

IN THE SUPREME COURT OF THE STATE OF NEVADA

---

EVARISTO JONATHAN GARCIA,  
Appellant,

v.

THE STATE OF NEVADA,  
Respondent.

Electronically Filed  
Oct 07 2014 03:47 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

Case No. 64221

**RESPONDENT'S APPENDIX**

ROSS C. GOODMAN, ESQ.  
Nevada Bar #007722  
Goodman Law Group  
520 South Fourth Street, 2nd Floor  
Las Vegas, Nevada 89101  
(702) 383-5088

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
Regional Justice Center  
200 Lewis Avenue  
Post Office Box 552212  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
State of Nevada

CATHERINE CORTEZ MASTO  
Nevada Attorney General  
Nevada Bar No. 003926  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(775) 684-1265

Counsel for Appellant

Counsel for Respondent

## INDEX

<u>Document</u>	<u>Page No.</u>
Criminal Bindover, filed 12/23/08 .....	49-73
District Court Minutes of 03/03/09 (Petition for Writ of Habeas Corpus).....	83
District Court Minutes of 05/25/10 (All Pending Motions) .....	101-102
District Court Minutes of 06/22/10 (Petition for Writ of Habeas Corpus – Manuel Lopez) .....	113-114
Information, filed 12/29/08 .....	74-76
Petition for Writ of Habeas Corpus, filed 02/17/09.....	77-82
Petition for Writ of Habeas Corpus, filed 04/30/10.....	84-100
Petition for Writ of Habeas Corpus (Manuel Lopez), filed 06/04/10.....	103-112
Reporter’s Transcripts of 12/18/08 (Preliminary Hearing), filed 01/02/09.....	1-48
State’s Opposition to Defendant’s Motion for Acquittal or in the Alternative, Motion for New Trial, filed 07/29/13 .....	115-148

## **CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 7<sup>th</sup> day of October, 2014. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ MASTO  
Nevada Attorney General

ROSS C. GOODMAN, ESQ.  
Counsel for Appellant

JONATHAN E. VANBOSKERCK  
Chief Deputy District Attorney

*/s/ j. garcia*

---

Employee, Clark County  
District Attorney's Office

JEV/Genevieve Craggs/jg

CASE NO. C226218  
DEPT. NO. 5

ORIGINAL

IN THE JUSTICE COURT OF THE LAS VEGAS TOWNSHIP  
COUNTY OF CLARK, STATE OF NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

Case No. 06F11378A

EVARISTO JONATHAN GARCIA,  
Defendant.

REPORTER'S TRANSCRIPT  
OF  
PRELIMINARY HEARING

BEFORE THE HONORABLE WILLIAM D. JANSEN  
JUSTICE OF THE PEACE

TAKEN ON THURSDAY, DECEMBER 18, 2008  
AT 8:30 A.M.

APPEARANCES:

For the State: NOREEN C. NYIKOS and  
SONIA V. JIMENEZ  
Deputy District Attorneys  
For the Defendant: WILLIAM B. TERRY  
Reported by: Gerri De Lucca, C.C.R. #82  
Official Court Reporter

LAS VEGAS, NEVADA, THURSDAY, DECEMBER 18, 2008

THE COURT: Now, Mr. Garcia, this is the  
time and place for the preliminary hearing in State  
of Nevada v. Evaristo Jonathan Garcia.

Let the record reflect that the  
defendant is present with his attorney, Mr. Terry,  
and we have Noreen

MS. NYIKOS: Nyikos.

MS. JIMENEZ: And Sonia Jimenez.

THE COURT: The attorneys representing  
the State.

You said you have two witnesses?

MS. JIMENEZ: There's a possibility of a  
third, but I think we'll be able to do it in two.

THE COURT: All the witnesses possibly  
that are going to testify, they're all outside?

MS. JIMENEZ: Yes, Judge.

THE COURT: So there's been -- the Court  
has been informed all the witnesses who will testify  
in the matter are outside in the hallway. So let the  
record reflect that the exclusionary rule for  
witnesses has been invoked and the witnesses have  
been excluded from the courtroom.

INDEX

	PAGE
<u>WITNESSES FOR THE STATE</u>	
JONATHAN EMANUEL HARPER	
Direct Examination by Ms. Nyikos:	7
Cross-Examination by Mr. Terry:	36
Redirect Examination by Ms. Nyikos:	62
Recross-Examination by Mr. Terry:	65
Examination by The Court:	66
MELISSA MARIA GAMBOA	
Direct Examination by Ms. Jimenez:	69
Cross-Examination by Mr. Terry:	87
Redirect Examination by Ms. Jimenez:	95
Recross-Examination by Mr. Terry:	98
CLIFFORD MOGG	
Direct Examination by Ms. Nyikos:	101
Cross-Examination by Mr. Terry:	103
Redirect Examination by Ms. Nyikos:	108
Recross-Examination by Mr. Terry:	108

RECEIVED

EXHIBITS

JAN 12 2009

Marked

Admitted

State's Exhibit 1:

77

78

CLERK OF THE COURT

Do you have any possible

witnesses, Mr. Terry?

MR. TERRY: No, your Honor, but we would  
formally for the record ask that all witnesses be  
excluded, and I understand the Court's already made  
that directive.

THE COURT: Potential witnesses later on  
I don't excuse them.

MR. TERRY: Understood.

THE COURT: Okay. State go ahead and  
call your first witness.

MS. NYIKOS: Judge, before I call this  
witness, his name is Jonathan Harper, I just want to  
inform the Court he did have a head injury, so he  
speaks a little bit slowly and sometimes mumbles. So  
he's not being disrespectful. I'll try and keep him  
audible for you, Madam Court Reporter.

While we're waiting for the  
witness, Mr. Terry and I do have some stipulations.

THE COURT: Why don't you put those for  
the record.

MS. NYIKOS: Thank you.

Your Honor, we have stipulated  
that the cause of death was a single gunshot wound to  
the back, manner of death to be a homicide. We did

RA 000001

1 go ahead and mark a copy of the autopsy report for 5  
2 you.

3 Also, Mr. Terry was kind enough to  
4 allow us to just use the victim's name as a purpose  
5 for ID rather than having to show a photograph to the  
6 victim's sister in this case.

7 MR. TERRY: That's all accurate with the  
8 exception of, if counsel's marking the autopsy  
9 report, we don't have a problem with that. They're  
10 not moving to admit it, however. We did not agree to  
11 that.

12 MS. NYIKOS: That's fine. Just for a  
13 court exhibit, your Honor.

14 THE COURT: Just for a court exhibit to  
15 show here, but it's not -- it won't be admitted.

16 MR. TERRY: That's fine. As an exhibit  
17 is fine. Admitted is different.

18 THE COURT: Right. In other words,  
19 they'll get it returned. It won't be admitted. It  
20 will be returned to them.

21 MS. NYIKOS: That's fine, Judge.

22 THE COURT: Back to the State.

23 MR. TERRY: That's fine, Judge. And not  
24 considered by the Court.

25 THE COURT: No. I won't even look at it.

1 MS. NYIKOS: Thank you, your Honor. 7  
2 ORIGINAL

3 JONATHAN EMANUEL HARPER, having  
4 been first duly sworn to testify to the truth, the  
5 whole truth, and nothing but the truth, testified as  
6 follows:

7 DIRECT EXAMINATION

8 BY MS. NYIKOS:

9 Q. Jonathan, I want to direct your attention  
10 to a couple of years ago in 2006. In 2006 were you a  
11 member of a particular gang?

12 A. Yes.

13 Q. What was the name of that gang?

14 A. (Unintelligible).

15 THE COURT REPORTER: I didn't even get  
16 that.

17 BY MS. NYIKOS:

18 Q. Is that Puros Locos?

19 A. Yes.

20 THE COURT REPORTER: Can you spell that  
21 for me?

22 MR. TERRY: Objection. That wasn't  
23 directed to the DA. That was directed to the  
24

1 MS. NYIKOS: Thank you, Judge. 6

2 THE CLERK: Please be seated.

3 State your full name and spell  
4 your name, please.

5 THE COURT: I want you to spell your  
6 first name and last name. State your total name  
7 first.

8 THE WITNESS: Jonathan Emanuel Harper.

9 THE COURT: Spell your first name.

10 THE WITNESS: J-o-n-a-t-h-a-n.

11 THE COURT: Your last name?

12 THE WITNESS: H-a-r-p-e-r.

13 THE COURT: Now, Jonathan, now, listen to  
14 me carefully. If the question that is asked of  
15 you -- are you listening to me?

16 THE WITNESS: Yes.

17 THE COURT: -- by either one of these  
18 attorneys calls for a yes or no answer, state yes or  
19 no. Don't shake your head or say mm-hmm --

20 THE WITNESS: Okay.

21 THE COURT: -- because the court reporter  
22 here cannot take that type of response. Do you  
23 understand that?

24 THE WITNESS: Yes.

25 THE COURT: Okay. You may proceed.

1 witness. 8

2 (Overlapping speakers)

3 THE COURT: Do you know how to spell it?

4 THE WITNESS: No.

5 THE COURT: It's in the Criminal  
6 Complaint.

7 BY MS. NYIKOS:

8 Q. Now, when did you become a member of  
9 Puros Locos?

10 A. A few years ago.

11 Q. Do you remember around what year that  
12 was?

13 A. 2005.

14 Q. Now, before you became a member of Puros  
15 Locos, that gang had already been in existence,  
16 right?

17 A. Yes.

18 Q. Do you know where that gang started?

19 MR. TERRY: Judge, objection; it would  
20 call for hearsay. He can explain what he did.  
21 Anything else --

22 THE COURT: What do we need that for? He  
23 said he's a member. What's the difference when it  
24

RA 000002

1 started. What's his participation in it, and I agree 9  
 2 with counsel, I don't see we need all that.  
 3 BY MS. NYIKOS:  
 4 Q. Okay. Now, how did you become a member  
 5 of this gang?  
 6 A. From a friend. Well, I started -- I  
 7 was -- I started hanging out with him, and then like  
 8 one day we just went and started tagging, and after  
 9 that, you know, like probably like a month passes,  
 10 and, you know, just got -- I just got into the thing  
 11 more with them.  
 12 MR. TERRY: Judge, this would all be  
 13 hearsay. It's all based on out of court testimony.  
 14 THE COURT: He can say what he's doing.  
 15 MR. TERRY: He cannot testify as to what  
 16 somebody else said. The original question was a very  
 17 broad question, how did you become a gang member.  
 18 He's going to testify because somebody else asked  
 19 him. That would be hearsay. Unless it's my client.  
 20 MS. NYIKOS: That's fine.  
 21 BY MS. NYIKOS:  
 22 Q. Jonathan, did you have to do something in  
 23 order to actually formally be a member of Puros  
 24 Locos?  
 25 A. Get in fights.

1 Q. Do you remember when you got into a 10  
 2 fight?  
 3 MR. TERRY: Judge, this is irrelevant. I  
 4 don't mean to belabor it.  
 5 THE COURT: What are you trying to drive  
 6 at? I agree. Let's just get to the point.  
 7 BY MS. NYIKOS:  
 8 Q. You know what, Jonathan, I want to direct  
 9 your attention to February 6 of 2006. Were you in  
 10 Puros Locos at that time?  
 11 A. Yes.  
 12 Q. Around 8:00 that night --  
 13 MR. TERRY: Objection; leading.  
 14 THE COURT: I know it's leading. I'm  
 15 going to give her a little leeway because of the  
 16 position he's in. I'll give you a little leeway. Go  
 17 ahead. But let's try to cut down --  
 18 MR. TERRY: Respectfully, for the record,  
 19 the only position he's in is based upon counsel's  
 20 statements, and I object to that.  
 21 THE COURT: Well, I can observe it also.  
 22 Go ahead. I'll give you some  
 23 leeway.  
 24 MS. NYIKOS: Thank you.  
 25

1 BY MS. NYIKOS: 11  
 2 Q. The night of February 6, 2006, did you go  
 3 somewhere that night?  
 4 A. Was that the night of the shooting?  
 5 MR. TERRY: Counsel cannot respond,  
 6 Judge.  
 7 THE COURT: That's true.  
 8 BY MS. NYIKOS:  
 9 Q. You said the night of the shooting. Talk  
 10 to me about the night of the shooting.  
 11 A. Well, I just, you know, it started in the  
 12 day. I was at Salvador's, I'm pretty sure, and then  
 13 like, you know, it started because I guess like  
 14 another gang --  
 15 Q. Don't tell me about anything anybody told  
 16 you.  
 17 A. This is what I know. I'm getting to the  
 18 point, you know, I don't have to like beat around it.  
 19 You know, I'm trying to get to the point so we can  
 20 get this finished, you know, but it was a day, and  
 21 Little One called his brother and said --  
 22 MR. TERRY: Objection, Judge.  
 23 THE COURT: You can't testify -- what  
 24 happened that night? What did you observe or see?  
 25 That's what they're talking about.

1 BY MS. NYIKOS: 12  
 2 Q. Did you wind up --  
 3 MR. TERRY: Objection; leading.  
 4 THE WITNESS: I got in a fight, man. I  
 5 got in a fight, a big ass brawl, and ended up, you  
 6 know, the kid ran out of the circle, and then Little  
 7 One was like, there he is, so like --  
 8 MR. TERRY: Objection to Little One,  
 9 Judge.  
 10 THE COURT: I know it.  
 11 What did you do, if anything; what  
 12 did you observe?  
 13 THE WITNESS: I was in the fight and then  
 14 I saw the shooting, man.  
 15 THE COURT: That's what we're driving at.  
 16 Okay.  
 17 BY MS. NYIKOS:  
 18 Q. Where was this fight you were in?  
 19 A. At the school.  
 20 Q. Do you know the name of the school?  
 21 A. Desert Ponds (phonetic). I know it was  
 22 on Washington and Pecos. I never went there. It was  
 23 my first time.  
 24 Q. So at Washington and Pecos.  
 25 Now, is that here in Clark County,

1 Nevada? 13

2 A. Yes.

3 Q. You're in this fight --

4 MR. TERRY: Objection; leading. She's

5 leading.

6 THE COURT: He said he was in a fight.

7 MR. TERRY: I understand, but, now,

8 you're in this fight, that's a leading introduction.

9 MS. JIMENEZ: She hasn't even asked a

10 question, Judge. That's foundational to lead up to

11 her question.

12 THE COURT: Go ahead.

13 BY MS. NYIKOS:

14 Q. Who was fighting?

15 A. At first it was Little One.

16 Q. Do you know Little One's name?

17 A. Giovanni.

18 Q. Do you know his last name?

19 A. Garcia.

20 Q. So who else?

21 A. It was me, Giovanni, Emanuel, and

22 Emanuel's girl, Stacy. I don't know if they're still

23 together, but that's who was there at the time. And

24 then Salvador, Echo, Brian, and I'm pretty sure

25 Adrian. They were on the way, and they got there as

1 soon as -- 14

2 MR. TERRY: That would be hearsay, Judge.

3 The question was who were you with.

4 THE COURT: He said he observed them to

5 get there. He can testify to that.

6 MR. TERRY: I didn't hear him say, I

7 observed them, Judge.

8 THE COURT: He said -- did you observe

9 them get there?

10 THE WITNESS: Yeah. I was talking about

11 before.

12 THE COURT: Let's move on.

13 THE WITNESS: Like I was saying, you

14 know, and they haven't got there, and we were already

15 there. And Giovanni is already fighting. He's in a

16 big ass circle. And, you know, I got out of the car,

17 E got out of the car.

18 BY MS. NYIKOS:

19 Q. Who's E?

20 A. Evaristo.

21 Q. Do you see E in the courtroom today?

22 A. Yes.

23 Q. Can you point to him and tell me

24 something he's wearing?

25 A. Wearing a jumpsuit.

1 THE COURT: What color? 15

2 THE WITNESS: Blue.

3 MS. NYIKOS: Let the record reflect

4 identification of the defendant.

5 THE COURT: So reflect.

6 BY MS. NYIKOS:

7 Q. What happened when E got out of the car?

8 A. He ran in the circle, and I was behind

9 him, and then we started fighting, and then the fight

10 escalated with the kid running out of the circle.

11 MR. TERRY: Objection to escalated,

12 Judge.

13 THE COURT: Just say that you saw a kid

14 running out of the circle.

15 THE WITNESS: Yeah.

16 THE COURT: Okay, go ahead.

17 BY MS. NYIKOS:

18 Q. What happened when the kid ran out of the

19 circle?

20 A. That's when E -- I mean Giovanni was

21 like, that's the kid that started all the shit, and

22 then he was like, all right, so I didn't hear that.

23 Q. Who is he? You said he was like all

24 right?

25 A. Evaristo.

1 Q. Then what happened? 16

2 A. He started running at him, and then

3 Giovanni followed him. And then I ran out of the

4 circle, and then I was probably like 50 feet from

5 him, and then they started arguing and --

6 Q. Who started arguing?

7 A. Giovanni and E.

8 Q. And what were they arguing about?

9 A. About the gun.

10 Q. Specifically, what did you hear E say?

11 A. It was not E at first, it was Giovanni.

12 He was like, I want that fucking gun.

13 THE COURT: What did you hear E say?

14 What did you hear him say?

15 THE WITNESS: Nothing at first.

16 BY MS. NYIKOS:

17 Q. Now, you said Giovanni said something

18 first?

19 A. Yeah.

20 Q. What did Giovanni say?

21 MR. TERRY: Objection; hearsay.

22 MS. NYIKOS: Statement of co-conspirator,

23 Judge.

24 MR. TERRY: Where is he in this charging

25 document? Where is he?

RA 000004

1 THE WITNESS: Who? 17

2 MR. TERRY: If he's a co-conspirator, so

3 is Mr. Harper. Does the State want to stipulate to

4 that? We'll stipulate to it.

5 THE COURT: Go ahead.

6 BY MS. NYIKOS:

7 Q. After Giovanni --

8 THE COURT: He's right. What did you

9 observe? Go ahead.

10 BY MS. NYIKOS:

11 Q. What happened next?

12 A. Like I was saying, they were fighting for

13 the gun, and then he was like, all right, I got him.

14 MR. TERRY: Objection, Judge. When he

15 says he --

16 THE COURT: Who do you mean, he?

17 THE WITNESS: E. I'm talking about

18 Giovanni and E right now. So if I say he, you know,

19 I'm sorry.

20 THE COURT: You can only testify as to

21 what E or the defendant said, what you heard the

22 defendant say.

23 MS. JIMENEZ: That's who he's talking

24 about.

25 THE WITNESS: I'm talking about before he

1 and that's when I, you know, left. 19

2 Q. Did you see E after this?

3 A. Right after?

4 Q. At any time, at any point after this?

5 A. Yeah.

6 Q. About how long after this did you see E?

7 A. I'm thinking I didn't see him. I talked

8 to him.

9 Q. How did you talk to him; on the phone, in

10 person?

11 A. On the phone.

12 Q. Do you talk to him a lot on the phone?

13 A. No.

14 Q. How did you know it was E on the phone?

15 A. Because I was like, hello. He called my

16 house phone. And I was like, hello, and then he was

17 like, what's up, dog? And I was like, what's up,

18 man, you know, and we just started talking, and he

19 was like, hey, man --

20 MR. TERRY: No foundation yet, Judge.

21 THE COURT: Yeah.

22 MS. NYIKOS: That's okay, Judge.

23 BY MS. NYIKOS:

24 Q. Did you recognize his voice?

25 A. Yeah. He told me it was him, you know.

1 said something. He didn't say nothing before. 18

2 BY MS. NYIKOS:

3 Q. Who's the person who said, that's all

4 right, I got it, man?

5 A. E. He didn't say that in the words, but

6 pretty much in that phrase.

7 MR. TERRY: Then we'll move to strike,

8 Judge.

9 THE COURT: What did you actually hear

10 him say?

11 THE WITNESS: I got it.

12 BY MS. NYIKOS:

13 Q. What happened after that?

14 A. He cocked the gun back and ran in the

15 middle of the street and shot the kid.

16 Q. How many times did he shoot?

17 A. Pretty sure he emptied the clip.

18 Q. Do you remember how many shots you heard?

19 A. Nine, eight.

20 Q. Did you see what happened to the kid?

21 A. After I seen him hit the floor.

22 Q. Did you see where E went?

23 A. After the first shot, you know, he ran up

24 to him, you know, that's what I saw, and then after

25 that the gunshots started, and then the police came,

1 Q. Did you guys talk about what happened at 20

2 the school?

3 A. Not the thing. We didn't talk about it,

4 but he was like, I fucked up, man.

5 Q. Now, when this fight was happening, did

6 you know E had a gun?

7 A. Yes.

8 Q. How did you know that?

9 A. Well, before I got in the car, and, you

10 know, he got it from Puppet, Emanuel.

11 Q. Did you see him get it from Puppet?

12 A. No.

13 Q. How do you know he got it from Puppet?

14 A. Because it was a black gun and that was

15 Puppet's gun.

16 Q. Did you ever talk to E about how he got

17 the gun?

18 A. No.

19 MS. NYIKOS: Court's indulgence.

20 BY MS. NYIKOS:

21 Q. Now, Jonathan, do you remember talking to

22 a detective in this case?

23 A. Mogg or Hardy.

24 Q. Do you remember talking to them?

25 A. Yes.



1 Q. Do you remember being on tape? 21  
2 A. Yes.  
3 Q. Do you remember telling Detective Mogg --  
4 MR. TERRY: Judge, she's not refreshing  
5 his memory for anything. I mean we don't have -- all  
6 right. Withdraw the objection.  
7 MS. NYIKOS: Page 13.  
8 BY MS. NYIKOS:  
9 Q. Do you remember telling Detective Mogg  
10 that E told you that Puppet gave him the gun?  
11 A. Yes.  
12 Q. Do you know where the gun ended up?  
13 A. After the shooting I'm pretty sure he  
14 said he put it in the toilet.  
15 MR. TERRY: Objection.  
16 THE COURT: Who's he?  
17 BY MS. NYIKOS:  
18 Q. Did you say he or E?  
19 A. E.  
20 Q. E?  
21 A. Yeah. I'm sorry about my speech.  
22 THE COURT: That's all right. I thought  
23 you said he. You're speaking about the defendant; is  
24 that correct?  
25 THE WITNESS: Yes.

1 BY MS. NYIKOS: 22  
2 Q. What did he tell you?  
3 A. Well, about the gun?  
4 Q. Yes.  
5 A. He just said, you know, he got it from  
6 Puppet.  
7 Q. What did E tell you about what happened  
8 to the gun after the shooting?  
9 MR. TERRY: Could we have a foundation,  
10 Judge?  
11 THE WITNESS: Got rid of it.  
12 THE COURT: Hold it. Do you know about  
13 when or where did he tell you this?  
14 BY MS. NYIKOS:  
15 Q. Do you know when E talked to you about  
16 what happened to the gun?  
17 A. He told us all, he told us all that he  
18 put it in the toilet.  
19 MR. TERRY: Excuse me, Judge. Still no  
20 foundation.  
21 THE COURT: When did he tell you that?  
22 THE WITNESS: In person.  
23 THE COURT: When?  
24 THE WITNESS: When?  
25 THE COURT: Yeah.

1 THE WITNESS: Like a day after. 23  
2 THE COURT: That's what he's talking  
3 about. When did you have your conversation about  
4 that.  
5 BY MS. NYIKOS:  
6 Q. Okay. Now, so the day after this  
7 shooting he told you -- I'm sorry again, without the  
8 objections and everything --  
9 MR. TERRY: Objection; leading.  
10 THE COURT: What did he tell you?  
11 BY MS. NYIKOS:  
12 Q. What did he tell you about what happened  
13 to the gun?  
14 A. He said that he got rid of it.  
15 Q. Did he tell you how?  
16 A. He said that he put it in the toilet.  
17 Q. Did he tell you where?  
18 A. It was like a toilet for like the  
19 garbage, you know.  
20 Q. That's okay.  
21 Did he tell you where this toilet  
22 was?  
23 A. Around the school.  
24 Q. And you said it was for the garbage. Did  
25 he tell you -- what led you to believe that it was

1 for the garbage? 24  
2 A. No, he just put it in the toilet, and  
3 then he told Puppet, and then Puppet, I'm pretty  
4 sure, Puppet went there.  
5 MR. TERRY: Objection.  
6 MS. NYIKOS: Don't talk about what Puppet  
7 did.  
8 THE WITNESS: This is about the gun  
9 though.  
10 MS. NYIKOS: I know, but you can't talk  
11 about what other people did, only about what you  
12 heard.  
13 THE WITNESS: Okay.  
14 BY MS. NYIKOS:  
15 Q. Now, on the day of shooting can you tell  
16 me what E was wearing; do you remember?  
17 A. All black, sleeve, long sleeves, pants.  
18 MS. NYIKOS: Page 14, counsel.  
19 BY MS. NYIKOS:  
20 Q. Do you remember telling Detective Mogg  
21 that it was a gray sweatshirt?  
22 A. To refresh my mind, yes, it was a gray  
23 hoodie.  
24 Q. How did you get to the school that night?  
25 A. Emanuel.

1 Q. Was it Emanuel's car? 25  
 2 A. Yes.  
 3 Q. What kind of car was it?  
 4 A. It was a black Elko -- El Camino.  
 5 Q. And do you know Emanuel's nickname?  
 6 A. Puppet.  
 7 Q. Who else was in that car?  
 8 A. It was me, Evaristo, Emanuel, Stacy.  
 9 Q. Why were you going to that school?  
 10 A. To fight.  
 11 Q. Who were you going to fight?  
 12 A. I didn't know. You know, I know -- I  
 13 don't know.  
 14 MR. TERRY: Objection; hearsay. Move to  
 15 strike. If it was said by my client, I'll withdraw  
 16 the objection, but that wasn't the question.  
 17 BY MS. NYIKOS:  
 18 Q. When you got to the school who did you  
 19 start fighting with?  
 20 MR. TERRY: Judge, is that stricken then?  
 21 THE COURT: That's stricken, yeah.  
 22 BY MS. NYIKOS:  
 23 Q. When you got to the school who did you  
 24 start fighting with?  
 25 THE COURT: If he knows.

1 they haven't proved anything in reference to it yet, 27  
 2 Judge. And if he was in a fight on a prior occasion,  
 3 it is irrelevant.  
 4 MS. JIMENEZ: Judge, we have alleged a  
 5 gang enhancement. He can testify to what the gang  
 6 that he was a member of did, what their activities  
 7 were. If it's in his personal knowledge, he can  
 8 testify to it.  
 9 THE COURT: I'll let him go ahead. He  
 10 said he was in the gang. He was in that gang. What  
 11 their activities were, I'll let him go ahead, what he  
 12 did anyway.  
 13 MS. NYIKOS: Yes.  
 14 THE WITNESS: I got there and I started  
 15 fighting, like I was saying.  
 16 THE COURT: Wait for the question.  
 17 BY MS. NYIKOS:  
 18 Q. That's okay. Is this the only fight you  
 19 were in as a member of Puros Locos?  
 20 A. That I can recall, yes. A big fight. It  
 21 was a big fight. I mean there was probably like one  
 22 or two other fights that I was in, and I was out of a  
 23 kickback, but it was nothing serious.  
 24 Q. So you were in a couple of other fights?  
 25 MR. TERRY: Objecting; leading.

1 THE WITNESS: I know I fought the leader, 26  
 2 one of the leaders from the other gang. I don't know  
 3 his name.  
 4 You know what, I take that back.  
 5 It was Diablo.  
 6 BY MS. NYIKOS:  
 7 Q. What was the other gang?  
 8 MR. TERRY: Objection. That assumes  
 9 facts not in evidence, and it would be hearsay.  
 10 THE COURT: If he knows. I'll let him  
 11 answer if he knows.  
 12 THE WITNESS: Yeah, Brown Pride.  
 13 MR. TERRY: Assumes facts not in  
 14 evidence. As long as the record reflects I'm  
 15 objecting.  
 16 THE COURT: I'll let the record reflect  
 17 that.  
 18 MR. TERRY: Thank you, Judge.  
 19 BY MS. NYIKOS:  
 20 Q. Now, is this the only fight you were in  
 21 as a member of Puros Locos?  
 22 MR. TERRY: Objection; irrelevant.  
 23 MS. NYIKOS: Judge, we've alleged a gang  
 24 enhancement.  
 25 MR. TERRY: They may have alleged it, but

1 THE COURT: He testified he did. 28  
 2 MS. NYIKOS: Thank you.  
 3 BY MS. NYIKOS:  
 4 Q. What other things did you do as a member  
 5 of Puros Locos?  
 6 MR. TERRY: Continuing objection, Judge.  
 7 THE COURT: It's noted.  
 8 THE WITNESS: Well, there's a lot, you  
 9 know. I did -- I mean I know, pretty sure they did  
 10 it too.  
 11 THE COURT: Just what you did.  
 12 MR. TERRY: Objection.  
 13 THE WITNESS: I got in fights, and I  
 14 tagged. And I, you know, I made money by selling  
 15 drugs.  
 16 BY MS. NYIKOS:  
 17 Q. Did you do that as a member of Puros  
 18 Locos?  
 19 A. Yeah.  
 20 Q. And did other members of the gang do  
 21 those things with you?  
 22 MR. TERRY: Objection; hearsay, without  
 23 foundation.  
 24 THE COURT: If he observed it. If he  
 25 observed them doing the same thing, I'll let him

1 testify to it. 29

2 MR. TERRY: Foundation then, Judge.

3 When, who present.

4 THE COURT: I don't see the relevancy of

5 it, but --

6 THE WITNESS: When?

7 BY MS. NYIKOS:

8 Q. Yes, when?

9 A. Pretty much I mean I was helping Salvador

10 like sell the drugs, and then like, you know, like he

11 had a friend, Little Sax, and I had to pay him back,

12 and that was like during and before, you know, I was

13 doing that before I got in the gang.

14 Q. What was Salvador's role in Puros Locos?

15 MR. TERRY: Objection; hearsay.

16 THE COURT: If he knows. That is

17 hearsay, but if he knows.

18 MS. JIMENEZ: It's not hearsay. He

19 didn't ask for a statement. He asked what his

20 knowledge is of what Salvador's role is. That's not

21 hearsay.

22 THE COURT: I'll let him answer.

23 THE WITNESS: Salvador wanted to take

24 over things, and he wanted to recruit other people.

25 MR. TERRY: Objection; hearsay.

1 BY MS. NYIKOS: 30

2 Q. Did you answer to Salvador?

3 A. Most of --

4 THE COURT: Hold it. Did you participate

5 in recruiting the members?

6 THE WITNESS: No.

7 BY MS. NYIKOS:

8 Q. Were you recruited by Salvador?

9 A. Yes.

10 Q. Okay.

11 THE COURT: I'll let him answer that.

12 MR. TERRY: It would still be hearsay,

13 Judge.

14

15 (Overlapping speakers)

16

17 THE COURT: He can testify if he's

18 recruited by Salvador.

19 MR. TERRY: It assumes facts not in

20 evidence that Salvador said something. You know,

21 will you join a fraternity? What's the difference

22 between that and somebody saying yes. It has to

23 assume facts not in evidence.

24 THE COURT: Let me put it this way, did

25 you join as a result of Salvador asking you to join

1 this group? 31

2 THE WITNESS: I'm sorry, what?

3 THE COURT: The reason you joined the

4 gang, was that a result of Salvador asking you to

5 or --

6 THE WITNESS: Yeah and no. Yes, because

7 he asked, and on my part, I wanted to.

8 THE COURT: You wanted to?

9 THE WITNESS: At the time.

10 BY MS. NYIKOS:

11 Q. Only if you know this. Is there a

12 relationship between Sal and E?

13 A. Yes.

14 MR. TERRY: Objection; hearsay.

15 THE COURT: I don't know how he would

16 know that. How would he know that without having

17 somebody tell him.

18 BY MS. NYIKOS:

19 Q. Did E ever tell you if there was a

20 relationship between E and Sal?

21 MR. TERRY: Foundation.

22 THE WITNESS: No, I just knew.

23 MR. TERRY: No. We'll accept that.

24 MS. NYIKOS: Judge, one second. Court's

25 indulgence.

1 BY MS. NYIKOS: 32

2 Q. Now, the kid who got shot that night, can

3 you describe him for me?

4 A. Short, black hair. Mexican.

5 Q. About how old was he?

6 A. 14, 15.

7 Q. Had you ever seen him before?

8 A. No.

9 Q. And just before he got shot what was he

10 doing?

11 A. He was in the circle. He was fighting,

12 pretty sure, and then he ran out of the circle.

13 Q. Now, when he ran out of the circle what

14 did E do?

15 A. He ran after him. And when he was

16 crossing, that's when -- that's -- this is when the

17 kid crossed, this is the --

18 MR. TERRY: Judge, he answered the

19 question. He ran after him. That's the question.

20 That was the answer.

21 THE COURT: Okay, go ahead.

22 BY MS. NYIKOS:

23 Q. So what did he do when he was crossing

24 the street?

25 A. He was trying to run away.

1 Q. And what was E doing? 33  
 2 A. Chasing him. The same as for Giovanni.  
 3 Q. And --  
 4 THE COURT: He testified to this already.  
 5 We're just going over it.  
 6 BY MS. NYIKOS:  
 7 Q. Did you see where this kid got shot,  
 8 where on his body?  
 9 A. In his back. He was running and then out  
 10 of the blue he just fell.  
 11 Q. Now, you said earlier that E and Giovanni  
 12 were fighting for the gun. Were they doing this  
 13 while they were chasing the kid?  
 14 MR. TERRY: I don't know that that's an  
 15 accurate characterization of the testimony, Judge.  
 16 If it is, I yield to you and the record.  
 17 THE COURT: I don't think they were  
 18 arguing over it then. I'm not clear on that myself.  
 19 Let him clear it up. See if you can.  
 20 BY MS. NYIKOS:  
 21 Q. Could you hear anything that was  
 22 happening while E and Giovanni were chasing this kid?  
 23 A. Yeah. I mean they were fighting for the  
 24 gun. E had the gun. Giovanni was asking for the  
 25 gun. And they just stopped like by the stop sign,

1 and then like he was like, I got it, because Giovanni 34  
 2 was like, give me that fucking gun. I'm going to  
 3 kill him.  
 4 Q. What tone of voice was Giovanni using  
 5 when he was saying that?  
 6 MR. TERRY: That again would be hearsay.  
 7 Move to strike.  
 8 MS. NYIKOS: Judge, I'm trying to get in  
 9 a hearsay objection as excited utterance.  
 10  
 11 (Overlapping speakers)  
 12  
 13 THE COURT: Ask what the defendant did.  
 14 Why are we getting into all this. Ask what the  
 15 defendant did.  
 16 MS. JIMENEZ: Judge, it's relevant to  
 17 what's going on. The fact that they're acting  
 18 together. The fact that they're part of a gang. The  
 19 fact that --  
 20 THE COURT: We already know that. We got  
 21 that established as far as I'm concerned. What did  
 22 he observe the defendant do.  
 23 MR. TERRY: So the objection is any  
 24 statement made by other individuals is sustained,  
 25 Judge?

1 THE COURT: Hearsay. 35  
 2 THE WITNESS: What I saw the defendant  
 3 do, Judge, your Honor --  
 4 THE COURT: You can testify what you  
 5 heard him say and what you saw him do.  
 6 THE WITNESS: What I saw and what I heard  
 7 is what I'm telling you. They were fighting for the  
 8 gun.  
 9 MR. TERRY: Objection.  
 10 THE WITNESS: Hold on, dude.  
 11 MR. TERRY: Facts not in evidence.  
 12 MS. JIMENEZ: He's testifying to it.  
 13 That's in evidence.  
 14 THE COURT: That's in evidence. He  
 15 observed that. Go ahead.  
 16 THE WITNESS: Like I was saying, they  
 17 were fighting for the gun, and out of the blue he  
 18 cocked the gun back and he ran in the street and shot  
 19 him.  
 20 THE COURT: Who's he?  
 21 THE WITNESS: Evaristo.  
 22 You know, it was --  
 23 THE COURT: Hold it. There is no  
 24 question.  
 25

1 BY MS. NYIKOS: 36  
 2 Q. Just for clarification, E is Evaristo?  
 3 A. Sí. Yes.  
 4 MS. NYIKOS: Pass the witness.  
 5 THE COURT: Just a minute.  
 6  
 7 (After a recess the following  
 8 proceedings were had.)  
 9  
 10 Okay. Mr. Terry, the State has  
 11 finished direct examination, so you can  
 12 cross-examine.  
 13 MR. TERRY: Thank you.  
 14  
 15 CROSS-EXAMINATION  
 16 BY MR. TERRY:  
 17 Q. Good morning.  
 18 A. Good morning.  
 19 Q. Just so we're clear, the gentleman that's  
 20 seated to my right, what is his full name?  
 21 A. Evaristo Jonathan --  
 22 Q. Spell it, please.  
 23 A. I don't know.  
 24 Q. Would you pronounce it a little slower?  
 25 A. Evaristo.

1 Q. Are you saying Evaristo? 37  
2 A. Yes.  
3 Q. Go ahead.  
4 A. Jonathan Garcia.  
5 Q. Do you remember when the police asked you  
6 what his name was, you had to ask your mother; yes or  
7 no?  
8 A. I don't think that happened.  
9 Q. Well, counsel asked you questions in  
10 reference to a statement that you made to the  
11 detectives, and just for the purposes of your  
12 recollection and counsel, just so you're clear, it's  
13 this one here on 4-1.  
14 Do you recall that you indicated  
15 you knew E's name, but it was too hard to pronounce,  
16 at which time your mother provided the name; yes or  
17 no?  
18 A. Yes.  
19 Q. Now, at a point in time prior to February  
20 of '06, did you receive a head injury?  
21 A. Yes.  
22 Q. Were you in fact shot in the head?  
23 A. Yes.  
24 Q. And which portion of your head received  
25 that injury?

1 A. My left side right here. 38  
2 Q. Let the record reflect he's pointing to  
3 his left.  
4 And where did the bullet go?  
5 A. Well, I'm pretty sure the hollow point  
6 went up, that's how my head got split, and then the  
7 hollow, it burst in my head.  
8 Q. And as a result you had some brain  
9 surgery, correct?  
10 A. Yes.  
11 Q. Fairly extensive, correct?  
12 A. Yes.  
13 Q. And that affected your memory, correct?  
14 A. No.  
15 Q. Didn't affect your memory?  
16 A. No.  
17 Q. Affect your speech?  
18 A. A little bit.  
19 Q. A little bit. Okay. When did that  
20 occur?  
21 A. 2006.  
22 Q. When in 2006?  
23 A. February 18, around 12.  
24 Q. February 18.  
25 When counsel directed questions to

1 you, she asked you about an incident on February 6; 39  
2 is that right?  
3 A. 8.  
4 Q. February 6?  
5 A. It was on the 6th?  
6 Q. I'm repeating what counsel asked you.  
7 When she asked the questions, it was in reference to  
8 February 6.  
9 A. Okay.  
10 Q. Now, my question is when did you receive  
11 the head injury?  
12 A. Two weeks later.  
13 Q. Now, E was not there when you got a head  
14 injury, correct?  
15 A. No.  
16 Q. No, it's not correct or yes, it is  
17 correct?  
18 A. Yes.  
19 Q. E was not present, correct?  
20 A. Yes.  
21 Q. You were shot in the head, right?  
22 A. Yes.  
23 Q. When you spoke to the police it wasn't in  
24 February, correct?  
25 A. Yes.

1 Q. It wasn't in March either, correct? 40  
2 April 1.  
3 A. It was late April.  
4 Q. Your recollection is that it was late  
5 April?  
6 A. Or early.  
7 Q. Now, when they asked you when this  
8 alleged shooting occurred at the school that you have  
9 described, you didn't know; is that right? You  
10 didn't know if it was February, March, or any other  
11 month, correct; yes or no?  
12 A. I knew.  
13 Q. Yes or no?  
14 A. I knew -- yes.  
15 Q. Now, when you arrived at the school there  
16 was already a fight going on, correct?  
17 A. Yes.  
18 Q. Okay. And you observed that fight,  
19 correct?  
20 A. Yes.  
21 Q. So you weren't going there to start a  
22 fight, you were going there, and when you got there,  
23 there was a fight already going on, correct?  
24 A. Yes.  
25 Q. All right.

1 THE COURT: Is that yes? 41  
2 THE WITNESS: Yes.  
3 BY MR. TERRY:  
4 Q. And when you got in the automobile, you  
5 knew that you were going there --  
6 A. To fight.  
7 Q. -- for a reason, correct?  
8 A. To fight.  
9 Q. Is that correct?  
10 A. Yes.  
11 Q. All right. I didn't ask you for what.  
12 A. Okay.  
13 MR. TERRY: So I move to strike that as  
14 nonresponsive, Judge.  
15 THE COURT: Okay.  
16 BY MR. TERRY:  
17 Q. You knew you were going there for a  
18 reason, correct?  
19 A. Yes.  
20 Q. When you got there a fight was already  
21 going on, correct?  
22 A. Yep.  
23 Q. So for whatever reason you would have  
24 went there, it didn't make any difference because  
25 there was already a fight occurring, correct?

1 A. Yes. 42  
2 Q. All right. Now, when you looked over and  
3 saw that fight, were there men and women involved in  
4 that fight? And when I say men and women, boys and  
5 girls, men and women, teenage women, teenage boys?  
6 A. There was only guys.  
7 Q. Only guys?  
8 A. There was girls there.  
9 Q. Only guys, correct?  
10 A. The school just got out, so there was --  
11 Q. Just answer my question.  
12  
13 (Overlapping speakers)  
14  
15 THE COURT: Hold it, hold it, hold it.  
16 MR. TERRY: I don't care if school just  
17 got out, Judge.  
18 THE WITNESS: Then I answered his  
19 question.  
20  
21 (Overlapping speakers)  
22  
23 THE COURT: Hold it, hold it.  
24 You asked him in relation to the  
25 fight were there girls and guys involved in the

1 fight. That was your question. He was trying to 43  
2 answer it.  
3 BY MR. TERRY:  
4 Q. Were there girls and boys involved in the  
5 fight?  
6 A. Guys.  
7 Q. All guys?  
8 A. Yes.  
9 Q. And just so we're clear, who is in the  
10 vehicle that you went to the school with? Slowly.  
11 A. Again, it was me, Evaristo, Puppet,  
12 Emanuel, and his girl, Stacy.  
13 Q. So there was a girl in the car, right?  
14 A. Yes.  
15 Q. Now, you've testified you are a gang  
16 member, correct?  
17 A. Ex.  
18 Q. Was the girl a gang member?  
19 A. No.  
20 Q. There was any other females in the car?  
21 A. No.  
22 Q. When you got in the car, E, as you refer  
23 to him, did not have a gun; is that correct?  
24 A. Wrong.  
25 Q. When you got in the car?

1 A. He had a gun. 44  
2 Q. When you got in the car?  
3 A. He had a gun.  
4 Q. When you got in the car?  
5 A. I was not in the car. I was in the back,  
6 but he had a gun.  
7 Q. You were in the back of a car?  
8 A. Yeah.  
9 Q. And that's not in the car?  
10 THE COURT: Hold it, hold it. She cannot  
11 take -- let him answer and wait until he finishes the  
12 question before you answer.  
13 MR. TERRY: These are all yes and nos,  
14 Judge.  
15 THE COURT: I know, but just state your  
16 question.  
17 BY MR. TERRY:  
18 Q. Were you in a car?  
19 A. Yes.  
20 Q. Were you in the back seat?  
21 A. Yes.  
22 Q. Before you got in the car E did not have  
23 a gun, correct?  
24 A. I answered that question, man. I said  
25 yes.

1 Q. Answer it one more time. 45  
2 A. E had a gun.  
3 Q. When did he get the gun?  
4 A. Before he got in the car.  
5 Q. When?  
6 A. Before he got in the car.  
7 Q. When? At a house?  
8 MS. JIMENEZ: Objection; asked and  
9 answered. He's battering the witness.  
10 MR. TERRY: It's not battering. It's  
11 asking for an answer, Judge.  
12 THE COURT: Hold it, hold it. Let's just  
13 simmer down here.  
14 THE WITNESS: I'm supposed to say like  
15 the minutes that he got the gun?  
16 THE COURT: Hold it. Just listen to his  
17 question. Do you know when he got the gun?  
18 THE WITNESS: Before he got in the car.  
19 Five minutes before.  
20 BY MR. TERRY:  
21 Q. Was it directly before?  
22 A. Yes.  
23 Q. Was it two minutes before?  
24 A. It was before he got in the car.  
25 Q. Was it two minutes before?

1 A. Again, dude, it was before he got in the 46  
2 car. It was five minutes.  
3 Q. Five minutes before?  
4 A. Before he got in the car.  
5 Q. Five minutes before, Mr. Harper, right?  
6 A. Yes.  
7 Q. And you were aware there was a gun in the  
8 car, correct?  
9 A. Yes.  
10 Q. What are guns used for?  
11 A. To protect.  
12 Q. And?  
13 A. And shoot.  
14 Q. As a gang member, you have testified you  
15 were a gang member, did you ever carry a gun?  
16 A. No.  
17 Q. Never carried a gun?  
18 A. No.  
19 Q. Now, you testified that you got out of  
20 the car and you went over to the fight, correct?  
21 A. We all did.  
22 Q. No, listen to my question.  
23 THE COURT: Listen.  
24 THE WITNESS: Yes.  
25

1 BY MR. TERRY: 47  
2 Q. You testified that you got out of the  
3 car, correct?  
4 A. Yes.  
5 Q. And you went over and participated in the  
6 fight, correct?  
7 A. Yes.  
8 Q. And that the fight was already ongoing  
9 before you jumped in, correct?  
10 A. Yes.  
11 Q. Did anybody -- strike that.  
12 Did E direct you to participate in  
13 that fight verbally in the car after you observed the  
14 fight was already going on?  
15 A. What do you mean?  
16 Q. Exactly what I asked, did E direct you to  
17 participate --  
18 A. No.  
19 Q. The answer is no, correct?  
20 A. Yes.  
21 MR. TERRY: Could I have the Court's  
22 indulgence?  
23 THE COURT: Sure.  
24 BY MR. TERRY:  
25 Q. When you observed an individual that you

1 described as the individual that was ultimately shot, 48  
2 when you observed him run from the circle, as you put  
3 it, did you also run after him, yes or no?  
4 A. No. I got --  
5 Q. Where did you remain? Where did you  
6 remain?  
7 A. What do you mean, like in the circle?  
8 Q. Where were you?  
9 A. I was in the circle, and then when they  
10 ran, I ran out of the circle.  
11 Q. You answered my question.  
12 My question was where were you,  
13 and you stated you were still in the circle, correct?  
14 A. Yeah.  
15 Q. Yes?  
16 Were you still fighting?  
17 A. When?  
18 Q. When you were in the circle.  
19 A. I was fighting when they were fighting.  
20 Q. My question is when you observed E in  
21 effect go after the individual that had left the  
22 circle --  
23 A. Yes.  
24 Q. -- that was already shot, that was shot,  
25 where were you?

RA 000012

1 A. There E was running after, I was running 49  
2 out of the circle.  
3 Q. You were running after the same boy,  
4 correct?  
5 A. I was just running out of the circle.  
6 Q. Where were you running?  
7 A. Out of the circle. And then --  
8 Q. Let me try this one more time. Where  
9 were you running?  
10 A. To the street.  
11 Q. Okay. Were you going after E; yes or no?  
12 A. No.  
13 Q. Were you going after Sal; yes or no?  
14 A. No.  
15 Q. Were you headed in the same direction as  
16 the boy that you indicated was shot, was running; yes  
17 or no?  
18 A. Can you phrase the question before I  
19 answer that question?  
20 Q. I'll ask it again.  
21 A. Yeah.  
22 Q. Were you also running after the  
23 individual that you testified that was ultimately  
24 shot; yes or no?  
25 A. Yes.

1 Q. So you were chasing him, correct -- 50  
2 A. Yes.  
3 Q. -- yes or no?  
4 Yes?  
5 A. I was running out of the circle.  
6 Q. And you were chasing the boy; yes or no?  
7 A. I was chasing. I was running with them.  
8 Q. You were running in the same direction as  
9 Sal and E?  
10 A. Yep.  
11 Q. Were you also chasing the boy; yes or no?  
12 A. No.  
13 Q. You weren't chasing the boy?  
14 A. No.  
15 Q. You were just running after E and Sal?  
16 A. Yes. I was just trying to get out of the  
17 circle.  
18 Q. These are yes and nos.  
19 A. Okay.  
20 THE COURT: He answered.  
21 BY MR. TERRY:  
22 Q. Now, you indicated when you observed the  
23 police you left, you ran; is that correct?  
24 A. Yes.  
25 Q. Did you actually see the police arrive on

1 that occasion? 51  
2 A. No.  
3 Q. Okay. So did you run before the police  
4 arrived or when you observed them?  
5 A. I ran when I heard gunshots.  
6 Q. Listen to my question, Mr. Harper.  
7 Your testimony on direct  
8 examination was that when you saw the police, you  
9 ran.  
10 My question is did you actually  
11 see the police and that is what caused you to run?  
12 A. I heard sirens.  
13 Q. My question is did you actually see the  
14 police --  
15 A. No.  
16 Q. -- and is that what caused you to run?  
17 A. No.  
18 Q. But you obviously heard --  
19 A. I ran --  
20 Q. Listen to the question.  
21 MS. NYIKOS: Judge, asked and answered at  
22 this point. He already said he heard the sirens, and  
23 that's not -- he didn't run because he saw the  
24 police.  
25 THE COURT: That's what he said.

1 MR. TERRY: That's fine. 52  
2 BY MR. TERRY:  
3 Q. Do you remember that this taped  
4 interview -- this is going to be page 3, counsel.  
5 MS. NYIKOS: Thank you.  
6 BY MR. TERRY:  
7 Q. Page 3. Do you remember that when the  
8 police did a taped interview you were asked, who is  
9 E, and you stated, I don't know; yes or no?  
10 A. Yes.  
11 Q. Do you remember being asked if anybody  
12 was talking in the car while you were driving to the  
13 school?  
14 MS. NYIKOS: Page, counsel.  
15 MR. TERRY: Page 6.  
16 BY MR. TERRY:  
17 Q. Do you remember being asked that question  
18 by the police --  
19 A. Did I hear --  
20 Q. -- on April 1?  
21 A. Yes.  
22 Q. The question is were you asked if you  
23 recalled anybody talking in the car when you were  
24 going to the school?  
25 A. And I just said yes.



1 Q. And you said no. 53  
2 A. In the statement?  
3 MR. TERRY: May I approach?  
4 THE COURT: Sure. Show him the  
5 statement.  
6 MR. TERRY: I will.  
7 BY MR. TERRY:  
8 Q. I show you the bottom, page 6, the  
9 question was: And was anybody talking in the car  
10 while you were going to the school, and your response  
11 was no, correct?  
12 A. Okay.  
13 Q. Is that correct?  
14 A. Yes.  
15 Q. So all the way from where you left to  
16 when you got to the school nobody was talking, right?  
17 Right?  
18 A. Yes.  
19 Q. Do you remember being asked by the  
20 police: And you were going to the school because of  
21 a fight, not to fight; do you remember that?  
22 A. Yes.  
23 Q. And your response was yeah -- page 7,  
24 counsel. Your response was yeah, right?  
25 A. Yes.

1 Q. All right. So just so we're clear, you 54  
2 were going to the school because of a fight, correct?  
3 A. Yes.  
4 Q. Do you recall being asked whether or not  
5 you jumped in the fight that was going on already at  
6 the school?  
7 A. Yes.  
8 Q. And do you remember your response was  
9 yes?  
10 A. Yes.  
11 Q. Do you remember telling the police that  
12 after this incident E told you he was scared?  
13 A. Yes.  
14 Q. Do you remember telling the police that  
15 he shot the boy because somebody provoked him?  
16 MS. NYIKOS: Objection.  
17 MR. TERRY: Page 15 and 16.  
18 MS. NYIKOS: Was this coming out of --  
19 MR. TERRY: Is this an objection?  
20 BY MR. TERRY:  
21 Q. The question is do you remember telling  
22 the police?  
23 A. No.  
24 Q. Do you recall being asked the question:  
25 Did he tell you why he shot the

1 boy? 55  
2 And your response was:  
3 Cuz, um, Little One  
4 (unintelligible) him, continuing, police.  
5 Little One told him to?  
6 ANSWER: No, provoked him.  
7 QUESTION: Provoked him?  
8 ANSWER: Yeah.  
9 QUESTION: Okay --  
10 THE COURT: Is this his statement, what  
11 he's saying?  
12 MR. TERRY: That's correct.  
13 THE COURT: Okay.  
14 BY MR. TERRY:  
15 Q.  
16 QUESTION: Okay, um.  
17 ANSWER: Peer pressure.  
18 QUESTION: Pressure?  
19 Yeah.  
20 QUESTION: Why would there be  
21 pressure?  
22 ANSWER: Because Little One told  
23 him.  
24 Do you recall telling the police  
25 all that?

1 A. Yes. 56  
2 Q. Because E was pressured, that's what your  
3 indication was to the police, correct?  
4 A. Peer pressure, yeah.  
5 Q. By whom?  
6 A. Giovanni. Little One.  
7 Q. Do you recall telling the police in  
8 response to the question:  
9 Before you got there, there being  
10 the school, did you know who had the gun?  
11 And your response was Puppet.  
12 Do you recall telling the police  
13 all that?  
14 A. No.  
15 Q. Okay. Page 18, counsel.  
16 Just so we're clear, so the Court  
17 knows, who was Puppet; what was the name?  
18 A. Emanuel.  
19 Q. Who is Emanuel? What's Emanuel's --  
20 A. Puppet.  
21 Q. What's Emanuel's last name?  
22 A. Don't know.  
23 Q. Don't know?  
24 A. No.  
25 Q. Okay. Page 18:

1 Before you got there, did you know 57  
 2 who had a gun?  
 3 ANSWER: Puppet.  
 4 Is that your answer?  
 5 A. Yes.  
 6 Q. Just so we're clear, Puppet is not the  
 7 gentleman that's seated at that same table with me,  
 8 correct?  
 9 A. Yes.  
 10 Q. Do you remember being asked: Did you see  
 11 it, and your response being yes or yeah; do you  
 12 remember that?  
 13 A. Yes.  
 14 Q. Do you remember being asked: Where was  
 15 the gun, and your response was -- well, you were  
 16 asked two questions: Where was the gun, and then the  
 17 officer asked you, in his waistband, and your  
 18 response was yeah; do you remember that?  
 19 A. Yes.  
 20 Q. And we're referring to Puppet, correct?  
 21 A. Yes, but can I say something?  
 22 Q. Do you remember --  
 23 THE COURT: No.  
 24  
 25

1 BY MR. TERRY: 59  
 2 Q. The question is did you ever tell the  
 3 police you sold drugs, and your answer was yes,  
 4 correct?  
 5 A. Yes.  
 6 Q. The young ladies to my left are not  
 7 police, they're deputy District Attorneys.  
 8 Now, do you want to change your  
 9 testimony?  
 10 A. Why would I do that?  
 11 Q. Okay. Which police officer or detective  
 12 did you tell that you sold drugs?  
 13 A. Only thing I'm pretty sure -- I said that  
 14 to the police?  
 15 Q. You just said that you did.  
 16 A. Yeah, but she's not a police.  
 17 Q. Let try this again.  
 18 A. She asked me a question and I told her.  
 19 Q. You indicated on direct examination.  
 20  
 21 (Overlapping speakers)  
 22  
 23 THE COURT: Hold it, hold it, hold it.  
 24 One at time. Wait until he gets finished, then you  
 25 can answer, okay?

1 BY MR. TERRY: 58  
 2 Q. Do you remember telling the police that  
 3 Puppet told E to hold the gun; yes or no?  
 4 A. Can you rephrase that question?  
 5 Q. Sure.  
 6 Do you remember telling the police  
 7 that Puppet told E to hold the gun?  
 8 A. Yes.  
 9 Q. Now, did you tell the police that you  
 10 sold drugs?  
 11 A. Yes.  
 12 Q. Where in that statement do you tell the  
 13 police that you are or were a seller of drugs?  
 14 A. They never asked.  
 15 Q. So when did you tell the police you sold  
 16 drugs?  
 17 A. When she just told me, when she asked me.  
 18 Q. When she just told you?  
 19 A. She asked me.  
 20 Q. I didn't hear her say to you, you're a  
 21 drug seller. She asked you a question.  
 22 MS. JIMENEZ: Judge, he's clarifying  
 23 himself.  
 24 THE COURT: Hold it, hold it, hold it.  
 25 MS. JIMENEZ: Objection.

1 Go ahead. 60  
 2 BY MR. TERRY:  
 3 Q. You indicated on direct examination that  
 4 you sold drugs, correct?  
 5 A. Yes.  
 6 Q. My question's simple, simple question.  
 7 Did you tell the police that?  
 8 A. No.  
 9 Q. Never told the police that?  
 10 A. No.  
 11 Q. Is that because they didn't ask?  
 12 A. Yes.  
 13 Q. So you didn't volunteer that, right?  
 14 A. No. There was more --  
 15 Q. Now, were you promised that you wouldn't  
 16 be prosecuted for this?  
 17 A. What do you mean?  
 18 Q. Exactly what the question says. Were you  
 19 promised you would not be prosecuted for this?  
 20 A. This?  
 21 Q. Yes.  
 22 A. Yes.  
 23 Q. Okay. Who made you that promise? One of  
 24 these nice young ladies to my left?  
 25 And if the answer is no, that's

1 fine. 61  
2 A. No.  
3 Q. Who made you that promise?  
4 A. Mogg.  
5 Q. The police officer, right?  
6 A. Yes.  
7 Q. In fact, you haven't been prosecuted,  
8 right?  
9 A. Yes.  
10 Q. Even though you were in the car? Yes?  
11 A. Yes.  
12 Q. And you knew there was a gun? Yes?  
13 A. Yes.  
14 Q. And you participated in the fight? Yes?  
15 A. Yes.  
16 MR. TERRY: Nothing further.  
17 Judge, just so we're clear, I  
18 would like a copy of any documents where this young  
19 man has been offered a promise not to testify, and  
20 I'm not attributing that to these DA's.  
21 THE COURT: If there's a document, if  
22 there's one in existence.  
23 MR. TERRY: Correct.  
24 MS. JIMENEZ: There is no document.  
25

1 statement when Detective Mogg on the bottom of page 3 63  
2 asked you, who is E, you said, I don't know?  
3 A. I knew -- can I --  
4 THE COURT: No.  
5 BY MS. NYIKOS:  
6 Q. Can you clarify that? Did you know E's  
7 name?  
8 A. I knew it, but I couldn't say it because  
9 my speech problem. That's why my mom --  
10 MS. NYIKOS: Page 6 and 7, counsel.  
11 BY MS. NYIKOS:  
12 Q. Now, counsel asked you about your  
13 statement earlier that started with, was anybody  
14 talking in the car when you were going to school, and  
15 your answer was no.  
16 He also asked you about whether  
17 you were going there for a fight.  
18 Do you remember telling the  
19 detective when asked: Was there any reason you were  
20 to go up there, and you said yeah?  
21 QUESTION: Why?  
22 Fight.  
23 Were you going there to fight?  
24 A. To fight.  
25 Q. Now, counsel had asked you about your

1 (Overlapping speakers) 62  
2  
3 MR. TERRY: They can't represent that  
4 unless they've checked.  
5 THE COURT: I said if there's one in  
6 existence. They said there isn't. I don't know if  
7 they checked on it or --  
8 MS. NYIKOS: Judge, Miss Jimenez and I  
9 went to homicide, looked through the entire homicide  
10 file, copied every single piece of paper in it, and  
11 provided those copies to Mr. Terry as well, so  
12 there's nothing in that binder.  
13 MR. TERRY: That doesn't mean they  
14 were -- they asked the question of the officer,  
15 Judge. That would be clear break.  
16  
17 REDIRECT EXAMINATION  
18 BY MS. NYIKOS:  
19 Q. Jonathan, when you talked to Detective  
20 Mogg in April, how were your communication skills  
21 back then?  
22 A. Horrible.  
23 MS. NYIKOS: And page 3 and 4, counsel.  
24 BY MS. NYIKOS:  
25 Q. Mr. Terry had asked you about your

1 statement that Puppet had told E to hold the gun. 64  
2 Did you see the gun back then  
3 before you went to the school?  
4 A. Yes.  
5 Q. What kind of a gun was it?  
6 A. A 9.  
7 Q. Now, when you say 9 --  
8 A. I don't know what kind. It was a  
9 9-millimeter.  
10 Q. So it was a handgun?  
11 A. Yeah.  
12 Q. What color was it?  
13 A. Black.  
14 Q. Now, this shooting you're testifying  
15 about today, was this before or after you were shot  
16 in the head?  
17 A. Before.  
18 Q. About how long before?  
19 A. Two weeks.  
20 MR. TERRY: Asked and answered, Judge.  
21 Two weeks is what he said.  
22 MS. NYIKOS: Okay. I didn't hear it.  
23 THE COURT: I didn't hear that either.  
24 If that's the case --  
25 MR. TERRY: If neither the Court nor

1 counsel heard it, I'll withdraw the objection and let 65  
2 him restate it.  
3 THE COURT: I don't recall.  
4 MS. NYIKOS: I didn't either.  
5 THE COURT: Go ahead and ask it.  
6 BY MS. NYIKOS:  
7 Q. About how long --  
8 THE COURT: You may be right. I just  
9 can't recall.  
10 THE WITNESS: Two weeks.  
11 MS. NYIKOS: Nothing further.  
12  
13 RECROSS-EXAMINATION  
14 BY MR. TERRY:  
15 Q. One last series of questions, Mr. Harper.  
16 A. Okay.  
17 Q. Counsel asked you questions about you  
18 were going there to fight --  
19 A. To fight.  
20 Q. -- correct?  
21 That's a future act, right?  
22 A. Yes.  
23 Q. Like I would say, I'm going to go  
24 shopping tonight, right?  
25 A. Yes.

1 Q. But when you got there, there was a fight 66  
2 already going on, right?  
3 A. Yes.  
4 Q. All right. And you participated in that  
5 fight, correct?  
6 A. Yes.  
7 MR. TERRY: Nothing further.  
8 THE COURT: Anything else?  
9 MS. NYIKOS: No.  
10  
11 EXAMINATION  
12 BY THE COURT:  
13 Q. I want to clear up something I think may  
14 be important.  
15 What kind of a vehicle -- let me  
16 go back. Who was all in the car again?  
17 A. It was me, Evaristo, Stacy, which is  
18 Emanuel's girlfriend, and then Emanuel.  
19 Q. What kind of car was it?  
20 A. A black El Camino.  
21 Q. Was this a truck-type thing?  
22 A. It was like one of them, you know, like  
23 you can put the top on. It was like -- it was like a  
24 truck.  
25

1 (Overlapping speakers) 67  
2  
3 Q. You said you were in the back. Were you  
4 in the back in the bed of the truck?  
5 A. Yeah. I was laying down.  
6 Q. So you had people who were in the cab  
7 sitting, right?  
8 A. Yes.  
9 Q. And then you were in the back, right?  
10 A. Yes.  
11 Q. So a lot of things, where you were, you  
12 could not hear what was going on in the cab; is that  
13 correct?  
14 A. Yes.  
15 Q. That's what I want to clarify, because an  
16 El Camino, which I had owned one, which is like a  
17 fancy truck, you know, car-truck thing, and that's  
18 when he said in the back, that's what I want to make  
19 clear that he was in the back of the bed of the  
20 truck, not in like in the back seat?  
21 A. Yeah.  
22 THE COURT: Now, as a result of that do  
23 you have any further questions?  
24 MS. NYIKOS: None from the State.  
25 MR. TERRY: No.

1 THE COURT: Then you're excused. Thank 68  
2 you.  
3 (Witness excused)  
4  
5 Call your next witness.  
6 MS. JIMENEZ: Melissa Gamboa.  
7 THE COURT: Remain outside. I'm going to  
8 have you remain outside. You'll be excused by the DA  
9 or the bailiff.  
10 THE CLERK: Please be seated.  
11 Please be seated. State your full  
12 name and spell your name, please.  
13 THE WITNESS: My name is Melissa Maria  
14 Gamboa. M-e-l-i-s-s-a, G-a-m-b-o-a.  
15 THE COURT: Now, Melissa, if the question  
16 is asked of you by either of one of these attorneys  
17 that calls for a yes or no answer, please state yes  
18 or no. Don't shake your head and say mm-hmm, because  
19 the court reporter cannot take that type of response.  
20 Do you understand that?  
21 THE WITNESS: Okay, yes.  
22 THE COURT: Now, listen to the questions  
23 carefully, and if they call for a yes or no answer,  
24 just state yes or no. Do you understand that?  
25 THE WITNESS: Yes.

THE COURT: Okay. You may proceed.

MS. JIMENEZ: Thank you, Judge.

MELISSA MARIA GAMBOA, having been first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MS. JIMENEZ:

Q. Miss Gamboa, how old are you?

A. I'm 19.

Q. And, Miss Gamboa, did you have a brother?

A. Yes.

Q. What was your brother's name?

A. Victor Gamboa.

Q. And did something happen to your brother, Victor?

A. Yes.

Q. And what happened to Victor?

A. He was murdered.

Q. Do you remember when that occurred?

MR. TERRY: Just so we're clear, that's a legal conclusion.

A. No.

Q. Is that here in Las Vegas, Clark County, Nevada?

A. Yes, it is.

Q. And what hours did you go to school at Morris Academy that day?

A. 2:30 to 8 something, I believe.

Q. What kind of school is Morris Academy?

A. It was adult ed to make up credits.

Q. Were the classes in the afternoon and evening generally?

A. Yes.

Q. That day what time did you get out of school?

A. Don't remember.

Q. What time did school generally get out?

A. Like I said, 8 something.

Q. In the evening?

A. At night.

Q. At night.

And did you get out at the regular time school got out that day?

A. Yes.

Q. When you got out of school what did you do after you got out of school?

THE COURT: It's a legal conclusion. I'll let the record reflect that.

MS. JIMENEZ: That's fine.

THE COURT: Go ahead.

BY MS. JIMENEZ:

Q. When did that occur?

A. The date you mean?

Q. Yes.

A. February 6, 2006.

Q. And in February 6 of 2006, how old were you at that time?

A. I believe 17.

Q. And how old was your brother, Victor?

A. 15.

Q. On February 6 of 2006, what were you doing in the afternoon or evening hours?

A. I was attending school.

Q. Where did you attend school?

A. Morris.

Q. Is there a full name to Morris?

A. Morris Academy.

Q. On what street is Morris Academy located?

A. I just know it's up by Washington.

Q. Do you know a cross street for Washington?

A. I was talking to my friend, waiting for my brother.

Q. Your brother, Victor?

A. Yes.

Q. And why were you waiting for Victor?

A. He was picking me up!

Q. Did Victor arrive at the school?

A. Yes, he did.

Q. About how long after you got out of school did Victor arrive at school?

A. Five minutes or so or less.

Q. Before Victor got there did you notice anybody else doing anything in particular?

A. Yes.

Q. What did you see?

A. I saw my sixth period student class was talking about a fight. They were talking about --

MR. TERRY: Judge, that would be hearsay. The question was clear, what did you see.

BY MS. JIMENEZ:

Q. Right. I'm asking not to talk about what people were saying, but I want to talk about did you see somebody do something after school before your brother got there?

A. Yes.

73

1 Q. And who was that person?

2 A. Just we were just waiting for people to

3 pick us up, so . . .

4 Q. What happened after Victor arrived?

5 A. My brother arrived. I saw that he came

6 with a friend of him.

7 Q. Do you know his friend's name?

8 A. I do now. Then I didn't know his name.

9 Q. What's his name?

10 A. Brian.

11 Q. And what happened after Victor and Brian

12 got there?

13 A. I just heard -- I don't know if you want

14 me to say that.

15 Q. I want you to talk about what you saw

16 happened after Victor and Brian got there.

17 A. I saw that Brian was talking to my

18 brother.

19 Q. And after Brian and your brother were

20 talking, what did you see happen next?

21 A. I saw Brian fighting.

22 Q. Who was Brian fighting with?

23 A. Giovanni Garcia.

24 Q. And how do you know Giovanni?

25 A. I have him for sixth period class at the

75

1 one-on-one?

2 A. It was no longer than five minutes. It

3 all happened so quick.

4 Q. At some point did something else happen

5 with regard to that fight?

6 A. Yes.

7 Q. What was that?

8 A. More people started jumping in, girls and

9 guys.

10 Q. How many others jumped into the fight?

11 A. For defending Giovanni, I saw a guy, and

12 then after that I saw another guy coming.

13 Q. So when you say defending, do you mean on

14 the same side?

15 A. Giovanni's side, yes.

16 Q. And you said you saw a guy and another

17 guy, so is that two guys?

18 A. Yes, other two guys.

19 Q. Where did these two guys come from?

20 A. They came out of a car.

21 Q. Can you describe the car?

22 A. It was a -- I forgot the color. It was

23 like gray. It was an El Camino, two-door car. I saw

24 two -- four people in that car.

25 Q. And of the four people that you saw in

74

1 school I was arriving at.

2 Q. He goes to school with you?

3 A. He did.

4 Q. Before -- I want to back up for a second.

5 Before Victor showed up, did you

6 see Giovanni doing something before Victor got there?

7 A. Yes, I did.

8 Q. What did you see him do?

9 A. I saw him making a phone call, and as

10 well he was with girls.

11 Q. Was he on the phone?

12 A. He was on the phone.

13 Q. Was it a cellphone?

14 A. Yes.

15 Q. You said that after Victor and Brian

16 showed up that Brian and Giovanni got into a fight?

17 A. Mm-hmm.

18 Q. Is that yes?

19 A. Yes.

20 Q. Can you describe what kind of fight it

21 was?

22 A. It was a one-on-one fight, the two guys.

23 Q. Was it with fists or weapons?

24 A. With fists.

25 Q. How long did the two of them fight just

76

1 the car, males or females?

2 A. There was one female and three males.

3 Q. And about what age were these people?

4 A. Around my age, I can say, 17, 18.

5 Q. And what race were they?

6 A. Hispanic.

7 Q. All of them?

8 A. Mm-hmm.

9 Q. Is that yes?

10 A. Yes.

11 Q. And so you said that the two people who

12 got in the fight, they came from this gray El Camino

13 you described?

14 A. Yes.

15 Q. What happened after those two people

16 joined in the fight?

17 A. The principal came out.

18 Q. What happened after the principal came

19 out?

20 A. Everybody started running.

21 Q. This is the principal of the school?

22 A. Yes.

23 Q. Where was that fight occurring?

24 A. This was right in front of the school by

25 the parking lot.

(State's Proposed Exhibit 1  
marked for identification.)

MS. JIMENEZ: Judge, I have State's  
Proposed Exhibit 1, which is a purported map, which  
I'm showing to defense counsel. May I approach?

THE COURT: Sure, you may.

BY MS. JIMENEZ:

Q. Miss Gamboa, I'm going to show you  
State's Proposed Exhibit 1. Do you recognize that  
item?

A. Yes, I do.

Q. What is that?

A. The school I was attending.

Q. Is that a map of that school?

A. Yes.

Q. And does that map fairly and accurately  
show the school and the nearby streets at the time  
that this happened on February 6 of 2006?

A. Yes.

MS. JIMENEZ: And, Judge, I'm going to  
move to admit State's Proposed 1.

MR. TERRY: I have to ask for what  
purpose?

THE COURT: What's the purpose for it?

Q. Can you put a circle the map where --

THE COURT: Wait until counsel gets  
there.

BY MS. JIMENEZ:

Q. Can you put a circle on the map where the  
fight that you have just described was occurring.

A. I believe this is the entrance. There  
was two entrance for the school.

Q. Take a moment to orient yourself.

A. I know there was one for daycare. This  
is the entrance. The fight was right across over  
here, the parking lot.

Q. So you've drawn a circle on the map in  
the parking lot area, correct?

A. Correct.

Q. After the individuals -- you said two  
other people jumped in the fight on the side of  
Giovanni. What happened after that?

A. Can you explain that again?

Q. After -- you said two people jumped into  
the fight on the side of Giovanni, correct?

A. Mm-hmm.

Q. Is that yes?

A. Yes.

Q. What happened after that?

MR. TERRY: We don't have an adequate  
foundation really to admit it.

MS. JIMENEZ: We do. I laid a foundation  
that it's a fair and accurate map, that this is the  
location of her school, that it's the location at the  
time and the date that this happened.

THE COURT: For what is the purpose?

MS. JIMENEZ: I'm going to have her  
describe where people were, what they were doing.

THE COURT: I'll allow it in for that.

Go ahead.

(State's Exhibit 1  
admitted into evidence.)

BY MS. JIMENEZ:

Q. You said that the fight was occurring in  
the parking lot, correct?

A. Correct.

MS. JIMENEZ: I'm going to ask her to  
mark on the map, if counsel wants to watch where  
she's marking.

MR. TERRY: May I approach?

THE COURT: Absolutely.

BY MS. JIMENEZ:

A. They started running because the  
principal came.

Q. And did your brother, Victor, run?

A. Yes.

Q. And did you run?

A. Yes.

Q. And who else ran?

A. Everybody.

Q. While the running was happening, what did  
you see happen?

A. I was running towards my brother and --

Q. It's okay. Take a tissue if you need it.

MR. TERRY: Judge, if counsel's not going  
to mark on that anymore, I'll return to my seat.

MS. JIMENEZ: I'm sorry, we are. I  
thought we were getting to it a little faster.

MR. TERRY: No problem.

MS. JIMENEZ: It will be just a moment.

THE WITNESS: While crossing the street I  
was running behind my brother, and then I see  
somebody just -- I running towards my brother, and I  
seen somebody else running towards my brother and  
shooting him.

BY MS. JIMENEZ:

Q. Can you put a v on the map where your

1 brother was when he was getting shot at. 81  
2 Can you put an M -- for the  
3 record, Judge, she's mark a V on the street area of  
4 Washington. It's towards the upper half, left-hand  
5 side of the drawing.  
6 And can you put an M for where you  
7 were standing when your brother was being shot at.  
8 And can you put an S for Shooter,  
9 where the person doing the shooting was standing.  
10 Okay. I'm done marking on the map  
11 at this time.  
12 So from where you were standing,  
13 could you see the person who was shooting your  
14 brother?  
15 A. Yes.  
16 Q. Can you describe that person?  
17 A. Yes.  
18 Q. Describe him, please.  
19 A. He was wearing a hoodie that night, and  
20 he was -- it was covered his face. And he was like  
21 5-2, 5-3. He was wearing, I believe, shorts that  
22 night.  
23 Q. And what race was he?  
24 A. Hispanic.  
25 Q. And, I'm sorry, you may have said this

1 saw him again? 83  
2 A. Yes.  
3 Q. Do you see that person here in court  
4 today?  
5 A. Yes.  
6 Q. Could you please point to that person and  
7 tell the Judge what color shirt he's wearing?  
8 A. He's in custody, wearing blue.  
9 MS. JIMENEZ: May the record reflect the  
10 witness has identified the defendant.  
11 THE COURT: So reflect.  
12 BY MS. JIMENEZ:  
13 Q. How many shots were fired at your  
14 brother?  
15 A. It was couple of rounds.  
16 Q. When you say couple, is that two or is  
17 that --  
18 A. More than two.  
19 Q. And did you actually see the gun that the  
20 defendant you identified was holding?  
21 A. Yes.  
22 Q. Can you describe that gun?  
23 A. Holding it right hand. I believe it was  
24 a 380.  
25 Q. Do you know -- do you have a particular

1 and I didn't catch it. Did you say about what age he 82  
2 was?  
3 A. No, I didn't.  
4 Q. About what age was he?  
5 A. 17 or 18.  
6 Q. And do you remember what he was wearing?  
7 A. Yes. I just --  
8 MR. TERRY: Asked and answered.  
9 THE COURT: She just said that.  
10 MS. JIMENEZ: Judge, I think she just  
11 described the shorts. I'm asking about the rest of  
12 the clothing.  
13 THE COURT: She said he was wearing a  
14 hoodie. Didn't say what color.  
15 BY MS. JIMENEZ:  
16 Q. What color was the hoodie?  
17 A. Gray.  
18 Q. Can you describe his hair or his face?  
19 A. He didn't have facial.  
20 Q. And you said this is the person you saw  
21 shooting at your brother, correct?  
22 A. Mm-hmm.  
23 Q. Is that yes?  
24 A. Yes.  
25 Q. Would you recognize that person if you

1 background in guns, Miss Gamboa? 84  
2 A. Just a little.  
3 Q. It's not your job to do --  
4 A. No, it's not.  
5 Q. When I say describe it, can you describe  
6 what color the gun was?  
7 A. I don't remember what color. I know it's  
8 either black or gray. I can guarantee you it was.  
9 MS. JIMENEZ: Court's indulgence a  
10 moment.  
11 BY MS. JIMENEZ:  
12 Q. What happened when your brother was shot  
13 at?  
14 A. I ran towards him.  
15 Q. At the time that your brother was being  
16 shot at was he facing the shooter?  
17 A. He was at -- he wasn't facing directly at  
18 the shooter. He was running. Then when he kept  
19 getting shot at, he did look back towards me, I  
20 believe to see if I was the one getting shot.  
21 Q. So initially he was running away from the  
22 shooter, you said?  
23 A. Mm-hmm.  
24 Q. Is that yes?  
25 A. Yes.



85

1 Q. And then you said you turned back and he  
2 looked in your direction?

3 A. Yes.

4 Q. What happened after he was shot?

5 A. I saw the shooter running.

6 Q. Where -- which direction did you see the  
7 shooter run in?

8 A. That would be the left.

9 Q. Could you show it on the map?

10 A. Yes, I can.

11 MS. JIMENEZ: If I can approach again  
12 with the map, Judge.

13 THE COURT: You may.

14 You want Mr. Terry there?

15 MS. JIMENEZ: Sure.

16 BY MS. JIMENEZ:

17 Q. Would you be able to draw an arrow  
18 showing which direction the shooter ran?

19 Okay. And did you see where he  
20 went after he ran?

21 A. I saw him there.

22 Q. And you've drawn a second arrow where you  
23 indicated you saw him turn; is that correct?

24 A. Yes.

25 Q. What did you do after your brother was

87

1 MS. JIMENEZ: Court's indulgence.

2 Judge, I have no further  
3 questions.

4 THE COURT: Mr. Terry.

5 MR. TERRY: Thank you.

6

7 CROSS-EXAMINATION

8 BY MR. TERRY:

9 Q. Ma'am, you've just identified the  
10 gentleman seated to my right --

11 A. Yes.

12 Q. -- as the individual that you described  
13 as the shooter, right?

14 A. Yes.

15 Q. What is his name?

16 A. I know his name, but I didn't know --

17 Q. You did not know him as of February of  
18 '06, correct?

19 A. Correct.

20 Q. And isn't it true that you're identifying  
21 him because he's seated to my right?

22 A. No.

23 Q. Do you remember giving a description to  
24 the police?

25 A. Yes.

86

1 shot?

2 A. I was asking him if he was okay, and he  
3 was not responding.

4 Q. Could you see any injuries on him?

5 A. I just saw him holding his stomach.

6 Q. And was he -- at that point was he  
7 standing up or what position --

8 A. He was sitting down against the wall.

9 Q. And what happened with your brother after  
10 that?

11 A. Some students from school brought their  
12 car over to try to take him to the hospital, and the  
13 police arrived and they just laid him down.

14 Q. How much time passed between when you got  
15 out of the school and the time that this shooting  
16 happened?

17 A. It was so fast, I don't remember.

18 Q. Did you ever hear the person who shot the  
19 defendant who you identified say anything?

20 A. No.

21 Q. Did you hear anybody else say anything  
22 leading up to the shooting?

23 A. No.

24 Q. Did your brother have a weapon that day?

25 A. No.

88

1 Q. Do you remember that description being as  
2 follows:

3 He was wearing a gray sweater, had a hoodie  
4 on, dark shorts, the gun -- I'm sorry, counsel, page 6.

5 MS. JIMENEZ: Thank you.

6 BY MR. TERRY:

7 Q. The gun was, I believe, a 380. It was  
8 dark. I think it was black. Had light hair, a face.  
9 He -- he -- I don't think he had hairs on his face.  
10 He looked clean. I don't think he had a mustache.

11 Is that the description you gave?

12 A. I don't remember.

13 MR. TERRY: May I approach?

14 THE COURT: Sure.

15 MR. TERRY: I believe I read it verbatim.

16 THE COURT: Counsel, is this another  
17 recorded statement?

18 MR. TERRY: Correct, Judge.

19 THE COURT: Maybe ask her if she recalled  
20 giving a recorded statement.

21 BY MR. TERRY:

22 Q. Do you recall giving a recorded  
23 statement, as a matter of fact, shortly after the  
24 incident?

25 A. Yes.

1 Q. And, certainly, it would have been within 89  
2 a week, correct?  
3 A. It was that same night.  
4 Q. The same night. So that was the same  
5 exact night that you gave that description, correct?  
6 A. Yes.  
7 Q. And that would have been to Detective  
8 Mogg on February 6 at 2326, correct?  
9 A. Correct.  
10 Q. All right. Now, the original question  
11 was, please look at that and tell me if that's the  
12 way you described the individual?  
13 A. Yes.  
14 Q. Yes?  
15 A. Mm-hmm.  
16 Q. Does the gentleman seated to my left have  
17 light hair?  
18 A. Has what?  
19 Q. Does the gentleman seated to my left have  
20 light hair?  
21 A. No.  
22 Q. You described the gentleman that was the  
23 shooter as having light hair, correct?  
24 A. Correct.  
25 Q. And you indicated that my client's

1 A. No. 91  
2 Q. Did you come into the courtroom at any  
3 time before you were called as a witness?  
4 A. Yes.  
5 Q. And isn't it true that you observed me to  
6 be talking to the defendant at that time?  
7 A. No.  
8 Q. Isn't it true you remained in the  
9 courtroom during that period of time?  
10 A. What do you mean?  
11 Q. Stayed in the courtroom.  
12 A. Like right now?  
13 Q. No, before you were called --  
14 A. No.  
15 Q. -- as a witness.  
16 Were you with an individual that  
17 the commonly referred to as a Victim Witness  
18 coordinator?  
19 A. I'm not understanding.  
20 Q. Did somebody help you come to court this  
21 morning?  
22 A. As a ride or . . .  
23 Q. No. When you got to the building did  
24 somebody bring you up here?  
25 A. No.

1 appearance today is the same as you recall it on that 90  
2 day, correct?  
3 A. Correct.  
4 Q. He doesn't have light hair though, does  
5 he.  
6 A. No.  
7 Q. You described him in that same police  
8 report as being 18 or 19 years old, correct?  
9 A. Correct.  
10 Q. And do you recall how tall you said the  
11 individual was?  
12 A. Yes.  
13 Q. How tall did you tell the police he was?  
14 A. I don't remember what I said on my  
15 statement.  
16 Q. Now, you've been sitting outside the  
17 courtroom today, correct?  
18 A. Correct.  
19 Q. And you've seen me go back and forth,  
20 correct?  
21 A. Correct.  
22 Q. And you've seen me talking to the  
23 defendant that's seated to my right, correct?  
24 A. No.  
25 Q. You never saw that at all?

1 Q. There's a young lady sitting in the 92  
2 courtroom. Have you had any -- beside the two DA's,  
3 have you had any conversations with her today?  
4 A. Yes.  
5 Q. And would you point to that lady so that  
6 we're clear.  
7 And I'll ask the lady to identify  
8 herself.  
9 MS. JIMENEZ: I object as to the  
10 relevance.  
11 MR. TERRY: We'll get to the relevance.  
12 THE COURT: It may be. I don't know.  
13 I'll give him leeway.  
14 THE WITNESS: I couldn't describe over  
15 the phone. I did talk to her over the phone.  
16 MR. TERRY: I'm just asking you to point  
17 to her.  
18 THE WITNESS: I spoke with Dawn.  
19 BY MR. TERRY:  
20 Q. The lady is in the courtroom right now?  
21 A. Yes.  
22 Q. Would you point to her. Third time.  
23 A. Over there.  
24 MR. TERRY: Would that lady stand up and  
25 identify herself for the record.

1 MS. BARLOW: I'm a criminal investigator 93  
2 with the District Attorney's Office. My name is Dawn  
3 Barlow.  
4 THE COURT: Okay.  
5 MR. TERRY: Thank you very much.  
6 BY MR. TERRY:  
7 Q. Now, she's in here while your testifying,  
8 right?  
9 A. Yes.  
10 Q. She's helping you, right?  
11 A. Yes.  
12 Q. And you met with her before you came into  
13 the building today, right?  
14 A. Inside the court.  
15 Q. Before you came into the court this  
16 morning?  
17 A. Yes.  
18 Q. Courtroom, how about that?  
19 A. Yes.  
20 Q. And did she come in when you came in?  
21 A. No.  
22 Q. Did she tell you to remain outside?  
23 A. No.  
24 Q. But I you came in?  
25 A. Yes.

1 REDIRECT EXAMINATION 95  
2 BY MS. JIMENEZ:  
3 Q. Miss Gamboa, do you recall giving a  
4 written statement to the police at the time that this  
5 happened, one that you wrote in your own hand?  
6 A. Yes.  
7 MS. JIMENEZ: And, Judge, if I can  
8 approach. I have her handwritten statement.  
9 BY MS. JIMENEZ:  
10 Q. Do you recall there's a box on the  
11 statement that asks if you can identify the suspect,  
12 correct?  
13 A. Yes.  
14 Q. And you marked yes on that box, didn't  
15 you?  
16 A. Yes.  
17 Q. When you came into court earlier today,  
18 before you testified, did you recognize the defendant  
19 at that time?  
20 A. Yes.  
21 Q. And was he sitting in the same place that  
22 he's sitting now?  
23 A. No.  
24 Q. Where was he sitting?  
25 A. Right there.

1 Q. Were you ever shown a photo spread of any 94  
2 individuals that the police believed were involved in  
3 the shooting?  
4 A. No.  
5 Q. So this is the first time that you're  
6 identifying my client as being the individual that  
7 was shooting?  
8 A. Yes.  
9 Q. Is that because you want to believe he's  
10 the individual that was doing the shooting?  
11 A. No.  
12 Q. Would you acknowledge he does not meet  
13 the description that you gave the police that same  
14 day; yes or no?  
15 Yes or no?  
16 A. Can you explain that again?  
17 Q. No. I'll ask the question.  
18 Do you acknowledge that he does  
19 not meet the description that you gave to the police  
20 that same day it occurred; yes or no?  
21 A. Yes.  
22 MR. TERRY: Nothing further.  
23 MS. JIMENEZ: Thank you, Judge.  
24  
25

1 MS. JIMENEZ: And, for the record, Judge, 96  
2 she's pointed toward the jury box.  
3 BY MS. JIMENEZ:  
4 Q. In the first or the second row?  
5 A. The first row.  
6 Q. Can you say which seat he was in?  
7 A. Either first or second.  
8 Q. And you said that you didn't see  
9 Mr. Terry, the defense attorney, talking to him?  
10 A. No, I didn't.  
11 Q. Did anybody tell you who the defendant  
12 was?  
13 A. No.  
14 Q. Did anybody tell you to pick that person?  
15 A. No.  
16 Q. Do you remember what you wrote in your  
17 handwritten statement about how the shooter looked?  
18 A. A little.  
19 Q. Would it refresh your memory to look at  
20 the handwritten statement?  
21 A. Yes, please.  
22 MR. TERRY: I prefer counsel ask a  
23 specific question, and then if she needs to refresh  
24 her memory, we don't have a problem with that.  
25 MS. JIMENEZ: That's what I just did. I

1 asked her if she called how she described it. She 97  
2 said no. I asked if it would refresh her memory to  
3 look at the statement.  
4 THE COURT: Go ahead.  
5 BY MS. JIMENEZ:  
6 Q. I want to direct your attention to the  
7 first few lines, and let me know when you're done  
8 reading that, okay?  
9 A. Okay.  
10 Q. Are you done?  
11 A. Mm-hmm.  
12 Q. Is that yes?  
13 A. Yes.  
14 Q. I'm taking the statement back.  
15 Did that help you remember how you  
16 described the shooter to the police in your  
17 handwritten statement?  
18 A. Yes.  
19 Q. And what was that description you gave?  
20 A. Gray sweater and dark shorts.  
21 Q. And do you remember saying what race he  
22 was?  
23 A. Hispanic.  
24 Q. And do you remember saying what color  
25 hair he had?

1 A. Black. 98  
2 Q. The investigator that you indicated that  
3 you spoke with here in the courtroom, Dawn, did she  
4 ever tell you who to pick out as the person who  
5 committed this?  
6 A. No.  
7 Q. Why did you point to the defendant and  
8 identify him?  
9 A. Because I recognized him.  
10 MS. JIMENEZ: Judge, I have nothing  
11 further.  
12  
13 RECROSS-EXAMINATION  
14 BY MR. TERRY:  
15 Q. Counsel asked you about a statement that  
16 you wrote. Do you recall describing the individual  
17 AS being as 5-foot-7.  
18 A. Don't remember.  
19 Q. Yes?  
20 MR. TERRY: Show counsel another  
21 statement.  
22 MS. JIMENEZ: That's fine. I thought he  
23 said a statement she wrote, and I think.  
24  
25 (Overlapping speakers)

1 THE COURT: You said a statement. He did 99  
2 say that.  
3 BY MR. TERRY:  
4 Q. Do you recall telling Detective Mogg on  
5 that same date, 2-6-06 at 2050 hours, which would  
6 have been before the recorded statement, that the  
7 individual was 5-foot-7?  
8 A. Like I said, I don't remember telling  
9 that to the detective.  
10 Q. You acknowledge that that's what his  
11 report attributes to you as having said?  
12 A. I believe that's his report, but I don't  
13 remember.  
14 Q. So you're not disputing that, you're just  
15 saying you don't remember, correct?  
16 A. I don't remember.  
17 MR. TERRY: Nothing further.  
18 THE COURT: Okay. Do you have anything  
19 else?  
20 MS. JIMENEZ: No, Judge.  
21 THE COURT: You all done, Mr. Terry?  
22 MR. TERRY: Yes, Judge.  
23 THE COURT: You're excused. You may  
24 remain in the hallway.  
25

1 (Witness excused) 100  
2  
3 Call your next witness.  
4 MS. JIMENEZ: Could we have the Court's  
5 indulgence.  
6 THE COURT: Sure.  
7 Just remain in the hallway until  
8 this hearing is completed, and the bailiff or the DA  
9 will excuse you, okay, ma'am?  
10 THE WITNESS: Okay.  
11 THE COURT: Thank you.  
12 MS. JIMENEZ: Judge, can we approach?  
13  
14 (Side bar discussion)  
15  
16 (After a recess the following  
17 proceedings were had.)  
18  
19 MR. TERRY: Defendant's present, Judge.  
20 THE COURT: Defense is now present. All  
21 parties and attorneys are present.  
22 So now you go ahead and swear him  
23 in, okay?  
24 THE CLERK: Please be seated.  
25 State your full name.

1 THE WITNESS: Clifford Mogg, M-o-g-g. 101

2 THE COURT: You may proceed.

3  
4  
5 CLIFFORD MOGG, having been first duly  
6 sworn to testify to the truth, the whole truth, and  
7 nothing but the truth, testified as follows:

8  
9 DIRECT EXAMINATION

10 BY MS. NYIKOS:

11 Q. It's Detective Mogg, correct?

12 A. That's correct.

13 Q. Now, Detective, were you assigned to  
14 prosecute the case of -- sorry, to investigate a case  
15 against Evaristo Garcia?

16 A. I was.

17 Q. And in conducting your investigation, did  
18 you speak with a person by the name of Jonathan  
19 Harper?

20 A. I did.

21 Q. And do you recall when you spoke with  
22 Jonathan Harper?

23 A. I can refer to his statement.

24 Q. Would that refresh your recollection?

25 A. It would.

1 last year. 103

2 Q. Now, during any of these conversations  
3 you had with Jonathan, did you ever make him any  
4 promises that he would not be prosecuted for any  
5 offenses?

6 A. I did not.

7 Q. Do you recall if you made any statements  
8 that would leave Jonathan to believe that?

9 A. I'm sure we would have. We would have  
10 told Mr. Harper that he's not in custody, that at  
11 this point in time when we were doing the initial  
12 interview with him that we had information that he  
13 may be a witness to the murder which occurred. That  
14 he may have information that would assist us in  
15 identifying the suspect who did the shooting.

16 Q. So there were no promises made in any  
17 fashion?

18 A. None.

19 MS. NYIKOS: Pass the witness.

20  
21 CROSS-EXAMINATION

22 BY MR. TERRY:

23 Q. At the time you met with Mr. Harper did  
24 you make a report?

25 A. I don't believe so. Some of them was

1 MR. TERRY: Judge, if counsel wants to 102  
2 tell him the date, I don't have a problem with that.

3 MS. NYIKOS: Thank you.

4  
5 BY MS. NYIKOS:

6 Q. On April 1, 2006, did you speak to  
7 Jonathan Harper?

8 A. That's correct.

9 Q. And where did you conduct this interview?

10 A. At his residence.

11 Q. And who was present?

12 A. It was Jonathan, his mother, and I  
13 believe his father was there also, and my partner,  
14 Detective Hardy.

15 Q. And is that the only contact during your  
16 investigation that you had with Mr. Harper?

17 A. No.

18 Q. When was the other occurrence?

19 A. There was another time when I spoke with  
20 him when he was in rehab, and I think I spoke with  
21 him once or twice after that at his father's house.

22 Q. And all of these occurrences, were they  
23 around the same April 2006 date?

24 A. No. They would have been between April  
25 '06 and probably middle of last year to the end of

1 just to check to see how he was doing. 104

2 Q. So the answer is no?

3 A. No.

4 Q. You did not make a report in reference to  
5 the rehab, correct?

6 A. If I could refer to my case file.

7 Mr. Terry, do you want me just to  
8 give you the dates here when --

9 Q. I want to know if you made reference for  
10 counsel of your having had a conversation with  
11 Mr. Harper when he was in rehab, and my question was  
12 did you make a report of that?

13 A. Okay. Obviously, April 1 of '06, there  
14 was a statement taken from him.

15 Q. I think we're past that.

16 A. That's correct.

17 And then June 21, 2006 is when we  
18 conducted the photo lineup with Mr. Harper.

19 Q. Is that the same occasion that you would  
20 have met with him when he was in rehab?

21 A. I believe it is because the address is  
22 2905 West Charleston, which I believe is the rehab  
23 center.

24 Q. And you made a report in reference to  
25 that?

RA 000026

105

1 A. That's correct.

2 Q. Any other meetings with Mr. Harper?

3 A. 5-11 of '06 we did another photo lineup

4 with him.

5 Q. And you made a report in that regard?

6 A. That's correct.

7 Q. Any other meetings with Mr. Harper?

8 We'll get to conversations. Right

9 now --

10 A. I believe those were the only meetings,

11 other than at one point I believe the last time that

12 we had some kind of court procedure scheduled I went

13 by his father's house and just met with him, and I

14 believe I delivered a subpoena. Other than that, no.

15 Q. Did you ever have any conversations with

16 Mr. Harper other than 4-1-06, 6-21-06, 5-11-06?

17 A. I don't believe so. If I did, I don't

18 recall them.

19 Q. Do you remember making any statements to

20 Mr. Harper, we're not looking at you?

21 A. I don't believe I said we're not looking

22 at you. I think I believe I said we're investigating

23 the murder which occurred, and we have information

24 that you may have been a witness to that.

25 Q. Is that specific language in any of your

107

1 MR. TERRY: I beg your pardon then.

2 BY MR. TERRY:

3 Q. And, just so we're clear, you would have

4 had a conversation with Mr. Harper on April 1, before

5 you turned on the tape recorder, correct?

6 A. We would have introduced ourselves,

7 explained why we were there.

8 Q. Did you make a report in reference to

9 that? Not the taped interview, a report in reference

10 to any conversation you had with Mr. Harper before

11 you turned on the tape recorder?

12 A. No.

13 Q. And as you sit here today you do not

14 recall making a statement to him, we're not looking

15 at you?

16 A. No, sir.

17 Q. You do recall that or you don't recall

18 it?

19 A. I do not recall that.

20 Q. Do you recall making any statement to

21 Mr. Harper that would lead him to believe that he

22 would not be subjected to prosecution for anything he

23 told you?

24 A. No, sir.

25 MR. TERRY: Nothing further.

106

1 reports?

2 A. If I could look at his statement. If it

3 wasn't in the statement, then I don't believe it

4 would be. It would have been something that I would

5 have told him when I met with him.

6 Q. Something that is not in the recorded

7 statement?

8 A. That's correct.

9 Q. And for brevity purposes, I'll indicate

10 that's not in the statement. If counsel believes I'm

11 incorrect, in the 4-1 statement.

12 MS. NYIKOS: That sounds correct, Judge.

13 MS. JIMENEZ: It does. I think those

14 exact words weren't used. I think there's a

15 statement on page 2.

16 MR. TERRY: You're right.

17 MS. JIMENEZ: I believe those exact

18 words, I don't believe are used.

19 THE COURT: Was this a question before

20 the Court, because there was a document just came

21 through that I had to acknowledge. I'm sorry.

22 MS. JIMENEZ: No.

23 MR. TERRY: I think we're waiting for him

24 to look.

25 MS. JIMENEZ: I thought we stipulated.

108

1 REDIRECT EXAMINATION

2 BY MS. NYIKOS:

3 Q. And there also would not be any written

4 documentation of any promises or anything like that?

5 A. We're not allowed to make promises. If

6 there was any kind of promise made, then that would

7 have been arranged through the District Attorney's

8 Office and not Detective Hardy or I.

9 Q. And there were no promises made in this

10 case?

11 A. There were none made.

12 MS. NYIKOS: Thank you. Nothing further.

13

14 RECROSS-EXAMINATION

15 BY MR. TERRY:

16 Q. When you say you're not allowed to make

17 promises --

18 A. Of non-prosecution.

19 Q. -- are you saying you're not allowed or

20 the Las Vegas Metropolitan Police Department is not

21 allowed to make promises?

22 A. I'm not.

23 Q. Okay. That's not Metro, right? I mean

24 you may be part of Metro, but that's your policy,

25 correct?

109

1 A. No, sir. I can't make a deal with  
2 somebody that they will not be prosecuted for any  
3 crimes.  
4 Q. Did you ever work narcotics?  
5 A. No, sir.  
6 Q. Are you aware that a lot of times an  
7 individual that's arrested for a small amount of  
8 drugs is asked to provide other drug sellers, and, if  
9 he does, they will not be prosecuted; yes or no?  
10 MS. NYIKOS: Objection to relevance.  
11 MR. TERRY: It's not irrelevant.  
12 THE COURT: No, they do that.  
13 MR. TERRY: Thank you. I guess the Court  
14 took judicial notice of that.  
15 THE COURT: No, I'm not taking judicial  
16 notice. I've been around the block.  
17 BY MR. TERRY:  
18 Q. What is the answer to that question then?  
19 THE COURT: If he knows.  
20 BY MR. TERRY:  
21 Q. Are you seriously going to tell us that  
22 doesn't happen, Detective?  
23 MS. JIMENEZ: Object as to argumentative,  
24 the tone of voice, Judge.  
25 THE COURT: Hold it, hold it. If he

111

1 your client know he has a right to testify and you  
2 advised him, I'm sure --  
3 MR. TERRY: Absolutely.  
4 THE COURT: -- at this hearing not to  
5 testify; is that correct?  
6 MR. TERRY: Correct. We have arguments  
7 we'd like to address to the Court, but we rest as far  
8 as the evidence.  
9  
10 DEFENSE RESTS  
11  
12 THE COURT: Arguments.  
13 MS. JIMENEZ: Judge, we'll submit and  
14 reserve for rebuttal on the arguments.  
15 THE COURT: Mr. Terry.  
16 MR. TERRY: We first ask the Court to --  
17 THE COURT: Hold it a minute.  
18 The only one that's been admitted  
19 is the photograph.  
20 MS. JIMENEZ: The map. That's correct,  
21 Judge.  
22 THE COURT: Their photograph of the  
23 school.  
24 MR. TERRY: The one she marked on.  
25 THE COURT: Right.

110

1 knows, if he knows.  
2 THE WITNESS: Not in a homicide  
3 investigation.  
4 BY MR. TERRY:  
5 Q. That doesn't mean it doesn't happen,  
6 right?  
7 A. That's correct. I do not do that as a  
8 course in a homicide investigation.  
9 MR. TERRY: We'll accept that. Nothing  
10 further.  
11 THE COURT: Anything else?  
12 MR. TERRY: No, Judge.  
13 THE COURT: Okay. Thank you very much.  
14  
15 (Witness excused)  
16  
17 Any other witnesses, State?  
18 MS. NYIKOS: State rests, your Honor.  
19  
20 STATE RESTS  
21  
22 THE COURT: All right. Mr. Terry, the  
23 State has rested their case.  
24 MR. TERRY: Defense rests, Judge.  
25 THE COURT: Now, for the record, does

112

1 Go ahead.  
2 MR. TERRY: We would first ask that you  
3 consider Mr. Harper as being an accomplice, an  
4 accomplice under the law. It makes no difference  
5 whether he was prosecuted or not, Judge. It's does  
6 he subject himself to possible prosecution.  
7  
8 If you accept his testimony he was  
9 in the car, he vacillated back and forth as to  
10 whether they were going there to fight or participate  
11 in an ongoing fight. He was aware there was a gun.  
12 There was nothing that distinguishes him from any of  
13 the other individuals, I might tell you, including  
14 the female that were present in that car.  
15  
16 If your Honor construes him as an  
17 accomplice, then anything that he has said cannot be  
18 considered by your Honor until such time as the State  
19 has shown that independent of Mr. Harper.  
20  
21 Why is that relevant? Because  
22 there are no conversations then that would be  
23 considered by the Court, and there would be nothing  
24 in reference to the gang enhancement or the specific  
25 allegation set forth within the Amended Criminal  
Complaint that has to do with anything having to do  
with the gang, and that would be the language  
pertaining to the Puros Locos.

RA 000028

1 Now, I would also suggest to the 113  
2 Court that there's no testimony before the Court, no  
3 admissible testimony before the Court that my client  
4 was a member of either that gang or any gang.  
5 If the Court's recollection is  
6 different then I yield to the Court, but I certainly  
7 would have objected if Mr. Harper or anybody else  
8 would have testified to that without some type of  
9 foundation, et cetera.  
10 If the Court accepts that, then  
11 the gang enhancement has to go. Certainly, we would,  
12 consistent with that, strike anything pertaining to  
13 the gang enhancement.  
14 As far as the, quote, murder with  
15 use of a deadly weapon, Judge, there are two bases  
16 set forth within this charging document. By killing  
17 Victor Gamboa with premeditation and deliberation,  
18 we'll submit that to the Court.  
19 Two, the death of Victor Gamboa,  
20 ensuing following defendant's giving and/or sending  
21 and/or accepting of a challenge to fight or said  
22 death ensuing during a fight that occurred upon  
23 previous concert and agreement, the evidence is  
24 clearly to the contrary on that.  
25 When these people arrived at the

1 scene, if you accept the testimony, the fight was 114  
2 already going on. There was no testimony about a  
3 previous agreement to get involved in a fight. That  
4 would involve more than one party. That would have  
5 involved the parties that were in the car that went  
6 to the fight that was already going on, and the  
7 fight -- and the people that were already involved in  
8 the fight.  
9 And it's very interesting, because  
10 Mr. Harper testified there were no girls involved in  
11 that fight, and that certainly was not the testimony  
12 of the sister in this case, that there were girls and  
13 boys involved in the fight. Mr. Harper testified  
14 there are no girls that were part of the gang. That  
15 was a very specific question that was directed to him  
16 and a very specific response that he made.  
17 So the second theory of the  
18 State's case, we would suggest has to be stricken.  
19 There was no challenge to fight, and a fight did not  
20 start once they got there. The fight was already  
21 going on, your Honor. We would submit it on that.  
22 MS. JIMENEZ: Thank you, Judge.  
23 A few comments. First of all, I  
24 would disagree with defense counsel's argument that  
25 Jonathan Harper is an accomplice in this. He said

1 that nothing distinguishes him from the other people 115  
2 in the car except for the fact that he didn't have a  
3 gun. He didn't tell the defendant to do anything  
4 with that gun. He didn't tell him to shoot the  
5 victim. He didn't tell him to provide that gun to  
6 him. And that distinguishes him from the defendant's  
7 actions, and even from the some of the actions of the  
8 other individuals who were in the car.  
9 He's not an accomplice in this  
10 act. There has to be a threshold showing that he's  
11 an accomplice, and there isn't that showing here.  
12 Secondly, it's my belief that the  
13 statute says that what needs to be corroborated of an  
14 accomplice is the identity of the defendant, and we  
15 did have corroboration, even if you were to consider  
16 him an accomplice, in the form of Melissa Gamboa's  
17 testimony, where she also identified the defendant as  
18 being the shooter.  
19 And, Judge, if you're not sure, I  
20 didn't bring the statute with me, and I don't have it  
21 memorized, unfortunately, but we can pull the statute  
22 up and look at what it says right now.  
23 Second of all, that's also an  
24 issue that is something that a jury will decide. And  
25 if there's a finding that he's an accomplice, then

1 the defense can ask for that instruction in front of 116  
2 the jury, but that's not something for this Court to  
3 consider here. And, as I said, even if you were to  
4 consider that, there was corroborating testimony that  
5 the defendant was the shooter, and that's what has to  
6 be corroborated under that accomplice statute.  
7 THE COURT: According to the accomplice  
8 issue of it, I consider him more of a witness than I  
9 do an accomplice. I think that he was more of a  
10 witness to -- though he was present and rode along,  
11 but as to the crime itself of murder, I think his  
12 position was more as a witness than as an accomplice,  
13 so I do not consider him as an accomplice.  
14 MS. JIMENEZ: Thank you, Judge. As I  
15 indicated that's our primary argument on that issue.  
16 And then with that being said,  
17 then his testimony regarding the gang enhancement is  
18 relevant. Mr. Terry said there wasn't any testimony  
19 that the defendant was a member of a gang, but  
20 actually the gang enhancement doesn't require there  
21 that the person charged with it actually be a member  
22 of the gang. What they have to do is commit the  
23 crime to promote or further that gang.  
24 And we had testimony that he was  
25 told to commit this. In fact, Mr. Terry brought it



117  
1 out on cross-examination that Little One or Giovanni  
2 said to him that he was provoked to do the crime by  
3 Little One or Giovanni.

4 And that's why we were asking  
5 Mr. Harper the questions regarding the gang  
6 involvement and who was in the gang, because that is  
7 relevant to proving the gang enhancement, and that is  
8 something that Mr. Harper can testify to.

9 This is slight or marginal  
10 evidence, and, Judge, we have met slight or marginal  
11 evidence of the reason behind this fight occurring  
12 and the shooting occurring.

13 As far as the theories of  
14 liability, Judge, at preliminary hearing we are not  
15 required to prove each and every theory of liability  
16 that we choose. That's simply not a burden that we  
17 have.

18 The purpose of charging and  
19 pleading a theory of liability is to put the defense  
20 on notice as to the theories that the State is  
21 proceeding on. And, in fact, if we had included that  
22 second theory in this Criminal Complaint, we could  
23 have filed an Amended Information in District Court  
24 adding that theory of liability because it's a notice  
25 pleading, it's not -- those aren't specific facts

119  
1 therefore --

2 MR. TERRY: Before you bind him over  
3 then, may I address the Court on the question of  
4 bail, either before or after.

5 THE COURT: Let's do it after.

6 Now, for the purpose of this  
7 hearing, I think the State's met their burden, so,  
8 therefore, it appearing to me from the Complaint on  
9 file herein that crimes have been committed, that a  
10 crime has been committed in Case No. 06F11378A, and  
11 that's the crime of murder with use of a deadly  
12 weapon with the intent to promote, further, or assist  
13 a criminal gang, and there is reasonable grounds to  
14 believe that the defendant, Evaristo Jonathan Garcia,  
15 committed this crime, I hereby order said defendant  
16 be held to answer to said charge in the Eighth  
17 Judicial District Court, State of Nevada, in and for  
18 the County of Clark.

19 THE CLERK: January 5, 9 a.m., lower  
20 level Courtroom A.

21 MR. TERRY: And ultimately to 14?

22 THE COURT: All 14.

23 MR. TERRY: May I now address the  
24 question of bail, Judge?

25 THE COURT: You may.

118  
1 that we have to prove.

2 We have to prove that a murder  
3 occurred, that it occurred with a deadly weapon, and  
4 in this case the gang enhancement. And we met that  
5 burden here, so there's no need to strike the  
6 theories of liability, and, in fact, that would be  
7 inappropriate at this stage of the proceedings  
8 because we have shown slight or marginal evidence  
9 that the murder happened, and we are entitled to  
10 proceed on the theories of liability that we see  
11 appropriate to proceed on. That we don't have to  
12 prove the elements of those theories of liability at  
13 the preliminary hearing.

14 THE COURT: I think all the questions  
15 that have been directed by defense counsel; the  
16 enhancement, gang enhancement, where it was acting as  
17 a member of the gang, was it enhancing the gang,  
18 whether it was premeditation, deliberation, and  
19 whether or not it followed after a death ensuing  
20 after a fight, that or a challenge to fight, I think  
21 these are all questions that are going to have to be  
22 answered by the jury. And I think these are all jury  
23 questions with the proper instructions.

24 So I think for the purpose of this  
25 hearing, the State's met their burden, so,

120  
1 MR. TERRY: The Court would note that we  
2 did not address that at the time we first appeared  
3 before the Court, so as a result my client stands  
4 before the Court on a no bail situation.

5 Unless the State is representing  
6 to the Court that this is a capital case, which they  
7 cannot do, quite frankly, then the defendant is  
8 entitled to bail. And the reason they cannot do that  
9 is because in the extradition proceedings, it was  
10 represented this was not a capital case. So as a  
11 result they have --

12 THE COURT: Where was he extradited from?

13 MS. JIMENEZ: Judge, he was extradited  
14 from Mexico on an international extradition.

15 MR. TERRY: But does the State concur  
16 this is not a capital case?

17 MS. JIMENEZ: Judge, I concur it's not a  
18 capital case, but I disagree that the statute says we  
19 can't have no bail on any but a capital case.  
20 Actually, murder cases, not just capital cases, are  
21 the kind of cases that we can have no bail on. It  
22 doesn't have to be a capital case.

23 MR. TERRY: So we've established it is  
24 not a capital case, Judge. Then I would ask the  
25 Court to set reasonable bail.

1 This offense occurred in 2006. If 121  
2 the State wants to make other representations to the  
3 Court regarding prior criminal history of my client,  
4 they're welcome to do that, because he had absolutely  
5 no juvenile record.  
6 His parents are present in court.  
7 He will reside with his parents. I realize the Court  
8 will more likely than not set a relatively high bail,  
9 but the Court can also set conditions, conditions  
10 such as house arrest, intense supervision, monitoring  
11 devices, no contact with certain individuals, which  
12 we would be willing to accept. I just urge the Court  
13 to set a reasonable bail.  
14 Now, if the State stands up and  
15 says, well, gee, we think a million dollars is  
16 reasonable, you have to take into consideration the  
17 economic situation of this individual that's before  
18 the Court. He doesn't have any money, Judge. Any  
19 monies that he gets are through his parents, but he  
20 is an adult at this point in time, so if the State's  
21 going to argue for an excessively large amount of  
22 bail; 1, obviously, he won't be able to make it, but  
23 No. 2, it really doesn't pertain to this individual  
24 because you have to look at what his economic status  
25 is, and, obviously, he's been in custody since the

1 You heard the evidence of the 123  
2 case, which is strong, and under these circumstances,  
3 the facts of the case, combined with the fact that he  
4 was brought here through an international  
5 extradition, which are few and far between, I think  
6 that no bail is certainly reasonable and appropriate  
7 in this case.  
8 THE COURT: First of all, I don't think  
9 the parents had much control over him from the  
10 beginning. Going out there and running with a gang  
11 and what have you, to me it lacks any parental  
12 control.  
13 No, I'm going to leave it at no  
14 bail. You can bring the issue up after he enters a  
15 plea in District Court.  
16 MR. TERRY: Thank you, Judge.  
17 MS. JIMENEZ: Thank you, Judge.  
18 ---o0o---  
19 ATTEST: Full, true and accurate transcript of  
20 proceedings.  
21 *Gerri De Lucca*  
22 GERRI DE LUCCA, C.C.W. NO. 82  
23  
24  
25

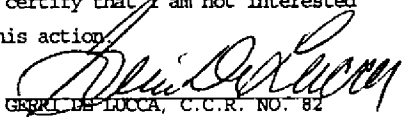
1 time of the extradition. 122  
2 MS. JIMENEZ: Judge, I'm actually not  
3 going to argue that a million dollars bail is  
4 reasonable because I think no bail is reasonable in  
5 this case, and that's what we're asking that the  
6 Court leave it at.  
7 The defendant, after committing  
8 this crime, the reason it's been two years is because  
9 the defendant fled to Mexico with the help of his  
10 parents, and he had to be extradited through an  
11 international extradition, which is a lengthy,  
12 difficult, detailed process in order to get him here.  
13 If the Court were to release him  
14 on bail, he would be a huge flight risk to go right  
15 back to Mexico and have to have the process start all  
16 over again. A lot of time and expense went into it,  
17 and the fact that he fled after this crime, he stayed  
18 out of the country and he had to be brought back here  
19 by an extradition is certainly evidence of flight to  
20 have him held at no bail.  
21 Additionally, he's a danger to the  
22 community, Judge. He went to this fight, as  
23 Mr. Terry said, that was ongoing. He brought a gun,  
24 and he shot a 15 year-old in the back as the 15  
25 year-old was running away.

1 IN THE JUSTICE COURT OF THE LAS VEGAS TOWNSHIP 124  
2 COUNTY OF CLARK, STATE OF NEVADA  
3  
4 STATE OF NEVADA,  
5 Plaintiff,  
6 vs. Case No. 06F11378A  
7 EVARISTO JONATHAN GARCIA, ATTEST RE: NRS 239B.030  
8 Defendant.  
9  
10  
11 STATE OF NEVADA }  
12 COUNTY OF CLARK } SS  
13  
14 I, Gerri De Lucca, a Certified Shorthand  
15 Reporter within and for the County of Clark and the  
16 State of Nevada, do hereby certify:  
17 That REPORTER'S TRANSCRIPT OF PROCEEDINGS  
18 was reported in open court pursuant to NRS 3.360  
19 regarding the above proceedings in Las Vegas Justice  
20 Court, 200 Lewis Avenue, Las Vegas, Nevada.  
21 That said TRANSCRIPT:  
22 X Does not contain the Social Security  
23 number of any person.  
24 \_\_\_\_\_ Contains the Social Security number  
25 of a person.

RA 000031

---o0o---

1  
2 ATTEST: I further certify that I am not interested  
3 in the events of this action.  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

  
GREGORY DE LUCCA, C.C.R. NO. 82

RA 000032

1	8	49/1 49/3 49/11 49/13 49/22 50/15 54/12 64/15 71/25 72/9 72/23 73/4 73/11 73/16 73/19 74/15 75/12 76/15 76/18 79/16 79/18 79/20 79/25 85/4 85/20 85/25 86/9 88/23 100/16 102/21 118/19 118/20 119/4 119/5 122/7 122/17 123/14 afternoon [2] 70/16 71/10 again [12] 23/7 34/6 43/11 46/1 49/20 59/17 66/16 79/19 83/1 85/11 94/16 122/16 against [2] 86/8 101/15 age [4] 76/3 76/4 82/1 82/4 ago [2] 7/12 8/12 agree [3] 5/10 9/1 10/6 agreement [2] 113/23 114/3 ahead [20] 4/10 5/1 10/17 10/22 13/12 15/16 17/5 17/9 27/9 27/11 32/21 35/15 37/3 60/1 65/5 70/4 78/11 97/4 100/22 112/1 all [47] 3/17 3/18 3/21 4/4 5/7 9/2 9/12 9/13 15/21 15/22 15/23 17/13 18/3 21/5 21/22 22/17 22/17 24/17 34/14 40/25 41/11 42/2 43/7 44/13 46/21 53/15 54/1 55/25 56/13 66/4 66/16 75/3 76/7 89/10 90/25 99/21 100/20 102/22 110/22 114/23 115/23 118/14 118/21 118/22 119/22 122/15 123/8 allegation [1] 112/22 alleged [4] 26/23 26/25 27/4 40/8 allow [2] 5/4 78/10 allowed [4] 108/5 108/16 108/19 108/21 along [1] 116/10 already [20] 4/5 8/17 14/14 14/15 33/4 34/20 40/16 40/23 41/20 41/25 47/8 47/14 48/24 51/22 54/5 66/2 114/2 114/6 114/7 114/20 also [12] 5/3 10/21 48/3 49/22 50/11 63/16 102/13 108/3 113/1 115/17 115/23 121/9 am [1] 125/2 Amended [2] 112/22 117/23 amount [2] 109/7 121/21 and/or [2] 113/20 113/21 another [7] 11/14 75/12 75/16 88/16 98/20 102/19 105/3 answer [29] 6/18 26/11 29/22 30/2 30/11 32/20 42/11 43/2 44/11 44/12 45/1 45/11 47/19 49/19 55/6 55/8 55/17 55/22 57/3 57/4 59/3 59/25 60/25 63/15 68/17 68/23 104/2 109/18 119/16 answered [10] 32/18 42/18 44/24 45/9 48/11 50/20 51/21 64/20 82/8 118/22 any [40] 4/1 19/4 19/4 34/23 40/10 41/24 43/20 61/18 63/19 67/23 86/4 91/2 92/2 92/3 94/1 103/2 103/3 103/4 103/7 103/16 105/2 105/7 105/15 105/19 105/25 107/10 107/20 108/3 108/4 108/6 109/2 110/17 112/11 113/4 116/18 120/19 121/18 121/18 123/11 124/23 anybody [11] 11/15 47/11 52/11
106 [5] 37/20 87/18 102/23 104/13 105/3	82 [3] 1/24 123/21 125/5 87 [1] 2/12 8:00 [1] 10/12 8:30 [1] 1/18	
-		
---o0o [2] 123/18 125/1	9	
0	9 a.m [1] 119/19 9-millimeter [1] 64/9 95 [1] 2/13 98 [1] 2/14	
06 [4] 99/5 105/16 105/16 105/16 06F11378A [3] 1/9 119/10 124/5	A	
1	a.m [2] 1/18 119/19 able [3] 3/16 85/17 121/22 about [50] 11/10 11/15 11/25 14/10 16/8 16/9 17/17 17/24 17/25 19/6 20/1 20/3 20/16 21/21 21/23 22/3 22/7 22/12 22/15 23/3 23/3 23/12 24/6 24/8 24/11 24/11 32/5 39/1 62/25 63/12 63/16 63/25 64/15 64/18 65/7 65/17 72/9 72/17 72/17 72/21 72/22 73/15 76/3 82/1 82/4 82/11 93/18 96/17 98/15 114/2 above [1] 124/19 absolutely [3] 78/24 111/3 121/4 Academy [4] 70/21 70/22 71/6 71/8 accept [5] 31/23 110/9 112/7 114/1 121/12 accepting [1] 113/21 accepts [1] 113/10 accomplice [14] 112/3 112/4 112/15 114/25 115/9 115/11 115/14 115/16 115/25 116/6 116/7 116/9 116/12 116/13 According [1] 116/7 accurate [4] 5/7 33/15 78/4 123/19 accurately [1] 77/17 acknowledge [4] 94/12 94/18 99/10 106/21 across [1] 79/11 act [2] 65/21 115/10 acting [2] 34/17 118/16 action [1] 125/3 actions [2] 115/7 115/7 activities [2] 27/6 27/11 actually [10] 9/23 18/9 50/25 51/10 51/13 83/19 116/20 116/21 120/20 122/2 adding [1] 117/24 Additionally [1] 122/21 address [5] 104/21 111/7 119/3 119/23 120/2 adequate [1] 78/1 admissible [1] 113/3 admit [3] 5/10 77/22 78/2 admitted [6] 2/22 5/15 5/17 5/19 78/14 111/18 Adrian [1] 13/25 adult [2] 71/9 121/20 advised [1] 111/2 affect [2] 38/15 38/17 affected [1] 38/13 after [57] 9/8 17/7 18/13 18/21 18/23 18/24 19/2 19/3 19/4 19/6 21/13 22/8 23/1 23/6 32/15 32/19 36/7 47/13 48/3 48/21	
101 [1] 2/17 103 [1] 2/18 108 [2] 2/19 2/20 11 [1] 105/3 12 [1] 38/23 13 [1] 21/7 14 [4] 24/18 32/6 119/21 119/22 15 [5] 32/6 54/17 70/14 122/24 122/24 16 [1] 54/17 17 [3] 70/12 76/4 82/5 18 [9] 1/18 3/1 38/23 38/24 56/15 56/25 76/4 82/5 90/8 19 [2] 69/13 90/8		
2		
2-6-06 [1] 99/5 200 [1] 124/20 2005 [1] 8/15 2006 [14] 7/12 7/12 10/9 11/2 38/21 38/22 70/9 70/10 70/15 77/19 102/6 102/23 104/17 121/1 2008 [2] 1/18 3/1 2050 [1] 99/5 21 [1] 104/17 2326 [1] 89/8 239B.030 [1] 124/6 2905 [1] 104/22 2:30 [1] 71/7		
3		
3.360 [1] 124/18 36 [1] 2/6 380 [2] 83/24 88/7		
4		
4-1 [2] 37/13 106/11 4-1-06 [1] 105/16		
5		
5-11 [1] 105/3 5-11-06 [1] 105/16 5-2 [1] 81/21 5-3 [1] 81/21 5-foot-7 [2] 98/17 99/7 50 feet [1] 16/4		
6		
6-21-06 [1] 105/16 62 [1] 2/7 65 [1] 2/8 66 [1] 2/9 69 [1] 2/11 6th [1] 39/5		
7		
77 [1] 2/23 78 [1] 2/23		

RA 000033

**A**

anybody... [8] 52/23 53/9 63/13  
72/13 86/21 96/11 96/14 113/7  
anyone [1] 80/14  
anything [18] 8/23 11/15 12/11  
21/5 27/1 33/21 66/8 72/13  
86/19 86/21 99/18 107/22 108/4  
110/11 112/15 112/23 113/12  
115/3  
anyway [1] 27/12  
appearance [1] 90/1  
APPEARANCES [1] 1/20  
appeared [1] 120/2  
appearing [1] 119/8  
approach [7] 53/3 77/6 78/23  
85/11 88/13 95/8 100/12  
appropriate [2] 118/11 123/6  
April [10] 40/2 40/3 40/5 52/20  
62/20 102/6 102/23 102/24  
104/13 107/4  
April 1 [4] 40/2 102/6 104/13  
107/4  
April 2006 [1] 102/23  
are [32] 3/18 3/22 6/15 10/5  
34/14 37/1 43/15 44/13 46/10  
50/18 58/13 59/6 69/12 80/15  
97/10 100/21 106/18 108/19  
109/6 109/21 112/19 113/15  
114/14 117/14 118/9 118/21  
118/21 118/22 120/20 121/6  
121/19 123/5  
area [2] 79/14 81/3  
aren't [1] 117/25  
argue [2] 121/21 122/3  
arguing [4] 16/5 16/6 16/8  
33/18  
argument [2] 114/24 116/15  
argumentative [1] 109/23  
arguments [3] 111/6 111/12  
111/14  
around [8] 8/13 10/12 11/18  
23/23 38/23 76/4 102/23 109/16  
arranged [1] 108/7  
arrest [1] 121/10  
arrested [1] 109/7  
arrive [3] 50/25 72/7 72/10  
arrived [6] 40/15 51/4 73/4  
73/5 86/13 113/25  
arriving [1] 74/1  
arrow [2] 85/17 85/22  
as [76] 5/4 5/16 7/6 9/15 13/25  
14/1 17/20 26/14 26/14 26/21  
27/19 28/4 28/17 30/25 33/2  
34/9 34/21 34/21 38/8 41/13  
43/22 46/14 48/1 48/2 49/15  
50/8 62/11 67/22 69/7 74/9  
87/12 87/13 87/17 88/1 88/23  
89/23 90/1 90/8 91/3 91/15  
91/17 91/22 92/9 94/6 98/4  
98/17 98/17 99/11 101/7 107/13  
109/23 110/7 111/7 111/8 112/3  
112/8 112/14 112/16 113/14  
113/14 115/17 116/3 116/11  
116/12 116/12 116/13 116/14  
117/13 117/13 117/20 118/16  
120/3 120/10 121/10 122/22  
122/24  
ask [19] 4/4 29/19 34/13 34/14  
37/6 41/11 49/20 60/11 65/5  
77/23 78/20 88/19 92/7 94/17  
96/22 111/16 112/2 116/1 120/24  
asked [46] 6/14 9/18 13/9 29/19

31/7 37/5 37/9 39/1 39/6 39/7  
40/7 42/24 45/8 47/16 51/21  
52/8 52/11 52/17 52/22 53/19  
54/4 54/24 57/10 57/14 57/16  
57/17 58/14 58/17 58/19 58/21  
59/18 62/14 62/25 63/2 63/12  
63/16 63/19 63/25 64/20 65/17  
68/16 82/8 97/1 97/2 98/15  
109/8  
asking [10] 30/25 31/4 33/24  
45/11 72/21 82/11 86/2 92/16  
117/4 122/5  
asks [1] 95/11  
ass [2] 12/5 14/16  
assigned [1] 101/13  
assist [2] 103/14 119/12  
assume [1] 30/23  
assumes [3] 26/8 26/13 30/19  
attend [1] 70/18  
attending [2] 70/17 77/14  
attention [3] 7/11 10/9 97/6  
ATTEST [3] 123/19 124/6 125/2  
attorney [2] 3/8 96/9  
Attorneys [2] 93/2 108/7  
attorneys [6] 1/22 3/12 6/18  
59/7 68/16 100/21  
attributes [1] 99/11  
attributing [1] 61/20  
audible [1] 4/17  
automobile [1] 41/4  
autopsy [2] 5/1 5/8  
Avenue [1] 124/20  
aware [3] 46/7 109/6 112/10  
away [3] 32/25 84/21 122/25

**B**

back [28] 4/25 5/22 18/14 26/4  
29/11 33/9 35/18 44/5 44/7  
44/20 62/21 64/2 66/16 67/3  
67/4 67/9 67/18 67/19 67/20  
74/4 84/19 85/1 90/19 97/14  
112/8 122/15 122/18 122/24  
background [1] 84/1  
bail [16] 119/4 119/24 120/4  
120/8 120/19 120/21 120/25  
121/8 121/13 121/22 122/3 122/4  
122/14 122/20 123/6 123/14  
bailiff [2] 68/9 100/8  
bar [1] 100/14  
Barlow [1] 93/3  
based [2] 9/13 10/19  
bases [1] 113/15  
battering [2] 45/9 45/10  
be [57] 3/16 4/4 4/25 5/15 5/19  
5/20 6/2 9/12 9/19 9/23 14/2  
26/9 30/12 34/6 52/4 55/20  
60/16 60/19 62/15 65/8 66/14  
68/8 68/10 68/11 72/18 80/18  
85/8 85/17 91/6 92/12 100/24  
103/4 103/13 106/4 107/22 108/3  
108/24 109/2 109/9 112/15  
112/19 112/20 112/24 114/18  
115/10 115/13 116/6 116/21  
118/6 118/21 119/16 120/22  
121/12 121/22 122/10 122/14  
122/18  
beat [1] 11/18  
became [1] 8/16  
because [35] 6/21 9/18 10/15  
11/13 19/15 20/14 31/6 34/1  
41/24 51/23 53/20 54/2 54/15  
55/22 56/2 60/11 63/8 67/15  
68/18 80/1 87/21 94/9 98/9  
104/21 106/20 112/18 114/9  
6 117/24 118/8 120/9 121/4  
121/24 122/4 122/8  
become [3] 8/10 9/4 9/17  
bed [2] 67/4 67/19  
been [25] 3/20 3/21 3/24 3/25  
7/5 8/17 61/7 61/19 69/5 89/1  
89/7 90/16 99/6 101/5 102/24  
105/24 106/4 108/7 109/16  
111/18 118/15 119/9 119/10  
121/25 122/8  
before [55] 1/16 4/12 8/16  
14/11 17/25 18/1 20/9 29/12  
29/13 32/7 32/9 44/12 44/22  
45/4 45/6 45/18 45/19 45/21  
45/23 45/24 45/25 46/1 46/3  
46/4 46/5 47/9 49/18 51/3 56/9  
57/1 64/3 64/15 64/17 64/18  
72/12 72/23 74/4 74/5 74/6 91/3  
91/13 93/12 93/15 95/18 99/6  
106/19 107/4 107/10 113/2 113/3  
119/2 119/4 120/3 120/4 121/17  
beg [1] 107/1  
beginning [1] 123/10  
behind [3] 15/8 80/20 117/11  
being [20] 4/16 21/1 52/11  
52/17 53/19 54/4 54/24 56/9  
57/10 57/11 57/14 81/7 84/15  
88/1 90/8 94/6 98/17 112/3  
115/18 116/16  
belabor [1] 10/4  
belief [1] 115/12  
believe [27] 23/25 70/12 71/7  
79/7 81/21 83/23 84/20 88/7  
88/15 94/9 99/12 102/13 103/8  
103/25 104/21 104/22 105/10  
105/11 105/14 105/17 105/21  
105/22 106/3 106/17 106/18  
107/21 119/14  
believed [1] 94/2  
believes [1] 106/10  
beside [1] 92/2  
beside the [1] 92/2  
between [6] 30/22 31/12 31/20  
86/14 102/24 123/5  
big [4] 12/5 14/16 27/20 27/21  
bind [1] 119/2  
binder [1] 62/12  
bit [3] 4/15 38/18 38/19  
black [9] 20/14 24/17 25/4 32/4  
64/13 66/20 84/8 88/8 98/1  
block [1] 109/16  
blue [4] 15/2 33/10 35/17 83/8  
body [1] 33/8  
bottom [2] 53/8 63/1  
box [3] 95/10 95/14 96/2  
boy [7] 49/3 49/16 50/6 50/11  
50/13 54/15 55/1  
boys [4] 42/4 42/5 43/4 114/13  
brain [1] 38/8  
brawl [1] 12/5  
break [1] 62/15  
brevity [1] 106/9  
Brian [10] 13/24 73/10 73/11  
73/16 73/17 73/19 73/21 73/22  
74/15 74/16  
bring [3] 91/24 115/20 123/14  
broad [1] 9/17  
brother [25] 11/21 69/14 69/18  
70/13 72/2 72/3 72/24 73/5  
73/18 73/19 80/3 80/11 80/20  
80/21 80/22 81/1 81/7 81/14  
82/21 83/14 84/12 84/15 85/25

<b>B</b> brother... [2] 86/9 86/24 brother's [1] 69/16 brought [5] 86/11 116/25 122/18 122/23 123/4 Brown [1] 26/12 building [2] 91/23 93/13 bullet [1] 38/4 burden [4] 117/16 118/5 118/25 119/7 burst [1] 38/7	certain [1] 121/11 certainly [6] 89/1 113/6 113/ 114/11 122/19 123/6 Certified [1] 124/14 certify [2] 124/16 125/2 cetera [1] 113/9 challenge [3] 113/21 114/19 118/20 change [1] 59/8 characterization [1] 33/15 charge [1] 119/16 charged [1] 116/21 charging [3] 16/24 113/16 117/18 Charleston [1] 104/22 chasing [8] 33/2 33/13 33/22 50/1 50/6 50/7 50/11 50/13 check [1] 104/1 checked [2] 62/4 62/7 choose [1] 117/16 circle [25] 12/6 14/16 15/8 15/10 15/14 15/19 16/4 32/11 32/12 32/13 48/2 48/7 48/9 48/10 48/13 48/18 48/22 49/2 49/5 49/7 50/5 50/17 79/1 79/5 79/13 circumstances [1] 123/2 clarification [1] 36/2 clarify [2] 63/6 67/15 clarifying [1] 58/22 CLARK [7] 1/5 12/25 71/2 119/18 124/2 124/12 124/15 class [2] 72/16 73/25 classes [1] 71/10 clean [1] 88/10 clear [16] 33/18 33/19 36/19 37/12 43/9 54/1 56/16 57/6 61/17 62/15 66/13 67/19 69/24 72/19 92/6 107/3 clearly [1] 113/24 client [7] 9/19 25/15 94/6 111/1 113/3 120/3 121/3 client's [1] 89/25 CLIFFORD [2] 2/16 101/1 clip [1] 18/17 clothing [1] 82/12 co [2] 16/22 17/2 co-conspirator [2] 16/22 17/2 cocked [2] 18/14 35/18 color [9] 15/1 64/12 75/22 82/14 82/16 83/7 84/6 84/7 97/24 combined [1] 123/3 come [4] 75/19 91/2 91/20 93/20 coming [2] 54/18 75/12 comments [1] 114/23 commit [2] 116/22 116/25 committed [4] 98/5 119/9 119/10 119/15 committing [1] 122/7 commonly [1] 91/17 communication [1] 62/20 community [1] 122/22 Complaint [3] 8/8 112/23 117/22 completed [1] 100/8 Compliant [1] 119/8 concerned [1] 34/21 concert [1] 113/23 conclusion [2] 69/25 70/1 concur [2] 120/15 120/17 conditions [2] 121/9 121/9 conduct [1] 102/9 conducted [1] 104/18	conducting [1] 101/17 consider [6] 112/3 115/15 116/3 116/4 116/8 116/13 consideration [1] 121/16 considered [3] 5/24 112/16 112/20 consistent [1] 113/12 conspirator [2] 16/22 17/2 construes [1] 112/14 contact [2] 102/15 121/11 contain [1] 124/22 Contains [1] 124/24 continuing [2] 28/6 55/4 contrary [1] 113/24 control [2] 123/9 123/12 conversation [4] 23/3 104/10 107/4 107/10 conversations [5] 92/3 103/2 105/8 105/15 112/19 coordinator [1] 91/18 copied [1] 62/10 copies [1] 62/11 copy [2] 5/1 61/18 correct [88] 21/24 38/9 38/11 38/13 39/14 39/16 39/17 39/19 39/24 40/1 40/11 40/16 40/19 40/23 41/7 41/9 41/18 41/21 41/25 42/9 43/16 43/23 44/23 46/8 46/20 47/3 47/6 47/9 47/19 48/13 49/4 50/1 50/23 53/11 53/13 54/2 55/12 56/3 57/8 57/20 59/4 60/4 61/23 65/20 66/5 67/13 78/18 78/19 79/14 79/15 79/21 82/21 85/23 87/18 87/19 88/18 89/2 89/5 89/8 89/9 89/23 89/24 90/2 90/3 90/8 90/9 90/17 90/18 90/20 90/21 90/23 95/12 99/15 101/11 101/12 102/8 104/5 104/16 105/1 105/6 106/8 106/12 107/5 108/25 110/7 111/5 111/6 111/20 corroborated [2] 115/13 116/6 corroborating [1] 116/4 corroboration [1] 115/15 could [12] 22/9 33/21 47/21 67/12 81/13 83/6 85/9 86/4 100/4 104/6 106/2 117/22 couldn't [2] 63/8 92/14 counsel [29] 9/2 11/5 24/18 37/9 37/12 38/25 39/6 52/4 52/14 53/24 56/15 62/23 63/10 63/12 63/25 65/1 65/17 77/6 78/21 79/2 88/4 88/16 96/22 98/15 98/20 102/1 104/10 106/10 118/15 counsel's [4] 5/8 10/19 80/13 114/24 country [1] 122/18 COUNTY [7] 1/5 12/25 71/2 119/18 124/2 124/12 124/15 couple [4] 7/12 27/24 83/15 83/16 course [1] 110/8 court [53] 1/4 1/25 2/9 3/20 4/14 4/17 5/13 5/14 5/24 6/21 9/13 56/16 64/25 66/12 68/19 83/3 91/20 93/14 93/15 95/17 105/12 106/20 109/13 111/7 111/16 112/20 113/2 113/2 113/3 113/6 113/10 113/18 116/2 117/23 119/3 119/17 120/1 120/3 120/4 120/6 120/25 121/3 121/6 121/7 121/9 121/12 121/18 122/6
<b>C</b> C.C.R [3] 1/24 123/21 125/5 C226218 [1] 1/1 cab [2] 67/6 67/12 call [7] 4/11 4/12 8/22 68/5 68/23 74/9 100/3 called [5] 11/21 19/15 91/3 91/13 97/1 calls [2] 6/18 68/17 came [13] 18/25 73/5 75/20 76/12 76/17 76/18 80/2 93/12 93/15 93/20 93/24 95/17 106/20 Camino [5] 25/4 66/20 67/16 75/23 76/12 can [53] 7/22 8/22 9/14 10/21 11/19 14/5 14/23 17/20 24/15 27/5 27/7 27/20 30/17 32/2 33/19 35/4 36/11 49/18 57/21 58/4 59/25 63/3 63/6 66/23 74/20 75/21 76/4 79/1 79/5 79/19 80/25 81/2 81/6 81/8 81/16 82/18 83/22 84/5 84/8 85/10 85/11 94/16 95/7 95/11 96/6 100/12 101/23 115/21 116/1 117/8 120/21 121/9 123/14 can't [6] 11/23 24/10 62/3 65/9 109/1 120/19 cannot [8] 6/22 9/15 11/5 44/10 68/19 112/15 120/7 120/8 capital [8] 120/6 120/10 120/16 120/18 120/19 120/20 120/22 120/24 car [47] 14/16 14/17 15/7 20/9 25/1 25/3 25/7 43/13 43/20 43/22 43/25 44/2 44/4 44/5 44/7 44/9 44/18 44/22 45/4 45/6 45/18 45/24 46/2 46/4 46/8 46/20 47/3 47/13 52/12 52/23 53/9 61/10 63/14 66/16 66/19 67/17 75/20 75/21 75/23 75/24 76/1 86/12 112/8 112/13 114/5 115/2 115/8 car-truck [1] 67/17 care [1] 42/16 carefully [2] 6/14 68/23 carried [1] 46/17 carry [1] 46/15 case [26] 1/1 1/9 5/6 20/22 64/24 101/14 101/14 104/6 108/10 110/23 114/12 114/18 118/4 119/10 120/6 120/10 120/16 120/18 120/19 120/22 120/24 122/5 123/2 123/3 123/7 124/5 cases [3] 120/20 120/20 120/21 catch [1] 82/1 cause [1] 4/24 caused [2] 51/11 51/16 cellphone [1] 74/13 center [1] 104/23		

<b>C</b>	<p> description [7] 87/23 88/1  88/11 89/5 94/13 94/19 97/19  Desert [1] 12/21  detailed [1] 122/12  detective [16] 20/22 21/3 21/9  24/20 59/11 62/19 63/1 63/19  89/7 99/4 99/9 101/11 101/13  102/14 108/8 109/22  Detective Mogg [1] 21/9  detectives [1] 37/11  devices [1] 121/11  Diablo [1] 26/5  did [172]  didn't [35] 7/17 14/6 15/22  18/1 18/5 19/7 20/3 25/12 29/19  38/15 40/9 40/10 41/11 41/24  51/23 58/20 60/11 60/13 64/22  64/23 65/4 73/8 82/1 82/3 82/14  82/19 87/16 95/14 96/8 96/10  115/2 115/3 115/4 115/5 115/20  difference [4] 8/25 30/21 41/24  112/4  different [2] 5/17 113/6  difficult [1] 122/12  direct [15] 2/5 2/11 2/17 7/9  7/11 10/8 36/11 47/12 47/16  51/7 59/19 60/3 69/10 97/6  101/9  directed [5] 7/25 7/25 38/25  114/15 118/15  direction [5] 49/15 50/8 85/2  85/6 85/18  directive [1] 4/6  directly [2] 45/21 84/17  disagree [2] 114/24 120/18  discussion [1] 100/14  disputing [1] 99/14  disrespectful [1] 4/16  distinguishes [3] 112/11 115/1  115/6  District [7] 1/22 59/7 93/2  108/7 117/23 119/17 123/15  do [128]  document [5] 16/25 61/21 61/24  106/20 113/16  documentation [1] 108/4  documents [1] 61/18  does [13] 17/3 77/17 89/16  89/19 90/4 94/12 94/18 106/13  109/9 110/25 112/5 120/15  124/22  doesn't [9] 62/13 90/4 109/22  110/5 110/5 116/20 120/22  121/18 121/23  dog [1] 19/17  doing [14] 9/14 28/25 29/13  32/10 33/1 33/12 70/16 72/13  74/6 78/9 81/9 94/10 103/11  104/1  dollars [2] 121/15 122/3  don't [55] 4/8 4/20 5/9 6/19  9/2 10/4 11/15 11/18 13/22 21/5  24/6 25/13 26/2 29/4 31/15  33/14 33/17 36/23 37/8 42/16  52/9 56/22 56/23 62/6 63/2 64/8  65/3 68/18 71/15 73/13 78/1  84/7 86/17 88/9 88/10 88/12  90/14 92/12 96/24 98/18 99/8  99/12 99/15 99/16 102/2 103/25  105/17 105/17 105/21 106/3  106/18 107/17 115/20 118/11  123/8  done [4] 81/10 97/7 97/10 99/21 </p>	<p> door [1] 75/23  d [5] 10/17 45/13 67/5 86/8  86/13  draw [1] 85/17  drawing [1] 81/5  drawn [2] 79/13 85/22  drive [1] 10/5  driving [2] 12/15 52/12  drug [2] 58/21 109/8  drugs [9] 28/15 29/10 58/10  58/13 58/16 59/3 59/12 60/4  109/8  dude [2] 35/10 46/1  duly [3] 7/5 69/6 101/5  during [5] 29/12 91/9 102/15  103/2 113/22 </p>
<b>D</b>	<p> DA [3] 7/25 68/8 100/8  DA's [2] 61/20 92/2  danger [1] 122/21  dark [3] 88/4 88/8 97/20  date [5] 70/7 78/6 99/5 102/2  102/23  dates [1] 104/8  Dawn [3] 92/18 93/2 98/3  day [13] 9/8 11/12 11/20 23/1  23/6 24/15 71/6 71/13 71/22  86/24 90/2 94/14 94/20  daycare [1] 79/10  De [4] 1/24 123/21 124/14 125/5  deadly [3] 113/15 118/3 119/11  deal [1] 109/1  death [5] 4/24 4/25 113/19  113/22 118/19  DECEMBER [2] 1/18 3/1  decide [1] 115/24  defendant [30] 1/11 1/23 3/8  15/4 17/21 17/22 21/23 34/13  34/15 34/22 35/2 83/10 83/20  86/19 90/23 91/6 95/18 96/11  98/7 115/3 115/14 115/17 116/5  116/19 119/14 119/15 120/7  122/7 122/9 124/8  defendant's [3] 100/19 113/20  115/6  defending [2] 75/11 75/13  defense [9] 77/6 96/9 100/20  110/24 111/10 114/24 116/1  117/19 118/15  deliberation [2] 113/17 118/18  delivered [1] 105/14  Department [1] 108/20  DEPT [1] 1/2  deputy [2] 1/22 59/7  describe [11] 32/3 74/20 75/21  78/9 81/16 81/18 82/18 83/22  84/5 84/5 92/14  described [11] 40/9 48/1 76/13  79/6 82/11 87/12 89/12 89/22  90/7 97/1 97/16  describing [1] 98/16 </p>	<p> E's [2] 37/15 63/6  each [1] 117/15  earlier [3] 33/11 63/13 95/17  early [1] 40/6  Echo [1] 13/24  economic [2] 121/17 121/24  ed [1] 71/9  effect [1] 48/21  eight [1] 18/19  Eighth [1] 119/16  either [9] 6/17 40/1 64/23 65/4  68/16 84/8 96/7 113/4 119/4  El [5] 25/4 66/20 67/16 75/23  76/12  elements [1] 118/12  Elko [1] 25/4  else [14] 8/23 9/16 9/18 13/20  25/7 66/8 72/13 75/4 80/7 80/22  86/21 99/19 110/11 113/7  EMANUEL [10] 2/4 6/8 13/21  20/10 24/25 25/8 43/12 56/18  56/19 66/18  Emanuel's [6] 13/22 25/1 25/5  56/19 56/21 66/18  emptied [1] 18/17  end [1] 102/25  ended [2] 12/5 21/12  enhancement [11] 26/24 27/5  112/21 113/11 113/13 116/17  116/20 117/7 118/4 118/16  118/16  enhancing [1] 118/17  enough [1] 5/3  ensuing [3] 113/20 113/22  118/19  enters [1] 123/14  entire [1] 62/9  entitled [2] 118/9 120/8  entrance [3] 79/7 79/8 79/11  escalated [2] 15/10 15/11  established [2] 34/21 120/23  et [1] 113/9  et cetera [1] 113/9  EVARISTO [15] 1/10 3/6 14/20  15/25 25/8 35/21 36/2 36/21  36/25 37/1 43/11 66/17 101/15  119/14 124/7  even [7] 5/25 7/17 13/9 61/10  115/7 115/15 116/3  evening [3] 70/16 71/11 71/18  events [1] 125/3  ever [11] 20/16 31/19 32/7  46/15 59/2 86/18 94/1 98/4  103/3 105/15 109/4  every [2] 62/10 117/15 </p>

RA 000036

## E

Everybody [2] 76/20 80/8  
 everything [1] 23/8  
 evidence [15] 26/9 26/14 30/20  
 30/23 35/11 35/13 35/14 78/14  
 111/8 113/23 117/10 117/11  
 118/8 122/19 123/1  
 Ex [1] 43/17  
 exact [3] 89/5 106/14 106/17  
 Exactly [2] 47/16 60/18  
 examination [31] 2/5 2/6 2/7  
 2/8 2/9 2/11 2/12 2/13 2/14  
 2/17 2/18 2/19 2/20 7/9 36/11  
 36/15 51/8 59/19 60/3 62/17  
 65/13 66/11 69/10 87/7 95/1  
 98/13 101/9 103/21 108/1 108/14  
 117/1  
 examine [1] 36/12  
 except [1] 115/2  
 exception [1] 5/8  
 excessively [1] 121/21  
 excited [1] 34/9  
 excluded [2] 3/25 4/5  
 exclusionary [1] 3/23  
 excuse [3] 4/8 22/19 100/9  
 excused [6] 68/1 68/3 68/8  
 99/23 100/1 110/15  
 exhibit [8] 2/23 5/13 5/14 5/16  
 77/1 77/5 77/10 78/13  
 Exhibit 1 [1] 77/5  
 EXHIBITS [1] 2/21  
 existence [3] 8/17 61/22 62/6  
 expense [1] 122/16  
 explain [3] 8/22 79/19 94/16  
 explained [1] 107/7  
 extensive [1] 38/11  
 extradited [3] 120/12 120/13  
 122/10  
 extradition [6] 120/9 120/14  
 122/1 122/11 122/19 123/5

## F

face [4] 81/20 82/18 88/8 88/9  
 facial [1] 82/19  
 facing [2] 84/16 84/17  
 fact [12] 34/17 34/18 34/19  
 37/22 61/7 88/23 115/2 116/25  
 117/21 118/6 122/17 123/3  
 facts [7] 26/9 26/13 30/19  
 30/23 35/11 117/25 123/3  
 fair [1] 78/4  
 fairly [2] 38/11 77/17  
 fancy [1] 67/17  
 far [5] 34/21 111/7 113/14  
 117/13 123/5  
 fashion [1] 103/17  
 fast [1] 86/17  
 faster [1] 80/16  
 father [1] 102/13  
 father's [2] 102/21 105/13  
 February [16] 10/9 11/2 37/19  
 38/23 38/24 39/1 39/4 39/8  
 39/24 40/10 70/9 70/10 70/15  
 77/19 87/17 89/8  
 February 18 [2] 38/23 38/24  
 February 6 [10] 10/9 11/2 39/1  
 39/4 39/8 70/9 70/10 70/15  
 77/19 89/8  
 feet [1] 16/4  
 fell [1] 33/10  
 female [2] 76/2 112/13  
 females [2] 43/20 76/1

few [4] 8/12 97/7 114/23 123/5  
 fight [81] 10/2 12/4 12/5 12/6  
 12/18 13/3 13/6 13/8 15/9 20/5  
 25/10 25/11 26/20 27/2 27/18  
 27/20 27/21 40/16 40/18 40/22  
 40/23 41/6 41/8 41/20 41/25  
 42/3 42/4 42/25 43/1 43/5 46/20  
 47/6 47/8 47/13 47/14 53/21  
 53/21 54/2 54/5 61/14 63/17  
 63/22 63/23 63/24 65/18 65/19  
 66/1 66/5 72/17 74/16 74/20  
 74/22 74/25 75/5 75/10 76/12  
 76/16 76/23 78/17 79/6 79/11  
 79/17 79/21 112/9 112/10 113/21  
 113/22 114/1 114/3 114/6 114/7  
 114/8 114/11 114/13 114/19  
 114/19 114/20 117/11 118/20  
 118/20 122/22  
 fighting [17] 13/14 14/15 15/9  
 17/12 25/19 25/24 27/15 32/11  
 33/12 33/23 35/7 35/17 48/16  
 48/19 48/19 73/21 73/22  
 fights [4] 9/25 27/22 27/24  
 28/13  
 file [3] 62/10 104/6 119/9  
 filed [1] 117/23  
 finding [1] 115/25  
 fine [10] 5/12 5/16 5/17 5/21  
 5/23 9/20 52/1 61/1 70/3 98/22  
 finished [3] 11/20 36/11 59/24  
 finishes [1] 44/11  
 fired [1] 83/13  
 first [23] 4/11 6/6 6/7 6/9 7/5  
 12/23 13/15 16/11 16/15 16/18  
 18/23 69/6 94/5 96/4 96/5 96/7  
 97/7 101/5 111/16 112/2 114/23  
 120/2 123/8  
 fists [2] 74/23 74/24  
 five [6] 45/19 46/2 46/3 46/5  
 72/11 75/2  
 fled [2] 122/9 122/17  
 flight [2] 122/14 122/19  
 floor [1] 18/21  
 followed [2] 16/3 118/19  
 following [3] 36/7 100/16  
 113/20  
 follows [4] 7/7 69/8 88/2 101/7  
 foot [2] 98/17 99/7  
 forgot [1] 75/22  
 form [1] 115/16  
 formally [2] 4/4 9/23  
 forth [4] 90/19 112/8 112/22  
 113/16  
 fought [1] 26/1  
 foundation [9] 19/20 22/9 22/20  
 28/23 29/2 31/21 78/2 78/3  
 113/9  
 foundational [1] 13/10  
 four [2] 75/24 75/25  
 frankly [1] 120/7  
 fraternity [1] 30/21  
 friend [4] 9/6 29/11 72/1 73/6  
 friend's [1] 73/7  
 front [2] 76/24 116/1  
 fucked [1] 20/4  
 fucking [2] 16/12 34/2  
 full [6] 6/3 36/20 68/11 70/20  
 100/25 123/19  
 further [14] 61/16 65/11 66/7  
 67/23 87/2 94/22 98/11 99/17  
 107/25 108/12 110/10 116/23  
 119/12 125/2  
 future [1] 65/21

## G

G-a-m-b-o-a [1] 68/14  
 GAMBOA [11] 2/10 68/6 68/14  
 69/12 69/14 69/17 77/9 84/1  
 95/3 113/17 113/19  
 Gamboa's [1] 115/16  
 gang [43] 7/13 7/15 8/17 8/20  
 9/5 9/17 11/14 26/2 26/7 26/23  
 27/5 27/5 27/10 27/10 28/20  
 29/13 31/4 34/18 43/15 43/18  
 46/14 46/15 112/21 112/24 113/4  
 113/4 113/11 113/13 114/14  
 116/17 116/19 116/20 116/22  
 116/23 117/5 117/6 117/7 118/4  
 118/16 118/17 118/17 119/13  
 123/10  
 garbage [3] 23/19 23/24 24/1  
 GARCIA [9] 1/10 3/4 3/6 13/19  
 37/4 73/23 101/15 119/14 124/7  
 gave [6] 21/10 88/11 89/5 94/13  
 94/19 97/19  
 gee [1] 121/15  
 generally [2] 71/11 71/16  
 gentleman [6] 36/19 57/7 87/10  
 89/16 89/19 89/22  
 Gerri [4] 1/24 123/21 124/14  
 125/5  
 get [20] 5/19 7/17 9/25 10/6  
 11/19 11/20 14/5 14/9 20/11  
 24/24 34/8 45/3 50/16 71/13  
 71/16 71/21 92/11 105/8 114/3  
 122/12  
 gets [3] 59/24 79/2 121/19  
 getting [6] 11/17 34/14 80/16  
 81/1 84/19 84/20  
 Giovanni [27] 13/17 13/21 14/15  
 15/20 16/3 16/7 16/11 16/17  
 16/20 17/7 17/18 33/2 33/11  
 33/22 33/24 34/1 34/4 56/6  
 73/23 73/24 74/6 74/16 75/11  
 79/18 79/21 117/1 117/3  
 Giovanni's [1] 75/15  
 girl [4] 13/22 43/12 43/13  
 43/18  
 girlfriend [1] 66/18  
 girls [9] 42/5 42/8 42/25 43/4  
 74/10 75/8 114/10 114/12 114/14  
 give [6] 10/15 10/16 10/22 34/2  
 92/13 104/8  
 giving [5] 87/23 88/20 88/22  
 95/3 113/20  
 go [30] 4/10 5/1 10/16 10/22  
 11/2 13/12 15/16 17/5 17/9 27/9  
 27/11 32/21 35/15 37/3 38/4  
 48/21 60/1 63/20 65/5 65/23  
 66/16 70/4 71/5 78/11 90/19  
 97/4 100/22 112/1 113/11 122/14  
 goes [1] 74/2  
 going [47] 3/18 9/18 10/15 25/9  
 25/11 33/5 34/2 34/17 40/16  
 40/21 40/22 40/23 41/5 41/17  
 41/21 47/14 49/11 49/13 52/4  
 52/24 53/10 53/20 54/2 54/5  
 63/14 63/17 63/23 65/18 65/23  
 66/2 67/12 68/7 77/9 77/21 78/8  
 78/20 80/13 109/21 112/9 114/2  
 114/6 114/21 118/21 121/21  
 122/3 123/10 123/13  
 Good [2] 36/17 36/18  
 got [71] 9/10 9/10 10/1 12/4  
 12/5 13/25 14/14 14/16 14/17  
 15/7 17/13 18/4 18/11 20/9

RA 000037



## G

got... [57] 20/10 20/13 20/16  
 22/5 22/11 23/14 25/18 25/23  
 27/14 28/13 29/13 32/2 32/9  
 33/7 34/1 34/20 38/6 39/13  
 40/22 41/4 41/20 42/10 42/17  
 43/22 43/25 44/2 44/4 44/22  
 45/4 45/6 45/15 45/17 45/18  
 45/24 46/1 46/4 46/19 47/2 48/4  
 53/16 56/9 57/1 66/1 71/22  
 71/24 71/25 72/9 72/12 72/24  
 73/12 73/16 74/6 74/16 76/12  
 86/14 91/23 114/20  
 gray [8] 24/21 24/22 75/23  
 76/12 82/17 84/8 88/3 97/20  
 grounds [1] 119/13  
 group [1] 31/1  
 guarantee [1] 84/8  
 guess [2] 11/13 109/13  
 gun [55] 16/9 16/12 17/13 18/14  
 20/6 20/14 20/15 20/17 21/10  
 21/12 22/3 22/8 22/16 23/13  
 24/8 33/12 33/24 33/24 33/25  
 34/2 35/8 35/17 35/18 43/23  
 44/1 44/3 44/6 44/23 45/2 45/3  
 45/15 45/17 46/7 46/15 46/17  
 56/10 57/2 57/15 57/16 58/3  
 58/7 61/12 64/1 64/2 64/5 83/19  
 83/22 84/6 88/4 88/7 112/10  
 115/3 115/4 115/5 122/23  
 guns [2] 46/10 84/1  
 gunshot [1] 4/24  
 gunshots [2] 18/25 51/5  
 guy [4] 75/11 75/12 75/16 75/17  
 guys [12] 20/1 42/6 42/7 42/9  
 42/25 43/6 43/7 74/22 75/9  
 75/17 75/18 75/19

## H

H-a-r-p-e-r [1] 6/12  
 had [43] 8/17 20/6 29/11 29/11  
 32/7 33/24 36/8 37/6 38/8 44/1  
 44/3 44/6 45/2 48/21 56/10 57/2  
 62/25 63/25 64/1 67/6 67/16  
 88/3 88/8 88/9 88/10 92/2 92/3  
 97/25 100/17 102/16 103/3  
 103/12 104/10 105/12 106/21  
 107/4 107/10 116/24 117/21  
 121/4 122/10 122/18 123/9  
 hair [8] 32/4 82/18 88/8 89/17  
 89/20 89/23 90/4 97/25  
 hairs [1] 88/9  
 half [1] 81/4  
 hallway [3] 3/22 99/24 100/7  
 hand [3] 81/4 83/23 95/5  
 handgun [1] 64/10  
 handwritten [4] 95/8 96/17  
 96/20 97/17  
 hanging [1] 9/7  
 happen [6] 69/18 73/20 75/4  
 80/10 109/22 110/5  
 happened [29] 11/24 15/7 15/18  
 16/1 17/11 18/13 18/20 20/1  
 22/7 22/16 23/12 37/8 69/21  
 73/4 73/11 73/16 75/3 76/15  
 76/18 77/19 78/6 79/18 79/25  
 84/12 85/4 86/9 86/16 95/5  
 118/9  
 happening [3] 20/5 33/22 80/9  
 hard [1] 37/15  
 Hardy [3] 20/23 102/14 108/8  
 HARPER [30] 2/4 4/13 6/8 17/3

46/5 51/6 65/15 101/19 101/22  
 102/7 102/16 103/10 103/23  
 104/11 104/18 105/2 105/7  
 105/16 105/20 107/4 107/10  
 107/21 112/3 112/17 113/7  
 114/10 114/13 114/25 117/5  
 117/8  
 has [17] 3/21 3/24 30/22 36/10  
 61/19 83/10 89/18 110/23 111/1  
 112/15 112/17 112/23 113/11  
 114/18 115/10 116/5 119/10  
 hasn't [1] 13/9  
 have [91] 3/9 3/14 3/24 4/1  
 4/14 4/19 4/23 5/9 9/22 11/18  
 21/5 22/9 23/3 26/25 27/4 40/8  
 41/23 43/23 44/22 46/14 47/21  
 67/23 68/8 69/14 73/25 77/4  
 77/23 78/1 78/8 79/6 81/25  
 82/19 83/25 86/24 87/2 89/1  
 89/7 89/16 89/19 90/4 92/2 92/3  
 95/8 96/24 98/10 99/6 99/18  
 100/4 102/2 102/24 103/9 103/9  
 103/14 104/20 105/15 105/23  
 105/24 106/4 106/5 107/3 107/6  
 108/7 111/6 113/7 113/8 114/4  
 115/2 115/15 115/20 116/22  
 117/10 117/17 117/23 118/1  
 118/2 118/8 118/11 118/15  
 118/21 119/9 120/11 120/19  
 120/21 120/22 121/16 121/18  
 121/24 122/15 122/15 122/20  
 123/11  
 haven't [3] 14/14 27/1 61/7  
 having [9] 5/5 7/4 31/16 69/5  
 89/23 99/11 101/5 104/10 112/23  
 he [248]  
 he's [29] 4/16 8/25 9/14 9/18  
 10/16 10/19 14/15 14/24 17/2  
 17/8 17/23 23/2 30/17 35/12  
 38/2 45/9 55/11 58/22 83/7 83/8  
 87/21 94/9 95/22 103/10 115/9  
 115/10 115/25 121/25 122/21  
 head [12] 4/14 6/19 37/20 37/22  
 37/24 38/6 38/7 39/11 39/13  
 39/21 64/16 68/18  
 headed [1] 49/15  
 hear [14] 14/6 15/22 16/10  
 16/13 16/14 18/9 33/21 52/19  
 58/20 64/22 64/23 67/12 86/18  
 86/21  
 heard [12] 17/21 18/18 24/12  
 35/5 35/6 51/5 51/12 51/18  
 51/22 65/1 73/13 123/1  
 hearing [8] 1/15 3/5 100/8  
 111/4 117/14 118/13 118/25  
 119/7  
 hearsay [19] 8/22 9/13 9/19  
 14/2 16/21 25/14 26/9 28/22  
 29/15 29/17 29/18 29/21 29/25  
 30/12 31/14 34/6 34/9 35/1  
 72/18  
 held [2] 119/16 122/20  
 hello [2] 19/15 19/16  
 help [3] 91/20 97/15 122/9  
 helping [2] 29/9 93/10  
 her [17] 10/15 13/11 58/20  
 59/18 78/5 78/8 78/20 88/19  
 92/3 92/15 92/17 92/22 93/12  
 95/8 96/24 97/1 97/2  
 here [20] 5/15 6/22 12/25 37/13  
 38/1 45/13 71/2 79/12 83/3  
 91/24 93/7 98/3 104/8 107/13  
 115/11 116/3 118/5 122/12

122/18 123/4  
 he [2] 119/15 124/16  
 herein [1] 119/9  
 herself [2] 92/8 92/25  
 hey [1] 19/19  
 high [1] 121/8  
 him [108] 4/16 9/7 9/19 14/6  
 14/23 15/9 16/2 16/3 16/5 16/14  
 17/13 18/10 18/21 18/24 19/7  
 19/8 19/9 19/12 19/25 20/11  
 21/10 26/10 27/9 27/11 28/25  
 29/11 29/22 30/11 31/17 32/3  
 32/7 32/15 32/19 33/2 33/19  
 34/3 35/5 35/5 35/19 42/24  
 43/23 44/11 48/2 48/3 50/1 53/4  
 54/15 55/4 55/5 55/6 55/7 55/23  
 65/2 73/6 73/25 74/8 74/9 80/23  
 81/18 83/1 84/14 85/21 85/23  
 86/2 86/4 86/5 86/12 86/13  
 87/17 87/21 90/7 92/13 96/9  
 98/8 98/9 100/22 102/2 102/20  
 102/21 103/3 103/12 104/14  
 104/20 105/4 105/13 106/5 106/5  
 106/23 107/14 107/21 111/2  
 112/11 112/14 114/15 115/1  
 115/4 115/5 115/6 115/6 115/16  
 116/8 116/13 117/2 119/2 122/12  
 122/13 122/20 123/9  
 himself [2] 58/23 112/6  
 his [47] 3/8 4/13 9/1 11/21  
 13/18 19/24 21/5 26/3 27/7  
 29/19 33/8 33/9 36/20 37/6 38/3  
 42/18 43/12 45/16 55/10 57/17  
 73/7 73/8 73/9 81/20 82/18  
 82/18 86/5 87/15 87/16 88/9  
 99/10 99/12 101/23 102/10  
 102/12 102/13 102/21 105/13  
 106/2 112/7 116/11 116/17 121/6  
 121/7 121/19 121/24 122/9  
 Hispanic [3] 76/6 81/24 97/23  
 history [1] 121/3  
 hit [1] 18/21  
 hmm [9] 6/19 68/18 74/17 76/8  
 79/22 82/22 84/23 89/15 97/11  
 hold [26] 22/12 30/4 35/10  
 35/23 42/15 42/15 42/15 42/23  
 42/23 44/10 44/10 45/12 45/12  
 45/16 58/3 58/7 58/24 58/24  
 58/24 59/23 59/23 59/23 64/1  
 109/25 109/25 111/17  
 holding [3] 83/20 83/23 86/5  
 hollow [2] 38/5 38/7  
 homicide [5] 4/25 62/9 62/9  
 110/2 110/8  
 Honor [9] 4/3 4/23 5/13 7/1  
 35/3 110/18 112/14 112/16  
 114/21  
 HONORABLE [1] 1/16  
 hoodie [5] 24/23 81/19 82/14  
 82/16 88/3  
 Horrible [1] 62/22  
 hospital [1] 86/12  
 hours [3] 70/16 71/5 99/5  
 house [5] 19/16 45/7 102/21  
 105/13 121/10  
 how [36] 8/5 9/4 9/17 18/16  
 18/18 19/6 19/9 19/14 20/8  
 20/13 20/16 23/15 24/24 31/15  
 31/16 32/5 38/6 62/20 64/18  
 65/7 69/12 70/10 70/13 72/9  
 73/24 74/25 75/10 83/13 86/14  
 90/10 90/13 93/18 96/17 97/1  
 97/15 104/1

**H**  
 however [1] 5/10  
 huge [1] 122/14

**I**  
 I'll [20] 4/16 10/16 10/22  
 25/15 26/10 26/16 27/9 27/11  
 28/25 29/22 30/11 49/20 65/1  
 70/2 78/10 80/14 92/7 92/13  
 94/17 106/9  
 I'm [51] 10/14 11/12 11/17  
 11/19 13/24 17/17 17/19 17/25  
 19/7 21/13 21/21 23/7 24/3  
 26/14 31/2 33/18 34/2 34/8  
 34/21 35/7 38/5 39/6 45/14  
 59/13 61/20 65/23 68/7 69/13  
 72/21 77/6 77/9 77/21 78/8  
 78/20 80/15 81/10 81/25 82/11  
 88/4 91/19 92/16 93/1 97/14  
 103/9 106/10 106/21 108/22  
 109/15 111/2 122/2 123/13  
 I've [1] 109/16  
 ID [1] 5/5  
 identification [2] 15/4 77/2  
 identified [5] 83/10 83/20  
 86/19 87/9 115/17  
 identify [4] 92/7 92/25 95/11  
 98/8  
 identifying [3] 87/20 94/6  
 103/15  
 identity [1] 115/14  
 important [1] 66/14  
 inappropriate [1] 118/7  
 incident [3] 39/1 54/12 88/24  
 included [1] 117/21  
 including [1] 112/12  
 incorrect [1] 106/11  
 independent [1] 112/17  
 INDEX [1] 2/1  
 indicate [1] 106/9  
 indicated [9] 37/14 49/16 50/22  
 59/19 60/3 85/23 89/25 98/2  
 116/15  
 indication [1] 56/3  
 individual [15] 47/25 48/1  
 48/21 49/23 87/12 89/12 90/11  
 91/16 94/6 94/10 98/16 99/7  
 109/7 121/17 121/23  
 individuals [6] 34/24 79/16  
 94/2 112/12 115/8 121/11  
 indulgence [6] 20/19 31/25  
 47/22 84/9 87/1 100/5  
 inform [1] 4/14  
 information [4] 103/12 103/14  
 105/23 117/23  
 informed [1] 3/21  
 initial [1] 103/11  
 initially [1] 84/21  
 injuries [1] 86/4  
 injury [5] 4/14 37/20 37/25  
 39/11 39/14  
 Inside [1] 93/14  
 instruction [1] 116/1  
 instructions [1] 118/23  
 intense [1] 121/10  
 intent [1] 119/12  
 interested [1] 125/2  
 interesting [1] 114/9  
 international [3] 120/14 122/11  
 123/4  
 interview [5] 52/4 52/8 102/9  
 103/12 107/9

introduced [1] 107/6  
 introduction [1] 13/8  
 investigate [1] 101/14  
 investigating [1] 105/22  
 investigation [4] 101/17 102/16  
 110/3 110/8  
 investigator [2] 93/1 98/2  
 invoked [1] 3/24  
 involve [1] 114/4  
 involved [9] 42/3 42/25 43/4  
 94/2 114/3 114/5 114/7 114/10  
 114/13  
 involvement [1] 117/6  
 irrelevant [4] 10/3 26/22 27/3  
 109/11  
 is [151]  
 isn't [5] 62/6 87/20 91/5 91/8  
 115/11  
 issue [4] 115/24 116/8 116/15  
 123/14  
 it [210]  
 it's [31] 5/15 8/7 9/13 9/19  
 10/14 27/7 28/7 29/18 34/16  
 37/12 39/16 45/10 45/10 70/1  
 70/23 78/4 78/5 80/12 81/4 84/3  
 84/4 84/7 101/11 109/11 112/5  
 114/9 115/12 117/24 117/25  
 120/17 122/8  
 item [1] 77/11  
 itself [1] 116/11

**J**  
 J-o-n-a-t-h-a-n [1] 6/10  
 JANSEN [1] 1/16  
 January [1] 119/19  
 January 5 [1] 119/19  
 JIMENEZ [7] 1/21 2/11 2/13 3/11  
 62/8 69/11 95/2  
 job [1] 84/3  
 join [3] 30/21 30/25 30/25  
 joined [2] 31/3 76/16  
 JONATHAN [22] 1/10 2/4 3/6 4/13  
 6/8 6/13 7/11 9/22 10/8 20/21  
 36/21 37/4 62/19 101/18 101/22  
 102/7 102/12 103/3 103/8 114/25  
 119/14 124/7  
 Judge [90] 3/19 4/12 5/21 5/23  
 6/1 8/21 9/12 10/3 11/6 11/22  
 12/9 13/10 14/2 14/7 15/12  
 16/23 17/14 18/8 19/20 19/22  
 21/4 22/10 22/19 25/20 26/18  
 26/23 27/2 27/4 28/6 29/2 30/13  
 31/24 32/18 33/15 34/8 34/16  
 34/25 35/3 41/14 42/17 44/14  
 45/11 51/21 58/22 61/17 62/8  
 62/15 64/20 69/2 72/18 77/4  
 77/21 80/13 81/3 82/10 83/7  
 85/12 87/2 88/18 94/23 95/7  
 96/1 98/10 99/20 99/22 100/12  
 100/19 102/1 106/12 109/24  
 110/12 110/24 111/13 111/21  
 112/5 113/15 114/22 115/19  
 116/14 117/10 117/14 119/24  
 120/13 120/17 120/24 121/18  
 122/2 122/22 123/16 123/17  
 judicial [3] 109/14 109/15  
 119/17  
 jumped [5] 47/9 54/5 75/10  
 79/17 79/20  
 jumping [1] 75/8  
 jumpsuit [1] 14/25  
 June [1] 104/17  
 June 21 [1] 104/17

jury [5] 96/2 115/24 116/2  
 118/22 118/22  
 just [71] 4/13 5/4 5/12 5/14  
 9/8 9/10 9/10 10/6 11/11 15/13  
 19/18 22/5 24/2 28/11 31/22  
 32/9 33/5 33/10 33/25 36/2 36/5  
 36/19 37/11 37/12 42/10 42/11  
 42/16 43/9 44/15 45/12 45/16  
 49/5 50/15 50/16 52/25 54/1  
 56/16 57/6 58/17 58/18 59/15  
 61/17 65/8 68/24 69/24 70/23  
 73/2 73/2 73/13 74/25 79/6  
 80/18 80/21 82/7 82/9 82/10  
 84/2 86/5 86/13 87/9 92/16  
 96/25 99/14 100/7 104/1 104/7  
 105/13 106/20 107/3 120/20  
 121/12  
 JUSTICE [4] 1/4 1/17 124/1  
 124/19  
 juvenile [1] 121/5

**K**  
 keep [1] 4/16  
 kept [1] 84/18  
 kickback [1] 27/23  
 kid [12] 12/6 15/10 15/13 15/18  
 15/21 18/15 18/20 32/2 32/17  
 33/7 33/13 33/22  
 kill [1] 34/3  
 killing [1] 113/16  
 kind [11] 5/3 25/3 64/5 64/8  
 66/15 66/19 71/8 74/20 105/12  
 108/6 120/21  
 knew [9] 31/22 37/15 40/12  
 40/14 41/5 41/17 61/12 63/3  
 63/8  
 know [91] 8/5 8/20 9/9 9/10  
 10/8 10/14 11/11 11/13 11/17  
 11/18 11/19 11/20 12/6 12/10  
 12/20 12/21 13/16 13/18 13/22  
 14/14 14/16 17/18 18/23 18/24  
 19/1 19/14 19/18 19/25 20/6  
 20/8 20/10 20/13 21/12 22/5  
 22/12 22/15 23/19 24/10 25/5  
 25/12 25/12 25/12 25/13 26/1  
 26/2 26/4 28/9 28/9 28/14 29/10  
 29/12 30/20 31/11 31/15 31/16  
 31/16 33/14 34/20 35/22 36/23  
 40/9 40/10 44/15 45/17 52/9  
 56/10 56/22 56/23 57/1 62/6  
 63/2 63/6 64/8 66/22 67/17  
 70/23 70/24 73/7 73/8 73/13  
 73/24 79/10 83/25 84/7 87/16  
 87/16 87/17 92/12 97/7 104/9  
 111/1  
 knowledge [2] 27/7 29/20  
 knows [9] 25/25 26/10 26/11  
 29/16 29/17 56/17 109/19 110/1  
 110/1

**L**  
 lacks [1] 123/11  
 ladies [2] 59/6 60/24  
 lady [5] 92/1 92/5 92/7 92/20  
 92/24  
 laid [2] 78/3 86/13  
 language [2] 105/25 112/24  
 large [1] 121/21  
 LAS [7] 1/4 3/1 71/2 108/20  
 124/1 124/19 124/20  
 Las Vegas [2] 71/2 108/20  
 last [8] 6/6 6/11 13/18 56/21  
 65/15 102/25 103/1 105/11

RA 000039

<b>L</b>	lower [1] 119/19 Lucca [4] 1/24 123/21 124/14 125/5	<b>M</b>	Metro [2] 108/23 108/24 Metropolitan [1] 108/20 Mexican [1] 32/4 Mexico [3] 120/14 122/9 122/15 middle [2] 18/15 102/25 might [1] 112/12 millimeter [1] 64/9 million [2] 121/15 122/3 mind [1] 24/22 minute [2] 36/5 111/17 minutes [9] 45/15 45/19 45/23 45/25 46/2 46/3 46/5 72/11 75/2 Miss [6] 62/8 69/12 69/14 77/9 84/1 95/3 mm [9] 6/19 68/18 74/17 76/8 79/22 82/22 84/23 89/15 97/11 mm-hmm [9] 6/19 68/18 74/17 76/8 79/22 82/22 84/23 89/15 97/11 MOGG [12] 2/16 20/23 21/3 21/9 24/20 61/4 62/20 63/1 89/8 99/4 101/1 101/11 mom [1] 63/9 moment [3] 79/9 80/18 84/10 money [2] 28/14 121/18 monies [1] 121/19 monitoring [1] 121/10 month [2] 9/9 40/11 more [11] 9/11 45/1 49/8 60/14 75/8 83/18 114/4 116/8 116/9 116/12 121/8 morning [4] 36/17 36/18 91/21 93/16 Morris [6] 70/19 70/20 70/21 70/22 71/6 71/8 Most [1] 30/3 mother [3] 37/6 37/16 102/12 move [6] 14/12 18/7 25/14 34/7 41/13 77/22 moving [1] 5/10 Mr [16] 2/6 2/8 2/12 2/14 2/18 2/20 4/19 36/16 65/14 87/8 98/14 99/21 102/16 103/22 108/15 114/10 Mr. [37] 3/4 3/8 4/2 5/3 17/3 36/10 46/5 51/6 62/11 62/25 65/15 85/14 87/4 96/9 103/10 103/23 104/7 104/11 104/18 105/2 105/7 105/16 105/20 107/4 107/10 107/21 110/22 111/15 112/3 112/17 113/7 114/13 116/18 116/25 117/5 117/8 122/23 Mr. Garcia [1] 3/4 Mr. Harper [21] 17/3 46/5 51/6 65/15 103/10 103/23 104/11 104/18 105/2 105/7 105/16 105/20 107/4 107/10 107/21 112/3 112/17 113/7 114/13 117/5 117/8 Mr. Terry [15] 3/8 4/2 5/3 36/10 62/11 62/25 85/14 87/4 96/9 104/7 110/22 111/15 116/18 116/25 122/23 Ms [11] 2/5 2/7 2/11 2/13 2/17 2/19 7/10 62/18 69/11 95/2 108/2 much [6] 18/6 29/9 86/14 93/5 110/13 123/9 mumbles [1] 4/15 murder [8] 103/13 105/23 113/14 116/11 118/2 118/9 119/11 120/20
late [2] 40/3 40/4 later [2] 4/7 39/12 law [1] 112/4 laying [1] 67/5 lead [2] 13/10 107/21 leader [1] 26/1 leaders [1] 26/2 leading [9] 10/13 10/14 12/3 13/4 13/5 13/8 23/9 27/25 86/22 leave [3] 103/8 122/6 123/13 led [1] 23/25 leeway [4] 10/15 10/16 10/23 92/13 left [12] 19/1 38/1 38/3 48/21 50/23 53/15 59/6 60/24 81/4 85/8 89/16 89/19 left-hand [1] 81/4 legal [2] 69/25 70/1 lengthy [1] 122/11 less [1] 72/11 let [20] 3/7 3/22 15/3 26/10 26/16 27/9 27/11 28/25 29/22 30/11 30/24 33/19 38/2 44/11 49/8 59/17 65/1 66/15 70/2 97/7 let's [5] 10/6 10/17 14/12 45/12 119/5 level [1] 119/20 Lewis [1] 124/20 liability [7] 117/14 117/15 117/19 117/24 118/6 118/10 118/12 light [5] 88/8 89/17 89/20 89/23 90/4 like [53] 9/7 9/9 9/9 11/13 11/13 11/18 12/7 12/7 14/13 15/21 15/22 15/23 16/4 16/12 17/12 17/13 19/15 19/16 19/17 19/17 19/19 20/4 23/1 23/18 23/18 27/15 27/21 29/10 29/10 29/10 29/12 33/25 34/1 34/1 34/2 35/16 45/14 48/7 61/18 65/23 66/22 66/22 66/23 66/23 67/16 67/20 71/17 75/23 81/20 91/12 99/8 108/4 111/7 likely [1] 121/8 lines [1] 97/7 lineup [2] 104/18 105/3 listen [7] 6/13 45/16 46/22 46/23 51/6 51/20 68/22 listening [1] 6/15 little [21] 4/15 10/15 10/16 11/21 12/6 12/8 13/15 13/16 29/11 36/24 38/18 38/19 55/3 55/5 55/22 56/6 80/16 84/2 96/18 117/1 117/3 located [1] 70/22 location [2] 78/5 78/5 Locos [11] 7/20 8/11 8/17 9/24 10/10 26/21 27/19 28/5 28/18 29/14 112/25 long [7] 19/6 24/17 26/14 64/18 65/7 72/9 74/25 longer [1] 75/2 look [9] 5/25 84/19 89/11 96/19 97/3 106/2 106/24 115/22 121/24 looked [5] 42/2 62/9 85/2 88/10 96/17 looking [3] 105/20 105/21 107/14 lot [9] 19/12 28/8 67/11 76/25 78/18 79/12 79/14 109/6 122/16	made [15] 4/5 28/14 34/24 37/10 60/23 61/3 103/7 103/16 104/9 104/24 105/5 108/6 108/9 108/11 114/16 make [14] 41/24 67/18 71/9 103/3 103/24 104/4 104/12 107/8 108/5 108/16 108/21 109/1 121/2 121/22 makes [1] 112/4 making [4] 74/9 105/19 107/14 107/20 males [2] 76/1 76/2 man [8] 12/4 12/14 18/4 19/18 19/19 20/4 44/24 61/19 manner [1] 4/25 many [4] 18/16 18/18 75/10 83/13 map [13] 77/5 77/15 77/17 78/4 78/21 79/1 79/5 79/13 80/25 81/10 85/9 85/12 111/20 March [2] 40/1 40/10 marginal [3] 117/9 117/10 118/8 MARIA [2] 2/10 68/13 mark [4] 5/1 78/21 80/14 81/3 marked [4] 2/22 77/2 95/14 111/24 marking [3] 5/8 78/22 81/10 matter [2] 3/22 88/23 may [23] 6/25 26/25 53/3 65/8 66/13 69/1 77/6 77/7 78/23 81/25 83/9 85/13 88/13 92/12 99/23 101/2 103/13 103/14 105/24 108/24 119/3 119/23 119/25 Maybe [1] 88/19 me [35] 6/14 6/15 7/23 11/10 11/15 13/21 14/23 19/25 22/19 24/16 25/8 30/24 32/3 34/2 43/11 49/8 57/7 58/17 58/17 58/19 59/18 66/15 66/17 72/6 73/14 84/19 89/11 90/19 90/22 91/5 97/7 104/7 115/20 119/8 123/11 mean [17] 10/4 15/20 17/16 21/5 27/21 28/9 29/9 33/23 47/15 48/7 60/17 62/13 70/7 75/13 91/10 108/23 110/5 meet [2] 94/12 94/19 meetings [3] 105/2 105/7 105/10 MELISSA [5] 2/10 68/6 68/13 68/15 115/16 member [20] 7/13 8/10 8/16 8/25 9/4 9/17 9/23 26/21 27/6 27/19 28/4 28/17 43/16 43/18 46/14 46/15 113/4 116/19 116/21 118/17 members [2] 28/20 30/5 memorized [1] 115/21 memory [6] 21/5 38/13 38/15 96/19 96/24 97/2 men [3] 42/3 42/4 42/5 met [9] 93/12 103/23 104/20 105/13 106/5 117/10 118/4 118/25 119/7		

RA 000040

# M

murdered [1] 69/22  
 mustache [1] 88/10  
 my [53] 9/19 12/23 19/15 21/21  
 24/22 25/15 31/7 36/20 38/1  
 38/6 38/7 39/10 42/11 46/22  
 48/11 48/12 48/20 51/6 51/10  
 51/13 59/6 60/6 60/24 63/9 63/9  
 68/13 72/1 72/2 72/16 73/5  
 73/17 76/4 80/11 80/14 80/20  
 80/21 80/22 87/10 87/21 89/16  
 89/19 89/25 90/14 90/23 93/2  
 94/6 102/13 104/6 104/11 113/3  
 115/12 120/3 121/3  
 myself [1] 33/18

# N

name [34] 4/13 5/4 6/3 6/4 6/6  
 6/6 6/6 6/9 6/11 7/15 12/20  
 13/16 13/18 26/3 36/20 37/6  
 37/15 37/16 56/17 56/21 63/7  
 68/12 68/12 68/13 69/16 70/20  
 73/7 73/8 73/9 87/15 87/16 93/2  
 100/25 101/18  
 narcotics [1] 109/4  
 nearby [1] 77/18  
 need [4] 8/24 9/2 80/12 118/5  
 needs [2] 96/23 115/13  
 neither [1] 64/25  
 NEVADA [12] 1/5 1/7 3/1 3/6  
 13/1 71/3 119/17 124/2 124/4  
 124/11 124/16 124/20  
 never [5] 12/22 46/17 58/14  
 60/9 90/25  
 next [4] 17/11 68/5 73/20 100/3  
 nice [1] 60/24  
 nickname [1] 25/5  
 night [16] 10/12 11/2 11/3 11/4  
 11/9 11/10 11/24 24/24 32/2  
 71/19 71/20 81/19 81/22 89/3  
 89/4 89/5  
 Nine [1] 18/19  
 no [148]  
 No. [1] 121/23  
 No. 2 [1] 121/23  
 nobody [1] 53/16  
 non [1] 108/18  
 non-prosecution [1] 108/18  
 none [3] 67/24 103/18 108/11  
 nonresponsive [1] 41/14  
 NOREEN [2] 1/21 3/9  
 nos [2] 44/13 50/18  
 not [94] 4/16 5/10 5/10 5/15  
 5/23 16/11 20/3 21/4 26/9 26/13  
 29/18 29/20 30/19 30/23 33/18  
 35/11 39/13 39/16 39/19 43/23  
 44/5 44/9 44/22 45/10 51/23  
 53/21 54/4 57/6 59/6 59/16  
 60/19 61/19 61/20 67/12 67/20  
 72/21 80/13 84/3 84/4 86/3  
 87/17 91/19 94/12 94/19 99/14  
 103/4 103/6 103/10 104/4 105/20  
 105/21 106/6 106/10 107/9  
 107/13 107/14 107/19 107/22  
 108/3 108/5 108/8 108/16 108/19  
 108/20 108/22 108/23 109/2  
 109/9 109/11 109/15 110/2 110/7  
 111/4 112/5 114/11 114/19 115/9  
 115/19 116/2 116/13 117/14  
 117/16 117/25 118/19 120/2  
 120/10 120/16 120/17 120/20  
 120/24 121/8 122/2 124/22 125/2

note [1] 120/1  
 noted [1] 28/7  
 nothing [19] 7/6 16/15 18/1  
 27/23 61/16 62/12 65/11 66/7  
 69/7 94/22 98/10 99/17 101/7  
 107/25 108/12 110/9 112/11  
 112/20 115/1  
 notice [5] 72/12 109/14 109/16  
 117/20 117/24  
 now [55] 3/4 6/13 6/13 8/10  
 8/16 9/4 12/25 13/7 16/17 17/18  
 20/5 20/21 23/6 24/15 26/20  
 32/2 32/13 33/11 37/19 39/10  
 39/13 40/7 40/15 42/2 43/15  
 46/19 50/22 58/9 59/8 60/15  
 63/12 63/25 64/7 64/14 67/22  
 68/15 68/22 73/8 89/10 90/16  
 91/12 92/20 93/7 95/22 100/20  
 100/22 101/13 103/2 105/9  
 110/25 113/1 115/22 119/6  
 119/23 121/14  
 NRS [2] 124/6 124/18  
 number [2] 124/23 124/24  
 NYIKOS [9] 1/21 2/5 2/7 2/17  
 2/19 3/10 7/10 62/18 108/2

# O

o0o [2] 123/18 125/1  
 object [3] 10/20 92/9 109/23  
 objected [1] 113/7  
 objecting [2] 26/15 27/25  
 objection [33] 7/24 8/21 10/13  
 11/22 12/3 12/8 13/4 15/11  
 16/21 17/14 21/6 21/15 23/9  
 24/5 25/14 25/16 26/8 26/22  
 28/6 28/12 28/22 29/15 29/25  
 31/14 34/9 34/23 35/9 45/8  
 54/16 54/19 58/25 65/1 109/10  
 objections [1] 23/8  
 observe [6] 10/21 11/24 12/12  
 14/8 17/9 34/22  
 observed [13] 14/4 14/7 28/24  
 28/25 35/15 40/18 47/13 47/25  
 48/2 48/20 50/22 51/4 91/5  
 obviously [4] 51/18 104/13  
 121/22 121/25  
 occasion [3] 27/2 51/1 104/19  
 occur [2] 38/20 70/6  
 occurred [9] 40/8 69/23 94/20  
 103/13 105/23 113/22 118/3  
 118/3 121/1  
 occurrence [1] 102/18  
 occurrences [1] 102/22  
 occurring [6] 41/25 76/23 78/17  
 79/6 117/11 117/12  
 offense [1] 121/1  
 offenses [1] 103/5  
 offered [1] 61/19  
 Office [2] 93/2 108/8  
 officer [4] 57/17 59/11 61/5  
 62/14  
 Official [1] 1/25  
 okay [49] 4/10 6/20 6/25 9/4  
 12/16 15/16 19/22 23/6 23/20  
 24/13 27/18 30/10 32/21 36/10  
 38/19 39/9 40/18 41/12 41/15  
 49/11 50/19 51/3 53/12 55/9  
 55/13 55/16 56/15 56/25 59/11  
 59/25 60/23 64/22 65/16 68/21  
 69/1 80/12 81/10 85/19 86/2  
 93/4 97/8 97/9 99/18 100/9  
 100/10 100/23 104/13 108/23  
 110/13

old [7] 32/5 69/12 70/10 70/13  
 90/8 122/24 122/25  
 once [2] 102/21 114/20  
 one [38] 6/17 9/8 11/21 12/7  
 12/8 13/15 26/2 27/21 31/24  
 37/13 45/1 49/8 55/3 55/5 55/22  
 56/6 59/24 60/23 61/22 62/5  
 65/15 66/22 67/16 68/16 74/22  
 74/22 75/1 75/1 76/2 79/10  
 84/20 95/5 105/11 111/18 111/24  
 114/4 117/1 117/3  
 One's [1] 13/16  
 one-on-one [2] 74/22 75/1  
 ongoing [3] 47/8 112/10 122/23  
 only [13] 10/19 17/20 24/11  
 26/20 27/18 31/11 42/6 42/7  
 42/9 59/13 102/15 105/10 111/18  
 open [1] 124/18  
 order [3] 9/23 119/15 122/12  
 orient [1] 79/9  
 original [2] 9/16 89/10  
 other [26] 5/18 24/11 26/2 26/7  
 27/22 27/24 28/4 28/20 29/24  
 34/24 40/10 43/20 75/18 79/17  
 102/18 105/2 105/7 105/11  
 105/14 105/16 109/8 110/17  
 112/12 115/1 115/8 121/2  
 others [1] 75/10  
 our [1] 116/15  
 ourselves [1] 107/6  
 out [41] 9/7 9/13 12/6 14/16  
 14/17 15/7 15/10 15/14 15/18  
 16/3 27/22 32/12 32/13 33/9  
 35/17 42/10 42/17 46/19 47/2  
 48/10 49/2 49/5 49/7 50/5 50/16  
 54/18 71/13 71/16 71/21 71/22  
 71/24 71/25 72/9 75/20 76/17  
 76/19 86/15 98/4 117/1 122/18  
 123/10  
 outside [6] 3/18 3/22 68/7 68/8  
 90/16 93/22  
 over [14] 29/24 33/5 33/18 42/2  
 46/20 47/5 79/11 86/12 92/14  
 92/15 92/23 119/2 122/16 123/9  
 Overlapping [9] 8/3 30/15 34/11  
 42/13 42/21 59/21 62/1 67/1  
 98/25  
 own [1] 95/5  
 owned [1] 67/16

# P

page [17] 2/2 21/7 24/18 52/4  
 52/7 52/14 52/15 53/8 53/23  
 54/17 56/15 56/25 62/23 63/1  
 63/10 88/4 106/15  
 Page 13 [1] 21/7  
 Page 14 [1] 24/18  
 Page 15 [1] 54/17  
 Page 18 [2] 56/15 56/25  
 page 2 [1] 106/15  
 page 3 [4] 52/4 52/7 62/23 63/1  
 page 6 [4] 52/15 53/8 63/10  
 88/4  
 page 7 [1] 53/23  
 pants [1] 24/17  
 paper [1] 62/10  
 pardon [1] 107/1  
 parental [1] 123/11  
 parents [5] 121/6 121/7 121/19  
 122/10 123/9  
 parking [4] 76/25 78/18 79/12  
 79/14  
 part [4] 31/7 34/18 108/24

RA 000041

<b>P</b>	possibly [1] 3/17 Potential [1] 4/7 prefer [1] 96/22 preliminary [4] 1/15 3/5 117/14 118/13 premeditation [2] 113/17 118/18 present [10] 3/8 29/3 39/19 100/19 100/20 100/21 102/11 112/13 116/10 121/6 pressure [4] 55/17 55/18 55/21 56/4 pressured [1] 56/2 pretty [11] 11/12 13/24 18/6 18/17 21/13 24/3 28/9 29/9 32/12 38/5 59/13 previous [2] 113/23 114/3 Pride [1] 26/12 primary [1] 116/15 principal [4] 76/17 76/18 76/21 80/2 prior [3] 27/2 37/19 121/3 probably [4] 9/9 16/4 27/21 102/25 problem [5] 5/9 63/9 80/17 96/24 102/2 procedure [1] 105/12 proceed [5] 6/25 69/1 101/2 118/10 118/11 proceeding [1] 117/21 proceedings [7] 36/8 100/17 118/7 120/9 123/20 124/17 124/19 process [2] 122/12 122/15 promise [4] 60/23 61/3 61/19 108/6 promised [2] 60/15 60/19 promises [7] 103/4 103/16 108/4 108/5 108/9 108/17 108/21 promote [2] 116/23 119/12 pronounce [2] 36/24 37/15 proper [1] 118/23 Proposed [4] 77/1 77/5 77/10 77/22 prosecute [1] 101/14 prosecuted [7] 60/16 60/19 61/7 103/4 109/2 109/9 112/5 prosecution [3] 107/22 108/18 112/6 protect [1] 46/11 prove [4] 117/15 118/1 118/2 118/12 proved [1] 27/1 provide [2] 109/8 115/5 provided [2] 37/16 62/11 proving [1] 117/7 provoked [4] 54/15 55/6 55/7 117/2 pull [1] 115/21 Puppet [20] 20/10 20/11 20/13 21/10 22/6 24/3 24/4 24/6 25/6 43/11 56/11 56/17 56/20 57/3 57/6 57/20 58/3 58/7 64/1 Puppet's [1] 20/15 Puros [11] 7/20 8/11 8/16 9/23 10/10 26/21 27/19 28/5 28/17 29/14 112/25 purported [1] 77/5 purpose [7] 5/4 77/24 77/25 78/7 117/18 118/24 119/6 purposes [2] 37/11 106/9 pursuant [1] 124/18 put [15] 4/20 21/14 22/18 23/16 24/2 30/24 48/2 66/23 79/1 79/5	80/25 81/2 81/6 81/8 117/19 <b>Q</b> question [59] 6/14 9/16 9/17 13/10 13/11 14/3 25/16 27/16 32/19 32/19 35/24 39/10 42/11 42/19 43/1 44/12 44/16 44/24 45/17 46/22 48/11 48/12 48/20 49/18 49/19 51/6 51/10 51/13 51/20 52/17 52/22 53/9 54/21 54/24 55/7 55/9 55/16 55/18 55/20 56/8 58/4 58/21 59/2 59/18 60/6 60/18 62/14 63/21 68/15 72/19 89/10 94/17 96/23 104/11 106/19 109/18 114/15 119/3 119/24 question's [1] 60/6 questions [13] 37/9 38/25 39/7 57/16 65/15 65/17 67/23 68/22 87/3 117/5 118/14 118/21 118/23 quick [1] 75/3 quite [1] 120/7 quote [1] 113/14 <b>R</b> race [3] 76/5 81/23 97/21 ran [21] 12/6 15/8 15/18 16/3 18/14 18/23 32/12 32/13 32/15 32/19 35/18 48/10 48/10 50/23 51/5 51/9 51/19 80/7 84/14 85/18 85/20 rather [1] 5/5 RE [1] 124/6 read [1] 88/15 reading [1] 97/8 realize [1] 121/7 really [2] 78/2 121/23 reason [8] 31/3 41/7 41/18 41/23 63/19 117/11 120/8 122/8 reasonable [7] 119/13 120/25 121/13 121/16 122/4 122/4 123/6 rebuttal [1] 111/14 recall [24] 27/20 37/14 54/4 54/24 55/24 56/7 56/12 65/3 65/9 88/22 90/1 90/10 95/3 95/10 98/16 99/4 101/21 103/7 105/18 107/14 107/17 107/17 107/19 107/20 recalled [2] 52/23 88/19 receive [2] 37/20 39/10 received [1] 37/24 recess [2] 36/7 100/16 recognize [4] 19/24 77/10 82/25 95/18 recognized [1] 98/9 recollection [4] 37/12 40/4 101/24 113/5 record [17] 3/7 3/23 4/4 4/21 10/18 15/3 26/14 26/16 33/16 38/2 70/2 81/3 83/9 92/25 96/1 110/25 121/5 recorded [5] 88/17 88/20 88/22 99/6 106/6 recorder [2] 107/5 107/11 Recross [6] 2/8 2/14 2/20 65/13 98/13 108/14 Recross-Examination [6] 2/8 2/14 2/20 65/13 98/13 108/14 recruit [1] 29/24 recruited [2] 30/8 30/18 recruiting [1] 30/5 Redirect [6] 2/7 2/13 2/19 62/17 95/1 108/1
----------	---	---

RA 000042

## R

refer [3] 43/22 101/23 104/6  
 reference [9] 27/1 37/10 39/7  
 104/4 104/9 104/24 107/8 107/9  
 112/21  
 referred [1] 91/17  
 referring [1] 57/20  
 reflect [9] 3/7 3/23 15/3 15/5  
 26/16 38/2 70/2 83/9 83/11  
 reflects [1] 26/14  
 refresh [5] 24/22 96/19 96/23  
 97/2 101/24  
 refreshing [1] 21/4  
 regard [2] 75/5 105/5  
 regarding [4] 116/17 117/5  
 121/3 124/19  
 regular [1] 71/21  
 rehab [5] 102/20 104/5 104/11  
 104/20 104/22  
 relation [1] 42/24  
 relationship [2] 31/12 31/20  
 relatively [1] 121/8  
 release [1] 122/13  
 relevance [3] 92/10 92/11  
 109/10  
 relevancy [1] 29/4  
 relevant [4] 34/16 112/18  
 116/18 117/7  
 remain [7] 48/5 48/6 68/7 68/8  
 93/22 99/24 100/7  
 remained [1] 91/8  
 remember [48] 8/13 10/1 18/18  
 20/21 20/24 21/1 21/3 21/9  
 24/16 24/20 37/5 52/3 52/7  
 52/11 52/17 53/19 53/21 54/8  
 54/11 54/14 54/21 57/10 57/12  
 57/14 57/18 57/22 58/2 58/6  
 63/18 69/23 71/15 82/6 84/7  
 86/17 87/23 88/1 88/12 90/14  
 96/16 97/15 97/21 97/24 98/18  
 99/8 99/13 99/15 99/16 105/19  
 repeating [1] 39/6  
 rephrase [1] 58/4  
 report [12] 5/1 5/9 90/8 99/11  
 99/12 103/24 104/4 104/12  
 104/24 105/5 107/8 107/9  
 reported [2] 1/24 124/18  
 reporter [5] 1/25 4/17 6/21  
 68/19 124/15  
 REPORTER'S [2] 1/14 124/17  
 reports [1] 106/1  
 represent [1] 62/3  
 representations [1] 121/2  
 represented [1] 120/10  
 representing [2] 3/12 120/5  
 require [1] 116/20  
 required [1] 117/15  
 reserve [1] 111/14  
 reside [1] 121/7  
 residence [1] 102/10  
 Respectfully [1] 10/18  
 respond [1] 11/5  
 responding [1] 86/3  
 response [13] 6/22 53/10 53/23  
 53/24 54/8 55/2 56/8 56/11  
 57/11 57/15 57/18 68/19 114/16  
 rest [2] 82/11 111/7  
 restate [1] 65/2  
 rested [1] 110/23  
 rests [4] 110/18 110/20 110/24  
 111/10  
 result [6] 30/25 31/4 38/8

67/22 120/3 120/11  
 return [1] 80/14  
 returned [2] 5/19 5/20  
 rid [2] 22/11 23/14  
 ride [1] 91/22  
 right [59] 5/18 8/18 15/22  
 15/24 17/8 17/13 17/18 18/4  
 19/3 21/6 21/22 36/20 38/1 39/2  
 39/21 40/9 40/25 41/11 42/2  
 43/13 46/5 53/16 53/17 53/24  
 54/1 60/13 61/5 61/8 65/8 65/21  
 65/24 66/2 66/4 67/7 67/9 72/21  
 76/24 79/11 83/23 87/10 87/13  
 87/21 89/10 90/23 91/12 92/20  
 93/8 93/10 93/13 95/25 105/8  
 106/16 108/23 110/6 110/22  
 111/1 111/25 115/22 122/14  
 risk [1] 122/14  
 rode [1] 116/10  
 role [2] 29/14 29/20  
 rounds [1] 83/15  
 row [2] 96/4 96/5  
 rule [1] 3/23  
 run [10] 32/25 48/2 48/3 51/3  
 51/11 51/16 51/23 80/3 80/5  
 85/7  
 running [28] 15/10 15/14 16/2  
 33/9 49/1 49/1 49/3 49/5 49/6  
 49/9 49/16 49/22 50/5 50/7 50/8  
 50/15 76/20 80/1 80/9 80/11  
 80/20 80/21 80/22 84/18 84/21  
 85/5 122/25 123/10

## S

said [72] 3/14 8/25 9/16 11/9  
 11/21 13/6 14/4 14/8 15/23  
 16/17 16/17 17/21 18/1 18/3  
 21/14 21/23 22/5 23/14 23/16  
 23/24 25/15 27/10 30/20 33/11  
 44/24 51/22 51/25 52/25 53/1  
 59/13 59/15 62/5 62/6 63/2  
 63/20 64/21 67/3 67/18 71/17  
 74/15 75/16 76/11 78/17 79/16  
 79/20 81/25 82/9 82/13 82/20  
 84/22 85/1 90/10 90/14 96/8  
 97/2 98/23 99/1 99/8 99/11  
 105/21 105/22 112/15 113/21  
 114/25 116/3 116/16 116/18  
 117/2 119/15 119/16 122/23  
 124/21  
 Sal [5] 31/12 31/20 49/13 50/9  
 50/15  
 Salvador [9] 13/24 29/9 29/23  
 30/2 30/8 30/18 30/20 30/25  
 31/4  
 Salvador's [3] 11/12 29/14  
 29/20  
 same [18] 28/25 33/2 49/3 49/15  
 50/8 57/7 75/14 89/3 89/4 89/4  
 90/1 90/7 94/13 94/20 95/21  
 99/5 102/23 104/19  
 saw [27] 12/14 15/13 18/24 35/2  
 35/5 35/6 42/3 51/8 51/23 72/16  
 73/5 73/15 73/17 73/21 74/9  
 75/11 75/12 75/16 75/23 75/25  
 82/20 83/1 85/5 85/21 85/23  
 86/5 90/25  
 Sax [1] 29/11  
 say [35] 6/19 9/14 14/6 15/13  
 16/10 16/13 16/14 16/20 17/18  
 17/22 18/1 18/5 18/10 21/18  
 35/5 42/4 45/14 57/21 58/20  
 63/8 64/7 65/23 68/18 73/14

75/13 76/4 82/182/14 83/16  
 84/5 86/19 86/21 96/6 99/2  
 108/16  
 saying [13] 14/13 17/12 27/15  
 30/22 34/5 35/16 37/1 55/11  
 72/22 97/21 97/24 99/15 108/19  
 says [6] 17/15 60/18 115/13  
 115/22 120/18 121/15  
 scared [1] 54/12  
 scene [1] 114/1  
 scheduled [1] 105/12  
 school [48] 12/19 12/20 20/2  
 23/23 24/24 25/9 25/18 25/23  
 40/8 40/15 42/10 42/16 43/10  
 52/13 52/24 53/10 53/16 53/20  
 54/2 54/6 56/10 63/14 64/3  
 70/17 70/18 71/5 71/8 71/14  
 71/16 71/22 71/24 71/25 72/7  
 72/10 72/10 72/23 74/1 74/2  
 76/21 76/24 77/14 77/15 77/18  
 78/5 79/8 86/11 86/15 111/23  
 seat [4] 44/20 67/20 80/14 96/6  
 seated [11] 6/2 36/20 57/7  
 68/10 68/11 87/10 87/21 89/16  
 89/19 90/23 100/24  
 second [8] 31/24 74/4 85/22  
 96/4 96/7 114/17 115/23 117/22  
 Secondly [1] 115/12  
 Security [2] 124/22 124/24  
 see [35] 9/2 11/24 14/21 18/20  
 18/22 19/2 19/6 19/7 20/11 29/4  
 33/7 33/19 50/25 51/11 51/13  
 57/10 64/2 72/15 72/19 72/23  
 73/20 74/6 74/8 80/10 80/20  
 81/13 83/3 83/19 84/20 85/6  
 85/19 86/4 96/8 104/1 118/10  
 seen [5] 18/21 32/7 80/22 90/19  
 90/22  
 sell [1] 29/10  
 seller [2] 58/13 58/21  
 sellers [1] 109/8  
 selling [1] 28/14  
 sending [1] 113/20  
 series [1] 65/15  
 serious [1] 27/23  
 seriously [1] 109/21  
 set [6] 112/22 113/16 120/25  
 121/8 121/9 121/13  
 shake [2] 6/19 68/18  
 she [24] 13/9 39/1 39/7 44/10  
 58/17 58/17 58/18 58/19 58/21  
 59/18 82/9 82/10 82/13 88/19  
 93/20 93/22 96/23 97/1 97/1  
 97/1 98/3 98/23 111/24 115/17  
 she's [8] 13/4 21/4 59/16 78/22  
 81/3 93/7 93/10 96/2  
 shirt [1] 83/7  
 shit [1] 15/21  
 shoot [3] 18/16 46/13 115/4  
 shooter [13] 81/8 84/16 84/18  
 84/22 85/5 85/7 85/18 87/13  
 89/23 96/17 97/16 115/18 116/5  
 shooting [21] 11/4 11/9 11/10  
 12/14 21/13 22/8 23/7 24/15  
 40/8 64/14 80/23 81/9 81/13  
 82/21 86/15 86/22 94/3 94/7  
 94/10 103/15 117/12  
 shopping [1] 65/24  
 Short [1] 32/4  
 Shorthand [1] 124/14  
 shortly [1] 88/23  
 shorts [4] 81/21 82/11 88/4  
 97/20

RA 000043

**S**

shot [26] 18/15 18/23 32/2 32/9  
33/7 35/18 37/22 39/21 48/1  
48/24 48/24 49/16 49/24 54/15  
54/25 64/15 81/1 81/7 84/12  
84/16 84/19 84/20 85/4 86/1  
86/18 122/24

shots [2] 18/18 83/13

show [8] 5/5 5/15 53/4 53/8  
77/9 77/18 85/9 98/20

showed [2] 74/5 74/16

showing [4] 77/6 85/18 115/10  
115/11

shown [3] 94/1 112/17 118/8

side [7] 38/1 75/14 75/15 79/17  
79/21 81/5 100/14

sign [1] 33/25

simmer [1] 45/13

simple [2] 60/6 60/6

simply [1] 117/16

since [1] 121/25

single [2] 4/24 62/10

sir [4] 107/16 107/24 109/1  
109/5

sirens [2] 51/12 51/22

sister [2] 5/6 114/12

sit [1] 107/13

sitting [7] 67/7 86/8 90/16  
92/1 95/21 95/22 95/24

situation [2] 120/4 121/17

sixth [2] 72/16 73/25

skills [1] 62/20

sleeve [1] 24/17

sleeves [1] 24/17

slight [3] 117/9 117/10 118/8

slower [1] 36/24

slowly [2] 4/15 43/10

small [1] 109/7

so [72] 3/20 3/22 4/14 4/15  
11/19 12/7 12/24 13/20 15/5  
15/22 17/2 17/18 23/6 27/24  
32/23 34/23 36/11 36/19 37/12  
40/21 41/13 41/23 42/10 43/9  
43/13 50/1 51/3 53/15 54/1 54/1  
56/16 56/16 57/6 58/15 60/13  
61/17 62/11 64/10 67/6 67/11  
69/24 72/11 73/3 75/3 75/13  
75/17 76/11 79/13 81/12 83/11  
84/21 86/17 89/4 92/5 94/5  
99/14 100/22 103/16 103/25  
104/2 105/17 107/3 114/17  
116/13 118/5 118/24 118/25  
119/7 120/3 120/10 120/23  
121/20

Social [2] 124/22 124/24

sold [5] 58/10 58/15 59/3 59/12  
60/4

some [9] 4/19 10/22 38/8 75/4  
86/11 103/25 105/12 113/8 115/7

somebody [11] 9/16 9/18 30/22  
31/17 54/15 72/23 80/21 80/22  
91/20 91/24 109/2

something [18] 9/22 14/24 16/17  
18/1 30/20 57/21 66/13 69/18  
71/7 71/17 72/23 74/6 75/4  
106/4 106/6 115/24 116/2 117/8

sometimes [1] 4/15

somewhere [1] 11/3

SONIA [2] 1/21 3/11

soon [1] 14/1

sorry [9] 17/19 21/21 23/7 31/2  
80/15 81/25 88/4 101/14 106/21

sounds [1] 106/12

speak [2] 101/18 102/6

speakers [9] 8/3 30/15 34/11  
42/13 42/21 59/21 62/1 67/1  
98/25

speaking [1] 21/23

speaks [1] 4/15

specific [6] 96/23 105/25  
112/21 114/15 114/16 117/25

Specifically [1] 16/10

speech [3] 21/21 38/17 63/9

spell [7] 6/3 6/5 6/9 7/22 8/5  
36/22 68/12

split [1] 38/6

spoke [6] 39/23 92/18 98/3  
101/21 102/19 102/20

spread [1] 94/1

SS [1] 124/11

Stacy [4] 13/22 25/8 43/12  
66/17

stage [1] 118/7

stand [1] 92/24

standing [4] 81/7 81/9 81/12  
86/7

stands [2] 120/3 121/14

start [5] 25/19 25/24 40/21  
114/20 122/15

started [19] 8/20 9/1 9/6 9/7  
9/8 11/11 11/13 15/9 15/21 16/2  
16/5 16/6 18/25 19/18 27/14  
63/13 75/8 76/20 80/1

state [34] 1/5 1/7 1/21 2/2 3/5  
3/13 4/10 5/22 6/3 6/6 6/18  
17/3 36/10 44/15 67/24 68/11  
68/17 68/24 100/25 110/17  
110/18 110/20 110/23 112/16  
117/20 119/17 120/5 120/15  
121/2 121/14 124/2 124/4 124/11  
124/16

State's [10] 2/23 77/1 77/4  
77/10 77/22 78/13 114/18 118/25  
119/7 121/20

stated [2] 48/13 52/9

statement [38] 16/22 29/19  
34/24 37/10 53/2 53/5 55/10  
58/12 63/1 63/13 64/1 88/17  
88/20 88/23 90/15 95/4 95/8  
95/11 96/17 96/20 97/3 97/14  
97/17 98/15 98/21 98/23 99/1  
99/6 101/23 104/14 106/2 106/3  
106/7 106/10 106/11 106/15  
107/14 107/20

statements [3] 10/20 103/7  
105/19

status [1] 121/24

statute [5] 115/13 115/20  
115/21 116/6 120/18

stayed [2] 91/11 122/17

still [5] 13/22 22/19 30/12  
48/13 48/16

stipulate [2] 17/3 17/4

stipulated [2] 4/23 106/25

stipulations [1] 4/19

stomach [1] 86/5

stop [1] 33/25

stopped [1] 33/25

street [8] 18/15 32/24 35/18  
49/10 70/22 70/24 80/19 81/3

streets [1] 77/18

stricken [3] 25/20 25/21 114/18

strike [7] 18/7 25/15 34/7  
41/13 47/11 113/12 118/5

strong [1] 123/2

student [1] 72/16

students [1] 86/11

subject [1] 112/6

subjected [1] 107/22

submit [3] 111/13 113/18 114/21

subpoena [1] 105/14

such [2] 112/16 121/10

suggest [2] 113/1 114/18

supervision [1] 121/10

supposed [1] 45/14

sure [19] 11/12 13/24 18/17  
21/13 24/4 28/9 32/12 38/5  
47/23 53/4 58/5 59/13 77/7  
85/15 88/14 100/6 103/9 111/2  
115/19

surgery [1] 38/9

suspect [2] 95/11 103/15

sustained [1] 34/24

swear [1] 100/22

sweater [2] 88/3 97/20

sweatshirt [1] 24/21

sworn [3] 7/5 69/6 101/6

Si [1] 36/3

**T**

table [1] 57/7

tagged [1] 28/14

tagging [1] 9/8

take [9] 6/22 26/4 29/23 44/11  
68/19 79/9 80/12 86/12 121/16

taken [2] 1/18 104/14

taking [2] 97/14 109/15

talk [12] 11/9 19/9 19/12 20/1  
20/3 20/16 24/6 24/10 72/21  
72/22 73/15 92/15

talked [3] 19/7 22/15 62/19

talking [22] 11/25 14/10 17/17  
17/23 17/25 19/18 20/21 20/24  
23/2 52/12 52/23 53/9 53/16  
63/14 72/1 72/17 72/17 73/17  
73/20 90/22 91/6 96/9

tall [2] 90/10 90/13

tape [3] 21/1 107/5 107/11

taped [3] 52/3 52/8 107/9

teenage [2] 42/5 42/5

tell [35] 11/15 14/23 22/2 22/7  
22/13 22/21 23/10 23/12 23/15  
23/17 23/21 23/25 24/15 31/17  
31/19 54/25 58/9 58/12 58/15  
59/2 59/12 60/7 83/7 89/11  
90/13 93/22 96/11 96/14 98/4  
102/2 109/21 112/12 115/3 115/4  
115/5

telling [15] 21/3 21/9 24/20  
35/7 54/11 54/14 54/21 55/24  
56/7 56/12 58/2 58/6 63/18 99/4  
99/8

TERRY [30] 1/23 2/6 2/8 2/12  
2/14 2/18 2/20 3/8 4/2 4/19 5/3  
36/10 36/16 62/11 62/25 65/14  
85/14 87/4 87/8 96/9 98/14  
99/21 103/22 104/7 108/15  
110/22 111/15 116/18 116/25  
122/23

testified [14] 7/6 28/1 33/4  
43/15 46/14 46/19 47/2 49/23  
69/7 95/18 101/7 113/8 114/10  
114/13

testify [19] 3/18 3/21 7/5 9/15  
9/18 11/23 14/5 17/20 27/5 27/8  
29/1 30/17 35/4 61/19 69/6  
101/6 111/1 111/5 117/8

testifying [3] 35/12 64/14 93/7

# T

testimony [15] 9/13 33/15 51/7  
59/9 112/7 113/2 113/3 114/1  
114/2 114/11 115/17 116/4  
116/17 116/18 116/24  
than [10] 5/5 75/2 83/18 105/11  
105/14 105/16 114/4 116/8  
116/12 121/8  
Thank [23] 4/22 6/1 7/1 10/24  
26/18 28/2 36/13 52/5 68/1 69/2  
87/5 88/5 93/5 94/23 100/11  
102/3 108/12 109/13 110/13  
114/22 116/14 123/16 123/17  
that [445]  
that's [77] 5/7 5/12 5/16 5/21  
5/23 9/20 11/7 11/25 12/15 13/8  
13/10 13/23 15/20 15/21 17/23  
18/3 18/24 19/1 19/22 21/22  
23/2 23/20 25/21 27/18 29/20  
32/16 32/16 32/19 33/14 35/13  
35/14 36/19 38/6 44/9 51/23  
51/25 52/1 55/12 56/2 57/7  
60/25 63/9 64/24 65/21 67/15  
67/17 67/18 69/24 70/3 89/11  
90/23 96/25 98/22 99/10 99/12  
101/12 102/8 104/16 105/1 105/6  
106/8 106/10 108/23 108/24  
109/7 110/7 111/18 111/20  
115/23 116/2 116/5 116/15 117/4  
117/16 119/11 121/17 122/5  
their [7] 27/6 27/11 86/11  
110/23 111/22 118/25 119/7  
them [15] 4/8 5/20 9/11 14/4  
14/7 14/9 20/24 28/25 50/7 51/4  
66/22 74/25 76/7 103/25 105/18  
then [59] 9/7 11/12 12/6 12/13  
13/24 15/9 15/9 15/22 16/1 16/2  
16/3 16/4 16/5 17/13 18/7 18/24  
18/25 19/16 24/3 24/3 25/20  
29/2 29/10 32/12 33/9 33/18  
34/1 38/6 42/18 48/9 49/7 57/16  
59/24 62/21 64/2 66/18 67/9  
68/1 73/8 75/12 80/20 84/18  
85/1 96/23 104/17 106/3 107/1  
108/6 109/18 112/15 112/19  
113/6 113/10 115/25 116/16  
116/17 119/3 120/7 120/24  
theories [5] 117/13 117/20  
118/6 118/10 118/12  
theory [5] 114/17 117/15 117/19  
117/22 117/24  
there [94] 12/7 12/22 13/23  
13/25 14/5 14/9 14/14 14/15  
24/4 27/14 27/21 31/11 31/19  
35/23 39/13 40/15 40/21 40/22  
40/22 40/23 41/5 41/17 41/20  
41/24 41/25 42/3 42/6 42/8 42/8  
42/10 42/25 43/4 43/13 43/20  
46/7 49/1 55/20 56/9 56/9 57/1  
60/14 61/12 61/24 62/6 63/17  
63/19 63/20 63/23 65/18 66/1  
66/1 70/20 72/12 72/24 73/12  
73/16 74/6 76/2 79/3 79/7 79/10  
85/14 85/21 92/23 95/25 102/13  
102/19 103/16 104/13 106/20  
107/7 108/3 108/6 108/9 108/11  
112/9 112/10 112/11 112/19  
112/20 113/15 114/2 114/10  
114/12 114/14 114/19 114/20  
115/10 115/11 116/4 116/18  
116/20 119/13 123/10  
there's [13] 3/15 3/20 28/8

61/21 61/22 62/5 62/12 92/1  
95/10 106/14 113/2 115/25 11  
therefore [2] 119/1 119/8  
these [14] 6/17 44/13 50/18  
60/24 61/20 68/16 75/19 76/3  
102/22 103/2 113/25 118/21  
118/22 123/2  
they [45] 13/25 13/25 14/14  
16/5 16/8 17/12 26/25 27/1 28/9  
33/12 33/13 33/17 33/23 33/25  
35/7 35/16 40/7 48/9 48/19  
58/14 60/11 62/3 62/6 62/7  
62/13 62/14 68/23 72/17 75/20  
76/5 76/12 78/9 80/1 86/13  
102/22 102/24 109/2 109/9  
109/12 112/9 114/20 116/22  
120/6 120/8 120/11  
they'll [1] 5/19  
they're [8] 3/18 5/9 11/25  
13/22 34/17 34/18 59/7 121/4  
they've [1] 62/4  
thing [6] 9/10 20/3 28/25 59/13  
66/21 67/17  
things [4] 28/4 28/21 29/24  
67/11  
think [26] 3/16 33/17 37/8  
66/13 82/10 88/8 88/9 88/10  
98/23 102/20 104/15 105/22  
106/13 106/14 106/23 116/9  
116/11 118/14 118/20 118/22  
118/24 119/7 121/15 122/4 123/5  
123/8  
thinking [1] 19/7  
third [2] 3/16 92/22  
this [102] 3/4 4/12 5/6 9/5  
9/12 10/3 11/17 11/20 12/18  
13/3 13/8 16/24 19/2 19/4 19/6  
20/5 20/22 22/13 23/6 23/21  
24/8 26/20 27/18 30/24 31/1  
31/11 32/16 32/17 33/4 33/7  
33/12 33/22 34/14 37/13 40/7  
49/8 51/22 52/3 52/4 54/12  
54/18 54/19 55/10 59/17 60/16  
60/19 60/20 61/18 64/14 64/15  
66/21 76/12 76/21 76/24 77/19  
78/4 78/6 79/7 79/10 81/11  
81/25 82/20 86/15 88/16 91/20  
93/15 94/5 95/4 98/5 100/8  
102/9 103/11 106/19 108/9 111/4  
113/16 114/12 114/25 115/9  
116/2 116/25 117/9 117/11  
117/22 118/4 118/7 118/24 119/6  
119/15 120/6 120/10 120/16  
121/1 121/17 121/20 121/23  
122/5 122/8 122/17 122/22 123/7  
125/3  
those [9] 4/20 28/21 62/11  
76/15 105/10 106/13 106/17  
117/25 118/12  
though [4] 24/9 61/10 90/4  
116/10  
thought [4] 21/22 80/16 98/22  
106/25  
three [1] 76/2  
threshold [1] 115/10  
through [6] 62/9 106/21 108/7  
121/19 122/10 123/4  
THURSDAY [2] 1/18 3/1  
time [37] 3/5 10/10 12/23 13/23  
19/4 31/9 37/16 37/19 45/1 49/8  
59/24 70/11 71/13 71/16 71/22  
77/18 78/6 81/11 84/15 86/14  
86/15 91/3 91/6 91/9 92/22 94/5

95/4 95/19 102/19 103/11 103/23  
105/11 112/16 120/2 121/20  
122/1 122/16  
times [2] 18/16 109/6  
tissue [1] 80/12  
today [9] 14/21 64/15 83/4 90/1  
90/17 92/3 93/13 95/17 107/13  
together [2] 13/23 34/18  
toilet [6] 21/14 22/18 23/16  
23/18 23/21 24/2  
told [21] 11/15 19/25 21/10  
22/17 22/17 23/7 24/3 54/12  
55/5 55/22 58/3 58/7 58/17  
58/18 59/18 60/9 64/1 103/10  
106/5 107/23 116/25  
tone [2] 34/4 109/24  
tonight [1] 65/24  
too [2] 28/10 37/15  
took [1] 109/14  
top [1] 66/23  
total [1] 6/6  
toward [1] 96/2  
towards [6] 80/11 80/21 80/22  
81/4 84/14 84/19  
TOWNSHIP [2] 1/4 124/1  
transcript [4] 1/14 123/19  
124/17 124/21  
truck [6] 66/21 66/24 67/4  
67/17 67/17 67/20  
truck-type [1] 66/21  
true [5] 11/7 87/20 91/5 91/8  
123/19  
truth [9] 7/5 7/6 7/6 69/6 69/7  
69/7 101/6 101/6 101/7  
try [5] 4/16 10/17 49/8 59/17  
86/12  
trying [6] 10/5 11/19 32/25  
34/8 43/1 50/16  
turn [1] 85/23  
turned [3] 85/1 107/5 107/11  
twice [1] 102/21  
two [28] 3/14 3/16 27/22 39/12  
45/23 45/25 57/16 64/19 64/21  
65/10 74/22 74/25 75/17 75/18  
75/19 75/23 75/24 76/11 76/15  
79/8 79/16 79/20 83/16 83/18  
92/2 113/15 113/19 122/8  
two-door [1] 75/23  
type [4] 6/22 66/21 68/19 113/8

# U

ultimately [3] 48/1 49/23  
119/21  
um [2] 55/3 55/16  
under [3] 112/4 116/6 123/2  
understand [5] 4/5 6/23 13/7  
68/20 68/24  
understanding [1] 91/19  
Understood [1] 4/9  
unfortunately [1] 115/21  
unintelligible [2] 7/16 55/4  
unless [3] 9/19 62/4 120/5  
until [5] 44/11 59/24 79/2  
100/7 112/16  
up [26] 12/2 12/5 13/10 18/23  
19/17 19/17 20/4 21/12 33/19  
38/6 63/20 66/13 70/23 71/9  
72/6 73/3 74/4 74/5 74/16 86/7  
86/22 91/24 92/24 115/22 121/14  
123/14  
upon [2] 10/19 113/22  
upper [1] 81/4  
urge [1] 121/12



<b>U</b>	us [6] 5/4 22/17 22/17 73/3 103/14 109/21 use [3] 5/4 113/15 119/11 used [3] 46/10 106/14 106/18 using [1] 34/4 utterance [1] 34/9	weapons [1] 74/23 wearing [10] 14/24 14/25 24/16 81/19 81/21 82/6 82/13 83/7 83/8 88/3 week [1] 89/2 weeks [4] 39/12 64/19 64/21 65/10 welcome [1] 121/4 well [12] 9/6 10/21 11/11 20/9 22/3 28/8 37/9 38/5 57/15 62/11 74/10 121/15 went [16] 9/8 12/22 18/22 24/4 38/6 41/24 43/10 46/20 47/5 62/9 64/3 85/20 105/12 114/5 122/16 122/22 were [124] 7/12 10/9 12/18 13/25 14/3 14/14 16/8 17/12 25/9 25/11 26/20 27/7 27/11 27/19 27/24 30/8 33/12 33/12 33/13 33/17 33/22 33/23 35/7 35/17 36/8 37/22 39/21 40/22 41/5 41/17 42/3 42/25 43/4 44/7 44/18 44/20 46/7 46/15 48/8 48/12 48/13 48/16 48/18 48/19 48/25 49/3 49/6 49/9 49/11 49/13 49/15 49/22 50/1 50/6 50/8 50/11 50/15 52/8 52/12 52/22 52/23 53/10 53/20 54/2 57/15 58/13 60/15 60/18 61/10 62/14 62/20 63/14 63/17 63/19 63/23 64/15 65/18 67/3 67/3 67/6 67/9 67/11 70/10 70/15 71/10 72/5 72/17 72/22 73/2 73/19 76/3 76/5 78/9 78/9 80/16 81/7 81/12 83/13 91/3 91/13 91/16 94/1 94/2 100/17 101/13 102/22 103/11 103/16 105/10 107/7 108/9 108/11 112/9 112/13 114/5 114/7 114/10 114/12 114/14 115/8 115/15 116/3 117/4 122/13 weren't [3] 40/21 50/13 106/14 West [1] 104/22 what [160] what's [10] 8/25 9/1 19/17 19/17 30/21 34/17 56/19 56/21 73/9 77/25 whatever [1] 41/23 when [102] 8/10 8/25 10/1 15/7 15/18 15/20 17/14 19/1 20/5 22/13 22/15 22/21 22/23 22/24 23/3 25/18 25/23 29/3 29/6 29/8 32/13 32/15 32/16 32/16 32/23 34/5 37/5 38/19 38/22 38/25 39/7 39/10 39/13 39/23 40/7 40/7 40/15 40/22 41/4 41/20 42/2 42/4 43/22 43/25 44/2 44/4 45/3 45/5 45/7 45/17 47/25 48/2 48/9 48/17 48/18 48/19 48/20 50/22 51/4 51/5 51/8 52/7 52/23 53/16 58/15 58/17 58/17 58/18 62/19 63/1 63/14 63/19 64/7 66/1 67/18 69/23 70/6 71/24 75/13 81/1 81/7 83/16 84/5 84/12 84/18 86/14 91/23 93/20 95/17 97/7 101/21 102/18 102/19 102/20 103/11 104/8 104/11 104/17 104/20 106/5 108/16 113/25 where [44] 8/20 12/18 16/24 16/25 18/22 21/12 22/13 23/17 23/21 33/7 33/8 38/4 48/5 48/5 48/8 48/12 48/25 49/6 49/8	52/15 57/14 57/16 58/12 61/18 61 70/18 75/19 76/23 78/9 78/21 79/1 79/5 80/25 81/6 81/9 81/12 85/6 85/19 85/22 95/24 102/9 115/17 118/16 120/12 whether [6] 54/4 63/16 112/5 112/9 118/18 118/19 which [20] 37/16 37/24 59/11 66/17 67/16 67/16 77/5 77/5 85/6 85/18 96/6 99/5 103/13 104/22 105/23 120/6 121/11 122/11 123/2 123/5 while [8] 4/18 33/13 33/22 52/12 53/10 80/9 80/19 93/7 who [42] 3/21 13/14 13/20 13/23 14/3 15/23 16/6 17/1 17/16 17/23 18/3 25/7 25/11 25/18 25/23 29/3 32/2 43/9 52/8 56/10 56/17 56/19 57/2 60/23 61/3 63/2 66/16 67/6 73/1 73/22 76/11 80/7 81/13 86/18 86/19 96/11 98/4 98/4 102/11 103/15 115/8 117/6 Who's [4] 14/19 18/3 21/16 35/20 whole [3] 7/6 69/6 101/6 whom [1] 56/5 why [13] 4/20 25/9 34/14 54/25 55/20 59/10 63/9 63/21 72/5 98/7 107/7 112/18 117/4 will [11] 3/21 5/20 30/21 53/6 80/18 100/9 109/2 109/9 115/24 121/7 121/8 WILLIAM [2] 1/16 1/23 willing [1] 121/12 wind [1] 12/2 withdraw [3] 21/6 25/15 65/1 within [4] 89/1 112/22 113/16 124/15 without [4] 23/7 28/22 31/16 113/8 witness [21] 4/11 4/13 4/19 8/1 36/4 45/9 68/3 68/5 83/10 91/3 91/15 91/17 100/1 100/3 103/13 103/19 105/24 110/15 116/8 116/10 116/12 witnesses [10] 2/2 3/14 3/17 3/21 3/24 3/24 4/2 4/4 4/7 110/17 women [4] 42/3 42/4 42/5 42/5 won't [4] 5/15 5/19 5/25 121/22 words [4] 5/18 18/5 106/14 106/18 work [1] 109/4 would [67] 4/3 8/21 9/12 9/19 14/2 26/9 30/12 31/15 31/16 34/6 36/24 41/23 55/20 59/10 60/19 61/18 62/15 65/23 72/18 82/25 85/8 85/17 89/1 89/7 92/5 92/22 92/24 94/12 96/19 97/2 99/5 101/24 101/25 102/24 103/4 103/8 103/9 103/9 103/14 104/19 106/4 106/4 106/4 107/3 107/6 107/21 107/22 108/3 108/6 112/2 112/19 112/20 112/24 113/1 113/7 113/8 113/11 114/4 114/4 114/18 114/21 114/24 118/6 120/1 120/24 121/12 122/14 wouldn't [1] 60/15 wound [1] 4/24 written [2] 95/4 108/3 Wrong [1] 43/24 wrote [4] 95/5 96/16 98/16
<b>V</b>			
vacillated [1] 112/8 VEGAS [7] 1/4 3/1 71/2 108/20 124/1 124/19 124/20 vehicle [2] 43/10 66/15 verbally [1] 47/13 verbatim [1] 88/15 very [6] 9/16 93/5 110/13 114/9 114/15 114/16 victim [2] 91/17 115/5 victim's [2] 5/4 5/6 Victor [18] 69/17 69/19 69/21 70/13 72/3 72/5 72/7 72/10 72/12 73/4 73/11 73/16 74/5 74/6 74/15 80/3 113/17 113/19 voice [3] 19/24 34/4 109/24 volunteer [1] 60/13			
<b>W</b>			
waistband [1] 57/17 wait [4] 27/16 44/11 59/24 79/2 waiting [5] 4/18 72/1 72/5 73/2 106/23 wall [1] 86/8 want [19] 4/13 6/5 7/11 10/8 16/12 17/3 59/8 66/13 67/15 67/18 72/22 73/13 73/15 74/4 85/14 94/9 97/6 104/7 104/9 wanted [4] 29/23 29/24 31/7 31/8 wants [3] 78/21 102/1 121/2 was [329] Washington [5] 12/22 12/24 70/23 70/25 81/4 wasn't [7] 7/24 25/16 39/23 40/1 84/17 106/3 116/18 watch [1] 78/21 way [4] 13/25 30/24 53/15 89/12 we [70] 3/9 4/3 4/23 4/25 5/9 5/10 8/24 9/2 9/8 11/19 14/14 15/9 19/18 20/3 21/5 22/9 27/4 34/14 34/20 34/20 46/21 73/2 78/1 78/3 80/15 80/16 96/24 100/4 100/12 103/9 103/9 103/11 103/12 104/17 105/3 105/12 105/23 106/25 107/6 107/7 111/6 111/7 111/16 112/2 113/11 114/18 114/21 115/14 115/21 116/24 117/4 117/10 117/14 117/16 117/16 117/21 117/22 118/1 118/2 118/4 118/8 118/9 118/10 118/11 120/1 120/2 120/18 120/21 121/12 121/15 we'd [1] 111/7 we'll [9] 3/16 17/4 18/7 31/23 92/11 105/8 110/9 111/13 113/18 we're [21] 4/18 12/15 33/5 36/19 43/9 54/1 56/16 57/6 57/20 61/17 69/24 92/6 104/15 105/20 105/21 105/22 106/23 107/3 107/14 108/5 122/5 we've [2] 26/23 120/23 weapon [4] 86/24 113/15 118/3 119/12			

RA 000046

W

wrote... [1] 98/23

Y

yeah [28] 14/10 15/15 16/19  
19/5 19/21 19/25 21/21 22/25  
25/21 26/12 28/19 31/6 33/23  
44/8 48/14 49/21 53/23 53/24  
55/8 55/19 56/4 57/11 57/18  
59/16 63/20 64/11 67/5 67/21  
year [5] 8/13 102/25 103/1  
122/24 122/25  
year-old [2] 122/24 122/25  
years [4] 7/12 8/12 90/8 122/8  
Yep [2] 41/22 50/10  
yes [206]  
yet [2] 19/20 27/1  
yield [2] 33/16 113/6  
you [661]  
you a [1] 10/16  
You'll [1] 68/8  
you're [17] 13/3 13/8 21/23  
37/12 58/20 64/14 68/1 87/20  
94/5 97/7 99/14 99/14 99/23  
106/16 108/16 108/19 115/19  
you've [7] 43/15 79/13 85/22  
87/9 90/16 90/19 90/22  
young [4] 59/6 60/24 61/18 92/1  
your [88] 4/3 4/11 4/23 5/13  
6/3 6/4 6/5 6/6 6/9 6/11 6/19  
7/1 7/11 10/9 23/3 35/3 37/6  
37/11 37/16 37/24 38/13 38/15  
38/17 40/4 43/1 44/15 51/7  
53/10 53/23 53/24 54/8 55/2  
56/2 56/11 57/4 57/11 57/15  
57/17 59/3 59/8 62/20 62/25  
63/12 63/15 63/25 68/5 68/11  
68/12 68/18 69/16 69/18 70/13  
72/3 72/23 73/19 80/3 80/25  
81/7 81/13 82/21 83/13 84/3  
84/12 84/15 85/2 85/25 86/9  
86/24 93/7 95/5 96/16 96/19  
97/6 97/16 100/3 100/25 101/17  
101/24 102/15 104/10 105/25  
107/1 108/24 110/18 111/1  
112/14 112/16 114/21  
yourself [1] 79/9

RA 000047

RECEIVED IN JUSTICE COURT

DATE JAN 09 2009

APPROVED JV

DATE \_\_\_\_\_

RA 000048



**JUSTICE COURT, LAS VEGAS TOWNSHIP**

CLARK COUNTY, NEVADA

STATE OF NEVADA,  
Plaintiff,

vs.

EVARISTO JONATHAN GARCIA  
Defendant(s)

) District Court Case No.: C226218

) Justice Court Case No.: 06F11378A

**COMMITMENT and ORDER TO APPEAR**

An Order having been made this day by me that **EVARISTO JONATHAN GARCIA** be held to answer before the Eighth Judicial District Court, Department 14 upon the charge(s) of **MURDER WITH USE OF A DEADLY WEAPON WITH THE INTENT TO PROMOTE, FURTHER, OR ASSIST A CRIMINAL GANG**, committed in said Township and County, on or about the 6<sup>TH</sup> day of FEBRUARY, 2006.

**IT IS FURTHER ORDERED** that the Sheriff of the County of Clark is hereby commanded to receive him into custody, and detain him until he can be legally discharged, and that he be admitted to bail in the sum of **NO BAIL** Dollars, and be committed to the custody of the Sheriff of said County, until such bail is given; and

**IT IS FURTHER ORDERED** that said defendant(s) is/are commanded to appear in the Eighth Judicial District Court, Regional Justice Center, Lower Level Arraignment Courtroom "A", Las Vegas, Nevada at 9:00 AM on the 5<sup>TH</sup> day of JANUARY 2009 for arraignment and further proceedings on the within charge(s).

Dated this December 19, 2008

*William D. Hansen*

Justice of the Peace, Las Vegas Township

# Justice Court, Las Vegas Township

STATE VS. GARCIA, EVARISTO JONATHAN CASE NO. 0-6F11378A

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES — HEARING

CONTINUED TO:

NOVEMBER 26, 2008  
W. JANSEN  
N. NYIKOS, DA  
W. TERRY, ESQ.  
G. DELUCCA, CR  
L. FOY, CLK

TIME SET FOR PRELIMINARY HEARING  
DEFENDANT NOT PRESENT IN COURT \*IN CUSTODY\*  
PRELIMINARY HEARING DATE RESET

12/18/08 8:30 #5

DEFENDANT REMANDED INTO THE CUSTODY OF THE SHERIFF

SLS

DECEMBER 18, 2008  
W. JANSEN  
N. NYIKOS, DA &  
S. JIMENEZ, DA  
W. TERRY, ESQ.  
G. DELUCCA, CR  
L. FOY, CLK

TIME SET FOR PRELIMINARY HEARING  
DEFENDANT PRESENT IN COURT \*\*IN CUSTODY\*\*  
MOTION TO EXCLUDE WITNESSES BY DEFENSE — MOTION GRANTED  
STATE WITNESSES  
JONATHAN HARPER  
MELISSA GAMBOA  
CLIFFORD MOGG  
EVIDENCE

WITNESS I/D DEFT.  
WITNESS I/D DEFT.

JANUARY 5, 2009  
9:00 AM  
DISTRICT COURT  
ARRAIGNMENT

STATE'S #1 — PHOTOGRAPH — OFFERED-ADMITTED  
STATE'S #2 — PHOTOGRAPH MARKED-NOT OFFERED-NOT ADMITTED  
STATE'S #3 — DOCUMENT MARKED-NOT OFFERED-NOT ADMITTED  
STATE RESTS  
DEFENDANT ADVISED OF HIS STATUTORY RIGHT TO MAKE A SWORN OR  
UNSWORN STATEMENT, TO WAIVE MAKING A STATEMENT, AND/OR OF  
HIS RIGHT TO CALL WITNESSES — DEFENDANT WAIVES HIS RIGHT TO  
MAKE A STATEMENT  
DEFENSE RESTS

MOTION BY DEFENSE TO SET BAIL — ARGUMENT — MOTION DENIED  
DEFENDANT BOUND OVER TO DISTRICT COURT #14 AS CHARGED  
DEFENDANT TO APPEAR IN THE LOWER LEVEL ARRAIGNMENT  
COURTROOM A  
DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF

CASE FORWARDED TO

FEB 23 2009

COUNTY CLERKS OFFICE

# Justice Court, Las Vegas Township

GARCIA, EVARISTO JONATHAN

06F11378A

STATE VS. \_\_\_\_\_ CASE NO. \_\_\_\_\_

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES — HEARING

CONTINUED TO:

JUNE 19, 2006	CRIMINAL COMPLAINT FILED: MURDER WITH USE OF A DEADLY WEAPON	DMC
JUNE 21, 2006 W. JANSEN S. SMITH, DA L. FOY, CLK	DEFENDANT NOT PRESENT IN COURT ARREST WARRANT ISSUED — BAIL SET: NO BAIL	DMC
OCTOBER 20, 2008 W. JANSEN N. NYIKOS, DA Y.L. ZHENG, ESQ. FOR W. TERRY, ESQ. G. DELUCCA, CR L. FOY, CLK	INITIAL ARRAIGNMENT DEFENDANT PRESENT IN COURT *IN CUSTODY* ADVISED OF CHARGES/WAIVES READING OF COMPLAINT MOTION BY DEFENDANT TO CONTINUE TO SECURE OWN COUNSEL MOTION GRANTED MOTHER PRESENT IN COURT (SPANISH COURT INTERPRETER PRESENT) DEFENDANT WAIVES 15 DAY RULE DEFENDANT REMANDED INTO THE CUSTODY OF THE SHERIFF	10/27/08 7:30 #5:  SLS
OCTOBER 27, 2008 W. JANSEN N. NYIKOS, DA & D. RICKERT, DA D. GREEN, CR L. FOY, CLK	DEFENDANT PRESENT IN COURT *IN CUSTODY* SPANISH COURT INTERPRETER PRESENT IN COURT MOTION BY DEFENDANT TO CONTINUE TO SECURE OWN COUNSEL MOTION GRANTED  DEFENDANT REMANDED INTO THE CUSTODY OF THE SHERIFF	11/10/08 7:30 #5  SLS
NOVEMBER 10, 2008 W. JANSEN D. RICKERT, DA D. GREEN, CR L. FOY, CLK	DEFENDANT PRESENT IN COURT IN CUSTODY COURT ORDERS CASE CONTINUED FOR DEFENDANT TO SECURE OWN COUNSEL  DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF	11/14/08 7:30 #5  DMC
NOVEMBER 14, 2008 W. JANSEN M. RADOVICIC, DA W. TERRY, ESQ CONFIRMS G. DELUCCA, CR L. FOY, CLK	DEFENDANT PRESENT IN COURT IN CUSTODY PRELIMINARY HEARING DATE SET  DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF	11/26/08 8:30 #5 COUNTY CLERK'S OFFICE DMC

RA 000052

ORIGINAL

FILED IN OPEN  
COURT ON

JUSTICE COURT, LAS VEGAS TOWNSHIP

CLARK COUNTY, NEVADA

11-26-08  
Hinda Lee  
Court Clerk

THE STATE OF NEVADA,

Plaintiff,

-vs-

EVARISTO JONATHAN GARCIA,

Defendant.

CASE NO: 06F11378A

DEPT NO: 5

AMENDED

CRIMINAL COMPLAINT

The Defendant above named having committed the crime of MURDER WITH USE OF A DEADLY WEAPON WITH THE INTENT TO PROMOTE, FURTHER, OR ASSIST A CRIMINAL GANG (Felony - NRS 200.010, 200.030, 200.450, 193.165, 193.168, 193.169), in the following manner, to-wit: That the said Defendant, on or about the 6th day of February, 2006, at and within the County of Clark, State of Nevada, did then and there wilfully, unlawfully, feloniously, and knowingly, for the benefit of, at the direction of, or in affiliation with a criminal gang, to-wit: PUROS LOCOS, which has as one of its common activities engaging in felonious criminal activities other than the conduct which constitutes the primary offense, and the defendant with specific intent to promote, further, or assist the activities of the above-said gang, did then and there wilfully, feloniously, without authority of law, and with malice aforethought, kill VICTOR GAMBOA, a human being, by shooting at and into the body of the said VICTOR GAMBOA with a deadly weapon, to-wit: a firearm; said crime being committed under one or more of the following principals of liability, to-wit: 1) by killing VICTOR GAMBOA with premeditation and deliberation and/or 2) the death of VICTOR GAMBOA ensuing following Defendant's giving and/or sending and/or acceptance of a challenge to fight or said death ensuing during a fight that occurred upon previous concert and agreement.

///

///



1 All of which is contrary to the form, force and effect of Statutes in such cases made and  
2 provided and against the peace and dignity of the State of Nevada. Said Complainant makes  
3 this declaration subject to the penalty of perjury.  
4

5   
6 11/26/2008

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26 6F11378A-B/jmh/ncn  
27 LVMPD EV# 0602062820;  
28 0602090797  
MWDW - F  
(TK5)

COPY  
FILED

JUSTICE COURT, LAS VEGAS TOWNSHIP

CLARK COUNTY, NEVADA

JUN 19 9 08 AM '06

THE STATE OF NEVADA,

Plaintiff, BY

JUSTICE COURT  
LAS VEGAS NEVADA

SA DEPUTY

CASE NO: 06F11378A-B

DEPT NO: 5

-vs-

EVARISTO JONATHAN GARCIA,  
YOBANI BORRADAS, aka,  
Giovanny Borradas,

Defendants.

TN: GIOVANNY  
GARCIA

CRIMINAL COMPLAINT

The Defendants above named having committed the crime of MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030, 193.165), in the manner following, to-wit: That the said Defendants, on or about the 6th day of February, 2006, at and within the County of Clark, State of Nevada, did then and there wilfully, feloniously, without authority of law, and with premeditation and deliberation, and with malice aforethought, kill VICTOR GAMBOA, a human being, by shooting at and into the body of the said VICTOR GAMBOA, with a deadly weapon, to-wit: a firearm, in the following manner, to-wit: by Defendants participating in a fist fight, Defendants thereafter running after VICTOR GAMBOA, Defendant YOBANI BORRADAS, aka, Giovanny Borradas telling Defendant EVARISTO JONATHAN GARCIA to give him the handgun, Defendant EVARISTO JONATHAN GARCIA neglecting to do so, whereupon Defendant YOBANI BORRADAS, aka, Giovanny Borradas told Defendant EVARISTO JONATHAN GARCIA "shoot him, shoot him fucker" or words to that affect, at which time Defendant EVARISTO JONATHAN GARCIA fired said firearm numerous times at VICTOR GAMBOA, striking him one time, both Defendants acting with intent to commit murder.

///

///

///

///

1 All of which is contrary to the form, force and effect of Statutes in such cases made  
2 and provided and against the peace and dignity of the State of Nevada. Said Complainant  
3 makes this declaration subject to the penalty of perjury.

4  
5  
6 6/16/2006



7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26 06F11378A-B/jmh  
27 LVMPD EV# 0602062820;  
28 0602090797  
MWDW - F  
(TK5)

06/06/2007

RA 000057

Page <u>1</u> of <u>1</u>		LAS VEGAS METROPOLITAN POLICE DEPARTMENT TEMPORARY CUSTODY RECORD				I.D. #:	<u>2685822</u>	Event #:	<u>060206-2824</u>
DATE OF ARREST: <u>10/16/08</u>		TIME OF ARREST: <u>1800</u>				I.D. ESTAB. BY: _____			
INTAKE NAME (AKA, ALIAS, ETC.) Last First Middle <u>GARCIA, EVARISTO JONATHAN</u>			TRUE NAME Last First Middle <u>Garcia Evaristo Jonathan</u>						
ADDRESS NUMBER & STREET <u>4986 PEARL</u>			BLDG./APT. #			CITY <u>LAS VEGAS</u>	STATE <u>NV</u>	ZIP <u>89120</u>	
DATE OF BIRTH <u>5/26/89</u>	RACE <u>H</u>	SEX <u>M</u>	HEIGHT <u>5'8"</u>	WEIGHT <u>135</u>	HAIR <u>Bk</u>	EYES <u>BRO</u>	SOCIAL SECURITY # <u>680-66-2609</u>	Speak English? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	PLACE OF BIRTH <u>LAS VEGAS, NV</u>
LOCATION OF CRIME (# - Street - City - State - Zip) <u>3801 E. WASHINGTON LNN 89110 NV</u>						CC <input checked="" type="checkbox"/> CIVILIAN ARREST <u>(N)</u>	LOCATION OF ARREST <u>MEXICO</u>		
BKG. CODE	CHARGE ORD / NRS #	M	GM	F	ARR TYPE*	EVENT NUMBER	WARR/NCIC NUMBER	COURT LV JC DC OTHER	
5045	MURDER w/ DEADLY WEAPON	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	WA	060206-2820	06F11318A	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
	200.030	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		JTS		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
OTHER COURT: <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>									
APPROVAL CONTROL # FOR ADDITIONAL CHARGES: _____									

ARREST TYPE: PD - PROBABLE CAUSE BS - BONDSMAN SURRENDER BW - BENCH WARRANT WA - WARRANT RM - REMAND GJ - GRAND JURY IND.

**Time Stamp at BOOKING**

FOR PROBABLE CAUSE/NCIC HIT ARREST SEE PAGE TWO FOR DETAILS.

BENCH WARRANT SERVED ON HSZ VILLALBA

WARRANT SERVED ON \_\_\_\_\_

GRAND JURY INDICTMENT SERVED ON \_\_\_\_\_

TYPE OF I.D. FOR VERIFICATION \_\_\_\_\_

**Signatures**

Arresting Officer's Signature: [Signature] (Print Name) E. MOGG P# 3031 Agency LVMED

Transporting Officer's Signature: [Signature] (Print Name) E. MOGG P# 3031 Agency LVMED

FIRST APPEARANCE: DATE: \_\_\_\_\_ TIME: \_\_\_\_\_

COURT: ☐ STANDARD BAIL ☐ JUSTICE ☐ O.R. RELEASE ☐ MUNICIPAL ☐ PROBABLE CAUSE ☐ JUVENILE ☐ IAD.

JUDGE: \_\_\_\_\_

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
DECLARATION OF ARREST

# NEW

b.D. #: 2685822

True Name: GARCIA, EVARISTO

Date of Arrest: 10/16/08

Time of Arrest: \_\_\_\_\_

OTHER CHARGES RECOMMENDED FOR CONSIDERATION:

THE UNDERSIGNED MAKES THE FOLLOWING DECLARATIONS SUBJECT TO THE PENALTY FOR PERJURY AND SAYS: That I am a peace officer with LVMPD (Department), Clark

County, Nevada, being so employed for a period of \_\_\_\_\_ years (months). That I learned the following facts and circumstances which lead me to believe that the above named subject committed (or

was committing) the offense of MURDER W/ DEADLY WEAPON at the location of 3801 E. WASHINGTON LN 89110

(ADDRESS / CITY / STATE / ZIP)

and that the offense occurred at approximately 2100 hours on the 6<sup>th</sup> day of FEB, 2006, in the county of ☐ Clark or ☐ City of Las Vegas, NV.

DETAILS FOR PROBABLE CAUSE:

ON 10/16/08 EVARISTO GARCIA ARRIVED IN LAS VEGAS, NEVADA. GARCIA HAD AN OUTSTANDING WARRANT FOR MURDER W/ DEADLY WEAPON. GARCIA WAS THEN TAKEN TO THE CLARK COUNTY DETENTION CENTER WHERE HE WAS BOOKED ACCORDINGLY.

Wherefore, Declarant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are a misdemeanor).

Declarant must sign second page with original signature.

Declarant's Signature

L. HARDY

Print Declarant's Name

3031

P #

RA 000058

CLARK COUNTY DETENTION CENTER  
ARREST WARRANT ABSTRACT

10/16/2008  
18:55

WARRANT NAME: GARCIA, EVARISTO JONATHAN  
DOB: 05/26/1989 SSN: 680-66-2609  
RAC: W SEX: M HGT: 5'05" WGT: 145 HAI: BLK EYE: BRO

WARRANT #: 06F11378A

EVENT #:

CLARK COUNTY ONLY:

	CHRG NRS			CASH	ASSUR
CNT	CODE CODE	CHARGE LITERAL		BAIL	BAIL
01	5045 200.030 F	MURDER WITH A DEADLY WEAPON	NO BAIL		
	PCN#0023605288-001				

ISSUED BY JUDGE: WILLIAM D JANSEN  
COURT: LAS VEGAS JUSTICE COURT

DOW: 06/21/2006  
DEPT: JCRT5

I HEREBY CERTIFY THAT I RECEIVED THE ABOVE AND FOREGOING WARRANT  
ON THE 16<sup>th</sup> DAY OF OCTOBER, 2008, AND SERVED THE  
SAME BY ARRESTING THE WITHIN DEFENDANT,  
AND BRINGING HIM INTO COURT THIS 16<sup>th</sup> DAY OF OCTOBER,  
2008.

DOUGLAS C. GILLESPIE, SHERIFF, CLARK COUNTY, NEVADA

BY: [Signature] # 3031, DEPUTY

\*\*\*\*\* C O N F I D E N T I A L \*\*\*\*\*

RA 000059

ORIG: LVM020060 LVM03031  
 RESP: NCICQH0T2 ( NV0007990A4C )

CJIS:QW  
 NCIC:QWA

10/16/2008-16:39:46  
 10/16/2008-16:39:47

NV0020060

\*\*\*MESSAGE KEY QWA SEARCHES ALL NCIC PERSONS FILES WITHOUT LIMITATIONS.  
 MKE/WANTED - EMANCIPATED JUVENILE DELINQUENT - CHARGED  
 1 - FULL EXTRADITION UNLESS OTHERWISE NOTED IN THE MIS FIELD  
 ORI/NV0020100 NAM/GARCIA, EVARISTO JONATHAN SEX/M RAC/W DOB/19890526  
 DOE/20070526 HGT/505 WGT/145 EYE/BR0 HAI/BLK  
 SOC/680662609  
 OLN/1702409551 OLS/NV OLY/2009  
 OFF/HOMICIDE - WILLFUL KILL-NONFAMILY-WEAPON  
 DOV/20060206 OCA/060206-2820  
 WNO/06F11378A  
 VLD/20071102  
 MIS/EXTR ANY USA, MURDER WDW, NO BAIL, ID CARD ONLY, CONTACT DET MOGG OR DET  
 MIS/HARDY, LVMPD HOMICIDE AT 702 828-3111, SUBJECT MAY BE FLEEING TOWARD MEXICO  
 DNA/N  
 ORI IS LAS VEGAS MET PD LAS VEGAS 702 828-3745  
 NIC/W750678587 DTE/20060622 2006 EDT  
 IMMED CONFIRM RECORD WITH ORI AND FOLLOW PROCEDURES  
 IN INTERSTATE COMPACT ON JUVENILES. CAUTION: THIS  
 JUVENILE IS EMANCIPATED. PLEASE CHECK YOUR STATE  
 LAWS REGARDING APPROPRIATE ACTION

*Bld on Ste Warrant  
 SM 9752*

*SAME SUBJECT  
 K3031H*

MKE/WANTED - EMANCIPATED JUVENILE DELINQUENT - CHARGED/CAUTION  
 ARMED AND DANGEROUS  
 1 - FULL EXTRADITION UNLESS OTHERWISE NOTED IN THE MIS FIELD  
 ORI/NVFBILV00 NAM/GARCIA, EVARISTO JONATHAN SEX/M RAC/W POB/NV DOB/19890526  
 DOE/20070525 HGT/505 WGT/145 EYE/BR0 HAI/BLK  
 SOC/680662609  
 OLN/1702409551 OLS/NV OLY/2009  
 OFF/FLIGHT TO AVOID SEE MIS  
 DOV/20060206 OCA/88A-LV-39819  
 VLD/20080222  
 MIS/ARMED AND DANGEROUS, UNLAWFUL FLIGHT TO AVOID PROSECUTION-MURDER WITH A  
 MIS/DEADLY WEAPON, PLEASE CONTACT DET STEVE DEVORE  
 DNA/N  
 ORI IS FBI LAS VEGAS 702 385-1281  
 NIC/W901220000 DTE/20061010 1944 EDT  
 IMMED CONFIRM RECORD WITH ORI AND FOLLOW PROCEDURES  
 IN INTERSTATE COMPACT ON JUVENILES. CAUTION: THIS  
 JUVENILE IS EMANCIPATED. PLEASE CHECK YOUR STATE  
 LAWS REGARDING APPROPRIATE ACTION

*No action  
 SM 9752*

*SAME SUBJECT  
 K3031H*

\*\*\*\*\*

S E R V E D

\*\*\*\*\*

```

***** NCJIS WANTED PERSON SYSTEM *****
*
*
* PIN-0209 NCJIS WARRANT HAS BEEN SUCCESSFULLY CLEARED
*
*
* CLEARING AGENCY /NVLVJC001 - CLARK CO INFO SERVICES
* ARRESTING AGENCY /NV0020135 - CLARK COUNTY DETENTION CENTER
* ENTERING AGENCY /NVLVJC001 - CLARK CO INFO SERVICES
* CONFIRMING AGENCY/NV0020135 - CLARK COUNTY DETENTION CENTER
* WARRANT RECORD NUMBER/1359008
* NIN/W804410284
* SEQ/001 REASON/SERVED
* WARRANT NAME /GARCIA, EVARISTOJONATHAN
* BASE RECORD NAME/GARCIA, EVARISTOJONATHAN
* COURT CASE #/06F11378A
* COURT/NV002A53J - LAS VEGAS JUSTICE COURT

```

OCT 17 2008

RA 000061



WARRANT ELECTRONICALLY GENERATED AND ENTERED INTO NCJIS  
\*\*\* DO NOT MANUALLY ENTER INTO NCJIS \*\*\*

JUSTICE COURT, LAS VEGAS TOWNSHIP  
CLARK COUNTY NEVADA  
-----

THE STATE OF NEVADA	)	CASE NO: 06F11378A
	)	
PLAINTIFF	)	DEPT. NO: 5
VS.	)	
	)	AGENCY: METRO-HOMICIDE
GARCIA, EVARISTO JONATHAN	)	
ID# X0096190	)	
	)	
	)	ARREST WARRANT
DEFENDANT	)	-----

THE STATE OF NEVADA,

TO: ANY SHERIFF, CONSTABLE, MARSHALL, POLICEMAN, OR PEACE OFFICER  
IN THIS STATE:

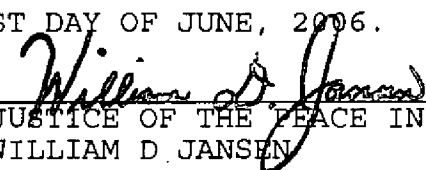
A COMPLAINT AND AN AFFIDAVIT UPON OATH HAS THIS DAY BEEN LAID  
BEFORE ME ACCUSING GARCIA, EVARISTO JONATHAN, OF THE CRIME(S):

COUNTS	CHARGE	BAIL: CASH	SURETY	PROPERTY
1	MURDER WITH A DEADLY W	NO BAIL		

YOU ARE, THEREFORE, COMMANDED FORTHWITH TO ARREST THE ABOVE NAMED  
DEFENDANT AND BRING HIM BEFORE ME AT MY OFFICE IN LAS VEGAS TOWNSHIP,  
COUNTY OF CLARK, STATE OF NEVADA, OR IN MY ABSENCE OR INABILITY TO  
ACT, BEFORE THE NEAREST AND MOST ACCESSIBLE MAGISTRATE IN THIS COUNTY.

THIS WARRANT MAY BE SERVED AT ANY HOUR OF THE DAY OR NIGHT.

GIVEN UNDER MY HAND THIS 21ST DAY OF JUNE, 2006.

  
\_\_\_\_\_  
JUSTICE OF THE PEACE IN AND FOR SAID TOWNSHIP  
WILLIAM D. JANSEN

SHERIFF'S RETURN  
-----

I HEREBY CERTIFY THAT I RECEIVED THE ABOVE AND FOREGOING WARRANT  
ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_, AND SERVED THE SAME BY  
ARRESTING AND BRINGING DEFENDANT, \_\_\_\_\_, INTO COU  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_.

BILL YOUNG, SHERIFF, CLARK COUNTY, NEVADA

BY: \_\_\_\_\_, DEPUTY

RA 000062

DEFENDANT GARCIA, EVARISTO JONATHAN

DEFENDANT ID# X0096190

CASE NO: 06F11378A

DEPARTMENT JCRT5

JUDGE WILLIAM D JANSEN

AGENCY: METRO-HOMICIDE

ORI	VRI	NAME	GARCIA, EVARISTO JONATHAN		
DOB 05261989	SOC 680662609	SID			
RAC H	SEX M	HGT 505	WGT 145	HAI BLK	EYE BRO

-----WARRANT-----

HOI	COI	WNM GARCIA, EVARISTO JONATHAN			
NOC 00093	AOC	OFC F FTF	TRF	JUV	DSO DOW 06212006
OCA 0602062820	CCN 06F11378A	BAIL NO BAIL			
TRA	MIS				

-----SUPPLEMENTAL-----

SUBMITTING OFFICER ID#:MP5096 NAME: MOGG, CLIFFORD H

COUNTS	CHARGE
1	MURDER WITH A DEADLY WEAPON

CONFIDENTIAL

RA 000063

JUSTICE COURT, LAS VEGAS TOWNSHIP  
CLARK COUNTY NEVADA  
-----

THE STATE OF NEVADA	)	CASE NO. 06F11378A
	)	
PLANTIFF	)	
VS.	)	
	)	
Evaristo Jonathan Garcia	)	
ID NO. X0096190	)	
	)	
	)	REQUEST FOR ARREST WARRANT
DEFENDANT.	)	-----
_____	)	

COMES NOW, DAVID J J ROGER, DISTRICT ATTORNEY,  
AND REQUESTS THAT A WARRANT OF ARREST BE ISSUED  
FOR THE ABOVE NAMED DEFENDANT PURSUANT TO  
NRS 171.106 AND THE COMPLAINT AND/OR AFFIDAVIT(S)  
ATTACHED HERETO AND INCORPORATED HEREIN BY  
THIS REFERENCE.

DAVID J J ROGER  
DISTRICT ATTORNEY  
NEVADA BAR NO. 002781

PROBABLE CAUSE FOUND:   J   BAIL:   NO BAIL    
PROBABLE CAUSE NOT FOUND: \_\_\_\_\_

William D. Jansen  
JUSTICE OF THE PEACE,  
LAS VEGAS TOWNSHIP

RA 000064

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**DECLARATION OF WARRANT/SUMMONS**  
(N.R.S. 171.106)  
(N.R.S. 53 amended 07/13/93)

JUN 19 9 08 AM '06

EVENT: 060206-2820

STATE OF NEVADA )

JUSTICE COURT  
LAS VEGAS NEVADA

COUNTY OF CLARK )

BY  
) ss: EVARISTO JONATHAN GARCIA, DOB: 05-26-1989

Detective Clifford Mogg, being first duly sworn, deposes and says:

That he is a police officer with the Las Vegas Metropolitan Police Department, being so employed for a period of 10 years, assigned to investigate the crime(s) of Murder with a Deadly Weapon committed on or about 02-06-06, which investigation has developed EVARISTO JONATHAN GARCIA as the perpetrator thereof.

**THAT DECLARANT DEVELOPED THE FOLLOWING FACTS IN THE COURSE OF THE INVESTIGATION OF SAID CRIME TO WIT:**

That on 02-06-06, during the even class session at the Morris Academy located at 3801 E. Washington, Crystal Perez and Giovanni Borradas were involved in a verbal confrontation which had been escalating over several days. During the confrontation Borradas told Perez "you and your homeboy are gonna get yours after school today, we gonna handle this shit today." Perez said the person Borradas was referring to as her "homeboy" was Jesus Alonso. Later in the evening on 02-06-06, Gena Marquez told Perez she overheard Borradas on his cell phone talking to "Puppet." Marquez said she heard Borradas telling "Puppet", bring Stacey because there's some girl who thinks she's a man that's gonna get handled like a man." "Puppet" was later identified as Manuel Lopez, and Stacey was later identified as Lopez' girlfriend Stacey DeCarlois. Prior to the end of classes, Gena Marquez called her brother Bryan Marquez and asked him to pick her up from school.

Call records for Giovanni Borradas' cell phone (702-371-2678) was obtained, and showed 20 calls to and from Manuel Lopez at 378-1727 between 1958 and 2117 hours on 02-06-06. Borradas' call records also indicated 12 calls to and from 884-4614 between 2032 and 2107 hours on 02-06-06. Phone number 884-4614 is a cell phone belonging to Melinda Lopez at 6247 Elvido Ave, which is the same address Manuel Lopez lists as his residence. On 02-18-06, Salvador Garcia, LM, DOB 01-28-1985, was involved in an incident where a police report was taken. At that time Garcia listed his cellular phone number as 884-4614. Giovanni Borradas and Manuel Lopez are both admitted members of the Puros Locos street gang.

On 02-06-06, at approximately 2030 hours, Bryan Marquez said he, and Victor Gamboa were at Gilbert Garcia's house. Bryan said he received a call from his sister Gena, who asked him to pick her up after school. Bryan said he, Gamboa, and Garcia drove to the Morris Academy, parked in a residential area across Washington Avenue from the school, and the three walked over to the school. At approximately 2055 hours Jesus Alonso also arrived at the school to pick up Melissa Gamboa. Alonso said he parked his car in the north parking lot of the school near the front doors.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**DECLARATION OF WARRANT/SUMMONS**

Page 2

EVENT: 060206-2820

Bryan Marquez said when school was dismissed at approximately 2100 hours he located Borradas and asked him why he was threatening his sister Gena. Marquez said he and Borradas exchanged words and began fighting. Marquez said two of Borradas' friends jumped in the fight which prompted Victor Gamboa and Jesus Alonso to come to the assistance of Marquez. When the fight between Borradas and Marquez started, several other fights broke out between various males and females associated with Borradas and Marquez. Shortly after the fight started, the school principal came outside and attempted to break the fight up at which time an unidentified female in the crowd yelled "he has a gun" at which point the crowd scattered.

Betty Graves, who is a hall monitor at the Morris Academy, said she was standing at the front of the school and saw the fight. Graves identified a Latin male, approximately 19 years old, approximately 5'6, medium build, short hair, wearing a grey hooded sweatshirt, and dark pants who was fighting. Graves said the Latin male kept his right hand inside the sweatshirt and punched with his left hand. Graves said when the principal broke the fight up the Latin male ran north toward Washington Avenue with the rest of the people. Graves said when the Latin male reached the northwest corner of the school he fired at least four shots then ran west on Washington Avenue.

Melissa Gamboa said she is the victim Victor Gamboa's sister, and she attends the Morris Academy night school. Melissa said she had just walked out the front doors of the school around 2100 hours when and saw her brother Victor in the parking lot. Melissa said Borradas and another Latin male were fighting when some of Borradas' friends arrived in a grey Chevy El Camino. Melissa said the El Camino was occupied by three males and a female. Melissa said two of the males in the El Camino jumped in the fight between Borradas and the other Latin male. Soon after the fight started Melissa said, the school principal began breaking the fight up and people ran north in the parking lot toward and across Washington Avenue. Melissa said she was across Washington Avenue when she looked back and saw her brother Victor running across the street. Melissa said a Latin male wearing a grey hooded sweatshirt and dark shorts began firing a small, black, possibly .380 caliber pistol at Victor as he ran across Washington. Melissa said after her brother was shot he fell down in the street at which time the suspect ran west on Washington Avenue to Parkhurst Street, and then ran south on Parkhurst Street out of view. Melissa said she knows Giovanni Borradas and he was not the person who shot her brother.

Oscar Garcia was interviewed at the scene by detectives. During the interview Garcia said a Latin male wearing a gray hooded sweatshirt and blue shorts firing a gun at Victor Gamboa. Garcia said the suspect was standing in the center of Washington Avenue when he was shooting. Garcia said after Gamboa was shot, he and Dania Diaz tried to put Gamboa in their car, but were stopped by the school principal.

Clark County School Police Officer Gaspardi P# 251 was at the school when the fight broke out, and responded to the scene on Washington where Victor Gamboa collapsed after being shot. Clark County Fire Department Rescue 8 responded to the scene and transported Gamboa to the UMC Trauma Center where he was treated by Dr. Ozbias who pronounced Gamboa dead at 2140 hours. On 02-07-06, Dr.

RA 000066

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**DECLARATION OF WARRANT/SUMMONS**

Page 3

EVENT: 060206-2820

L. Simms from the Clark County Coroners Office performed an autopsy on Victor Gamboa and determined the cause of death was a gunshot wound to the back, and the manner of death was homicide.

Crime Scene Investigator D. Proietto and Detective K. Hardy recovered an IMEZ 9mm pistol, serial # AKB6366 from the tank of a toilet which was located on the side of the road in front of 865 Parkhurst Street. In addition to the pistol CSA Proietto recovered 6 WOLF 9mm Makarov cartridge casings, and four bullets and fragments in and near the roadway on Washington Avenue. The pistol was found to be registered with LVMPD on 02-16-1995, by Sharon Christensen, DOB: 04-30-1947, SSN: 552-66-4552. I later contacted Christensen who said she had sold the gun several years ago but did not know whom she sold the gun to.

On 02-07-06, at approximately 0245 hours, Detective Wilson and I interviewed Giovanni Borradas at the Homicide Office. During the interview, Borradas, who was out of custody said he was involved in an on going confrontation with Melissa's (Gamboa) boyfriend. Borradas said he was attending night class at the Morris Academy on 02-06-06 when he found out some people associated with Melissa were going to jump him after school. Borradas said he called Manuel Lopez, told him about the plan to jump him, and asked Lopez to bring his girlfriend Stacey (DeCarlois) to fight some girls. Borradas also said he placed phone calls to Sal (Salvador Garcia) and Geronimo to see if they could also help him after school during this fight. Borradas said when school recessed for the day he walked into the north parking lot of the school where he saw Lopez and DeCarlois. Borradas said Lopez was driving a gray, Chevy El Camino that night, and he didn't see anyone else with Lopez and DeCarlois. Borradas said he walked into the school parking lot, was confronted by Crystal Reyes brother, and the two started fighting. During the fight Borradas said he heard four to five gunshots and people started running toward Washington Avenue. Borradas said when he heard the shots he ran to a friend's car and she gave him a ride home. Borradas said he never saw who was shooting nor did he see who was shot. At the conclusion of the interview Borradas said he received a phone call from Chucky, but the conversation was very short and they didn't talk about who was shot, or who did the shooting. Borradas also said he wanted to tell us who was involved in the shooting but he didn't want to be a rat.

Manuel Lopez said he received the phone call from Borradas, and he, Stacey DeCarlois, "Silent" (Jonathan Harper), and "Chucky" (later identified as Evaristo Garcia) drove to the Morris Academy. Lopez said "Silent" and "Chucky" are also members of the Puros Locos street gang. Lopez said the four drove to the Morris Academy in Lopez' brown, Chevy El Camino. Lopez said when they were driving to the school "Chucky" had a 9mm pistol with him. Lopez described the gun as a black, 9mm semiautomatic pistol which was similar in appearance to a small Beretta pistol. Lopez also said the gun was made in Russia and the name started with an "M." Lopez said when they arrived at the school he parked in the parking lot on the north side of the school at which time Harper and Evaristo Garcia got out of the car and walked toward the school.

RA 000067

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**DECLARATION OF WARRANT/SUMMONS**

Page 4

**EVENT:** 060206-2820

On 02-09-06, Detective Hardy and I interviewed Manuel Lopez at the Homicide Office. Lopez, who was out of custody, told us he was at the Morris Academy on 02-06-06 at approximately 2050 hours after receiving a phone call from Borradas. Lopez said he went to the school to pick Borradas up after Borradas said some people were going to jump him. Lopez said Stacey DeCarlois was the only other person that was with him in his gray, Chevy El Camino when he went to the school to pick Borradas up. Lopez said he saw two crowds of people when he arrived at the school, and he yelled for Borradas to come over to him. Lopez said he heard several shots which appeared to be coming from the northwest corner of the school and people began running toward Washington Avenue. Lopez said during the commotion he lost track of Borradas, and didn't see the victim or who was shooting. Lopez said he and DeCarlois got back in his car, drove west on Washington Avenue, then made a U-turn in front of the school and left the area eastbound on Washington Avenue. During the interview Lopez said he and Borradas are both members of the Puros Locos street gang.

On 03-30-06, I interviewed Jonathan Robinson. Robinson said he was a co-worker of Manuel Lopez on or about 02-07-06 when they both worked for Mike's Plumbing. Prior to beginning the interview I showed Robinson a photo lineup and he identified a photo of Manuel Lopez as the person he used to work with. Robinson said he picked Lopez up a few days after the murder at Lopez' house and while they were driving to work Lopez asked him "if he heard about it" meaning the murder. Robinson said he asked Lopez if he was involved and Lopez told him "he handed his friend the gun." When I asked Robinson what kind of gun he had seen Lopez with he said a 9mm pistol which Lopez said he kept at his house and always took to parties. Lopez told Robinson that he took the gun back from his friend after the shooting, that the gun was placed in a toilet tank outside of a house where he had done some work, and that Lopez went back to look for the gun the next day but it was gone. Lopez also told Robinson the person who did the shooting went to Mexico.

On 03-30-06, I interviewed Manuel Lopez at the Clark County Detention Center where he was in custody on unrelated charges. Prior to beginning the interview I advised Lopez of his Miranda Rights via an LVMPD Advisement of Persons Arrested card. During the interview Lopez said his 9mm pistol was the one used to kill the victim. Lopez described his gun as black in color, with 9mm cartridges that were smaller than normal 9mm cartridges, that the gun looked like a small Beretta, that the gun was made in Russia, and the name of the gun started with an "M." Lopez said he traded a person for the gun and had it for about three months before the shooting. Initially Lopez said he gave the gun to "Chucky," then later denied giving the gun to "Chucky" and said he left the gun at Sal's (Salvador Garcia's) where apparently "Chucky" took it from. Lopez said "Chucky" is a Latin male, 15 - 16 years old, with a "fade" hair style. Lopez said he has also heard "Chucky" called "E." Lopez also said "Chucky" is a member of the Puros Locos street gang and hangs out in the area of Tropicana and Sandhill. Lopez said after he received a phone call from Borradas on 02-06-06 he went to "Silent's" house and picked up Stacey DeCarlois, Silent (later identified as Jonathan Harper), and Chucky (later identified as Evaristo Jonathan Garcia), because Borradas said to bring everybody meaning the people in their gang. Lopez said they all drove to the Morris Academy in his gray, Chevy El Camino. During the interview I asked Lopez whom in his car had a gun, and he replied "Chucky" then went on to say "Chucky" had his (Lopez's) 9mm pistol. When they arrived at the school Lopez said "Chucky" and "Silent" got out of the car and began fighting with several people. Lopez described "Chucky" as wearing a gray hooded sweat shirt and dark pants.

**RA 000068**

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**DECLARATION OF WARRANT/SUMMONS**

Page 5

EVENT: 060206-2820

Lopez said he saw the victim run across Washington Avenue and get shot. Although Lopez said he didn't see "Chucky" shoot the victim, when I asked him who shot the victim he said "I already told you." Lopez described "Chucky" as trigger happy and stupid for getting them involved in this. Lopez said he heard from other people that his gun was hidden in a toilet. At the conclusion of the interview Lopez said he thought they were just going to the school to fight.

On 03-31-06 I received information from Detective Erickson that "Silent" was a 16-year-old white male by the name of Jonathan Harper. According to Det. Erickson, Harper was a member of the Puros Locos street gang who had been recently shot in the head and was recovering at home. Erickson said when he interviewed Harper in connection with his shooting he learned that Harper had information about the person who shot Victor Gamboa.

On 04-01-06 Detective Hardy and I spoke to Jonathan Harper. During the interview we noticed that Harper required a little time to formulate his answers which appeared to be associated with his head injury. However, Harper appeared to be able to recall details concerning the murder of Victor Gamboa, who he was with on the day of the murder, and events which occurred after the murder. Harper said he, Puppet (Manuel Lopez), Stacey, and "E" went to a school to help Giovanni. Harper said the incident happened at night in either February or March, but he could not be sure of the date. Harper said he knew "E's" name, but that it was too hard for him to pronounce at which point he asked his mother Daina Harper to help him. Daina said "E's" name was Evaristo. Harper said Evaristo was "Chabie's" (Salvador Garcia) cousin. Harper said Lopez picked him, Stacey, and Evaristo up at Sal's house the evening they went to the school. Harper said they drove to the school which was located on Pecos in Lopez's gray El Camino. Harper said he is a member of the Puros Locos gang, and was under the impression they were going to the school to fight with some Brown Pride gang members. Harper said when they got to the school he, Evaristo, Little One, and Puppet were all fighting with people and Giovanni (Borradas) was fighting with a person by the name of Diablo. Harper said when they arrived at the school Evaristo told him that Lopez gave him the gun while they were in the car driving to the school. Harper said Little One and Evaristo started chasing a young male across Washington Avenue at which time Giovanni (Borradas) told Evaristo "shoot him, shoot him, fucker." Harper said Evaristo who was armed with a black 9mm fired several shots at the young male and "dumped" the clip which according to Harper meant empty the gun's magazine. Harper said after the shooting Evaristo ran west on Washington Avenue. After the shooting Evaristo told Harper he shot because of pressure by Little One (at this time believed to be Giovanni Borradas). Evaristo also said he hid the gun in a toilet and that Puppet (Lopez) went there the next day to try to get the gun but it was gone.

On 05-09-06, I received a Crime Stopper tip indicating the suspect in this murder was a Latin male, 16 years old, 5'8, 150 pounds who lived at 1986 Pearl Street. I later learned the address for the suspect was not 1986, but rather 4986 Pearl Street. I drove to 4986 Pearl Street and saw a 1985 Ford pickup truck bearing Nevada license 822NNI parked in front of the house. The truck was registered to Maria DeGarcia, DOB 11-16-1959, SSN 530-33-9965, at that address. I conducted a SCOPE check on DeGarcia and found her to have a work card at the Stratosphere. I contacted Security at the Stratosphere Casino and found DeGarcia listed the names of her children on her application, and one of the names was Evaristo Garcia, DOB: 05-26-1989. I checked with juvenile authorities and found there were no photos of him on file. I then contacted the Nevada DMV and obtained Evaristo's drivers

RA 000069



LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**DECLARATION OF WARRANT/SUMMONS**

Page 6

EVENT: 060206-2820

license photo. I took his photo to the LVMPD Photo Lab and had a photo lineup constructed with Evaristo's photo.

On 05-11-06 I met with Jonathan Harper and showed him the photo lineup. Harper selected photo # 4 which was a photo of Evaristo Garcia and said he is the person that shot the kid.

Latent fingerprints and a DNA sample were recovered from the IMEZ 9mm pistol. The fingerprints were compared to Lopez and Borradas with negative results, and the DNA evidence has not yet been processed.

Wherefore, declarant prays that a Warrant of Arrest be issued for suspect EVARISTO JONATHAN GARCIA on a charge(s) of Murder with a Deadly Weapon with Gang Enhancement.

**I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.**

Executed on this 15th day of June, 2006.

DECLARANT: \_\_\_\_\_

WITNESS: \_\_\_\_\_

DATE: \_\_\_\_\_

6.15.06

RA 000070

# **JUSTICE COURT, LAS VEGAS TOWNSHIP**

CLARK COUNTY, NEVADA

## PRETRIAL SERVICES INFORMATION SHEET

**CASE #**

06F11378A

**DEPT #**

JC-05

**REQUESTED BY:**

**NAME:**

Evaristo Garcia

**ID #**

2685822

**CHARGES:**

**MURDER WITH A DEADLY WEAPON**

**CURRENT BAIL:**

**NO BAIL**

---

**VERIFIED: ADDRESS: NOT INTERVIEWED,,,**  
**WITH WHOM/HOW LONG: /**

**VERIFIED: EMPLOYMENT STATUS: /**  
**LENGTH:**

**VERIFIED: RELATIVES - LOCAL :**

**NOT LOCAL:**

---

**FELONY/GROSS MISDEMEANOR CONVICTIONS: 0**

**MISDEMEANOR CONVICTIONS: 0**

**FAIL TO APPEAR: 0**

**COMMENTS:**

---

**RECOMMENDATION:**

**DATE: 12/11/2008**

**PRETRIAL SERVICES: Maritza Aguilar**

**RA 000071**

***JUSTICE COURT, LAS VEGAS TOWNSHIP***  
**CLARK COUNTY, NEVADA**

**PRETRIAL SERVICES INFORMATION SHEET**

<b>CASE #</b>	<b>DEPT #</b>	<b>REQUESTED BY:</b>
<b>06F11378A</b>	<b>Jc-5</b>	
<b>NAME:</b>	<b>ID #</b>	
<b>Evaristo Garcia</b>	<b>2685822</b>	

**CHARGES:**  
**MURDER WITH A DEADLY WEAPON**  
**CURRENT BAIL:**  
**NO BAIL**

---

**VERIFIED: ADDRESS: NOT INTERVIEWED,,,**  
**WITH WHOM/HOW LONG: /**

**VERIFIED: EMPLOYMENT STATUS: /**  
**LENGTH:**

**VERIFIED: RELATIVES - LOCAL :** **NOT LOCAL:**

---

**FELONY/GROSS MISDEMEANOR CONVICTIONS: NONE**

**MISDEMEANOR CONVICTIONS: 0**

**FAIL TO APPEAR: 0**

**COMMENTS:**

---

**RECOMMENDATION:**

**DATE: 11/21/2008**

**PRETRIAL SERVICES: Anna Vasquez**

**CONFIDENTIAL**

**RA 000072**

***JUSTICE COURT, LAS VEGAS TOWNSHIP***  
**CLARK COUNTY, NEVADA**

**PRETRIAL SERVICES INFORMATION SHEET**

<b>CASE #</b>	<b>DEPT #</b>	<b>REQUESTED BY:</b>
<b>06F11378A</b>	<b>JC- 05</b>	
<b>NAME:</b>	<b>ID #</b>	
<b>Evaristo Garcia</b>	<b>2685822</b>	

**CHARGES:**  
**MURDER WITH A DEADLY WEAPON**  
**CURRENT BAIL:**  
**NO BAIL**

---

**VERIFIED: ADDRESS: NOT INTERVIEWED,,,**  
**WITH WHOM/HOW LONG: /**

**VERIFIED: EMPLOYMENT STATUS: /**  
**LENGTH:**

**VERIFIED: RELATIVES - LOCAL :** **NOT LOCAL:**

---

**FELONY/GROSS MISDEMEANOR CONVICTIONS: 0**

**MISDEMEANOR CONVICTIONS: 0**

**FAIL TO APPEAR: 0**

**COMMENTS:**

---

**RECOMMENDATION:**

**DATE: 10/20/2008**

**PRETRIAL SERVICES: Reynaldo Ureno**

**CONFIDENTIAL**

**RA 000073**

  
CLERK OF THE COURT

**INFO**  
DAVID ROGER  
Clark County District Attorney  
Nevada Bar #002781  
SONIA V. JIMENEZ  
Deputy District Attorney  
Nevada Bar #008818  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

I.A. 01/05/09  
9:00 A.M.  
W. TERRY, ESQ.

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
  
Plaintiff,  
  
-vs-  
  
EVARISTO JONATHAN GARCIA,  
#2685822  
  
Defendant.

Case No: C226218A  
Dept No: XIV

I N F O R M A T I O N

STATE OF NEVADA }  
COUNTY OF CLARK } ss.

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

That EVARISTO JONATHAN GARCIA, the Defendant(s) above named, having committed the crime of **MURDER WITH USE OF A DEADLY WEAPON WITH THE INTENT TO PROMOTE, FURTHER OR ASSIST A CRIMINAL GANG (Category A Felony - NRS 193.168, 193.169, 200.010, 200.030, 193.165)**, on or about the 6th day of February, 2006, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada, did then and there wilfully, unlawfully, feloniously, and knowingly, for the benefit of, at the direction of, or in affiliation with, a criminal gang, to wit: PUROS LOCOS, which has as one of its common activities, engaging in felonious criminal activities,

other than the conduct which constitutes the primary offense, and the defendant with specific intent to promote, further, or assist the activities of the above said gang, did then and there wilfully, feloniously, without authority of law, and with premeditation and deliberation, and with malice aforethought, kill VICTOR GAMBOA, a human being, by shooting at and into the body of the said VICTOR GAMBOA, with a deadly weapon, to-wit: a firearm; said crime being committed under one or more of the following principles of liability, to-wit: 1) by killing VICTOR GAMBOA with premeditation and deliberation and/or 2) the death of VICTOR GAMBOA ensuing following Defendant's giving and/or sending and/or acceptance of a challenge to fight or said death ensuing during a fight that occurred upon previous concert and agreement.

BY



DAVID ROGER  
DISTRICT ATTORNEY  
Nevada Bar #002781

Names of witnesses known to the District Attorney's Office at the time of filing this Information are as follows:

<u>NAME</u>	<u>ADDRESS</u>
BORRADAS, Yobani	6307 Elvido Ave., LV, NV
CAVILLO, Edshel	4325 S. Bruce, #19, LV, NV
CUSTODIAN OF RECORDS or Designee	Clark County Detention Center
CUSTODIAN OF RECORDS or Designee	CORONER'S OFFICE
CUSTODIAN OF RECORDS or Designee	LVMPD Communications
CUSTODIAN OF RECORDS or Designee	LVMPD Records
CUSTODIAN OF RECORDS or Designee	UMC RECORDS
EICHELBERGER, Dan	3801 E. Washington Av., LV, NV
GAMBOA, Melissa	217 N. 20 <sup>th</sup> St., LV, NV

1	GARCIA, Oscar	2225 McCarren St, #B, LV, NV
2	GRAVES, Betty	2540 Tuskegee, LV, NV
3	HARDY, K. W.	LVMPD #3031
4	HARPER, Jonathan	C/O LVMPD #5096
5	LOPEZ, Manuel A.	6247 Elvido Ave., LV, NV
6	MARQUEZ, Bryan	200 Cervantes St., LV, NV
7	MOGG, C. H.	LVMPD #5096
8	PARENT or GUARDIAN of Edshel Cavillo	4325 S. Bruce, #19, LV, NV
9	PARENT or GUARDIAN of Melissa Gamboa	217 N. 20 <sup>th</sup> St., LV, NV
10	ROBINSON, Jonathan	4660 Cliff Breeze Dr., LV, NV
11	SIMMS, Larry	Clark County Coroner's Office

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26 DA#06F11378A/djj  
27 LVMPD EV#0602062820;  
0602090797  
28 MWDW/GANG - F  
(TK5)

ORIGINAL

81

FILED

FEB 17 4 14 PM '09

*Earl B. Bindrup*  
CLERK OF THE COURT

0001  
DAVID SCHIECK  
Special Public Defender  
Nevada Bar No. 0824  
SCOTT L. BINDRUP  
Deputy Special Public Defender  
Nevada Bar No. 2537  
330 S. Third Street,  
Las Vegas, Nevada 89155-2316  
(702) 455-6265  
(702) 455-6273 fax  
sbindrup@co.clark.nv.us  
Attorney for GARCIA

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

EVARISTO J. GARCIA # 2685822,

Defendant.

CASE NO. C226218  
DEPT. NO. XIV

PETITION FOR WRIT OF HABEAS CORPUS

DATE: 3/3/09  
TIME: 9AM

TO: The Honorable Eighth Judicial District Court of the State of Nevada, in and for the County of Clark:

The Petition of SCOTT L. BINDRUP, Deputy Special Public Defender for the above-captioned individual, respectfully shows:

1. Petitioner is a duly qualified, practicing and licensed attorney and court-appointed counsel for Defendant EVARISTO J. GARCIA.

2. That Petitioner makes application herein on behalf of her client for a Writ of Habeas Corpus; that the place where Applicant is restrained of his liberty is the Clark County Detention Center; that the officer by whom he is restrained is DOUG GILLESPIE,

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

RA 000077



1 Sheriff.

2 3. That the imprisonment and restraint of said above-captioned client of  
3 Petitioner is unlawful in that the evidence adduced at the time of the Preliminary Hearing  
4 supports only binding over of the matter to the District Court for trial on the charge of  
5 murder with use of a Deadly Weapon: That the complaint criminal gang enhancement  
6 charge is not supported by evidence.

7 4. That client of Petitioner waives the 60-day limitation for bringing said client to  
8 trial.

9 5. That client of Petitioner consents that if the Petition is not decided within 15  
10 days before the date set for trial, the Court may, without notice or hearing, continue the trial  
11 indefinitely to a date designated by the Court;

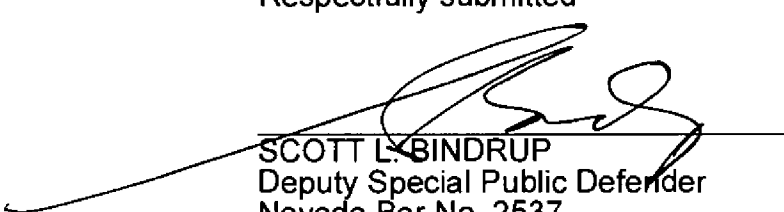
12 6. That client of Petitioner consents that if any party appeals the Court's rulings  
13 and the appeal is not determined before the date set for trial, the trial date is automatically  
14 vacated and the trial postponed unless the Court otherwise orders.

15 7. That no other Petition for Writ of Habeas Corpus has heretofore been filed on  
16 behalf of defendant on this particular issue.

17 WHEREFORE, Petitioner prays that the Honorable Court issue an order directing  
18 the Clark County Clerk to issue a Writ of Habeas Corpus directed to the said Sheriff,  
19 commanding him to bring the above-captioned defendant before your Honor, and return  
20 the cause of imprisonment.

21 DATED this 17th day of February, 2009.

22 Respectfully submitted

23  
24   
25 SCOTT L. BINDRUP  
26 Deputy Special Public Defender  
27 Nevada Bar No. 2537  
28 330 S. Third Street, Ste. 800  
Las Vegas, NV 89155

1                                   **POINTS AND AUTHORITIES IN SUPPORT OF**  
2                                   **PETITION FOR WRIT OF HABEAS CORPUS**

3                                   **FACTUAL BACKGROUND**

4                   On December 18, 2008, a Preliminary Hearing was held before the Honorable  
5 William Jansen and the above named Defendant was held to answer for the charge of  
6 Murder with Use of a Deadly Weapon with the Intent to Promote, Further or Assist a  
7 criminal gang. Defendant has entered a plea of Not Guilty and a trial date of June 1, 2009,  
8 has been set.

9                   On or about February 6, 2006, the victim, Victor Gamboa, died as a result of  
10 receiving a single gunshot wound to the back. At the Preliminary Hearing, the Defendant,  
11 Evaristo Garcia was identified by two witnesses as the shooter. For purposes of this  
12 petition, the Defendant is not contesting bindover on the charge of Murder with use of a  
13 Deadly Weapon but is limiting argument solely to the inpropriety of the gang enhancement  
14 charge.

15                                   **STATEMENT OF FACTS**

16                   Of the three state witnesses called at the Preliminary Hearing both eyewitness Melissa  
17 Gamboa and head investigative Detective Clifford Mogg, gave absolutely no testimony  
18 whatsoever concerning affiliation or activities of any of the participants in the February 6, 2006  
19 fight or brawl resulting in Gamboa's death, which could be related to criminal gangs.

20                   Melissa Gamboa was in the parking area in front of her school, the Morris Academy in  
21 anticipation of a fight. (PHT, pg. 70,72). Her brother, Victor Gamboa and his friend Brian  
22 showed up and a two person fist fight commenced between Brian and another teenager  
23 Giovanni Garcia. (PHT, pg. 73,74). Several minutes later, "more people started jumping in,  
24 girls and guys" to the escalating group fight. (PHT, pg. 75 line 8, 9). An El Camino drove up  
25 and three males and one female jumped out in an apparent attempt to side with Giovanni. The  
26 principal eventually came out and everybody started to run. (PHT, pg. 75 line 6). At some point  
27 as Gamboa was running away from the area he was shot down. (PHT, pg. 84).

28                   The only witness to mention gang affiliation was another eyewitness Jonathan Harper.

1 Harper acknowledged that he used to be a member of a gang known as the Puros Locos.  
2 When asked what things he did as a member he said, "I got in fights, and I tagged. And I, you  
3 know, I made money by selling drugs". (Emphasis supplied, PHT, pg. 28 line 13-15). Harper  
4 joined because he wanted to and a Salvador had recruited him. Before he got involved he  
5 helped Sal sell drugs and had to pay back one of his friend's, Little Sax. (PHT, pg. 29, 30, 31).  
6 When asked directly if there was a "relationship between Sal" and Garcia he said he knew  
7 there was. (PHT, pg. 31). Additionally, he mentioned that he had started fighting with Diablo  
8 who was with a Brown Pride gang. (PHT, pg. 26).

9 Harper's testimony regarding the fight alone has no reference to gang affiliation signs  
10 or specific gang actions, other than a street brawl. "I got in a fight, a big ass brawl", which  
11 ended in observing the shooting. (Emphasis supplied, PHT, pg. 12 line 5). The fight escalated  
12 to a large group which included Salvador, Echo, Brian and Adrian. (PHT, pg. 13). Giovanni  
13 was already fighting when Harper's group including GARCIA, Emanuel and his girl Stacy,  
14 arrived at the location (PHT, pg. 43, line 13,14). His group joined into the "big ass circle" of  
15 fighting. The Victim, GAMBOA, eventually ran out of this circle and was followed by Giovanni,  
16 Garcia and Harper. (PHT, pg. 16, 49, 50). Giovanni said "I want that fucking gun", and argued  
17 about the gun with Garcia before shots were fired. (PHT, pg. 16).

#### 18 LEGAL ARGUMENT

19 If from the evidence it appears to the magistrate that there is probable cause to believe  
20 that an offense has been committed and that the defendant has committed it, the magistrate  
21 shall forthwith hold him to answer in the district court; otherwise the magistrate shall discharge  
22 him. N.R.S. 171.206. The Nevada Supreme Court has held that a suspect may not be bound  
23 over for trial unless the State demonstrates that there exists probable cause that the suspect  
24 committed the charged crime. Sherriff v. Richardson, 103 Nev. 180, 734 P.2d 735 (1987).  
25 Probable cause to support a criminal charge "may be based on 'slight,' even 'marginal'  
26 evidence, . . . because it does not involve a determination of the guilt or innocence of an  
27 accused." Sherriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980). "To commit an  
28 accused for trial, the State is not required to negate all inferences which might explain his

1 conduct, but only to present enough evidence to support a reasonable inference that the  
2 accused committed the offense." Kinsey v. Sheriff, 87 Nev. 361, 363, 487 P.2d 340, 341  
3 (1971). To establish probable cause to bind a defendant over for trial, the state must show that  
4 (1) a crime has been committed and (2) there is probable cause to believe the defendant  
5 committed it. NRS 172.155; Frutigerv. State, 111 Nev. 1385, 1389; 907 P.2d 158, 160 (1995).

6 Examining the evidence provided at the Preliminary Hearing, in a light most beneficial  
7 to the State, there is clearly insufficient evidence to support the gang enhancement allegation.  
8 Defendant is charged by way of information and pursuant to NRS 193. 168, with acting "for  
9 the benefit of, at the discretion of, or in affiliation with a criminal gang, to wit: PUROS LOCOS,  
10 which has as one of it's common activities, engaging in felonious criminal activities", other than  
11 primary offense conduct "with specific intent to promote, further, or assist the above said gang"  
12 did kill GAMBOA. (Information pg. 1, line 27, 28; pg. 2 line 1-2).

13 NRS 193.168 (3)(b) provides that the gang enhancement statute applies only  
14 when the trier of fact finds, beyond a reasonable doubt, that the primary offense  
was committed knowingly for the benefit of a criminal gang.

15 NRS 193.168 (6) defines "criminal gang." One of the requirements of this statute  
16 is that the gang "has as one of its common activities engaging in criminal activity  
punishable as a felony, other than the conduct with constitutes the primary  
17 offense." NRS 193. 168 (6)(c).

18 Thus, the plain language of the gang enhancement statute, as well as the Due  
19 Process clause, clearly requires that in order for the statute to apply here, the  
State must prove beyond a reasonable doubt that the Maravilla gang, as one of  
its common activities, engages in felonies.

20 During that trial, the state utilized the testimony of a gang expert (Rafaqat) in an attempt  
21 to justify the gang enhancement.  
22

23 Rafaqat's testimony simply does not address the element of whether Maravilla  
members commit felonies as a common activity. Rafaqat did not testify as to an  
24 approximate number of Maravilla gang members who committed felonies. He  
did not testify that incoming members of the gang were exhorted to felonious  
25 acts by senior members. The fact that individual members committed felony  
crimes which benefited the gang does not lead necessarily to the conclusion that  
26 felonious action is a common denominator of the gang. Likewise, just because  
certain members of a hypothetical group play musical instruments, it does not  
27 follow that the group is an orchestra.

28 Furthermore, Rafaqat's testimony as to the definition of a criminal gang, followed  
by his statement that the Maravilla gang was such a gang, does not constitute

1 sufficient evidence. This testimony is akin to a police officer testifying as to some  
2 of the statutory elements of murder and then stating the legal conclusion that the  
3 defendant murdered the victim, without proving each and every one of those  
statutory elements. Rafaqat's conclusory testimony is simply not proof of every  
factual element required to find that the Maravilla gang was a criminal gang.

4 Therefore, we conclude that the evidence at trial, even when viewed in the light  
5 most favorable to the prosecution, does not provide a rational fact finder with  
6 sufficient evidence that the members of the Maravilla gang commit felonies as  
one of their common activities.

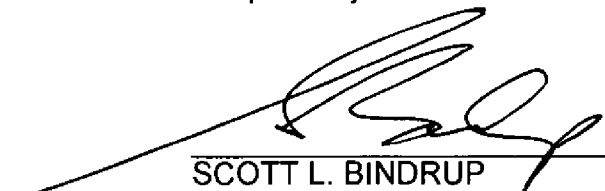
7 Oriegel-Candido vs. NV, 114 Nev 378, 956 P2d 1378, 1381 (1998).

8 Being merely present around the same area or simple association with other gang  
9 members does not provide sufficient evidence to warrant a criminal punishment enhancement  
10 so onerous. This was simply a street brawl and free for all melee, which escalated from an  
11 initial two person fist fight. Harper's acknowledgment of his gang involvement and naming of  
12 a handful of other gang members (of which Defendant is NEVER mentioned as a member and  
13 fellow vehicle occupant specifically mentioned as having no gang involvement as well (PHT  
14 pg 43, line 18,19) does not support gang enhancement charges as to GARCIA. Some  
15 "relationship" between Garcia and another identified gang individual is meaningless. No other  
16 information was adduced to support any gang inferences whatsoever.

17 Wherefore, Defendant prays that the Court dismiss the gang enhancement allegations  
18 as set forth in the information.

19 DATED this 17 day of February, 2009.

20  
21  
22 Respectfully Submitted:

23  
24   
25  
26 SCOTT L. BINDRUP  
27 Deputy Special Public Defender  
28 Nevada Bar No. 2537  
330 S. Third Street, Ste. 800  
Las Vegas, NV 89155

[Skip to Main Content](#) [Logout](#) [My Account](#) [Search Menu](#) [New District Criminal/Civil Search](#) [Refine Search](#) [Close](#)

Location : District Courts [Images](#) [Help](#)

## REGISTER OF ACTIONS

[CASE No. 06C226218-2](#)

The State of Nevada vs Evaristo J Garcia

§  
§  
§  
§  
§  
§  
§  
§

Case Type: **Felony/Gross Misdemeanor**  
Date Filed: **09/19/2006**  
Location: **Department 15**  
Cross-Reference Case Number: **C226218**  
Defendant's Scope ID #: **2685822**  
Lower Court Case Number: **06F11378**

### RELATED CASE INFORMATION

#### Related Cases

06C226218-1 (Multi-Defendant Case)

### PARTY INFORMATION

**Defendant** Garcia, Evaristo J

**Lead Attorneys**  
**John J. Momot, Jr.**  
*Retained*  
7023857170(W)

**Plaintiff** State of Nevada

**Steven B Wolfson**  
702-671-2700(W)

### CHARGE INFORMATION

Charges: Garcia, Evaristo J	Statute	Level	Date
1. MURDER.	200.010	Felony	01/01/1900
1. DEGREES OF MURDER	200.030	Felony	01/01/1900
1. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
1. FURTHER OR ASSIST A CRIMINAL GANG	193.169	Felony	01/01/1900
1. FELONY COMMITTED TO PROMOTE ACTIVITIES OF CRIMINAL GANG	193.168	Felony	01/01/1900

### EVENTS & ORDERS OF THE COURT

03/03/2009 **Petition for Writ of Habeas Corpus** (9:00 AM) ()  
*DEFT'S PTN FOR WRIT OF HABEAS CORPUS/14 Court Clerk: Linda Skinner Reporter/Recorder: Maureen Schorn Heard By: Donald Mosley*

#### Minutes

03/03/2009 9:00 AM

- Court inquired about this being untimely. Mr. Bindrup advised they were just appointed on 2/2/09 and requested 21 days to file the writ. Ms. Nyikos stated the time would have been up the next day and they did not ask for an extension. Following colloquy, Court advised it will allow the writ to be heard. Arguments by Mr. Bindrup in support of the writ including issues regarding gang enhancement. Arguments by Ms. Nyikos in opposition to the writ. Following, Court advised the standard at Preliminary Hearing is slight and ORDERED, Writ DENIED. CUSTODY

[Parties Present](#)

[Return to Register of Actions](#)

RA 000083

17

0001  
DAVID SCHIECK  
Special Public Defender  
Nevada Bar No. 0824  
SCOTT L. BINDRUP  
Deputy Special Public Defender  
Nevada Bar No. 2537  
330 S. Third Street, Ste. 800  
Las Vegas, Nevada 89155-2316  
(702) 455-6265  
(702) 455-6273 fax  
sbindrup@co.clark.nv.us  
Attorney for GARCIA

FILED  
APR 30 2010  
CLERK OF COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
  
Plaintiff,  
  
vs.  
  
EVARISTO J. GARCIA # 2685822,  
  
Defendant.

CASE NO. C 262966  
DEPT. NO. XV

PETITION FOR WRIT OF HABEAS CORPUS

DATE OF HEARING: 5/25/10  
TIME OF HEARING: 9:00 a.m.

TO: The Honorable Eighth Judicial District Court of the State of Nevada, in and for the  
County of Clark:

The Petition of SCOTT L. BINDRUP, Deputy Special Public Defender for the above-  
captioned individual, respectfully shows:

1. Petitioner is a duly qualified, practicing and licensed attorney and court-  
appointed counsel for Defendant EVARISTO J. GARCIA.
2. That Petitioner makes application herein on behalf of her client for a Writ of  
Habeas Corpus; that the place where Applicant is restrained of his liberty is the Clark  
County Detention Center; that the officer by whom he is restrained is DOUG GILLESPIE,  
Sheriff.

RECEIVED  
APR 30 2010  
CLERK OF THE COURT

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

RA 000084

1           3.       That the imprisonment and restraint of said above-captioned client of  
2       Petitioner is unlawful in that the evidence adduced at the time of the Preliminary Hearing  
3       supports only binding over of the matter to the District Court for trial on the charge of  
4       murder with use of a deadly weapon: insufficient evidence was presented to sustain the  
5       indictment as the defendant Evaristo Garcia was never identified as the shooter/perpetrator  
6       and insufficient evidence was presented to sustain the gang enhancement allegation of the  
7       indictment.

8           4.       That client of Petitioner waives the 60-day limitation for bringing said client to  
9       trial.

10          5.       That client of Petitioner consents that if the Petition is not decided within 15  
11       days before the date set for trial, the Court may, without notice or hearing, continue the trial  
12       indefinitely to a date designated by the Court;

13          6.       That client of Petitioner consents that if any party appeals the Court's rulings  
14       and the appeal is not determined before the date set for trial, the trial date is automatically  
15       vacated and the trial postponed unless the Court otherwise orders.

16          7.       That no other Petition for Writ of Habeas Corpus has heretofore been filed on  
17       behalf of defendant on this particular issue.

18               WHEREFORE, Petitioner prays that the Honorable Court issue an order directing  
19       the Clark County Clerk to issue a Writ of Habeas Corpus directed to the said Sheriff,  
20       commanding him to bring the above-captioned defendant before your Honor, and return  
21       the cause of imprisonment.

22               DATED this 30th day of April, 2010

23                               RESPECTFULLY SUBMITTED:

24                               DAVID M. SCHIECK  
25                               SPECIAL PUBLIC DEFENDER

26                                 
27                               SCOTT L. BINDRUP  
28                               330 S. Third St. Ste. 800  
                              Las Vegas, NV 89155



1 **POINTS AND AUTHORITIES IN SUPPORT OF**  
2 **PETITION FOR WRIT OF HABEAS CORPUS**

3 **FACTUAL BACKGROUND**

4 On December 18, 2008, a Preliminary Hearing was held before the Honorable  
5 William Jansen and EVARISTO GARCIA was held to answer for the charge of Murder with  
6 Use of a Deadly Weapon with the Intent to Promote, Further or Assist a criminal gang.  
7 Defendant entered a plea of not guilty and was awaiting trial on May 3, 2010, when the  
8 State proceeded to seek an Indictment charging GARCIA and adding a Co-Defendant  
9 Manuel Anthony Lopez. An Indictment was returned and trial is currently set for November  
10 8, 2010.

11 **STATEMENT OF FACTS**

12 The following evidence was elicited and presented to a grand jury on March 4<sup>th</sup> (GJT  
13 1) and 18<sup>th</sup> (GJT 2) 2010, which resulted in a two count indictment charging EVARISTO  
14 GARCIA and MANUEL LOPEZ in count one, conspiracy to commit murder with the intent to  
15 promote, further or assist a criminal gang and count two, murder with use of a deadly weapon  
16 to promote, further, or assist a criminal gang.

17 On or about February 6, 2006, the victim, Victor Gamboa, died as a result of receiving  
18 a single gunshot wound to the back. (Grand Jury Transcript I, pg. 20, l. 3). From the scene  
19 of the shooting were recovered six cartridge casings and four bullets of a 9 millimeter caliber  
20 bearing a similar head stamp of Makarow. At a nearby residence on the front sidewalk at 865  
21 North Parkhurst was recovered a 9 millimeter Makarow semi automatic handgun inside one  
22 of two discarded toilet tanks. (GJT 1, PG. 27, 28). Latent prints were recovered from the gun's  
23 left grip side and back strap which were identified to Garcia's right ring finger and palm,  
24 respectively. (GJT 2, pg. 18, 19).

25 Melissa Gamboa testified that during sixth period at Morris Academy that Giovanni  
26 Garcia and Gena Marquez got into some sort of problem. Calls were made and a group of  
27 people including students and non-students arrived at the conclusion of school in the parking  
28 lot. Gamboa was waiting with her friend Gena Marquez and Crystal Perez as her brother,

1 victim Victor Gamboa and her boyfriend Jesus Alonzo, Gena's brother Brian Marquez arrived.  
2 (GJT I, pg. 45, 48, 49, 51).

3 A four passengered El Camino was seen parking by the school and she observed the  
4 unidentified by name shooter and another individual get out of the car. (GJT 1, pg. 57-59, 71,  
5 72, 74). An initial first fight broke out between Giovanni and Brian, after Brian had thrown the  
6 first punch. (GJT 1, pg. 50). A large group of around six teenagers then joined in the melee.  
7 After about five to six minutes of fighting the group started to run away after hearing that the  
8 school principal was approaching. (GJT 1, pg. 51, 52, 61). As they were running from the  
9 school, she heard gunshots and saw "some guy just come up and started shooting at my  
10 brother." (GJT 1, pg. 53, ll 6-7, 15-16).

11 Gamboa described the shooter as wearing a black hoodie even though the prosecutor  
12 reminded her that a prior police statement indicated a gray sweater and hoodie. (GJT 1, pg.  
13 55, 56). She further claimed that Jesus Alonzo was involved with Brown Pride but her brother  
14 Victor was not involved with any gang. She was not familiar with any gang called Puros Locos.  
15 (GJT I, pg. 60, 70).

16 Gena Marquez also attended Morris Academy and had witnessed a verbal altercation  
17 that day during fifth period between Giovanni Garcia (who she identified as a Puros Locos  
18 gang member) and Crystal. Crystal tossed a school book to a table where Giovanni was  
19 sitting and he got upset and tossed it back at her. Agitated words were exchanged between  
20 the two of them which escalated into threats and a fight challenge after school. Networking  
21 calls were made resulting in a group gathering ready for a fight to break out. (GJT 1, pg. 80,  
22 83, 85, 86, 91, 92).

23 Gena called her brother Brian Marquez to come pick her up. He arrived before school  
24 ended with victim Victor Gamboa, they went to 7'11, and then returned to school for the  
25 expected fight. A big fist fight broke out involving a large group of kids including Giovanni,  
26 Brian, Victor, Jesus and herself. Four gunshots were heard but she didn't observe any  
27 shooting as she was already inside a car after the crowd had dispersed. (GJT 1, pg. 87-89,  
28 91-94, 96).

1 Jonathan Harper testified that he was a member of the Puros Locos gang during this  
2 time period along with Giovanni Garcia, Salvador Garcia, Edshel Calvillo, Emmanuel Lopez  
3 and Evaristo Garcia. As a gang member he got into fights and went around writing on walls  
4 with paint known as "tagging." (GJT 1, pg. 102-106).

5 Harper was together with Salvador, Edshel and Emmanuel when he heard there was  
6 going to be a fight with some gang called Brown Pride. (GJT 1, pg. 107, 108). He drove to the  
7 school in an El Camino with Emmanuel and his girlfriend, Edshel and Evaristo. (GJT 1, pg.  
8 107-109).

9 Upon arriving at the school, Harper saw 15-20 people outside of the school fighting and  
10 arguing. After his group joined in the melee there were over 20 people fighting including  
11 Diablo, who he was told was the leader of Brown Pride and Edshel's brother Arian. After  
12 hearing gunshots he fled the scene along with many others. (GJT 1, pg. 113-115, 119).

13 The following information about the incident only came out through the prosecutor's  
14 reading of prior statements of Harper to police. Giovanni Garcia told Evaristo to give him the  
15 gun then screamed out loud to shoot him. (GJT 1, pg. 118). Evaristo shot a clip load of bullets  
16 into the victim as they were running in the middle of the street. (GJT 1, pg. 119). Evaristo was  
17 wearing a gray sweatshirt. He shot because Giovanni provoked him and the gun had been  
18 put inside a toilet. (GJT 1, pg. 121, 122).

19 Patrol officer Michael Souder testified that he was familiar with the Brown Pride and  
20 Puros Locos gangs. He identified Arian Calvillo, Salvador Garcia, Giovanni Garcia, Melinda  
21 Lopez, Jonathan Harper, Edshel Calvillo as members of Puros Locos. (GJT 1, pg. 139, 140).  
22 Giovanni Garcia and Manuel Lopez admitted being Puros Locos members from field interview  
23 cards and had tattoos consistent with that group. (GJT 1, pg. 141, 142, 145, 148). Souder  
24 opined that gangs stood up for each other, painted graffiti, got into fights and committed  
25 felonious acts such as battery, intimidation and kidnappings. (GJT 1, pg. 149, 150). Evaristo  
26 Garcia however, had no field interview cards acknowledging any gang affiliation and no gang  
27 related tattoos. (GJT 1, pg. 155).

Jonathan Robinson testified that co-worker Manuel Lopez admitted to him that he handed his 9-millimeter to a friend who used it to shoot a kid. Cell phone pictures of the gun were shown to him and Lopez said he then took the gun back and put it in a toilet. When he returned the next day to retrieve it, it was gone. Lopez acted like he was proud of what happened and said the shooter left to Mexico. (GJT 2, pg. 23-26).

Crystal Perez indicated that after a book throwing incident at Morris Academy with Giovanni Garcia that he started to make threats against her. She left school early and met up with Victor, Brian, Gena and some other guy and they returned to school where Giovanni was in front with a whole bunch of his friends. Brian went up to Giovanni and started fighting then others joined in including Victor and Jesus Alonzo. (GJT 2, pg. 32, 35, 36).

Everyone started to run away after the principal and school police arrived. Crystal saw the shooter gun down Victor and then told police that Giovanni Garcia had done it. She lied because she still blamed Giovanni for starting the trouble. Crystal does not know who the shooter was however and does not believe she could ever identify him. (GJT 2, pg. 39-41, 43, 44). She identified Giovanni as a Puros Locos member and Jesus as a Brown Pride member (GJT 2, pg. 37, 38).

Detective Clifford Mogg placed Giovanni Garcia and Manuel Lopez as Puros Locos members and was aware of gang tattoos on them. On February 9, 2006 and March 30, 2006 he interviewed Manuel Lopez who denied involvement in the fight, the shooting or in supplying the gun to the shooter. Lopez had heard on the street that a 9-millimeter M gun he used to have was used by a Chuckie or E. The detective later decided that E stood for Evaristo Garcia. (GJT 2, pg. 48, 57, 61-64).

The prosecutor then allowed the Detective to summarize and give his opinion of the State's theory of the case. (GJT 2, pg. 65, 66).

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **A. INSUFFICIENT EVIDENCE WAS PRESENTED TO SUSTAIN THE INDICTMENT AS**  
3 **THE DEFENDANT EVARISTO GARCIA WAS NEVER IDENTIFIED AS THE**  
4 **SHOOTER/PERPETRATOR**

5 The State's theory of the case is predicated on the belief that Mr. Garcia is the shooter.  
6 This is evidenced by the Indictment which states: "... Defendant EVARISTO JONATHAN  
7 GARCIA fired said firearm numerous times at VICTOR GAMBOA, striking him one time ..."  
8 (Indictment, p. 3, l. 20-21). However, in the instant case, the State failed to present sufficient  
9 evidence to the grand jury to prove its theory or to sustain the Indictment against Garcia  
10 because none of the percipient witnesses, in their testimony, properly or accurately identified  
11 him as the shooter.

12 During grand jury proceedings, that State must elicit sufficient evidence demonstrating  
13 probable cause that a crime was committed and that the accused was likely the perpetrator.  
14 Sheriff v. Miley, 99 Nev. 377, 379, 663 P.2d 343, 344 (1983); NRS 172.155. The finding of  
15 probable cause may be based on slight, even "marginal" evidence. Sheriff v. Badillo, 95 Nev.  
16 593, 600 P.2d 221 (1979). Although the evidence in support of an indictment need only be  
17 slight, it remains incumbent upon the prosecution to produce some evidence that supports the  
18 accusation. Franklin v. State, 89 Nev. 382, 513 P.2d 1252 (1973); Grant v. Sheriff, Clark  
19 County, 95 Nev. 211, 212, 591 P.2d 1145, 1145 (1979).

20 The State presented four (4) percipient witnesses to the February 6, 2006 incident that  
21 resulted in the shooting death of Victor Gamboa, namely: Melissa Gamboa, Gena Marquez,  
22 Jonathan Harper, and Crystal Perez. However, the State failed to elicit sufficient testimony  
23 or evidence before the grand jury to support it's theory that Mr. Garcia was, in fact, the  
24 shooter.

25 **1. THE STATE FAILED TO LAY A FOUNDATION TO PROPERLY IDENTIFY THE**  
26 **SHOOTER DURING MELISSA GAMBOA'S TESTIMONY**

27 The State, in its attempt to establish the identity of the shooter, elicited the following  
28 testimony from Melissa Gamboa:

1 Q: Now you previously testified in court regarding this incident; correct?

2 A: Yes.

3 Q: Do you recall about when that was?

4 A: The exact date, no.

5 Q: Would about a year ago sound correct or a little more than that?

6 A: I want to say a year or so.

7 Q: It wasn't this year; correct?

8 A: Correct.

9 Q: And when you testified in court did you recognize anybody in the courtroom when you were  
10 testifying?

11 A: Yes.

12 Q: Who did you recognize in the courtroom?

13 A: The shooter.

14 Q: Were you able to identify that person in the courtroom?

15 A: Yes.

16 Q: Did you point to them in court in front of the judge and --

17 A: Yes.

18 Q: And when you -- well, I'll withdraw that.

19 (GJT 1, p. 62, ll 17-25, p. 63, ll 1-14.)  
20

21 It is clear that with that line of questioning it is impossible to establish who the shooter  
22 is as no foundation whatsoever was laid. *When exactly did Ms. Gamboa previously testify?*  
23 *What court did Ms. Gamboa testify in? What type of proceeding was it? **Who** was the named*  
24 *defendant in that case? **Who** was the person that she recognized in the courtroom? **Who** did*  
25 *she identify as the shooter? **Was it** EVARISTO GARCIA or the co-defendant's MANUAL*  
26 *LOPEZ or GIOVANNY GARCIA?* Frankly, it could have been anyone that was sitting in that  
27 courtroom. There is simply no foundation to allow the grand jury to make an informed and  
28 reasonable inference, in support of the State's theory, that Mr. Garcia was the shooter as

1 alleged in the Indictment.

2 The State took no steps to cure this defect. While State's Grand Jury Exhibit #12 and  
3 #19 were pictures of co-defendant Manuel Lopez and Mr. Garcia, respectively, the State failed  
4 to introduce those exhibits until much later in the grand jury presentment. Exhibits #12 and  
5 #19 were never presented to Ms. Gamboa for her to positively identify the shooter by and  
6 between the two defendants in the case at hand. For all we know it could have been anyone  
7 of the many individuals present at the February 6, 2006 incident that she identified as the  
8 shooter. There is no foundation that her prior in court identification is consistent with either  
9 of the named defendants in the instant case; much less Mr. Garcia specifically. As such the  
10 State is unable to establish through Ms. Gamboa by even slight or marginal evidence that Mr.  
11 Garcia was the shooter.

12 **2. GENA MARQUEZ IS INCAPABLE OF IDENTIFYING THE SHOOTER**

13 A review of the testimony of Gena Marquez verifies that the State did not seek to  
14 establish the identity of the shooter through her testimony. No questions were asked about  
15 the identity of the shooter, given that Ms. Marquez testified that she did not see the shooting  
16 because "I was already in the car on the other side of the street." (GJT 1, p. 96, II 11-13).

17 **3. THE STATE CANNOT UTILIZE IMPERMISSIBLE HEARSAY TO IMPEACH/BOLSTER**  
18 **JONATHAN HARPER'S GRAND JURY TESTIMONY IN ITS ATTEMPT TO ESTABLISH**  
19 **THE IDENTITY OF THE SHOOTER**

20 At the grand jury presentment, Jonathan Harper had only some independent  
21 recollection of the February 6, 2006 incident. Unable to testify for himself as to critical  
22 elements of the offense, the State basically testified for him by asking a series of leading  
23 questions and reading part of his prior voluntary statement into the record. These statements  
24 were not made under oath and never subject to cross examination.

25 NRS 172.135(2) commands that the "grand jury can receive none but legal evidence  
26 and the best evidence in degree, to the exclusion of hearsay or secondary evidence". Sheriff  
27 v. Frank, 103 Nev. 160, 165, 734 P.2d 1241, 1245 (1987); Serrano v. State, 83 Nev. 324, 329,  
28 429 P.2d 831, 833 (1967). Shelby v. Sixth Judicial Dist. Court In and For Pershing County,

1 82 Nev. 204, 209, 414 P.2d 942, 944 - 945 (1966). The preceding subsection, NRS  
2 172.135(1), provides that "in the investigation of a charge, for the purpose of either  
3 presentment or indictment, the grand jury can receive no other evidence than such as is given  
4 by witnesses produced and sworn before them, or furnished by legal documentary evidence,  
5 or the deposition of witnesses taken as provided in this Title". Shelby, 82 Nev. at 209. A  
6 person who has been indicted by grand jury may challenge the indictment and test the legal  
7 sufficiency of evidence supporting grand jury indictment as to whether it was in fact "the best  
8 evidence," and whether the evidence is "hearsay or secondary evidence." Id. Failure to  
9 present "none but legal evidence and the best evidence" to the grand jury undermines the  
10 proceeding and prejudices the defendant.

11 Jonathan Harper was present at the February 6, 2006 incident. Following the incident  
12 that resulted in the shooting death of Victor Gamboa, Harper gave a recorded voluntary  
13 statement to Detectives Mogg and Hardy in April 2006. (GJT 1, p. 110, II 6-8). Subsequent  
14 to that, he sustained a head injury. Harper's head injury affects his speech, motor skills, and  
15 has "some memory problems sometimes." (GJT 1, p. 101; p. 109, II 25 - p. 110, II 2).

16 At the grand jury presentment, the State asked Harper a series of questions about the  
17 sequence of events on the evening of February 6, 2006, the people present, their given names  
18 and monikers, his own involvement in the fight that precipitated the shooting, and the events  
19 after the shooting. For the most part Harper was able to answer the State's question on his  
20 own. However, for the questions that he provided an unsatisfactory answer, the State all too  
21 conveniently supplied an answer for him, by citing his "memory problem" as an excuse to read  
22 the substantive portions of his voluntary statement into the record, to establish the elements  
23 of criminal liability against Mr. Garcia. This is evidenced by the following passages:

24 Q: Okay. Now before you got into the car was there any talk about a gun?

25 A: No.

26 Q: Okay. Now Jonathan, you've got this head injury, yeah?

27 A: Yes.

28 Q: Does it cause you to have some memory problems sometimes?



1 A: Yes.

2 Q: Now you met with me in my officer earlier, yes?

3 A: Yes.

4 Q: Okay. Do you remember giving a statement to Detective Mogg and Hardy?

5 A: Bits and parts.

6 Q: Okay. So you gave a statement to them?

7 A: Yes.

8 Q: And that was in April of '06?

9 A: Yes.

10 Q: Okay. And your heard yourself on that statement, right?

11 A: Yes.

12 Q: Now was your memory back then better than it is right now?

13 A: Yes.

14 Q: Now showing you your statement on page 18. Okay. This is your statement?

15 A: Yes.

16 Q: Okay. And you also listened to that earlier today, yes?

17 A: Yes.

18 Q: Now on page 18 you were asked by Detective Mogg: ....

19 (GJT 1, p. 109, ll 19 – p. 111, ll 9).

20

21 Q: Could you hear what they were arguing about?

22 A: They were arguing about something.

23 Q: Do you remember what they were arguing for?

24 A: No.

25 Q: Now Jonathan, I want to go back to your statement that you gave the detectives in April.

26 And again your memory was better back then, yeah.

27 A: Yes.

28 Q: I'm going to page 12 here. Okay? Now at the top of page 12 of your statement you told the

1 detectives: ....

2 (GJT 1, p. 117, ll 24 – p. 118, ll 11).

3

4 Q: All right. So they're chasing this kid and arguing over the gun. What happens next?

5 A: Like I just started hearing gunshots.

6 Q: Do you remember seeing what happened?

7 A: No.

8 Q: Okay. And again was your memory better back then?

9 A: Yes.

10 Q: Okay. Now again on page 12 in our statement about halfway down the detective asks: ...

11 (GJT 1, p. 118, ll 25 – p. 119, ll 9).

12

13 Q: Okay. Do you remember where E<sup>1</sup> was?

14 A: No.

15 Q: Did you talk to E after the shooting happened?

16 A: No.

17 Q: Do you remember if you talked to E after this shooting happened?

18 A: No.

19 Q: Okay. Let me go back a little ways. Do you remember what E was wearing?

20 A: No.

21 Q: And again your memory batter back when you talked to detectives in April of 2006?

22 A: Yes.

23 Q: Okay. Jonathan, I want to show you your statement again on page 14, about halfway down.

24 Question: ...

25 ...

26 Q: Yes. Okay. Now do you remember where E went after the shooting?

27

28

---

<sup>1</sup> E is allegedly the moniker for the Defendant Evaristo Garcia.

1 A: No.

2 Q:Okay. Now Jonathan, page 15 of your statement. Question: ...

3 (GJT 1, p. 120, ll 15 – p. 121, ll 16).

4

5 Q:Okay. Now I asked your earlier if your remembered talking to E after this. Okay? Now I'm  
6 showing you the same page on your statement. Question: ...

7 ...

8 Q:Okay. Now do you remember what E told you happen to the gun?

9 A: No.

10 Q:Okay. Going back to your statement on page 16. Question: ...

11 (GJT 1, p. 121, ll 25 – p. 122, ll 15).

12

13 The reading of Harper's voluntary statement into the record is objectionable on so many  
14 levels. First, the voluntary statement is not legal and competent evidence. It is his out of court  
15 statement that is now being used to prove the truth of the matter asserted, as testimonial  
16 evidence, to substitute the unsatisfactory answers that he was giving under the guise of  
17 "memory loss." The reading of his voluntary statement violates NRS 172.135(2), which  
18 commands that the "grand jury can receive none but legal evidence and the best evidence in  
19 degree, to the exclusion of hearsay or secondary evidence."

20 The State had free reign to pick its favorite bits and pieces of Harper's voluntary  
21 statement to read into the record where he failed to answer appropriately. He is a competent  
22 witness, and was responsive to a great deal of the State's questioning. Instead of using prior  
23 Preliminary Hearing transcript statements made under oath and subject to cross examination,  
24 the State instead used more unreliable statements.

25 Reading his voluntary statement into the record, rather than just showing him the  
26 statement portion to attempt to refresh his memory is the proper way to utilize it. By simply  
27 reading his statement into the record, rather than using the statement to refresh Harper's  
28 recollection, the State is blatantly testifying for him. Why even bother having him testify at all,

1 if the State is only going to read its choice passages into the record on his behalf. By reading  
2 Harper's statements to the grand jury, it gives it unwarranted weight and credibility in the mind  
3 of the grand jurors.

4 If the State believes that Harper has such a memory problem, and given that he only  
5 remembers "bits and parts" of giving a statement to Detectives Mogg and Hardy, where is the  
6 reliability that he actually remembers telling the detectives the statements that were read to  
7 the grand jury?

8 Harper's testimony before the grand jury should be stricken in its entirety. The  
9 testimony is tainted with inextricable hearsay statements that the State willfully introduced.  
10 The State commandeered the questions and the answers. Jonathan Harper became a  
11 channel for the State to testify, not the witness. Any identification of Mr. Garcia is rendered  
12 useless.

13 **4. CRYSTAL PEREZ IS INCAPABLE OF IDENTIFYING THE SHOOTER**

14 Crystal Perez was a percipient witness to the shooting, who shortly after the shooting  
15 gave a written and taped recorded statement to the police that Giovanni Garcia, a previously  
16 named co-defendant, was the shooter. (GJT 2, p. 40, ll 22-25). However, in her grand jury  
17 testimony she "changed her story" and stated that she lied about Giovanni Garcia being the  
18 shooter "because I wanted it to be him because if it wasn't for him my friend wouldn't be dead,  
19 but I did lie in my statement and say it was him but I know he wasn't." (GJT 2, p. 41, ll 7-15).  
20 The grand jury inquired about the shooter's identity it in the following colloquy:

21 THE FOREPERSON: Bob go ahead.

22 BY A JUROR:

23 Q: Did you know the person who did the shooting?

24 A: No.

25 Q: Not at all, never saw him before?

26 A: Not at all.

27 THE FOREPERSON: Okay. Steve.

28 BY A JUROR:

1 Q: You didn't know that person but did you get a good look at his face?

2 A: Slightly, not a good look.

3 Q: Have you since pulled him out of a line-up or seen a picture of him?

4 A: No.

5 BY THE FOREPERSON:

6 Q: So you haven't identified him at all?

7 A: No, ma'am.

8 THE FOREPERSON: any other questions?

9 BY MS. JIMENEZ:

10 Q: Let me ask you this, Crystal. Do you feel like you had a good enough look that you could  
11 identify this person if you saw him again?

12 A: Now?

13 Q: Right now.

14 A: No.

15 (GJT 2, p. 43, ll 9 – p. 44, ll 9).

16

17 Ms. Perez, like Ms. Marquez, is not capable of identifying the shooter. Hence, the State  
18 cannot establish through Perez that Evaristo Garcia is the shooter by any measure of reliable  
19 evidence.

20

21 **B. INSUFFICIENT EVIDENCE WAS PRESENTED TO SUSTAIN THE GANG**  
22 **ENHANCEMENT ALLEGATION OF THE INDICTMENT**

23 Examining the evidence provided at the Preliminary Hearing, in a light most beneficial  
24 to the State, there is clearly insufficient evidence to support the gang enhancement allegation.  
25 Defendant is charged by way of information and pursuant to NRS 193. 168, with acting "for  
26 the benefit of, at the discretion of, or in affiliation with a criminal gang, to wit: PUROS LOCOS,  
27 which has as one of its common activities, engaging in felonious criminal activities", other than  
28 primary offense conduct "with specific intent to promote, further, or assist the above said gang"

1 did kill GAMBOA. (Information pg. 1, line 27, 28; pg. 2 line 1-2).

2 NRS 193.168 (3)(b) provides that the gang enhancement statute applies only  
3 when the trier of fact finds, beyond a reasonable doubt, that the primary offense  
4 was committed knowingly for the benefit of a criminal gang.

5 NRS 193.168 (6) defines "criminal gang." One of the requirements of this statute  
6 is that the gang "has as one of its common activities engaging in criminal activity  
7 punishable as a felony, other than the conduct with constitutes the primary  
8 offense." NRS 193.168 (6) (c).

9 Thus, the plain language of the gang enhancement statute, as well as the Due  
10 Process clause, clearly requires that in order for the statute to apply here, the  
11 State must prove beyond a reasonable doubt that the Maravilla gang, as one of  
12 its common activities, engages in felonies.

13 During that trial, the state utilized the testimony of a gang expert (Rafaqat) in an attempt  
14 to justify the gang enhancement.

15 Rafaqat's testimony simply does not address the element of whether Maravilla  
16 members commit felonies as a common activity. Rafaqat did not testify as to an  
17 approximate number of Maravilla gang members who committed felonies. He  
18 did not testify that incoming members of the gang were exhorted to felonious  
19 acts by senior members. The fact that individual members committed felony  
20 crimes which benefited the gang does not lead necessarily to the conclusion that  
21 felonious action is a common denominator of the gang. Likewise, just because  
22 certain members of a hypothetical group play musical instruments, it does not  
23 follow that the group is an orchestra.

24 Furthermore, Rafaqat's testimony as to the definition of a criminal gang, followed  
25 by his statement that the Maravilla gang was such a gang, does not constitute  
26 sufficient evidence. This testimony is akin to a police officer testifying as to some  
27 of the statutory elements of murder and then stating the legal conclusion that the  
28 defendant murdered the victim, without proving each and every one of those  
statutory elements. Rafaqat's conclusory testimony is simply not proof of every  
factual element required to find that the Maravilla gang was a criminal gang.

Therefore, we conclude that the evidence at trial, even when viewed in the light  
most favorable to the prosecution, does not provide a rational fact finder with  
sufficient evidence that the members of the Maravilla gang commit felonies as  
one of their common activities.

Oriegel-Candido vs. NV, 114 Nev 378, 956 P2d 1378, 1381 (1998).

Being merely present around the same area or simple association with other gang  
members does not provide sufficient evidence to warrant a criminal punishment enhancement  
so onerous. This was simply a street brawl and free for all melee, which escalated from an  
initial few person fist fight. The fight started between a teenage boy and teenage girl over a  
tossed book. The subsequent group fight was in no way related to gang activities or felonious

1 conduct.

2 Wherefore, Defendant prays that the Indictment in it's entirety be dismissed or  
3 alternatively that the gang enhancement allegations be struck from the charges.

4

5 DATED this 30th day of April 2010.

6

RESPECTFULLY SUBMITTED:


7

DAVID M. SCHIECK  
SPECIAL PUBLIC DEFENDER

8

9

10

  
SCOTT L. BINDRUP  
330 S. Third Street, Ste. 800  
Las Vegas, NV 89155  
Attorney for GARCIA

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

[Skip to Main Content](#) [Logout](#) [My Account](#) [Search Menu](#) [New District Criminal/Civil Search](#) [Refine Search](#) [Close](#)

Location : District Courts [Images](#) [Help](#)

## REGISTER OF ACTIONS

[CASE No. 10C262966-1](#)

The State of Nevada vs Evaristo J Garcia

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Case Type: **Felony/Gross Misdemeanor**  
Date Filed: **03/19/2010**  
Location: **Department 15**  
Cross-Reference Case Number: **C262966**  
Defendant's Scope ID #: **2685822 1994518**  
Lower Court Case Number: **09GJ00047**  
Supreme Court No.: **64221**

### RELATED CASE INFORMATION

#### Related Cases

10C262966-2 (Multi-Defendant Case)

### PARTY INFORMATION

**Defendant** Garcia, Evaristo J

**Lead Attorneys**  
**Ross C. Goodman**  
*Retained*  
7023845563(W)

**Material Witness** Calvillo, Edshel

**Other** Lopez, Manuel A

**Lance A. Maningo**  
*Retained*  
702-734-0400(W)

**Plaintiff** State of Nevada

**Steven B Wolfson**  
702-671-2700(W)

### CHARGE INFORMATION

Charges: Garcia, Evaristo J	Statute	Level	Date
1. CONSPIRACY TO COMMIT A CRIME	199.480	Felony	01/01/1900
1. DEGREES OF MURDER	200.030	Felony	01/01/1900
1. FELONY COMMITTED TO PROMOTE ACTIVITIES OF CRIMINAL GANG	193.168	Felony	01/01/1900
1. FURTHER OR ASSIST A CRIMINAL GANG	193.169	Felony	01/01/1900
1. CONSPIRACY TO COMMIT MURDER	200.010	Felony	01/01/1900
2. MURDER.	200.010	Felony	01/01/1900
2. DEGREES OF MURDER	200.030	Felony	01/01/1900
2. FURTHER OR ASSIST A CRIMINAL GANG	193.169	Felony	01/01/1900
2. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
2. FELONY COMMITTED TO PROMOTE ACTIVITIES OF CRIMINAL GANG	193.168	Felony	01/01/1900
2. CHALLENGES TO FIGHT; FIGHTING OR ACTING AS SECOND WHEN DEATH ENSUES.	200.450	Felony	01/01/1900
2. SECOND DEGREE MURDER WITH USE OF A DEADLY WEAPON	200.030.2	Felony	02/02/2006

RA 000101



## EVENTS &amp; ORDERS OF THE COURT

05/25/2010 **All Pending Motions** (9:00 AM) ()  
*ALL PENDING MOTIONS - 5/25/10 Court Clerk: Jennifer Kimmel Reporter/Recorder: Renee Silvaggio Heard By: Abbi Silver*

**Minutes**

05/25/2010 9:00 AM

- DEFENDANT GARCIA'S PETITION FOR WRIT OF HABEAS CORPUS...STATUS CHECK: WRITS IF ANY...DEFENDANT GARCIA'S MOTION TO SEVER TRIALS DEFENDANT GARCIA: Also present Yilin Zheng on behalf of the Deft. Argument by counsel. COURT FINDS, Defendant was identified by Jonathan Harper as the shooter, and his palm and fingerprints were identified on the gun. COURT FINDS, Deft's fingerprints are sufficient to establish probable cause and there is a mountain of evidence that indicates Garcia shot the victim. Accordingly, COURT ORDERED, Writ is DENIED. Discussion regarding Deft's Motion to Sever trials. COURT FURTHER ORDERED, Motion to Sever is CONTINUED. Ms. Jimenez moved to dismiss C226218 and refile the Motions in Limine in this case. There being no opposition, COURT SO ORDERED. DEFENDANT LOPEZ: Mr. Manningo advised the transcripts from the preliminary hearing were sent to his brother in error. Mr. Maningo requested additional time to file the writ. COURT ORDERED, counsel to file the Writ forthwith. CUSTODY 8/31/10 9:00 A.M. DEFENDANT GARCIA'S MOTION TO SEVER TRIALS

[Parties Present](#)

[Return to Register of Actions](#)

RA 000102

ORIGINAL

WRIT

BELLON & MANINGO, LTD.  
LANCE A. MANINGO, ESQ.  
Nevada Bar No.: 006405  
732 S. Sixth Street, Ste. 102  
Las Vegas, Nevada 89101  
Telephone: (702) 452-6299  
Facsimile: (702) 452-6298  
Email: [lam@bellonandmaningo.com](mailto:lam@bellonandmaningo.com)  
Attorney for Defendant MANUEL LOPEZ

17  
FILED  
JUN 04 2010  
CLERK OF COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

MANUEL LOPEZ, #1994518

Defendant.

CASE NO.: C262966  
Dept No.: XV

PETITION FOR WRIT OF HABEAS CORPUS

TO: The Honorable Judge of the Eighth Judicial District Court of  
The State of Nevada, in and for the County of Clark

The Petition of Manuel Lopez submitted by LANCE A. MANINGO, ESQ. of  
BELLON & MANINGO, LTD., as attorney for the above-captioned individual, respectfully affirms:

1. That he is a duly qualified, practicing and licensed attorney in the City of Las Vegas,  
County of Clark, State of Nevada.
2. That Petitioner makes application for a Writ of Habeas Corpus; that the place where  
the Petitioner is imprisoned actually or constructively imprisoned and restrained of his liberty is the  
Clark County Detention Center; that the officer by whom he is imprisoned and restrained is Doug  
Gillespie, Sheriff.

RECEIVED

JUN 04 2010

CLERK OF THE COURT

RA 000103

1           3.     That the imprisonment and restraint of said Petitioner is unlawful in that: there was  
2 insufficient evidence to establish the gang enhancement allegation of the indictment.

3           4.     That Petitioner waives his right to be brought to trial within 60 days.

4           5.     That Petitioner consents that if Petition is not decided within 15 days before the date  
5 set for trial, the Court may, without notice of hearing, continue the trial indefinitely to a date  
6 designated by the Court.

7           6.     That Mr. Lopez personally authorized his aforementioned attorney to commence this  
8 action.

9           WHEREFORE, Petitioner prays that this Honorable Court make an order directing the  
10 County of Clark to issue a Writ of Habeas Corpus directed to the said Doug Gillespie, Sheriff,  
11 commanding him to bring the Petitioner before your Honor, and return the cause of his  
12 imprisonment.

13                     DATED this 4<sup>th</sup> day of June, 2010.

14                                     BELLON & MANINGO, LTD.

15  
16                                     By 

17                                     LANCE A. MANINGO, ESQ.  
18                                     Nevada Bar. No.: 006405  
19                                     732 S. Sixth Street, Suite 102  
20                                     Las Vegas, NV 89101  
21                                     Phone: (702) 452-6299  
22                                     Fax: (702) 452-6298  
23                                     Attorney for Defendant  
24                                     MANUEL LOPEZ  
25  
26  
27  
28

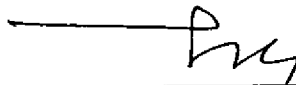
1 **NOTICE**

2 TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

3 YOU WILL PLEASE TAKE NOTICE that the foregoing PETITION FOR WRIT OF  
4 HABEAS CORPUS will be heard on the 22 day of June, 2010, at 9 2 .m. in the above-  
5 entitled Department of the Eighth Judicial District Court.

6 DATED this 3<sup>rd</sup> day of June, 2010.

7 BELLON & MANINGO, LTD.

8  
9 By   
10 LANCE A. MANINGO, ESQ.  
11 Nevada Bar. No.: 006405  
12 732 S. Sixth Street, Suite 102  
13 Las Vegas, NV 89101  
14 Phone: (702) 452-6299  
15 Fax: (702) 452-6298  
16 Attorney for Defendant

17 **DECLARATION**

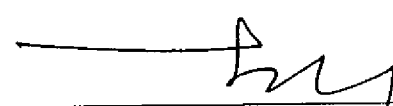
18 LANCE A. MANINGO, ESQ., makes the following declaration:

19 1. I am an attorney duly licensed to practice law in the State of Nevada; I am the  
20 Attorney assigned to represent the Defendant in the instant matter, and I am familiar with the facts  
21 and circumstances of this case.

22 2. That I am the attorney of record for Petitioner in the above matter; that I have read  
23 the foregoing Petition, know the contents thereof, and that the same is true of my own knowledge,  
24 except for those matters therein stated on information and belief, and as to those matters, I believe  
25 them to be true; that Petitioner, MANUEL LOPEZ, personally authorizes me to commence this Writ  
26 of Habeas Corpus action.

27 I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

28 EXECUTED this 4<sup>th</sup> day of June, 2010.

  
LANCE A. MANINGO

1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2                                   **IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS**

3           COMES NOW the Petitioner, MANUEL LOPEZ, by and through his counsel, LANCE A.  
4   MANINGO, ESQ. of BELLON & MANINGO, LTD., and submits the following Points and  
5   Authorities in Support of Defendant's Petition for a pre-trial Writ of Habeas Corpus.

6                                   **PROCEDURAL HISTORY**

7           Petitioner was indicted on March 19, 2010 and was charged with Conspiracy to Commit  
8   Murder with the Intent to Promote, Further or Assist a Criminal Gang and Murder with Use of a  
9   Deadly Weapon with the Intent to Promote, Further or Assist a Criminal Gang. Trial in this matter  
10   has been set for November 8, 2010.

11                                  **STATEMENT OF FACTS**

12           The following facts are those presented to the Grand Jury on March 4, 2010 and March 18,  
13   2010 (GJT, Vol. 1 and GJT, Vol. 2).

14           The State alleges that on or about February 6, 2006, the alleged victim, Victor Gamboa, died  
15   as a result of a gunshot wound to the back. (GJT, Vol. 1, pg. 19-20). The alleged shooting took  
16   place on east Washington, just west of Virgil. (GJT, Vol. 1, pg. 25). According to the testimony of  
17   William Speas, a crime scene analyst with the Las Vegas crime lab, a total of six (6) 9-mm  
18   cartridges casings were recovered, and four (4) 9-mm bullets. (GJT, Vol. 1, pg. 27). All six (6) of  
19   the 9-mm cartridges casings had the same head stamp – Wolf 9-mm Makarov. (GJT, Vol., pg. 27).  
20   Additionally, at a nearby residence, located at 865 North Parkhurst, a 9-mm Makarov semi  
21   automatic handgun was recovered inside a discarded toilet tank. (GJT, Vol. 1, pg. 27-28). The  
22   handgun was taken into evidence and latent prints identified the right ring finger and palm of  
23   Petitioner's co-defendant, Evaristo Garcia.

24           The first witness called by the State was Dr. Gray Telgenhoff, employed with the Clark  
25   County Coroner's Office. (GJT, Vol. 1, pg. 14). Dr. Telgenhoff did not perform the autopsy on the  
26   alleged victim, however, had reviewed the autopsy report prepared by Dr. Simms. (GJT, Vol. 1, pg.  
27   16). Dr. Telgenhoff testified that the cause of death according to Dr. Simms was a gunshot wound  
28   of the back. (GJT, Vol. 1, pg. 19-20).

1 Melissa Gamboa, the alleged's victim sister, was also called as a witness for the State. (GJT,  
2 Vol. 1, pg. 43). Ms. Gamboa testified that she witnessed Giovanni Garcia and Gena Marquez  
3 speaking during sixth period on February 6, 2006, but did not elaborate what was said. (GJT, Vol. 1,  
4 pg. 44-45). Ms. Gamboa further testified that she did not make any phone calls, nor did she observe  
5 any phone calls being made by Gena Marquez or Crystal Perez. (GJT, Vol. 1, pg. 46). Ms. Gamboa  
6 testified that after school, she saw Giovanni Garcia talking on his cell phone, but she could not hear  
7 what he was saying. (GJT, Vol. 1, pg. 47). Ms. Gamboa stated that during this time, she observed  
8 an El Camino pull up to the school and four individuals got out of the car. (GJT, Vol. 1, pg. 57-59,  
9 71). While Ms. Gamboa watched, several individuals from her school, along with some of the  
10 individuals from the El Camino, got into a fistfight. (GJT, Vol. 1, pg. 50). After observing the  
11 fistfight for several minutes, Ms. Gamboa, along with her brother, the alleged victim, took off  
12 running when someone yelled the principal was coming outside. (GJT, Vol. 1, pg. 52). Ms.  
13 Gamboa and her brother ran toward Washington Street, with her brother leading the way. (GJT,  
14 Vol. 1, pg. 53). While running, Ms. Gamboa testified "some guy" came up and started shooting at  
15 her brother. (GJT, Vol. 1, pg. 53). Ms. Gamboa did not clearly see the shooter. She described the  
16 shooter as wearing a black sweater and hoodie, with black hair. (GJT, Vol. 1, pg. 53). However, in  
17 an earlier statement given to police, Ms. Gamboa described the shooter as wearing a gray sweater  
18 and hoodie. (GJT, Vol. 1 pg. 55). Finally, Ms. Gamboa testified that her boyfriend, Jesus Alonzo  
19 was involved with a gang, but that her brother was not. (GJT, Vol. 1, pg. 60).

20 Gena Marquez was also called as a witness for the State. (GJT, Vol. 1, pg. 78). Ms.  
21 Marquez had witnessed a verbal altercation between Giovanni Garcia (who she stated was part of  
22 the Puros Locos gang) and Crystal Perez, prior to February 6, 2006. (GJT, Vol. 1, pg. 80-81, 83).  
23 Ms. Marquez testified that Crystal told Ms. Gamboa's boyfriend, Jesus, to confront Giovanni about  
24 the incident. (GJT, Vol. 1, pg. 82). Ms. Marquez further testified that on February 6, 2006 she went  
25 to apologize to Giovanni, but that he was still upset. (GJT, Vol. 1, pg. 84). Later that day, a large  
26 fistfight broke out at school involving a number of individuals, including herself. She further  
27 testified that she heard five gunshots, but did not see who the shooter was or who was shot as she  
28 was in a vehicle on the other side of the street. (GJT, Vol. 1, pg. 95-96).

1 The next witness called to testify was Jonathan Harper. (GJT, Vol. 1, pg. 100). Mr. Harper  
2 testified that he, petitioner, Giovanni Garcia and several other individuals were involved with a  
3 gang known as Puros Locos. (GJT, Vol. 1, pg. 102). On February 6, 2006, Mr. Harper testified that  
4 he was with petitioner, Salvador Garcia, Edshel Calvillo and petitioner's girlfriend when he heard  
5 there was going to be a fight at Morris Academy. (GJT, Vol. 1, pg. 107, 108). All five of the above  
6 individuals drove to the school. Upon their arrival, Mr. Harper testified a large group of people were  
7 involved in a fistfight, and that they got out of the car and joined in the fight. (GJT, Vol. 1, pg. 113-  
8 115). The prosecutor then proceeded to read in parts of Mr. Harper's prior statements to police  
9 wherein he stated that Giovanni Garcia instructed co-defendant Evaristo Garcia to shoot the alleged  
10 victim. (GJT, Vol. 1, pg. 118). According to Mr. Harper's prior statement, Evaristo Garcia shot an  
11 entire clip at the victim. (GJT, Vol. 1, pg. 119).

12 Patrol Officer Michael Souder and Detective Clifford Mogg also appeared as witnesses.  
13 They identified petitioner and several other individuals as members of the Puros Locos gang. (GJT,  
14 Vol. 1, 139-140; GJT, Vol. 2, pg. 48, 57,). Detective Mogg further testified that on February 9, 2006  
15 and March 30, 2006, he interviewed petitioner about the incident on February 6, 2006. Petitioner  
16 denied involvement in the fight on February 6, but admitted to being a member of the Puros Locos  
17 gang. (GJT, Vol. 2, pg. 61-64).

18 Jonathan Robinson, a co-worker of petitioner, appeared as a witness and provided testimony  
19 that petitioner had admitted to handing a 9-mm gun to his friend to shoot a kid. (GJT, Vol. 2, pg.  
20 23-26).

21 Finally, Crystal Perez testified as to her involvement in the incident on February 6, 2006.  
22 She stated that after an altercation between her and Giovanni over a thrown book, Giovanni started  
23 threatening her. After school on February 6, Ms. Perez stated she met up with Victor, the alleged  
24 victim, Brian and Gena Marquez, and that they confronted Giovanni, who was there with a group of  
25 his friends. Brian confronted Giovanni and a fight broke out between the two of them. Eventually,  
26 several other individuals joined in the fight. (GJT, Vol. 2, pg. 32, 35, 36).

27 ////

28 ////

1 Ms. Perez stated she saw Victor get shot, but lied to police, stating the Giovanni had shot at  
2 Victor. Crystal eventually admitted that she did not know who had shot Victor. (GJT, Vol. 2, pg.  
3 41).

### 4 5 LEGAL ARGUMENT

6 To establish probable cause to bind a defendant over for trial, the State must demonstrate that  
7 (1) a crime has been committed and (2) the defendant committed the crime. NRS § 171.206; *Jones*  
8 *v. Sheriff*, 93 Nev. 297, 565 P.2d 325 (1977). The standard of review for a pretrial habeas challenge  
9 to the sufficiency of the evidence is that the State has the burden of showing "slight or marginal"  
10 evidence that a crime has been committed and that the defendant committed the crime. *Sheriff v.*  
11 *Hodes*, 96 Nev. 184, 186, 606 P.2d 178, 179 (1980).

#### 12 13 **A. This Court should dismiss the gang enhancements because the State failed to 14 provide sufficient evidence to prove the allegation**

15 Petitioner has been charged with acting "for the benefit of, at the discretion of, or in  
16 affiliation with a criminal gang, to wit: Puros Locos, which has as one of its common activities,  
17 engaging in felonious criminal activities with specific intent to promote, further or assist the above  
18 said gang."

19 NRS 193.168 provides in pertinent part as follows:

- 20 1. Except as otherwise provided in subsection 5 and NRS 193.169, any person who is  
21 convicted of a felony committed knowingly for the benefit of, at the direction of, or in  
22 affiliation with, a criminal gang, with the specific intent to promote, further or assist the  
23 activities of the criminal gang, shall, in addition to the term of imprisonment prescribed by  
24 statute for the crime, be punished by imprisonment in the state prison for a minimum term of  
25 not less than 1 year and a maximum term of not more than 20 years. In determining the  
26 length of the additional penalty imposed, the court shall consider the following information:  
27 a) **The facts and circumstances of the crime;**  
28 b) The criminal history of the person;  
c) The impact of the crime on any victim;  
d) Any mitigating factors presented by the person; and  
e) Any other relevant information.

...



- 1 4. The court shall not impose an additional penalty pursuant to this section unless:  
2 b) **The trier of fact finds that allegation to be true beyond a reasonable doubt.**

3 8. As used in this section, "criminal gang" means any combination of persons,  
4 organized formally or informally, so constructed that the organization will  
5 continue its operation even if individual members enter or leave the organization, which:  
6 (a) Has a common name or identifying symbol;  
7 (b) Has particular conduct, status and customs indicative of it; and  
8 (c) **Has as one of its common activities engaging in criminal activity punishable  
9 as a felony, other than the conduct which constitutes the primary offense.**

10 Emphasis added.

11 Here, there is no indication that the fight that broke out in any way was in furtherance of any  
12 gang activity, nor that the alleged gang, Puros Locos, engages in criminal activities that are  
13 punishable as felonies as one of its common activities, as required by statute. Rather, the altercation  
14 alleged was the result of an altercation that occurred between two individuals – Crystal Perez and  
15 Giovanni Garcia, over the way a book was tossed on a table. This altercation eventually escalated  
16 into a fistfight involving nearly twenty different individuals, some of which happened to be  
17 members of different gangs.

18 There was no indication in the testimony that this fight was arranged between the two  
19 different gangs. Rather, it was a fight that broke out after school involving the two individuals  
20 and several of their friends. The fight was in no way related to the furtherance of gang activity or  
21 felonious conduct.

22 ////

23 ////

24 ////

25 ////

26 ////

27 ////

28 ////

CONCLUSION

Based on the aforementioned, Defense respectfully asks that this Court strike the gang enhancement allegations from the charges.

DATED this 4<sup>th</sup> day of June, 2010.

BELLON & MANINGO, LTD.

By 

\_\_\_\_\_  
LANCE A. MANINGO, ESQ.

Nevada Bar. No.: 006405

732 S. Sixth Street, Suite 102

Las Vegas, NV 89101

Phone: (702) 452-6299

Fax: (702) 452-6298

*Attorney for Defendant MANUEL LOPEZ*

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing PETITION FOR WRIT OF HABEAS  
CORPUS is hereby acknowledged this \_\_\_\_\_ day of June, 2010.

CLARK COUNTY DISTRICT ATTORNEY

By: \_\_\_\_\_

[Skip to Main Content](#) [Logout](#) [My Account](#) [Search Menu](#) [New District Criminal/Civil Search](#) [Refine Search](#) [Close](#)

Location : District Courts [Images](#) [Help](#)

## REGISTER OF ACTIONS

[CASE No. 10C262966-1](#)

The State of Nevada vs Evaristo J Garcia

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Case Type: **Felony/Gross Misdemeanor**  
Date Filed: **03/19/2010**  
Location: **Department 15**  
Cross-Reference Case Number: **C262966**  
Defendant's Scope ID #: **2685822 1994518**  
Lower Court Case Number: **09GJ00047**  
Supreme Court No.: **64221**

### RELATED CASE INFORMATION

#### Related Cases

10C262966-2 (Multi-Defendant Case)

### PARTY INFORMATION

**Defendant** Garcia, Evaristo J

**Lead Attorneys**  
**Ross C. Goodman**  
*Retained*  
7023845563(W)

**Material Witness** Calvillo, Edshel

**Other** Lopez, Manuel A

**Lance A. Maningo**  
*Retained*  
702-734-0400(W)

**Plaintiff** State of Nevada

**Steven B Wolfson**  
702-671-2700(W)

### CHARGE INFORMATION

Charges: Garcia, Evaristo J	Statute	Level	Date
1. CONSPIRACY TO COMMIT A CRIME	199.480	Felony	01/01/1900
1. DEGREES OF MURDER	200.030	Felony	01/01/1900
1. FELONY COMMITTED TO PROMOTE ACTIVITIES OF CRIMINAL GANG	193.168	Felony	01/01/1900
1. FURTHER OR ASSIST A CRIMINAL GANG	193.169	Felony	01/01/1900
1. CONSPIRACY TO COMMIT MURDER	200.010	Felony	01/01/1900
2. MURDER.	200.010	Felony	01/01/1900
2. DEGREES OF MURDER	200.030	Felony	01/01/1900
2. FURTHER OR ASSIST A CRIMINAL GANG	193.169	Felony	01/01/1900
2. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
2. FELONY COMMITTED TO PROMOTE ACTIVITIES OF CRIMINAL GANG	193.168	Felony	01/01/1900
2. CHALLENGES TO FIGHT; FIGHTING OR ACTING AS SECOND WHEN DEATH ENSUES.	200.450	Felony	01/01/1900
2. SECOND DEGREE MURDER WITH US OF A DEADLY WEAPON	200.030.2	Felony	02/02/2006

RA 000113

## EVENTS &amp; ORDERS OF THE COURT

06/22/2010 | **Petition for Writ of Habeas Corpus** (9:00 AM) ()  
*DEFT'S PTN FOR WRIT OF HABEAS CORPUS /015 Court Clerk: Jennifer Kimmel Reporter/Recorder: Renee Silvaggio  
Heard By: Abbi Silver*

**Minutes**

06/22/2010 9:00 AM

- Matter argued and submitted. COURT ORDERED, Deft's Petition for Writ of Habeas Corpus is DENIED. COURT FINDS, under NRS 34.700 challenges based on alleged lack of probable cause must be raised in a pre-trial petition for Writ of Habeas Corpus within twenty one days after the Deft's first appearance. The arraignment date has been held to be the first appearance contemplated under the statute. In *Palmer vs. Sheriff*, 93 Nev. 648, 572 P.2d 218 (1977). Pursuant to *Sheriff vs. Jensen*, failure to file such a petition in a timely manner makes the petition not cognizable for the District Court and not reviewable by the Supreme Court, 95 Nev. 595, 596 (1979). Under NRS 34.710, the District Court shall not consider any pretrial petition for Habeas Corpus that fails to comply with the timely filing requirements of NRS 34.700. Under NRS 34.700 and NRS 34.710, the twenty one day filing period is jurisdictional. The Deft's failure to file a timely petition for Writ of Habeas Corpus prevents the Court from taking jurisdiction to hear the Deft's motion. In this matter, the Deft. was arraigned on 3/25/10. The Court granted an extension until 4/30/10 for the Deft. to file any pre-trial motion. Deft. Lopez filed his Petition for Writ of Habeas Corpus on 6/4/10. As such, this Court lacks jurisdiction to hear this instant motion. Notwithstanding the untimely petition, this COURT FINDS that the State did meet its burden. Specifically, the State presented evidence that the Deft. 1 - knew he was going to get into a fight with a rival gang; 2 - the Puros Locos could enhance its reputation by fighting Brown Pride Locotes; 3 - a fellow gang member, Giovanni Garcia, requested Deft's assistance in the fight. Moreover, the trier of fact determines if a crime was committed and whether or not the enhancement should be applied; and 4 - Deft. has a large tattoo of Puros Locos on his abdomen. Court directed the State to prepare the Order. CUSTODY

[Parties Present](#)

[Return to Register of Actions](#)

RA 000114

  
CLERK OF THE COURT

**OPPS**

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
TALEEN PANDUKHT  
Chief Deputy District Attorney  
Nevada Bar #5734  
NOREEN DEMONTE  
Chief Deputy District Attorney  
Nevada Bar #8213  
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-

EVARISTO JONATHAN GARCIA,  
#2685822,  
  
Defendant.

CASE NO: 10C262966-1

DEPT NO: XV

**STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR ACQUITTAL OR IN  
THE ALTERNATIVE, MOTION FOR NEW TRIAL**

DATE OF HEARING: AUGUST 1, 2013  
TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through NOREEN DEMONTE, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion For Acquittal Or In The Alternative, Motion For New Trial.

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

//

1 **POINTS AND AUTHORITIES**

2 **PROCEDURAL HISTORY**

3 Under the original Case No. in this case C226218, Defendant was charged by way of  
4 Criminal Complaint filed on June 19, 2006 with Conspiracy to Commit Murder and Murder  
5 with Use of a Deadly Weapon with Co-Defendant Giovanni Garcia. At the time of the  
6 filing of the complaint, Defendant had fled to Mexico. An Arrest warrant was issued for  
7 Defendant on June 21, 2006. Following a lengthy extradition process, Defendant was  
8 booked into the Clark County Detention Center on October 16, 2008. An Amended  
9 Criminal Complaint charging one count of Murder with Use of a Deadly Weapon with the  
10 Intent to Promote, Further, or Assist a Criminal Gang was filed on November 26, 2008.

11 A Preliminary Hearing was held on December 18, 2008, and the Defendant was  
12 bound over on the charge. Defendant was represented by Bill Terry, Esq. at the Preliminary  
13 Hearing, but was not retained for trial.

14 On February 2, 2009, Scott Bindrup, Esq. of the Special Public Defender's Office  
15 confirmed as new counsel for Defendant. Trial was initially scheduled for June 1, 2009.  
16 Defendant filed a Petition for Writ of Habeas Corpus on February 17, 2009, which was set  
17 for hearing on March 3, 2009 and which the Court denied in its Order filed on March 9,  
18 2009. At the defense request, the June 1, 2009 trial date was continued and the trial was  
19 reset for February 16, 2010. On February 9, 2010, the February 16, 2010 trial date was  
20 continued two weeks to February 22, 2010.

21 On February 18, 2010, John Momot, Esq. was appointed as co-counsel with SPD  
22 Scott Bindrup and the February 22, 2010 trial date was continued at the defense request to  
23 May 3, 2010. On March 25, 2010, the May 3, 2010 trial date was continued at the State's  
24 request to November 8, 2010. On May 25, 2010, at the State's request, the Court dismissed  
25 Case No. C226218.

26 Under the present Case No. C262966, the State presented the case to the Clark  
27 County Grand Jury on March 4, 2010 and March 18, 2010, and the Grand Jury returned a  
28 true bill on March 19, 2010 against Defendant and Co-Defendant Manual Lopez for

1 Conspiracy to Commit Murder with the Intent to Promote, Further, or Assist a Criminal  
2 Gang and Murder with Use of a Deadly Weapon with the Intent to Promote, Further, or  
3 Assist a Criminal Gang. Defendant filed a second Petition for Writ of Habeas Corpus on  
4 April 30, 2010, which was set for hearing on May 25, 2010 and which this Court denied on  
5 that date. Defendant filed a Motion to Sever Trials on May 4, 2010, which was denied on  
6 September 21, 2010.

7 On October 12, 2010, the November 8, 2010 trial date was vacated and continued at  
8 the defense request and reset for March 21, 2011. At Calendar Call on March 17, 2011,  
9 Defendant entered a plea of guilty to Second Degree Murder with Use of a Deadly Weapon,  
10 with the State retaining the right to argue. Defendant retained Ross Goodman, Esq. and filed  
11 a pre-sentence Motion to Withdraw Guilty Plea on April 22, 2011, which was granted by this  
12 Court on May 12, 2011.

13 The Court gave a new trial date of May 7, 2012. At the Calendar Call on April 26,  
14 2012, the May 7, 2012 trial date was continued at the defense request. The trial was reset for  
15 September 17, 2012. On September 11, 2012, Defendant filed a Motion to Continue Trial  
16 for independent re-examination of the State's fingerprint evidence by defense expert Joi  
17 Dickerson, which was granted and the trial was reset for July 8, 2013.

18 The case proceeded to trial in this Court on July 8, 2013. The jury returned a verdict  
19 on July 15, 2013, finding Defendant guilty of Second Degree Murder with Use of a Deadly  
20 Weapon and not guilty of Conspiracy to Commit Murder. Defendant filed the instant motion  
21 on July 22, 2013. The State's opposition follows.

### 22 **STATEMENT OF FACTS**

23 Crystal Perez was attending Morris Sunset East High School in February of 2009.  
24 Among her classmates were Giovanny Garcia, Gena Marquez, and Melissa Gamboa.  
25 Crystal had once been affiliated with the gang Brown Pride, and was friends with Melissa  
26 Gamboa's boyfriend, Jesus Alonso, an active member of Brown Pride who went by the  
27 nickname Diablo. Crystal was aware of Giovanny's membership in the gang Puros Locos  
28 after Giovanny had displayed his tattoos to members of her class. The week prior to



1 February 6, 2006, Crystal had gotten into a confrontation with Giovanni over a book.  
2 Following this confrontation, Crystal observed Jesus Alonso approach Giovanni and "hit  
3 him up". Crystal then observed Giovanni make the Puros Locos hand signal to Jesus.

4 On February 6, 2006, between fifth and sixth periods, Crystal observed Giovanni  
5 talking on his cell phone stating "bring Stacy." Following this call, Crystal and Gena  
6 Marquez left school early. Crystal and Gena then went to Gena's house to get help from  
7 Gena's twin brother Bryan. When Crystal and Gena arrived at the house, Bryan was playing  
8 video games with Melissa's younger brother, Victor.

9 Crystal, Gena, Bryan, and Victor then returned to the school. They parked on Virgil  
10 Street and walked to the front of the school. When the bell rang to signal the end of school,  
11 Bryan (who was around 300 pounds at the time) then approached Giovanni and hit him.  
12 From there, a large group of students and non students began fighting. Bryan stated that he  
13 kept getting hit and kicked by numerous people.

14 When the fight broke up, Crystal got knocked to the ground in the parking lot, but  
15 observed a person run past her with a gun. Crystal then heard shots. Crystal admitted that  
16 she lied to police and said that Giovanni was the shooter because he caused it by making  
17 that phone call and she "wanted it to be him."

18 Melissa came out of school and observed the fight. She saw her brother outside of the  
19 school, but did not see him fighting. During the fight, she observed a gray El Camino  
20 carrying three (3) males and one (1) female park at the school. The four (4) occupants got  
21 out of the car and proceeded to the fight. One of the males was wearing a gray hooded  
22 sweatshirt. The fight broke up and everyone started running across the street. She was  
23 running behind her brother across Washington when she saw the male in the gray hoodie  
24 shoot her brother. Gamboa could not identify the shooter during trial over seven (7) years  
25 later, but she had previously identified Defendant as the shooter during the Preliminary  
26 Hearing on December 18, 2008.

27 While the fight was progressing, Campus Monitor Betty Graves observed a Hispanic  
28 male with black hair in a gray hooded sweatshirt holding his right hand in his pocket as he

1 attempted to throw punches with his left hand. Graves stated to her co-worker "that boy's  
2 got a gun." Graves called Principal Dan Eichelberger.

3 After receiving the distressing call from Graves, Eichelberger came out of the school  
4 and observed "total mayhem." Eichelberger yelled and most everyone ran to cars and left.  
5 He then began escorting the others off of school property when he observed a smaller kid  
6 running away from a taller male in a gray hoodie. The male in the hoodie then pulled the  
7 hoodie over his head and "fired away," as the kid "ran for his life," but was pinned up  
8 against the wall. Graves observed the male in the gray hoodie that she had noticed earlier  
9 stop in the middle of the street where the raised median was located. She did not see the  
10 shooting itself, but observed smoke and fire near the male in the hoodie as she heard the  
11 shots, and saw the "young baby fall to the ground."

12 Joseph Harris traveled to the school on his bicycle to pick up his girlfriend. As he  
13 was waiting at the bus stop at the corner of Washington and Virgil on the side of the street  
14 by the school, he observed a young male in "house shoes" running across the street. A male  
15 in a gray hoodie pointed a gun at him as he ran away. Harris heard five to six shots, and saw  
16 the victim fall against the wall face-first, before sliding down to the ground. The shooter  
17 then ran past him down Parkhurst.

18 Vanessa Grajeda had been watching the fight and observed a male in a gray hoodie.  
19 She noticed something black in his pocket, and watched him as he ran to the middle of the  
20 street, pulled out a gun, and shot the gun with his right hand.

21 Daniel Proietto, a Crime Scene Analyst with the Las Vegas Metropolitan Police  
22 Department, responded to the Morris Sunset East High School located on East Washington  
23 Street to document the crime scene and collect evidence. On Washington Street, Proietto  
24 located four (4) bullets and six (6) expended cartridge cases, some of which were located on  
25 the raised median in the center of Washington Street. All six (6) of the fired cartridge cases  
26 were headstamped Wolf 9mm caliber Makarov. On the North side of Washington Street,  
27 across from the school, Proietto located four (4) bullet strikes to the wall adjacent to the  
28 sidewalk and one (1) bullet embedded in the wall.

1           Officer Richard Moreno began walking the area in the direction the shooter had been  
2 seen fleeing, and located an Imez 9mm Makarov pistol hidden upside down in a toilet tank  
3 that had been left curbside as garbage outside 865 Parkhurst. Proietto collected and  
4 impounded the firearm.

5           Dinnah Angel Moses, a Firearms Examiner with the Las Vegas Metropolitan Police  
6 Department, examined the firearm, bullets, and cartridge cases recovered at the crime scene.  
7 Moses testified that all of the cartridge cases were consistent with that firearm, and was able  
8 to identify two (2) of the recovered bullets as being fired by the Imez pistol. The remaining  
9 two (2) bullets were too damaged to identify, but bore similar characteristics to the other two  
10 (2) bullets.

11           Clifford Mogg and Ken Hardy, Detectives with the Las Vegas Metropolitan Police  
12 Department Homicide Section, were assigned to the investigation. Mogg left the scene to  
13 interview Giovanni Garcia. Giovanni was photographed wearing the same all-black  
14 clothing he was wearing during the school day. Mogg collected Giovanni's cellular  
15 telephone and discovered that just prior to the shooting, Giovanni placed twenty (20) calls to  
16 Manuel Lopez, a fellow member of Puros Locos who went by the nickname Puppet, and  
17 twelve (12) calls to Melinda Lopez, the girlfriend of Salvador Garcia, another member of  
18 Puros Locos.

19           Mogg later interviewed Lopez, who admitted that the firearm was his, and that he had  
20 given it to the shooter on the night of February 6, 2006. Lopez further admitted that he  
21 attempted to retrieve the gun following the shooting, but the police already had it. Mogg's  
22 investigation also revealed that Manuel Lopez drove a gray El Camino.

23           In late March of 2006, Mogg received a call from Detective Ed Ericsson with the Las  
24 Vegas Metropolitan Police Department's Gang Unit. Ericsson was investigating a shooting  
25 of Puros Locos member Jonathan Harper that had occurred on February 18, 2006 at the  
26 home of Salvador Garcia. Ericsson informed Mogg that Harper might have information  
27 regarding the homicide at Morris Sunset East High School.

28    //

1 Mogg and Hardy interviewed Harper at the home of Harper's mother on April 1,  
2 2006. During this interview, Harper provided details of his account of the events of  
3 February 6, 2006 and provided detectives with the first name of the shooter in the gray  
4 hoodie, Evaristo.

5 Harper testified at trial that in February of 2006, Harper had been a member of the  
6 gang for a short time, and went by the nickname Silent. Harper testified that on the night of  
7 the murder, he was at Salvador Garcia's apartment with Puppet (Manuel Lopez), Edshel  
8 Calvillo (who went by the nickname Danger), and Evaristo (who he called "E"). While they  
9 were at Salvador's apartment, Giovanni (who went by the nickname Little One) called.  
10 Salvador then told them that they had to go to the school. Before leaving Salvador's  
11 apartment, Harper noticed that Puppet had his "nine" in his waistband, and Puppet gave the  
12 gun to E before they got into the car. Harper then stated that he, Puppet, E, and Puppet's  
13 girlfriend Stacy got into Puppet's El Camino. Harper testified that Sal, Edshel, and Edshel's  
14 brother were in Sal's car. Harper stated that they arrived at the school first in Puppet's car,  
15 and there was a big brawl in front of the school.

16 Harper stated that he observed Little One fighting with a "big fat guy", so he and  
17 others also fought this "big fat guy" until Harper got "side swiped" by Diablo. Harper stated  
18 that E was wearing a gray hoodie.

19 Harper stated that everyone started running, and a kid ran across the street. Harper  
20 stated that Giovanni and E were chasing the kid and fighting over the gun. Harper stated  
21 that Giovanni and E were yelling loud enough that he could hear it. Harper heard E say, "I  
22 got it." Harper then testified that E shot the kid, and "dumped the clip" into the kid. Harper  
23 testified that E later told him, "I got him". Harper then overheard several people at  
24 Salvador's apartment talking about the gun being hidden in the toilet. Harper could not  
25 identify anyone in the courtroom as "E" at trial, but was shown State's Exhibit 111  
26 (Defendant's booking photo taken on October 16, 2008), and stated that the person depicted  
27 in that photograph was the person he knew as E.

28 //

1 Following the April 1, 2006 interview with Harper, Mogg received an anonymous tip  
2 via the "Crime Stoppers" line in May of 2006. The tip led him to the 4900 block of Pearl  
3 Street. Mogg began investigating residents on that block for any connection to a person  
4 named Evaristo, and came upon Maria Garcia and Victor Tapia who lived on Pearl Street.  
5 Maria Garcia worked at the Stratosphere, and listed her sixteen year old son Evaristo on her  
6 emergency contact paperwork through her employer.

7 Mogg then obtained a DMV photograph of Evaristo Garcia and placed it into a  
8 photographic lineup. Mogg showed the lineup to Manuel Lopez and Harper. Both identified  
9 Defendant Evaristo Garcia from that lineup.

10 On July 27 2006, Edshel Calvillo came forward and was interviewed by Detectives.  
11 Calvillo testified that he was coming forward because of the fact that a young boy had been  
12 killed "weighed heavily on his conscience". Calvillo testified that on the night of February  
13 6, 2006, he was at Salvador Garcia's apartment with Puppet, Harper, and "Chucky".  
14 Calvillo identified Defendant as "Chucky" and says that he called him that because he  
15 looked like a character from the cartoon, "Rug Rats" named "Chucky." Calvillo stated that  
16 while they were at Sal's apartment, they received a call from Little One. They were going to  
17 the school to back up Little One. Calvillo testified that Puppet gave the gun to Chucky.  
18 Harper, Chucky, Puppet, and "Puppet's girl" left in Puppet's El Camino. Calvillo got into  
19 the car with Sal, and followed Puppet's car. Calvillo stated that Sal's car got stuck at a light,  
20 and by the time they got to the school everyone was running and they heard shots. Calvillo  
21 testified that after the shooting, he spoke with Defendant both on the phone and in person.  
22 During one of these conversations, Defendant stated he shot a kid and laughed. Defendant  
23 also told Calvillo that he shot the kid because Little One told him to. Calvillo also stated that  
24 Harper told him that he saw the whole thing. Calvillo stated he also heard about what  
25 happened from Giovanni, and heard that the gun was thrown away in a toilet.

26 Mogg then submitted arrest warrants for Defendant and Giovanni Garcia, which were  
27 granted on June 21, 2006. Mogg had been unable to locate Defendant, so he referred  
28 Defendant's warrant to the Criminal Apprehension Team (CAT), a joint task force of the

1 FBI and local law enforcement. FBI Special Agent T. Scott Hendricks then began his  
2 investigation to locate and apprehend Defendant. Defendant, a sixteen year old United  
3 States citizen, could not be located in the United States. Hendricks applied for and was  
4 granted an Unlawful Flight to Avoid Prosecution (UFAP) warrant for the United States  
5 District Court on October 10, 2006.

6 On April 20, 2007, Hendricks applied for and was granted pen register warrants for  
7 the cellular telephones belonging to Defendant's parents, Maria Garcia and Victor Tapia.  
8 On April 23, 2007, Hendricks requested that Detective Mogg visit the home of Maria Garcia  
9 and Victor Tapia to "tickle the pen," an investigative tool used in attempt to cause a phone  
10 call. Mogg went to the Pearl Street home, and spoke to Defendant's parents. Shortly after  
11 Mogg concluded the conversation, Defendant's parents placed a call to Vera Cruz, Mexico.

12 Hendricks then placed field agents in Vera Cruz, Mexico, who located Defendant  
13 there. Hendricks then contacted the Clark County District Attorney's office to obtain a  
14 provisional arrest warrant which would start the extradition process to retrieve Defendant  
15 from Mexico. Defendant was arrested on the provisional warrant on April 23, 2008, and was  
16 formally extradited back to the United States on October 16, 2008.

17 Defendant was met at McCarran International Airport by Detectives Mogg and  
18 Hardy, who were seeing him for the first time. Detectives took custody of Defendant and  
19 booked him into the Clark County Detention Center. Detective Hardy was present during  
20 the taking of Defendant's booking photo, State's Exhibit 111, and identified Defendant in  
21 court as the person depicted in that photograph.

22 Alice Maceo, a Latent Print Examiner and the Lab Manager of the Latent Prints  
23 Section of the Las Vegas Metropolitan Police Department, received the firearm from Daniel  
24 Proietto in February of 2006. Prior to beginning the process of lifting any latent prints,  
25 Maceo noticed a reddish substance on the rear slide of the firearm, and called over to the  
26 DNA lab to get the substance swabbed. This was pursuant to protocols that were in effect in  
27 2006. Maceo personally watched Berch Henry swab the substance, and then began her own  
28 examination. Maceo was able to lift three (3) latent prints from the upper grip below the

1 slide (L1), the back strap (L2) and the grip (L3). The print from the grip (L3) was not of  
2 sufficient quality to make any identification. Maceo was able to exclude Giovanni Garcia  
3 and Manuel Lopez as to the remaining two prints back in 2006.

4 Meghan Clement from LabCorp, a private DNA laboratory in North Carolina,  
5 testified that her laboratory conducted testing on the swab of reddish substance and  
6 determined that the substance was not blood and contained no DNA.

7 After Defendant was taken into custody, Maceo obtained was then able to compare  
8 his prints to L1 and L2 on the Makarov 9mm pistol. Maceo identified Defendant's right ring  
9 finger on the upper left side of the grip (L1). She also identified Defendant's right palm  
10 print, the webbing between the thumb and the index finger, on the back strap of the gun just  
11 above the grip (L2). Maceo demonstrated that the print on the back strap is consistent with  
12 holding the firearm in a firing position, and the location of the print on the upper grip could  
13 be consistent with placing the gun in the toilet in the position in which it was found. She  
14 testified that she saw no evidence of overlapping prints at the location of the two (2) latent  
15 prints she identified to Defendant.

## 16 **ARGUMENT**

### 17 **I. THERE IS NO BASIS TO SET ASIDE THE JURY'S VERDICT**

18 Subsection 2 of NRS 175.381 states, in part:

19 The court may, on a motion of a defendant or on its own motion,  
20 which is made after the jury returns a verdict of guilty, set aside  
21 the verdict and enter a judgment of acquittal if the evidence is  
insufficient to sustain a conviction. . . .

22 The following is the standard for the review of the sufficiency of the evidence:

23 This court has stated that in a criminal case where the jury has  
24 arrived at a guilty verdict, the relevant inquiry is "whether, after  
25 viewing the evidence in the light most favorable to the  
prosecution, any rational trier of fact could have found the  
essential elements of the crime beyond a reasonable doubt."

26 Milton v. State, 111 Nev. 1487, 1491, 908 P.2d 684 (1995) (murder case), *quoting* Koza v.  
27 State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984) (murder case) and Jackson v. Virginia, 443  
28 U.S. 307, 319, 99 S.Ct. 2781 (1979).

1 Even where a Defendant contests the evidence and presents his own case, the jury is  
2 free to reject the defendant's version of events. As the Nevada Supreme Court held in  
3 Cunningham v. State, 113 Nev. 897, 944 P.2d 261, 268 (1997):

4 We further hold that sufficient evidence exists overall to support  
5 his murder conviction. Although Cunningham contested the  
6 evidence and presented impeachment witnesses, "[s]uch  
7 conflicting testimony addresses the sound discretion of the  
8 jury.... The jury is at liberty to reject the defendant's version of  
9 events."

10 Cunningham v. State, 113 Nev. 897, 944 P.2d 261, 268 (1997) (murder case), *quoting* Porter  
11 v. State, 94 Nev. 142, 146, 576 P.2d 275, 278 (1978). *See also*, Doyle v. State, 112 Nev.  
12 879, 921 P.2d 901, 910 (1996) ('it is the jury's function, not the reviewing court, to assess  
13 the weight of the evidence and determine the credibility of witnesses. Walker v. State, 91  
14 Nev. 724, 726, 542 P.2d 438, 438-39 (1975).

15 In order to evaluate and weigh the testimony, the jury can rely upon circumstantial  
16 evidence:

17 [A] jury may reasonably rely upon circumstantial evidence; to  
18 conclude otherwise would mean that a criminal would commit a  
19 secret murder, destroy the body of the victim, and escape  
20 punishment despite convincing circumstantial evidence against  
21 him or her . . . .

22 State v. Rhodig, 101 Nev. 608, 610, 707 P.2d 549, 550 (1985), *quoting* Wilkins v. State, 96  
23 Nev. 367, 374, 609 P.2d 309, 313 (1980) (murder case). *See also*, Cunningham v. State, 113  
24 Nev. 897, 944 P.2d 261, 268 (1997) *quoting* United States v. Thurston, 771 F.2d 449, 452  
25 (10th Cir. 1985) (holding that "[c]ircumstantial evidence is entitled to the same weight as  
26 that given to direct evidence in determining the sufficiency of the evidence to support a  
27 verdict of conviction").

28 The Nevada Supreme Court has emphasized the following:

Moreover, it is exclusively within the province of the trier of  
fact to weigh evidence and pass on the credibility of witnesses  
and their testimony.

Lay v. State, 110 Nev. 1189, 1192, 886 P.2d 448, 450 (1994), *citing* Bolden v. State, 97 Nev.  
71, 73, 624 P.2d 20 (1981).



1 “Insufficiency of the evidence occurs where the prosecution has not produced a  
2 minimum threshold of evidence upon which a conviction may be based, even if such  
3 evidence were believed by the jury. Clearly, this standard does not allow the district court to  
4 act as a “thirteenth juror” and reevaluate the evidence and the credibility of the witnesses.”  
5 Evans v. State, 112 Nev. 1172, 1193-94, 926 P.2d 265, 278-79 (1996) (internal citations  
6 omitted).

7 Following the instructions and the testimony outlined above, the jury reasonably  
8 found Defendant guilty. This Court should not disturb that determination as Defendant fails  
9 to show that no rational trier of fact could have found Defendant guilty based on this  
10 evidence.

## 11 12 **II. DEFENDANT IS NOT ENTITLED TO A NEW TRIAL**

13 NRS 176.515 provides in pertinent part as follows:

- 14 1. The court may grant a new trial to a defendant if required as a  
15 matter of law or on the ground of newly discovered evidence.
- 16 2. If trial was by the court without a jury, the court may vacate  
17 the judgment if entered, take additional testimony and direct the  
18 entry of a new judgment.
- 19 3. Except as otherwise provided in NRS 176.0918, a motion for a  
20 new trial based on the ground of newly discovered evidence may  
21 be made only within 2 years after the verdict or finding of guilt.
- 22 4. A motion for a new trial based on any other grounds must be  
23 made within 7 days after the verdict or finding of guilt or within  
24 such further time as the court may fix during the 7-day period.

25 This statute is limited to situations where a new trial is “required as a matter of law or  
26 on the ground of newly discovered evidence.” McCabe v. State, 98 Nev. 604, 606, 655  
27 P.2d 536, 537 (1982); Porter v. State, 94 Nev. 142, 149, 576 P.2d 275, 280 (1975). A trial  
28 court’s decision not to grant a new trial will not be disturbed on appeal unless it is clearly an  
abuse of discretion. Sanborn v. State, 107 Nev. 399, 406, 812 P.2d 1279, 1284 (1991);  
Pacheco v. State, 81 Nev. 639, 640, 408 P.2d 715, 715 (1965); Lightford v. State, 91 Nev.  
482, 483, 538 P.2d 585, 586 (1975).

1 The Nevada Supreme Court has held that “other grounds” for a new trial exist under  
2 NRS 176.515(4) where the trial judge finds that the evidence of guilt is conflicting, and after  
3 an independent evaluation of the evidence, disagrees with the jury's verdict of guilty. Evans  
4 v. State, 112 Nev. 1172, 926 P.2d 265, 279 (1996), *citing* State v. Purcell, 110 Nev. 1389,  
5 887 P.2d 276 (1994); Washington v. State, 98 Nev. 601, 655 P.2d 531 (1982). We have  
6 explained that a conflict of evidence occurs where there is sufficient evidence presented at  
7 trial which, if believed, would sustain a conviction, but this evidence is contested and the  
8 district judge, in resolving the conflicting evidence differently from the jury, believes the  
9 totality of evidence fails to prove the defendant guilty beyond a reasonable doubt. State v.  
10 Walker, 109 Nev. 683, 685-86, 857 P.2d 1, 2 (1993). However, a district court lacks  
11 authority to grant a new trial based on insufficiency of the evidence; when there is truly  
12 insufficient evidence to convict, a defendant must be acquitted. Purcell, 110 Nev. at 1394-  
13 95, 887 P.2d at 279.

14 Defendant cites various bases under which he believes a new trial is required as a  
15 matter of law: (1) Melissa Gamboa’s previous identification of Defendant, (2) The State’s  
16 ability to call Jonathan Harper to testify, (3) Prosecutorial misconduct with regard to Edshel  
17 Calvillo being compelled to testify via material witness warrant, (4) Alleged incomplete  
18 chain of custody of a swab of non-existent DNA, (5) Prejudice from the State proceeding  
19 with a gang enhancement, (6) Conflicting evidence, and (7) Cumulative error. The  
20 arguments should be independently reviewed.

21 **A. Melissa Gamboa’s previous identification**

22 Defendant’s first assignment of error is that (1) the state should not have been allowed  
23 to “refer in any way” to Gamboa’s identification of the Defendant at preliminary hearing and  
24 (2) the State improperly bolstered that identification by showing Gamboa Defendant’s 2008  
25 booking photo after defense “objected strenuously.” The State will address the latter  
26 complaint first. Contrary to Defendant’s recollection of the trial, Gamboa was NOT shown  
27 the 2008 booking photo of Defendant. Gamboa testified and was cross examined on  
28 Wednesday, July 10, 2013. On the morning of July 11, 2013, the State obtained Defendant’s

1 2008 booking photo, printed it, and had it marked as State's Proposed Exhibit 111. Thus  
2 there was absolutely no mention of State's Exhibit 111 during Gamboa's testimony nor any  
3 "strenuous objection" by the defense thereto as it simply did not yet exist.

4 With regard to reference to Gamboa's prior identification at preliminary hearing,  
5 Defendant's memory of the trial is also somewhat faulty. The State asked Gamboa if she  
6 saw the shooter in court at trial. When Gamboa stated she did not, the State merely asked  
7 Gamboa if she had identified the shooter previously in court at an earlier time. It was  
8 actually the Defense who elicited from Gamboa that the person Gamboa identified at the  
9 time was the Defendant Evaristo Garcia.

10 However, even if it was the State who elicited this testimony, there is simply no  
11 authority supporting the position that it would have been improper. Defendant rather  
12 complains that this Honorable Court ruled wrongly when it denied his motion to suppress  
13 identification in October of 2012. This argument makes no sense to the State, as the Motion  
14 filed by Defendant on September 25, 2012, and the arguments held on October 30, 2012  
15 sought to **prevent** Gamboa from identifying Defendant at trial. As Gamboa was actually  
16 unable to do so, this argument is moot.

17 To the extent that Defendant is perhaps attempting to argue that This Honorable Court  
18 should have found that the preliminary hearing identification was unduly suggestive and  
19 therefore should have not been mentioned at all during trial, the argument is without merit.

20 Not surprisingly, the defendant cites no authority that an in court identification at  
21 preliminary hearing is within the ambit of "suggestive pre-trial identification." There is  
22 none. The reason that an in court identification is not subject to the same considerations as a  
23 street show-up or a photo-lineup is because in a preliminary hearing, unlike those situations  
24 (and unlike a grand jury proceeding) the witness' identification can be tested by the  
25 defendant's counsel through cross-examination.

26 In Baker v. State, 88 Nev. 369, 370, 498 P.2d 1310 (1972), Defendant complained  
27 that the preliminary examination deprived him of due process in violation of the Fourteenth  
28 Amendment, by exposing him to identification in a prejudicially suggestive grouping,

1 contrary to Stovall v. Denno, 388 U.S. 293, 87 S.Ct. 1967, 18 L.Ed.2d 1199 (1967). He  
2 requested a new trial on appeal where an in court identification would be prohibited. The  
3 Court declined to rule in Defendant's favor.

4 Baker then took his case to the federal courts. In Baker v. Hocker, 496 F.2d 615 (9th  
5 Cir. 1974), the Court of Appeals for the Ninth Circuit, affirming the District Court's denial  
6 of petition for writ of habeas corpus, stated that the defendant failed "to clear even the first  
7 hurdle" of a Stovall violation. The defendant had not been identified in an earlier physical  
8 lineup, but was identified at preliminary hearing, where he was seated between the two co-  
9 defendants who had been identified in that physical lineup. The court held that the risk of a  
10 mistaken identification at preliminary hearing becoming "fixed" and tainting trial  
11 identification "is far less present in the court proceeding because, as here, the identification  
12 can be immediately challenged by cross-examination." 496 F.2 at 617.

13 The Ninth Circuit further considered the issue, and reaffirmed Baker, in Johnson v.  
14 Sublett, 63 F.3d 926 (9th Cir 1995), cert. denied, 516 U.S. 1017, 116 S.Ct. 582). In so  
15 affirming the court stated:

16 While conceding that courtroom procedures are undoubtedly  
17 suggestive, we stress that only "unnecessary" or "impermissible"  
18 suggestion violates due process. We balanced the state's strong  
19 interest in conducting the court procedure against the dangers of  
misidentification, which were already mitigated by cross-  
examination, and held that the suggestive character of courtroom  
logistics was not unnecessarily suggestive.

20 63 F.3d at 929.

21 As early as 1969, the Nevada Supreme Court held, in Craig v. State, 85 Nev. 130, 451  
22 P.2d 365 (1969) that a defendant's claim that he was prejudiced by being identified at a  
23 preliminary hearing without having had a lineup was without merit. The court added that the  
24 nature of the prejudice he claimed was not clear. Id.

25 A year later, the court implied that testimony at preliminary hearing did not constitute  
26 a "pre-trial" identification. In Sanchez v. State, 86 Nev. 142, 143, 466 P.2d 670, 671 (1970),  
27 the court indicated in dicta that it considered pre-trial identification by a robbery victim and  
28 the subsequent preliminary hearing testimony of that victim as two different things.

1 In Lamb v. State, 96 Nev. 452, 454, 611 P.2d 206, 207 (1980), the court implicitly  
2 recognized the difference between an in-court and out-of-court identification, by rejecting  
3 that defendant's claim that trial identification was based upon an arguably improper photo-  
4 lineup by stating, inter alia, that the witness' preliminary hearing identification was  
5 unequivocal.

6 In Hicks v. State, 96 Nev. 82, 84, 605 P.2d 219, 220 (1980), the court again  
7 distinguished in-court identifications (at preliminary hearing or trial) from out-of-court  
8 identifications which may have been suggestive.

9 In the hearing regarding Defendant's "Motion to Suppress In-Court Identification  
10 Pursuant to NRS 174.215(1)" held on October 30, 2013, this Honorable Court correctly  
11 found that the preliminary hearing identification was not unduly suggestive:

12 All right. The Court is going to make an independent finding  
13 that there was a reliable basis based on one of her statements to  
14 police that she had observed him, that she could identify him,  
that he was wearing a gray sweatshirt.

15 She stated in at least one statement that she could. Apparently  
there's some – she's off on her other statement.  
16 She testified at the preliminary hearing that she had recognized  
the defendant despite the fact that, um, you know, we say three  
17 years later, that's because he went to Mexico and had to be  
extradited back.

18 So for that reason it is three years. So I want the record to be  
19 clear, it's not for any government misconduct that it took three  
years to get him back for a prelim.

20 He comes back. She testified under oath at prelim that she  
21 recognized him while he was sitting in the box. Nobody had  
talked to her. She recognized him.

22 And there's no other – what the Court gleans from the record to  
23 show that this is unduly suggestive. This is what happens in,  
quite frankly, most cases.

24  
25 And the defense has the opportunity to cross-examine this  
26 witness regarding the light hair, regarding the time that his face  
may have been covered, regarding three years passage has gone  
27 by, certainly not prevented from cross-examining, just like any  
other identification case.

28 Reporter's Transcript of Proceedings, October, 30, 2013, p. 10-11.

1 Defendant took full advantage of his ability to cross-examine Gamboa about the  
2 inconsistencies in her statements, and her identification of the Defendant as “the person  
3 seated at counsel table.” Additionally, this Court did not in any way curtail his ability to  
4 cross examine her regarding this identification. Additionally, the State in fact refrained from  
5 eliciting from Gamboa where Defendant actually was when she recognized him at the  
6 preliminary hearing, as Defendant was seated with the rest of the in custody defendants at  
7 that time. He should not be granted a new trial.

8 **B. Jonathan Harper**

9 Defendant seems to be claiming that had the Court been aware of Harper’s previous  
10 inconsistent statements, this Honorable Court would not have denied his motion to subject  
11 Harper to a competency evaluation and hold an evidentiary hearing to determine his  
12 competency. The State actually made this Honorable Court aware of ALL of Harper’s  
13 statements in its opposition filed on October 23, 2012. The State’s opposition stated as  
14 follows:

15 On April 1, 2006, Harper was interviewed by Detective Mogg at  
16 his mother’s home regarding the instant case. Though  
17 communicating slowly, Harper gave Detective Mogg the  
18 following account of what occurred on February 6, 2006: On the  
19 night of the shooting, Harper was with Puppet Stacy and “E”.  
20 “E” is the cousin of “Chabie” whose real name is Sal. Jonathan  
21 could not pronounce the full name of E, so his mother provided  
22 the name “Evaristo”. They were at Sal’s house when Little One  
23 called them to back him up. Harper and E were picked up by  
24 Puppet. Puppet had a gun in his waistband and told E to hold it.  
25 Puppet drove them to the high school where they were supposed  
26 to fight gang member from Brown Pride. Once they were at the  
27 school, everyone began fighting. A “skinny guy” took off  
28 running. Little One and E chased the “skinny guy” across  
Washington. Little One asked E for gun, and then said “shoot  
him.” E ran into the middle of the street and “dumps clip” (shot  
all of the bullets). Harper saw the kid fall.

Harper testified during the Preliminary Hearing in this case on  
December 18, 2008 as follows:

Harper is a former a member of Puros Locos recruited by  
Salvador Garcia in 2005. (PHT 8, 30). Harper testified that in  
order to gain entry into Puros Locos, he had to “get in fights”.  
(PHT 9). As a member of Puros Locos, he would sell drugs  
(PHT 28, 29), place graffiti (PHT 28), and get into fights (PHT 9,

1 27). Harper was an active member of Puros Locos in February  
2 of 2006 when this shooting occurred. (PHT 7).

3 On the night of the shooting, Harper was at Salvador Garcia's  
4 home (PHT 11). He left Salvador's home in an El Camino  
5 vehicle driven by Manuel, "Puppet", with Defendant, and a girl  
6 named Stacy to go to Desert Pines High school for a fight. (PHT  
7 25). Harper testified that they were supposed to fight another  
8 gang called Brown Pride. (PHT 26, 41).

9 Prior to entering the car, Defendant obtained a gun from Puppet.  
10 (PHT 20, 44-46). Once they arrived at Desert Pines High  
11 School, Giovanni (Little One) Garcia was already fighting in a  
12 circle. (PHT 14, 43). Jonathan and Defendant exited the car and  
13 began to fight in the same circle. (PHT 14-15). Jonathan  
14 testified that the person he personally was fighting with was the  
15 leader of Brown Pride, Diablo. (PHT 26).

16 Jonathan then saw a young Hispanic male run out of the circle  
17 being chased by Defendant and Giovanni. (PHT 15-16). As  
18 Defendant and Giovanni chased the victim, they began fighting  
19 over the gun – Giovanni was demanding the gun, and defendant  
20 was saying "I got it." (PHT 16-17, 32-35). Defendant then  
21 cocked the gun and shot at the victim several times. (PHT 35).  
22 Defendant later told Jonathan that he shot the victim because  
23 Little One provoked him. (PHT 55-56).

24 While this case was pending in District Court, the State brought  
25 the case before the Clark County Grand Jury in order to charge  
26 Manuel Lopez (Puppet) as a co-defendant. Harper testified  
27 before the Grand Jury as follows:

28 In 2006, Jonathan Harper was a member of a gang called Puros  
Locos, and went by the moniker "Silent". GJT1, 101-102, 106.  
Other members of Puros Locos at the time were Giovanni  
Garcia, who used the moniker "Little One"; Salvador Garcia,  
who went by "Boxer"; Edshel Calvillo, who went by "Danger";  
Manual Lopez, who used the moniker "Puppet"; and Evaristo  
Garcia, who went by "E". GJT1, 102-106.

Harper became a member of the gang through his friend Edshel  
Calvillo by participating in fights and tagging "PL" in various  
places until he was finally "jumped into" the gang. GJT1, 106,  
123.

On February 6, 2006, he participated in a fight at a high school as  
part of the gang. GJT1, 107. Harper was at Salvador Garcia's  
home and was told that he was going to fight a gang called  
"Brown Pride". Harper rode to the school in Lopez's El Camino  
with Lopez, Defendant, Edshel, and Lopez's girlfriend. GJT1,  
108-109.

Harper testified that no one discussed a gun. GJT1, 109. Harper  
had previously given a statement to police that Puppet had a  
"nine" and "told E to hold it." GJT1, 111.

1 As they parked in the parking lot, Harper saw between fifteen  
2 and twenty people outside the school fighting. All four of them  
3 then got out of the car, and Harper saw Giovanni fighting.  
4 Harper then joined the fight by fighting with a person named  
"Diablo". GJT1, 112-113. Other members of Puros Locos then  
showed up and joined the fight. GJT1, 115.

5 The fight started to break up and a young kid ran out of the  
6 circle. Defendant and Giovanni then ran out of the circle after  
7 him. Defendant and Giovanni were arguing. GJT1, 116-117.  
8 Harper testified that he did not remember what they were arguing  
9 about. GJT1, 117. Harper had previously told detectives that  
10 Defendant and Giovanni were arguing over a gun. GJT1, 117.

11 Harper testified that he then heard gunshots, but did not see  
12 anything. GJT1, 119. Harper previously told detectives that E  
13 ran into the middle of the street and emptied the gun shooting at  
14 the kid. GJT1, 119.

15 Harper testified that he did not remember what Defendant was  
16 wearing. GJT1, 120. Harper previously told detectives that  
17 Defendant was wearing a gray hooded sweatshirt. GJT1, 121.

18 Harper also testified that he does not remember speaking with  
19 Defendant after the shooting. GJT1, 122. Harper previously  
20 stated that Defendant told him that he felt like Giovanni  
21 provoked him into shooting the kid, and that after the shooting he  
22 put the gun in a toilet that was in the street. GJT1, 122.

23 Harper identified Defendant and Manual Lopez in photo lineups  
24 for Detective Mogg. GJT2, 7-9.

25 "State's Opposition to Defendant's Motion for Evidentiary Hearing to Determine  
26 Competency of State's Primary Witness and Order Compelling Medical Records and  
27 Psychological Examination and Testing to Determine Memory Loss", filed October 23,  
28 2012, p. 2-6.

29 N.R.S. 50.015 states that "[e]very person is competent to be a witness except as  
30 otherwise provided in this Title." Nowhere in the remaining sections are persons who  
31 express failure to recall events they once knew addressed separately; nor are persons who  
32 provide inconsistent statements over a span of several years. Thus, it is obvious that these  
33 persons are presumed competent until **shown to be otherwise**.

34 The Supreme Court in subsequent cases dealing with the question of competence did  
35 not change the underlying rationale in witness competency. In Wilson v. State, 96 Nev. 422,



1 610 P.2d 184 (1980), the Court in finding an eight-year-old competent reiterated that the  
2 standard of competence is "that the child must have the capacity to receive just impressions  
3 and possess the ability to relate them truthfully." 96 Nev. at 423. The Court went on to  
4 make an important point regarding inconsistencies in testimony. The Court stated that  
5 "inconsistencies in testimony go to the weight to be given the evidence by the jury rather  
6 than to the question of competence." Id.

7 While Harper is not a child witness, the same standard of competency remains the  
8 same. Harper must have the capacity to receive just impressions and relate them truthfully.  
9 "When the competency of any witness has been questioned, it is within the discretion of the  
10 trial court to consider factors relative to qualification and to determine if such person is  
11 competent to testify." Shuff v. State, 86 Nev. 736, 738, 476 P.2d 22, 24 (1970).

12 Questions of the competency of witnesses in criminal trials must be determined in  
13 accordance with the general principle enunciated in NRS 175.221 (2), which states, "[t]he  
14 admissibility of evidence and the competency and privileges of witnesses shall be governed,  
15 except when otherwise provided by statute, by the principles of the common law as they may  
16 be interpreted by the courts of the State of Nevada in the light of reason and experience."

17 In Fox v. State, 87 Nev. 567 (1971), the Nevada Supreme Court examined the  
18 competency of a witness who was a drug addict, and admitted to consuming drugs the  
19 evening prior to his testimony.

20 In the case we are here considering, Trial Judge William R.  
21 Morse made the following explanation for permitting Boley's  
22 testimony to stand:

23 'THE COURT: Record will show that in the court's opinion \* \* \*  
24 the witness didn't appear to me to be high on narcotics. He  
25 handled himself pretty well under cross examination, in fact,  
26 very well on expert cross examination and as many times as you  
27 (defense counsel) tried to cross him up and throw rapid-fire  
28 questions at the man, he did fairly well. \* \* \*

29 \*\*\*

30 'THE COURT: In fact, very good, and handled himself in a  
31 manner that some people who \* \* \* hadn't had a drug can't.

32 \*\*\*

33 'THE COURT: \* \* \* I see nothing in any statute that says that  
34 the witness \* \* \* Mr. Boley is incompetent to testify, and it's up

1 to the jury to determine his credibility and \* \* \* they saw him,  
2 saw his actions, saw his demeanor.'

3 The district judge gave defense counsel wide latitude in his  
4 cross-examination of Witness Boley, and he also gave a  
5 cautionary instruction to the jury regarding the credibility and  
6 weight to be given the testimony of an informer or an addict.  
7 Wide latitude on cross-examination and cautionary instructions  
8 are necessary in situations such as faced the court below. Cf.  
9 *Crowe v. State*, supra.

10 We conclude that the district judge did not abuse his discretion in  
11 refusing to order a physical examination of Witness Boley and  
12 that under the facts presented it was proper to permit Boley's  
13 testimony to stand.

14 Fox v. State, 87 Nev. 567, 569-72, 491 P.2d 35, 36-37 (1971).

15 In this case, this Honorable Court reviewed all of the facts, and determined that there  
16 was no basis to hold a competency hearing:

17 All right. The motion for evidentiary hearing to determine  
18 competency is going to be denied.

19 As an – as an – just as an aside, our last murder case, the gal got  
20 shot in the head two times. The other guy was killed. And she  
21 was the best witness of the whole trial, despite her being shot in  
22 the head two times.

23 So when I gleaned the record on this, clearly he could relate, and  
24 that's – that's competency. Can they perceive an event and can  
25 they relate it back as far as testimony, which when I gleaned  
26 from the record here, he's competent.

27 Now, whether or not, you know, he's getting contradictory  
28 statements because this is a gang case and he's been shot in the  
head and there's intimidation is a whole other ball game.

But a competency hearing on somebody that's been shot in the  
head, the Court doesn't see the need based on the record that's  
before the Court.

What I read, clearly he appears to be competent. Does he give  
contradictory statements? Yes. And you all can deal with that  
through cross examination.

...

I'll do it without prejudice. If I find him to be a babbling baby  
up on the stand, and I need to excuse the jury and have a  
competency hearing, I'll do that.

But I'm not going to, based on your expert's claim.  
I already gleaned the record. With all due respect, he appears to  
be competent.

1 Reporter's Transcript of Proceedings October 30, 2012, 33-34, 37.

2 Nothing in Harper's testimony during trial indicated that he could not perceive an  
3 event and relate back that perception. Defendant did not see the need during trial to ask the  
4 Court to excuse the jury to hold a competency hearing. In fact, on cross-examination,  
5 Harper responded to counsel's question about whether he handles stressful situations well,  
6 by stating that he didn't think that anyone does. Clearly Harper was not a babbling baby  
7 regurgitating statements fed to him by the State as Defendant asserts. In truth, given Harper's  
8 statement to Defendant's investigator and his demeanor over the years, the State had no idea  
9 what Harper was going to say on the witness stand, and was prepared to have to impeach  
10 him with his prior statements and testimony – just as it had during the grand jury proceeding.

11 Additionally, nothing occurred at trial that indicated that this Honorable Court  
12 wrongly denied the motion to compel the witness to undergo a psychiatric evaluation for  
13 competency:

14 As far as the – as far as the – a witness to undergo a psychiatric  
15 evaluation, the Court's going to deny that for the reasons set  
16 forth in the State's opposition and including Kirshner (phonetic)  
17 versus State as well as Abbott (phonetic) versus State.  
There's no need to give an independent psychiatric evaluation to  
this witness.

18 Reporter's Transcript of Proceedings October 30, 2012, 34.

19 Authority in Nevada for compelling a witness to undergo a psychiatric evaluation is  
20 centered mostly on child victims of sexual abuse. The State asserts that, although a regular  
21 State witness is not a child victim, the same analysis applies. In Abbott v. State, 138 P.3d  
22 462 (2006), the Nevada Supreme Court departed from a two year old precedent by  
23 overruling State v. District Court (Romano), 120 Nev. 613, 97 P.3d 594 (2004). In doing so,  
24 the Court returned to the requirements it previously set forth in Koerschner v. State, 116  
25 Nev. 1111, 13 P.3d 451 (2000), reasserting that a trial judge should order an independent  
26 psychological or psychiatric examination of a child victim in a sexual assault case only if the  
27 defendant presents a compelling reason for such an examination. Defendant has made no  
28 such showing.

1 In Koerschner, the Court stated:

2 The primary source of ambiguity in our decisions in these cases  
3 centers on the second Keeney factor, i.e., whether the victim is  
4 not shown by compelling reasons to be in need of protection.  
5 See Griego, 111 Nev. at 450, 893 P.2d at 999. We now conclude  
6 that, to the extent Keeney shifted the burden in these matters  
7 from the defendant to the State, it should be overturned. In this,  
8 we return to the statement in Washington that “[t]he trial judge  
9 should order an examination if the defendant presents a  
10 compelling reason for such an examination. Washington v.  
11 State, 96 Nev. 305, 307, 608 P.2d 1101, 1102 (1980).

12 We now also hold that whether a compelling need exists for such  
13 an intrusion is not a factor to be considered along with the other  
14 three factors. Rather, it is the overriding judicial question which  
15 must be resolved based upon the other three factors. Thus,  
16 compelling reasons to be weighed, not necessarily to be given  
17 equal weight, involve whether the State actually calls or obtains  
18 some benefit from an expert in psychology or psychiatry,  
19 whether the evidence of the offense is supported by little or no  
20 corroboration beyond the testimony of the victim, and whether  
21 there is a reasonable basis for believing that the victim’s mental  
22 or emotional state may have affected his or her veracity.

23 Id. at 1116 – 1117, 455.

24 In Lickey v. State, 108 Nev. 91, 827 P.2d 824 (1992) the court ruled that it is error to  
25 permit the State to have a psychologist testify as to the veracity of a victim. Id. at 826. The  
26 Court went on to cite Townsend v. State, 103 Nev. 113, 734 P.2d 705 (1987) by recalling  
27 that they unequivocally stated that it was improper for an expert to comment directly on  
28 whether the victim’s testimony was truthful, because that would invade the prerogative of  
the jury. Id. at 827.

As the State argued in its opposition to Defendant’s motion, a review of the factors  
presented by Koerschner demonstrates that the Defendant failed to meet the burden  
necessary to facilitate an independent psychological examination of Jonathan Harper. With  
regard to the first prong, the State did not retain or call an expert in the field of psychology  
or psychiatry in this case for the purpose of examining Harper psychologically.

Pursuant to the second prong of Koerschner, the Defendant did not show that  
evidence of the crimes had little or no corroboration beyond the testimony of the witness in  
this case. In the instant case, evidence of the crimes was corroborated. In fact, this

1 Honorable Court instructed the jury that it could not convict Defendant based on Harper's  
2 testimony unless his testimony was in fact corroborated. Every witness who observed the  
3 shooter described the shooter as a young Hispanic male wearing a gray hoodie. Melissa  
4 Gamboa stated that she observed a gray El Camino arrive on scene carrying three males and  
5 a female and identified Defendant as the shooter at the preliminary hearing. Harper stated  
6 that Defendant told him he put the gun in a toilet, and that was indeed where the gun was  
7 located by police. Harper stated that Defendant got the gun from Manuel Lopez; Manuel  
8 Lopez admitted to police that he gave the gun to the shooter. Edshel Calvillo also relayed to  
9 police that Defendant admitted to him that he shot the kid because "Little One told him to."  
10 Moreover, Defendant's prints were found on the murder weapon, and Defendant fled to  
11 Mexico.

12 Defendant was afforded the opportunity to cross-examine Harper and to present jury  
13 instructions regarding credibility. The jury in this case did hear about Harper's inconsistent  
14 testimony and prior inconsistent statements. Defendant had full opportunity to cross  
15 examine Harper and did avail himself to that end. Additionally, Defendant was allowed to  
16 call upon the expert services of Dr. Norton Roitman to challenge Harper's credibility. It was  
17 a matter for the Jury, and no one else, to determine Harper's credibility. See Lay, supra.  
18 Defendant is not entitled to a new trial simply because he did not like the way Harper  
19 testified or the way the Court ruled months prior to trial.

20 **C. Edshel Calvillo**

21 Defendant asserts in his brief that the State deliberately paraded Edshel Calvillo  
22 before the jury in chains in an effort to bolster his credibility.

23 It should first be noted that the State felt that any attempt to obscure Calvillo's  
24 custody status could be seen as improper vouching. See Lisle v. State, 113 Nev. 540, 553,  
25 937 P.2d 473, 481 (1997) (Vouching may occur in two ways: the prosecution may place the  
26 prestige of the government behind the witness or may indicate that information not presented  
27 to the jury supports the witness's testimony.")

28 Defendant was in the custody of the Clark County Detention Center and was

1 transported to Court by corrections officers pursuant to their own procedures. The manner in  
2 which corrections officers transport an inmate to Court is not within the State's control.

3 Edshel Calvillo was noticed as a witness by the State in the Indictment filed on March  
4 19, 2010. A subpoena was issued for the most recent trial setting on May 13, 2013. The  
5 subpoena (like all trial subpoenas for district court) informed Calvillo to be present on the  
6 first day of trial, Monday, July 8, 2013 at 12:00 p.m. (noon).

7 Edshel Calvillo was served a copy of his subpoena by DA Investigator Jamie Honaker  
8 on June 24, 2013. Edshel was to contact DA Investigator Honaker to arrange a pretrial  
9 conference, and failed to do so. After multiple attempts, Honaker was able to reach Edshel  
10 Calvillo on July 1, 2013 and schedule a pretrial conference for July 5, 2013 at 2:00 p.m.  
11 Honaker contacted Edshel Calvillo on July 5, 2013, who indicated he would be running late  
12 for the pretrial conference. Calvillo never appeared for pretrial conference, and stopped  
13 answering his telephone. Moreover, Edshel Calvillo's mother, Maria and his brother Bryan  
14 also stopped answering their phones. As he failed to appear for his pretrial conference, and  
15 will not answer calls, the State was unable to give Edshel Calvillo an estimated time to  
16 appear for testimony.

17 Pursuant to Edshel Calvillo's subpoena, he was to appear before this Honorable Court  
18 today, July 8, 2013 at noon. Honaker waited outside the Courtroom on July 8, 2013 for  
19 Calvillo; Calvillo failed to do so despite giving Honaker his oral promise to appear under  
20 this subpoena. The State then filed an Ex Parte Application for Issuance of a Material  
21 Witness Warrant, which was granted by this Court later during the afternoon of July 8, 2013.

22 Calvillo was arrested on the material witness warrant and booked into the Clark  
23 County Detention Center on the morning of July 9, 2013. He was brought to the Court for  
24 testimony that same afternoon. Upon the request of Defendant, this Honorable Court  
25 concluded proceedings following the State's direct examination to afford Defense Counsel  
26 the opportunity to speak with Calvillo the following morning. This Court even ensured with  
27 corrections officers that Calvillo would be made available to them. Prior to the start of trial  
28 the following morning, counsel for the Defense informed the Court that they were able to

1 meet with and speak to Calvillo prior to commencing cross examination.

2 To the extent that Defendant claims “newly discovered evidence” based on hearing  
3 for the first time at trial that Calvillo actually went to the school himself, this argument is  
4 wholly without merit and belied by the record.

5 In Callier v. Warden, 111 Nev. 976, 901 P.2d 619 (1995), this Court reiterated the  
6 general standard for a new trial based on newly discovered evidence as follows (1) the  
7 evidence must be newly discovered; (2) it must be material to the defense; (3) it could not  
8 have been discovered and produced for trial even with the exercise of reasonable diligence;  
9 (4) it must not be cumulative; (5) it must indicate that a different result is probable on retrial;  
10 (6) it must not simply be an attempt to contradict or discredit a former witness; and (7) it  
11 must be the best evidence the case admits. *See also* Oliver v. State, 85 Nev. 418, 424, 456  
12 P.2d 431, 435 (1969).

13 In his Preliminary Hearing testimony on December 18, 2008, Jonathan Harper  
14 testified that Salvador, Edshel, Brian, and possibly Adrian were on their way to the school  
15 but had not arrived yet when the fight was taking place. Reporter’s Transcript of  
16 Preliminary Hearing (PHT) 13-14. Thus, the fact that Calvillo was on his way to the school  
17 to participate in the fight is not newly discovered at all.

18 To be fair, the Court reporter for the preliminary hearing transcribed the name  
19 “Edshel” phonetically as “Echo”. To the extent that Defendant may claim that his **current**  
20 counsel was not present for the preliminary hearing and therefore did not comprehend the  
21 transcription, Defendant still fails to meet the standard set forth in Callier. Defendant’s  
22 current counsel could easily have discovered that “Echo” in the transcript meant “Edshel”  
23 through an exercise of reasonable and very minimal investigation. Defendant himself was  
24 present at the hearing and heard the testimony; his present counsel (who demonstrated an  
25 acute knowledge of the contents of Harper’s testimony throughout pretrial motions and the  
26 trial) could certainly have asked Defendant who “Echo” was. Moreover, Harper was  
27 interviewed by Defendant’s investigator; any confusion over who “Echo” was could have  
28 been asked of Harper at that time. Defendant fails to overcome the third prong of the Callier

1 test.

2 Thus, Defendant is not entitled to a new trial based on his claim of “newly  
3 discovered” evidence.

4 **D. Swab of Reddish Stain**

5 It is not necessary to negate all possibilities of substitution or tampering with an  
6 exhibit in order to satisfy the chain of custody requirement, nor to trace its custody by  
7 placing each custodian upon the stand. It is sufficient to establish only that it is reasonably  
8 certain that no tampering or substitution took place and the doubt, if any, goes to the weight  
9 of the evidence. Hughes v. State, 116 Nev. 975, 981, 12 P.3d 948, 952 (2000); Geary v.  
10 State, 91 Nev. 784, 794, 544 P.2d 417, 424 (1975), *quoting* Sorce v. State, 88 Nev. 350, 352-  
11 53, 497 P.2d 902, 903 (1972).

12 Defendant claims that the State was under some sort of obligation to admit the actual  
13 swab of the reddish stain found on the Imez 9mm Makarov pistol in this case. He is  
14 attempting to create issues that do not exist. Lab Corp Director Meghan Clement testified at  
15 trial that the reddish stain was submitted to her laboratory in a sealed condition by the  
16 LVMPD and that it was analyzed. She testified that the reddish stain was not blood and  
17 contained no DNA. LVMPD Latent Print Section Manager Alice Maceo testified at trial that  
18 she was the one who requested that the apparent stain be swabbed for DNA and personally  
19 watched Berch Henry, who has long since retired from the LVMPD DNA Laboratory, swab  
20 the reddish stain from this pistol that was in her custody at that time. The evidence envelope  
21 containing the reddish stain was still in a sealed and untampered condition at the time of  
22 trial. As held by the Nevada Supreme Court in Sorce v. State, “It is not necessary to negate  
23 all possibilities of substitution or tampering with an exhibit in order to satisfy the chain of  
24 custody requirement, nor to trace its custody by placing each custodian upon the stand.” The  
25 State sufficiently addressed this issue at trial and did not err by not admitting the actual swab  
26 of non-existent blood containing non-existent DNA.

27 **E. Gang Enhancement**

28 Under the original Case No. in this case C226218, Defendant filed a Petition for Writ



1 of Habeas Corpus challenging the gang enhancement, which was set for hearing on March 3,  
2 2009 and which the Court denied in its Order filed on March 9, 2009. After the State  
3 presented the case to the Clark County Grand Jury on March 4, 2010 and March 18, 2010  
4 and the Grand Jury returned a true bill against Defendant and Co-Defendant Manual Lopez,  
5 Defendant filed a second Petition for Writ of Habeas Corpus challenging the gang  
6 enhancement, which was set for hearing on May 25, 2010 and which this Court denied on  
7 that date. Detective Michael Souder had testified as a Gang Expert at the grand jury  
8 proceedings. Except for the two Petitions for Writ of Habeas Corpus challenging the gang  
9 enhancement, which were both denied, the defense filed no other motions prior to the start of  
10 trial with reference to the introduction of any evidence regarding the gang enhancement.

11 On July 11, 2013 on the fourth day of trial, based on Defendant's objection on that  
12 date, the Court precluded the State's noticed gang expert Detective Michael Souder from  
13 testifying at the trial based upon the fact that no one testified that Defendant was a member  
14 of Puros Locos during the trial and that the power point presentation he had prepared was  
15 overly prejudicial. The State knew that based upon the current state of the law in the Nevada  
16 Supreme Court decision Origel-Candido v. State, 114 Nev. 378 (1998), that the State could  
17 not present sufficient evidence to sustain the gang enhancement without calling a Gang  
18 Expert. Therefore, the State felt required to withdraw the gang enhancement, which was  
19 done. The Court made findings during the hearing outside the presence of the jury that that  
20 the State is an ethical prosecutor and bring things because you think it's there (Trial  
21 Transcript Dated 7/11/13, Page 12), that the State proceeded in good faith (Trial Transcript  
22 Dated 7/11/13, Page 23), that it was not the Prosecution's fault as the State believed  
23 Defendant was in the gang (Trial Transcript Dated 7/11/13, Page 25), and that the State has  
24 not in any way acted in bad faith, has brought this in good faith (Trial Transcript Dated  
25 7/11/13, Page 26).

26 To the extent that Defendant claims that the State proceeded in bad faith with a gang  
27 enhancement in an effort to "sully the Defendant and the proceedings with gang references",  
28 this argument makes no sense as the only persons present at trial that were "sullied" were the

1 State's own witnesses. Contrary to statements made to police back in 2006, no witnesses  
2 testified that Defendant was a member of a gang.

3 Based on the discovery in this case, the State proceeded in good faith with regard to  
4 the gang enhancement and presenting gang related evidence at the trial. This Court  
5 specifically requested the State list references in the discovery where witnesses referred to  
6 Defendant belonging to the gang Puros Locos. First, in Edshel Calvillo's recorded statement  
7 on July 26, 2006, he said Evaristo Chucky was from my same gang, from PL, in the same  
8 gang as him (Page 4). PL stands for Puros Loco (Page 5).

9 In Jonathan Harper's April 1, 2006 recorded statement, he said they went to the  
10 school to fight with Brown Pride. He was in the gang Puros Locos, which goes by PL.  
11 Edshel, E, Puppet, Sal, leader was also in that gang (Page 7). He referred to Evaristo Garcia  
12 as E. Diablo from Brown Pride was fighting (Page 9). Diablo was identified as Jesus  
13 Alonzo, the decedent's sister's boyfriend and leader of Brown Pride (Page 22), who is now  
14 deceased and unable to testify at the trial in this matter. E was in our gang PL Puros Locos  
15 (Page 24).

16 Jonathan Harper testified at Preliminary Hearing that they were supposed to fight  
17 another gang called Brown Pride. (PHT 26, 41). Prior to entering the car, Defendant  
18 obtained a gun from Puppet. (PHT 20, 44-46). Once they arrived at Desert Pines High  
19 School, Giovanny (Little One) Garcia was already fighting in a circle. (PHT 14, 43).  
20 Jonathan and Defendant exited the car and began to fight in the same circle. (PHT 14-15).  
21 Jonathan testified that the person he personally was fighting with was the leader of Brown  
22 Pride, Diablo. (PHT 26).

23 Jonathan Harper testified before the Grand Jury that in 2006, he was a member of the  
24 gang Puros Locos and went by the nickname Silent (GJT1, 101-102, 106). Other members  
25 of Puros Locos at the time were Giovanny Garcia, who used the nickname Little One;  
26 Salvador Garcia, who went by Boxer; Edshel Calvillo, who went by Danger; Manuel Lopez,  
27 who used the nickname Puppet; and Evaristo Garcia, who went by "E" (GJT1, 102-106). On  
28 February 6, 2006, he participated in a fight at a high school as part of the gang (GJT1, 107).

1 Harper was at Salvador Garcia's home and was told that he was going to fight a gang called  
2 Brown Pride. Harper rode to the school in Lopez's El Camino with Lopez, Defendant,  
3 Edshel, and Lopez's girlfriend (GJT1, 108-109).

4 In his March 30, 2006 recorded statement, Manuel Lopez stated that Chucky ran with  
5 the set Puros Locos (Page 5). He also stated that Chucky was a member of the gang (Page  
6 31). In Giovanni Garcia's February 7, 2006 recorded statement, he said Melissa's boyfriend  
7 hit him up where he was from. Garcia told him he was from Puros Locos (Page 7).  
8 Melissa's boyfriend said he was Brown Pride (Page 8).

9 Crystal Perez testified at grand jury proceedings that the week before the shooting,  
10 she saw Jesus Alonzo go up to Giovanni Garcia and hit him up to see what gang he was  
11 from, that Giovanni said his gang was Puros Locos and Jesus said he was from Brown Pride  
12 (Grand Jury Transcript, Page 37-38).

13 Under NRS 193.168(1), a criminal gang enhancement may be added for "any person  
14 who is convicted of a felony committed knowingly for the benefit of, at the direction of, or  
15 in affiliation with, a criminal gang, with the specific intent to promote, further or assist the  
16 activities of the criminal gang." The criminal gang enhancement must be found beyond a  
17 reasonable doubt by the trier of fact. NRS 193.168(4)(b). The trier of the fact makes the  
18 decision as to whether the elements of the gang enhancement have been met.

19 The plain reading of the gang enhancement statute does not require that the state  
20 produce evidence of criminal convictions. NRS 193.168 provides for punishment for  
21 committing a felony crime "knowingly for the benefit of, at the direction of, or in affiliation  
22 with, a criminal gang, with the specific intent to promote, further or assist the activities of  
23 the criminal gang." NRS 193.168(1). Proving that the gang involved in the charged crime is  
24 a "criminal gang" is an element of the crime. NRS 193.168(8) defines a criminal gang as  
25 follows:

- 26 8. As used in this section, "criminal gang" means any combination of persons,  
27 organized formally or informally, so constructed that the organization will  
28 continue its operation even if individual members enter or leave the  
organization, which:  
(a) Has a common name or identifying symbol;

(b) Has particular conduct, status and customs indicative of it; and  
(c) Has as one of its common activities engaging in criminal activity punishable as a felony, other than the conduct which constitutes the primary offense.

The Nevada Supreme Court has held numerous times that statutes should be given their plain meaning, and has noted that:

It is well settled in Nevada that words in a statute should be given their plain meaning unless this violates the spirit of the act. Application of Filippini, 66 Nev. 17, 24, 202 P.2d 535, 538 (1949). Where a statute is clear on its face, a court may not go beyond the language of the statute in determining the legislature's intent. Thompson v. District Court, 100 Nev. 352, 354, 683 P.2d 17, 19 (1984); Robert E. v. Justice Court, 99 Nev. 443, 664 P.2d 957 (1983).

McKay v. Board of Sup'rs of Carson City, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986).

Here, there is no language in the statute finding that the common activity of the gang must be proven by way of actual convictions, as opposed to other forms of evidence. There is very little case law in Nevada which addresses the gang enhancement. One of the only cases that addresses the gang enhancement is Origel-Candido v. State, 114 Nev. 378, 956 P.2d 1378 (1998). That case discussed the sufficiency of testimony by the gang expert that felony activities the gang engaged in were felonious activities of the gang. The Court ultimately found the expert's conclusory testimony was insufficient. This would have been the perfect opportunity for the Court to discuss a requirement that certified judgments of convictions must be presented to satisfy the element of demonstrating that felonious activity is a primary activity of the gang. However, the Court found no such requirement that the State had to prove felony convictions in order to establish this element of the crime.

Additionally, the gang enhancement statute also discusses the admissibility of expert witness testimony. Subsection 7 provides:

7. In any proceeding to determine whether an additional penalty may be imposed pursuant to this section, expert testimony is admissible to show particular conduct, status and customs indicative of criminal gangs, including, but not limited to:

- (a) Characteristics of persons who are members of criminal gangs;
- (b) Specific rivalries between criminal gangs;
- (c) Common practices and operations of criminal gangs and the members of those gangs;

- (d) Social customs and behavior of members of criminal gangs;
- (e) Terminology used by members of criminal gangs;
- (f) **Codes of conduct, including criminal conduct**, of particular criminal gangs; and
- (g) **The types of crimes that are likely to be committed by a particular criminal gang** or by criminal gangs in general.

NRS 193.168 (emphasis added).

Clearly, the statute contemplates that evidence regarding the common activity of the gang will be provided through gang expert witness testimony. Defendant is erroneous in contending that the State must prove a certain number of convictions (or any convictions at all) to establish that engaging in felonious activity is one of the common activities of the gang. There is no such requirement in Nevada law.

#### **F. Conflicting Evidence**

“It is the fact finder’s function, not that of the court, to assess the weight of the evidence and determine the credibility of the witnesses.” Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998), (*quoting* McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992); *see also* Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221 (1979) (The Court held it is the function of the jury to weigh the credibility of the identifying witnesses); Azbill v. State, 88 Nev. 240, 252, 495 P.2d 1064, 1072 (1972) (In all criminal proceedings, the weight and sufficiency of the evidence are questions for the trier of fact; its verdict will not be disturbed if there is evidence to support it), *cert. denied*, 429 U.S. 895, 97 S.Ct. 257 (1976).

This standard does not require this Court to decide whether “it believes that the evidence at the trial established guilt beyond a reasonable doubt.” Jackson v. Virginia, 443 U.S. at 319-20, 99 S.Ct. at 2789 (*quoting* Woodby v. INS, 385 U.S. 276, 282, 87 S.Ct. 483, 486 (1966)). This standard thus preserves the fact finder’s role and responsibility “to fairly resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.” Id. at 319, 99 S.Ct. at 2789.

//

1 Defendant claims there was conflicting evidence presented at trial. In closing  
2 argument, the defense argued issues of prior inconsistent statements and perceived conflicts  
3 among the testimony of various witnesses at great length. Defendant's arguments in this  
4 motion are merely a rehash of Defendant's closing argument. As such, it does not present an  
5 issue of law or new evidence to support a request for a new trial or an acquittal. A criminal  
6 Defendant is not entitled to new trial simply because he does not agree with the verdict  
7 returned by the jury. In the instant case, the State can find no other basis for the Defendant's  
8 request other than that he is not satisfied with the jury's determination. The fact finder is  
9 charged with resolving any conflict of evidence and assessing the weight of the evidence and  
10 to determine the credibility of the witnesses. Origel-Candido v. State, *supra*; Azbill v. State,  
11 *supra*. The members of this jury heard about every inconsistent statement and conflicting  
12 piece of evidence from both the State and the Defense, and resolved those conflicts pursuant  
13 to their duty as the fact finder.

#### 14 **G. Cumulative Error**

15 Defendant's final contention is that his alleged errors, taken in the aggregate,  
16 constitute cumulative error. The Nevada Supreme Court has held that under the doctrine of  
17 cumulative error, "although individual errors may be harmless, the cumulative effect of  
18 multiple errors may deprive a defendant of the constitutional right to a fair trial." Pertgen v.  
19 State, 110 Nev. 554, 566, 875 P.2d 361, 368 (1994), citing Sipsas v. State, 102 Nev. 119,  
20 716 P.2d 231 (1986); see also Big Pond v. State, 101 Nev. 1, 3, 692 P.2d 1288, 1289 (1985).  
21 The relevant factors to consider in determining "whether error is harmless or prejudicial  
22 include whether 'the issue of innocence or guilt is close, the quantity and character of the  
23 error, and the gravity of the crime charged.'" Big Pond, 101 Nev. at 3, 692 P.2d at 1289; See  
24 also Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845, 854-55 (2000). The doctrine of  
25 cumulative error "requires that numerous errors be committed, not merely alleged." People  
26 v. Rivers, 727 P.2d 394, 401 (Colo. Ct. App. 1986); see also People v. Jones, 665 P.2d 127,  
27 131 (Colo. Ct. App. 1982). Evidence against the defendant must therefore be "substantial  
28 enough to convict him in an otherwise fair trial" and it must be said "without reservation that

1 the verdict would have been the same in the absence of the error.” Witherow v. State, 104  
2 Nev. 721, 724, 765 P.2d 1153, 1156 (1988).

3 Furthermore, it is of note that a defendant “is not entitled to a perfect trial, but only a  
4 fair trial...” Ennis v. State, 91 Nev. 530, 533, 539 P.2d 114, 115 (1975), citing Michigan v.  
5 Tucker, 417 U.S. 433, 94 S.Ct. 2357 (1974). In the case at bar, Defendant received a fair  
6 trial. All the errors alleged here are without merit. Therefore, there can be no cumulative  
7 error.

### 8 CONCLUSION

9 For the foregoing reasons, the State respectfully requests this Honorable Court Deny  
10 Defendant’s Motion for Acquittal or in the Alternative, Motion for New Trial.

11 DATED this 29th day of July, 2013.

12 Respectfully submitted,

13 STEVEN B. WOLFSON  
14 Clark County District Attorney  
Nevada Bar #001565

15  
16 BY /s/ Noreen Demonte

17 NOREEN DEMONTE  
18 Chief Deputy District Attorney  
Nevada Bar #8213

### 19 CERTIFICATE OF FACSIMILE TRANSMISSION

20  
21 I hereby certify that service of the above and foregoing was made this 29th day of  
22 JULY, 2013, by facsimile transmission to:

23 ROSS GOODMAN, ESQ.  
24 385-5088

25  
26 BY: /s/ J. Serpa

27 J. Serpa  
Employee of the District Attorneys Office

28 06F11378A/js/ROP