

Case No. 10C262966-1

Dept. No. 11

IN THE 8<sup>th</sup> JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

Electronically Filed  
Nov 28 2016 11:58 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
Electronically Filed  
11/16/2016 11:10:55 AM

State of Nevada

Petitioner/Plaintiff,

vs.

Evaristo J. Garcia  
#1108072

Respondent/Defendant.

Allen D. Quinn  
NOTICE OF APPEAL CLERK OF THE COURT

Notice is hereby given that Evaristo J. Garcia, Petitioner/Defendant  
above named, hereby appeals to the Court of Appeals for the State of Nevada from the final  
judgment / order of the denial on his Habeas corpus post conviction

Entered in this action on the 10 day of November, 20 16.

Dated this 10 day of November, 20 16.

Evaristo Garcia #1108072

NDOC # 1108072  
Appellant - Pro Per  
Ely State Prison  
P.O. Box 1989  
Ely, Nevada 89301-1989

RECEIVED  
NOV 16 2016

CLERK OF THE COURT

#53

**CERTIFICATE OF SERVICE BY MAIL**

I, Everisto J. Garcia, hereby certify pursuant to Rule 5(b) of the NRCP, that on this 10 day of November, 20 16, I served a true and correct copy of the above-entitled Notice of Appeal postage prepaid and addressed as follows:

<u>Clerk of the Court</u>	<u>Steven B. Wolfson</u>
<u>200 Lewis Ave, 3<sup>rd</sup> Floor</u>	<u>Clark County District Attorney</u>
<u>Las Vegas NV 89155-2212</u>	<u>200 Lewis Ave, 3<sup>rd</sup> Floor</u>
	<u>P.O. Box 552212</u>
	<u>Las Vegas NV 89155</u>

Signature Everisto J. Garcia #1108072

Print Name Everisto J. Garcia #1108072  
Ely State Prison  
P.O. Box 1989  
Ely, Nevada 89301-1989

**AFFIRMATION PURSUANT TO NRS 239B.030**

I, Everisto J. Garcia, NDOC# 1108072,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE  
ATTACHED DOCUMENT ENTITLED Notice of Appeal

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY  
PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 10 DAY OF November, 20 16.

SIGNATURE: Everisto J. Garcia

INMATE PRINTED NAME: Everisto J. Garcia #1108072

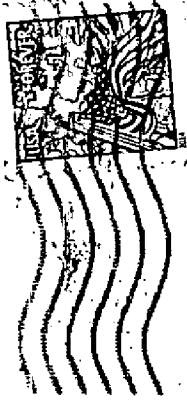
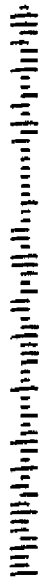
INMATE NDOC # 1108072

INMATE ADDRESS: ELY STATE PRISON  
P. O. BOX 1989  
ELY, NV 89301

Evaristo Garcia # 1108072  
Ely State Prison  
P.O. Box 1984  
Ely NV 89301

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

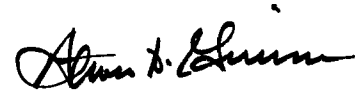
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CLERK OF THE COURT

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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 STATE OF NEVADA,

10 Plaintiff(s),

11 vs.

12 EVARISTO J. GARCIA,

13 Defendant(s),

Case No: 10C262966-1

Dept No: II

14  
15  
16 **CASE APPEAL STATEMENT**

17 1. Appellant(s): Evaristo Garcia

18 2. Judge: Richard F. Scotti

19 3. Appellant(s): Evaristo Garcia

20 Counsel:

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

24 4. Respondent: The State of Nevada

25 Counsel:

26 Steven B. Wolfson, District Attorney  
27 200 Lewis Ave.  
28 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: Post-Conviction Relief

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 64221, 71525

12. Child Custody or Visitation: N/A

Dated This 17 day of November 2016.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann

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

cc: Evaristo Garcia

DEPARTMENT 2  
**CASE SUMMARY**  
**CASE NO. 10C262966-1**

**The State of Nevada vs Evaristo J Garcia**

§	Location:	<b>Department 2</b>
§	Judicial Officer:	<b>Scotti, Richard F.</b>
§	Filed on:	<b>03/19/2010</b>
§	Case Number History:	
§	Cross-Reference Case	<b>C262966</b>
§	Number:	
§	Defendant's Scope ID #:	<b>2685822</b>
§		<b>1994518</b>
§	ITAG Booking Number:	<b>1000013408</b>
§	ITAG Case ID:	<b>1134181</b>
§	Lower Court Case # Root:	<b>10F03640</b>
§	Lower Court Case Number:	<b>10F03640X</b>
§	Supreme Court No.:	<b>64221</b>
§		<b>71525</b>

**CASE INFORMATION**

<b>Offense</b>	<b>Deg</b>	<b>Date</b>	<b>Case Type:</b>	<b>Felony/Gross Misdemeanor</b>
1. CONSPIRACY TO COMMIT A CRIME	F	01/01/1900	<b>Case Flags:</b> <b>Appealed to Supreme Court</b> <b>Custody Status - Nevada</b> <b>Department of Corrections</b> <b>In Forma Pauperis Granted</b> <i>For Defendant Evaristo Garcia</i> <i>Filed 6-15-16</i> <b>Charge Description Updated</b>	
1. CONSPIRACY TO COMMIT MURDER	F	01/01/1900		
<i>Filed As:</i> MURDER.	F	3/19/2010		
1. DEGREES OF MURDER	F	01/01/1900		
1. FELONY COMMITTED TO PROMOTE ACTIVITIES OF CRIMINAL GANG	F	01/01/1900		
1. FURTHER OR ASSIST A CRIMINAL GANG	F	01/01/1900		
2. MURDER.	F	01/01/1900		
2. DEGREES OF MURDER	F	01/01/1900		
2. FURTHER OR ASSIST A CRIMINAL GANG	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. 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











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

DATE	EVENTS & ORDERS OF THE COURT	INDEX
03/19/2010	<b>Grand Jury Indictment</b> (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	<b>Initial Arraignment</b> (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	10C262966-10010.tif pages












DEPARTMENT 2  
**CASE SUMMARY**  
**CASE NO. 10C262966-1**

*STATUS CHECK: WRITS (IF ANY)*

03/25/2010	<b>Plea</b> (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	<b>Motion for Own Recognizance Release/Setting Reasonable Bail (9:00 AM)</b> 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

DEPARTMENT 2  
**CASE SUMMARY**  
**CASE NO. 10C262966-1**

05/14/2010	 Order <i>ORDER - RELATED PARTYID: 10C262966_0001</i>	10C262966-10026.tif pages
05/18/2010	 Writ <i>WRIT OF HABEAS CORPUS - RELATED PARTYID: 10C262966_0001</i>	10C262966-10027.tif pages
05/18/2010	 Receipt of Copy <i>RECEIPT OF COPY - RELATED PARTYID: 10C262966_0001</i>	10C262966-10028.tif pages
05/18/2010	 Writ <i>RETURN TO WRIT OF HABEAS CORPUS</i>	10C262966-10029.tif pages
05/18/2010	 Opposition <i>STATES OPPOSITION TO DEFTS MTN TO SEVER TRIALS</i>	10C262966-10030.tif pages
05/25/2010	<b>Status Check (9:00 AM)</b> Events: 03/25/2010 Hearing <i>STATUS CHECK: WRITS (IF ANY)</i>	
05/25/2010	<b>Petition for Writ of Habeas Corpus (9:00 AM)</b> Events: 04/30/2010 Petition <i>DEFT'S PTN FOR WRIT OF HABEAS CORPUS /011</i>	
05/25/2010	<b>Motion to Sever (9:00 AM)</b> Events: 05/04/2010 Motion <i>DEFT'S MTN TO SEVER TRIALS/012 Heard By: Abbi Silver</i>	
05/25/2010	<b>All Pending Motions (9:00 AM)</b> <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>	10C262966-10031.tif pages
05/25/2010	Motion <i>DEFT'S MTN TO SEVER TRIALS/012</i>	10C262966-10032.tif pages
05/28/2010	 Certificate <i>CERTIFICATE OF MAILING - RELATED PARTYID: 10C262966_0001</i>	10C262966-10033.tif pages
06/02/2010	 Order <i>ORDER DENYING DEFTS PETITION FOR WRIT OF HABEAS CORPUS</i>	10C262966-10034.tif pages
06/04/2010	 Petition <i>DEFT'S PTN FOR WRIT OF HABEAS CORPUS /015</i>	10C262966-10035.tif pages
06/16/2010	 Writ <i>RETURN TO WRIT OF HABEAS CORPUS</i>	10C262966-10036.tif pages
06/22/2010	<b>Petition for Writ of Habeas Corpus (9:00 AM)</b> Events: 06/04/2010 Petition	

DEPARTMENT 2  
**CASE SUMMARY**  
**CASE No. 10C262966-1**

*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>

DEPARTMENT 2  
**CASE SUMMARY**  
**CASE NO. 10C262966-1**












*Other Application*

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	<b>CANCELED Motion to Sever</b> (9:00 AM) <i>Vacated - per Clerk</i> <i>CASE DISMISSED 5/25/10</i>
08/31/2010	 <b>All Pending Motions</b> (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 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</i>
09/21/2010	<b>Motion to Sever</b> (9:00 AM) (Judicial Officer: Silver, Abbi) <i>Motion to Sever (Motion set per minutes of 5/25/10)</i>
09/21/2010	<b>Motion in Limine</b> (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	<b>Motion for Discovery</b> (9:00 AM) (Judicial Officer: Silver, Abbi) Events: 08/25/2010 Motion for Discovery
09/21/2010	<b>Motion to Compel</b> (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	<b>Motion</b> (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	<b>Motion</b> (9:00 AM) (Judicial Officer: Silver, Abbi) Events: 08/25/2010 Motion <i>Motion to Exclude Other Bad Acts, Character Evidence, and Irrelevant Prior Criminal Activity</i>
09/21/2010	<b>Motion</b> (9:00 AM) (Judicial Officer: Silver, Abbi)






DEPARTMENT 2  
**CASE SUMMARY**  
**CASE NO. 10C262966-1**

	Events: 08/25/2010 Motion <i>Motion to Allow Jury Questionnaire</i>
09/21/2010	<b>Motion</b> (9:00 AM) (Judicial Officer: Silver, Abbi) Events: 08/25/2010 Motion <i>Motion to Bar Improper Prosecutorial Argument</i>
09/21/2010	<b>Motion</b> (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	<b>Motion</b> (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	 <b>All Pending Motions</b> (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	 <b>Status Check</b> (9:00 AM) (Judicial Officer: Silver, Abbi) <b>10/12/2010, 02/10/2011, 02/17/2011, 02/24/2011</b> <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	<b>CANCELED Calendar Call</b> (9:00 AM) <i>Vacated - per Judge</i> <b>RESET</b>
11/04/2010	<b>CANCELED Calendar Call</b> (9:00 AM) (Judicial Officer: Silver, Abbi) <i>Vacated - per Judge</i> <b>RESET</b>
11/08/2010	<b>CANCELED Jury Trial</b> (10:00 AM) (Judicial Officer: Silver, Abbi) <i>Vacated - per Clerk</i> <b>RESET</b>
11/08/2010	<b>CANCELED Jury Trial</b> (10:00 AM) (Judicial Officer: Silver, Abbi) <i>Vacated - per Judge</i> <b>RESET</b>
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	<b>CANCELED Status Check</b> (9:00 AM) (Judicial Officer: Silver, Abbi) <i>Vacated - On in Error</i>

DEPARTMENT 2  
**CASE SUMMARY**  
**CASE NO. 10C262966-1**

01/11/2011	 <b>Motion</b> (9:00 AM) (Judicial Officer: Silver, Abbi) <i>Motion for Reasonable Bail</i>
02/10/2011	 <b>All Pending Motions</b> (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	 <b>Status Check</b> (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	 <b>Calendar Call</b> (9:00 AM) (Judicial Officer: Silver, Abbi)
03/17/2011	 Amended Indictment
03/17/2011	Guilty Plea Agreement
03/17/2011	<b>Disposition</b> (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

DEPARTMENT 2  
**CASE SUMMARY**  
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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	<b>Plea</b> (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	<b>CANCELED Jury Trial</b> (10:00 AM) (Judicial Officer: Silver, Abbi) <i>Vacated - per Judge</i>
03/21/2011	<b>CANCELED Jury Trial</b> (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	 <b>Motion to Withdraw Plea</b> (9:00 AM) (Judicial Officer: Silver, Abbi) <b>05/03/2011, 05/12/2011</b> 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	<b>Sentencing</b> (9:00 AM) (Judicial Officer: Silver, Abbi)
05/12/2011	<b>Status Check</b> (9:00 AM) (Judicial Officer: Silver, Abbi) <i>Status Check: Reset Sentencing</i>

DEPARTMENT 2  
**CASE SUMMARY**  
**CASE NO. 10C262966-1**












05/12/2011	 <b>All Pending Motions</b> (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	 <b>Status Check</b> (9:00 AM) (Judicial Officer: Silver, Abbi) <i>Status Check: Reset Trial</i>
05/24/2011	 <b>Opposition to Motion</b> <i>State's Opposition to Defendant's Presentence Motion to Withdraw Guilty Plea</i>
02/21/2012	 <b>Status Check</b> (9:00 AM) (Judicial Officer: Bare, Rob) <i>Status Check: Reset Calendar Call</i>
02/23/2012	 <b>Substitution of Attorney</b> <i>Substitution of Counsel</i>
03/05/2012	 <b>Ex Parte</b> <i>Ex Parte Motion for Appointment of Expert Services and For Payment of Fees Incurred Herein</i>
03/15/2012	 <b>Motion for Appointment</b> <i>Motion for Appointment of Expert Services and for Payment of Fees on Order Shortening Time</i>
03/19/2012	 <b>Motion for Appointment</b> <i>Motion for Appointment of an Investigator and for Payment of Fees on Order Shortening Time</i>
03/22/2012	 <b>Certificate of Mailing</b> <i>Certificate of Service</i>
03/22/2012	 <b>Certificate of Mailing</b> <i>Ex-Parte Motion for Appointment of Expert Services and for Payment of Fees Incurred Herein</i>
03/22/2012	 <b>Certificate of Mailing</b> <i>Certificarte of Service</i>
03/27/2012	<b>Motion</b> (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	<b>Motion for Appointment</b> (9:00 AM) (Judicial Officer: Silver, Abbi)
03/27/2012	 <b>All Pending Motions</b> (9:00 AM) (Judicial Officer: Silver, Abbi)
03/29/2012	 <b>Notice of Entry of Order</b> <i>Notice of Entry of Order</i>
03/30/2012	 <b>Order</b> <i>Order Granting Motion for Appointment of an Investigator and for Payment of Fees on Order Shortening Time</i>
04/02/2012	 <b>Notice of Entry of Order</b> <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	 <b>Calendar Call</b> (9:00 AM) (Judicial Officer: Silver, Abbi)
05/07/2012	<b>CANCELED Jury Trial</b> (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	 <b>Motion to Compel</b> (9:00 AM) (Judicial Officer: Silver, Abbi) <i>Motion to Compel Fingerprint Evidence Pursuant to NRS 174.235</i>
07/10/2012	<b>Motion for Appointment</b> (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	<b>Calendar Call</b> (9:00 AM) (Judicial Officer: Silver, Abbi)

DEPARTMENT 2  
**CASE SUMMARY**  
**CASE NO. 10C262966-1**

09/13/2012	<b>Motion to Continue Trial</b> (9:00 AM) (Judicial Officer: Silver, Abbi) <i>Defendant's Motion to Continue Trial on Order Shortening Time</i>
09/13/2012	 <b>All Pending Motions</b> (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	<b>CANCELED Jury Trial</b> (1:00 PM) (Judicial Officer: Silver, Abbi) <i>Vacated - per Judge</i>
09/25/2012	 <b>Motion to Suppress</b> <i>Motion to Suppress In-Court Identification Pursuant to NRS 174.125(1)</i>
09/27/2012	 <b>Motion</b> <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	 <b>Receipt of Copy</b> <i>Receipt of Copy</i>
10/02/2012	 <b>Receipt of Copy</b> <i>Receipt of Copy</i>
10/04/2012	 <b>Opposition</b> <i>State's Opposition to Defendant's Motion to Suppress In-Court Identification Pursuant to NRS 174.215(1)</i>
10/08/2012	 <b>Reply</b> <i>Reply in Support of Motion to Suppress In-Court Identification Pursuant to NRS 174.125(1)</i>
10/23/2012	 <b>Opposition</b> 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	<b>Motion to Suppress</b> (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	<b>Motion</b> (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	 <b>All Pending Motions</b> (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	 <b>Ex Parte Order</b> Filed By: Plaintiff State of Nevada <i>Ex Parte Motion and Order Releasing All Medical Records</i>
11/21/2012	 <b>Ex Parte Order</b>

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	 <b>Motion for Appointment</b> (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	 <b>Calendar Call</b> (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	 <b>Jury Trial - FIRM</b> (9:30 AM) (Judicial Officer: Silver, Abbi) <b>07/08/2013-07/12/2013, 07/15/2013-07/16/2013</b>
07/08/2013	<b>CANCELED Jury Trial</b> (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	 <b>Motion</b> Filed By: Defendant Garcia, Evaristo J <i>Motion for Acquittal or in the Alternative, Motion for New Trial</i>												
07/29/2013	 <b>Opposition</b> 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	 <b>Motion</b> (9:00 AM) (Judicial Officer: Silver, Abbi) <i>Motion for Acquittal or in the Alternative, Motion for New Trial</i>												
08/14/2013	 <b>Memorandum</b> Filed By: Defendant Garcia, Evaristo J <i>Sentencing Memo</i>												
08/15/2013	 <b>Sentencing</b> (10:30 AM) (Judicial Officer: Silver, Abbi) <b>08/15/2013, 08/29/2013</b>												
08/29/2013	 <b>Order</b> <i>Order Granting Motion for Appointment of Expert Services and for Payment of Fees on Order Shortening Time</i>												
08/29/2013	<b>Sentence</b> (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: <table border="0" style="margin-left: 40px;"><tr><td>Administrative</td><td></td></tr><tr><td>Assessment Fee</td><td style="text-align: right;">25.00</td></tr><tr><td>\$25</td><td></td></tr><tr><td>DNA Analysis Fee</td><td style="text-align: right;">150.00</td></tr><tr><td>\$150</td><td></td></tr><tr><td>Fee Totals \$</td><td style="text-align: right;">175.00</td></tr></table>	Administrative		Assessment Fee	25.00	\$25		DNA Analysis Fee	150.00	\$150		Fee Totals \$	175.00
Administrative													
Assessment Fee	25.00												
\$25													
DNA Analysis Fee	150.00												
\$150													
Fee Totals \$	175.00												
08/30/2013	 <b>Order</b> <i>Order for Appointment of Counsel Pursuant to NRS 34.750(1)</i>												
09/09/2013	 <b>Criminal Order to Statistically Close Case</b> <i>Criminal Order To Statistically Close Case</i>												
09/10/2013	 <b>Notice of Entry of Order</b> <i>Notice of Entry of Order for Appointment of Counsel Pursuant to NRS 34.750(1)</i>												
09/10/2013	 <b>Notice of Entry of Order</b> <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	 <b>Judgment of Conviction</b>												







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	 <b>Request</b> (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	<b>Petition for Writ of Habeas Corpus</b> (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	<b>Motion for Appointment of Attorney</b> (9:00 AM) (Judicial Officer: Scotti, Richard F.) <i>Defendant's Pro Per Motion for the Appointment of Counsel</i>
09/29/2016	<b>Motion</b> (9:00 AM) (Judicial Officer: Scotti, Richard F.) <i>Defendant's Pro Per Motion to Withdraw Counsel</i>
09/29/2016	 <b>All Pending Motions</b> (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
10/25/2016	 Certificate of Service Filed by: Plaintiff State of Nevada <i>Certificate of Service</i>
10/25/2016	 Findings of Fact, Conclusions of Law and Order Filed By: Plaintiff State of Nevada
10/26/2016	 Notice of Entry Filed By: Plaintiff State of Nevada <i>Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
11/16/2016	 Notice of Appeal (criminal) Party: Defendant Garcia, Evaristo J <i>Notice of Appeal</i>
11/17/2016	 Case Appeal Statement Filed By: Defendant Garcia, Evaristo J <i>Case Appeal Statement</i>

DATE	FINANCIAL INFORMATION	
	<b>Defendant</b> Garcia, Evaristo J	
	Total Charges	175.00
	Total Payments and Credits	0.00
	<b>Balance Due as of 11/17/2016</b>	<b>175.00</b>



  
CLERK OF THE COURT

1 FCL  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 KRISTA D. BARRIE  
6 Chief Deputy District Attorney  
7 Nevada Bar #010310  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

CASE NO: 10C262966-1

12 EVARISTO JONATHAN GARCIA,  
13 #2685822

DEPT NO: II

14 Defendant.

15 FINDINGS OF FACT, CONCLUSIONS OF  
16 LAW AND ORDER

17 DATE OF HEARING: SEPTEMBER 29, 2016  
18 TIME OF HEARING: 9:00 A.M.

19 THIS CAUSE having come on for hearing before the Honorable RICHARD F.  
20 SCOTTI, District Judge, on the 16th day of August, 2016, the Defendant not being present,  
21 proceeding in forma pauperis, the Respondent being represented by STEVEN B. WOLFSON,  
22 Clark County District Attorney, by and through NOREEN DEMONTE, Chief Deputy District  
23 Attorney, and the Court having considered the matter, including briefs, transcripts, arguments  
24 of counsel, and documents on file herein, now therefore, the Court makes the following  
25 findings of fact and conclusions of law:

26 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

27 Under C226218, the original case number in this case, EVARISTO JONATHAN  
28 GARCIA ("Garcia") was charged by way of Criminal Complaint filed on June 19, 2006 with  
Conspiracy to Commit Murder and Murder with Use of a Deadly Weapon with Co-Defendant

OCT 19 2016

1 Giovanni Garcia. At the time of the filing of the complaint, Garcia had fled to Mexico. An  
2 Arrest warrant was issued for Garcia on June 21, 2006. Following a lengthy extradition  
3 process, Garcia was booked into the Clark County Detention Center (CCDC) on October 16,  
4 2008. An Amended Criminal Complaint charging one count of Murder with Use of a Deadly  
5 Weapon with the Intent to Promote, Further, or Assist a Criminal Gang was filed on November  
6 26, 2008.

7 A Preliminary Hearing was held on December 18, 2008, and Garcia was bound over on  
8 the charge. Garcia was represented by Bill Terry, Esq. at the Preliminary Hearing, but was  
9 not retained for trial.

10 On February 2, 2009, Scott Bindrup, Esq. of the Special Public Defender's Office  
11 ("SPD") confirmed as new counsel for Garcia. Trial was initially scheduled for June 1, 2009.  
12 Garcia filed a Petition for Writ of Habeas Corpus on February 17, 2009, which was set for  
13 hearing on March 3, 2009, and which the Court denied in its Order filed on March 9, 2009. At  
14 the defense request, the June 1, 2009 trial date was continued and the trial was reset for  
15 February 16, 2010. On February 9, 2010, the February 16, 2010 trial date was continued two  
16 weeks to February 22, 2010.

17 On February 18, 2010, John Momot, Esq. was appointed as co-counsel with SPD Scott  
18 Bindrup and the February 22, 2010 trial date was continued at the defense request to May 3,  
19 2010. On March 25, 2010, the May 3, 2010 trial date was continued at the State's request to  
20 November 8, 2010. On May 25, 2010, at the State's request, the Court dismissed Case Number  
21 C226218.

22 In the current case, Case Number C262966, the State presented the evidence of the  
23 same offense charged in Case Number C226218 to the Clark County Grand Jury on March 4,  
24 2010, and March 18, 2010. On March 19, 2010, the grand jury returned an indictment  
25 charging Garcia and a co-defendant, Manuel Lopez, as follows: COUNT 1 – Conspiracy to  
26 Commit Murder With the Intent to Promote, Further, or Assist a Criminal Gang (Category B  
27 Felony – NRS 200.010, 200.030, 199.168, 193.169), and COUNT 2 – Murder With Use of a  
28 Deadly Weapon With the Intent to Promote, Further, or Assist a Criminal Gang (Category A

1 Felony – NRS 193.168, 193.169, 200.010, 200.030, 200.450, 193.165) for crimes committed  
2 on February 6, 2006. Garcia filed a second Petition for Writ of Habeas Corpus on April 30,  
3 2010, which was set for hearing on May 25, 2010, and which this Court denied on that date.  
4 Garcia filed a Motion to Sever Trials on May 4, 2010, which was denied on September 21,  
5 2010.

6 On October 12, 2010, the November 8, 2010 trial date was vacated and continued at the  
7 defense request and reset for March 21, 2011. At Calendar Call on March 17, 2011, Garcia  
8 entered a plea of guilty to Second Degree Murder with Use of a Deadly Weapon, with the State  
9 retaining the right to argue. Soon thereafter, Garcia retained Ross Goodman, Esq. and filed a  
10 pre-sentence Motion to Withdraw Guilty Plea on April 22, 2011, which was granted by this  
11 Court on May 12, 2011.

12 The Court gave a new trial date of May 7, 2012. At the Calendar Call on April 26,  
13 2012, the May 7, 2012 trial date was continued at the defense request. The trial was reset for  
14 September 17, 2012. On September 11, 2012, Garcia filed a Motion to Continue Trial for  
15 independent re-examination of the State's fingerprint evidence by defense expert Joi  
16 Dickerson, which was granted and the trial was reset for July 8, 2013.

17 The case proceeded to trial in this Court on July 8, 2013. On June 12, 2013, after the  
18 District Court's ruling that a State's witness could not testify, the State filed an Amended  
19 Information that did not include the gang enhancement. The jury returned a verdict on July  
20 15, 2013, finding Defendant guilty of Second Degree Murder with Use of a Deadly Weapon  
21 and not guilty of Conspiracy to Commit Murder. Garcia filed a motion for acquittal, or in the  
22 alternative, for new trial on July 22, 2013. The Court denied that motion on August 1, 2013.  
23 Garcia appeared for sentencing on August 29, 2013, and the Court sentenced him as follows:  
24 LIFE with a MINIMUM Parole Eligibility of TEN (10) YEARS plus an EQUAL and  
25 CONSECUTIVE term of LIFE with TEN (10) YEARS MINIMUM for Use of a Deadly  
26 Weapon. He received ONE THOUSAND NINE HUNDRED FIFTY-NINE (1,959) DAYS  
27 Credit for Time Served. The Court entered the Judgment of Conviction on September 11,  
28 2013.

1 Garcia filed a Notice of Appeal on October 11, 2013, and filed Appellant's Opening  
2 Brief on June 25, 2014, raising the following claims before the Nevada Supreme Court: 1)  
3 that there was insufficient evidence to sustain a verdict of guilt for Second Degree Murder, 2)  
4 the District Court erred in allowing a prior suggestive in-court identification when the witness  
5 failed to identify the defendant at trial, 3) the District Court erred by allowing an incompetent  
6 witness to testify, 4) the District Court erred in allowing a material witness warrant to issue  
7 engendering sympathy and/or credibility for a state's witness, and 5) that it was prosecutorial  
8 misconduct to proceed with a prejudicial gang enhancement only to dismiss it midtrial. The  
9 State filed its Answering Brief on October 7, 2014, and the Nevada Supreme Court filed an  
10 Order of Affirmance on May 18, 2015. The date of remittitur was October 20, 2015.

11 Garcia filed the instant Petition for Writ of Habeas Corpus and Motion for Appointment  
12 of Counsel on June 10, 2016. The State responded on September 12, 2016. This Court now  
13 orders the Petition DENIED.

14 Garcia raised four claims in his Petition alleging ineffective assistance of counsel, three  
15 claims pertaining to trial counsel's performance and one pertaining to appellate counsel's  
16 performance. Specifically, Garcia alleged that trial counsel was ineffective for the following  
17 reasons: failure to investigate State's witness Edshel Calvillo, failure to challenge the  
18 imposition of an illegal sentence for use of a deadly weapon, and failure to move for a mistrial  
19 due to the circumstances surrounding the gang enhancement. He further alleged that his  
20 appellate counsel was ineffective for failing to communicate about his direct appeal.

21 On each of these claims, Garcia has failed to meet the high burden set forth in Strickland  
22 v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), wherein the defendant must show: 1)  
23 that counsel's performance was deficient, and 2) that the deficient performance prejudiced the  
24 defense. 466 U.S. at 687, 104 S.Ct. at 2064.

25 **I. Trial Counsel's Alleged Failure to Investigate Edshel Calvillo**

26 Defendant's first claim, that counsel was ineffective for failure to investigate Edshel  
27 Calvillo, is belied by the record.

28 //

1 In post-conviction petitions, claims must be supported with specific factual allegations,  
2 which if true, would entitle the defendant to relief. Hargrove v. State, 100 Nev. 498, 502, 686  
3 P.2d 222, 225 (1984). “Bare” and “naked” allegations are not sufficient, nor are those belied  
4 and repelled by the record. Id. When a claim is belied by the record, a district court may  
5 properly reject it without conducting an evidentiary hearing. McConnell v. State, 125 Nev.  
6 243, 257, 212 P.3d 307, 317 (2009).

7 Garcia’s trial counsel informed the Court, outside the presence of the jury on the second  
8 day of trial (first day of testimony), that he attempted to find and interview Calvillo, but that  
9 he had been unable to locate him. Reporter’s Transcript, 06/09/2013 (“RT1”), pp. 198-99.  
10 Defense counsel even hired a private investigator to find Cavillo, but to no avail. RT1, p.233.  
11 In fact, no one had been able to locate Calvillo, and he was only made available after being  
12 arrested on a material witness warrant. RT1, p. 199. Garcia’s counsel then requested that the  
13 Court permit him to interview the witness before cross-examination, which the Court granted,  
14 telling the defense that they could speak with Calvillo all night if they wanted.<sup>1</sup> Id., RT1, p.  
15 233.

16 For those reasons, this Court finds that this claim is belied by the record and must be  
17 denied.

## 18 **II. Trial Counsel’s Alleged Failure to Challenge the Imposed Sentence**

19 Garcia next claimed that counsel was ineffective for failing to challenge the imposition  
20 of an equal and consecutive sentence for use of a deadly weapon. He argued that his sentence  
21 is illegal because the version of NRS 193.165 applicable since 2007 limits the deadly weapon  
22 enhancement to one to 20 years and that his 10 to Life sentence on the enhancement violates  
23 the statute.

24 The Nevada Supreme Court has unequivocally stated that “‘the general rule is that the  
25 proper penalty is that in effect at the time of the commission of the offense’ unless the  
26 Legislature demonstrates clear legislative intent to apply a criminal statute retroactively.”  
27

---

28 <sup>1</sup> Defense counsel did choose to interview Calvillo, and indicated that they would do so on the morning of June 10, 2013. RT1, p. 236.

1 State v. Second Judicial Dist. Court of Nev., 124 Nev. 564, 572, 188 P.3d 1079, 1084 (2008)  
2 (citing Sparkman v. State, 95 Nev. 76, 81-82, 590 P.2d 151, 155 (1979)).

3 The applicable version of NRS 193.165, in this case, is that which was in effect on  
4 February 6, 2006. That version, which was last amended in 1995, stated:

5 Except as otherwise provided in NRS 193.169, any person who  
6 uses a firearm or other deadly weapon or a weapon containing or  
7 capable of emitting tear gas, whether or not its possession is  
8 permitted by NRS 202.375, in the commission of a crime shall be  
9 punished by imprisonment in the state prison for a term equal to  
and in addition to the term of imprisonment prescribed by statute  
for the crime. The sentence prescribed by this section runs  
consecutively with the sentence prescribed by statute for the  
crime.

10 1995 Nev. Stat., ch. 455, §1, at 1431. Thus, it was not only proper, but mandatory for this  
11 Court to sentence Garcia to a term of imprisonment equal and consecutive to the sentence for  
12 the Second Degree Murder conviction.

13 Therefore, it would have been futile for trial counsel to challenge this sentence because  
14 the result would have been the same. Thus, counsel was not deficient in performance and  
15 Defendant was not prejudiced. This claim is denied.

### 16 **III. Trial Counsel's Alleged Failure to Request a Mistrial**

17 Defendant also argued that trial counsel was ineffective for failing to move for a mistrial  
18 on the grounds that the State had prejudiced him by introducing evidence of gang involvement  
19 before it dismissed the gang enhancement. But this claim is also belied by the record.

20 Contrary to Garcia's claims, defense counsel made an oral motion for a mistrial "based  
21 on the fact that the prosecution proceeded with all that information about gangs and gang  
22 activity." Reporter's Transcript, 07/11/2013, pp. 206-08. As this belies Defendant's claim, it  
23 must be denied.

### 24 **IV. Appellate Counsel's Alleged Failure to Communicate**

25 Lastly, Defendant argued that appellate counsel was ineffective for failure to  
26 communicate. There is a strong presumption that counsel's performance was reasonable and  
27 fell within "the wide range of reasonable professional assistance." See United States v.  
28 Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990). The Nevada Supreme Court has held that all

1 appeals must be "pursued in a manner meeting high standards of diligence, professionalism  
2 and competence." Burke, 110 Nev. at 1368, 887 P.2d at 268. Finally, in order to prove that  
3 appellate counsel's alleged error was prejudicial, a defendant must show that an omitted issue  
4 would have had a reasonable probability of success on appeal. See Duhamel v. Collins, 955  
5 F.2d 962, 967 (5th Cir. 1992); Heath, 941 F.2d at 1132.

6 Here, Defendant never alleged how different or additional communication from his  
7 appellate counsel would have yielded a different result. Therefore, he has failed to  
8 demonstrate prejudice. This claim, then, must also be denied.

9 **V. Motion to Appoint Counsel**

10 Garcia also moved for this Court to appoint him counsel. In Coleman v. Thompson,  
11 501 U.S. 722, 752, 111 S. Ct. 2546, 2566 (1991), the United States Supreme Court ruled that  
12 the Sixth Amendment provides no right to counsel in post-conviction proceedings. In  
13 McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996), the Nevada Supreme Court similarly  
14 observed that "[t]he Nevada Constitution . . . does not guarantee a right to counsel in post-  
15 conviction proceedings, as we interpret the Nevada Constitution's right to counsel provision  
16 as being coextensive with the Sixth Amendment to the United States Constitution."

17 NRS 34.750 provides, in pertinent part:

18 [a] petition may allege that the Defendant is unable to pay the costs  
19 of the proceedings or employ counsel. If the court is satisfied that  
20 the allegation of indigency is true and the petition *is not dismissed*  
21 *summarily*, the court may appoint counsel at the time the court  
22 orders the filing of an answer and a return. In making its  
23 determination, the court may consider whether:

- 21 a. The issues are difficult;
- 22 b. The Defendant is unable to comprehend the  
23 proceedings; or
- 24 c. Counsel is necessary to proceed with discovery.

24 NRS 34.750 (emphasis added).

25 Under NRS 34.750, it is clear that the court has discretion in determining whether to  
26 appoint counsel. McKague specifically held that with the exception of cases in which  
27  
28

1 appointment of counsel is mandated by statute<sup>2</sup>, one does not have "[a]ny constitutional or  
2 statutory right to counsel at all" in post-conviction proceedings. Id. at 164.

3 The Nevada Supreme Court has observed that a petitioner "must show that the  
4 requested review is not frivolous before he may have an attorney appointed." Peterson v.  
5 Warden, Nevada State Prison, 87 Nev. 134, 483 P.2d 204 (1971) (citing former statute NRS  
6 177.345(2)).

7 This Court finds that there are no difficult issues, proceedings for Defendant to  
8 comprehend, or discovery for which counsel would be necessary. Therefore, Defendant is not  
9 entitled to counsel.

10 **ORDER**


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

13 DATED this 20th day of October, 2016.

14   
15 DISTRICT JUDGE

16 STEVEN B. WOLFSON  
17 Clark County District Attorney  
18 Nevada Bar #001565

19 BY

20   
21 KRISTA D. BARRIE  
22 Chief Deputy District Attorney  
23 Nevada Bar #010310  
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<sup>2</sup> See NRS 34.820(1)(a) [entitling appointed counsel when petition is under a sentence of death].



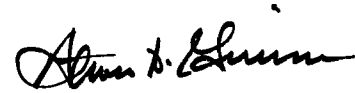
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EVARISTO JONATHAN GARCIA #1108072  
ELY STATE PRISON  
4569 NORTH STATE ROUTE 490  
P.O. BOX 1989  
ELY, NV 89301

R. Johnson

Secretary for the District Attorney's Office

9



CLERK OF THE COURT

NEO

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

EVARISTA J. GARCIA,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: 10C262966-1

Dept No: II

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

**PLEASE TAKE NOTICE** that on October 25, 2016, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on October 26, 2016.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on this 26 day of October 2016, I placed a copy of this Notice of Entry in:

- ☒ The bin(s) located in the Regional Justice Center of:  
Clark County District Attorney's Office  
Attorney General's Office – Appellate Division-
- ☒ The United States mail addressed as follows:  
Evaristo J. Garcia # 1108072  
P.O. Box 1989  
Ely, NV 89301

/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk

  
CLERK OF THE COURT

1 **FCL**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 KRISTA D. BARRIE  
6 Chief Deputy District Attorney  
7 Nevada Bar #010310  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

CASE NO: 10C262966-1

12 EVARISTO JONATHAN GARCIA,  
13 #2685822

DEPT NO: II

14 Defendant.

15 FINDINGS OF FACT, CONCLUSIONS OF  
16 LAW AND ORDER

17 DATE OF HEARING: SEPTEMBER 29, 2016  
18 TIME OF HEARING: 9:00 A.M.

19 THIS CAUSE having come on for hearing before the Honorable RICHARD F.  
20 SCOTTI, District Judge, on the 16th day of August, 2016, the Defendant not being present,  
21 proceeding in forma pauperis, the Respondent being represented by STEVEN B. WOLFSON,  
22 Clark County District Attorney, by and through NOREEN DEMONTE, Chief Deputy District  
23 Attorney, and the Court having considered the matter, including briefs, transcripts, arguments  
24 of counsel, and documents on file herein, now therefore, the Court makes the following  
25 findings of fact and conclusions of law:

26 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

27 Under C226218, the original case number in this case, EVARISTO JONATHAN  
28 GARCIA ("Garcia") was charged by way of Criminal Complaint filed on June 19, 2006 with  
Conspiracy to Commit Murder and Murder with Use of a Deadly Weapon with Co-Defendant

OCT 19 2016

1 Giovanni Garcia. At the time of the filing of the complaint, Garcia had fled to Mexico. An  
2 Arrest warrant was issued for Garcia on June 21, 2006. Following a lengthy extradition  
3 process, Garcia was booked into the Clark County Detention Center (CCDC) on October 16,  
4 2008. An Amended Criminal Complaint charging one count of Murder with Use of a Deadly  
5 Weapon with the Intent to Promote, Further, or Assist a Criminal Gang was filed on November  
6 26, 2008.

7 A Preliminary Hearing was held on December 18, 2008, and Garcia was bound over on  
8 the charge. Garcia was represented by Bill Terry, Esq. at the Preliminary Hearing, but was  
9 not retained for trial.

10 On February 2, 2009, Scott Bindrup, Esq. of the Special Public Defender's Office  
11 ("SPD") confirmed as new counsel for Garcia. Trial was initially scheduled for June 1, 2009.  
12 Garcia filed a Petition for Writ of Habeas Corpus on February 17, 2009, which was set for  
13 hearing on March 3, 2009, and which the Court denied in its Order filed on March 9, 2009. At  
14 the defense request, the June 1, 2009 trial date was continued and the trial was reset for  
15 February 16, 2010. On February 9, 2010, the February 16, 2010 trial date was continued two  
16 weeks to February 22, 2010.

17 On February 18, 2010, John Momot, Esq. was appointed as co-counsel with SPD Scott  
18 Bindrup and the February 22, 2010 trial date was continued at the defense request to May 3,  
19 2010. On March 25, 2010, the May 3, 2010 trial date was continued at the State's request to  
20 November 8, 2010. On May 25, 2010, at the State's request, the Court dismissed Case Number  
21 C226218.

22 In the current case, Case Number C262966, the State presented the evidence of the  
23 same offense charged in Case Number C226218 to the Clark County Grand Jury on March 4,  
24 2010, and March 18, 2010. On March 19, 2010, the grand jury returned an indictment  
25 charging Garcia and a co-defendant, Manuel Lopez, as follows: COUNT 1 – Conspiracy to  
26 Commit Murder With the Intent to Promote, Further, or Assist a Criminal Gang (Category B  
27 Felony – NRS 200.010, 200.030, 199.168, 193.169), and COUNT 2 – Murder With Use of a  
28 Deadly Weapon With the Intent to Promote, Further, or Assist a Criminal Gang (Category A

1 Felony – NRS 193.168, 193.169, 200.010, 200.030, 200.450, 193.165) for crimes committed  
2 on February 6, 2006. Garcia filed a second Petition for Writ of Habeas Corpus on April 30,  
3 2010, which was set for hearing on May 25, 2010, and which this Court denied on that date.  
4 Garcia filed a Motion to Sever Trials on May 4, 2010, which was denied on September 21,  
5 2010.

6 On October 12, 2010, the November 8, 2010 trial date was vacated and continued at the  
7 defense request and reset for March 21, 2011. At Calendar Call on March 17, 2011, Garcia  
8 entered a plea of guilty to Second Degree Murder with Use of a Deadly Weapon, with the State  
9 retaining the right to argue. Soon thereafter, Garcia retained Ross Goodman, Esq. and filed a  
10 pre-sentence Motion to Withdraw Guilty Plea on April 22, 2011, which was granted by this  
11 Court on May 12, 2011.

12 The Court gave a new trial date of May 7, 2012. At the Calendar Call on April 26,  
13 2012, the May 7, 2012 trial date was continued at the defense request. The trial was reset for  
14 September 17, 2012. On September 11, 2012, Garcia filed a Motion to Continue Trial for  
15 independent re-examination of the State's fingerprint evidence by defense expert Joi  
16 Dickerson, which was granted and the trial was reset for July 8, 2013.

17 The case proceeded to trial in this Court on July 8, 2013. On June 12, 2013, after the  
18 District Court's ruling that a State's witness could not testify, the State filed an Amended  
19 Information that did not include the gang enhancement. The jury returned a verdict on July  
20 15, 2013, finding Defendant guilty of Second Degree Murder with Use of a Deadly Weapon  
21 and not guilty of Conspiracy to Commit Murder. Garcia filed a motion for acquittal, or in the  
22 alternative, for new trial on July 22, 2013. The Court denied that motion on August 1, 2013.  
23 Garcia appeared for sentencing on August 29, 2013, and the Court sentenced him as follows:  
24 LIFE with a MINIMUM Parole Eligibility of TEN (10) YEARS plus an EQUAL and  
25 CONSECUTIVE term of LIFE with TEN (10) YEARS MINIMUM for Use of a Deadly  
26 Weapon. He received ONE THOUSAND NINE HUNDRED FIFTY-NINE (1,959) DAYS  
27 Credit for Time Served. The Court entered the Judgment of Conviction on September 11,  
28 2013.

1 Garcia filed a Notice of Appeal on October 11, 2013, and filed Appellant's Opening  
2 Brief on June 25, 2014, raising the following claims before the Nevada Supreme Court: 1)  
3 that there was insufficient evidence to sustain a verdict of guilt for Second Degree Murder, 2)  
4 the District Court erred in allowing a prior suggestive in-court identification when the witness  
5 failed to identify the defendant at trial, 3) the District Court erred by allowing an incompetent  
6 witness to testify, 4) the District Court erred in allowing a material witness warrant to issue  
7 engendering sympathy and/or credibility for a state's witness, and 5) that it was prosecutorial  
8 misconduct to proceed with a prejudicial gang enhancement only to dismiss it midtrial. The  
9 State filed its Answering Brief on October 7, 2014, and the Nevada Supreme Court filed an  
10 Order of Affirmance on May 18, 2015. The date of remittitur was October 20, 2015.

11 Garcia filed the instant Petition for Writ of Habeas Corpus and Motion for Appointment  
12 of Counsel on June 10, 2016. The State responded on September 12, 2016. This Court now  
13 orders the Petition DENIED.

14 Garcia raised four claims in his Petition alleging ineffective assistance of counsel, three  
15 claims pertaining to trial counsel's performance and one pertaining to appellate counsel's  
16 performance. Specifically, Garcia alleged that trial counsel was ineffective for the following  
17 reasons: failure to investigate State's witness Edshel Calvillo, failure to challenge the  
18 imposition of an illegal sentence for use of a deadly weapon, and failure to move for a mistrial  
19 due to the circumstances surrounding the gang enhancement. He further alleged that his  
20 appellate counsel was ineffective for failing to communicate about his direct appeal.

21 On each of these claims, Garcia has failed to meet the high burden set forth in Strickland  
22 v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), wherein the defendant must show: 1)  
23 that counsel's performance was deficient, and 2) that the deficient performance prejudiced the  
24 defense. 466 U.S. at 687, 104 S.Ct. at 2064.

25 **I. Trial Counsel's Alleged Failure to Investigate Edshel Calvillo**

26 Defendant's first claim, that counsel was ineffective for failure to investigate Edshel  
27 Calvillo, is belied by the record.

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7 Garcia’s trial counsel informed the Court, outside the presence of the jury on the second  
8 day of trial (first day of testimony), that he attempted to find and interview Calvillo, but that  
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10 Defense counsel even hired a private investigator to find Cavillo, but to no avail. RT1, p.233.  
11 In fact, no one had been able to locate Calvillo, and he was only made available after being  
12 arrested on a material witness warrant. RT1, p. 199. Garcia’s counsel then requested that the  
13 Court permit him to interview the witness before cross-examination, which the Court granted,  
14 telling the defense that they could speak with Calvillo all night if they wanted.<sup>1</sup> Id., RT1, p.  
15 233.

16 For those reasons, this Court finds that this claim is belied by the record and must be  
17 denied.

## 18 **II. Trial Counsel’s Alleged Failure to Challenge the Imposed Sentence**

19 Garcia next claimed that counsel was ineffective for failing to challenge the imposition  
20 of an equal and consecutive sentence for use of a deadly weapon. He argued that his sentence  
21 is illegal because the version of NRS 193.165 applicable since 2007 limits the deadly weapon  
22 enhancement to one to 20 years and that his 10 to Life sentence on the enhancement violates  
23 the statute.

24 The Nevada Supreme Court has unequivocally stated that “‘the general rule is that the  
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26 Legislature demonstrates clear legislative intent to apply a criminal statute retroactively.”  
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28 <sup>1</sup> Defense counsel did choose to interview Calvillo, and indicated that they would do so on the morning of June 10, 2013. RT1, p. 236.

1 State v. Second Judicial Dist. Court of Nev., 124 Nev. 564, 572, 188 P.3d 1079, 1084 (2008)  
2 (citing Sparkman v. State, 95 Nev. 76, 81-82, 590 P.2d 151, 155 (1979)).

3 The applicable version of NRS 193.165, in this case, is that which was in effect on  
4 February 6, 2006. That version, which was last amended in 1995, stated:

5 Except as otherwise provided in NRS 193.169, any person who  
6 uses a firearm or other deadly weapon or a weapon containing or  
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9 punished by imprisonment in the state prison for a term equal to  
and in addition to the term of imprisonment prescribed by statute  
for the crime. The sentence prescribed by this section runs  
consecutively with the sentence prescribed by statute for the  
crime.

10 1995 Nev. Stat., ch. 455, §1, at 1431. Thus, it was not only proper, but mandatory for this  
11 Court to sentence Garcia to a term of imprisonment equal and consecutive to the sentence for  
12 the Second Degree Murder conviction.

13 Therefore, it would have been futile for trial counsel to challenge this sentence because  
14 the result would have been the same. Thus, counsel was not deficient in performance and  
15 Defendant was not prejudiced. This claim is denied.

### 16 **III. Trial Counsel's Alleged Failure to Request a Mistrial**

17 Defendant also argued that trial counsel was ineffective for failing to move for a mistrial  
18 on the grounds that the State had prejudiced him by introducing evidence of gang involvement  
19 before it dismissed the gang enhancement. But this claim is also belied by the record.

20 Contrary to Garcia's claims, defense counsel made an oral motion for a mistrial "based  
21 on the fact that the prosecution proceeded with all that information about gangs and gang  
22 activity." Reporter's Transcript, 07/11/2013, pp. 206-08. As this belies Defendant's claim, it  
23 must be denied.

### 24 **IV. Appellate Counsel's Alleged Failure to Communicate**

25 Lastly, Defendant argued that appellate counsel was ineffective for failure to  
26 communicate. There is a strong presumption that counsel's performance was reasonable and  
27 fell within "the wide range of reasonable professional assistance." See United States v.  
28 Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990). The Nevada Supreme Court has held that all



1 appeals must be "pursued in a manner meeting high standards of diligence, professionalism  
2 and competence." Burke, 110 Nev. at 1368, 887 P.2d at 268. Finally, in order to prove that  
3 appellate counsel's alleged error was prejudicial, a defendant must show that an omitted issue  
4 would have had a reasonable probability of success on appeal. See Duhamel v. Collins, 955  
5 F.2d 962, 967 (5th Cir. 1992); Heath, 941 F.2d at 1132.

6 Here, Defendant never alleged how different or additional communication from his  
7 appellate counsel would have yielded a different result. Therefore, he has failed to  
8 demonstrate prejudice. This claim, then, must also be denied.

9 **V. Motion to Appoint Counsel**

10 Garcia also moved for this Court to appoint him counsel. In Coleman v. Thompson,  
11 501 U.S. 722, 752, 111 S. Ct. 2546, 2566 (1991), the United States Supreme Court ruled that  
12 the Sixth Amendment provides no right to counsel in post-conviction proceedings. In  
13 McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996), the Nevada Supreme Court similarly  
14 observed that "[t]he Nevada Constitution . . . does not guarantee a right to counsel in post-  
15 conviction proceedings, as we interpret the Nevada Constitution's right to counsel provision  
16 as being coextensive with the Sixth Amendment to the United States Constitution."

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- 22 b. The Defendant is unable to comprehend the  
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24 NRS 34.750 (emphasis added).

25 Under NRS 34.750, it is clear that the court has discretion in determining whether to  
26 appoint counsel. McKague specifically held that with the exception of cases in which  
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1 appointment of counsel is mandated by statute<sup>2</sup>, one does not have "[a]ny constitutional or  
2 statutory right to counsel at all" in post-conviction proceedings. Id. at 164.

3 The Nevada Supreme Court has observed that a petitioner "must show that the  
4 requested review is not frivolous before he may have an attorney appointed." Peterson v.  
5 Warden, Nevada State Prison, 87 Nev. 134, 483 P.2d 204 (1971) (citing former statute NRS  
6 177.345(2)).

7 This Court finds that there are no difficult issues, proceedings for Defendant to  
8 comprehend, or discovery for which counsel would be necessary. Therefore, Defendant is not  
9 entitled to counsel.

10 **ORDER**


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

13 DATED this 20th day of October, 2016.

14   
15 DISTRICT JUDGE

16 STEVEN B. WOLFSON  
17 Clark County District Attorney  
18 Nevada Bar #001565

19 BY

20   
21 KRISTA D. BARRIE  
22 Chief Deputy District Attorney  
23 Nevada Bar #010310  
24  
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<sup>2</sup> See NRS 34.820(1)(a) [entitling appointed counsel when petition is under a sentence of death].

1 CERTIFICATE OF SERVICE

2 I certify that on the 17th day of October, 2016, I mailed a copy of the foregoing  
3 proposed Findings of Fact, Conclusions of Law, and Order to:

4 EVARISTO JONATHAN GARCIA #1108072  
5 ELY STATE PRISON  
6 4569 NORTH STATE ROUTE 490  
7 P.O. BOX 1989  
8 ELY, NV 89301

9 BY



10 R. JOHNSON

11 Secretary for the District Attorney's Office  
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28 AWR/KDB/rj/M-1

**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**

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10C262966-1

The State of Nevada vs Evaristo J Garcia

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**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**

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10C262966-1

The State of Nevada vs Evaristo J Garcia

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**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**

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10C262966-1

The State of Nevada vs Evaristo J Garcia

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

Attorney  
Defendant  
Attorney  
Attorney  
Attorney  
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**

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10C262966-1

The State of Nevada vs Evaristo J Garcia

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**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 Deft's.

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 Nevada

Attorney  
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**

<b>PRESENT:</b>	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**

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10C262966-1

The State of Nevada vs Evaristo J Garcia

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**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**

<b>PRESENT:</b>	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			
7			
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17			
18			
19			
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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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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. C262966

		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

CASE NO. C262964

S:\exhibitlist.doc5/10/2012

## EXHIBITS

CASE NO. C262966

[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"/> "

# Certification of Copy

State of Nevada }  
County of Clark } SS:

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

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

STATE OF NEVADA,

Plaintiff(s),

vs.

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 17 day of November 2016.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

