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11/12/2015 12:48:42 PM

*Tracie K. Lindeman*  
Electronically Filed  
Nov 17 2015 02:51 p.m.  
CLERK OF THE COURT  
Tracie K. Lindeman  
Clerk of Supreme Court

Kevin Gipson #1082776  
Petitioner In Proper Person  
P.O. Box 650 H.D.S.P.  
Indian Springs, Nevada 89018

Eighth DISTRICT COURT  
Clark COUNTY NEVADA

Kevin M. Gipson  
#1082776  
Petitioner

Case No. 10C264079  
Dept. No. XIX  
Docket \_\_\_\_\_

-v-

Dwight Neven, Warden, et.al.  
Respondent

NOTICE OF APPEAL

Notice is hereby given that the Petitioner, Kevin M. Gipson, by and through himself in proper person, does now appeal to the Supreme Court of the State of Nevada, the decision of the District Court Findings of Fact, Conclusions of Law and Order Denying Petition for Post-Conviction Relief

Dated this date, November 8<sup>th</sup>, 2015.

Respectfully Submitted,

*Kevin Gipson*  
In Proper Person

RECEIVED

CLERK OF THE COURT  
NOV 12 2015

**CERTIFICATE OF SERVICE BY MAILING**

I, Kevin M. Gipson, hereby certify, pursuant to NRCP 5(b), that on this 8<sup>th</sup>  
day of November, 2015, I mailed a true and correct copy of the foregoing, "Notice  
of Appeal"

by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,  
addressed as follows:

Steven B. Wolfson  
District Attorney  
200 Lewis Ave.  
Carlsbad, NV 89155-2212

Attorney General  
Herold Memorial Bldg.  
100 N. Carson St.  
Carson City, NV 89710

DATED: this 8<sup>th</sup> day of November, 2015.

Kevin M. Gipson  
Kevin M. Gipson # 1082778  
Petitioner /In Propria Persona  
Post Office box 650 [HDSP]  
Indian Springs, Nevada 89018

## AFFIRMATION

The undersigned does hereby affirm that the preceding Notice

(Title of Document)

10C264079

☒

**-OR-**



**A. A specific state or federal law, to wit:**

**(State specific law)**

**-or-**

**B. For the administration of a public program or for an application for a federal or state grant.**

**Signature**

Date \_\_\_\_\_

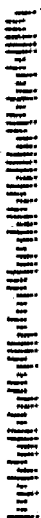
**Print Name**

## Title

Kevin M. Gipsen #1082726  
P.O. Box 650  
Indian Springs, NV 89018

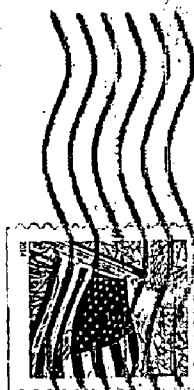
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Confidential

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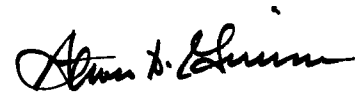


Steven D. Grierson  
Clerk of the Court  
200 Lewis Ave, 3rd Fl.  
Las Vegas, NV 89155-1160

LAS VEGAS NV 890  
09 NOV 2015 PM 4 L



NOV 11 2015  
LAS VEGAS NV



CLERK OF THE COURT

ASTA

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR  
THE COUNTY OF CLARK**

STATE OF NEVADA,

Plaintiff(s),

vs.

KEVIN M. GIPSON,

Defendant(s),

Case No: 10C264079

Dept No: XIX

**CASE APPEAL STATEMENT**

1. Appellant(s): Kevin Gipson

2. Judge: William D. Kephart

3. Appellant(s): Kevin Gipson

Counsel:

Kevin Gipson #1082776  
P.O. Box 650  
Indian Springs, NV 89070

4. Respondent: The State of Nevada

Counsel:

Steven B. Wolfson, District Attorney  
200 Lewis Ave.  
Las Vegas, NV 89101

(702) 671-2700

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

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

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

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

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

9. Date Commenced in District Court: April 28, 2010

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

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

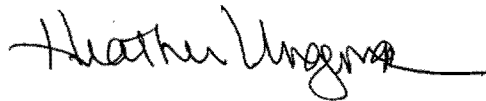
11. Previous Appeal: Yes

Supreme Court Docket Number(s): 62071

12. Child Custody or Visitation: N/A

Dated This 13 day of November 2015.

Steven D. Grierson, Clerk of the Court



---

Heather Ungermann, Deputy Clerk  
200 Lewis Ave  
PO Box 551601  
Las Vegas, Nevada 89155-1601  
(702) 671-0512

cc: Kevin Gipson

DEPARTMENT 19  
**CASE SUMMARY**  
**CASE NO. 10C264079**

**The State of Nevada vs Kevin M Gipson**

§	Location:	<b>Department 19</b>
§	Judicial Officer:	<b>Kephart, William D.</b>
§	Filed on:	<b>04/28/2010</b>
§	Case Number History:	
§	Cross-Reference Case	<b>C264079</b>
§	Number:	
§	Defendant's Scope ID #:	<b>1582343</b>
§	ITAG Booking Number:	<b>1000016823</b>
§	ITAG Case ID:	<b>1139062</b>
§	Lower Court Case # Root:	<b>10F05796</b>
§	Lower Court Case Number:	<b>10F05796X</b>
§	Supreme Court No.:	<b>62071</b>

**CASE INFORMATION**

<b>Offense</b>	<b>Deg</b>	<b>Date</b>	<b>Case Type:</b>	<b>Felony/Gross Misdemeanor</b>
1. MURDER.	F	01/01/1900		
1. DEGREES OF MURDER	F	01/01/1900	<b>Case Flags:</b>	<b>Appealed to Supreme Court</b>
1. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	F	01/01/1900		<b>Custody Status - Nevada Department of Corrections</b>

**Statistical Closures**

02/21/2012 Guilty Plea with Sentence (before trial)

**Warrants**

Bench Warrant - Gipson, Kevin M (Judicial Officer: Barker, David )

05/04/2010 Quashed

04/28/2010 Issued

Fine: \$0

Bond: \$0

**DATE**

**CASE ASSIGNMENT**

**Current Case Assignment**

Case Number	10C264079
Court	Department 19
Date Assigned	01/05/2015
Judicial Officer	Kephart, William D.


**PARTY INFORMATION**

<b>Defendant</b>	<b>Gipson, Kevin M</b>	<i>Lead Attorneys</i> <b>Colucci, Carmine J.</b> <i>Retained</i> 7023841274(W)
<b>Plaintiff</b>	<b>State of Nevada</b>	<b>Wolfson, Steven B</b> 702-671-2700(W)









**DATE**

**EVENTS & ORDERS OF THE COURT**

**INDEX**













04/28/2010	<b>Grand Jury Indictment</b> (11:45 AM) <i>GRAND JURY INDICTMENT Court Clerk: Tina Hurd Reporter/Recorder: Renee Vincent Heard By: Linda Bell</i>	
04/28/2010	 Indictment <i>(GRAND JURY) INDICTMENT Fee \$0.00</i>	<i>10C2640790001.tif pages</i>
04/28/2010	Hearing <i>GRAND JURY INDICTMENT</i>	<i>10C2640790002.tif pages</i>

DEPARTMENT 19  
**CASE SUMMARY**  
**CASE NO. 10C264079**

04/28/2010	Hearing <i>INITIAL ARRAIGNMENT</i>	10C2640790003.tif pages
04/28/2010	 Conversion Case Event Type <i>INDICTMENT WARRANT</i>	10C2640790008.tif pages
04/30/2010	 Bench Warrant <i>INDICTMENT WARRANT RETURN/03</i>	10C2640790005.tif pages
04/30/2010	Bench Warrant <i>NO BAIL BENCH WARRANT ISSUED</i>	10C2640790006.tif pages
04/30/2010	Order <i>ORDER OF INTENT TO FORFEIT</i>	10C2640790007.tif pages
05/04/2010	 Media Request and Order <i>MEDIA REQUEST AND ORDER FOR CAMERA ACCESS TO COURT PROCEEDINGS</i>	10C2640790010.tif pages
05/05/2010	<b>Initial Arraignment</b> (8:15 AM) Events: 04/28/2010 Hearing <i>INITIAL ARRAIGNMENT</i>	
05/05/2010	<b>Bench Warrant Return</b> (8:15 AM) Events: 04/30/2010 Bench Warrant <i>INDICTMENT WARRANT RETURN/03</i>	
05/05/2010	<b>All Pending Motions</b> (8:15 AM) <i>ALL PENDING MOTIONS (5/5/10) Court Clerk: Sharon Chun Reporter/Recorder: Richard Kangas Heard By: David Barker</i>	
05/05/2010	Motion <i>ALL PENDING MOTIONS (5/5/10)</i>	10C2640790011.tif pages
05/05/2010	Hearing <i>STATUS CHECK: STATE'S REQUEST RE DEATH PENALTY</i>	10C2640790012.tif pages
05/13/2010	 Reporters Transcript <i>REPORTER'S TRANSCRIPT OF PROCEEDINGS - GRAND JURY HEARING 4/27/10</i>	10C2640790015.tif pages
05/18/2010	 Receipt <i>RECEIPT OF GRAND JURY TRANSCRIPTS</i>	10C2640790016.tif pages
05/21/2010	<b>Status Check</b> (8:15 AM) Events: 05/05/2010 Hearing <i>STATUS CHECK: STATE'S REQUEST RE DEATH PENALTY Relief Clerk: Tia Everett/te Reporter/Recorder: Richard Kangas Heard By: David Barker</i>	
05/25/2010	 Media Request and Order <i>MEDIA REQUEST AND ORDER FOR CAMERA ACCESS TO COURT PROCEEDINGS</i>	10C2640790018.tif pages
06/04/2010	 Order Filed By: Defendant Gipson, Kevin M <i>ORDER</i>	10C2640790019.tif pages
09/15/2010	 <b>Calendar Call</b> (8:15 AM) (Judicial Officer: Barker, David)	













DEPARTMENT 19  
**CASE SUMMARY**  
**CASE NO. 10C264079**









09/20/2010	<b>CANCELED Jury Trial</b> (10:00 AM) <i>Vacated - per Judge</i> <i>Vacated At Request of Defense</i>
11/19/2010	<b>Further Proceedings</b> (8:15 AM) (Judicial Officer: Barker, David) <i>Further Proceedings: Reset Trial/Case Dismissal</i>
01/02/2011	 <b>Motion</b> Filed By: Defendant Gipson, Kevin M <i>Pro Per Motion Seeking Dismissal of Court Appointed Counsel Where Attorney Has Been in Non-Compliance With ADKT 4-1, 4-7, 4-8(a); Nor The Nevada Rules of Professional Conduct Rule 1.4. (3), 3.2 (a) Rendering Counsel In Effective:</i>
01/19/2011	 <b>Motion</b> (8:15 AM) (Judicial Officer: Barker, David) Events: 01/02/2011 Motion <i>Pro Per Motion Seeking Dismissal of Court Appointed Counsel Where Attorney Has Been in Non-Compliance With ADKT 4-1, 4-7, 4-8(a); Nor The Nevada Rules of Professional Conduct Rule 1.4. (3), 3.2 (a) Rendering Counsel In Effective:</i>
04/13/2011	 <b>Motion to Compel</b> Filed By: Defendant Gipson, Kevin M <i>Motion to Compel Discovery</i>
04/13/2011	 <b>Motion to Suppress</b> Filed By: Defendant Gipson, Kevin M <i>Motion to Suppress or in the Alternative A Jackson V Demo</i>
04/15/2011	 <b>Notice of Expert Witnesses</b> Filed By: Defendant Gipson, Kevin M <i>Defendant's Notice of Expert Witnesses, Pursuant to NRS 174.234(2)</i>
04/19/2011	 <b>Motion in Limine</b> <i>State's Notice of Motion and Motion in Limine to Admit Bad Acts and Other Acts of the Defendant Against the Victim</i>
04/19/2011	 <b>Notice of Witnesses and/or Expert Witnesses</b> <i>Notice of Expert Witnesses</i>
04/19/2011	 <b>Filed Under Seal</b> <i>Request To File Order Under Seal</i>
04/19/2011	 <b>Order</b> Filed By: Defendant Gipson, Kevin M <i>Request to File Ex Parte Order Under Seal</i>
04/19/2011	 <b>Filed Under Seal</b> Filed By: Defendant Gipson, Kevin M <i>Ex Parte Order</i>
04/19/2011	 <b>Filed Under Seal</b> Filed By: Defendant Gipson, Kevin M <i>Order</i>
04/21/2011	 <b>Motion</b>

DEPARTMENT 19  
**CASE SUMMARY**  
**CASE NO. 10C264079**














*State's Motion In Limine Regarding The Defendant's Expert Witnesses And Request For Discovery*

04/22/2011	 Notice of Expert Witnesses Filed By: Defendant Gipson, Kevin M
04/25/2011	<b>Motion to Compel</b> (8:15 AM) (Judicial Officer: Barker, David) <b>04/25/2011, 05/02/2011</b> Events: 04/13/2011 Motion to Compel <i>Motion to Compel Discovery</i>
04/25/2011	<b>Motion to Suppress</b> (8:15 AM) (Judicial Officer: Barker, David) <b>04/25/2011, 05/02/2011, 05/04/2011</b> Events: 04/13/2011 Motion to Suppress <i>Motion to Suppress or in the Alternative A Jackson V Denno</i>
04/25/2011	 <b>All Pending Motions</b> (8:15 AM) (Judicial Officer: Barker, David) <i>DEFT'S MOTION TO COMPEL DISCOVERY...DEFT'S MOTION TO SUPPRESS OR IN THE ALTERNATIVE A JACKSON V DENNO.</i>
04/26/2011	 Notice of Witnesses and/or Expert Witnesses <i>Supplemental Notice of Expert Witnesses</i>
04/27/2011	 Opposition <i>State's Opposition To Defendant's Motion To Suppress</i>
04/27/2011	 Supplement <i>Supplement to Opposition To Defendant's Motion To Suppress</i>
04/28/2011	 Notice of Witnesses and/or Expert Witnesses <i>Notice of Witnesses</i>
04/29/2011	 Notice of Witnesses and/or Expert Witnesses <i>Supplemental Notice of Witnesses</i>
04/29/2011	 Notice of Witnesses <i>Defendant's Notice of Witnesses, Pursuant To NRS 174.234</i>
05/02/2011	<b>Motion in Limine</b> (8:15 AM) (Judicial Officer: Barker, David) <b>05/02/2011, 05/04/2011, 10/07/2011, 10/24/2011, 11/09/2011, 11/16/2011</b> Events: 04/19/2011 Motion in Limine <i>Motion in Limine to Admit Bad Acts and Other Acts of the Defendant Against the Victim</i>
05/02/2011	<b>Motion in Limine</b> (8:15 AM) (Judicial Officer: Barker, David) <b>05/02/2011, 05/04/2011, 10/07/2011, 10/24/2011, 12/07/2011</b> Events: 04/21/2011 Motion <i>State's Motion In Limine Regarding The Defendant's Expert Witnesses And Request For Discovery</i>
05/02/2011	 <b>All Pending Motions</b> (8:15 AM) (Judicial Officer: Barker, David)
05/02/2011	 Reply Filed by: Attorney Public Defender <i>Defense Reply to State's Motion in Limine to Admit Prior Bad Acts</i>
05/03/2011	











DEPARTMENT 19  
**CASE SUMMARY**  
**CASE NO. 10C264079**

	 Notice of Witnesses and/or Expert Witnesses <i>Second Supplemental Notice of Witnesses</i>
05/03/2011	 Reply to Motion Filed By: Defendant Gipson, Kevin M <i>Defendant's Reply to State's Motion in Limine Regarding Defendant's Expert Witness</i>
05/03/2011	 Motion in Limine Filed By: Defendant Gipson, Kevin M <i>Motion in Limine to Bar the Admission of Cumulative Victim Impact Evidence in Violation of the Due Process Clause</i>
05/03/2011	 Motion in Limine Filed By: Defendant Gipson, Kevin M <i>Motion in Limine to Preclude the State from Moving to Admit into Evidence Photographs Prejudicial to Kevin Gipson</i>
05/04/2011	<b>Calendar Call</b> (8:15 AM) (Judicial Officer: Barker, David)
05/04/2011	 <b>All Pending Motions</b> (8:15 AM) (Judicial Officer: Barker, David) <i>CALENDAR CALL...DEFT'S MOTION IN LIMINE TO ADMIT BAD ACTS AND OTHER ACTS OF THE DEFT. AGAINST THE VICTIM...DEFT'S MOTION TO SUPPRESS OR IN THE ALTERNATIVE A JACKSON V DENNO...STATE'S MOTION IN LIMINE REGARDING THE DEFENDANT'S EXPERT WITNESSES AND REQUEST FOR DISCOVERY.</i>
05/09/2011	<b>CANCELED Jury Trial</b> (10:00 AM) (Judicial Officer: Barker, David) <i>Vacated - per Clerk Trial reset on 5/4/11</i>
05/16/2011	<b>Motion in Limine</b> (8:15 AM) (Judicial Officer: Barker, David) <b>05/16/2011, 08/17/2011, 10/07/2011, 10/24/2011, 12/07/2011</b> Events: 05/03/2011 Motion in Limine <i>Motion in Limine to Bar the Admission of Cumulative Victim Impact Evidence in Violation of the Due Process Clause</i>
05/16/2011	<b>Motion in Limine</b> (8:15 AM) (Judicial Officer: Barker, David) <b>05/16/2011, 08/17/2011, 10/07/2011, 10/24/2011, 12/07/2011</b> Events: 05/03/2011 Motion in Limine <i>Motion in Limine to Preclude the State from Moving to Admit into Evidence Photographs Prejudicial to Kevin Gipson</i>
05/16/2011	 <b>All Pending Motions</b> (8:15 AM) (Judicial Officer: Barker, David) <i>DEFT'S MOTION IN LIMINE TO BAR THE ADMISSION OF CUMULATIVE VICTIM IMPACT EVIDENCE IN VIOLATION OF THE DUE PROCESS CLAUSE...DEFT'S MOTION IN LIMINE TO PRECLUDE THE STATE FROM MOVING TO ADMIT INTO EVIDENCE PHOTOGRAPHS PREJUDICIAL TO KEVIN GIPSON.</i>
06/28/2011	 Notice of Motion <i>Notice of Motion and Motion to Move Trial Date</i>
07/11/2011	 <b>Motion</b> (8:15 AM) (Judicial Officer: Barker, David) Events: 06/28/2011 Notice of Motion <i>Notice of Motion and Motion to Move Trial Date</i>
08/17/2011	<b>CANCELED Hearing</b> (8:15 AM) (Judicial Officer: Barker, David) <i>Vacated - On In Error</i>

DEPARTMENT 19  
**CASE SUMMARY**  
**CASE NO. 10C264079**


08/17/2011	 <b>All Pending Motions</b> (8:15 AM) (Judicial Officer: Smith, Douglas E.) <i>DEFENDANT'S NOTICE OF MOTION AND MOTION TO BAR THE ADMISSION OF CUMULATIVE VICTIM IMPACT PANEL EVIDENCE IN VIOLATION OF THE DUE PROCESS CLAUSE...DEFT'S MOTION IN LIMINE TO PRECLUDE THE STATE FROM MOVING TO ADMIT INTO EVIDENCE PHOTOGRAPHS PREJUDICIAL TO KEVIN GIPSON.</i>
10/07/2011	 <b>All Pending Motions</b> (8:30 AM) (Judicial Officer: Barker, David)
10/12/2011	 <b>Opposition</b> <i>State's Opposition to Defendant's Motion to Bar the Admission of Cumulative Victim Impact Evidence in Violation of the Due Process Clause</i>
10/12/2011	 <b>Opposition</b> <i>State's Opposition to Defendant's Motion in Limine to Preclude the State From Moving to Admit Into Evidence Photographs Prejudicial to Kevin Gibson</i>
10/24/2011	 <b>All Pending Motions</b> (8:15 AM) (Judicial Officer: Barker, David)
11/09/2011	<b>CANCELED Calendar Call</b> (8:15 AM) (Judicial Officer: Barker, David) <i>Vacated - per Judge</i>
11/09/2011	 <b>Hearing</b> (8:15 AM) (Judicial Officer: Barker, David) <b>11/09/2011, 12/02/2011</b> <i>HEARING: JACKSON DENNO HEARING - Motion to Suppress DENIED on 12/2/11</i>
11/09/2011	 <b>All Pending Motions</b> (8:15 AM) (Judicial Officer: Barker, David)
11/09/2011	 <b>Certificate</b> Filed By: Defendant Gipson, Kevin M <i>Certificate of The Eighth Judicial District Court of Nevada</i>
11/09/2011	 <b>Motion</b> Filed By: Defendant Gipson, Kevin M <i>Motion to Secure The Attendance of an Out of State Witness and for Issuance of A Certificate Under Seal of The Court</i>
11/09/2011	 <b>Motion</b> Filed By: Defendant Gipson, Kevin M <i>Motion for Witness List and Evidence in Support of Allegations of Prior Bad Acts</i>
11/10/2011	 <b>Motion</b> Filed By: Defendant Gipson, Kevin M <i>Motion For In Camera Review of Personnel Records</i>
11/10/2011	 <b>Certificate for Attendance of Out-Of-State Witness</b>
11/10/2011	 <b>Motion</b> Filed By: Defendant Gipson, Kevin M <i>Motion to Secure the Attendance of an Out of State Witness and for Issuance of a Certificate Under Seal of the Court</i>
11/14/2011	<b>CANCELED Jury Trial</b> (10:00 AM) (Judicial Officer: Barker, David) <i>Vacated - per Judge</i>

DEPARTMENT 19  
**CASE SUMMARY**  
**CASE NO. 10C264079**

11/15/2011	 Motion <i>State's Supplemental Motion in Limine to Admit Bad Acts and Other Acts of the Defendant</i>
11/15/2011	 Opposition <i>State's Opposition to Defendant's Motion for in Camera Review of Personal Records</i>
11/16/2011	<b>Motion</b> (8:15 AM) (Judicial Officer: Barker, David) <i>Def't's Motion for Witness List and Evidence in Support of Allegations of Prior Bad Acts</i>
11/16/2011	 <b>All Pending Motions</b> (8:15 AM) (Judicial Officer: Barker, David)
11/21/2011	 <b>Motion</b> (8:15 AM) (Judicial Officer: Barker, David) Events: 11/10/2011 Motion <i>Motion For In Camera Review of Personnel Records</i>
11/30/2011	 Motion <i>Notice of Motion and Motion in Limine Regarding Jail Phone Call</i>
11/30/2011	 Order Filed By: Defendant Gipson, Kevin M
12/02/2011	 Motion Filed By: Defendant Gipson, Kevin M <i>Motion to Limit The Testimony of Det. Long</i>
12/05/2011	 Notice of Witnesses Party: Defendant Gipson, Kevin M <i>Defendant's Notice of Witnesses, Pursuant to NRS 174.234</i>
12/07/2011	<b>Calendar Call</b> (8:15 AM) (Judicial Officer: Barker, David)
12/07/2011	 <b>All Pending Motions</b> (8:15 AM) (Judicial Officer: Barker, David)
12/07/2011	 Guilty Plea Agreement
12/07/2011	<b>Plea</b> (Judicial Officer: Barker, David) 1. MURDER. Guilty PCN: Sequence:  1. DEGREES OF MURDER Guilty PCN: Sequence:  1. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Guilty PCN: Sequence:
12/12/2011	<b>CANCELED Motion in Limine</b> (8:15 AM) (Judicial Officer: Barker, David) <i>Vacated - per Judge</i>
12/12/2011	<b>CANCELED Jury Trial</b> (10:00 AM) (Judicial Officer: Barker, David) <i>Vacated - per Judge</i>

## DEPARTMENT 19

 PSI

 **Sentencing (1:30 PM)** (Judicial Officer: Barker, David)

**Disposition** (Judicial Officer: Barker, David)

PCN: Sequence:

PCN: Sequence:

PCN: Sequence:

**Sentence** (Judicial Officer: Barker, David)

\$150 DNA Fee waived as previously imposed


**Sentence** (Judicial Officer: Barker, David)


## Adult Adjudication


**Sentence** (Judicial Officer: Barker, David)

## Adult Adjudication










 Criminal Order to Statistically Close Case  
*Criminal Order to Statistically Close Case*

 Judgment of Conviction  
*Judgment of Conviction (Plea of Guilty)*



 Motion  
Filed By: Defendant Gipson, Kevin M  
*Motion To Withdraw Plea*

 Opposition to Motion  
Filed By: Plaintiff State of Nevada  
*State's Opposition to Defendant's Motion Pro Per Motion to Withdraw Plea*

DEPARTMENT 19  
**CASE SUMMARY**  
**CASE NO. 10C264079**

09/26/2012	 <b>Motion</b> (8:15 AM) (Judicial Officer: Barker, David) <i>Deft's Pro Per Motion to Withdraw Plea</i>
09/27/2012	 Order Denying Motion Filed By: Plaintiff State of Nevada <i>Order Denying Defendant's Pro Per Motion to Withdraw Plea</i>
10/15/2012	 Motion Filed By: Defendant Gipson, Kevin M <i>Motion To Proceed In Forma Pauperis</i>
10/15/2012	 Motion Filed By: Defendant Gipson, Kevin M <i>Ex Parte Motion For Appointment Of Counsel And Request For Evidentiary Hearing</i>
11/02/2012	 Opposition Filed By: Plaintiff State of Nevada <i>State's Opposition to Defendant's Motion to Appoint Counsel and Request for Evidentiary Hearing</i>
11/05/2012	 Motion Filed By: Defendant Gipson, Kevin M <i>Motion for Direct Appeal / Memorandum of Points and Authorities Facts of the Case</i>
11/07/2012	<b>Motion</b> (8:15 AM) (Judicial Officer: Barker, David) <i>Deft's Pro Per Motion To Proceed In Forma Pauperis</i>
11/07/2012	<b>Motion</b> (8:15 AM) (Judicial Officer: Barker, David) <b>11/07/2012, 01/09/2013, 01/28/2013</b> <i>Deft's Pro Per Ex Parte Motion for Appointment of Counsel and Request for Evidentiary Hearing</i>
11/07/2012	 <b>All Pending Motions</b> (8:15 AM) (Judicial Officer: Barker, David)
11/08/2012	 Case Appeal Statement Filed By: Defendant Gipson, Kevin M <i>Case Appeal Statement</i>
11/26/2012	 <b>Motion</b> (8:15 AM) (Judicial Officer: Barker, David) <b>11/26/2012, 01/09/2013, 01/28/2013, 02/11/2013</b> Events: 11/05/2012 Motion <i>Deft's Pro Per Motion for Direct Appeal / Memorandum of Points and Authorities Facts of the Case</i>
01/09/2013	 <b>All Pending Motions</b> (8:15 AM) (Judicial Officer: Cory, Kenneth)
01/17/2013	 NV Supreme Court Clerks Certificate/Judgment - Dismissed <i>Nevada Supreme Court Clerk's Certificate Judgment - Dismissed</i>
01/28/2013	 <b>All Pending Motions</b> (8:15 AM) (Judicial Officer: Barker, David)
02/11/2013	<b>Confirmation of Counsel</b> (8:15 AM) (Judicial Officer: Barker, David)

DEPARTMENT 19  
**CASE SUMMARY**  
**CASE NO. 10C264079**

02/11/2013	 <b>All Pending Motions</b> (8:15 AM) (Judicial Officer: Barker, David)
06/17/2013	 <b>Status Check</b> (8:15 AM) (Judicial Officer: Barker, David) <i>Status Check: Set Briefing Schedule</i>
01/07/2014	 Stipulation and Order Filed by: Defendant Gipson, Kevin M <i>Stipulation and Order</i>
02/06/2014	 Stipulation and Order Filed by: Defendant Gipson, Kevin M <i>Stipulation and Order</i>
05/19/2014	 Stipulation and Order Filed by: Plaintiff State of Nevada <i>Stipulation and Order</i>
05/21/2014	 Recorders Transcript of Hearing <i>Recorder's Rough Draft Transcript of Proceedings Defendant's Pro Per Motion for Direct Appeal Memorandum of Points and Authorities Facts of the Case; Confirmation of Counsel - 2/11/2013</i>
05/23/2014	 Recorders Transcript of Hearing Party: Plaintiff State of Nevada <i>Recorder's Rough Draft Transcript of Proceedings Defendant's Motion to Compel Discovery; Defendant's Motion to Suppress or in the Alternative A Jackson V. Denno April 25, 2011</i>
05/23/2014	 Recorders Transcript of Hearing Party: Plaintiff State of Nevada <i>Recorder's Rough Draft Transcript of Proceedings Defendant's Motion in Limine to Admit Bad Acts and Other Acts of the Defendant Against the Victim; Defendant's Motion to Compel Discovery; Defendant's Motion to Suppress or in the Alternative a Jackson V. Denno; State's Motion in Limine Regarding the Defendant's Expert Witnesses and Request for Discovery Monday, May 2, 2011</i>
05/23/2014	 Recorders Transcript of Hearing Party: Plaintiff State of Nevada <i>Recorder's Rough Draft Transcript of Proceedings Calendar Call; Defendant's Motion in Limine to Admit Bad Acts and Other Acts of the Defendant Against the Victim; Defendant's Motion to Suppress or in the Alternative a Jackson V. Denno; State's Motion in Limine Regarding the Defendant's Expert Witnesses and Request for Discovery Wednesday, May 4, 2011</i>
05/23/2014	 Recorders Transcript of Hearing Party: Plaintiff State of Nevada <i>Recorder's Rough Draft Transcript of Proceedings Defendant's Notice of Motion and Motion to Bar the Admission of Cumulative Victim Impact Panel Evidence in Violation of the Due Process Clause; Hearing-counsel to Notify Staff of Pending Motions; Defendant's Motion in Limine to Preclude the State from Moving to Admit into Evidence Photographs Prejudicial to Kevin Gipson Wednesday, August 17, 2011</i>
05/23/2014	 Recorders Transcript of Hearing Party: Plaintiff State of Nevada <i>Recorder's Rough Draft Transcript of Proceedings State's Motion in Limine Regarding Defendant's Expert Witnesses and Request for Discovery; State's Motion in Limine to Admit Bad Acts and Other Acts of the Defendant Against the Victim; Defendant's Motion</i>















**CASE SUMMARY****CASE NO. 10C264079**




*in Limine to Preclude the State from Moving to Admit into Evidence Photographs Prejudicial to Kevin Gipson; Defendant's Motion in Limine to Bar the Admission of Cumulative Victim Impact Evidence in Violation of the Due Process Clause Monday, October 24, 2011*

05/23/2014	 <b>Recorders Transcript of Hearing</b> Party: Plaintiff State of Nevada <i>Recorder's Rough Draft Transcript of Proceedings Defendant's Motion for In Camera Review of Personnel Records Monday, November 21, 2011</i>
05/23/2014	 <b>Recorders Transcript of Hearing</b> Party: Plaintiff State of Nevada <i>Recorder's Rough Draft Transcript of Proceedings State's Motion in Limine Regarding the Defendant's Expert Witnesses and Request for Discovery; Defendant's Motion in Limine to Preclude the State from Moving to Admit into Evidence Photographs Prejudicial to Kevin Gipson; Defendant's Motion in Limine to Bar the Admission of Cumulative Victim Impact Evidence in Violation of the Due Process Clause; Calendar Call Wednesday, December 7, 2011</i>
05/23/2014	 <b>Recorders Transcript of Hearing</b> Party: Plaintiff State of Nevada <i>Recorder's Rough Draft Transcript of Proceedings Defendant's Pro Per Motion to Withdraw Plea Wednesday, September 26, 2012</i>
06/06/2014	 <b>Petition</b> Filed by: Defendant Gipson, Kevin M <i>Petition for Writ of Habeas Corpus (Post-Conviction)</i>
06/06/2014	 <b>Points and Authorities</b> Filed by: Defendant Gipson, Kevin M <i>Points and Authorities in Support of Petition for Writ of Habeas Corpus (Post Conviction)</i>
06/13/2014	 <b>Response</b> Filed by: Plaintiff State of Nevada <i>State's Response and Motion to Dismiss Defendant's Petition for Writ of Habeas Corpus (Post-Conviction)</i>
06/23/2014	<b>CANCELED Petition for Writ of Habeas Corpus (8:15 AM)</b> (Judicial Officer: Barker, David) <i>Vacated - Duplicate Entry</i> <i>Deft's Petition for Writ of Habeas Corpus</i>
08/07/2014	 <b>Reply</b> Filed by: Defendant Gipson, Kevin M <i>Reply to State's Response and Motion to Dismiss Defendant's Petition for Writ of Habeas Corpus (Post-Conviction)</i>
09/15/2014	<b>Petition for Writ of Habeas Corpus (8:15 AM)</b> (Judicial Officer: Kephart, William D.) <b>09/15/2014, 03/30/2015, 04/13/2015, 09/10/2015</b> <i>Deft's Petition for Writ of Habeas Corpus (Post Conviction)</i>
09/15/2014	<b>Response and Countermotion (8:15 AM)</b> (Judicial Officer: Barker, David) <i>State's Response and Motion to Dismiss Defendant's Petition for Writ of Habeas Corpus (Post-Conviction)</i>
09/15/2014	 <b>All Pending Motions (8:15 AM)</b> (Judicial Officer: Barker, David)
12/15/2014	

DEPARTMENT 19  
**CASE SUMMARY**  
**CASE NO. 10C264079**

	 Supplemental Filed by: Defendant Gipson, Kevin M <i>Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)</i>
12/15/2014	 Supplemental Filed by: Defendant Gipson, Kevin M <i>Supplemental Points and Authorities in Support of Petition for Writ of Habeas Corpus (Post-Conviction)</i>
01/05/2015	Case Reassigned to Department 19 <i>District Court Case Reassignment 2015</i>
02/24/2015	 Response Filed by: Plaintiff State of Nevada <i>State's Response to Defendant's Supplemental Points and Authorities in Support of Petition for Writ of Habeas Corpus (Post-Conviction)</i>
03/24/2015	 Reply Filed by: Defendant Gipson, Kevin M <i>Defendant's Reply to State's Response To Defendant's Supplemental Points and Authorities</i>
03/25/2015	 Stipulation and Order Filed by: Defendant Gipson, Kevin M <i>Stipulation and Order</i>
03/30/2015	<b>Hearing</b> (8:30 AM) (Judicial Officer: Kephart, William D.) <b>03/30/2015, 04/13/2015</b> <i>Hearing: Deft's Petition and Supplemental Petition for Writ of Habeas Corpus</i>
03/30/2015	 <b>All Pending Motions</b> (8:30 AM) (Judicial Officer: Kephart, William D.)
04/13/2015	 <b>All Pending Motions</b> (8:30 AM) (Judicial Officer: Kephart, William D.)
06/18/2015	 Order for Production of Inmate Party: Plaintiff State of Nevada <i>Order for Production of Inmate</i>
07/14/2015	 Stipulation and Order Filed by: Defendant Gipson, Kevin M <i>Stipulation and Order</i>
08/03/2015	 Order for Production of Inmate Party: Plaintiff State of Nevada <i>Order for Production of Inmate Kevin Marquette Gipson aka Kevin Marquett Gipson BAC # 1082776</i>
09/10/2015	<b>Evidentiary Hearing</b> (9:30 AM) (Judicial Officer: Kephart, William D.) <i>Evidentiary Hearing re Mental Issue &amp; Prior's Counsel's Advice</i>
09/10/2015	 <b>All Pending Motions</b> (9:30 AM) (Judicial Officer: Kephart, William D.)
10/22/2015	 Findings of Fact, Conclusions of Law and Order Filed By: Plaintiff State of Nevada

DEPARTMENT 19  
**CASE SUMMARY**  
**CASE NO. 10C264079**

10/26/2015	 Notice of Entry Filed By: Plaintiff State of Nevada <i>Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>	
11/12/2015	 Notice of Appeal (criminal) Party: Defendant Gipson, Kevin M <i>Notice of Appeal</i>	
11/13/2015	 Case Appeal Statement Filed By: Defendant Gipson, Kevin M <i>Case Appeal Statement</i>	

**DATE**

**FINANCIAL INFORMATION**

<b>Defendant</b> Gipson, Kevin M	
Total Charges	275.00
Total Payments and Credits	0.00
<b>Balance Due as of 11/13/2015</b>	<b>275.00</b>

  
CLERK OF THE COURT

**FCL**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
RYAN J. MACDONALD  
Deputy District Attorney  
Nevada Bar #012615  
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-

CASE NO: 10C264079

KEVIN MARQUETTE GIPSON, aka,  
Kevin Marquett Gipson, #1582343,

DEPT NO: XIX

Defendant.

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND ORDER

DATE OF HEARING: September 10, 2015  
TIME OF HEARING: 9:30 AM

THIS CAUSE having come on for hearing before the Honorable WILLIAM D. KEPHART, District Judge, on the 10th day of September, 2015, the Petitioner being present, REPRESENTED BY CARMINE J. COLUCCI, ESQ., the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through RYAN J. MACDONALD, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT, CONCLUSIONS OF LAW**

This is Defendant Kevin Marquette Gipson's post-conviction petition for a writ of habeas corpus. On April 28, 2010, Defendant was charged by way of Indictment with one count of Murder with Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165).

1 On December 7, 2011, at Calendar Call, the parties informed the court that the matter was  
2 resolved via negotiations. Defendant's Guilty Plea Agreement was filed in open court and he  
3 entered a plea of Guilty to the charge of First Degree Murder With Use of a Deadly Weapon.  
4 The Guilty Plea Agreement provided that the parties stipulated to a sentence of 20 years to  
5 Life in the Nevada Department of Corrections and the State retained the right to argue for a  
6 deadly weapon term of not less than four to eight years.

7 Defendant was present with counsel for sentencing on February 10, 2012. The court  
8 adjudicated him guilty as charged in the Indictment and sentenced him to a term of 20 years  
9 to life, plus a consecutive term of 96 to 240 months for Use of a Deadly Weapon; Defendant  
10 received 686 days credit for time served. The Judgment of Conviction was filed March 13,  
11 2012. Defendant did not file a direct appeal.

12 Defendant filed a Pro Per Motion to Withdraw Plea on September 5, 2012. The State  
13 filed its Opposition on September 21, 2012. The court denied the motion on September 26,  
14 2012.

15 On October 15, 2012, Defendant filed a Pro Per "Ex Parte Motion for Appointment of  
16 Counsel and Request for Evidentiary Hearing." The State filed its Opposition on November  
17 2, 2012. On November 5, 2012, Defendant filed a Pro Per "Memorandum of Points and  
18 Authorities Facts of the Case." That Memorandum sought to file a direct appeal and the  
19 Memorandum was transmitted to the Nevada Supreme Court as a Notice of Appeal. On  
20 December 20, 2012, the Nevada Supreme Court dismissed Defendant's appeal. See Gipson  
21 v. State, Docket No. 62071, Order Dismissing Appeal (December 20, 2012).

22 On January 28, 2013, the court granted Defendant's Motion for Appointment of  
23 Counsel. On February 11, 2013, Carmine Colucci, Esq., was confirmed as counsel for  
24 Defendant. On June 17, 2013, counsel advised the court that all the documents had been  
25 received and a briefing schedule was set.

26 Defendant filed his Petition for Writ of Habeas Corpus (Post-Conviction) and Points  
27 and Authorities in Support of Petition for Writ of Habeas Corpus (Post-Conviction) on June  
28 6, 2014. The State filed its Response and Motion to Dismiss on June 13, 2014. Defendant

1 filed a Reply on August 7, 2014. The court denied the State's Motion to Dismiss and ordered  
2 briefing on the merits.

3 Defendant filed a Supplemental post-conviction Petition for Writ of Habeas Corpus and  
4 Supplemental Points and Authorities in support on December 15, 2014. The State filed its  
5 Response on February 24, 2015. Finally, this court convened an evidentiary hearing on  
6 September 10, 2015.

7 **Defendant Received Effective Assistance of Counsel**

8 Defendant makes various claims of ineffective assistance of counsel. The Sixth  
9 Amendment to the United States Constitution provides that, "[i]n all criminal prosecutions,  
10 the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." The  
11 United States Supreme Court has long recognized that "the right to counsel is the right to the  
12 effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052,  
13 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

14 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove  
15 he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of  
16 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865  
17 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's  
18 representation fell below an objective standard of reasonableness, and second, that but for  
19 counsel's errors, there is a reasonable probability that the result of the proceedings would have  
20 been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison  
21 v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test).  
22 "[T]here is no reason for a court deciding an ineffective assistance claim to approach the  
23 inquiry in the same order or even to address both components of the inquiry if the defendant  
24 makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

25 The court begins with the presumption of effectiveness and then must determine  
26 whether the defendant has demonstrated by a preponderance of the evidence that counsel was  
27 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "Effective counsel  
28 does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of

1 competence demanded of attorneys in criminal cases.” Jackson v. Warden, 91 Nev. 430, 432,  
2 537 P.2d 473, 474 (1975).

3 Even if a defendant can demonstrate that his counsel's representation fell below an  
4 objective standard of reasonableness, he must still demonstrate prejudice and show a  
5 reasonable probability that, but for counsel's errors, the result of the trial would have been  
6 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
7 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability  
8 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89,  
9 694, 104 S. Ct. at 2064-65, 2068).

10 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the  
11 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of  
12 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,  
13 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must  
14 be supported with specific factual allegations, which if true, would entitle the petitioner to  
15 relief. Hargrove, 100 Nev. at 503, 686 P.2d at 225. “Bare” and “naked” allegations are not  
16 sufficient, nor are those belied and repelled by the record. Id. NRS 34.735(6) states in relevant  
17 part, “[Petitioner] *must* allege specific facts supporting the claims in the petition[.] . . . Failure  
18 to allege specific facts rather than just conclusions may cause your petition to be dismissed.”  
19 (emphasis added).

20 Defendant contends that plea counsel did not adequately investigate petitioner's mental  
21 health issues and that counsel was aware he was off his medication during the crime and the  
22 plea canvass. A defendant who contends his attorney was ineffective because he did not  
23 adequately investigate must show how a better investigation would have rendered a more  
24 favorable outcome probable. See Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).  
25 Defendant pointed to plea counsel's comments during the hearing on his Motion to Withdraw  
26 Guilty Plea as evidence that she was aware of potential issues regarding his mental health. He  
27 misconstrues trial counsel's actions by making it seem as though plea counsel admitted to her  
28 ineffectiveness, where in actuality it is standard for counsel to withdraw if the defendant is

1 trying to withdraw his guilty plea based on ineffectiveness. Supplemental Points and  
2 Authorities (SPA), Dec. 15, 2014, p. 9. Plea counsel stated to the court that the best course of  
3 action may be for new counsel to be appointed, as it appeared Defendant wanted to move  
4 forward on an ineffectiveness claim. Rough Draft Transcript, Sept. 26, 2012, p. 3. Trial  
5 counsel also stated "I would remind the Court that Mr. Gipson does suffer from a mental illness  
6 and that is probably a legitimate ground. . .," referring to Defendant's attempt to withdraw the  
7 guilty plea. Id.

8 Additionally, it is clear based on the arraignment that plea counsel had investigated  
9 Defendant's mental illness. Plea counsel requested the Court allow Defendant to enter a plea  
10 of guilty but mentally ill. Recorder's Transcript (Arraignment), Dec. 7, 2011, p. 2. This Court  
11 acknowledged that both plea counsel and the State had informed the Court that it was the intent  
12 of Defendant to enter a plea of guilty but mentally ill consistent with NRS 174.035.  
13 Arraignment at 2. The parties agreed that the plea canvass would move forward in a typical  
14 fashion, and the decision regarding whether Defendant was mentally ill would occur at  
15 sentencing with the burden on the defendant. Arraignment at 2-3. The Court finds Defendant's  
16 claim lacks merit because the above is evidence that plea counsel knew of Defendant's alleged  
17 mental health issues, and attempted to bring them before the court at multiple junctures.

18 Defendant does not adequately explain how further investigation would have changed  
19 the outcome of the plea. Defendant contends, without a factual basis, that "the investigation  
20 and these issues and proof thereof would at least have had an effect on the degree of murder  
21 of which he was convicted." SPA at 9. But Defendant also asserts plea counsel was aware  
22 prior to the entry of the plea that Defendant suffered from schizophrenia and bipolar disorder.  
23 Id. There is no explanation as to what further investigation should have been done, and what  
24 facts would have been uncovered that would have changed the negotiations. The Court finds  
25 this is a bare claim that is belied by the record. See infra II; see Hargrove, 100 Nev. at 503,  
26 686 P.2d at 225.

27 Further, Defendant has the burden of showing he was legally mentally incompetent at  
28 the time he pleaded guilty. Specifically, per Riker v. State, 111 Nev. 1316, 905 P.2d 706



1 (1995), and Calambro v. 2nd Judicial Dist. Court, 114 Nev. 961, 965 P.2d 794 (1998), the  
2 mere fact that Defendant may have had mental health issues at the time he pleaded guilty does  
3 not render him incompetent to enter a guilty plea.

4 The Court finds this claim is without merit because an evidentiary hearing was held on  
5 the specific issue of Defendant's mental health issues and prior counsel's advice and this Court  
6 found sufficient information and/or investigation into Defendant's mental health background  
7 was performed by counsel to the extent possible.

8 **Defendant's Plea Was Given Freely, Knowingly, and Voluntarily**

9 Defendant alleges that he was coerced into taking the plea agreement by counsel and  
10 that the "coercion to take the plea occurred outside of the recorded portions of these  
11 proceedings." SPA at 7. Defendant points to his Motion to Withdraw Plea for additional  
12 support for this claim. In the Motion, Defendant contends this alleged coercion consisted of  
13 his counsel telling him it was likely he would be found guilty of First Degree Murder and go  
14 to prison for life if he did not take the plea. Motion to Withdraw Guilty Plea, Sept. 5, 2012, p.  
15 2. Defendant further contends that he was never told of his appellate rights, and would not  
16 have signed the GPA if he had been so informed. The Court finds that Defendant's allegation  
17 that he was coerced and did not understand he was waiving certain rights is belied by the record  
18 and therefore insufficient to warrant relief. See Hargrove, 100 Nev. at 503, 686 P.2d 225.

19 The law in Nevada clearly establishes that a plea of guilty is presumptively valid and  
20 the burden is on a defendant to show that the plea was not voluntarily entered. Bryant, 102  
21 Nev. 272, 721 P.2d 364, 368 (1986); Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295,  
22 1295 (1975). Furthermore, the Nevada Supreme Court makes it clear in the case of Heffley v.  
23 Warden, 89 Nev. 573, 575, 516 P.2d 1403, 1404 (1973), that the guidelines for voluntariness  
24 of pleas of guilty do "not require the articulation of talismanic phrases." Rather, "the record  
25 must affirmatively disclose that a defendant who pleaded guilty entered his plea  
26 understandingly and voluntarily." Id. (quoting Brady v. United States, 397 U.S. 742, 747-748,  
27 90 S.Ct. 1463, 1470 (1970)).  
28

1 In determining whether a guilty plea is knowingly and voluntarily entered, the Court  
2 will review the totality of the circumstances surrounding the defendant's plea. Bryant, 102  
3 Nev. at 271. The proper standard set forth in Bryant requires the Court to personally address  
4 a defendant at the time he enters his plea in order to determine whether he understands the  
5 nature of the charges to which he is pleading. Id. at 271.

6 In Wilson v. State, 99 Nev. 362, 366-67, 664 P.2d 328, 330-31 (1983), the Nevada  
7 Supreme Court stated the following regarding the acceptance of a guilty plea:

8 In Higby v. Hisiff, 86 Nev. 774, 476 P.2d 950 (1970), we  
9 concluded that certain minimum requirements must be met when  
10 a judge canvasses a defendant regarding the voluntariness of a  
11 guilty plea. We held that the record must affirmatively show the  
12 following: 1) the defendant knowingly waived his privilege  
13 against self-incrimination, the right to trial by jury, and the right  
to confront his accusers; 2) the plea was voluntary, was not  
coerced, and was not the result of a promise of leniency; 3) the  
defendant understood the consequences of his plea and the range  
of punishment; and 4) the defendant understood the nature of the  
charge, i.e., the elements of the crime.

14 In State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000), the Nevada Supreme Court held  
15 that a failure to conduct a ritualistic oral canvass does not mandate a finding of an invalid plea.  
16 Instead, the Court found that a district court should not invalidate a plea as long as the totality  
17 of the circumstances, as shown by the record, demonstrates that the plea was knowingly and  
18 voluntarily made and that the defendant understood the nature of the offense and the  
19 consequences of the plea. Freese, 116 Nev. at 1105. Furthermore, "[w]hen an accused  
20 expressly represents in open court that his plea is voluntary, he may not ordinarily repudiate  
21 his statements to the sentencing judge." Lundy v. Warden, 89 Nev. 419, 422, 514 P.2d 212,  
22 213-14 (1973).

23 Defendant signed his GPA on December 7, 2011. By signing the GPA, Defendant  
24 acknowledged the stipulation to twenty years to life in the Nevada Department of Corrections;  
25 the parties retention of the right to argue the deadly weapon for a term of not less than four to  
26 eight years; and his waiver of rights, including the right to appeal the conviction. GPA, p. 1,  
27 4. Further, Defendant acknowledged that he was pleading guilty freely and voluntary. GPA,  
28 p. 4-5.

1        Within the guilty plea agreement, Defendant's counsel made the representation that to  
2 the best of her knowledge and belief, the Defendant was competent and understood the charges  
3 and consequences of pleading guilty and executed the agreement and entered all guilty pleas  
4 voluntarily. GPA, p. 6.

5        Additionally, during Defendant's plea canvass, the Court addressed Defendant and  
6 asked if more time was needed to speak with Ms. Craig about the elements of the offense and  
7 the allegation before asking whether he wanted to change his plea again, and Defendant  
8 responded "No." The Court asked Defendant how he pleaded to the charge of murder with use  
9 of a deadly weapon—first degree murder with use of a deadly weapon, and Defendant  
10 responded "Guilty." Before the Court accepted his plea of guilty, in order to be satisfied that  
11 Defendant's plea was freely and voluntarily entered and was doing so knowingly, the Court  
12 asked if Defendant was pleading guilty because in truth and in fact he was guilty and Defendant  
13 responded "Yes." The Court asked if anyone forced Defendant or coerced him to enter this  
14 plea and Defendant responded "No." The Court asked Defendant to verify his signature on the  
15 guilty plea, which he did. The Court verified that he signed it after he read it and asked  
16 Defendant if he carefully read it and went through it with his attorney and Defendant responded  
17 "Yes." The Court asked Defendant if when he carefully read this document he realized he was  
18 waiving valuable constitutional and procedural rights by entering the plea and Defendant  
19 responded "Yes." Arraignment at 4-5. The Court explained the stipulation of 20 years to life  
20 with the possibility of parole, and a consecutive four to eight years for the deadly weapon  
21 enhancement and asked if this changed Defendant's mind about any nature of his plea to  
22 confirm that he was still doing it voluntarily and Defendant responded "Yes." Id. at 6-7.

23        Defendant acknowledged that he was made no promises of leniency, that he was aware  
24 of the possible punishment he could receive, and that any questions arising from the GPA had  
25 been answered by his attorney. RT at 6-7, GPA at 3. Defendant agreed that pleading guilty  
26 and accepting the plea bargain was in his best interest and a trial would be contrary to his best  
27 interest. GPA at 5. Defendant clearly acknowledged that he was entering into his GPA  
28 voluntarily and not under duress or coercion and that he was not under the influence of any

1 substance that would impair his ability to understand the GPA or the circumstances  
2 surrounding his plea. GPA at 4-5, RT at 4-5. Finally, by admitting the facts as outlined in the  
3 Information, Defendant acknowledged that he understood the nature of the charges against  
4 him. GPA at 1, RT at 4, 7-8, see Wilson v. State, 99 Nev. 362, 366-67 (As to the requirement  
5 that a defendant understand the nature of the charge, this Court previously held that "in order  
6 for the record to show an understanding of the nature of the charge it is necessary that there be  
7 either a showing that the defendant himself understood the elements of the offense to which  
8 the plea was entered or a showing that the defendant has made factual statements to the court  
9 which constitute an admission to the pleaded to offense.") (internal citation omitted).  
10 Accordingly, the State affirmatively demonstrated each element of a plea canvass as required  
11 by Wilson v. State, 99 Nev. 362, 366-67, and Defendant failed to satisfy his burden of proving  
12 his plea was entered into unknowingly or involuntarily. See Bryant, 102 Nev. 268.  
13 Additionally, Defendant's GPA in conjunction with the Court's canvass indicates that  
14 Defendant knew he was waiving certain appellate rights. GPA at 4, RT, 4-5.

15 Defendant alleges that he was coerced into pleading guilty as he was not given enough  
16 time to consider the offer and that his attorney threatened him by saying he would likely lose  
17 at trial and go to prison for life. The Court finds this is belied by the record, because not only  
18 was Defendant given multiple opportunities to tell the court he needed more time or had further  
19 questions, he also told the court he was not being coerced. RT 4-5. Further, at the evidentiary  
20 hearing his plea counsel, Christy Craig, explained that she did not coerce him or threaten him;  
21 counsel was being honest with Defendant in telling him the State had a strong case against  
22 him, and a plea offer was an opportunity for eventual parole. The Court credits Ms. Craig's  
23 testimony and also finds that she was highly effective as she counseled Defendant with good  
24 advice subsequent to which Defendant knowingly, freely, and voluntarily entered a plea of  
25 guilty. Further, the Court finds the issue of Defendant withdrawing his guilty plea lacks merit  
26 because counsel addressed any issue coming to light and counsel would have informed the  
27 Court if there was any question of competency at the time of entry of plea. The Court finds the  
28 issue of Defendant's mental health and prior counsel's advice is satisfied after having

1 conducted the evidentiary hearing. The Court further finds that future counsel would be unable  
2 to bring another claim on these issues under these circumstances.

3 **ORDER**


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

6 DATED this 20<sup>th</sup> day of October, 2015.

7   
8 DISTRICT JUDGE

9  
10 STEVEN B. WOLFSON  
11 Clark County District Attorney  
12 Nevada Bar #001565

13 BY

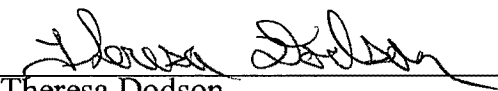
  
14 RYAN J. MACDONALD  
15 Deputy District Attorney  
16 Nevada Bar #012615

17 **CERTIFICATE OF SERVICE**

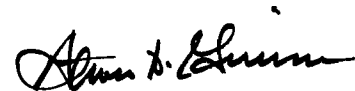
18 I certify that on the 7<sup>th</sup> day of October, 2015, I mailed a copy of the foregoing  
19 proposed Findings of Fact, Conclusions of Law, and Order to:

20 Carmine Colucci, Esq.  
21 629 South Sixth Street  
22 Las Vegas, Nevada 89101

23 BY

  
24 Theresa Dodson  
25 Secretary for the District Attorney's Office  
26  
27  
28

no/RJM/td/dvu



CLERK OF THE COURT

NEO

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

KEVIN M. GIPSON,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: 10C264079

Dept No: XIX

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

**PLEASE TAKE NOTICE** that on October 22, 2015, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on October 26, 2015.

STEVEN D. GRIERSON, CLERK OF THE COURT



Mary Kielty, Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on this 26 day of October 2015, I placed a copy of this Notice of Entry in:

☒ The bin(s) located in the Regional Justice Center of:  
Clark County District Attorney's Office  
Attorney General's Office – Appellate Division-

☒ The United States mail addressed as follows:  
Kevin M. Gipson # 1082776 Carmine J. Colucci, Esq.  
P.O. Box 650 629 S. Sixth Street  
Indian Springs, NV 89070 Las Vegas, NV 89101



Mary Kielty, Deputy Clerk

  
CLERK OF THE COURT

**FCL**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**RYAN J. MACDONALD**  
Deputy District Attorney  
Nevada Bar #012615  
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-

CASE NO: 10C264079

KEVIN MARQUETTE GIPSON, aka,  
Kevin Marquett Gipson, #1582343,

DEPT NO: XIX

Defendant.

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

DATE OF HEARING: September 10, 2015  
TIME OF HEARING: 9:30 AM

THIS CAUSE having come on for hearing before the Honorable WILLIAM D. KEPHART, District Judge, on the 10th day of September, 2015, the Petitioner being present, REPRESENTED BY CARMINE J. COLUCCI, ESQ., the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through RYAN J. MACDONALD, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT, CONCLUSIONS OF LAW**

This is Defendant Kevin Marquette Gipson's post-conviction petition for a writ of habeas corpus. On April 28, 2010, Defendant was charged by way of Indictment with one count of Murder with Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165).

1 On December 7, 2011, at Calendar Call, the parties informed the court that the matter was  
2 resolved via negotiations. Defendant's Guilty Plea Agreement was filed in open court and he  
3 entered a plea of Guilty to the charge of First Degree Murder With Use of a Deadly Weapon.  
4 The Guilty Plea Agreement provided that the parties stipulated to a sentence of 20 years to  
5 Life in the Nevada Department of Corrections and the State retained the right to argue for a  
6 deadly weapon term of not less than four to eight years.

7 Defendant was present with counsel for sentencing on February 10, 2012. The court  
8 adjudicated him guilty as charged in the Indictment and sentenced him to a term of 20 years  
9 to life, plus a consecutive term of 96 to 240 months for Use of a Deadly Weapon; Defendant  
10 received 686 days credit for time served. The Judgment of Conviction was filed March 13,  
11 2012. Defendant did not file a direct appeal.

12 Defendant filed a Pro Per Motion to Withdraw Plea on September 5, 2012. The State  
13 filed its Opposition on September 21, 2012. The court denied the motion on September 26,  
14 2012.

15 On October 15, 2012, Defendant filed a Pro Per "Ex Parte Motion for Appointment of  
16 Counsel and Request for Evidentiary Hearing." The State filed its Opposition on November  
17 2, 2012. On November 5, 2012, Defendant filed a Pro Per "Memorandum of Points and  
18 Authorities Facts of the Case." That Memorandum sought to file a direct appeal and the  
19 Memorandum was transmitted to the Nevada Supreme Court as a Notice of Appeal. On  
20 December 20, 2012, the Nevada Supreme Court dismissed Defendant's appeal. See Gipson  
21 v. State, Docket No. 62071, Order Dismissing Appeal (December 20, 2012).

22 On January 28, 2013, the court granted Defendant's Motion for Appointment of  
23 Counsel. On February 11, 2013, Carmine Colucci, Esq., was confirmed as counsel for  
24 Defendant. On June 17, 2013, counsel advised the court that all the documents had been  
25 received and a briefing schedule was set.

26 Defendant filed his Petition for Writ of Habeas Corpus (Post-Conviction) and Points  
27 and Authorities in Support of Petition for Writ of Habeas Corpus (Post-Conviction) on June  
28 6, 2014. The State filed its Response and Motion to Dismiss on June 13, 2014. Defendant



1 filed a Reply on August 7, 2014. The court denied the State's Motion to Dismiss and ordered  
2 briefing on the merits.

3 Defendant filed a Supplemental post-conviction Petition for Writ of Habeas Corpus and  
4 Supplemental Points and Authorities in support on December 15, 2014. The State filed its  
5 Response on February 24, 2015. Finally, this court convened an evidentiary hearing on  
6 September 10, 2015.

7 **Defendant Received Effective Assistance of Counsel**

8 Defendant makes various claims of ineffective assistance of counsel. The Sixth  
9 Amendment to the United States Constitution provides that, "[i]n all criminal prosecutions,  
10 the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." The  
11 United States Supreme Court has long recognized that "the right to counsel is the right to the  
12 effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052,  
13 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

14 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove  
15 he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of  
16 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865  
17 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's  
18 representation fell below an objective standard of reasonableness, and second, that but for  
19 counsel's errors, there is a reasonable probability that the result of the proceedings would have  
20 been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison  
21 v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test).  
22 "[T]here is no reason for a court deciding an ineffective assistance claim to approach the  
23 inquiry in the same order or even to address both components of the inquiry if the defendant  
24 makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

25 The court begins with the presumption of effectiveness and then must determine  
26 whether the defendant has demonstrated by a preponderance of the evidence that counsel was  
27 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "Effective counsel  
28 does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of

1 competence demanded of attorneys in criminal cases.” Jackson v. Warden, 91 Nev. 430, 432,  
2 537 P.2d 473, 474 (1975).

3 Even if a defendant can demonstrate that his counsel's representation fell below an  
4 objective standard of reasonableness, he must still demonstrate prejudice and show a  
5 reasonable probability that, but for counsel's errors, the result of the trial would have been  
6 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
7 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability  
8 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89,  
9 694, 104 S. Ct. at 2064-65, 2068).

10 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the  
11 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of  
12 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,  
13 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must  
14 be supported with specific factual allegations, which if true, would entitle the petitioner to  
15 relief. Hargrove, 100 Nev. at 503, 686 P.2d at 225. “Bare” and “naked” allegations are not  
16 sufficient, nor are those belied and repelled by the record. Id. NRS 34.735(6) states in relevant  
17 part, “[Petitioner] *must* allege specific facts supporting the claims in the petition[.] . . . Failure  
18 to allege specific facts rather than just conclusions may cause your petition to be dismissed.”  
19 (emphasis added).

20 Defendant contends that plea counsel did not adequately investigate petitioner's mental  
21 health issues and that counsel was aware he was off his medication during the crime and the  
22 plea canvass. A defendant who contends his attorney was ineffective because he did not  
23 adequately investigate must show how a better investigation would have rendered a more  
24 favorable outcome probable. See Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).  
25 Defendant pointed to plea counsel's comments during the hearing on his Motion to Withdraw  
26 Guilty Plea as evidence that she was aware of potential issues regarding his mental health. He  
27 misconstrues trial counsel's actions by making it seem as though plea counsel admitted to her  
28 ineffectiveness, where in actuality it is standard for counsel to withdraw if the defendant is

1 trying to withdraw his guilty plea based on ineffectiveness. Supplemental Points and  
2 Authorities (SPA), Dec. 15, 2014, p. 9. Plea counsel stated to the court that the best course of  
3 action may be for new counsel to be appointed, as it appeared Defendant wanted to move  
4 forward on an ineffectiveness claim. Rough Draft Transcript, Sept. 26, 2012, p. 3. Trial  
5 counsel also stated “I would remind the Court that Mr. Gipson does suffer from a mental illness  
6 and that is probably a legitimate ground. . . ,” referring to Defendant’s attempt to withdraw the  
7 guilty plea. Id.

8 Additionally, it is clear based on the arraignment that plea counsel had investigated  
9 Defendant’s mental illness. Plea counsel requested the Court allow Defendant to enter a plea  
10 of guilty but mentally ill. Recorder’s Transcript (Arraignment), Dec. 7, 2011, p. 2. This Court  
11 acknowledged that both plea counsel and the State had informed the Court that it was the intent  
12 of Defendant to enter a plea of guilty but mentally ill consistent with NRS 174.035.  
13 Arraignment at 2. The parties agreed that the plea canvass would move forward in a typical  
14 fashion, and the decision regarding whether Defendant was mentally ill would occur at  
15 sentencing with the burden on the defendant. Arraignment at 2-3. The Court finds Defendant’s  
16 claim lacks merit because the above is evidence that plea counsel knew of Defendant’s alleged  
17 mental health issues, and attempted to bring them before the court at multiple junctures.

18 Defendant does not adequately explain how further investigation would have changed  
19 the outcome of the plea. Defendant contends, without a factual basis, that “the investigation  
20 and these issues and proof thereof would at least have had an effect on the degree of murder  
21 of which he was convicted.” SPA at 9. But Defendant also asserts plea counsel was aware  
22 prior to the entry of the plea that Defendant suffered from schizophrenia and bipolar disorder.  
23 Id. There is no explanation as to what further investigation should have been done, and what  
24 facts would have been uncovered that would have changed the negotiations. The Court finds  
25 this is a bare claim that is belied by the record. See infra II; see Hargrove, 100 Nev. at 503,  
26 686 P.2d at 225.

27 Further, Defendant has the burden of showing he was legally mentally incompetent at  
28 the time he pleaded guilty. Specifically, per Riker v. State, 111 Nev. 1316, 905 P.2d 706

1 (1995), and Calambro v. 2nd Judicial Dist. Court, 114 Nev. 961, 965 P.2d 794 (1998), the  
2 mere fact that Defendant may have had mental health issues at the time he pleaded guilty does  
3 not render him incompetent to enter a guilty plea.

4 The Court finds this claim is without merit because an evidentiary hearing was held on  
5 the specific issue of Defendant's mental health issues and prior counsel's advice and this Court  
6 found sufficient information and/or investigation into Defendant's mental health background  
7 was performed by counsel to the extent possible.

8 **Defendant's Plea Was Given Freely, Knowingly, and Voluntarily**

9 Defendant alleges that he was coerced into taking the plea agreement by counsel and  
10 that the "coercion to take the plea occurred outside of the recorded portions of these  
11 proceedings." SPA at 7. Defendant points to his Motion to Withdraw Plea for additional  
12 support for this claim. In the Motion, Defendant contends this alleged coercion consisted of  
13 his counsel telling him it was likely he would be found guilty of First Degree Murder and go  
14 to prison for life if he did not take the plea. Motion to Withdraw Guilty Plea, Sept. 5, 2012, p.  
15 2. Defendant further contends that he was never told of his appellate rights, and would not  
16 have signed the GPA if he had been so informed. The Court finds that Defendant's allegation  
17 that he was coerced and did not understand he was waiving certain rights is belied by the record  
18 and therefore insufficient to warrant relief. See Hargrove, 100 Nev. at 503, 686 P.2d 225.

19 The law in Nevada clearly establishes that a plea of guilty is presumptively valid and  
20 the burden is on a defendant to show that the plea was not voluntarily entered. Bryant, 102  
21 Nev. 272, 721 P.2d 364, 368 (1986); Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295,  
22 1295 (1975). Furthermore, the Nevada Supreme Court makes it clear in the case of Heffley v.  
23 Warden, 89 Nev. 573, 575, 516 P.2d 1403, 1404 (1973), that the guidelines for voluntariness  
24 of pleas of guilty do "not require the articulation of talismanic phrases." Rather, "the record  
25 must affirmatively disclose that a defendant who pleaded guilty entered his plea  
26 understandingly and voluntarily." Id. (quoting Brady v. United States, 397 U.S. 742, 747-748,  
27 90 S.Ct. 1463, 1470 (1970)).  
28

1 In determining whether a guilty plea is knowingly and voluntarily entered, the Court  
2 will review the totality of the circumstances surrounding the defendant's plea. Bryant, 102  
3 Nev. at 271. The proper standard set forth in Bryant requires the Court to personally address  
4 a defendant at the time he enters his plea in order to determine whether he understands the  
5 nature of the charges to which he is pleading. Id. at 271.

6 In Wilson v. State, 99 Nev. 362, 366-67, 664 P.2d 328, 330-31 (1983), the Nevada  
7 Supreme Court stated the following regarding the acceptance of a guilty plea:

8 In Higby v. Hisiff, 86 Nev. 774, 476 P.2d 950 (1970), we  
9 concluded that certain minimum requirements must be met when  
10 a judge canvasses a defendant regarding the voluntariness of a  
11 guilty plea. We held that the record must affirmatively show the  
12 following: 1) the defendant knowingly waived his privilege  
13 against self-incrimination, the right to trial by jury, and the right  
to confront his accusers; 2) the plea was voluntary, was not  
coerced, and was not the result of a promise of leniency; 3) the  
defendant understood the consequences of his plea and the range  
of punishment; and 4) the defendant understood the nature of the  
charge, i.e., the elements of the crime.

14 In State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000), the Nevada Supreme Court held  
15 that a failure to conduct a ritualistic oral canvass does not mandate a finding of an invalid plea.  
16 Instead, the Court found that a district court should not invalidate a plea as long as the totality  
17 of the circumstances, as shown by the record, demonstrates that the plea was knowingly and  
18 voluntarily made and that the defendant understood the nature of the offense and the  
19 consequences of the plea. Freese, 116 Nev. at 1105. Furthermore, "[w]hen an accused  
20 expressly represents in open court that his plea is voluntary, he may not ordinarily repudiate  
21 his statements to the sentencing judge." Lundy v. Warden, 89 Nev. 419, 422, 514 P.2d 212,  
22 213-14 (1973).

23 Defendant signed his GPA on December 7, 2011. By signing the GPA, Defendant  
24 acknowledged the stipulation to twenty years to life in the Nevada Department of Corrections;  
25 the parties retention of the right to argue the deadly weapon for a term of not less than four to  
26 eight years; and his waiver of rights, including the right to appeal the conviction. GPA, p. 1,  
27 4. Further, Defendant acknowledged that he was pleading guilty freely and voluntary. GPA,  
28 p. 4-5.

1        Within the guilty plea agreement, Defendant's counsel made the representation that to  
2 the best of her knowledge and belief, the Defendant was competent and understood the charges  
3 and consequences of pleading guilty and executed the agreement and entered all guilty pleas  
4 voluntarily. GPA, p. 6.

5        Additionally, during Defendant's plea canvass, the Court addressed Defendant and  
6 asked if more time was needed to speak with Ms. Craig about the elements of the offense and  
7 the allegation before asking whether he wanted to change his plea again, and Defendant  
8 responded "No." The Court asked Defendant how he pleaded to the charge of murder with use  
9 of a deadly weapon—first degree murder with use of a deadly weapon, and Defendant  
10 responded "Guilty." Before the Court accepted his plea of guilty, in order to be satisfied that  
11 Defendant's plea was freely and voluntarily entered and was doing so knowingly, the Court  
12 asked if Defendant was pleading guilty because in truth and in fact he was guilty and Defendant  
13 responded "Yes." The Court asked if anyone forced Defendant or coerced him to enter this  
14 plea and Defendant responded "No." The Court asked Defendant to verify his signature on the  
15 guilty plea, which he did. The Court verified that he signed it after he read it and asked  
16 Defendant if he carefully read it and went through it with his attorney and Defendant responded  
17 "Yes." The Court asked Defendant if when he carefully read this document he realized he was  
18 waiving valuable constitutional and procedural rights by entering the plea and Defendant  
19 responded "Yes." Arraignment at 4-5. The Court explained the stipulation of 20 years to life  
20 with the possibility of parole, and a consecutive four to eight years for the deadly weapon  
21 enhancement and asked if this changed Defendant's mind about any nature of his plea to  
22 confirm that he was still doing it voluntarily and Defendant responded "Yes." Id. at 6-7.

23        Defendant acknowledged that he was made no promises of leniency, that he was aware  
24 of the possible punishment he could receive, and that any questions arising from the GPA had  
25 been answered by his attorney. RT at 6-7, GPA at 3. Defendant agreed that pleading guilty  
26 and accepting the plea bargain was in his best interest and a trial would be contrary to his best  
27 interest. GPA at 5. Defendant clearly acknowledged that he was entering into his GPA  
28 voluntarily and not under duress or coercion and that he was not under the influence of any

1 substance that would impair his ability to understand the GPA or the circumstances  
2 surrounding his plea. GPA at 4-5, RT at 4-5. Finally, by admitting the facts as outlined in the  
3 Information, Defendant acknowledged that he understood the nature of the charges against  
4 him. GPA at 1, RT at 4, 7-8, see Wilson v. State, 99 Nev. 362, 366-67 (As to the requirement  
5 that a defendant understand the nature of the charge, this Court previously held that “in order  
6 for the record to show an understanding of the nature of the charge it is necessary that there be  
7 either a showing that the defendant himself understood the elements of the offense to which  
8 the plea was entered or a showing that the defendant has made factual statements to the court  
9 which constitute an admission to the pleaded to offense.”) (internal citation omitted).  
10 Accordingly, the State affirmatively demonstrated each element of a plea canvass as required  
11 by Wilson v. State, 99 Nev. 362, 366-67, and Defendant failed to satisfy his burden of proving  
12 his plea was entered into unknowingly or involuntarily. See Bryant, 102 Nev. 268.  
13 Additionally, Defendant’s GPA in conjunction with the Court’s canvass indicates that  
14 Defendant knew he was waiving certain appellate rights. GPA at 4, RT, 4-5.

15 Defendant alleges that he was coerced into pleading guilty as he was not given enough  
16 time to consider the offer and that his attorney threatened him by saying he would likely lose  
17 at trial and go to prison for life. The Court finds this is belied by the record, because not only  
18 was Defendant given multiple opportunities to tell the court he needed more time or had further  
19 questions, he also told the court he was not being coerced. RT 4-5. Further, at the evidentiary  
20 hearing his plea counsel, Christy Craig, explained that she did not coerce him or threaten him;  
21 counsel was being honest with Defendant in telling him the State had a strong case against  
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25 guilty. Further, the Court finds the issue of Defendant withdrawing his guilty plea lacks merit  
26 because counsel addressed any issue coming to light and counsel would have informed the  
27 Court if there was any question of competency at the time of entry of plea. The Court finds the  
28 issue of Defendant’s mental health and prior counsel’s advice is satisfied after having

1 conducted the evidentiary hearing. The Court further finds that future counsel would be unable  
2 to bring another claim on these issues under these circumstances.

3 **ORDER**


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

6 DATED this 20<sup>th</sup> day of October, 2015.

7   
8 DISTRICT JUDGE

9  
10 STEVEN B. WOLFSON  
11 Clark County District Attorney  
12 Nevada Bar #001565

13 BY

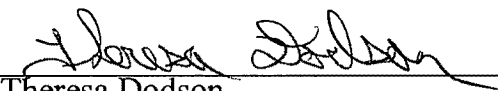
  
14 RYAN J. MACDONALD  
15 Deputy District Attorney  
16 Nevada Bar #012615

17 **CERTIFICATE OF SERVICE**

18 I certify that on the 17<sup>th</sup> day of October, 2015, I mailed a copy of the foregoing  
19 proposed Findings of Fact, Conclusions of Law, and Order to:

20 Carmine Colucci, Esq.  
21 629 South Sixth Street  
22 Las Vegas, Nevada 89101

23 BY

  
24 Theresa Dodson  
25 Secretary for the District Attorney's Office  
26  
27  
28

no/RJM/td/dvu



**DISTRICT COURT  
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****April 28, 2010**

10C264079

The State of Nevada vs Kevin M Gipson

**April 28, 2010****11:45 AM****Grand Jury Indictment****GRAND JURY  
INDICTMENT****Court Clerk: Tina  
Hurd****Reporter/Recorder:  
Renee Vincent****Heard By: Linda Bell****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**Clowers, Shanon  
Schubert, DavidAttorney  
Attorney**JOURNAL ENTRIES**

- Duane Schlismann, Grand Jury Foreperson, stated to the Court that at least twelve members had concurred in the return of the true bill during deliberation, but had been excused for presentation to the Court. The State presented Grand Jury case number 09AGJ167X to the Court. COURT ORDERED, the Indictment may be filed and is assigned case number C264079, Department 18. Ms. Clowers requested a warrant and argued bail. COURT ORDERED, ARREST WARRANT WILL ISSUE, NO BAIL. Matter set for initial arraignment. Exhibit(s) 1-18 lodged with Clerk of District Court.

**WARRANT (CUSTODY)****5-5-10 8:15 AM INITIAL ARRAIGNMENT (DEPT. 18)**

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****May 05, 2010**

10C264079

The State of Nevada vs Kevin M Gipson

**May 05, 2010****8:15 AM****All Pending Motions**

**ALL PENDING  
MOTIONS (5/5/10)  
Court Clerk: Sharon  
Chun  
Reporter/Recorder:  
Richard Kangas  
Heard By: David  
Barker**

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

Bolenbaker, Mike R.

Attorney

Craig-Rohan, Christy L.

Attorney

Gipson, Kevin M

Defendant

Public Defender

Attorney

**JOURNAL ENTRIES****- INITIAL ARRAIGNMENT...BENCH WARRANT RETURN**

Deft present in custody. DEFT. GIPSON ARRAIGNED, PLED NOT GUILTY and WAIVED THE 60-DAY RULE. COURT ORDERED, matter set for trial in ordinary course. Mr. Bolenbaker noted that the State may be seeking the Death Penalty and COURT ORDERED, matter SET for status check. At request of Ms. Craig, COURT ORDERED, Ms. Craig has 21 days from filing of the transcript to file a Writ.

**CUSTODY (B.W.)****5/21/10 8:15 AM STATUS CHECK: STATE'S REQUEST RE DEATH PENALTY**

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****May 21, 2010**

10C264079

The State of Nevada vs Kevin M Gipson

**May 21, 2010****8:15 AM****Status Check**

**STATUS CHECK:**  
**STATE'S REQUEST**  
**RE DEATH**  
**PENALTY Relief**  
**Clerk: Tia Everett/te**  
**Reporter/Recorder:**  
**Richard Kangas**  
**Heard By: David**  
**Barker**

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

Clowers, Shanon

Attorney

Craig-Rohan, Christy L.

Attorney

Gipson, Kevin M

Defendant

Public Defender

Attorney

**JOURNAL ENTRIES**

- Ms. Clowers informed the Court a decision has been made and the State will not be seeking the death penalty in this case. Ms. Craig advised this case will still carry the potential penalty of life without the possibility of parole and due to the significant mental health issues with defendant and his family she may need to request a continuance of the trial. Court stated parties should work toward the current trial date at this time; however, should the need arise for the Court to make a decision to place the matter on calendar.

**CUSTODY**

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**September 15, 2010**

10C264079

The State of Nevada vs Kevin M Gipson

**September 15, 2010 8:15 AM Calendar Call**

**HEARD BY:** Barker, David

**COURTROOM:** RJC Courtroom 11B

**COURT CLERK:** Sharon Chun

**RECORDER:** Richard Kangas

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Clowers, Shanon	Attorney
	Craig-Rohan, Christy L.	Attorney
	Public Defender	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Ms. Craig requested the trial continued and a briefing schedule set, because of a discovery issue. The State had no opposition, as well as to Deft filing its Writ. COURT ORDERED the 9/20/10 trial VACATED and RESET.

**CUSTODY**

5/4/11 8:15 AM CALENDAR CALL

5/9/11 10:00 AM TRIAL BY JURY

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**November 19, 2010**

10C264079

The State of Nevada vs Kevin M Gipson

**November 19, 2010 8:15 AM**

**Further Proceedings**

**HEARD BY:** Barker, David

**COURTROOM:** RJC Courtroom 11B

**COURT CLERK:** Roshonda Mayfield

**RECORDER:** Richard Kangas

**REPORTER:**

**PARTIES**

**PRESENT:**

Craig-Rohan, Christy L.  
Gipson, Kevin M

Attorney  
Defendant

**JOURNAL ENTRIES**

- Following representations by counsel, COURT ORDERED, calendar call and trial date STANDS.

CUSTODY

5/4/11 8:15 A.M. CALENDAR CALL

5/9/11 10:00 A.M. JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****January 19, 2011**

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10C264079

The State of Nevada vs Kevin M Gipson

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**January 19, 2011****8:15 AM****Motion****HEARD BY:** Barker, David**COURTROOM:** RJC Courtroom 11B**COURT CLERK:** Roshonda Mayfield**RECORDER:** Richard Kangas**REPORTER:****PARTIES****PRESENT:**

Clowers, Shanon  
Gipson, Kevin M  
Khamisi, Bitu  
State of Nevada

Attorney  
Defendant  
Attorney  
Plaintiff

**JOURNAL ENTRIES**

- Upon inquiry by the Court, the Deft. states he would like to withdraw his motion as the issues within the motion are no longer true. Therefore, COURT ORDERED, motion WITHDRAWN and OFF CALENDAR at the request of the Defendant; trial STANDS.

**CUSTODY**

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****April 25, 2011**

10C264079

The State of Nevada vs Kevin M Gipson

**April 25, 2011****8:15 AM****All Pending Motions****HEARD BY:** Barker, David**COURTROOM:** RJC Courtroom 11B**COURT CLERK:** Roshonda Mayfield**RECORDER:** Richard Kangas**REPORTER:****PARTIES****PRESENT:**

Craig-Rohan, Christy L.

Attorney

Gipson, Kevin M

Defendant

State of Nevada

Plaintiff

Turner, Robert B.

Attorney

**JOURNAL ENTRIES**

- DEFT'S MOTION TO CMPEL DISCOVERY...DEFT'S MOTION TO SUPPRESS OR IN THE ALTERNATIVE A JACKSON V. DENNO.

Colloquy between parties regarding charts, grafts and reports as it relates to this matter. Following representations by counsel, COURT ORDERED, matter CONTINUED with there being no opposition.

**CUSTODY**

5/2/11 8:15 A.M. DEFENDENTS MOTION TO COMPEL DISCOVERY...DEFENDANTS MOTION TO SUPPRESS OR IN THE ALTERNATIVE A JACKSON V. DENNO.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****May 02, 2011**

10C264079

The State of Nevada vs Kevin M Gipson

**May 02, 2011****8:15 AM****All Pending Motions****HEARD BY:** Barker, David**COURTROOM:** RJC Courtroom 11B**COURT CLERK:** Roshonda Mayfield**RECORDER:** Richard Kangas**REPORTER:****PARTIES****PRESENT:**

Clowers, Shanon

Attorney

Craig-Rohan, Christy L.

Attorney

Gipson, Kevin M

Defendant

State of Nevada

Plaintiff

Turner, Robert B.

Attorney

**JOURNAL ENTRIES**

- STATES MOTION IN LIMINE TO ADMIT BAD ACTS AND OTHER ACTS OF THE DEFENDANT AGAINST THE VICTIM...DEFT'S MOTION TO COMPEL DISCOVERY...DEFT'S MOTION TO SUPPRESS OR IN THE ALTERNATIVE A JACKSON V DENNO...STATE'S MOTION IN LIMINE REGARDING THE DEFENDANT'S EXPERT WITNESSES AND REQUEST FOR DISCOVERY.

Attorney Clowers argued, there is an issue regarding the defense motion to suppress that may affect the trial date in this matter.

Attorney Craig advised, the State has provided defense with everything requested as it pertains to discovery. Therefore, the motion is moot.

Court advised, the parties are still in the process of addressing other motions. This Court will hold to the calendar call date that has been set. All pending motions are to be properly noticed. Therefore, there will be no decisions made as to the motions at this time; motions CONTINUED to the calendar call date. Further the Motion to Compel is MOOT/OFF CALENDAR as stated on the record.



CUSTODY

5/4/11 8:15 A.M. STATES MOTION IN LIMINE TO ADMIT BAD ACTS AND OTHER ACTS OF THE DEFENDANT AGAINST THE VICTIM.....DEFT'S MOTION TO SUPPRESS OR IN THE ALTERNATIVE A JACKSON V DENNO...STATE'S MOTION IN LIMINE REGARDING THE DEFENDANT'S EXPERT WITNESSES AND REQUEST FOR DISCOVERY

CLERK'S NOTE: Minute order modified to reflect the Motion to Compel being MOOT/OFF CALENDAR. (rm 8/16/11)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****May 04, 2011**

10C264079

The State of Nevada vs Kevin M Gipson

**May 04, 2011****8:15 AM****All Pending Motions****HEARD BY:** Barker, David**COURTROOM:** RJC Courtroom 11B**COURT CLERK:** Roshonda Mayfield**RECORDER:** Richard Kangas**REPORTER:****PARTIES****PRESENT:**

Clowers, Shanon

Attorney

Craig-Rohan, Christy L.

Attorney

Gipson, Kevin M

Defendant

State of Nevada

Plaintiff

Turner, Robert B.

Attorney

**JOURNAL ENTRIES**

- CALENDAR CALL...DEFT'S MOTION IN LIMINE TO ADMIT BAD ACTS AND OTHER ACTS OF THE DEFT. AGAINST THE VICTIM...DEFT'S MOTION TO SUPPRESS OR IN THE ALTERNATIVE A JACKSON V DENNO...STATE'S MOTION IN LIMINE REGARDING THE DEFENDANT'S EXPERT WITNESSES AND REQUEST FOR DISCOVERY.

Attorney's Craig and Turner argued, the person needed for the Jackson Denno hearing will not be available for 13 weeks. Following representations by counsel, COURT ORDERED, matter CONTINUED at the request of counsel without there being opposition; Defense oral request to continue trial GRANTED; trial VACATED and RESET. Matter set for hearing regarding all pending motions.

**CUSTODY**

8/17/11 8:15 A.M. HEARING ( ALL PENDING MOTIONS)

9/7/11 8:15 A.M. CALENDAR CALL

**10C264079**

9/12/11 10:00 A.M. JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****May 16, 2011**

10C264079

The State of Nevada vs Kevin M Gipson

**May 16, 2011****8:15 AM****All Pending Motions****HEARD BY:** Barker, David**COURTROOM:** RJC Courtroom 11B**COURT CLERK:** Roshonda Mayfield**RECORDER:** Richard Kangas**REPORTER:****PARTIES****PRESENT:**

Avants, Lynn

Attorney

Gipson, Kevin M

Defendant

**JOURNAL ENTRIES**

- DEFT'S MOTION IN LIMINE TO BAR THE ADMISSION OF CUMULATIVE VICTIM IMPACT EVIDENCE IN VIOLATION OF THE DUE PROCESS CLAUSE...DEFT'S MOTION IN LIMINE TO PRECLUDE THE STATE FROM MOVING TO ADMIT INTO EVIDENCE PHOTOGRAPHS PREJUDICIAL TO KEVIN GIPSON.

Court advised, both parties are requesting a continuance in this matter. Therefore, COURT ORDERED, matter CONTINUED at the request of counsel.

**CUSTODY**

8/17/11 8:15 A.M. DEFT'S MOTION IN LIMINE TO BAR THE ADMISSION OF CUMULATIVE VICTIM IMPACT EVIDENCE IN VIOLATION OF THE DUE PROCESS CLAUSE/DEFT'S MOTION IN LIMINE TO PRECLUDE THE STATE FROM MOVING TO ADMIT INTO EVIDENCE PHOTOGRAPHS PREJUDICIAL TO KEVIN GIPSON.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****July 11, 2011**

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10C264079

The State of Nevada vs Kevin M Gipson

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**July 11, 2011****8:15 AM****Motion****HEARD BY:** Barker, David**COURTROOM:** RJC Courtroom 11B**COURT CLERK:** Roshonda Mayfield**RECORDER:** Richard Kangas**REPORTER:****PARTIES****PRESENT:**

Clowers, Shanon

Attorney

Craig-Rohan, Christy L.

Attorney

Gipson, Kevin M

Defendant

State of Nevada

Plaintiff

**JOURNAL ENTRIES**

- Following a conference at the bench, Court advised, there is a scheduling conflict with the State. Therefore, COURT ORDERED, motion GRANTED; trial VACATED and RESET.

**CUSTODY**

11/9/11 8:15 A.M. CALENDAR CALL

11/14/11 10:00 A.M. JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****August 17, 2011**

10C264079

The State of Nevada vs Kevin M Gipson

**August 17, 2011****8:15 AM****All Pending Motions****HEARD BY:** Smith, Douglas E.**COURTROOM:** RJC Courtroom 11B**COURT CLERK:** Roshonda Mayfield**RECORDER:** Richard Kangas**REPORTER:****PARTIES****PRESENT:**

Clowers, Shanon

Attorney

Attorney

Craig-Rohan, Christy L.

Attorney

Gipson, Kevin M

Defendant

State of Nevada

Plaintiff

**JOURNAL ENTRIES**

- DEFENDANT'S NOTICE OF MOTION AND MOTION TO BAR THE ADMISSION OF CUMULATIVE VICTIM IMPACT PANEL EVIDENCE IN VIOLATION OF THE DUE PROCESS CLAUSE...DEFT'S MOTION IN LIMINE TO PRECLUDE THE STATE FROM MOVING TO ADMIT INTO EVIDENCE PHOTOGRAPHS PREJUDICIAL TO KEVIN GIPSON.

Court advised, this matter is on calendar today specifically to set dates regarding the pending motions and the denno hearing. Therefore, COURT SO ORDERED.

10/7/11 1:00 P.M. DEFENDANT'S NOTICE OF MOTION AND MOTION TO BAR THE ADMISSION OF CUMULATIVE VICTIM IMPACT PANEL EVIDENCE IN VIOLATION OF THE DUE PROCESS CLAUSE...DEFT'S MOTION IN LIMINE TO PRECLUDE THE STATE FROM MOVING TO ADMIT INTO EVIDENCE PHOTOGRAPHS PREJUDICIAL TO KEVIN GIPSON...STATES MOTION IN LIMINE TO ADMIT BAD ACTS AND OTHER ACTS OF THE DEFENDANT AGAINST THE VICTIM...STATES MOTION IN LIMINE REGARDING THE DEFENDANT'S EXPERT WITNESSES AND REQUEST FOR DISCOVERY.

11/9/11 8:15 A.M. CALENDAR CALL

11/14/11 10:00 A.M. JURY TRIAL

11/14/11 10:00 A.M. HEARING (JACKSON v DENNO)

CLERK'S NOTE: The pending motions from 5/4/11 were not heard on 8/17/11 due to a clerical error of not being entered into Odyssey. (rm 8/16/11)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**October 07, 2011**

10C264079

The State of Nevada vs Kevin M Gipson

**October 07, 2011**

**8:30 AM**

**All Pending Motions**

**HEARD BY:** Barker, David

**COURTROOM:** RJC Courtroom 11B

**COURT CLERK:** April Watkins

**RECORDER:** Richard Kangas

**REPORTER:**

**PARTIES**

**PRESENT:**

Gipson, Kevin M

Defendant

**JOURNAL ENTRIES**

- STATE'S MOTION IN LIMINE REGARDING THE DEFT'S EXPERT WITNESSES AND REQUEST FOR DISCOVERY...STATE'S MOTION IN LIMINE TO ADMIT BAD ACTS AND OTHER ACTS OF THE DEFT. AGAINST THE VICTIM...DEFT'S MOTION IN LIMINE TO PRECLUDE THE STATE FROM MOVING TO ADMIT INTO EVIDENCE PHOTOGRAPHS PREJUDICIAL TO KEVIN GIPSON...DEFT'S MOTION IN LIMINE TO BAR THE ADMISSION OF CUMULATIVE VICTIM IMPACT EVIDENCE IN VIOLATION OF THE DUE PROCESS CLAUSE

COURT ORDERED, matters CONTINUED at request of counsel.

CUSTODY

CONTINUED TO: 10/24/11 8:15 AM



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****October 24, 2011**

10C264079

The State of Nevada vs Kevin M Gipson

**October 24, 2011****8:15 AM****All Pending Motions****HEARD BY:** Barker, David**COURTROOM:** RJC Courtroom 11B**COURT CLERK:** April Watkins**RECORDER:** Cheryl Carpenter**REPORTER:****PARTIES****PRESENT:**

Craig-Rohan, Christy L.

Attorney

Gipson, Kevin M

Defendant

State of Nevada

Plaintiff

Turner, Robert B.

Attorney

**JOURNAL ENTRIES**

- STATE'S MOTION IN LIMINE REGARDING THE DEFT'S EXPERT WITNESSES AND REQUEST FOR DISCOVERY...STATE'S MOTION IN LIMINE TO ADMIT BAD ACTS AND OTHER ACTS OF THE DEFT. AGAINST THE VICTIM...DEFT'S MOTION IN LIMINE TO PRECLUDE THE STATE FROM MOVING TO ADMIT INTO EVIDENCE PHOTOGRAPHS PREJUDICIAL TO KEVIN GIPSON...DEFT'S MOTION IN LIMINE TO BAR THE ADMISSION OF CUMULATIVE VICTIM IMPACT EVIDENCE IN VIOLATION OF THE DUE PROCESS CLAUSE

Statement by Ms. Craig regarding State's request to continue trial date due to missing witnesses. Colloquy regarding pending motions. Upon Court's inquiry, Mr. Turner stated he does not believe motions will have a impact on trial date. Colloquy regarding Jackson v. Denno hearing. COURT ORDERED, trial date VACATED and RESET. FURTHER ORDERED, State's Motion in Limine to Admit Bad Acts and Jackson v. Denno Hearing date VACATED and RESET; Deft's motions and State's Motion in Limine Regarding the Deft's Expert Witnesses CONTINUED.

**CUSTODY**

11/9/11 8:15 AM STATE'S MOTION IN LIMINE TO ADMIT BAD ACTS AND OTHER ACTS OF

THE DEFT. AGAINST THE VICTIM...JACKSON V. DENNO HEARING

12/7/11 8:15 AM CALENDAR CALL...STATE'S MOTION IN LIMINE REGARDING THE DEFT'S  
EXPERT WITNESSES AND REQUEST FOR DISCOVERY...DEFT'S MOTION IN LIMINE TO  
PRECLUDE THE STATE FROM MOVING TO ADMIT INTO EVIDENCE PHOTOGRAPHS  
PREJUDICIAL TO KEVIN GIPSON...DEFT'S MOTION IN LIMINE TO BAR THE ADMISSION OF  
CUMULATIVE VICTIM IMPACT EVIDENCE IN VIOLATION OF THE DUE PROCESS CLAUSE

12/12/11 10:00 AM JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****November 09, 2011**

10C264079

The State of Nevada vs Kevin M Gipson

**November 09, 2011 8:15 AM****All Pending Motions****HEARD BY:** Barker, David**COURTROOM:** RJC Courtroom 11B**COURT CLERK:** April Watkins**RECORDER:** Cheryl Carpenter**REPORTER:****PARTIES****PRESENT:**

Clowers, Shanon

Attorney

Attorney

Craig-Rohan, Christy L.

Attorney

Gipson, Kevin M

Defendant

State of Nevada

Plaintiff

**JOURNAL ENTRIES**

- Deft's Motion for Witness List and Evidence in Support of Allegations of Prior Bad Acts FILED IN OPEN COURT.

Court stated he has read other bad acts motion. Ms. Clowers stated she is doing this as a precautionary measure. Further, when pretrialing other witnesses, came across other information that was presented in motion. Additionally, Ms. Clowers stated she can provide names of witnesses for Petrocelli Hearing. Ms. Craig argued she does not believe Petrocelli Hearing standard has been met. Further, Ms. Craig argued she does not have names of witnesses and advised she has requested dates and what will be used to support. Ms. Clowers stated she believed information was provided and argued Deft. went to victim's place of business demanding money, do not have employees name who witnessed, but will provide. Further, Ms. Clowers stated she was also advised victim's father, Charles Lavall, observed incidents and will be calling him as a witness. COURT ORDERED, State of Nevada has ONE (1) WEEK to produce names, dates and interviews. Ms. Clowers stated she does not have interviews.

Ms. Clowers stated as to the former Las Vegas Metropolitan Police Department (LVMPD) employee,

believes he has been located and believes if he is served with order, he will appear. CONFERENCE AT THE BENCH. Colloquy. FURTHER ORDERED, State's Motion and Deft's Motion CONTINUED. Additional colloquy. COURT ORDERED, Jackson v. Denno hearing CONTINUED.

Motion to Secure the Attendance of an Out of State Witness and for Issuance of a Certificate Under Seal of the Court and Certificate of the Eighth Judicial District Court of Nevada FILED IN OPEN COURT.

Colloquy. COURT ORDERED, motion to secure GRANTED. Order and Certificate signed in open court.

CUSTODY

11/16/11 State's Motion in Limine to Admit Bad Acts and Other Acts of the Deft. Against Victim...Deft's Motion for Witness List and Evidence in Support of Allegations of Prior Bad Acts

12/2/11 1:00 PM JACKSON V. DENNO HEARING

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****November 16, 2011**

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10C264079

The State of Nevada vs Kevin M Gipson

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**November 16, 2011     8:15 AM****All Pending Motions****HEARD BY:** Barker, David**COURTROOM:** RJC Courtroom 11B**COURT CLERK:** April Watkins**RECORDER:** Cheryl Carpenter**REPORTER:****PARTIES****PRESENT:**

Clowers, Shanon

Attorney

Attorney

Craig-Rohan, Christy L.

Attorney

Gipson, Kevin M

Defendant

State of Nevada

Plaintiff

**JOURNAL ENTRIES**

- STATE'S MOTION IN LIMINE TO ADMIT BAD ACTS AND OTHER ACTS OF DEFT. AGAINST THE VICTIM...DEFT'S MOTION FOR WITNESS LIST AND EVIDENCE IN SUPPORT OF ALLEGATIONS OF PRIOR BAD ACTS

Court stated he has received information the State would be withdrawing motion. Ms. Clowers stated she has gone through everything as well as meeting with witnesses and the State does not have anything at this point to qualify as a bad act. Further, the State will present evidence regarding the relationship they had. COURT ORDERED, State's Motion WITHDRAWN. Ms. Craig stated she is concerned as to the body of the motion which list things the State believes they can get in which the State is now withdrawing and argued all is hearsay. Further, Ms. Craig stated she believes there are Crawford problems. Ms. Clowers stated issue will be brought up at time of trial and the Court can rule at that time. Further, Ms. Clowers stated she has noticed all witnesses the State intends on calling. Colloquy. Ms. Clowers advised she has prepare a list of things the State wants to present which she will provide to Deft's counsel. Court stated he will require proffer from the State. As to the motion for in camera review of personnel records, Ms. Clowers argued State filed opposition. Further, Ms. Clowers advised Charlotte Bible, counsel for the Las Vegas Metropolitan Police

Department is not available on the day that was determined. Colloquy. Ms. Craig stated she did send notice to Mr. Flohr who did interviews with Deft. FURTHER ORDERED, Deft's Motion MOOT.

CUSTODY

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****November 21, 2011**

10C264079

The State of Nevada vs Kevin M Gipson

**November 21, 2011     8:15 AM     Motion****HEARD BY:** Barker, David**COURTROOM:** RJC Courtroom 11B**COURT CLERK:** April Watkins**RECORDER:** Cheryl Carpenter**REPORTER:****PARTIES****PRESENT:**

Clowers, Shanon

Attorney

Attorney

Craig-Rohan, Christy L.

Attorney

Gipson, Kevin M

Defendant

State of Nevada

Plaintiff

Turner, Robert B.

Attorney

**JOURNAL ENTRIES**

- Ms. Craig requested the Court do a in camera review of Mr. Flohr's civilian file while employed with the Las Vegas Metropolitan Police Department (Metro). Further, Ms. Craig argued Mr. Flohr conducted the interrogation of Deft., advised she wants the Court to determine if he was disciplined regarding Miranda Rights and if his separation from Metro had to do with any of this as well as accommodations he said he has. Mr. Turner argued speculation, nothing shown from Deft's counsel, no nexus between Miranda violation and the fact there will be records to help impeach. Court stated in camera review is appropriate. Mr. Turner advised everything was done on video. Further, Mr. Turner stated if Mr. Flohr violated Miranda in another case, does not mean it was violated here. COURT ORDERED, motion GRANTED. Court will determine if there are issues of veracity that would impact Deft. and if anything else needs to be determined as to Mr. Flohr's veracity.

**CUSTODY**

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****December 02, 2011**

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10C264079

The State of Nevada vs Kevin M Gipson

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**December 02, 2011      8:30 AM      Hearing****HEARD BY:** Barker, David**COURTROOM:** RJC Courtroom 11B**COURT CLERK:** April Watkins  
Christine Erickson**RECORDER:** Cheryl Carpenter**REPORTER:****PARTIES**

<b>PRESENT:</b>	Craig-Rohan, Christy L.	Attorney
	Gipson, Kevin M	Defendant
	State of Nevada	Plaintiff
	Turner, Robert B.	Attorney

**JOURNAL ENTRIES**

- Deft's Motion to Limit the Testimony of Detective Long FILED IN OPEN COURT.

Ms. Craig advised she is objecting to some of the testimony from Detective Long. Further, Ms. Craig objected to any hearsay testimony including discussions between Deft. and Mr. Flohr, argued clear hearsay and no exceptions. Additionally, Ms. Craig requested State to provide identifiers for Mr. Flohr, advised he has been found in Michigan, counsel has spoken to Judge Schrock in Michigan, they know where he is, know where he is working in Michigan and they have no problem enforcing this Court's order. Colloquy. Ms. Craig further requested Detective Long's testimony be limited and advised there was a second statement given by Deft. on March 25th, argued Detective Long makes ten comments, none are questions, just comments. Further, interview conducted by Mr. Flohr, counsel argued hearsay and inappropriate, cannot testify as to what Mr. Flohr said. Mr. Turner argued motion is untimely, have to establish Deft. was mirandized and have to establish statement was voluntary. Court inquired if Detective Long was present during process. Mr. Turner stated he was, he will testify he was there directly with Mr. Flohr or just outside observing and could hear everything. Court stated objection to hearsay is noted. Detective Long and Linda Jackson, sworn and testified. Ms. Craig requested to bifurcate hearing so Mr. Flohr can be present and testify. Colloquy.



Ms. Craig requested anything after March 25th not come in and argued Detective Long did not participate in the polygraph testing done by Mr. Flohr. Mr. Turner argued Mr. Flohr is not here to discuss CIT test, if it was performed properly, argued here today to determine if Deft. was there voluntarily and if Miranda was violated. COURT ORDERED, Oral Motion to Bifurcate DENIED as the Court has an understanding of interaction between Deft. and police. Mr. Turner argued Deft. was never in custody by any indicia, never told he was in custody, never told he was arrested, took him into custody after Deft. confessed, Detective picked up Deft. in a unmarked vehicle, no handcuffs, no admissions by Deft. in first interview and door was never locked. Further, second interview, Deft. not in custody and argued Las Vegas Metropolitan Police Department's (Metro) policy is to mirandize Deft. Colloquy. Mr. Turner stated Court has to determine if Deft. was in custody at that time. Additionally, Mr. Turner argued Deft. did not have right to counsel in second interview, could of done CIT test since Deft. was not in custody, Deft. said lets do it but Detective decided to take Deft. home, advised him to speak to who he needed to and picked him up at 11:30 a.m . Further, Mr. Turner argued Deft. given Miranda again, did not invoke right to counsel and testing was performed. Additionally, Mr. Turner stated when Deft. was told he failed test, then he confessed. Mr. Turner further stated on March 25th, Deft. said he wanted to talk to counsel, if the Court finds Deft. was in custody and if there is a break in custody between interviews, argued sufficient time State has right to re-mirandize Deft. Ms. Craig argued Deft. expressed concerns about the testing, did not volunteer, did not bring up, the police brought it up, Deft. waits in a room for a couple of hours, Deft. under video taped surveillance and argued not sure if door was locked or not locked. Further, Mr. Flohr mirandized Deft. during second interview and explained Miranda to Deft. Additionally, Ms. Craig stated police willing to bring Deft. a telephone, willing to bring him telephone book and argued Deft. not free to leave. Colloquy. Ms. Craig further argued Deft. was in custody, being interrogated, under Edwards, Detective and police were to stop interrogating Deft. once he asked for counsel. As to mental illness, Ms. Craig argued Mr. Flohr should of been told about Deft's long history of mental illness. Court FINDS based on the totality of circumstances, cannot find this was a custodial interrogation, Deft. voluntarily participated in the questioning and examination and ORDERED, motion to suppress DENIED.

## CUSTODY

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****December 07, 2011**

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10C264079

The State of Nevada vs Kevin M Gipson

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**December 07, 2011      8:15 AM      All Pending Motions****HEARD BY:** Barker, David**COURTROOM:** RJC Courtroom 11B**COURT CLERK:** April Watkins  
Christine Erickson**RECORDER:** Cheryl Carpenter**REPORTER:****PARTIES**

<b>PRESENT:</b>	Craig-Rohan, Christy L.	Attorney
	Gipson, Kevin M	Defendant
	State of Nevada	Plaintiff
	Turner, Robert B.	Attorney

**JOURNAL ENTRIES**

- STATE'S MOTION IN LIMINE REGARDING THE DEFT'S EXPERT WITNESSES AND REQUEST FOR DISCOVERY...DEFT'S MOTION IN LIMINE TO PRECLUDE THE STATE FROM MOVING TO ADMIT INTO EVIDENCE PHOTOGRAPHS PREJUDICIAL TO KEVIN GIPSON...DEFT'S MOTION IN LIMINE TO BAR THE ADMISSION OF CUMULATIVE VICTIM IMPACT EVIDENCE IN VIOLATION OF THE DUE PROCESS CLAUSE... CALENDAR CALL

NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT. Ms. Craig requested to enter plea of guilty but mentally ill. Court noted all agree this decision is not reflected in guilty plea agreement. Mr. Turner stated the State agrees to that but the Court needs to make finding. DEFT. GIPSON ARRAIGNED AND PLED GUILTY BUT MENTALLY ILL to MURDER WITH USE OF A DEADLY WEAPON (F). Court ACCEPTED plea and ORDERED, matter referred to the Division of Parole and Probation (P & P) and set for sentencing. FURTHER ORDERED, State's Motion, Deft's Motions MOOT and trial date VACATED.

**CUSTODY**

**10C264079**

2/10/12 1:30 PM SENTENCING

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****February 10, 2012**

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10C264079

The State of Nevada vs Kevin M Gipson

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**February 10, 2012****1:30 PM****Sentencing****HEARD BY:** Barker, David**COURTROOM:** RJC Courtroom 11B**COURT CLERK:** Tiffany Lawrence**RECORDER:** Cheryl Carpenter**REPORTER:****PARTIES****PRESENT:**

**JOURNAL ENTRIES**

- Robert Turner, DDA, and Shanon Clowers, DDA, present for State of Nevada. Christy Craig-Rohan, DPD, and Timothy O'Brien, DPD, present with Defendant. DEFT GIPSON ADJUDGED GUILTY of MURDER WITH USE OF A DEADLY WEAPON (F). Arguments by counsel and statement of Deft read on the record. Victim Speakers Mechele Lavoll, Charles Lavoll, and Shaena Lavoll sworn and gave victim impact statement. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee and a \$250.00 Civil Indigent Defense Assessment fee, Deft. SENTENCED to LIFE in the Nevada Department of Corrections (NDC) with a MINIMUM PAROLE ELIGIBILITY of TWENTY (20) YEARS; COURT made FACTUAL FINDINGS and ORDERED, pursuant to NRS 193.165 a CONSECUTIVE term of a MAXIMUM of TWO-HUNDRED FORTY (240) MONTHS and a MINIMUM of NINETY-SIX (96) MONTHS in NDC for the weapons enhancement, with 686 DAYS credit for time served. COURT FURTHER ORDERED, DNA Analysis fee WAIVED as previously imposed.

**CUSTODY****BOND, if any, EXONERATED.**

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****September 26, 2012**

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10C264079

The State of Nevada vs Kevin M Gipson

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**September 26, 2012    8:15 AM****Motion****Deft's Pro Per Motion  
to Withdraw Plea****HEARD BY:** Barker, David**COURTROOM:** RJC Courtroom 11B**COURT CLERK:** April Watkins**RECORDER:** Cheryl Carpenter**REPORTER:****PARTIES****PRESENT:**

Clowers, Shanon

Attorney

Attorney

Craig-Rohan, Christy L.

Attorney

State of Nevada

Plaintiff

**JOURNAL ENTRIES**

- Ms. Craig stated she has reviewed motion, given the fact Deft. plead and sentenced to a significant sentence, counsel believes someone should be appointed to see if Deft. has grounds. Court stated Deft. sentenced in manner consistent with stipulation, have not followed Chapter 34 rules, action under Chapter 176, Deft. has to follow the rules and the Court is treating this as a fugitive document. Ms. Craig requested to withdraw as counsel, will mail copy of motion to Deft. and also advised Deft. suffers from mental illness which is a legitimate grounds for the Court to look into consideration to see if counsel did what she was suppose to do. COURT ORDERED, oral request to withdraw GRANTED and motion DENIED under Chapter 176, no factual or legal basis to support.

NDC

CLERK'S NOTE: The above minute order has been distributed to: Kevin Marquette Gipson #1082776, Ely State Prison, 4569 North State Route 490, P.O. Box 1989, Ely, NV 893041. aw

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****November 07, 2012**

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10C264079

The State of Nevada vs Kevin M Gipson

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**November 07, 2012 8:15 AM****All Pending Motions****HEARD BY:** Barker, David**COURTROOM:** RJC Courtroom 11B**COURT CLERK:** April Watkins**RECORDER:** Cheryl Carpenter**REPORTER:****PARTIES****PRESENT:**Cooper, Jonathan  
State of NevadaAttorney  
Plaintiff**JOURNAL ENTRIES**

- DEFT'S PRO PER MOTION TO PROCEED IN FORMA PAUPERIS:

COURT ORDERED, motion GRANTED.

DEFT'S PRO PER MOTION TO APPOINTMENT OF COUNSEL AND REQUEST FOR  
EVIDENTIARY HEARING:

Court stated Deft. needs to articulate basis or reason for appointment of counsel, motion broad, does not factually state why Deft, needs counsel and ORDERED, matter CONTINUED forty-five (45) days for Deft. to supplement motion for appointment of counsel.

NDC

1/9/13 8:15 AM DEFT'S PRO PER MOTION TO APPOINTMENT OF COUNSEL AND REQUEST  
FOR EVIDENTIARY HEARING

CLERK'S NOTE: The above minute order has been distributed to: Kevin Marquette Gipson BAC#  
1082776, Ely State Prison, P.O. Box 1989, Ely, NV 89301. aw

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****November 26, 2012**

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10C264079

The State of Nevada vs Kevin M Gipson

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**November 26, 2012     8:15 AM****Motion****Motion for Direct  
Appeal/  
Memorandum of  
Points and  
Authorities Facts of  
the Case****HEARD BY:** Barker, David**COURTROOM:** RJC Courtroom 11B**COURT CLERK:** April Watkins**RECORDER:** Cheryl Carpenter**REPORTER:****PARTIES****PRESENT:** Burns, J Patrick  
State of NevadaAttorney  
Plaintiff

**JOURNAL ENTRIES**

- COURT ORDERED, matter CONTINUED to be heard with motion for appointment of counsel that is currently set for January 9, 2013.

NDC

CONTINUED TO: 1/9/13 8:15 AM

CLERK'S NOTE: The above minute order has been distributed to: Kevin Marquette Gipson, BAC #1082776, Ely State Prison, P.O. Box 1989, Ely, NV 89301. aw

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**January 09, 2013**

10C264079

The State of Nevada vs Kevin M Gipson

**January 09, 2013**

**8:15 AM**

**All Pending Motions**

**HEARD BY:** Cory, Kenneth

**COURTROOM:** RJC Courtroom 16A

**COURT CLERK:** April Watkins

**RECORDER:** Cheryl Carpenter

**REPORTER:**

**PARTIES**

**PRESENT:**

Burns, J Patrick  
State of Nevada

Attorney  
Plaintiff

**JOURNAL ENTRIES**

- DEFT'S PRO PER MOTION FOR DIRECT APPEAL / MEMORANDUM OF POINTS AND  
AUTHORITIES FACTS OF CASE...DEFT'S PRO PER EX PARTE MOTION FOR APPOINTMENT OF  
COUNSEL AND REQUEST FOR EVIDENTIARY HEARING

COURT ORDERED, matter CONTINUED for the presence of Judge Barker.

NDC

CONTINUED TO: 1/28/13 8:15 AM

CLERK'S NOTE: The above minute order has been distributed to: Kevin Marquette Gipson, BAC  
#1082776, Ely State Prison, P.O. Box 1989, Ely, NV 89301. aw



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****January 28, 2013**

10C264079

The State of Nevada vs Kevin M Gipson

**January 28, 2013****8:15 AM****All Pending Motions****HEARD BY:** Barker, David**COURTROOM:** RJC Courtroom 11B**COURT CLERK:** April Watkins**RECORDER:** Cheryl Carpenter**REPORTER:****PARTIES****PRESENT:**Burns, J Patrick  
State of NevadaAttorney  
Plaintiff**JOURNAL ENTRIES**

- DEFT'S PRO PER MOTION FOR DIRECT APPEAL / MEMORANDUM OF POINTS AND AUTHORITIES FACTS OF THE CASE...DEFT'S PRO PER EX PARTE MOTION FOR APPOINTMENT OF COUNSEL AND REQUEST FOR EVIDENTIARY HEARING

Court noted Deft. filed a motion to file out of time appeal which the Clerk's Office may have construed as a notice of appeal on or about first week of November, 2012. Further, at the same time, case appeal statement was filed which triggered Supreme Court review and on December 20, 2012, more than thirty (30) days after, Supreme Court dismissed appeal indicating Deft. has thirty (30) days to file that appeal which Deft. did not do and it was dismissed. Further, Supreme Court also indicated that the deprivation of appellate rights needs to be raised in post conviction context, petition for writ of habeas corpus. Court believe there was no appeal in the first instance and under Lozada, COURT ORDERED, Deft's motion for appointment of counsel GRANTED. FURTHER ORDERED, Deft's motion for evidentiary hearing DENIED, motion for direct appeal CONTINUED and matter SET for confirmation of counsel.

NDC

2/11/13 8:15 AM DEFT'S PRO PER MOTION FOR DIRECT APPEAL / MEMORANDUM OF POINTS AND AUTHORITIES FACTS OF THE CASE...CONFIRMATION OF COUNSEL

CLERK'S NOTE: Mr. Christensen notified as to the appointment of counsel. aw 1/28/13

CLERK'S NOTE: The above minute order has been distributed to: Kevin Gipson #1082776, Ely State Prison, P.O. Box 1989, Ely, NV 89301. aw

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****February 11, 2013**

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10C264079

The State of Nevada vs Kevin M Gipson

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**February 11, 2013****8:15 AM****All Pending Motions****HEARD BY:** Barker, David**COURTROOM:** RJC Courtroom 11B**COURT CLERK:** April Watkins**RECORDER:** Cheryl Carpenter**REPORTER:****PARTIES****PRESENT:**Colucci, Carmine J.  
Edwards, Michelle  
State of NevadaAttorney  
Attorney  
Plaintiff**JOURNAL ENTRIES**

- CONFIRMATION OF COUNSEL (COLUCCI)...DEFT'S PRO PER MOTION FOR DIRECT APPEAL / MEMORANDUM OF POINTS AND AUTHORITIES FACTS OF THE CASE

Mr. Colucci CONFIRMED as counsel and requested matter be set for status check in for months for him to have time to review file. COURT ORDERED, matter SET for status check and Deft's Pro Per Motion OFF CALENDAR.

NDC

6/17/13 8:15 AM STATUS CHECK: SET BRIEFING SCHEDULE

CLERK'S NOTE: The above minute order has been distributed to: Kevin Marquette Gipson BAC #1082776, Ely State Prison, P.O. Box 1989, Ely, NV 89301. aw

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****June 17, 2013**

10C264079

The State of Nevada vs Kevin M Gipson

**June 17, 2013****8:15 AM****Status Check****Status Check: Set  
Briefing Schedule****HEARD BY:** Barker, David**COURTROOM:** RJC Courtroom 11B**COURT CLERK:** April Watkins**RECORDER:** Cheryl Carpenter**REPORTER:****PARTIES****PRESENT:**Nelson, Catherine L.  
State of Nevada  
Trippiedi, HagarAttorney  
Plaintiff  
Attorney**JOURNAL ENTRIES**

- Ms. Nelson advised all documents have been received and requested 180 days to file initial brief. COURT ORDERED, the following briefing schedule set: initial brief due by December 16, 2013; State's Opposition due by February 17, 2014; Deft's Reply due by March 17, 2014, and matter SET thereafter for hearing.

NDC

3/31/14 8:15 AM HEARING

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****September 15, 2014**

10C264079

The State of Nevada vs Kevin M Gipson

**September 15, 2014 8:15 AM****All Pending Motions****HEARD BY:** Barker, David**COURTROOM:** RJC Courtroom 11B**COURT CLERK:** April Watkins**RECORDER:** Cheryl Carpenter**REPORTER:****PARTIES****PRESENT:**Colucci, Carmine J.  
Duncan, Wesley K.  
State of NevadaAttorney  
Attorney  
Plaintiff**JOURNAL ENTRIES**

- DEFT'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)...STATE'S RESPONSE AND MOTION TO DISMISS DEFT'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

Court stated he is inclined to allow action to be decided on merits and ORDERED, State's Motion to Dismiss DENIED.

Mr. Colucci submitted. Colloquy. COURT ORDERED, the following briefing schedule: Deft's Supplemental Petition due by December 15, 2014, State's Opposition due by February 17, 2015, Deft's Reply due by March 17, 2015, and matter SET for hearing. FURTHER ORDERED, Deft's petition CONTINUED.

NDC

CONTINUED TO: 3/30/15 8:15 AM

3/30/15 8:15 AM HEARING: DEFT'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) & SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST-

**10C264079**

CONVICTION)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

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10C264079

The State of Nevada vs Kevin M Gipson

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**March 30, 2015****8:30 AM****All Pending Motions****HEARD BY:** Kephart, William D.**COURTROOM:** RJC Courtroom 03E**COURT CLERK:** Billie Jo Craig**RECORDER:** Christine Erickson**REPORTER:****PARTIES****PRESENT:** Colucci, Carmine J.

Attorney

**JOURNAL ENTRIES**

- PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)...HEARING: DEFT'S  
PETITION AND SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS

Deputy District Attorney Christopher Laurent present. Defendant not present.

COURT ORDERED, above matter CONTINUED. The State inquired if defendant needed to be present, which the Court advised no he need not be present. CONFERENCE AT THE BENCH.

NDC

CONTINUED TO: 4/13/15 8:30 AM ABOVE MATTERS

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****April 13, 2015**

10C264079

The State of Nevada vs Kevin M Gipson

**April 13, 2015****8:30 AM****All Pending Motions****HEARD BY:** Kephart, William D.**COURTROOM:** RJC Courtroom 03E**COURT CLERK:** Ying Pan**RECORDER:** Christine Erickson**REPORTER:****PARTIES****PRESENT:**

Colucci, Carmine J.

Attorney

MacDonald, Ryan J, ESQ

Attorney

State of Nevada

Plaintiff

**JOURNAL ENTRIES**

- PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) ... HEARING: DEFT S  
PETITION AND SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS

Defendant not present.

Argument by counsel. COURT ORDERED, an Evidentiary Hearing regarding the mental health investigation and prior counsel's advice SHALL be SET and Request to Withdraw Plea DENIED. Court DIRECTED the State to prepare a Transport Order.

NDC

6-26-15 9:00 AM PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) ...  
EVIDENTIARY HEARING RE MENTAL ISSUE & PRIOR COUNSEL'S ADVICE



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

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10C264079

The State of Nevada vs Kevin M Gipson

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**September 10, 2015    9:30 AM            All Pending Motions****HEARD BY:** Kephart, William D.**COURTROOM:** RJC Courtroom 03E**COURT CLERK:** April Watkins**RECORDER:** Christine Erickson**REPORTER:****PARTIES****PRESENT:**

Colucci, Carmine J.

Attorney

Gipson, Kevin M

Defendant

MacDonald, Ryan J, ESQ

Attorney

State of Nevada

Plaintiff

**JOURNAL ENTRIES**

**- PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION...EVIDENTIARY HEARING:  
HEARING RE: MENTAL HEALTH ISSUE & PRIOR COUNSEL'S ADVICE**

Court noted hearing is limited to Deft's mental issues and prior counsel's advice. Mr. Colucci stated he believes coercion come into this if Deft. had mental issues at time of plea. Statement by Mr. MacDonald regarding petition. Deft. Gipson and Christy Craig, Esq., sworn and testified. CONFERENCE AT THE BENCH. Matter submitted by counsel. Court FINDS sufficient information or investigation into Deft's mental health background, counsel did what she had to and to the extent she could. As to the claim Deft. was coerced into taking plea, Court FINDS Deft. was not coerced into plea, believes Deft. understood and Ms. Craig did not coerce Deft. into taking plea. Further, the Court FINDS Ms. Craig was highly effective, counsel addressed Deft. with good advice, Deft. knowingly, freely and voluntarily entered into plea. As to the issue of Deft. withdrawing plea, Court FINDS counsel addressed any issue coming to light, counsel would have informed the Court if there was any question of competency at time of plea, believes issue is satisfied at this point and does not believe any counsel would be able to bring another issue with that under those circumstances. COURT ORDERED, petition DENIED. State to prepare order.

**10C264079**

NDC

**GRAND JURY INDICTMENTS RETURNED IN OPEN COURT APRIL 28, 2010**  
**(From Grand Jury sessions held on April 6 & 27, 2010)**

**JUDGE LINDA MARIE BELL**

**FOREPERSON DUANE SCHLISMANN**

**CHIEF DEPUTY DISTRICT ATTORNEY DAVID SCHUBERT**  
**DEPUTY DISTRICT ATTORNEY SHANON CLOWERS**  
**DEPUTY DISTRICT ATTORNEY PETER THUNELL**  
**CHIEF DEPUTY DISTRICT ATTORNEY STACY KOLLINS**

**CASE NO.** *C264079*  
**DEPT. NO.** *XVIII*  
**DDA SHANON CLOWERS**

**Defendant(s):** KEVIN MARQUETTE GIPSON, aka Kevin Marquett Gipson  
**Case No(s):** 09AGJ167X (RANDOM TRACKS TO DEPTS XII AND XVIII)  
**Charge(s):** (1) *CT – MURDER WITH USE OF A DEADLY WEAPON (Felony)*  
**Def. Counsel(s):** CHRISTY CRAIG, Deputy Public Defender

**WARRANT:**  
**DEFT IS IN CUSTODY @ CCDC**

**Exhibits:**

- |                        |           |
|------------------------|-----------|
| 1. Proposed Indictment | 10. Photo |
| 2. Instructions        | 11. Photo |
| 3. Photo               | 12. Photo |
| 4. Photo               | 13. Photo |
| 5. Photo               | 14. Photo |
| 6. Photo               | 15. Photo |
| 7. Photo               | 16. Photo |
| 8. Photo               | 17. Photo |
| 9. Photo               | 18. Photo |

**Exhibits 1-18, to be lodged with the Clerk of the Court.**

## 'S EXHIBIT LIST

HEARING DATE

DEC 02 2011

Case No. C264079	Clerk: April Watkins
Dept. XVIII Judge: DAVID BARKER	Recorder: Cheryl Carpenter
Pltt(s): The State of Nevada	Pltt's Counsel: Brad Turner
Def(s): Kevin Marquett Gipson	Def's Counsel: Christy Craig

[illegible]

# Certification of Copy

State of Nevada }  
County of Clark } SS:

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

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

STATE OF NEVADA,

Plaintiff(s),

vs.

KEVIN M. GIPSON,

Defendant(s).

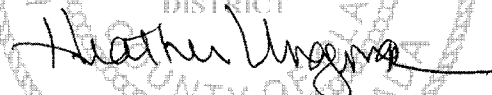
Case No: C264079

Dept No: XIX

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 13 day of November 2015.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

