

Electronically Filed
10/13/2016 11:50:19 AM

Elizabeth A. Brown
Electronically Filed
Oct 19 2016 09:53 a.m.
CLERK OF THE COURT
Elizabeth A. Brown
Clerk of Supreme Court

Evaristo J. Garcia
In Proper Person

~~State of Nevada~~
Ely State Prison
P.O. Box 1989
Ely, NV, 89301

8th DISTRICT COURT
Clark COUNTY NEVADA

Evaristo J. Garcia #1108072

Defendant

-v-

State of Nevada

Case No. C-262966
Dept. No. 11
Docket _____

NOTICE OF APPEAL

Notice is hereby given that the Evaristo J. Garcia

_____, 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 on my denial of my writ of Habeas corpus

Dated this date, 10/3/2016

Respectfully Submitted,

Evaristo Garcia #1108072

In Proper Person

RECEIVED

OCT 13 2016

CLERK OF THE COURT

CERTIFICATE OF SERVICE BY MAILING

I, Evaristo J. Garcia, hereby certify, pursuant to NRCP 5(b), that on this 10
day of 3, 2016, I mailed a true and correct copy of the foregoing, "Notice
OF Appeal"

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

Steve D. Grierson
Clerk of the court
200 Lewis Ave. 3rd Floor
Las Vegas NV 89155-1160

Catherine Cortez
Nevada Attorney General
100 North Carson Street
Carson City NV 89701-4717

STEVEN B. WOLF
OFFICE OF THE DISTRICT ATTORNEY
200 LEWIS AVE.
P.O. BOX 552212
LAS VEGAS NV 89155-2212

DATED: this 3 day of Oct., 2016.

Evaristo Garcia
Ely State Prison #1108072
/In Propria Persona
~~Notary Public for the State of Nevada~~
~~My Commission Expires 12/31/2016~~
Ely state prison
P.O. Box 1989
Ely, NV 89301

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Notice of Appeal
(Title of Document)

filed in District Court Case number C-262966

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

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.

Evaristo Garcia #1108072
Signature

10/3/2016
Date

Evaristo Garcia #1108072
Print Name

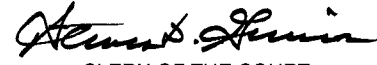
Title

Evaristo J. Garcia #110807Z
Ely State Prison
P.O. Box 1989
Ely, NV 89301

Steve D. Grierson
Clerk of The Court
200 Lewis Ave 3rd Floor
Las Vegas NV 89155-1160



9026 0 123


CLERK OF THE COURT

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

10 STATE OF NEVADA,

11 Plaintiff(s),

12 vs.

13 EVARISTO J. GARCIA,

14 Defendant(s),
15

Case No: 10C262966-1

Dept No: II

16
17 **CASE APPEAL STATEMENT**

18 1. Appellant(s): Evaristo Garcia

19 2. Judge: Richard F. Scotti

20 3. Appellant(s): Evaristo Garcia

21 Counsel:

22 Evaristo Garcia #1108072
23 P.O. Box 1989
24 Ely, NV 89301

25 4. Respondent: The State of Nevada

26 Counsel:

27 Steven B. Wolfson, District Attorney
28 200 Lewis Ave.
Las Vegas, NV 89101

(702) 671-2700

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

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

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

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

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

9. Date Commenced in District Court: March 19, 2010

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

Type of Judgment or Order Being Appealed: Writ of Habeas Corpus

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 64221

12. Child Custody or Visitation: N/A

Dated This 14 day of October 2016.

Steven D. Grierson, Clerk of the Court

/s/ Chaunte Pleasant

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

cc: Evaristo Garcia

CASE SUMMARY**CASE NO. 10C262966-1****The State of Nevada vs Evaristo J Garcia**

§ Location: **Department 2**
 § Judicial Officer: **Scotti, Richard F.**
 § Filed on: **03/19/2010**
 § Case Number History:
 § Cross-Reference Case **C262966**
 § Number:
 § Defendant's Scope ID #: **2685822**
 § **1994518**
 § ITAG Booking Number: **1000013408**
 § ITAG Case ID: **1134181**
 § Lower Court Case # Root: **10F03640**
 § Lower Court Case Number: **10F03640X**
 § Supreme Court No.: **64221**

CASE INFORMATION

Offense	Deg	Date	Case Type:	Felony/Gross Misdemeanor
1. CONSPIRACY TO COMMIT A CRIME	F	01/01/1900	Case Flags:	Appealed to Supreme Court
1. CONSPIRACY TO COMMIT MURDER	F	01/01/1900		
<i>Filed As:</i> MURDER.	F	3/19/2010		Custody Status - Nevada
1. DEGREES OF MURDER	F	01/01/1900		Department of Corrections
1. FELONY COMMITTED TO PROMOTE ACTIVITIES OF CRIMINAL GANG	F	01/01/1900		In Forma Pauperis Granted
				<i>For Defendant Evaristo Garcia</i>
				<i>Filed 6-15-16</i>
1. FURTHER OR ASSIST A CRIMINAL GANG	F	01/01/1900		Charge Description Updated
2. MURDER.	F	01/01/1900		
2. DEGREES OF MURDER	F	01/01/1900		
2. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	F	01/01/1900		
2. FELONY COMMITTED TO PROMOTE ACTIVITIES OF CRIMINAL GANG	F	01/01/1900		
2. FURTHER OR ASSIST A CRIMINAL GANG	F	01/01/1900		
2. CHALLENGES TO FIGHT; FIGHTING OR ACTING AS SECOND WHEN DEATH ENSUES.	F	01/01/1900		
2. SECOND DEGREE MURDER WITH USE OF A DEADLY WEAPON	F	02/02/2006		
<i>Filed As:</i> MURDER WITH USE OF A DEADLY WEAPON WITH THE INTENT TO PROMOTE, FURTHER OR ASSIST A CRIMINAL GANG	F	7/8/2013		

Related Cases

10C262966-2 (Multi-Defendant Case)

Statistical Closures

09/09/2013 Jury Trial - Conviction - Criminal

Warrants

Bench Warrant - Garcia, Evaristo J (Judicial Officer: Silver, Abbi)




03/19/2020 Issued
 03/26/2010 Quashed
 Fine: \$0
 Bond: \$0

DATE**CASE ASSIGNMENT****Current Case Assignment**


Case Number 10C262966-1
 Court Department 2
 Date Assigned 05/04/2015
 Judicial Officer Scotti, Richard F.

DEPARTMENT 2
CASE SUMMARY
CASE NO. 10C262966-1
PARTY INFORMATION










Defendant	Garcia, Evaristo J	
Plaintiff	State of Nevada	Wolfson, Steven B 702-671-2700(W)
Material Witness	Calvillo, Edshel	
Other	Lopez, Manuel A	Maningo, Lance A. <i>Retained</i> 702-734-0400(W)

DATE	EVENTS & ORDERS OF THE COURT	INDEX
03/19/2010	Grand Jury Indictment (11:45 AM) <i>GRAND JURY INDICTMENT Relief Clerk: Shelly Landwehr Reporter/Recorder: Maggie Lambrose Heard By: ELISSA CADISH</i>	
03/19/2010	 Indictment <i>(GRAND JURY) INDICTMENT Fee \$0.00</i>	10C262966-10001.tif pages
03/19/2010	Hearing <i>GRAND JURY INDICTMENT</i>	10C262966-10002.tif pages
03/19/2010	Hearing <i>INITIAL ARRAIGNMENT</i>	10C262966-10003.tif pages
03/19/2010	Bench Warrant <i>NO BAIL BENCH WARRANT ISSUED</i>	10C262966-10004.tif pages
03/19/2010	Order <i>ORDER OF INTENT TO FORFEIT</i>	10C262966-10005.tif pages
03/19/2010	Bench Warrant <i>NO BAIL BENCH WARRANT ISSUED</i>	10C262966-10006.tif pages
03/19/2010	Order <i>ORDER OF INTENT TO FORFEIT</i>	10C262966-10007.tif pages
03/19/2010	 Conversion Case Event Type <i>INDICTMENT WARRANT</i>	10C262966-10008.tif pages
03/19/2010	 Conversion Case Event Type <i>INDICTMENT WARRANT</i>	10C262966-10009.tif pages
03/25/2010	Initial Arraignment (9:00 AM) Events: 03/19/2010 Hearing <i>INITIAL ARRAIGNMENT Court Clerk: Jennifer Kimmel Reporter/Recorder: JoAnn Orduna Heard By: Abbi Silver</i>	
03/25/2010	Hearing <i>STATUS CHECK: WRITS (IF ANY)</i>	10C262966-10010.tif pages

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03/25/2010	Plea (Judicial Officer: Silver, Abbi) 1. CONSPIRACY TO COMMIT A CRIME Not Guilty PCN: Sequence:	
03/30/2010	 Motion <i>DEFT'S O.R. RELEASE/BAIL REDUCTION /010</i>	10C262966- 10014.tif pages
04/01/2010	 Reporters Transcript <i>REPORTER'S TRANSCRIPT OF PROCEEDINGS - GRAND JURY VOLUME 1 HEARING 3/04/10</i>	10C262966- 10015.tif pages
04/01/2010	 Reporters Transcript <i>REPORTER'S TRANSCRIPT OF PROCEEDINGS - GRAND JURY VOLUME 2 HEARING 3/18/10</i>	10C262966- 10016.tif pages
04/05/2010	 Opposition <i>STATES OPPOSITION TO DEFTS MTN FOR OWN RECOGNIZANCE RELEASE OR IN THE ALTERNATIVE FOR BAIL REDUCTION ALTERNATIVE FOR BAIL REDUCTION</i>	10C262966- 10018.tif pages
04/06/2010	Motion for Own Recognizance Release/Setting Reasonable Bail (9:00 AM) Events: 03/30/2010 Motion <i>DEFT'S O.R. RELEASE/BAIL REDUCTION /010 Court Clerk: Jennifer Kimmel Reporter/Recorder: JoAnn Orduna Heard By: Abbi Silver</i>	
04/06/2010	 Receipt <i>RECEIPT FOR GRAND JURY TRANSCRIPTS - VOLUMES 1-2</i>	10C262966- 10019.tif pages
04/14/2010	 Order <i>ORDER DENYING IN PART AND GRANTING IN PART DEFTS MTN FOR OWN RECOGNIZANCE RELEASE OR IN THE ALTERNATIVE FOR BAIL REDUCTION RELEASE OR IN THE ALTERNATIVE FOR BAIL REDUCTION</i>	10C262966- 10020.tif pages
04/28/2010	 Receipt <i>RECEIPT FOR GRAND JURY TRANSCRIPTS - VOLUMES 1-2</i>	10C262966- 10022.tif pages
04/30/2010	 Petition <i>DEFT'S PTN FOR WRIT OF HABEAS CORPUS /011</i>	10C262966- 10021.tif pages
05/04/2010	 Motion <i>DEFT'S MTN TO SEVER TRIALS/012</i>	10C262966- 10023.tif pages
05/04/2010	 Receipt of Copy <i>RECEIPT OF COPY - RELATED PARTYID: 10C262966_0001</i>	10C262966- 10024.tif pages
05/04/2010	 Receipt of Copy <i>RECEIPT OF COPY - RELATED PARTYID: 10C262966_0001</i>	10C262966- 10025.tif pages
05/14/2010		10C262966-

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	 Order <i>ORDER - RELATED PARTYID: 10C262966_0001</i>	<i>10026.tif pages</i>
05/18/2010	 Writ <i>WRIT OF HABEAS CORPUS - RELATED PARTYID: 10C262966_0001</i>	<i>10C262966-10027.tif pages</i>
05/18/2010	 Receipt of Copy <i>RECEIPT OF COPY - RELATED PARTYID: 10C262966_0001</i>	<i>10C262966-10028.tif pages</i>
05/18/2010	 Writ <i>RETURN TO WRIT OF HABEAS CORPUS</i>	<i>10C262966-10029.tif pages</i>
05/18/2010	 Opposition <i>STATES OPPOSITION TO DEFTS MTN TO SEVER TRIALS</i>	<i>10C262966-10030.tif pages</i>
05/25/2010	Status Check (9:00 AM) Events: 03/25/2010 Hearing <i>STATUS CHECK: WRITS (IF ANY)</i>	
05/25/2010	Petition for Writ of Habeas Corpus (9:00 AM) Events: 04/30/2010 Petition <i>DEFT'S PTN FOR WRIT OF HABEAS CORPUS /011</i>	
05/25/2010	Motion to Sever (9:00 AM) Events: 05/04/2010 Motion <i>DEFT'S MTN TO SEVER TRIALS/012 Heard By: Abbi Silver</i>	
05/25/2010	All Pending Motions (9:00 AM) <i>ALL PENDING MOTIONS - 5/25/10 Court Clerk: Jennifer Kimmel Reporter/Recorder: Renee Silvaggio Heard By: Abbi Silver</i>	
05/25/2010	Motion <i>ALL PENDING MOTIONS - 5/25/10</i>	<i>10C262966-10031.tif pages</i>
05/25/2010	Motion <i>DEFT'S MTN TO SEVER TRIALS/012</i>	<i>10C262966-10032.tif pages</i>
05/28/2010	 Certificate <i>CERTIFICATE OF MAILING - RELATED PARTYID: 10C262966_0001</i>	<i>10C262966-10033.tif pages</i>
06/02/2010	 Order <i>ORDER DENYING DEFTS PETITION FOR WRIT OF HABEAS CORPUS</i>	<i>10C262966-10034.tif pages</i>
06/04/2010	 Petition <i>DEFT'S PTN FOR WRIT OF HABEAS CORPUS /015</i>	<i>10C262966-10035.tif pages</i>
06/16/2010	 Writ <i>RETURN TO WRIT OF HABEAS CORPUS</i>	<i>10C262966-10036.tif pages</i>
06/22/2010	Petition for Writ of Habeas Corpus (9:00 AM) Events: 06/04/2010 Petition	

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*DEFT'S PTN FOR WRIT OF HABEAS CORPUS /015 Court Clerk: Jennifer Kimmel
Reporter/Recorder: Renee Silvaggio Heard By: Abbi Silver*

08/25/2010	 Motion in Limine Filed By: Defendant Garcia, Evaristo J <i>Motion in Limine to Preclude Admission of Photographs</i>
08/25/2010	 Motion for Discovery Filed By: Defendant Garcia, Evaristo J
08/25/2010	 Motion to Compel Filed By: Defendant Garcia, Evaristo J <i>Motion to Compel Disclosure of Existence and Substance of Expectations, Or Actual Receipt of Benefits or Preferential Treatment for Co-operation With Prosecution</i>
08/25/2010	 Motion Filed By: Defendant Garcia, Evaristo J <i>Motion to Federalize All Motions, Objections, Requests and Other Applications</i>
08/25/2010	 Motion Filed By: Defendant Garcia, Evaristo J <i>Motion to Exclude Other Bad Acts, Character Evidence, and Irrelevant Prior Criminal Activity</i>
08/25/2010	 Motion Filed By: Defendant Garcia, Evaristo J <i>Motion to Allow Jury Questionnaire</i>
08/25/2010	 Motion Filed By: Defendant Garcia, Evaristo J <i>Motion to Bar Improper Prosecutorial Argument</i>
08/25/2010	 Motion Filed By: Defendant Garcia, Evaristo J <i>Motion to Allow Defendant's IQ Assessment To Be Utilized At Time Of Trial</i>
08/27/2010	 Receipt of Copy Filed by: Defendant Garcia, Evaristo J
08/30/2010	 Opposition Filed By: Plaintiff State of Nevada <i>State's Opposition to Defendant's Motion to Exclude other Bad Acts, Character Evidence, and Irrelevant Prior Criminal Activity</i>
08/30/2010	 Opposition Filed By: Plaintiff State of Nevada <i>State's Opposition to Defendant's Motion in Limine to Preclude Admission of Photographs</i>
08/30/2010	 Opposition Filed By: Plaintiff State of Nevada <i>State's Opposition to Motion to Bar Improper Prosecutorial</i>
08/30/2010	 Opposition Filed By: Plaintiff State of Nevada <i>State's Opposition to Defendant's Motion Federalize all Motions, Objections, Requests and</i>












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	<i>Other Application</i>
08/30/2010	 Response Filed by: Plaintiff State of Nevada <i>State's Response to Defendant's Motion to Allow Jury Questionnaire</i>
08/30/2010	 Response Filed by: Plaintiff State of Nevada <i>State's Response to Defendant's Motion to Allow Defendant's IQ Assessment to be Utilized at Time of Trial</i>
08/30/2010	 Response Filed by: Plaintiff State of Nevada <i>State's Response to Defendant's Motion for Discovery and Motion to Compel Disclosure of Existence and Substance of Expectations, or Actual Receipt of Benefits or Preferential Treatment for Cooperation with Prosecution</i>
08/30/2010	 Motion Filed By: Plaintiff State of Nevada <i>Notice of Motion and Motion for Reciprocal Discovery</i>
08/31/2010	CANCELED Motion to Sever (9:00 AM) <i>Vacated - per Clerk</i> <i>CASE DISMISSED 5/25/10</i>
08/31/2010	 All Pending Motions (9:00 AM) (Judicial Officer: Silver, Abbi) <i>Def't. Garcia's Motion to Sever Trials...Def't. Garcia's Motion in Limine to Preclude Admission of Photographs...Def't. Garcia's Motion for Discovery...Motion to Compel Disclosure of Existence and Substance of Expectations, Or Actual Receipt of Benefits or Preferential Treatment for Co-operation With Prosecution...Motion to Federalize All Motions, Objections, Requests and Other Applications...Motion to Exlude Other Bad Acts, Character Evidence, and Irrelevant Prior Criminal Activity...Motion to Allow Jury Questionnaire...Motion to Bar Improper Prosecutorial Argument...Motion to Allow Defendant's IQ Assessment To Be Utilized At Time Of Trial</i>
09/21/2010	Motion to Sever (9:00 AM) (Judicial Officer: Silver, Abbi) <i>Motion to Sever (Motion set per minutes of 5/25/10)</i>
09/21/2010	Motion in Limine (9:00 AM) (Judicial Officer: Silver, Abbi) Events: 08/25/2010 Motion in Limine <i>Motion in Limine to Preclude Admission of Photographs</i>
09/21/2010	Motion for Discovery (9:00 AM) (Judicial Officer: Silver, Abbi) Events: 08/25/2010 Motion for Discovery
09/21/2010	Motion to Compel (9:00 AM) (Judicial Officer: Silver, Abbi) Events: 08/25/2010 Motion to Compel <i>Motion to Compel Disclosure of Existence and Substance of Expectations, Or Actual Receipt of Benefits or Preferential Treatment for Co-operation With Prosecution</i>
09/21/2010	Motion (9:00 AM) (Judicial Officer: Silver, Abbi) Events: 08/25/2010 Motion <i>Motion to Federalize All Motions, Objections, Requests and Other Applications</i>
09/21/2010	Motion (9:00 AM) (Judicial Officer: Silver, Abbi) Events: 08/25/2010 Motion <i>Motion to Exlude Other Bad Acts, Character Evidence, and Irrelevant Prior Criminal Activity</i>
09/21/2010	Motion (9:00 AM) (Judicial Officer: Silver, Abbi)






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	Events: 08/25/2010 Motion <i>Motion to Allow Jury Questionnaire</i>
09/21/2010	Motion (9:00 AM) (Judicial Officer: Silver, Abbi) Events: 08/25/2010 Motion <i>Motion to Bar Improper Prosecutorial Argument</i>
09/21/2010	Motion (9:00 AM) (Judicial Officer: Silver, Abbi) Events: 08/25/2010 Motion <i>Motion to Allow Defendant's IQ Assessment To Be Utilized At Time Of Trial</i>
09/21/2010	Motion (9:00 AM) (Judicial Officer: Silver, Abbi) Events: 08/30/2010 Motion <i>Notice of Motion and Motion for Reciprocal Discovery</i>
09/21/2010	 All Pending Motions (9:00 AM) (Judicial Officer: Silver, Abbi) <i>Motion to Sever (Motion set per minutes of 5/25/10), Motion in Limine to Preclude Admission of Photographs, Deft's Motion for Discovery, Motion to Compel Disclosure of Existence and Substance of Expectations, Or Actual Receipt of Benefits or Preferential Treatment for Cooperation With Prosecution, Motion to Federalize All Motions, Objections, Requests and Other Applications, Motion to Exclude Other Bad Acts, Character Evidence, and Irrelevant Prior Criminal Activity, Motion to Allow Jury Questionnaire, Motion to Bar Improper Prosecutorial Argument, Motion to Allow Defendant's IQ Assessment To Be Utilized At Time Of Trial and Notice of Motion and Motion for Reciprocal Discovery</i>
10/12/2010	 Status Check (9:00 AM) (Judicial Officer: Silver, Abbi) 10/12/2010, 02/10/2011, 02/17/2011, 02/24/2011 <i>Status Check: Jury Questionnaire</i>
10/18/2010	 Reporters Transcript Filed By: Plaintiff State of Nevada <i>of Proceedings - September 21, 2010</i>
11/04/2010	CANCELED Calendar Call (9:00 AM) <i>Vacated - per Judge</i> RESET
11/04/2010	CANCELED Calendar Call (9:00 AM) (Judicial Officer: Silver, Abbi) <i>Vacated - per Judge</i> RESET
11/08/2010	CANCELED Jury Trial (10:00 AM) (Judicial Officer: Silver, Abbi) <i>Vacated - per Clerk</i> RESET
11/08/2010	CANCELED Jury Trial (10:00 AM) (Judicial Officer: Silver, Abbi) <i>Vacated - per Judge</i> RESET
01/05/2011	 Motion Filed By: Defendant Garcia, Evaristo J <i>Motion for Reasonable Bail</i>
01/07/2011	 Opposition <i>State's Opposition to Defendant's Motion for Reasonable Bail</i>
01/11/2011	CANCELED Status Check (9:00 AM) (Judicial Officer: Silver, Abbi) <i>Vacated - On in Error</i>

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01/11/2011	 Motion (9:00 AM) (Judicial Officer: Silver, Abbi) <i>Motion for Reasonable Bail</i>
02/10/2011	 All Pending Motions (9:00 AM) (Judicial Officer: Bare, Rob) <i>Status Check: Jury Questionnaire (Both Defts.)</i>
02/24/2011	 Notice of Witnesses and/or Expert Witnesses <i>Notice of Expert Witnesses</i>
02/24/2011	 Notice of Witnesses and/or Expert Witnesses <i>Notice of Witnesses</i>
02/25/2011	 Notice of Expert Witnesses <i>Notice of Defendant's Expert Witnesses</i>
03/03/2011	 Status Check (9:00 AM) (Judicial Officer: Silver, Abbi) <i>Status Check: Negotiations</i>
03/03/2011	 Stipulation and Order <i>Stipulation and Order Waiving Separate Penalty Hearing</i>
03/16/2011	 Notice of Witnesses and/or Expert Witnesses <i>Amended Notice of Expert Witness</i>
03/16/2011	 Notice of Witnesses and/or Expert Witnesses <i>Notice of Witnesses</i>
03/17/2011	 Calendar Call (9:00 AM) (Judicial Officer: Silver, Abbi)
03/17/2011	 Amended Indictment
03/17/2011	Guilty Plea Agreement
03/17/2011	Disposition (Judicial Officer: Silver, Abbi) 1. CONSPIRACY TO COMMIT A CRIME Charges Amended/Dropped PCN: Sequence: 1. DEGREES OF MURDER Charges Amended/Dropped PCN: Sequence: 1. FELONY COMMITTED TO PROMOTE ACTIVITIES OF CRIMINAL GANG Charges Amended/Dropped PCN: Sequence: 1. FURTHER OR ASSIST A CRIMINAL GANG Charges Amended/Dropped PCN: Sequence: 2. MURDER. Charges Amended/Dropped PCN: Sequence: 2. DEGREES OF MURDER

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	Charges Amended/Dropped PCN: Sequence:
	2. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Charges Amended/Dropped PCN: Sequence:
	2. FELONY COMMITTED TO PROMOTE ACTIVITIES OF CRIMINAL GANG Charges Amended/Dropped PCN: Sequence:
	2. FURTHER OR ASSIST A CRIMINAL GANG Charges Amended/Dropped PCN: Sequence:
	2. CHALLENGES TO FIGHT; FIGHTING OR ACTING AS SECOND WHEN DEATH ENSUES. Charges Amended/Dropped PCN: Sequence:
03/17/2011	Plea (Judicial Officer: Silver, Abbi) 1. CONSPIRACY TO COMMIT MURDER Not Guilty PCN: Sequence: 2. SECOND DEGREE MURDER WITH USE OF A DEADLY WEAPON Not Guilty PCN: Sequence:
03/21/2011	CANCELED Jury Trial (10:00 AM) (Judicial Officer: Silver, Abbi) <i>Vacated - per Judge</i>
03/21/2011	CANCELED Jury Trial (1:00 PM) (Judicial Officer: Silver, Abbi) <i>Vacated - per Judge</i>
04/21/2011	 Notice <i>Notice of Special Appearance on Behalf of Defendant Evaristo Jonathan Garcia</i>
04/22/2011	 Motion to Withdraw Plea Filed By: Defendant Garcia, Evaristo J
04/26/2011	 Receipt of Copy <i>Receipt of Copy</i>
05/03/2011	 Motion to Withdraw Plea (9:00 AM) (Judicial Officer: Silver, Abbi) 05/03/2011, 05/12/2011 Events: 04/22/2011 Motion to Withdraw Plea <i>Presentence Motion to Withdraw Guilty Plea</i>
05/04/2011	 PSI <i>PSI Dated 05/04/11; with notes</i>
05/12/2011	Sentencing (9:00 AM) (Judicial Officer: Silver, Abbi)
05/12/2011	Status Check (9:00 AM) (Judicial Officer: Silver, Abbi) <i>Status Check: Reset Sentencing</i>











DEPARTMENT 2
CASE SUMMARY
CASE NO. 10C262966-1

05/12/2011	 All Pending Motions (9:00 AM) (Judicial Officer: Silver, Abbi) <i>Sentencing, Status Check: Reset Sentencing and Deft's Presentence Motion to Withdraw Guilty Plea</i>
05/19/2011	 Status Check (9:00 AM) (Judicial Officer: Silver, Abbi) <i>Status Check: Reset Trial</i>
05/24/2011	 Opposition to Motion <i>State's Opposition to Defendant's Presentence Motion to Withdraw Guilty Plea</i>
02/21/2012	 Status Check (9:00 AM) (Judicial Officer: Bare, Rob) <i>Status Check: Reset Calendar Call</i>
02/23/2012	 Substitution of Attorney <i>Substitution of Counsel</i>
03/05/2012	 Ex Parte <i>Ex Parte Motion for Appointment of Expert Services and For Payment of Fees Incurred Herein</i>
03/15/2012	 Motion for Appointment <i>Motion for Appointment of Expert Services and for Payment of Fees on Order Shortening Time</i>
03/19/2012	 Motion for Appointment <i>Motion for Appointment of an Investigator and for Payment of Fees on Order Shortening Time</i>
03/22/2012	 Certificate of Mailing <i>Certificate of Service</i>
03/22/2012	 Certificate of Mailing <i>Ex-Parte Motion for Appointment of Expert Services and for Payment of Fees Incurred Herein</i>
03/22/2012	 Certificate of Mailing <i>Certificarte of Service</i>
03/27/2012	Motion (9:00 AM) (Judicial Officer: Silver, Abbi) <i>Motion for Appointment of Expert Services and for Payment of Fees on Order Shortening Time</i>
03/27/2012	Motion for Appointment (9:00 AM) (Judicial Officer: Silver, Abbi)
03/27/2012	 All Pending Motions (9:00 AM) (Judicial Officer: Silver, Abbi)
03/29/2012	 Notice of Entry of Order <i>Notice of Entry of Order</i>
03/30/2012	 Order <i>Order Granting Motion for Appointment of an Investigator and for Payment of Fees on Order Shortening Time</i>
04/02/2012	 Notice of Entry of Order <i>Notice of Entry of Order</i>

DEPARTMENT 2
CASE SUMMARY
CASE NO. 10C262966-1

04/04/2012	 Order <i>Order Granting Motion for Appointment of Expert Services and for Payment of Fees on Order Shortening Time</i>
04/05/2012	 Notice of Entry of Order <i>Notice of Entry of Order</i>
04/26/2012	 Calendar Call (9:00 AM) (Judicial Officer: Silver, Abbi)
05/07/2012	CANCELED Jury Trial (1:00 PM) (Judicial Officer: Silver, Abbi) <i>Vacated - per Judge Reset</i>
06/22/2012	 Motion to Compel <i>Motion to Compel Fingerprint Evidence Pursuant to NRS 174.235</i>
06/25/2012	 Certificate of Service <i>Certificate of Service</i>
07/05/2012	 Motion for Appointment <i>Motion for Appointment of an Investigator and for Payment of Fees on Order Shortening Time</i>
07/05/2012	 Receipt of Copy <i>Receipt of Copy</i>
07/10/2012	 Motion to Compel (9:00 AM) (Judicial Officer: Silver, Abbi) <i>Motion to Compel Fingerprint Evidence Pursuant to NRS 174.235</i>
07/10/2012	Motion for Appointment (9:00 AM) (Judicial Officer: Silver, Abbi)
07/10/2012	 Stipulation and Order Filed by: Defendant Garcia, Evaristo J <i>Stipulation and Order for Release of Fingerprint Evidence</i>
07/13/2012	 Notice of Entry <i>Notice of Entry of Stipulation and Order for Release of Fingerprint Evidence</i>
07/17/2012	 Notice of Entry of Order <i>Notice of Entry of Order Granting Motion for Appointment of an Investigator and for Payment of Fees on Order Shortening Time</i>
07/17/2012	 Order Granting <i>Order Granting Motion for Appointment of an Investigator and for Payment of Fees on Order Shortening Time</i>
09/11/2012	 Receipt of Copy <i>Receipt of Copy</i>
09/11/2012	 Motion to Continue <i>Defendant's Motion to Continue Trial on Order Shortening Time</i>
09/13/2012	Calendar Call (9:00 AM) (Judicial Officer: Silver, Abbi)

DEPARTMENT 2
CASE SUMMARY
CASE NO. 10C262966-1

09/13/2012	Motion to Continue Trial (9:00 AM) (Judicial Officer: Silver, Abbi) <i>Defendant's Motion to Continue Trial on Order Shortening Time</i>
09/13/2012	 All Pending Motions (9:00 AM) (Judicial Officer: Silver, Abbi) <i>Defendant's Motion to Continue Trial on Order Shortening Time and Calendar Call</i>
09/17/2012	CANCELED Jury Trial (1:00 PM) (Judicial Officer: Silver, Abbi) <i>Vacated - per Judge</i>
09/25/2012	 Motion to Suppress <i>Motion to Suppress In-Court Identification Pursuant to NRS 174.125(1)</i>
09/27/2012	 Motion <i>Motion for Evidentiary Hearing to Determine Competency of State's Primary Witness and Order Compelling Production of Medical Records and Psychological Examination and Testing to Determine Extent of Memory Loss</i>
09/28/2012	 Receipt of Copy <i>Receipt of Copy</i>
10/02/2012	 Receipt of Copy <i>Receipt of Copy</i>
10/04/2012	 Opposition <i>State's Opposition to Defendant's Motion to Suppress In-Court Identification Pursuant to NRS 174.215(1)</i>
10/08/2012	 Reply <i>Reply in Support of Motion to Suppress In-Court Identification Pursuant to NRS 174.125(1)</i>
10/23/2012	 Opposition Filed By: Plaintiff State of Nevada <i>Opposition to Defendant's Motion For Evidentiary Hearing To Determine Competency Of State's Primary Witness And Order Compelling Medical Records And Psychological Examination And Testing To Determine Memory Loss</i>
10/30/2012	Motion to Suppress (9:00 AM) (Judicial Officer: Silver, Abbi) Events: 09/25/2012 Motion to Suppress <i>Motion to Suppress In-Court Identification Pursuant to NRS 174.125(1)</i>
10/30/2012	Motion (9:00 AM) (Judicial Officer: Silver, Abbi) <i>Motion for Evidentiary Hearing to Determine Competency of State's Primary Witness and Order Compelling Production of Medical Records and Psychological Examination and Testing to Determine Extent of Memory Loss</i>
10/30/2012	 All Pending Motions (9:00 AM) (Judicial Officer: Silver, Abbi) <i>Motion for Evidentiary Hearing to Determine Competency of State's Primary Witness and Order Compelling Production of Medical Records and Psychological Examination and Testing to Determine Extent of Memory Loss and Motion to Suppress In-Court Identification Pursuant to NRS 174.125(1)</i>
11/21/2012	 Ex Parte Order Filed By: Plaintiff State of Nevada <i>Ex Parte Motion and Order Releasing All Medical Records</i>
11/21/2012	 Ex Parte Order

DEPARTMENT 2
CASE SUMMARY
CASE NO. 10C262966-1

Filed By: Plaintiff State of Nevada
Ex Parte Motion and Order Releasing all Medical Records

12/12/2012	 Ex Parte Motion <i>Ex Parte Motion for Payment of Transcript</i>
12/12/2012	 Order Granting Motion Filed By: Defendant Garcia, Evaristo J <i>Order Granting Ex Parte Motion for Payment of Transcript</i>
12/13/2012	 Certificate of Service <i>Certificate of Service</i>
12/13/2012	 Notice of Entry of Order <i>Notice of Entry of Order Granting Ex Parte Motion for Payment of Transcript</i>
12/26/2012	 Recorders Transcript of Hearing <i>Reporter's Transcript of Proceedings October 30, 2012</i>
02/25/2013	 Motion for Appointment <i>Motion for Appointment of Expert Services and for Payment of Fees on Order Shortening Time</i>
02/26/2013	 Receipt of Copy <i>Receipt of Copy</i>
03/05/2013	 Motion for Appointment (9:00 AM) (Judicial Officer: Silver, Abbi) <i>Motion for Appointment of Expert Services and for Payment of Fees on Order Shortening Time</i>
06/14/2013	 Notice of Witnesses and/or Expert Witnesses <i>Supplemental Notice of Expert Witnesses</i>
06/25/2013	 Notice of Witnesses and/or Expert Witnesses <i>Notice of Witnesses [NRS 174.234(2)]</i>
06/25/2013	 Notice of Witnesses and/or Expert Witnesses <i>Notice of Expert Witnesses [NRS 174.234(2)]</i>
06/26/2013	 Certificate of Service <i>Certificate of Service</i>
06/27/2013	 Calendar Call (9:00 AM) (Judicial Officer: Silver, Abbi)
07/03/2013	 Notice of Witnesses and/or Expert Witnesses <i>Supplemental Notice of Witnesses</i>
07/08/2013	 Jury Trial - FIRM (9:30 AM) (Judicial Officer: Silver, Abbi) 07/08/2013-07/12/2013, 07/15/2013-07/16/2013
07/08/2013	CANCELED Jury Trial (1:00 PM) (Judicial Officer: Silver, Abbi) <i>Vacated - per Clerk</i>
07/08/2013	 Order


DEPARTMENT 2
CASE SUMMARY
CASE NO. 10C262966-1


Filed By: Plaintiff State of Nevada
Order Requiring Material Witness to Post Bail or Be Committed to Custody


07/08/2013  Amended Indictment
2nd Amended Indictment


07/08/2013  Jury List


07/09/2013  Amended Information
3rd Amended Information


07/10/2013  Recorders Transcript of Hearing
Jury Trial Excerpt Transcript Testimony of Daniel Proietto July 9, 2013

07/10/2013  Order
Filed By: Plaintiff State of Nevada
Order For Transcript

07/12/2013  Recorders Transcript of Hearing
Jury Trial Excerpt Transcript Testimony of Ken Hardy heard July 11, 2013

07/12/2013  Reporters Transcript
Jury Trial Excerpt Transcript heard July 11, 2013

07/12/2013  Order
Filed By: Plaintiff State of Nevada
Order For Transcript


07/15/2013  Media Request and Order
Party: Plaintiff State of Nevada
Media Request and Order allowing camera access to court proceedings


07/15/2013  Opposition
State's Opposition and Written Record in Response to Defendant's Oral Motion for Mistrial

07/15/2013 **Disposition** (Judicial Officer: Silver, Abbi)
1. CONSPIRACY TO COMMIT MURDER
Not Guilty
PCN: Sequence:

2. SECOND DEGREE MURDER WITH US OF A DEADLY WEAPON
Guilty
PCN: Sequence:

07/16/2013 **CANCELED Bench Warrant Return** (9:00 AM) (Judicial Officer: Silver, Abbi)
Vacated - per Clerk












07/16/2013  Verdict

07/16/2013  Instructions to the Jury
Instructions to the Jury (Instruction No. 1) Members of the Jury:








07/16/2013  Amended Indictment

DEPARTMENT 2
CASE SUMMARY
CASE NO. 10C262966-1














Fourth Amended Indictment

07/22/2013	 Motion Filed By: Defendant Garcia, Evaristo J <i>Motion for Acquittal or in the Alternative, Motion for New Trial</i>
07/29/2013	 Opposition Filed By: Plaintiff State of Nevada <i>State's Opposition To Defendant's Motion For Acquittal or in the Alternative, Motion For New Trial</i>
08/01/2013	 Motion (9:00 AM) (Judicial Officer: Silver, Abbi) <i>Motion for Acquittal or in the Alternative, Motion for New Trial</i>
08/14/2013	 Memorandum Filed By: Defendant Garcia, Evaristo J <i>Sentencing Memo</i>
08/15/2013	 Sentencing (10:30 AM) (Judicial Officer: Silver, Abbi) 08/15/2013, 08/29/2013
08/29/2013	 Order <i>Order Granting Motion for Appointment of Expert Services and for Payment of Fees on Order Shortening Time</i>
08/29/2013	Sentence (Judicial Officer: Silver, Abbi) 2. SECOND DEGREE MURDER WITH US OF A DEADLY WEAPON Adult Adjudication Sentenced to Nevada Dept. of Corrections Term: Life with the possibility of parole after: 10 Years Consecutive Enhancement: Life with the possibility of parole after: 10 Years Credit for Time Served: 1959 Days Other Fees 1. , \$38,000.00 Fee Totals: Administrative Assessment Fee 25.00 \$25 DNA Analysis Fee 150.00 \$150 Fee Totals \$ 175.00
08/30/2013	 Order <i>Order for Appointment of Counsel Pursuant to NRS 34.750(1)</i>
09/09/2013	 Criminal Order to Statistically Close Case <i>Criminal Order To Statistically Close Case</i>
09/10/2013	 Notice of Entry of Order <i>Notice of Entry of Order for Appointment of Counsel Pursuant to NRS 34.750(1)</i>
09/10/2013	 Notice of Entry of Order <i>Notice of Entry of Order Granting Motion for Appointment of Expert Services and for Payment of Fees on Order Shortening Time</i>
09/11/2013	 Judgment of Conviction

DEPARTMENT 2
CASE SUMMARY
CASE NO. 10C262966-1

	Party: Plaintiff` State of Nevada <i>Judgment of Conviction (Jury Trial)</i>
10/11/2013	 Notice of Appeal (criminal) <i>Notice of Appeal</i>
10/11/2013	 Case Appeal Statement <i>Case Appeal Statement</i>
10/11/2013	 Request <i>Request for Rough Draft Transcript</i>
02/10/2014	 Reporters Transcript <i>Reporter's Transcript of Proceedings October 30, 2012</i>
02/10/2014	 Reporters Transcript <i>Reporter's Transcript of Proceedings Jury Trial July 9, 2013</i>
02/10/2014	 Reporters Transcript <i>Reporter's Transcript of Proceedings Jury Trial, Wednesday, July 10, 2013</i>
02/10/2014	 Reporters Transcript <i>Reporter's Transcript of Proceedings Trial July 11, 2013</i>
02/18/2014	 Transcript of Proceedings <i>Reporter's Transcript of Jury Trial July 8, 2013</i>
02/18/2014	 Transcript of Proceedings <i>Reporter's Transcript of Jury Trial July 12, 2013</i>
02/18/2014	 Transcript of Proceedings <i>Reporter's Transcript of Jury Trial July 15, 2013</i>
02/18/2014	 Transcript of Proceedings <i>Reporter's Transcript of Sentencing August 29, 2013</i>
02/18/2014	 Transcript of Proceedings <i>Reporter's Transcript of Proceedings August 1, 2013</i>
05/04/2015	Case Reassigned to Department 2 <i>Case reassigned from Judge Abbi Silver Dept 15</i>
10/23/2015	 NV Supreme Court Clerks Certificate/Judgment - Affirmed <i>Nevada Supreme Court Clerk's Certificate Judgment - Affirmed; Rehearing Denied</i>
06/10/2016	 Petition Filed by: Defendant` Garcia, Evaristo J <i>Petition for Writ of Habeas Corpus (Post-Conviction)</i>
06/10/2016	 Motion for Appointment of Attorney Filed By: Defendant` Garcia, Evaristo J <i>Motion for the Appointment of Counsel Request for Evidentiary Hearing</i>

DEPARTMENT 2
CASE SUMMARY
CASE NO. 10C262966-1

06/10/2016	 Notice of Motion Filed By: Defendant Garcia, Evaristo J <i>Notice of Motion</i>
06/10/2016	 Motion Filed By: Defendant Garcia, Evaristo J <i>Motion to Withdraw Counsel</i>
06/10/2016	 Notice of Motion Filed By: Defendant Garcia, Evaristo J <i>Notice of Motion</i>
06/10/2016	 Filed Under Seal <i>Financial Certificate</i>
06/10/2016	 Application to Proceed in Forma Pauperis
06/15/2016	 Order for Petition for Writ of Habeas Corpus
06/15/2016	 Notice of Hearing
06/15/2016	 Order to Proceed In Forma Pauperis Granted for: Defendant Garcia, Evaristo J
07/22/2016	 Motion Filed By: Plaintiff State of Nevada <i>Motion for Enlargement of Time for Response to Defendant's Pro Per Petition for Writ of Habeas Corpus (Post-Conviction) and Motion to Appoint Counsel</i>
07/28/2016	 Request (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) <i>STATES MOTION FOR ENLARGEMENT OF TIME FOR RESPONSE TO DEFENDANT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) AND MOTION TO APPOINT COUNSEL</i>
09/12/2016	 Opposition Filed By: Plaintiff State of Nevada <i>State's Opposition to Defendant's Petition for Writ of Habeas Corpus and Motion for Appointment of Counsel</i>
09/29/2016	Petition for Writ of Habeas Corpus (9:00 AM) (Judicial Officer: Scotti, Richard F.) Events: 06/15/2016 Order for Petition for Writ of Habeas Corpus <i>Defendant's Pro Per Petition for Writ of Habeas Corpus (Post-Conviction)</i>
09/29/2016	Motion for Appointment of Attorney (9:00 AM) (Judicial Officer: Scotti, Richard F.) <i>Defendant's Pro Per Motion for the Appointment of Counsel</i>
09/29/2016	Motion (9:00 AM) (Judicial Officer: Scotti, Richard F.) <i>Defendant's Pro Per Motion to Withdraw Counsel</i>
09/29/2016	 All Pending Motions (9:00 AM) (Judicial Officer: Scotti, Richard F.)
10/13/2016	 Notice of Appeal (criminal) Party: Defendant Garcia, Evaristo J <i>Notice of Appeal</i>

DEPARTMENT 2
CASE SUMMARY
CASE No. 10C262966-1

10/14/2016

 Case Appeal Statement

DATE

FINANCIAL INFORMATION

Defendant Garcia, Evaristo J

Total Charges

175.00

Total Payments and Credits

0.00

Balance Due as of 10/14/2016

175.00

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****March 19, 2010**

10C262966-1

The State of Nevada vs Evaristo J Garcia

March 19, 2010**11:45 AM****Grand Jury Indictment**

**GRAND JURY
INDICTMENT
Relief Clerk: Shelly
Landwehr
Reporter/Recorder:
Maggie Lambrose
Heard By: ELISSA
CADISH**

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

Jimenez, Sonia V.
Mitchell, Scott S.

Attorney
Attorney

JOURNAL ENTRIES

- As to Defts' GARCIA AND LOPEZ: Pamela Young, 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 09BGJ047A-B to the Court. COURT ORDERED, the Indictment may be filed and is assigned case number C262965, Department 15. Exhibits 1-40 lodged with Clerk of District Court. Ms. Jimenez requested a bench warrant. COURT ORDERED, BENCH WARRANT WILL ISSUE, NO BAIL. Mr. Jimenez requested arraignment be set on the same day as another co-defendant, in Dept. 15.

CUSTODY (BOTH)

03/25/10 09:00 AM INITIAL ARRAIGNMENT (BOTH) DEPT. 15

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****March 25, 2010**

10C262966-1

The State of Nevada vs Evaristo J Garcia

March 25, 2010**9:00 AM****Initial Arraignment**

**INITIAL
ARRAIGNMENT
Court Clerk: Jennifer
Kimmel
Reporter/Recorder:
JoAnn Orduna
Heard By: Abbi
Silver**

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

Bindrup, Scott L.
Garcia, Evaristo J
Jimenez, Sonia V.
Momot, Jr., John J.
Nyikos, Noreen

Attorney
Defendant
Attorney
Attorney
Attorney

JOURNAL ENTRIES

- DEFENDANT LOPEZ: Case was called without the co-deft. being present. Ms. McNeill appearing for Mr. Jeff Maningo. DEFT. LOPEZ ARRAIGNED, PLED NOT GUILTY and WAIVED THE 60-DAY RULE. COURT ORDERED, matter set for trial. COURT noted, counsel anticipate 1 to 1.5 weeks for Trial. Ms. McNeill requested 21 days from the filing of the preliminary hearing transcript to file a Writ. There being no opposition, COURT SO ORDERED.

DEFENDANT GARCIA: Case was called without the co-deft. being present. DEFT. GARCIA ARRAIGNED, PLED NOT GUILTY and WAIVED THE 60-DAY RULE. COURT ORDERED, matter set for Trial. Mr. Bindrup requested 21 days from the filing of the preliminary hearing transcript to file a Writ. There being no opposition, COURT SO ORDERED. COURT FURTHER ORDERED,

Motions and Petitions for Writs shall be due 4/30/10 and set for hearing on 5/25/10. Discussion regarding the Pending Motions set to be heard in C226218, see minutes same date.

CUSTODY (BOTH)

11/4/10 9:00 A.M. CALENDAR CALL

11/8/10 10:30 A.M. TRIAL BY JURY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****April 06, 2010**

10C262966-1

The State of Nevada vs Evaristo J Garcia

April 06, 2010**9:00 AM**

**Motion for Own
Recognizance
Release/Setting Reasonable
Bail**

**DEFT'S O.R.
RELEASE/BAIL
REDUCTION /010
Court Clerk: Jennifer
Kimmel
Reporter/Recorder:
JoAnn Orduna
Heard By: Abbi
Silver**

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:** Jimenez, Sonia V.

Attorney

JOURNAL ENTRIES

- Ms. McNeill appearing for Mr. Maningo. Matter argued and submitted. COURT FINDS, the reasonable bail for Count 1 - is \$100,000.00 and Count 2 - is \$100,000.00 given the nature of the charges. Accordingly COURT ORDERED, bail is set on Count 1 - at \$100,000.00 and Count 2 - at \$100,000.00 for total amount of \$200,000.00. COURT FURTHER ORDERED, the Defendant's request for Own Recognizance (O.R.) release is DENIED. Court directed the State to prepare the Order. CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****May 25, 2010**

10C262966-1

The State of Nevada vs Evaristo J Garcia

May 25, 2010**9:00 AM****All Pending Motions**

**ALL PENDING
MOTIONS - 5/25/10
Court Clerk: Jennifer
Kimmel
Reporter/Recorder:
Renee Silvaggio
Heard By: Abbi
Silver**

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

Bindrup, Scott L.
Garcia, Evaristo J
Jimenez, Sonia V.
Momot, Jr., John J.
Nyikos, Noreen

Attorney
Defendant
Attorney
Attorney
Attorney

JOURNAL ENTRIES

- DEFENDANT GARCIA'S PETITION FOR WRIT OF HABEAS CORPUS...STATUS CHECK: WRITS IF ANY...DEFENDANT GARCIA'S MOTION TO SEVER TRIALS
DEFENDANT GARCIA: Also present Yilin Zheng on behalf of the Deft. Argument by counsel.
COURT FINDS, Defendant was identified by Jonathan Harper as the shooter, and his palm and fingerprints were identified on the gun. COURT FINDS, Deft's fingerprints are sufficient to establish probable cause and there is a mountain of evidence that indicates Garcia shot the victim.
Accordingly, COURT ORDERED, Writ is DENIED. Discussion regarding Deft's Motion to Sever trials. COURT FURTHER ORDERED, Motion to Sever is CONTINUED. Ms. Jimenez moved to dismiss C226218 and refile the Motions in Limine in this case. There being no opposition, COURT SO

ORDERED.

DEFENDANT LOPEZ: Mr. Manningo advised the transcripts from the preliminary hearing were sent to his brother in error. Mr. Maningo requested additional time to file the writ. COURT ORDERED, counsel to file the Writ forthwith.

CUSTODY

8/31/10 9:00 A.M. DEFENDANT GARCIA'S MOTION TO SEVER TRIALS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****June 22, 2010**

10C262966-1

The State of Nevada vs Evaristo J Garcia

June 22, 2010**9:00 AM****Petition for Writ of Habeas
Corpus**

**DEFT'S PTN FOR
WRIT OF HABEAS
CORPUS /015
Court Clerk: Jennifer
Kimmel
Reporter/Recorder:
Renee Silvaggio
Heard By: Abbi
Silver**

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:** Nyikos, Noreen

Attorney

JOURNAL ENTRIES

- Matter argued and submitted. COURT ORDERED, Deft's Petition for Writ of Habeas Corpus is DENIED. COURT FINDS, under NRS 34.700 challenges based on alleged lack of probable cause must be raised in a pre-trial petition for Writ of Habeas Corpus within twenty one days after the Deft's first appearance. The arraignment date has been held to be the first appearance contemplated under the statute. In Palmer vs. Sheriff, 93 Nev. 648, 572 P.2d 218 (1977). Pursuant to Sheriff vs. Jensen, failure to file such a petition in a timely manner makes the petition not cognizable for the District Court and not reviewable by the Supreme Court, 95 Nev. 595, 596 (1979). Under NRS 34.710, the District Court shall not consider any pretrial petition for Habeas Corpus that fails to comply with the timely filing requirements of NRS 34.700. Under NRS 34.700 and NRS 34.710, the twenty one day filing period is jurisdictional. The Deft's failure to file a timely petition for Writ of Habeas Corpus prevents the Court from taking jurisdiction to hear the Deft's motion. In this matter, the Deft. was arraigned on 3/25/10. The Court granted an extension until 4/30/10 for the Deft. to file any pre-trial motion. Deft. Lopez

filed his Petition for Writ of Habeas Corpus on 6/4/10. As such, this Court lacks jurisdiction to hear this instant motion. Notwithstanding the untimely petition, this COURT FINDS that the State did meet its burden. Specifically, the State presented evidence that the Deft. 1 - knew he was going to get into a fight with a rival gang; 2 - the Puros Locos could enhance its reputation by fighting Brown Pride Locotes; 3 - a fellow gang member, Giovanni Garcia, requested Deft's assistance in the fight. Moreover, the trier of fact determines if a crime was committed and whether or not the enhancement should be applied; and 4 - Deft. has a large tattoo of Puros Locos on his abdomen. Court directed the State to prepare the Order.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****August 31, 2010**

10C262966-1

The State of Nevada vs Evaristo J Garcia

August 31, 2010**9:00 AM****All Pending Motions****HEARD BY:** Silver, Abbi**COURTROOM:** RJC Courtroom 14B**COURT CLERK:** Jennifer Kimmel**RECORDER:****REPORTER:** Renee Silvaggio**PARTIES****PRESENT:**

Bindrup, Scott L.
Garcia, Evaristo J
Jimenez, Sonia V.
Nyikos, Noreen
State of Nevada

Attorney
Defendant
Attorney
Attorney
Plaintiff

JOURNAL ENTRIES

- DEFT. GARCIA'S MOTION TO SEVER TRIALS...DEFT. GARCIA'S MOTION IN LIMINE TO PRECLUDE ADMISSION OF PHOTOGRAPHS...DEFT. GARCIA'S MOTION FOR DISCOVERY...DEFT. GARCIA'S MOTION TO COMPEL DISCLOSURE OF EXISTENCE AND SUBSTANCE OF EXPECTATIONS, OR ACTUAL RECEIPT OF BENEFITS OR PREFERENTIAL TREATMENT FOR CO-OPERATION WITH PROSECUTION...DEFT. GARCIA'S MOTION TO FEDERALIZE ALL MOTIONS, OBJECTIONS, REQUESTS AND OTHER APPLICATIONS...DEFT. GARCIA'S MOTION TO EXCLUDE OTHER BAD ACTS, CHARACTER EVIDENCE, AND IRRELEVANT PRIOR CRIMINAL ACTIVITY...DEFT. GARCIA'S MOTION TO ALLOW JURY QUESTIONNAIRE...DEFT. GARCIA'S MOTION TO BAR IMPROPER PROSECUTORIAL ARGUMENT...DEFT. GARCIA'S MOTION TO ALLOW DEFENDANT'S IQ ASSESSMENT TO BE UTILIZED AT TIME OF TRIAL

Mr. Lance Maningo, present on behalf of the Co-Deft. Manuel Lopez and advised he has filed a joinder to Deft. Garcia's Motions. COURT advised it just received the State's Opposition and has not reviewed this document. Accordingly, COURT ORDERED, matters are CONTINUED and Deft. Lopez is joined in these Motions. Court directed counsel to send courtesy copies to the Court,

10C262966-1

through e-mail if possible.

CUSTODY

CONTINUED TO: 9/21/10 9:00 A.M.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

10C262966-1

The State of Nevada vs Evaristo J Garcia

September 21, 2010 9:00 AM**All Pending Motions****HEARD BY:** Silver, Abbi**COURTROOM:** RJC Courtroom 14B**COURT CLERK:** Jennifer Kimmel**RECORDER:****REPORTER:** JoAnn Melendez**PARTIES****PRESENT:**

Bindrup, Scott L.

Attorney

Garcia, Evaristo J

Defendant

Momot, Jr., John J.

Attorney

JOURNAL ENTRIES

- MOTION TO SEVER (MOTION SET PER MINUTES OF 5/25/10)...MOTION IN LIMINE TO PRECLUDE ADMISSION OF PHOTOGRAPHS...DEFT'S MOTION FOR DISCOVERY...MOTION TO COMPEL DISCLOSURE OF EXISTENCE AND SUBSTANCE OF EXPECTATIONS, OR ACTUAL RECEIPT OF BENEFITS OR PREFERENTIAL TREATMENT FOR CO-OPERATION WITH PROSECUTION... MOTION TO FEDERALIZE ALL MOTIONS, OBJECTIONS, REQUESTS AND OTHER APPLICATIONS...MOTION TO EXCLUDE OTHER BAD ACTS, CHARACTER EVIDENCE, AND IRRELEVANT PRIOR CRIMINAL ACTIVITY...MOTION TO ALLOW JURY QUESTIONNAIRE...MOTION TO BAR IMPROPER PROSECUTORIAL ARGUMENT...MOTION TO ALLOW DEFENDANT'S IQ ASSESSMENT TO BE UTILIZED AT TIME OF TRIAL...STATE'S NOTICE OF MOTION AND MOTION FOR RECIPROCAL DISCOVERY

Ms. Sonia Jimenez, Esq. and Noreen Nyikos, Esq. present on behalf of the State of Nevada. Mr. Lance Maningo, Esq. present on behalf of Deft. Lopez.

Argument by counsel regarding Deft's Motion to Sever Trials. COURT stated its findings and ORDERED, Motion is DENIED.

Argument by counsel regarding Deft's Motion in Limine to Preclude Admission of Photographs.

COURT stated additional findings and FURTHER ORDERED, Motion is DENIED WITHOUT PREJUDICE as premature but Deft. may renew at time of Trial.

Argument by counsel regarding Deft's Motion to Compel Disclosure of Existence and Substance of Expectations, or Actual Receipt of Benefits or Preferential Treatment for Co-Operation with Prosecution. COURT FURTHER ORDERED, Motion is GRANTED as to the 1st request as to written and recorded statement(s) and the Court noted the State appears to have complied. Regarding the, 2nd request in this Motion as to Defts. substantive statements made by the Deft. which the State intends to use as evidence including jail house conversations is GRANTED and it appears as if the State has complied. Regarding the Deft's 6th as to witnesses may be motivated in providing information and testimony by the expectation or receipt of benefits of some type from the State and to the extent that this is within the control of the State it is granted and if it is not within the control of the State then it would be DENIED. FURTHER and regarding the 7b request, relating to the criminal records of the State's witness(es), is DENIED in PART and GRANTED in PART pursuant to NRS 50.095. The State certainly has a duty to provide the Defense with that type of impeachment evidence, however as far as the request for NCIC, handing over NCIC and/or disseminating an NCIC is not proper therefore this is DENIED in PART as to that. FURTHER and regarding request 7c relating to promises and benefits and cooperation this is GRANTED and all impeachment evidence shall be turned over to the Defense. Additionally the COURT noted the State's paperwork reflects they have complied with this request.

Argument by counsel regarding Motion to Federalize All Motions, Objections, Requests and Other Applications. COURT FURTHER ORDERED, under Ward vs. State, motion is DENIED WITHOUT PREJUDICE as premature and counsel should object at the proper time during Trial.

Argument by counsel regarding Motion to Exclude Other Bad Acts, Character Evidence and Irrelevant Prior Criminal Activity. COURT DEEMED Deft's flight to Mexico to be relevant to the crime and not a bad act as long as it stays within the parameter of being not overly prejudicial, therefore FURTHER ORDERED, Motion is DENIED. Discussion ensued regarding a Sexual Assault case that the Deft. may have been picked up on in Mexico. COURT DEEMED this other Sexual Assault case is overly prejudicial to the Defts. therefore it will not be brought up. COURT, should this be brought up at time of Trial, the Court will address ask counsel to address same outside the presence of the jury.

Regarding Deft's Motion to Allow the Jury Questionnaire, COURT noted no opposition, therefore FURTHER ORDERED, Motion is GRANTED and matter is set for Status Check. Counsel are to get together and work out agreed upon questions and anything not agreed upon the Court will address at the Status Check.

Argument by counsel regarding Deft's Motion to Bar Improper Prosecutorial Argument. COURT FURTHER ORDERED, Motion is DENIED WITHOUT PREJUDICE as premature over Mr. Momot's objection.

Argument by counsel regarding Deft's Motion to Allow Deft's IQ Assessment to be Utilized at Time of Trial. COURT FURTHER ORDERED, Motion is GRANTED WITH LIMITATIONS that the only mention shall be that Deft. Garcia has a lower I.Q. and the State is free to get their own evaluation for Deft. Garcia. Deft. will not be permitted to go into "Diminished Capacity". COURT noted, this Motion is not regarding Deft. Lopez. COURT stated, Dr. Paglini's testimony would go towards intent and pre-meditation therefore the Court sees him as a Penalty hearing witness.

Argument by counsel regarding State's Motion for Reciprocal Discovery. COURT FURTHER ORDERED, and there being no opposition by the Defense, this is GRANTED and the "raw data" used in forming Dr. Paglini's IQ assessment decision and supporting documentation is to be provided to the State pursuant to Floyd vs. State and NRS 50.305

CUSTODY

10/12/10 9:00 A.M. STATUS CHECK: JURY QUESTIONNAIRE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****October 12, 2010**

10C262966-1

The State of Nevada vs Evaristo J Garcia

October 12, 2010**9:00 AM****Status Check****HEARD BY:** Silver, Abbi**COURTROOM:** RJC Courtroom 14B**COURT CLERK:** Jennifer Kimmel**RECORDER:****REPORTER:** Renee Silvaggio**PARTIES****PRESENT:**Bindrup, Scott L.
Garcia, Evaristo J
Jimenez, Sonia V.
State of NevadaAttorney
Defendant
Attorney
Plaintiff**JOURNAL ENTRIES**

- Mr. Bindrup requested the Trial be RESET. Mr. Maningo, present on behalf of the Co-Def. agreed. There being no opposition, COURT ORDERED, Status Check is CONTINUED and the upcoming Calendar Call and Trial dates are RESET.

CUSTODY

CONTINUED TO: 2/10/11 9:00 A.M.

3/17/11 9:00 A.M. CALENDAR CALL

3/21/11 10:00 A.M. TRIAL BY JURY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

10C262966-1

The State of Nevada vs Evaristo J Garcia

January 11, 2011**9:00 AM****Motion****HEARD BY:** Silver, Abbi**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Jennifer Kimmel**RECORDER:****REPORTER:** JoAnn Melendez**PARTIES****PRESENT:**

Bindrup, Scott L.
Garcia, Evaristo J
Jimenez, Sonia V.
Momot, Jr., John J.
State of Nevada

Attorney
Defendant
Attorney
Attorney
Plaintiff

JOURNAL ENTRIES

- Matter argued and submitted. COURT FINDS, the State of Nevada had to go through the international extradition process to have this Deft. brought to Nevada on this matter. Accordingly, bail is not appropriate for this Deft. and ORDERED, Motion is DENIED.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****February 10, 2011**

10C262966-1

The State of Nevada vs Evaristo J Garcia

February 10, 2011**9:00 AM****All Pending Motions****Status Check: Jury
Questionnaire (Both
Defts.)****HEARD BY:** Bare, Rob**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Lorraine Williams**RECORDER:****REPORTER:** JoAnn Melendez**PARTIES****PRESENT:**Bindrup, Scott L.
Garcia, Evaristo J
Lopez, Manuel A
Maningo, Lance A.
Nyikos, Noreen
State of NevadaAttorney
Defendant
Other
Attorney
Attorney
Plaintiff**JOURNAL ENTRIES**

- Counsel requested one additional week to complete the Jury Questionnaire; COURT SO ORDERED.

CUSTODY (BOTH)

CONTINUED TO: 2/17/11 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

10C262966-1

The State of Nevada vs Evaristo J Garcia

February 17, 2011 9:00 AM Status Check**HEARD BY:** Silver, Abbi**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Jennifer Kimmel**RECORDER:****REPORTER:** Robert Cangemi**PARTIES**

PRESENT:	Bindrup, Scott L.	Attorney
	Garcia, Evaristo J	Defendant
	Jimenez, Sonia V.	Attorney
	Momot, Jr., John J.	Attorney
	Nyikos, Noreen	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Mr. Bindrup requested more time to review the Jury Questionnaire and discuss possible negotiations. COURT stated, the Court will be conducting a Medical Malpractice trial the week prior to the current trial stack this matter is set on, therefore the likelihood of this being bumped or going into the following week is possible. COURT ORDERED, matter CONTINUED.

CUSTODY**CONTINUED TO:** 2/24/11 9:00 A.M.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

10C262966-1

The State of Nevada vs Evaristo J Garcia

February 24, 2011**9:00 AM****Status Check****HEARD BY:** Silver, Abbi**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Jennifer Kimmel**RECORDER:****REPORTER:** JoAnn Melendez**PARTIES****PRESENT:**

Bindrup, Scott L.
Garcia, Evaristo J
Jimenez, Sonia V.
Momot, Jr., John J.
Nyikos, Noreen
State of Nevada
Zheng, Yi Len

Attorney
Defendant
Attorney
Attorney
Attorney
Plaintiff
Attorney

JOURNAL ENTRIES

- Defendant Garcia's Submission of Additional Proposed Juror Questions FILED IN OPEN COURT. Court reviewed same. COURT directed the State to redact Co-Deft. Lopez from the Questionnaire. Argument by counsel. COURT ORDERED, Deft's Submission of Additional Proposed Juror Questions is DENIED. Court advised there is another way of phrasing these questions and encouraged counsel to attempt to rephrase the language wherein it complies with EDCR. Court advised it will give some latitude to the Defense in questioning the Jury however this Deft. is not facing the death penalty. Mr. Bindrup requested matter be set for Status Check regarding potential negotiations as the State has made an offer. COURT ORDERED, matter set for Status Check.

CUSTODY

3/3/11 9:00 A.M. STATUS CHECK: NEGOTIATIONS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****March 03, 2011**

10C262966-1

The State of Nevada vs Evaristo J Garcia

March 03, 2011**9:00 AM****Status Check****HEARD BY:** Silver, Abbi**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Jennifer Kimmel**RECORDER:****REPORTER:** Renee Silvaggio**PARTIES****PRESENT:**

Bindrup, Scott L.
Garcia, Evaristo J
Jimenez, Sonia V.
Momot, Jr., John J.
Nyikos, Noreen
State of Nevada

Attorney
Defendant
Attorney
Attorney
Attorney
Plaintiff

JOURNAL ENTRIES

- Stipulation and Order Waiving Separate Penalty Hearing was signed and FILED IN OPEN COURT.
Counsel advised the Jury Questionnaire is finished and they have an agreed upon questionnaire.
COURT ORDERED, Calendar Call and Trial dates STAND.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

10C262966-1

The State of Nevada vs Evaristo J Garcia

March 17, 2011**9:00 AM****Calendar Call****HEARD BY:** Silver, Abbi**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Susan Jovanovich**RECORDER:****REPORTER:** Renee Silvaggio**PARTIES****PRESENT:**

Bindrup, Scott L.
Garcia, Evaristo J
Jimenez, Sonia V.
Momot, Jr., John J.
Nyikos, Noreen
State of Nevada

Attorney
Defendant
Attorney
Attorney
Attorney
Plaintiff

JOURNAL ENTRIES

- State announced being ready for trial. Mr. Momot requested a continuance for further investigation to be done, and for pending negotiations. COURT ORDERED, Deft's oral motion to continue trial DENIED. Court stated findings including that this matter needs to proceed forward for trial, there was additional time, previously, to go forward with the case, and questionnaires have already been sent to Jury Services. Colloquy regarding history of case, including original dates of preliminary hearing and arraignment. COURT FURTHER ORDERED, trial to begin March 21, 2011 at 1:00 p.m. Further colloquy as to trial schedule for next week, availability, and current prospective jury panel. Statements by Ms. Jimenez and by the Court. Mr. Momot requested this matter be trailed to speak further with Deft. regarding negotiations. COURT ORDERED, matter TRAILED. RECALLED at 11:21 a.m. CONFERENCE AT BENCH. Court TRAILED matter for further discussions between Deft. and counsel. RECALLED AT 1:00 p.m., with all parties present from before. Statements by Mr. Momot and Deft. Matter resolved. Amended Indictment FILED IN OPEN COURT. NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT. DEFT. GARCIA ARRAIGNED AND PLED GUILTY PURSUANT TO THE ALFORD DECISION TO SECOND DEGREE MURDER WITH USE OF A DEADLY WEAPON (F). State made offer of proof. Court

ACCEPTED plea, and ORDERED, matter referred to the Division of Parole and Probation (P&P) and SET for sentencing; trial date VACATED.

CUSTODY

5/12/11 9:00 AM SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****May 03, 2011**

10C262966-1

The State of Nevada vs Evaristo J Garcia

May 03, 2011**9:00 AM****Motion to Withdraw Plea****HEARD BY:** Silver, Abbi**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Jennifer Kimmel**RECORDER:****REPORTER:** JoAnn Melendez**PARTIES****PRESENT:**

Garcia, Evaristo J
Goodman, Ross C.
Jimenez, Sonia V.
State of Nevada

Defendant
Attorney
Attorney
Plaintiff

JOURNAL ENTRIES

- Mr. Goodman, Esq. making a special appearance on behalf of Deft. Garcia. COURT noted the transcript had been prepared. Ms. Jimenez advised the State just received the transcript and needs time to respond to this Motion. COURT ORDERED, matter CONTINUED and the Court will RESET sentencing, next date if applicable.

CUSTODY

CONTINUED TO: 5/12/11 9:00 A.M.//STATUS CHECK: RESET SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****May 12, 2011**

10C262966-1

The State of Nevada vs Evaristo J Garcia

May 12, 2011**9:00 AM****All Pending Motions****HEARD BY:** Silver, Abbi**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Jennifer Kimmel**RECORDER:****REPORTER:** Renee Silvaggio**PARTIES****PRESENT:**

Bindrup, Scott L.
Garcia, Evaristo J
Goodman, Ross C.
Jimenez, Sonia V.
State of Nevada

Attorney
Defendant
Attorney
Attorney
Plaintiff

JOURNAL ENTRIES

- SENTENCING...STATUS CHECK: RESET SENTENCING...DEFT'S PRESENTENCE MOTION TO WITHDRAW GUILTY PLEA

Mr. Ross Goodman, Esq. making a special appearance on behalf of the Deft. BENCH CONFERENCE. Matter argued and submitted. COURT ORDERED, Deft's Motion to Withdraw the Guilty Plea is GRANTED pursuant to Woods vs. State and Molina vs. State. COURT noted, given the total record it is clear the Supreme Court of Nevada would likely reverse this case should the Court proceed with sentencing this date. COURT stated, the trial will likely go forward this September.

Mr. Bindrup made a verbal request to withdraw for the Special Public Defender and also for Mr. Momot, stating they have been put in an adversarial position given the Deft's contention that they pressured him into taking the plea. COURT FURTHER ORDERED, request is DENIED. COURT noted, Mr. Bindrup left after talking to the Deft. and understanding his desire to go forward with trial therefore there would be no conflict with the Special Public Defender. COURT stated, it is the Deft's decision regarding Mr. Momot given he was retained, therefore the Deft. may elect to replace him or not to replace him, but that decision is the Defts.

COURT FURTHER ORDERED, matter is set for Status Check, Sentencing is OFF CALENDAR.

CUSTODY

5/19/11 9:00 A.M. STATUS CHECK: RESET TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

10C262966-1

The State of Nevada vs Evaristo J Garcia

May 19, 2011**9:00 AM****Status Check****HEARD BY:** Silver, Abbi**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Jennifer Kimmel**RECORDER:****REPORTER:** JoAnn Melendez**PARTIES****PRESENT:**Bindrup, Scott L.
Garcia, Evaristo J
Nyikos, Noreen
State of NevadaAttorney
Defendant
Attorney
Plaintiff**JOURNAL ENTRIES**

- Mr. Jay Ramen, Esq. present on behalf of the State of Nevada. Case trailed to await Ms. DiGiacomo, case was recalled upon her appearance. Mr. Bindrup advised Mr. Momot desires to WITHDRAW. COURT SO ORDERED. Ms. DiGiacomo stated she thinks Ms. Jimenez wanted this matter set on a faster setting. Court advised counsel can put matter on calendar if there is a problem with the Trial date. COURT ORDERED, trial date set. CASE was RECALLED upon Ms. Nyikos' arrival, who was advised of the trial date. COURT further stated, the new trial setting is during spring break so this matter could be heard by a senior judge.

CUSTODY

5/3/12 9:00 A.M. CALENDAR CALL

5/7/12 1:00 P.M. JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 21, 2012

10C262966-1

The State of Nevada vs Evaristo J Garcia

February 21, 2012

9:00 AM

Status Check

HEARD BY: Bare, Rob

COURTROOM: RJC Courtroom 11D

COURT CLERK: Jennifer Kimmel

RECORDER:

REPORTER: JoAnn Melendez

PARTIES

PRESENT:

Bindrup, Scott L.
Garcia, Evaristo J
Jimenez, Sonia V.
State of Nevada

Attorney
Defendant
Attorney
Plaintiff

JOURNAL ENTRIES

- COURT advised this matter was set on calendar to reset the Calendar Call due to the Court's schedule. COURT ORDERED, Calendar Call is RESET.

CUSTODY

4/26/12 9:00 A.M. CALENDAR CALL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****March 27, 2012**

10C262966-1

The State of Nevada vs Evaristo J Garcia

March 27, 2012**9:00 AM****All Pending Motions****HEARD BY:** Silver, Abbi**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Jennifer Kimmel**RECORDER:****REPORTER:** JoAnn Melendez**PARTIES****PRESENT:**

Garcia, Evaristo J
Goodman, Ross C.
Jimenez, Sonia V.
State of Nevada

Defendant
Attorney
Attorney
Plaintiff

JOURNAL ENTRIES

- DEFT'S MOTION FOR APPOINTMENT OF EXPERT SERVICES AND FOR PAYMENT OF FEES ON ORDER SHORTENING TIME...MOTION FOR APPOINTMENT OF AN INVESTIGATOR AND FOR PAYMENT OF FEES ON ORDER SHORTENING TIME

Mr. Goodman confirming as new counsel. Argument by counsel. COURT noted, Deft. retained counsel through a third party. COURT DECLARES Deft. to be INDIGENT. COURT ORDERED, pursuant to EDCR 2.23 (c, d) Deft's Motion for Appointment of an Investigator and for Payment of Fees on Order Shortening Time, set for 3/29/12, is ADVANCED and GRANTED.

COURT FURTHER ORDERED, Deft's Motion for Appointment of Expert Services and Payment of Fees is GRANTED.

COURT directed Mr. Goodman to provide the State with a copy of these reports as soon as they are available.

Discussion ensued regarding resetting of Trial. COURT clarified this is the oldest criminal case this Court has and therefore the Trial, if delayed, will be put on calendar each and every month until the

10C262966-1

Trial is completed.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

10C262966-1

The State of Nevada vs Evaristo J Garcia

April 26, 2012**9:00 AM****Calendar Call****HEARD BY:** Silver, Abbi**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Jennifer Kimmel**RECORDER:****REPORTER:** JoAnn Melendez**PARTIES****PRESENT:**

Demonte, Noreen

Attorney

Garcia, Evaristo J

Defendant

Goodman, Ross C.

Attorney

Jimenez, Sonia V.

Attorney

State of Nevada

Plaintiff

JOURNAL ENTRIES

- Mr. Goodman moved for Trial to be reset as he has just been granted leave to retain a specialist who needs to conduct his investigation. COURT noted, counsel anticipate this matter taking about 1 to 1 & 1/2 weeks for trial. State announced ready and in opposition to trial being continued. COURT SO NOTED. COURT ORDERED, the Court's is not available as it is presently in trial and at the Defts. request Calendar Call and Trial dates are RESET.

CUSTODY

9/13/12 9:00 A.M. CALENDAR CALL

9/17/12 1:00 P.M. JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

10C262966-1

The State of Nevada vs Evaristo J Garcia

July 10, 2012**9:00 AM****Motion to Compel****HEARD BY:** Silver, Abbi**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Phyllis Irby**RECORDER:****REPORTER:** Renee Silvaggio**PARTIES****PRESENT:**

Garcia, Evaristo J

Defendant

Goodman, Ross C.

Attorney

Ponticello, Frank M.

Attorney

State of Nevada

Plaintiff

JOURNAL ENTRIES

- Mr. Goodman FILED IN OPEN COURT Stipulation and Order regarding Deft's Motion to Compel Finger Print Evidence. COURT ORDERED, MOTION IS MOOT. Mr. Ponticello advised Ms. Jimenez requested a continuance. FURTHER ORDERED, Deft is indigent, will get investigation fees. Mr. Goodman to provide to the Court the Curriculum Vitae of the expert and what they charge.

CUSTODY

9-13-12 9:00 AM CALENDAR CALL (DEPT. XV)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****September 13, 2012**

10C262966-1

The State of Nevada vs Evaristo J Garcia

September 13, 2012 9:00 AM**All Pending Motions****HEARD BY:** Silver, Abbi**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Jennifer Kimmel**RECORDER:****REPORTER:** JoAnn Melendez**PARTIES****PRESENT:**

Demonte, Noreen
Garcia, Evaristo J
Goodman, Ross C.
State of Nevada

Attorney
Defendant
Attorney
Plaintiff

JOURNAL ENTRIES

- DEFENDANT'S MOTION TO CONTINUE TRIAL ON ORDER SHORTENING TIME...CALENDAR CALL

Mr. Jeff Rogan, Esq. also present on behalf of the State of Nevada. State announced ready for trial having 5 - 20 witnesses and needing 7 days for trial. COURT noted, the trial will last two (2) weeks, for both sides. Additionally the State intends to file Motions in Limine. Mr. Goodman advised he just received the ballistics report and will need to retain a ballistics expert. COURT ORDERED, Deft's Motion to Continue the Trial on an Order Shortening Time is GRANTED and Calendar Call and Jury Trial are RESET.

CUSTODY

6/27/13 9:00 A.M. CALENDAR CALL

7/8/13 1:00 P.M. JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****October 30, 2012**

10C262966-1

The State of Nevada vs Evaristo J Garcia

October 30, 2012**9:00 AM****All Pending Motions****HEARD BY:** Silver, Abbi**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Jennifer Kimmel**RECORDER:****REPORTER:** Renee Silvaggio**PARTIES****PRESENT:**

Demonte, Noreen

Attorney

Garcia, Evaristo J

Defendant

Goodman, Ross C.

Attorney

State of Nevada

Plaintiff

JOURNAL ENTRIES

- MOTION FOR EVIDENTIARY HEARING TO DETERMINE COMPETENCY OF STATE'S PRIMARY WITNESS AND ORDER COMPELLING PRODUCTION OF MEDICAL RECORDS AND PSYCHOLOGICAL EXAMINATION AND TESTING TO DETERMINE EXTENT OF MEMORY LOSS...MOTION TO SUPPRESS IN-COURT IDENTIFICATION PURSUANT TO NRS 174.125(1)

Argument by counsel Regarding Deft's Motion to Suppress In-Court Identification Pursuant to NRS 174.125(1). COURT ORDERED, Motion is DENIED. COURT FINDS, the reason that an in court identification is not subject to the same considerations as a street show-up or a photo-lineup is because in a preliminary hearing, the witness identification can be tested by the Defendant's counsel through cross-examination, thus curing the need for the constitutional safeguard of suppression of the identification. Additionally, in Johnson v. Sublett, the Ninth Circuit Court reaffirmed the Nevada Court's decision in Baker v. State, by holding that the suggestive character of courtroom logistics was not unnecessarily suggestive. In Hicks v. State, the Nevada Court again distinguished in-court identifications (at preliminary hearing or trial) from out-of-court identifications which may have been suggestive. Therefore, in accordance with the court in Johnson v. Sublett, in balancing the state's strong interest in conducting the court procedure against the dangers of misidentification, which will be mitigated by cross-examination, the COURT FINDS that

the suggestive character of courtroom logistics is not unnecessarily suggestive. Accordingly, and for the reasons set forth in the State's Opposition, Defendant's Motion is DENIED, WITHOUT PREJUDICE.

Argument by counsel regarding Motion for Evidentiary Hearing to Determine Competency of State's Primary Witness and Order Compelling Production of Medical Records and Psychological Examination and Testing to Determine Extent of Memory Loss.

COURT ORDERED, Deft s Motion for Evidentiary Hearing to Determine Competency of State's Primary Witness and Order Compelling Production of Medical Records and Psychological Examination and Testing to Determine Extent of Memory Loss is GRANTED IN PART and DENIED IN PART.

Court stated its findings and FURTHER ORDERED, request for Evidentiary Hearing to Determine Competency of State s Primary Witness (Harper) is DENIED.

COURT FURTHER ORDERED, the request for an Order Compelling Production of Medical Records is GRANTED.

COURT FURTHER ORDERED, the request to Determine the Extent of Memory Loss is DENIED.

COURT directed the State to prepare the Order within two weeks and have the medical records turned over to the Defense within sixty days.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****March 05, 2013**

10C262966-1

The State of Nevada vs Evaristo J Garcia

March 05, 2013**9:00 AM****Motion for Appointment****HEARD BY:** Silver, Abbi**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Jennifer Kimmel**RECORDER:****REPORTER:** Renee Silvaggio**PARTIES****PRESENT:**

Demonte, Noreen

Attorney

Garcia, Evaristo J

Defendant

Goodman, Ross C.

Attorney

Pandukht, Taleen R

Attorney

State of Nevada

Plaintiff

JOURNAL ENTRIES

- Matter argued and submitted. COURT ORDERED, Deft's Motion is GRANTED IN PART. COURT conditioned the payment of Expert Fees to Dr. Roitman as long as these fees are the standard expert fee paid by the State or \$350.00 per hour. COURT FURTHER ORDERED, no witness can talk about the reliability of testimony.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****June 27, 2013**

10C262966-1

The State of Nevada vs Evaristo J Garcia

June 27, 2013**9:00 AM****Calendar Call****HEARD BY:** Silver, Abbi**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Jennifer Kimmel**RECORDER:****REPORTER:** Renee Silvaggio**PARTIES****PRESENT:**

Figler, Dayvid J

Attorney

Garcia, Evaristo J

Defendant

Goodman, Ross C.

Attorney

Pandukht, Taleen R

Attorney

State of Nevada

Plaintiff

JOURNAL ENTRIES

- Mr. Goodman, Esq. announced ready for trial and needing 10 days to 2 weeks. Ms. Pandukht, Esq. agreed and stated Noreen DeMonte will be assisting with the Trial. Final trial preparation was made, including verification of length of trial, how the Court excuses jurors, voir dire procedures with both sides proposed questions due 7/3/13 by 5:00 P.M., and jury instructions which are due to first day of Trial and counsel should bring one set with cites and another without. COURT stated, counsel to provide the Court with courtesy copies of their respective paperwork.

Mr. Goodman advised he will be filing a trial brief.

COURT ORDERED, State is directed to file the offer of negotiations made to the Defendant and rejected, on the first day of Trial and Trial dates FIRM.

CUSTODY

7/8/13 9:00 A.M. JURY TRIAL - TWO WEEKS FIRM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****July 08, 2013**

10C262966-1

The State of Nevada vs Evaristo J Garcia

July 08, 2013**9:30 AM****Jury Trial - FIRM****HEARD BY:** Silver, Abbi**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Jennifer Kimmel**RECORDER:****REPORTER:** JoAnn Melendez**PARTIES****PRESENT:**

Demonte, Noreen

Attorney

Figler, Dayvid J

Attorney

Garcia, Evaristo J

Defendant

Goodman, Ross C.

Attorney

Pandukht, Taleen R

Attorney

State of Nevada

Plaintiff

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS: Discussion regarding Voir Dire procedures and scheduling.

PROSPECTIVE JURY PANEL PRESENT: introductions by Ms. Demonte and Mr. Goodman, who each named their witnesses. Voir Dire Oath administered. Voir Dire conducted. Court queried regarding challenge of panel as a whole. COURT NOTED, counsel had no challenges. Court admonished and excused jurors for morning recess.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Mr. Goodman clarified the Deft. minimum jail time would be 40 years, not 20 years. Court and counsel discussed scheduling.

PROSPECTIVE JURY PANEL PRESENT: Voir Dire resumed. Twelve Jurors and two alternates selected and sworn. Court read admonishment to Jury. Information read in open court. Court admonished and excused jurors for evening recess.

OUTSIDE THE PRESENCE OF THE JURY: Court gave explanation regarding excusing Juror #163 and #091. Discussion ensued regarding Saul Garcia, who was found guilty in another case. Mr. Figler advised Saul made a phone call and originally stated this incident appeared to be an attempt at suicide. Additional discussion regarding, the Co-Deft. Manuel Lopez, who stated the injury was self inflicted.

State advised it has a limiting instruction that the Defts. would like read before anyone who is in a gang testifies. COURT ORDERED, no limiting instruction will be given unless the State can provide case law that would warrant giving same. Court stated it will rely on the expertise of both sides, to address this issue in the instructions.

Mr. Figler advised the second issue to be the alleged extradition of the Deft. from Mexico. Lengthy argument ensued. COURT FURTHER ORDERED, this issue was not addressed properly in a Motion in Limine prior to trial and therefore it will be permitted and the State may mention the Deft's flight to Mexico.

Additional discussion regarding Jonathan Harper, which was addressed in a Motion in Limine prior trial beginning. COURT advised it will review the transcripts concerning it's prior ruling.

COURT ORDERED, matter CONTINUED.

CONTINUED TO: 7/8/13 9:00 A.M.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****July 09, 2013**

10C262966-1

The State of Nevada vs Evaristo J Garcia

July 09, 2013**1:00 PM****Jury Trial - FIRM****HEARD BY:** Silver, Abbi**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Jennifer Kimmel**RECORDER:****REPORTER:** Renee Silvaggio**PARTIES****PRESENT:**

Demonte, Noreen

Attorney

Figler, Dayvid J

Attorney

Garcia, Evaristo J

Defendant

Goodman, Ross C.

Attorney

Pandukht, Taleen R

Attorney

State of Nevada

Plaintiff

JOURNAL ENTRIES

- JURY PRESENT: State INVOKED the EXCLUSIONARY RULE. Opening statements by Ms. Pandukht and Mr. Goodman. Testimony and exhibits presented (See worksheets.) Court admonished and excused Jury for lunch recess.

OUTSIDE THE PRESENCE OF THE JURY: Court made record of questions submitted by the Jury to a witness and not asked.

JURY PRESENT: Testimony and exhibitis resumed (See worksheets.) Court admonished and excused Jury for evening recess.

OUTSIDE THE PRESENCE OF THE JURY: Mr. Goodman requested to interview Edshel Calvillo. COURT ORDERED, request GRANTED and special arrangements were made for Defense to interview Mr. Calvillo. Mr. Figler advised that witness Calvillo should have an attorney appointed to him. COURT stated, in one scenario, that witness may have conceded to being an Accessory to Murder, to which the statute of limitations has run. Additionally Mr. Calvillo, if charged of

Conspiracy to Commit Murder, his statute of limitations would have run 2/6/09. COURT FINDS, even in the worse case scenario the statute of limitations would have run on Mr. Calvillo, therefore and for these reasons, COURT FURTHER ORDERED, request DENIED. COURT reviewed the profile of the Jury.

State clarified the offer to the Deft. prior to trial was for SECOND DEGREE MURDER WITH USE OF A DEADLY WEAPON (F), which holds a 10 years to Life plus a consecutive 10 to Life for use of a deadly weapon and giving him 5 years of credit for time served. Additionally another offer was for FIRST DEGREE MURDER which holds a 20 years to Life with the same credit for time served.

Mr. Figler stated, the State's investigator made promises to the Defense that they would be able to interview Mr. Calvillo and he was just made available this date. COURT explained it signed a Material Witness Warrant to bring Edshel Calvillo to Court and he was just found. Additionally, Mr. Figler advised Edshel perjured himself during testimony. Court queried regarding Mr. Calvillo's having a conviction for perjury. Mr. Figler advised his testimony in the prior trial he indicated that Mr. Harper shot himself. Lengthy discussion ensued regarding discussions with what occurred in the other trial being used in this trial. COURT stated it will not let either side pick a portion of the other trial to use in this trial, by having the Court lets some come in, and not allow other parts to come in.

COURT directed counsel to arrive at 8:00 tomorrow morning to review the transcripts that address extradition. Additionally, the Court will review these and it's Order concerning the specifics around the other shooting.

COURT FURTHER ORDERED, matter CONTINUED.

CONTINUED TO: 7/10/13 9:00 A.M.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****July 10, 2013**

10C262966-1

The State of Nevada vs Evaristo J Garcia

July 10, 2013**9:00 AM****Jury Trial - FIRM****HEARD BY:** Silver, Abbi**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Jennifer Kimmel**RECORDER:****REPORTER:** Renee Silvaggio**PARTIES****PRESENT:**

Demonte, Noreen

Attorney

Figler, Dayvid J

Attorney

Garcia, Evaristo J

Defendant

Goodman, Ross C.

Attorney

Pandukht, Taleen R

Attorney

State of Nevada

Plaintiff

JOURNAL ENTRIES

- JURY PRESENT: Testimony presented. (See worksheets) Court admonished and excused the Jury for evening recess and ORDERED, matter CONTINUED.

OUTSIDE THE PRESENCE OF THE JURY: COURT FURTHER ORDERED, Material Witness Warrant is QUASHED and Mr. Calvillo is given an Own Recognizance (O.R.) this date and told his presence tomorrow is not required.

Court queried Deft's counsel regarding having sufficient time to question him and was advised their time was sufficient.

CONTINUED TO: 7/11/13 10:30 A.M.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

10C262966-1

The State of Nevada vs Evaristo J Garcia

July 11, 2013**10:30 AM****Jury Trial - FIRM****HEARD BY:** Silver, Abbi**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Jennifer Kimmel**RECORDER:****REPORTER:** Renee Silvaggio**PARTIES****PRESENT:**

Demonte, Noreen

Attorney

Figler, Dayvid J

Attorney

Garcia, Evaristo J

Defendant

Goodman, Ross C.

Attorney

Pandukht, Taleen R

Attorney

State of Nevada

Plaintiff

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY: Counsel attempted to negotiate this matter.

JURY PRESENT: Testimony and exhibits presented. (See worksheets) COURT admonished and excused the Jury for afternoon recess.

OUTSIDE THE PRESENCE OF THE JURY: Mr. Figler objected to the State's Powerpoint Opening and State's expert. Mr. Figler stated the fight was not in furtherance to promote a gang and moved for a Directed Verdict regarding the Gang enhancement. COURT stated it's inclination to grant the Defense request for a Directed Verdict, however prefers to have the State brief this issue. COURT FINDS, the State has not acted in bad faith. COURT ORDERED, it will not allow the State's Expert to testify about gangs. COURT FURTHER FINDS the State's Powerpoint opening is overly prejudicial and shall not be used. COURT stated, it does not believe the State has shown evidence to support "Puros Locos" being a gang. COURT directed the State to brief this issue.

JURY PRESENT: Testimony and exhibits resumed. (See worksheets) COURT admonished and

excused Jury for evening recess and ORDERED, matter CONTINUED.

OUTSIDE THE PRESENCE OF THE JURY: Mr. Figler moved to dismiss based upon the testimony of Hardy and that evidence was destroyed. State responded there was no destruction of evidence it was tested and found negative for blood. COURT stated, issue is deferred and counsel are to wait until the outcome of the Jury's verdict before addressing this issue as it may not be an issue at all. Mr. Figler moved for MISTRIAL. COURT FURTHER ORDERED, issue is DEFERRED and the State shall prepare a brief over the weekend. Transcript shall be prepared as soon as possible.

Additional discussion regarding Jury Instructions.

CONTINUED TO: 7/12/13 9:00 A.M.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****July 12, 2013**

10C262966-1

The State of Nevada vs Evaristo J Garcia

July 12, 2013**9:00 AM****Jury Trial - FIRM****HEARD BY:** Silver, Abbi**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Jennifer Kimmel**RECORDER:****REPORTER:** JoAnn Melendez**PARTIES****PRESENT:**

Demonte, Noreen

Attorney

Figler, Dayvid J

Attorney

Garcia, Evaristo J

Defendant

Goodman, Ross C.

Attorney

Pandukht, Taleen R

Attorney

State of Nevada

Plaintiff

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY: Mr. Goodman objected to seeing a Juror in the hallway and their reaction to seeing him. COURT stated, the Marshall has moved the Jury into the Jury deliberation room due to crowded conditions in the hallways. Both sides requested to question the Court's Marshall. Court's Marshall was questioned and the COURT ORDERED, each Juror shall be brought into Court outside the presence of the other jurors and questioned.

Subsequently Jurors 1 - 12 were brought into Court and discussed their experiences in the hallway outside the Courtroom. COURT FURTHER ORDERED, Juror Numbers shall be used, instead of their names. Additionally, the Court's Marshall shall escort them to and from Court from the Jury Commissioner room every day.

JURY PRESENT: Testimony and exhibits continued. (See worksheets) COURT admonished and excused the Jury for lunch recess.

OUTSIDE THE PRESENCE OF THE JURY: Court and counsel discussed Jury Instructions. Fourth

Amended Information was FILED IN OPEN COURT.

JURY PRESENT: Testimony and exhibits resumed. (See worksheets). State RESTED. Court admonished and excused the Jury for afternoon recess.

OUTSIDE THE PRESENCE OF THE JURY: Court and counsel discussed Jury Instructions. Deft. was advised of his right to testify or not testify. Mr. Figler stated they will STIPULATE that should the Deft. be found guilty of first degree murder, the Court will sentence him. COURT directed Mr. Figler to place this STIPULATION in writing and file same with the Court.

JURY PRESENT: Testimony presented. (See worksheets). Deft. RESTED. Court admonished and excused the Jury for short recess.

OUTSIDE THE PRESENCE OF THE JURY: State moved for rebuttal witness. Argument ensued. COURT FURTHER ORDERED, request is DENIED.

JURY PRESENT: Court admonished and excused the Jury for evening/weekend recess. COURT FURTHER ORDERED, matter CONTINUED.

OUTSIDE THE PRESENCE OF THE JURY: Deft. was not present, COURT and counsel finalized Jury Instructions.

CONTINUED TO: 7/15/13 9:00 A.M.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****July 15, 2013**

10C262966-1

The State of Nevada vs Evaristo J Garcia

July 15, 2013**9:00 AM****Jury Trial - FIRM****HEARD BY:** Silver, Abbi**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Jennifer Kimmel**RECORDER:****REPORTER:** Renee Silvaggio**PARTIES****PRESENT:**

Demonte, Noreen

Attorney

Figler, Dayvid J

Attorney

Garcia, Evaristo J

Defendant

Goodman, Ross C.

Attorney

Pandukht, Taleen R

Attorney

State of Nevada

Plaintiff

JOURNAL ENTRIES

- JURY PRESENT: Closing arguments by Ms. Demonte, Ms. Pandukht and Mr. Goodman. Court instructed the Jury. At the hour of 12:30 P.M. the Jury began its Deliberations.

OUTSIDE THE PRESENCE OF THE JURY: State's Opposition and Written Record in Response to Deft's Oral Motion for Mistrial FILED IN OPEN COURT.

JURY DELIBERATING

OUTSIDE THE PRESENCE OF THE JURY: Deft. not present, Court advised a note was received from the deliberating Jury indicating there was an error on the verdict form. Court and counsel discussed same and a new Verdict was prepared and provided to the Jury.

At the hour of 3:45 PM, the jury returned with verdicts of NOT GUILTY to COUNT 1 - CONSPIRACY TO COMMIT MURDER and GUILTY of SECOND DEGREE MURDER WITH USE OF A DEADLY WEAPON. Jury polled at Defense Counsel's request. Verdict and Jury Instructions

FILED IN OPEN COURT. Court thanked and excused jury. COURT ORDERED, matter referred to the Division of Parole and Probation for a Pre-Sentence Report and set for Sentencing. COURT FURTHER ORDERED, Deft. REMANDED into custody, NO BAIL.

CUSTODY

9/12/13 9:00 A.M. SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 16, 2013

10C262966-1

The State of Nevada vs Evaristo J Garcia

July 16, 2013

10:30 AM

Jury Trial - FIRM

HEARD BY: Silver, Abbi

COURTROOM: RJC Courtroom 11D

COURT CLERK: Jennifer Kimmel

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- This case reached a verdict after final calendar had been run. COURT ORDERED, matter OFF CALENDAR.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****August 01, 2013**

10C262966-1

The State of Nevada vs Evaristo J Garcia

August 01, 2013**9:00 AM****Motion****HEARD BY:** Silver, Abbi**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Jennifer Kimmel**RECORDER:****REPORTER:** JoAnn Melendez**PARTIES****PRESENT:**

Demonte, Noreen

Attorney

Figler, Dayvid J

Attorney

Garcia, Evaristo J

Defendant

Goodman, Ross C.

Attorney

Pandukht, Taleen R

Attorney

State of Nevada

Plaintiff

JOURNAL ENTRIES

- Argument by counsel. COURT ORDERED, for the reasons set forth in the State's Opposition to the Deft's Motion, Motion is DENIED. Court directed the State to prepare the Order and submit same to opposing counsel for their review and signature prior to submitting to the Court. Discussion regarding present sentencing date. COURT FURTHER ORDERED, sentencing date is RESET as they already have a Pre Sentence Investigative (PSI) report.

CUSTODY

8/15/13 10:30 A.M. SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****August 15, 2013**

10C262966-1

The State of Nevada vs Evaristo J Garcia

August 15, 2013**10:30 AM****Sentencing****HEARD BY:** Silver, Abbi**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Phyllis Irby**RECORDER:****REPORTER:** JoAnn Melendez**PARTIES****PRESENT:**

Figler, Dayvid J

Attorney

Garcia, Evaristo J

Defendant

Goodman, Ross C.

Attorney

Pandukht, Taleen R

Attorney

State of Nevada

Plaintiff

JOURNAL ENTRIES

- Ms. Pandukht requested a continuance; advised the Deft's family could not be present. Mr. Figler has no opposition. COURT ORDERED, MATTER CONTINUED.

CUSTODY

8-29-13 10:30 AM SENTENCING (DEPT. XV)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****August 29, 2013**

10C262966-1

The State of Nevada vs Evaristo J Garcia

August 29, 2013**10:30 AM****Sentencing****HEARD BY:** Silver, Abbi**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Jennifer Kimmel**RECORDER:****REPORTER:** JoAnn Melendez**PARTIES****PRESENT:**

Demonte, Noreen

Attorney

Figler, Dayvid J

Attorney

Garcia, Evaristo J

Defendant

Goodman, Ross C.

Attorney

State of Nevada

Plaintiff

JOURNAL ENTRIES

- DEFT GARCIA ADJUDGED GUILTY by way of the Jury's verdict of SECOND DEGREE MURDER WITH USE OF A DEADLY WEAPON (F). BENCH CONFERENCE. Statement by Deft., victim witnesses Maria Oyervillez and Melissa Maria Gamboa sworn and testified. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, RESTITUTION in the amount of \$38,000.00 and a \$150.00 DNA Analysis fee including testing to determine genetic markers, Deft. SENTENCED to a MAXIMUM of LIFE with a MINIMUM parole eligibility after TEN (10) YEARS in the Nevada Department of Corrections (NDC), plus an EQUAL and CONSECUTIVE MAXIMUM of LIFE with a MINIMUM parole eligibility after TEN (10) YEARS in the Nevada Department of Corrections for the use of a Deadly Weapon and with ONE THOUSAND, NINE HUNDRED FIFTY NINE (1,959) DAYS CREDIT FOR TIME SERVED. COURT FURTHER ORDERED, Mr. Goodman, Esq. is APPOINTED for the purposes of appeal.

BOND, if any, EXONERATED and CASE CLOSED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

10C262966-1

The State of Nevada vs Evaristo J Garcia

July 28, 2016**9:00 AM****Request****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Dulce Romea**RECORDER:** Jill Hawkins**REPORTER:****PARTIES****PRESENT:**Laurent, Christopher J
State of NevadaAttorney
Plaintiff**JOURNAL ENTRIES**

- Appearing for the State: Melanie Marland, practicing under Supreme Court Rule 49.5 and supervised by Deputy District Attorney Christopher Laurent.

Deft not present, in custody at the Nevada Department of Corrections.

Matter submitted by the State requesting 45 more days for its Response. COURT ORDERED, motion GRANTED and State given forty-five (45) days. Petition for Writ and Deft's Motion for Appointment of Counsel RESET in 60 days.

NDC

9-29-16 9:00 AM DEFENDANT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS (POSTCONVICTION)...DEFENDANT'S MOTION FOR THE APPOINTMENT OF COUNSEL DEFENDANT'S MOTION TO WITHDRAW COUNSEL (DEPT II - SCOTTI)

CLERK'S NOTE: A copy of the above minute order was mailed to Evaristo Garcia, ID # 1108072, High Desert State Prison, P.O. Box 650, Indian Springs, NV 89070. / dr 7-29-16

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****September 29, 2016**

10C262966-1

The State of Nevada vs Evaristo J Garcia

September 29, 2016 9:00 AM**All Pending Motions****HEARD BY:** Scotti, Richard F.**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Tena Jolley
Carole D'Aloia**RECORDER:** Dalyne Easley**REPORTER:****PARTIES**

PRESENT:	Demonte, Noreen	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFENDANT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)...DEFENDANT'S PRO PER MOTION FOR THE APPOINTMENT OF COUNSEL...DEFENDANT'S PRO PER MOTION TO WITHDRAW COUNSEL

Defendant not present as he is currently in the Nevada Department of Corrections (NDC). As to Defendant's Pro Per Motion to Withdraw Counsel, COURT ORDERED, motion GRANTED. As to Defendant's Pro Per Petition for Writ of Habeas Corpus (Post Conviction), COURT ORDERED, petition DENIED and DISCHARGED. Court finds that trial counsel was not ineffective for investigating the witness, Edschel Calvillo and the Court agrees with the position of the State that the record belies Garcia's claim of failure to investigate and shows that counsel did do everything that Defendant claims should have been done. Court notes there was an issue about whether more investigation would have revealed that Calvillo perjured himself and the record shows that the parties and the Court did have a lengthy discussion about the alleged perjury and defense counsel the next day was able to thoroughly Calvillo about the alleged perjury in a prior case for impeachment purposes. Court finds that there was appropriate investigation the allegation by the Defendant of infective assistance counsel is belied by the fact and, ORDERED, THERE IS NO NEED FOR AN EVIDENTIARY HEARING ON THIS MATTER. Court further notes there was the issue of the allegation of the error in the sentence and Court finds that trial counsel was not ineffective for

failing to challenge the imposed sentence as the sentence was not only proper but it was mandatory and pursuant to the statute and any challenge by counsel would have been futile as Court was required by law to impose the sentence it did. The next issue was trial counsel failing to move for a mistrial and allegedly being ineffective for failing to do so and the Court finds from the record that trial counsel did move for a mistrial on the grounds that Defendant thought should have been moved so that plainly belied by the record and, ORDERED, THERE IS NO NEED FOR AN EVIDENTIARY HEARING ON THIS MATTER. Court noted Defendant also contends that appellate counsel was ineffective and, again, applying the Strickland Test the Court finds that the Defendant has not met the requirements of Strickland to show there was ineffective assistance of counsel as he claims he did not have proper communication with appellate counsel and yet he fails to show how additional communication would have resulted in anything different on appeal. For those reasons, the appeal is frivolous, belied by the record and, COURT ORDERED, DENIED and DENIED Defendant's Pro Per Motion for the Appointment of Counsel as there is no legitimate issues here presented and no complicated issues that require appointment of counsel. Ms. De Monte advised she will prepare the findings.

CASE NO. *C262966*
DEPT. NO. XV
CDDA SONIA JIMENEZ

Defendant(s): EVARISTO JONATHAN GARCIA
MANUEL ANTHONY LOPEZ

Case No(s): 09BGJ047A-B (PREVIOUSLY TRACKED TO DEPT. XV)

Charge(s): *AS TO BOTH DEFTS:*
(1) CT - CONSPIRACY TO COMMIT MURDER WITH THE INTENT
TO PROMOTE, FURTHER OR ASSIST A CRIMINAL GANG
(Category B Felony);
(1) CT - MURDER WITH USE OF A DEADLY WEAPON WITH THE
INTENT TO PROMOTE, FURTHER OR ASSIST A CRIMINAL
GANG (Category A Felony)

Def. Counsel(s): GARCIA - SPD, SCOTT BINDRUP
LOPEZ - JOHN MOMOT, ESQ.

WARRANTS:
GARCIA -
LOPEZ -
SET FELONY ARRAIGNMENT (ONE WEEK)
BOTH DEFTS IN CUSTODY AT CCDC

Exhibits:

1. Proposed Indictment

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

Exhibits , returned to (agency) (officer)

~~00~~ STATE'S EXHIBITS

CASE NO. C262966

	Date Offered	Objection	Date Admitted
1 - Aerial map	7-9-13	NO	7-9-13
2 - Aerial map zoom	"	"	"
3 - Crime scene diagram	"	"	"
4 Photo	"	"	"
5			
6			
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10			
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12			
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15			
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17			
18			
19			
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22			
23			

STATE'S

EXHIBITS

CASE NO. C262966

	Date Offered	Objection	Date Admitted
24 Photo	7-9-13	no	7-9-13
25			
26			
27			
28			
29			
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44			
45			
46			

STATE'S EXHIBITS

CASE NO. C262946

	Date Offered	Objection	Date Admitted
47 Photo	7.9.13	NO	7.9.13
48	"	"	"
49	"	"	"
50	7.9.13	NO	7.9.13
51	"	Obj. OR	"
52			
53			
54	7.9.13	Obj. OR	7.9.13
55			
56			
57			
58	7.9.13	NO	7.9.13
59			
60			
61			
62			
63	7.9.13	NO	7.9.13
64	7.11.13	NO	7.11.13
65	"	"	"
66	"	"	"
67	"	"	"
68	"	"	"
69 ↓	"	"	"

STATE'S EXHIBITS

CASE NO. 0262966

		Date Offered	Objection	Date Admitted
70	Photo	7-11-13	NO	7-11-13
71		"	"	"
72		"	"	"
73		"	"	"
74		"	"	"
75		"	"	"
76		7-11-13	NO	7-11-13
77		"	"	"
78		"	"	"
79		"	"	"
80		"	"	"
81		"	"	"
82		"	"	"
83		"	"	"
84		"	"	"
85		7-9-13	NO	7-9-13
86	Puppet's Girl/Friend	"	Obj. OR	"
87				
88				
89				
90		7-11-13	NO	7-11-13
91		"	"	"
92	✓	"	"	"

STATE'S

EXHIBITS

CASE NO. C262964

	Date Offered	Objection	Date Admitted
93 Photo	7-11-13	NO	7-11-13
94	"	"	"
95	"	"	"
96	7-12-13	NO	7-12-13
97	"	"	"
98 @ Photo	"	"	"
99 evidence bag (bullets + casing)	7-9-13	NO	7-9-13
99.1 Apparent bullet	"	"	"
99.2 " "	"	"	"
99.3 Cartridge Case	"	"	"
99.4 " "	"	"	"
99.5 " "	"	"	"
99.6 Apparent Bullet	"	"	"
99.7 Cartridge Case	"	"	"
99.8 " "	"	"	"
99.9 Apparent Bullet	"	"	"
99.11 " "	"	"	"
100- evidence box (gun)	7/9/13	obj 505	7-11-13
100A Bag contents	7/11/13	No obj.	
100b Apparent bullet			
101 A - buccal swab Giovanni C. buccal - vic			
101 B buccal swab Manuel d buccal - Δ			
102- evidence bag (V clothes)	7-11-13	NO	7-11-13
103 - latent print (bullet)			
104 latent print cards (gun)			
105- known prints - Δ			

} Returned
To Counsel

STATE'S EXHIBITS

CASE NO. C2629664

[illegible]

EXHIBITS

CASE NO. C262946

[illegible]

Court's Exhibit List

CASE # C262966

		OFFERED		ADMITTED	
		DATE	OBJ	DATE	
1.	Question from Juror # 6 : directed to: CSA Proietto: Asked	7/9	<input checked="" type="checkbox"/>	NO	<input checked="" type="checkbox"/> 7/9
2.	" " " # 7 : " " " " : Asked	"	<input checked="" type="checkbox"/>	"	<input checked="" type="checkbox"/> "
3.	" " " # 5 : " " " " : NOT Asked	"	<input checked="" type="checkbox"/>	"	<input checked="" type="checkbox"/> "
4.	" " " # 5 : " " " " : NOT Asked	"	<input checked="" type="checkbox"/>	"	<input checked="" type="checkbox"/> "
5.	" " " # 14 : " " " " : NOT Asked	"	<input checked="" type="checkbox"/>	"	<input checked="" type="checkbox"/> "
6.	" " " # 4 : " " :Dan Eichelberger : Asked	7/10	<input checked="" type="checkbox"/>	"	<input checked="" type="checkbox"/> 7/10
7.	" " " # 1 : " " :Dan Eichelberger : Asked	"	<input checked="" type="checkbox"/>	"	<input checked="" type="checkbox"/> "
8.	" " " # 1 : " " :Betty Graves : Asked	"	<input checked="" type="checkbox"/>	"	<input checked="" type="checkbox"/> "
9.	" " " # 7 : " " :Betty Graves : Asked	"	<input checked="" type="checkbox"/>	"	<input checked="" type="checkbox"/> "
10.	" " " # 8 : " " :Betty Graves : Asked	"	<input checked="" type="checkbox"/>	"	<input checked="" type="checkbox"/> "
11.	" " " # 7 : " " :The Court : NOT Asked	"	<input checked="" type="checkbox"/>	"	<input checked="" type="checkbox"/> "
12.	State's Proposed Opening Powerpoint presentation on paper (not used)	7/11	<input checked="" type="checkbox"/>	"	<input checked="" type="checkbox"/> 7/11
13.	Question from Juror # 7 : directed to : Ken Hardy: BOTH Asked	"	<input checked="" type="checkbox"/>	"	<input checked="" type="checkbox"/> "
14.	" " " # 6 : " " " " : Asked	"	<input checked="" type="checkbox"/>	"	<input checked="" type="checkbox"/> "
15.	" " " # 8 : " " " " : Asked	"	<input checked="" type="checkbox"/>	"	<input checked="" type="checkbox"/> "
16.	" " " # 7 : " " : Cliff Mogg : Asked	7/12	<input checked="" type="checkbox"/>	"	<input checked="" type="checkbox"/> 7/12
17.	" " " # 7 : " " : Alice Maceo : Asked	"	<input checked="" type="checkbox"/>	"	<input checked="" type="checkbox"/> "
18.	" " " # 5 : " " " " : Asked	"	<input checked="" type="checkbox"/>	"	<input checked="" type="checkbox"/> "
19.	" " " #10 : " " " " : Asked	"	<input checked="" type="checkbox"/>	"	<input checked="" type="checkbox"/> "
20.	" " " #1 : " " " " : Asked	"	<input checked="" type="checkbox"/>	"	<input checked="" type="checkbox"/> "
21.	" " " #3 : " " :Dr. Roitman : Asked	"	<input checked="" type="checkbox"/>	"	<input checked="" type="checkbox"/> "
22.	" " " #13 : " " " " : Asked	"	<input checked="" type="checkbox"/>	"	<input checked="" type="checkbox"/> "
23.	" " " # 8 : " " " " : Asked	"	<input checked="" type="checkbox"/>	"	<input checked="" type="checkbox"/> "
24.	Deft's proposed Jury Instruction Not Given - Credibility Instruction	"	<input checked="" type="checkbox"/>	"	<input checked="" type="checkbox"/> "
25.	Deft's proposed Jury Instruction: Withdrawn by Deft.	"	<input checked="" type="checkbox"/>	"	<input checked="" type="checkbox"/> "
26.	State's Closing Powerpoint presentation on paper	7/15	<input checked="" type="checkbox"/>	"	<input checked="" type="checkbox"/> 7/15
27.	Verdict Form with typo	"	<input checked="" type="checkbox"/>	"	<input checked="" type="checkbox"/> "



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

EVARISTO GARCIA #1108072
P.O. BOX 1989
ELY, NV 89301

DATE: October 14, 2016
CASE: 10C262966-1

RE CASE: STATE OF NEVADA vs. EVARISTO J. GARCIA

NOTICE OF APPEAL FILED: October 13, 2016

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS NOT TRANSMITTED HAVE BEEN MARKED:

- ☐ Case Appeal Statement
- NRAP 3 (a)(1), Form 2
- ☒ Order
- ☒ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

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; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

STATE OF NEVADA,

Plaintiff(s),

vs.

EVARISTO J. GARCIA,

Defendant(s).

Case No: 10C262966-1

Dept No: II

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 14 day of October 2016.

Steven D. Grierson, Clerk of the Court

Chaunte Pleasant

Chaunte Pleasant, Deputy Clerk