valerie Adair</i>	
03/07/2008	 Notice of Intent to Seek Death Penalty <i>NOTICE OF INTENT TO SEEK DEATH PENALTY</i>	08C2413940016.tif pages
03/10/2008	 Expert Witness List <i>NOTICE OF EXPERT WITNESSES</i>	08C2413940017.tif pages
03/11/2008	Status Check (9:30 AM) <i>STATUS CHECK: TRIAL SETTING VC 3/10/08 Court Clerk: Denise Husted Reporter/Recorder: Janie Olsen</i>	
03/11/2008	Motion (9:30 AM) <i>DEFT'S MOTION FOR BAIL HEARING VC 3/10/08 Heard By: Valerie Adair</i>	
03/13/2008	 Notice <i>NOTICE OF EVIDENCE IN AGGRAVATION</i>	08C2413940019.tif pages
03/15/2008	 Motion <i>PLTF'S MTN TO COMPEL HANDWRITING EXAMPLARS/10</i>	08C2413940018.tif pages


DEPARTMENT 21
CASE SUMMARY
CASE No. 08C241394

03/17/2008	 Motion <i>DEFT'S MTN FOR COURT TO ALLOW PRESENTATION OF EVID TO THE JURY /11</i>	08C2413940020.tif pages
03/17/2008	 Motion <i>DEFT'S MTN TO STRIKE DEATH PENALTY AS UNCONSTITUTIONAL /12</i>	08C2413940021.tif pages
03/17/2008	 Motion <i>DEFT'S MTN TO PROHIBIT ARGUMENT ON DETERRENCE OR TO PERMIT EVID OF LACK /13</i>	08C2413940022.tif pages
03/17/2008	 Motion <i>DEFT'S MTN TO STRIKE NOTICE OF INTENT TO SEEK DEATH PENALTY /14</i>	08C2413940023.tif pages
03/17/2008	 Notice of Witnesses and/or Expert Witnesses Filed By: Defendant Hidalgo Jr, Luis <i>DEFENDANT LUIS A HIDALGO JRS NOTICE OF EXPERT WITNESSES</i>	08C2413940027.tif pages
03/18/2008	 Motion <i>DEFT'S MTN TO PROHIBIT THE STATE OF NV/15</i>	08C2413940024.tif pages
03/18/2008	 Motion <i>DEFT'S MTN TO STRIKE DEATH PENALTY/16</i>	08C2413940025.tif pages
03/18/2008	 Motion <i>DEFT'S MTN TO DECLARE AS UNCONSTITUTIONAL/17</i>	08C2413940026.tif pages
03/18/2008	 Motion <i>DEFT'S MTN TO BIFURCATE PENALTY PHASE PROCEEDINGS /18</i>	08C2413940028.tif pages
03/18/2008	 Motion <i>DEFT'S MTN FOR DISCLOSURE OF INTERCEPTED COMMUNICATIONS /19</i>	08C2413940029.tif pages
03/18/2008	 Motion <i>DEFT'S MTN TO STRIKE NTC OF INTENT TO SEEK DEATH /20</i>	08C2413940030.tif pages
03/19/2008	 Motion <i>DEFT'S MTN FOR PRETRIAL RELEASE ON BAIL WITH CONDITIONS OF HOME CONFINEMENT/21</i>	08C2413940031.tif pages
03/19/2008	 Motion <i>DEFT'S MTN FOR DISCLOSURE OF EXISTENCE OF ELECTRONIC SURVEILLANCE/22</i>	08C2413940032.tif pages
03/19/2008	 Certificate Filed By: Defendant Hidalgo Jr, Luis <i>CERTIFICATE OF SERVICE</i>	08C2413940037.tif pages
03/20/2008	Motion to Compel (9:30 AM) Events: 03/15/2008 Motion <i>PLTF'S MTN TO COMPEL HANDWRITING EXAMPLARS/10 Court Clerk: Denise Husted Reporter/Recorder: Janie Olsen Heard By: Valerie Adair</i>	

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03/20/2008	 Motion <i>DEFT'S MTN TO DISMISS COUNT ONE OF INDICTMENT/25</i>	08C2413940035.tif pages
03/21/2008	 Supplement Filed by: Defendant Hidalgo Jr, Luis <i>DEFENDANT LUIS HIDALGO JRS SUPPLEMENT TO MOTION FOR PRETRIAL RELEASE ON BAIL WITH CONDITIONS OF HOME CONFINEMENT AND ELECTRONIC MONITORING CONDITIONS OF HOME CONFINEMENT AND ELECTRONIC MONITORING</i>	08C2413940038.tif pages
03/25/2008	Motion to Dismiss (9:30 AM) Events: 03/20/2008 Motion <i>DEFT'S MTN TO DISMISS COUNT ONE OF INDICTMENT/25 Heard By: Valerie Adair</i>	
03/26/2008	 Opposition <i>STATES OPPOSITION TO DEFTS MTN FOR PRETRIAL RELEASE ON BAIL WITH CONDITONS OF HOME CONFINEMENT AND ELECTRONIC MONITORING OF HOME CONFINEMENT AND ELECTRONIC MONITORING</i>	08C2413940040.tif pages
03/27/2008	CANCELED Calendar Call (9:30 AM) <i>Vacated</i>	
03/27/2008	Motion (9:30 AM) Events: 03/17/2008 Motion <i>DEFT'S MTN FOR COURT TO ALLOW PRESENTATION OF EVID TO THE JURY /11 Heard By: Valerie Adair</i>	
03/27/2008	Motion to Strike (9:30 AM) Events: 03/17/2008 Motion <i>DEFT'S MTN TO STRIKE DEATH PENALTY AS UNCONSTITUTIONAL /12 Heard By: Valerie Adair</i>	
03/27/2008	Motion (9:30 AM) Events: 03/17/2008 Motion <i>DEFT'S MTN TO PROHIBIT ARGUMENT ON DETERRENCE OR TO PERMIT EVID OF LACK /13 Heard By: Valerie Adair</i>	
03/27/2008	Motion to Strike (9:30 AM) Events: 03/17/2008 Motion <i>DEFT'S MTN TO STRIKE NOTICE OF INTENT TOSEEK DEATH PENALTY /14 Heard By: Valerie Adair</i>	
03/27/2008	Motion (9:30 AM) <i>DEFT'S MTN TO PROHIBIT THE STATE OF NV/15 Heard By: Valerie Adair</i>	
03/27/2008	Motion to Strike (9:30 AM) <i>DEFT'S MTN TO STRIKE DEATH PENALTY/16 Heard By: Valerie Adair</i>	
03/27/2008	Motion (9:30 AM) <i>DEFT'S MTN TO DECLARE AS UNCONSTITUTIONAL/17 Heard By: Valerie Adair</i>	
03/27/2008	Motion to Bifurcate (9:30 AM) <i>DEFT'S MTN TO BIFURCATE PENALTY PHASE PROCEEDINGS /18 Heard By: Valerie Adair</i>	
03/27/2008	Motion (9:30 AM) <i>DEFT'S MTN FOR DISCLOSURE OF INTERCEPTED COMMUNICATIONS /19 Heard By: Valerie Adair</i>	
03/27/2008	Motion to Strike (9:30 AM)	



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	<i>DEFT'S MTN TO STRIKE NTC OF INTENT TO SEEK DEATH /20 Heard By: Valerie Adair</i>	
03/27/2008	Motion (9:30 AM) <i>DEFT'S MTN FOR PRETRIAL RELEASE ON BAIL WITH CONDITIONS OF HOME CONFINEMENT/21 Court Clerk: Denise Husted Reporter/Recorder: Cheryl Carpenter Heard By: Valerie Adair</i>	
03/27/2008	CANCELED Motion (9:30 AM) Events: 02/26/2008 Motion <i>Vacated</i>	
03/28/2008	Hearing <i>DECISION: BAIL AMOUNT</i>	08C2413940039.tif pages
03/31/2008	CANCELED Jury Trial (10:00 AM) <i>Vacated</i>	
03/31/2008	 Reporters Transcript <i>REPORTER'S TRANSCRIPT DEFENDANTS MOTION FOR PRETRIAL RELEASE ON BAIL WITH CONDITIONS OF HOME CONFINEMENT AND ELECTRONIC MONITORING CONDITIONS OF HOME CONFINEMENT AND ELECTRONIC MONITORING</i>	08C2413940041.tif pages
04/01/2008	Motion (9:30 AM) Events: 03/18/2008 Motion <i>DEFT'S MTN TO PROHIBIT THE STATE OF NV/15 Heard By: Valerie Adair</i>	
04/01/2008	Motion to Strike (9:30 AM) Events: 03/18/2008 Motion <i>DEFT'S MTN TO STRIKE DEATH PENALTY/16 Heard By: Valerie Adair</i>	
04/01/2008	Motion (9:30 AM) Events: 03/18/2008 Motion <i>DEFT'S MTN TO DECLARE AS UNCONSTITUTIONAL/17 Heard By: Valerie Adair</i>	
04/01/2008	Motion to Bifurcate (9:30 AM) Events: 03/18/2008 Motion <i>DEFT'S MTN TO BIFURCATE PENALTY PHASE PROCEEDINGS /18 Heard By: Valerie Adair</i>	
04/01/2008	Motion (9:30 AM) Events: 03/18/2008 Motion <i>DEFT'S MTN FOR DISCLOSURE OF INTERCEPTED COMMUNICATIONS /19 Heard By: Valerie Adair</i>	
04/01/2008	Motion to Strike (9:30 AM) Events: 03/18/2008 Motion <i>DEFT'S MTN TO STRIKE NTC OF INTENT TO SEEK DEATH /20 Heard By: Valerie Adair</i>	
04/01/2008	Motion (9:30 AM) Events: 03/19/2008 Motion <i>DEFT'S MTN FOR PRETRIAL RELEASE ON BAIL WITH CONDITIONS OF HOME CONFINEMENT/21 Heard By: Valerie Adair</i>	
04/01/2008	Motion (9:30 AM) Events: 03/19/2008 Motion <i>DEFT'S MTN FOR DISCLOSURE OF EXISTENCE OF ELECTRONIC SURVEILLANCE/22 Heard By: Valerie Adair</i>	

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04/01/2008	Decision (9:30 AM) Events: 03/28/2008 Hearing <i>DECISION: BAIL AMOUNT Court Clerk: Denise Husted Reporter/Recorder: Janie Olsen Heard By: Valerie Adair</i>	
04/03/2008	 Bond <i>BOND - #ASIM-1155 - \$650,000.00</i>	08C2413940042.tif pages
04/03/2008	 Reporters Transcript <i>REPORTER'S TRANSCRIPT MOTIONS</i>	08C2413940043.tif pages
04/07/2008	 Opposition <i>STATES OPPOSITION TO DEFENDANTS MOTION TO STRIKE NOTICE OF INTENT TO SEEK DEATH BASED UPON UNCONSTITUTIONAL WEIGHING EQUATION DEATH BASED UPON UNCONSTITUTIONAL WEIGHING EQUATION</i>	08C2413940045.tif pages
04/07/2008	 Opposition <i>OPPOSITION TO DEFENDANTS MOTION TO BIFURCATE PENALTY PHASE PROCEEDINGS</i>	08C2413940046.tif pages
04/07/2008	Opposition <i>OPPOSITION TO DEFENDANTS MOTION TO STRIKE NOTICE OF INTENT TO SEEK DEATH PENALTY BASED UPON UNCONSTITUTIONALITY OF LETHAL INJECTION PENALTY BASED UPON UNCONSTITUTIONALITY OF LETHAL INJECTION</i>	08C2413940047.tif pages
04/07/2008	 Opposition <i>OPPOSITION TO MOTION TO PROHIBIT THE STATE OF NEVADA FROM INTRODUCING EVIDENCE AND ARGUMENT REGARDING MITIGATING CIRCUMSTANCES THAT ARE NOT APPLICABLE TO LUIS HIDALGO JR EVIDENCE AND ARGUMENT REGARDING MITIGATING CIRCUMSTANCES THAT ARE NOT APPLICABLE TO LUIS HIDALGO JR</i>	08C2413940049.tif pages
04/07/2008	 Opposition <i>OPPOSITION TO DEFENDANTS MOTION TO STRIKE THE DEATH PENALTY BASED UPON UNCONSTITUTIONALITY UNCONSTITUTIONALITY</i>	08C2413940050.tif pages
04/07/2008	 Opposition <i>STATES OPPOSITION TO DEFENDANTS MOTION TO DISMISS COUNT ONE OF THE INDICTMENT FOR DUPLICITY OR IN THE ALTERNATIVE FOR AN ELECTION INDICTMENT FOR DUPLICITY OR IN THE ALTERNATIVE FOR AN ELECTION</i>	08C2413940051.tif pages
04/07/2008	 Opposition <i>STATES OPPOSITION TO DEFENDANTS MOTION FOR COURT TO ALLOW PRESENTATION OF UNFAIRNESS FOR A DEATH SENTENCE EVIDENCE TO THE JURY OF THE DISPROPORTIONALITY AND ARBITRARINESS AND UNFAIRNESS FOR A DEATH SENTENCE EVIDENCE TO THE JURY OF THE DISPROPORTIONALITY AND ARBITRARINESS AND</i>	08C2413940052.tif pages
04/07/2008	 Response <i>RESPONSE TO MOTION FOR DISCLOSURE OF INTERCEPTED COMMUNICATIONS</i>	08C2413940053.tif pages
04/07/2008	 Opposition <i>STATES OPPOSITION TO DEFENDANTS HIDALGO AND ESPINDOLA'S MOTION TO STRIKE THE DEATH PENALTY AS UNCONSTITUTIONAL BASED ON ITS ALLOWANCE OF INHERENTLY UNRELIABLE EVIDENCE DEATH PENALTY AS UNCONSTITUTIONAL BASED ON ITS ALLOWANCE OF INHERENTLY UNRELIABLE</i>	08C2413940054.tif pages

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	<i>EVIDENCE</i>	
04/07/2008	 Opposition <i>STATES OPPOSITION TO DEFENDANTS MOTION TO PROHIBIT ARGUMENT ON DETERRENCE OR IN THE ALTERNATIVE TO PERMIT EVIDENCE OF LACK OF DETERRENCE IN THE ALTERNATIVE TO PERMIT EVIDENCE OF LACK OF DETERRENCE</i>	<i>08C2413940055.tif pages</i>
04/07/2008	 Opposition <i>OPPOSITION TO DEFENDANTS MOTION TO DECLARE AS UNCONSTITUTIONAL THE UNBRIDLED DISCRETION OF PROSECUTION TO SEEK THE DEATH PENALTY UNBRIDLED DISCRETION OF PROSECUTION TO SEEK THE DEATH PENALTY</i>	<i>08C2413940056.tif pages</i>
04/09/2008	 Motion <i>STATE'S MTN TO CONDUCT VIDEOTAPED TESTIMONY OF A COOPERATING WITNESS/28</i>	<i>08C2413940044.tif pages</i>
04/09/2008	 Opposition <i>OPPOSITION TO DEFENDANTS MOTION TO STRIKE NOTICE OF INTENT TO SEEK DEATH PENALTY BASED UPON UNCONSTITUTIONALITY OF LETHAL INJECTION PENALTY BASED UPON UNCONSTITUTIONALITY OF LETHAL INJECTION</i>	<i>08C2413940048.tif pages</i>
04/10/2008	Motion (9:30 AM) <i>DEFT'S MTN FOR COURT TO ALLOW PRESENTATION OF EVID TO THE JURY /11 Heard By: Valerie Adair</i>	
04/10/2008	Motion to Strike (9:30 AM) <i>DEFT'S MTN TO STRIKE DEATH PENALTY AS UNCONSTITUTIONAL /12 Heard By: Valerie Adair</i>	
04/10/2008	Motion (9:30 AM) <i>DEFT'S MTN TO PROHIBIT ARGUMENT ON DETERRENCE OR TO PERMIT EVID OF LACK /13 Heard By: Valerie Adair</i>	
04/10/2008	Motion to Strike (9:30 AM) <i>DEFT'S MTN TO STRIKE NOTICE OF INTENT TO SEEK DEATH PENALTY /14 Heard By: Valerie Adair</i>	
04/10/2008	Motion (9:30 AM) <i>DEFT'S MTN TO PROHIBIT THE STATE OF NV/15 Heard By: Valerie Adair</i>	
04/10/2008	Motion to Strike (9:30 AM) <i>DEFT'S MTN TO STRIKE DEATH PENALTY/16 Heard By: Valerie Adair</i>	
04/10/2008	Motion (9:30 AM) <i>DEFT'S MTN TO DECLARE AS UNCONSTITUTIONAL/17 Heard By: Valerie Adair</i>	
04/10/2008	Motion to Bifurcate (9:30 AM) <i>DEFT'S MTN TO BIFURCATE PENALTY PHASE PROCEEDINGS /18 Heard By: Valerie Adair</i>	
04/10/2008	Motion (9:30 AM) <i>DEFT'S MTN FOR DISCLOSURE OF INTERCEPTED COMMUNICATIONS /19 Heard By: Valerie Adair</i>	
04/10/2008	Motion to Strike (9:30 AM) <i>DEFT'S MTN TO STRIKE NTC OF INTENT TO SEEK DEATH /20 Heard By: Valerie Adair</i>	

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04/10/2008	Motion (9:30 AM) <i>DEFT'S MTN FOR PRETRIAL RELEASE ON BAIL WITH CONDITIONS OF HOME CONFINEMENT/21 Court Clerk: Denise Husted Reporter/Recorder: Cheryl Carpenter Heard By: Valerie Adair</i>
04/10/2008	Motion (9:30 AM) <i>DEFT'S MTN FOR DISCLOSURE OF EXISTENCE OF ELECTRONIC SURVEILLANCE/22 Heard By: Valerie Adair</i>
04/10/2008	Motion to Dismiss (9:30 AM) <i>DEFT'S MTN TO DISMISS COUNT ONE OF INDICTMENT/25 Heard By: Valerie Adair</i>
04/10/2008	Motion (9:30 AM) Events: 04/09/2008 Motion <i>STATE'S MTN TO CONDUCT VIDEOTAPED TESTIMONY OF A COOPERATING WITNESS/28 Heard By: Valerie Adair</i>
04/15/2008	Motion (9:30 AM) <i>DEFT'S MTN FOR COURT TO ALLOW PRESENTATION OF EVID TO THE JURY /11 Heard By: Valerie Adair</i>
04/15/2008	Motion to Strike (9:30 AM) <i>DEFT'S MTN TO STRIKE DEATH PENALTY AS UNCONSTITUTIONAL /12 Heard By: Valerie Adair</i>
04/15/2008	Motion (9:30 AM) <i>DEFT'S MTN TO PROHIBIT ARGUMENT ON DETERRENCE OR TO PERMIT EVID OF LACK /13 Heard By: Valerie Adair</i>
04/15/2008	Motion to Strike (9:30 AM) <i>DEFT'S MTN TO STRIKE NOTICE OF INTENT TO SEEK DEATH PENALTY /14 Heard By: Valerie Adair</i>
04/15/2008	Motion (9:30 AM) <i>DEFT'S MTN TO PROHIBIT THE STATE OF NV/15 Heard By: Valerie Adair</i>
04/15/2008	Motion to Strike (9:30 AM) <i>DEFT'S MTN TO STRIKE DEATH PENALTY/16 Heard By: Valerie Adair</i>
04/15/2008	Motion (9:30 AM) <i>DEFT'S MTN TO DECLARE AS UNCONSTITUTIONAL/17 Heard By: Valerie Adair</i>
04/15/2008	Motion to Bifurcate (9:30 AM) <i>DEFT'S MTN TO BIFURCATE PENALTY PHASE PROCEEDINGS /18 Heard By: Valerie Adair</i>
04/15/2008	Motion (9:30 AM) <i>DEFT'S MTN FOR DISCLOSURE OF INTERCEPTED COMMUNICATIONS /19 Heard By: Valerie Adair</i>
04/15/2008	Motion to Strike (9:30 AM) <i>DEFT'S MTN TO STRIKE NTC OF INTENT TO SEEK DEATH /20 Heard By: Valerie Adair</i>
04/15/2008	Motion (9:30 AM) <i>DEFT'S MTN FOR DISCLOSURE OF EXISTENCE OF ELECTRONIC SURVEILLANCE/22 Heard By: Valerie Adair</i>
04/15/2008	Motion to Dismiss (9:30 AM) <i>DEFT'S MTN TO DISMISS COUNT ONE OF INDICTMENT/25 Heard By: Valerie Adair</i>
04/15/2008	Motion (9:30 AM)

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STATE'S MTN TO CONDUCT VIDEOTAPED TESTIMONY OF A COOPERATING
WITNESS/28 Heard By: Valerie Adair

04/16/2008	Motion to Strike (9:30 AM) DEFT'S MTN TO STRIKE DEATH PENALTY/16 Heard By: Valerie Adair
04/16/2008	Opposition Filed By: Defendant Hidalgo Jr, Luis OPPOSITION TO STATES MTN TO CONDUCT VIDEOTAPED TESTIMONY OF COOPERATING
04/16/2008	Filed Under Seal FILED UNDER SEAL EXHIBIT 2 TO OPPOSITION TO STATE'S MTN TO CONDUCT VIDEOTAPED TESTIMONY - SEALED TESTIMONY - SEALED
04/17/2008	Motion (9:30 AM) DEFT'S MTN FOR COURT TO ALLOW PRESENTATION OF EVID TO THE JURY /11 Heard By: Valerie Adair
04/17/2008	Motion to Strike (9:30 AM) DEFT'S MTN TO STRIKE DEATH PENALTY AS UNCONSTITUTIONAL /12 Heard By: Valerie Adair
04/17/2008	Motion (9:30 AM) DEFT'S MTN TO PROHIBIT ARGUMENT ON DETERRENCE OR TO PERMIT EVID OF LACK /13 Heard By: Valerie Adair
04/17/2008	Motion to Strike (9:30 AM) DEFT'S MTN TO STRIKE NOTICE OF INTENT TOSEEK DEATH PENALTY /14 Heard By: Valerie Adair
04/17/2008	Motion (9:30 AM) DEFT'S MTN TO PROHIBIT THE STATE OF NV/15 Heard By: Valerie Adair
04/17/2008	Motion to Strike (9:30 AM) DEFT'S MTN TO STRIKE DEATH PENALTY/16 Heard By: Valerie Adair
04/17/2008	Motion (9:30 AM) DEFT'S MTN TO DECLARE AS UNCONSTITUTIONAL/17 Heard By: Valerie Adair
04/17/2008	Motion to Bifurcate (9:30 AM) DEFT'S MTN TO BIFURCATE PENALTY PHASE PROCEEDINGS /18 Heard By: Valerie Adair
04/17/2008	Motion (9:30 AM) DEFT'S MTN FOR DISCLOSURE OF INTERCEPTEDCOMMUNICATIONS /19 Heard By: Valerie Adair
04/17/2008	Motion to Strike (9:30 AM) DEFT'S MTN TO STRIKE NTC OF INTENT TO SEEK DEATH /20 Heard By: Valerie Adair
04/17/2008	Motion (9:30 AM) DEFT'S MTN FOR DISCLOSURE OF EXISTENCE OF ELECTRONIC SURVEILLANCE/22 Heard By: Valerie Adair
04/17/2008	Motion to Dismiss (9:30 AM) DEFT'S MTN TO DISMISS COUNT ONE OF INDICTMENT/25 Heard By: Valerie Adair
04/17/2008	Motion (9:30 AM) STATE'S MTN TO CONDUCT VIDEOTAPED TESTIMONY OF A COOPERATING WITNESS/28 Heard By: Valerie Adair






08C2413940201.tif pages

08C2413940202.tif pages

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





04/17/2008	All Pending Motions (9:30 AM) <i>ALL PENDING MOTIONS 4/17/08 Court Clerk: Denise Husted Reporter/Recorder: Debra Winn Heard By: Valerie Adair</i>	
04/17/2008	Hearing <i>TRIAL SETTING</i>	08C2413940057.tif pages
04/17/2008	Motion <i>ALL PENDING MOTIONS 4/17/08</i>	08C2413940058.tif pages
04/17/2008	Hearing <i>STATUS CHECK: AFFIDAVIT</i>	08C2413940059.tif pages
04/17/2008	Hearing <i>STATUS CHECK: TRIAL SETTING</i>	08C2413940060.tif pages
04/24/2008	CANCELED Calendar Call (9:30 AM) <i>Vacated</i>	
04/28/2008	CANCELED Jury Trial (10:00 AM) <i>Vacated</i>	
05/01/2008	Motion (9:30 AM) <i>DEFT'S MTN FOR DISCLOSURE OF INTERCEPTED COMMUNICATIONS /19 Heard By: Valerie Adair</i>	
05/01/2008	Motion (9:30 AM) <i>DEFT'S MTN FOR DISCLOSURE OF EXISTENCE OF ELECTRONIC SURVEILLANCE/22 Heard By: Valerie Adair</i>	
05/01/2008	Motion (9:30 AM) <i>STATE'S MTN TO CONDUCT VIDEOTAPED TESTIMONY OF A COOPERATING WITNESS/28 Heard By: Valerie Adair</i>	
05/01/2008	CANCELED Conversion Hearing Type (9:30 AM) Events: 04/17/2008 Hearing <i>Vacated</i>	
05/01/2008	Status Check (9:30 AM) Events: 04/17/2008 Hearing <i>STATUS CHECK: AFFIDAVIT Heard By: Valerie Adair</i>	
05/01/2008	Status Check (9:30 AM) Events: 04/17/2008 Hearing <i>STATUS CHECK: TRIAL SETTING Heard By: Valerie Adair</i>	
05/01/2008	All Pending Motions (9:30 AM) <i>ALL PENDING MOTIONS 5/1/08 Court Clerk: Denise Husted Reporter/Recorder: Janie Olsen Heard By: Valerie Adair</i>	
05/01/2008	 Indictment <i>AMENDED (GRAND JURY) INDICTMENT</i>	08C2413940065.tif pages
05/01/2008	 Opposition Filed By: Defendant Hidalgo Jr, Luis <i>OPPOSITION TO STATES MOTION TO CONDUCT VIDEOTAPED TESTIMONY OF A CO OPERATING WITNESS OPERATING WITNESS</i>	08C2413940066.tif pages
05/01/2008		08C2413940067.tif pages

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






	 Affidavit Filed By: Defendant Hidalgo Jr, Luis <i>AFFIDAVIT OF CHRISTOPHER J LALLI</i>	
05/02/2008	Motion <i>ALL PENDING MOTIONS 5/1/08</i>	08C2413940064.tif pages
05/05/2008	 Reporters Transcript <i>REPORTER'S TRANSCRIPT OF MOTIONS</i>	08C2413940068.tif pages
05/22/2008	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE DEFTS MOTION FOR DISCLOSURE OF THE EXISTENCE OF ELECTRONIC SURVEILLANCE INTERCEPTED COMMUNICATIONS STATES MOTION TO CONDUCT VIDEOTAPED TESTIMONY OF A COOPERATING WITNESS STATUS CHECK RE AFFIDAVIT TRIAL SETTING ELECTRONIC SURVEILLANCE INTERCEPTED COMMUNICATIONS STATES MOTION TO CONDUCT VIDEOTAPED TESTIMONY OF A COOPERATING WITNESS STATUS CHECK RE AFFIDAVIT TRIAL SETTING</i>	08C2413940069.tif pages
06/03/2008	Motion (9:30 AM) <i>DEFT'S MTN FOR DISCLOSURE OF INTERCEPTED COMMUNICATIONS /19 Heard By: Valerie Adair</i>	
06/03/2008	Motion (9:30 AM) <i>DEFT'S MTN FOR DISCLOSURE OF EXISTENCE OF ELECTRONIC SURVEILLANCE/22 Heard By: Valerie Adair</i>	
06/03/2008	Status Check (9:30 AM) <i>STATUS CHECK: AFFIDAVIT Heard By: Valerie Adair</i>	
06/03/2008	All Pending Motions (9:30 AM) <i>ALL PENDING MOTIONS 6-3-08 Relief Clerk: REBECCA FOSTER Reporter/Recorder: Janie Olsen Heard By: Valerie Adair</i>	
06/05/2008	Motion <i>ALL PENDING MOTIONS 6-3-08</i>	08C2413940070.tif pages
06/17/2008	Motion (9:30 AM) <i>DEFT'S MTN FOR DISCLOSURE OF INTERCEPTED COMMUNICATIONS /19 Heard By: Valerie Adair</i>	
06/17/2008	Motion (9:30 AM) <i>DEFT'S MTN FOR DISCLOSURE OF EXISTENCE OF ELECTRONIC SURVEILLANCE/22 Heard By: Valerie Adair</i>	
06/17/2008	Status Check (9:30 AM) <i>STATUS CHECK: AFFIDAVIT Heard By: Valerie Adair</i>	
06/17/2008	All Pending Motions (9:30 AM) <i>ALL PENDING MOTIONS 6/17/08 Court Clerk: Denise Husted Reporter/Recorder: Janie Olsen Heard By: Valerie Adair</i>	
06/18/2008	Motion <i>ALL PENDING MOTIONS 6/17/08</i>	08C2413940071.tif pages
06/18/2008	 Notice of Intent to Seek Death Penalty <i>AMDNED NOTICE OF INTENT TO SEEK DEATH PENALTY</i>	08C2413940072.tif pages
06/25/2008	 Motion	08C2413940073.tif pages

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DEFT'S MTN TO CONSOLIDATE WITH C241394/39








07/03/2008	 Reporters Transcript <i>REPORTER'S TRANSCRIPT STATUS CHECK TRIAL SETTING AFFIDAVIT DEFTS MTN FOR DISCLOSURE OF EXISTENCE OF ELECTRONIC SURVEILLANCE DEFTS MTN FOR DISCLOSURE OF INTERCEPTED COMMUNICATIONS DISCLOSURE OF EXISTENCE OF ELECTRONIC SURVEILLANCE DEFTS MTN FOR DISCLOSURE OF INTERCEPTED COMMUNICATIONS</i>	08C2413940074.tif pages
07/10/2008	Motion to Consolidate (9:30 AM) Events: 06/25/2008 Motion <i>DEFT'S MTN TO CONSOLIDATE WITH C241394/39 Heard By: Valerie Adair</i>	
07/22/2008	Motion to Consolidate (9:30 AM) <i>DEFT'S MTN TO CONSOLIDATE WITH C241394/39 Court Clerk: Denise Husted Reporter/Recorder: Janie Olsen Heard By: Valerie Adair</i>	
08/12/2008	Motion to Consolidate (9:30 AM) <i>DEFT'S MTN TO CONSOLIDATE WITH C241394/39 Court Clerk: Denise Husted Reporter/Recorder: Janie Olsen Heard By: Valerie Adair</i>	
08/14/2008	CANCELED Calendar Call (9:30 AM) <i>Vacated</i>	
08/18/2008	CANCELED Jury Trial (10:00 AM) <i>Vacated</i>	
08/28/2008	 Reporters Transcript <i>REPORTER'S TRANSCRIPT OF HEARING RE ARRAIGNMENT</i>	08C2413940077.tif pages
11/13/2008	Hearing <i>STATE'S REQUEST STATUS CHECK ON MTN TO CONSOLIDATE C212667</i>	08C2413940078.tif pages
11/20/2008	Request (9:30 AM) Events: 11/13/2008 Hearing <i>STATE'S REQUEST STATUS CHECK ON MTN TO CONSOLIDATE C212667 Court Clerk: Denise Husted Reporter/Recorder: Janie Olsen Heard By: Adair, Valerie</i>	
12/08/2008	 Opposition Filed By: Defendant Hidalgo Jr, Luis <i>DEFTS LUIS HIDALGO JR AND LUIS HIDALGO IIIS OPPOSITION TO THE MTN TO CONSOLIDATE CASE NO C241394 INTO C212667 CONSOLIDATE CASE NO C241394 INTO C212667</i>	08C2413940080.tif pages
12/09/2008	 Motion <i>DEFT'S MTN TO STRIKE THE AMENDED NTC TO SEEK DEATH/43</i>	08C2413940079.tif pages
12/15/2008	 Response <i>RESPONSE TO DEFT LUIS HIDALGO JR AND LUIS HIDALGO IIIS OPPOSITION TO CONSOLIDATE CASE NO C241394 INTO C212667 CONSOLIDATE CASE NO C241394 INTO C212667</i>	08C2413940081.tif pages
12/15/2008	 Response <i>RESPONSE TO DEFT LUIS HIDALGO JR AND LUIS HIDALGO IIIS OPPOSITION TO CONSOLIDATE CASE NO C241394 INTO C212667 CONSOLIDATE CASE NO C241394 INTO C212667</i>	08C2413940089.tif pages
12/19/2008	Request (9:30 AM) <i>STATE'S REQUEST STATUS CHECK ON MTN TO CONSOLIDATE C212667 Heard By:</i>	

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CASE NO. 08C241394







	<i>Valerie Adair</i>	
12/19/2008	Motion to Strike (9:30 AM) Events: 12/09/2008 Motion <i>DEFT'S MTN TO STRIKE THE AMENDED NTC TO SEEK DEATH/43</i>	
12/19/2008	All Pending Motions (9:30 AM) <i>ALL PENDING MOTIONS 12/19/08 Relief Clerk: Carole D'Aloia Reporter/Recorder: Janie Olsen Heard By: Valerie Adair</i>	
12/19/2008	Motion <i>ALL PENDING MOTIONS 12/19/08</i>	08C2413940082.tif pages
12/23/2008	 Motion <i>DEFT'S MTN TO STRIKE THE AMENDED NTC TO SEEK DEATH/45</i>	08C2413940083.tif pages
12/29/2008	 Reporters Transcript <i>RECORDER'S TRANSCRIPT OF HEARING RE STATES REQUEST FOR STATUS CHECK ON MTN TO CONSOLIDATE TO CONSOLIDATE</i>	08C2413940084.tif pages
12/31/2008	 Opposition <i>STATES OPPOSITION TO DEFT LUIS A HIDALGO JRS AMENDED MTN TO STRIKE THE AMENDED NOTICE TO SEEK DEATH PENALTY AMENDED NOTICE TO SEEK DEATH PENALTY</i>	08C2413940085.tif pages
01/02/2009	 Jury List <i>DISTRICT COURT JURY LIST</i>	08C2413940107.tif pages
01/05/2009	 Notice of Witnesses and/or Expert Witnesses Filed By: Defendant Hidalgo Jr, Luis <i>DEFT LUIS A HIDALGO JRS SUPPLEMENTAL NOTICE OF EXPERT WITNESSES</i>	08C2413940086.tif pages
01/07/2009	 Motion <i>STATE'S MTN TO REMOVE MR GENTILE AS ATTORNEY OR REQ WAIVERS /46</i>	08C2413940087.tif pages
01/08/2009	 Motion <i>DEFT'S MTN FOR FAIR & ADEQUATE VOIR DIRE/47</i>	08C2413940088.tif pages
01/09/2009	All Pending Motions (9:00 AM) <i>ALL PENDING MOTIONS 1/9/09 Court Clerk: Denise Husted Reporter/Recorder: Janie Olsen Heard By: Valerie Adair</i>	
01/09/2009	Request (9:30 AM) <i>STATE'S REQUEST STATUS CHECK ON MTN TO CONSOLIDATE C212667 Heard By: Valerie Adair</i>	
01/09/2009	Motion to Strike (9:30 AM) <i>DEFT'S MTN TO STRIKE THE AMENDED NTC TO SEEK DEATH/43</i>	
01/09/2009	CANCELED Motion to Strike (9:30 AM) Events: 12/23/2008 Motion <i>Vacated</i>	
01/09/2009	Motion <i>ALL PENDING MOTIONS 1/9/09</i>	08C2413940196.tif pages
01/12/2009	 Motion	08C2413940090.tif pages

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CASE No. 08C241394









DEFT'S MTN TO SUPPRESS EVIDENCE /48

01/12/2009	 Reporters Transcript <i>REPORTER'S TRANSCRIPT - STATES REQUEST STATUS CHECK ON MOTION TO CONSOLIDATE DEFENDANTS MOTION TO STRIKE THE AMENDED NOTICE TO SEEK DEATH PENALTY DEFENDANTS MOTION TO STRIKE THE AMENDED NOTICE TO SEEK DEATH PENALTY</i>	08C2413940092.tif pages
01/13/2009	 Motion <i>STATES MTN IN LIMINE TO EXCLUDE THE TESTIMONY/49</i>	08C2413940091.tif pages
01/16/2009	Request (9:30 AM) <i>STATE'S REQUEST STATUS CHECK ON MTN TO CONSOLIDATE C212667 Court Clerk: Denise Husted Reporter/Recorder: Janie Olsen Heard By: Valerie Adair</i>	
01/16/2009	Motion (9:30 AM) <i>STATE'S MTN TO REMOVE MR GENTILE AS ATTORNEY OR REQ WAIVERS /46 Heard By: Valerie Adair</i>	
01/16/2009	Motion (9:30 AM) <i>DEFT'S MTN FOR FAIR & ADEQUATE VOIR DIRE/47 Heard By: Valerie Adair</i>	
01/16/2009	All Pending Motions (9:30 AM) <i>ALL PENDING MOTIONS 1-16-09 Relief Clerk: REBECCA FOSTER Reporter/Recorder: Janie Olsen Heard By: Valerie Adair</i>	
01/16/2009	Motion <i>ALL PENDING MOTIONS 1-16-09</i>	08C2413940093.tif pages
01/16/2009	 Waiver <i>WAIVER OF RIGHTS TO A DETERMINATION OF PENALTY BY THE TRIAL JURY</i>	08C2413940094.tif pages
01/16/2009	 Order <i>ORDER GRANTING THE STATES MOTION TO CONSOLIDATE C241394 INTO C212667</i>	08C2413940095.tif pages
01/16/2009	 Notice of Witnesses and/or Expert Witnesses <i>SUPPLEMENTAL NOTICE OF WITNESSES</i>	08C2413940096.tif pages
01/16/2009	 Notice of Witnesses and/or Expert Witnesses <i>SUPPLEMENTAL NOTICE OF WITNESSES</i>	08C2413940097.tif pages
01/16/2009	 Notice of Witnesses and/or Expert Witnesses <i>SUPPLEMENTAL NOTICE OF WITNESSES</i>	08C2413940098.tif pages
01/20/2009	Motion (9:30 AM) Events: 01/07/2009 Motion <i>STATE'S MTN TO REMOVE MR GENTILE AS ATTORNEY OR REQ WAIVERS /46 Heard By: Valerie Adair</i>	
01/20/2009	Motion (9:30 AM) Events: 01/08/2009 Motion <i>DEFT'S MTN FOR FAIR & ADEQUATE VOIR DIRE/47 Heard By: Valerie Adair</i>	
01/20/2009	Motion in Limine (9:30 AM) Events: 01/13/2009 Motion <i>STATES MTN IN LIMINE TO EXCLUDE THE TESTIMONY/49 Heard By: Valerie Adair</i>	

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CASE NO. 08C241394

01/20/2009	 Opposition <i>STATES OPPOSITION TO DEFT LUIS A HIDALGO JRS MTN TO SUPPRESS EVIDENCE</i>	08C2413940099.tif pages
01/22/2009	Calendar Call (9:30 AM) <i>CALENDAR CALL Heard By: Valerie Adair</i>	
01/22/2009	 All Pending Motions (9:30 AM) (Judicial Officer: Adair, Valerie)	
01/22/2009	Motion to Suppress (10:15 AM) Events: 01/12/2009 Motion <i>DEFT'S MTN TO SUPPRESS EVIDENCE /48 Heard By: Valerie Adair</i>	
01/22/2009	Motion in Limine (10:15 AM) <i>STATES MTN IN LIMINE TO EXCLUDE THE TESTIMONY/49 Heard By: Valerie Adair</i>	
01/23/2009	 Decision (10:50 AM) (Judicial Officer: Adair, Valerie) <i>DECISION:MATTERS ADDRESSED ON 1/22/09 Court Clerk: Denise Husted Heard By: Valerie Adair</i>	
01/23/2009	Hearing <i>DECISION:MATTERS ADDRESSED ON 1/22/09</i>	08C2413940101.tif pages
01/23/2009	Hearing <i>STATE'S REQUEST FOR CLARIFICATION</i>	08C2413940102.tif pages
01/26/2009	CANCELED Jury Trial (10:00 AM) <i>Vacated</i>	
01/26/2009	 Request (10:00 AM) (Judicial Officer: Adair, Valerie) Events: 01/23/2009 Hearing <i>STATE'S REQUEST FOR CLARIFICATION</i>	
01/27/2009	Jury Trial (12:30 PM) <i>TRIAL BY JURY Court Clerk: Denise Husted Reporter/Recorder: Janie Olsen Heard By: Adair, Valerie</i>	
01/28/2009	Jury Trial (10:30 AM) <i>TRIAL BY JURY Court Clerk: Denise Husted Reporter/Recorder: Janie Olsen Heard By: Adair, Valerie</i>	
01/29/2009	Jury Trial (9:30 AM) <i>TRIAL BY JURY Court Clerk: Denise Husted Reporter/Recorder: Janie Olsen Heard By: Adair, Valerie</i>	
01/29/2009	 Subpoena Duces Tecum Filed by: Defendant Hidalgo Jr, Luis <i>SUBPOENA - CRIMINAL</i>	08C2413940105.tif pages
01/29/2009	 Memorandum Filed By: Defendant Hidalgo Jr, Luis <i>LUIS A HIDALGO JRS TRIAL MEMORANDUM - REDACTED</i>	08C2413940106.tif pages
01/30/2009	Jury Trial (10:00 AM) <i>TRIAL BY JURY Court Clerk: Denise Husted Reporter/Recorder: Janie Olsen Heard By: Adair, Valerie</i>	
02/02/2009	Jury Trial (10:30 AM)	

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CASE NO. 08C241394










	<i>TRIAL BY JURY Court Clerk: Denise Husted Reporter/Recorder: Janie Olsen Heard By: Adair, Valerie</i>	
02/02/2009	 Jury List <i>DISTRICT COURT JURY LIST</i>	08C2413940108.tif pages
02/02/2009	 Notice of Witnesses and/or Expert Witnesses <i>SUPPLEMENTAL NOTICE OF WITNESSES</i>	08C2413940109.tif pages
02/02/2009	 Notice of Witnesses and/or Expert Witnesses <i>SUPPLEMENTAL NOTICE OF WITNESSES</i>	08C2413940110.tif pages
02/03/2009	Jury Trial (10:30 AM) <i>TRIAL BY JURY Court Clerk: Denise Husted Reporter/Recorder: Janie Olsen Heard By: Adair, Valerie</i>	
02/03/2009	 Reporters Transcript <i>RECORDER'S TRANSCRIPT OF HEARING RE - EXCERPT OF PROCEEDINGS- STATES OPENING STATEMENT - HEARD 02-02-09 STATEMENT - HEARD 02-02-09</i>	08C2413940111.tif pages
02/04/2009	Jury Trial (10:30 AM) <i>TRIAL BY JURY Court Clerk: Denise Husted Reporter/Recorder: Janie Olsen Heard By: Adair, Valerie</i>	
02/05/2009	Jury Trial (9:00 AM) <i>TRIAL BY JURY Court Clerk: Denise Husted Reporter/Recorder: Janie Olsen Heard By: Adair, Valerie</i>	
02/05/2009	 Reporters Transcript <i>RECORDER'S TRANSCRIPT OF HEARING RE EXCERPT OF PROCEEDINGS - HEARD 02-04-09</i>	08C2413940113.tif pages
02/06/2009	Jury Trial (9:30 AM) <i>TRIAL BY JURY Court Clerk: Denise Husted Reporter/Recorder: Janie Olsen Heard By: Adair, Valerie</i>	
02/06/2009	 Reporters Transcript <i>RECORDER'S TRANSCRIPT OF HEARING RE - EXCERPT OF PROCEEDINGS RONTAE ZONES TESTIMONY - HEARD 02-03-09 TESTIMONY - HEARD 02-03-09</i>	08C2413940112.tif pages
02/09/2009	Jury Trial (9:00 AM) <i>TRIAL BY JURY Court Clerk: Denise Husted Reporter/Recorder: Janie Olsen Heard By: Adair, Valerie</i>	
02/09/2009	 Reporters Transcript <i>RECORDER'S TRANSCRIPT OF HEARING RE EXCERPT OF PROCEEDINGS - ANABEL ESPINDOLAS TESTIMONY - HEARD 02-06-09 ESPINDOLAS TESTIMONY - HEARD 02-06-09</i>	08C2413940114.tif pages
02/09/2009	 Reporters Transcript <i>RECORDER'S TRANSCRIPT OF HEARING RE EXCERPT OF PROCEEDINGS - ANABEL ESPINDOLAS TESTIMONY - HEARD 02-06-09 ESPINDOLAS TESTIMONY - HEARD 02-06-09</i>	08C2413940115.tif pages
02/10/2009	Jury Trial (9:30 AM) <i>TRIAL BY JURY Court Clerk: Denise Husted Reporter/Recorder: Janie Olsen Heard By: Adair, Valerie</i>	

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CASE NO. 08C241394





02/10/2009	 Notice of Witnesses and/or Expert Witnesses Filed By: Defendant Hidalgo Jr, Luis <i>DEFENDANTS FIRST SUPPLEMENTAL NOTICE OF WITNESSES</i>	08C2413940116.tif pages
02/10/2009	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE EXCERPT OF PROCEEDINGS OF ANABEL EXPINDOLAS TESTIMONY TESTIMONY</i>	08C2413940118.tif pages
02/11/2009	Jury Trial (9:30 AM) <i>TRIAL BY JURY Court Clerk: Denise Husted Reporter/Recorder: Janie Olsen Heard By: Adair, Valerie</i>	
02/12/2009	Jury Trial (9:30 AM) <i>TRIAL BY JURY Court Clerk: Denise Husted Reporter/Recorder: Janie Olsen Heard By: Adair, Valerie</i>	
02/12/2009	 Proposed Verdict Forms Not Used at Trial <i>PROPOSED VERDICT FORMS NOT USED AT TRIAL</i>	08C2413940119.tif pages
02/13/2009	Jury Trial (9:30 AM) <i>TRIAL BY JURY Court Clerk: Denise Husted Reporter/Recorder: Janie Olsen Heard By: Adair, Valerie</i>	
02/13/2009	 Jury List <i>AMENDED DISTRICT COURT JURY LIST</i>	08C2413940122.tif pages
02/17/2009	Jury Trial (9:30 AM) <i>TRIAL BY JURY Court Clerk: Denise Husted Reporter/Recorder: Janie Olsen Heard By: Valerie Adair</i>	
02/17/2009	 Judgment <i>VERDICT</i>	08C2413940124.tif pages
02/17/2009	 Instructions to the Jury <i>INSTRUCTIONS TO THE JURY - INSTRUCTION NO 1</i>	08C2413940127.tif pages
02/17/2009	 Proposed Verdict Forms Not Used at Trial <i>PROPOSED VERDICT FORMS NOT USED AT TRIAL</i>	08C2413940141.tif pages
02/18/2009	Conversion Case Event Type <i>SENTENCING VJ 5/1/09</i>	08C2413940117.tif pages
02/18/2009	 Motion <i>ANABEL ESPINDOLA O.R. RELEASE/BAIL REDUCE/55 VA 2/18/09</i>	08C2413940120.tif pages
02/18/2009	 Motion <i>DEFT ANABEL ESPINDOLA'S MTN FOR OWN RECOG RELEASE, FOR HOUSE ARREST/56</i>	08C2413940121.tif pages
02/24/2009	CANCELED Motion for Own Recognizance Release/Setting Reasonable Bail (9:30 AM) Events: 02/18/2009 Motion <i>Vacated</i>	
02/24/2009	Motion for Own Recognizance Release/Setting Reasonable Bail (9:30 AM) Events: 02/18/2009 Motion	

CASE SUMMARY**CASE No. 08C241394**

DEFT ANABEL ESPINDOLA'S MTN FOR OWN RECOG RELEASE, FOR HOUSE
ARREST/56 Relief Clerk: Sharon Chun Reporter/Recorder: Janie Olsen Heard By:
Valerie Adair

02/24/2009	 Ex Parte Filed By: Defendant Hidalgo Jr, Luis <i>EX PARTE APPLICATION TO EXTEND TIME TO FILE MTN FOR NEW TRIAL</i>	08C2413940125.tif pages
02/24/2009	 Ex Parte Order Filed By: Defendant Hidalgo Jr, Luis <i>DEFENDANTS LUI EX PARTE ORDR TO EXTEND TIME TO FILE MTN FOR NEW TRIAL</i>	08C2413940126.tif pages
03/10/2009	 Motion <i>DEFT'S MTN FOR JUDGMENT OF ACQUITTAL/272</i>	08C2413940128.tif pages
03/10/2009	 Motion <i>DEFT'S MTN FOR JUDGMENT OF ACQUITTAL/273</i>	08C2413940129.tif pages
03/11/2009	 Request Filed by: Defendant Hidalgo Jr, Luis <i>SUPPLEMENT TO LUIS A HIDALGO JRS MTN FOR JUDGMENT OF ACQUITTAL OR IN THE ALTERNATIVE A NEW TRIAL ALTERNATIVE A NEW TRIAL</i>	08C2413940130.tif pages
03/17/2009	 Opposition <i>STATES OPPOSITION TO DEFTS LUIS HIDALGO JRS MTN FOR JUDGMENT OF ACQUITTAL OR IN THE ALTERNATIVE A NEW TRIAL THE ALTERNATIVE A NEW TRIAL</i>	08C2413940131.tif pages
03/20/2009	 Order Filed By: Defendant Hidalgo Jr, Luis <i>STIPULATION AND ORDER TO CONTINUE HEARING ON DEFTS LUIS A HIDALGO JRS ANDLUIS A HIDALGO IIIS MTNS FOR JUDGMENT OF ACQUITTAL OR IN THE ALTERNATIVE A NEW TRIAL LUIS A HIDALGO IIIS MTNS FOR JUDGMENT OF ACQUITTAL OR IN THE ALTERNATIVE A NEW TRIAL</i>	08C2413940132.tif pages
03/23/2009	 Notice Filed By: Defendant Hidalgo Jr, Luis <i>NOTICE OF ENTRY OF ORDER TO CONTINUE HEARING ON DEFTS LUIS A HIDALGO JRS ANDLUIS A HIDALGO IIIS MTNS FOR JUDGMENT OF ACQUITTAL OR IN THE ALTERNATIVE A NEW TRIAL LUIS A HIDALGO IIIS MTNS FOR JUDGMENT OF ACQUITTAL OR IN THE ALTERNATIVE A NEW TRIAL</i>	08C2413940133.tif pages
03/24/2009	Motion for Judgment (9:30 AM) Events: 03/10/2009 Motion <i>DEFT'S MTN FOR JUDGMENT OF ACQUITTAL/272</i>	
03/24/2009	Motion for Judgment (9:30 AM) Events: 03/10/2009 Motion <i>DEFT'S MTN FOR JUDGMENT OF ACQUITTAL/273 Heard By: Valerie Adair</i>	
04/17/2009	 Reply Filed by: Defendant Hidalgo Jr, Luis <i>REPLY TO STATES OPPOSITION TO DEFT LUIS A HIDALGO JRS MTN FOR JUDGMENT OF ACQUITTAL OR IN THE ALTERNATIVE A NEW TRIAL ACQUITTAL OR IN THE ALTERNATIVE A NEW TRIAL</i>	08C2413940135.tif pages

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04/21/2009	Motion for Judgment (9:30 AM) <i>DEFT'S MTN FOR JUDGMENT OF ACQUITTAL/272</i>	
04/21/2009	Motion for Judgment (10:30 AM) <i>DEFT'S MTN FOR JUDGMENT OF ACQUITTAL/273 Court Clerk: Denise Husted Reporter/Recorder: Janie Olsen Heard By: Adair, Valerie</i>	
04/27/2009	 Points and Authorities Filed by: Defendant Hidalgo Jr, Luis <i>SUPPLEMENTAL POINTS AND AUTHORITIES TO DEFT LUIS A HIDALGO JRS MTN FOR JUDGMENT OF ACQUITTAL OR IN THE ALTERNATIVE A NEW TRIAL OF ACQUITTAL OR IN THE ALTERNATIVE A NEW TRIAL</i>	08C2413940136.tif pages
05/01/2009	CANCELED Status Check (9:30 AM) <i>Vacated</i>	
05/01/2009	Motion for Judgment (10:30 AM) <i>DEFT'S MTN FOR JUDGMENT OF ACQUITTAL/273 Court Clerk: Denise Husted Reporter/Recorder: Janie Olsen Heard By: Valerie Adair</i>	
05/01/2009	Hearing <i>STATUS CHECK: SENTENCING</i>	08C2413940137.tif pages
05/01/2009	Hearing <i>STATUS CHECK: SENTENCING</i>	08C2413940139.tif pages
05/05/2009	CANCELED Sentencing (9:30 AM) Events: 02/18/2009 Conversion Case Event Type <i>Vacated</i>	
05/05/2009	Bench Warrant <i>BENCH WARRANT RETURN VA 5/5/09</i>	08C2413940138.tif pages
05/07/2009	CANCELED Bench Warrant Return (9:30 AM) Events: 05/05/2009 Bench Warrant <i>Vacated</i>	
06/02/2009	Status Check (9:30 AM) Events: 05/01/2009 Hearing <i>STATUS CHECK: SENTENCING Relief Clerk: Shelly Landwehr/sl Reporter/Recorder: Janie Olsen Heard By: Valerie Adair</i>	
06/02/2009	Conversion Case Event Type <i>SENTENCING</i>	08C2413940140.tif pages
06/19/2009	 Objection Filed By: Defendant Hidalgo Jr, Luis <i>LUIS A HIDALGO JRS OBJECTIONS TO THE SUPPLEMENTAL PRESENTENCE INVESTIGATION REPORT REPORT</i>	08C2413940142.tif pages
06/19/2009	 Memorandum Filed By: Defendant Hidalgo Jr, Luis <i>LUIS A HIDALGO JRS SENTENCING MEMORANDUM</i>	08C2413940143.tif pages
06/19/2009	 Memorandum Filed By: Defendant Hidalgo Jr, Luis <i>LUIS A HIDALGO IIIS SENTENCING MEMORANDUM</i>	08C2413940144.tif pages
06/23/2009	Sentencing (10:00 AM) (Judicial Officer: Adair, Valerie)	

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Events: 06/02/2009 Conversion Case Event Type
SENTENCING Court Clerk: Denise Husted Reporter/Recorder: Janie Olsen Heard By: Valerie Adair

06/23/2009



ORDER DIRECTING THE DEPT OF PAROLE AND PROBATION TO MAKE THE FOLLOWING CORRECTIONS TO THE PRESENTENCE INVESTIGATION REPORTS FOR THE ABOVE REFERENCED DEFENDANTS CORRECTIONS TO THE PRESENTENCE INVESTIGATION REPORTS FOR THE ABOVE REFERENCED DEFENDANTS

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06/23/2009



ORDER DIRECTING THE DEPT OF PAROLE AND PROBATION TO MAKE THE FOLLOWING CORRECTIONS TO THE PRESENTENCE INVESTIGATION REPORTS FOR THE ABOVE REFERENCED DEFENDANTS CORRECTIONS TO THE PRESENTENCE INVESTIGATION REPORTS FOR THE ABOVE REFERENCED DEFENDANTS

08C2413940197.tif pages

06/23/2009

Disposition (Judicial Officer: User, Conversion)

1. CONSPIRACY TO COMMIT A CRIME

Guilty

PCN: Sequence:

06/23/2009

Disposition (Judicial Officer: User, Conversion)

06/23/2009

Disposition (Judicial Officer: User, Conversion)

1. MURDER.

Guilty

PCN: Sequence:

06/23/2009

Disposition (Judicial Officer: User, Conversion)

1. DEGREES OF MURDER

Guilty

PCN: Sequence:

06/23/2009

Disposition (Judicial Officer: User, Conversion)

2. MURDER.

Guilty

PCN: Sequence:

06/23/2009

Disposition (Judicial Officer: User, Conversion)

06/23/2009

Disposition (Judicial Officer: User, Conversion)

2. DEGREES OF MURDER

Guilty

PCN: Sequence:

06/23/2009

Disposition (Judicial Officer: User, Conversion)

2. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.

Guilty

PCN: Sequence:








06/23/2009

Sentence (Judicial Officer: User, Conversion)

1. CONSPIRACY TO COMMIT A CRIME

Adult Adjudication

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CASE SUMMARY
CASE No. 08C241394

	Converted Disposition: Sentence# 0001: Minimum 12 Months to Maximum 12 Months Placement: CCDC Converted Disposition: Sentence# 0002: CREDIT FOR TIME SERVED Minimum 184 Days to Maximum 184 Days	
06/23/2009	Sentence (Judicial Officer: User, Conversion) 2. MURDER. Adult Adjudication Converted Disposition: Sentence# 0001: LIFE WITH POSSIBILITY OF PAROLE Converted Disposition: Sentence# 0002: LIFE WITH POSSIBILITY OF PAROLE Cons/Conc: Consecutive w/Charge Item: 0004 and Sentence#: 0001	
07/06/2009	 Ex Parte Order Filed By: Defendant Hidalgo Jr, Luis <i>EX PARTE ORDER TO SEAL EX-PARTE APPLICATION TO DECLARE LUIS A HIDALGO III INDIGENT FOR PURPOSES OF APPOINTING APPELLATE COUNSEL</i> <i>III INDIGENT FOR PURPOSES OF APPOINTING APPELLATE COUNSEL</i>	08C2413940145.tif pages
07/06/2009	 Ex Parte Filed By: Defendant Hidalgo Jr, Luis <i>EX PARTE APPLICATION REQUESTING THAT DEFT LUIS A HIDALGO JR BE DECLARED INDIGENT FOR PURPOSES OF APPOINTING APPELLATE COUNSEL</i> <i>INDIGENT FOR PURPOSES OF APPOINTING APPELLATE COUNSEL</i>	08C2413940146.tif pages
07/06/2009	 Ex Parte Order Filed By: Defendant Hidalgo Jr, Luis <i>EX PARTE ORDER DECLARING LUIS HIDALGO III INDIGENT FOR PURPOSES OF APPOINTING APPELLATE COUNSEL APPELLATE COUNSEL</i>	08C2413940147.tif pages
07/06/2009	 Ex Parte Filed By: Defendant Hidalgo Jr, Luis <i>EX PARTE APPLICATION REQUESTING THAT DEFT LUIS A HIDALGO III BE DECLARED INDIGENT FOR PURPOSES OF APPOINTING APPELLATE COUNSEL</i> <i>INDIGENT FOR PURPOSES OF APPOINTING APPELLATE COUNSEL</i>	08C2413940148.tif pages
07/06/2009	 Ex Parte Filed By: Defendant Hidalgo Jr, Luis <i>EX PARTE APPLICATION REQUESTING THAT DEFT LUIS A HIDALGO JRS EX PARTE APPOINTING APPELLATE COUNSEL BE SEALED APPLICATION REQUESTING AN ORDER DECLARING HIM INDIGENT FOR PURPOSES OF APPOINTING APPELLATE COUNSEL BE SEALED APPLICATION REQUESTING AN ORDER DECLARING HIM INDIGENT FOR PURPOSES OF</i>	08C2413940150.tif pages
07/10/2009	 Judgment <i>JUDGMENT OF CONVICTION/ADMIN ASSESSMENT</i>	08C2413940152.tif pages
07/10/2009	Judgment <i>JUDGMENT OF CONVICTION/GENETIC TESTING</i>	08C2413940153.tif pages
07/13/2009	 Reporters Transcript <i>RECORDER'S TRANSCRIPT OF HEARING RE SENTENCING - HEARD 6-23-09</i>	08C2413940154.tif pages

DEPARTMENT 21
CASE SUMMARY
CASE NO. 08C241394

07/16/2009	 Notice of Appeal Filed By: Defendant Hidalgo Jr, Luis <i>LUIS A HIDALGO JRS NOTICE OF APPEAL</i>	08C2413940156.tif pages
07/16/2009	 Notice of Appeal Filed By: Defendant Hidalgo Jr, Luis <i>LUIS A HIDALGO IIIS NOTICE OF APPEAL</i>	08C2413940157.tif pages
07/30/2009	 Statement Filed by: Defendant Hidalgo Jr, Luis <i>CASE APPEAL STATEMENT</i>	08C2413940158.tif pages
07/30/2009	 Request Filed by: Defendant Hidalgo Jr, Luis <i>REQUEST FOR TRANSCRIPTS OF PROCEEDINGS</i>	08C2413940159.tif pages
07/30/2009	 Request Filed by: Defendant Hidalgo Jr, Luis <i>REQUEST FOR TRANSCRIPTS OF PROCEEDINGS</i>	08C2413940160.tif pages
07/30/2009	 Statement Filed by: Defendant Hidalgo Jr, Luis <i>CASE APPEAL STATEMENT</i>	08C2413940161.tif pages
07/31/2009	 Request Filed by: Defendant Hidalgo Jr, Luis <i>REQUEST FOR TRANSCRIPTS OF PROCEEDINGS</i>	08C2413940162.tif pages
08/11/2009	Minute Order (3:30 PM) <i>MINUTE ORDER RE: JUDGMENT OF CONVICTION Court Clerk: Denise Husted Heard By: Valerie Adair</i>	
08/11/2009	Hearing <i>MINUTE ORDER RE: JUDGMENT OF CONVICTION</i>	08C2413940163.tif pages
08/11/2009	 Ex Parte Order Filed By: Defendant Hidalgo Jr, Luis <i>EX PARTE ORDER ORDERING THE STATE OF NEVADA TO PAY FOR DISTRICT COURTTRANSCRIPTS OF PROCEEDINGS ON BEHALF OF LUIS A HIDALGO JR DUE TO HIS INDIGENCY TRANSCRIPTS OF PROCEEDINGS ON BEHALF OF LUIS A HIDALGO JR DUE TO HIS INDIGENCY</i>	08C2413940164.tif pages
08/17/2009	 Notice Filed By: Defendant Hidalgo Jr, Luis <i>NOTICE OF ENTRY OF ORDER</i>	08C2413940165.tif pages
08/18/2009	 Judgment <i>AMENDED JUDGMENT OF CONVICTION</i>	08C2413940166.tif pages
08/21/2009	 Ex Parte Order Filed By: Defendant Hidalgo Jr, Luis <i>EX PARTE ORDER ORDERING THE STATE OF NEVADA TO PAY FOR DISTRICT COURTTRANSCRIPTS OF PROCEEDINGS ON BEHALF OF LUIS A HIDALGO III DUE TO HIS INDIGENCY TRANSCRIPTS OF PROCEEDINGS ON BEHALF OF LUIS A HIDALGO III DUE TO HIS INDIGENCY</i>	08C2413940167.tif pages












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CASE No. 08C241394

08/21/2009	 Ex Parte Filed By: Defendant Hidalgo Jr, Luis <i>LUIS A HIDALGO IIIS EX PARTE APPLICATION REQUESTING THE STATE OF NEVADA TO PAY FOR TRANSCRIPTS OF DISTRICT COURT PROCEEDINGS DUE TO HIS INDIGENCY FOR TRANSCRIPTS OF DISTRICT COURT PROCEEDINGS DUE TO HIS INDIGENCY</i>	08C2413940168.tif pages
09/26/2009	 Notice of Witnesses and/or Expert Witnesses Filed By: Defendant Hidalgo Jr, Luis <i>DEFENDANTS SUPPLEMENTAL NOTICE OF WITNESSES</i>	08C2413940104.tif pages
11/20/2009	 Reporters Transcript <i>RECORDER'S TRANSCRIPT OF HEARING RE STATUS CHECK - HEARD 06-26-07</i>	08C2413940169.tif pages
11/20/2009	 Reporters Transcript <i>REPORTER'S TRANSCRIPT OF PROCEEDINGS - DEFTS LUIS HIDALGO IIISMTN FORJUDGMENT OF ACQUITTAL OR IN THE ALTERNATIVE FOR A NEW TRIAL - DEFT LUIS HIDALGO JRS MTN FOR JUDGMENT OF ACQUITTAL - HEARD 05-01-09 JUDGMENT OF ACQUITTAL OR IN THE ALTERNATIVE FOR A NEW TRIAL - DEFT LUIS HIDALGO JRS MTN FOR JUDGMENT OF ACQUITTAL - HEARD 05-01-09</i>	08C2413940170.tif pages
11/20/2009	 Reporters Transcript <i>RECORDER'S TRANSCRIPT OF HEARING RE DEFENDANTS MOTIONS - HEARD 02-11-08</i>	08C2413940171.tif pages
11/20/2009	 Reporters Transcript <i>RECORDER'S TRANSCRIPT OF HEARING RE MOTIONS - HEARD 01-16-09</i>	08C2413940172.tif pages
11/20/2009	 Reporters Transcript <i>REPORTER'S TRANSCRIPT OF PROCEEDINGS - CALENDAR CALL - STATES MTN IN LIMNETO EXCLUDE TESTIMONY OF VALERIE FRIDLAND - DEFT LUIS HIDALGO JRS MTN TO SUPPRESS EVIDENCE - HEARD 01-22-09 TO EXCLUDE TESTIMONY OF VALERIE FRIDLAND - DEFT LUIS HIDALGO JRS MTN TO SUPPRESS EVIDENCE - HEARD 01-22-09</i>	08C2413940173.tif pages
11/20/2009	 Reporters Transcript <i>RECORDER'S TRANSCRIPT OF HEARING RE STATES MTN TO CONSOLIDATE WITH C241394 STATES MTN TO CONSOLIDATE WITH C212667 - HEARD 07-22-08 STATES MTN TO CONSOLIDATE WITH C212667 - HEARD 07-22-08</i>	08C2413940174.tif pages
11/20/2009	 Reporters Transcript <i>RECORDER'S TRANSCRIPT OF HEARING RE DEFTS MTN FOR AUDIBILITY HEARING AND TRANSCRIPT APPROVAL - HEARD 02-05-08 TRANSCRIPT APPROVAL - HEARD 02-05-08</i>	08C2413940175.tif pages
11/24/2009	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE JURY TRIAL JANUARY 30 2009</i>	08C2413940176.tif pages
11/24/2009	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE JURY TRIAL FEBRUARY 11 2009</i>	08C2413940177.tif pages
11/24/2009	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE JURY TRIAL DAY 5 FEBRUARY 2 2009</i>	08C2413940178.tif pages
11/24/2009		08C2413940179.tif pages











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CASE No. 08C241394

	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE JURY TRIAL DAY 6 FEBRUARY 3 2009</i>	
11/24/2009	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE JURY TRIAL DAY 1 JURY VOIR DIRE JANUARY 27 2009</i>	<i>08C2413940180.tif pages</i>
11/24/2009	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE JURY TRIAL JANUARY 29 2009</i>	<i>08C2413940181.tif pages</i>
11/24/2009	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE JURY TRIAL DAY 9 FEBRUARY 6 2009</i>	<i>08C2413940182.tif pages</i>
11/24/2009	 Reporters Transcript <i>REPORTER'S TRANSCRIPT JURY TRIAL VERDICT DAY 14 FEBRUARY 17 2009</i>	<i>08C2413940183.tif pages</i>
11/24/2009	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE JURY TRIAL DAY 8 FEBRUARY 5 2009</i>	<i>08C2413940184.tif pages</i>
11/24/2009	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE JURY TRIAL DAY 7 FEBRUARY 4 2009</i>	<i>08C2413940185.tif pages</i>
11/24/2009	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE JURY TRIAL DAY 13 FEBRUARY 12 2009</i>	<i>08C2413940186.tif pages</i>
11/24/2009	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE JURY TRIAL DAY 11 FEBRUARY 10 2009</i>	<i>08C2413940187.tif pages</i>
11/24/2009	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE JURY TRIAL DAY 10 FEBRUARY 9 2009</i>	<i>08C2413940188.tif pages</i>
11/24/2009	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE JURY TRIAL JANUARY 28 2009</i>	<i>08C2413940189.tif pages</i>
12/17/2009	Motion <i>DEFT'S PRO PER MTN TO WITHDRAW CNSL/283</i>	<i>08C2413940191.tif pages</i>
12/29/2009	Motion (9:30 AM) Events: 12/17/2009 Motion <i>DEFT'S PRO PER MTN TO WITHDRAW CNSL/283 Court Clerk: Denise Husted Reporter/Recorder: Janie Olsen Heard By: Valerie Adair</i>	
12/29/2009	Hearing <i>STATUS CHECK: DEFENDANT'S PRO PER MOTION TO WITDRAW</i>	<i>08C2413940192.tif pages</i>
01/19/2010	Status Check (9:30 AM) Events: 12/29/2009 Hearing <i>STATUS CHECK: DEFENDANT'S PRO PER MOTION TO WITDRAW Court Clerk: Denise Husted Reporter/Recorder: Janie Olsen Heard By: Valerie Adair</i>	
01/25/2010	Motion <i>DEFT'S PRO PER MTN FOR PRODCUTION OF DOCUMNE</i>	<i>08C2413940193.tif pages</i>
02/09/2010	CANCELED Motion (9:30 AM) Events: 01/25/2010 Motion	















DEPARTMENT 21
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	<i>Vacated</i>	
04/28/2010	Motion <i>DEFT'S MTN FOR DISCOVERY RE: EXPERT TESTIMON</i>	<i>08C2413940194.tif pages</i>
04/30/2010	 Motion <i>DEFT'S MTN TO SUPPRESS /289</i>	<i>08C2413940195.tif pages</i>
05/11/2010	<i>CANCELED</i> Motion (9:30 AM) Events: 04/28/2010 Motion <i>Vacated</i>	
05/11/2010	<i>CANCELED</i> Motion to Suppress (9:30 AM) Events: 04/30/2010 Motion <i>Vacated</i>	
06/03/2010	Petition <i>PTN FOR WRIT OF HABEAS CORPUS VQ 6/30/10</i>	<i>08C2413940200.tif pages</i>
07/01/2010	<i>CANCELED</i> Petition for Writ of Habeas Corpus (9:30 AM) Events: 06/03/2010 Petition <i>Vacated</i>	
10/28/2010	 Motion to Amend <i>Motion to Amend Record</i>	
10/29/2010	 Errata <i>Errata to Motion to Amend Record</i>	
11/09/2010	 Motion to Amend (9:30 AM) (Judicial Officer: Adair, Valerie) <i>Motion to Amend Record</i>	
11/12/2010	 Transcript of Proceedings Party: Plaintiff State of Nevada <i>Transcript of Proceedings Jury Trial - Day 13 - Feb. 12, 2009</i>	
12/29/2010	 Motion to Amend <i>Motion to Amend Record</i>	
01/07/2011	 Response <i>State's Respons to Defendant Hidalgo, Jr.'s December 29, 2010 Motion to Amend Record</i>	
01/11/2011	 Motion to Amend (9:30 AM) (Judicial Officer: Adair, Valerie) Events: 12/29/2010 Motion to Amend <i>Defendant's Motion to Amend Record</i>	
01/21/2011	 Recorders Transcript of Hearing Party: Plaintiff State of Nevada <i>Recorder's Transcript of Hearing Re: Defendant's Motion To Amend Record - 01/11/2011</i>	
04/17/2013	 NV Supreme Court Clerks Certificate/Judgment - Affirmed <i>Nevada Supreme Court Clerk's Certificate Judgment - Affirmed; Rehearing Denied; Petition Denied</i>	
12/31/2013	 Petition for Writ of Habeas Corpus	

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	Filed by: Defendant Hidalgo Jr, Luis <i>Petition for Writ of Habeas Corpus (Post Conviction)</i>
12/31/2013	 Motion for Leave to Proceed in Forma Pauperis Filed By: Defendant Hidalgo Jr, Luis
12/31/2013	 Motion for Appointment Filed By: Defendant Hidalgo Jr, Luis <i>Motion for Appointment of Counsel</i>
12/31/2013	 Memorandum of Points and Authorities Filed By: Defendant Hidalgo Jr, Luis <i>Memorandum of Points and Authorities In Support of Petition for Writ of Habeas Corpus</i>
01/08/2014	 Order for Petition for Writ of Habeas Corpus
01/08/2014	 Notice of Hearing <i>Notice of Hearings</i>
01/09/2014	 Notice of Hearing Filed By: Plaintiff State of Nevada <i>Notice of Hearing</i>
01/13/2014	 Response Filed by: Plaintiff State of Nevada <i>State's Response To Defendant's Pro Per Motion For Appointment Of Counsel</i>
01/21/2014	 Request (9:30 AM) (Judicial Officer: Adair, Valerie) <i>State's Request: Defendant's Motion for Appointment of Counsel</i>
01/28/2014	 Order for Production of Inmate Party: Plaintiff State of Nevada <i>Order For Production Of Inmate - Luis Hidalgo, Jr., Aka, Luis Alonso Hidalgo, BAC # 1038134</i>
02/04/2014	 Status Check (9:30 AM) (Judicial Officer: Adair, Valerie) <i>Status Check: Confirmation of Counsel</i>
03/11/2014	CANCELED Petition for Writ of Habeas Corpus (9:30 AM) (Judicial Officer: Adair, Valerie) <i>Vacated - Moot</i>
03/11/2014	CANCELED Petition to Proceed in Forma Pauperis (9:30 AM) (Judicial Officer: Adair, Valerie) <i>Vacated - Moot</i> <i>Defendant - Motion for Leave to Proceed in Forma Pauperis</i>
03/11/2014	CANCELED Motion for Appointment of Attorney (9:30 AM) (Judicial Officer: Adair, Valerie) <i>Vacated</i> <i>Defendant - Motion for Appointment of Counsel</i>
07/21/2014	 Stipulation and Order Filed by: Plaintiff State of Nevada <i>Stipulated Extension of Habeas Petition Dates and Order</i>

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07/21/2014	 Notice of Entry of Order Filed By: Defendant Hidalgo Jr, Luis <i>Notice of Entry of Order</i>
12/18/2014	 Notice of Entry of Order Filed By: Defendant Hidalgo Jr, Luis <i>Notice of Entry of Order</i>
12/18/2014	 Stipulation and Order Filed by: Plaintiff State of Nevada <i>Stipulated Extension of Habeas Petition Dates and Proposed Order</i>
04/03/2015	 Filed Under Seal Filed By: Defendant Hidalgo Jr, Luis <i>Ex Parte Motion and Order to File Under Seal</i>
04/03/2015	 Filed Under Seal Filed By: Defendant Hidalgo Jr, Luis <i>Proposed Order for Ex Parte Motion for Paralegal Services-*Motion for Supplemental Fees</i>
04/03/2015	 Filed Under Seal Filed By: Defendant Hidalgo Jr, Luis <i>Ex Parte Motion for Paralegal Services-Motion for Supplemental Fees</i>
06/17/2015	 Motion Filed By: Defendant Hidalgo Jr, Luis <i>Motion and Notice of Motion for an extension of Time to File Supplement Petition for Writ of Habeas Corpus (Third Request)</i>
06/26/2015	 Filed Under Seal <i>Ex Parte Motion and Order to File Under Seal</i>
06/26/2015	 Filed Under Seal <i>Ex Parte Motion for Investigator- Motion for Supplemental Fees</i>
06/30/2015	 Motion for Order Extending Time (9:30 AM) (Judicial Officer: Adair, Valerie) <i>Defendant's Motion and Notice of Motion for an extension of Time to File Supplement Petition for Writ of Habeas Corpus (Third Request)</i>
07/07/2015	 Notice of Change of Firm Name Filed By: Defendant Hidalgo Jr, Luis <i>Notice of Change of Law Firm Affiliation</i>
07/13/2015	 Filed Under Seal <i>Order for Ex Parte Motion for Investigation-Motion for Supplemental Fees</i>
07/13/2015	 Filed Under Seal <i>Proposed Order to File Under Seal</i>
08/04/2015	 Notice of Change of Address Filed By: Defendant Hidalgo Jr, Luis <i>Notice of Change of Address</i>

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10/29/2015	 Motion Filed By: Defendant Hidalgo Jr, Luis <i>Motion and Notice of Motion for an Extension of Time to File Supplemental Petition for Writ of Habeas Corpus (Fourth Request)</i>
11/04/2015	 Opposition Filed By: Plaintiff State of Nevada <i>State's Opposition to Defendant's Motion for an Extension of Time to File Supplemental Petition for Writ of Habeas Corpus</i>
11/10/2015	 Motion (9:30 AM) (Judicial Officer: Adair, Valerie) <i>Defendant's Motion for An Extension of Time to File Supplemental Petition for Writ of Habeas Corpus</i>
11/17/2015	CANCELED Petition for Writ of Habeas Corpus (9:30 AM) (Judicial Officer: Adair, Valerie) <i>Vacated</i>
01/13/2016	 Recorders Transcript of Hearing <i>Recorder's Transcript Re: Defendant's Motion for an Extension of Time to File Supplemental Petition for Writ of Habeas Corpus</i>
01/14/2016	 Order Shortening Time Filed By: Defendant Hidalgo Jr, Luis <i>Unopposed Motion and Notice of Motion for an Extension of Time to File Supplemental Petition for Writ of Habeas Corpus and Application for Order on Shortening Time (Fifth Request)</i>
01/14/2016	 Filed Under Seal Filed By: Defendant Hidalgo Jr, Luis <i>Ex Parte Motion and Order to File Under Seal</i>
01/14/2016	 Filed Under Seal Filed By: Defendant Hidalgo Jr, Luis <i>Ex Parte Declaration of Margaret A. McLetchie in Support of Petitioner's Motion For An Extension of Time to File Supplemental Petition For Writ of Habeas Corpus Under Seal</i>
01/15/2016	 Order Filed By: Defendant Hidalgo Jr, Luis <i>Order to Prepare Transcripts</i>
01/15/2016	 Notice of Entry of Order Filed By: Defendant Hidalgo Jr, Luis <i>Notice of Entry of Order</i>
01/21/2016	 Motion (9:30 AM) (Judicial Officer: Adair, Valerie) <i>Petitioner's Motion for Extension of Time to File Supplemental Petition for Writ of Habeas Corpus on OST</i>
02/16/2016	CANCELED Petition for Writ of Habeas Corpus (9:30 AM) (Judicial Officer: Adair, Valerie) <i>Vacated</i>
02/29/2016	 Exhibits Filed By: Defendant Hidalgo Jr, Luis

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Petitioner's Appendix for Supplemental Petition for Writ of Habeas Corpus - Volume 13

02/29/2016



Exhibits

Filed By: Defendant Hidalgo Jr, Luis

Petitioner's Appendix for Supplemental Petition for Writ of Habeas Corpus - Volume 14

02/29/2016



Exhibits

Filed By: Defendant Hidalgo Jr, Luis

Petitioner's Appendix for Supplemental Petition for Writ of Habeas Corpus - Volume 15

02/29/2016



Exhibits

Filed By: Defendant Hidalgo Jr, Luis

Petitioner's Appendix for Supplemental Petition for Writ of Habeas Corpus - Volume 16

02/29/2016



Exhibits

Filed By: Defendant Hidalgo Jr, Luis

Petitioner's Appendix for Supplemental Petition for Writ of Habeas Corpus - Volume 17

02/29/2016



Exhibits

Filed By: Defendant Hidalgo Jr, Luis

Petitioner's Appendix for Supplemental Petition for Writ of Habeas Corpus - Volume 18

02/29/2016



Exhibits

Filed By: Defendant Hidalgo Jr, Luis

Petitioner's Appendix for Supplemental Petition for Writ of Habeas Corpus - Volume 19

02/29/2016



Exhibits

Filed By: Defendant Hidalgo Jr, Luis

Petitioner's Appendix for Supplemental Petition for Writ of Habeas Corpus - Volume 20

02/29/2016



Supplemental

Filed by: Defendant Hidalgo Jr, Luis

Supplemental Memorandum of Points and Authorities in Support of Petition for Writ of Habeas Corpus (Post-Conviction)

02/29/2016



Exhibits

Filed By: Defendant Hidalgo Jr, Luis

Petitioner's Appendix for Supplemental Petition for Writ of Habeas Corpus - Volume 1

02/29/2016



Exhibits

Filed By: Defendant Hidalgo Jr, Luis

Petitioner's Appendix for Supplemental Petition for Writ of Habeas Corpus - Volume 2

02/29/2016



Exhibits

Filed By: Defendant Hidalgo Jr, Luis

Petitioner's Appendix for Supplemental Petition for Writ of Habeas Corpus - Volume 3

02/29/2016



Exhibits

Filed By: Defendant Hidalgo Jr, Luis

Petitioner's Appendix for Supplemental Petition for Writ of Habeas Corpus - Volume 4

02/29/2016



Exhibits












Filed By: Defendant Hidalgo Jr, Luis

Petitioner's Appendix for Supplemental Petition for Writ of Habeas Corpus - Volume 5

DEPARTMENT 21
CASE SUMMARY
CASE NO. 08C241394

02/29/2016	 Exhibits Filed By: Defendant Hidalgo Jr, Luis <i>Petitioner's Appendix for Supplemental Petition for Writ of Habeas Corpus - Volume 6</i>
02/29/2016	 Exhibits Filed By: Defendant Hidalgo Jr, Luis <i>Petitioner's Appendix for Supplemental Petition for Writ of Habeas Corpus - Volume 7</i>
02/29/2016	 Exhibits Filed By: Defendant Hidalgo Jr, Luis <i>Petitioner's Appendix for Supplemental Petition for Writ of Habeas Corpus - Volume 8</i>
02/29/2016	 Exhibits Filed By: Defendant Hidalgo Jr, Luis <i>Petitioner's Appendix for Supplemental Petition for Writ of Habeas Corpus - Volume 9</i>
02/29/2016	 Exhibits Filed By: Defendant Hidalgo Jr, Luis <i>Petitioner's Appendix for Supplemental Petition for Writ of Habeas Corpus - Volume 10</i>
02/29/2016	 Exhibits Filed By: Defendant Hidalgo Jr, Luis <i>Petitioner's Appendix for Supplemental Petition for Writ of Habeas Corpus - Volume 11</i>
02/29/2016	 Exhibits Filed By: Defendant Hidalgo Jr, Luis <i>Petitioner's Appendix for Supplemental Petition for Writ of Habeas Corpus - Volume 12</i>
03/08/2016	 Supplement Filed by: Defendant Hidalgo Jr, Luis <i>Supplement to Petitioner's Supplemental Memorandum in Support of Petition for Writ of Habeas Corpus (Post-Conviction)</i>
03/09/2016	 Filed Under Seal Filed By: Attorney McLetchie, Margaret A. <i>Ex Parte Motion and Order to File Under Seal</i>
03/09/2016	 Filed Under Seal Filed By: Attorney McLetchie, Margaret A. <i>Petitioner's Appendix for Supplemental Petition for Writ of Habeas Corpus Under Seal</i>
05/10/2016	CANCELED Hearing (9:30 AM) (Judicial Officer: Adair, Valerie) <i>Vacated</i> <i>Petition for Writ of Habeas Corpus</i>
05/18/2016	 Response Filed by: Plaintiff State of Nevada <i>State's Response to Defendant's Supplemental Petition for Writ of Habeas Corpus</i>
06/21/2016	 Stipulation and Order Filed by: Defendant Hidalgo Jr, Luis <i>Stipulated Extension of Habeas Petition Dates and [Proposed] Order</i>

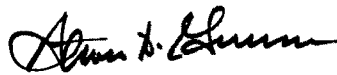
DEPARTMENT 21
CASE SUMMARY
CASE NO. 08C241394

06/21/2016	 Notice of Entry of Order Filed By: Defendant Hidalgo Jr, Luis <i>Notice of Entry of Order</i>
06/21/2016	CANCELED Hearing (9:30 AM) (Judicial Officer: Adair, Valerie) <i>Vacated - per Secretary</i> <i>Defendant's Peitition for Writ of Habeas Corpus</i>
07/21/2016	 Reply Filed by: Defendant Hidalgo Jr, Luis <i>Reply to State's Response to the Supplemental Memorandum of Points and Authorities in Support of the Petition for Writ of Habeas Corpus (Post-Conviction)</i>
07/28/2016	 Petition for Writ of Habeas Corpus (9:30 AM) (Judicial Officer: Adair, Valerie) 07/28/2016, 08/11/2016, 08/15/2016 <i>Petition for Writ of Habeas Corpus</i>
08/11/2016	 Motion for Appointment Filed By: Defendant Hidalgo Jr, Luis <i>Petitioner Luis Hidalgo, Jr.'s Motion for Order Appointing Margaret A. McLetchie as Court-Appointed Counsel</i>
08/15/2016	 Opposition <i>State's Opposition to Petitioner Luis Hidalgo, Jr.'s Motion for Order Appointing Margaret A. McLetchie as Court-Appointed Counsel</i>
08/23/2016	 Motion for Appointment of Attorney (9:30 AM) (Judicial Officer: Adair, Valerie) <i>Petitioner Luis Hidalgo, Jr.'s Motion for Order Appointing Margaret A. McLetchie as Court-Appointed Counsel</i>
09/16/2016	 Findings of Fact, Conclusions of Law and Order Filed By: Plaintiff State of Nevada
09/19/2016	 Notice of Entry <i>Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
10/03/2016	 Notice of Appeal (criminal) Party: Defendant Hidalgo Jr, Luis <i>Notice of Appeal</i>
10/03/2016	 Case Appeal Statement Filed By: Defendant Hidalgo Jr, Luis <i>Case Appeal Statement</i>
10/04/2016	 Case Appeal Statement

DATE

FINANCIAL INFORMATION

Defendant Hidalgo Jr, Luis	
Total Charges	1,672.00
Total Payments and Credits	1,606.54
Balance Due as of 10/5/2016	65.46



CLERK OF THE COURT

FCL
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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

LUIS HIDALGO, JR.,
aka, Luis Alonso Hidalgo, #1579522
Defendant.

CASE NO: 08C241394

DEPT NO: XXI

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: AUGUST 11, 2016 & AUGUST 15, 2016
TIME OF HEARING: 3:00 AM

THIS CAUSE having come on for hearing before the Honorable VALERIE ADAIR, District Judge, on the 11th day of August, 2016, the Petitioner not being present, being represented by ALINA SHELL, Esq., the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through MARC DIGIACOMO, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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1 FINDINGS OF FACT, CONCLUSIONS OF LAW

2 STATEMENT OF FACTS

3 In May of 2005, Defendant ("Mr. H") was the owner of the Palomino Club ("Palomino"
4 or "the club"), which is Las Vegas's only all-nude strip club licensed to serve alcohol. On the
5 afternoon of May 19, 2005, Mr. H's romantic partner of 18 years, Anabel Espindola
6 ("Espindola"), received a phone call from Deangelo Carroll ("Carroll"); Carroll was an
7 employee of the Palomino serving as a "jack of all trades" handling promotions, disc
8 jockeying, and other assorted duties. Espindola was the Palomino's general manager and
9 handled all of the club's financial and management affairs. During the call, Carroll informed
10 Espindola that the victim in this case, T.J. Hadland ("Hadland"), a recently fired Palomino
11 doorman, had been "badmouthing" the Palomino to taxicab drivers. A week prior to this news,
12 Mr. H's son and co-defendant, Luis Hidalgo, III ("Little Lou"), had informed Mr. H that
13 Hadland had been falsifying Palomino taxicab voucher tickets in order to generate
14 unauthorized kickbacks from the drivers.¹ In response, Mr. H ordered that Hadland be fired.²

15 The Palomino was not in a good financial state and Mr. H was having trouble meeting
16 the \$10,000.00 per week payment due to Dr. Simon Sturtzer from whom he purchased the club
17 in early 2003. Taxicab drivers are a critically important form of advertising for strip clubs
18 generally. Because of the Palomino's location in North Las Vegas, revenue generated through
19 taxicab drop-offs was very important to the club's operation. Due to a legal dispute among the
20 area strip clubs regarding bonus payments to taxicab drivers, all payments were suspended
21 during the period encompassing May 19-20, 2005; the Palomino was the only club permitted
22 to continue paying taxi drivers for dropping off customers.

23 //

24
25 ¹ The Palomino paid cash bonuses to taxi drivers for each person a driver dropped off. The club accomplished this by
26 having a doorman, such as Hadland, provide a ticket or voucher to the driver, which reflected the number of passengers
(customers) dropped off. Apparently, Hadland was inflating the number of passengers taxi drivers dropped off in exchange
for the driver agreeing to kick back to Hadland some of the bonus paid out by the club for these phantom customers.

27 ² Mr. H had also received prior reports that, at other times, Hadland was selling Palomino VIP passes to arriving customers
28 in exchange for cash, which deprived the taxicab drivers of bonuses for bringing customers to the club, and diverted the
passes from their intended purpose of attracting patrons local to the club. This practice created a problem for the club
because taxi drivers would begin disputing their entitlement to be paid bonuses.

1 At the time Espindola took Carroll's call, she was at Simone's Auto Body, which was
2 a body-shop/collision repair business also owned by Mr. H and managed by Espindola.³ After
3 taking Carroll's call, Espindola informed Mr. H and Little Lou of Carroll's news about
4 Hadland disparaging the club. Upon hearing the news, Little Lou became enraged and began
5 yelling at Mr. H, demanding of Mr. H: "You're not going to do anything?" and stating "That's
6 why nothing ever gets done." Little Lou told Mr. H, "You'll never be like Rizzolo and Galardi.
7 They take care of business."⁴ He further criticized Mr. H by pointing out that Rizzolo had once
8 ordered an employee to beat up a strip club patron.⁵ Mr. H became angry, telling Little Lou to
9 mind his own business. Little Lou again told Mr. H, "You'll never be like Galardi and
10 Rizzolo," and then stormed out of Simone's heading for the Palomino.

11 Visibly angered, Mr. H walked out of Espindola's office and sat on Simone's reception
12 area couch. At approximately 6:00 or 7:00 pm, Espindola and a still visibly-angered Mr. H
13 drove from Simone's to the Palomino. Once at the Palomino, Espindola went into Mr. H's
14 office, which was her customary workplace at the club. Approximately half an hour later,
15 Carroll arrived at the club and knocked on the office door, which Mr. H answered. Mr. H and
16 Carroll had a short conversation and then walked out the office door together. A short time
17 later, Mr. H came back into the office and directed Espindola to speak with him out of earshot
18 of Palomino technical consultant, Pee-Lar "PK" Handley, who was nearby. Mr. H instructed
19 Espindola to call Carroll and tell Carroll to "go to Plan B."

20 Espindola went to the back of the office and attempted to contact Carroll by "direct
21 connect" ("chirp") through her and Carroll's Nextel cell phones. Carroll called Espindola back
22 on Count's cellular phone, and Espindola instructed Carroll that Mr. H wanted Carroll to
23 "switch to Plan B." Carroll protested that "we're here" and "I'm alone" with Hadland, and he
24

25 ³ Financially, Simone's was breaking even at the time of this case's underlying events, but the business never turned a
profit.

26 ⁴ Frederick John "Rick" Rizzolo was the owner of a Las Vegas strip club known as Crazy Horse Too, and Jack Galardi is
the owner of Cheetah's strip club as well as a number of other clubs in Atlanta, Georgia.

27 ⁵ Mr. H had previously enlisted his own employee, Carroll, to physically harm the boyfriend of Mr. H's daughter whom
28 the boyfriend had caused to use methamphetamine; Espindola later intervened to stop Carroll from harming the boyfriend.
This evidence came in after Mr. H attempted to suggest to the jury that he was unlike Gillardi and Rizzolo. The evidence
was not admitted as to Little Lou.

1 told Espindola that he would get back to her. Espindola and Carroll's phone connection was
2 then cut off. At that point, Espindola knew "something bad" was going to happen to Hadland.
3 She attempted to call Carroll back, but could not reach him. Espindola returned to the office
4 and informed Mr. H that she had instructed Carroll to go to "Plan B," after which Mr. H left
5 the office with Handley.

6 Earlier in the day, May 19, 2005, at approximately noon, Carroll was at his apartment
7 with Rontae Zone ("Zone") and Jayson Taoipu ("Taoipu"), who were both "flyer boys"
8 working unofficially for the Palomino. Zone and Taoipu worked alongside Carroll and
9 performed jobs Carroll delegated to them in exchange for being paid "under the table" by
10 Carroll. Zone and Taoipu would pass out Palomino flyers to taxis at cabstands. Zone lived at
11 the apartment with Carroll, Carroll's wife, and Zone's pregnant girlfriend, Crystal Payne. Zone
12 and Taoipu had been friends for several years.

13 While at the apartment, Carroll informed Zone and Taoipu that Little Lou had told him
14 Mr. H wanted a "snitch" killed. Carroll asked Zone if he would be "into" doing something like
15 that, and Zone responded "No," he would not. Carroll also asked the same question of Taoipu
16 who indicated he was "down," *i.e.*, interested in helping out. Later when Taoipu and Zone
17 were in the Palomino's white Chevrolet Astro Van with Carroll, Carroll told them that Little
18 Lou had instructed Carroll to obtain some baseball bats and trash bags to use in aid of killing
19 the person. After the initial noontime conversation about killing someone on Mr. H's behalf,
20 Zone observed Carroll using the phone, but he could not hear what Carroll was talking about.
21 At some point after the noon conversation and after Zone observed him using the phone,
22 Carroll informed Zone and Taoipu that Mr. H would pay \$6,000.00 to the person who actually
23 killed the targeted victim.

24 A couple hours later while the three were still in the van, Carroll again discussed on the
25 phone having an individual "dealt with," *i.e.*, killed, although Zone did not know the specific
26 person to be killed. Carroll produced a .22 caliber revolver with a pearl green handle and
27 displayed it to Zone and Taoipu as if it were the weapon to be utilized in killing the targeted
28 victim. Carroll attempted to give the revolver to Zone who refused to take it. Taoipu was

1 willing to take the revolver from Carroll and did so. Carroll also produced some bullets for the
2 gun and placed them in Zone's lap, but Zone dumped the bullets onto the van's floor where
3 Taoipu picked them up and put them in his own lap.⁶

4 The three then proceeded back to Carroll's apartment where Carroll instructed Zone
5 and Taoipu to dress in all black so they could go out and work promoting the Palomino. The
6 three then used the Astro van to go out promoting, returned briefly to Carroll's apartment for
7 a second time, and again left the apartment to go promoting. On this next trip, however, Carroll
8 took them to a residence on F Street where they picked up Kenneth "KC" Counts ("Counts").
9 Zone had no idea they were traveling to pick up Counts whom he had never previously met.
10 Once at Counts' house, Carroll went inside the house and emerged ten minutes later
11 accompanied by Counts who was dressed in dark clothing, including a black hooded sweatshirt
12 and black gloves. Counts entered the Astro van and seated himself in the back passenger seat
13 next to Zone who was seated in the rear passenger seat directly behind the driver. Taoipu was
14 seated in the front, right-side passenger seat.

15 At the time, Zone believed they were headed out to do more promoting for the
16 Palomino. As Carroll drove onto Lake Mead Boulevard, Zone realized they were not going to
17 be promoting because there are no taxis or cabstands at Lake Mead. Carroll told Zone and the
18 others that they were going to be meeting Hadland and were going to "smoke [marijuana] and
19 chill" with Hadland.⁷ Carroll continued driving toward Lake Mead.

20 On the drive up, Zone observed Carroll talking on his cell phone and he heard Carroll
21 tell Hadland that Carroll had some marijuana for Hadland. Carroll was also using his phone's
22 walkie-talkie function to chirp. Little Lou chirped Carroll and they conversed. Carroll spoke
23 with Espindola who told him to "Go to Plan B," and then to "come back" to the Palomino.
24 Zone recalled Carroll responding "We're too far along Ms. Anabel. I'll talk to you later," and
25 terminated the conversation. After executing a left turn, Carroll lost the signal for his cell
26

27 ⁶ Carroll would attempt a second time, unsuccessfully, to give the bullets to Zone when they were back at Carroll's
28 apartment.

⁷ Zone had been smoking marijuana throughout the day; on the ride to Lake Mead, Zone, Carroll, Counts, and Taoipu
smoked one "blunt" or cigar of marijuana.

1 phone and was unable to communicate with it, so he began driving back to areas around the
2 lake where his cell phone service would be re-established.

3 Carroll was able to describe a place for Hadland to meet him along the road to the lake.
4 Hadland arrived driving a Kia Sportage, executed a U-turn, and pulled to the side of the road.
5 Hadland walked up to the driver's side window where Carroll was seated and began having a
6 conversation with Carroll; Zone and Taoipu were still seated in the rear right passenger's seat
7 and front right passenger's seat, respectively. As Carroll and Hadland spoke, Counts opened
8 the van's right-side sliding door and crept out onto the street, moving first to the front of the
9 van, then back to its rear, and back to its front again. Counts then snuck up behind Hadland
10 and shot him twice in the head. One bullet entered Hadland's head near the left ear, passed
11 through his brain, and exited out the top of his skull. The other bullet entered through
12 Hadland's left cheek, passed through and destroyed his brain stem, and was instantly fatal.

13 A stack of Palomino Club flyers fell out of the vehicle near Hadland's body when
14 Counts re-entered or exited the vehicle. Counts then hurriedly hopped back into the van and
15 Carroll drove off. Counts then questioned both Zone and Taoipu as to whether they were
16 carrying a firearm and why they had not assisted him. Zone responded that he did not have a
17 gun and had nothing to do with the plan. Taoipu responded that he had a gun, but did not want
18 to inadvertently hit Carroll with gunfire.

19 Carroll then drove the four through Boulder City and to the Palomino, where Carroll
20 exited the van and entered the club. Carroll met with Espindola and Mr. H in the office. He sat
21 down in front of Mr. H and informed him "It's done," and stated "He's downstairs." Mr. H
22 instructed Espindola to "Go get five out of the safe." Espindola queried, "Five what? \$500?,"
23 which caused Mr. H to become angry and state "Go get \$5,000 out of the safe." Espindola
24 followed Mr. H's instructions and withdrew \$5,000.00 from the office safe, a substantial sum
25 in light of the Palomino's financial condition. Espindola placed the money in front of Carroll
26 who picked it up and walked out of the office. Alone with Mr. H, Espindola asked Mr. H,
27 "What have you done?" to which Mr. H did not immediately respond, but later asked "Did he
28 do it?"

1 Ten minutes after entering the Palomino, Carroll emerged from the club, got Counts,
2 and then went back in the club accompanied by Counts. Counts then emerged from the club,
3 got into a yellow taxicab minivan driven by taxicab driver Gary McWhorter, and left the
4 scene.⁸ Carroll again emerged from the Palomino about thirty minutes later and drove the van
5 first to a self-serve car wash and then back to his house, all the while accompanied by Zone
6 and Taoipu. Zone was very shaken up about the murder and did not say much after they
7 returned to his and Carroll's apartment.

8 The next morning, May 20, 2005, Espindola and Mr. H awoke at Espindola's house
9 after a night of gambling at the MGM. Mr. H appeared nervous and as though he had not slept;
10 he told Espindola he needed to watch the television for any news. While watching the news,
11 they observed a report of Hadland's murder; Mr. H said to Espindola, "He did it." Espindola
12 again asked Mr. H, "What did you do?" and Mr. H responded that he needed to call his
13 attorney.

14 Meanwhile, that same morning, Carroll slashed the tires on the van and, accompanied
15 by Zone, used another car to follow Taoipu who drove the van down the street to a repair shop.
16 Carroll paid \$100.00 cash to have all four tires replaced. Carroll, Zone, and Taoipu
17 subsequently went to a Big Lots store where Carroll purchased cleaning supplies, after which
18 Carroll cleaned the interior of the Astro van. Carroll, Zone, Taoipu, Zone's girlfriend, Carroll's
19 wife and kids, and some other individuals ate breakfast at an International House of Pancakes
20 restaurant later that day; Carroll paid for the party's breakfast. At some point also, Carroll,
21 accompanied by Zone, went to get a haircut.

22 Carroll then drove himself, Zone, and Taoipu in the Astro van to Simone's where Mr.
23 H, Little Lou, and Espindola were present. Carroll made Zone and Taoipu wait in the van while
24 he went into Simone's; Carroll emerged about thirty minutes later and directed Zone and
25 Taoipu inside where they sat on a couch in Simone's central office area. While at Simone's,
26 Zone observed Carroll speaking with Mr. H in between trips to a back room, and he also

27
28 ⁸ Counts had to go back into the Palomino to obtain some change because McWhorter did not have change for the \$100.00 bill Counts tried to pay him with.

1 observed Carroll speaking with Espindola. Carroll then went into a back room of Simone's,
2 but emerged later to direct Zone and Taoipu into the bathroom. Carroll expressed
3 disappointment in Zone and Taoipu for not involving themselves in Hadland's murder, and he
4 told them they had missed the opportunity to make \$6,000.00. He informed Zone and Taoipu
5 that Counts received \$6,000.00 for his part in Hadland's murder. After Carroll, Zone, and
6 Taoipu left Simone's, Carroll told Zone that Mr. H had instructed Carroll that the "job was
7 finished and that [they] were just to go home."

8 Las Vegas Metropolitan Police Department ("LVMPD") detectives identified Carroll
9 as possibly involved in the murder after speaking with Hadland's girlfriend, Paijik Karlson,
10 and because his name showed as the last person called from Hadland's cell phone. On May
11 20, 2005, Detective Martin Wildemann spoke with Mr. H and inquired about Carroll,
12 requesting any contact information Mr. H might have for Carroll; Mr. H told Detective
13 Wildemann he had no contact information for Carroll and that Wildemann should speak with
14 one of the Palomino managers, Ariel aka Michelle Schwanderlik, who could put the detectives
15 in touch with Carroll.

16 At approximately 7:00 pm, the detectives returned to the Palomino where they found
17 Carroll who agreed to accompany them back to their office for an interview. After the
18 interview, the detectives took Carroll back to his apartment where they encountered Zone who
19 agreed to come to their office for an interview. Carroll then told Zone within earshot of the
20 detectives: "Tell them the truth, tell them the truth. I told them the truth." Zone recalled Carroll
21 also saying: "If you don't tell the truth, we're going to jail." Zone interpreted Carroll's
22 statements to mean that Zone should fabricate a story that tended to exculpate Carroll, himself,
23 and Taoipu. Zone gave the police a voluntary statement on May 21, 2005. Also on that day,
24 Carroll brought Taoipu to the detectives' office for an interview.

25 Meanwhile on May 21, 2005, Mr. H and Espindola consulted with attorney Jerome A.
26 DePalma, Esq., and defense attorney Dominic Gentile, Esq.'s investigator, Don Dibble. The
27 next morning, May 22, 2005, a completely distraught Mr. H said to Espindola, "I don't know
28 what I told him to do." Espindola responded by again asking Mr. H, "What have you done?"

1 to which Mr. H responded, "I don't know what I told him to do. I feel like killing myself."
2 Espindola asked Mr. H if he wanted her to speak to Carroll and Mr. H responded affirmatively.
3 Espindola arranged through Mark Quaid, parts manager for Simone's, to get in touch with
4 Carroll.

5 On the morning of May 23, 2005, LVMPD Detective Sean Michael McGrath and
6 Federal Bureau of Investigation (FBI) agent Bret Shields put an electronic listening device on
7 Carroll's person; the detectives intended for Carroll to meet at Simone's with Mr. H and the
8 other co-conspirators. Prior to Carroll arriving at Simone's, Mr. H and Espindola engaged in
9 a conversation by passing handwritten notes back and forth. In this conversation, Mr. H
10 instructed Espindola that she should tell Carroll to meet Arial and resign from working at the
11 Palomino under a pretext of taking a leave of absence to care for his sick son. He further
12 instructed Espindola to warn Carroll that if something bad happens to Mr. H then there would
13 be no one to support and take care of Carroll. After the conversation, Espindola tore the notes
14 up and flushed them down a toilet in the women's bathroom at Simone's.

15 When Carroll arrived at Simone's, Espindola directed him to Room 6 where he met
16 with Little Lou. Espindola joined them and asked Carroll if he was wearing "a wire," to which
17 Carroll responded, "Oh come on man. I'm not fucking wired. I'm far from fucking wired,"
18 and he lifted his shirt up. Mr. H was present in his office at Simone's while the three met in
19 Room 6. In the course of the conversation among Carroll, Espindola, and Little Lou, Espindola
20 informed Carroll: "Louie is panicking, he's in a mother fucking panic, cause I'll tell you right
21 now . . . if something happens to him we all fucking lose. Every fucking one of us." Little Lou
22 informed Carroll that "[Mr. H]'s all ready to close the doors and everything and hide go into
23 exile and hide." Espindola emphasized the importance of Carroll not defecting from Mr. H:

24 "Yeah but . . . if the cops can't go no where with you, the shits
25 gonna have to, fucking end, they gonna have to go someplace else,
26 they're still gonna dig. They are gonna keep digging, they're
27 gonna keep looking, they're gonna keep on, they're gonna keep on
28 looking. [pause] Louie went to see an attorney not just for him but
for you as well, just in case. Just in case . . . we don't want it to get
to that point, I'm telling you because if we have to get to that point,
you and Louie are gonna have to stick together."

1 Carroll, who had been prepared by detectives to make statements calculated to elicit
2 incriminating responses, initiated the following exchange:⁹

3 Carroll: Hey what's done is done, you wanted him fucking taken
4 care of we took care of him . . .

5 Espindola: Why are you saying that shit, what we really wanted
6 was for him to be beat up, then anything else, _____ mother
fucking dead.

7 Carroll also stated to Little Lou: "You . . . not gonna fucking[. . .] what the fuck are you talking
8 about don't worry about it . . . you didn't have nothing to do with it," to which Little Lou had
9 no response.

10 Espindola again emphasized that Carroll should not talk to the police and she would
11 arrange an attorney for him:

12 Espindola: _____ all I'm telling you is all I'm telling you is stick
13 to your mother fucking story _____ Stick to your fucking story.
14 Cause I'm telling you right now it's a lot easier for me to try to
15 fucking get an attorney to get you fucking out than it's gonna be
16 for everybody to go to fucking jail. I'm telling you once that
happens we can kiss everything fucking goodbye, all of it . . . your
kids' salvation and everything else . . . It's all gonna depend on
you.

17 Little Lou also instructed Carroll to remain quiet and what Carroll should tell police if
18 confronted: "[whispering] . . . _____ don't say shit, once you get an attorney, we can
19 say _____ TJ, they thought he was a pimp and a drug dealer at one time _____ I don't
20 know shit, I was gonna get in my car and go promote but they started talking about drugs and
21 pow pow." He also promised to support Carroll should Carroll go to prison for conspiracy:

22 Little Lou: . . . How much is the time for a conspiracy _____

23 Carroll: [F]ucking like 1 to 5 it aint shit.

24 Little Lou: In one year I can buy you twenty-five thousand of those
25 [savings bonds], _____ thousand dollars _____ one year, you'll come out
26 and you'll have a shit load of money _____ I'll take care of your
27 son I'll put em in a nice condo _____

28 _____
⁹ The audio recordings of Carroll's conversations are of poor quality and inaudible portions are indicated by blanks.

1 During this May 23rd wiretapped conversation, Little Lou also solicited Zone and
2 Taoipu's murder. In response to Carroll's claims that Zone and Taoipu were demanding money
3 and threatening to defect to the police, Little Lou proposed killing both young men:

4 Carroll: They're gonna fucking work deals for themselves, they're
5 gonna get me for sure cause I was driving, they're gonna get KC
6 because he was the fucking trigger man. They're not gonna do
anything else to the other guys cause they're fucking snitching.

7 Little Lou: Could you have KC kill them too, we'll fucking put
something in their food so they die rat poison or something.

8 Carroll: We can do that too.

9 Little Lou: And we get KC last.

10 ...

11 Little Lou: Listen ____ You guys smoke weed right, after you have
12 given them money and still start talking they're not gonna expect
13 rat poisoning in the marijuana and give it to them ____

14 Espindola: I'll get you some money right now.

15 Little Lou: Go buy rat poison ____ and take ____ back to the
club...Here, [d]rink this right.

16 Carroll: [W]hat is it?

17 Little Lou: Tanguerey, [sic] you stir in the poison ____

18 Espindola: Rat poison is not gonna do it I'm telling you right
19 now ____

20 Little Lou: [Y]ou know what the fuck you got to do.

21 Espindola: ____ takes so long ____ not even going to fucking
kill him.

22 At the end of the meeting, Espindola stated she would give Carroll some money and promised
23 to financially contribute to Carroll and his son, as well as arrange for an attorney for Carroll.
24 After the meeting, Carroll provided the detectives \$1,400.00 and a bottle of Tanqueray, which
25 he stated were given to him by Espindola and Little Lou, respectively.¹⁰

26
27
28 ¹⁰ Espindola would later testify Mr. H gave her only \$600 to give to Carroll, which she did in fact give to Carroll on the
23rd.

1 On May 24, 2005, the detectives again outfitted Carroll with a wire and sent him back
2 to Simone's. After Carroll's unexpected arrival, Espindola again directed him to Room 6 where
3 the two again meet with Little Lou while Mr. H was present in the body shop's kitchen area.
4 During the conversation, Carroll and Espindola engaged in an extended colloquy regarding
5 their agreement to harm Hadland:

6 Carroll: You know what I'm saying, I did everything you guys asked me to do.
7 You told me to take care of the guy; I took care of him.

8 Espindola: O.K. wait, listen, listen to me (Unintelligible)

9 Carroll: I'm not worried.

10 Espindola: Talk to the guy, not fucking take care of him like get him out of the
11 fucking way (Unintelligible). God damn it, I fucking called you.

12 Carroll: Yeah, and when I talked to you on the phone, Ms. Anabel, I specifically
13 I specifically said, I said "if he's by himself, do you still want me to do him in."

14 Espindola: I I . . .

15 Carroll: You said Yeah.

16 Espindola: I did not say "yes."

17 Carroll: you said if he's with somebody, then beat him up.

18 Espindola: I said go to plan B, -- fucking Deangelo, Deangelo you just told
19 admitted to me that you weren't fucking alone I told you 'no', I fucking told you
20 'no' and I kept trying to fucking call you and you turned off your mother fucking
21 phone.

22 Carroll: I never turned off my phone.

23 Espindola: I couldn't reach you.

24 Carroll: I never turned off my phone. My phone was on the whole fucking night.

25 . . .

26 Carroll: Ms. Anabel
27
28

1 to Commit a Battery with a Deadly Weapon or Battery Resulting in Substantial Bodily Harm;
2 and Count 2 – Guilty of Second Degree Murder with Use of a Deadly Weapon.

3 On March 10, 2009, Defendant filed a Motion for Judgment of Acquittal, or in the
4 Alternative, a New Trial. The State filed its Opposition on March 17, 2009. Defendant filed
5 a Reply to the State's Opposition on April 17, 2009. Defendant filed his Supplemental Points
6 and Authorities on April 27, 2009. On May 1, 2009, the Court deferred its ruling on the Motion
7 for Judgment of Acquittal and invited additional briefing on the Motion. On June 23, 2009,
8 the court found that there was sufficient evidence to warrant not upsetting the jury verdict and
9 denied Defendant's Motion for Judgment of Acquittal, or in the Alternative, a New Trial. On
10 the same date, the matter proceeded to sentencing.

11 On June 23, 2009, Defendant was adjudged guilty and sentenced as follows: Count 1
12 – 12 months in the Clark County Detention Center; and Count 2 – life imprisonment in the
13 Nevada Department of Corrections with parole eligibility beginning after 120 months, plus an
14 equal and consecutive term of 120 months to life for the deadly weapon enhancement, Count
15 2 to run concurrent with Count 1. Defendant was given 184 days credit for time served. The
16 Judgment of Conviction was filed on July 10, 2009.¹²

17 Defendant filed a Notice of Appeal on July 16, 2009. The Nevada Supreme Court
18 issued its Order of Affirmance on June 21, 2012. On July 27, 2012, the Nevada Supreme
19 Court issued an Order Denying Rehearing. The Nevada Supreme Court issued an Order
20 Denying En Banc Reconsideration on November 13, 2012. Remittitur issued on April 10,
21 2013.

22 On December 31, 2013, Defendant filed a Petition for Writ of Habeas Corpus
23 ("Petition"), a Memorandum of Points and Authorities In Support of Petition for Writ of
24 Habeas Corpus ("Memorandum"), a Motion to Proceed in Forma Pauperis and a Motion for
25 Appointment of Counsel. On January 21, 2014, the Court appointed post-conviction counsel.
26 On February 4, 2014, Margaret A. McCletchie, Esq., confirmed as counsel.

27
28 ¹² An Amended Judgment of Conviction was filed on August 19, 2009, in order to reflect that on Count 1, Defendant was
adjudged guilty of Conspiracy to Commit Battery with a Deadly Weapon or Battery Resulting in Substantial Bodily Harm,
rather than Conspiracy to Commit Battery with a Deadly Weapon.

1 On February 29, 2016, Petitioner, through counsel, filed the instant Supplemental
2 Memorandum of Points and Authorities in Support of Petition for Writ of Habeas Corpus
3 (Post-Conviction) ("Supplement"). The State filed its Response to the Supplement on May 18,
4 2016. On August 11, 2016, this Court heard argument. On August 15, 2016, this Court denied
5 habeas relief.

6 The Court now orders that Petitioner's Petition be DISMISSED, as Petitioner received
7 effective assistance of trial and appellate counsel.

8 **I. Defendant Received Effective Assistance of Counsel**

9 Claims of ineffective assistance of counsel are analyzed under the two-pronged test
10 articulated in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), wherein the
11 defendant must show: (1) that counsel's performance was deficient, and (2) that the deficient
12 performance prejudiced the defense. Id. at 687, 104 S. Ct. at 2064. "A court may consider the
13 two test elements in any order and need not consider both prongs if the defendant makes an
14 insufficient showing on either one." Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107
15 (1997).

16 "Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559
17 U.S. 356, 371, 130 S. Ct. 1473, 1485 (2010). The question is whether an attorney's
18 representations amounted to incompetence under prevailing professional norms, "not whether
19 it deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86,
20 88, 131 S. Ct. 770, 778 (2011). Further, "[e]ffective counsel does not mean errorless counsel,
21 but rather counsel whose assistance is '[w]ithin the range of competence demanded of
22 attorneys in criminal cases.'" Jackson v. Warden, Nevada State Prison, 91 Nev. 430, 432, 537
23 P.2d 473, 474 (1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441,
24 1449 (1970)).

25 The court begins with the presumption of effectiveness and then must determine
26 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
27 ineffective. Means v. State, 120 Nev. 1001, 1011-1012, 103 P.3d 25, 32-33 (2004). The role
28 of a court in considering alleged ineffective assistance of counsel is "not to pass upon the

1 merits of the action not taken but to determine whether, under the particular facts and
2 circumstances of the case, trial counsel failed to render reasonably effective assistance.”
3 Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (citing Cooper v. Fitzharris,
4 551 F.2d 1162, 1166 (9th Cir. 1977)).

5 In considering whether trial counsel was effective, the court must determine whether
6 counsel made a “sufficient inquiry into the information . . . pertinent to his client’s case.”
7 Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996) (citing Strickland, 466 U.S. at
8 690–91, 104 S. Ct. at 2066). Then, the court will consider whether counsel made “a reasonable
9 strategy decision on how to proceed with his client’s case.” Doleman, 112 Nev. at 846, 921
10 P.2d at 280 (citing Strickland, 466 U.S. at 690–91, 104 S. Ct. at 2066). Counsel’s strategy
11 decision is a “tactical” decision and will be “virtually unchallengeable absent extraordinary
12 circumstances.” Doleman, 112 Nev. at 846, 921 P.2d at 280.

13 This analysis does not indicate that the court should “second guess reasoned choices
14 between trial tactics, nor does it mean that defense counsel, to protect himself against
15 allegations of inadequacy, must make every conceivable motion no matter how remote the
16 possibilities are of success.” Donovan, 94 Nev. at 675, 584 P.2d at 711 (citing Cooper, 551
17 F.2d at 1166 (9th Cir. 1977)). In essence, the court must “judge the reasonableness of counsel’s
18 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s
19 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. However, counsel cannot be deemed
20 ineffective for failing to make futile objections, file futile motions, or for failing to make futile
21 arguments. Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

22 In order to meet the second “prejudice” prong of the test, the defendant must show a
23 reasonable probability that, but for counsel’s errors, the result of the trial would have been
24 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999). “A reasonable
25 probability is a probability sufficient to undermine confidence in the outcome.” Strickland,
26 466 U.S. at 694, 104 S. Ct. at 2068.

27 Claims asserted in a petition for post-conviction relief must be supported with specific
28 factual allegations, which if true, would entitle the petitioner to relief. Hargrove v. State, 100

1 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” or “naked” allegations are not sufficient, nor
2 are those belied and repelled by the record. Id.; see also NRS 34.735(6).

3 **A. Counsel Was Not Encumbered With an Unwaived Actual Conflict of**
4 **Interest**

5 A defendant has a constitutional right under the Sixth Amendment to the effective
6 assistance of counsel unhindered by conflicting interests. Holloway v. Arkansas, 435 U.S. 475,
7 98 S. Ct. 1173 (1978); Coleman v. State, 109 Nev. 1, 3, 846 P.2d 276, 277 (1993); Harvey v.
8 State, 96 Nev. 850, 619 P.2d 1214 (1980). Where the trial court is unaware of the potential
9 conflict of interest, to establish a claim of ineffective assistance of counsel based on a conflict
10 of interest, a defendant must show that the conflict of interest adversely affected his attorney’s
11 performance. Mickens v. Taylor, 535 U.S. 162, 173, 122 S. Ct. 1237, 1244-45 (2002). “[U]ntil
12 a defendant shows that his counsel actively represented conflicting interests, he has not
13 established the constitutional predicate for his claim of ineffective assistance.” Cuyler v.
14 Sullivan, 446 U.S. 335, 350, 100 S. Ct. 1708, 1719 (1980). An actual conflict of interest which
15 adversely affects a lawyer’s performance will result in a presumption of prejudice to the
16 defendant. Id.; Mickens, 535 U.S. at 166, 122 S. Ct. at 1237. Mannon v. State, 98 Nev. 224,
17 226, 645 P.2d 433, 434 (1982).

18 The United States Supreme Court has defined an actual conflict under the Sixth
19 Amendment as “a conflict of interest that adversely affects counsel’s performance.” Mickens,
20 535 U.S. at 172, 122 S. Ct. at 1244. Quoting the Second Circuit’s definition of an actual
21 conflict as defined in United States v. Levy, 25 F.3d 146, 155 (2d Cir. 1994), the Ninth Circuit
22 Court of Appeals has stated:

23 An attorney has an actual, as opposed to a potential, conflict of
24 interest when, during the course of the representation, the
attorney’s and the defendant’s interests diverge with respect to a
material factual or legal issue or to a course of action.

25 United States v. Baker, 256 F.3d 855, 860 (9th Cir. 2001). Similarly, in Clark v. State, 108
26 Nev. 324, 326, 831 P.2d 1374, 1376 (1992), the Nevada Supreme Court defined an actual
27 conflict as one where the personal interests of the attorney are in clear conflict with that of the
28

1 client, such as in dual representation situations or in instances when the attorney has a personal
2 interest in the outcome of his client's case such that it adversely affects his representation. Id.

3 Conflicts relating to dual representation can be waived. "Under the Sixth Amendment,
4 criminal defendants 'who can afford to retain counsel have a qualified right to obtain counsel
5 of their choice.'" Ryan v. Eighth Judicial Dist. Ct., 123 Nev. 419, 426, 168 P.3d 703, 708
6 (2007) (quoting United States v. Ray, 731 F.2d 1361, 1365 (9th Cir. 1984)). However, this
7 interest, in cases of dual representation, often conflicts with the right to conflict-free counsel.
8 Id.

9 Despite this potential conflicts between the right to choose retained counsel and the
10 right to conflict-free counsel, "[b]ecause there can be a benefit in a joint defense against
11 common criminal charges, there is no per se rule against dual representation." Ryan v. Eighth
12 Judicial Dist. Ct., 123 Nev. 419, 426, 168 P.3d 703, 708 (2007) (citing Holloway v. Arkansas,
13 435 U.S. 475, 482-83, 98 S. Ct. 1173 (1978)). And, on balance of the two conflicting interests,
14 "there is a strong presumption in favor of a non-indigent criminal defendant's right to counsel
15 of her own choosing . . . [and] [t]his presumption should rarely yield to the imposition of
16 involuntary conflict-free representation." Id. at 428, 168 P.3d at 709. That being said, "when
17 a defendant knowingly, intelligently, and voluntarily waives her right to conflict-free
18 representation, she also waives her right to seek a mistrial arising out of such conflicted
19 representation. Further, the waiver is binding on the defendant throughout trial, on appeal, and
20 in habeas proceedings. Thus, the defendant cannot subsequently seek a mistrial arising out of
21 the conflict that he waived and "cannot . . . be heard to complain that the conflict he waived
22 resulted in ineffective assistance of counsel." Id. at 429, 168 P.3d at 710.

23 In Ryan, the Nevada Supreme Court directed district courts, in assessing joint
24 representation cases, to conduct extensive canvasses to (1) determine whether each of the
25 defendants have made a knowing, intelligent, and voluntary waiver of their right to conflict-
26 free representation; and (2) advise each defendant that a waiver of the right to conflict-free
27 representation means that they cannot seek a mistrial or raise claims of ineffective assistance
28 of counsel based on any conflict caused by the dual representation. There is also a third

1 requirement, imposed on defense counsel – attorneys must advise the defendants of their right
2 to consult with independent counsel to advise them on the potential conflict of interest and the
3 consequences of waiving the right to conflict-free representation, and must advise the clients
4 to seek the advice of independent counsel before the attorney engages in the dual
5 representation. Id. at 430, 168 P.3d at 710-11. If the clients choose not to seek the advice of
6 independent counsel, the clients must expressly waive the right to do so before agreeing to any
7 waiver of conflict-free representation. Id.

8 Prior to Little Lou's representation by separate counsel, the Nevada Supreme Court
9 determined that Gentile's pre-arrest representation of Defendant and his representation of
10 Little Lou did not create a conflict of interest. Hidalgo v. Eighth Judicial Dist. Court, 124 Nev.
11 330, 333, 184 P.3d 369, 372 (2008) ("Based on the affidavits submitted by Hidalgo, his
12 counsel, and Hidalgo's father, we perceive no current or potential conflict sufficient to warrant
13 counsel's disqualification at this time."). Additionally, after this decision, this Court conducted
14 an extensive evidentiary hearing on whether he knowingly and voluntarily waived any conflict
15 resulting from joint representation and whether he was informed of the necessary
16 requirements.

17 Defendant first provided background concerning his work experience and his
18 relationship with Mr. Gentile. He testified that although he was born in El Salvador, he
19 received schooling in the United States and reads and writes the English language. Recorder's
20 Transcript Re: Hearing: Potential Conflict, February 13, 2013, at 83 (filed under seal). He had
21 extensive experience in the justice system, and worked at a Sheriff's Office in Northern
22 California. Id. at 81. He cited an experience in his twenties with law enforcement where he
23 was initially arrested but the charges were ultimately dismissed. Id. at 85. He cited the specific
24 section of the California Penal Code (Cal. Penal Code § 849(a)) under which his case was
25 dismissed. Id. He met trial counsel through prior litigation, when he was representing an
26 opposing party. Id. at 88. Initially, he retained Gentile to counsel him, considering the potential
27 that criminal charges would be filed against him. Id. at 92-93. Gentile then involved himself
28 in Little Lou's case when Little Lou's case was before the Nevada Supreme Court during

1 litigation of a writ of mandamus. Id. at 93. He asked Mr. Gentile to represent his son. Id. at
2 150. Defendant acknowledged he was waiving his rights to raise a claim relating to the dual
3 representation and any impact it had on Defendant's defense. Id. at 152-53. He determined
4 that it was in his best interest to waive the conflict and continue dual representation. Id. at 154.

5 Subsequently, Defendant testified that he spoke to two independent counsel concerning
6 potential conflicts of interest – Michael Cristalli, Esq., and Amy Chelini, Esq. Id. at 102. He
7 spoke to these attorneys after he learned Espindola would be testifying. Id. at 104. He was
8 advised by these attorneys as to the fact he could not claim ineffective assistance based on any
9 conflicts of interest. Id. at 105-06. He understood what the attorneys were telling him. Id. at
10 106.

11 Mr. Cristalli testified that he spoke with Defendant about the potential conflicts that
12 would result from joint representation. Id. at 108-09. Cristalli was not compensated for his
13 advice. Id. at 111. He focused on the issues raised in Ryan. Id. at 114. Ms. Chelini testified to
14 the same effect. Id. at 116-18. She also noted that Defendant was “more than confident with
15 Mr. Gentile and is more than happy to sign any waiver and understands the consequences of
16 doing such.” Id. at 117.

17 Thus, Defendant effectively waived any claim arising from Mr. Gentile's dual
18 representation of him and his son. Accordingly, this claim is denied.

19 Also, based on the discussion below, Mr. Gentile did not have a conflict of interest
20 based on the grounds raised in the Supplement.

21 **i. Counsel and Defendant's Fee Agreement, Involving the Purchase**
22 **of Bermuda Sands LLC by Counsel, Was Not Improper**

23 Defendant first claims that Mr. Gentile rendered ineffective assistance due to a conflict
24 of interest relating to Defendant's agreement to sell his interest in Bermuda Sands LLC to
25 Gentile in exchange for legal representation. Supplement at 31. The claim in essence is that
26 Gentile committed an ethical violation by allegedly violating Nevada Rule of Professional
27 Conduct (“NRPC”) 1.8(a) which states:

28 A lawyer shall not enter into a business transaction with a client or
knowingly acquire an ownership, possessory, security or other

pecuniary interest adverse to a client unless:

- (1) The transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
- (2) The client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
- (3) The client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.


Supplement at 30.

First, and most importantly, even if Defendant could show a violation under the Nevada Rules of Professional Conduct by Gentile, it is irrelevant to a claim of ineffective assistance due to an actual conflict of interest under the Sixth Amendment standard. Nix v. Whiteside, 475 U.S. 157, 165, 106 S. Ct. 988, 993 (1986) (“[B]reach of an ethical standard does not necessarily make out a denial of the Sixth Amendment guarantee of assistance of counsel.”). Also, the professional obligations of the Nevada Rules of Professional Conduct, by their plain language, do not create an independent basis for relief in a criminal case. NRPC 1.0A provides guidance on interpreting the rules and specifically indicates that the rules are not meant to be used in litigation outside the context of a bar complaint:

Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, since the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct.

1 NRPC 1.0A(d). Instead, Defendant is required to show that any conflict of interest "adversely
2 affect[ed] counsel's performance," Mickens, 535 U.S. at 172, 122 S. Ct. at 1244, and were in
3 clear conflict with the Defendant's interests, Clark, 108 Nev. at 326, 831 P.2d at 1376.
4 Defendant has failed to show that Mr. Gentile's representation was adversely affected by his
5 business dealings with Defendant or that Gentile's interests were in *clear* conflict with
6 Defendant's interests. He instead focuses only on whether Gentile's conduct violated NRPC
7 1.8(a).

8 Defendant does not even establish a violation of NRPC 1.8(a).¹³ He claims that because
9 Gentile entered into a purchase agreement with Defendant to transfer Defendant's interest in
10 Bermuda Sands LLC, in exchange for \$500,000, and because this agreement was done without
11 a valuation of the asset prior to the transaction, there was a violation of the rule. Supplement
12 at 31. He also points to sale of other LLCs to Mr. Gentile's son for \$30,000, and use of
13 Defendant as a consultant, as evidence that this ethical rule was violated. Id. However, at the
14 evidentiary hearing concerning Gentile's joint representation of Defendant and Little Lou,
15 Defendant testified that *he* had offered to enter a property transaction to pay the fee for legal
16 representation of him, Little Lou and Espindola. Recorder's Transcript Re: Hearing: Potential
17 Conflict, February 13, 2013, at 96-101. Defendant consulted independent counsel, Mark
18 Nicoletti, who he had known previously and had used for business transactions. *Nicoletti*
19 drafted the fee agreement. Id. The agreement was to transfer Defendant's interest in the LLCs
20 controlling the club and owning the property, as well as the note on the property in exchange
21 for Gentile's representation and the legal fees of Espindola and Little Lou. Id. This testimony
22 clearly establishes that Defendant entered into this business transaction knowingly and
23 voluntarily, with advice from independent counsel, and that he proposed the transaction
24

25 ¹³ Also, if Defendant's counsel was actually concerned as to whether Mr. Gentile violated the NRPC, the State imagines
26 she would have reported his conduct to the State Bar of Nevada. In fact, the rules *impose* a duty to report, as "[a] lawyer
27 who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial
28 question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate
professional authority." NRPC 8.3(a). ~~It is professional misconduct to violate this rule and any other rule as contained in~~
~~the NRPC. NRPC 8.4. One would think that if counsel indeed thought Mr. Gentile strong-armed Defendant into an unfair~~
~~transaction, it would raise a substantial question as to his honesty and trustworthiness as an attorney. Yet, no evidence of~~
~~a bar complaint has been shown.~~ 

1 himself in order to pay for legal fees. Defendant was a sophisticated businessman who
2 conducted an arms-length transaction with Gentile in order to secure his representation. Both
3 parties assumed risks but obtained benefits in the transaction – Defendant assumed the risk
4 that he was paying less for the property than fair market value, in exchange for an open line of
5 credit to fund his, Little Lou’s and Espindola’s defenses, while Gentile assumed the risk that
6 the property would be unprofitable or that legal fees would exceed the value of the property.
7 Accordingly, the testimony at the evidentiary hearing alone satisfies the rule and shows that
8 the transaction was entirely fair.

9 Also, the terms of the agreement were fair. That the property was not subjected to a
10 valuation is irrelevant. And Defendant’s allegation that this transaction was unfair because the
11 property was undervalued, is a bare, naked assertion that should be summarily rejected by this
12 Court. Hargrove, 100 Nev. at 502-03, 686 P.2d at 225.

13 Defendant received another substantial benefit from the fee agreement, beyond that of
14 legal representation. Notably, trial testimony established that pre-Hadland’s murder, the
15 Palomino was not in a good financial state and Defendant was having trouble meeting the
16 \$10,000.00 per *week* payment due to Dr. Simon Sturtzer (through Windrock LLC) from whom
17 he purchased the club in early 2003. Recorder’s Transcript of Proceedings: Jury Trial – Day
18 9, February 6, 2009, at 20-29, 80; Recorder’s Transcript of Proceedings: Jury Trial – Day 10,
19 February 9, 2009, at 5. As Defendant acknowledges, Gentile through an LLC acquired the note
20 on which Defendant was obligated to pay and negotiated a new note to Windrock LLC with a
21 much lower principal and monthly payment. Defendant’s Appendix for Supplemental Petition
22 for Writ of Habeas Corpus Under Seal (“Sealed App’x”) at 8; Recorder’s Transcript Re:
23 Hearing: Potential Conflict, February 13, 2013, at 77. Accordingly, Defendant was relieved
24 from an obligation to pay the exorbitant weekly payment due on the note, that he had trouble
25 making even before the murder mired the Palomino Club in scandal. Defendant clearly
26 received this benefit in addition to the benefit of legal representation through his fee agreement
27 with Gentile. The additional agreements between Gentile, Gentile’s son, and Defendant do not
28

1 contradict this, and just show that Defendant found creative ways to satisfy his debts for legal
2 services provided by Gentile.¹⁴

3 Additionally, once again, Defendant fails to show that any unfairness within the
4 business deal created an *actual* conflict under the Sixth Amendment, as he cannot show that
5 this transaction affected counsel's representation in the instant criminal matter. Mickens, 535
6 U.S. at 172, 122 S. Ct. at 1244; Clark, 108 Nev. at 326, 831 P.2d at 1376. All claims of a
7 violation of NRPC 1.8(a) and the Sixth Amendment right to counsel are bare allegations that
8 are undeserving of relief or an evidentiary hearing. Accordingly, they are denied by this Court.

9 **ii. Counsel's Alleged Failure to Fully Fund Little Lou's and**
10 **Espindola's Defenses Fails to Show a Conflict of Interest or**
Ineffective Assistance

11 Defendant next claims that Gentile's "apparent failure" to fully fund Little Lou's and
12 Espindola's defenses prejudiced him, because "Espindola's belief that Mr. Gentile was not
13 paying for her defense led to her decision to testify against [Defendant] and his son."
14 Supplement at 32.

15 Defendant provides no authority for the proposition that Gentile was required under the
16 Sixth Amendment of the United States Constitution to monetarily placate Defendant's co-
17 conspirators so as to induce them not to testify. This failure is fatal, and is thus construed as
18 an admission that he was not, and is not, entitled to an evidentiary hearing on this issue. District
19 Court Rule 13(2); Eighth Judicial District Court Rule 3.20(b); Polk v. State, 126 Nev. ___,
20 ___, 233 P.3d 357, 360-61 (2010). Further, this Court need not address arguments that are not
21 supported with precedent. Edwards v. Emperor's Garden Rest., 122 Nev. 317, 330, n.38, 130
22 P. 3d 1280, n.38 (2006) (court need not consider claims unsupported by relevant authority);
23 State, Dept. of Motor Vehicles and Public Safety v. Rowland, 107 Nev. 475, 479, 814 P.2d
24 80, 83 (1991) (unsupported arguments are summarily rejected on appeal); Maresca v. State,
25 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant
26 authority and cogent argument; issues not so presented need not be addressed by this court.");

27 ¹⁴ One would think that had Defendant considered the bargain between him and Gentile unconscionable, he would seek
28 relief under contract law for rescission or reformation of the agreement, or otherwise seek excusal of his performance under
the agreement on this ground. Yet, a review of Odyssey reveals no such contract action.

1 Randall v. Salvation Army, 100 Nev. 466, 470-71, 686 P.2d 241, 244 (1984) (court may
2 decline consideration of issues lacking citation to relevant legal authority); Holland Livestock
3 v. B & C Enterprises, 92 Nev. 473, 533 P.2d 950 (1976) (failure to offer citation to relevant
4 legal precedent justifies affirmation of the judgment below).

5 Nonetheless, the claim is meritless. First, it is belied by the record. Hargrove, 100 Nev.
6 at 502-03, 686 P.2d at 225. During the evidentiary hearing on the issue of dual representation,
7 Mr. Gentile, as an officer of the court, stated that Espindola was distraught by the loss of JoNell
8 Thomas to the defense team. While Oram represented that Espindola wanted certain
9 investigation done, Gentile recommended that they not yet spend funds on penalty-phase
10 investigation, considering that the Nevada Supreme Court had not yet ruled on the mandamus
11 issue concerning the alleged aggravating circumstances. Recorder's Transcript Re: Hearing:
12 Potential Conflict, February 13, 2013, at 76. He also represented that Oram was paid \$60,000
13 for his work. Id. Gentile disbursed money, when it became available, to the other attorneys,
14 not to himself. Id. at 77. These representations belie the claim that Espindola's defense was
15 underfunded.

16 Second, Defendant unreasonably assumes that the Joint Defense Agreement and
17 funding of the defenses of his co-defendants meant that they could never testify against him.
18 This expectation cannot be supported by the Joint Defense Agreement, as it informed
19 Defendant, through his independent counsel at the time (Gentile), of the consequences of a
20 joint defense. Gentile had authority to execute this agreement from Defendant. Sealed App'x
21 at 35.

22 The Joint Defense Agreement informed Defendant that any member of the Joint
23 Defense Agreement could become a witness in the criminal case. Id. It also informed
24 Defendant that any member could withdraw from the agreement. Sealed App'x at 36. Finally,
25 it explicitly informed Defendant that each client had independent counsel and each counsel
26 had a duty to represent his or her client zealously, even if this meant advising the client to
27 cooperate with the State. Sealed App'x at 37.

28 Finally, Mr. Oram's testimony during the evidentiary hearing on the issue of dual

1 representation does not establish that Espindola turned on Defendant due to any failure to fund
2 her defense. Instead, Espindola was concerned about the independence of Oram and the fact
3 that Defendant held the power of the purse. Recorder's Transcript Re: Hearing: Potential
4 Conflict, February 13, 2013, at 44-45. She also was dissatisfied when JoNell Thomas left the
5 case and believed that it was for a lack of financing (however, Ms. Thomas in fact left the case
6 after taking a position with the Clark County Special Public Defender). Id. at 45-46. This
7 testimony indicates that Defendant's *control* of the financing of her defense, rather than the
8 funding itself, was what she was concerned about. She wanted independent counsel, not a
9 puppet who acceded to the demands of Gentile and Defendant. She wanted assurances that her
10 attorney was acting in her best interest rather than Defendant's or Little Lou's.

11 Oram had an ethical obligation to act in Espindola's best interest and abide by her
12 wishes concerning the ultimate resolution of the matter, whether it be to take a negotiation
13 offered by the State or proceed to trial. See NRPC 1.2(a) ("[A] lawyer *shall* abide by a client's
14 decision concerning the objectives of representation and, as required by Rule 1.4, shall consult
15 with the client as to the means by which they are to be pursued. . . . In a criminal case, the
16 lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to
17 be entered, whether to waive jury trial and whether the client will testify.") (emphasis added);
18 NRPC 1.8(f)(2) (attorney receiving compensation for representation by a third-party must
19 exercise independence of professional judgment and not allow interference with the attorney-
20 client relationship). Oram would have an *actual* conflict under the Sixth Amendment were he
21 to set aside Espindola's best interest and accede to Defendant's desire to use Espindola for
22 Defendant's defense.

23 Oram represented Espindola's best interest by securing her an extremely beneficial
24 negotiation with the State. The State allowed her to plead guilty to Voluntary Manslaughter
25 With Use of a Deadly Weapon (Category B Felony – NRS 200.040, 200.050, 200.080), and
26 agreed to make no recommendation at sentencing in exchange for her testimony against
27 Defendant and Little Lou. See Guilty Plea Agreement, Case No. 05C212667-3, filed February
28 4, 2008, at 1. Prior to this agreement, Espindola was facing the potential of a life sentence as

1 she was charged with Murder with Use of a Deadly Weapon. Information, Case No.
2 05C212667-3, filed June 20, 2005, at 2-3. Instead of a life sentence, Espindola was sentenced
3 to 24 to 72 months in the Nevada Department of Corrections, plus an equal and consecutive
4 term of 24 to 72 months for use of a deadly weapon. Judgment of Conviction, Case No.
5 05C212667-3, filed February 17, 2011. With the 1,379 days credit for time served granted to
6 her, she was very close to parole eligibility even with the consecutive sentences. Id. She
7 received an enormous benefit from the negotiation with the State and received superb
8 representation from Oram. Accordingly, Defendant cannot show a causal connection between
9 the alleged failure to fund Espindola's defense and the deficiency and prejudice prongs as
10 required by Strickland – Espindola and Oram acted in Espindola's best interest, rather than
11 Defendant's, in securing the negotiation, and the negotiation was not fueled by vindictiveness
12 or resentment toward Defendant. This claim is denied.

13 In addition, Defendant provides nothing but a naked assertion in relation to the funding
14 of Little Lou's defense. Defendant fails to show that the defense was underfunded, and fails to
15 show how any failure to fund his son's defense prejudiced him, especially considering that
16 father and son proceeded to trial together. Pursuant to Hargrove, this claim is denied.
17 Hargrove, 100 Nev. at 502-03, 686 P.2d at 225.

18 **iii. Espindola's Alleged Participation in the Joint Defense Agreement**
19 **and Her Subsequent Decision to Turn State's Evidence Did Not**
20 **Create an Irreconcilable Conflict of Interest**

21 Defendant also claims that the Joint Defense Agreement and Espindola's ultimate
22 decision to testify against Defendant and Little Lou created an irreconcilable conflict of
23 interest. Supplement at 32-33. This claim has no merit and is accordingly denied.

24 First, Defendant provides only mere speculation in his claim that "Espindola's counsel
25 undoubtedly participated in joint defense meetings, during which Mr. Gentile could have
26 gleaned information which prevented him from effectively cross-examining Espindola when
27 she testifies as a State's witness" and "[i]t is possible that Mr. Gentile had learned information
28 during the joint defense meetings which would have provided fertile ground for
impeachment." Supplement at 34. While Defendant points to specific meetings between he,

1 Oram, Espindola, and Gentile, he does not establish that the subject matter of these meetings
2 constituted fodder for cross-examination. In fact, the substance of these meetings appear to be
3 the funding requests outlined above and instruction for Espindola not to speak with DeAngelo
4 Carrol, which would not be important for cross-examination.

5 Second, Defendant waived any conflict of interest that could be asserted in the event a
6 co-defendant testified. Even after the Ninth Circuit decided United States v. Henke, 222 F.3d
7 633, 637 (9th Cir. 2000), courts bound by its precedent have found that conflicts of interest
8 arising from an agreement may be waived. In United States v. Stepney, 246 F. Supp. 2d 1069,
9 1085 (N.D. Cal. 2003), the United States District Court for the Northern District of California
10 found appropriate the following waiver provision, taken from the American Law Institute-
11 American Bar Association model joint defense agreement:

12 Nothing contained herein shall be deemed to create an attorney-
13 client relationship between any attorney and anyone other than the
14 client of that attorney and the fact that any attorney has entered
15 this Agreement shall not be used as a basis for seeking to
16 disqualify any counsel from representing any other party in this or
17 any other proceeding; and no attorney who has entered into this
18 Agreement shall be disqualified from examining or cross-
19 examining any client who testifies at any proceeding, whether
20 under a grant of immunity or otherwise, because of such attorney's
21 participation in this Agreement; and the signatories and their
22 clients further agree that a signatory attorney examining or cross-
23 examining any client who testifies at any proceeding, whether
24 under a grant of immunity or otherwise, may use any Defense
25 Material or other information contributed by such client during the
26 joint defense; and it is herein represented that each undersigned
27 counsel to this Agreement has specifically advised his or her
28 respective client of this clause and that such client has agreed to
its provisions.

22 The court specifically noted the advantages of this sort of provision:

23 Under this regime, all defendants have waived any duty of
24 confidentiality for purposes of cross-examining testifying
25 defendants, and generally an attorney can cross-examine using any
26 and all materials, free from any conflicts of interest. This form of
27 waiver also places the loss of the benefits of the joint defense
28 agreement only on the defendant who makes the choice to testify.
Defendants who testify for the government under a grant of
immunity lose nothing by this waiver. Those that testify on their
own behalf have already made the decision to waive their Fifth
Amendment right against self-incrimination and to admit evidence

1 through their cross-examination that would otherwise be
2 inadmissible.

3 The conditional waiver of confidentiality also provides notice to
4 defendants that their confidences may be used in cross-
5 examination, so that each defendant can choose with suitable
6 caution what to reveal to the joint defense group. Although a
7 limitation on confidentiality between a defendant and his own
attorney would pose a severe threat to the true attorney-client
relationship, making each defendant somewhat more guarded
about the disclosures he makes to the joint defense effort does not
significantly intrude on the function of joint defense agreements.

8 Id. at 1085-86; see also United States v. Almeida, 341 F.3d 1318, 1326 (11th Cir. 2003) (“We
9 hold that when each party to a joint defense agreement is represented by his own attorney, and
10 when communications by one co-defendant are made to the attorneys of other co-defendants,
11 such communications do not get the benefit of the attorney-client privilege in the event that
12 the co-defendant decides to testify on behalf of the government in exchange for a reduced
13 sentence.”); United States v. Reeves, 2011 U.S. Dist. LEXIS 139127, *42 (D.N.J. Dec. 2,
14 2011) (accepting a waiver of conflict of interests in a joint defense agreement).¹⁵

15 Here, while not a verbatim form of the ALI-ABA waiver, the Joint Defense Waiver
16 provided for a waiver to the same effect. Defendant and his co-defendants agreed in the Joint
17 Defense Agreement that, in the event that one of them became a witness for the State, that
18 would *not* create a conflict of interest so as to require disqualification. Sealed App’x at 35. The
19 Joint Defense Agreement also acknowledged that each client was informed that if a member
20 defected, his or her counsel could be in possession of information previously shared, including
21 confidences. Id. Also, the Agreement specified that nothing in it was intended to create an
22 attorney-client relationship and information obtained pursuant to the Agreement could not be
23 used to disqualify a member of the joint defense group. Id. Defendant then knowingly and
24 intelligently waived *any* conflict of interest that might otherwise be available based upon the
25 sharing of information pursuant to the Agreement. He was advised of the risks but determined

26
27 ¹⁵ Citation to Reeves is permissible pursuant to Rule 32.1(a) of the Federal Rules of Appellate Procedure, which prohibits
28 a court from restricting citation to “federal judicial opinions, orders, judgments, or other written dispositions that have
been ... issued on or after January 1, 2007.” Accord Gibbs v. United States, 865 F. Supp. 2d 1127, 1133 n.3 (M.D. Fla.
2012), aff’d, 517 Fed. App’x. 664 (2013) (although an unpublished opinion is not binding, it is persuasive authority).

1 that the benefits of the Agreement outweighed the risks. Id. Thus, this agreement constituted
2 a knowing and voluntary waiver of any claim of a conflict of interest based on Espindola's
3 previous membership within the joint defense group. Defendant cannot now claim that there
4 was an irreconcilable conflict of interest, because his informed choice to enter the Joint
5 Defense Agreement extinguished any claim of such.

6 While Henke is merely persuasive, see Blanton v. North Las Vegas Mun. Ct., 103 Nev.
7 623, 633, 748 P.2d 494, 500 (1987) (decisions of federal courts not binding), and Nevada
8 courts have not determined whether a Joint Defense Agreement can create an attorney-client
9 relationship between a lawyer and another member of the joint defense agreement, the case is
10 nonetheless distinguishable. Notably, a limited attorney-client relationship was *implied* from
11 the joint defense agreement in Henke. Here, however, the plain language of the joint defense
12 agreement provided that *no such relationship was created* from the joint defense group.
13 "[A]bsent some countervailing reason, contracts will be construed from the written language
14 and enforced as written." Ellison v. California State Auto. Ass'n, 106 Nev. 601, 603, 797 P.2d
15 975, 977 (1990). There is no reason the law should imply an attorney-client relationship when
16 Defendant has explicitly agreed that no such relationship existed.

17 Further, in Henke, the parties asserted confidentiality and threatened legal action if
18 confidences were not protected. Henke, 222 F.3d at 638. In contrast, here the Joint Defense
19 Agreement waived all conflicts of interest and acknowledged that information obtained during
20 joint defense meetings could be in the hands of a defecting member should he or she choose
21 to testify.

22 Finally, the court in Henke relied on the fact that the confidential information *had* in
23 fact been exchanged, and distinguished cases where joint defense meetings would not create a
24 conflict of interest:

25 There may be cases in which defense counsel's possession of
26 information about a former co-defendant/government witness
27 learned through joint defense meetings will not impair defense
28 counsel's ability to represent the defendant or breach the duty of
confidentiality to the former co-defendant. Here, however, counsel
told the district court that this was not a situation where they could

1 avoid reliance on the privileged information and still fully uphold
2 their ethical duty to represent their clients.

3 Henke, 222 F.3d at 638. Here, as stated above, Defendant has not shown that his counsel
4 obtained confidential information from the joint defense meetings. Thus, he cannot establish
5 a conflict of interest, even under Henke, that would have disqualified Gentile from
6 representing him.

7 Finally, Defendant again fails to satisfy the Sixth Amendment test for determining an
8 actual, rather than a potential, conflict of interest, as he fails to show that counsel's
9 performance was hindered. Clark, 108 Nev. at 326, 831 P.2d at 1376. Instead, Mr. Gentile
10 vigorously cross-examined Espindola. He questioned Espindola's motives to testify, including
11 the possibility of the death penalty, her mother's illness, and Defendant's infidelity.
12 Recorder's Transcript of Proceedings: Jury Trial – Day 10, February 9, 2009, at 102-20, 146-
13 47. Further, he specifically asked her about joint defense meetings and meetings that lead to
14 the joint defense. He questioned Espindola about a meeting where Gentile and Oram were
15 present and where Espindola listened to the Carroll recordings. Id. at 81. He questioned
16 Espindola about the meeting with his partner, Jerry DePalma, Esq., and questioned her veracity
17 when she claimed that she said nothing of substance to DePalma that day. Id. at 85-87. He also
18 cross-examined her about another meeting between him and her, along with Defendant and
19 Oram, directly citing the Joint Defense Agreement. Id. at 135-36. Gentile was in no way
20 hindered in his cross-examination by the Joint Defense Agreement, and Defendant has failed
21 to meet his burden of showing an actual conflict of interest. Accordingly, this claim is denied.

22 **B. Counsel Made a Reasonable Strategic Decision in Conceding the State's
23 Motion to Consolidate Defendant's and Little Lou's Cases**

24 Defendant next complains that his counsel rendered ineffective assistance because he
25 conceded the State's Motion to Consolidate and withdrew his Opposition. Supplement at 35.

26 Notably, the Nevada Supreme Court recently rejected Little Lou's claim regarding his
27 counsel's conceding the consolidation motion in his appeal from the denial of his habeas
28 petition. See Hidalgo, III (Luis) v. State, No. 67640 (Order of Affirmance, filed May 11, 2016,
at 3-4) (attached as State's Exhibit B). While Little Lou's claim was raised on different

1 grounds, concerning the exclusion of evidence he claims would have been admitted were the
2 cases not tried together, this recent denial is persuasive. Id.

3 However, Defendant acknowledges that this decision was made in exchange for the
4 State's withdrawal of its Notice of Intent to Seek the Death Penalty. Id.; Recorder's Transcript
5 of Hearing Re: Motions, January 16, 2009, at 1. This bargain was clearly a reasonable strategy
6 decision that must be respected by this Court. After lengthy efforts to attempt to remove
7 execution as a possible punishment, including the writ proceedings before the Nevada
8 Supreme Court, Gentile's conceding the Motion to Consolidate won the war by taking death
9 off the table and sparing Defendant the ultimate punishment. While Defendant now states that
10 "[t]he limited impact of the removal of the death penalty is evident in the jury's conviction of
11 both Hidalgos for Second Degree Murder, rather than First Degree Murder," he speaks with
12 the benefit of hindsight – at the time, the threat of the death penalty was real, and efforts to
13 strike all statutory aggravators had fallen short. Notably, the Strickland standard does not ask
14 counsel to act with clairvoyance – it asks counsel to act reasonable at the time the decision in
15 question is being made. At the time the Motion to Consolidate was before this Court, the death
16 penalty remained a possibility, and counsel's decision was well-reasoned.

17 In addition, the decision was a sound one, considering that the Motion to Consolidate
18 would likely succeed.¹⁶ In order to promote efficiency and equitable outcomes, Nevada law
19 favors trying multiple defendants together. Jones v. State, 111 Nev. 848, 853, 899 P.2d 544,
20 547 (1995). As a general rule, defendants who are indicted together shall be tried together,
21 absent a compelling reason to the contrary. Rowland v. State, 118 Nev. 31, 44, 39 P.3d 114,
22 122 (2002). "A district court should grant a severance only if there is a serious risk that a joint
23 trial would compromise a specific trial right of one of the defendants, or prevent the jury from
24 making a reliable judgment about guilt or innocence." Chartier v. State, 124 Nev. 760, 765,
25 191 P.3d 1182, 1185 (2008) (quoting Marshall v. State, 118 Nev. 642, 646, 56 P.3d 376, 378

26
27 ¹⁶ Defendant appears to complain of efforts to move this case to the same department as Little Lou's case. Supplement at
28 35. This decision was reasonable in light of Defendant's initial desire to have the same attorney as Little Lou. In addition,
Defendant cannot show any prejudice, as the State could have sought consolidation even absent the case being sent to the
same department.

1 (2002)); see also NRS 174.165.

2 Generally speaking, severance is proper only in two instances. The first is where the
3 codefendants' theories of defense are so antagonistic that they are "mutually exclusive" such
4 that "the core of the codefendant's defense is so irreconcilable with the core of the defendant's
5 own defense that the acceptance of the codefendant's theory by the jury precludes acquittal of
6 the defendant." Chartier, 124 Nev. at 765, 191 P.3d at 1185 (quoting Rowland, 118 Nev. at
7 45, 39 P.3d at 122-23) (alteration omitted). The second instance is "where a failure to sever
8 hinders a defendant's ability to prove his theory of the case." Id. at 767, 191 P.3d at 1187.

9 Even when one of the above situations are presented, a defendant must also show that
10 there is "a serious risk that a joint trial would compromise a specific trial right . . . or prevent
11 the jury from making a reliable judgment about guilt or innocence." Marshall, 118 Nev. at 647,
12 56 P.3d at 379 (quoting Zafiro v. United States, 506 U.S. 534, 539, 113 S. Ct. 933, 938 (1993)).
13 To show prejudice from an improper joinder "requires more than simply showing that
14 severance made acquittal more likely; misjoinder requires reversal only if it has a substantial
15 and injurious effect on the verdict." Chartier, 124 Nev. at 764-65, 191 P.3d at 1185 (quoting
16 Marshall, 118 Nev. at 647, 56 P.3d at 379). Further, "some level of prejudice exists in a joint
17 trial, error in refusing to sever joint trials is subject to harmless-error review." Id.

18 Defendant claims that he suffered spill-over prejudice due to his being tried along with
19 Little Lou. Supplement at 36. However, there was no such effect. While he claims that "more"
20 evidence implicated Little Lou than him, Carroll's conversations with Espindola and
21 Espindola's testimony implicate Defendant and would have been entirely admissible at a trial
22 where he was the sole defendant. Espindola's testimony served as the connection between
23 Little Lou's actions and Defendant's orders, as she established that Defendant had ordered
24 Carroll to switch to "Plan B." Recorder's Transcript of Proceedings: Jury Trial – Day 9,
25 February 6, 2009, at 70. While Defendant tries to undercut Espindola's testimony as
26 "circumstantial at best," this testimony was damning, specific, and showed that Defendant was
27 part of the conspiracy to cause harm to Hadland. There was no spill-over prejudice that would
28

1 warrant severance, and Defendant was proven equally culpable within the conspiracy so as to
2 make any lack of severance benign.

3 In addition, while Defendant claims that his defense was antagonistic to his son's, they
4 were not. Supplement at 38. Both defendant's closing arguments focused on claiming that
5 neither joined the conspiracy or aided and abetted Carroll in killing Hadland. Recorder's
6 Transcript of Proceedings: Jury Trial – Day 13, February 12, 2009, at 145-79, 180-24. At no
7 point in the argument did Little Lou's counsel claim that Defendant had joined the conspiracy
8 and Little Lou had not.

9 Defendant again focuses on the evidence implicating Little Lou, but this evidence
10 equally implicated Defendant, along with Espindola's testimony, and would have been
11 admissible were Defendant tried alone. Also, Defendant's complaints about the father-son
12 relationship resulting in guilt by association are mere speculation and would have been
13 insufficient to show antagonistic defenses or spill-over warranting severance. Finally,
14 Defendant's claim that Little Lou's defense team "would essentially be tasked with defending
15 [Defendant] at the expense of their client's child," clearly cannot establish prejudice to
16 *Defendant*, considering that he would be the beneficiary of such divided attention. Supplement
17 at 38.

18 Therefore, it is clear that severance would have been unwarranted and counsel's efforts
19 to prevent it would have been futile. Ennis, 122 Nev. at 706, 137 P.3d at 1103. Instead of
20 losing the Motion to Consolidate outright, counsel instead secured Defendant a windfall by
21 conceding the Motion and removing death as a sentencing option. These tactics were entirely
22 reasonable in light of the threat of execution, and should be respected by this Court. This claim
23 is accordingly denied.

24 **C. Defendant Received Effective Assistance of Appellate Counsel**

25 Defendant also alleges counsel was ineffective while the case was in appellate posture.
26 Supplement at 39-41. However, appellate counsel is not required to raise every issue that
27 Defendant felt was pertinent to the case. The United States Supreme Court has held that there
28 is a constitutional right to effective assistance of counsel in a direct appeal from a judgment of

conviction. Evitts v. Lucey, 469 U.S. 387, 396-97, 105 S. Ct. 830, 835-37 (1985); see also Burke v. State, 110 Nev. 1366, 1368, 887 P.2d 267, 268 (1994). The federal courts have held that in order to claim ineffective assistance of appellate counsel, the defendant must satisfy the two-prong test of deficient performance and prejudice set forth by Strickland. Williams v. Collins, 16 F.3d 626, 635 (5th Cir. 1994); Hollenback v. United States, 987 F.2d 1272, 1275 (7th Cir. 1993); Heath v. Jones, 941 F.2d 1126, 1130 (11th Cir. 1991).

There is a strong presumption that counsel's performance was reasonable and fell within "the wide range of reasonable professional assistance." See United States v. Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990). All appeals must be "pursued in a manner meeting high standards of diligence, professionalism and competence." Burke, 110 Nev. at 1368, 887 P.2d at 268. Finally, in order to prove that appellate counsel's alleged error was prejudicial, a defendant must show that the omitted issue would have had a reasonable probability of success on appeal. Duhamel v. Collins, 955 F.2d 962, 967 (5th Cir. 1992); Heath, 941 F.2d at 1132; Lara v. State, 120 Nev. 177, 184, 87 P.3d 528, 532 (2004); Kirksey, 112 Nev. at 498, 923 P.2d at 1114.

The defendant has the ultimate authority to make fundamental decisions regarding his case. Jones v. Barnes, 463 U.S. 745, 751, 103 S. Ct. 3308, 3312 (1983). However, the defendant does not have a constitutional right to "compel appointed counsel to press nonfrivolous points requested by the client, if counsel, as a matter of professional judgment, decides not to present those points." Id. In reaching this conclusion the United States Supreme Court has recognized the "importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most on a few key issues." Id. at 751-752, 103 S. Ct. at 3313. In particular, a "brief that raises every colorable issue runs the risk of burying good arguments . . . in a verbal mound made up of strong and weak contentions." Id. at 753, 103 S. Ct. at 3313. The Court also held that, "for judges to second-guess reasonable professional judgments and impose on appointed counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy." Id. at 754, 103 S. Ct. at 3314. The Nevada Supreme Court has similarly concluded that

1 appellate counsel may well be more effective by not raising every conceivable issue on appeal.
2 Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

3 **1. Counsel Was Not Ineffective For Any Failure to Raise the Severance Issue on**
4 **Appeal**

5 Defendant complains that, after counsel conceded the Motion to Consolidate in order
6 to take death off the table, counsel did not raise the issue on appeal. Supplement at 39. As
7 discussed above, the decision to concede the Motion to Consolidate was a reasonable strategy
8 in light of the State's agreement to withdraw its Notice of Intent to Seek the Death Penalty and
9 the lack of merit to any opposition to the Motion to Consolidate. Additionally, there was no
10 ineffective assistance of appellate counsel because, in light of counsel's agreement to withdraw
11 opposition to the Motion to Consolidate, the doctrine of invited error precluded raising this
12 issue on appeal. LaChance v. State, 130 Nev. ___, ___, 321 P.3d 919, 928 (2014); Pearson v.
13 Pearson, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994). Further, this issue would have been
14 considered waived on appeal since it was not litigated in the trial court. Dermody v. City of
15 Reno, 113 Nev. 207, 210-11, 931 P.2d 1354, 1357 (1997); Guy v. State, 108 Nev. 770, 780
16 839 P.2d 578, 584 (1992), cert. denied, 507 U.S. 1009, 113 S. Ct. 1656 (1993); Davis v. State,
17 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991). Nor will the Nevada Supreme Court consider
18 an issue that is initially raised before the lower court but then abandoned. Buck v. Greyhound
19 Lines, Inc., 105 Nev. 756, 766, 783 P.2d 437, 443 (1989). Considering this, counsel's failure
20 to raise this issue on direct appeal did not constitute deficient performance nor cause Defendant
21 prejudice. This is especially true in light of the lack of any prejudice suffered due to the
22 consolidation, as discussed *supra* and incorporated here. Accordingly, this claim is denied.

23 **2. Counsel Was Not Ineffective For Not Raising Claims of Error Relating to the**
24 **"Hearsay" During Zone's Testimony**

25 Defendant next contends that counsel should have raised as a claim of error the Court's
26 overruling the objection to Zone's testimony concerning Carroll's statement to him while in
27 presence of the police. Supplement at 40-42. The statement was, "if you don't tell the truth,
28 we're going to jail." Recorder's Transcript of Proceedings: Jury Trial – Day 6, February 3,
29 2009, at 137. Defendant also notes that Detective McGrath testified to the same statement, that

1 Carroll told Zone, “tell them the truth, tell them the truth. I told them the truth.” Recorder’s
2 Transcript of Proceedings: Jury Trial – Day 7, February 4, 2009, at 180-81.

3 Hearsay is defined as an out-of-court statement “offered in evidence to prove the truth
4 of the matter asserted.” NRS 51.035. Here, Defendant claims the statement was “clearly to
5 establish the credibility of Zone’s own testimony.” Supplement at 41. That is not the test – the
6 test is whether the statement is offered in evidence to prove the truth of the matter asserted.
7 NRS 51.035. The truth of the matter of Carroll’s statement, as testified to by Zone, is that if
8 Zone did not tell the truth, Zone and Carroll would go to jail. That was not relevant to the
9 State’s case, nor was it relevant to the jury’s determination of the Defendant’s guilt. Instead,
10 as revealed during cross-examination by Little Lou’s counsel, the statement was shown
11 relevant for its effect on the listener (Zone), because Zone interpreted the statement to mean
12 Zone should fabricate a story that tended to exculpate Carroll, himself, and Taoipu. Recorder’s
13 Transcript of Proceedings: Jury Trial – Day 7, February 4, 2009, at 97-99. It was *not* introduced
14 to show that Zone’s testimony was truthful, as Defendant states, but rather to explain why
15 Zone was hesitant to tell the truth at first. Id. at 97. Because the statement was not introduced
16 for the truth of the matter asserted, it was non-hearsay and entirely admissible.

17 The second statement, as testified to by McGrath, comprises of two commands (“tell
18 them the truth”) and one declarative statement (“I told them the truth”). The commands are in
19 the imperative form, and of necessity *assert nothing*. They do not operate to state a fact, but
20 rather encourage the listener to do something. Thus, the statements were non-hearsay and were
21 clearly introduced for their effect on Zone. While the final statement is in declarative form,
22 and asserts that Carroll told the truth, it was not relevant for that purpose – again, it was
23 relevant to the effect on the listener (Zone) and that it encouraged him to withhold the true
24 story at first. Therefore, none of these statements constituted hearsay.

25 Even if they did constitute hearsay, their admission was harmless, especially in light of
26 Espindola’s testimony which established that Carroll was acting pursuant to Defendant’s
27 directions when he killed Hadland. Knipes v. State, 124 Nev. 927, 935, 192 P.3d 1178, 1183
28 (2008) (to warrant reversal, evidentiary error must have substantial and injurious effect or

1 influence on the jury's verdict). Because any error would not have warranted reversal, briefing
2 the issue would have been futile and expended space which could be used for issues with a
3 greater likelihood of success. Therefore, Defendant cannot show deficient performance or
4 prejudice and this claim is denied.

5 **D. Defendant's Pro Per Claims Must Be Denied**

6 Within his initial Petition, Defendant made eight claims for relief. Each are insufficient
7 to warrant relief and must be denied.

8 First, Defendant claims that counsel was ineffective for failing to request a verdict form
9 that separated the two alternate theories relating to the Conspiracy charge: "Conspiracy to
10 Commit Battery with Substantial Bodily Harm" and "Conspiracy to Commit Battery with a
11 Deadly Weapon," rather than "Conspiracy to Commit Battery with a Deadly Weapon or With
12 Substantial Bodily Harm." Memorandum at 5-6. The jury was fully instructed as to the status
13 of this charge as a lesser-included offense, was instructed that it had to find Defendant guilty
14 beyond a reasonable doubt to convict him of this crime, and this minor difference in the verdict
15 form would not have made a difference in the trial. Instructions to the Jury: Instructions Nos.
16 15, 22-24, filed February 17, 2009. As such, Defendant cannot show deficient performance or
17 prejudice in relation to this claim and it is therefore denied.

18 Second, Defendant claims that counsel was ineffective in conflating "context" with
19 "adoptive admission" in relation to Carroll's statements, and that his statements were
20 erroneously admitted. Memorandum at 6-7. While he cites the Nevada Supreme Court's
21 acknowledgement of this conflation, it was in regard to a jury instruction given by the Court,
22 and the discussion did not concern the admissibility of the statements. Hidalgo, Jr. (Luis) v.
23 State, No. 54209 (Order of Affirmance, filed June 21, 2012, at 3 n.4). As the Nevada Supreme
24 Court determined that the statements were admissible (*see infra*), this conflation did not result
25 in the admission of Carroll's statements, and Defendant cannot show deficient performance or
26 prejudice. Accordingly, this claim is denied.

27 Third, Defendant claims that he was not identified at trial, there was confusion between
28 him and Little Lou, and his conviction must be reversed because the State failed to meet its

1 burden. This claim is not appropriate for post-conviction review and was appropriate for direct
2 appeal. See NRS 34.810(1)(b)(2) (providing that a post-conviction petition must be dismissed
3 if “the grounds for the petition could have been raised in a direct appeal”); NRS 34.724(2)
4 (stating that a post-conviction petition is not a substitute for the remedy of a direct review);
5 Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (“[C]laims of ineffective
6 assistance of trial and appellate counsel must first be pursued in post-conviction proceeding .
7 . . . [A]ll other claims that are appropriate for a direct appeal must be pursued on direct appeal,
8 or they will be *considered waived in subsequent proceedings.*”) (emphasis added). In any
9 event, Espindola had a long-term sexual relationship with Defendant, clearly knew who he
10 was, and implicated him in the plot to kill Hadland. This claim is denied.

11 Fourth, Defendant complains of his counsel’s concession of the severance issue. This
12 claim is disposed of *supra*.

13 Fifth, Defendant complains about Espindola’s testimony and the use of conversations
14 between him and her against him. These claims are considered waived in the instant
15 proceedings for failure to raise them on direct appeal, and are generally not legal arguments
16 but rather complaints that Espindola turned on him and her motives for testifying. This claim
17 relates to the sole province of the jury – credibility – and must be denied. To the extent
18 Defendant complains that counsel failed to impeach Espindola with evidence of a jailhouse
19 romance between her and another woman, the decision on how to cross-examine a witness is
20 one of strategy, and best left to counsel. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002)
21 (“[T]he trial lawyer alone is entrusted with decisions regarding legal tactics such as deciding
22 what witnesses to call.”). The record reveals that Mr. Gentile vigorously cross-examined
23 Espindola and Defendant cannot show deficient performance or prejudice. Therefore, this
24 claim is denied.

25 Sixth, Defendant repeats his direct appeal complaint that his Confrontation Clause
26 rights were violated by use of Carroll’s statements during his trial. The Nevada Supreme Court
27 rejected this claim:

28 //

1 Hidalgo's Confrontation Clause rights were not violated

2 In the days following Hadland's murder, law enforcement officers
3 procured the cooperation of one of Hidalgo's coconspirators,
4 Deangelo Carroll. Namely, Carroll agreed to tape-record his
5 conversations with other coconspirators in an attempt to obtain
6 incriminating statements from the coconspirators.

7 At trial, the State sought to introduce two tape-recorded
8 conversations between Carroll, Anabel Espindola, and Luis
9 Hidalgo, III. Because Carroll was unavailable to testify at trial,
10 Hidalgo objected to Carroll's statements being introduced into
11 evidence. The district court admitted Carroll's statements but
12 instructed the jury that it should consider Carroll's statements for
13 context only. On appeal, Hidalgo contends that this limiting
14 instruction was insufficient to avoid a violation of his
15 Confrontation Clause rights. We disagree.

16 "[W]hether a defendant's Confrontation Clause rights were
17 violated is 'ultimately a question of law that must be reviewed de
18 novo.'" Chavez v. State, 125 Nev. 328, 339, 213 P.3d 476, 484
19 (2009) (quoting United States v. Larson, 495 F.3d 1094, 1102 (9th
20 Cir. 2007)).

21 In Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L.
22 Ed. 2d 177 (2004), the Supreme Court held that the Confrontation
23 Clause prohibits introduction of testimonial hearsay when the
24 declarant is unavailable to testify. *Id.* at 51, 59 n.9; see also NRS
25 51.035(1) (defining "[h]earsay" as an out-of-court statement that
26 is used "to prove the truth of the matter asserted"). Thus, if a
27 testimonial statement is introduced for a purpose other than its
28 substantive truth, no Confrontation Clause violation occurs.
Crawford, 541 U.S. at 59 n.9 ("The Clause . . . does not bar the use
of testimonial statements for purposes other than establishing the
truth of the matter asserted.").

29 In light of Crawford, several federal courts have addressed the
30 identical issue presented here. These courts have held that no
31 Confrontation Clause violation occurs if a non-conspirator's
32 statements are introduced simply to provide "context" for the
33 coconspirators' statements. See, e.g., United States v. Hendricks,
34 395 F.3d 173, 184, 46 V.I. 704 (3d Cir. 2005) ("[I]f a Defendant
35 [6] or his or her coconspirator makes statements as part of a
36 reciprocal and integrated conversation with a government
37 informant who later becomes unavailable for trial, the
38 Confrontation Clause does not bar the introduction of the
39 informant's portions of the conversation as are reasonably
40 required to place the defendant or coconspirator's nontestimonial
statements into context."); United States v. Tolliver, 454 F.3d 660,
666 (7th Cir. 2006) ("Statements providing context for other
admissible statements are not hearsay because they are not offered
for their truth."); United States v. Eppolito, 646 F. Supp. 2d 1239,
1241 (D. Nev. 2009) ("[The informant's] recorded statements
have been offered [to] give context to Defendants' statements.

1 Because [the informant's] statements are not hearsay, the
2 Confrontation Clause and Crawford do not apply.”).

3 Consequently, Hidalgo’s Confrontation Clause rights were not
4 violated when the district court instructed the jury to consider
5 Carroll’s statements for context only.

6 Hidalgo, Jr. (Luis) v. State, No. 54209 (Order of Affirmance, filed June 21, 2012, at 2-5).

7 Where an issue has already been decided on the merits by the Nevada Supreme Court, the
8 Court’s ruling is law of the case, and the issue will not be revisited. Pellegrini v. State, 117
9 Nev. 860, 884, 34 P.3d 519, 535 (2001); see McNelton v. State, 115 Nev. 396, 990 P.2d 1263,
10 1276 (1999); Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975); see also Valerio
11 v. State, 112 Nev. 383, 386, 915 P.2d 874, 876 (1996); Hogan v. Warden, 109 Nev. 952, 860
12 P.2d 710 (1993). A Defendant cannot avoid the doctrine of law of the case by a more detailed
13 and precisely focused argument. Hall, 91 Nev. at 316, 535 P.2d at 798-99; see also Pertgen v.
14 State, 110 Nev. 557, 557-58, 875 P.2d 316, 362 (1994). Therefore, consideration of this ground
15 is partially barred by the doctrine of law of the case and the claim is denied.

16 Seventh, Defendant claims that trial counsel was ineffective for failing to request a jury
17 instruction that prohibited finding the use of a deadly weapon if the jury found him guilty of
18 murder under a conspiracy liability theory. The Nevada Supreme Court recently rejected the
19 same claim in Little Lou’s appeal from the denial of his habeas petition. Hidalgo v. State,
20 Docket No. 67640 at 2-3 (Order of Affirmance, May 11, 2016) (“Because the deadly weapon
21 enhancement was not applied to the conspiracy conviction, appellant failed to demonstrate that
22 counsel was ineffective.”).

23 Defendant conflates the crime of conspiracy, with the commission of a crime pursuant
24 to a theory of liability of conspiracy. Given that the instruction he asserts trial counsel should
25 have requested would have been an inaccurate statement of law, it would have been rejected.

26 “It is not error for a court to refuse an instruction when the law in that instruction is
27 adequately covered by another instruction given to the jury.” Rose v. State, 123 Nev. 194,
28 205, 163 P.3d 408, 415 (2007) (quoting Doleman v. State, 107 Nev. 409, 416, 812 P.2d 1287,
1291 (1991)). Further, district courts are not required to give misleading, inaccurate, or
duplicious instructions, and defendants are not entitled to dictate the specific wording of the

1 instructions. Crawford v. State, 121 Nev. 746, 754, 121 P.3d 582, 589 (2005). A jury may not
2 be given instructions which are a misstatement of law. Id. at 757, 121 P.3d at 591; see also
3 Barron v. State, 105 Nev. 767, 773, 783 P.2d 444, 448 (1989) (while a defendant has a right
4 to a jury instruction on his theory of the case, the instruction “must correctly state the law”).

5 Here, Defendant failed to demonstrate that his trial counsel erred in not offering a jury
6 instruction, or filing a NRS 175.381(2) motion, pursuant to Moore v. State, 117 Nev. 659, 662-
7 663, 27 P.3d 447, 450 (2001), arguing that Moore prevented an enhancement under NRS
8 193.165 for his conviction for Second Degree Murder. In Moore, the jury found Moore guilty
9 of First Degree Murder with Use of a Deadly Weapon, Robbery with Use of a Firearm, and
10 Conspiracy to Commit Robbery with Use of a Firearm. Moore, 117 Nev. at 660-61, 27 P.3d
11 at 448. Moore was sentenced to equal and consecutive terms on each of the 3 counts pursuant
12 to NRS 193.165, including his conviction for Conspiracy to Commit Robbery. Id. The Nevada
13 Supreme Court concluded and ruled as follows:

14 Following the plain import of the term “uses” in NRS 193.165(1),
15 we conclude that it is improper to enhance a sentence for
16 conspiracy using the deadly weapon enhancement. Accordingly,
17 we reverse Moore’s sentence in part and remand this case to the
district court with instructions to vacate the second, consecutive
term of Moore’s sentence for conspiracy. We affirm Moore’s
conviction and sentence in all other respects.

18 Id. at 663, 27 P.3d at 450. The Nevada Supreme Court affirmed the deadly weapon
19 enhancement on the Murder and Robbery convictions, and only reversed its application to the
20 Conspiracy conviction. Id. Notably, the Nevada Supreme Court found Moore was guilty of
21 robbery and murder under a conspiracy theory, stating, “Moore conspired with three others to
22 rob the occupants of an apartment at gunpoint. While carrying out the armed robbery, one of
23 the conspirators shot and killed a man who the conspirators believed was delivering drugs to
24 the apartment.” Id. at 660, 27 P.3d at 448.

25 Defendant’s claim is premised upon a conflation of the crime of conspiracy, with
26 liability for the commission of a crime pursuant to a conspiracy. Conspiring to commit a crime
27 is separate and distinct from conspiracy liability for committing a crime. See Bolden v. State,
28 121 Nev. 908, 912–13, 915–23, 124 P.3d 194, 196–201 (2005) (affirming a conviction for

1 conspiracy to commit robbery and/or kidnapping, but reversing charges including robbery and
2 kidnapping for insufficient evidence to sustain those convictions under conspiracy liability)
3 receded from on other grounds, Cortinas v. State, 124 Nev. 1013, 1026–27, 195 P.3d 315, 324
4 (2008); Batt v. State, 111 Nev. 1127, 1130–31 & n.3, 901 P.2d 664, 666 & n.3 (1995)
5 (declining to extend a conspiracy charge to encompass notice of conspiracy liability because
6 they involve two distinct crimes). Although a defendant has committed the crime of
7 conspiracy, and may be liable therefor, upon making the agreement, Nunnery v. Eighth
8 Judicial Dist. Ct., 124 Nev. 447, 480, 186 P.3d 886, 888 (2008), a defendant is not liable for
9 committing a crime, under a liability theory or otherwise, until the crime has been completed.
10 Further, the State may proceed upon a conspiracy theory without including an additional
11 charge of conspiracy. Walker v. State, 116 Nev. 670, 673–74, 6 P.3d 477, 479 (2000).

12 Thus, the instruction Defendant claims counsel was ineffective for not requesting is
13 based upon a misinterpretation of Nevada law, because Moore only prohibits a deadly weapon
14 enhancement on a conviction and sentence for a charge of conspiracy, not a conviction for
15 murder on a conspiracy theory of liability. Moore, 117 Nev. at 663, 27 P.3d at 450. Also,
16 Fiegehen v. State, 121 Nev. 293, 301-305, 113 P.3d 305, 310-312 (2005), merely held that
17 where a jury convicts a defendant of first-degree murder, via a felony-murder theory, as a
18 matter of law, the verdict was sufficient under NRS 200.030(3) even though it did not
19 designate between 1st and 2nd degree murder. Fiegehen, 121 Nev. at 301-305, 113 P.3d at 310-
20 312. To the extent Defendant asserts that the jury could not have found him guilty of murder
21 under an aiding and abetting theory because he was convicted of second degree murder, and
22 Counts was convicted of first degree murder, the State notes that Defendant and Counts were
23 tried separately, and Defendant has offered no proof that the jury knew the result of Counts'

24 trial. *Additionally, ~~Count~~ Defendant presumably means Deangelo Carroll*
as Kenneth Counts was acquitted of Murder with use of a Deadly weapon.

25 Accordingly, even if counsel had proffered the now-requested instruction, the Court
26 would have properly rejected it because the Court is not required to give jury instructions
27 containing inaccurate or incorrect statements of law. Crawford, 121 Nev. at 754, 757, 121
28 P.3d at 589, 591; Barron, 105 Nev. 767, 773, 783 P.2d 444, 448. Therefore, Defendant cannot

1 demonstrate that his trial counsel's conduct fell below an objective standard of reasonableness
2 and also cannot demonstrate that there was a reasonable probability that the outcome of the
3 trial would have been different if counsel had offered any Moore instruction or filed a NRS
4 175.381(2) motion on the same basis. Strickland, 466 U.S. at 687–688, 694, 697, 104 S.Ct.
5 at 2065, 2068–2069; Kirksey, 112 Nev. 980, 987, 923 P.2d 1102, 1107. Had he done so, his
6 actions would have been futile, and counsel is not ineffective for failing to take futile actions.
7 Ennis, 122 Nev. at 706, 137 P.3d at 1103. Accordingly, this claim is denied.

8 Eighth, Defendant alleges that trial and appellate counsel should have challenged Jury
9 Instruction No. 40 on the basis that the Nevada Supreme Court should reevaluate the
10 McDowell standard due to Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354 (2004), and
11 Davis v. Washington, 547 U.S. 813, 126 S. Ct. 2266 (2006), and their alleged effect on United
12 States v. Bourjaily, 483 U.S. 171, 107 S. Ct. 2775 (1987). The Nevada Supreme Court recently
13 rejected Little Lou's claim of error on this ground. See Hidalgo v. State, Docket No. 67640 at
14 3 (Order of Affirmance, May 11, 2016).

15 Defendant appears to argue that co-conspirator statements should no longer be
16 admissible because they are either inherently unreliable, and thus subject to Crawford's
17 Confrontation Clause requirement of cross-examination, or inherently unreliable and thus
18 inadmissible hearsay. However, Defendant misconstrues the holdings in Crawford and the
19 other cases to which he refers.

20 McDowell ruled:

21 According to NRS 51.035(3)(e), an out-of-court statement of a co-
22 conspirator made during the course and in furtherance of the
23 conspiracy is admissible as nonhearsay against another co-
24 conspirator. Pursuant to this statute, it is necessary that the co-
25 conspirator who uttered the statement be a member of the
26 conspiracy at the time the statement was made. It does not require
27 the co-conspirator against whom the statement is offered to have
28 been a member at the time the statement was made.

The federal position is consistent with our interpretation. In
construing Federal Rule of Evidence 801(d)(2)(E), which is
analogous to NRS 51.035(3)(e), the federal courts have
consistently held that extra-judicial statements made by one co-
conspirator during the conspiracy are admissible, without
violation of the Confrontation Clause, against a co-conspirator

1 who entered the conspiracy after the statements were made. See
2 U.S. v. Gypsum, 333 U.S. 364, 68 S.Ct. 525, 92 L.Ed. 746 (1948);
3 U.S. v. Davis, 809 F.2d 1194 (6th Cir.1987).

4 103 Nev. at 529–30, 746 P.2d at 150 (1987). In Bourjaily, the United States Supreme Court
5 similarly concluded that co-conspirator statements did not invoke the protections of the
6 Confrontation Clause. 483 U.S. at 181-84, 107 S. Ct. at 2782-83 (1987). The decision in
7 Bourjaily was based on the Confrontation Clause test set forth in Ohio v. Roberts, 448 U.S.
8 56, 63, 100 S. Ct. 2531, 2537 (1980), and concluded that no independent inquiry into the
9 reliability of co-conspirator statements was necessary prior to admission because they
10 qualified under a deeply rooted hearsay exemption. Bourjaily, 483 U.S. at 181-84, 107 S. Ct.
11 at 2782-83. Defendant alleges that Crawford and Davis somehow change the long-standing
12 rule that co-conspirator statements are not subject to the Confrontation Clause requirement for
13 cross-examination but his argument is meritless.

14 In Crawford, the United States Supreme Court replaced the Roberts Confrontation
15 Clause test, which provided that a hearsay statement from a declarant was admissible when “it
16 falls under a “firmly rooted hearsay exception” or bears “particularized guarantees of
17 trustworthiness.” 448 U.S. at 66, 100 S. Ct. 2531. The Court ruled that:

18 Where nontestimonial hearsay is at issue, it is wholly consistent
19 with the Framers’ design to afford the States flexibility in their
20 development of hearsay law—as does Roberts, and as would an
21 approach that exempted such statements from Confrontation
22 Clause scrutiny altogether. Where testimonial evidence is at issue,
23 however, the Sixth Amendment demands what the common law
24 required: unavailability and a prior opportunity for cross-
25 examination. We leave for another day any effort to spell out a
26 comprehensive definition of “testimonial.” Whatever else the term
27 covers, it applies at a minimum to prior testimony at a preliminary
28 hearing, before a grand jury, or at a former trial; and to police
interrogations. These are the modern practices with closest kinship
to the abuses at which the Confrontation Clause was directed.

24 Id. at 68, 124 S. Ct. at 1374. The Court further noted that without a prior opportunity to cross-
25 examine the framers did not intend to allow the admission of testimonial hearsay; therefore,
26 the only exceptions/exemptions to the hearsay rule which should continue to be exempt from
27 the Confrontation Clause were those that existed historically and did not involve testimonial
28 hearsay “for example, business records or *statements in furtherance of a conspiracy*.” Id. at

1 55-56, 124 S. Ct. 1354, 1366-67 (emphasis added). Thus, Crawford specifically excluded co-
2 conspirator statements from the reach of the Confrontation Clause. Id.

3 Given that any request by counsel or argument on appeal would have been futile,
4 Defendant has not shown he received ineffective assistance. Ennis, 122 Nev. at 706, 137 P.3d
5 at 1103. Therefore, this claim is denied.

6 Lastly, Defendant alleges cumulative error. While the Nevada Supreme Court has noted
7 that some courts do apply cumulative error in addressing ineffective assistance claims, it has
8 not specifically adopted this approach. See McConnell v. State, 125 Nev. 243, 250 n.17, 212
9 P.3d 307, 318 n.17 (2009). However, the Eighth Circuit Court of Appeals has concluded that
10 "a habeas petitioner cannot build a showing of prejudice on a series of errors, none of which
11 would by itself meet the prejudice test." Middleton v. Roper, 455 F.3d 838, 851 (8th Cir. 2006),
12 cert. denied, 549 U.S. 1134, 127 S. Ct. 980 (2007) (quoting Hall v. Luebbers, 296 F.3d 685,
13 692 (8th Cir. 2002)).

14 Even if the Court applies cumulative error analysis to Defendant's claims of ineffective
15 assistance, Defendant fails to demonstrate cumulative error warranting reversal. A cumulative
16 error finding in the context of a Strickland claim is extraordinarily rare and requires an
17 extensive aggregation of errors. See, e.g., Harris By and Through Ramseyer v. Wood, 64 F.3d
18 1432, 1438 (9th Cir. 1995). Because Defendant fails to demonstrate that any claim warrants
19 relief under Strickland, there is nothing to cumulate.

20 Defendant fails to demonstrate cumulative error sufficient to warrant reversal. In
21 addressing a claim of cumulative error, the relevant factors are: (1) whether the issue of guilt
22 is close; (2) the quantity and character of the error; and (3) the gravity of the crime charged.
23 Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845, 854-5 (2000). As demonstrated by the facts
24 *supra*, the evidence against Defendant was strong and eliminates the possibility of prejudice
25 from any omission by counsel (should deficient performance be found by this Court). Further,
26 even assuming that some or all of Defendant's allegations of deficiency had merit, he has failed
27 to establish that, when aggregated, the errors deprived him of a reasonable likelihood of a
28 better outcome at trial. Therefore, even if counsel was in any way deficient, there is no

1 reasonable probability that Defendant would have received a better result but for the alleged
2 deficiencies. Further, even if Defendant had made such a showing, he has certainly not shown
3 that the cumulative effect of these errors was so prejudicial as to undermine the Court's
4 confidence in the outcome of his case. Therefore, Defendant's cumulative error claim is
5 denied.

6 II. Defendant Is Not Entitled to an Evidentiary Hearing

7 Defendant requests an evidentiary hearing throughout his Petition. NRS 34.770
8 determines when a defendant is entitled to an evidentiary hearing:

9 1. The judge or justice, upon review of the return, answer and all
10 supporting documents which are filed, shall determine whether
11 an evidentiary hearing is required. A petitioner must not be
12 discharged or committed to the custody of a person other than the
13 respondent *unless an evidentiary hearing is held*.

12 2. If the judge or justice determines that the petitioner is not
13 entitled to relief and an evidentiary hearing is not required, he
14 shall dismiss the petition without a hearing.

13 3. If the judge or justice determines that an evidentiary hearing
14 is required, he shall grant the writ and shall set a date for the
hearing.

15 The Nevada Supreme Court has held that if a petition can be resolved without expanding the
16 record, then no evidentiary hearing is necessary. Mann v. State, 118 Nev. 351, 356, 46 P.3d
17 1228, 1231 (2002); Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603, 605 (1994). A
18 defendant is entitled to an evidentiary hearing if his petition is supported by specific factual
19 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled
20 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; Hargrove, 100 Nev. at 503, 686
21 P.2d at 225 (holding that "[a] defendant seeking post-conviction relief is not entitled to an
22 evidentiary hearing on factual allegations belied or repelled by the record"). "A claim is
23 'belied' when it is contradicted or proven to be false by the record as it existed at the time the
24 claim was made." Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

25 Here, an evidentiary hearing is unwarranted because the petition may be resolved
26 without expanding the record. Mann, 118 Nev. at 356, 46 P.3d at 1231; Marshall, 110 Nev. at
27 1331, 885 P.2d at 605. As explained above, Defendant's claims are bare/belied by the record,
28 and otherwise fail to sufficiently allege ineffective assistance of counsel. Additionally, this

1 Court has already held an evidentiary hearing on potential conflicts of interest and there is a
2 sufficient record to deny the claims alleging a conflict of interest presented in the Supplement.
3 Therefore, no evidentiary hearing is warranted in order to deny such claims. Hargrove, 100
4 Nev. at 503, 686 P.2d at 225. Accordingly, Defendant's request for an evidentiary hearing is
5 denied.

6 **III. Defendant is Not Entitled to Discovery**

7 Rules regarding post-conviction discovery are found in NRS 34.780(2). NRS 34.780(2)
8 reads:

9 *After the writ has been granted and a date set for the hearing, a*
10 *party may invoke any method of discovery available under the*
11 *Nevada Rules of Civil Procedure if, and to the extent that, the*
12 *judge or justice for good cause shown grants leave to do so.*

13 (emphasis added). Post-conviction discovery is not available until "after the writ has been
14 granted." Id. Here, the Petition and Supplement are denied without an evidentiary hearing.
15 Therefore, Defendant is not entitled to discovery.

16 **ORDER**

17 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief
18 shall be, and it is, hereby denied.

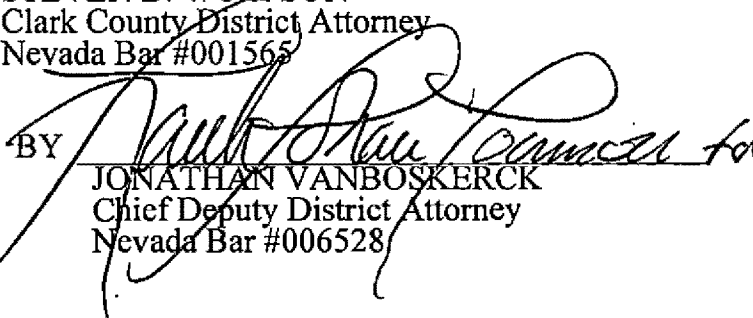
19 DATED this 8th day of September, 2016.

20 

21 VALERIE ADAIR
22 DISTRICT JUDGE

23 STEVEN B. WOLFSON
24 Clark County District Attorney
25 Nevada Bar #001565

26 BY

27 
28 JONATHAN VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528

1 CERTIFICATE OF SERVICE

2 I certify that on the 7th day of September, 2016, I e-mailed a copy of the foregoing
3 State's Opposition to Petitioner Luis Hidalgo, Jr.'s Motion for Order Appointing Margaret a.
4 McLetchie as Court-Appointed Counsel, to:

5 MARGARET A. MCLETCHE, Esq.
6 maggie@nvlitigation.com

7
8 BY /s/ T. Driver
9 T. DRIVER
10 Secretary for the District Attorney's Office
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