IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN MARQUETTE GIPSON,
Appellant(s),

vs.

STATE OF NEVADA,
Respondent(s),

Case No: 10C264079

Docket No: 73307

RECORD ON APPEAL
VOLUME
5

ATTORNEY FOR APPELLANT
KEVIN M. GIPSON # 1082776,
PROPER PERSON
P.O. BOX 650
INDIAN SPRINGS, NV 89070

ATTORNEY FOR RESPONDENT
STEVEN B. WOLFSON,
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NV 89101

10C264079 STATE OF NEVADA vs. KEVIN M. GIPSON

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10C264079 **The State of Nevada vs Kevin M Gipson**

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A. Uh huh.

DL. Did you help her to the truck?

A. No, I didn't touch her.

DL. You never touched her? Okay. You didn't help her to get into the Jeep afterwards, or ____ (unintelligible) fall out, anything like that?

A. (Inaudible response)

DL. Okay. All right.

A. I was, I was fucked up, man.

DL. Okay. What do you think should happen to you now?

A. I get punished.

DL. Okay. What do you think the punishment should be?

A. Whatever it's gonna be.

DL. Okay. You think you need help?

A. Yeah, I know I need...I'm tired of hearing voices and shit, man.

DL. Okay.

A. I ain't been taking my medicine. I been_____ (unintelligible), shit, man, this shit it's crazy.

DL. Okay.

A. Look at buildings in a different way, wanna jump off shit. I don't know. I'm thinking, man, this shit's crazy.

DL. Okay.

DT. What are the chances we can get that gun back with your help? Without getting your buddy in trouble.

DL. We won't get him in trouble. We can actually have him put it somewhere, wipe it down, put it somewhere. We just need to get it off the street. It's one of those things that...

A. I don't know how to get in touch with that dude.

DL. Well if we get you the phone number can we like tell him to put it in a bag, wipe it down, put it in a bag, we'll just come get it?

A. Uh huh.

DL. Okay.

DT. You think he's gonna do that?

A. I don't know. I don't know him like that.

DT. Would you be willing to give that a try, if we were to take you over to where your phone's at, get that number, and use one of our phones to make a phone call? Would you call him and?

A. Uh huh.

DL. Okay.

DT. 'Cause that's something that we really wanna do, and it would benefit you to, to do that.

DL. Were these the pants you were wearing?

A. (Inaudible response)

DL. Um, damn, uh, all right. I, I think you need help too. Um...

A. All I needed was my medicine. It had me so calm. I was, I was doing real good.

DL. Okay. Did--your, your family doesn't know what's going on right now, right?

A. No.

DL. Okay.

DT. You tell anybody about what happened, your buddy you got the gun from, anybody, anybody?

A. (Inaudible response)

DL. Okay. Um...

DT. Let me run upstairs for a second and, ah...

DL. Yeah.

DT. ...and, uh...

DL. I think all mine are in my car.

DT. I got some upstairs.

DL. Okay.

DT. Be right back.

(DETECTIVE TREMEL LEAVES ROOM)

DL. Brittany because, I mean it literally is because she just was making your life hell, and the voices were...

A. And she knew, she knew, man.

DL. She knew what?

A. She knew I was hearing voices and shit.

DL. Okay.

A. Seeing shit, man, like I don't know.

DL. Okay. I mean she wouldn't let you see your son on his birthday. How did that affect you? I mean real--really how did that affect you?

A. _____(unintelligible) and I was just tired of just not seeing my kids. And then...

DL. You wanted...

A. I ain't been in control.

DL. Right.

A. In a long time.

DL. You wanted her back?

A. _____(both talking).

DL. There's nothing here to hurt you.

A. After a while I did, but then I just, just went numb. I didn't care about nothing.

DL. Okay. Did it affect you that she was seeing somebody else?

A. Yeah.

DL. And he was with your kids?

A. (No response)

DL. Okay. Did you--when did you get the gun? How long before?

A. Day.

DL. One day?

A. Yep.

DL. How long had you been thinking about it?

A. That day.

DL. That, just that one day?

A. Yeah.

DL. It wasn't like something that was eating you alive for a while? No, just one day it just got in your head and?

A. It was just like go kill her.

DL. And you knew what time she goes to work. How long did you wait?

A. Couple minutes.

DL. Really, that's all? You just timed it right?

A. It was just how it played out. Wasn't no plan.

DL. So she never said anything to you?

A. I can't remember. I was...

DL. Did you say anything to her?

A. I don't know.

DL. You don't remember? No?

(DETECTIVE TREMEL RETURNS TO ROOM)

DL. Okay. What's gonna happen now, um, we are gonna have to take you to the county, and, ah, I'll make sure medical, the doctors know what's going on. Um, I'll, I'll let your mom know. Is there anything else you need?

A. (No response)

DL. You, you'll work on getting us that, maybe make a phone call to where we might be able to get that gun back?

A. I can try.

DL. Okay.

DT. That's all we can ask, you know, if the guy don't answer the phone, or doesn't wanna cooperate, that's--it's not on you. You know, at least you tried. Uh, the only clothing you had on during this whole thing would be the pants, right?

DL. The Chucks and the sweatshirt. You remember where the dumpster was?

A. No.

DL. Okay. Okay. And there's, you don't remember anything else about the actual event? Anything else that would help us?

A. I was out of it.

DL. Okay. Could there of been some movement around, could you guys have moved around a little bit, more than you remember?

A. I don't know.

DT. Was there a struggle? Did she grab you, fling her arms away, did you grab at her, was there some sort of a struggle before all this happened?

A. I went blank.

DT. I'm sorry?

A. Like I said, I went blank.

DL. Okay.

DT. I mean that there probably was a struggle based on what I saw this morning with the marks on her arm, and the fact that you popped out of some bushes. There, there-- I don't believe she was willing to stand there and talk to you.

A. She didn't see me come out of the bushes.

DT. She didn't see you? Let me ask you this. When you got the gun from your buddy, okay, how many days before this did that, did you get that gun?

A. One.

DT. One day?

DL. We just went through all that.

DT. You went through all that, and you got that for the specific reason of doing this?

DL. Yes.

DT. Okay. We'll go upstairs and work on getting somebody to come and take the pants. We'll get him...

DL. Yeah.

DT. We're gonna take you back upstairs to our office. Same place we were yesterday. We'll tell your family what's happening.

DL. Those loose enough? You all right?

A. (No audible response)

DL. Yeah, there you go, keep your hand. I'm gonna lock 'em so they don't crank down on you.

DT. Geez. Got your jacket and stuff in there.

DL. Yeah, I'm gonna, I'm gonna go in and get it. You got him?

DT. Yeah.

(END OF INTERVIEW)

THIS VOLUNTARY STATEMENT WAS COMPLETED AT 4750 W. OAKEY, ON THE 26th DAY OF MARCH, 2010 AT ____ HOURS.

GF:DL:DT:sd
10V0660

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**April 28, 2010**

10C264079 The State of Nevada vs Kevin M Gipson

April 28, 2010	**11:45 AM**	**Grand Jury Indictment**	**GRAND JURY INDICTMENT** **Court Clerk: Tina Hurd** **Reporter/Recorder: Renee Vincent** **Heard By: Linda Bell**

HEARD BY: **COURTROOM:**

COURT CLERK:

RECORDER:

REPORTER:

PARTIES PRESENT:

Clowers, Shanon	Attorney
Schubert, David	Attorney

JOURNAL ENTRIES

- Duane Schlismann, Grand Jury Foreperson, stated to the Court that at least twelve members had concurred in the return of the true bill during deliberation, but had been excused for presentation to the Court. The State presented Grand Jury case number 09AGJ167X to the Court. COURT ORDERED, the Indictment may be filed and is assigned case number C264079, Department 18. Ms. Clowers requested a warrant and argued bail. COURT ORDERED, ARREST WARRANT WILL ISSUE, NO BAIL. Matter set for initial arraignment. Exhibit(s) 1-18 lodged with Clerk of District Court.
WARRANT (CUSTODY)
5-5-10 8:15 AM INITIAL ARRAIGNMENT (DEPT. 18)

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	May 05, 2010

10C264079 The State of Nevada vs Kevin M Gipson

May 05, 2010	**8:15 AM**	**All Pending Motions**	**ALL PENDING MOTIONS (5/5/10)** **Court Clerk: Sharon Chun** **Reporter/Recorder: Richard Kangas** **Heard By: David Barker**

HEARD BY: **COURTROOM:**

COURT CLERK:

RECORDER:

REPORTER:

PARTIES PRESENT:

Bolenbaker, Mike R.	Attorney
Craig-Rohan, Christy L.	Attorney
Gipson, Kevin M	Defendant
Public Defender	Attorney

JOURNAL ENTRIES

- INITIAL ARRAIGNMENT...BENCH WARRANT RETURN
Deft present in custody. DEFT. GIPSON ARRAIGNED, PLED NOT GUILTY and WAIVED THE 60-DAY RULE. COURT ORDERED, matter set for trial in ordinary course. Mr. Bolenbaker noted that the State may be seeking the Death Penalty and COURT ORDERED, matter SET for status check. At request of Ms. Craig, COURT ORDERED, Ms. Craig has 21 days from filing of the transcript to file a Writ.
CUSTODY (B.W.)
5/21/10 8:15 AM STATUS CHECK: STATE'S REQUEST RE DEATH PENALTY

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	May 21, 2010

10C264079 The State of Nevada vs Kevin M Gipson

May 21, 2010	**8:15 AM**	**Status Check**	**STATUS CHECK: STATE'S REQUEST RE DEATH PENALTY Relief** **Clerk: Tia Everett/te** **Reporter/Recorder: Richard Kangas** **Heard By: David Barker**

HEARD BY: **COURTROOM:**

COURT CLERK:

RECORDER:

REPORTER:

PARTIES PRESENT:

Clowers, Shanon	Attorney
Craig-Rohan, Christy L.	Attorney
Gipson, Kevin M	Defendant
Public Defender	Attorney

JOURNAL ENTRIES

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

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **September 15, 2010**

10C264079 The State of Nevada vs Kevin M Gipson

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

HEARD BY: Barker, David **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Sharon Chun

RECORDER: Richard Kangas

REPORTER:

PARTIES PRESENT:

Clowers, Shanon	Attorney
Craig-Rohan, Christy L.	Attorney
Public Defender	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

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

CUSTODY

5/4/11 8:15 AM CALENDAR CALL

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

10C264079 The State of Nevada vs Kevin M Gipson

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

HEARD BY: Barker, David **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Roshonda Mayfield

RECORDER: Richard Kangas

REPORTER:

PARTIES PRESENT:

Craig-Rohan, Christy L.	Attorney
Gipson, Kevin M	Defendant

JOURNAL ENTRIES

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

CUSTODY

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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

10C264079 The State of Nevada vs Kevin M Gipson

January 19, 2011 **8:15 AM** **Motion**

HEARD BY: Barker, David **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Roshonda Mayfield

RECORDER: Richard Kangas

REPORTER:

PARTIES PRESENT:

Clowers, Shanon	Attorney
Gipson, Kevin M	Defendant
Khamsi, Bita	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

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

CUSTODY

DISTRICT COURT
CLARK COUNTY, NEVADA

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

10C264079 The State of Nevada vs Kevin M Gipson

April 25, 2011 **8:15 AM** **All Pending Motions**

HEARD BY: Barker, David **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Roshonda Mayfield

RECORDER: Richard Kangas

REPORTER:

PARTIES PRESENT:

Craig-Rohan, Christy L.	Attorney
Gipson, Kevin M	Defendant
State of Nevada	Plaintiff
Turner, Robert B.	Attorney

JOURNAL ENTRIES

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

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

CUSTODY

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

10C264079 The State of Nevada vs Kevin M Gipson

May 02, 2011 **8:15 AM** **All Pending Motions**

HEARD BY: Barker, David **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Roshonda Mayfield

RECORDER: Richard Kangas

REPORTER:

PARTIES PRESENT:

Clowers, Shanon	Attorney
Craig-Rohan, Christy L.	Attorney
Gipson, Kevin M	Defendant
State of Nevada	Plaintiff
Turner, Robert B.	Attorney

JOURNAL ENTRIES

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

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

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

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

CUSTODY

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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

10C264079 The State of Nevada vs Kevin M Gipson

May 04, 2011 **8:15 AM** **All Pending Motions**

HEARD BY: Barker, David **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Roshonda Mayfield

RECORDER: Richard Kangas

REPORTER:

PARTIES PRESENT:

Clowers, Shanon	Attorney
Craig-Rohan, Christy L.	Attorney
Gipson, Kevin M	Defendant
State of Nevada	Plaintiff
Turner, Robert B.	Attorney

JOURNAL ENTRIES

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

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

CUSTODY

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

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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

10C264079 The State of Nevada vs Kevin M Gipson

May 16, 2011 **8:15 AM** **All Pending Motions**

HEARD BY: Barker, David **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Roshonda Mayfield

RECORDER: Richard Kangas

REPORTER:

PARTIES PRESENT:

Avants, Lynn	Attorney
Gipson, Kevin M	Defendant

JOURNAL ENTRIES

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

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

CUSTODY

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

10C264079 The State of Nevada vs Kevin M Gipson

July 11, 2011 **8:15 AM** **Motion**

HEARD BY: Barker, David **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Roshonda Mayfield

RECORDER: Richard Kangas

REPORTER:

PARTIES PRESENT:

Clowers, Shanon	Attorney
Craig-Rohan, Christy L.	Attorney
Gipson, Kevin M	Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

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

CUSTODY

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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

10C264079 The State of Nevada vs Kevin M Gipson

August 17, 2011 **8:15 AM** **All Pending Motions**

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Roshonda Mayfield

RECORDER: Richard Kangas

REPORTER:

PARTIES PRESENT:

Clowers, Shanon	Attorney
	Attorney
Craig-Rohan, Christy L.	Attorney
Gipson, Kevin M	Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

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

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

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

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

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

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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

10C264079 The State of Nevada vs Kevin M Gipson

October 07, 2011 **8:30 AM** **All Pending Motions**

HEARD BY: Barker, David **COURTROOM:** RJC Courtroom 11B

COURT CLERK: April Watkins

RECORDER: Richard Kangas

REPORTER:

PARTIES PRESENT: Gipson, Kevin M Defendant

JOURNAL ENTRIES

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

COURT ORDERED, matters CONTINUED at request of counsel.

CUSTODY

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

10C264079 The State of Nevada vs Kevin M Gipson

October 24, 2011 **8:15 AM** **All Pending Motions**

HEARD BY: Barker, David **COURTROOM:** RJC Courtroom 11B

COURT CLERK: April Watkins

RECORDER: Cheryl Carpenter

REPORTER:

PARTIES PRESENT:

Craig-Rohan, Christy L.	Attorney
Gipson, Kevin M	Defendant
State of Nevada	Plaintiff
Turner, Robert B.	Attorney

JOURNAL ENTRIES

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

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

CUSTODY

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

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

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

12/12/11 10:00 AM JURY TRIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	November 09, 2011

10C264079 The State of Nevada vs Kevin M Gipson

November 09, 2011 **8:15 AM** **All Pending Motions**

HEARD BY: Barker, David **COURTROOM:** RJC Courtroom 11B

COURT CLERK: April Watkins

RECORDER: Cheryl Carpenter

REPORTER:

PARTIES PRESENT:

Clowers, Shanon	Attorney
Craig-Rohan, Christy L.	Attorney
Gipson, Kevin M	Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

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

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

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

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

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

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

CUSTODY

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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

10C264079 The State of Nevada vs Kevin M Gipson

November 16, 2011 **8:15 AM** **All Pending Motions**

HEARD BY: Barker, David **COURTROOM:** RJC Courtroom 11B

COURT CLERK: April Watkins

RECORDER: Cheryl Carpenter

REPORTER:

PARTIES PRESENT:

Clowers, Shanon	Attorney
	Attorney
Craig-Rohan, Christy L.	Attorney
Gipson, Kevin M	Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

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

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

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

CUSTODY

DISTRICT COURT
CLARK COUNTY, NEVADA

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

10C264079 The State of Nevada vs Kevin M Gipson

November 21, 2011 **8:15 AM** **Motion**

HEARD BY: Barker, David **COURTROOM:** RJC Courtroom 11B

COURT CLERK: April Watkins

RECORDER: Cheryl Carpenter

REPORTER:

PARTIES PRESENT:

Clowers, Shanon	Attorney
	Attorney
Craig-Rohan, Christy L.	Attorney
Gipson, Kevin M	Defendant
State of Nevada	Plaintiff
Turner, Robert B.	Attorney

JOURNAL ENTRIES

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

CUSTODY

DISTRICT COURT
CLARK COUNTY, NEVADA

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

10C264079 The State of Nevada vs Kevin M Gipson

December 02, 2011 **8:30 AM** **Hearing**

HEARD BY: Barker, David **COURTROOM:** RJC Courtroom 11B

COURT CLERK: April Watkins
Christine Erickson

RECORDER: Cheryl Carpenter

REPORTER:

PARTIES PRESENT:

Craig-Rohan, Christy L.	Attorney
Gipson, Kevin M	Defendant
State of Nevada	Plaintiff
Turner, Robert B.	Attorney

JOURNAL ENTRIES

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

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

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

CUSTODY

DISTRICT COURT
CLARK COUNTY, NEVADA

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

10C264079 The State of Nevada vs Kevin M Gipson

December 07, 2011 **8:15 AM** **All Pending Motions**

HEARD BY: Barker, David **COURTROOM:** RJC Courtroom 11B

COURT CLERK: April Watkins
Christine Erickson

RECORDER: Cheryl Carpenter

REPORTER:

PARTIES PRESENT:

Craig-Rohan, Christy L.	Attorney
Gipson, Kevin M	Defendant
State of Nevada	Plaintiff
Turner, Robert B.	Attorney

JOURNAL ENTRIES

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

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

CUSTODY

2/10/12 1:30 PM SENTENCING

DISTRICT COURT
CLARK COUNTY, NEVADA

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

10C264079 The State of Nevada vs Kevin M Gipson

February 10, 2012 **1:30 PM** **Sentencing**

HEARD BY: Barker, David **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Tiffany Lawrence

RECORDER: Cheryl Carpenter

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

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

CUSTODY

BOND, if any, EXONERATED.

DISTRICT COURT
CLARK COUNTY, NEVADA

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

10C264079 The State of Nevada vs Kevin M Gipson

September 26, 2012 **8:15 AM** **Motion** **Deft's Pro Per Motion to Withdraw Plea**

HEARD BY: Barker, David **COURTROOM:** RJC Courtroom 11B

COURT CLERK: April Watkins

RECORDER: Cheryl Carpenter

REPORTER:

PARTIES PRESENT:

Clowers, Shanon	Attorney
	Attorney
Craig-Rohan, Christy L.	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

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

NDC

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

10C264079 The State of Nevada vs Kevin M Gipson

November 07, 2012 **8:15 AM** **All Pending Motions**

HEARD BY: Barker, David **COURTROOM:** RJC Courtroom 11B

COURT CLERK: April Watkins

RECORDER: Cheryl Carpenter

REPORTER:

PARTIES PRESENT:

Cooper, Jonathan	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

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

COURT ORDERED, motion GRANTED.

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

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

NDC

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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

10C264079 The State of Nevada vs Kevin M Gipson

November 26, 2012	**8:15 AM**	**Motion**	**Motion for Direct Appeal/ Memorandum of Points and Authorities Facts of the Case**

HEARD BY: Barker, David **COURTROOM:** RJC Courtroom 11B

COURT CLERK: April Watkins

RECORDER: Cheryl Carpenter

REPORTER:

PARTIES PRESENT:

Burns, J Patrick	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

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

NDC

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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

10C264079 The State of Nevada vs Kevin M Gipson

January 09, 2013 **8:15 AM** **All Pending Motions**

HEARD BY: Cory, Kenneth **COURTROOM:** RJC Courtroom 16A

COURT CLERK: April Watkins

RECORDER: Cheryl Carpenter

REPORTER:

PARTIES PRESENT:

Burns, J Patrick	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

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

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

NDC

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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

10C264079 The State of Nevada vs Kevin M Gipson

January 28, 2013 **8:15 AM** **All Pending Motions**

HEARD BY: Barker, David **COURTROOM:** RJC Courtroom 11B

COURT CLERK: April Watkins

RECORDER: Cheryl Carpenter

REPORTER:

PARTIES PRESENT:

Burns, J Patrick	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

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

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

NDC

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

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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

10C264079 The State of Nevada vs Kevin M Gipson

February 11, 2013 **8:15 AM** **All Pending Motions**

HEARD BY: Barker, David **COURTROOM:** RJC Courtroom 11B

COURT CLERK: April Watkins

RECORDER: Cheryl Carpenter

REPORTER:

PARTIES PRESENT:

Colucci, Carmine J.	Attorney
Edwards, Michelle	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

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

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

NDC

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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

10C264079 The State of Nevada vs Kevin M Gipson

June 17, 2013	**8:15 AM**	**Status Check**	**Status Check: Set Briefing Schedule**

HEARD BY: Barker, David **COURTROOM:** RJC Courtroom 11B

COURT CLERK: April Watkins

RECORDER: Cheryl Carpenter

REPORTER:

PARTIES PRESENT:

Nelson, Catherine L.	Attorney
State of Nevada	Plaintiff
Trippiedi, Hagar	Attorney

JOURNAL ENTRIES

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

NDC

3/31/14 8:15 AM HEARING

DISTRICT COURT
CLARK COUNTY, NEVADA

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

10C264079 The State of Nevada vs Kevin M Gipson

September 15, 2014 **8:15 AM** **All Pending Motions**

HEARD BY: Barker, David **COURTROOM:** RJC Courtroom 11B

COURT CLERK: April Watkins

RECORDER: Cheryl Carpenter

REPORTER:

PARTIES PRESENT:

Colucci, Carmine J.	Attorney
Duncan, Wesley K.	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

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

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

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

NDC

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

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

CONVICTION)

DISTRICT COURT
CLARK COUNTY, NEVADA

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

10C264079 The State of Nevada vs Kevin M Gipson

March 30, 2015 **8:30 AM** **All Pending Motions**

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Billie Jo Craig

RECORDER: Christine Erickson

REPORTER:

PARTIES PRESENT: Colucci, Carmine J. Attorney

JOURNAL ENTRIES

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

Deputy District Attorney Christopher Laurent present. Defendant not present.

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

NDC

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

10C264079 The State of Nevada vs Kevin M Gipson

April 13, 2015 **8:30 AM** **All Pending Motions**

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Ying Pan

RECORDER: Christine Erickson

REPORTER:

PARTIES PRESENT:

Colucci, Carmine J.	Attorney
MacDonald, Ryan J, ESQ	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

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

Defendant not present.

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

NDC

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

10C264079 The State of Nevada vs Kevin M Gipson

September 10, 2015 9:30 AM All Pending Motions

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 03E

COURT CLERK: April Watkins

RECORDER: Christine Erickson

REPORTER:

PARTIES PRESENT:

Colucci, Carmine J.	Attorney
Gipson, Kevin M	Defendant
MacDonald, Ryan J, ESQ	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

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

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

NDC

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**January 13, 2016**

10C264079 The State of Nevada vs Kevin M Gipson

January 13, 2016 **8:30 AM** **Further Proceedings**

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES PRESENT:

Colucci, Carmine J.	Attorney
Laurent, Christopher J.	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Court noted Defendant not present and in custody with the Nevada Department of Corrections. Upon Court's inquiry, Mr. Laurent advised Findings of Fact was sent to Mr. Colucci. COURT ORDERED, Matter CONTINUED. RECALLED. Court noted Mr. Colucci present. Upon Court's inquiry, Mr. Colucci confirmed as counsel for purposes of appeal. Court so noted.

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**June 05, 2017**

10C264079 The State of Nevada vs Kevin M Gipson

June 05, 2017 **8:30 AM** **Petition for Writ of Habeas Corpus**

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES PRESENT:

Dickerson, Michael	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Court noted Defendant not present and in custody with the Nevada Department of Corrections. Court finds petition barred pursuant to NRS 34.726 and Defendant has failed to show good cause to overcome the bar; therefore, COURT ORDERED, Petition DENIED as it challenges the validity of the conviction and DENIED WITHOUT PREJUDICE as to claims 2 and 3. State to prepare an order consistent with their opposition.

NDC

CLERK'S NOTE: The above minute order has been distributed to:

KEVIN MARQUETTE GIPSON # 1082776
HIGH DESERT STATE PRISON
PO BOX 650
INDIAN SPRINGS, NV 89070

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } **SS:**

Pursuant to the Supreme Court order dated September 7, 2017, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises five volumes with pages numbered 1 through 1012.

STATE OF NEVADA,

Plaintiff(s),

vs.

KEVIN M. GIPSON,

Defendant(s),

Case No: 10C264079

Dept. No: XIX

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 27 day of September 2017.

Steven D. Grierson, Clerk of the Court

Amber Lasby

Amber Lasby, Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN MARQUETTE GIPSON,
Appellant(s),

vs.

STATE OF NEVADA,
Respondent(s),

Case No: 10C264079

Docket No: 73307

RECORD ON APPEAL
VOLUME
4

ATTORNEY FOR APPELLANT
KEVIN M. GIPSON # 1082776,
PROPER PERSON
P.O. BOX 650
INDIAN SPRINGS, NV 89070

ATTORNEY FOR RESPONDENT
STEVEN B. WOLFSON,
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NV 89101

10C264079 STATE OF NEVADA vs. KEVIN M. GIPSON

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10C264079 **The State of Nevada vs Kevin M Gipson**

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4	11/17/2015	UNSIGNED DOCUMENT(S) - ORDER	742 - 742

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

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

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

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

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

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

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

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

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

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

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

ORDER

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

DATED this 30th day of October, 2015.

DISTRICT JUDGE

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

BY
RYAN J. MACDONALD
Deputy District Attorney
Nevada Bar #012615

CERTIFICATE OF SERVICE

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

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

BY
Theresa Dodson
Secretary for the District Attorney's Office

no/RJM/td/dvu

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CLERK OF THE COURT

NEO

DISTRICT COURT
CLARK COUNTY, NEVADA

KEVIN M. GIPSON,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: 10C264079

Dept No: XIX

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

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

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

STEVEN D. GRIERSON, CLERK OF THE COURT

Mary Kielty

Mary Kielty, Deputy Clerk

CERTIFICATE OF MAILING

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

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

☑ The United States mail addressed as follows:

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

Carmine J. Colucci, Esq.
629 S. Sixth Street
Las Vegas, NV 89101

Mary Kielty

Mary Kielty, Deputy Clerk

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CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
RYAN J. MACDONALD
Deputy District Attorney
Nevada Bar #012615
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

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

Defendant.

CASE NO: 10C264079

DEPT NO: XIX

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

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

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

FINDINGS OF FACT, CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

Defendant Received Effective Assistance of Counsel

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ORDER

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

DATED this 30th day of October, 2015.

DISTRICT JUDGE

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

BY for
RYAN J. MACDONALD
Deputy District Attorney
Nevada Bar #012615

CERTIFICATE OF SERVICE

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

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

BY
Theresa Dodson
Secretary for the District Attorney's Office

no/RJM/td/dvu

Please Return Filed Stamped

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

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CLERK OF THE COURT

Eighth DISTRICT COURT
Clark COUNTY NEVADA

Kevin M. Gipson #1082776, Petitioner,

-V-

Dwight Neven, Warden, et.al, Respondent,

Case No. 10C264079
Dept.No. XIX
Docket

NOTICE OF APPEAL

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

Dated this date, November 8th, 2015.

Respectfully Submitted,

Kevin Gipson
In Proper Person

RECEIVED
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CLERK OF THE COURT

AB

CERTIFICATE OF SERVICE BY MAILING

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

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

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

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

DATED: this 8th day of November, 2015.

Kevin M. Gipson # 1082770
Petitioner /In Propria Persona
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Notice of Appeal
(Title of Document)

filed in District Court Case number 10C264079

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

-OR-

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

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

(State specific law)

-or-

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

Kevin Gipson
Signature

11/8/15
Date

Kevin M. Gipson
Print Name

Petitioner
Title

Kevin M. Gipson #1082776
P.O. Box 650
Indian Springs, NV 89018

Legal Mail
Confidential

LAS VEGAS NV 890
09 NOV 2015 PM 4 L

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

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ASTA

CLERK OF THE COURT

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

STATE OF NEVADA,

Plaintiff(s),

vs.

KEVIN M. GIPSON,

Defendant(s),

Case No: 10C264079

Dept No: XIX

CASE APPEAL STATEMENT

1. Appellant(s): Kevin Gipson

2. Judge: William D. Kephart

3. Appellant(s): Kevin Gipson

Counsel:

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

4. Respondent: The State of Nevada

Counsel:

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

(702) 671-2700

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

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

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

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

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

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

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

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

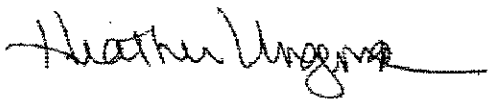
11. Previous Appeal: Yes

    Supreme Court Docket Number(s): 62071

12. Child Custody or Visitation: N/A

Dated This 13 day of November 2015.

Steven D. Grierson, Clerk of the Court



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

cc: Kevin Gipson

LSF

PRO SE

DISTRICT COURT

Clark COUNTY, NEVADA

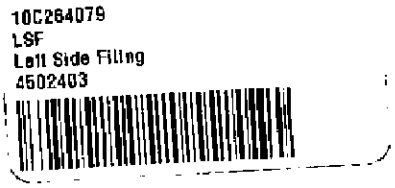
Kevin Gipson, #1082776
Petitioner

vs.

Dwight Neven, Warden, et. al
Respondent

CASE NO. 10C264079

DEPT NO. XIX



ORDER

Upon reading the motion of the Petitioner, Kevin Gipson requesting appointment of counsel and good cause appearing;

IT IS HEREBY ORDERED that petitioner's motion for appointment of counsel is granted.

The following named attorney has taken the appointment:

_____.
Attorney's Name

Dated this ____ day of _____, _____.

_____
DISTRICT JUDGE

Kevin Gipson
IN PROPER PERSON

EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT
REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd Fl.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

Brandi J. Wendel
Court Division Administrator

November 17, 2015

Attorney: Carmine J. Colucci
629 S Sixth St
Las Vegas NV 89101

Case Number: 10C264079
Department: Department 19

Defendant: Kevin M Gipson

Attached are pleadings received by the Office of the District Court Clerk which are being forwarded to your office pursuant to Rule 3.70.

Pleadings: **Motion To Appoint Counsel For Appeal To Supreme Court Of Nevada, And Notice Of Motion.**

Rule 3.70. Papers which May Not be Filed

Except as may be required by the provisions of NRS 34.730 to 34.830, inclusive, all motions, petitions, pleadings or other papers delivered to the clerk of the court by a defendant who has counsel of record will not be filed but must be marked with the date received and a copy forwarded to the attorney for such consideration as counsel deems appropriate. This rule does not apply to applications made pursuant to Rule 7.40(b)(2)(ii).

Cordially yours,

DC Criminal Desk # #28 Terri Stringer

Deputy Clerk of the Court

10C264079
LSF
Left Side Filing
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8

Kevin Gipson #1082776
Petitioner In Propria Personam
Post Office Box 650 [HDSP]
Indian Springs, Nevada 89018

DISTRICT COURT
CLARK COUNTY, NEVADA

Kevin Gipson #1082776
Petitioner

vs.

Dwight Neven, Warden, et. al
Respondent

Case No. 10C264079
Dept No. XIX
Docket _____

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE, that Motion to Appoint Counsel for Appeal to Supreme Court of Nevada will come on for hearing before the above-entitled Court on the ____ day of _____, 20___, at the hour of ____ o'clock ___. M. In Department ___, of said Court.

CC:FILE

DATED: this 10th day of November, 2015.

BY: Kevin Gipson
Kevin Gipson #1082776
Petitioner /In Propria Personam

RECEIVED
NOV 16 2015
CLERK OF THE COURT

POINTS AND AUTHORITIES

NRS 34.750 Appointment of Counsel for indigents; pleading supplemental to petition; response to dismiss.

"If the Court is satisfied that the allegation of indigency is true and the petition is not dismissed summarily, the Court may appoint counsel to represent the petitioner."

NRS 171.188 Procedure for appointment of attorney for indigent defendant.

"Any defendant charged with a public offense who is an indigent may, be oral statement to the District Judge, justice of peace, municipal judge or master, request the appointment of an attorney to represent him."

NRS 178.397 Assignment of counsel.

"Every defendant accused of a gross misdemeanor or felony who is financially unable to obtain counsel is entitled to have counsel assigned to represent him at every stage of the proceedings from his initial appearance before a magistrate or the court through appeal, unless he waives such appointment."

WHEREFORE, petitioner prays the Court will grant his motion for appointment of counsel to allow him the assistance that is needed to insure that justice is served. See attached Exhibits

Dated this 10th day of November, 2015

Respectfully submitted,

Kevin Taylor

CARMINE J. COLUCCI, CHTD.
ATTORNEY AT LAW

629 SOUTH SIXTH STREET
LAS VEGAS, NEVADA 89101

(702) 384-1274
FAX: (702) 384-4453

October 30, 2015

KEVIN GIPSON #1082776
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89070-0650

Dear Mr. Gipson,

Enclosed please find the Findings of Fact, Conclusions of Law and Order which the District Court filed in your case. If you plan to appeal, time is of the essence. You must file your Notice of Appeal as soon as possible.

My duty to you is complete. I was court appointed to handle your Petition for Writ of Habeas Corpus (Post-conviction) only. If you plan to appeal, you should immediately contact a prison law clerk and get the Notice of Appeal on file forthwith. Your failure to do so will cause you to lose that right.

Once that is filed along with the documents that need to go with it, you can file a motion to request the appointment if appellate counsel.

If we have not already done so, we will be sending your file to you. You will need to furnish it to your appellate counsel.

Sincerely,

Carmine J. Colucci, Chtd.

Carmine J. Colucci, Esq.

CJC/ns
Encl. notice

Exhibit

CERTIFICATE OF SERVICE BY MAILING

I, Kevin Gipson, hereby certify, pursuant to NRCP 5(b) that on this 10th day of November, 2015, I mailed a true and correct copy of the foregoing "Motion to Appoint Counsel for Appeal to Supreme Court of Nevada" by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, Fully prepaid, addressed as follows:

Clark County District Attorney
200 Lewis Ave.
Las Vegas, NV 89155

DATED: THIS 10th day of November, 2015

/Kevin Gipson
Petitioner /In Propria Persona
High Desert State Prison
P.O. Box 650
Indian Springs, Nevada. 89018

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion to Appoint Counsel for Appeal to Supreme Court of Nevada
(Title of Document)

filed in District Court Case number 10C264079

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

-OR-

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

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

(State specific law)

-or-

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

Kevin Gipson — 11/10/15
Signature — Date

Kevin Gipson, # 1082776
Print Name

Petitioner
Title

Kevin Gipson #1082776
Petitioner/In Propria Persona
Post Office Box 650 (HDSP)
Indian Springs, Nevada. 89018

DISTRICT COURT

Clark **COUNTY, NEVADA**

Kevin Gipson, #1082776
Petitioner

vs.

Dwight Neven, Warden, et. al
Respondent

Case No. 10C264079

Dept. No. XIX

Docket _____

MOTION TO APPOINT COUNSEL FOR APPEAL TO SUPREME COURT OF NEVADA

DATE OF HEARING: _____

TIME OF HEARING: _____

COMES NOW the Defendant Kevin Gipson, in proper persona and moves this court for an Order granting him counsel in the proceeding action.

This motion is made and based upon all papers and pleadings on file herein and attached points and authorities.

Dated this 10th day of November, 2015

Respectfully Submitted,

Kevin Gipson

RECEIVED
NOV 16 2015
CLERK OF THE COURT

Kevin Gipson #1082776
P.O. Box 650
Indian Springs, NV 89018

Clerk of the District Court
200 Lewis Ave., 3rd Fl.
Las Vegas, NV 89155

LEGAL MAIL

CONFIDENTIAL

89155-990099

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CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, vs. KEVIN MARQUETTE GIPSON, Defendant.	CASE NO. C264079 DEPT. XIX

BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE

THURSDAY, SEPTEMBER 10, 2015

RECORDER'S TRANSCRIPT OF
EVIDENTIARY HEARING

APPEARANCES:

For the State: RYAN MACDONALD, ESQ.
Deputy District Attorney

For the Defendant: CARMINE COLUCCI, ESQ.

RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER

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Thursday, September 10, 2015 -- 9:50 a.m.

THE COURT: On my criminal calendar, State of Nevada versus Kevin Gipson in C264079.

THE CLERK: Can you state your appearances and Bar number for the record.

MR. MACDONALD: Ryan MacDonald for the State, 12615.

MR. COLUCCI: Carmine Colucci for Kevin Gipson. He is in custody. Bar Number 000881.

THE COURT: Let's see if he's here. I'm sure that -- yeah.

MR. COLUCCI: He's here.

[Pause]

THE COURT: Okay. This is on for Defense petition for writ of habeas corpus. I've limited the hearing to argument regarding a hearing regarding his mental issue and prior counsel's advice.

As reading back through this, he entered into negotiations. Part of his claim was that his counsel failed to investigate his mental issues; coerced him into his plea. A lot of it was already addressed with regards to a motion to dismiss and that. But I've read through Judge Barker's minutes and his position on allowing a hearing. There was even an argument about being time barred that the State applied with the Court. A previous judge had already ordered that this be held.

And when I went back through it, I think it can be determined only on the issues involving his mental issues, what counsel did with regards to that and what advice that she gave him with respect to that in regards to

his plea. Right?

MR. COLUCCI: Right. And I think the coercion comes into that -- because if he had mental health issues at the time he entered his plea, the coercion aspect of it as he's outlined is he -- he was not fully aware of what was going on, and he felt coerced to take the negotiation and because he wasn't on his meds and the other reasons that we've set forth.

THE COURT: Okay. I understand that. I understand what your position is, and that's why --

MR. COLUCCI: So it's just -- we're just going to touch that tangentially. We're not going to make a big deal out of that, but I just wanted to let you know because --

THE COURT: Okay.

MR. COLUCCI: -- I don't want to be precluded from discussing that.

THE COURT: No, that's fine. You're fine.

MR. MACDONALD: And before we get started, I'd like to clarify the procedural issue. From looking at the record -- I wasn't here at the time -- but it looks like what happened is that Mr. Colucci was appointed, and a briefing schedule was set outside of the one-year time bar. And so the Court found that since it set the briefing schedule like that, that there was good cause to excuse the untimely filing of petition. Is that understanding --

THE COURT: Yeah, that's --

MR. MACDONALD: Is that what you understand?

THE COURT: Yes, but it was Judge Barker.

MR. COLUCCI: It was Judge Barker and --

THE COURT: And so what I've done, to be honest with you, in reading

his ruling, rather than to readdress it, I just went ahead and looked at the allegations in the petition, and I narrowed them down to these two -- these issues. I figured I'd go ahead and hear -- if, in fact -- to be honest with you, if, in fact, we are hearing this independent of any time bar issue, these would be the issues, I believe, that need to be brought, brought to hearing.

MR. COLUCCI: And very briefly on that -- that one issue. I was called in. I was appointed. Did not have any part of the record. Didn't have the time -- the time limit on the filing of the petition. I had 19 days before the one-year time ran. Did not get the full record until after that time period, and the judge had already set out 40 days or 45 days or something like that past the time bar period. So I just wanted to make that clear.

THE COURT: Okay. That's fine. All right. Let's get started.

MR. COLUCCI: I'm going to call Mr. Gipson first.

THE COURT: Okay. Mr. Gipson, you can stay right there.

THE DEFENDANT: All right.

THE COURT: You're fine.

THE MARSHAL: Stand and raise your right hand.

KEVIN M. GIPSON

being first duly sworn as a witness, testified as follows:

THE CLERK: Go ahead and have a seat. Will you please state your full name, spelling your first and last name for the record.

THE WITNESS: Kevin Marquette Gipson, K-E-V-I-N, G-I-P-S-O-N.

THE CLERK: Thank you.

/ / /

/ / /

DIRECT EXAMINATION

BY MR. COLUCCI:

Q You are the Defendant in this case?

A Yes.

Q And you were convicted previously of murder with use of a deadly weapon?

A Yes, sir.

Q Is that right? You're presently incarcerated at High Desert?

A Yes.

Q And prior to the time -- you took a plea in this case; is that correct?

A Yes.

Q And part of the time you took a plea, you consulted with your attorney? That would be Ms. Christy Craig.

A On the day I was to sign the plea.

Q Okay. You had previously -- she's been your lawyer throughout this whole case; is that right?

A Yes.

Q And you talked to her specifically prior to entry of plea about your mental health issues; is that correct?

A Yes.

Q Did you tell her what your mental health issues were?

A Yes.

Q What were you mental health issues at that time?

A I was diagnosed as being bipolar and schizophrenic.

Q And were you prescribed medication?

A Yes.

Q And at the time of the crimes in this case, were you on your medication?

A No, I was not.

Q As part of Ms. Craig's preparation to take you through the plea bargain process, were you ever evaluated by a psychologist or psychiatrist?

A No.

Q Okay. Did you advise her that you had previously been in -- under healthcare at an institution?

A Yes.

Q When did you first tell Ms. Craig about your medical -- your health -- mental health issues?

A The first day I met her, but I don't remember what the date was.

Q Okay. Prior to accepting the negotiation, did you have discussions with Ms. Craig about the guilty plea agreement?

A I did -- did she come talk to me before I signed it?

Q Yes.

A No.

Q When did you first get the guilty plea agreement?

A When I went to court.

Q And when you went to court to enter your plea, is that what your testimony is?

A Yes.

Q Okay. Did you spend any time with her prior to entry of the guilty plea? Did you spend any time with her going over the guilty plea agreement?

A Before I went to court?

Q Yes.

A No.

Q And in court did you spend time with her?

A She came and talked to me for a couple minutes. She told me to look it over.

Q While you were in custody?

A Yes.

Q And did she sit there and go over anything in there with you?

A Not really.

Q At that time were you on any medication?

A I was on Evadra (phonetic).

Q What's that?

A It's an anti-psychotic, anti-depressant.

Q And what was that for?

A For hearing voices and seeing moving objects.

Q Did you feel like you were in your right state of mind to consider the offer and to accept it?

A No, because the medicine wasn't working.

Q Did you later change medicine?

A Yes.

Q What did you change to?

A Xyprexa and Benadryl and two other medicines that I don't take no more, Topamax and Risperdal.

Q Okay. Prior to entering into your guilty plea agreement, did you go through the facts and circumstances of your case with Ms. Christy?

A What do you mean by that?

Q Did you discuss your case with her?

A Before the guilty plea?

Q Yes. Before you went to court. Not that day, but prior to that.

A I can't remember. I don't even remember talking -- I'm not --

Q Okay. Let me simplify it. Did you -- at any time during Ms. Christy's representation, did she come to visit you and go over your case with you?

A Oh. Yes.

Q How many times; do you remember?

A No, I don't remember. It was probably like three or four times.

Q And did you discuss the facts of your case with her?

A What do you mean the facts?

Q Did you discuss what happened?

A Oh. Yes.

Q Did she provide you with a copy of the discovery?

A No.

Q Did you ask for a copy of the discovery?

A Yes, several times.

Q You -- subsequently, after you were sentenced, you filed a motion to withdraw your plea?

A Yes.

Q Why did you do that?

A Because I never wanted to take the -- take the guilty plea anyways. I wanted to go to trial. But the day I came to court, she handed me the guilty plea and said I was going to accept that, guilty but mentally ill, and I was -- that day I felt like I was put on the spot, pressured to take the deal. So that's why I signed it.

Q Did you plead guilty to guilty but mentally ill?

A That's what she said I was pleading to.

Q Did you discuss with her at any point the possibility of appealing the adverse pretrial rulings?

A No.

Q And any time during her representation, did you go through any mental health treatment or evaluation?

A No.

Q When you talk about coercion, was there any kind of force or pressure used against you in order to get you to plead guilty?

A Well, I felt like it was pressure because she was -- she was like saying that you need to take this and all that. It was right on the spot. It was like she came with it and said, this is the deal, you should sign it. So I was going by what she said, so I just signed it.

Q Did you tell her you wanted to go to trial?

A Yes.

Q And how did she respond to that?

A I didn't tell her that day I wanted to go to trial, but when she

came and met me, I was like, I want to go to trial.

Q What do you mean when she came down --

A When she came to visit me.

Q Is that before that?

A Before that.

Q Before you took the deal?

A Uh-huh.

Q Now, you were questioned by the District Court judge at the entry of plea wherein he went through your understanding of what the plea bargain was.

A Uh-huh.

Q Do you remember that?

A I -- I vaguely remember that. I don't remember the whole thing because the medicine I take messes with my memory.

Q Okay. Were you on any -- you were on medication at the time you entered your plea, right?

A Yes.

Q And you said it wasn't working?

A No.

Q What effect did it not working have on you?

A Because I'm still hearing voices and still seeing things.

Q Did you tell Ms. Christy that?

A I can't remember.

Q You appeared to answer all of the questions put to you by the judge. If you're hearing voices and not understanding the questions the judge

is asking you, how are you able to answer those questions?

A I was just going -- I was just answering from what Ms. Christy Craig told me to answer.

Q Was she supposedly telling you things during the course of the plea?

A Uh-huh.

Q Were you asking her --

THE COURT: Is that a yes, sir?

THE WITNESS: Yes.

BY MR. COLUCCI:

Q Were you answering questions -- or were you asking questions?

A No, I wasn't asking any questions.

MR. COLUCCI: I have nothing further.

THE COURT: Cross?

MR. MACDONALD: Thank you.

CROSS-EXAMINATION

BY MR. MACDONALD:

Q Are you saying that during your plea, Ms. Craig was actually telling you what each answer to these questions should be?

A Well, right before I would answer, she -- she looked at me and shake her head yes, so that's what I said, yes.

Q So when she -- when you're supposed to be responding no, she's shaking her head no to each and every question?

A What do you mean?

Q How many questions did she tell you how to answer?

A I can't remember.

Q So only the questions where you would answer yes, she gave you the answer?

A Well, when he asked me do I understand, she said yes, too. And that's when I said yes.

Q But the questioning was a lot longer than that. Do you recall that, sir?

A I can't remember.

Q So you only recall one answer where she told you -- where she supplied the response for you?

A From what I remember.

Q Okay. Do you remember if Ms. Craig talked to the press about your case?

A I don't know, but it was really -- it was news.

Q Yeah. So you don't -- you don't have any recollection of that?

A I don't know if she talked to them.

Q Do you know if she talked to them about your significant mental issues?

A I don't know. Like I say, when the news was there, she would just stand by me. She said -- she would stand in front of me so the camera couldn't get a picture of me.

Q Okay. Sir, what's your understanding of the effect of winning this petition?

MR. COLUCCI: Objection; relevancy.

THE COURT: Overruled.

THE WITNESS: What's my understanding?

BY MR. MACDONALD:

Q Yes, sir.

A All I know is it's an evidentiary hearing.

Q So this is -- this is a petition for a writ of habeas corpus, so this proceeding is to test the legality of your custody. Do you know what the effect is if you win?

A No.

Q Okay. Do you know that this goes back to a pretrial posture, and you could potentially go to trial and get a different sentence?

A Nobody talked to me about this.

MR. MACDONALD: I have nothing further.

MR. COLUCCI: Nothing additional.

THE COURT: Mr. Gipson, do you recall when you -- when the court was asking you questions about -- about the crime and what you were pleading to?

THE WITNESS: I can't -- I really can't say because it was so long ago, I really don't remember what he was asking me.

THE COURT: And you read through the paperwork that --

THE WITNESS: I glanced through it. I didn't get to read through it.

THE COURT: So you've not looked at your own transcripts where -- to every particular question the court asked -- for example, "Has anyone forced you or coerced you to enter this plea," your response was no"?

THE WITNESS: Well, she told me to say no. She was -- she was -- she was right next to me.

THE COURT: Okay. So when someone says -- when the court asked you, "Has anyone forced you or coerced you to enter this plea," you're telling me that she coerced you into entering this plea, and you stood in front of that judge and said no?

THE WITNESS: Yes.

THE COURT: Because she told you no?

THE WITNESS: She said -- no, she didn't actually tell -- she looked at me and she just shake her head like this.

THE COURT: Then why would you -- if she's coercing you into doing something, into entering this plea, tell me what it was in your mind that was coercing you into entering into this plea? What was she doing to force you to take this plea?

THE WITNESS: (No audible response).

THE COURT: What was she telling you or what was she doing that you felt coerced you or forced you to take a plea to murder with use of a deadly weapon?

THE WITNESS: I only took a plea because I didn't -- I didn't want the life without.

THE COURT: Okay. So tell me where she was coercing you in that.

THE WITNESS: Because she was standing next to me. She was telling me what to say.

THE COURT: So if someone's standing and telling you what to say, that's coercive as far as you're concerned?

THE WITNESS: I don't know. I don't understand really what you saying.

THE COURT: Okay. Well, it says here, another question: "You carefully read this document. Did you realize that you were waiving valuable constitutional and procedural rights by entering this plea?" and you said yes. Did she tell you to say yes to that, too?

THE WITNESS: I can't remember.

THE COURT: Okay. Do you recall the Court talking to you specifically what you were agreeing to; that you were stipulating to 20 years to life with the possibility of parole and a consecutive 4 to 8 years for the deadly weapon enhancement? Do you recall that?

MR. COLUCCI: 48 months, Your Honor.

THE COURT: It's 4 years to 8 years. Yeah.

MR. COLUCCI: I'm sorry, maybe I misunderstood what you said.

THE COURT: A consecutive 4 to 8 years for the deadly weapon enhancement. It says 20 to life with the possibility of parole, plus you have to do 4 to 8 years on top of that for the weapon enhancement. Do you recall the Court asking you about that?

THE WITNESS: (No audible response).

THE COURT: Do you recall that?

THE WITNESS: Something similar to that, but I don't know if it was exactly that.

THE COURT: Okay. Do you recall when the Court asked you: "Are you satisfied with her representation of you?"

THE WITNESS: I don't -- I don't remember him asking me that.

THE COURT: Okay. And then the Court said: "Based upon knowing that there's an anticipated penalty" -- in this case meaning that you are going

to prison, and the question then is: "Are you freely and voluntarily entering into this plea knowing that?" Do you recall answering yes?

THE WITNESS: I don't remember that question.

THE COURT: Okay. And the Court said: "You're looking at a life sentence, and you're headed to prison as a consequence. Do you understand that?" and you answered yes.

THE WITNESS: I don't remember that question.

THE COURT: And then the Court says: "Does that change your mind about any nature of this plea? Are you still doing this voluntarily?" and you said yes.

THE WITNESS: I don't remember that question either.

THE COURT: So you don't remember as she stood there and shook her head and told you to answer those questions yes?

THE WITNESS: No.

THE COURT: And it says: "Do you have any questions of the Court?" You said: "No, sir." Did she say to say no, sir?

THE WITNESS: She didn't -- we didn't talk about that.

THE COURT: Well, it says: "Do you have any questions of the Court?" Did you have any questions of the judge, and your answer to the judge was: "No, sir." Did she say, "Say no, sir"?

THE WITNESS: No.

THE COURT: And then he said: "Do you have any questions of Ms. Craig?" and you said no.

THE WITNESS: I don't remember that one either.

THE COURT: Okay. Now, you also signed the guilty plea agreement;

do you recall that?

THE WITNESS: Well, I thought I was signing the guilty but mentally ill plea.

THE COURT: Okay. Well, the Court asked you if you read the guilty plea agreement before you signed it, and you said you did. Are you telling me that you didn't read it?

THE WITNESS: I didn't read the whole thing. I only glanced through it because I only had a couple minutes to read it.

THE COURT: Now, it says here: "Now, you recall when you went -- entered your original plea, you went through it, and you indicated you understood the elements of the offense," that you had the chance -- "have you had a chance to talk with your lawyer?" And then Court says: "Do you need more time to talk to Ms. Craig about these elements and the offense and the allegations before I ask you again when you change your plea?"

THE WITNESS: I don't remember him asking me if I need more time. I don't even think I ever heard that.

THE COURT: Okay. Sir, how long -- if you remember, how long was this case from the beginning of when you first started litigated it, meaning when you were first in court, possibly in Justice Court, until you took your plea, do you know how long that was?

THE WITNESS: Well --

THE COURT: Can you estimate it?

THE WITNESS: Like two years maybe.

THE COURT: Who was your attorney throughout that whole time?

THE WITNESS: Christy Craig.

THE COURT: Okay. And it's your testimony here today that she came and talked to you three times about this case?

THE WITNESS: She didn't -- she only came three or four times. She didn't come that much.

THE COURT: Did she come before you did your -- went to your preliminary hearing stage down in Justice Court?

THE WITNESS: I don't think so. I can't remember. I don't know.

THE COURT: Well, what happened in the preliminary hearing stage?

THE WITNESS: I can't remember.

THE COURT: Okay. His indictment --

MR. MACDONALD: Judge, I believe it was an indictment.

THE COURT: I know, but he's being held at the preliminary hearing stage. Were you told that this was possibly going to go to an indictment?

THE WITNESS: No.

THE COURT: So you were never furnished with a --

THE WITNESS: I got the indictment papers.

THE COURT: But were you ever furnished --

THE WITNESS: That's when I was locked up.

THE COURT: Were you ever furnished with what they call a *Markham* notice, saying if you want to testify at the -- at the indictment, you can do so?

THE WITNESS: No, I never got that. I never --

THE COURT: So your attorney never gave that to you?

THE WITNESS: No.

THE COURT: Okay. And -- so did you have a hearing at all down in Justice Court, do you recall, before another judge?

THE WITNESS: About the -- when I got indicted?

THE COURT: No, before that. When you get indicted, they send you up here. I know that.

THE WITNESS: Oh. I can't remember.

THE COURT: Did you have any hearing on bail or anything like that?

THE WITNESS: No.

THE COURT: Okay. What about when you got to District Court, did you have a hearing on your indictment?

THE WITNESS: I never went to court. I -- I didn't -- when I got -- when I got served the indictment papers, I didn't go to court for that.

THE COURT: Did you come up here, though, to District Court on the indictment? You were being charged with murder with use of a deadly weapon.

THE WITNESS: Yes.

THE COURT: Okay. So how long do you think you were up in District Court before you entered into your plea?

THE WITNESS: Almost two years.

THE COURT: Was it scheduled for trial a number of times?

THE WITNESS: I can't remember.

THE COURT: Did it -- did it come up for trial and get continued?

THE WITNESS: I -- I can't remember that either. I think so, but I'm not sure.

THE COURT: When was it that Ms. Craig -- if you remember, when was it that she started talking to you about negotiations that you -- the one that you entered -- that you signed your agreement to?

THE WITNESS: She never talked to me about it. I -- one time --

THE COURT: So it was the day you signed it?

THE WITNESS: The day I signed it.

THE COURT: Okay. All right. Do you have any questions as a result of my questions, Mr. Colucci?

MR. COLUCCI: No, Your Honor.

THE COURT: Do you have any questions as a result of my questions?

MR. MACDONALD: No, Your Honor.

THE COURT: Okay. All right. Thank you, Mr. Gipson. You can just stay right there. He's got -- you guys weren't taking him, were you?

THE CORRECTIONS OFFICER: No.

THE COURT: Okay. Okay. Do you have any other witnesses?

MR. COLUCCI: Yes, Ms. Craig.

THE COURT: Okay. Jim, can you get Ms. Craig for me.

[Pause]

CHRISTY CRAIG, ESQ.

being first duly sworn as a witness, testified as follows:

THE CLERK: Please be seated. Can you please state your full name, spelling your first and last name for the record.

THE WITNESS: Christy Craig, C-H-R-I-S-T-Y, C-R-A-I-G.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. COLUCCI:

Q Your occupation, please.

A I'm a lawyer at the Clark County Public Defender's Office.

Q How long have you been there?

A 1998.

Q Are you acquainted with Mr. Gipson?

A I am.

Q And did you represent Mr. Gipson in his murder case?

A I did.

Q Okay. Did you represent Mr. Gipson from the inception of that case?

A Yes.

Q And you -- during the course of your preparation for that case, of course, you investigated his background?

A Yes.

Q And during this pretrial investigation process, you became aware that he had some mental health issues?

A Yes, very early on.

Q And do you know what those mental health issues were? Do you remember?

A I think -- I think it was schizophrenia maybe and bipolar disorder. I'm just not -- I haven't relooked at his diagnoses.

Q Okay. Prior to the time -- first of all, this case was negotiated instead of tried, correct?

A Yes.

Q And as part of that negotiation, you discussed the potential plea bargain with Mr. Gipson, correct?

A Yes.

Q And was there more than one offer to resolve the case or was there just the ultimate final offer to resolve the case?

A I don't think there was more than one offer than just the one.

Q And the pretrial phase of Mr. Gipson's case lasted approximately two years?

A Yes.

Q And during that two-year time period, you went and visited Mr. Gipson?

A Yes.

Q Do you remember approximately how many times?

A No.

Q And what was the purpose of those visits?

A Each one was different. There were all kinds of reasons. Sometimes it was to talk about very specific things; other times it was just to check in and let him know how things were going.

Q Did you go over and talk to him about -- prior to the plea hearing where he accepted the plea bargain, did you go over to the jail and discuss the proposed plea bargain?

A I have some notes with me. Is it all right if I take a look?

Q Sure, please.

A See if I --

Q If that would refresh your memory, please do.

A It would.

[Witness looking through documents]

THE WITNESS: You know, I don't have any notes that -- and I just

don't recollect how the plea came about. It was after some of the motions were heard. I just don't recall. I don't have a specific note. Typically, I talk about what I think will happen in the event the State makes an offer long before they make an offer.

BY MR. COLUCCI:

Q And in this case, prior to the time that you went to the actual plea hearing itself, do you recall having a discussion with Mr. Gipson about the proposed contents of that plea bargain?

A Do you mean the actual deal or the --

Q The actual deal.

A I don't recall.

Q Do you recall whether or not the initial negotiation was to plead -- for him to plead guilty but mentally ill?

A I'm sure that's something I asked for. I don't think the State just offered it. They normally make an offer, and then someone like Mr. Gipson who has a mental illness, I'll ask for the guilty but mentally ill.

Q Okay. Do you know whether, in fact, he pled guilty to the first degree murder with use of a deadly weapon, guilty but mentally ill? Do you remember that?

A Yes.

Q Did he plead to that?

A Yes. As I recall, he did.

Q Do you recall whether or not you received a proposed guilty plea agreement before the plea hearing was scheduled or at the time of the plea hearing?

A I have no idea.

Q Do you recall how much time you would've spent with Mr. Gipson to go over the guilty plea agreement?

A I don't have a specific memory of talking to Kevin. I can tell you that normally when the State gives me an offer, I go over and explain it and get their agreement. And then the guilty plea agreement is prepared, and I provide it to them and talk about the consequences.

Sometimes if the offer is right at the last minute, those things may happen very quickly in time, But usually I have some idea of where I think the State's going to go, and I will have talked about that and told them to consider what they would do in the event the offer did come very quickly so that it wouldn't be the first time they heard it. But I don't have an independent memory of doing that with Kevin.

Q Do you recall having a discussion with Mr. Gipson about the waiver of appellate rights that would be contained in the guilty plea agreement?

A I don't have an independent memory of that, but I always go over it.

Q You're not sure as we -- as you sit here right now whether you did or not?

A I'm sure I did, but I don't have an independent memory of doing it specifically with Kevin. I mean, I say the same thing every time. I could probably repeat what I tell everybody quite easily because I literally do the same spiel when it comes to the waiver or rights.

Q Did you do any independent investigation into Mr. Gipson's

mental health issues?

A Yes.

Q And what did you do?

A We ordered his records from every available source. He had a private doctor named Nwokike that was a little bit hard to track down. We got those records. We got records from a -- I can't remember the name of the private facility. We got -- we kept an eye on his jail records routinely. And I had Dr. Slagle go and see him to do evaluations just for me with regard to Kevin's competency and how he was doing with his mental illness as well whether or not an NGRI plea would be appropriate.

Q And did you send Dr. Slagle in to see Kevin; do you remember that?

A Twice.

Q Twice? Okay.

A Yeah.

Q Now, prior to Mr. Gipson's sentencing, did you have an opportunity to go over the PSI with him?

A I really don't have an independent memory of whether or not we talked about the PSI. I typically ask if there's been any -- if there's any grievous errors that we need to correct before he goes to prison. I do recall that the sentencing was extremely difficult. Despite the fact that it was a -- a set sentence, there was quite a lengthy hearing.

Q I'm sorry?

A It was a very lengthy hearing that the State presented despite the fact that the sentence was, you know, what it was.

Q Was the lengthy hearing caused by the State --

A Yes.

Q -- reciting the facts and going through their --

A No. Well, I mean, it was, but they also -- I recall they played a video, I think, and -- it was just -- it was very long, and it was -- it was emotionally a very difficult sentencing.

Q When you went over the plea agreement with Mr. Gipson, was he on any kind of medication?

A We were keeping an eye on his medication. As I recall, I don't think that he was taking any, and he seemed to be doing quite well at the jail. I wasn't extraordinarily concerned about whether or not he was competent pursuant to *Dusky*. I had felt fairly confident, plus I had had him evaluated by Dr. Slagle. So it was something I was really keeping an eye on, and if I had concerns, I would have stopped and had a quick eval done to make sure.

Q Okay. Mr. Gipson filed a motion to withdraw his plea at some point after sentencing, correct?

A He did.

Q Did you attend that motion or did you represent him at that motion?

A Yes. I think I was still -- I was still appointed, and I requested -- and I thought it was appropriate. In fact, I think the Court should have done it. I think given his mental health history, I thought it was prudent for the Court to appoint alternative counsel to represent him just to determine whether or not as a result of his mental illness there was any grounds to withdraw his plea. And I believe I requested that alternative counsel be

appointed for that purpose.

Q And the judge denied that?

A I believe he did.

Q Did you discuss with Mr. Gipson appealing that ruling?

A No, I think I withdrew. I think my request to withdraw was granted that same day so that he could pursue whatever -- because -- you know, he was really in some way saying that I was ineffective, and that's not really an appeal that I could do for him, and I thought it was appropriate that someone else should be appointed.

But in the event the Court didn't do that, I withdrew so that he could -- he could proceed that way, and I believe I sent him a letter describing the appellate process and explaining -- you know, there's timing issues that are critical, I think, and I had sent him a letter in the prison kind of describing how that process works.

Q Do you specifically recall doing that?

A I know that I did it because I printed the letter off -- I mean, I'm assuming that my secretary now that I told her to.

Q Okay. Did you -- after sending that letter, did you ever get a response from Mr. Gipson?

A Not that I recall. And I'm fairly certain that the Court granted my request to withdraw.

Q And I'll just tell you that it did. They did. He did on September 26th of 2012.

A And that's the same day that I sent the letter. I must have come back from court and sent the letter on September 26th.

Q Do you recall telling me -- the Court at the time that you withdrew that Mr. Gipson does suffer from mental illness and that you thought it was a legitimate ground for some type of action?

A I thought that -- he absolutely suffered from a mental illness, and I know because of my -- my work in competency court that those kind of illnesses can cycle; people can be better, and then they can get worse. And given his mental health history, which was legitimate and real and I had documents to prove that, that I thought if that was his grounds, it should be explored.

And I thought it was prudent for the Court to appoint someone to represent him, to make that determination whether or not his mental health history, you know, could have supported a legitimate motion to withdraw his guilty plea. I don't think that something that I could do. I thought the Court needed to appoint someone to make that assessment.

Q Okay. And with respect to -- he made a coercion claim in the PCR that you exerted some type of pressure on him to accept the negotiation the way it was put to him at the time of the plea agreement. Can you address kind of a -- what you did with him at the time that you discussed with him accepting the plea agreement?

A Well, one thing that I am, as a defense attorney, is I am brutally frank. I don't hide the bad things, and I share them. In Kevin's case, there was literally no physical evidence of any kind to tie him to this crime. There were no witnesses. There was no DNA. There was no gun. There was literally nothing except for a statement that Kevin had made when they did the pseudo polygraph examination, which was very difficult.

And the -- the facts of the murder were difficult. You know, she was shot, I think, in the back of the head. There was a lying-in-wait allegation that I was gravely concerned about. And they were essentially going to tie him up with his own words, and I did not think that he would be successful at trial once I lost the right to prevent his statement from being used. And we went pretty hard core trying to prevent the statement from being used. We went after the person who conducted the statement. In fact, I think I got a material witness warrant to get that guy back from Michigan because he was fired or let go by Metro.

So if his statement had been suppressed, I think he probably would've walked free. I don't think the State could've proven their case. But with his statement, I didn't think that we would be successful at trial, and I was worried that with the lying-in-wait allegation and she was a mother and the nature of the shooting, that life without the possibility of parole was a grave concern.

And I'm always worried as well when somebody has a mental illness and it's a factor, that juries are going to want to hang the crazy, scary murder guy, and that's always a concern that I have. And when they consider that when they're making a decision about life without, I think juries typically will hold a mental illness against the defendant. And then finally -- I lost my train of thought, so forget my "finally."

Q When -- when you were discussing the guilty plea agreement with Mr. Gipson, did you discuss with him -- I may have asked you this, and I don't remember. Did you discuss with him the waiver of any appellate rights he would be making by accepting the guilty plea?

A I say the same thing every time, which is, by not going to trial, you lose the right to appeal what happens at trial, mistakes, but you always maintain the right to appeal this document and anything that I have done. You're not going to hurt my feelings. You're not going to embarrass me. If you think that I've done something wrong, you never lose the right to confront about that.

Q And do you remember telling Mr. Gipson that?

A I don't remember independently having a memory of sitting down and talking to him, but I literally say that to every single client.

MR. COLUCCI: I have nothing further.

THE COURT: Cross?

MR. MACDONALD: Thank you, Judge.

CROSS-EXAMINATION

BY MR. MACDONALD:

Q So when you're talking about appealing your performance, you're talking about filing a post-conviction petition, correct?

A Correct.

Q Now, it sounds like you don't remember a lot of the circumstances of this plea; is that -- is that true?

A Yes.

Q Okay. So I want to talk about some -- some of your like habits and practices.

A Sure.

Q During the plea canvass, do you ever supply responses to the defendant? For example, when you're in court doing the arraignment on the

guilty plea and the judge says, is this plea forced or coerced, do you ever tell the -- do you ever whisper to the defendant or supply -- otherwise supply their responses?

A Yeah.

Q You do?

A Sure. Sometimes I'll nod my head and remind them of what we've talked about or if they look to me like they're not sure where -- what's going on, I'll whisper to them and remind them what we discussed. Yes.

Q Okay. Do you feel that practice is coercive?

A No.

Q Why is that?

A Well, because I'm generally responding to something that they've done. Either they looked at me quizzically or they're not sure. Maybe they whispered something. Maybe they're hesitating. And so sometimes I'll nod that they're doing the right thing or if I need to, I'll whisper in their ear, this is the part we talked about, this is where you have to plead guilty. Or sometimes -- and there's all sorts of reasons, but generally I'm responding to body language. If somebody's doing just fine, I don't -- I don't do anything at all. They're doing well. Sometimes I might hold their hand and squeeze them.

Q Okay.

A I may put my arm around them and pat them on the back to let them know that everything's going okay and I'm paying attention. I typically stand right beside them when they're taking a plea unless a court won't let me.

Q Okay. And you talked about the sentencing hearing being quite

lengthy and emotional. So you would agree that a penalty phase hearing would perhaps be even more lengthy and --

A Oh, that would've been brutal.

Q -- and more emotion --

A It would've been awful.

Q And that's -- that's where the State could definitely get its life without?

A I think the life without would've been a combination of the fact that she was ambushed and shot in the back of the head; the fact that she was a mother with, I think, three young children and that -- and then the emotional impact of all the stuff that they presented at the hearing. All those three things together would've been -- I would've been really concerned that I'd have a hard time talking a jury out of life without as well as his mental illness as the icing on that difficult case.

Q So in light of that -- and I realize you don't remember the circumstances of this plea precisely, but do you think that this negotiation is a good negotiation given all of those circumstances?

A Yes.

Q Now, do you recall filing a notice of expert witnesses where you noticed the two physicians or psychiatrists that you talked about, Dr. Slagle and Dr. Nowocki (phonetic)?

A Nwokike.

Q Nwokike.

A I don't recall doing it, but I noticed that I did file it, so --

Q Would you disagree with me that you filed that in April of 2011?

A No.

Q And do you recall when this plea -- when he was arraigned on this plea?

A No, but I could look.

Q Would you disagree that it was about in December of 2011?

A Oh, that sounds about right.

Q Okay. So you were -- you filed many pretrial motions in this case, correct?

A Yes.

Q So you were prepared to go to trial if it came to that?

A Yes.

Q So this isn't a case where you're going to push a plea on a client, if you ever do that, because you're not ready for trial or you have too many balls in the air and you want to get this one done?

A I would -- I appreciate the fact that you said "if you would do that" because I would never do that. I would fall on the sword in front of the Court first and tell them I wasn't ready and why I wasn't ready.

Q That's what I thought.

A I would never push it, so no. I was ready to go to trial. I just didn't think it was in his best interest, and when the -- when it was clear that his statement was going to be able to be used against him, I was gravely concerned about what the outcome would be.

Q So this suppression motion that you filed was probably one of the most important things that happened in this case?

A That is the only evidence that ties him to the crime. The only

evidence. There's literally nothing else.

Q Are there ever circumstances where you coerce a client into a plea?

A No. No.

Q Okay.

A I'll be really strong with them and super frank about what I think is going to happen. I'll get exasperated. I'll bring in as many people as I think could have an impact on someone's decision. If I think that they're not hearing me, I will go to great lengths. I'm not going to -- how would a coerce somebody? I mean, I guess I could physically twist their fingers and cause them pain, but I don't know what I could hold over someone's head. Literally what I'm saying to them is, if you go to trial, the outcome is going to be bad, and this is how bad I think it's going to be.

And I know that a lot of the people that are in Kevin's position feel coerced by the circumstances that they're in, and I get that, because it is. I mean, I'm asking them to choose between really, really bad and bad, and that decision in and of itself is coercive, I suppose, in some -- in some respects, I get how they feel that, but it doesn't change the fact that they have to make that decision.

Q So having a life without hanging over your head is somewhat coercive? That's what you're saying?

A That is massive coercive. That's a very painful place to be.

Q But to be clear, if Mr. Gipson had said, I don't care, I want to go to trial, you would have taken this to trial?

A I do that all the time.

MR. MACDONALD: Nothing further.

MR. COLUCCI: No additional questions.

THE COURT: Ms. Craig --

THE WITNESS: Yes.

THE COURT: -- were you able to communicate with Mr. Gipson?

THE WITNESS: Oh, yeah, he was a lovely man. He was extraordinarily -- probably one of the nicest clients I've ever had. We never had a cross word. He was pleasant. He made clear when he didn't understand things. He was gracious. So, no, I never had any trouble talking to him.

THE COURT: At the time of the actual plea being entered --

THE WITNESS: Uh-huh.

THE COURT: -- if he had any feelings of his inability to understand what was proceeding, possible competency issues as to the plea, would you have continued with the plea?

THE WITNESS: No. I would've stopped, and I probably would not have told the Court or anybody my concern. I probably just would've asked for a delay in order to talk to him, and I would've ordered an internal psyche evaluation. I probably would've had Dr. Slagle go see him again because Slagle had already seen him twice, so he had a history with him. And I would've made sure that we have updated jail records to see if he had any issues in the jail. But if I had any concerns at all, I would not have gone forward because it was something I was watching out for.

THE COURT: The Public Defender's Office has a specific -- I don't want to say program, but a specific set of cases that you oversee; is that

correct?

THE WITNESS: I'm now kind of like the godfather of it. I'm not literally doing it day to day, but I did at the time that Kevin was -- he was my client. I was the competency person --

THE COURT: Okay.

THE WITNESS: -- as far as that goes.

THE COURT: So you kind of handled the cases where individuals had concerns with their mental stability; is that correct?

THE WITNESS: Every single case that went through our office from 2005 to about 2012-ish, I appeared on those people's behalf in competency court.

THE COURT: You've had a lot of experience with regards to individuals with mental health issues?

THE WITNESS: Yes.

THE COURT: Okay. And in this particular case, you had elicited the assistance of Dr. Slagle?

THE WITNESS: Yep.

THE COURT: And you've also noticed another doctor for purposes of going to trial; is that correct?

THE WITNESS: It was his personal physician who had treated him in the past, to establish that he had a mental health history that predated the -- the death. It showed he wasn't making it up.

THE COURT: Okay. With respect to using or investigating information regarding his mental issues, were you of the opinion that there was anything that you failed to do at the time where the Defendant was given an offer to

plea in this case?

THE WITNESS: We got -- we got his psychiatric history from every available source that we were aware of that he had been treated at. We had his school records. We had him evaluated by our own expert. I was contemplating an NGRI, but just couldn't figure out a way to make that work under the factual circumstances that were in this case given the limitations of the NGRI defense.

He's born and raised here, as I recall. I think we even had the Department of Family Services records because he kind of had some difficulties in his childhood. And Judge Barker evaluated those records, and I don't recall offhand what he gave us, but I don't think that there was any other sources of information that we could've tapped that I was aware of with regard to his mental health history and his personal history.

THE COURT: Okay. You were assigned this case from the inception; is that correct?

THE WITNESS: Yes.

THE COURT: And from there being an indictment, this didn't go to preliminary hearing that you remember?

THE WITNESS: I don't remember. I'd have to look through it.

THE COURT: Do you recall the first time you met the Defendant?

THE WITNESS: Yes.

THE COURT: He was in custody?

THE WITNESS: Yes.

THE COURT: Was it in the Justice Court level?

THE WITNESS: Yes.

THE COURT: And did you have -- obviously, did you have a charging document?

THE WITNESS: I don't know that the first time I saw him I actually had the charging document yet. Back in those days, we used to get notice from the jail when someone was arrested on a murder. I may have seen him before. I don't really recall.

THE COURT: Okay.

THE WITNESS: But I do remember seeing him. He was --

THE COURT: So when you -- when the question was asked of you, if you recall how many times you had visited him, would you agree it was multiple times?

THE WITNESS: Oh, yeah.

THE COURT: And you had indicated that -- and sometimes you would check in with him?

THE WITNESS: Yeah.

THE COURT: Kind of just let him know that you're still handling the case?

THE WITNESS: Right.

THE COURT: And then other times you talked about specifics?

THE WITNESS: Right. Sometimes there's not a lot that's happening like when we're getting records.

THE COURT: Uh-huh.

THE WITNESS: I describe it all the time to defendants as, when you see a duck swimming in the water, it looks like nothing's going on on top, but on bottom, the feet are going.

THE COURT: Okay.

THE WITNESS: So my -- my mitigation specialist and my investigator were doing their part collecting records. And then we had a fairly large span of time where we were going hot and heavy after the guy, Jeff Florr, F-L-O-R-R, who had gone -- he was the polygraph guy, had disappeared into Michigan, so I was getting material witness warrants. We were really going hard against that.

So there wasn't a lot specifically that was happening, so I would just check in with him because it was all duck feet under the water, stuff that he really couldn't see or know was happening.

THE COURT: Independent of -- you indicated that he was raised here.

THE WITNESS: Yeah.

THE COURT: Did you have a discussion with family members at all then?

THE WITNESS: Yes. His mother's in the back. We maintained contact with his family. They were gracious and cooperative and very, very helpful, and they were always in court. I can't remember who my mitigation -- I think it was probably Emily, and Emily would maintain direct contact. But I think I might have given -- I typically give parents -- unless they're really dangerous in some way, I usually give them my cell phone number, and they can text me or call me. And I think his mom came in to see me a couple times in my office.

THE COURT: Oftentimes, individuals are handed copies of guilty plea agreements on the day that they enter their plea, and they review it then. Do you recall in this case if on that day that offer was one that was extended to

you for the first time?

THE WITNESS: I have absolutely no memory of it. I really don't.

THE COURT: Okay. Well, let me ask it this way. Under the circumstances of this case, would it be -- would it be -- would you accept a guilty plea agreement in the nature that was being offered here if you had never discussed that with -- with your client?

THE WITNESS: No.

THE COURT: And would there be reason, if you know, for the State to have prepared the guilty plea agreement under these circumstances if you hadn't discussed it with them?

THE WITNESS: Generally what happens is, as we go along, I will -- I can usually look at the case and figure out where it's going, you know, what I might be able to ask for, and I will oftentimes start to gently lead the defendant in that way so that it's not a big shock to them.

THE COURT: Okay.

THE WITNESS: And so we'll talk about, well, what do you think an outcome would be? And then if it's gets closer, I will tell them what I think the State may offer so that it's not -- and I'll tell them, think about it now, think about what you want to say in the event it happens. Because it could happen at the last second, so I want you to think about it and ask me questions. And then --

But what happens is, is that either I will reach out and try to press the State for a negotiation or they'll come to me, but at some point they will make an offer, and I have to talk to Kevin about it because I can't accept it without his permission. Once he accepts it, then I tell the D.A., prepare a

guilty plea agreement.

THE COURT: Okay.

THE WITNESS: Now, sometimes that can all happen very quickly, and I just don't have any independent memory of it.

THE COURT: If your client is -- and under the circumstances, under the type of cases you handle --

THE WITNESS: Uh-huh.

THE COURT: -- if your client is having difficulty understanding the guilty plea agreement on the day that they're asked to sign it, would you -- would you want to proceed further or would you ask the Court for additional time?

THE WITNESS: I'd ask the Court for additional time, and I -- it's rare that they don't give it to me. It would be -- unless it was like the jury's walking in the door, and I don't think that's where we were at in this case. So there would be no reason not to just turn to the judge and ask for a day or two.

THE COURT: And you said it's rare that the Court wouldn't give it to you. Isn't it even common that the Court would even ask if you needed additional time?

THE WITNESS: Yes. If they -- if they saw there was some hesitation, they surely would, but they would have to ask me. I would asking them for it.

THE COURT: Okay.

THE WITNESS: And sometimes, you know, even in -- even literally in court, I'll ask to have the defendant taken back to the room in the -- by the sally ports --

THE COURT: Uh-huh.

THE WITNESS: -- and sit there quietly with them in the room while court goes on to answer questions and see how much -- if I need that kind of time.

THE COURT: Okay.

THE WITNESS: But I don't recall needing to do that in this case.

THE COURT: Mr. Colucci, did you have any questions as a result of my questions?

MR. COLUCCI: No, Your Honor.

THE COURT: Do you have any further questions as a result of my questions?

MR. MACDONALD: Yes, Judge.

THE COURT: Okay.

CROSS-EXAMINATION (CONTINUED)

BY MR. MACDONALD:

Q Can you explain how you typically go through a guilty plea agreement since you don't recall this one specifically.

A If I actually -- sometimes I'll take over a -- like a blank guilty plea agreement because, you know, most of it is routine, and I will leave that with them to read. But if I'm holding the actual guilty plea agreement, I will tell them that the first page is the part that's specific to them. I will tell them that that outlines the specifics of their contract with the State, and I'll point it out to them and read it to them.

The bottom of the first page has some language that usually doesn't apply to my clients. It's something about like multiple DUI's, I think,

or failure to appears or something. My clients aren't usually out of custody, so they're not going to not appear for that, and I'll tell them, that part doesn't apply to you.

Then the next part is the potential penalties, and I'll -- we'll talk about the potential penalties, and I'll explain what they are. And then I think there's a part about if you're not an American citizen, and I'll tell them that part doesn't apply to you. There's a significant chunk that's just routine; it doesn't apply to a lot of my clients.

Then I think it's the waiver of rights. Then there's a part, again, I think, that talks about -- there's another part -- oh, then it will ask -- it'll talk about whether or not, you know, you talked about the elements with your attorney, whether or not you talked about defenses, and I'll remind them that we've been talking about what your defense is going to be almost since the day you were arrested. Here's where we stand today. The elements of murder, we'll go over that again. I usually talk about the elements of murder when they're first arrested and explain how to do premeditation, deliberation and how to get them first in this particular case.

I'll remind them what an element is and what the judge will be asking them. Then it gets to the part where it asks whether they're intox -- under intoxications, and I usually say the judge is going to want to know if you're drunk, high or stupid, and that's what that next part is.

And then -- then I'll explain to them the judge is going to ask how old you are, how far you went in school. If you're concerned, you have questions, I'll be standing right next to you. All you have to do is ask me. And then depending on the judge, I'll explain that either the judge will read

the -- the --

THE COURT: Indictment.

THE WITNESS: -- indictment or he'll ask you if on this day, you did blah, blah, blah, and you'll have to say yes or no. And that's generally the path that I take when I'm going through a guilty plea agreement.

BY MR. MACDONALD:

Q So you would say it's pretty likely that's exactly what you did in this case as well?

A I've been saying the same thing for 17 years, so, yeah, likely that's exactly how it went.

Q And you agree with the judge that you saw him multiple times. Could you possibly estimate how many times?

A No.

Q Would it be more than a dozen?

A Probably.

Q So if he said three or four, that's probably not correct?

A I don't think that's accurate. And also my team goes in as well. I will send over my social worker to do a psychosocial history, to meet with him, to get releases, to talk to him about his family. And sometimes there's stuff maybe that my social worker needs to poke at, you know. So she'll go over multiple times. My investigator will have gone over and had personal discussions with him, although there was less in this case. We were really spending a lot of time finding that Florr guy and attacking the -- his statement.

MR. MACDONALD: Nothing further, Judge.

MR. COLUCCI: Nothing further.

THE COURT: I want to ask one additional question.

THE WITNESS: Sure.

THE COURT: I neglected to do so. I started to, but -- you said that you had a pretty good relationship, discussion relationship with his family.

THE WITNESS: Uh-huh.

THE COURT: In some cases, oftentimes individuals will ask time to speak to their family before they'll enter into negotiations. Do you recall if that was something that happened in this case?

THE WITNESS: I don't recall other than he asked to speak to his mom. I know they were in contact, and I know I was talking to his family. But they were really concerned about whether or not he was doing the right thing, and I made sure that they understood, and I answered their questions.

THE COURT: So you conversed with them --

THE WITNESS: I had his permission to talk to them.

THE COURT: When you say doing the right thing, you're talking about the plea?

THE WITNESS: Yes.

THE COURT: So you believe you conversed with --

THE WITNESS: Well, I know I did.

THE COURT: -- his family about it?

THE WITNESS: Oh, I know I did.

THE COURT: Okay. Okay. All right. Any questions as a result of that?

MR. MACDONALD: No.

MR. COLUCCI: No.

THE COURT: Okay. Ms. Craig, thank you so much. You may step down.

THE WITNESS: You're welcome. Good to see you.

THE COURT: You, too.

MR. COLUCCI: We have no additional witnesses.

THE COURT: State?

MR. MACDONALD: No witnesses.

THE COURT: Do you want to argue?

MR. COLUCCI: Can we approach?

THE COURT: Sure.

[Bench conference - not transcribed]

THE COURT: Okay. Mr. Colucci, did you have any further argument?

MR. COLUCCI: Your Honor, after our discussion at the bench, I am just going to submit it on the pleadings.

MR. MACDONALD: The State concurs.

THE COURT: Okay. Mr. Gipson?

THE DEFENDANT: Yes.

THE COURT: Your petition for a writ of habeas corpus, at this point in time, I'm going to deny it on the two issues, the issue with respect to whether or not there was sufficient information -- or investigation into -- into your mental issue background. I believe that the Public Defender in this case expended their resources with -- quite honestly, Ms. Craig is their top person that handles those type of cases, so I'm very confident based on her testimony here today that she did what she could, to the extent that she could and used whatever information that she had to the extent that she could.

So for that reason, I'm denying that.

As to any claims that you were coerced in your plea, I believe that you understood your plea. I don't believe that Ms. Craig had coerced you. And that's why I asked the questions whether or not you discussed it -- or she discussed it with your family and that you knew what you were doing. It was in your best interest to enter into this.

You got a deal that was probably pretty favorable to you under the circumstances; that it was -- I believe under those circumstances that she was highly effective in obtaining that and that any advice that she had addressed you with, I believe, was probably good advice. I believe also that you knowingly and freely and voluntarily entered into this plea under that advice.

Also just as a quick caveat with regards to her representation that she felt that motion to withdraw his plea should've been addressed with another attorney to address those issues, I believe that she -- my questioning her with respect to her addressing any issue that would have come to light with her, she did so. I believe that she would have informed the Court if there was any question of incompetency at the time of your plea.

And so kind of in a roundabout way, that issue, I believe, is satisfied at this point, and I don't believe that any attorney would've been able to bring in another case with that under those circumstances. So we address that in kind of in a roundabout way. So for that reason I'm denying your motion, sir. Good luck in your future. Okay? All right.

Anything further from the parties?

MR. COLUCCI: No, Your Honor.

THE COURT: I'm going to ask the State to prepare the motion -- I mean, prepare the order.

MR. MACDONALD: Yes, sir.

THE COURT: Okay. Thank you. All right. We're off the record on this.

[Proceedings concluded at 10:57 a.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-visual recording of the proceeding in the above entitled case to the best of my ability.

Renee Vincent

Renee Vincent, Court Recorder/Transcriber

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN MARQUETTE GIPSON, A/K/A KEVIN MARQUETT GIPSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 69174
District Court Case No. C264079

FILED
JAN 30 2017
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 28th day of December, 2016.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this January 24, 2017.

Elizabeth A. Brown, Supreme Court Clerk

By: Dana Richards
Deputy Clerk

10C264079
CCJA
NV Supreme Court Clerks Certificate/Judgn
4618719

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEVIN MARQUETTE GIPSON, A/K/A KEVIN MARQUETT GIPSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69174

FILED

DEC 28 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Kevin Gipson appeals from the denial of his postconviction petition for a writ of habeas corpus filed on June 6, 2014. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Gipson filed his petition on June 6, 2014, more than two years after entry of the judgment of conviction on March 13, 2012.[1] Thus, Gipson's petition was untimely filed. *See* NRS 34.726(1). Gipson's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

In its response and motion to dismiss, the State argued the petition was procedurally barred. Gipson responded and argued he had good cause for failure to file a timely petition because his counsel was appointed only a few weeks before his petition was due and he was unaware the filing deadline for the petition was only a few weeks away. The district court considered these arguments and denied the State's motion to dismiss concluding Gipson demonstrated good cause to overcome

[1]No direct appeal was taken.

the procedural bars.[2] The district court then denied the petition on its merits.

On appeal, Gipson claims the district court erred by denying his ineffective assistance of counsel claims because Gipson's diminished mental abilities required extraordinary legal assistance.[3] The State argues the denial of the petition should be upheld on other grounds. Specifically, the State asserts the district court should have granted its motion to dismiss the petition as untimely filed.

We agree with the State. Application of the procedural bars is mandatory. *See State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). Counsel's failure to take notice of the filing deadline is not an impediment external to the defense and therefore, this could not constitute good cause to overcome the procedural bar. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Further, even assuming counsel's failure to take notice of the filing deadline could provide good cause, Gipson failed to demonstrate good cause for the entire length of his delay, because he did not file his petition within one year of counsel being appointed.[4] *Id.* Therefore, we conclude the district court erred by denying the State's motion to dismiss and determining Gipson

---

[2]Hon. David B. Barker reviewed the motion to dismiss and denied the motion.

[3]Gipson also claimed the district court erred by denying his claim that he was not competent to plead guilty because the standard for competency for pleading guilty is different than the standard for competency for going to trial. Gipson abandoned this claim in his reply brief.

[4]Counsel was appointed on February 11, 2013.

demonstrated good cause to overcome the procedural bar. Because the district court reached the correct result, albeit for the wrong reasons, we affirm the denial of Gipson's appeal. *See Wyatt v. State*, 86 Nev. 294, 468 P.2d 338, 341 (1970). Accordingly, we

ORDER the judgment of the district court AFFIRMED.[5]

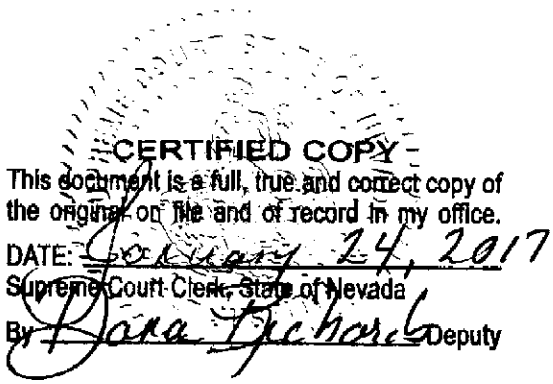
_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Silver

cc: Hon. William D. Kephart, District Judge
Carmine J. Colucci & Associates
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

[5]In light of this decision we decline to address Gipson's claims raised on appeal.


CERTIFIED COPY
This document is a full, true and correct copy of
the original on file and of record in my office.
DATE: January 24, 2017
Supreme Court Clerk, State of Nevada
By Dana Richards Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN MARQUETTE GIPSON, A/K/A KEVIN MARQUETT GIPSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 69174
District Court Case No. C264079

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: January 24, 2017

Elizabeth A. Brown, Clerk of Court

By: Dana Richards
Deputy Clerk

cc (without enclosures):
Hon. William D. Kephart, District Judge
Clark County District Attorney
Attorney General/Carson City
Carmine J. Colucci & Associates

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the REMITTITUR issued in the above-entitled cause, on JAN 3 0 2017.

HEATHER UNGERMANN
Deputy District Court Clerk

RECEIVED
JAN 2 7 2017
CLERK OF THE COURT

29

Case No. C264079
Dept. No. 19

Electronically Filed
02/28/2017 11:51:51 AM

CLERK OF THE COURT

IN THE Eighth JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF Clark

Kevin Gipson #1082776
Petitioner,

v.

Brian Williams, Warden
Respondent.

PPOW
DA
PP

PETITION FOR WRIT OF HABEAS CORPUS (POSTCONVICTION)

INSTRUCTIONS:

(1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.

(2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

(3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

(4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.

(5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.

(6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

(7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: High Desert State Prison (H.D.S.P.) Clark County

2. Name and location of court which entered the judgment of conviction under attack: Dist. Court XJEX

3. Date of judgment of conviction: March 13, 2017

4. Case number: C264079

5. (a) Length of sentence: Life with a possible eligibility of twenty(20) years w/ a consecutive term of (240) two hundred forty months max and (96) month minimum for use of a deadly weap.

-1-

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CLERK OF THE COURT

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(b) If sentence is death, state any date upon which execution is scheduled:....

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion?

Yes ..... No ✓

If "yes," list crime, case number and sentence being served at this time: ..... N/A .....

.....

.....

7. Nature of offense involved in conviction being challenged: Murder with Use of a deadly Weapon (Felony - NRS 200.010, 200.030, 193.165)

8. What was your plea? (check one)

(a) Not guilty .....

(b) Guilty ✓

(c) Guilty but mentally ill .....

(d) Nolo contendere .....

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details: ..... N/A .....

.....

10. If you were found guilty or guilty but mentally ill after a plea of not guilty, was the finding made by: (check one)

(a) Jury ..... N/A

(b) Judge without a jury .....

11. Did you testify at the trial? Yes .....No ..... N/A N/A

12. Did you appeal from the judgment of conviction? Yes ✓ No .....

13. If you did appeal, answer the following:

(a) Name of court: Nevada Supreme Ct.

(b) Case number or citation: 62071

(c) Result: Denied

(d) Date of result: Dec. 12, 2013

(Attach copy of order or decision, if available.)

14. If you did not appeal, explain briefly why you did not: N/A Trial counsel failed to file appeal following sentencing & appellate counsel Calvcci #0881 NEVER Argued/raised Direct appeal issue Counsel is in this petition.)

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal? Yes ...✓... No .....

16. If your answer to No. 15 was "yes," give the following information:

(a) (1) Name of court: District Court XIX

(2) Nature of proceeding: Postconviction petition for writ of Habeas Corpus Atty: Counsel Cesare Calvcci #0881

(3) Grounds raised: 1) counsel was ineffective for failing to advise petitioner of right to appeal adverse pretrial ruling & district ct. 2) petitioner was coerced into plea agreement by trial counsel. Counsel failed to assert mental illness of petitioner. 3) Trial

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ...✓... No .....

(5) Result: Denied

(6) Date of result: Oct. 22, 2015

(7) If known, citations of any written opinion or date of orders entered pursuant to such result: that counsel was not ineffective

(b) As to any second petition, application or motion, give the same information:

(1) Name of court: N/A

(2) Nature of proceeding: N/A

(3) Grounds raised: N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes N/A No .....

(5) Result: N/A

(6) Date of result: N/A

(7) If known, citations of any written opinion or date of orders entered pursuant to such result: N/A

(c) As to any third or subsequent additional applications or motions, give the same information as above, list them on a separate sheet and attach.

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?

(1) First petition, application or motion? Yes ..... No ..N/A...

Citation or date of decision: .....

(2) Second petition, application or motion? Yes ..... No .....

Citation or date of decision: .....

(3) Third or subsequent petitions, applications or motions? Yes ..... No .....

Citation or date of decision: .....

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) because trial and appellate counsel failed to file direct appeal, timely Notice or Locate issues or grounds that warrant relief.

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

(a) Which of the grounds is the same: ..N/O.....

.....

(b) The proceedings in which these grounds were raised: ..N/A.....

.....

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) ..N/A.....

.....

18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) ..Appellate counsel never argued ground 1

in that petition I have not taken any further action on behalf of petitioner though opted to do so by New Sup. Ct. #69174, ~~[illegible]~~, Dec, 08, 2015.

19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) this issue has been raised by appellate counsel and was waived by district Ct.

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes ..... No ...✓...?

If yes, state what court and the case number: n/a

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: Trial Counsel -

Appellate Counsel - Carmine J. Colucci, Chtd.

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes ..... No ...✓...

If yes, specify where and when it is to be served, if you know: n/a

23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

(a) Ground ONE: Petitioner was denied effective assistance of counsel and appellate counsel as guaranteed by the 5th, 6th, and 14th amendments of the U.S. Constitution, when petitioner following sentencing, informed counsel he wanted her to file an appeal.

Supporting FACTS (Tell your story briefly without citing cases or law.): Further more, appellate counsel failed to raise this issue in petition for writ of Habeas Corpus.

On February 10th, 2012 petitioner was sentenced to the Nevada Department of Corrections (N.D.O.C) to a term of Life with a possibility of parole after (20) twenty years and a consecutive (8) eight to (20) twenty years for the Deadly weapon. Enhancement. After sentencing, petitioner requested counsel, Kristy Craig, to file an appeal on his behalf.

But petitioner being ignorant of the laws did not know by which means counsel would take to file an appeal on or about the stricked (30) thirty day deadline of the notice of appeal that needed to be filed with the district court or Nev. Sup. Ct.

And by Sentencing counsel NOT fulfilling her duty and obligations as requested by her client, petitioner was timebarred under NRAP 4(b) and denied A direct appeal by Nev. Sup. Ct on Dec. 20, 2012. The reason being untimely filed.

Flores v. Ortega (U.S Supreme Ct) states that Counsel is obligated, and required by law, to file an appeal on her clients behalf if it is requested.

Furthermore, when appellate counsel was appointed to represent petitioner in a post conviction for writ of

Cont. case of around 1...

habeas Corpus on Febuary, 11, 2013, he failed to raise this issue of trial counsel's failure to file a direct appeal. Instead, apellate counsel merely raised claims in the petition that posed no true merit ~~that could~~ sufficient enough to warrent relief.

And for those reasons stated above, petitioner request relief or in the alternative request an evidentiary hearing so that he may recieve a direct appeal under Lozada vs. State, 110 Nev. 349, 352; 871 p.2d 944, 946 (1994)

(7)

(b) Ground TWO: Petitioner is being denied of his 5th and 14th amendment right to due process of law, by N.D.O.C (Nevada Department of Corrections) to deduct from the minimum (and maximum) term of his sentence the good time required by law.

Supporting FACTS (Tell your story briefly without citing cases or law.): His crime was commited on April 28, 2010. And petitioner was sentenced to (2) two consecutive ~~[illegible]~~ sentences for Murder and the deadly weapon (Felony - NRS 200.010, 200.030, 193.165) Under NRS 209.4465 (1997), Mr. Gipson is entitled to have 20 days per month of Statutory good time deducted from the minimum (and maximum) term of his sentence. The N.D.O.C has refused and/or failed to deduct that good time from his sentence. Pursuant to N.R.A.P Rule 33(3)(c), I rely upon the decision of the Nv. Supreme Ct in Wasleyde Smith v. Warden, Ely State Prison, case No# 66159, as persuasive argument and authority that petitioner is entitled to relief.

(c) Ground THREE: Petitioner is being denied his Constitutional right to be free from ex post facto laws, under the exclusionary provisions of Section 8 of N.R.S. 209.4465 (2007) to deny said petitioner his (20) twenty days of

Supporting FACTS (Tell your story briefly without citing cases or law.): statutory good time per month in the twenty (20) days per month that is supposed to be deducted from the MINIMUM (and maximum) terms of his sentence.

He incorporates all the facts contained in ground 1 & 2 of this petition for relief.

The Nevada department of Corrections (N.D.O.C) appears to be denying (20) days a month of statutory good time to be deducted from the minimum (and maximum) term of petitioner's sentence, based on the exclusionary provisions of Section 8 of N.R.S. 209.4465

This is a violation of petitioners ex post facto right(s) and equal protection rights under the 5th and 14th amendments of the Nevada and U.S. Constitution.

Petitioner relys upon the decisions in the following cases to support his petition in this ground for relief. Weaver v. Graham, 450 U.S. 24 (1981); Stevens v. Nevada State Prison, 969 P.2d 945 (Nev. 1991); and Goldsworthy v. Hannifin, 468 P.2d 350 (1970).

This Ground is based in accordance with Article 1 of the U.S. Constitution and Nevada Constitution.

WHEREFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

EXECUTED at **High Desert State Prison** on the ____ day of the month of _____, 20 17.

X _____

* Kevin Gipson # 1082776
High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

VERIFICATION

Under penalty of perjury, the undersigned declares that the undersigned is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

X _____

* Kevin Gipson # 1082776
High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

AFFIRMATION (Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceeding PETITION FOR WRIT OF HABEAS CORPUS filed in District Court Case Number C-16-317079 Does not contain the social security number of any person.

X _____

* Kevin Gipson # 1082776
High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

CERTIFICATE OF SERVICE BY MAIL

I, Kevin Gipson, hereby certify pursuant to N.R.C.P. 5(b), that on this ____ day of the month of _____, 20 17, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

D.W. Neven, Warden High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070

Attorney General of Nevada
100 North Carson Street
Carson City, Nevada 89701

Clark County District Attorney's Office
200 Lewis Avenue
Las Vegas, Nevada 89155

X _____

* Kevin Gipson
High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

* Print your name and NDOC back number and sign

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN MARQUETTE GIPSON, A/K/A KEVIN MARQUETT GIPSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69174

FILED

DEC 0 8 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF LIMITED REMAND FOR APPOINTMENT OF COUNSEL

This is a pro se appeal from an order denying a post-conviction petition for a writ of habeas corpus. Appellant was represented by appointed counsel in the proceedings below. We remand this appeal to the district court for the limited purpose of securing counsel for appellant. The district court shall have 30 days from the date of this order to appoint counsel for appellant. Within 5 days from the date of appointment, the district court clerk shall transmit to the clerk of this court a copy of the district court's written or minute order appointing appellate counsel.

It is so ORDERED.[1]

/ Hardesty, C.J.

[1]The pro se motion to appoint counsel filed on December 2, 2015, is denied as moot.

cc: Hon. William D. Kephart, District Judge
Kevin Marquette Gipson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

APPL

Kevin Gipson #1082776
NAME

H.D.S.P. P.O. Box 650
ADDRESS

Indian Springs, NV 89070
CITY, STATE, ZIP CODE

x
TELEPHONE

IN PROPER PERSON

DISTRICT COURT
Clark COUNTY, NEVADA

Kevin Gipson
Plaintiff,
vs.
Warden, Brian Williams
Defendant

Case No.: C264079

Dept. No.: 19

APPLICATION TO PROCEED INFORMA PAUPERIS
(Filing Fees/Service Only)

Pursuant to NRS 12.015, and based on the following Affidavit, I request permission from this Court to proceed without paying court costs or other costs and fees as provided in NRS 12.015, because I lack sufficient financial ability.

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Civil-IFP Costs/Fees

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AFFIDAVIT

STATE OF NEVADA)
) **ss.**
COUNTY OF CLARK)

I, Kevin Gipson, after being duly sworn, depose and state as follows:

I wish to file with this Court the pleading submitted with this Application. I cannot pay the filing fees and costs of this action because I lack sufficient income, assets, or other resources. Including myself, there are N/A adults and N/A children age(s) _____ in my household.

My total monthly income is:

From all sources including employment, self-employment, social security, child support, etc $ 0

Any other household income from another member of the household is $ 0

My employer is N/A located at N/A, my job title is N/A.

The following represents a list of all of my assets and their value:

Automobile N/A YEAR, MAKE, AND MODLE	Value $ 0	Loan Balance $ 0
Mobile Home, House or Other Real Estate N/A SIZE, TYPE, AND YEAR	$ 0	$ 0
Bank Accounts	Value	Loan Balance
N/A NAME OF BANK AND TYPE OF ACCOUNT	$ 0	$ 0
N/A NAME OF BANK AND TYPE OF ACCOUNT	$ 0	$ 0
Other N/A DESCRIPTION	$ 0	$ 0

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N/A	$ 0	$ 0
N/A	$ 0	$ 0

The following represents my total monthly expenses:

Rent or Mortgage		$
Phone, Gas, Electricity, and Other Utilities		$
Food		$
Child Care		$
Insurance		$
Medical		$
Transportation		$
Other: Auto Insurance		$
None		$
TOTAL MONTHLY EXPENSES		$

I request the Court hold a hearing on this Application if the Court is inclined to deny same, so that I may testify as to my indigent status. I declare under penalty of perjury that the foregoing is true and correct.

DATED this _____ day of _____, 20_____.

X _____
(Signature)

Kevin Gipson #1082776

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APPL

Vheun Gibson #1082776
NAME

H.D.S.P. P.O. Box 650
ADDRESS

Indian Springs, NV 89070
CITY, STATE, ZIP CODE

X
TELEPHONE

IN PROPER PERSON

DISTRICT COURT
Clark COUNTY, NEVADA

Vheun Gipson
Plaintiff,
vs.
Warden, Brian Williams
Defendant

Case No.: C264079

Dept. No.: 19

ORDER TO PROCEED IN FORMA PAUPERIS
(Filing Fees/Service Only)

Upon consideration of _____'s Application to Proceed in Forma Pauperis and it appearing that there is not sufficient income, property, or resources with which to maintain the action and good cause appearing therefore:

IT IS HEREBY ORDERED,

1. That _____, _____, shall be permitted to proceed in Forma Pauperis with this action as permitted by NRS 12.015.

2. That _____ shall proceed without the prepayment costs or fees or the necessity of giving security, and the Clerk of the Court may file or issue any necessary writ, pleading or paper without charge.

3. That the Sheriff or other appropriate officer within this State shall make personal service of any necessary writ, pleading or paper without charge.

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4. That if the _____, _____, prevails in this action, the Court shall enter an Order pursuant to NRS 12.015 requiring the opposing party to pay into the court, within five (5) days, the costs which would have been incurred by the prevailing party, and those costs must then be paid as provided by law.

. **IT IS HEREBY ORDERD** that _____ 's request to waive fees and costs is **DENIED** for the following reason:

A. _____ The Party is not indigent.

B. _____ Other: _____

_____

DATED this _____ day of _____, 20___.

_____
DISTRICT COURT JUDGE

Respectfully submitted by:

_____
Signature

_____
PRINT NAME

_____
ADDRESS

_____
CITY, STATE, ZIP CODE

_____
TELEPHONE

IN PROPER PERSON

CERTIFICATE OF SERVICE BY MAILING

I, Kevin Gipson, hereby certify, pursuant to NRCP 5(b), that on this ____ day of _____, 2017, I mailed a true and correct copy of the foregoing, "Application to Proceed in forma pauperis"

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

Warden, Brian Williams
P.O. Box 650
Indian Springs, NV 89070

Attny General of Nev
100 North Carson St.
Carson City, NV 89701

Clark County D.A's Office
200 Lewis Ave
Las Vegas, NV 89155

CC:FILE

DATED: this ____ day of _____, 2017.

/s/
Kevin Gipson #1082776
/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding App. to proceed in forma pauperis for Writ of Habeas Corpus
(Title of Document)

filed in District Court Case number C264075

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

-OR-

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

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

(State specific law)

-or-

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

X
Signature

6/17
Date

Kevin Gipson
Print Name

Application to proceed in forma pauperis
Title

Kevin Closson # 1082776
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

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02/17/2017
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ZIP 89101
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Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89155

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FILED

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

KEVIN M GIPSON,

Petitioner,

vs.

STATE OF NEVADA,

Respondent,

Case No: 10C264079
Department 19

ORDER FOR PETITION FOR WRIT OF HABEAS CORPUS

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on February 28, 2017. The Court has reviewed the Petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order, answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's Calendar on the 5th day of June, 2017, at the hour of 8:30 A.M. o'clock for further proceedings.

10C264079
OPWH
Order for Petition for Writ of Habeas Corpu
4629209

District Court Judge

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CLERK OF THE COURT

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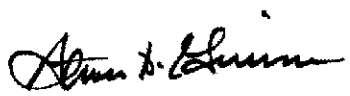

CLERK OF THE COURT

RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
STEVEN OWENS
Chief Deputy District Attorney
Nevada Bar #004352
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

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

Defendant.

CASE NO: 10C264079

DEPT NO: XIX

STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS

DATE OF HEARING: JUNE 5, 2017
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through STEVEN OWENS, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Petition For Writ Of Habeas Corpus.

This Response is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

///

///

///

///

POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On April 28, 2010, Defendant Kevin Marquette Gipson was charged by way of Indictment with one count of Murder With Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165). On December 7, 2011, the parties informed the District Court that the matter was resolved via negotiations. A Guilty Plea Agreement was filed in open court and Defendant entered a plea of guilty to the charge within the Indictment. Within the Guilty Plea Agreement, the parties stipulated to recommend a sentence of 20 years to life in the Nevada Department of Corrections and the State retained the right to argue for a term of not less than 4 to 8 years for use of a deadly weapon.

Defendant was present with counsel for sentencing on February 10, 2012. The District Court adjudicated him guilty and sentenced him to a term of 20 years to life, plus a consecutive term of 96 to 240 months for use of a deadly weapon, with 686 days credit for time served. The Judgment of Conviction was filed March 13, 2012. Defendant did not file a timely direct appeal.

Defendant filed a Pro Per Motion to Withdraw Plea on September 5, 2012. The District Court denied the motion on September 26, 2012.

On October 15, 2012, Defendant filed a Pro Per "Ex Parte Motion for Appointment of Counsel and Request for Evidentiary Hearing." The State filed its Opposition on November 2, 2012. On November 5, 2012, Defendant filed a Pro Per "Memorandum of Points and Authorities Facts of the Case." That Memorandum sought to file a direct appeal and the Memorandum was transmitted to the Nevada Supreme Court as a Notice of Appeal. On December 20, 2012, the Nevada Supreme Court dismissed Defendant's appeal.

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

///

Defendant, through counsel, filed his first Post-Conviction Petition for Writ of Habeas Corpus and Points and Authorities in support of his Petition on June 6, 2014. The State filed a Response and Motion to Dismiss on June 13, 2014. Defendant filed a Reply on August 7, 2014. The District Court denied the State's Motion to Dismiss and ordered briefing on the merits.

Defendant filed a Supplemental Post-Conviction Petition for Writ of Habeas Corpus and Supplemental Points and Authorities on December 15, 2014. The State filed its Response on February 24, 2015.

On September 10, 2015, the District Court held an evidentiary hearing, where Defendant and his former counsel, Christy Craig, Esq., testified. At the conclusion of the hearing, the District Court denied Gipson's Petition. It issued its Findings of Fact, Conclusions of Law, and Order reflecting its oral pronouncement on October 22, 2015.

Defendant filed a Notice of Appeal from the denial of his Petition on November 12, 2015. The Supreme Court of Nevada affirmed the denial of Defendant's first Petition for Writ of Habeas corpus. Remittitur issued on January 24, 2017.

Defendant filed the instant second Petition for Writ of Habeas corpus on March 6, 2017. The State herein responds.

ARGUMENT

I. DEFENDANT'S PETITION IS TIME BARRED UNDER NRS 34.726

Defendant's Petition for Writ of Habeas Corpus is time barred with no good cause shown for delay. Pursuant to NRS 34.726:

> 1. Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year of the entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the Supreme Court issues its remittitur. For the purposes of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court:
> (a) That the delay is not the fault of the petitioner; and
> (b) That dismissal of the petition as untimely will unduly prejudice the petitioner.

Defendant's petition does not fall within this statutory time limitation. The Supreme Court of Nevada has held that NRS 34.726 should be construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873, 34 P.3d 519, 528 (2001). As per the language of the statute, the one-year time bar prescribed by NRS 34.726 begins to run from the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

The one-year time limit for preparing petitions for post-conviction relief under NRS 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 53 P.3d 901 (2002), the Nevada Supreme Court rejected a habeas petition that was filed two days late despite evidence presented by the defendant that he purchased postage through the prison and mailed the Notice within the one-year time limit.

The Judgment of Conviction was filed in this case on March 13, 2012. Accordingly, Defendant had until March 13, 2013, to file a timely post-conviction Petition. Defendant's instant Petition was not filed until March 6, 2017. Absent a showing of good cause for this delay, the court has a duty to apply the procedural bars and Defendant's Petition must be denied because of its tardy filing.

II. DEFENDANT'S PETITION IS SUCCESIVE

Defendant's second Petition should also be denied pursuant to NRS 34.810 as it is successive. Pertinent portions of NRS 34.810 state:

> 2. A second or successive petition must be dismissed if the judge or justice determines that it fails to allege new or different grounds for relief and that the prior determination was on the merits or, if new and different grounds are alleged, the judge or justice finds that the failure of the Defendant to assert those grounds in a prior petition constituted an abuse of the writ.
>
> 3. Pursuant to subsections 1 and 2, the petitioner has the burden of pleading and proving specific facts that demonstrate:
>
> (a) Good cause for the petitioner's failure to present the claim or for presenting the claim again; and
>
> (b) Actual prejudice to the petitioner.

NRS 34.810(2), (3).

In Lozada v. State, the Nevada Supreme Court stated: "Without such limitations on the availability of post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-conviction remedies. In addition, meritless, successive and untimely petitions clog the court system and undermine the finality of convictions." 110 Nev. 349, 358, 871 P.2d 944, 950 (1994). The Nevada Supreme Court recognizes that "[u]nlike initial petitions which certainly require a careful review of the record, successive petitions may be dismissed based solely on the face of the petition." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995).

Defendant filed his first Petition on June 6, 2014. The District Court ultimately denied this first Petition on the merits. The denial of Defendant's Petition was affirmed. Gipson v. State, Docket No. 69174 (Order of Affirmance, December 28, 2016). Defendant then filed this second Petition on March 6, 2017.

III. DEFENDANT FAILS TO SHOW GOOD CAUSE AND PREJUDICE TO OVERCOME PROCEDURAL BARS.

In its decision affirming the denial of the first Petition, the Nevada Supreme Court found that the District Court erred in reaching the merits of Defendant's first petition and should have dismissed it due to procedural default. Id. "The law of a first appeal is law of the case on all subsequent appeals in which the facts are substantially the same." Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). "The doctrine of the law of the case cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings." Id. at 316, 535 P.2d at 799. Under the law of the case doctrine, issues previously decided on direct appeal may not be reargued in a habeas petition. Pellegrini v. State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001) (citing McNelton v. State, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, this Court cannot overrule the Nevada Supreme Court. NEV. CONST. Art. VI § 6. In his first Petition, which was also untimely, Defendant argued that the

ineffective assistance of appellate counsel constituted good cause for his delay and caused him prejudice. Defendant raises the same claim in this second Petition. As the Nevada Supreme Court rejected these arguments on appeal, the law of the case is that the alleged ineffectiveness of appellate counsel does not satisfy the good cause requirement for delay. Therefore, this petition ought to be dismissed as untimely and successive without good cause for the procedural defects.

IV. APPLICATION OF THE PROCEDURAL BARS IS MANDATORY.

The Nevada Supreme Court has specifically found that the district court has a duty to consider whether the procedural bars apply to a post-conviction petition and not arbitrarily disregard them. In State v. Dist. Ct. (Riker), 121 Nev. 225, 112 P.3d 1070 (2005), the Court held that "[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory," and "cannot be ignored when properly raised by the State." Id. at 231, 233, 112 P.3d at 1074, 1075. There, the Court reversed the district court's decision not to bar the defendant's untimely and successive petition:

> Given the untimely and successive nature of [defendant's] petition, the district court ***had a duty imposed by law*** to consider whether any or all of [defendant's] claims were barred under NRS 34.726, NRS 34.810, NRS 34.800, or by the law of the case . . . [and] the court's failure to make this determination here constituted an arbitrary and unreasonable exercise of discretion.

Id. at 234, 112 P.3d at 1076 (emphasis added). The Court justified this holding by noting that "[t]he necessity for a workable system dictates that there must exist a time when a criminal conviction is final." Id. at 231, 112 P.3d 1074 (citation omitted); see also State v. Haberstroh, 119 Nev. 173, 180-81, 69 P.3d 676, 681-82 (2003) (wherein the Nevada Supreme Court held that parties cannot stipulate to waive, ignore or disregard the mandatory procedural default rules nor can they empower a court to disregard them).

In State v. Greene, the Nevada Supreme Court reaffirmed its prior holdings that the procedural bars are mandatory when it reversed the district court's grant of a post-conviction petition for writ of habeas corpus. See State v. Greene, 129 Nev. ___, 307 P.3d 322 (2013). There, the Court ruled that the defendant's petition was "untimely, successive, and an abuse

of the writ" and that the defendant failed to show good cause and actual prejudice. Id. 307 P.3d at 324. Accordingly, the Court reversed the district court and ordered the defendant's petition dismissed pursuant to the procedural bars. Id. 307 P.3d at 323.

As explained above, Defendant's Petition is procedurally barred under NRS 34.810 and 34.826 and therefore must be dismissed.

V. DEFENDANT'S REQUEST THAT HIS GOOD TIME CREDITS BE RE-CALCULATED MUST BE DISMISSED.

NRS 34.738(3) provides:

> A petition must not challenge both the validity of a judgment of conviction or sentence and the computation of time that the petitioner has served pursuant to that judgment. If a petition improperly challenges both the validity of a judgment of conviction or sentence and the computation of time that the petitioner has served pursuant to that judgment, the district court for the appropriate county shall resolve that portion of the petition that challenges the validity of the judgment of conviction or sentence and dismiss the remainder of the petition without prejudice.

Since Defendant is challenging both his judgment of conviction and the computation of his credit for good time, NRS 34.738(3) requires the court to resolve only that portion of Defendant's petition which challenges the validity of the judgment of conviction or sentence, and dismiss the remainder of the petition without prejudice. As such, claims two and three, which questions whether his credit for good time is correct, must be dismissed at this time.

CONCLUSION

For the forgoing reasons, the State respectfully requests that Defendant's Petition for Writ of Habeas Corpus be DENIED.

DATED this 18th day of April, 2017.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #1565

BY _____
STEVEN OWENS
Chief Deputy District Attorney
Nevada Bar #004352

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing State's Response to Defendant's Petition For Writ Of Habeas Corpus was made this 27th day of April, 2017, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

Kevin Marquette Gipson, BAC #1082776
High Desert State Prison
P.O. Box 650
Indian Springs, Nevada 89070-0650

BY: _____
Theresa Dodson
Secretary for the District Attorney's Office

ms/SO/td/dvu

Electronically Filed
6/8/2017 10:51 AM
Steven D. Grierson
CLERK OF THE COURT

RSPN TO STATE

Kevin M. Gipson
H.D.S.P
P.O. Box 650
Indian Springs, NV 89070

DISTRICT COURT,
CLARK COUNTY, NV

Kevin M. Gipson, #1582393
petitioner

-vs-

State of Nevada,
Plaintiff/
Brian Williams, respondent

Case #: 10C264079
Dept No: XIX (19)

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CLERK OF THE COURT

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CLERK OF THE COURT

RESPONSE TO STATES OPPOSITION TO PETITIONERS WRIT OF HABES CORPUS (POST-CONVICTION) filed March 6th 2017.

Comes Now, petitioner Kevin Gipson, in proper person (prose), files this response to the States Opposition motion.

This response is provided and based on all papers, pleadings and records on file herein.

Kevin Gipson #1582393
aided by
Jail house lawyer

(7)

The State alleges that the Honorable District Court should summarily dismiss Mr. Gipson's petition due to him being time barred under NRS. 34.726., because he is w/o good cause or legetimate reason for his delay in filing the instant petition.

Petitioner responds as follows...

In That he IS NOT timebarred as the State alleges, because this honorable court heard his petition (filed previously June, 6, 2014), though his his Judgement of Conviction (J.O.C.) had been filed two(2) years prior, March, 13, 2012. That is not to excuse Mr. Gipson possible delay, but it's clear that this Court had found it proper to hear the petition based on the merits in 2014, instead of barring the petition from being filed at all.

Furthermore, petioner WAS made reasonable effort whereas in the first petion, Mr. Gipson was represented by counsel, but now is represented without one. He is also unqualified and uneducated, is a documented BIPOLAR and SCHIZOPHRENIC patient who is currently being prescribed and taking OLANZAPINE & BENADRYL for treatment. IF this Honorable Court was to excuse any possible delay on Mr. Gipson's part, it would

(1)

be doing so in good faith, ultimately avoiding a total miscarriage of Justice. Therefore, if this Honorable Court didn't find it suitable to prohibit Mr. Gipson First petition from being heard before in June 2014, where he was afforded counsel, then petitioner hopes and prays this Court doesn't do so now, especially where Mr. Gipson is without Counsel this time, but is simply a medical and psychotic patient, attempting to the best of his ability, to represent hiself and reach a favorable atcome in his case.

And so petitioner prays his petition his heard on it's merits.

Secondly, the State alleges that Mr. Gipson's petition is succesive, pursuant to N.R.S. 34.810, which states, in part 2): A second or successive petition must be dismissed if the judge or Justice determines that it fails to allege new or different information (grounds) for relief and that the prior determination was on the merits or, if new and different grounds are alleged, the judge or Justice finds that the failure of the defendant to assert those grounds in a prior petition constituted an abuse of the writ," respectively.

(2)

(cont)

3 Pursuant to subsections 1 and 2, the petitioner has the burden of pleading and proving specific facts that demonstrate:

(a) Good Cause for the petitioner's failure to present the claim or for presenting the claim again; and

(b) Actual prejudice to Mr. Gipson

Petitioner RESPONDS AS follows:

Mr. Gipson's petition is NOT succesive and raises NEW issues that wasn't raised before and that Counsel failed to raise when representing petitioner.

(1) A defendant cannot force or Compel his counsel to raise any issues/grounds that counsel doesn't deem fit. Furthermore, trial or appelate counsel is more reluctent to raise a claim of ineffectiveness on his or herself, which is why it is hardley raised on most direct appeals (ie fasttrack steuvents)

Withthat said, petitioner has requested in his petition and in his response, a ZOSADA hearing (evidentiary hearing) where he asserts he expressed to ~~[redacted]~~ treat counsel and thought trial counsel would file a notice of appeal following sentencing on Feb 10, 2012.

(3)

However, counsel never did,

Furthermore, Mr. Gipson's appelette counsel were raised grounds that frivulous, if not mediocre at best, that were difficult to overcome the Nev. Sup. Ct plain error review and miscarriage of justice standard.

With that said, these claims are new and wasnt raised before because petitioner was without fit and effective counsel at any of the pre and post stages of his criminal proceedings. And therefore, Mr. Gipson shouldnt be held accountable or responsible for anything filed or wasnt filed on his behalf, that should have been done so by his counsel's of record.

CONCLUSION

Petitioner prays that this Court doesn't find him time barred and that his petition isn't successive, but should be heard on it's merits

Furthermore, petitioner request a **Lozada** appeal(evidentiary) 110 Nev 349, 871 p.2d 944 (1994).

CERTIFICATE OF SERVICE

I, Kevin Gipson, hereby certify that service of the above and foregoing response to States opposition for my writ of habeas Corpus was sent May 28, 2017, by sending a copy in the U.S mail, with prepaid postage, addressed to:

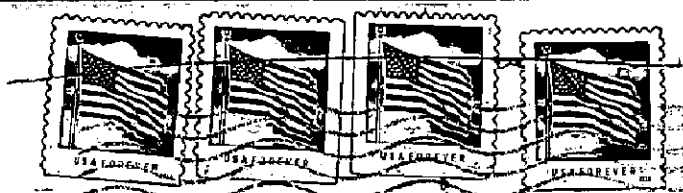
Steve Wolfson
Office of the District Attorney
200 Lewis Ave.
Las Vegas, NV 89155-2212

x Kevin Gipson
Kevin Gipson # 1582343

* Mailed by Jailhouse lawyer x Dwayne B. #32214

(5)

Legal mail
[redacted]
Confidential



Las Vegas P&DC 89199
TUE 30 MAY 2017 PM

Kevin M. Gipson #1082776
H.D.S.P.
P.O. Box 650
Indian Springs, NV 89070

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

842

Electronically Filed
6/14/2017 11:32 AM
Steven D. Grierson
CLERK OF THE COURT

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

8th Judical DISTRICT COURT

Clark COUNTY NEVADA

Kevin M. Gipson,
appelate,

-v-

Warden, Brian Williams,
respondent,

Case No. 10C264079
Dept.No. XIX (19)
Docket

NOTICE OF APPEAL

Notice is hereby given that the appelate, Kevin M. Gipson, by and through himself in proper person, does now appeal to the Supreme Court of the State of Nevada, the decision of the District Court denial of his petition for Writ of Habeas Corpus (post-conviction) heard on June 5th 2017 and denied on such date.

Dated this date, June 8th, 2017.

Respectfully Submitted,

/s/ Kevin Gipson

In Proper Person

RECEIVED
JUN 14 2017
CLERK OF THE COURT

12

CERTIFICATE OF SERVICE BY MAILING

I, Kevin M. Gipson, hereby certify, pursuant to NRCP 5(b), that on this 8th day of June, 2017, I mailed a true and correct copy of the foregoing, "Notice of appeal of : petition for Writ of Habeas Corpus (post-conviction)" by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid, addressed as follows:

Office of Clark County D.A.
Steven Wolfson
200 Lewis Avenue
Las Vegas, NV 89155

DATED: this 11th day of June, 20 17.

/s/ Kevin Gipson
Kevin Gipson #1082776
/In Propria Persona
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

_____
(Title of Document)

filed in District Court Case number _____

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

-OR-

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

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

_____
(State specific law)

-or-

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

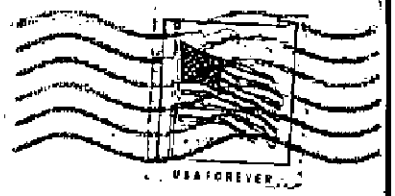
_____ _____
Signature Date

_____
Print Name

_____
Title

Kenneth M. Gipson #1082776
H.D.S.P.
P.O. Box 650
Indian Springs, NV 89070

LAS VEGAS NV 890
12 JUN 2017 PM 4 L



Steven D. Grierson, Clerk of court
200 Lewis Ave, 3rd Floor
Las Vegas, NV 89155

89101-630000

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6/16/2017 8:49 AM
Steven D. Grierson
CLERK OF THE COURT

ASTA

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

STATE OF NEVADA,

Plaintiff(s),

vs.

KEVIN M. GIPSON,

Defendant(s),

Case No: 10C264079

Dept No: XIX

CASE APPEAL STATEMENT

1. Appellant(s): Kevin Gipson

2. Judge: William D. Kephart

3. Appellant(s): Kevin Gipson

Counsel:

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

4. Respondent: The State of Nevada

Counsel:

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

Case Number: 10C264079

(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: No

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

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

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

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

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

11. Previous Appeal: Yes

    Supreme Court Docket Number(s): 62071, 69174

12. Child Custody or Visitation: N/A

Dated This 16 day of June 2017.

Steven D. Grierson, Clerk of the Court

/s/ Amanda Hampton
Amanda Hampton, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 671-0512

cc: Kevin Gipson

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8/21/2017 4:31 PM
Steven D. Grierson
CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CAL THOMAN
Deputy District Attorney
Nevada Bar #012649
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

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

Defendant.

CASE NO: 10C264079

DEPT NO: XIX

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: JUNE 5, 2017
TIME OF HEARING: 8:30 AM

THIS CAUSE having come on for hearing before the Honorable WILLIAM KEPHART, District Judge, on the 5th day of June, 2017, the Petitioner not being present, PROCEEDING IN FORMA PAUPERIS, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through MICHAEL DICKERSON, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

On April 28, 2010, Defendant Kevin Marquette Gipson was charged by way of Indictment with one count of Murder With Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165). On December 7, 2011, the parties informed the District Court that the

matter was resolved via negotiations. A Guilty Plea Agreement was filed in open court and Defendant entered a plea of guilty to the charge within the Indictment. Within the Guilty Plea Agreement, the parties stipulated to recommend a sentence of 20 years to life in the Nevada Department of Corrections and the State retained the right to argue for a term of not less than 4 to 8 years for use of a deadly weapon.

Defendant was present with counsel for sentencing on February 10, 2012. The District Court adjudicated him guilty and sentenced him to a term of 20 years to life, plus a consecutive term of 96 to 240 months for use of a deadly weapon, with 686 days credit for time served. The Judgment of Conviction was filed March 13, 2012. Defendant did not file a timely direct appeal.

Defendant filed a Pro Per Motion to Withdraw Plea on September 5, 2012. The District Court denied the motion on September 26, 2012.

On October 15, 2012, Defendant filed a Pro Per "Ex Parte Motion for Appointment of Counsel and Request for Evidentiary Hearing." The State filed its Opposition on November 2, 2012. On November 5, 2012, Defendant filed a Pro Per "Memorandum of Points and Authorities Facts of the Case." That Memorandum sought to file a direct appeal and the Memorandum was transmitted to the Nevada Supreme Court as a Notice of Appeal. On December 20, 2012, the Nevada Supreme Court dismissed Defendant's appeal.

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

Defendant, through counsel, filed his first Post-Conviction Petition for Writ of Habeas Corpus and Points and Authorities in support of his Petition on June 6, 2014. The State filed a Response and Motion to Dismiss on June 13, 2014. Defendant filed a Reply on August 7, 2014. The District Court denied the State's Motion to Dismiss and ordered briefing on the merits.

///

Defendant filed a Supplemental Post-Conviction Petition for Writ of Habeas Corpus and Supplemental Points and Authorities on December 15, 2014. The State filed its Response on February 24, 2015.

On September 10, 2015, the District Court held an evidentiary hearing, where Defendant and his former counsel, Christy Craig, Esq., testified. At the conclusion of the hearing, the District Court denied Gipson's Petition. It issued its Findings of Fact, Conclusions of Law, and Order reflecting its oral pronouncement on October 22, 2015.

Defendant filed a Notice of Appeal from the denial of his Petition on November 12, 2015. The Supreme Court of Nevada affirmed the denial of Defendant's first Petition for Writ of Habeas corpus. Remittitur issued on January 24, 2017.

Defendant filed the instant second Petition for Writ of Habeas corpus on March 6, 2017. The State herein responds.

I. DEFENDANT'S PETITION IS TIME BARRED UNDER NRS 34.726

Defendant's Petition for Writ of Habeas Corpus is time barred with no good cause shown for delay. Pursuant to NRS 34.726:

> 1. Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year of the entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the Supreme Court issues its remittitur. For the purposes of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court:
> (a) That the delay is not the fault of the petitioner; and
> (b) That dismissal of the petition as untimely will unduly prejudice the petitioner.

Defendant's petition does not fall within this statutory time limitation. The Supreme Court of Nevada has held that NRS 34.726 should be construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873, 34 P.3d 519, 528 (2001). As per the language of the statute, the one-year time bar prescribed by NRS 34.726 begins to run from the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

The one-year time limit for preparing petitions for post-conviction relief under NRS 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 53 P.3d 901 (2002), the Nevada Supreme Court rejected a habeas petition that was filed two days late despite evidence presented by the defendant that he purchased postage through the prison and mailed the Notice within the one-year time limit.

The Judgment of Conviction was filed in this case on March 13, 2012. Accordingly, Defendant had until March 13, 2013, to file a timely post-conviction Petition. Defendant's instant Petition was not filed until March 6, 2017. Absent a showing of good cause for this delay, the court has a duty to apply the procedural bars and Defendant's Petition is denied because of its tardy filing.

II. DEFENDANT'S PETITION IS SUCCESIVE

Defendant's second Petition is also denied pursuant to NRS 34.810 as it is successive. Pertinent portions of NRS 34.810 state:

> 2. A second or successive petition must be dismissed if the judge or justice determines that it fails to allege new or different grounds for relief and that the prior determination was on the merits or, if new and different grounds are alleged, the judge or justice finds that the failure of the Defendant to assert those grounds in a prior petition constituted an abuse of the writ.
>
> 3. Pursuant to subsections 1 and 2, the petitioner has the burden of pleading and proving specific facts that demonstrate:
>
> (a) Good cause for the petitioner's failure to present the claim or for presenting the claim again; and
>
> (b) Actual prejudice to the petitioner.

NRS 34.810(2), (3).

In Lozada v. State, the Nevada Supreme Court stated: "Without such limitations on the availability of post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-conviction remedies. In addition, meritless, successive and untimely petitions clog the court system and undermine the finality of convictions." 110 Nev. 349, 358, 871 P.2d 944, 950 (1994). The Nevada Supreme Court recognizes that "[u]nlike initial petitions which certainly require a careful review of the record, successive petitions may be dismissed based

solely on the face of the petition." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995).

Defendant filed his first Petition on June 6, 2014. The District Court ultimately denied this first Petition on the merits. The denial of Defendant's Petition was affirmed. Gipson v. State, Docket No. 69174 (Order of Affirmance, December 28, 2016). Defendant then filed this second Petition on March 6, 2017.

III. DEFENDANT FAILS TO SHOW GOOD CAUSE AND PREJUDICE TO OVERCOME PROCEDURAL BARS.

In its decision affirming the denial of the first Petition, the Nevada Supreme Court found that the District Court erred in reaching the merits of Defendant's first petition and should have dismissed it due to procedural default. Id. "The law of a first appeal is law of the case on all subsequent appeals in which the facts are substantially the same." Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). "The doctrine of the law of the case cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings." Id. at 316, 535 P.2d at 799. Under the law of the case doctrine, issues previously decided on direct appeal may not be reargued in a habeas petition. Pellegrini v. State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001) (citing McNelton v. State, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, this Court cannot overrule the Nevada Supreme Court. NEV. CONST. Art. VI § 6. In his first Petition, which was also untimely, Defendant argued that the ineffective assistance of appellate counsel constituted good cause for his delay and caused him prejudice. Defendant raises the same claim in this second Petition. As the Nevada Supreme Court rejected these arguments on appeal, the law of the case is that the alleged ineffectiveness of appellate counsel does not satisfy the good cause requirement for delay. Therefore, this petition is denied as untimely and successive without good cause for the procedural defects.

IV. APPLICATION OF THE PROCEDURAL BARS IS MANDATORY.

The Nevada Supreme Court has specifically found that the district court has a duty to consider whether the procedural bars apply to a post-conviction petition and not arbitrarily

disregard them. In State v. Dist. Ct. (Riker), 121 Nev. 225, 112 P.3d 1070 (2005), the Court held that "[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory," and "cannot be ignored when properly raised by the State." Id. at 231, 233, 112 P.3d at 1074, 1075. There, the Court reversed the district court's decision not to bar the defendant's untimely and successive petition:

> Given the untimely and successive nature of [defendant's] petition, the district court ***had a duty imposed by law*** to consider whether any or all of [defendant's] claims were barred under NRS 34.726, NRS 34.810, NRS 34.800, or by the law of the case . . . [and] the court's failure to make this determination here constituted an arbitrary and unreasonable exercise of discretion.

Id. at 234, 112 P.3d at 1076 (emphasis added). The Court justified this holding by noting that "[t]he necessity for a workable system dictates that there must exist a time when a criminal conviction is final." Id. at 231, 112 P.3d 1074 (citation omitted); see also State v. Haberstroh, 119 Nev. 173, 180-81, 69 P.3d 676, 681-82 (2003) (wherein the Nevada Supreme Court held that parties cannot stipulate to waive, ignore or disregard the mandatory procedural default rules nor can they empower a court to disregard them).

In State v. Greene, the Nevada Supreme Court reaffirmed its prior holdings that the procedural bars are mandatory when it reversed the district court's grant of a post-conviction petition for writ of habeas corpus. See State v. Greene, 129 Nev. ___, 307 P.3d 322 (2013). There, the Court ruled that the defendant's petition was "untimely, successive, and an abuse of the writ" and that the defendant failed to show good cause and actual prejudice. Id. 307 P.3d at 324. Accordingly, the Court reversed the district court and ordered the defendant's petition dismissed pursuant to the procedural bars. Id. 307 P.3d at 323.

As explained above, Defendant's Petition is procedurally barred under NRS 34.810 and 34.826 and therefore is denied.

V. DEFENDANT'S REQUEST THAT HIS GOOD TIME CREDITS BE RE-CALCULATED MUST BE DISMISSED.

NRS 34.738(3) provides:

> A petition must not challenge both the validity of a judgment of conviction or sentence and the computation of time that the petitioner has served pursuant to that judgment. If a petition improperly challenges both the validity of a judgment of conviction or sentence and the computation of time that the petitioner has served pursuant to that judgment, the district court for the appropriate county shall resolve that portion of the petition that challenges the validity of the judgment of conviction or sentence and dismiss the remainder of the petition without prejudice.

Since Defendant is challenging both his judgment of conviction and the computation of his credit for good time, NRS 34.738(3) requires the court to resolve only that portion of Defendant's petition which challenges the validity of the judgment of conviction or sentence, and dismiss the remainder of the petition without prejudice. As such, claims two and three, which questions whether his credit for good time is correct are dismissed without prejudice.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus shall be, and it is, hereby denied.

DATED this 17th day of August, 2017.

DISTRICT JUDGE

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

BY
CARL THOMAN
Deputy District Attorney
Nevada Bar #012649

CERTIFICATE OF SERVICE

I certify that on the 11th day of August, 2017, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

Kevin Marquette Gipson, BAC #1082776
High Desert State Prison
P.O. Box 650
Indian Springs, Nevada 89070-0650

BY _____
Theresa Dodson
Secretary for the District Attorney's Office

ms/CT/td/dvu

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8/24/2017 8:02 AM
Steven D. Grierson
CLERK OF THE COURT

NEO

DISTRICT COURT
CLARK COUNTY, NEVADA

KEVIN M. GIPSON,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: 10C264079

Dept No: XIX

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

PLEASE TAKE NOTICE that on August 21, 2017, 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 August 24, 2017.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 24 day of August 2017, I served a copy of this Notice of Entry on the following:

☑ By e-mail:
Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

☑ The United States mail addressed as follows:
Kevin M. Gipson # 1082776
P.O. Box 650
Indian Springs, NV 89070

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

Electronically Filed
8/21/2017 4:31 PM
Steven D. Grierson
CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CAL THOMAN
Deputy District Attorney
Nevada Bar #012649
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

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

Defendant.

CASE NO: 10C264079

DEPT NO: XIX

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: JUNE 5, 2017
TIME OF HEARING: 8:30 AM

THIS CAUSE having come on for hearing before the Honorable WILLIAM KEPHART, District Judge, on the 5th day of June, 2017, the Petitioner not being present, PROCEEDING IN FORMA PAUPERIS, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through MICHAEL DICKERSON, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

On April 28, 2010, Defendant Kevin Marquette Gipson was charged by way of Indictment with one count of Murder With Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165). On December 7, 2011, the parties informed the District Court that the

matter was resolved via negotiations. A Guilty Plea Agreement was filed in open court and Defendant entered a plea of guilty to the charge within the Indictment. Within the Guilty Plea Agreement, the parties stipulated to recommend a sentence of 20 years to life in the Nevada Department of Corrections and the State retained the right to argue for a term of not less than 4 to 8 years for use of a deadly weapon.

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> (a) That the delay is not the fault of the petitioner; and
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Defendant's petition does not fall within this statutory time limitation. The Supreme Court of Nevada has held that NRS 34.726 should be construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873, 34 P.3d 519, 528 (2001). As per the language of the statute, the one-year time bar prescribed by NRS 34.726 begins to run from the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

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II. DEFENDANT'S PETITION IS SUCCESIVE

Defendant's second Petition is also denied pursuant to NRS 34.810 as it is successive. Pertinent portions of NRS 34.810 state:

> 2. A second or successive petition must be dismissed if the judge or justice determines that it fails to allege new or different grounds for relief and that the prior determination was on the merits or, if new and different grounds are alleged, the judge or justice finds that the failure of the Defendant to assert those grounds in a prior petition constituted an abuse of the writ.
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> 3. Pursuant to subsections 1 and 2, the petitioner has the burden of pleading and proving specific facts that demonstrate:
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> (a) Good cause for the petitioner's failure to present the claim or for presenting the claim again; and
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NRS 34.810(2), (3).

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solely on the face of the petition." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995).

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The Nevada Supreme Court has specifically found that the district court has a duty to consider whether the procedural bars apply to a post-conviction petition and not arbitrarily

disregard them. In State v. Dist. Ct. (Riker), 121 Nev. 225, 112 P.3d 1070 (2005), the Court held that "[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory," and "cannot be ignored when properly raised by the State." Id. at 231, 233, 112 P.3d at 1074, 1075. There, the Court reversed the district court's decision not to bar the defendant's untimely and successive petition:

> Given the untimely and successive nature of [defendant's] petition, the district court ***had a duty imposed by law*** to consider whether any or all of [defendant's] claims were barred under NRS 34.726, NRS 34.810, NRS 34.800, or by the law of the case . . . [and] the court's failure to make this determination here constituted an arbitrary and unreasonable exercise of discretion.

Id. at 234, 112 P.3d at 1076 (emphasis added). The Court justified this holding by noting that "[t]he necessity for a workable system dictates that there must exist a time when a criminal conviction is final." Id. at 231, 112 P.3d 1074 (citation omitted); see also State v. Haberstroh, 119 Nev. 173, 180-81, 69 P.3d 676, 681-82 (2003) (wherein the Nevada Supreme Court held that parties cannot stipulate to waive, ignore or disregard the mandatory procedural default rules nor can they empower a court to disregard them).

In State v. Greene, the Nevada Supreme Court reaffirmed its prior holdings that the procedural bars are mandatory when it reversed the district court's grant of a post-conviction petition for writ of habeas corpus. See State v. Greene, 129 Nev. ___, 307 P.3d 322 (2013). There, the Court ruled that the defendant's petition was "untimely, successive, and an abuse of the writ" and that the defendant failed to show good cause and actual prejudice. Id. 307 P.3d at 324. Accordingly, the Court reversed the district court and ordered the defendant's petition dismissed pursuant to the procedural bars. Id. 307 P.3d at 323.

As explained above, Defendant's Petition is procedurally barred under NRS 34.810 and 34.826 and therefore is denied.

V. DEFENDANT'S REQUEST THAT HIS GOOD TIME CREDITS BE RE-CALCULATED MUST BE DISMISSED.

NRS 34.738(3) provides:

> A petition must not challenge both the validity of a judgment of conviction or sentence and the computation of time that the petitioner has served pursuant to that judgment. If a petition improperly challenges both the validity of a judgment of conviction or sentence and the computation of time that the petitioner has served pursuant to that judgment, the district court for the appropriate county shall resolve that portion of the petition that challenges the validity of the judgment of conviction or sentence and dismiss the remainder of the petition without prejudice.

Since Defendant is challenging both his judgment of conviction and the computation of his credit for good time, NRS 34.738(3) requires the court to resolve only that portion of Defendant's petition which challenges the validity of the judgment of conviction or sentence, and dismiss the remainder of the petition without prejudice. As such, claims two and three, which questions whether his credit for good time is correct are dismissed without prejudice.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus shall be, and it is, hereby denied.

DATED this 17th day of August, 2017.

DISTRICT JUDGE

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

BY
CARL THOMAN
Deputy District Attorney
Nevada Bar #012649

CERTIFICATE OF SERVICE

I certify that on the 11th day of August, 2017, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

Kevin Marquette Gipson, BAC #1082776
High Desert State Prison
P.O. Box 650
Indian Springs, Nevada 89070-0650

BY _____
Theresa Dodson
Secretary for the District Attorney's Office

ms/CT/td/dvu

DOCUMENTARY EXHIBITS

Grand Jury Case # 09AGJ167F

Exhibit # 1

Date 4/27/2010

4

IND

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
SHANON CLOWERS
Deputy District Attorney
Nevada Bar #010008
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

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

Defendant(s).

Case No.
Dept. No.

INDICTMENT

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

The Defendant(s) above named, KEVIN MARQUETTE GIPSON, aka, Kevin Marquett Gipson, accused by the Clark County Grand Jury of the crime of MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030, 193.165), committed at and within the County of Clark, State of Nevada, on or about the 25th day of March, 2010, as follows:

did then and there wilfully, feloniously, without authority of law, and with malice aforethought, kill BRITNEY LOVALL, a human being, by shooting at or into the body of

///

///

BRITNEY LOVALL, with a deadly weapon, to-wit: a firearm, said killing having been: (1) willful, deliberate and premeditated; and/or (2) committed by Defendant lying in wait to commit the killing.

DATED this _____ day of April, 2010.

DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

BY _____
SHANON CLOWERS
Deputy District Attorney
Nevada Bar #010008

ENDORSEMENT: A True Bill

_____
Foreperson, Clark County Grand Jury

Names of witnesses testifying before the Grand Jury:

Additional witnesses known to the District Attorney at time of filing the Indictment:

09AGJ167X/10F05796X/sam
LVMPD EV# 1003250682
(TK7)

Grand Jury Case # 09AGJ167X

Exhibit # 2

Date 4/27/2010

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ORIGINAL

Murder is the unlawful killing of a human being, with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

Malice aforethought, as used in the definition of Murder, means the intentional doing of a wrongful act without legal cause or excuse or what the law considers adequate provocation. The condition of mind described as malice aforethought may arise, not only from anger, hatred, revenge or from particular ill will, spite, or grudge toward the person killed, but also may result from any unjustifiable or unlawful motive or purpose to injure another.

The term "lying in wait" is defined as a waiting and watching for an opportune time to act, together with a concealment by ambush or some other secret design to take the other person by surprise. The lying in wait need not continue for any particular period of time provided that its duration is such as to show a state of mind equivalent to premeditation or deliberation.

To constitute murder by means of lying in wait there must be, in addition to the aforesaid conduct by the defendant, an intentional infliction upon the person killed of bodily harm involving a high degree of probability that it will result in death and which shows a wanton disregard for human life.

Willfulness is the intent to kill. There need be no appreciable space of time between formation of the intent to kill and the act of killing.

Deliberation is the process of determining upon a course of action to kill as a result of thought, including weighing the reasons for and against the action and considering the consequences of the action.

A deliberate determination may be arrived at in a short period of time. But in all cases the determination must not be formed in passion, or if formed in passion, it must be carried out after there has been time for the passion to subside and deliberation to occur. A mere unconsidered and rash impulse is not deliberate, even though it includes the intent to kill.

Premeditation is a design, a determination to kill, distinctly formed in the mind by the time of the killing.

Premeditation need not be for a day, an hour, or even a minute. It may be as instantaneous as successive thoughts of the mind. For if the jury believes from the evidence that the act constituting the killing has been preceded by and has been the result of premeditation, no matter how rapidly the act follows the premeditation, it is premeditated.

The law does not undertake to measure in units of time the length of the period during which the thought must be pondered before it can ripen into an intent to kill which is truly deliberate and premeditated. The time will vary with different individuals and under varying circumstances.

The true test is not the duration of time, but rather the extent of the reflection. A cold, calculated judgment and decision may be arrived at in a short period of time, but a mere unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation and premeditation as will fix an unlawful killing as murder of the first degree.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 1

EVENT #: **100325-0682**

SPECIFIC CRIME: HOMICIDE

DATE OCCURRED: 03-25-10 **TIME OCCURRED:** 0545 HRS.

LOCATION OF OCCURRENCE: 7510 W. LAKE MEAD

CITY OF LAS VEGAS **CLARK COUNTY**

NAME OF PERSON GIVING STATEMENT: KEVIN MARQUETTE GIPSON

DOB:	06-26-83	**SOCIAL SECURITY #:**	430-53-6654
RACE:		**SEX:**	
HEIGHT:		**WEIGHT:**	
HAIR:		**EYES:**	
WORK SCHEDULE:		**DAYS OFF:**	
HOME ADDRESS:		**HOME PHONE:**	
WORK ADDRESS:		**WORK PHONE:**	

BEST PLACE TO CONTACT:

BEST TIME TO CONTACT:

The following is the transcription of a tape-recorded interview conducted by DETECTIVE D. LONG, P# 3969, AND DETECTIVE D. TREMEL, P#2038, LVMPD HOMICIDE SECTION, on 03-25-10 at 1520 hours.

Q. This is Detective D. Long, P#3969. I'll be taking a recorded voluntary statement under Event #100325-0682, be the investigation of a murder with deadly weapon. Date and time of occurrence is 03-25-2010. Location of occurrence is 7510 W.

MARKED STATE'S EXHIBIT 1 12-2-11 C016079 IN

CASE #

PROPOSED

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Lake Mead Boulevard, Las Vegas, Nevada. It is currently 03-25-2010, at 1520 hours. We're at the ISD building. With me is Kevin Gipson, G-I-P-S-O-N, middle name of Marquette, M-A-R-Q-U-E-T-T-E. His date of birth if 06-26-83, social of 430-53-6654. He currently resides sometimes with his mother at 3630 E. Owens, Apartment 1032. Ah, that's Linda Jackson, telephone number of 488-4979, and also with his friend Denise Nelson at 824 Levy, Las Vegas, Nevada 89106. Telephone there is 522-7817. He is currently not employed. Ah, can I call you Kevin?

A. (Inaudible response).

Q. Do you realize I'm recording this?

A. Yeah.

Q. Is that okay?

A. Fine with me.

Q. All right. Um, you had a relationship with a girl by the name of Brittany Lavoll?

A. Lavoll.

Q. Lavoll. And how long has that been going on?

A. Uh, we broke up over a year ago.

Q. I mean how long's--how long you been together? When did you start seeing her?

A. Oh, we was together about five years.

Q. Okay.

A. Ah, 2004.

Q. All right. And you lived together at some point?

A. Uh huh (yes).

Q. And you have children together?

A. We got two kids.

Q. And what are their names?

A. Keoni and Khali (phonetic).

Q. How old is Keoni?

A. Keoni is four, and Khali is one.

Q. Okay. And you broke up about one year ago?

A. Yeah.

Q. Okay.

A. A little over a year.

Q. Okay. Um, tell me about...well start last night, where were you last night?

A. I--we was at Denise's house. Me, Denise and Larry. That's my friend.

Q. Larry?

A. Lindsey.

Q. Lindsey?

A. Glinsey, G-L-I-N-S-E-Y

Q. Okay.

A. And we was going to a friend house, Rosie, to play cards. We came out. We backed out the car. We backed out the driveway. We got stopped by the gang unit. They took Larry to jail, 'cause he had a warrant for domestic violence.

Q. Okay. About what time was that?

A. Oh, 11:00, 12:00 maybe. I'm not sure, but you can find it on his arrest record approximate time.

Q. Okay. All right.

A. And after that we went back in the house, and I was like well shit.

Q. So you didn't go to Rosie's?

A. Yeah, we went. I'm telling you what's...

Q. Oh, okay. All right.

A. We went back in the house and I was like well damn, my brother in jail, I really don't feel like going. She was like nah, fuck that, I'm getting wasted 'cause of that. I like well fine, I'll go. So we went to Rosie's house. It was about, I'd say a good ten, eleven people there, playing cards, drinking beers, having liquor. I played Rummy 1500 with her friend. I can't--I don't remember her name. But Rosie knows everybody. So she can verify it. To about 2:30, 3:00.

Q. Okay. Uh huh.

A. Drove home, fell asleep, whatever. Larry called Niecy, she was talking to Larry for a minute. I fell asleep. Got a phone call about little bit after 8:00 saying something happened to Brittany. I like okay, what's going on? You know what I'm saying?

Q. Who called you?

A. My mom.

Q. Okay. All right.

A. That's how I _____(unintelligible).

Q. Right.

A. That something was wrong. So she called. I was trying to find out what happened. She didn't know. She said she'd get back to me. So the only number that I knew to call was, ah, a girl named Kia. I axed [sic] her had she heard from her. She said no. I said do you know how to get in touch with her? She said no, she just calls me.

Q. Okay.

A. And I was like okay. Well when she call you, have her call me.

Q. What's Kia's number?

A. Um, I don't know it by heart.

Q. Okay.

A. It was in a phone.

Q. Which phone?

A. Um, a old cell phone.

Q. In a old cell phone?

A. Uh huh.

Q. What's the old cell phone number?

A. 502-8458.

Q. Where's that phone?

A. It's at the house.

Q. Okay. And who's that service through?

A. Metro PCS.

Q. That's at the Levy house?

A. Uh huh.

Q. Okay. Okay.

A. But that phone was not on.

Q. That's just where you have the number for it.

A. (Both talking).

Q. Okay. And so you pulled it up in that and called I from the house line?

A. The house phone.

Q. Okay. All right, go ahead.

A. She--we talked, hung up.

Q. What's Kia's last name, or how do I?

A. Jackson.

Q. Kia Jackson?

A. Uh huh.

Q. Okay. Is that how you spell Kia?

A. Your guess is as good as mine.

Q. Okay.

A. It looks right.

Q. All right.

A. And after that I stayed up 'cause I was worried, thinking about my kids, wondering if she was all right. Got a call couple hours later. Well, my brother called me, he was like everybody call? I was like for what? I ain't been no where. I got in the house, I went to sleep. I was drunk, you know.

Q. Uh huh.

A. I got in the house about 3:00, tired, you know, threw my clothes off, went to sleep. Got the phone call at 8:00, and that's how I found out.

Q. Right. And your brother, who's your brother?

A. Isaiah. Well he's, he's my cousin, but he like a brother to me.

Q. Okay. Do you--what's his last name?

A. Martin.

Q. Was he at the party?

A. No.

Q. Okay. How would I get a hold of Isaiah?

A. 628-2007.

Q. Okay. And what–how do I get a hold of Rosie?

A. I don't, I don't know the number by heart but Niecy knows everybody number. Denise.

Q. Okay.

A. And they'll verify where I was at, and what happened.

Q. Okay. And Denise spent the night with you when you got home at 3:00?

A. Yeah.

Q. She stayed in the house?

A. She stayed in the house.

Q. Okay. Anybody else in the house?

A. Just the kids.

Q. Okay. Uh, Rosie, whereabout does she live?

A. Cheyenne and Martin Luther King, but it's not Martin Luther King. It's the street right after Martin Luther King. So you saying this–Martin Luther King, that street...

Q. Simmons...Simons...Simmons?

A. (Both talking).

Q. Is it to the west or to the east?

A. West...east.

Q. To the east.

A. East this way, right?

Q. Ah, yeah.

A. Yeah, east.

Q. East. Um, Martin Luth--sheez. Uh, okay. We'll work on it. All right, so it's out there somewhere. All right. Um, why did you and Brittany break up?

A. I was cheatin'.

Q. Oh, okay. With who?

A. A girl name _____(unintelligible). (Laughs) Key-Key-Keyona-Kiana...Kiana.

Q. Kiana? Okay. And this is about a year ago?

A. Yeah, a little over a year.

Q. How would you describe your relationship with her?

A. It was cool. And I was cheatin' though.

Q. Yeah, I get that. Um, were you guys--did you guys become verbally angry at each other? Yell at each other?

A. Yeah, she would yell.

Q. Okay, what about you?

A. I would just tell her--I would just call her, like I would play jokes with her. Like _____(both talking).

Q. Would she get mad?

A. Yeah.

Q. Okay.

A. She got tired of it. So she left.

Q. Okay. Did you ever get physical with her?

A. (Inaudible response)

Q. Did you ever hit her?

A. Huh uh.

Q. No?

A. No.

Q. Okay. Have you--the police ever come out?

A. No, never.

Q. Okay. Um, have you ever made threats to her?

A. Never.

Q. Nothing like that?

A. (Inaudible response)

Q. Okay. If she would of told somebody that you had threatened her that would be a lie?

A. I don't see why she would say that.

Q. Okay, I'm just saying...

A. She did dislike me though. (Laughs)

Q. Okay.

A. So she could say anything.

Q. Did you call her often, call her at work?

A. I really didn't call her that much at work, but I had stopped calling her for like five months. In the beginning I called her like 'cause I wanted to get back with her, and after that, I stopped.

Q. Okay.

A. I didn't even call her at work.

Q. She get a new boyfriend?

A. Uh huh.

Q. Who's that?

A. Some guy named Kevin.

Q. Kevin? Do you know his last name?

A. Nah.

Q. Do you know where he is now?

A. Huh uh.

Q. Okay. Um, did you just recently start calling her again?

A. I don't have any number on her.

Q. Okay. But you didn't start calling her at work or anything like that?

A. I called her at work.

Q. Recently?

A. At Jack-in-the-Box, the 649 number says she don't work there no more, so.

Q. Okay.

A. That's it.

Q. Did--what I'm saying is so you didn't start calling her recently?

A. I only called her one time.

Q. Okay. There was not more than one phone call?

A. 'Cause I didn't see my kids.

Q. Okay.

A. And I was trying to get in touch with her 'cause of my son's birthday.

Q. When is that?

A. March 23.

Q. Okay. Um, so did you have the birthday together with him?

A. I didn't see him. I didn't talk to him. I haven't talked to her.

Q. Okay.

A. I haven't talked to her. She called me on the, the 12th. That's how I got __(unintelligible) number. We talked for 45 seconds. She was gonna bring the kids by, but she never did.

Q. Okay.

A. That's the last time I talked to her.

Q. And how long ago was that?

A. The 12th of this month.

Q. Okay. About two weeks ago.

A. The last time I talked to her.

Q. Okay. Did you see Keyone about two weeks ago?

A. Uh huh.

Q. And where was that?

A. She brung him to my house.

Q. Okay. Um, all right. And there was--you didn't make any threats?

A. Nope.

Q. Anything like that?

A. Nope. I got--she gave me his bed, and my mom was right there. My whole family was right there. They'll tell you.

Q. Well, I'm talking about phone calls.

A. Oh, no.

Q. Nothing like that? Okay. We're getting people that were...that's why we wanted to talk to you, is because we're getting people that are telling us that you were calling her.

A. Well they would say that.

Q. Why would they say that?

A. I don't know. Her mom never liked me. She, she said I stole some money from her long time ago. She didn't like me from the jump. And we always got into it.

DT (DON TREMEL). That's, that's why we talk to you and get your side because if we believed everything everybody told us already, you'd been handcuffed and on your way to jail. So that's why we gotta find out what's going on.

A. She never liked me. She, she, she wouldn't talk to me. She wouldn't even come in the house. I say hi to her and she wouldn't say nothing back. So I _____(unintelligible).

Q. Okay. How do you feel about Brittany being dead now?

A. Hurting. I cried, but you know, _____ (unintelligible) my kids' mom.

Q. Okay. Who do you think did it?

A. I have no idea. I'm not in her life no more. We barely talked.

Q. If you were to guess, who would you, would you think did it?

A. I have no idea.

Q. Nothing. You have no ideas?

A. I don't know _____ (unintelligible) with.

Q. Okay.

A. Me and her didn't even socialize.

Q. Okay. It, ah, the way it was done is, is personal, and so it--I get the feeling from it that it's somebody that was close to her. How did she--how is her relationship with the other guy?

A. I don't know. I never talked to him.

Q. Okay.

A. I don't know nothing about that.

Q. What did Kia tell you?

A. She didn't tell me nothing. She just said that she was--she talked to her yesterday, and she would have her call me. We didn't talk that long.

Q. Okay. You talked to her today though?

A. Yeah. After my mom called me.

Q. And what did Kia say then?

A. She didn't say nothing. She said she haven't talked to her, and I was like well, you know, she okay? If anything happened to her. My mom, who just called me, saying something happened.

Q. Okay.

A. Do you know how to get in touch with her. That's--and she was like no, she calls me. And I was like do you know where she work at? She said no.

Q. Okay. Do you own any guns?

A. No sir.

Q. When was the last time you handled a gun, actually picked one up?

A. I haven't picked up a gun.

Q. How long?

A. Since I was a teenager.

Q. Okay. So you haven't had a gun, you haven't fired a gun, and haven't been in contact with a gun in a long time.

A. Exactly.

Q. Nothing in the last three days?

A. Huh uh.

Q. Okay. Um, would you mind if we took a test on your hands to see if there's any substance from a firearm?

A. Sure.

Q. Okay. Um, did you kill Brittany?

A. No sir.

Q. Okay. Um, would you be willing to take a polygraph?

A. I was watching the show, and they say them things aren't accurate.

Q. We're not gonna present it in court. All I wanted you to do is take one of these to prove it to me. I can't take it to court, it will not prove you as guilty, it has nothing to do like that.

DT. (Both detectives talking at the same time.)

Q. All I'm trying to do is get past you. I wanna...if, if you did it, then I wanna talk to you some more. If you didn't do it, then I'm done with you, and I can move on. That's what I'm asking. Will you help me in that way?

A. (Both talking).

Q. I know, I can't take it to court.

A. (Both talking).

Q. It was not prove your innocence or guilt. I can't show it to anybody. All I wanna do is you prove to me that you didn't kill her. That's it. That's, that's the grand total of why I would want you to take that.

A. I know, but if it's not accurate...

Q. Well don't--I--I--what I can't do is I can't take it to court. I can't prove it to anybody. If it shows that you did shoot her, then I'm gonna actually have more questions for you. But I can't take it to anybody _____(both detectives talking)

DT. (Both detectives talking at same time.) Basically what it is, is it's an investigative tool.

Q. That's it.

DT. We give you a polygraph, and you pass it, we're done. Okay? That's the last time you're gonna see us. If you fail it, and the examiner says there's some form of deception in any of the questions he's asked you, then of course, you know, we, you

know, we can't, we can't move on. We have, we have to _____(both detectives talking at the same time.)

Q. _____(both detectives talking at the same time) trick you. I'm gonna tell you exactly what the question is gonna be before you take it. You'll know exactly what's going on. Um, if you're uncomfortable with it, you don't have to answer it. But the question I wanna ask you is did you kill Brittany?

A. No, I didn't.

Q. Okay. That's all...I want you to do it on the machine. If it says you're being truthful, I'm done with you, and I can move onto the next one.

A. I know but if it's not accurate, then how am I suppose to, you know what I'm saying, I don't wanna _____(both talking).

Q. It's just between...this is really just between you and me. It will never go anywhere else.

DT. If you fail the polygraph then we can't, we can't exclude you as a suspect, and we still have to investigate you further. If you don't...

Q. I'm trying to exclude you.

DT. ...if you don't take a polygraph we can't exclude you as a suspect, and, and, and still have to investigate you further. It doesn't mean, it doesn't mean that the polygraph test comes back and says well hey, Kevin's been untruthful with you, it means we're gonna hook you up and take you to jail. We can't do that 'cause they're

inadmissable in court. Alls it is, is a tool for us to move on, or we gotta dig a little deeper is all.

Q. That's what we wanna do is we wanna move on. We wanna eliminate you, and find out who the next one is. The way a homicide investigation works is you start at the inside. So the people that are closest to the victim are the people we start with, and it's gonna upset people, and we understand that. But we need to eliminate from the inside out. And you were obviously one of the people that's closest to her. So we wanna start with you. Especially when people tell us that you made threats to her.

A. That's a total ___(unintelligible). They bullshittin'.

Q. Okay. All right. But you gotta still get it from my point of view. Right? I don't know you.

A. 'Cause I...

Q. And you talk to me straight in the eyes, you're, you're pretty straight forward to me, um, I wanna move away from you. I wanna say okay, he didn't--nothing there. _____(both detectives talking at the same time).

DT. You cooperate, you pass the polygraph test and we're, we're barking up the wrong tree, we gotta move on.

A. So when do I take the test?

Q. Uh, we can do it whenever. We can do it right now if you want.

DT. We got this _____(unintelligible) schedule it, but I mean we probably could, you know, pull a few strings, I don't know. But...

Q. I don't either. We can make a phone call.

DT. Yeah.

A. Let's schedule it.

Q. All right, we'll do that. Good, I appreciate that.

DT. Is she, ah, have you ever had a protection order or a restraining order served against you by her, or anybody in her family?

A. No sir.

DT. There's been no protective order?

A. No. I never been served with anything.

Q. What kind of car does Nicey--Niecy have? When you went to Rosie's what kind of car were you in?

A. (No response)

Q. What color car was it?

A. Tan.

Q. Tan car?

A. Yeah.

Q. Four door car?

A. Four door.

Q. Older, newer?

A. Think in the 2000's.

Q. Okay. Is it Niecy's car?

A. She say it is.

Q. Okay. (Laughs) I'm just--I'll know. I just need to verify. The more I can verify that you tell me, the better. Um, were you on a CAT bus at all today?

A. No sir.

Q. Okay. Okay. Um, do you have any other clothes at Niecy's?

A. This it. This all I got.

Q. That's it. Okay.

A. 'Cause I really wasn't gonna stay but then one day turned into two, and two turned into three, and you know, so I just kept _____(detective talking over).

Q. You were getting along and everything's good, huh?

A. Uh huh.

Q. Okay. And Niecy just has the one car?

A. Uh huh.

Q. Okay. What did Larry go to jail for, warrants?

A. Yeah.

Q. Okay. And did you get patted down by the gang guys?

A. Uh huh.

Q. So they patted you down, everything. This is prior to you going out?

A. Yeah.

Q. Okay. Good.

DT. If, if I were to go and get a DNA sample, it's a kit that we have, it's not needles, just like a little toothbrush, swab the inside of your cheek, would you provide us with a DNA sample?

A. Sure.

DT. Okay. I'm gonna go do that, and it's, it ain't gonna hurt at all. It's not like we gotta draw blood. It's like a toothbrush. You know we're gonna give you the thing and you're gonna get some saliva on _____(unintelligible).

Q. Okay.

DT. I'll be _____(unintelligible).

Q. That'll be the end of the interview. It's 1535 (tape ends in middle of sentence).

THIS VOLUNTARY STATEMENT WAS COMPLETED AT 4750 W. OAKEY ON THE 26TH DAY OF MARCH, 2010 AT 1535 HOURS.

DL:DT:sd
10V0387

EXHIBIT 2

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

EVENT #: 100325-0682

SPECIFIC CRIME: HOMICIDE

DATE OCCURRED: **TIME OCCURRED:**

LOCATION OF OCCURRENCE:

CITY OF LAS VEGAS **CLARK COUNTY**

NAME OF PERSON GIVING STATEMENT: GIPSON, KEVIN

DOB:	**SOCIAL SECURITY #:**
RACE:	**SEX:**
HEIGHT:	**WEIGHT:**
HAIR:	**EYES:**
WORK SCHEDULE:	**DAYS OFF:**
HOME ADDRESS:	**HOME PHONE:**
WORK ADDRESS:	**WORK PHONE:**
BEST PLACE TO CONTACT:	
BEST TIME TO CONTACT:	

The following is the transcription of a tape-recorded interview conducted by POLYGRAPH EXAMINER GEOFFREY FLOHR AND DETECTIVE DAN LONG, P# 3969, LVMPD HOMICIDE Detail, on at hours.

1755

Q: _____. _____. Hey.

A: How you doing?

Q: I'm Geoff Flohr. How you doing man?

A: Kevin Gipson.

(2)

Vol-Statement, No Affirmation (Rev. 9/08) - AUTOMATED/WP12

MARR[illegible]TION

CASE

PROP

STATE'S EXHIBIT 2 12-2-11 1264079

9

Q: Nice to meet you. Come on in here. Kevin have a seat right there. Just to let you know everything is being audio and video recorded from this point forward. Okay? Just so you know that. Alright?

A: Mmm hmm. Okay.

Q: Good. Okay. Before we get going here today, because this investigation involves the death of an individual, uh, I have to advise anybody that sits in that chair of their rights. Okay? Number one. You have the right to remain silent. Tell me what that means to you.

A: That I don't gotta say nutten [sic].

Q: That's right. All you gotta do is say, 'You know, Geoff, I don't wanna talk anymore' and we're done. I won't get angry. I'm not gonna get upset. Okay. Uh, anything that you say can and will be used against you in a court a law. Tell me what that would mean to you.

A: Whatever I say y'all gonna use it against me.

Q: If you were to say anything in here about this case, okay, and ultimately be charged in this case, uh, I could be subpoenaed and then have to testify to everything that you said. Okay. Um, you have the right to have an attorney with before or during any questioning, and if you can't afford an attorney, attorney would be appointed to represent ya [sic] at public expense. Do you understand that right?

A: Shouldn't I have a attorney for this?

Q: Well, that's up to you.

DL (DAN LONG): Completely up to you.

Q: That's completely up to you.

A: Oh, okay. Think I seen a story on the history channel about these things and they not always accurate.

Q: Well, the examination that I'm gonna provide you with today is not about deception. It's about knowledge. Okay. So all the questions that I'm going to ask you on this thing would only be know by the person that did this. If you didn't do it, you won't know any information about this case. Does that make sense to ya? So anyway, you understand the right about the attorney?

A: Mmm hmm.

Q: Okay. If you waive your right to remain silent and later change your mind all questioning will stop. Tell me what that means to ya.

A: I'm, I'm not sure.

Q: Okay. If you agree to talk to me and say, hey Geoff, I'll start out talking to ya, and you change your mind and say 'Oh, I don't wanna talk to you anymore.' All you gotta do is just say, 'Geoff, I don't wanna talk anymore,' and all questioning is gonna stop. Okay. Do you understand that? I need a verbal.

A: Oh, yes.

Q: Okay. Um, if you waive your right to have an attorney present and later change your mind, the questioning will stop until you've had a chance to speak with an attorney. Do you understand that right? What's it mean to ya?

A: I can get a attorney if I want one.

Q: Yeah. At any point in time. You could say 'Hey, you know what Geoff. Before we go any further, I'm gonna want an attorney.'

A: Mmm hmm.

Q: You just gotta verbalize that to me. I'm gonna stop. I won't get angry. I won't get upset. Okay. We'll just stop.

A: Well, could I get a attorney then?

Q: It's up to you.

A: I just wanna ax [sic] him a couple questions before I take this.

Q: Okay. Okay. We'll be with you in just a second.

A: I mean, I'm not opposed to taking it. I just wanna get some counsel about this cause I don't _____ (inaudible).

Q: Okay.

A: ...not sure about that.

Q: Alright. Okay.

A: _____.

Q: Okay. We understand.

A: I, I seen the show man. It's got me skeptical about this.

Q: Okay.

(Sound of Geoff leaving the room, door opening/closing) (pause) (Geoff returns) Yeah. Okay. Do you have a name of an attorney that you need to call or, or you wanna contact?

A: I thought y'all was gonna provide me one.

Q: _____. (Inaudible) If you're charged in this investigation...

A: (Both talking-inaudible)

Q: ...yeah. When, if you're charged in the investigation, okay, and you don't have the funds to have an attorney then one would be provided for ya. Uh, right now this is in the investigative stage as I understand at this point. So if, if you know a name of an attorney we'll provide you with a phone and you can make a phone call and talk to him about it and make a decision on what you wanna do.

A: I don't understand.

DL: We're, we're not arresting you.

A: _____. (Both talking-inaudible)

DL: You're not under arrest.

A: Yeah. I know that.

DL: So we don't provide you an attorney for you because you're not under arrest.

Q: You're not under arrest.

Q: If you have an attorney you wanna consult with, then you can consult with...because this involves a criminal investigation and because it involves this type of, ah, ah, information test, okay, examination here. Um, we have to advise you of these rights. So if you say to me 'Hey Jeff, you know what, I think I wanna talk to an attorney before I go in through this process here'. Um, then I have to stop, mmm, and afford you that opportunity to go ahead and go, go do that if that's what you wanna do. Um, but like he said, you're not under arrest at this point so we don't have to provide you with an attorney, but we can provide you the means to make a phone call here tonight if you want.

DL: Absolutely.

Q: To call an attorney and talk to him.

A: I don't know any attorney's.

Q: Well, give him a phone book I guess, if you wanna call. What do you wanna do?

A: I wanna make sure this is right.

Q: The examination that you're going to go under is called concealed information test. Okay. And basically it's based on knowledge. If you didn't have anything to do with this you wouldn't know specific information about this case. That's what this is gonna involve.

A: Come on. Let's get it over with.

Q: Okay. Hold on for just a second. Alright. So, you're telling me Jeff you know what, you don't wanna consult with an attorney at this point? Verbalize that to me so...

A: No.

Q: No. You don't. It's okay to continue?

A: Yeah.

Q: Okay. Hold on for just a second. (Leaves room) (pause)

A: _____(inaudible)

Q: (returns to room) Okay. Here's the deal. I wanna give you an opportunity here tonight to, to leave. Okay. So what I'd like to do is I wanna administer, ah, this examination, the concealed information test, tomorrow at noon. Okay. So, I'm gonna kick you outta [sic] here. These guys will come and pick ya [sic] up and bring you on down here if that's alright with ya [sic], tomorrow morning, and I'll see you here at noon. Well enough?

DL: Tomorrow noon. (Laughs)

Q: Yeah. Tomorrow. Tomorrow at noon.

A: _____ (both talking-inaudible)

DL: Because if they, the, the, they, I mean, you, you wanna consult with, go consult with attorneys.

Q: Yeah. We got, we gotta give you that opportunity. That's the right thing to do. Okay. If, if, if you didn't have nothing to do with this I'll get you through this thing.

Okay. It's not that hard. It's not that long. Okay. And it's definitely not gonna be what you see on t.v. Okay.

DL: No.

Q: It's a completely different type of format. Alright?

A: Cause this gave me a little...

Q: No. It, it, that's fine. Yeah, I understand that. But, I'm, the, the questions I'm gonna ask you are gonna be questions that have direct information about the incident, okay, that only the person that would've done it would know about.

A: Mmm hmm.

Q: Does that make sense to you?

A: That makes sense.

Q: Okay. So it's very simple. It's based on knowledge. Okay. So it's very simple. I'll explain it to you and still all your rights will apply tomorrow too, just like here today. And then there's some polygraph rights the, that I have to advise you of, okay, in, in regards to this, this test, and I'll, uh, I'll do that tomorrow. Okay?

A: Okay.

Q: Alright.

DL: So I'll come pick you up then like 11:30 tomorrow.

A: That's fine with me.

Q: Cool? Excellent. Alright. Good job.

DL: And I'll take you home right now.

Q: I'll see you tomorrow.

A: What changed y'all [sic] mind?

Q: Well because of the fact that you're, ah...

DL: Because you asked.

Q: ...you're a little, _____(both talking-inaudible), and we gotta do the right thing.

Okay? Alright.

(Statement ends)

THIS VOLUNTARY STATEMENT WAS COMPLETED AT ON THE DAY OF , AT HOURS.

GF/DL/jc
10V0657

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

CONCEALED INFORMATION TEST

EVENT #: 100325-0682

SPECIFIC CRIME: HOMICIDE

DATE OCCURRED: 03-25-10 **TIME OCCURRED:** 0545 HRS

LOCATION OF OCCURRENCE: 7510 W. LAKE MEAD

CITY OF LAS VEGAS CLARK COUNTY

NAME OF PERSON GIVING STATEMENT: KEVIN GIPSON

DOB:	SOCIAL SECURITY #:
RACE:	SEX:
HEIGHT:	WEIGHT:
HAIR:	EYES:
WORK SCHEDULE:	DAYS OFF:
HOME ADDRESS:	HOME PHONE:
WORK ADDRESS:	WORK PHONE:
BEST PLACE TO CONTACT:	
BEST TIME TO CONTACT:	

The following is the transcription of a tape-recorded Concealed Information Test conducted by Polygraph Examiner Geoffrey Flohr, P#12912, LVMPD, on 03-26-10 at 1157 hours. Also present is Detective D. Long, P#3969, LVMPD Homicide Section.

Q (GEOFFREY FLOHR). ...advised of your rights again.

DL (DAN LONG). Okay.

Q. It is the 26th, right?

DL. Huh?

Q. Today's the 26th, right?

DL. Correct.

MARKED F
CASE # C
PROPOSED

STATE'S EXHIBIT 3 C214079 12-2-11

.63

Q. Today's date is, ah, March 26, 2010. It's 11:57 am, and this is concealed information test involving Kevin Gipson. Okay, Kevin.

A. See I thing I know about these is they go off your heart rate.

Q. That's okay.

A. I got a irregular heartbeat. My heart always...

Q. Okay. You're not gonna have to worry about that, okay? This is different than anything that you've ever seen on TV.

A. What is it?

Q. Okay, I'm gonna explain it to you here in a second. Let's go through your rights though. Okay? 'Cause this is a criminal investigation again, I have to advise you of your Miranda Rights. Okay?

A. Uh huh (yes).

Q. Number one, you have the right to remain silent. Tell me what that means to you.

A. I ain't gotta say nothin'.

Q. That's right. At any point in time you can say Geoff, I don't wanna talk. We're done, stop right where we're at, out we go. Okay? Anything that you say can and will be used again you in a court of law. Tell me what means to you.

A. Whatever I say that'll be used against me.

Q. Right. If charges should be brought in this investigation against you, I can be subpoenaed and I have to testify to what you may have said to me. Okay? You

have the right to have an attorney present with you before or during any questioning, and if you can't afford one, one will be appointed to represent you at public expense. Do you understand that?

A. Sure.

Q. Okay. If you waive your right to remain silent, and later wish to stop answering questions, the questions will stop. Tell me what that means to you.

A. If I don't wanna say nothing I don't have to.

Q. Right. If you decide you're gonna talk to me, and then you change your mind, all you gotta do is just say Geoff, I don't wanna answer anymore questions, and we're done. Okay? If you waive your right to have attorney present and later change your mind, all questioning will stop until you've had a chance to speak with an attorney. Tell me what means to you.

A. I _____(unintelligible).

Q. Right. All you gotta do is just say hey, Geoff, I wanna talk to an attorney before I go any further, and I'm done. Okay? Do you understand each of these rights, Kevin, that I've advised you of?

A. Uh huh (yes).

Q. Are you willing to waive them at this time, and continue this, ah, interview with me here today?

A. Sure.

Q. Okay, great. You satisfied?

DL. Yes sir.

Q. You're out of here.

(DETECTIVE LONG LEAVES INTERVIEW)

Q. Kevin, if you would do me a favor, what I'm gonna ask you to do is I'm gonna ask you to print your name right here. Okay? Then I'm gonna read each one of these things. Okay? And as I go through 'em I'm just gonna ask you to check 'em off on the side, you know just a check-mark. Okay? And make sure that I cover everyone of 'em, and that I don't miss any, and that you don't have any questions. Okay? If you decide you wanna continue, down here is where you're gonna sign. I'll give you the date and time, and then I'll sign my name at the bottom as the witness. Okay? All right. There you go, bub. Sign here. Print your name right there. I'm gonna read each one, okay? Just do me a favor and print your name on that first line. Okay. The first paragraph says I, Kevin, Gipson, do hereby voluntarily consent to be examined by the instrument for the purposes of determining if I possess any concealed information surrounding this police investigation. I am in good health, and I know of no reason why I cannot proceed with this examination. If that's accurate, I need you to just check it off on the side. If you have any questions let me know.

A. What does that mean?

Q. What does this mean?

A. Uh huh (yes).

Q. The examination that I'm going to give you today is called a concealed information test. Okay? And what it's gonna determine is whether or not you have any concealed information, involvement in this case. Okay? All right. And it also says that you're in good health as of this moment right here, and that you don't know of anything that can't--that would preclude you or keep you from taking this exam. Okay? You wanna check if off there on the side?

A. Which side, this side?

Q. Either one. I don't care, whatever. Now you've never had this type of a, a examination before, right?

A. No sir.

Q. Okay. So what I'm gonna do is I'm gonna explain this components, tell you where they're gonna go on your body. Okay? These two components right here, Kevin, they're gonna be attached to your chest wall, basically above and below your heart. It's gonna let me know what's going on with your breathing. Okay? These components right here, they're gonna be attached to your finger. That's gonna tell me what's going on with your sweat. Okay? This one right here, that's gonna be attached to your finger also. It's gonna shoot that little beam of light through the tip of your finger, and that's gonna let me know what's going on with the volume of

blood in the tip of your finger. Okay? This right here, is going to be your blood pressure cuff. That's gonna go on your thumb. Okay? I choose to use this one as opposed to the ones that most people are com--ah, familiar with, the arm one, because this doesn't have any significant level of discomfort with it, and it'll allow me to get through the examination a heck of lot quicker. Okay? This pad right here, and these pads right down here, when we go to do the examination they're gonna be out on the chair. They're designed to let me know if you're moving in a chair when I'm asking you to sit still. Okay? All right. So next one reads this way, go ahead, grab your clipboard there. I've had the details of this examination explained to my satisfaction, and voluntarily give me permission for the necessary instrument components to be attached to my body. If that's accurate, check it off. If you have any questions let me know. I further understand that I have the right to stop this examination at any time. If that's accurate, check it off. If you have any questions let me know. Okay? And the next one says, ah, this examination will be audio and video taped. Right up there's the camera. Okay? Everything's being taped. Okay. And the final one says I've read this agreement form, and completely and fully understand it's contents. If that's accurate, check it off. If you have any questions let me know. In order for us to continue, I need your signature right here. Underneath it today's date, March 26, and it's now 12:03 p.m. by my clock, on my phone here. And I'll sign as a witness. _____(inaudible) Let me tell you a little

bit about my background, okay? You were brought to me specifically. Okay? And it's because of my background. Right? I been in law enforcement, ah, going on my thirty-third year now. Okay? Uh, I started out in a sheriff's department in the upper Midwest, ah, outside of Detroit. I worked there for about four and a half years. Ah, then I was hired by the Michigan Department of State Police, and I spent the next 25 years, uh, or so with them. Okay? I spent a total of about 22 years on the street. Okay? The majority of it was, ah, spent within 25 miles of downtown Detroit, if not in the city itself. So I'm real familiar with the urban policing environment. In Michigan when you, uh, become a trooper, uh, you are taught and trained how to handle everything from smashed mailbox complaints all the way to and including homicides. _____ (unintelligible) of a homicide, you won't see a detective unless you ask for one. So you pretty much handle each investigation by yourself. The reason you're here with me is because I have an extensive background in, in, in administering these types of examinations, ah, with regards to homicides and cold case homicides. Okay? So that's why you're here with me today. All right? I wanna give you some rules about how you and I will interact in here today. Would that be all right?

A. Sure.

Q. I want a promise from you that you're gonna be a hundred percent truthful with me here today. You won't leave any information out. Will you do that for me?

A. Yeah, sure.

Q. Okay, great. If I ask you a question that you don't understand, if I misinterpret something that you tell me, or I cause you an confusion, I am giving you permission to confront me about it. Okay? I won't get angry. I'm not gonna get upset, and it's not gonna affect this examination here today. It's just gonna insure that you and me stay on the same page at all time with regards to this investigation, and, and this examination. Okay? Flip side of the coin, if I see or hear something, you say I don't understand, sounds wrong to me, or causes me confusion, can I have your permission to confront you about it?

A. Uh huh (yes).

Q. Okay. I want you to do well here today. That's the goal. If you don't possess any intimate knowledge about this case, okay, then you're gonna be fine here. All right? These questions that you're gonna be asked are about information that has not been released. The only person that would know anything about it was the person that was there and did it. Does that make sense? Okay, real good. Now, if you need a break, you're gonna have to verbalize it to me. Just say hey, Geoff, I need a break. All right? Um, when we get to the examination, I'm gonna give you a set of specific physical instructions. I want you to promise that you'll just listen to what I tell you to do and follow my directions, just the way I give 'em to you. Will you do that for me?

A. Uh huh.

Q. Okay. Answer me this. How do you want me to treat you in here today?

A. Whatch you mean by that?

Q. Think about it. What do you think? How do you wanna be treated in here today?

A. With respect.

Q. Okay. So that's what I hear you saying. I hear you saying hey, Geoff, you know what, uh, make sure this examination is done right, make it fair, make it, make it ethical. There's no reason to yell and scream at me. Okay? I'm a big guy, you know. Don't have to worry about. How old are you now?

A. Twenty-six.

Q. Yeah, 26. You're about, ah, the age of my youngest boy. Um, and you know what, Geoff, I want you to know that I am nervous about this, but it doesn't mean that I'm gonna try to hide anything from you. It's just that I'm nervous. Okay?

A. Uh huh (yes).

Q. All right. This, this test will, uh, work without the fact that you're...or with the fact that you're nervous, because it's not about any sort of level of deception. It's about knowledge. Okay? So it's, it's different than any type of examination that you may be familiar with. Okay? All right. Um, let's do this. Why don't you tell me everything that you do know about this case, and where you got that information from.

A. I told you everything I know.

Q. You haven't told me.

A. About the day I did it?

Q. The day that you did what?

A. The day I did, uh, tell y'all about everything I know. Yesterday.

Q. No. You didn't tell me. You didn't talk to me yesterday. ____(both talking).

A. ____(both talking) the whole story again.

Q. Well, what I want you to do is just tell me what you do know about this case. That's what I want you to do.

A. I know that my parents said the dude was like 5'8".

Q. Okay.

A. ___(unintelligible).

Q. Anything else?

A. (No audible response)

Q. That's it? No other information about the case?

A. It's only been a day.

Q. Well, I'm, I'm, well, I don't know what you do or don't know. Okay? So I need to know that. That's all.

A. I don't know nothing.

Q. Okay. All right. So all you know right now is what you're telling me is that the individual that did it was about 5'8", and wore what?

A. A hoodie.

Q. A hoodie? Any particular color or anything like that?

A. (No audible response)

Q. Where, where did, where did this information come from?

A. From my mom.

Q. Your mom? Okay. Anything else?

A. That she's been threatening to kill me.

Q. Okay.

A. But I ain't did shit though.

Q. Okay. All right, cool. Um, what I, what I do wanna do is this. I want go over these questions with you. Okay? And once we agree on the questions, okay, that you understand what I'm asking you to do, okay, they won't change. There won't be any surprise questions in this process. Okay? Does that make sense to you?

A. Uh huh (yes).

Q. All right, great. All right. One of the questions that I'm gonna ask you to do, and this is how the questions is gonna, is gonna read. It's gonna have a statement, and then I'm gonna ask you to repeat a series of words after me. Okay? So it's gonna sound just like this. This will be one of the questions that I'm going to, uh, ask.

Okay? (Pause) What's going on here? (Pause) All right, here's one of the questions I'm going to ask you. Okay? If you were involved in the death of Brittany you would know what caliber of weapon was used. Repeat after me. Okay? So that'll be the first thing that you hear come out of my mouth. All right?

A. I was involved?

Q. If you were involved in the death of Brittany you would know what caliber of weapon was used. Repeat after me. And then what I'll do is I'm going to say .45. You'll say .45. I'll say .40. You'll say .40. I'll say 9. You'll say 9. I'll say .25. You'll say .25. I'll say .22. You'll say .22. I'll say .38. You'll say .38. Do you understand that question?

A. Okay.

Q. Okay. So let's just go a dry run, all right? You're not connected to anything. I just wanna make sure you understand the question. Okay? All right. If you were involved in the death of Brittany you would know what caliber of weapon was used. Repeat after me. .45.

A. .45.

Q. .40.

A. .40.

Q. 9.

A. 9.

Q. .25.

A. .25.

Q. .22.

A. .22.

Q. .38.

A. .38.

Q. Okay. You understand that question?

A. (Inaudible response)

Q. Okay, very good. Now the only person that would know what the caliber was would be the person that did the shooting. Would you agree?

A. ___(unintelligible).

Q. Okay. Next one, if you were involved in the death of Brittany, you would know where she was shot on her body. Repeat after me. Lower back.

A. Lower back.

Q. Chest.

A. Chest.

Q. Stomach.

A. Stomach.

Q. Neck.

A. Neck.

Q. Head.

A. Head.

Q. Leg.

A. Leg.

Q. Do you understand that question?

A. Yeah.

Q. The only person that would know that would be the person that did it and was there. Do you agree?

A. Yeah.

Q. Okay, very good. If you were involved in the death of Brittany, you would know how many shots were fired. Repeat after me. Five.

A. Five.

Q. Four.

A. Four.

Q. Three.

A. Three.

Q. Two.

A. Two.

Q. One.

A. One.

Q. Six.

A. Six.

Q. You understand that question?

A. Uh huh.

Q. The person that did the shooting, can I get you to agree would know exactly how many shots they fired.

A. Uh huh (yes).

Q. Okay, very good. The next question. If you were involved in Brittany's death, you would know the last location of her body. Repeat after me. Behind the counter.

A. Behind the counter.

Q. Dining area.

A. Dining area.

Q. By her vehicle.

A. By her vehicle.

Q. On Lake Mead.

A. On Lake Mead.

Q. Outside the front door.

A. Outside the front door.

Q. Outside the back door.

A. Outside the back door.

Q. Okay. You would agree that the person that did this would know where her body was after he shot, would you agree?

A. Uh huh (yes).

Q. Okay, very good. And the final question we're gonna ask will be this. If you were involved in the death of Brittany, you would know what item of Brittany's was found near the Jack-in-the-Box. Repeat after me. Purse.

A. Purse.

Q. Wallet.

A. Wallet.

Q. Jewelry.

A. Jewelry.

Q. Money.

A. Money.

Q. Keys.

A. Keys.

Q. Watch,

A. Watch.

Q. You would agree that the person that did this would know that there was a piece of property that was left, agreed?

A. Agree.

Q. Okay. Now, do you understand each one of these questions?

A. Uh huh (yes).

Q. That I've asked you? Do you possess any intimate knowledge about this that you have not revealed to us at this point?

A. No.

Q. Okay, very good. If I could get you to do me a favor, and move over to this chair, take off your shoes. Okay? Leave your socks on. Now what I'm gonna ask you to do, Kevin, when you come back here, is I'm gonna ask you to remain standing. You're gonna put one foot in the middle, one foot on the outside of the pads, remain standing, and face me. Okay? Thank you. Very good. Excellent. Alrighty. All right. Okay, with your right hand here, I want you to grab the chain, pull it around your back some. Other way. And bring it out here. Wonderful. Okay, that's good. I got it. It'll feel a little tight at first. That's normal. Okay? Same thing. Wonderful. Okay, you can let it go. Thanks. Beautiful. Okay, have a seat in the chair, all the way to the back. Oh, popped it right off of that shirt of yours. I was afraid that was gonna happen. Let's try it again. Your shirt's kinda thick up there. Thanks. Okay, go ahead and have a seat. Wonderful. Feet on the pads, please. Okay, great. Take this hand and place it on top of your head for me that'd be great. Okay. Go ahead and drop it down. Okay, the next three components that I placed on you are gonna be very sensitive to movement. Okay? What does that mean?

A. Sensitive to movement.

Q. Yeah. Also means don't move during this examination. Okay?

A. Uh huh (yes).

Q. (Whistling) Okay. Thank you. Okay. What we are looking for during this examination is whether or not the person possesses concealed information about evidence that has not been released. Okay?

A. Uh huh (yes).

Q. So what we will do is look at your body and see whether or not there's any recognition. Does that make sense to you?

A. Uh huh (yes).

Q. Okay. Good. Now grab that. The thumb will get a little numb, kinda feel like it's falling asleep. That's normal. Okay? I don't want you to move it because it's very sensitive to movement. Okay?

A. Uh huh (yes).

Q. All right, you're gonna feel some air come in there. That's as much as would ever be in there. That's not so bad, is it?

A. (No audible response)

Q. I'm gonna take a whole bunch out, 'cause I don't need that much in there. I just need to make sure that I get a good seal. During a polygraph, here are the instructions that I'm going to give you. I'm going to ask you to remain absolutely

still. Okay? I'm gonna ask you to keep your eyes gently closed. All right? And then we're gonna go through these questions. In a couple seconds here I'm going to ask you some health questions and make sure you're okay to take the exam today, and then we'll go right into the exam. Okay?

A. (No audible response)

Q. Great. How much sleep did you get last night?

A. Um, I went to bed around 9:00.

Q. Okay. What time--how many hours did you get?

A. Got seven.

Q. Seven? Did you sleep good?

A. Yeah, it was all right.

Q. Great. Did you have any breakfast yet this morning?

A. Yeah, I ate.

Q. Okay. How about lunch?

A. No.

Q. Are you taking any medicines right now?

A. No.

Q. Okay. What have you had in the way of any illegal drug use in the last 24 hours?

A. Vodka.

Q. Well, that's just alcohol. Any illegal drugs?

A. Yeah, we was at a party 'til 3:00 in morning.

Q. Okay. So you had some, uh...

A. Marijuana.

Q. Okay. Anything else?

A. No.

Q. You have any heart problems?

A. I got a irregular heart beat.

Q. That's fine. Do you have any respiratory problems?

A. No.

Q. Okay. Do you have any general health problems today that you think might affect the exam?

A. No.

Q. Okay. How would you describe your physical health right now, poor, fair, good, or excellent?

A. I'm okay.

Q. Okay. You're gonna feel those loosen up just a little bit. Okay. Okay. You're in good shape to take, ah, take this exam here today.

A. Uh huh.

Q. Great. Got your eyes gently closed?

A. Sure.

Q. Okay. To ahead. Okay. You're gonna feel a little more air coming through the cuff. Okay, keep your eyes gently closed. Don't move during this examination. It's gonna begin here in just a bit. If you were involved in the death of Brittany you would know what caliber of weapon was used. Repeat after me. .45.

A. .45.

Q. .40.

A. .40.

Q. 9.

A. 9.

Q. .25.

A. .25.

Q. .22.

A. .22.

Q. .38.

A. .38.

Q. Okay, that examination is over with. Go ahead and gently open up your eyes, but don't move around a lot. Okay. You did a good job following my directions. I need you to keep doing that, okay?

A. Uh huh (yes).

Q. All you hear me doing over here is printing out that chart. Okay?

A. Uh huh (yes).

Q. That's all I'm doing over here.

A. That's cool.

Q. Okay. It goes to another room there. Okay. I'm going into--we're gonna do the next examination. Go ahead and gently close your eyes. Okay, we'll begin in just a minute. Don't move. If you were involved in the death of Brittany you would know how many shots were fired. Repeat after me. Five.

A. Five.

Q. Four.

A. Four.

Q. Three.

A. Three.

Q. Two.

A. Two.

Q. One.

A. One.

Q. Six.

A. Six.

Q. Exam's over with. Go ahead and gently open up your eyes, but don't move around a lot. Good job following my directions. Go ahead and gently close your eyes.

Next exam will begin here in just a moment. The exam's gonna begin here in just a minute. If you were involved in the death of Brittany, you would know where she was shot on her body. Repeat after me. Lower back.

A. Lower back.

Q. Chest.

A. Chest.

Q. Stomach.

A. Stomach.

Q. I'm gonna repeat that question 'cause you're licking your lips, okay?

A. Oh, my bad.

Q. No problem. Stomach.

A. Stomach.

Q. Neck.

A. Neck.

Q. Head.

A. Head.

Q. Leg.

A. Leg.

Q. And exam's over with. Go ahead and open up your eyes, but don't move around a lot. You're doing a good job following my directions. I appreciate it.

A. Uh huh (yes).

Q. Again, I'm just printing this chart out. Okay? That's what you hear me doing over here.

A. That's fine.

Q. Next exam's gonna begin here in just a bit. Go ahead and gently close your eyes. Don't move during the exam. If you were involved in Brittany's death, you would know the last location of her body. Repeat after me. Behind the counter.

A. Behind the counter.

Q. Dining area.

A. Dining area.

Q. By her vehicle.

A. By her vehicle.

Q. On Lake Mead.

A. On Lake Mead.

Q. Outside the front door.

A. Outside the front door.

Q. Outside the back door.

A. Outside the back door.

Q. Okay, the exam's over with. Go ahead and gently open up your eyes. Again, Kevin, good job following my instructions. I appreciate it.

A. That's cool.

Q. Again, uh, I'm just sending it to the printer. That's what you hear me doing over here.

A. Uh huh (yes).

Q. Next exam's gonna begin here in just a bit.

A. Okay.

Q. You have to close your eyes again. Don't move during the exam. If you were involved in the death of Brittany, you would know what item of Brittany's was found near the Jack-in-the-Box. Repeat after me. Purse.

A. Purse.

Q. Wallet.

A. Wallet.

Q. Jewelry.

A. Jewelry.

Q. Money.

A. Money.

Q. Keys.

A. Keys.

Q. Watch.

A. Watch.

Q. The exam's over with. Go ahead and gently open up your eyes. Don't move around a lot. Good job following my directions again. Kevin, I may want to repeat that one, uh, test where you licked your lips and I had to repeat the question. Okay?

A. Okay.

Q. All right. ____ (unintelligible). Give me a second and let me look at it, okay? I'll be right back.

A. Okay.

(EXAMINER LEAVES ROOM)

(EXAMINER RETURNS TO ROOM)

Q. Okay. All right. I wanna thank you for, ah, following my directions the way you did. You did give me good charts to look at.

A. (unintelligible).

Q. ___(unintelligible) put your shoes on. You can come back and have a seat. Okay. Kevin, I need to confront you about something, can I?

A. Uh huh (yes).

Q. I know you killed her. Yep. You hit every one of the questions. The only way you could do that, 'cause you did it.

A. (unintelligible)

Q. Yeah. This test is not based on deception. This is based on knowledge. Okay?

A. I don't have any knowledge.

Q. Yeah, you do. Your body reacted to every one of the questions with direct knowledge of information that's been concealed. _____(both talking).

A. I never even moved.

Q. No, no, no, your body reacted because you recognized that information. That's why it's called a concealed information test. The only way that you could do that, is because you did it.

A. No.

Q. Yeah. And let me tell you this. I made the test fair for you. Okay? One of the questions I wanted to ask you, the scene, somebody left the scene, the suspect when he left the scene was wearing something on his head.

A. What?

Q. A hoodie. So I didn't ask you that question, 'cause it wouldn't of been fair for you, 'cause you'd already had that information. You see? You told me, I asked you what you knew about this case, and you said to me, hey, Geoff, this is what I do know, black male, about 5'8", fled the scene wearing a hoodie. One of the questions that was not released was the hoodie. That information was not released, but you had it coming in here. So it wouldn't of been fair for me to ask you that question. So I didn't even throw that question.

A. (unintelligible)

Q. What do you mean what do I mean by that? It's pretty simple. Come on, you're an intelligent guy. Come on.

A. My mama told me _____(both talking).

Q. That's what I'm saying, you walked in the door with the information, so I didn't ask you that. Do you understand? It wouldn't of been fair for you 'cause you already had that information. This examination I provided you with today, it's not based on, uh, deception, whether or not you did, or didn't do it. That's now what I'm asking you. What I'm asking you is whether or not you have concealed information about the test. And because of the format that we use, you hit every one of the questions. Okay? Location of where the body was shot, caliber of the weapon that was used, uh, where the body was, uh, left after the shooting, the, uh, uh, keys that were left at the end of the driveway. You hit everyone of those things. The only way you can do that is 'cause you did it. So now I'm asking myself okay, how do I get you to confess to killing Brittany, because I know you did it.

A. I did not do it.

Q. Yeah, you did. Yeah, you did.

A. _____(unintelligible).

Q. You don't have to understand it other than the fact that you did it.

A. ___(unintelligible) I don't even know how you...nah.

Q. Yes. And that's just the way the report's gonna read. Okay? So now you gotta ask yourself okay, what do I do? All right? Look, man, I don't, I don't profess to understand why somebody's gonna kill somebody. I know what the major motives are. Anger is usually right up there. Okay? And the one thing we do know, is there was a lot of friction between you and Brittany. Okay? I don't know what it was all about. We just know what it--that, that it existed, and they got that information from people that they've been talking to. So my guess is that you're really angry at her, 'cause that's the only reason that you could of taken a .25 caliber, put it up against her head, and shot her one time, okay, and then fled the scene, dropping the keys. Okay? That's the only way. Okay? You did it. I know you did it, you know you did it. Yeah. The unfortunate thing for you is the prosecutor's gonna know that you did it, and my report's gonna reflect that you did it. Because you have information that only the person...

A. I have no information.

Q. Yeah, you do, you had the intimate information, the concealed information that has not been released. These detectives have been trained by our polygraph unit that when they have cases like this, we don't want you to give out all the information, because this format that we can use, we can get this format and this stuff entered into court and I can say with absolute certainty that you were the person that pulled

that trigger, because you hit every one of the key questions with regards to the event. So I know you did it.

A. I don't see how.

Q. I know how. Well, I know how, you were angry. That's how. You're angry at her. Something's going on.

A. I don't see how I hit it.

Q. You hit it because you did it. That's, that's the simple part.

A. (Both talking)

Q. 'Cause it would be like, it would be--you would have responses like you did on everyone of those other questions, that didn't have anything to do with the case. Okay? You didn't have any reactions. As soon as I asked you to repeat the word of the key, okay, and the key is the piece of information that we know about that hasn't been released, you come right through the roof.

A. Right through the roof how?

Q. Your body reacts. Okay? And the only...

A. No.

Q. It reacts. Your body changes when you repeat that information. That's because you were concealing that information. You had that information up front.

A. My body did not change. I didn't do nothing.

Q. Yes, it did, that's why we, that's why we attached a component. You're gonna have to trust me on this. This is a very delicate instrument. Man, we're watching everything. We're watching your heartbeat, we're watching your sweat, we're watching your breathing, we're watching ___(unintelligible).

A. I'm not even sweating.

Q. It's not about sweating, it's about changes that take place in the body. When you recognize something, and I ask you to repeat it, your body changes. Why? Because you know that I caught you. I caught you. And I caught you based on your reactions.

A. I ain't even react. I ain't have no reaction.

Q. Yes, you did. You did.

A. I don't believe it.

Q. You don't believe it? You can, you can say whatever you want, but I'm telling you the way my report's gonna read is that you're the shooter. You have concealed information that nobody but the shooter would have. Do you understand what I'm saying?

A. I didn't have any information.

Q. I got you, yes, you do, because I got you to agree that if a person reacted to anyone of those questions, if that question, if the person that did it, they would know exactly what that key was. You knew it every time. Every...yeah, you did, buddy. So I'm

gonna show you. Here's a good one. We look for the purple line on here. The purple line is the determiner. See the purple line?

A. Uh huh (yes).

Q. This is me at the beginning. Okay? Watch the purple line, okay. Here's that one time where I said I was gonna repeat the question, because that was a pretty big reaction what you were licking your lips. Remember you said to me my bad? That's me repeating the question. So that's not a reaction. Okay? Here I repeat the question, no big thing. Number five, see the five with the green on it? Look on here. If you were involved in the death of Brittany, you would know where she was shot on her body. Repeat after me. Okay? That's where she was shot. Look at your reaction. See that purple line? The only person that would know that was the shooter, because that information was withheld. It didn't go out.

A. That's the only thing?

Q. No, it's not the only thing. That's one of the five.

A. How?

Q. Because you knew. Purple line again. We look for the tallest one, the biggest response. Okay? If you were involved in the death of Brittany, you would know what caliber weapon was used. Repeat after me. What's 4C? Twenty-five caliber. That wasn't released.

A. (Both talking).

Q. No, they aren't. This one is smaller, this one is taller. The biggest one gets the reaction. This one's taller.

A. They look the same height to me.

Q. They aren't. They are not the same height. Look at it this way. Right here. See that? It starts right there. Okay? See where this one ends? Way above it. That gets the reaction. Twenty-five caliber, you're the only that would know that because you're the one that shot her.

A. Nope.

Q. Yep. And here's the other one. Here's you're moving, so we don't count that one. Okay? Here we go. By her vehicle. That's where she's at. The green 13, 3C. That's your reaction. Your reaction too right there in your breathing. You are the one.

A. I didn't change anything.

Q. Yeah, you did. That's your body. That's not me making any adjustments to this thing. That's your body doing it. Every one of 'em, without fail. The keys, the shots, everything. You knew it.

A. No.

Q. Yeah, you did. You're the shooter. You're the shooter. You're flat up it. You're the shooter. And I'm gonna be able to say that. I'm gonna be able to write the report that says you're the shooter. No doubt about it. So now you gotta ask yourself,

okay, what do I do? Well look, man, you been around. I caught you. I caught you. So now you gotta ask yourself what do I do? Well, you tell the truth. You tell why you did it. You tell what's going on. You just tell the frickin' truth. It's that simple. It's that simple. Is there gonna be a consequence to you? Heck yeah, there'll be a consequence to you. You're a smart guy. You know. All right? The question is what are you gonna do about it, how you gonna do it? You gonna tell the truth? 'Cause you're not. When you say to me I didn't do it, Geoff, that's not the truth. I know it. I know it because you're the only person that has that information. You're the shooter. My guess is you're angry at her. I don't know what she was doing to you, okay, and I'm not trying to give you an excuse. I can give you an explanation. I've been dealing with enough people who've killed people to know that there are all sorts of reason to kill. I don't get upset or mad about it anymore. Okay? I just try to get people to walk in the truth. That's my job. Straight up and simple. It's just the truth. The question is whether or not you got enough inside you to tell the truth. Tell the reason that you did it, sort it out, take your punishment like a man. Look, you're a tough guy, okay. You don't time before?

A. Little bit.

Q. Okay. So you know what's coming. You understand it. You understand it.

A. But I don't see how I had a reaction to it.

Q. You had a reaction 'cause it's this simple, you were the shooter. You killed her. It's that simple. I can't make it any easier than that. Watch my lips. You put the gun, shot her in the head. Okay? Yeah, you did. There's no doubt in my mind, there's no doubt in your mind. I've sat in this room with people who have been accused of murder before. You're not the first pony to sit in this chair with me. All right? I know you did it. I know you did it. Okay? Now, I think we've treated each other respectfully. I think so. Yeah? And I'm confronting you about it. The question is whether or not you got enough balls to tell the truth. 'Cause I caught you. I caught you. And I caught you with your own body. So here's the one thing I do know. There is a piece of you, even that angry piece of you, that feels bad about what you did. Maybe just a little bit. Maybe she ran you through the ringer. I don't know if there was child support issues. I don't know if she's sleeping around with your friends. I don't know what the heck may be going on. I do know this, okay, for you to pull the trigger in that way, you had to be angry. You had to be upset with her. Okay? To do that. It's not easy to pull the trigger and kill somebody. It's not easy to be involved in a shooting. Okay? It's not easy. Some people it might be. I don't know. Are you in, belong to a gang? What's your gang? Blood?

A. I'm _____(unintelligible).

Q. Crip? What are you?

A. Nothing.

Q. Nothing? Have you been in a gang in the past? No? Well, I don't know what this woman was doing to you to get that upset, man. I would of--you seem like a pretty decent guy. I'd like to see you just walk away, 'cause it's not worth it. It's not worth it. This relationship that you had with her, it's messed up, man. It's messed up. 'Cause it caused you to pick up a gun and cap her. Right when she's getting ready to go into work. Leave her body right there by the car. You left her. How many babies you got with her?

A. Two.

Q. Okay. Babies don't got no mommy now. So I don't know if that's part of the issue. I don't know what it is. Okay? I just know you did it. I just know you did it.

(KNOCK AT DOOR)

DL. Can I come in?

Q. Yeah. So the question is whether or not you're gonna have the courage to just tell the truth, man. Just tell the truth. Okay? It's gonna go one way or the other here. It's one way. Just by telling the truth. The hole's already dug, man, it dug, and you're in it. I think you can see that. You're a smart guy. All right? But you gotta make the decision what you're gonna do. 'Cause there's only so much that people are gonna be able to tolerate. And you already got people who know you did it. So there's some sort of friction going on. Apparently there was some death threats or something involved in the past. I don't know if they were both ways. I don't know

if the death threats were coming towards you, and you felt like you had to do it. I'm not sure. Okay? All I do know is you did it. That much I do know. I just don't know why. And I didn't ask you why, I asked you whether or not you had knowledge that hadn't been released. You got it. I know you did it. There's no doubt about it. That's why I'm coming right in here and confronting you right off the bat. I don't have to play games. I don't have to try to catch you. I already did. I don't have to try to convince you. You already know. You already gave it up. You know that I know. Your body knows that I know. So you gotta try to make that decision, what the heck you gonna do. How you gonna tell the truth? How you gonna explain it. How you gonna explain that you got so upset that this person deserved to die. 'Cause in your mind, they deserved to die. And it's up close and personal when you do it in the head. From a profile aspect, that's an angry shot right there. This is I'm gonna teach you a lesson, bitch. That's what this is about. So my guess is she probably made your life a living hell. She probably made your life a living hell. Okay? And so the reality of it is you gotta decide, okay, they caught me, what do I do? So what kind of man are you, man? You gonna still play this game, or you gonna just tell the truth? I'm hoping that you're kinda guy that'll just tell the truth, get through it, move through it, and be done with it. 'Cause guess what? It's not going away. You know that. You been around enough. You know it. These guys aren't gonna go away. All right? This isn't gonna go away. It's just not gonna go away.

So the opportunity that you have is to start dig yourself up out the hole. One of the first things you start to do, man, is start doing it with the truth. Okay? The truth is gonna start to pull you up out of this thing. Okay? You gotta decide what you wanna do. You gotta decide how you're life's gonna play out. Geoff Flohr has nothing more than to just get you to tell the truth. That's my job. Okay? That's my job. Just to get you to tell the truth. You're either gonna do it, or you're not. That's gonna be your choice. You have the ultimate choice. But it's the same ultimate choice that you had when you put the gun up by her head and popped off the round. Okay? It's the same type of choice. Okay? There's gonna be that momentary second where you're gonna be able to figure out what the right thing might be to do. I hope that you just got so angry that you couldn't control yourself. I hope that you're not a cold calculating killer. I hope that you didn't plan this thing out well in advance, stalk her down the line, and come after her. I'm hoping that it was a momentary lapse of good judgement where you decided I just gotta take care of this problem 'cause I can't deal with it anymore. I understand what pressure's all about. Okay? I know that. I know how you can get that upset.

A. You don't know what it's like to hear, like you don't know what it's like to hear all types of shit.

Q. No, that's not true. I do.

A. I been in a mental hospital and shit. I been seeing things. I been hearing shit.

Q. You want, you wanna know, you wanna know, you wanna know the difference between you and me?

A. You got your family.

Q. You know what, buddy, I'm not that far behind you. I been there. I been right to the edge before. Okay? I understand. Okay? I, I, I do. Look in my eyes. I'm telling you I understand, man. I do. That's not a lie. I'm telling you the truth, buddy. You ever been on a rubber gun squad? You know what it is in our lingo? They take your badge and they take your shit 'cause you're having a lot of issues with something that you're involved in. I was involved in the death of a kid. Took me right to the edge. So I understand. I understand where you're at. This is the truth. And I'm telling you buddy. Nine weeks I was off. So I know.

DL. Go ahead and tell him.

Q. Come on, man, just tell me the truth of what she did to you. Tell me what happened, tell me why it occurred, and we'll figure it out. It's that simple.

A. I told you.

Q. Why'd you kill her?

A. She drove me crazy.

DL. What was she doing?

Q. What'd she do to you?

DL. We wanna understand it. Explain it all to us.

A. I just had--I can't explain it. I...

Q. Yeah, you can.

A. ...it was, it was one of those out of body experiences.

Q. All right. Let me ask you this.

DL. Le-le-le-let--go ahead and finish it. What was Brittany doing? Tell us everything she was doing to you. I wanna understand that part of it first.

A. She was playing with my head.

Q. How so? What did she do to you to drive you to the point where you'd wanna kill her?

DL. Playing with the kids?

A. Yeah.

DL. With a new, new boyfriend?

A. I wouldn't--I, I didn't know--I wouldn't see my kids for months at a time.

DL. Okay.

Q. Okay. Look...

A. Put me through it.

Q. ...look at me, I know she did. I appreciate you telling me the truth, man. Now what I want you to do, I want you to walk me right through it, exactly what you did. Okay? On that day, at the Jack-in-the-Box. Tell me exactly how you did it.

A. I just shot her, and I ran.

Q. Okay. Tell me where the gun's at.

A. I don't know.

Q. What'd you do with it?

A. I gave it back to some dude.

Q. Okay, we're gonna...

A. I didn't know his name.

Q. We're gonna need that dude's name, man. You're gonna know how to be able to get him, _____(both talking).

DL. _____(both talking)...how did you get up to the Jack-in-the-Box?

A. I walked.

DL. You walked the whole way? How'd you get home?

A. Walked.

DL. The whole way? You didn't bus, nobody picked you up?

A. (No audible response)

DL. Okay.

Q. What I need for you to do, okay, is this. Walk us through the whole thing, right from the beginning, all the way to the end. Okay. All the details. Tell us exactly what you did, how you did it.

A. That's it. I just walked up Jack-in-the-Box, seen her get out of the truck, and shot her, and I walked home.

Q. Okay. Tell me how you shot her.

A. I just shot her.

Q. Okay. This is what I want you to do.

DL. He's Brittany. Okay?

Q. Use me as Brittany, who me how you shot her.

A. She was a little back.

Q. Big, back, what, tell me where she was at, buddy.

DL. Where's the car?

A. The car is right here. She was right here.

Q. She was standing up outside the car?

A. Uh huh (yes).

Q. Okay. Show me, come up behind me just like you did her.

A. I wasn't behind her.

Q. Okay, show me how you did it.

A. She was in front, _____(unintelligible).

DL. _____(unintelligible).

Q. Like this?

A. Like this.

Q. What'd you do?

A. And I was a little back, and I shot.

Q. Okay, where'd you shoot her at?

A. I guess it hit her in the head. I didn't stay to see.

Q. You didn't stay to see? Where'd you point the gun at?

A. To upwards.

Q. Okay. Then what did you do?

A. I ran.

Q. Okay. Where, where did her body lay?

A. It fell she was standing.

Q. Right there next to what?

A. To the truck.

Q. The truck? Okay. Tell us about the keys.

A. I don't know about the keys. I swear.

Q. Did you pick the keys up?

A. No.

Q. Did she throw 'em? What happened?

A. I don't know.

DL. Did--was she _____(both talking).

Q. How did you know the keys were there, 'cause you knew that they were there. Did you see 'em on the ground when you ran away?

A. Yeah.

Q. Okay. So how did they get to the ground?

A. I guess they fell out of her hand.

Q. Out of her hand?

A. I never touched the keys.

Q. Okay.

DL. Did she, ah, what were you wearing?

A. What I got on.

DL. This?

A. Uh huh.

Q. The hoodie?

DL. What color was the hoodie?

A. Gray.

Q. How many times did you shoot her?

A. Once.

Q. Okay. Twenty-five cal?

A. Uh huh (yes).

Q. Okay. What's the buddy's name that has it? We gotta get that gun back.

A. I don't know his name.

Q. You gonna be able to take these guys to him to get the gun?

A. I don't know where he's at, I swear. You can ask me all you want.

DL. _____(unintelligible). Um...

Q. You need anymore from me?

DL. No.

Q. You all set?

DL. Yeah.

Q. Okay. All right. Look at me. Thank you, I appreciate it.

DL. You did right.

A. ___(unintelligible) off my meds...

DL. I understand that. And absolutely I was _____(unintelligible).

(EXAMINER LEAVES ROOM)

(DETECTIVE TREMEL ENTERS ROOM)

DL. Um, when you approached, where were you when she parked?

A. Sitting down.

DL. Where?

A. In the bushes. Well, not in the bushes, next to a van, behind the van.

DL. Okay, what color was the van?

A. I can't remember.

DL. It was parked close to Lake Mead?

A. It was parked in the parking lot.

DL. Well I know. What I'm saying is it...here's Lake Mead, right here, was it parked right here, and you were in these bushes?

DT (DON TREMEL). Was it parked close to her car?

DL. It was away. I had walked to the car. She didn't see me.

DL. Okay. Okay. I, I think I know the van you're talking about. It was down a little ways. Okay. And then she pulled up. She parks. And then what'd you do? How did you approach?

A. Just walked up to her.

DL. From behind?

A. Uh huh (yes).

DL. Okay. And what did--did she see you?

A. (No audible response)

DL. She didn't see you?

A. No, until I shot her.

DL. And then she--what'd she do when you shot her?

A. She fell.

DL. Did she--was there a scream?

A. No.

DL. There's, there's a lot of people saying that she let out a scream, or you did. But it sounded like a female.

A. I don't know, I was out of it.

DL. Okay. All right. You were wearing the gray hoodie. Did you have the hood up or down?

A. Up.

DL. Up. All right. And, ah, what did--what kind of gun was it?

A. A .25.

DL. What kind? I mean what color? Was it black, was it silver?

A. Like faded.

DL. Faded, an old one?

A. Yeah.

DL. Okay. Was it faded black, or a fade of silver?

A. Faded black.

DL. Faded black. Okay.

A. But I swear, I don't know the dude.

DL. I, I'm not, I'm not looking to get anybody else in trouble.

A. No, I swear I don't know him.

DL. Okay. How did you get it from him?

A. He was walking one day and I, you know what I'm saying, I talked to him and he loaned it to me.

DL. Okay. Did you pay for it?

A. Yeah.

DL. How much did you pay for it?

A. I gave him, uh, fifty dollars in weed, and fifty dollars.

DL. Okay. And then you gave it back to him?

A. Yep.

DL. Did you tell him it was dirty?

A. (unintelligible)

DL. You didn't tell him it was dirty?

A. No.

DL. Is he over in the Coast?

A. No.

DL. Where is it? What area is he in?

A. On, uh, uh, by the McDonald's, in them apartments on Sahara and Arville.

DL. Sahara and Arville. Okay. A black male?

A. Uh huh, light skinneded [sic].

DL. Older, younger?

A. About 23, 24.

DL. Okay. How did you get a hold of him to give him his gun back?

A. I went to, um, we met at the McDonald's.

DL. No, how did you get a hold of him is what I meant. How did you reach him?

A. I called him.

DL. Do you know his number?

A. Not by heart. It's in my phone. I don't got my phone.

DL. Okay. All right. We'll work on that. Um, like I said, I'm not looking to get anybody in trouble. We're just trying to tie this all, tie it all parts together. Okay? Um, so then you, you actually ran all the way home. Okay. So tell me about which way you ran when you left.

A. Down Lake Mead.

DL. Okay, so you run along Jack-In-The-Box, right, and then where?

A. Other side.

DL. You ran to the other side?

A. Uh huh.

DL. And then where'd you go from there, when you got to the other side?

A. Ran straight.

DL. Straight down Lake Mead, or did you...

A. I cut through the, I was cutting through like the parking lot and stuff.

DL. Okay. So you went across the street and then farther in, and then just made your way all the way across. Did, did you cross at Lake Mead, or did you cross somewhere else, when you crossed the freeway?

A. I went through the intersection.

DL. The freeway?

A. Uh huh (yes). Over the overpass.

DL. That's what I ___(unintelligible). Did you do it at Lake Mead, or did you do it at the next street over?

A. At Lake Mead.

DL. At Lake Mead. Okay. And you literally walked the whole way?

A. Yep.

DL. How do you feel about Brittany being dead now?

A. I'm hurtin'.

DL. It, it...

A. But I, I had no control of myself.

DL. Because you'd stopped taking your meds?

A. And they wouldn't give it to me.

DL. Because the insurance had run out?

A. Yep.

DL. And if you were taking the, what was it called again?

A. __(unintelligible).

DL. Invaga (phonetic) you wouldn't...

A. _____(unintelligible) it have me in like, like it's for psychosis.

DL. Okay. So did you have--what kind of problems were you having when you decided, or when you did this?

A. I was seeing things, hearing shit.

DL. Hearing what?

A. Voices.

DL. What were they telling you?

A. Telling me all type of shit, man. Kept saying murder, kill, kill yourself, everything. ____(unintelligible).

DL. Are you still thinking about killing yourself?

A. It's the voices. I been, I been in mental hospitals and shit, in padded rooms.

DL. Okay. There was--a few days prior to this, uh, you went over with a pair of binoculars?

A. No.

DL. You didn't go over there and look at her from across the street?

A. Nope.

DL. So how did you know she was there?

A. I didn't. I was guessing.

DL. You were guessing?

A. Yep.

DL. Was this your first guess?

A. Yep.

DL. You just __(unintelligible)?

A. ____ in one.

DL. You guessed which store, or did you know which store?

A. I didn't know. Just said it was on Buffalo.

DL. I, I missed--I don't understand that.

A. They just said it was on Buffalo.

DL. Okay. You weren't on Buffalo. Oh yeah, you were close to Buffalo.

DT. Who said, who said it was on Buffalo?

A. One of her co-workers.

DL. Somebody told you?

A. Uh huh (yes).

DL. Was it–who?

A. One of the Mexicans. I don't know.

DL. Oh, okay. All right. So you never went up prior to this?

A. No, this was my first time.

DT. When did you get--when did you get this information that she was at this, this new Jack-in-the-Box?

A. When I called on the 23rd.

DT. And again, you called from your cell phone?

A. No.

DT. You said your...

A. My cell phone been off.

DT. It's been off?

A. For, since the 15th.

DT. Okay.

DL. Okay. The whole thing about going to the party that night, is that true?

A. Uh huh, it's true.

DL. You did get drunk?

A. Uh huh.

DL. You did go home with Denise, and you did go to bed?

A. And I left.

DL. Then you left. What--so you left at about what time? You said you got home about 2:00 or 3:00.

A. Close to 3:00.

DL. Close to 3:00 in the morning.

A. She went in her room, closed the door, and I left.

DL. Okay. And, ah, what time, do you remember what time you got back?

A. Yeah.

DL. What time was it?

A. It was daylight. I don't know, it was before 8:00 something, 'cause my mom called.

DL. It was before your mom called.

A. Uh huh (yes).

DL. Okay. And Denise was still in bed, and you __(unintelligible), you knew how to get back into the apartment?

A. Uh huh (yes).

DL. Did you go to bed?

A. No, I stayed up.

DL. You stayed up?

A. 'Cause my mom called.

DL. Okay. Did you tell your mom what happened?

A. No, I didn't tell nobody.

DL. You didn't tell anybody.

A. Nope.

DL. You didn't tell Denise?

A. No, 'cause she thought I was asleep.

DL. Okay.

DT. You didn't take her car over there? You walked over there, right?

A. Uh huh (yes).

DL. You didn't have your cell phone, or any cell phone with you___(unintelligible)?

A. (Unintelligible/coughing in background)

DL. Okay. Are these the shoes you were wearing?

A. No.

DL. What shoes were you wearing?

A. Some gray Chucks.

DL. And where are those?

A. I threw 'em out on the freeway.

DT. Where's the hoodie at?

A. I don't know. _____(unintelligible/coughing)

DT. What's that?

A. Somewhere in Summerlin.

DT. Were you--when did you take it off?

A. When I got over the pass.

DT. So you--when you--after you, after you ran, cut through some businesses, you continued on, and then you took it off and got rid of it?

A. Uh huh.

DL. Did you just throw--you throw it in the trash can, or did you throw it just?

A. I threw it in a dumpster.

DL. In a dumpster. Did--so Brittany never, you guys actually never tussled? You never got close enough?

PLEADING CONTINUES IN NEXT VOLUME

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN MARQUETTE GIPSON,
Appellant(s),

vs.

STATE OF NEVADA,
Respondent(s),

Case No: 10C264079

Docket No: 73307

RECORD ON APPEAL
VOLUME
3

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10C264079 STATE OF NEVADA vs. KEVIN M. GIPSON

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ORIGINAL

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FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

DEC 02 2011

BY, APRIL WATKINS, DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. KEVIN MARQUETT GIPSON, Defendant.	CASE NO. C264079X DEPT. NO. XVIII DATE: December 2, 2011 TIME: 8:15 a.m.

MOTION TO LIMIT THE TESTIMONY OF DET. LONG

COMES NOW, the Defendant, KEVIN MARQUETT GIPSON, by and through CHRISTY L. CRAIG, Deputy Public Defender and hereby .

This Motion is made and based upon all the papers and pleadings on file herein, the attached Declaration of Counsel, and oral argument at the time set for hearing this Motion.

DATED this 2 day of December, 2011.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By
CHRISTY L. CRAIG, #6262
Deputy Public Defender

10C264079
MOT
Motion
1711527

4

A. TESTIMONY BY DET. LONG AS TO ANY STATEMENTS MADE BY GEOFFREY FLOHR DURING THE INTERROGATION OF KEVIN GIPSON IS HEARSAY FOR WHICH THERE IS NO EXCEPTION

Hearsay is defined as:

"... A statement offered in evidence to prove the truth of the matter asserted unless;

1. The statement is one made by a witness while testifying at the trial or hearing;

2. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement ..."

This issue also implicates the Confrontation Clause of the Sixth Amendment to the United States Constitution which provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him". U.S. Const. amend. VI.

Crawford 541 U.S. at 53-54, 124 S.Ct. 1354 does not allow the admission of Flohr's out-of-court hearsay statements at the Jackson v Denno suppression hearing. To allow the admission of Flohr's out of court hearsay statements is a violation of Gipson's constitutional right to confrontation.

In Crawford, the Supreme Court established a rule barring admission of testimonial hearsay at trial absent the witness's unavailability and a prior opportunity to cross examine. Crawford at 53-54. Citing the infamous treason trial of Sir Walter Raleigh, the Court determined that the "principal evil" the Confrontation Clause was meant to address, was the use of pretrial ex parte examinations that were used at trial without allowing the defendant the right to cross examine the accuser. Id at 50.

"In summary, the Court held that "if a witness is unavailable to testify at trial and the out-of-court statement sought to be admitted are "testimonial, the Sixth Amendment Confrontation Clause requires actual confrontation, i.e., cross-examination." 541 U.S. at 68-69.

It is anticipated that the District Court, if it where to mistakenly rule the hearsay statements admissible, would rely upon NRS 51.315(1). That statute provides:

"A statement is not excluded under the hearsay rule if:

a) Its nature and the special circumstances of which it was made offer a strong assurance of accuracy; and

b) The declarant is unavailable as a witness."

First, and foremost, the prosecution must demonstrate that the declarant is unavailable. Bockting v. State, 109 Nev. 103, 108 847 P.2d 1364 (1993). The prosecution has not provided evidence of their attempts to locate Flohr yet. Upon being provided identifying information for Flohr, defense counsel located him in his home state of Michigan. He is currently working at the Cook nuclear power plant in Berrien County Michigan. This court, at defense counsel's request, issued a Certificate pursuant to the Uniform Action regarding Attendance of Witnesses Outside State to secure the attendance of Flohr at this hearing. A judge in Michigan has agreed to issue a summons for Flohr to appear in Nevada. Flohr is well known in the area, particularly since he is a retired police officer.

Clearly, Flohr is not unavailable as a witness in this case. Therefore, there is no allowable exception to the hearsay rule that would allow Det. Long to testify as to the statements made by Flohr.

Geoffrey Flohr conducts both interviews on March 25 and March 26, 2010. During the March 26th interview, Det. Long leaves the interview room within a few minutes after the start of the interrogation.

After Det. Long left the interview room, Flohr told Kevin about his "polygraph rights" asked questions about Kevin's health and described the test. The question and answer session that

continued after Det. Long can only be testified to by Flohr and falls squarely into information that the court needs in order to determine if the statement was voluntary under Jackson v. Denno.

Det. Long can legally testify as to the 10 sentences he uttered to Kevin, he cannot testify about any of the statements made by Flohr.

The defense respectfully requests that this court limit Det. Long's testimony to the 10 statement made by Det. Long.

DATED this 7 day of December, 2011.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: _____
CHRISTY L. CRAIG, #6262
Deputy Public Defender

•ORIGINAL•

FILED
DEC 5 2 44 PM '11
CLERK OF COURT

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Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. KEVIN MARQUETT GIPSON, Defendant.	CASE NO. C264079X DEPT. NO. XVIII DATE: December 7, 2011 TIME: 8:15 a.m.

DEFENDANT'S NOTICE OF WITNESSES, PURSUANT TO NRS 174.234

TO: CLARK COUNTY DISTRICT ATTORNEY:

You, and each of you, will please take notice that the Defendant, KEVIN MARQUETT GIPSON, intends to call the following witness in his case in chief:

Felicia Nemcke — Southwest Career and Technical Academy
7050 W. Shelbourne Ave
Las Vegas, Nevada 89113 702-799-5766

DATED this 5th day of December, 2011.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: _____
CHRISTY L. CRAIG, #6262
Deputy Public Defender

RECEIVED
DEC 05
CLERK OF THE COURT

10C264079
NOOW
Notice of Witnesses
1712093

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Notice is hereby acknowledged this 5 day of December, 2011.

CLARK COUNTY DISTRICT ATTORNEY

By _____

Case Name: Kevin Marquett Gipson
Case No.: C264079X
Dept. No.: XVIII

ORIGINAL

GPA
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STEVEN D. GRIERSON
CLERK OF THE COURT
DEC 07 2011
BY, April Watkins
APRIL WATKINS, DEPUTY

10C264079
GPA
Guilty Plea Agreement
1714319

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

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

Defendant.

CASE NO: C264079
DEPT NO: XVII

GUILTY PLEA AGREEMENT

I hereby agree to plead guilty to: **FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030, 193.165)**, as more fully alleged in the charging document attached hereto as Exhibit "1".

My decision to plead guilty is based upon the plea agreement in this case which is as follows:

Parties stipulate to twenty (20) years to life in the Nevada Department of Corrections. Further, parties retain the right to argue the deadly weapon for a term of not less than four (4) to eight (8) years.

I agree to the forfeiture of any and all weapons or any interest in any weapons seized and/or impounded in connection with the instant case and/or any other case negotiated in whole or in part in conjunction with this plea agreement.

I understand and agree that, if I fail to interview with the Department of Parole and Probation, fail to appear at any subsequent hearings in this case, or an independent magistrate, by affidavit review, confirms probable cause against me for new criminal charges

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including reckless driving or DUI, but excluding minor traffic violations, that the State will have the unqualified right to argue for any legal sentence and term of confinement allowable for the crime(s) to which I am pleading guilty, including the use of any prior convictions I may have to increase my sentence as an habitual criminal to five (5) to twenty (20) years, life without the possibility of parole, life with the possibility of parole after ten (10) years, or a definite twenty-five (25) year term with the possibility of parole after ten (10) years.

Otherwise I am entitled to receive the benefits of these negotiations as stated in this plea agreement.

CONSEQUENCES OF THE PLEA

I understand that by pleading guilty I admit the facts which support all the elements of the offense(s) to which I now plead as set forth in Exhibit "1".

I understand that the Court must sentence me to the Nevada Department of Corrections as follows: to a term of LIFE without the possibility of parole PLUS a consecutive term of ONE (1) to TWENTY (20) years for the deadly weapon enhancement; a term of LIFE with parole eligibility after TWENTY (20) years PLUS a consecutive term of ONE (1) to TWENTY (20) years for the deadly weapon enhancement; OR a definite term of TWENTY (20) to FIFTY (50) years PLUS a consecutive term of ONE (1) to TWENTY (20) years for the deadly weapon enhancement. I understand that I am not eligible for probation for the offense to which I am pleading guilty.

I understand that the law requires me to pay an Administrative Assessment Fee.

I understand that, if appropriate, I will be ordered to make restitution to the victim of the offense(s) to which I am pleading guilty and to the victim of any related offense which is being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to reimburse the State of Nevada for any expenses related to my extradition, if any.

I understand that I am not eligible for probation for the offense to which I am pleading guilty.

I also understand that I must submit to blood and/or saliva tests under the Direction of the Division of Parole and Probation to determine genetic markers and/or secretor status.

I further understand that if I am pleading guilty to charges of Burglary, Invasion of the Home, Possession of a Controlled Substance with Intent to Sell, Sale of a Controlled Substance, or Gaming Crimes, for which I have prior felony conviction(s), I will not be eligible for probation and may receive a higher sentencing range.

I understand that if more than one sentence of imprisonment is imposed and I am eligible to serve the sentences concurrently, the sentencing judge has the discretion to order the sentences served concurrently or consecutively.

I also understand that information regarding charges not filed, dismissed charges, or charges to be dismissed pursuant to this agreement may be considered by the judge at sentencing.

I have not been promised or guaranteed any particular sentence by anyone. I know that my sentence is to be determined by the Court within the limits prescribed by statute.

I understand that if my attorney or the State of Nevada or both recommend any specific punishment to the Court, the Court is not obligated to accept the recommendation.

I understand that if the offense(s) to which I am pleading guilty was committed while I was incarcerated on another charge or while I was on probation or parole that I am not eligible for credit for time served toward the instant offense(s).

I understand that if I am not a United States citizen, any criminal conviction will likely result in serious negative immigration consequences including but not limited to:

1. The removal from the United States through deportation;
2. An inability to reenter the United States;
3. The inability to gain United States citizenship or legal residency;
4. An inability to renew and/or retain any legal residency status; and/or
5. An indeterminate term of confinement, with the United States Federal Government based on my conviction and immigration status.

Regardless of what I have been told by any attorney, no one can promise me that this conviction will not result in negative immigration consequences and/or impact my ability to become a United States citizen and/or a legal resident.

I understand that the Division of Parole and Probation will prepare a report for the sentencing judge prior to sentencing. This report will include matters relevant to the issue of sentencing, including my criminal history. This report may contain hearsay information regarding my background and criminal history. My attorney and I will each have the opportunity to comment on the information contained in the report at the time of sentencing. Unless the District Attorney has specifically agreed otherwise, the District Attorney may also comment on this report.

WAIVER OF RIGHTS

By entering my plea of guilty, I understand that I am waiving and forever giving up the following rights and privileges:

1. The constitutional privilege against self-incrimination, including the right to refuse to testify at trial, in which event the prosecution would not be allowed to comment to the jury about my refusal to testify.

2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an attorney, either appointed or retained. At trial the State would bear the burden of proving beyond a reasonable doubt each element of the offense(s) charged.

3. The constitutional right to confront and cross-examine any witnesses who would testify against me.

4. The constitutional right to subpoena witnesses to testify on my behalf.

5. The constitutional right to testify in my own defense.

6. The right to appeal the conviction with the assistance of an attorney, either appointed or retained, unless specifically reserved in writing and agreed upon as provided in NRS 174.035(3). I understand this means I am unconditionally waiving my right to a direct appeal of this conviction, including any challenge based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings as stated in NRS 177.015(4). However, I remain free to challenge my conviction through other post-conviction remedies including a habeas corpus petition pursuant to NRS Chapter 34.

VOLUNTARINESS OF PLEA

I have discussed the elements of all of the original charge(s) against me with my attorney and I understand the nature of the charge(s) against me.

I understand that the State would have to prove each element of the charge(s) against

me at trial.

I have discussed with my attorney any possible defenses, defense strategies and circumstances which might be in my favor.

All of the foregoing elements, consequences, rights, and waiver of rights have been thoroughly explained to me by my attorney.

I believe that pleading guilty and accepting this plea bargain is in my best interest, and that a trial would be contrary to my best interest.

I am signing this agreement voluntarily, after consultation with my attorney, and I am not acting under duress or coercion or by virtue of any promises of leniency, except for those set forth in this agreement.

I am not now under the influence of any intoxicating liquor, a controlled substance or other drug which would in any manner impair my ability to comprehend or understand this agreement or the proceedings surrounding my entry of this plea.

My attorney has answered all my questions regarding this guilty plea agreement and its consequences to my satisfaction and I am satisfied with the services provided by my attorney.

DATED this 7 day of December, 2011.

KEVIN MARQUETTE GIPSON, aka,
Kevin Marquette Gipson
Defendant

AGREED TO BY:

SHANON CLOWERS
Deputy District Attorney
Nevada Bar #0010008

CERTIFICATE OF COUNSEL:

I, the undersigned, as the attorney for the Defendant named herein and as an officer of the court hereby certify that:

1. I have fully explained to the Defendant the allegations contained in the charge(s) to which guilty pleas are being entered.

2. I have advised the Defendant of the penalties for each charge and the restitution that the Defendant may be ordered to pay.

3. I have inquired of Defendant facts concerning Defendant's immigration status and explained to Defendant that if Defendant is not a United States citizen any criminal conviction will most likely result in serious negative immigration consequences including but not limited to:

   a. The removal from the United States through deportation;

   b. An inability to reenter the United States;

   c. The inability to gain United States citizenship or legal residency;

   d. An inability to renew and/or retain any legal residency status; and/or

   e. An indeterminate term of confinement, by with United States Federal Government based on the conviction and immigration status.

   Moreover, I have explained that regardless of what Defendant may have been told by any attorney, no one can promise Defendant that this conviction will not result in negative immigration consequences and/or impact Defendant's ability to become a United States citizen and/or legal resident.

4. All pleas of guilty offered by the Defendant pursuant to this agreement are consistent with the facts known to me and are made with my advice to the Defendant.

5. To the best of my knowledge and belief, the Defendant:

   a. Is competent and understands the charges and the consequences of pleading guilty as provided in this agreement,

   b. Executed this agreement and will enter all guilty pleas pursuant hereto voluntarily, and

   c. Was not under the influence of intoxicating liquor, a controlled substance or other drug at the time I consulted with the Defendant as certified in paragraphs 1 and 2 above.

Dated: This 19 day of December, 2011.

ATTORNEY FOR DEFENDANT

ts

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CLERK OF COURT

IND
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
SHANON CLOWERS
Deputy District Attorney
Nevada Bar #010008
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

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

Defendant(s).

Case No. C264079
Dept. No. XVIII

INDICTMENT

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

The Defendant(s) above named, KEVIN MARQUETTE GIPSON, aka, Kevin Marquette Gipson, accused by the Clark County Grand Jury of the crime of MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030, 193.165), committed at and within the County of Clark, State of Nevada, on or about the 25th day of March, 2010, as follows:

did then and there wilfully, feloniously, without authority of law, and with malice aforethought, kill BRITNEY LAVOLL, a human being, by shooting at or into the body of

///

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EXHIBIT "1"

BRITNEY LAVOLL, with a deadly weapon, to-wit: a firearm, said killing having been: (1) willful, deliberate and premeditated; and/or (2) committed by Defendant lying in wait to commit the killing.

DATED this 27 day of April, 2010.

DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

BY _____
SHANON CLOWERS
Deputy District Attorney
Nevada Bar #010008

ENDORSEMENT: A True Bill

_____
Foreperson, Clark County Grand Jury

Names of witnesses testifying before the Grand Jury:

BAILEY, CHRISTINA, c/o CCDA, 200 Lewis Ave, LV, NV

FLEMING, WADE, c/o CCDA, 200 Lewis Ave, LV, NV

LAVOLL, CHARLES, c/o CCDA, 200 Lewis Ave, LV, NV

LONG, DANIEL, LVMPD #3969

ROBERTSON, JEREMY, LVMPD

SIMMS, DR. LARY, CLARK COUNTY CORONER

Additional witnesses known to the District Attorney at time of filing the Indictment:

BENITEZ, CHRISTIAN, c/o CCDA, 200 Lewis Ave, LV, NV

CUSTODIAN OF RECORDS, CCDC

CUSTODIAN OF RECORDS, CLARK COUNTY PARK POLICE

CUSTODIAN OF RECORDS, LVMPD COMMUNICATIONS

CUSTODIAN OF RECORDS, LVMPD RECORDS

FLOHR, GEOFFREY, LVMPD #12912

GILMORE, ROBERT, c/o CCDA, 200 Lewis Ave, LV, NV

TELGENHOFF, GARY, CLARK COUNTY CORONER

TREMEL, DONALD, LVMPD #2038

09AGJ167X/10F05796X/sam
LVMPD EV# 1003250682
(TK7)

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * *

THE STATE OF NEVADA VS KEVIN M GIPSON	CASE NO.: 10C264079
	DEPARTMENT 18

CRIMINAL ORDER TO STATISTICALLY CLOSE CASE

Upon review of this matter and good cause appearing,

IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to statistically close this case for the following reason:

DISPOSITIONS:

- ☐ Nolle Prosequi (before trial)
- ☐ Dismissed (after diversion)
- ☐ Dismissed (before trial)
- ☒ Guilty Plea with Sentence (before trial)
- ☐ Transferred (before/during trial)
- ☐ Bench (Non-Jury) Trial
  - ☐ Dismissed (during trial)
  - ☐ Acquittal
  - ☐ Guilty Plea with Sentence (during trial)
  - ☐ Conviction
- ☐ Jury Trial
  - ☐ Dismissed (during trial)
  - ☐ Acquittal
  - ☐ Guilty Plea with Sentence (during trial)
  - ☐ Conviction
- ☐ Other Manner of Disposition

DATED this 13th day of February, 2012.

DAVID BARKER
DISTRICT COURT JUDGE

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CLERK OF COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

KEVIN MARQUETTE GIPSON
aka Kevin Marquette Gipson
#1582343

Defendant.

CASE NO. C264079

DEPT. NO. XVIII

10C264079
JOC
Judgment of Conviction
1797054

JUDGMENT OF CONVICTION

(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime of MURDER WITH USE OF A DEADLY WEAPON (Category A Felony), in violation of NRS 200.010, 200.030, 193.165; thereafter, on the 10TH day of February, 2012, the Defendant was present in court for sentencing with his counsels, CHRISTY CRAIG-ROHAN, Deputy Public Defender and TIMOTHY O'BRIEN, Deputy Public Defender, and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense and, in addition to the $25.00 Administrative Assessment Fee, and Indigent Defense Civil Assessment Fee of $250.00, the Defendant is sentenced to the Nevada Department of

Corrections (NDC) as follows: LIFE with a POSSIBLE parole eligibility of TWENTY (20) YEARS with a CONSECUTIVE term of TWO HUNDRED FORTY (240) MONTHS MAXIMUM and NINETY-SIX (96) MONTHS MINIMUM for Use of a Deadly Weapon; with SIX HUNDRED EIGHTY-SIX (686) days Credit for Time Served. As the Fee and Genetic Testing have been previously imposed, the Fee and Testing in the current case are WAIVED.

DATED this MAR 0 9 2012 day of February, 2012

DAVID BARKER
DISTRICT JUDGE

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Defendants Motion
Kevin Gipson
1082776
P.O. Box 1989
Ely Nevada, 89301

CLERK OF THE COURT

District Court
Clark County Nevada

The State of Nevada Plaintiff	Case NO: C264079 Dept NO: XVIII
V.S.	Docket NO: 1082776
Kevin Gipson Defendant	Hearing: 09-26-12

MOTION TO withDRAW PLEA

NOW Comes the Defendant, Kevin Gipson by and through CHRISTY L. CRAIG, Deputy Public Defender in the above captioned matter, and moves this Court to withdraw his Plea of guilty previously entered with the assistance of Counsel. As grounds and "good cause," defendant alleges the following grounds for withdrawal of the Plea.

DATED this 24th day of August, , 2012

Kevin Gipson
Kevin Gipson # 1082776
Defendant

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(1)

POINTS AND AUTHORITIES

N.R.S. 176.165. When plea of guilty or nolo contendere may be withdrawn. Except as otherwise provided in this section, a motion to withdraw a plea of guilty. To correct manifest injustice, the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea.

ARGUMENT

ON This DATED 23rd day of December, 2011 I Signed a deal I didn't want to Sign, I want to take my case to trial but my Attorney, CHRISTY L. CRAIG Coerce me by saying if I take my case to trial the Jury going to find me guilty of First Degree Murder in the Jury was going to sentence me to life w/o Finger v. State 2001, 27 P.3d 66, 117 Nev. 548 1995 Senate Bill 314 Should be rejected in its entirety and all prior versions of the Statutes amended or repealed therein remain in full force and effect. Hart v. State, 2000, 1 P.3d 969, 116 NEV. 558 Where a defendant previously has sought relief from conviction entered upon guilty plea, failure to identify all grounds for relief in the instance Pangallo v. State, 112 Nev. 1533, 930 P.2d 100 Lyarden v. Peters, 83 Nev. 298, 429 P.2d 549 defendants Challenging a conviction entered upon guilty plea Should clearly identify the nature of the relief sought as a motion to withdraw plea or a post-conviction petition for writ of habeas corpus, TO the Honorable Judge I want to withdraw my plea that my Attorney CHRISTY L. CRAIG Coerce me to take because I want to take my case to trial for I can have all my appeal right.

(2)

Dated this 24th day of August, 2012 I Kevin Gipson, do solemnly swear, under penalty of perjury, that the above text of Motion to withdraw plea. is accurate, and is correct to the best of my knowledge.

Respectfully submitted,
Kevin Gipson
Defendant

Kevin Gipson #1058774
E.S.P.
P.O. Box 1989
Ely, NV 89301

LAS VEGAS NV 890
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Just Justice USA

509

Regional Justice Center
200 Lewis Ave
Las Vegas, NV 89101

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OPPS
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
SHANON CLOWERS
Chief Deputy District Attorney
Nevada Bar #010008
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

KEVIN MARQUETTE GIPSON
#1582343

Defendant.

CASE NO: C264079

DEPT NO: XVIII

STATE'S OPPOSITION TO DEFENDANT'S PRO PER MOTION TO WITHDRAW PLEA

DATE OF HEARING: 09/26/12
TIME OF HEARING: 8:15 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through SHANON CLOWERS, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Pro Per Motion to Withdraw Guilty Plea.

This opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On April 28, 2010, KEVIN MARQUETTE GIPSON (hereinafter "Defendant") was charged by way of Grand Jury Indictment with Murder With Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165).

On December 7, 2011, Defendant entered into a Guilty Plea Agreement with the State whereby he agreed to plead guilty to the charge as alleged in the Indictment. Pursuant to negotiations, the parties stipulated to TWENTY (20) YEARS to LIFE in the Nevada Department of Corrections. However, parties retained the right to argue the deadly weapon for a term of not less than FOUR (4) to EIGHT (8) YEARS.

On February 10, 2012, Defendant was present in court with counsel, at which time he was sentenced to the Nevada Department of Corrections as follows: LIFE with a POSSIBLE parole eligibility at TWENTY (20) YEARS with a CONSECUTIVE TERM of to TWO HUNDRED FORTY (240) MONTHS MAXIMUM and NINETY-SIX (96) MONTHS MINIMUM for Use of a Deadly Weapon; with SIX HUNDRED EIGHTY-SIX (686) DAYS credit for time served. Judgment of Conviction was filed on March 13, 2012. Defendant did not file a direct appeal.

Defendant filed the instant motion on September 5, 2012. The State's opposition is as follows.

ARGUMENT

I. DEFENDANT'S MOTION TO WITHDRAW HIS GUILTY PLEA SHOULD BE DENIED UNDER 176.165 BECAUSE IT WAS FILED AFTER SENTENCE WAS IMPOSED AND NO MANIFEST INJUSTICE HAS BEEN SHOWN

Defendant claims that he should be allowed to withdraw his guilty plea because he was coerced by his counsel to enter into his plea. Defendant's Motion, September 5, 2012. Defendant relies upon a claim that he was coerced into taking the plea; thereby, forfeiting his right to trial and a subsequent appeal. Id. Defendant's claim is without merit and should be dismissed.

//

A. Standard of Review

NRS 176.165 states that a motion to withdraw a plea of guilty may be made only before sentence is imposed, but: "[t]o correct manifest injustice, the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea." See NRS 176.165; Baal v. State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990). In making its determination of whether manifest injustice occurred, the court looks to whether the defendant: 1) acted voluntarily; 2) understood the nature of the charges against him; and 3) understood the consequences of his plea. Bryant v. State, 102 Nev. 268, 273, 721 P.2d 364, 368, Wilson v. State, 99 Nev. 362, 373, 664 P.2d 328, 334 (1983). Looking to the totality of the facts and circumstances surrounding the plea, a defendant's comprehension of the consequences of a plea, the voluntariness of a plea and the general validity of a plea are to be determined by reviewing the entire record. State v. Freese, 116 Nev. 1097, 1106, 13 P.3d 442, 448 (2000).

A plea of guilty is presumptively valid and the burden is on the Defendant to show otherwise. Bryant, 102 Nev. 272. Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295 (1975). In determining the voluntariness of a plea, the court takes into consideration the presence and advice of counsel prior to the entering of the plea. Patton v. Warden, 91 Nev. 1, 2, 530 P.2d 107, 107 (1975). The court need not utter talismanic phrases for a plea to be valid. Heffley v. Warden, 89 Nev. 573, 575, 516 P.2d 1403, 1404 (1973). Nevada law requires only that the record affirmatively disclose that a defendant who pled guilty entered his plea understandingly and voluntarily. Brady v. United States, 397 U.S. 742, 747-748, 90 S.Ct. 1463, 1470 (1970); United States v. Sherman, 474 F.2d 303 (9th Cir. 1973).

B. Manifest Injustice

i. Defendant Acted Voluntarily and Understood the Nature of the Charges Against Him

In so far as Defendant is claiming that he did not act voluntarily or understand the nature of the charges against him, this claim is belied by the record. Defendant entered into

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a Guilty Plea Agreement with the State on December 7, 2011. In this agreement, Defendant acknowledged the following:

> Voluntariness of Plea
>
> I have discussed the elements of all of the original charge(s) against me with my attorney and I understand the nature of the charge(s) against me . . .
>
> I have discussed with my attorney any possible defenses, defense strategies and circumstances which might be in my favor.
>
> All of the foregoing elements, consequences, rights, and waiver of rights have been thoroughly explained to me by my attorney.
>
> I believe that pleading guilty and accepting this plea bargain is in my best interest, and that a trial would be contrary to my best interest.
>
> I am signing this agreement voluntarily, after consultation with my attorney, and I am not acting under duress or coercion or by virtue of any promises of leniency, except for those set forth in this agreement. . .
>
> My attorney has answered all my questions regarding the guilty plea agreement and its consequences to my satisfaction and I am satisfied with the services provided by my attorney

Guilty Plea Agreement, 4-5, Dec. 7, 2011. Defendant signed the Guilty Plea Agreement confirming the voluntariness of his plea and that he agreed to the negotiations entered into with the State. Guilty Plea Agreement, 5, Dec. 7, 2011.

Defendant cannot satisfy the first or second prongs of Baal to show a manifest injustice because he signed the Guilty Plea Agreement acknowledging that he was entering into this agreement voluntarily and that he understood the nature of the charges against him. Defendant's claims that he wanted to go to trial is further belied by the statement that "accepting this plea bargain is in my best interest, and that a trial would be contrary to my best interest." Guilty Plea Agreement, 5, Dec. 7, 2011.

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Moreover, Defendant's claim that he did not act voluntarily or understand the nature of the charges against him is belied by the record when he was properly canvassed on December 7, 2011.[1]

Defendant has failed to meet the manifest injustice standard; therefore, his claim should be dismissed.

CONCLUSION

Based on the foregoing arguments, the State respectfully requests that Defendant's motion be denied.

DATED this 21st day of September, 2012.

Respectfully submitted,

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

BY /s//SHANON CLOWERS
SHANON CLOWERS
Chief Deputy District Attorney
Nevada Bar #010008

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of State's Opposition To Defendant's Pro Per Motion To Withdraw Plea, was made this 21st day of September, 2012, by facsimile transmission to:

Christy L. Craig-Rohan
Deputy Public Defender
455-5112

BY: /s//R. JOHNSON
R. JOHNSON
Secretary for the District Attorney's Office

[1] There is nothing in the record to demonstrate that his guilty plea to the Indictment was not voluntary or knowingly entered.

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CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 21st day of September, 2012, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

KEVIN MARQUETTE GIPSON #1082776
ELY STATE PRISON
4569 NORTH STATE ROUTE 490
P.O. BOX 1989
ELY, NV 89301

BY: /s//R. JOHNSON
R. JOHNSON
Secretary for the District Attorney's Office

CR/SC/rj

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CLERK OF COURT

ORDR
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
SHANON CLOWERS
Chief Deputy District Attorney
Nevada Bar #010008
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

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Order Denying Motion
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THE STATE OF NEVADA,

Plaintiff,

-vs-

KEVIN MARQUETTE GIPSON,
#1582343

Defendant.

CASE NO: C264079

DEPT NO: XVIII

ORDER DENYING DEFENDANT'S PRO PER MOTION TO WITHDRAW PLEA

DATE OF HEARING: 09/26/12
TIME OF HEARING: 8:15 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 26th day of September, 2012, the Defendant not being present, in proper person, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through SHANON CLOWERS, Chief Deputy District Attorney, and ~~the Court having heard the arguments of counsel and~~ good cause appearing therefore,

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IT IS HEREBY ORDERED that the Defendant's Pro Per Motion to Withdraw Plea, shall be, and it is denied.

DATED this 27 day of September, 2012.

DISTRICT JUDGE

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

SHANON CLOWERS
Chief Deputy District Attorney
Nevada Bar #010008

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Inmate NO: 1082776

Steven D. Grierson
CLERK OF THE COURT

November 7, 2012

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DA/PP IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF NEVADA

Kevin M. Gibson
Petitioner,
VS.
STATE OF NEVADA,
Respondent.

Case NO: C264029
DEPT 18

EX PARTE MOTION FOR APPOINTMENT OF COUNSEL AND REQUEST FOR EVIDENTIARY HEARING.

Comes NOW Petitioner Kevin M. Gibson, in proper person, and moves this Court for its order allowing the appointment of counsel for Petitioner and for Evidentiary hearing. This motion is made and based in the interest of Justice.

Pursuant to NRS 34.750(1),

A Petitioner may allege that the Petitioner is unable to pay the costs of the proceedings or to employ counsel. If the court is satisfied that the allegation of indigency is true and the petition is not dismissed summarily, the court may appoint counsel to represent the petitioner. In making its determination, the court may consider, among other things, the severity of the consequences facing the petitioner and whether:

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(a) The issues presented are difficult;

(b) The Petitioner is unable to comprehend the proceedings; and

(c) Counsel is necessary to proceed with discovery.

Petitioner is presently incarcerated at ELY State Prison, ELY, NEVADA, where he is unemployed, indigent and unable to retain private counsel to represent him. Petitioner is unlearned and unfamiliar with the complexities of Nevada State law, particularly State post-conviction proceedings. Further Petitioner alleges that the issues in this case are complex and require and evidentiary hearing. Petitioner is unable to factually develop and adequately present the claims without the assistance of Counsel. Counsel is unable to adequately the claims without an evidentiary hearing.

Petitioner hereby respectfully requests that the Court appoint Counsel and set a date for evidentiary hearing the reasons stated above.

DATED this 8th day of October, 2012.

Respectfully Submitted,

Kevin M. Gibson

CERTIFICATE OF SERVICE BY MAIL

I, Kevin M. Gipson, hereby certify pursuant to N.R.C.P. 5(b), that on this 8th day of October, 2012, I handed to a prison official for mailing a true and correct copy of the foregoing REQUEST FOR APPOINTMENT OF COUNSEL AND REQUEST FOR EVIDENTIARY HEARING addressed to: EIGTH JUDICIAL DISTRICT COURT
REGIONAL JUSTICE CENTER
200 LEWIS AVENUE
LAS VEGAS NV 89155

(3)

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OPPS

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
BRIAN J. KOCHEVAR
Chief Deputy District Attorney
Nevada Bar #005691
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

KEVIN MARQUETTE GIPSON,
#1582343

Defendant.

CASE NO: 10C264079

DEPT NO: XVIII

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO APPOINT COUNSEL AND REQUEST FOR EVIDENTIARY HEARING

DATE OF HEARING: 11/07/2012
TIME OF HEARING: 8:15 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through BRIAN J. KOCHEVAR, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion To Appoint Counsel And Request For Evidentiary Hearing.

This opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On April 28, 2010, KEVIN MARQUETTE GIPSON (hereinafter "Defendant") was charged by way of Grand Jury Indictment with Murder With Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165).

On December 7, 2011, Defendant entered into a Guilty Plea Agreement with the State whereby he agreed to plead guilty to the charge as alleged in the Indictment. Pursuant to negotiations, the parties stipulated to TWENTY (20) YEARS to LIFE in the Nevada Department of Corrections. However, parties retained the right to argue the deadly weapon enhancement for a term of not less than FOUR (4) to EIGHT (8) YEARS.

On February 10, 2012, Defendant was present in court with counsel, at which time he was sentenced to the Nevada Department of Corrections as follows: LIFE with a POSSIBLE parole eligibility at TWENTY (20) YEARS with a CONSECUTIVE TERM of to TWO HUNDRED FORTY (240) MONTHS MAXIMUM and NINETY-SIX (96) MONTHS MINIMUM for Use of a Deadly Weapon; with SIX HUNDRED EIGHTY-SIX (686) DAYS credit for time served. Judgment of Conviction was filed on March 13, 2012. Defendant did not file a direct appeal.

Defendant filed the instant motion on October 15, 2012. The State's Opposition is as follows.

ARGUMENT

II. DEFENDANT IS NOT ENTITLED TO APPOINTMENT OF COUNSEL

In Coleman v. Thompson, 501 U.S. 722 (1991), the United States Supreme Court ruled that the Sixth Amendment provides no right to counsel in post-conviction proceedings. In McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996), the Nevada Supreme Court similarly observed that "[t]he Nevada Constitution...does not guarantee a right to counsel in post-conviction proceedings, as we interpret the Nevada Constitution's right to counsel provision as being coextensive with the Sixth Amendment to the United States Constitution."

NRS 34.750 provides, in pertinent part:

> [a] petition may allege that the Defendant is unable to pay the costs of the proceedings or employ counsel. If the court is satisfied that the allegation of indigency is true and the petition *is not dismissed summarily,* the court may appoint counsel at the time the court orders the filing of an answer and a return. In making its determination, the court may consider whether:
> (a) The issues are difficult;
> (b) The Defendant is unable to comprehend the proceedings; or
> (c) Counsel is necessary to proceed with discovery.
> (Emphasis added).

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

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

In this case, there is no petition pending and Defendant has failed to allege any specific facts to demonstrate that counsel should be appointed for him. Defendant has failed to demonstrate to the court any of the requirements under NRS 34.750.

As such, Defendant's Motion should be denied as he has failed to articulate with specificity that appointment of counsel is required.

II. DEFENDANT IS NOT ENTITLED TO AN EVIDENTIARY HEARING

Per NRS 34.770, the Court is to determine whether an evidentiary hearing is required when it hears Defendant's petition and considers the State's response. ("The judge or justice,

---

[1] See NRS 34.820(1)(a) (Entitling appointed counsel when petitioner is under a sentence of death).

upon review of the return, answer and all supporting documents which are filed, shall determine whether an evidentiary hearing is required.") Defendant does not have a petition pending, therefore, his motion for an evidentiary hearing should be denied as premature.

CONCLUSION

Based on the foregoing arguments, the State respectfully requests that Defendant's motion be denied.

DATED this 2ND day of November, 2012.

Respectfully submitted,

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

BY /s/ Brian J. Kochevar
BRIAN J. KOCHEVAR
Chief Deputy District Attorney
Nevada Bar #005691

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 2ND day of November, 2012, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

KEVIN MARQUETTE GIPSON, BAC #1082776
ELY STATE PRISON
PO BOX 1989
ELY, NV 89301

BY: /s/ D. Jason
Secretary for the District Attorney's Office

CR/HLS/djj

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Kevin Gipson
#1082776
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301

10C264079
MOT
Motion
1993913

FILED
NOV 05 2012
CLERK OF COURT

IN THE 8th Judicial District Court Of
the State Of Nevada

Kevin Gipson Petitioner	Case NO: C264079 Dept NO: XVIII
VS.	Docket NO: 1082776
The State of Nevada Respondent	Hearing Date: 11-26-12 @ 8:15AM

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS OF THE CASE

Appellant was Convicted of first Degree Murder February 10th, 2012 in the 8th Judicial District Court of the State of Nevada, by Plea of guilty.

Appellant contends that he has a right to a direct appeal as a matter of law; that he was never informed by the court of his right to appeal; that he was not appointed counsel for purposes of effecting an appeal; and that he did not waive his right to a direct appeal or appellate counsel.

Appellant now requests the court allow him to file an (out of time) appeal, and all papers relevant thereto.

RECEIVED
NOV 05 2012
CLERK OF THE COURT

Memorandum of Points and Authorities

Facts of the Case

Appellant was convicted of First Degree murder February 10th, 2012 in the 8th Judicial District court of the State of Nevada, by plea of guilty.

Appellant contends that he has a right to a direct appeal as a matter of law, that he was never informed by the Court of his right to appeal, that he was not appointed Counsel for purposes of effecting an appeal, and that he did not waive his right to a direct appeal or appellate Counsel.

Appellant now requests the Court allow him to file an (out of time) appeal, and all papers relevant thereto.

ARGUMENT

I. Appellant has A Right to Direct Appeal as a matter of law.

Present federal law has made an appeal from a judgment of conviction in a criminal case a matter of right. See Coppedge v. U.S., 82 S.Ct 917, 918 (1962). If a State has created appellate courts as an integral part of the system for finally adjudicating the guilt or innocence of a defendant, the procedures used in deciding appeals must comport with the demands of the Due Process and Equal Protection clauses of the U.S. Constitution. Evitts v. Lucey, 105 S.Ct 830, 834 (1985).

The State of Nevada has further provided defendants convicted by guilty plea, a right to direct appeal by statute. NRS 177.015(3) designates that it is the defendant only who may appeal from a final judgment or verdict in a criminal case, and NRS 177.015(4) States, in pertinent part, that,'

"... the defendant in a criminal case shall not appeal a final judgment or verdict resulting from a plea of guilty, guilty but mentally ill, or nolo contendere that the defendant has entered into voluntarily and with a full understanding of the nature of the charge and the consequences of the plea, unless the appeal is based upon reasonable constitutional, jurisdictional, or other grounds that challenge the legality of the proceedings ...

Appellant submits that since he is protected by both the Federal Constitution, as well as the provisions of Nevada statutory law, his right to a direct appeal challenging his judgment of conviction by way of guilty plea, is well establish

II. Appellant was never informed by the Court of his Right to Appeal.

Appellant submits that the district court never informed him that he had a right to direct appeal, and that the court had a duty to so inform, by way of guilty plea canvass. If a plea of guilty, or guilty but mentally ill is made orally, the court shall not accept such a plea, or a plea of nolo contendere without first addressing the defendant personally, and determining that the plea is made voluntarily, with the understanding of the nature of the charge and the consequences of the plea. NRS 174.035; Bryant v. State, 721 P.2d 364 (1986). The loss of the right to challenge certain aspects of the case that may have occurred prior to entering the guilty plea must certainly fall under the "consequences of the plea" category and would indicate that the court advise of the right to direct appeal, in order to advise what issues on appeal would be lost as a result of a guilty plea.

(2)

Federal courts have also held that the district court has an obligation to inform a criminal defendant of his right to appeal a sentence imposed after the defendant pleaded guilty, and a failure to inform a defendant of such, automatically entitles the defendant to relief. Gaeta V. U.S., 921 F.Supp. 864 (D. Mass. 1996)

III. Appellant was not Appointed Appellant Counsel.

Appellant was not provided with appellate counsel to perfect his appeal. The Fourteenth Amendment to the Federal Constitution guarantees a criminal appellant pursuing a first appeal as of right certain minimal safeguards necessary to make that appeal "adequate and effective". See Griffin V. Illinois, 76 S.Ct 585. Just as a transcript may by rule or custom be a prerequisite to appellate review, the services of a lawyer will for virtually every layman be necessary to present an appeal in a form suitable for appellate consideration on the merits. Evitts, Supra at 833. And Equal Protection requires that such be provided to every criminal defendant, regardless of financial abilities. Douglas V. California, 83 S.Ct 814. Accordingly, Appellant should have been provided with appellate counsel, and such counsel should have been provided at State expense if appellant was found to be indigent. Denial of Counsel was a clear violation of both the Sixth Amendment's right to Counsel, and the 14th Amendment's equal protection clauses.

IV. Appellant Never Waived His Right To Direct Appeal OR Counsel.

Appellant contends that he has never waived his right to direct appeal or appellate counsel. Since he was never informed of his right to appeal, and never knew he had such a right, it would be impossible for him to have waived such a right. It is well established that a criminal defendant can never stipulate to a waiver, and no waiver can be implied by guilty plea. All waivers must be affirmative, and must be made clear for the record that they are made knowingly, intelligently, voluntarily. This is true of both waivers of appeals and waivers of appellate counsel. A defendant can waive his right to counsel and conduct his appeal pro se; but to be valid, the waiver must be voluntary, knowing, and intelligently. Baker v. Kaiser, 929 F.2d 1495. Appellant contends that he made no such waiver.

Conclusion

Appellant has shown that he has a right to a direct appeal as matter of law, that he was never informed by the Court of his right to appeal, that he was not appointed appellate counsel to perfect an appeal, and that he never waived his right to a direct appeal or appellate counsel. Appellant now requests that he be allowed to file all papers and documents relevant thereto.

Appellant further requests that if the Court finds that It cannot or will not allow appellant's to take an appeal, that It issue an ORDER directing appellant's immediate release from the custody of the Judgement of conviction in the case at bar.

DATED this 15th day of October, 2012

Respectfully Submitted,

Kevin M. Gipson
Appellant in Pro Per
ELY State Prison
ELY, Nevada 89301

(5)

CERTIFICATE OF SERVICE

I hereby certify pursuant to N.R.C.P 5(b) that I am the Petitioner/Plaintiff in the foregoing Motion for Consideration of Direct Appeal, or in the Alternative, Release from Custody, and that on this 15th day of October, 2012, I did serve a true and correct copy of the above mentioned document, by giving it to a prison official at the ELY State Prison to deposit in the U.S. Mail, sealed in an envelope, postage pre-paid, and addressed as follows:

E.S.P
P.O. Box 1989
Ely, Nevada, 89301

Regional Justice center
200 Lewis Ave.
Las Vegas, NV 89101

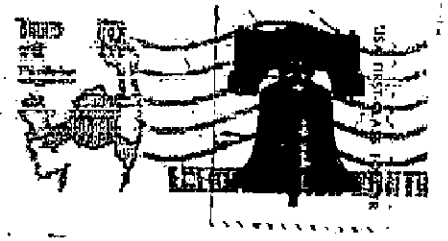
Dated this 15th day of October, 2012

Kevin M. Leisen
Petitioner/Plaintiff

(6)

Kevin Gipson #1082776
ESP
P.O. Box 1989
Ely, Nevada 89301

LAS VEGAS NV 889
31 OCT 2012 PM 3 L



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Clerk of the Court
200 Lewis Ave. 3rd Floor
Las Vegas, Nevada 89155-1160

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ELY STATE PRISON
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ASTA

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff(s),

vs.

KEVIN M. GIPSON,

Defendant(s).

Case No: 10C264079
Dept No: XVIII

CASE APPEAL STATEMENT

1. Appellant(s): Kevin Gipson

2. Judge: David Barker

3. Appellant(s): Kevin Gipson

Counsel:

Kevin Gipson #1082776
P.O. Box 1989
Ely, NV 89301

4. Respondent: The State of Nevada

Counsel:

Steven B. Wolfson, District Attorney
200 Lewis Ave.
Las Vegas, NV 89101
(702) 671-2700

5. Respondent's Attorney Licensed in Nevada: Yes

6. Appellant Represented by Appointed Counsel In District Court: No

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

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

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

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

Type of Judgment or Order Being Appealed: Judgment of Conviction

11. Previous Appeal: No

Supreme Court Docket Number(s):

12. Child Custody or Visitation: N/A

Dated This 8 day of November 2012.

Steven D. Grierson, Clerk of the Court

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

IDC264079

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN GIPSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 62071
District Court Case No. C264079

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CLERK OF THE COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER this appeal DISMISSED."

Judgment, as quoted above, entered this 14th day of January, 2013.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this January 14, 2013.

Tracie Lindeman, Supreme Court Clerk

By: Sally Williams
Deputy Clerk

SUPREME COURT STATE OF NEVADA

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN GIPSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 62071

FILED

DEC 20 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from a judgment of conviction. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

The notice of appeal was untimely filed.[1] NRAP 4(b). Because an untimely notice of appeal fails to vest jurisdiction in this court, Lozada v. State, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994), we conclude that we lack jurisdiction to consider this appeal, and we

ORDER this appeal DISMISSED.[2]

Saitta, J.

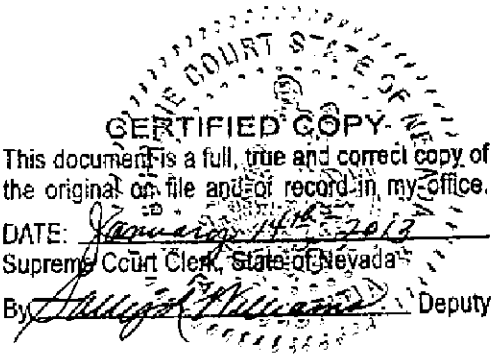
Pickering, J.

Hardesty, J.

[1]An appeal deprivation claim must be raised in a post-conviction petition for a writ of habeas corpus filed in the district court in the first instance. NRS 34.724(2)(c); NRS 34.738(1). We express no opinion regarding the merits of any such claim or whether appellant can satisfy the procedural requirements of NRS chapter 34.

[2]We have considered the proper person documents submitted in this matter, and we conclude that no relief is warranted for the reason set forth above.

cc: Hon. David B. Barker, District Judge
Kevin Gipson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk


CERTIFIED COPY
This document is a full, true and correct copy of
the original on file and of record in my office.
DATE:
Supreme Court Clerk, State of Nevada
By
Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN GIPSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 62071
District Court Case No. C264079

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: January 14, 2013

Tracie Lindeman, Clerk of Court

By: Sally Williams
Deputy Clerk

cc (without enclosures):
Hon. David B. Barker, District Judge
Kevin Marquette Gipson
Clark County District Attorney
Attorney General/Carson City

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the REMITTITUR issued in the above-entitled cause, on JAN 17 2013.

HEATHER UNGERMANN
Deputy District Court Clerk

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CLERK OF THE COURT

SAO

CARMINE J. COLUCCI, CHTD.
CARMINE J. COLUCCI, ESQ.
Nevada Bar No. 881
629 South Sixth Street
Las Vegas, Nevada 89101
(702) 384-1274 Telephone
E-Mail: cjc@lvcoxmail.com
Attorney for Respondent

DISTRICT COURT

CLARK COUNTY, NEVADA

KEVIN GIPSON, Petitioner, vs. D.W. NEVIN, WARDEN, HIGH DESERT STATE PRISON Respondent,	Case No.: 10C264079 Dept No.: XVIII

STIPULATION AND ORDER

IT IS HEREBY STIPULATED AND AGREED by the parties hereto through their respective counsel that the previous briefing schedule set by this Court on the Petition for Writ of Habeas Corpus shall be modified and extended as follows:

THAT the Petitioner shall have until and through January 31, 2014 within which to file his Points and Authorities in Support of Petition for Writ of Habeas Corpus (Post-Conviction).

THAT the State shall have until and through April 1, 2014 to file a Response.

THAT the hearing date of March 31, 2014 presently set by the Court for hearing and decision on whether to set an evidentiary hearing in this matter shall be vacated and reset to a date convenient for the court as set forth below in this

attached Order. Further stipulated that the State shall retain the right to raise the argument that Petitioner's petition is time barred

Dated this 6th day of December, 2013.

CARMINE J. COLUCCI, CHTD.

By _____
CARMINE J. COLUCCI, ESQ.
Nevada Bar No. 0881
629 South Sixth Street
Las Vegas, Nevada 89101
Attorney for Petitioner

STEPHEN B. WOLFSON
CLARK COUNTY DISTRICT ATTORNEY

_____
LEON SIMON, ESQ.
Nevada Bar No. 0411
200 E. Lewis Ave
Las Vegas, Nevada 89101
Attorney for Respondent

ORDER

IT IS HEREBY ORDERED that the previously ordered briefing schedule shall be modified as follows:

THAT the Petitioner shall have until and through January 31, 2014 within which to file his Supplemental Brief;

THAT the State shall have until and through April 1, 2014 within which to file its Response and further that the State shall retain the right to raise the argument that Petitioner's petition is time barred.

THAT THE HEARING AND DECISION on the issue raised in these briefs shall be set for 14th day of April, 2014 at the hour of 8:15 A.M. in the District Court 18.

DATED this _____ day of DEC 17 2013, 2013.

_____
DISTRICT JUDGE

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CLERK OF THE COURT

SAO
CARMINE J. COLUCCI, CHTD.
CARMINE J. COLUCCI, ESQ.
Nevada Bar No. 881
629 South Sixth Street
Las Vegas, Nevada 89101
(702) 384-1274 Telephone
E-Mail: cjc@lvcoxmail.com
Attorney for Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

KEVIN GIPSON, Petitioner, vs. D.W. NEVIN, WARDEN, HIGH DESERT STATE PRISON Respondent,	Case No.: 10C264079 Dept No.: XVIII

STIPULATION AND ORDER

IT IS HEREBY STIPULATED AND AGREED by the parties hereto through their respective counsel that the previous briefing schedule set by this Court on the Petition for Writ of Habeas Corpus (Post-Conviction) shall be modified and extended as follows:

THAT the Petitioner shall have up to and including May 5, 2014, within which to file his Petition for Writ of Habeas Corpus (Post-Conviction) and Points and Authorities in Support of Petition for Writ of Habeas Corpus (Post-Conviction).

THAT the State shall have up to and including July 7, 2014, to file a Response.

That the Petitioner shall have up to and including August 7, 2014, within which to file his Reply.

THAT the hearing date of April 14, 2014, presently set by the Court for hearing and decision on whether to set an evidentiary hearing in this matter shall be vacated and reset to a date convenient to the Court.

THAT it is further stipulated that the State shall retain the right to raise the argument that Petitioner's petition is time barred.

Dated this 31 day of January, 2014.

CARMINE J. COLUCCI, CHTD.

By _____
CARMINE J. COLUCCI, ESQ.
Nevada Bar No. 0881
629 South Sixth Street
Las Vegas, Nevada 89101
Attorney for Petitioner

STEPHEN B. WOLFSON
CLARK COUNTY DISTRICT ATTORNEY

_____
LEON SIMON, ESQ.
Nevada Bar No. 0411
200 E. Lewis Ave
Las Vegas, Nevada 89101
Attorney for Respondent

ORDER

IT IS HEREBY ORDERED that the previously ordered briefing schedule shall be modified as follows:

THAT the Petitioner shall have up to and including May 5, 2014, within which to file his Petition for Writ of Habeas Corpus (Post-Conviction) and Points and Authorities in Support of Petition for Writ of Habeas Corpus (Post-Conviction).

THAT the State shall have up to and including July 7, 2014, within which to file its Response and further that the State shall retain the right to raise the argument that Petitioner's petition is time barred.

THAT the Petitioner shall have up to and including August 7, 2014, within which to file his Reply.

THAT THE HEARING AND DECISION on the issue raised in these briefs shall be set for 18th day of August, 2014 at the hour of 8:15 A.M.

DATED this ____ day of FEB 03 2014, 2014.

DISTRICT JUDGE

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CLERK OF THE COURT

SAO
CARMINE J. COLUCCI, CHTD.
CARMINE J. COLUCCI, ESQ.
Nevada Bar No. 881
629 South Sixth Street
Las Vegas, Nevada 89101
(702) 384-1274 Telephone
E-Mail: cjc@lvcoxmail.com
Attorney for Respondent

DISTRICT COURT

CLARK COUNTY, NEVADA

KEVIN GIPSON,

Petitioner,

vs.

D.W. NEVIN, WARDEN,
HIGH DESERT STATE PRISON
Respondent,

Case No.: 10C264079
Dept No.: XVIII

HEARING DATE ALREADY ENTERED IN ODYSSEY

STIPULATION AND ORDER

IT IS HEREBY STIPULATED AND AGREED by the parties hereto through their respective counsel that the previous briefing schedule set by this Court on the Petition for Writ of Habeas Corpus shall be modified and extended as follows:

THAT the Petitioner shall have until and through **June 4, 2014** within which to file his Points and Authorities in Support of Petition for Writ of Habeas Corpus (Post-Conviction).

THAT the State shall have until and through **August 14, 2014** to file a Response.

THAT the hearing date of August 18, 2014 presently set by the Court for hearing and decision on whether to set an evidentiary hearing in this matter shall

be vacated and reset to a date no earlier than September 15, 2014, to a date convenient for the court, as set forth below in this attached Order.

Dated this 5 day of May, 2014.

CARMINE J. COLUCCI, CHTD.

By _____
CARMINE J. COLUCCI, ESQ.
Nevada Bar No. 0881
629 South Sixth Street
Las Vegas, Nevada 89101
Attorney for Petitioner

STEPHEN B. WOLFSON
CLARK COUNTY DISTRICT ATTORNEY

_____
LEON SIMON, ESQ.
Nevada Bar No. 0411
200 E. Lewis Ave
Las Vegas, Nevada 89101
Attorney for Respondent

ORDER

IT IS HEREBY ORDERED that the previously ordered briefing schedule shall be modified as follows:

THAT the Petitioner shall have until and through **June 4, 2014** within which to file his Supplemental Brief;

THAT the State shall have until and through **August 14, 2014** within which to file its Response.

THAT the hearing date of August 18, 2014 presently set by the Court for hearing and decision on whether to set an evidentiary hearing in this matter shall be vacated and reset to September 15, ____, 2014 at 8:15 a.m.

DATED this ____ day of MAY 07 2014, 2014.

_____
DISTRICT COURT JUDGE

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CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. KEVIN MARQUETTE GIPSON, Defendant.	CASE#: C264079 DEPT. XVIII

BEFORE THE HONORABLE DAVID BARKER, DISTRICT COURT JUDGE

MONDAY, FEBRUARY 11, 2013

RECORDER'S ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS
DEFENDANT'S PRO PER MOTION FOR DIRECT APPEAL MEMORANDUM OF POINTS AND AUTHORITIES FACTS OF THE CASE; CONFIRMATION OF COUNSEL

APPEARANCES:

For the State: MICHELLE Y. EDWARDS, ESQ.
Deputy District Attorney

For the Defendant: CARMINE J. COLUCCI, ESQ.

RECORDED BY: CHERYL CARPENTER, COURT RECORDER

MONDAY, FEBRUARY 11, 2013 AT 8:59 A.M.

THE COURT: C264079, State of Nevada versus Kevin Gipson. The record should reflect the presence of Mr. Colucci. Mr. Gipson in the Nevada Department -- in Nevada Department of Corrections, not present here in court, and Ms. Edwards for the State.

This is time set for confirmation of counsel. My notes reflect Mr. Christensen has indicated -- Mr. Colucci, you can accept this appointment; is that true?

MR. COLUCCI: Yes.

THE COURT: All right. What's your pleasure? Do you want to set a briefing schedule or I have an opportunity to review the file and then come back?

MR. COLUCCI: Actually -- yes. Actually what I'd like to do is actually get the file. So I'd ask for a four month status check and then we could set a briefing schedule at that point.

THE COURT: Four month status check.

THE COURT CLERK: June 17th, 8:15.

MR. COLUCCI: Thank you very much.

THE COURT: Thank you.

[Proceedings concluded at 9:00 a.m.]

* * * * * * * * *

ATTEST: Pursuant to Rule 3(c)(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

Sandra A Pruchnic

SANDRA PRUCHNIC
Court Transcriber

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RTRAN

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. KEVIN MARQUETTE GIPSON, Defendant.	CASE#: C264079 DEPT. XVIII

BEFORE THE HONORABLE DAVID BARKER, DISTRICT COURT JUDGE

MONDAY, APRIL 25, 2011

RECORDER'S ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS
DEFENDANT'S MOTION TO COMPEL DISCOVERY;
DEFENDANT'S MOTION TO SUPRRESS OR IN THE ALTERNATIVE A JACKSON V. DENNO

APPEARANCES:

For the State: ROBERT BRAD TURNER, ESQ.
Deputy District Attorney

For the Defendant: CHRISTY CRAIG, ESQ.
Deputy Public Defender

RECORDED BY: RICHARD KANGAS, COURT RECORDER

MONDAY, APRIL 25, 2011 AT 8:46 A.M.

THE COURT: C264079, State of Nevada versus Kevin Marquette Gipson. The record should reflect the presence of the Defendant in custody with counsel and representative of the State.

This is time set for Defendant's motion to compel; motion to suppress. Parties, per my notes, are requesting a continuance of these motions until May 2nd.

MR. TURNER: Well, Judge -- Brad Turner on behalf of the State.

Judge, as to the motion for discovery, I believe there's only one outstanding issue. That is the CIT results or any information Detective --

MS. CRAIG: Not the results so much as the charts, the actual graphs and -- I mean, I don't know how they're recorded. I got the audio and the video tape, but I'm actually looking for the printout. I'm just not sure if it's physically on a piece of paper or how it's actually recorded. But however that -- that item is recorded, as well as what the instrument was that he used, the brand name, the serial number, that sort of thing that was used during his polygraph examination.

MR. TURNER: And we don't have it in our physical possession. We don't even know what exists. We can represent to the Court, and we'll represent to counsel, that we'll contact Detective Flohr who conducted the test and see what reports he has and we'll make that available to counsel whatever we can get.

THE COURT: All right. Or you could issue a subpoena and they could comply or not independently.

MS. CRAIG: Well, because it's part of the police department, it's generally their policy to not respond to subpoenas and to make us go through the District Attorney's Office.

THE COURT: Okay.

MS. CRAIG: We get that letter from the Civil DA that essentially tells us to go pound sand and get it from them, so --

MR. TURNER: And that may well happen. I know with the DNA results often, even from the State, if we want to get the case notes, that type of thing, we'll have to issue a subpoena. But we'll contact the detective and then we'll let counsel know immediately and we can take, I guess, the steps from there. So I guess to some degree we're asking the Court to pass that to the 2nd as well when the other motions are on.

THE COURT: Okay.

MR. TURNER: But I believe that's the only outstanding issue. We've --

THE COURT: Why don't you work that --

MR. TURNER: -- already had an open file review.

THE COURT: -- work that out. I'm not going to enter any orders anyway. Frankly, when I saw the note that said continue to May 2nd I didn't even dive into the discovery issue, so I'm sitting here thinking, you know --

MR. TURNER: And fair enough, Judge. And it's the State's request for the motion to suppress. I was out of town most of last week, so we just needed additional time to respond to it, so --

THE COURT: Fair enough. That makes sense.

MS. CRAIG: Yeah, and they had let me know. I have no objection to that.

THE COURT: So -- all right. So you guys can work out that one sole remaining discovery issue and then we'll look at the motion to suppress further on May 2nd.

MR. TURNER: Thank you, Your Honor.

MS. CRAIG: And I think there's also a prior bad acts motion the State's filed as well, so --

THE COURT: Looks like, per my calendar, the OBA's presently scheduled also for the 2nd too. That makes sense. So that's obviously not a *Petrocelli* hearing. That's just the initial filing of the motion and notice.

MS. CRAIG: That's correct.

MR. TURNER: Correct, Your Honor.

MS. CRAIG: And, officer, do you have any objection if I give -- I brought some -- the motions over for him as well.

THE CORRECTIONS OFFICER: [No audible response.]

MS. CRAIG: I just brought him copies.

THE COURT CLERK: Counsel for the State, can I have your bar?

MR. TURNER: 6526.

THE COURT: All right.

MS. CRAIG: Thank you.

THE COURT: Mr. Gipson, you understand what's happened this morning?

THE DEFENDANT: Yes, I do.

THE COURT: And we'll see you all on the 2nd.

MR. TURNER: Thank you, Your Honor.

[Proceedings concluded at 8:50 a.m.]

* * * * * * * * *

ATTEST: Pursuant to Rule 3(c)(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

Sandra A Pruchnic

SANDRA PRUCHNIC
Court Transcriber

Electronically Filed
05/23/2014 09:44:10 AM

RTRAN

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. KEVIN MARQUETTE GIPSON, Defendant.	CASE#: C264079 DEPT. XVIII

BEFORE THE HONORABLE DAVID BARKER, DISTRICT COURT JUDGE

MONDAY, MAY 2, 2011

RECORDER'S ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS

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

APPEARANCES:

For the State: SHANON L. CLOWERS, ESQ.
ROBERT BRAD TURNER, ESQ.
Deputy District Attorneys

For the Defendant: CHRISTY CRAIG, ESQ.
Deputy Public Defender

RECORDED BY: RICHARD KANGAS, COURT RECORDER

MONDAY, MAY 2, 2011 AT 8:44 A.M.

THE COURT: C264079, State of Nevada versus Kevin Marquette Gipson. The record should reflect the presence of Mr. Gipson in custody with counsel and representatives of the State.

This is time set for a series of motions in limine both -- styled as defense and State motions, and a note that defense will -- requesting a continuance on all motions. And I keep getting late filed originals, current filed in open court responses, so where we at?

MS. CRAIG: What happened is I filed a -- well, I brought it with me this morning, my reply to the State's motion in limine to admit prior bad acts. I actually finished it yesterday afternoon and sent it by way of email and then I brought it today to file in open court.

The State also filed an opposition to my motion to suppress or to have a *Jackson v. Denno* hearing. I got their opposition late Thursday and I've been working on it, but I haven't completed my reply to their opposition yet, so that's what I'm asking for more time.

THE COURT: All right.

MS. CRAIG: But you only got my reply to the bad acts motion literally. Unless you were working yesterday afternoon you got it this morning.

THE COURT: I got it this morning.

MR. TURNER: And, Judge, before -- I guess -- there's an issue on the defense motion to suppress --

THE COURT: Okay.

MR. TURNER: -- that I think we need to address with the Court because

ultimately it looks like it may impact the trial date.

THE COURT: Okay.

MR. TURNER: I guess, Judge, before we get there my understanding is there's at least two motions that the Court can address today; the discovery motion.

MS. CRAIG: Oh, that's done.

MR. TURNER: Okay.

MS. CRAIG: The discovery motion, the State provided everything by way of email and it was exactly what I asked for.

MR. TURNER: There was an issue with the CIT in terms of the State turning over whatever reports that we had. We did that; we provided that to counsel.

There's also the State's motion in limine regarding the Defendant's notice of experts. I think it could probably be handled quickly this morning.

MR. TURNER: Did -- you aware of our motion?

MS. CRAIG: No, I'm not.

MR. TURNER: That's on calendar this morning as well; correct, Judge?

THE COURT: It's on calendar.

MR. TURNER: Okay.

THE COURT: State's motion in limine regarding Defendant's expert witness and request for discovery.

MS. CRAIG: Okay. Well, I didn't -- I never got it and I suppose it -- and I've been on Odyssey looking because I was trying to pull off their other --

THE COURT: All right.

MS. CRAIG: -- their opposition to my motion and I just never saw it on there.

MR. TURNER: It was sent and obviously I accept counsel's representations, so I guess we won't address that this morning either, but --

THE COURT: No, and she hasn't had a chance to review it.

MS. CRAIG: I'll go find it.

MR. TURNER: I guess the issue now, Judge, is the motion to suppress. The State feels -- number one, I think we need to set a hearing on the motion to suppress because I believe there's some additional testimony the Court's going to need to hear before the Court makes a ruling on the motion to suppress. It's the State's belief that we could present sufficient evidence for the Court to reach its decision with the video of the CIT that was performed, as well as the testimony of Detective Long who was a witness to the CIT examination and then ultimately got the confession from the Defendant. So that's our position, however, defense counsel -- in speaking with Ms. Craig indicated the person who actually performed the CIT is an Officer Flohr who is out of the jurisdiction. He's in --

MS. CLOWERS: A different state.

MR. TURNER: He's in a different state, Judge. He's in what I believe was represented as a 13 to 14 week --

MS. CLOWERS: Training.

MR. TURNER: -- training program to deal with a nuclear agency where he's involved in some kind of security. At this point it's our understanding that he's unavailable. He's the one who actually performed the examination. Our position is it's on video we don't need him, however, defense counsel I'm sure has her own representations. She's saying he's essential and she needs him for the *Jackson v. Denno*. Because it would impact the trial date, Judge, I guess -- I know you haven't read it, but it kind of puts us in a position where we would like an answer I guess before it gets set for trial.

MS. CRAIG: And I can tell the Court that Jeff Flohr is someone that I

absolutely would need to cross-examine. I need him here as a live witness. The main thrust of my motion revolves around Jeff Flohr and his discussions with Mr. Gipson.

THE COURT: Okay.

MS. CRAIG: In the event the Court's even contemplating having a hearing without Mr. Flohr I think I'd want to litigate that because I don't think it's appropriate and he is the guy. He was the one sitting in room. Any other detectives were in and out of the room and did not really participate straight on with Mr. Gipson. That was -- I don't even know if he's a detective -- with Mr. Flohr. I don't mean to insult him, but I'm just not sure exactly what his position is with the agency.

It's not even clear to me -- is he still employed with the Metropolitan Police Department -- he's left their employ?

MR. TURNER: That's correct, Judge.

MS. CRAIG: And it's also my understanding -- you know, I pointed out in my motion, and I don't know whether you've read it or not yet given where we're at, but Jeff Flohr's actions were the basis of a motion to suppress in another case. I know there's two more pending where he's a witness here in the State of Nevada. He's going to have to come back or there's going to be problems, not just in our case, but in two other pending cases which are actually coming up in the next couple weeks. It's a problem that's not going to go away. Mr. Flohr's absolutely the witness who needs to be sitting up there in the event that I get a *Jackson v. Denno* hearing and you don't just grant my motion to suppress outright.

THE COURT: Okay. Well, first things first. What I just heard everyone tell me was the defense motion to compel is taken -- is necessarily off calendar as a consequence of -- you've settled it. You don't need an entry of order; true?

MS. CRAIG: On the discovery motion, no --

THE COURT: On the discovery motion.

MS. CRAIG: -- it was perfectly done.

THE COURT: All right. Now we have a calendar call set for Wednesday, but what I also just heard you tell me is everybody's still in the process of exchanging or locating other pending motions that have been filed, including the motion on -- regarding -- the motion in limine regarding defense experts. So you're not in a procedural posture to head to trial on Monday, is that what I hear you telling me?

MS. CRAIG: That is correct.

MR. TURNER: The State's prepared to go forward. It's our position that the Court wouldn't need that witness. My understanding is that's the defense position.

THE COURT: Okay. Is this -- I was just quickly looking that the procedural history of the case. It's -- this is the first trial setting on this case; is that right?

MS. CLOWERS: No, Judge, I don't believe so.

MS. CRAIG: I think it's the second.

THE COURT: Second trial setting on the case.

MS. CLOWERS: Judge, it was set for trial last September and --

MS. CRAIG: It's been a year since --

THE COURT: Wow.

MS. CLOWERS: September 15th there was a Defendant's continuance and the trial was reset from September to now, Judge.

MS. CRAIG: That is accurate.

THE COURT: All right. Well, what I want to do is -- and we have a calendar call set. We're going to hold to that calendar call date just because -- what I want everybody to do is to get together and make sure all pending motions have been

appropriately noticed and responses received, so -- aside from striking the motion to compel -- not continuing the case at this point or making any decisions procedurally on that or on any of the other motions pending. I think in order to maintain -- you can just anticipate on the motion to suppress that -- I'll look at the information we have, but a *Jackson Denno* hearing may -- I do them as a matter of maintaining the record, but you have responsibilities on your side as well. In order to -- you got -- attempt to put this individual -- this witness under subpoena if you believe --

MS. CRAIG: Well, Judge, I can tell you -- it was my understanding that he was here. Now that I know he's in Louisiana I had asked the State to give me his cell phone number. They weren't inclined to do it at that moment, but they did indicate to me that he was sort of not really even answering his cell phone.

MS. CLOWERS: Because he's in a nuclear plant, Judge, or something to that effect. He said he had to turn his cell phone off while he was at work and --

THE COURT: He's not avoiding service or --

MS. CLOWERS: -- he could contact afterwards. No, Judge.

THE COURT: -- unwilling to come back here on -- if he's ordered or compelled to do so?

MS. CLOWERS: That's correct, Judge.

MR. TURNER: Well, and we need to talk with -- I don't think he would necessarily -- we would necessarily have to go that route. I just don't know if he would be -- his position is he's not available due to the training program he's in, which is part of a new job. We can get in contact or attempt to get in contact with him again and see the status and we can make representations to the Court on Wednesday.

THE COURT: All right. Let's do that. Move forward, see where you're at on

him on Wednesday and we'll adjust accordingly.

You should all know that evidently I have received -- or we have received -- I have not reviewed -- it looks like I have some records from DFS.

MS. CRAIG: Those, Judge -- I filed -- he had signed a release so I could get his records.

THE COURT: Oh.

MS. CRAIG: They were to come to me, but they wanted to send them to you first, so --

THE COURT: And they're his records?

MS. CRAIG: They're his records.

MR. TURNER: And that's at least part of the State's motion in limine and motion to compel discovery I'm assuming is for those records for expert. Is that what --

MS. CRAIG: No.

MR. TURNER: Oh.

MS. CRAIG: No, they're just for me.

THE COURT: Well, I've got some records.

MS. CRAIG: Yes.

THE COURT: To what extent I'm going to look at them or they're relevant to you, I'm just disclosing I've got them. I'm not -- I haven't look at them yet; all right.

MS. CRAIG: Okay.

THE COURT: See you Wednesday.

MS. CLOWERS: And, Judge, can I just --

THE COURT: Yeah.

MS. CLOWERS: -- point out on the calendar it says Defendant's motion in

limine. I believe it's the State's motion in limine for bad acts. And in addition, we are having trouble apparently with the e-filing system and that's why our motion was filed in two separate parts and then I guess part of it didn't make it to Odyssey.

THE COURT: Welcome to the party.

MS. CLOWERS: But we --

THE COURT: We set up the system and we're having problems --

MS. CLOWERS: Okay.

THE COURT: -- with the system.

MS. CLOWERS: Well, I just want to make sure you know that we weren't trying to misfile anything, Judge.

THE COURT: All right. Just everybody put your heads together. Get all motions --

MS. CLOWERS: Will do.

THE COURT: -- that are necessary to be reviewed so we can maintain the record. We'll see you Wednesday.

MS. CRAIG: Thank you.

MS. CLOWERS: Thank you, Judge.

THE COURT CLERK: Counsel for the State, may I have your name?

MS. CLOWERS: Clowers.

MR. TURNER: Brad Turner, 6526.

THE COURT: And Christy Craig.

All right. Mr. Gipson, you've been listening patiently to all this -- all that we've gone through this morning. Do you have any questions about what's been said so far?

THE DEFENDANT: No, sir.

THE COURT: All right. See you Wednesday.

[Proceedings concluded at 8:54 a.m.]

* * * * * * * *

ATTEST: Pursuant to Rule 3(c)(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

Sandra A Pruchnic

SANDRA PRUCHNIC
Court Transcriber

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RTRAN

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. KEVIN MARQUETTE GIPSON, Defendant.	CASE#: C264079 DEPT. XVIII

BEFORE THE HONORABLE DAVID BARKER, DISTRICT COURT JUDGE

WEDNESDAY, MAY 4, 2011

RECORDER'S ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS
CALLENDAR CALL; DEFENDANT'S MOTION IN LIMINE TO ADMIT BAD ACTS AND OTHER ACTS OF THE DEFENDANT AGAINST THE VICTIM; DEFENDANT'S MOTION TO SUPPRESS OR IN THE ALTERNATIVE A JACKSON V DENNO; STATE'S MOTION IN LIMINE REGARDING THE DEFENDANT'S EXPERT WITNESSES AND REQUEST FOR DISCOVERY

APPEARANCES:

For the State: SHANON L. CLOWERS, ESQ.
ROBERT BRAD TURNER, ESQ.
Deputy District Attorneys

For the Defendant: CHRISTY CRAIG, ESQ.
Deputy Public Defender

RECORDED BY: RICHARD KANGAS, COURT RECORDER

WEDNESDAY, MAY 4, 2011 AT 8:21 A.M.

THE COURT: C264079, State of Nevada versus Kevin Marquette Gipson. The record should reflect the presence of Mr. Gipson in custody with counsel, Ms. Craig, and representatives of the State.

MS. CLOWERS: Good morning.

THE COURT: This is time set for calendar call. My notes reflect this is the second trial setting, 60 days is waived. Where we at, ladies and gentlemen?

MS. CRAIG: The person that we need for the *Jackson v. Denno* here was a guy named Jeff Flohr, F-L-O-H-R. He is unable for the next 13 weeks; therefore, we're asking that we set a new trial date to coincide with when he's available --

THE COURT: Okay.

MS. CRAIG: -- and do the *Denno* hearing and set the trial, you know, the -- maybe do the *Denno* hearing at calendar call or in that week. Does that work for you guys --

MR. TURNER: That --

MS. CRAIG: -- or for the Court?

MS. CLOWERS: Well, we'd have to fly him out twice then.

MS. CRAIG: Oh.

MR. TURNER: We would actually -- I guess, we would prefer it closer to the trial date so we -- if we need to fly him out it would save us some expense, Judge. But that's correct. I informed the Court I would call Mr. Flohr.

THE COURT: Right.

MR. TURNER: He spoke with his supervisor; still wasn't able to get out before 13 weeks. But in speaking with his supervisor and speaking to me he

represented he would be available following the 13 weeks to come in and testify.

THE COURT: So if I put you at the end of the September stack --

MS. CRAIG: We were actually looking at your calendar, and after doing careful math, which required all four of us, we added up the 13 weeks and come up with ready September 12th.

THE COURT: September 12th with a calendar call date of September 7th.

MS. CRAIG: Yes, sir.

THE COURT: All right.

MR. TURNER: Thank you, Your Honor.

THE COURT: Mr. Gipson, do you understand the decisions made today while -- why your case isn't going to trial on Monday and that your new trial date is now in September. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Do you have any questions that you would like to ask me or spend some time with your lawyer?

THE DEFENDANT: [Inaudible response.]

THE COURT: Is that a no? You're shaking your head no, but I want to make sure --

THE DEFENDANT: No.

THE COURT: No.

MS. CRAIG: For the record, we've talked about it at length, so he's well aware of where we're at.

THE COURT: Joint continuance granted. All right. Any --

MS. CRAIG: Thank you, Judge.

MR. TURNER: Well, actually, Judge, this is defense continuance as we

previously represented on the motion calendar.

THE COURT: Oh, yeah. Defense --

MR. TURNER: This is an essential witness for the defense, but based upon her representations we were going to submit it to the Court.

THE COURT: All right. Defense continuance granted. Whether -- but it's important because --

MS. CRAIG: I understand.

THE COURT: -- I keep track. So, second defense continuance granted --

MS. CRAIG: Thank you, Judge.

THE COURT: -- and State's position noted for the record.

Mr. Turner?

MR. TURNER: Judge, could we get the motions set for maybe the week before just so the Court can address those motions and we could have a decision on them to see if it impacts our decision making --

MS. CRAIG: That's true because --

MR. TURNER: -- in terms of the trial.

MS. CRAIG: -- if I win my original motion we don't need Mr. Flohr here at all.

THE COURT: Okay. It's not on my calendar, so we want to set that -- the *Jackson Denno* hearing for the morning of Monday, the trial, or --

MS. CRAIG: No, the actual --

MR. TURNER: Well, Judge, there's a number of outstanding motions --

THE COURT: Right. I remember. Okay.

MR. TURNER: -- that the Court hasn't ruled on, and I just ask that the Court, I guess, save and accept for the --

THE COURT: Do you want them on --

MR. TURNER: -- motion to suppress with the *Jackson v. Denno* hearing all other motions if the Court can address those previous to.

THE COURT: Okay. Now, again, they're not -- they do not appear on my calendar and I --

MS. CRAIG: You can --

THE COURT: -- try to manage a lot of cases, so tell me what you want. You want them on calendar call, you want it pre -- you want a hearing date two weeks --

MS. CLOWERS: I think you need a previous because there's also a bad acts motion, so maybe we should go 30 days before trial --

MS. CRAIG: That'll be awesome.

MS. CLOWERS: -- for all motions.

THE COURT: All right.

MS. CRAIG: I can't believe I said awesome. That'd be wonderful.

THE COURT: Now, tell Roshonda because she has to build this calendar. We're talking about an OBA, other bad acts.

MS. CLOWERS: Wait. There's been multiple motions. Maybe we could just look them all up on Odyssey and email your clerk because I know the defense has filed multiple motions regarding the case as well and that way --

THE COURT: Right.

MS. CLOWERS: -- they will all be on the same day.

THE COURT: All right. Communicate, put your heads together --

MR. TURNER: Yes, Your Honor.

THE COURT: -- communicate with my staff.

MS. CLOWERS: Okay.

THE COURT: Make sure that the calendar's noted. We'll set a hearing date

on all pending motions 30 days prior to the trial date, so some time in the middle of August on a --

MS. CLOWERS: Thank you, Judge.

MR. TURNER: Thank you.

THE COURT: -- and let's do it on a Friday. I'm not allowed to do that anymore.

MS. CRAIG: You're not allowed?

THE COURT: Courtroom sharing.

MS. CRAIG: Ah.

THE COURT: And so I've given up Fridays absent -- except for emergencies.

MS. CRAIG: I don't --

THE COURT: So I can't declare this an emergency.

MS. CRAIG: I don't think so.

THE COURT: So it needs to be on a Wednesday.

THE COURT CLERK: Okay. Let's do August 17th.

THE COURT: 8:15.

THE COURT CLERK: 8:15.

MS. CRAIG: Thank you.

MR. TURNER: Thank you, Your Honor.

THE COURT: If we need to adjust times --

MS. CLOWERS: Okay.

THE COURT: -- just keep -- talk --

MS. CLOWERS: Thank you, Judge.

MS. CRAIG: Yes, sir.

THE COURT: -- among yourselves --

MR. TURNER: Thank you.

THE COURT: -- and then together come to me if you need to.

MS. CLOWERS: Thank you.

[Proceedings concluded at 8:26 a.m.]

* * * * * * * *

ATTEST: Pursuant to Rule 3(c)(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

Sandra A Pruchnic

SANDRA PRUCHNIC
Court Transcriber

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RTRAN

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. KEVIN MARQUETTE GIPSON, Defendant.	CASE#: C264079 DEPT. XVIII

BEFORE THE HONORABLE DOUGLAS SMITH, DISTRICT COURT JUDGE

WEDNESDAY, AUGUST 17, 2011

RECORDER'S ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS

DEFENDANT'S NOTICE OF MOTION AND MOTION TO BAR THE ADMISSION OF CUMULATIVE VICTIM IMPACT PANEL EVIDENCE IN VIOLATION OF THE DUE PROCESS CLAUSE; HEARING-COUNSEL TO NOTIFY STAFF OF PENDING MOTIONS; DEFENDANT'S MOTION IN LIMINE TO PRECLUDE THE STATE FROM MOVING TO ADMIT INTO EVIDENCE PHOTOGRAPHS PREJUDICIAL TO KEVIN GIPSON

APPEARANCES:

For the State: SHANON L. CLOWERS, ESQ.
Deputy District Attorney

For the Defendant: CHRISTY CRAIG, ESQ.
Deputy Public Defender

RECORDED BY: JILL JACOBY, COURT RECORDER

WEDNESDAY, AUGUST 17, 2011 AT 10:04 A.M.

THE COURT: All right. C264079, Kevin Gipson.

MS. CRAIG: Good morning. Christy Craig on behalf of Mr. Gipson who's present here in custody.

MS. CLOWERS: Shanon Clowers for the State, Judge.

THE COURT: All right. These are your motion -- Defendant's motions -- cumulative impact panel evidence in violation of the due process clause.

MS. CRAIG: We'd gotten an email saying that -- from the Judge's law clerk giving us a couple of dates to choose from --

THE COURT: Right.

MS. CRAIG: -- to move these to and we were going to ask the Court to set it on October the 7th.

MS. CLOWERS: Yes, please, at one o'clock, Judge.

THE COURT CLERK: At 1 p.m.?

MS. CRAIG: Yes, please.

THE COURT CLERK: Okay. And that's where all of the motions to be heard --

MS. CRAIG: Yes, ma'am.

THE COURT CLERK: Okay.

MS. CLOWERS: It's also for two of the State's motions that were not listed on today's calendar.

THE COURT: *Jackson Denno* hearing will --

THE COURT CLERK: Bad acts.

THE COURT: -- be there and you have two motions.

MS. CLOWERS: Yes, Judge, except for the *Jackson v. Denno*. We're going to ask for that to be set the first day of trial --

THE COURT: Okay.

MS. CLOWERS: -- which is November 14th.

THE COURT CLERK: November 14th?

THE COURT: You can ask Judge Barker that; okay.

MS. CLOWERS: Thank you, Judge.

MS. CRAIG: We will.

MS. CLOWERS: But for the -- if -- for the record, Judge, if we could also have the State's motion --

THE COURT: Yes.

MS. CLOWERS: -- to admit bad acts and the State's motion regarding the Defendant's discovery and expert.

THE COURT: Okay.

THE COURT CLERK: Okay. And that will all be on October 7th at 1 p.m.

MS. CLOWERS: Thank you very much.

MS. CRAIG: Appreciate it.

THE COURT: All right.

[Proceedings concluded at 10:05 a.m.]

* * * * * * * *

ATTEST: Pursuant to Rule 3(c)(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

Sandra A Pruchnic

SANDRA PRUCHNIC
Court Transcriber

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05/23/2014 09:50:14 AM

RTRAN

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

KEVIN MARQUETTE GIPSON,

Defendant.

CASE#: C264079

DEPT. XVIII

BEFORE THE HONORABLE DAVID BARKER, DISTRICT COURT JUDGE

MONDAY, OCTOBER 24, 2011

RECORDER'S ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS

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

APPEARANCES:

For the State: SHANON L. CLOWERS, ESQ.
ROBERT BRAD TURNER, ESQ.
Deputy District Attorneys

For the Defendant: CHRISTY CRAIG, ESQ.
Deputy Public Defender

RECORDED BY: CHERYL CARPENTER, COURT RECORDER

MONDAY, OCTOBER 24, 2011 AT 8:27 A.M.

THE COURT: Gipson is C264079, State of Nevada versus Kevin Marquette Gipson. The record should reflect the presence of the Defendant in custody with counsel, representatives of the State.

This is time set for a series of motions in limine, both State and defense. Where we at? Are we arguing these motions right now?

MS. CRAIG: We don't have to, Judge. I mean, I think their motions -- I think as we discussed on Friday, given in light of the State's request to continue the trial date due to a missing witness, I don't think they need to be argued today. It's certainly up to the Court.

MR. TURNER: That's fine, Judge. We can move them to calendar call or whatever the Court's convenience. We'd ask for calendar call anyway. We still need to get with your clerk about potential new court dates.

THE COURT: Okay. Let's do that.

MS. CRAIG: Perfect.

THE COURT: We have a *Jackson Denno* hearing on the 14th too that we have to move --

MS. CRAIG: That's correct.

THE COURT: -- that's time consistent with this. So let's plan on doing the *Jackson Denno* hearing just like we'd agreed on the morning of trial and do the motions in limine -- well, do we need to be in front of the motions in limine and I'd set it for calendar call.

MS. CRAIG: Well, there's --

THE COURT: You got an OBA going. You're requesting admission of other

bad acts --

MS. CRAIG: That's correct. That one -- in the event that the Court agrees to let them have it, I think we're going to have to talk about a *Petrocelli* hearing.

THE COURT: Why?

MR. TURNER: I don't think any of the motions in limine or dispositive will have any real impact on the trial date or anything else, Judge, so I think we can move those and set them whenever.

THE COURT: All right. I'll -- if you agree -- it seems strange to me that -- if I'm going to allow the other bad acts information in we got to have that *Petrocelli* hearing first to make sure we develop that record.

MR. TURNER: I would agree with the other bad acts motions, Judge.

THE COURT: All right. So let's set the other bad acts motion 30 days prior to calendar call.

MS. CRAIG: Thank you.

THE COURT: The balance of the discovery motions and the defense motions regarding the photographs and the cumulative victim impact evidence we can deal with at calendar call.

Now, let's talk about scheduling. How do you want to work it? Do you want to talk to April or would you just want to -- you both got your schedules?

MR. TURNER: I need to speak with Ms. Clowers.

MS. CRAIG: She's behind you.

MR. TURNER: If we could just have a moment with your clerk, Judge, we could talk with her and see what available dates the Court has and if we can all agree to --

THE COURT: You know, what I'd like you to do is go back and talk to Diane.

She's got the same access. Ms. Craig I'm sure has her schedule too. Let's find a date that works and -- for all sides, all right, and then just come back and report those dates.

MS. CLOWERS: Okay.

MS. CRAIG: Thank you, Judge.

[Proceedings trailed at 8:39 a.m.]

[Proceedings recalled 8:46 a.m.]

THE COURT: C264079, State of Nevada versus Kevin Marquette Gipson. The record should reflect the presence again Defendant in custody with counsel and representatives of the State.

What are our dates?

MS. CLOWERS: Judge, we went back and December 5th seems to be a good date with the one caveat.

THE COURT: I don't think it's a good date at all.

MS. CLOWERS: Because there's a seven time continued trial case on that day?

THE COURT: Yes. Yes.

MS. CLOWERS: Okay.

THE COURT: And I've got -- I was going through that this morning trying to get in front of my schedule --

MS. CLOWERS: Okay.

THE COURT: -- and that's not a good date.

MS. CLOWERS: Then would December 12th be okay with you? Do you know is that going to go longer?

THE COURT: I don't know that one. I was just looking at the 5th because

it's --

MS. CLOWERS: Okay.

THE COURT: How long do you anticipate, a week?

MS. CLOWERS: Well, Judge --

THE COURT: It's probably not.

MS. CLOWERS: -- if there is a penalty then I don't know that we would go into the next week; we might.

MS. CRAIG: I think that's likely.

MS. CLOWERS: But I know how you run your courtroom. It's very fast and so --

THE COURT: Let's go for the 12th then. The 5th is clearly not a good day.

MS. CLOWERS: Okay.

THE COURT CLERK: Okay. Calendar call is going to be December 7th. Jury trial December 12th.

MS. CLOWERS: Judge, do you think -- if it would save time would you like to do *Jackson v. Denno* ahead of time?

THE COURT: I always like to get in front of things. Usually it's the parties that want for witness convenience and attorney convenience to double it up.

MS. CLOWERS: I just don't want to --

THE COURT: I don't -- I don't want that --

MS. CLOWERS: -- run into the next week with it being Christmas following that.

THE COURT: Well that's --

MS. CLOWERS: I don't know --

THE COURT: -- and that's --

MS. CLOWERS: -- if you you're taking the time off.

THE COURT: -- that's what April was just concerned about because I'm dark the week after Christmas, but I just opened up the week before.

MR. TURNER: It looks like it's going to be a one witness -- it's going to be our detective who we're going to present, Judge. I know there's issues with --

THE COURT: I thought -- and I thought Ms. Craig was --

MR. TURNER: -- defense counsel in the *Jackson v. Denno*.

THE COURT: -- talking about another individual.

MR. TURNER: Correct.

THE COURT: Somebody from the poly that might be subpoenaed by her.

MS. CRAIG: What I would ask is maybe that we could hear the prior bad acts motion and the -- at least -- well, I think we've already argued the *Jackson v. Denno*, but maybe we could argue about who the appropriate witness is on November 14th and then we'll be able to go from there. It may be -- and frankly, I think it's likely the Court will see things my way and we won't need a *Petrocelli* hearing and you won't grant their motion, but --

THE COURT: So you want to set the other bad acts for the 14th, the --

[Colloquy between the Court and the Clerk]

THE COURT: I don't like -- I don't want to set an OBA on Monday because it's usually jury selection day.

MS. CRAIG: I'm going to be out of town on the 16th, but I could do the -- ooh, the 23rd is like the day before Thanksgiving.

THE COURT: How about a Friday -- that Friday?

MS. CRAIG: The 18th?

THE COURT: The 18th. All right. Let's do it Friday the 18th at 8:00 a.m.

THE COURT CLERK: For the --

THE COURT: *Jackson Denno* and other bad acts.

MS. CLOWERS: We're not expecting our detective to testify on the 18th of November . We're just going to argue if our detective is the appropriate witness --

THE COURT: Is it --

MS. CLOWERS: -- is that correct?

THE COURT: All right. Is it -- well, that brings an interesting question. The *Jackson Denno* hearing on the voluntary nature of the statements is not related to the OBA, the other bad acts --

MS. CLOWERS: Correct.

THE COURT: -- because that was -- I guess there's some allegations of prior DV, so that's where you want to go with that.

MS. CLOWERS: With the bad acts, yes, Judge.

THE COURT: Okay.

MS. CLOWERS: The *Denno* though, my only concern is that's when the detective is not available from the 14th to the 28th of November.

THE COURT: So that's not working on your side.

MS. CLOWERS: But if we're just -- I know that Ms. Craig, her angle is that it's Greg Flohr that must be present because he's the one that questioned the Defendant and he's the one that ran the CIT, but --

THE COURT: And as we discussed, you have the burden.

MR. TURNER: Right. We need to call that detective at the hearing, Judge.

MS. CLOWERS: Detective Long.

MR. TURNER: It's our -- Detective Long. He --

THE COURT: So let's move it -- let's move it up. Move it closer to us.

MR. TURNER: Okay.

THE COURT: Closer to our time now.

MS. CRAIG: How about the 11th?

THE COURT: How about the 11th?

MS. CLOWERS: Sounds good.

THE COURT: How we looking?

THE COURT CLERK: It's a holiday.

MS. CRAIG: It is?

THE COURT: That's not good.

MS. CLOWERS: I'll be here for this hearing.

THE COURT CLERK: November 11th is a holiday.

THE COURT: That must be Veterans Day.

THE COURT CLERK: It is.

THE COURT: I don't know what my -- that's the end of my civil stack. That's usually pretty busy. Let's go in the afternoon, one o'clock on Thursday, the day before just to find a place for it.

MS. CRAIG: So on 11-10 we're going to actually have the prior bad acts?

THE COURT: No. On 11-10 we'll do the *Jackson Denno*.

MS. CLOWERS: Okay.

MS. CRAIG: Okay.

THE COURT CLERK: On that Thursday you have a bench trial set [indiscernible]. We could do it on the 17th at --

MS. CLOWERS: That's when the detective is gone.

THE COURT CLERK: Oh, on the 17th?

MS. CLOWERS: Yeah. From the 14th through the 28th.

THE COURT: I'm going to put you on the 10th.

MS. CLOWERS: Okay.

THE COURT: Afternoon of the 10th, subject to Diane reaching out to my civil bench trial and finding out what they -- what their kind of commit is and then we might have to adjust.

MS. CLOWERS: Okay.

THE COURT: But I need to get you somewhere, so that's as good as any.

MS. CRAIG: And then prior bad acts motion itself will be heard on the 14th still?

THE COURT CLERK: The 18th.

MS. CRAIG: Eighteenth.

THE COURT CLERK: Oh, well, no, that's a Friday. Do you want to change that?

THE COURT: No.

THE COURT CLERK: Leave that on a Friday?

THE COURT: Let's just --

MS. CRAIG: That's actually not like --

THE COURT: It's not really lengthy in terms of arguing and whether -- making a decision on whether or not a *Petrocelli* --

MS. CLOWERS: Right.

THE COURT: -- hearing is appropriate.

MS. CLOWERS: Do you want to do it on the 10th as well?

THE COURT: Let's just do that on the 10th --

MS. CRAIG: Okay.

THE COURT: -- since we're already there.

THE COURT CLERK: Are we doing it at 10 a.m.?

THE COURT: If we can; yeah. I just -- I think that might throw us into a conflict with the bench trial.

THE COURT CLERK: Your bench trial is starting at nine.

MS. CLOWERS: Judge, if you let us know what time you want us to be here on that day, the day before, we'll make sure we get the detective here.

[Colloquy between the Court and the Clerk]

THE COURT: Let's do it before my trial starts. So let's do -- let's do it at eight o'clock. Because I can't imagine you two are going to argue too long. And the testimony of one witness shouldn't take a half hour, 45 minutes; right?

MS. CLOWERS: I imagine so, Judge; yes.

[Colloquy between the Court and the Clerk]

THE COURT: This is going to throw the heck -- this really is kind of already a mess in terms of what I'm doing. So actually what I want to do is I want to move these to a criminal day, the day before the 9th, just to have to some constancy. So, the 9th of November we're going to have the *Jackson Denno* hearing.

MS. CLOWERS: Okay.

THE COURT: Put it on at 8:15 with the balance -- what?

THE COURT CLERK: I thought you said the 10th for the --

THE COURT: The 10th is a Thursday; right?

THE COURT CLERK: That's a Thursday, yeah.

THE COURT: So I don't want to double up. That's a civil day. I want to keep some constancy, so we're going to move it to the 9th and put it on the regular calendar and we'll just it at the end of the calendar.

MS. CLOWERS: Okay.

THE COURT: All right?

MS. CLOWERS: So we'll just have the detective present and then expect us to go at the end.

THE COURT: You have the burden. I don't know who you want to present. If you want to get that poly guy that you are both referring to that's up to you. I just call -- listen to the evidence. All right?

MS. CLOWERS: We'll be ready, Judge.

MR. TURNER: Thanks, Judge.

MS. CRAIG: Okay. So on the 9th we're doing the *Jackson v. Denno* at 8:15.

THE COURT: Correct.

MS. CRAIG: And what are we doing about the prior bad acts?

MS. CLOWERS: Same day.

THE COURT CLERK: Same day.

THE COURT: Same day.

MS. CRAIG: Same day, just right after.

THE COURT: Correct.

MS. CRAIG: Okay.

MS. CLOWERS: And then everything moved to calendar call.

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THE COURT: Correct.

MS. CLOWERS: Thank you.

[Proceedings concluded at 8:54 a.m.]

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ATTEST: Pursuant to Rule 3(c)(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

Sandra A Pruchnic

SANDRA PRUCHNIC
Court Transcriber

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RTRAN

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. KEVIN MARQUETTE GIPSON, Defendant.	CASE#: C264079 DEPT. XVIII

BEFORE THE HONORABLE DAVID BARKER, DISTRICT COURT JUDGE

MONDAY, NOVEMBER 21, 2011

RECORDER'S ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS

DEFENDANT'S MOTION FOR IN CAMERA REVIEW OF PERSONNEL RECORDS

APPEARANCES:

For the State:	SHANON L. CLOWERS, ESQ. ROBERT BRAD TURNER, ESQ. Deputy District Attorneys
For the Defendant:	CHRISTY CRAIG, ESQ. Deputy Public Defender

RECORDED BY: CHERYL CARPENTER, COURT RECORDER

MONDAY, NOVEMBER 21, 2011 AT 8:23 A.M.

THE COURT: C264079, State of Nevada versus Kevin Marquette Gipson. The record should reflect the presence of Mr. Gipson in custody with counsel, representatives of the State.

This is the time set for Defendant's motion for in camera review of personnel records as they relate to this Officer Flohr that we've been talking about in a variety of contexts.

My notes reflect we also have a pending *Jackson Denno* hearing, which Mr. Flohr may or may not be a part of. This is only a determination of whether or not I should order an in camera review of personnel records.

Ms. Craig, this is your request.

MS. CRAIG: Judge, I'm asking the Court to do an in camera review of Mr. Flohr's records. He actually was not a police officer. I think he was a civilian employee. He was a former police officer in Michigan.

THE COURT: Oh.

MS. CRAIG: He is the fellow who conducted both of the interrogations on Mr. Gipson. He separated from Metro shortly after a difficult decision in a case that I outlined in my motion where he was found to have violated the Defendant's *Miranda* rights during an interrogation. And that interrogation, his statement in that case was ultimately suppressed and it resulted in I think a murder case being dismissed. Shortly after that Mr. Flohr left. He also writes online in his business that he's received numerous accommodations from Metro.

What I'm asking the Court to do is to review his records to determine whether or not he was disciplined for violation of *Miranda* rights and whether or not

his separation from Metro was the result of the -- of his problems in appropriately interrogating the Defendant in *Vazquez-Rosas*, which is the case that I referred to. And I'd also like the Court to determine whether or not he's actually received any of those accommodations and what they were for.

THE COURT: State's response.

MR. TURNER: Judge, first of all, everything counsel said is pure speculation. She's offered nothing to the Court to show that the reason he left Metro was because of some case where some Federal Court found that there was a violation of *Miranda.*

MS. CRAIG: Judge, it wasn't Federal Court. It was actually Judge Bixler.

MR. TURNER: Judge Bixler.

MS. CRAIG: Yeah.

MR. TURNER: That a District -- I think the argument still stands that a District Court found that there was a *Miranda* violation that somehow that that contributed to him leaving the office of the Las Vegas Metropolitan Police Department. The information that we had from him was they cut the program because of budgetary constraints and he left because his wife didn't like Las Vegas.

Additionally, she doesn't show any nexus between a *Miranda* violation that a Court made a decision on whether he properly *Mirandized* someone and the fact that there would be records that would help support or would be impeachment material in his personnel records.

THE COURT: Well, I'm not -- I'm certainly not ordering, nor is it requested, that -- a disclosure of those personnel records. But I think, based upon the predicate, at least an in camera review of those records in determination of whether they might be relevant to Mr. Gipson's situation is appropriate.

MR. TURNER: And, Judge, the Court has the -- and we will present to the Court in the *Jackson v. Denno* complete record of whether *Miranda* was performed in this case.

THE COURT: Okay.

MR. TURNER: And, in fact, it's all on video tape. I would submit to the Court that even if he had violated *Miranda* in another case it's not relevant to this Court's determination or even the jury's determination whether the facts in this case would either constitute a violation of *Miranda* or were involuntary. So even if --

THE COURT: Yeah.

MR. TURNER: -- counsel or the Court were to somehow make a threshold showing that there was some violation in a prior case, the State would submit it's not relevant in this case.

THE COURT: And I don't disagree necessarily with that analysis. I'm just saying that -- don't you think it's a better process to at least review and build a record on that as opposed to --

MR. TURNER: Well --

THE COURT: -- in terms of the balancing of interests here and maintaining -- protecting the record.

MR. TURNER: And, Judge, when there can't be any showing that it could be relevant to this case I think -- and as the Supreme Court would agree, there's certainly an interest that the Court, the public has, as well as Metro, in keeping those records private so that counsel doesn't constantly come in here and ask for in camera review.

I know it's an in camera review, but, nevertheless, it's an intrusion upon his privacy interests when the Court's reviewing those records. And there isn't any

showing, number one, that there's a nexus between a *Miranda* violation in another case and, number two, that that -- even if found by this Court it would be relevant in our case. So that would be the State's position.

THE COURT: I understand. I'm going to -- I'm going to do a -- grant the motion for an in camera review of the records. I'll determine based upon that whether there's issues of veracity that might impact Mr. Gipson's representation or more specifically possible information being disclosed about Mr. Flohr and his veracity. All right.

MS. CRAIG: I'll prepare the order.

THE COURT: Prepare that order.

MS. CRAIG: Thank you.

THE COURT: And I'll tell you what those decisions are when we get to the *Jackson Denno*.

MS. CRAIG: Thank you, Judge.

THE COURT: Good enough.

[Proceedings concluded at 8:28 a.m.]

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ATTEST: Pursuant to Rule 3(c)(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

Sandra A Pruchnic

SANDRA PRUCHNIC
Court Transcriber

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CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. KEVIN MARQUETTE GIPSON, Defendant.	CASE#: C264079 DEPT. XVIII

BEFORE THE HONORABLE DAVID BARKER, DISTRICT COURT JUDGE

WEDNESDAY, DECEMBER 7, 2011

RECORDER'S ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS

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

APPEARANCES:

For the State: ROBERT BRAD TURNER, ESQ.
Deputy District Attorney

For the Defendant: CHRISTY CRAIG, ESQ.
Deputy Public Defender

RECORDED BY: CHERYL CARPENTER, COURT RECORDER

WEDNESDAY, DECEMBER 07, 2011 AT 9:02 A.M.

THE COURT: C264079, State of Nevada versus Kevin Marquette Gipson. The record should reflect the presence of Mr. Gipson in custody with counsel and representative of the State.

Time set for pending motions in limine from both -- both sides and calendar call. The information I have is this matter is negotiated. I received the Guilty Plea Agreement. Ms. Craig is assisting Mr. Gipson in custody.

Is this case negotiated?

MS. CRAIG: It is, Judge.

THE COURT: What is the negotiation?

MS. CRAIG: Mr. Gipson is going to be pleading guilty today to one count of first degree murder with use of a deadly weapon. We have agreed to stipulate to a sentence of 20 to life on the count of first degree murder. We've retained the right to argue on the deadly weapon for between 4 and 8 years on the bottom end on the deadly weapon enhancement. The State's agreed that life without possibility of parole is not going to be considered as a potential penalty in this case.

THE COURT: Counsel, is that an accurate statement of the negotiations?

MR. TURNER: Yes, Your Honor.

MS. CRAIG: I'm also going to ask the Court to allow Mr. Gipson to enter a plea of guilty but mentally ill, additionally.

THE COURT: Now, let's make the record clear that I was informed this morning by both sides in chambers that it was the intent of the Defendant to enter the plea of guilty by mentally ill consistent with NRS 174 -- the provisions of NRS 174 that all have agreed procedurally that the method by which we take this plea or

that decision is not reflected in the Guilty Plea Agreement, and that the plea -- the procedure for taking the plea would be the same as we would in any other action. That the balance of the decisions that need to be made as a consequence of that decision would occur at sentencing with the burden on the defense by preponderance of the evidence as outlined under those provisions.

Is true, Ms. Craig?

MS. CRAIG: Yes, Judge.

MR. TURNER: And it's correct, Judge. The State isn't agreeing to that, but the State recognizes the Court needs to make that finding if the evidence supports it.

THE COURT: All right. So that's -- the minutes will reflect it's -- that -- it's contemplated that that is the decision.

Mr. Gipson, is your full name Kevin Marquette Gipson?

THE DEFENDANT: Yes, it is.

THE COURT: How old are you, Mr. Gipson?

THE DEFENDANT: Twenty-eight.

THE COURT: How far did you go in school?

THE DEFENDANT: I graduated.

THE COURT: High school?

THE DEFENDANT: [Inaudible response.]

THE COURT: Is that a yes?

THE DEFENDANT: Yes.

THE COURT: So you read, write and understand the English language?

THE DEFENDANT: Yes.

THE COURT: Now your attorney has been assisting you. Ms. Craig indicates

that based upon her conversations and efforts with you, in her mind, and based upon her background, training and expertise frankly, that she's comfortable in you proceedings this morning that you appear to her, at least, to understand what this process is. Is that true?

THE DEFENDANT: Yes.

THE COURT: Okay. Have you received a copy of the -- well, frankly, the original charging document that was filed in this case that you indicated you were not guilty of, that's the Indictment, that's attached as Exhibit 1 to a Guilty Plea Agreement. Do you have a copy of that with you right now?

THE DEFENDANT: Yes.

THE COURT: Now, you recall when you went -- entered your original plea you went through it and you indicated you understood the elements of that offense; that you had a chance to talk to your lawyer. Do you need any more time to talk to Ms. Craig about those -- the elements of that offense and the allegation there before I ask you again whether you've changed your plea?

THE DEFENDANT: No.

THE COURT: All right. So how do you plead to that charge, murder with use of a deadly weapon -- first degree murder with use of a deadly weapon; guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: Before I accept your plea of guilty I must be satisfied that the plea is freely and voluntarily entered and that you're doing so knowingly. Are you pleading guilty because in truth and in fact you are guilty?

THE DEFENDANT: Yes.

THE COURT: Has anyone forced you or coerced you to enter this plea?

THE DEFENDANT: No.

THE COURT: Has anybody made any promises other than what's been stated here in open court and frankly contained in the first page of the Guilty Plea Agreement to get you to plead guilty?

THE DEFENDANT: No.

THE COURT: You understand -- so no promises. Now the Guilty Plea Agreement I just referred to -- I'm looking at the original of that document. On page five of that Guilty Plea Agreement I see a signature under what I believe to be the signature line for you, Mr. Gipson. Is this your signature on this document?

THE DEFENDANT: Yes.

THE COURT: All right. Did you sign it today?

THE DEFENDANT: Yes.

THE COURT: Did you sign it after you read it -- carefully read it and went through it with your lawyer?

THE DEFENDANT: Yes.

THE COURT: Did she -- when you carefully read this document did you realize that you were waiving valuable constitutional and procedural rights by entering this plea?

THE DEFENDANT: Yes.

THE COURT: Did you talk to your lawyer about all those rights?

THE DEFENDANT: Yes.

THE COURT: Did she explain to you all this important information to your satisfaction?

THE DEFENDANT: Yes.

THE COURT: Are you satisfied with her presentation of you?

THE DEFENDANT: Yes.

THE COURT: So you understand that the range of punishment for first degree murder with use of a deadly frankly is potentially life without the possibility of parole. That is a consequence of this negotiation -- parties are stipulating. That means they're agreeing to a 20 years on the bottom in Nevada Department of Correction, life with the possibility of parole on the top, and a consecutive 4 years to 8 years for the enhancement of deadly weapon. And those will run consecutive to one another. So you're looking at a life with 20, plus a consecutive on top of that of 4 to 8 years structured. Does that make sense to you?

THE DEFENDANT: Yes.

THE COURT: Based upon knowing that that's the anticipated penalty in this case does that change your mind at all regarding the voluntary nature of this plea? Are you doing this freely and voluntarily?

THE DEFENDANT: Yes.

THE COURT: Okay. You understand frankly that sentencing is up to me. That no one is in a position to promise you leniency, probation, any special treatment. In fact, this is a non-probationable case. You're looking at a life sentence and you're headed to prison as a consequence. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Does that again change your mind at any -- about any nature of this plea; that you're still doing this voluntarily?

THE DEFENDANT: Yes.

THE COURT: Do you have any questions that you would like to ask me?

THE DEFENDANT: No, sir.

THE COURT: Any questions that you would like to ask Ms. Craig?

THE DEFENDANT: No.

THE COURT: Now you indicate that you're guilty of this offense. You understand that at the time of sentence, based upon what your attorney said, that this plea is going to be noted in the minutes and the public record as guilty but mentally ill. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: That at the time of sentence we're going to have a hearing and Ms. Craig is going to present the information to me and I have to make a finding -- the burdens on the defense to prove that mental illness. That if you are -- if it's proved to my satisfaction I make findings that ultimately might affect your custody status, what happens to you in prison and how you are handled in prison, but it won't change the fact you're headed to prison for the same life structure that we've been talking about today. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Does that change your mind at all?

THE DEFENDANT: No.

THE COURT: All right. Let's look to see if there's a factual basis to support this plea. The Indictment alleges that on the 25th day of March, 2010, that you did wilfully, feloniously, without authority of law, and with malice aforethought kill Britney Lavoll, a human being, by shooting at or into the body of Britney Lavoll with a deadly weapon, to-wit: a firearm, said killing having been, one, willful, deliberate and premeditated and or committed by Defendant lying in wait to commit the killing. Do you admit your guilt to that offense?

THE DEFENDANT: Yes.

THE COURT: Do you admit to the -- shooting Ms. Lavoll I believe in the head

with a firearm?

THE DEFENDANT: Yes.

THE COURT: All right. The Court finds the guilty plea of Mr. Gipson appears to be freely and voluntarily made. He appears to understand the nature of the offense, the consequences of his plea. I therefore accept his plea of guilty.

This matter's referred to the Department of Parole and Probation for the preparation of a Presentence Investigation and Report and it's passed for sentencing on this date?

MR. TURNER: And, Judge, we we're requesting a Friday date, if the Court recalls.

THE COURT: Let's set it on one of the pretrial conference dates.

THE COURT CLERK: It's going to be February 10th at 1:30.

MR. TURNER: Thank you.

THE COURT: Now we're going to vacate State's motion in limine regarding defense expert witness; defense motion in limine to preclude State from admitting evidence of photographs. Frankly, all pending motions. Trial date for Monday is vacated as a consequence of entry of plea. Also the 12-12 notice of motion in limine regarding jail phone all off calendar pending sentencing on February 10th.

Mr. Gipson, do you understand we're headed to sentence -- sentencing hearing on the 10th of February?

THE DEFENDANT: Yes.

THE COURT: And we're not having a trial. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Anything else either side?

MR. TURNER: No, Your Honor.

MS. CRAIG: We're good. Thank you.

THE COURT: All right. Very good.

MR. TURNER: Thank you, Judge.

[Proceedings concluded at 9:11 a.m.]

* * * * * * * *

ATTEST: Pursuant to Rule 3(c)(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

Sandra A Pruchnic

SANDRA PRUCHNIC
Court Transcriber

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RTRAN

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. KEVIN MARQUETTE GIPSON, Defendant.	CASE#: C264079 DEPT. XVIII

BEFORE THE HONORABLE DAVID BARKER, DISTRICT COURT JUDGE

WEDNESDAY, SEPTEMBER 26, 2012

RECORDER'S ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS
DEFENDANT'S PRO PER MOTION TO WITHDRAW PLEA

APPEARANCES:

For the State: SHANON L. CLOWERS, ESQ.
Deputy District Attorney

For the Defendant: CHRISTY CRAIG, ESQ.
Deputy Public Defender

RECORDED BY: CHERYL CARPENTER, COURT RECORDER

WEDNESDAY, SEPTEMBER 26, 2012 AT 8:44 A.M.

THE COURT: C264079, State of Nevada versus Kevin Gipson. The record should reflect the presence of Mr. Gipson -- excuse me, the lack of Mr. Gipson who's in Nevada Department of Corrections, current counsel of record, Ms. Craig, and Ms. Lavell for the State.

This is time set for Defendant's pro per motion to withdraw a plea. I note procedurally Mr. Gipson has not requested to be allowed to proceed in forma pauperis pro sec. He's just filed this motion assuming that's how it all works.

Frankly, taking it to the substance -- well, first of all. Ms. Craig, have you had the opportunity as current counsel of record to review the motion?

MS. CRAIG: I pulled it off this morning and read it. I would ask the Court -- I think that given the fact that he pled to what essentially turned out to be a 28 to life and was sentenced to a significant sentence, although the Court doesn't have to, and based on this record, may not. I think it would be a wise idea to appoint someone to represent him for the limited purpose of meeting with him and determining whether or not he has grounds. They could report back to the Court whether or not there were grounds. If there is, they could file it. If there isn't, then it's over, it's been reviewed and resolved and it's no longer an issue.

THE COURT: I understand that. I also note from review of the file that Mr. Gipson was sentenced in a manner consistent with the stipulation.

MS. CRAIG: Yes.

THE COURT: So what he agreed to from the beginning to the end of this action was what he received. He has made a motion pro se even though he's represented by counsel and has not followed the requirements and the rules under

Chapter 34 to seek pro per -- take pro per action, which he can do.

MS. CRAIG: Yes.

THE COURT: This action is under 176, so it's -- you know, it's different rules, different standard, different request. And he's going to have to follow the rules. This is -- I'm going to take -- frankly, cutting to the chase, I'm treating this as a fugitive document. But if you're -- are you making an oral request to withdraw at this time?

MS. CRAIG: I will be making an oral request to withdraw and have the Court grant that. I'll mail him a copy of his motion. I would remind the Court that Mr. Gipson does suffer from a mental illness and that is probably a legitimate ground -- although he -- I don't think he articulated it well, that's probably a legitimate ground for the Court to consider whether or not I took that into account and did what I was supposed to do prior to the plea, which is why --

THE COURT: Well, then maybe some day --

MS. CRAIG: -- I'm suggesting --

THE COURT: -- we will see you on this stand --

MS. CRAIG: That's --

THE COURT: -- in a Chapter 34 post-conviction action.

MS. CRAIG: Okay.

THE COURT: But that is not for today.

MS. CRAIG: Then I will formally request to withdraw from his case and I will send him a letter and provide him with a copy of his file.

THE COURT: And by that -- by those words I understand that you believe there's no procedural hurdles in the way. He has not requested that you seek an appeal of the sentence.

MS. CRAIG: He has not.

THE COURT: So there's no hurdle to grant your motion -- your oral motion to withdraw. I'm going to deny the pro per motion filed under Chapter 176 because there's no factual legal basis to support it. I do not require findings of facts or conclusions, but I do require that the clerk also forward to Mr. Gipson a copy of the minutes.

You indicate, Ms. Craig, as a function of your representation, you're also going to forward to him the information you have.

MS. CRAIG: I will.

THE COURT: So that his -- he can consider that for any type of future post-conviction action. Fair?

MS. CRAIG: Yes.

THE COURT: Very good.

MS. CRAIG: Thank you.

MS. CLOWERS: Thank you.

[Proceedings concluded at 8:47 a.m.]

* * * * * * * *

ATTEST: Pursuant to Rule 3(c)(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

Sandra A Pruchnic

SANDRA PRUCHNIC
Court Transcriber

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CLERK OF THE COURT

CARMINE J. COLUCCI CHTD.
Nevada Bar #000881
629 South Sixth Street
Las Vegas, Nevada 89101
(702) 384-1274 telephone
(702 384-4453 facsimile
Attorney for Petitioner
KEVIN MARQUETTE GIPSON

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

KEVIN MARQUETTE GIPSON, Petitioner, vs. DWIGHT NEVEN, WARDEN, HIGH DESERT STATE PRISON, Respondent.	CASE NO. C264079 DEPT NO. XVIII 6-23-14 8:15A

PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)
(POST CONVICTION)

The Petition of KEVIN MARQUETTE GIPSON,, by and through, CARMINE J. COLUCCI, ESQ., of the law firm of CARMINE J. COLUCCI CHTD., attorney for the above-captioned petitioner, respectfully shows:

1. Name of institution and county in which Kevin Marquette Gipson is presently imprisoned or where he is presently restrained of his liberty: I am presently imprisoned by Nevada Department of Corrections at the High Desert State Prison in Indian Springs, County of Clark, Nevada.

/ / /

2.The name and location of the court which entered the judgment of conviction under attack: Eighth Judicial District Court in the County of Clark, State of Nevada, Department 18, 200 Lewis Ave., Las Vegas, Nevada 89155

3. Date of judgment of conviction: March 13, 2012.

4. Case number: C264079

5. (a) Length of sentence: Life with a possible parole eligibility of Twenty (20) years with a consecutive term of Two Hundred Forty (240) months maximum and ninety-six (96) months minimum for Use of a Deadly Weapon with six hundred eighty-six (686) days credit for time served.

(b) If sentence is death, state any date upon which execution is scheduled:

N/A

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? No.

7. Nature of offense involved in conviction being challenged: Murder with Use of a Deadly Weapon.

8. What was your plea? Guilty.

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details: The case was negotiated pursuant to the terms of the Guilty Plea Agreement.

/ / /

/ / /

10. If you were found guilty or guilty but mentally ill after a plea of not guilty, was the finding made by: N/A

(a) Jury N/A

(b) Judge without Jury N/A

11. Did you testify at the trial? N/A

12. Did you appeal from the judgment of conviction? Yes.

13. If you did appeal, answer the following:

(a) Name of Court: Eighth Judicial District Court

(b) Case Number or citation: 62071

(c) Result: Dismissed for lack of jurisdiction (See Attached Order Dismissing Appeal, Exhibit 1).

14. If you did not appeal, explain briefly why you did not. N/A

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state of federal? Yes.

16. If your answer to No. 15 was "yes," give the following information:

(A) (1) Name of Court: Eighth Judicial District Court, Clark County, Nevada.

(2) Nature of Proceedings: Pro Per Motion to Withdraw Plea

(3) Grounds raised:

(a) Petitioner was denied his right to appeal

(b) Petitioner was not appointed counsel for purposes of effecting an appeal;

(c) Petitioner did not waive his right to a direct appeal.

(4) Did you receive an evidentiary hearing on your petition, application or motion? No.

(5) Result: Motion Denied

(6) Date of Result: September 26, 2012

(7) If known, citations of any written opinion or date of orders entered pursuant to such result: Order entered September 27, 2012.

(B) As to any second petition, application or motion, give the same information:

(1) Name of Court: Eighth Judicial District Court, Clark County, Nevada.

(2) Nature of Proceedings: Memorandum of Points and Authorities (filed Nov. 5, 2012)

(3) Grounds raised: Petitioner's right to direct appeal violated

(4) Did you receive an evidentiary hearing on your petition, application or motion? No.

(5) Result: Defendant's Pro Per Motion for Appointment of Counsel Granted; Defendant's Motion for Evidentiary Hearing denied.

(6) Date of Result: January 28, 2012.

(7) If known, citations of any written opinion or date of orders entered pursuant to such result: None.

/ / /

(C) As to any third or subsequent additional applications or motions, give the same information as above:

(1) Name of Court: Eighth Judicial District Court, Clark County, Nevada.

(2) Nature of Proceedings: Motion for Direct Appeal/Memorandum of Points and Authorities Facts of the Case.

(3) Grounds raised: Defendant's right to a direct appeal was violated (November 5, 2012)

(4) Did you receive an evidentiary hearing on your petition, application or motion? No.

(5) Result: Taken off Calendar

(6) Date of Result: February 11, 2012

(7) If known, citations of any written opinion or date of orders entered pursuant to such result: N/A

(D) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?

(1) First petition, application or motion? No.

(2) Second petition, application or motion? No.

(3) Third or subsequent petitions, applications or motions? No.

(E) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not.

Defendant did not know he had the right to or the knowledge to

proceed with an appeal of the issues raised and was not represented by and attorney for these. Petitioner tried to appeal but improperly and appeal dismissed.

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other post-conviction proceeding? If so, identify:

(a) Which of the grounds is the same: N/A

(b) The proceedings in which these grounds were raised:

(c) Briefly explain why you are again raising these grounds.

N/A

18. If any of the grounds listed in No. 23 or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. N/A

Ground 1 - Petitioner was denied the effective assistance of counsel in violation of his right to counsel as guaranteed by the Sixth Amendment of the Constitution of the United States.

19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? Yes.

Counsel was appointed to represent Gipson despite the fact that only nineteen (19) days remained before the one (1) year procedural time limit ran. It is apparent that neither the district court or the attorneys were aware of this. A review of the transcript makes it clear that appointed counsel was not given with

the petitioner's file by prior counsel, the defendant, or the court. Counsel asked for four (4) months in order to secure the file. That request was granted as all concerned thought that there were no pending time issues. The court set a status check date of June 17, 2013 which was well beyond the procedural time limit.

Therefore, in addition to the court and apparently all parties apparently being unaware of the pending time limit and the court setting a status check date well after the running of the time limit, it is apparent that good cause has been shown for the initial delay in filing. As for the additional time taken, the State has stipulated to the additional time taken to file the petition.

For the above-stated reasons, the filing of this petition may be beyond the statutory time limit but nevertheless can be filed as good cause appers to be shown for the delay.

Stipulation and Order to extend the time to file the petition to January 31, 2014, was filed on January 7, 2014. Stipulation and Order to extend the time to file the petition to January 31, 2014, a further extension was stipulated to May 5, 2014, and an additional extension was stipulated to June 4, 2014. A final extension was stipulated until June 6, 2014 for the petition to be filed.

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? No.

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal:

(A) Trial Counsel: Christy Craig, Clark County Public Defender

(B) Pro per- attempted direct appeal

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? No.

23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground.

(a) Ground One: Petitioner is in custody in violation of his constitutional right to the effective assistance of trial counsel as guaranteed by the Sixth Amendment to the United States Constitution.

1. Petitioner contends that his plea pursuant to the Guilty Plea Agreement was not freely and voluntarily given as he is claiming that he was coerced into taking a plea that he did not want to accept by his trial counsel. Petitioner is contending that the coercion to take the plea occurred outside of the recorded portions of these proceedings and that but for the coercive actions of trial counsel, Appellant would not have accepted the negotiations but wanted to go to trial on original charges. See Motion to Withdraw Plea filed on September 5, 2012 for additional facts and support for this claim.

2. Petitioner contends that his trial counsel was ineffective for not advising him of his rights to appeal as the adverse pretrial rulings of the district court before he agreed to the plea bargain to which he ultimately plead guilty. Some of the adverse rulings that he could have appealed from were (1) Denial of the Motion to Limit the Testimony of the Defective Long whose testimony was going to be allowed despite being hearsay and the State failing to show that the actual declarant of the offered testimony was not unavailable. (2) Denial of the

Defendant's Motion to Suppress or In the Alternative a Jackson v. Denno hearing and (3) Order granting State's Motion in Limine to Admit Bad Acts and Other Acts Against the victim.

3. Petitioner asserts that trial counsel failed to take into consideration his mental health problems and even brought that issue to the court's attention on September 26, 2012 (Rough Draft Transcript, p. 3) when the court even opined that it seemed possible that trial counsel would ultimately have to testify regarding this issue.

WHEREFORE, petitioner prays that the court grant the petition or grant him an evidentiary hearing on the issues raised in his petition and supporting points and authorities.

DATED this 6th day of June, 2014.

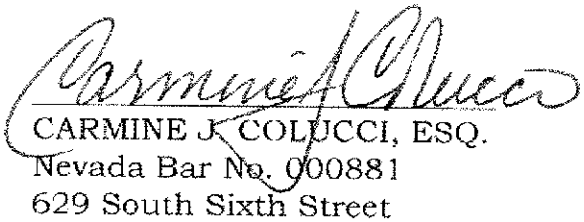
CARMINE J. COLUCCI CHTD.

CARMINE J. COLUCCI, ESQ.
Nevada Bar No. 000881
629 South Sixth Street
Las Vegas, Nevada 89101
Attorney for Petitioner

VERIFICATION

I, Carmine J. Colucci, Esq., declare that I am the attorney for the Petitioner, KEVIN MARQUETTE GIPSON, named in the foregoing petition and knows the contents thereof; that the pleading is true of mine own knowledge, except as to those matters stated on information and belief, and as to such matters I believes them to be true. Petitioner, KEVIN MARQUETTE GIPSON, has personally authorized me to commence this action on his behalf.

CARMINE J. COLUCCI CHTD.



CARMINE J. COLUCCI, ESQ.
Nevada Bar No. 000881
629 South Sixth Street
Las Vegas, Nevada 89101
Attorney for Petitioner

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that on this 6th day of June, 2014, I e-served pursuant to N.E.F.C.R 9 and mailed pursuant to NRCP 5(b), a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) addressed to:

Dwight Neven, Warden
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

Steven B. Wolfson
Clark County District Attorney
200 Lewis Ave.
Las Vegas, NV 89155

Catherine Cortez-Masto
Nevada Attorney General
100 North Carson St.
Carson City, NV 89701

E. Vargas

An employee of
CARMINE J. COLUCCI, CHTD.

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CLERK OF THE COURT

CARMINE J. COLUCCI, CHTD.
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(702) 384-1274 Telephone
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E-Mail: cjc@lvcoxmail.com
Attorney for Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

KEVIN GIPSON,

Petitioner,

vs.

DWIGHT NEVIN, WARDEN,
HIGH DESERT STATE PRISON
Respondent,

Case No.: 10C264079
Dept No.: XVIII

POINTS AND AUTHORITIES IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

Comes now the Petitioner, KEVIN GIPSON, by and through his appointed attorney, CARMINE J. COLUCCI, ESQ., of the law firm of CARMINE J. COLUCCI, CHTD., who submits these points and authorities in support of his Petition for Writ of Habeas Corpus (Post-Conviction).

These points and authorities are submitted pursuant to NRS 34.720, et.seq.

DATED this 6th day of June, 2014.

CARMINE J. COLUCCI CHTD.

CARMINE J. COLUCCI, ESQ.
Nevada Bar No. 0881
629 South Sixth Street
Las Vegas, Nevada 89101
Attorney for Petitioner

I.

STATEMENT OF THE CASE

On April 28, 2010, Defendant, KEVIN GIPSON, was charged by way of Grand Jury Indictment with Murder with Use of a Deadly Weapon (Felony - NRS200.010, 200.030, 193.165).

On December 7, 2011, the defendant entered into a Guilty Plea Agreement with the State whereby he agreed to plead guilty to the charge as alleged in the Indictment. Pursuant to negotiations, the parties stipulated to twenty (20) years to Life in the Nevada Department of Corrections. However, parties retained the right to argue the deadly weapon enhancement for a term of not less than four (4) to eight (8) years.

On February 10, 2012, the defendant was present in court with counsel, at which time he was sentenced to the Nevada Department of Corrections as follows: Life with a possible parole eligibility of Twenty (20) years with a consecutive term of Two Hundred Forty (240) months maximum and Ninety-Six (96) months minimum for Use of a Deadly Weapon with Six Hundred Eighty-Six (686) days credit for time served. Judgment of Conviction was filed on March 13, 2012.

Thereafter the defendant filed a Pro Per Motion to Withdraw Plea on September 5, 2012. That motion was denied by the court on September 26, 2012, and an order entered on September 27, 2012. The defendant filed a Pro Per Motion to Proceed in Forma Pauperis on October 15, 2012. That motion was granted on November 7, 2012. The defendant then filed an Ex Parte Motion for Appointment of counsel and Request for Evidentiary Hearing on October 15, 2012, and Defendant's Pro Per Motion for Direct Appeal/Memorandum of Points and Authorities Facts of the Case on November 26, 2012. On January 28, 2012, the defendant's Motion for appointment of Counsel was granted and his Motion for Evidentiary Hearing was denied.

/ / /

The defendant's Pro Per Motion for Direct Appeal/Memorandum of Points and Authorities Facts of the Case "may have been construed as a notice of appeal. "...Further, at the same time, case appeal statement was filed which triggered Supreme Court review..." (see court minutes dated January 28, 2013). The Nevada Supreme Court issued its Order Dismissing Appeal on December 20, 2012, stating, "an appeal deprivation claim must be raised in a post-conviction petition for a writ of habeas corpus filed in the district court in the first instance."

Thereafter, on February 22, 2012, Carmine J. Colucci, Esq., was appointed counsel for the defendant. Defendant's Motion for Direct Appeal/Memorandum of Points and Authorities Facts of the Case was taken off calendar on February 11, 2012. On June 17, 2013, a briefing schedule was set scheduling the initial brief due by December 16, 2013. A stipulation and order was entered on January 7, 2014, continuing the due date for the initial brief to January 31, 2014.

II.

STATEMENT OF THE FACTS

On March 25, 2010, Brittany Lavoll was shot in the parking lot of the Jack In The Box where she worked. According to witnesses, the shooting occurred at approximately 5:45 a.m.

The three witnesses described to police a male dressed in a dark hooded sweatshirt who was seen running from the scene. Witness Wade Fleming observed Lavoll and thought she was dead. Robert Gilmore, another witness, called 911. Christina Benitez was the third witness who claimed to have seen the man in the dark hoody running from the scene. Fleming and Gilmore were drawn to the area where Brittany Lovall was found by the sound of what they felt was a gunshot.

Bailey, who worked at a grocery store in the same shopping center as the Jack In The Box, initially saw a woman lying on the ground and the man in the

dark hoody standing over her. Bailey thought the man was helping the woman who Bailey thought might be drunk.

Police arrived at the scene located at 7541 West Lake Mead Boulevard and Brittany Lovall was immediately transported to UMC where she was pronounced dead at 6:15 a.m. An autopsy conducted on March 26, 2010, determined that the cause of death was a gunshot to the head.

Brittany Lovall's father met police at the scene and told police that Brittany had been in an abusive relationship with Kevin Gipson and that they had two (2) children together. He related that they had broken up a year before but that he had been stalking her.

Detectives of the LVMPD ultimately located Gipson and arranged to meet him on the afternoon of March 25th. Gipson allegedly agreed to speak with the detectives, which he ultimately did. Gipson provided them with an alibi to support his statement that he could not have been at the scene of the shooting when it occurred. Gipson denied having an abusive relationship with Lovall. Gipson said that he had recently tried to contact Lovall in order to arrange a visit with his children.

The next day the police gave Gipson a Concealed Information Test. The detectives Mirandized him and Gipson took the test. According to the detectives he failed it. He was told by Geoffrey Flohr that by failing, he must have knowledge of the murder that only the killer would know.

Gipson, without the services of an attorney, was confronted with this accusation. Gipson told them that he had been in and out of the mental hospital and that he killed Brittany Lovall because she drove him crazy. Allegedly Gipson managed to find out where Lovall worked prior to meeting her on March 25, 2010. Police theorized that Gipson went to the Jack In The Box and layed in wait for Lavoll and then shot her. During questioning, the detectives stated that Gipson confessed.

III.

STATEMENT OF THE ISSUES

1. Whether the Petition for Writ of Habeas Corpus (Post-Conviction) was untimely filed and therefore procedurally barred?

2. Whether petitioner was denied his right to the effective assistance as guaranteed under the Sixth and Fourteenth Amendments of the Constitution of the United States.

IV.

ARGUMENT

A. THE PETITION IS NOT PROCEDURALLY BARRED

The threshold question which must be decided by this court is whether this petition is procedurally barred. The district court must dismiss an untimely petition under NRS 34.726 unless the petitioner shows good cause for the delay. See State v. District Court, 121 Nev. 225, 112 P.3d 1070 (2005). Good cause means a "substantial reason, one that affords a legal excuse." Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003).

Good cause exists if the petitioner demonstrates that the delay was not the petitioner's fault and dismissal of the petition as untimely would unduly prejudice the petitioner. See NRS 34.726(1). Good cause also exists if the failure to consider the claims would result in a fundamental miscarriage of justice. Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001).

To show "good cause," a petitioner must demonstrate that an impediment, external to the defense, prevented him from complying with the procedural requirements. State v. District Court (Riker), 121 Nev. 225, 112 P.3d 1070 (2005); Pelligrini, supra at 886.

The Nevada Supreme Court has applied the same standards for determining good cause and prejudice to overcome the procedural bars for untimely petitions under NRS 34.726, and waived claims under NRS 34.810(2). See e.g. Pellegrini,

supra, at 886-887, 34 P.3d 519, 537.

The statute also specifically provides that the petitioner has the burden of pleading and proving "specific facts" demonstrating good cause and actual prejudice. NRS 34.810(3); see also State v. Haberstroh, 119 Nev. 173, 69 P.3d 676 (2003).

An appeal deprivation claim will provide good cause to delay filing a post-conviction petition if the petitioner asked counsel to file an appeal; reasonably believed that counsel had filed an appeal and filed the petition within a reasonable amount of time of learning that a direct appeal had not been filed. Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003).

If the court determines that the petitioner cannot demonstrate good cause, the district court may nevertheless excuse a procedural bar if petitioner can demonstrate that the failure to consider the petition would result in a fundamental miscarriage of justice. Pellegrini, supra at 887.

In the instant case, the defendant executed the Guilty Plea Agreement on December 7, 2011. The defendant was sentenced on February 10, 2012. The Judgment of Conviction was file don March 13, 2012. A direct appeal was not filed. On September 5, 2012, the defendant filed his Pro Per Motion to Withdraw Plea. That motion was denied on September 26, 2012.

The defendant filed a motion in district court requesting the appointment of counsel to pursue his post-conviction rights. On February 22, 2013 Carmine J. Colucci, Esq. appeared in court in order to be appointed to represent the defendant. The following colloquy between the court and counsel took place.

. . .

THE COURT: C264079, State of Nevada versus Kevin Gipson. The record should reflect the presence of Mr. Colucci. Mr. Gipson in the Nevada Department-in the Nevada Department of Corrections, not present here in court, and Ms. Edwards for the state.

This is time set for confirmation of counsel. My notes reflect Mr. Christensen has indicated - - Mr. Colucci, you can accept this appointment; is that true?

MR. COLUCCI: Yes.

THE COURT: All right. What's your pleasure? Do you want to set a briefing schedule or I have an opportunity to review the file and then come back?

MR. COLUCCI: Actually- - yes. Actually what I'd like to do is actually get the file. So I'd ask for a four month status check and then we could set a briefing schedule at that point.

THE COURT: Four month status check.

THE COURT CLERK: June 17th, 8:15.

MR. COLUCCI: Thank you very much.

THE COURT: Thank you.

. . . .

See Exhibit 2, transcript of February 22, 2013 proceeding attached hereto.

Counsel was appointed to represent Gipson despite the fact that only nineteen (19) days remained before the one (1) year procedural time limit ran. It is apparent that neither the district court or the attorneys were aware of this. A review of the transcript makes it clear that appointed counsel was not presented with the petitioner's file. Counsel asked for four (4) months in order to secure the file. The court set a status check date of June 17, 2013 which was well beyond the procedural time limit.

Therefore, in addition to the court and apparently all parties apparently being unaware of the pending time limit and the court setting a status check date well after the running of the time limit, it is apparent that good cause has been shown for the initial delay in filing. As for the additional time taken, the State has stipulated to the additional time taken to file the petition.

For the above-stated reasons, the filing of this petition may be beyond the statutory time limit but nevertheless can be filed as the affidavit of counsel shows,

good cause appears to be shown for the delay.

B. PETITIONER WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF HIS RIGHT TO COUNSEL AS GUARANTEED UNDER THE SIXTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES.

Standard of Review

A claim of ineffective assistance of counsel presents a mixed question of law and fact, which is subject to independent review upon appeal. Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996). Petitioner must prove the facts underlying an ineffective assistance of counsel claim by preponderance of the evidence. The Court's review of defense counsel's performance is highly deferential. There are circumstances warranting relief. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004); Strickland v. Washington, 466 U.S. 668, 689, 104 S. Ct. 2052, 2065 (1984). In the context of an appeal deprivation claim, prejudice may be presumed if the petitioner was deprived of the right to direct appeal due to the ineffective assistance of counsel. Hathaway v. State, 199 Nev. 248,71 P.3d 503 (2003); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

Nevada has adopted the two-pronged test outlined in Strickland for determining the effectiveness of counsel. Under Strickland, in order to assert a claim for ineffective assistance of counsel, the defendant must prove that he was denied "reasonably effective assistance" of counsel by satisfying a two-pronged test. Strickland 466 U.S. 668, 686-687, 104 S.Ct. 2052, 2063-2064; see State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

Under the Strickland, id. test, the defendant must show: first that his counsel's representation fell below an objective standard of reasonableness, and second, that but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. See Strickland, supra, at 687-688 and 694, 104 S.Ct. 2052, 2065, 2068. The defendant bears the burden to satisfy both requirements in order to prevail. Strickland, id. at 697; Means v.

State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). Inadequate performance is representation that falls below an objective standard of reasonableness. Id. (*citing* Dawson v. State, 108 Nev. 112, 115, 825 P.2d 593, 595 (1992)]. The role of a court in considering allegations of ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (citing Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977)).

In considering whether the defendant has an ineffective assistance of counsel claim, the court must determine whether counsel conducted a reasonable investigation of the facts relevant to the defendant's case. Doleman v. State, 112 Nev. 843, 846, 921 P.2d 278 (1996). Next, the court must consider whether counsel made "a reasonable strategy decision on how to proceed with his client's case." Doleman, id. at 846; *citing* Strickland, supra, at 690-691, 104 S.Ct. at 2066. While counsel's strategy decision is a "tactical" decision and will be "virtually unchallengeable absent extraordinary circumstances." Doleman, supra, at 846; see also Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990); Strickland, supra, at 691, 104 S.Ct at 2066. It is not without limitation. The defendant has the burden of overcoming the presumption that trial counsel's actions were the product of sound trial strategy. Means, 120 Nev. At 1012, 103 P.3d at 33 (*citing* Strickland, 466 U.S. at 689, *quoting* Michel v. Louisiana, 350 U.S. 91, 101, 76 S.Ct. 158 (1955)).

Even if counsel's representation fell below an objective standard of reasonableness, he must still demonstrate prejudice and show a reasonable probability that, but for counsel's errors, the result of the trial would have been different. McNelton v. State, 115 Nev. 396, 403, 990 P.2d 263, 1268 (1999) (*citing* Strickland, 466 U.S. at 687.) "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

Claims asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" and "naked" allegations are not sufficient, nor are those belied and repelled by the record. Id.

Petitioner contends that his plea pursuant to the Guilty Plea Agreement was not freely and voluntarily given as he is claiming that he was coerced into taking a plea that he did not want to. Petitioner is contending that the coercion to take the plea occurred outside of the recorded portions of these proceedings and that but for the coercive actions of trial counsel, Appellant would not have accepted the negotiations but wanted to go to trial on original charges. See Motion to Withdraw Plea filed on September 5, 2012 for additional facts and support for this claim.

Petitioner contends that his trial counsel was ineffective for not advising him of his rights to appeal as the adverse pretrial rulings of the district court before he agreed to the plea bargain to which he ultimately plead guilty. Some of the adverse rulings that he could have appealed from were (1) Denial of the Motion to Limit the Testimony of the Defective Long whose testimony was going to be allowed despite being hearsay and the State failing to show that the actual declarant of the offered testimony was not unavailable. (2) Denial of the Defendant's Motion to Suppress or In the Alternative a Jackson v. Denno hearing and (3) Order granting State's Motion in Limine to Admit Bad Acts and Other Acts Against the victim.

Petitioner asserts that trial counsel failed to take into consideration his mental health problems and even brought that issue to the court's attention on September 26, 2012 (Rough Draft Transcript, p. 3) when the court even opined that it seemed possible that trial counsel would ultimately have to testify regarding this issue.

Petitioner herein asserts that he can meet his burden of proof and is entitled to the relief sought herein. For the reasons stated below, Defendant has

demonstrated both that counsel was ineffective as to each issue and that he was prejudiced by counsel's actions. Accordingly, his petition must be granted.

DATED this 6th day of June, 2014.

CARMINE J. COLUCCI CHTD.

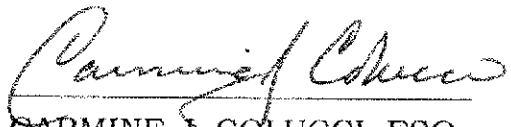
CARMINE J. COLUCCI, ESQ.
Nevada Bar No. 0881
629 South Sixth Street
Las Vegas, Nevada 89101
Attorney for Petitioner

VERIFICATION

I, Carmine J. Colucci, Esq., declare that I am the attorney for the Petitioner, KEVIN GIPSON, named in the foregoing petition and knows the contents thereof; that the pleading is true of mine own knowledge, except as to those matters stated on information and belief, and as to such matters I believe them to be true. Petitioner, KEVIN GIPSON, has personally authorized me to commence this action on his behalf.

DATED this 6th day of June, 2014.

CARMINE J. COLUCCI CHTD.



CARMINE J. COLUCCI, ESQ.
Nevada Bar No. 0881
629 South Sixth Street
Las Vegas, Nevada 89101
Attorney for Petitioner

CERTIFICATE OF MAILING

I hereby certify that on this 6th day of June, 2014, I e-served pursuant to N.E.F.C.R 9 and mailed pursuant to NRCP 5(b), a true and correct copy of the foregoing POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) addressed to:

Dwight Neven, Warden
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

Steven B. Wolfson
Clark County District Attorney
200 Lewis Ave.
Las Vegas, NV 89155

Catherine Cortez-Masto
Nevada Attorney General
100 North Carson St.
Carson City, NV 89701

E. Vargas

An employee of
CARMINE J. COLUCCI, CHTD.

Exhibit 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN GIPSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 62071

FILED

DEC 20 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY H. Mayer
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from a judgment of conviction. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

The notice of appeal was untimely filed.[1] NRAP 4(b). Because an untimely notice of appeal fails to vest jurisdiction in this court, Lozada v. State, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994), we conclude that we lack jurisdiction to consider this appeal, and we

ORDER this appeal DISMISSED.[2]

Saitta, J.
Saitta

Pickering, J.
Pickering

Hardesty, J.
Hardesty

[1]An appeal deprivation claim must be raised in a post-conviction petition for a writ of habeas corpus filed in the district court in the first instance. NRS 34.724(2)(c); NRS 34.738(1). We express no opinion regarding the merits of any such claim or whether appellant can satisfy the procedural requirements of NRS chapter 34.

[2]We have considered the proper person documents submitted in this matter, and we conclude that no relief is warranted for the reason set forth above.

cc: Hon. David B. Barker, District Judge
Kevin Gipson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

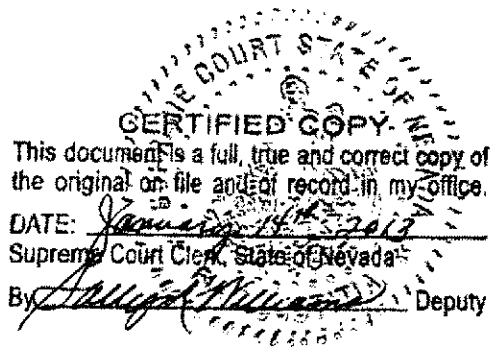

SUPREME COURT STATE OF NEVADA
CERTIFIED COPY
This document is a full, true and correct copy of
the original on file and of record in my office.
DATE:
Supreme Court Clerk, State of Nevada
By
Deputy

Exhibit 2

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RTRAN

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

KEVIN MARQUETTE GIPSON,

Defendant.

CASE#: C264079

DEPT. XVIII

BEFORE THE HONORABLE DAVID BARKER, DISTRICT COURT JUDGE

MONDAY, FEBRUARY 11, 2013

RECORDER'S ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS
DEFENDANT'S PRO PER MOTION FOR DIRECT APPEAL MEMORANDUM OF POINTS AND AUTHORITIES FACTS OF THE CASE; CONFIRMATION OF COUNSEL

APPEARANCES:

For the State: MICHELLE Y. EDWARDS, ESQ.
Deputy District Attorney

For the Defendant: CARMINE J. COLUCCI, ESQ.

RECORDED BY: CHERYL CARPENTER, COURT RECORDER

MONDAY, FEBRUARY 11, 2013 AT 8:59 A.M.

THE COURT: C264079, State of Nevada versus Kevin Gipson. The record should reflect the presence of Mr. Colucci. Mr. Gipson in the Nevada Department -- in Nevada Department of Corrections, not present here in court, and Ms. Edwards for the State.

This is time set for confirmation of counsel. My notes reflect Mr. Christensen has indicated -- Mr. Colucci, you can accept this appointment; is that true?

MR. COLUCCI: Yes.

THE COURT: All right. What's your pleasure? Do you want to set a briefing schedule or I have an opportunity to review the file and then come back?

MR. COLUCCI: Actually -- yes. Actually what I'd like to do is actually get the file. So I'd ask for a four month status check and then we could set a briefing schedule at that point.

THE COURT: Four month status check.

THE COURT CLERK: June 17th, 8:15.

MR. COLUCCI: Thank you very much.

THE COURT: Thank you.

[Proceedings concluded at 9:00 a.m.]

* * * * * * * * *

ATTEST: Pursuant to Rule 3(c)(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

Sandra A Pruchnic

SANDRA PRUCHNIC
Court Transcriber

RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
H. LEON SIMON
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Nevada Bar #000411
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

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

Defendant.

CASE NO: 10C264079

DEPT NO: XVIII

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

DATE OF HEARING: June 23, 2014
TIME OF HEARING: 8:15 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through H. LEON SIMON, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction).

This Response and Motion to Dismiss are made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On April 28, 2010, Kevin Marquette Gipson (hereinafter "Defendant") was charged by way of Indictment with 1 count of Murder With Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165). On December 7, 2014, at Calendar Call, the parties informed the court that the matter was resolved via negotiations. Defendant's Guilty Plea Agreement was filed in open court and he entered a plea of Guilty to the charge of First Degree Murder With Use of a Deadly Weapon. The Guilty Plea Agreement provided that the parties stipulated to a sentence of 20 years to Life in the Nevada Department of Corrections and the State retained the right to argue for a deadly weapon term of not less than 4 to 8 years.

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

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

On October 15, 2012, Defendant filed a Pro Per "Ex Parte Motion for Appointment of Counsel and Request for Evidentiary Hearing." The State filed its Opposition on November 2, 2012. On November 5, 2012, Defendant filed a Pro Per "Memorandum of Points and Authorities Facts of the Case." That Memorandum sought to file a direct appeal and the Memorandum was transmitted to the Nevada Supreme Court as a Notice of Appeal. On December 20, 2012, the Nevada Supreme Court dismissed Defendant's appeal. See Gipson v. State, Docket No. 62071, Order Dismissing Appeal (December 20, 2012). On January 28, 2013, the court granted Defendant's Motion for Appointment of Counsel. On February 11,

2013, Carmine Colucci, Esq., confirmed as counsel for Defendant. On June 17, 2013, counsel advised the court that all the documents had been received and a briefing schedule was set.

On January 7, 2014, the parties stipulated to extend the briefing schedule. Notably, they also stipulated that the State retained the right to argue that Defendant's Petition was time-barred. See Stipulation and Order, filed January 7, 2014, pg. 2. The parties again stipulated to extend the briefing schedule on February 6, 2014; the State again retained the right to argue that the Petition was time-barred. See Stipulation and Order, filed February 6, 2014, pg. 2. Finally, on May 19, 2014, the parties stipulated for a third time to extend the briefing schedule. See Stipulation and Order, filed May 19, 2014.

Defendant filed his Petition for Writ of Habeas Corpus (Post-Conviction) and Points and Authorities in Support of Petition for Writ of Habeas Corpus (Post-Conviction) on June 6, 2014. The State responds as follows.

ARGUMENT

I. DEFENDANT'S INSTANT PETITION IS PROCEDURALLY BARRED WITHOUT GOOD CAUSE

A. Defendant's Instant Petition For Writ Of Habeas Corpus (Post-Conviction), Is Procedurally Barred By The One-Year Time Limit Of NRS 34.726

Defendant's Judgment of Conviction was filed on March 13, 2012; Defendant did not file a direct appeal. NRS 34.726 provides in relevant part as follows:

> NRS 34.726 Limitations on time to file; stay of sentence.
>
> 1. Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence **must be filed within 1 year after entry of the judgment of conviction or, if an appeal has been taken from the judgment, within one year after the Supreme Court issues its remittitur.** For the purposes of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court:
>
> (a) That the delay is not the fault of the petitioner; and
>
> (b) That dismissal of the petition as untimely will unduly prejudice the petitioner.
>
> ...

NRS 34.726 (emphasis added). "Absent a showing of good cause as defined by this statute, untimely post-conviction claims that arise out of the proceedings involving the initial

conviction or the direct appeal and that could have been raised before the judgment of conviction was amended are procedurally barred." Sullivan v. State, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004). As per the language of the statute, the one-year time bar prescribed by NRS 34.726 begins to run from the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998); see Pellegrini v. State, 117 Nev. 860, 873, 34 P.3d 519, 528 (2001) (holding that NRS 34.726 should be construed by its plain meaning).

In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002), the Nevada Supreme Court rejected a habeas petition that was filed just two (2) days late, pursuant to the "clear and unambiguous" mandatory provisions of NRS 34.726(1). Gonzales reiterated the importance of filing the petition with the district court within the one-year mandate, absent a showing of "good cause" for the delay in filing. Gonzales, 118 Nev. at 593, 590 P.3d at 902. The one-year time bar is therefore strictly and exactingly construed. In contrast with the short amount of time to file a notice of appeal, a prisoner has an ample full year to file a post-conviction habeas petition, so there is no injustice in a strict application of NRS 34.726(1), despite any alleged difficulties with the postal system. Gonzales, 118 Nev. at 595, 53 P.3d at 903.

The instant Petition for Writ of Habeas Corpus (Post-Conviction) was filed on June 6, 2014, approximately 2 years, 2 months, and 24 days after Defendant's Judgment of Conviction on March 13, 2012. Defendant's instant Petition for Writ of Habeas Corpus (Post-Conviction) was filed beyond the one-year time bar of NRS 34.726(1). Therefore, it should be dismissed because it is procedurally barred by NRS 34.726(1) and Defendant fails to show good cause and prejudice. See Argument §I(B), infra.

B. Defendant Fails to Demonstrate Good Cause and Prejudice to Overcome the Procedural Bars

To show good cause for delay under NRS 34.726(1), a petitioner must demonstrate the following: 1) "[t]hat the delay is not the fault of the petitioner" and 2) that the petitioner will be "unduly prejudice[d]" if the petition is dismissed as untimely. NRS 34.726(1). Under the first requirement, "a petitioner must show that an impediment external to the defense prevented

him or her from complying with the state procedural default rules." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (citing Pellegrini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001); Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994); Passanisi v. Director, Dep't Prisons, 105 Nev. 63, 66, 769 P.2d 72, 74 (1989) (overruled on other grounds by Harris v. State, 130 Nev. Adv. Op. 47, *16-18). "An impediment external to the defense may be demonstrated by a showing 'that the factual or legal basis for a claim was not reasonably available to counsel, or that some interference by officials, made compliance impracticable.'" Id. (quoting Murray v. Carrier, 477 U.S. 478, 488, 106 S.Ct. 2639 (1986) (citations and quotations omitted)). Good cause for the delay is defined as "a substantial reason; one that affords a legal excuse." Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989).

Once a petitioner has established cause, he must show actual prejudice resulting from the errors of which he complains, i.e., "a petitioner must show that errors in the proceedings underlying the judgment worked to the petitioner's actual and substantial disadvantage." State v. Huebler, 128 Nev. Adv. Op. 19, 275 P.3d 91, 94-95 (2012) (citing Hogan v. Warden, 109 Nev. 952, 959–60, 860 P.2d 710, 716 (1993)).

Defendant alleges as good cause, that the parties and court were unaware of the impeding time bar when Mr. Colucci was appointed approximately 1 month prior to the running of the 1 year time-bar under NRS 34.726(1). See Defendant's Petition for Writ of Habeas Corpus (Post-Conviction), filed June 6, 2014, pgs. 6-7. He argues that the setting of a Status Check past the 1 year time-bar date of March 13, 2013, and the filing of Stipulations and Orders to extend the briefing schedule support his argument and constitute good cause to overcome the procedural bar. Id. What Mr. Colucci fails to mention, is that in the Stipulations and Orders filed on January 7, 2014, and February 6, 2014, the State specifically retained the right to assert the procedural time-bar of NRS 34.726(1). See Stipulation and Order, filed January 7, 2014, pg. 2; see also Stipulation and Order, filed February 6, 2014, pg. 2. Furthermore, the State is prohibited from waiving the procedural time-bar and district courts are prohibited from disregarding procedural bars even if parties stipulate to do so:

> ... we hold that the parties in a post-conviction habeas proceeding cannot stipulate to disregard the statutory procedural default rules. We direct all counsel in the future not to enter into stipulations like the one in this case and direct the district courts not to adopt such stipulations.

State v. Haberstroh, 119 Nev. 173, 181, 69 P.3d 676, 682 (2003). Therefore, the date of the status check and the Stipulations and Orders, even if they had not reserved the right to assert the time-bar, cannot constitute good cause. Thus, Defendant fails to demonstrate good cause and prejudice. Defendant's instant Petition for Writ of Habeas Corpus (Post-Conviction) should be dismissed pursuant to NRS 34.726(1). See Argument §I(A), supra; §§I(C), I(D), infra.

C. Application of Procedural Bars is Mandatory

The Nevada Supreme Court has specifically found that the district court has a duty to consider whether the procedural bars apply to a post-conviction petition and not arbitrarily disregard them. In State v. Dist. Ct. (Riker), 121 Nev. 225, 112 P.3d 1070 (2005), the Court held that "[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory," and "cannot be ignored when properly raised by the State." Id. at 231, 233, 112 P.3d at 1074, 1075. There, the Court reversed the district court's decision not to bar the defendant's untimely and successive petition:

> Given the untimely and successive nature of [defendant's] petition, the district court ***had a duty imposed by law*** to consider whether any or all of [defendant's] claims were barred under NRS 34.726, NRS 34.810, NRS 34.800, or by the law of the case . . . [and] the court's failure to make this determination here constituted an arbitrary and unreasonable exercise of discretion.

Id. at 234, 112 P.3d at 1076 (emphasis added). The Court justified this holding by noting that "[t]he necessity for a workable system dictates that there must exist a time when a criminal conviction is final." Id. at 231, 112 P.3d 1074 (citation omitted); see also State v. Haberstroh, 119 Nev. 173, 180-81, 69 P.3d 676, 681-82 (2003) (wherein the Nevada Supreme Court held that parties cannot stipulate to waive, ignore or disregard the mandatory procedural default rules nor can they empower a court to disregard them). Defendant is required to show good

cause and prejudice to overcome the procedural bars before his petition may be considered on the merits. Defendant's instant Petition for Writ of Habeas Corpus (Post-Conviction) cannot be considered on the merits because it is subject to procedural bars and Defendant fails to show good cause and prejudice. See Argument §§I(A), I(B), supra.

D. Consistent Application of Procedural Bars is Required

Legislatively mandated procedural bars are not simply a legal technicality. They serve a vital role in maintaining the viability of the criminal justice system.

> "[R]easonable adherence to clear, reasonable and known rules of procedure is essential to the administration of justice. Justice cannot be administered in chaos. Moreover the administration of justice involves not only meticulous disposition of the conflicts in one particular case but the expeditious disposition of hundreds of cases. If the courts must stop to inquire where substantial justice on the merits lies every time a litigant refuses or fails to abide the reasonable and known rules of procedure, there will be no administration of justice. Litigants must be required to cooperate in the efficient disposition of their cases."

United States v. Seigel, 168 F.2d 143, 146 (D.C., 1948).

As the Nevada Supreme Court noted in Pellegrini v. State, 117 Nev. 860, 34 P.3d 519, 530 (2001), "the legislative history of the habeas statutes shows that Nevada's lawmakers never intended for petitioners to have multiple opportunities to obtain post-conviction relief absent extraordinary circumstances." Furthermore, legislative imposition of statutory time limits "evinces intolerance toward perpetual filing of petitions for relief, which clogs the court system and undermines the finality of convictions." Id. 34 P.3d at 529. Defendants are entitled to "one time through the system absent extraordinary circumstances" Id.

"Where the intention of the Legislature is clear, it is the duty of the court to give effect to such intention and to construe the language of the statute so as to give it force and not nullify its manifest purpose." Woofter v. O'Donnell, 91 Nev. 756, 762, 542, P.2d 1396, 1400 (1975); see also Pellegrini v. State, 117 Nev. 860, 34 P.3d 519, 528-529 (2001).

Nevada courts, and the Nevada Supreme Court in particular, have been under regular attack by petitioners who claim Nevada does not consistently apply its procedural bars. See, e.g., Loveland v. Hatcher, 231 F.3d 640 (9th Cir.2000) (denying claim made that Nevada does

not consistently apply NRS 34.726(1), the one-year limit for filing habeas petition). These attacks have continued even though both the Nevada Supreme Court and the Ninth Circuit have recently ruled that "a petitioner must establish 'good cause' and 'actual prejudice' to overcome a post conviction procedural bar." Valerio v. State, 112 Nev. 383, 390, 915 P.2d 874 (1998); Loveland, supra. As long as the State rules are consistently applied, the federal courts must show deference to the State court's application of procedural bars. Loveland, supra. In Petrocelli v. Angelone, 248 F.3d 877 (9th Cir, 2001) the Ninth Circuit Court of Appeals, citing its earlier decision in Moran v. McDaniel, 80 F.3d 1261 (9th Cir.1996) found that the Nevada Supreme Court had consistently applied the procedural bar in NRS 34.800.

The United States Supreme Court has also addressed the importance of procedural bars. In Bousley v. United States, 523 U.S. 614, 629, 118 S.Ct. 1604, 1614 (1998), the Court stated that "[n]o criminal law system can function without rules of procedure conjoined with a rule of finality."

In Murray v. Carrier, 477 U.S. 478, 106 S.Ct. 2639 (1986), the United States Supreme Court stated that "[a] State's procedural rules serve vital purposes on appeal as well as at trial and on state collateral attack, and the standard for cause should not vary depending on the timing of a procedural default." The Court went on to say "[a]ttorney error short of ineffective assistance of counsel does not constitute cause for a procedural default even when that default occurs on appeal rather than at trial. To the contrary, cause for a procedural default on appeal ordinarily requires a showing of some external impediment preventing counsel from constructing or raising the claim." Murray, 477 U.S. at 492, 106 S.Ct. at 2648.

Even in the context of capital cases, courts have recognized the important function of procedural bars in appellate litigation. Recently the California Supreme Court held:

> California law also recognizes that in some circumstances there may be matters that undermine the validity of a judgment or the legality of a defendant's confinement or sentence, but which are not apparent from the record on appeal, and that such circumstances may provide a basis for a collateral challenge to the judgment through a writ of habeas corpus. At the same time, however, our cases emphasize that habeas corpus is an extraordinary remedy that "was not created for the purpose of defeating or embarrassing justice, but to promote it" (In re Alpine (1928) 203 Cal. 731, 744, 265 P. 947), and that the availability of

> the writ properly must be tempered by the necessity of giving due consideration to the interest of the public in the orderly and reasonably prompt implementation of its laws and to the important public interest in the finality of judgments. For this reason, a variety of procedural rules have been recognized that govern the proper use of the writ of habeas corpus, including a requirement that claims raised in a habeas corpus petition must be timely filed.

In re Robbins, 18 Cal.4th 770, 777, 959 P.2d 311, 316-316, 77 Cal.Rptr.2d 153, 158 (1998).

Finally, in United States v. Timmreck, 441 U.S. 780, 784, 99 S.Ct. 2085, 2087 (1979), the United States Supreme Court stated that "[e]very inroad on the concept of finality undermines confidence in the integrity of our procedures; and, by increasing the volume of judicial work, inevitably delays and impairs the orderly administration of justice. Thus, Defendant's instant Petition for Writ of Habeas Corpus (Post-Conviction) cannot be considered on the merits because it is subject to procedural bars which must be applied and Defendant fails to show good cause and prejudice. See Argument §§I(A), I(B), supra.

II. THE COURT MAY ELECT TO ALLOW DEFENDANT ADDITIONAL TIME TO OPPOSE THE INSTANT MOTION TO DISMISS

NRS 34.750(4) provides that Defendant is entitled to 15 days to respond to the State's Motion to Dismiss. However, the State did not receive this Petition for Writ of Habeas Corpus (Post-Conviction) until June 9, 2014. Therefore, the State was unable to file its instant Response and Motion to Dismiss Defendant's Petition for Writ of Habeas Corpus (Post-Conviction) 15 days prior to the hearing currently set on June 23, 2014, which would have necessitated filing the Response and Motion to Dismiss on or before Friday, June 6, 2014. Therefore, the State has no objection to this Court continuing the hearing so Defendant can have his statutory 15 days to respond.

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CONCLUSION

Based on the foregoing, the State respectfully requests that Defendant's Petition for Writ of Habeas Corpus (Post-Conviction) be DISMISSED.

DATED this 13th day of June, 2014.

Respectfully submitted,

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

BY _____
H. LEON SIMON
Chief Deputy District Attorney
Nevada Bar #000411

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of State's Response and Motion to Dismiss Defendant's Petition for Writ of Habeas Corpus (Post-Conviction), was made this 13th day of June, 2014, by facsimile transmission to:

CARMINE COLUCCI, ESQ.
FAX #702-384-4453

BY: _____
Theresa Dodson
Secretary for the District Attorney's Office

sk/HLS/td/dvu

Electronically Filed
08/07/2014 05:01:39 PM

CLERK OF THE COURT

CARMINE J. COLUCCI CHTD.
Nevada Bar #000881
629 South Sixth Street
Las Vegas, Nevada 89101
(702) 384-1274 telephone
(702 384-4453 facsimile
Attorney for Petitioner
KEVIN MARQUETTE GIPSON

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,	) CASE NO.	C264079
	) DEPT NO.	XVIII
Plaintiff,	)	
	)	
vs.	)	
	)	
KEVIN MARQUETTE GIBSON aka, Kevin Marquette Gibson, #1582343	)	
	)	
Defendant.	)	

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

Comes now Defendant, KEVIN GIPSON, by and through his appointed attorney, CARMINE J. COLUCCI, ESQ., of the law firm of CARMINE J. COLUCCI, CHTD., and moves this court to consider the Defendant's Petition for Writ of Habeas Corpus (Post-Conviction) on the merits and to deny the State's Motion to Dismiss.

/ / /

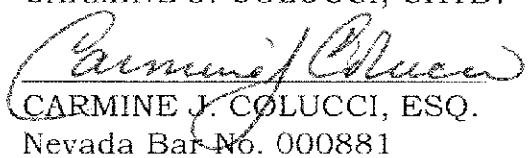
/ / /

/ / /

This Reply is made and based upon all of the pleadings and papers on file herein, the points and authorities submitted herewith, and the argument of counsel, if allowed by the Court at the time of the hearing on this matter.

DATED this 7th day of August, 2014.

CARMINE J. COLUCCI, CHTD.



CARMINE J. COLUCCI, ESQ.
Nevada Bar No. 000881
629 South Sixth Street
Las Vegas, Nevada 89101
Attorney for Petitioner

ARGUMENT

Defendant's Petition is Not Procedurally Barred

Under NRS 34.726, limitations on time to file a petition for writ of habeas corpus must be filed within one (1) year after the entry of the judgment of conviction unless there is good cause shown for the delay. Further, "good cause" for the delay exists if the petitioner demonstrates to the satisfaction of the court that the delay is not the fault of the petitioner; and the dismissal of the petition as untimely will unduly prejudice the petitioner.

The defendant has alleged that the Court and the parties, especially petitioner's counsel, was unaware of the impending time bar when he accepted the appointment. This was a court-appointment and the file was not immediately made available to him. The district court set a status check, past the one (1) year time bar date of March 13, 2013. Even the initial briefing schedule set by the district court set dates that were beyond the procedural bar time line date of

March 13, 2013.

Further, appointed counsel had to review the portions of the file that he was provided with which took some time. He initially requested four months to review the file and the Court ordered that. See **Exhibit A** attached hereto.

On May 19, 2014, defense counsel ordered the preparation of transcripts of the various proceedings which had not previously been provided to him. See entries in Exhibit 1 extending from June 17, 2013 through June 6, 2014. See **Exhibit B**. It was only after those transcripts had been provided that petitioner's counsel had the complete file. On June 17, 2013, defense counsel appeared in court and the district judge set a briefing schedule.

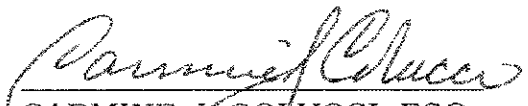
The undue prejudice of dismissal of the petition is obvious. A dismissal will serve to deny petitioner the opportunity to have the issues raised in his petition considered on the merits.

CONCLUSION

For the reasons set forth above, petitioner respectfully requests that this court deny the State's request to dismiss and consider the issues raised in the petition for the writ of habeas corpus (post-conviction) on the merits.

DATED this 7th day of August, 2014.

CARMINE J. COLUCCI CHTD.



CARMINE J. COLUCCI, ESQ.
Nevada Bar No. 000881
629 South Sixth Street
Las Vegas, Nevada 89101
Attorney for Petitioner

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that on this 7th day of August, 2014, I e-served pursuant to N.E.F.C.R 9 and mailed pursuant to NRCP 5(b), a true and correct copy of the foregoing REPLY TO STATE'S RESPONSE AND MOTION TO DISMISS DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) addressed to:

Dwight Neven, Warden
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

Steven B. Wolfson
Clark County District Attorney
200 Lewis Ave.
Las Vegas, NV 89155

Catherine Cortez-Masto
Nevada Attorney General
100 North Carson St.
Carson City, NV 89701

E. Vargas

An employee of
CARMINE J. COLUCCI, CHTD.

Exhibit A

Register of Actions

Case No. 10C264079

The State of Nevada vs Kevin M Gipson

Case Type:	**Felony/Gross Misdemeanor**
Date Filed:	**04/28/2010**
Location:	**Department 18**
Cross-Reference Case Number:	**C264079**
Defendant's Scope ID #:	**1582343**
Lower Court Case Number:	**09GJ00167**
Supreme Court No.:	**62071**

Party Information

Defendant **Gipson, Kevin M**
Other Agency Numbers
1582343 Scope ID Subject Identifier

Lead Attorneys
Carmine J. Colucci
Retained
7023841274(W)

Plaintiff **State of Nevada**

Steven B Wolfson
702-671-2700(W)

Charge Information

Charges: Gipson, Kevin M	**Statute**	**Level**	**Date**
1. MURDER.	200.010	Felony	01/01/1900
1. DEGREES OF MURDER	200.030	Felony	01/01/1900
1. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900

Events & Orders of the Court

02/11/2013 **All Pending Motions** (8:15 AM) (Judicial Officer Barker, David)

Minutes
02/11/2013 8:15 AM
- CONFIRMATION OF COUNSEL (COLUCCI)...DEFT'S PRO PER MOTION FOR DIRECT APPEAL / MEMORANDUM OF POINTS AND AUTHORITIES FACTS OF THE CASE Mr. Colucci CONFIRMED as counsel and requested matter be set for status check in for months for him to have time to review file. COURT ORDERED, matter SET for status check and Deft's Pro Per Motion OFF CALENDAR. NDC 6/17/13 8:15 AM STATUS CHECK: SET BRIEFING SCHEDULE CLERK'S NOTE: The above minute order has been distributed to: Kevin Marquette Gipson BAC #1082776, Ely State Prison, P.O. Box 1989, Ely, NV 89301. aw

Parties Present
Return to Register of Actions

12/07/2011 **All Pending Motions** (8:15 AM) (Judicial Officer Barker, David)
Parties Present
Minutes
Result: Matter Heard

12/12/2011 *CANCELED* **Jury Trial** (10:00 AM) (Judicial Officer Barker, David)
Vacated - per Judge

12/12/2011 *CANCELED* **Motion in Limine** (8:15 AM) (Judicial Officer Barker, David)
Vacated - per Judge

02/10/2012 **Sentencing** (1:30 PM) (Judicial Officer Barker, David)
Minutes
Result: Defendant Sentenced

02/21/2012 **Criminal Order to Statistically Close Case**
Criminal Order to Statistically Close Case

03/13/2012 **Judgment of Conviction**
Judgment of Conviction (Plea of Guilty)

09/05/2012 **Motion**
Motion To Withdraw Plea

09/21/2012 **Opposition to Motion**
State's Opposition to Defendant's Motion Pro Per Motion to Withdraw Plea

09/26/2012 **Motion** (8:15 AM) (Judicial Officer Barker, David)
Deft's Pro Per Motion to Withdraw Plea
Parties Present
Minutes
Result: Motion Denied

09/27/2012 **Order Denying Motion**
Order Denying Defendant's Pro Per Motion to Withdraw Plea

10/15/2012 **Motion**
Motion To Proceed In Forma Pauperis

10/15/2012 **Motion**
Ex Parte Motion For Appointment Of Counsel And Request For Evidentiary Hearing

11/02/2012 **Opposition**
State's Opposition to Defendant's Motion to Appoint Counsel and Request for Evidentiary Hearing

11/05/2012 **Motion**
Motion for Direct Appeal / Memorandum of Points and Authorities Facts of the Case

11/07/2012 **Motion** (8:15 AM) (Judicial Officer Barker, David)
Deft's Pro Per Motion To Proceed In Forma Pauperis
Result: Motion Granted

11/07/2012 **Motion** (8:15 AM) (Judicial Officer Barker, David)
11/07/2012, 01/09/2013, 01/28/2013
Deft's Pro Per Ex Parte Motion for Appointment of Counsel and Request for Evidentiary Hearing
Result: Matter Continued

11/07/2012 **All Pending Motions** (8:15 AM) (Judicial Officer Barker, David)
Parties Present
Minutes
Result: Matter Heard

11/08/2012 **Case Appeal Statement**
Case Appeal Statement

11/26/2012 **Motion** (8:15 AM) (Judicial Officer Barker, David)
11/26/2012, 01/09/2013, 01/28/2013, 02/11/2013
Deft's Pro Per Motion for Direct Appeal / Memorandum of Points and Authorities Facts of the Case
Parties Present
Minutes
Result: Matter Continued

01/09/2013 **All Pending Motions** (8:15 AM) (Judicial Officer Cory, Kenneth)
Parties Present
Minutes
Result: Matter Heard

01/17/2013 **NV Supreme Court Clerks Certificate/Judgment - Dismissed**
Nevada Supreme Court Clerk's Certificate Judgment - Dismissed

01/28/2013 **All Pending Motions** (8:15 AM) (Judicial Officer Barker, David)
Parties Present
Minutes
Result: Matter Heard

02/11/2013 **Confirmation of Counsel** (8:15 AM) (Judicial Officer Barker, David)
Result: Matter Heard

02/11/2013 **All Pending Motions** (8:15 AM) (Judicial Officer Barker, Davic)
Parties Present
Minutes
Result: Matter Heard

06/17/2013 **Status Check** (8:15 AM) (Judicial Officer Barker, David)
Status Check: Set Briefing Schedule
Parties Present
Minutes
Result: Briefing Schedule Set

01/07/2014 **Stipulation and Order**
Stipulation and Order

02/06/2014 **Stipulation and Order**
Stipulation and Order

05/19/2014 **Stipulation and Order**
Stipulation and Order

05/21/2014 **Recorders Transcript of Hearing**
Recorder's Rough Draft Transcript of Proceedings Defendant's Pro Per Motion for Direct Appeal Memorandum of Points and Authorities Facts of the Case; Confirmation of Counsel - 2/11/2013

05/23/2014 **Recorders Transcript of Hearing**
Recorder's Rough Draft Transcript of Proceedings Defendant's Motion to Compel Discovery; Defendant's Motion to Suppress or in the Alternative A Jackson V. Denno April 25, 2011

05/23/2014 **Recorders Transcript of Hearing**
Recorder's Rough Draft Transcript of Proceedings Defendant's Motion in Limine to Admit Bad Acts and Other Acts of the Defendant Against the Victim; Defendant's Motion to Compel Discovery; Defendant's Motion to Suppress or in the Alternative a Jackson V. Denno; State's Motion in Limine Regarding the Defendant's Expert Witnesses and Request for Discovery Monday, May 2, 2011

05/23/2014 **Recorders Transcript of Hearing**
Recorder's Rough Draft Transcript of Proceedings Calendar Call; Defendant's Motion in Limine to Admit Bad Acts and Other Acts of the Defendant Against the Victim; Defendant's Motion to Suppress or in the Alternative a Jackson V. Denno; State's Motion in Limine Regarding the Defendant's Expert Witnesses and Request for Discovery Wednesday, May 4, 2011

05/23/2014 **Recorders Transcript of Hearing**
Recorder's Rough Draft Transcript of Proceedings Defendant's Notice of Motion and Motion to Bar the Admission of Cumulatiave Victm Impact Panel Evidence in Violation of the Due Process Clause: Hearing-counsel to Notify Staff of Pending Motions; Defendant's Motion in Limine to Preclude the State from Moving to Admit into Evidence Photographs Prejudicial to Kevin Gipson Wednesday, August 17, 2011

05/23/2014 **Recorders Transcript of Hearing**
Recorder's Rough Draft Transcript of Proceedings State's Motion in Limine Regarding Defendant's Expert Witnesses and Request for Discovery; State's Motion in Limine to Admit Bad Acts and Other Acts of the Defendant Against the Victim; Defendant's Motion in Limine to Preclude the State from Moving to Admit into Evidence Photographs Prejudicial to Kevin Gipson; Defendant's Motion in Limine to Bar the Admission of Cumulative Victim Impact Evidence in Violation of the Due Process Clause Monday, October 24, 2011

05/23/2014 **Recorders Transcript of Hearing**
Recorder's Rough Draft Transcript of Proceedings Defendant's Motion for In Camera Review of Personnel Records Monday, November 21, 2011

05/23/2014 **Recorders Transcript of Hearing**
Recorder's Rough Draft Transcript of Proceedings State's Motion in Limine Regarding the Defendant's Expert Witnesses and Request for Discovery; Defendant's Motion in Limine to Preclude the State from Moving to Admit into Evidence Photographs Prejudicial to Kevin Gipson; Defendant's Motion in Limine to Bar the Admission of Cumulative Victim Impact Evidence in Violation of the Due Process Clause; Calendar Call Wednesday, December 7, 2011

05/23/2014 **Recorders Transcript of Hearing**
Recorder's Rough Draft Transcript of Proceedings Defendant's Pro Per Motion to Withdraw PleaWednesday, September 26, 2012

06/06/2014 **Petition**
Petition for Writ of Habeas Corpus (Post-Conviction)

06/06/2014 **Points and Authorities**
Points and Authorities in Support of Petition for Writ of Habeas Corpus (Post Conviction)

06/13/2014 **Response**
State's Response and Motion to Dismiss Defendant's Petition for Writ of Habeas Corpus (Post-Conviction)

06/23/2014 *CANCELED* **Petition for Writ of Habeas Corpus** (8:15 AM) (Judicial Officer Barker, David)
Vacated - Duplicate Entry
Deft's Petition for Writ of Habeas Corpus

09/15/2014 **Petition for Writ of Habeas Corpus** (8:15 AM) (Judicial Officer Barker, David)
Petition for Writ of Habeas Corpus (Post Conviction)
03/31/2014 Reset by Court to 04/14/2014
04/14/2014 Reset by Court to 09/18/2014
08/18/2014 Reset by Court to 09/15/2014

FINANCIAL INFORMATION

	Defendant Gipson, Kevin M	
	Total Financial Assessment	275.00
	Total Payments and Credits	0.00
	Balance Due as of 08/07/2014	**275.00**
12/18/2012	Transaction Assessment	275.00

Exhibit B

FAX COVER SHEET

FAX NUMBER TRANSMITTED TO: (702) 671-4458

From: Liz Vargas, Legal Secretary to Carmine J. Colucci, Esq.
Client/Matter: State v. Kevin Gipson
Date: May 14, 2014

Hi Cheryl,

We have amended the Request for Transcripts to include one additional date of February 13, 2013 (the last one). This should be the complete list. We really appreciate your help with this.

Thank you

Liz Vargas
Secretary to Carmine J. Colucci, Esq.

REQT
CARMINE J. COLUCCI, ESQ.
CARMINE J. COLUCCI, CHTD.
Nevada Bar No. 881
629 South Sixth Street
Las Vegas, Nevada 89101
(702) 384-1274 Telephone
(702) 384-4453 Facsimile
E-Mail: liz@lvcoxmail.com
Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

KEVIN GIPSON,
Defendant.

Case No.: 10C264079
Dept No.: XVIII

AMENDED REQUEST FOR TRANSCRIPTS

TO: CHERYL CARPENTER, Reporter/Recorder

KEVIN GIPSON, Defendant named above, requests preparation of a rough draft transcript of certain portions of the proceedings before the district court, as follows:

Date of Proceeding:

1) **April 25, 2011**- Defendant's Motion to Compel Discovery

2) **May 2, 2011** - State's Motion in Limine Regarding the Defendant's Expert

3) **May 4, 2011** - All pending motions- Calendar Call, Defendant's Motion in Limine to Admit Bad Acts

4) **August 17, 2011**- All pending motions- Defendant's Notice of Motion and Motion to Bar the Admission of Cumulative Victim Impact Panel

5) **October 24, 2011**- All pending motions

6) **November 21, 2011**- Motion for Camera Review of Personnel Records

7) **December 7, 2011**- Calendar Call

8) **September 26, 2012**- Defendant's Pro Per Motion to Withdraw

9) **February 13, 2013**- Confirmation of Counsel, Defendant's Pro Per Motion for Direct Appeal

Portions of the transcript requested: Defendant requests a transcript of the entire hearing.

This notice requests a transcript of only those portions of the district court proceedings which counsel reasonably and in good faith believes are necessary to prepare the Points and Authorities in Support of Writ of Habeas Corpus (Post-Conviction).

I recognize that I must personally serve a copy of this form on the above named court reporter and opposing counsel, and that the above named court reporter.

DATED this 14th day of May, 2014.

CARMINE J. COLUCCI, CHTD.

CARMINE J. COLUCCI, ESQ.
Nevada Bar #000881
629 South Sixth Street
Las Vegas, Nevada 89101
(702) 384-1274
Attorney for Defendant

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of REQUEST FOR TRANSCRIPT was made this 13th day of May, 2014, by facsimile transmission to:

Cheryl Carpenter
Reporter/Recorder
Eighth Judicial District Court Department XII
Facsimile (702)671-4458

E Vargas
An employee of Carmine J. Colucci, Chtd.

Transmission Report

Date/Time	05-14-2014	09:57:16 a.m.	Transmit Header Text	
Local ID 1	702 384 4453		Local Name 1	CARMINE J COLUCCI,CHTD.

This document : Confirmed
(reduced sample and details below)
Document size : 8.5"x11"

FAX COVER SHEET

FAX NUMBER TRANSMITTED TO: (702) 671-4458

From: Liz Vargas, Legal Secretary to Carmine J. Colucci, Esq.
Client/Matter: State v. Kevin Gipson
Date: May 14, 2014

Hi Cheryl,

We have amended the Request for Transcripts to include one additional date of February 13, 2013 (the last one). This should be the complete list. We really appreciate your help with this.

Thank you

Liz Vargas
Secretary to Carmine J. Colucci, Esq.

Total Pages Scanned : 3 Total Pages Confirmed : 3

No.	Job	Remote Station	Start Time	Duration	Pages	Line	Mode	Job Type	Results
001	480	6714458	09:55:59 a.m. 05-14-2014	00:00:35	3/3	1	EC	HS	CP31200

Abbreviations:
HS: Host send
HR: Host receive
WS: Waiting send
PL: Polled local
PR: Polled remote
MS: Mailbox save
MP: Mailbox print
RP: Report
FF: Fax Forward
CP: Completed
FA: Fail
TU: Terminated by user
TS: Terminated by system
G3: Group 3
EC: Error Correct

Electronically Filed
12/15/2014 05:06:41 PM

CLERK OF THE COURT

CARMINE J. COLUCCI CHTD.
Nevada Bar #000881
629 South Sixth Street
Las Vegas, Nevada 89101
(702) 384-1274 telephone
(702 384-4453 facsimile
cjclasvegas@gmail.com
Attorney for Petitioner
KEVIN MARQUETTE GIPSON

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

KEVIN MARQUETTE GIPSON, Petitioner, vs. DWIGHT NEVEN, WARDEN, HIGH DESERT STATE PRISON, Respondent.	) CASE NO.) DEPT NO.	C264079 XVIII

SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

The Petition of KEVIN MARQUETTE GIPSON,, by and through, CARMINE J. COLUCCI, ESQ., of the law firm of CARMINE J. COLUCCI CHTD., attorney for the above-captioned petitioner, respectfully shows:

1. Name of institution and county in which Kevin Marquette Gipson is presently imprisoned or where he is presently restrained of his liberty: I am presently imprisoned by Nevada Department of Corrections at the High Desert State Prison in Indian Springs, County of Clark, Nevada.

/ / /

2.The name and location of the court which entered the judgment of conviction under attack: Eighth Judicial District Court in the County of Clark, State of Nevada, Department 18, 200 Lewis Ave., Las Vegas, Nevada 89155

3. Date of judgment of conviction: March 13, 2012.

4. Case number: C264079

5. (a) Length of sentence: Life with a possible parole eligibility of Twenty (20) years with a consecutive term of Two Hundred Forty (240) months maximum and ninety-six (96) months minimum for Use of a Deadly Weapon with six hundred eighty-six (686) days credit for time served.

(b) If sentence is death, state any date upon which execution is scheduled: N/A

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? No.

7. Nature of offense involved in conviction being challenged: Murder with Use of a Deadly Weapon.

8. What was your plea? Guilty.

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details: The case was negotiated pursuant to the terms of the Guilty Plea Agreement.

/ / /

/ / /

10. If you were found guilty or guilty but mentally ill after a plea of not guilty, was the finding made by: N/A

(a) Jury N/A

(b) Judge without Jury N/A

11. Did you testify at the trial? N/A

12. Did you appeal from the judgment of conviction? Yes.

13. If you did appeal, answer the following:

(a) Name of Court: Eighth Judicial District Court

(b) Case Number or citation: 62071

(c) Result: Dismissed for lack of jurisdiction (See Attached Order Dismissing Appeal, Exhibit 1).

14. If you did not appeal, explain briefly why you did not. N/A

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state of federal? Yes.

16. If your answer to No. 15 was "yes," give the following information:

(A) (1) Name of Court: Eighth Judicial District Court, Clark County, Nevada.

(2) Nature of Proceedings: Pro Per Motion to Withdraw Plea

(3) Grounds raised:

(a) Petitioner was denied his right to appeal

(b) Petitioner was not appointed counsel for purposes of effecting an appeal;

(c) Petitioner did not waive his right to a direct appeal.

(4) Did you receive an evidentiary hearing on your petition, application or motion? No.

(5) Result: Motion Denied

(6) Date of Result: September 26, 2012

(7) If known, citations of any written opinion or date of orders entered pursuant to such result: Order entered September 27, 2012.

(B) As to any second petition, application or motion, give the same information:

(1) Name of Court: Eighth Judicial District Court, Clark County, Nevada.

(2) Nature of Proceedings: Memorandum of Points and Authorities (filed Nov. 5, 2012)

(3) Grounds raised: Petitioner's right to direct appeal violated

(4) Did you receive an evidentiary hearing on your petition, application or motion? No.

(5) Result: Defendant's Pro Per Motion for Appointment of Counsel Granted; Defendant's Motion for Evidentiary Hearing denied.

(6) Date of Result: January 28, 2012.

(7) If known, citations of any written opinion or date of orders entered pursuant to such result: None.

/ / /

(C) As to any third or subsequent additional applications or motions, give the same information as above:

(1) Name of Court: Eighth Judicial District Court, Clark County, Nevada.

(2) Nature of Proceedings: Defendant's Pro Per Motion for Direct Appeal/Memorandum of Points and Authorities Facts of the Case.

(3) Grounds raised: Defendant's right to a direct appeal was violated (November 5, 2012)

(4) Did you receive an evidentiary hearing on your petition, application or motion? No.

(5) Result: Taken off Calendar

(6) Date of Result: February 11, 2012

(7) If known, citations of any written opinion or date of orders entered pursuant to such result: N/A

(D) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?

(1) First petition, application or motion? No.

(2) Second petition, application or motion? No.

(3) Third or subsequent petitions, applications or motions? No.

(E) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not.

Defendant did not know he had the right to or the knowledge to

proceed with an appeal of the issues raised and was not represented by an attorney for these. Petitioner tried to appeal but improperly and appeal dismissed.

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other post-conviction proceeding? If so, identify:

(a) Which of the grounds is the same: N/A

(b) The proceedings in which these grounds were raised:

(c) Briefly explain why you are again raising these grounds.

N/A

18. If any of the grounds listed in No. 23 or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. N/A

Ground 1 - Petitioner was denied the effective assistance of counsel in violation of his right to counsel as guaranteed by the Sixth Amendment of the Constitution of the United States.

19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? Yes.

Counsel was appointed to represent Gipson despite the fact that only nineteen (19) days remained before the one (1) year procedural time limit ran. It is apparent that neither the district court or the attorneys were aware of this. A review of the transcript makes it clear that appointed counsel was not given with

the petitioner's file by prior counsel, the defendant, or the court. Counsel asked for four (4) months in order to secure the file. That request was granted as all concerned thought that there were no pending time issues. The court set a status check date of June 17, 2013 which was well beyond the procedural time limit.

Therefore, in addition to the court and apparently all parties apparently being unaware of the pending time limit and the court setting a status check date well after the running of the time limit, it is apparent that good cause has been shown for the initial delay in filing. As for the additional time taken, the State has stipulated to the additional time taken to file the petition.

For the above-stated reasons, the filing of this petition may be beyond the statutory time limit but nevertheless can be filed as good cause appers to be shown for the delay.

Stipulation and Order to extend the time to file the petition to January 31, 2014, was filed on January 7, 2014. Stipulation and Order to extend the time to file the petition to January 31, 2014, a further extension was stipulated to May 5, 2014, and an additional extension was stipulated to June 4, 2014. A final extension was stipulated until June 6, 2014 for the petition to be filed.

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? No.

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal:

(A) Trial Counsel: Christy Craig, Clark County Public Defender

(B) Pro per- attempted direct appeal

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? No.

23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground.

(a) Ground One: Petitioner is in custody in violation of his constitutional right to the effective assistance of trial counsel as guaranteed by the Sixth Amendment to the United States Constitution.

1. Petitioner contends that his plea pursuant to the Guilty Plea Agreement was not freely and voluntarily given as he is claiming that he was coerced into taking a plea that he did not want to accept by his trial counsel. Petitioner is contending that the coercion to take the plea occurred outside of the recorded portions of these proceedings and that but for the coercive actions of trial counsel, Appellant would not have accepted the negotiations but wanted to go to trial on original charges. See Motion to Withdraw Plea filed on September 5, 2012 for additional facts and support for this claim.

2. Petitioner contends that his trial counsel was ineffective for not advising him of his rights to appeal the adverse pretrial rulings of the district court before he agreed to the plea bargain to which he ultimately plead guilty. Some of the adverse rulings that he could have appealed from were (1) denial of the Motion to Limit the Testimony of the Defective Long whose testimony was going to be allowed despite being hearsay and the State failing to show that the actual declarant of the offered testimony was not unavailable; (2) denial of the

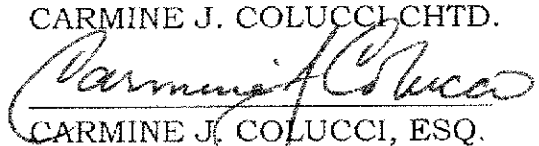
Defendant's Motion to Suppress or In the Alternative a Jackson v. Denno hearing and (3) the Order granting State's Motion in Limine to Admit Bad Acts and Other Acts Against the victim precluding the defendant from introducing this evidence.

3. Petitioner also asserts that trial counsel failed to investigate his mental health problems even though she brought that issue to the court's attention on September 26, 2012 (Rough Draft Transcript, p. 3). At that time, the court even opined that it seemed possible that trial counsel would ultimately have to testify regarding this issue. Petitioner asserts that he advised trial counsel, before his plea was taken, that he had been diagnosed as schizophrenic with bipolar disorder.

WHEREFORE, petitioner prays that the court grant the petition or grant him an evidentiary hearing on the issues raised in his petition and supporting points and authorities.

DATED this 15th day of December, 2014.

CARMINE J. COLUCCI, CHTD.

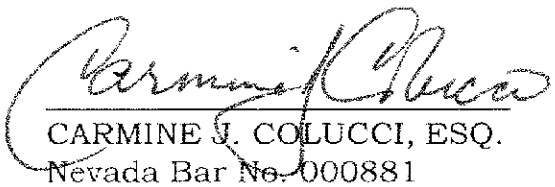


CARMINE J. COLUCCI, ESQ.
Nevada Bar No. 000881
629 South Sixth Street
Las Vegas, Nevada 89101
Attorney for Petitioner

VERIFICATION

I, Carmine J. Colucci, Esq., declare that I am the attorney for the Petitioner, KEVIN MARQUETTE GIPSON, named in the foregoing petition and knows the contents thereof; that the pleading is true of mine own knowledge, except as to those matters stated on information and belief, and as to such matters I believes them to be true. Petitioner, KEVIN MARQUETTE GIPSON, has personally authorized me to commence this action on his behalf.

CARMINE J. COLUCCI CHTD.



CARMINE J. COLUCCI, ESQ.
Nevada Bar No. 000881
629 South Sixth Street
Las Vegas, Nevada 89101
Attorney for Petitioner

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that on this 15th day of December, 2014, I e-served pursuant to N.E.F.C.R 9 and mailed pursuant to NRCP 5(b), a true and correct copy of the foregoing SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) addressed to:

Dwight Neven, Warden
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

Steven B. Wolfson
Clark County District Attorney
200 Lewis Ave.
Las Vegas, NV 89155

Catherine Cortez-Masto
Nevada Attorney General
100 North Carson St.
Carson City, NV 89701

E. Vargas

An employee of CARMINE J. COLUCCI, CHTD.

Exhibit 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN GIPSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 62071

FILED

DEC 20 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from a judgment of conviction. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

The notice of appeal was untimely filed.[1] NRAP 4(b). Because an untimely notice of appeal fails to vest jurisdiction in this court, Lozada v. State, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994), we conclude that we lack jurisdiction to consider this appeal, and we

ORDER this appeal DISMISSED.[2]

Saitta, J.

Pickering, J.

Hardesty, J.

[1]An appeal deprivation claim must be raised in a post-conviction petition for a writ of habeas corpus filed in the district court in the first instance. NRS 34.724(2)(c); NRS 34.738(1). We express no opinion regarding the merits of any such claim or whether appellant can satisfy the procedural requirements of NRS chapter 34.

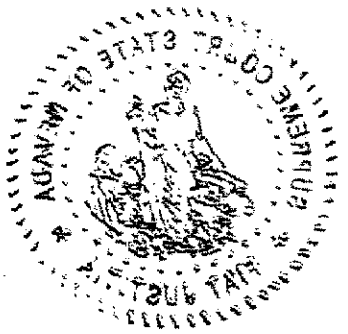
[2]We have considered the proper person documents submitted in this matter, and we conclude that no relief is warranted for the reason set forth above.

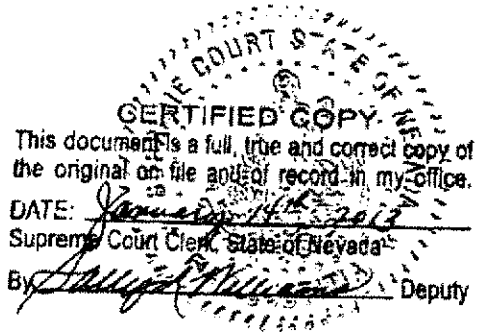
SUPREME COURT
OF
NEVADA

(O) 1947A

12-40284

cc: Hon. David B. Barker, District Judge
Kevin Gipson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk




SUPREME COURT STATE OF NEVADA
CERTIFIED COPY
This document is a full, true and correct copy of the original on file and of record in my office.
DATE:
Supreme Court Clerk, State of Nevada
By
Deputy

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CLERK OF THE COURT

CARMINE J. COLUCCI, CHTD.
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Nevada Bar No. 0881
629 South Sixth Street
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(702) 384-1274 Telephone
(702) 384-4453 Facsimile
E-Mail: cjc@lvcoxmail.com
Attorney for Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

KEVIN GIPSON,

Petitioner,

vs.

DWIGHT NEVIN, WARDEN,
HIGH DESERT STATE PRISON

Respondent,

Case No.: 10C264079
Dept No.: XVIII

SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

Comes now the Petitioner, KEVIN GIPSON, by and through his appointed attorney, CARMINE J. COLUCCI, ESQ., of the law firm of CARMINE J. COLUCCI, CHTD., who submits these supplemental points and authorities in support of his Petition for Writ of Habeas Corpus (Post-Conviction).

These supplemental points and authorities are submitted pursuant to NRS 34.720, et.seq.

DATED this 15th day of December, 2014.

CARMINE J. COLUCCI CHTD.

CARMINE J. COLUCCI, ESQ.
Nevada Bar No. 0881
629 South Sixth Street
Las Vegas, Nevada 89101
Attorney for Petitioner

I.
STATEMENT OF THE CASE

On April 28, 2010, Defendant, KEVIN GIPSON, was charged by way of Grand Jury Indictment with Murder with Use of a Deadly Weapon (Felony - NRS200.010, 200.030, 193.165).

On December 7, 2011, the defendant entered into a Guilty Plea Agreement with the State whereby he agreed to plead guilty to the charge as alleged in the Indictment. Pursuant to negotiations, the parties stipulated to twenty (20) years to Life in the Nevada Department of Corrections. However, parties retained the right to argue the deadly weapon enhancement for a term of not less than four (4) to eight (8) years.

On February 10, 2012, the defendant was present in court with counsel, at which time he was sentenced to the Nevada Department of Corrections as follows: Life with a possible parole eligibility of Twenty (20) years with a consecutive term of Two Hundred Forty (240) months maximum and Ninety-Six (96) months minimum for Use of a Deadly Weapon with Six Hundred Eighty-Six (686) days credit for time served. Judgment of Conviction was filed on March 13, 2012.

Thereafter the defendant filed a Pro Per Motion to Withdraw Plea on September 5, 2012. That motion was denied by the court on September 26, 2012, and an order entered on September 27, 2012. The defendant filed a Pro Per Motion to Proceed in Forma Pauperis on October 15, 2012. That motion was granted on November 7, 2012. The defendant then filed an Ex Parte Motion for Appointment of counsel and Request for Evidentiary Hearing on October 15, 2012, and Defendant's Pro Per Motion for Direct Appeal/Memorandum of Points and Authorities Facts of the Case on November 26, 2012. On January 28, 2012, the defendant's Motion for Appointment of Counsel was granted and his Motion for Evidentiary Hearing was denied.

The defendant's Pro Per Motion for Direct Appeal/Memorandum of Points and Authorities Facts of the Case "may have been construed as a notice of appeal. "...Further, at the same time, case appeal statement was filed which triggered Supreme Court review..." (see court minutes dated January 28, 2013). The Nevada Supreme Court issued its Order Dismissing Appeal on December 20, 2012, stating, "an appeal deprivation claim must be raised in a post-conviction petition for a writ of habeas corpus filed in the district court in the first instance." See Exhibit A attached hereto.

Thereafter, on February 22, 2012, Carmine J. Colucci, Esq., was appointed counsel for the defendant. Defendant's Motion for Direct Appeal/Memorandum of Points and Authorities Facts of the Case was taken off calendar on February 11, 2012. On June 17, 2013, a briefing schedule was set scheduling the initial brief due by December 16, 2013. A stipulation and order was entered on January 7, 2014, continuing the due date for the initial brief to January 31, 2014.

II.

STATEMENT OF THE FACTS

On March 25, 2010, Brittany Lavoll was shot in the parking lot of the Jack In The Box where she worked, which was located at 7541 West Lake Mead Boulevard, Las Vegas, Nevada 89128. According to witnesses, the shooting occurred at approximately 5:45 a.m.

Three witnesses described to police a male dressed in a dark hooded sweatshirt who was seen running from the scene. Witness Wade Fleming observed Lavoll and thought she was dead. Robert Gilmore, another witness, called 911. Christina Benitez was the third witness who claimed to have seen the man in the dark hoody running from the scene. Fleming and Gilmore were drawn to the area where Brittany Lovall was found by the sound of what they felt was a gunshot.

/ / /

Bailey, who worked at a grocery store in the same shopping center as the Jack In The Box, initially saw a woman lying on the ground and the man in the dark hoody standing over her. Bailey thought the man was helping the woman who Bailey thought might be drunk.

Police arrived at the scene a short time after the shooting and Brittany Lovall was immediately transported to UMC where she was pronounced dead at 6:15 a.m. An autopsy conducted on March 26, 2010, determined that the cause of death was homicide by a gunshot to the head.

Brittany Lovall's father met police at the scene and told police that Brittany had been in an abusive relationship with Kevin Gipson and that they had two (2) children together. He related that they had broken up a year before but that he had been stalking her.

Detectives of the LVMPD ultimately located Gipson and arranged to meet him on the afternoon of March 25th. Gipson allegedly agreed to speak with the detectives, which he ultimately did. Gipson provided them with an alibi to support his statement that he could not have been at the scene of the shooting when it occurred. Gipson denied having an abusive relationship with Lovall. Gipson said that he had recently tried to contact Lovall in order to arrange a visit with his children.

After interviewing Gipson, the police asked him to take a modified polygraph test. They called it a Concealed Information Test. The next day the police gave Gipson a Concealed Information Test. The detectives Mirandized him and Gipson took the test. The voluntariness of the test remains in dispute as does the legitimacy of this purported test. According to the detectives he failed it. He was told by Geoffrey Flohr that by failing, he must have knowledge of the murder that only the killer would know.

Gipson, without the services of an attorney, was confronted with this accusation. Gipson told them that he had been in and out of the mental hospital

and that he killed Brittany Lovall because she drove him crazy. Allegedly Gipson managed to find out where Lovall worked prior to meeting her on March 25, 2010. Police speculated that Gipson went to the Jack In The Box and laid in wait for Lavoll and then shot her. During questioning, the detectives stated that Gipson confessed after being given the Concealed Information Test.

III.

STATEMENT OF THE ISSUES

1. Whether petitioner was denied his right to the effective assistance of counsel as guaranteed under the Sixth and Fourteenth Amendments of the Constitution of the United States.

IV.

ARGUMENT

On September 15, 2014, this court ruled upon a portion of the State's Response and Motion to Dismiss Defendant's Petition for Writ of Habeas Corpus (Post-Conviction), denying the motion to dismiss. Petitioner now submits the following points and authorities.

A. Petitioner Was Denied the Effective Assistance of Counsel in Violation of His Right to Counsel as Guaranteed under the Sixth Amendment of the Constitution of the United States.

Standard of Review

A claim of ineffective assistance of counsel presents a mixed question of law and fact, which is subject to independent review upon appeal. Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996). Petitioner must prove the facts underlying an ineffective assistance of counsel claim by preponderance of the evidence. The Court's review of defense counsel's performance is highly deferential. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004); Strickland v. Washington, 466 U.S. 668, 689, 104 S. Ct. 2052, 2065 (1984). In the context of an appeal deprivation claim, prejudice may be presumed if the

petitioner was deprived of the right to direct appeal due to the ineffective assistance of counsel. Hathaway v. State, 199 Nev. 248,71 P.3d 503 (2003); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

Nevada has adopted the two-pronged test outlined in Strickland, Supra for determining the effectiveness of counsel. Under Strickland, in order to assert a claim for ineffective assistance of counsel, the defendant must prove that he was denied "reasonably effective assistance" of counsel by satisfying a two-pronged test. Strickland; see State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

Under the Strickland test, the defendant must show: first that his counsel's representation fell below an objective standard of reasonableness, and second, that but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. See Strickland, at 687-688 and 694. The defendant bears the burden to satisfy both requirements in order to prevail. Strickland, at 697; Means v. State, Supra, at 1011.

Inadequate performance is representation that falls below an objective standard of reasonableness. Id. (*citing* Dawson v. State, 108 Nev. 112, 115, 825 P.2d 593, 595 (1992)]. The role of a court in considering allegations of ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (citing Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977)).

In considering whether the defendant has an ineffective assistance of counsel claim, the court must determine whether counsel conducted a reasonable investigation of the facts relevant to the defendant's case. Doleman v. State, id.. Next, the court must consider whether counsel made "a reasonable strategy decision on how to proceed with his client's case." Doleman, id. at 846; *citing*

Strickland, supra, at 690-691, 104 S.Ct. at 2066. While counsel's strategy decision is a "tactical" decision and will be "virtually unchallengeable absent extraordinary circumstances." Doleman, supra, at 846; see also Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990); Strickland, supra, at 691, 104 S.Ct at 2066. It is not without limitation. The defendant has the burden of overcoming the presumption that trial counsel's actions were the product of sound trial strategy. Means, 120 Nev. At 1012, 103 P.3d at 33 (*citing* Strickland, 466 U.S. at 689, *quoting* Michel v. Louisiana, 350 U.S. 91, 101, 76 S.Ct. 158 (1955)).

Even if counsel's representation fell below an objective standard of reasonableness, he must still demonstrate prejudice and show a reasonable probability that, but for counsel's errors, the result of the trial would have been different. McNelton v. State, 115 Nev. 396, 403, 990 P.2d 263, 1268 (1999) (*citing* Strickland, 466 U.S. at 687.) "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

Claims asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" and "naked" allegations are not sufficient, nor are those belied and repelled by the record. Id.

A. GUILTY PLEA NOT FREELY AND KNOWINGLY GIVEN

Petitioner contends that his plea pursuant to the Guilty Plea Agreement was not freely and voluntarily given as he is claiming that he was coerced into taking a plea that he did not want to take. Petitioner is contending that the coercion to take the plea occurred outside of the recorded portions of these proceedings and that but for the coercive actions of trial counsel, Petitioner would not have accepted the negotiations but wanted to go to trial on original charges. However, he was only able to discuss the terms of the plea bargain and to review his Guilty Plea Agreement for a few minutes in court just before the Judge called the case.

See Motion to Withdraw Plea filed on September 5, 2012 for additional facts and support for this claim. See also NRS 174.035.

B. TRIAL COUNSEL NOT INFORM WAIVING APPEAL

Petitioner contends that his trial counsel was ineffective for not advising him that he had to give up the right to post-trial appeal of the adverse pretrial rulings of the district court before he agreed to the plea bargain to which he ultimately plead guilty. Some of the adverse rulings that he could have appealed if he had not taken the plea bargain were (1) Denial of the Motion to Limit the Testimony of the Detective Long whose testimony was going to be allowed despite being hearsay and despite the State failing to show that the actual declarant of the offered testimony was not unavailable; (2) Denial of the Defendant's Motion to Suppress or In the Alternative a Jackson v. Denno hearing and (3) Order granting State's Motion in Limine to Admit Bad Acts and Other Acts Against the victim which precluded the defense from admitting this evidence.

Petitioner asserts that he informed his trial counsel that he had mental health issues prior to the acceptance of his plea and had received mental health treatment and medication before the crime charged in this case had occurred and before he entered his plea. Petitioner asserts that he had been prescribed Invega for his schizophrenia and Risperdal as anti-psychotic medication. Petitioner claims that trial counsel was aware that he had been prescribed this medication before the incident and before he entered his guilty plea but that he was not able to get this medication for some time before the shooting occurred and before his guilty plea because he did not have the money or insurance needed to pay for the medication. He was therefore off of his medications when the crime occurred and at the time that his plea was taken.

Petitioner also asserts that he advised his trial counsel that he had spent time at the Rawson Neal mental facility, North Vista Hospital and the Las Vegas Mental Health Center before this incident and before entering his plea. He was

therefore suffering the effects of his schizophrenia and bipolar disorder at the time of the crime as well as at the time of his plea. The record is clear that Petitioner never received a psychological evaluation to address these issues. The issue of his competency was never addressed. Determining Petitioner's competency was critical to the determination of whether his plea was freely and knowingly given. Petitioner contends that due to his mental health problems and the lack of necessary medication he did not fully understand the nature of his plea and the consequences thereof.

C. TRIAL COUNSEL DID NOT INVESTIGATE PETITIONER'S MENTAL HEALTH ISSUES

Petitioner asserts that trial counsel failed to investigate his mental illness issues and even brought that issue to the court's attention on September 26, 2012 (Rough Draft Transcript, p. 3) when the court even opined that it seemed possible that trial counsel would ultimately have to testify regarding this issue. This issue was so apparent that trial counsel felt that she should withdraw as defendant's counsel due to a possible conflict.

Petitioner asserts that his trial counsel was aware prior to the entry of his plea that he suffered from schizophrenia and bipolar disorder. The investigation of these issues and proof thereof would at least have had an effect on the degree of murder of which he was convicted. This issue should have been investigated and discussed with Petitioner before he accepted the plea bargain and entered his plea so that he could have done so with full knowledge and an understanding of all available defenses and mitigation.

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/ / /

V. CONCLUSION

Petitioner herein asserts that he can meet his burden of proof and is entitled to the relief sought herein. For the reasons stated below, Defendant has demonstrated both that counsel was ineffective as to each issue and that he was prejudiced by counsel's actions. Accordingly, his petition must be granted.

DATED this 15th day of December, 2014.

CARMINE J. COLUCCI CHTD.

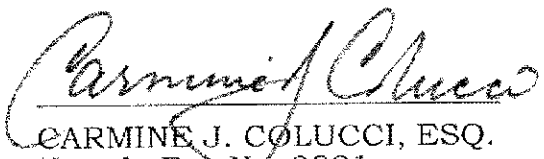
CARMINE J. COLUCCI, ESQ.
Nevada Bar No. 0881
629 South Sixth Street
Las Vegas, Nevada 89101
Attorney for Petitioner

VERIFICATION

I, Carmine J. Colucci, Esq., declare that I am the attorney for the Petitioner, KEVIN GIPSON, named in the foregoing petition and knows the contents thereof; that the pleading is true of my own knowledge, except as to those matters stated on information and belief, and as to such matters I believe them to be true. Petitioner, KEVIN GIPSON, has personally authorized me to commence this action on his behalf.

DATED this 15th day of December, 2014.

CARMINE J. COLUCCI CHTD.



CARMINE J. COLUCCI, ESQ.
Nevada Bar No. 0881
629 South Sixth Street
Las Vegas, Nevada 89101
Attorney for Petitioner

CERTIFICATE OF MAILING

I hereby certify that on this 15th day of December, 2014, I e-served pursuant to N.E.F.C.R 9 and a true and correct copy of the foregoing SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) addressed to:

Dwight Neven, Warden
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

Steven B. Wolfson
Clark County District Attorney
200 Lewis Ave.
Las Vegas, NV 89155

Catherine Cortez-Masto
Nevada Attorney General
100 North Carson St.
Carson City, NV 89701

E. Vargas

An employee of CARMINE J. COLUCCI, CHTD.

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CLERK OF THE COURT

RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
RYAN MACDONALD
Deputy District Attorney
Nevada Bar #012615
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

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

Defendant.

CASE NO: 10C264079

DEPT NO: XIX

STATE'S RESPONSE TO DEFENDANT'S SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

DATE OF HEARING: March 30, 2015
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through RYAN MACDONALD, Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Supplemental Points and Authorities in Support of Petition for Writ of Habeas Corpus (Post-Conviction).

This Response is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On April 28, 2010, Kevin Marquette Gipson (hereinafter "Defendant") was charged by way of Indictment with one count of Murder With Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165). On December 7, 2014, at Calendar Call, the parties informed the court that the matter was resolved via negotiations. Defendant's Guilty Plea Agreement was filed in open court and he entered a plea of Guilty to the charge of First Degree Murder With Use of a Deadly Weapon. The Guilty Plea Agreement provided that the parties stipulated to a sentence of 20 years to Life in the Nevada Department of Corrections and the State retained the right to argue for a deadly weapon term of not less than four to eight years.

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

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

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

On January 28, 2013, the court granted Defendant's Motion for Appointment of Counsel. On February 11, 2013, Carmine Colucci, Esq., was confirmed as counsel for

Defendant. On June 17, 2013, counsel advised the court that all the documents had been received and a briefing schedule was set.

Defendant filed his Petition for Writ of Habeas Corpus (Post-Conviction) and Points and Authorities in Support of Petition for Writ of Habeas Corpus (Post-Conviction) on June 6, 2014. The State filed its Response and Motion to Dismiss on June 13, 2014. Defendant filed a Reply on August 7, 2014. The court denied the State's Motion to Dismiss and ordered briefing on the merits.

Defendant filed a Supplemental post-conviction Petition for Writ of Habeas Corpus and Supplemental Points and Authorities in support on December 15, 2014. The State's Response is as follows.

ARGUMENT

Defendant contends that his plea was not freely and knowingly given because: 1) plea counsel should have investigated Defendant's alleged mental health issues; 2) he was allegedly coerced by counsel into taking the plea and only had a few minutes to review the plea agreement; and 3) Defendant was not informed that he would be waiving his right to appeal. These claims are without merit as Defendant entered his plea knowingly, freely, and voluntarily and with effective assistance of counsel.

I. Defendant Did Not Receive Ineffective Assistance of Counsel

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

To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's

representation fell below an objective standard of reasonableness, and second, that but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). "[T]his is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

The court begins with the presumption of effectiveness and then must determine whether the defendant has demonstrated by a preponderance of the evidence that counsel was ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "Effective counsel does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975).

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

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

to allege specific facts rather than just conclusions may cause your petition to be dismissed." (emphasis added).

Defendant contends that plea counsel did not adequately investigate petitioner's mental health issues, and that counsel was aware he was off his medication during the crime and the plea canvass. A defendant who contends his attorney was ineffective because he did not adequately investigate must show how a better investigation would have rendered a more favorable outcome probable. See Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Defendant points to plea counsel's comments during the hearing on his Motion to Withdraw Guilty Plea as evidence that she was aware of potential issues regarding his mental health. He misconstrues trial counsel's actions by making it seem as though plea counsel admitted to her ineffectiveness, where in actuality it is standard for counsel to withdraw if the defendant is trying to withdraw his guilty plea based on ineffectiveness. Supplemental Points and Authorities (SPA), Dec. 15, 2014, p. 9. Plea counsel stated to the court that the best course of action may be for new counsel to be appointed, as it appeared Defendant wanted to move forward on an ineffectiveness claim. Rough Draft Transcript, Sept. 26, 2012, p. 3. Trial counsel also stated "I would remind the Court that Mr. Gipson does suffer from a mental illness and that is probably a legitimate ground. . . ," referring to Defendant's attempt to withdraw the guilty plea. Id.

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

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

Further, Defendant has the burden of showing he was legally mentally incompetent at the time he pleaded guilty. Specifically, per Riker v. State, 111 Nev. 1316, 905 P.2d 706 (1995) and Calambro v. 2nd Judicial Dist. Court, 114 Nev. 961, 965 P.2d 794 (1998), the mere fact that Defendant may have had mental health issues at the time he pleaded guilty—an assertion the State in no way concedes— did not render him incompetent to enter a guilty plea.

II. Defendant's Plea Was Given Freely, Knowingly, and Voluntarily

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

The law in Nevada clearly establishes that a plea of guilty is presumptively valid and the burden is on a defendant to show that the plea was not voluntarily entered. Bryant, 102 Nev. 272, 721 P.2d 364, 368 (1986); Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295 (1975). Furthermore, the Nevada Supreme Court makes it clear in the case of Heffley v.

Warden, 89 Nev. 573, 575, 516 P.2d 1403, 1404 (1973), that the guidelines for voluntariness of pleas of guilty do "not require the articulation of talismanic phrases." Rather, "the record must affirmatively disclose that a defendant who pleaded guilty entered his plea understandingly and voluntarily." Id. (quoting Brady v. United States, 397 U.S. 742, 747-748, 90 S.Ct. 1463, 1470 (1970)).

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

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

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

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

Defendant signed his GPA on December 7, 2011. By signing the GPA, Defendant acknowledged the following:

> Parties stipulate to twenty (20) years to life in the Nevada Department of Corrections. Further, parties retain the right to argue the deadly weapon for a term of not less than four (4) to eight (8) years.
>
> WAIVER OF RIGHTS
>
> By entering my plea of guilty, I understand that I am waiving and forever giving up the following rights and privileges. . . .
>
> 6. The right to appeal the conviction with the assistance of an attorney, either appointed or retained, unless specifically reserved in writing and agreed upon as provided in NRS 174.035(3). I understand this means I am unconditionally waiving my right to a direct appeal of this conviction, including any challenge based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings as stated in NRS 177.015(4). However, I remain free to challenge my conviction through other post-conviction remedies including a habeas corpus petition pursuant to NRS Chapter 34.

GPA, p. 1, 4. Further, Defendant acknowledged that he was pleading guilty freely and voluntary:

> VOLUNTARINESS OF PLEA
>
> I have discussed the elements of all of the original charge(s) against me with my attorney and I understand the nature of the charge(s) against me.
>
> I understand that the State would have to prove each element of the charge(s) against me at trial.
>
> I have discussed with my attorney any possible defenses, defense strategies and circumstances which might be in my favor.
>
> ***All of the foregoing elements, consequences, rights, and waiver of rights have been thoroughly explained to me by my attorney.***
>
> ***I believe that pleading guilty and accepting this plea bargain is in my best interest, and that a trial would be contrary to my best interest.***
>
> ***I am signing this agreement voluntarily, after consultation with my attorney, and I am not acting under duress or coercion or by***

virtue of any promises of leniency, except for those set forth in this agreement.

I am not now under the influence of any intoxicating liquor, a controlled substance or other drug which would in any manner impair my ability to comprehend or understand this agreement or the proceedings surrounding my entry of this plea.

My attorney has answered all my questions regarding this guilty plea agreement and its consequences to my satisfaction and I am satisfied with the services provided by my attorney.

GPA, p. 4-5 (emphasis added).

Within the guilty plea agreement, Defendant's counsel made the following representations:

To the best of my knowledge and belief, the Defendant:

a. Is competent and understands the charges and the consequences of pleading guilty as provided in this agreement,

b. Executed in this agreement and will enter all guilty pleas pursuant to hereto voluntarily…

GPA, p. 6.

Additionally, during Defendant's plea canvass, the Court addressed Defendant as follows:

COURT:	Okay. Have you received a copy of the – well frankly, the charging document that was filed in this case that you indicated you were not guilty of, that's the Indictment, that's attached as Exhibit 1 to a Guilty Plea Agreement. Do you have a copy of that with you right now?
DEFENDANT:	Yes.
COURT:	Now, you recall when you went—entered your original plea you went through it and you indicated you understood the elements of that offense; that you had a chance to talk to your lawyer. ***Do you need any more time to talk with Ms. Craig*** about those—the elements of the offense and the allegation there before I ask you again whether you've changed your plea.
DEFENDANT:	***No.***

COURT: All right. So how do you plead to that charge, murder with use of a deadly weapon—first degree murder with use of a deadly weapon; guilty or not guilty.

DEFENDANT: Guilty.

COURT: Before I accept your plea of guilty I must be satisfied that the plea is freely and voluntarily entered and that you're doing so knowingly. Are you pleading guilty because in truth and in fact you are guilty?

DEFENDANT: Yes.

COURT: ***Has anyone forced you or coerced you to enter this plea?***

DEFENDANT: ***No.***

. . .

COURT: Now the Guilty Plea Agreement I just referred to – I'm looking at the original of that document. On page five of that Guilty Plea Agreement I see a signature under what I believe to be the signature line for you, Mr. Gipson. Is this your signature on this document?

DEFENDANT: Yes.

COURT: All right. Did you sign it today?

DEFENDANT: Yes.

COURT: Did you sign it after you read it – carefully read it and went through it with your lawyer?

DEFENDANT: Yes.

COURT: ***Did he—when you carefully read this document did you realize you were waiving valuable constitutional and procedural rights by entering this plea?***

DEFENDANT: ***Yes.***

COURT: Did you talk to your lawyer about all those rights?

DEFENDANT: Yes.

COURT: Did he explain to you all this important information to your satisfaction?

DEFENDANT: Yes.

COURT: Are you satisfied with his presentation [sic] of you?

Arraignment at 4-5. The court explained the stipulation of 20 years to life with the possibility of parole, and a consecutive four to eight years for the deadly weapon enhancement:

COURT: Based upon knowing that that's the anticipated penalty in this case does that change your mind at all regarding the voluntary nature of this plea? Are you doing this freely and voluntarily?

DEFENDANT: Yes.

COURT: Okay. You understand frankly that sentencing is up to me. That no one is in a position to promise you leniency, probation, any special treatment. In fact, this is a non-probational case. You're looking at a life sentence and you're headed to prison as a consequence. Do you understand that?

DEFENDANT: Yes.

COURT: Does that again change your mind at any – about any nature of this plea; that you're still doing this voluntarily?

DEFENDANT: Yes.

COURT: Do you have any questions you would like to ask me?

DEFENDANT: No, sir.

COURT: Any questions you would like to ask Ms. Craig.

DEFENDANT: No.

Id. at 6-7.

Defendant acknowledged that he was made no promises of leniency, that he was aware of the possible punishment he could receive, and that any questions arising from the GPA had been answered by his attorney. RT at 6-7, GPA at 3. Defendant agreed that pleading guilty and accepting the plea bargain was in his best interest and a trial would be contrary to his best interest. GPA at 5. Defendant clearly acknowledged that he was entering into his GPA

voluntarily and not under duress or coercion and that he was not under the influence of any substance that would impair his ability to understand the GPA or the circumstances surrounding his plea. GPA at 4-5, RT at 4-5. Finally, by admitting the facts as outlined in the Information, Defendant acknowledged that he understood the nature of the charges against him. GPA at 1, RT at 4, 7-8, see Wilson v. State, 99 Nev. 362, 366-67 (As to the requirement that a defendant understand the nature of the charge, this Court previously held that "in order for the record to show an understanding of the nature of the charge it is necessary that there be either a showing that the defendant himself understood the elements of the offense to which the plea was entered or a showing that the defendant has made factual statements to the court which constitute an admission to the pleaded to offense.") (internal citation omitted). Accordingly, the State has affirmatively demonstrated each element of a plea canvass as required by Wilson v. State, 99 Nev. 362, 366-67, and Defendant has failed to satisfy his burden of proving his plea was entered into unknowingly or involuntarily. See Bryant, 102 Nev. 268. Additionally, Defendant's GPA in conjunction with the Court's canvass indicate that Defendant knew he was waiving certain appellate rights. GPA at 4, RT, 4-5.

Defendant alleges that he was coerced into pleading guilty as he was not given enough time to consider the offer and that his attorney threatened him by saying he would likely lose at trial and go to prison for life. This is belied by the record, as not only was Defendant given multiple opportunities to tell the court he needed more time or had further questions, he also told the court he was not being coerced. RT 4-5. Furthermore, it is counsel's duty to candidly advise a defendant regarding whether they believe it would be beneficial for a defendant to accept a plea offer, but the ultimate decision of whether or not to accept a plea offer is the defendant's. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 163 (2002). Counsel was being honest with Defendant in telling him the State had a strong case against him, and a plea offer was an opportunity for eventual parole. Accordingly, counsel's candid advice regarding the possible outcomes cannot be deemed coercive. In fact, any failure to render such advice would certainly be deemed ineffective on counsel's part. See Lester v. State, 15 So.3d 728 (Fla. 4th DCA 2009).

Based on the foregoing, and based on the totality of the circumstances, it is clear that Defendant's plea was knowingly and voluntarily entered into. Defendant's claims that his counsel was ineffective for coercing him into entering the Guilty Plea Agreement, that he was not aware he was waiving certain appellate rights, and that plea counsel did not investigate his mental health issues are belied by the record. Because Defendant's allegations are belied by the record, he is not entitled to relief on this claims. See Hargrove, 100 Nev. at 503, 686 P.2d at 225.

CONCLUSION

Based on the foregoing the State requests the Defendant's post-conviction Petition for Writ of Habeas Corpus be DENIED.

DATED this 24th day of February, 2015.

Respectfully submitted,

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

BY _____
RYAN MACDONALD
Deputy District Attorney
Nevada Bar #012615

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of State's Response to Defendant's Supplemental Points and Authorities in Support of Petition for Writ of Habeas Corpus (Post-Conviction), was made this 24th day of February, 2015, by facsimile transmission to:

CARMINE COLUCCI, ESQ.
FAX #702-384-4453

BY: _____
Theresa Dodson
Secretary for the District Attorney's Office

gc/RM/td/dvu

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CLERK OF THE COURT

RPLY
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CARMINE J. COLUCCI, ESQ.
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Las Vegas, Nevada 89101
(702) 384-1274 Telephone
E-Mail: cjclasvegas@gmail.com
Attorney for Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

KEVIN GIPSON, Petitioner, vs. D.W. NEVIN, WARDEN, HIGH DESERT STATE PRISON Respondent,	Case No.: 10C264079 Dept No.: XIX

DEFENDANT'S REPLY TO STATE'S RESPONSE TO DEFENDANT'S SUPPLEMENTAL POINTS AND AUTHORITIES

COMES NOW, the Defendant Kevin Gipson, by and through his attorney, CARMINE J. COLUCCI, ESQ., of the law firm of CARMINE J. COLUCCI, CHTD., who now submits these points and authorities in reply to State's Response to Defendant's Supplemental Points and Authorities In Support of Petition for Writ of Habeas Corpus (Post-Conviction).

/ / /

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/ / /

This Reply is based upon the pleadings on file herein, the points and authorities attached hereto in support thereof and the oral argument of counsel for the respective parties, if allowed by this Court at the time that this matter is heard.

Dated this 24th day of March, 2015.

CARMINE J. COLUCCI, CHTD.

By _____
CARMINE J. COLUCCI, ESQ.
Nevada Bar No. 0881
629 South Sixth Street
Las Vegas, Nevada 89101
Attorney for Petitioner

POINTS AND AUTHORITIES

In reply to the State's response to the allegations raised by the defendant in his Petition for Writ of Habeas Corpus (Post-Conviction) and the Supplemental Points and Authorities submitted in support thereof, Defendant replies as follows:

A. Defendant Did Not Receive The Effective Assistance Of Counsel

In Strickland v. Washington, 466 U.S. 668, 686, 104 S.Ct. 2052 (1984), the United States Supreme Court held that "the right to counsel is the right to the effective assistance of counsel. That right has been recognized as applicable in our state cases. See State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

In the instant case, Defendant Gipson has made specific allegations, supporting his claim that he was denied the effective assistance of counsel, which if true, would entitle him to the relief which he now seeks. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

The Defendant has alleged that he was not informed by trial counsel that he would be waiving his right to appeal by accepting the plea bargain offered by the State. That is a specific factual allegation which requires the production of evidence outside of the record, specifically the testimony of trial counsel. This court must look beyond the mere words of the plea canvass to the entire record and the totality of the circumstances. See Barajas v. State, 115 Nev. 440, 472, 991 P.2d 474, 475 (1999), citing Bryant v. State, 102 Nev. 268, 721 P.2d 364, 368 (1986).

The Defendant has also alleged that he had mental health issues which affected his ability to fully understand and accept the plea bargain freely, knowingly, and voluntarily. Trial counsel acknowledged that this was a viable issue on the record and subsequently requested to be allowed to withdraw as Defendant's attorney. Her motion was granted.

The Defendant has also alleged that he felt coerced to accept the plea bargain offered by the State as he was only given a few minutes before his plea canvass to review his plea agreement while his attorney told him to accept the negotiation or get convicted at trial and face a life without parole sentenced. The Defendant has asserted that he did not have adequate time to review and understand his plea bargain.

Therefore, Defendant is specifically asserting facts which support his assertions that his plea was not given freely, knowingly and voluntarily entered into as required for a valid plea. See Brady v. United States, 397 U.S. 742, 748, 90 S. Ct. 1463 (1970); Wilson v. State, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983); Higby v. Sheriff of Clark County, 86 Nev. 774, 476 P.2d 959 (1970).

A habeas corpus petitioner must prove the allegations underlying the ineffective assistance of counsel claim by a by a preponderance of the evidence. Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). The only way for the defendant to have an opportunity to meet his burden is through an evidentiary hearing.

Therefore the defendant seeks an evidentiary hearing on the issues raised in this petition and the points and authorities submitted in support thereof so that he can avail himself of this opportunity to prove the allegation which he has made.

CONCLUSION

For the above-stated reasons, Defendant asserts that he is entitled to an evidentiary hearing on the issues raised herein as the determination of the issues raised require the presentation of evidence from outside the record.

Dated this 24th day of March, 2015.

CARMINE J. COLUCCI, CHTD.

By _____
CARMINE J. COLUCCI, ESQ.
Nevada Bar No. 0881
629 South Sixth Street
Las Vegas, Nevada 89101
Attorney for Petitioner

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CLERK OF THE COURT

SAO

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(702) 384-1274 Telephone
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Attorney for Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

KEVIN GIPSON, Petitioner, vs. D.W. NEVIN, WARDEN, HIGH DESERT STATE PRISON Respondent,	Case No.: 10C264079 Dept No.: XIX

STIPULATION AND ORDER

IT IS HEREBY STIPULATED AND AGREED by the parties hereto through their respective counsel that the previous briefing schedule set by this Court on the Petition for Writ of Habeas Corpus (Post-Conviction) shall be modified and extended as follows:

That the Petitioner shall have up to and including March 24, 2015, within which to file his Reply.

/ / /

/ / /

THAT the hearing date of March 30, 2015, presently set by the Court for hearing and decision on whether to set an evidentiary hearing shall remain.

Dated this 17th day of March, 2015.

CARMINE J. COLUCCI, CHTD.

By: _____
CARMINE J. COLUCCI, ESQ.
Nevada Bar No. 0881
629 South Sixth Street
Las Vegas, Nevada 89101
Attorney for Petitioner

STEVEN B. WOLFSON
CLARK COUNTY DISTRICT ATTORNEY

_____
CHRISTOPHER BURTON, ESQ.
Nevada Bar No. 012940
200 E. Lewis Ave.
Las Vegas, Nevada 89101
Attorney for Respondent

ORDER

IT IS HEREBY ORDERED that the previously ordered briefing schedule shall be modified as follows:

THAT the Petitioner shall have up to and including March 24, 2015, within which to file his Reply.

THAT the hearing date of March 30, 2015, presently set by the Court for hearing and decision on whether to set an evidentiary hearing shall remain.

DATED this 19th day of March, 2015.

_____
DISTRICT JUDGE

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CLERK OF THE COURT

OPI
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
RYAN J. MACDONALD
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200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

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

Defendant.

CASE NO: 10C264079

DEPT NO: XIX

ORDER FOR PRODUCTION OF INMATE
KEVIN MARQUETTE GIPSON, aka, Kevin Marquett Gipson, BAC #1082776

DATE OF HEARING: June 26, 2015
TIME OF HEARING: 9:00 A.M.

TO: DWIGHT NEVEN, Warden of the High Desert State Prison;

TO: JOE LOMBARDO, Sheriff of Clark County, Nevada

Upon the ex parte application of THE STATE OF NEVADA, Plaintiff, by STEVEN B. WOLFSON, Clark County District Attorney, through RYAN J. MACDONALD, Deputy District Attorney, and good cause appearing therefor,

IT IS HEREBY ORDERED that DWIGHT NEVEN, Warden of the High Desert State Prison shall be, and is, hereby directed to produce KEVIN MARQUETTE GIPSON, aka, Kevin Marquett Gipson, in Case Number 10C264079, wherein THE STATE OF NEVADA is the Plaintiff, inasmuch as the said KEVIN MARQUETTE GIPSON, aka, Kevin Marquett Gipson is currently incarcerated in the High Desert State Prison located in Indian Springs, Nevada and his presence will be required in Las Vegas, Nevada commencing on June 26,

2015, at the hour of 9:00 o'clock A.M. and continuing until completion of the prosecution's case against the said Defendant.

IT IS FURTHER ORDERED that JOE LOMBARDO, Sheriff of Clark County, Nevada, shall accept and retain custody of the said KEVIN MARQUETTE GIPSON, aka, Kevin Marquett Gipson in the Clark County Detention Center, Las Vegas, Nevada, pending completion of said matter in Clark County, or until the further Order of this Court; or in the alternative shall make all arrangements for the transportation of the said KEVIN MARQUETTE GIPSON, aka, Kevin Marquett Gipson to and from the Nevada State Prison facility which are necessary to insure the KEVIN MARQUETTE GIPSON, aka, Kevin Marquett Gipson's appearance in Clark County pending completion of said matter, or until further Order of this Court.

DATED this 10th day of June, 2015.

DISTRICT JUDGE

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

BY
RYAN J. MACDONALD
Deputy District Attorney
Nevada Bar #012615

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CLERK OF THE COURT

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Attorney for Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

KEVIN GIPSON,

Petitioner,

vs.

D.W. NEVIN, WARDEN,
HIGH DESERT STATE PRISON,

Respondent,

Case No.: 10C264079
Dept No.: XIX

STIPULATION AND ORDER

IT IS HEREBY STIPULATED AND AGREED by the parties hereto through their respective counsel, that with this Court's permission, the evidentiary hearing presently scheduled for June 26, 2015 shall be rescheduled for a time convenient for this court as former counsel for Mr. Gipson, who is a percipient witness, is unavailable on the date and time presently set for this hearing.

Dated this 24th day of June, 2015.

CARMINE J. COLUCCI, CHTD.

By: _____
CARMINE J. COLUCCI, ESQ.
Nevada Bar No. 881
629 South Sixth Street
Las Vegas, Nevada 89101
Attorney for Defendant

STEPHEN B. WOLFSON
CLARK COUNTY DISTRICT ATTORNEY

_____
RYAN MACDONALD, ESQ.
Nevada Bar No. 12615
200 E. Lewis Ave
Las Vegas, Nevada 89101
Attorney for Plaintiff

ORDER

IT IS HEREBY ORDERED that the evidentiary hearing set in this matter for June 26, 2015 shall be vacated and rescheduled to the 10th day of September, 2015, at 9:30 a.m.

DATED this 25th day of June, 2015.

DISTRICT COURT JUDGE

OPI
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Attorney for Plaintiff

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

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

Defendant.

CASE NO: 10C264079

DEPT NO: XIX

ORDER FOR PRODUCTION OF INMATE
KEVIN MARQUETTE GIPSON, aka, Kevin Marquett Gipson, BAC #1082776

DATE OF HEARING: September 10, 2015
TIME OF HEARING: 9:30 A.M.

TO: DWIGHT NEVEN, Warden of the High Desert State Prison;

TO: JOE LOMBARDO, Sheriff of Clark County, Nevada

Upon the ex parte application of THE STATE OF NEVADA, Plaintiff, by STEVEN B. WOLFSON, Clark County District Attorney, through RYAN J. MACDONALD, Deputy District Attorney, and good cause appearing therefor,

IT IS HEREBY ORDERED that DWIGHT NEVEN, Warden of the High Desert State Prison shall be, and is, hereby directed to produce KEVIN MARQUETTE GIPSON, aka, Kevin Marquett Gipson, in Case Number 10C264079, wherein THE STATE OF NEVADA is the Plaintiff, inasmuch as the said KEVIN MARQUETTE GIPSON, aka, Kevin Marquett Gipson is currently incarcerated in the High Desert State Prison located in Indian Springs, Nevada and his presence will be required in Las Vegas, Nevada commencing on September

10, 2015, at the hour of 9:30 o'clock A.M. and continuing until completion of the prosecution's case against the said Defendant.

IT IS FURTHER ORDERED that JOE LOMBARDO, Sheriff of Clark County, Nevada, shall accept and retain custody of the said KEVIN MARQUETTE GIPSON, aka, Kevin Marquett Gipson in the Clark County Detention Center, Las Vegas, Nevada, pending completion of said matter in Clark County, or until the further Order of this Court; or in the alternative shall make all arrangements for the transportation of the said KEVIN MARQUETTE GIPSON, aka, Kevin Marquett Gipson to and from the Nevada State Prison facility which are necessary to insure the KEVIN MARQUETTE GIPSON, aka, Kevin Marquett Gipson's appearance in Clark County pending completion of said matter, or until further Order of this Court.

DATED this 17th day of July, 2015.

DISTRICT JUDGE

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

BY
RYAN J. MACDONALD
Deputy District Attorney
Nevada Bar #012615

td/dvu

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CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
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Nevada Bar #012615
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

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

Defendant.

CASE NO: 10C264079

DEPT NO: XIX

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

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

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

FINDINGS OF FACT, CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

Defendant Received Effective Assistance of Counsel

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PLEADING CONTINUES IN NEXT VOLUME

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN MARQUETTE GIPSON,
Appellant(s),

vs.

STATE OF NEVADA,
Respondent(s),

Case No: 10C264079

Docket No: 73307

RECORD ON APPEAL
VOLUME
2

ATTORNEY FOR APPELLANT
KEVIN M. GIPSON # 1082776,
PROPER PERSON
P.O. BOX 650
INDIAN SPRINGS, NV 89070

ATTORNEY FOR RESPONDENT
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DISTRICT ATTORNEY
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NOTICE OF HEARING

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing motion on for setting before the above entitled Court, in Department XVIII thereof, on Monday, the 2nd day of May, 2011, at the hour of 8:15 o'clock AM, or as soon thereafter as counsel may be heard.

DATED this _____ day of April, 2011.

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY /s/ SHANON CLOWERS
SHANON CLOWERS
Deputy District Attorney
Nevada Bar #0010008

On April 15, 2011, the defense filed Notice of Expert Witnesses, pursuant to NRS 174.234(2). NRS 174.234(2) states in pertinent part that, "[i]f...a witness that a [defendant] intends to call during the case in chief ...is expected to offer testimony as an expert witness, the ... [defendant] ... shall file and serve upon the [state], not less than 21 days before trial ... a written notice containing: (a) a brief statement regarding the subject matter on which the expert witness is expected to testify and the substance of his testimony.

The defense Notice of Expert Witnesses lists two doctors in the fields of psychiatry; Dr. Dodge Slagle and Dr. Jerome Nwokiki. The Notice only generally explains that Dr. Slagle would "testify as to Kevin's past and current mental health issues" and Dr. Nowkiki would "testify as to Kevin's past mental health diagnosis and treatment" in the defense case in chief. See Exhibit 1.

It should be noted that an expert may not testify as to whether or not a defendant had the intent to kill at the time of the crime. See Winiarz v. State, 104 Nev. 43, 51 (1988), in which the Nevada Supreme Court cited the proposition that "[n]o expert witness testifying

with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone."

The defendant has not entered a plea of not guilty by reason of insanity, pursuant to NRS 174.035(5). Therefore, the above testimony could only be offered in the defense case in chief to support a claim of mental defect and/or diminished capacity. Such a claim is not a defense to the crime of murder in Nevada. See Crawford v. State, 121 Nev. 744, 757 (2005)("Nevada law recognizes the M'Naghten standard and the technical defense of diminished capacity is not available in Nevada."). However, "[e]vidence that does not rise to the level of legal insanity may, of course, be considered in evaluating whether or not the prosecution has proven each element of an offense beyond a reasonable doubt, for example in determining whether a killing is first- or second-degree murder..." Crawford, at 757. In other words, such evidence may be relevant in determining whether the defendant's mental condition was such that he was unable to premeditate and/or deliberate.

In the instant case, the defense has not specified what exactly the testimony of the psychiatrists would be offered for. Such testimony would only be relevant if the defense concedes identity and argues for conviction of a lesser degree of murder. Absent such a showing of relevance by the defense, the State would object to any admission of the doctors' testimony in the defense case in chief.

Additionally, the State is formally requesting, pursuant to NRS 174.234(2)(c), "[a] copy of all reports made by or at the direction of the expert witness[es]." Finally, pursuant to NRS 174.245, the State is also requesting any reports relied upon by the experts in

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mulating any of their opinions. As of the filing of the instant motion, the State has not received any discovery from the defense regarding the expert witnesses.

DATED this _____ day of April, 2011.

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY /s/ SHANON CLOWERS
SHANON CLOWERS
Deputy District Attorney
Nevada Bar #0010008

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing was made this 19th day of April, 2011, by Electronic Filing to:

PUBLIC DEFENDER
E-mail Address: pdclerk@co.clark.nv.us

BY: /s/ T. SCHESSLER
Secretary for the District Attorney's Office

ORIGINAL

FILED

APR 15 1 58 PM '11

CLERK OF THE COURT

NOTC
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite #226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

KEVIN MARQUETT GIPSON,

Defendant.

CASE NO. C264079X

DEPT. NO. XVIII

DATE: May 9, 2011
TIME: 8:30 am

DEFENDANT'S NOTICE OF EXPERT WITNESSES, PURSUANT TO NRS 174.234(2)

TO: CLARK COUNTY DISTRICT ATTORNEY:

You, and each of you, will please take notice that the Defendant, KEVIN MARQUETT GIPSON, intends to call the following expert witness in his case in chief:

Dodge Slagle M.D. 1090 N. Wigwam Pkwy, Henderson, NV 89074

Dr. Slagle will testify as to Kevin's past and current mental health issues. CV Attached

Jerome Nwokiki M.D. 6850 N. Durango Drive, #302, LV, NV 89149

Dr. Nwokiki will testify as to Kevin's past mental health diagnosis and treatment. CV Attached.

DATED this 15 of April, 2011.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By _____
CHRISTY L. CRAIG, #6262
Deputy Public Defender

10C264079
noew
Notice of Expert Witnesses
1356684

RECEIVED
APR 15 2011
CLERK OF THE COURT

EXHIBIT "1"

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Notice is hereby acknowledged this 15 day of April, 2011.

CLARK COUNTY DISTRICT ATTORNEY

By: _____

Case Name: Kevin Marquett Gipson
Case No.: C264079X
Dept. No.: XVIII

ORIGINAL

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CLERK OF THE COURT

NOTC
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite #226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

KEVIN MARQUETT GIPSON,

Defendant.

CASE NO. C264079X

DEPT. NO. XVIII

DATE: May 9, 2011
TIME: 8:30 am

DEFENDANT'S NOTICE OF EXPERT WITNESSES, PURSUANT TO NRS 174.234(2)

TO: CLARK COUNTY DISTRICT ATTORNEY:

You, and each of you, will please take notice that the Defendant, KEVIN MARQUETT GIPSON, intends to call the following expert witness in his case in chief:

Dodge Slagle M.D. 1090 N. Wigwam Pkwy, Henderson, NV 89074

Dr. Slagle will testify as to Kevin's past and current mental health issues. CV Attached

Jerome Nwokiki M.D. 6850 N. Durango Drive, #302, LV, NV 89149

Dr. Nwokiki will testify as to Kevin's past mental health diagnosis and treatment. CV Attached.

DATED this 21st of April, 2011.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By
CHRISTY L. CRAIG, #6262
Deputy Public Defender

10C264079
noew
Notice of Expert Witnesses
1368102

RECEIVED
APR 22 2011
CLERK OF THE COURT

18

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Notice is hereby acknowledged this 22nd day of April, 2011.

CLARK COUNTY DISTRICT ATTORNEY

By: _____

Case Name: Kevin Marquett Gipson
Case No.: C264079X
Dept. No.: XVIII

Dr. Slagle CV

DODGE A. SLAGLE, D.O.

1090 Wigwam Parkway, Suite 100
Henderson, Nevada 89074
(702)-454-0201

CURRICULUM VITAE

EDUCATION:

Undergraduate: University of Michigan, Ann Arbor, Michigan, 1977-1980; Bachelor of Science

Medical School: Ohio University College of Osteopathic Medicine; 1981-1985; Class Vice President; USAF Health Professions Scholarship Program

Internship: United States Air Force Medical Center Wright-Patterson, Wright State University, Dayton, 1985-1986, Rotating Internship including Internal Medicine, Surgery, Psychiatry, Pediatrics, Neurology, Obstetrics and Gynecology, Emergency Medicine

Residency: United States Air Force Medical Center Wright-Patterson, Wright State University Integrated Residency in Psychiatry, Dayton, Ohio, 1986-1989.

CREDENTIALS:

Diplomate in the Specialty of Psychiatry: American Board of Psychiatry and Neurology, April 1992.

Diplomate of the American Board of Forensic Medicine: American College of Forensic Examiners, January 1999.

National Board of Examiners, 1986.

Dodge A. Slagle, D.O.
Curriculum Vitae

Full licensure to practice medicine:
State of Ohio, August 1986 to present, license #4198.
State of Nevada, November 1989 to present, #500

PROFESSIONAL EXPERIENCE:

Chief, Mental Health Services, USAF Hospital Nellis, June 1991-1992; Medical Director, 1989 to June 1991; Acting Chief of Mental Health Clinic, September 1990 to April 1991. Provided outpatient psychiatric care to servicemen and their families, provided consultation / liaison for 40-bed general hospital; medical consultant to Nellis AFB Social Actions Substance Abuse Committee; developed outpatient treatment program for Pathological Gambling and Anxiety Disorders; medical consultant to Smoking Cessation Program. Responsible for overseeing clinical care rendered by two other psychiatrists, five psychologists, and six social workers and for providing administrative leadership for clinic. Developed clinic quality improvement program.

Staff Psychiatrist, Southern Nevada Adult Mental Health Services, Las Vegas, Nevada, August 1990 to December 1991. Provided part-time outpatient psychiatric services, including evaluations and psychotropic medication management in a community mental health setting.

Clinical Director, Adult Services, Montevista Hospital, Las Vegas, Nevada, May 1992 to March 2000. Acting Director, Chemical Dependency Unit, Montevista Hospital, August to November 1992. Provided supervision to staff on a psychiatric unit regarding clinical issues. Monitored clinical care. Participated in the revision of the hospital quality improvement process and the development of quality improvement teams. Developed program structure for Partial Hospitalization Program. Assisted in developing and revising medical staff bylaws.

Dodge A. Slagle, D.O.
Curriculum Vitae

Associate Medical Director, Montevista Hospital, Las Vegas, Nevada, March 2000 to October 2000. Provided leadership to the hospital performance improvement and credentialing systems. Provided in-service training to staff. Assisted in development of clinical procedures and oversight of hospital clinical care.

Medical Director, Legal Rehabilitation Services, Las Vegas Nevada, November 2000 to December 2001. Provided clinical supervision to counselors for outpatient chemical dependence rehabilitation program for adult and adolescent patients. Provided patient education on the medical aspects of chemical dependence and recovery. Provided leadership to the development and implementation of clinical programs.

Private practice in Psychiatry, Henderson, Nevada, June 1992 to present. Inpatient and outpatient treatment of adult, adolescent, and geriatric patients. Provided consultation/liaison services to medical/surgical hospitals, a rehabilitation hospital, and assisted living facilities. Provided forensic evaluations for local courts.

Assistant Professor, Touro University College of Osteopathic Medicine, September 2010 to present. Course director for Behavioral Medicine and Psychiatry class. Provided didactic and clinical training to medical students at all levels of training.

SPECIALIZED TRAINING EXPERIENCES:

Combat Casualty Care Course, San Antonio, Texas, 1987.

Chemical Dependency Program, Samaritan Hall, Dayton, Ohio, November 1988.

Forensic Psychiatry, Dayton Medical Health Center, Dayton, Ohio, January – February 1989.

Sleep Disorders Medicine, Kettering Medical Center, Dayton, Ohio, March 1989.

Community Mental Health, Mental Health Resources Corporation, Xenia, Ohio, April – June 1989.

Administrative Psychiatry Conference, Wright State University, Dayton, Ohio, November 1988.

Introductory Workshop on Clinical Hypnosis, University of Minnesota, June 1987.

Advanced Hypnosis in Psychiatry, American Psychiatric Association, May 1988.

Manager's / Supervisor's Orientation to Total Quality Leadership, Nellis AFB, Las Vegas, Nevada, March, 1991.

Dementia Congress, Chicago, Illinois, September 2002.

PUBLICATIONS:

Slagle, D.A.; The Acute Withdrawal of Diltiazem and Atenolol: A Possible Challenge to Affective Stability. Journal of Clinical Psychopharmacology, 9(5): 381-2; 1989.

Slagle, D.A.; Psychiatric Disorders Following Closed Head Injury: An Overview of Biopsychosocial Factors in their Etiology and Management. The International Journal of Psychiatry in Medicine, 20(1): 1-35; 1990.

Slagle, D.A., Reichman, M., Rodenhauser, P., et. al.,: Community Psychological Effects Following a Non-fatal Aircraft Accident. Aviation, Space and Environmental Medicine, 61(10); 879-86; 1990.

Dodge A. Slagle, D.O.
Curriculum Vitae

Slagle, D.A., Martin, T.A.: Trichotillomania, American Family Physician, 43(6): 2020-2024; 1991.

EDUCATIONAL PRESENTATIONS:

"Pathological Gambling," Wright State University, Dayton, Ohio, October, 1986.

"Issues in Child Development," Wright State University, Dayton, Ohio, April 1987.

"Psychiatric Disorders Following Closed Head Injury," Wright State University, Dayton, Ohio, November 1987.

"Calcium Channel Blockers in Psychiatry," Wright State University, Dayton, Ohio, August 1988.

"Trichotillomania: An Overview of the Diagnosis and Treatment,' Wright State University Scientific Day, Dayton, Ohio, April, 1989.

"Psychological Reactions to Aircraft Accidents," Wright State University, Dayton, Ohio, May 1989.

"Combat Psychiatry," Nellis AFB Hospital, Las Vegas, Nevada, November 1989.

"Patient Sensitivity,' Nellis AFB Hospital, Las Vegas, Nevada, March-April, 1990.

"Treatment Program for Pathological Gambling," Family Support Center, Nellis AFB, Las Vegas, Nevada, March, 1990.

"Emergency Psychiatry," Nellis AFB Hospital, Las Vegas, Nevada, May, 1990.

Dodge A. Slagle, D.O.
Curriculum Vitae

"Suicide Prevention," Nellis AFB Hospital, Las Vegas, Nevada, September 1990.

"Suicide Prevention," Nellis AFB Hospital, Las Vegas, Nevada, November-December, 1990.

"Patient Sensitivity," Nellis AFB Hospital, Las Vegas, Nevada, February 1991.

"Stress Management," Family Support Center, Nellis AFB, Las Vegas, Nevada, April, 1991.

"Patient Sensitivity," Nellis AFB Hospital, Las Vegas, Nevada, July 1991.

"Destigmatizing Mental Health Treatment," Nellis AFB Community, Las Vegas, Nevada, January, 1992.

"Recognizing Suicide Risk," Governor's Conference on Suicide Prevention, Las Vegas, Nevada, June, 1992.

"The Role of the Community in Preventing Suicide," Governor's Conference on Suicide Prevention, Las Vegas, Nevada, September 1992.

"Involuntary Hospitalization," Montevista Hospital, Las Vegas, Nevada, February 1994.

"DSM IV," Montevista Hospital, Las Vegas, Nevada, January 1995.

"The Impaired Professional," Professionals Reaching Nevada, Reno, Nevada, March 1995.

"Alcoholism and Other Addictions," Nevada Pharmacists Association, Las Vegas, Nevada, May 1995.

"National Anxiety Disorders Screening Day," Montevista Hospital, Las Vegas, Nevada, May 1995.

Dodge A. Slagle, D.O.
Curriculum Vitae

"National Depressive Disorders Screening Day," Montevista Hospital, Las Vegas, Nevada, October 1995.

"Insomnia," Nevada Osteopathic Medical Association, Las Vegas, Nevada, November 1999.

"Insomnia," Grand Rounds, Sunrise Hospital, Las Vegas, Nevada, January 2000.

"Creating Healthy Marriages," Nellis Air Force Base, Las Vegas, Nevada, May 2000.

"Depression and Anxiety Treatment Update," Nevada Osteopathic Medical Association Winter Symposium, Lake Tahoe, Nevada, January, 2001

"Insomnia and Sleep Disturbances," Nevada Osteopathic Medical Association Winter Symposium, Lake Tahoe, Nevada, January, 2001

"Psychopharmacology," Nevada Speech and Hearing Association Annual Meeting, Las Vegas, Nevada, March, 2001.

"Treatment of Depression in Dementia," Sierra Health Services, Las Vegas, Nevada, May 2001.

"Treatment of Psychosis in Dementia," Sierra Health Services, Las Vegas, Nevada, May 2001.

"Advances in the Treatment of Depression: Achieving Remission," Sunrise Hospital Grand Rounds, Las Vegas, Nevada, May 2002.

"The Evaluation and Management of Anxiety Disorders," Nevada Osteopathic Medical Association Spring Symposium, Henderson, Nevada, May, 2002.

"Achieving Remission in Depression," Nevada Association of Family Physicians Fall Conference, Las Vegas, Nevada, September, 2002.

"Making Sense of Antidepressants," Magellan Behavioral Health, Las Vegas, Nevada, September 2002.

"Insomnia: Effects on Staff and Patients," Summerlin Hospital Medical Center Fall Conference, Las Vegas, Nevada, October, 2002.

"Management of Psychosis and Depression in Dementia," Dementia Seminar, Sierra Health Services, Las Vegas, Nevada, November, 2002.

"Bipolar Disorder," University Medical Center Grand Rounds, Las Vegas, Nevada, November 2003.

"Management of Behavioral Disturbances Associated With Dementia," Sunrise Hospital Dementia Seminar, Las Vegas, Nevada, December 2003.

"Treating the Spectrum of Psychiatric Disorders," Nevada Psychiatric Association, Reno, Nevada, May 2004.

"Update on Psychiatry and Psychopharmacology," Nevada Osteopathic Medical Association Spring Meeting, Henderson, Nevada, May 2004.

"Emotional and Physical Symptoms of Depression: A New Treatment Option for Depression," Nevada Psychiatric Association, Las Vegas, Nevada, September 2004.

"Achieving Remission in Depession: Strategies for the Primary Care Physician," Prime Med Update, May, 2005.

"Psychological and Physical Symptoms of Depression," Managing Complexity: Depression and COPD, Albuquerque, New Mexico, September, 2005.

Dodge A. Slagle, D.O.
Curriculum Vitae

"Understanding the Management of Depression," Managing Complexity: Depression and COPD, Albuquerque, New Mexico, September, 2005.

"Evaluating and Effectively Managing Depression," New Mexico Osteopathic Medical Association 25th Annual Balloon Fiesta Medical Symposium, Albuquerque, New Mexico, October, 2005.

"Insomnia: Clinical Impact and Interventions," Western States Physician's Assistant Conference, Las Vegas, Nevada, March 2006.

"Attention Deficit Hyperactivity Disorder," Nevada Osteopathic Medical Association Spring Symposium, Las Vegas, Nevada, May 2006.

"Atypicality, from Theory to Practice," Nevada Psychiatric Association, Las Vegas, Nevada, March 2008.

"Adult ADHD: Diagnostic and Treatment Issues," Nevada Osteopathic Medical Association Annual Convention, Las Vegas, Nevada, April-May 2010.

COMMITTEE ACTIVITIES:

Resident Representative to Didactic Subcommittee, Wright State University Department of Psychiatry, 1988-1989.

Pharmacy and Therapeutics Committee, Nellis AFB Hospital, 1989-1992.

Executive committee of the Medical Staff, Nellis AFB Hospital, 1990-1992.

Paper Reviewer, The International Journal of Psychiatry in Medicine, 1991; Journal of Neuropsychiatry, 1994 to present.

Dodge A. Slagle, D.O.
Curriculum Vitae

Performance Improvement Committee (past Chairman), Montevista Hospital, 1992-1999.

Medical Executive Committee (past Chairman), Montevista Hospital, 1992 to 2001.

Peer Review Committee, Montevista Hospital, 1992-2002.

Pharmacy and Therapeutics Committee (past Chairman), Montevista Hospital, 1992-2000.

Bylaws Committee (past Chairman), Montevista Hospital, 1993 to 1999.

Credentials Committee (past Chairman), Montevista Hospital, 1992 to 2000.

Quality Council (past Chairman), Montevista Hospital, 1999 to 2000.

Medical Records / Utilization Review Committee (past Chairman), Montevista Hospital, 2000.

Safety Committee, Montevista Hospital, 1994-1996.

Secretary of the Medical Staff, Montevista Hospital, 1994-1996.

Professionals Reaching Nevada – Pharmacists Recovery Network, Nevada (Medical Director), 1995-2000.

Vice Chief of Staff, Montevista Hospital, 1996-1997.

Chief of Staff, Montevista Hospital, 1998-2000.

Peer Review Committee, Western Region, Magellan Behavioral Health, 2001 to 2004.

Dodge A. Slagle, D.O.
Curriculum Vitae

Nevada Medical Director, MHNet Behavioral Health, 2009 to present.

CURRENT SPEAKER'S BUREAUS:

Novartis	Astra Zeneca
Forest	Merck
Pfizer	Sanofi Aventis

OTHER FACULTY APPOINTMENTS

MIDWESTERN UNIVERSITY COLLEGE OF OSTEOPATHIC MEDICINE
(ADJUNCT CLINICAL FACULTY)

CONSULTANT:

Cephalon
Forest

CLINICAL INVESTIGATOR (PAST ACTIVITY):

Pfizer
Bristol Myers
Forest
Glaxo Smith Kline
Eli Lilly

PROFESSIONAL ORGANIZATIONS:

American Osteopathic Association (1981 to present)
American Psychiatric Association (1985 to present)
Nevada Osteopathic Medical Association (1990 to present)
Nevada Association of Psychiatric Physicians (1989 to present)

Updated:
9/1/10

Dr. Nwokike CV

JEROME N. NWOKIKE, M.D.

Address:	6850 N. Durango Drive, suite Las Vegas, NV 89149
Telephone:	702-750-2438
Fax	702-750-2173
Email	jnwokike2000@yahoo.com

UNDERGRADUATE SCHOOL	**DATES**	**DEGREE/YR/SUBJECT**
University of Benin Medical School	1982-1985	

GRADUATE SCHOOL		
University of Benin Medical School	1985-1988	MB BS

POST GRADUATE MEDICAL EDUCATION

Fellowship, Forensic Psychiatry	Yale University New Haven, Connecticut	July 04-June 05
Fellowship, Child & Adolescent Psychiatry	University of Maryland Baltimore, MD.	2002-2004
Residency, Psychiatry	Temple University Philadelphia, PA.	1999-2002
Residency, Psychiatry	Guy's Hospital Training Scheme London, UK.	1996-98
Preparatory Course for PLAB Exam	North Middlesex Hospital London, UK	1994-96
Internship: Rotating in Med, Surg, OBGYN & Peds	General Hospital Bida, Nigeria	1988-89

EMPLOYMENT

Consultant Psychiatrist	6850 Durango Drive suite 302 Las Vegas, NV 89149	Present
Attending Psychiatrist	Spring Mountain Treatment Center 7000 W. Spring Mountain Road Las Vegas, NV 89117	April 08 - Date
Attending Psychiatrist	Rawson-Neal Psychiatric Hospital 1650 Community College Drive Las Vegas, NV 89145	Mar 08- Jan, 10
Associate Chief Clinical Officer	DC Government, DMH 64 New York Avenue, NE Washington DC 20002	July 05- Mar08

Attending Psychiatrist	Sibley Memorial Hospital 5255 Loughboro RD, NW Washington, DC 20016	April 06- Mar08
Attending Psychiatrist	Prison Health Service, Baltimore Par-time, Evaluation and treatment of Inmates with mental illness	03/04-06/04
Attending Psychiatrist	Humanim, providing services at Howard County General Hospital Part-time, psychiatric inpatient and Emergency room coverage.	05/03-12/03
Medical Officer/Director	Riverside Clinic Owerri, Imo State, Nigeria Outpatient general medical practice	1990-1994
National Youth Service	Ngor-Okpala Local Council Imo State, Nigeria.	1989-1990

CERTIFICATIONS

American Board of Psychiatry and Neurology	Certified	2004
American Board of Psychiatry and the Law	Certified	2007
American Board of Child & Adolescent Psychiatry	Board Eligible	

LICENSURE

Nevada	12549	Active
Maryland	D0059285	Inactive
Virginia	0101238429	Inactive
District of Columbia	MD035581	Inactive
Connecticut	042375	Inactive

PROFESSIONAL ACTIVITIES

Evaluated and testified in court on several cases in Maryland, Connecticut and the District of Columbia. Cases range from (criminal) - various competencies (adult and juvenile), juvenile waivers, NGRI/NCRI, risk assessments & mitigation. (Civil) – malpractice, parental capacity, child custody, child placement & workman's compensation. July04- 2008

Jerome Nwokike, M.D. Legal Digest: Federal Insanity Acquittees. Person Found Not Guilty by Reason of Insanity May Not Attack His Successful Insanity Defense in Habeas Petition. Journal of the American Academy of Psychiatry and Law. Volume 33, Number 1, 2005. 2005

S. Kochhar, MD, J. Nwokike, MD. Olanzepine overdose: A Pediatric Case Report. Journal of Child and Adolescent Psychopharmacology 12 (4): 355-361, 2002	2002
Editor of Temple Psychiatric Review	2001 - 2002

LEADERSHIP/AWARDS/COMMITTEES

Chief Fellow, Child and Adolescent Division, University of Maryland Dept. of psychiatry	2003-2004
Chief Resident, Temple University Hospital, (TUH) Philadelphia	2001-2002
Janseen Resident Award of Excellence	2002
Hospital Performance Improvement Committee TUH	2001-2002
Residency Steering Committee, Temple University Hospital	2001-2002
Junior Doctors Representative, General Hospital, Bida, Nigeria	1988-1989

ORGANIZATIONAL/ACADEMIC AFFILIATIONS

Assistant Professor, George Washington University, Washington DC/ Children's National Medical Center, Washington DC.	2008-2009
Reviewer (Peer Review), Journal of American Academy of Psychiatry & Law	Present
Nevada Psychiatric Association	Present
American Psychiatric Association	Present
American Academy of Psychiatry and Law	Present

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04/26/2011 10:45:56 AM

CLERK OF THE COURT

NOTC

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
SHANON CLOWERS
Deputy District Attorney
Nevada Bar #0010008
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

KEVIN MARQUETTE GIPSON,
#1582343

Defendant.

CASE NO: C-264079

DEPT NO: XVIII

SUPPLEMENTAL NOTICE OF EXPERT WITNESSES
[NRS 174.234(2)]

TO: KEVIN MARQUETTE GIPSON, Defendant; and

TO: PUBLIC DEFENDER, Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF NEVADA intends to call the following witnesses in its case in chief:

C. RUSSELL, LVMPD P#7468- is a detective with the Las Vegas Metropolitan Police Department and an expert in the area of Concealed Information Testing (CIT). He has knowledge of the administration of the CIT examination, and the responses provided and the measured reactions of the Defendant upon being posed various questions.

The substance of each expert witness' testimony and a copy of all reports made by or at the direction of the expert witness has been provided in discovery.

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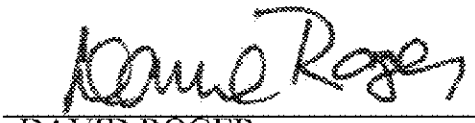
A copy of each expert witness' curriculum vitae, if available, is attached hereto.

BY 
DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing was made this 26th day of April, 2011, by Electronic Filing to:

PUBLIC DEFENDER
Email: pdclerk@co.clark.nv.us

/s/ T. SCHESSLER
Secretary for the District Attorney's Office

Electronically Filed
04/27/2011 07:57:55 AM

CLERK OF THE COURT

OPPS
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
SHANON CLOWERS
Deputy District Attorney
Nevada Bar #0010008
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, -vs- KEVIN MARQUETTE GIPSON, #1582343 Defendant.	CASE NO: C264079 DEPT NO: XVIII

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS

DATE OF HEARING: 05/02/2011
TIME OF HEARING: 8:15 AM

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through SHANON CLOWERS, Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's State's Opposition To Defendant's Motion To Suppress.

This opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

STATEMENT OF FACTS

On March 25, 2010, at approximately 5:45 a.m., Robert "Lee" Gilmore and Wade Fleming were leaving Einstein Bagels located at 7541 West Lake Mead Boulevard, Las Vegas, Nevada. As they were nearing Fleming's truck they heard what they thought was a

woman screaming loudly across the street at the Jack in the Box restaurant located at 7510 West Lake Mead Boulevard, Las Vegas, Nevada. Gilmore and Fleming then heard a single gunshot from the Jack in the Box area and immediately called 911.

As they approached the area of the gunshot, they were joined by another individual, Christian Benitez, who had been at Starbucks just next to Einstein Bagels. All three noticed what appeared to be a male in a dark hooded sweatshirt running south easterly down Lake Mead Boulevard. Neither Benitez, nor Gilmore, nor Fleming could identify the individual running away from the Jack in the Box. Fleming approached the victim as she lay in a parking stall at the Jack in the Box. Fleming noticed the victim's Jack in the Box name tag and yelled "Brittney" over and over to see if she would respond. Fleming got no response and thought she was dead.

Christina Bailey works at the Vons grocery store located in the same shopping complex as the Jack in the Box. She works the graveyard shift at Vons and was leaving the store in her vehicle when she heard the scream coming from Jack in the Box. Bailey drove towards the Jack in the Box and noticed a female laying on the ground with a male in a dark hooded sweatshirt standing over her. It appeared to Bailey that the male was helping the female, who appeared drunk, to her vehicle. Bailey did not hear a gunshot and thought everything appeared to be okay.

Bailey proceeded to the stoplight at the intersection of the Vons shopping center and Lake Mead. She was there for approximately 30 seconds when she noticed the same male with the hooded sweatshirt sprint past her vehicle onto Lake Mead Boulevard heading east. Bailey decided to follow the individual as he raced down Lake Mead, but eventually lost him as he darted between buildings. Bailey could not identify the individual other than to say he was an African-American.

Homicide Detectives arrived to the scene and were notified that the victim had been transported to UMC Trauma as she was still showing signs of life. Detectives were able to determine that the victim was Brittney Lavoll, who was on her way into work as an assistant manager at the Jack in the Box. At 6:15 a.m., Dr. Cousins of UMC Trauma pronounced

Brittney dead of an apparent gunshot wound to the head. An autopsy performed by Dr. Telgenhoff on March 26, 2010, revealed that the cause of death was a distant penetrating gunshot wound to the head.

At the scene, detectives located two sets of keys belonging to Brittney Lavoll, a cartridge case bearing the head stamp "25 AUTO CBC." Brittney's 1995 Jeep Grand Cherokee was parked in a stall near the Jack in the Box. Inside the vehicle, Detectives located a black jacket with apparent blood stains.

Charles Lavoll, Brittney's father, came to the scene and spoke to detectives. Upon learning that his daughter was shot, Charles immediately advised that the shooter was likely Kevin Gipson. Charles intimated that Gipson and Brittney had been in a dating relationship for several years and had two children together. They broke up because Gipson was abusive towards Brittney and refused to leave her alone. Brittney had to switch Jack in the Box locations due to Gipson harassing her at work, as well as move to a different apartment. According to Mechele Lavoll, Brittney's mother, Gipson was looking for Brittney approximately four to five months before the shooting and had threatened Mechele that he would shoot Brittney.

In an attempt to locate Gipson, Detectives went to the Summerhill Apartment Complex at 3630 E. Owens, Las Vegas, Nevada where Gipson's mother Lenda Jackson resided. While at the apartment, Gipson called his mother. Lenda handed the phone to Detective Long. Gipson denied any involvement in the murder saying that he had spent the night at a friend's house and did not learn of the murder until his mother called and notified him. Gipson stated he would get a ride to the Summerhill Apartment Complex to meet with the Detectives. Detective Long informed Gipson that there were numerous relatives of the victim at the complex and therefore they would come meet him. Gipson at first said he didn't want the "cops" to come to where he was. Gipson then asked someone in the background a question and agreed that detectives could come to his location, which was 824 Levy – the home of Denise Nelson. Detectives went to that location and came into contact with Gipson. He then agreed to go to the Detective's offices, known as the ISD building,

and was driven there.

1. Defendant's First Statement – March 25, 2010, 3:20 p.m. (Exhibit One)

On March 25, 2010 at approximately 3:20 p.m., detectives met with Gipson at the ISD building. Gipson was told that he was not under arrest and could stop the interview at any time. He was not handcuffed at anytime. He was interviewed by Detectives Long and Tremmel. Both out of uniform. The interview lasted for 15 minutes. Gipson completely denied killing Brittney.

Gipson stated that he dated Brittney for five years and had two children with her, but broke up approximately one year before. The previous night, Gipson had spent the night at Denise Nelson's house located at 824 Levy, Las Vegas, Nevada. Gipson, Denise, and her boyfriend Larry "Mississippi" Glinsey went to a party at a friend's house named Rosie. During the drive they were stopped by LVMPD and Glinsey was taken in for outstanding warrants. Gipson and Nelson drank alcohol and played cards until 2:30-3:00 a.m. when they went back to Nelson's place to sleep.

Gipson stated he received a call from his mother at approximately 8:00 a.m. stating that something had happened to Brittney. Eventually, Gipson's cousin, Isaiah Martin, notified Gipson that everyone was looking for him.

According to Gipson, the reason he and Brittney broke up was because he was cheating on her. Gipson denied any kind of abuse towards Brittney during their relationship. After the initial breakup, Gipson unsuccessfully attempted to get back together with Brittney. Gipson said he had no contact with Brittney for five months until he tried to contact her at her work but was informed that Brittney no longer worked at that location. Gipson recently had been trying to get in touch with Brittney to see his son on his birthday on March 23 but was unable to.

Gipson was then asked about taking a polygraph test. Detectives explained it as an investigative tool, and told Gipson even if he failed it they could not arrest him because the examinations were not. (Exhibit one pp. 18-19). Gipson agrees to schedule the test. Gipson also agreed to provide a DNA sample and have a Gunshot Residue Kit performed at the

same time. The interview then ends after fifteen minutes.

Detectives Tremmel and Long prepared to do a polygraph examination, but were informed by Officer Flohr that it would be preferable that Gipson take a Concealed Information Test (CIT).

2. Defendant's Second Recorded Statement – March 25, 2010 at about 6:55 p.m. (Exhibit Two).

Detective Long then introduced Gipson to Officer Geoff Flohr and the following colloquy occurred:

Q: "…you have the right to remain silent. Tell me what that means to you."

A: "That I don't gotta say nutten [sic].

Q: That's right. All you gotta do is say, 'You know Geoff (Flohr), I don't wanna talk anymore' and we are done. I wont get angry. I'm not gonna get upset. Okay. Uh, anything that you say can and will be used against you in a court a law. Tell me what that means to you?"

A: Whatever I say y'all gonna use it against me.

Q: If you were to say anything in here about this case, okay, and ultimately be charged in this case, I could be subpoenaed and then have to testify to everything that you said. Okay?. Um, you have the right to have an attorney with before or during any questioning, and if you can't afford an attorney, attorney would be appointed to represent ya [sic] at public expense. Do you understand that right?

A: Shouldn't I have a attorney for this?

Q: Well, that's up to you

DL (Dan Long): Completely up to you.

Q: That's completely up to you.

A: Oh, okay. Think I seen a story on the history channel about these things and they not always accurate.

Q: Well, the examination that I'm gonna provide you with today is not about deception. It's about knowledge. Okay. So all the questions that I'm going to ask you on this

thing would only be known by the person that did this. If you didn't do it, you wont know any information about this case. Does that make sense to ya? So anyway, you understand the right about the attorney?

A: Mmm Hmmm.

Q: Okay. If you waive your right to remain silent and later change your mind all questioning will stop. Tell me what that means to ya.

A: I'm, I'm not sure.

Q: Okay. If you agree to talk to me and say, hey Geoff, Ill start out talking to ya, and you change your mind and say 'Oh, I don't wanna talk to you anymore." All you gotta do is just say, "Geoff, I don't wanna talk anymore,' and all questioning is gonna stop. Okay. Do you understand that? I need a verbal.

A: Oh, yes.

Q: Okay. Um, if you waive your right to have an attorney present and later change your mind, the questioning will stop until you've had a chance to speak with an attorney. Do you understand that right? What's it mean to ya?

A: I can get a attorney if I want one.

Q: Yeah. At any point in time. You could say 'Hey, you know what Geoff. Before we go any further, I'm gonna want an attorney.'

A: Mmm hmm.

Q: You just gotta verbalize that to me. I'm gonna stop. I won't get angry. I won't get upset. Okay. We'll just stop.

A: Well, could I get an attorney then?

Q: It's up to you.

A: I just wanna ax [sic] him a couple of questions before I take this.

Q: Okay. Okay. We'll be with you in just a second.

A: I mean, I'm not opposed to taking it. I just wanna get some counsel about this cause I don't _____ (inaudible).

Q: Okay.

A: …not sure about that.

Q: Alright. Okay.

A: _____.

Q: Okay. We understand.

A: I, I seen the show man. It's got me skeptical about this.

Q: Okay.

(Sound of Geoff leaving the room, door opening/closing) (pause) (Geoff returns) Yeah. Okay. Do you have a name of an attorney that you need to call or, or you wanna contact?

A: I thought y'all was gonna provide me one.

Q: _____. (Inaudible) If you're charged in this investigation …

A: (Both talking-inaudible)

Q: … yeah. When, if you're charged in the investigation, okay, and you don't have the funds to have an attorney then one would be provided for ya. Uh, right now this is in the investigative stage as I understand at this point. So if, if you know a name of an attorney we'll provide you with a phone and you can make a call and talk to him about it and make a decision on what you wanna do.

A: I don't understand.

DL: We're, we're not arresting you.

A: _____ . (Both talking-inaudible)

DL: You're not under arrest.

A: Yeah. I know that.

DL: So we don't provide you an attorney for you because you're not under arrest.

Q: You're not under arrest.

Q: If you have an attorney you wanna consult with, then you can consult with … because this involves a criminal investigation and because it involves this type of, ah, ah, information test, okay, examination here. Um, we have to advise you of these rights. So if you say to me 'Hey Geoff, you know what, I think I wanna talk to an attorney

before I go in through this process here'. Um, then I have to stop, mmm, and afford you that opportunity to go ahead and go, go do that if that's what you wanna do. Um, but like he said, you're not under arrest at this point so we don't have to provide you with an attorney, but we provide you the means to make a phone call tonight if you want.

DL: Absolutely.

Q: To call an attorney and talk to him.

A: I don't know any attorneys.

Q: Well, give him a phone book I guess, if you wanna call. What do you wanna do?

A: I wanna make sure this is right.

Q: The examination that you're going to go under is called concealed information test. Okay. And basically it's based on knowledge. If you didn't have anything to do with this you wouldn't know specific information about this case. That's what this is gonna involve.

A: Come on. Let's get it over with.

Q: Okay. Hold on for just a second. Alright, So, you're telling me Geoff you know what, you don't wanna consult with an attorney at this point? Verbalize that to me so…

A: No.

Q: No. You don't. It's okay to continue?

A: Yeah.

Q: Okay. Hold on for just a second. (Leaves room) (pause)

A: _____ (inaudible)

Q: (returns to room) Okay. Here's the deal. I wanna give you an opportunity here tonight to, to leave. Okay. So what I'd like to do is I wanna administer, ah, this examination, the concealed information test, tomorrow at noon. Okay. So, I'm gonna kick you outta [sic] here. These guys will come and pick ya [sic] up and bring you down here if that's alright with ya [sic], tomorrow morning, and I'll see you here at

noon. Well enough?

DL: Tomorrow noon. (Laughs)

Q: Yeah. Tomorrow. Tomorrow at noon.

A: _____ (both talking – inaudible)

DL: Because if they, the, the, they, I mean, you, you wanna consult with, go consult with attorneys.

Q: Yeah. We got, we gotta give you that opportunity. That's the right thing to do.... (Exhibit Two, pp. 2 – 7).

Gipson was unsure of taking the test and wanted to talk it over with his mother or an attorney. Gipson again was advised that he was not under arrest and was told he would be taken home. (Exhibit Two, pp. 9). Gipson was then taken back to Nelson's apartment with the understanding that Gipson would again meet with detectives the following day at 11:30.

On March 26, 2010, at approximately 11:20 a.m., detectives went back to Nelson's apartment and picked up Gipson. Gipson agreed to take the CIT and to go with detectives. He was not placed in cuffs, not arrested, nor in custody.

3. The Defendant's Third Statement March 26, 2011 at 11:57. (Exhibit Three)

The Defendant was Mirandized again by Officer Flohr:

Q: ... Let's go through your rights though. Okay? 'Cause this is a criminal investigation again, I have to advise you of your Miranda Rights. Okay?

A: Uh huh (yes).

Q: Number one, you have the right to remain silent. Tell me what that means to you.

A: I ain't gonna say nothin'.

Q: That's right. At any point in time you can say Geoff, I don't wanna talk. We're done, stop right where we're at, out we go. Okay? Anything that you say can and will be used against you in a court of law. Tell me what means to you.

A: Whatever I say that'll be used against me.

Q: Right. If charges should be brought in this investigation against you, I can subpoenaed and I have to testify to what you may have said to me. Okay? You have

the right to have an attorney present with you before or during any questioning, and if you can't afford one, one will be appointed to represent you at public expense. Do you understand that?

A: Sure.

Q: Okay. If you waive your right to remain silent, and later wish to stop answering questions, the questions will stop. Tell me what that means to you.

A: If I don't wanna say nothing I don't have to.

Q: Right. If you decide you're gonna talk to me, and then you change your mind, all you gotta do is just say Geoff, I don't wanna answer anymore questions, and we're done. Okay? If you waive your right to have attorney present and later change your mind, all questioning will stop until you've had a chance to speak with an attorney. Tell me what means to you.

A: I _____ (unintelligible).

Q: Right. All you gotta do is just say hey, Geoff, I wanna talk to an attorney before I go any further, and I'm done. Okay? Do you understand each of these rights, Kevin, that I've advised you of?

A: Uh huh (yes).

Q: Are you willing to waive them at this time, and continue this, ah, interview with me here today?

A: Sure.

(Exhibit Three, pp. 2 – 3).

Officer Flohr advised Gipson that the CIT does not test deception but only knowledge of events. Officer Flohr then administered the test by asking him a series of questions regarding the murder of which only someone who had distinct knowledge of the murder would be able to answer. Gipson took the CIT and failed, meaning that he had knowledge of the murder that only the killer would know.

Detectives confronted Gipson with the fact that he failed the CIT. Gipson explained that he had been "in and out of the mental hospital" and that he killed Brittney because "she

drove me crazy." Gipson further stated that he would not see his kids for months.

Gipson previously had called the Jack in the Box and found out that Brittney worked at the West Lake Mead location. He walked to the Jack in the Box and waited for Brittney to arrive. He hid in the bushes behind a van.

Shortly thereafter, the victim arrived. When she got out of her car, a brown Jeep, Gipson approached her from behind and shot her one time in the head. Gipson did not know where she had been shot but that she collapsed on the ground next to her vehicle. Gipson then stated that he ran across the Vons shopping center intersection as Christina Bailey had described and ran all the way back to the 824 Levy address.

Gipson bought the .25 caliber gun on March 24, 2010, from an individual he knew only as Tramaine. He paid $50 in cash and $50 worth of Marijuana for the gun. After the shooting, he returned the gun to Tramaine without telling him he had used it in the murder. Gipson also discarded the shoes he was wearing as well as the dark hooded sweatshirt.

POINTS AND AUTHORITIES

I. THE DEFENDANT WAS NOT ENTITLED TO COUNSEL UNDER MIRANDA V. ARIZONA

A. The Defendant Was Not Subject to a Custodial Interrogation

The Fifth Amendment privilege against self-incrimination provides that a suspect's statements made during custodial interrogation are inadmissible at trial unless the police first provide a Miranda warning. Miranda v. Arizona, 384 U.S. 436, at 479, 86 S.Ct. 1602. An individual is not in custody for purposes of Miranda where police officers only question an individual on-scene regarding the facts and circumstances of a crime or ask other questions during the fact-finding process, or where the individual questioned is merely the focus of a criminal investigation. Garcia v. Singletary, 13 F.3d 1487, 1489 (11th Cir.1994), United States v. Jones, 21 F.3d 165, 170 (7th Cir.1994).

The fact that he was Mirandized does not create a custodial situation. See in U.S. v. Akin 435 F.2d 1011, 1013 (1970) ("a custodial situation cannot be created by the mere

giving of modified Miranda warnings"), cert. denied Akin v. U.S., 401 U.S. 1011 (1971).

In State v. Lanning, the defendant voluntarily went to the police station to discuss forged checks. 109 Nev. 1198 (1993). The defendant was not given any Miranda warnings. The Defendant told the detective that "she should see an attorney because she did not want to incriminate herself." Id. at 1199. The detective informed her that she was not in custody and she was free to leave at any time. Id. The defendant then confessed to the crimes. Id. The defendant appealed challenging the admissibility of her confession; she claimed her right to counsel was violated. Id. at 1199 - 1200. The court held that "a suspect questioned in a non-custodial setting is not entitled to legal counsel..." Id. at 1200.

A determination of whether an interrogation is custodial must be made under a totality of the circumstances, including the site of the interrogation, whether the objective indicia of an arrest are present, and the length and form of questioning. Alward v. State, 112 Nev. 141, 155, 912 P.2d 243, 252 (1996). Factors to consider are:

1. whether the suspect was told that the questioning was voluntary or that he was free to leave;
2. whether the suspect was not formally under arrest;
3. whether the suspect could move about freely during questioning;
4. whether the suspect voluntarily responded to questions;
5. whether the atmosphere of questioning was police-dominated;
6. whether the police used strong-arm tactics or deception during questioning; and
7. whether the police arrested the suspect at the termination of questioning.

United States v. McKinney, 88 F.3d 551, 554 (8th Cir.1996). All seven factors need not be present in order to determine that the suspect was or was not in custody. Id.

In this case, the Defendant was not in custody, therefore, not entitled to the rights as provided by Miranda. Each of the seven factors listed above will be addressed in kind as follows:

1. The Defendant Was Told the Questioning was Voluntary and He Was Free to Leave.

In this case, the Defendant was informed multiple times that he was not under arrest. Specifically, On March 25, 2010 the Defendant voluntarily went with Detectives Long and Tremmel to their offices. Gipson was informed that he was not under arrest and could stop the interview at any time. He was informed such by both Detectives. He was not handcuffed at anytime. He was interviewed by Detectives Long and Tremmel both in civilian clothing. The initial interview lasted for fifteen minutes, during which Gipson completely denied killing Brittney.

Gipson was asked about taking a polygraph test. Gipson agrees to schedule the test. Gipson also agreed to provide a DNA sample and have a Gunshot Residue Kit performed at the same time. The Defendant was then asked to stay so that the examination could be scheduled. During which time Officer Flohr informed the Detectives that it would be preferable that Gipson take a Concealed Information Test (CIT). It was immediately available to be done.

The Defendant then met with Detective Long and Officer Flohr. Officer Flohr read the Defendant his Miranda rights. The Defendant was told unequivocally that ""You're not under arrest." The Defendant's response was "Yeah. I know that." (Exhibit Two, pp. 5).

The Defendant brought up the issue of speaking with an attorney, at which point Detectives informed him it was his choice to make and they took him home. Detective Long specifically encouraged him to speak with whomever he needed to. He also informed the Defendant that it was his choice whether he wanted to come and speak to him the next day, that he did not have to. The Defendant said multiple times that he just wanted to remove any suspicion that he was the murderer.

The next day, March 26, 2010, the Defendant then again voluntarily agreed to go with Detectives to the ISD building. He was again informed that he was not under arrest. The Defendant then voluntarily participated in the CIT examination.

2. The Defendant Was Not Formally Under Arrest.

Not only was the Defendant not under formal arrest, he was informed of such and acknowledged such. Detective Long stated: ""You're not under arrest." The Defendant's response: "Yeah. I know that." (Exhibit Two, pp. 5).

3. The Defendant Was Free to Leave.

The Defendant was told he could leave at any time. In fact, the Defendant was given a ride home on March 25, 2011. Twice during the interviews the Defendant was allowed to use the bathrooms. Twice during the interviews the Defendant stood up and the Detectives allowed him to move freely. They did not instruct him to sit down and the interviews continued.

4. The Defendant Voluntarily Responded to Questions.

The Defendant answered questions without hesitation and appropriately.

5. The Atmosphere was Not Police Dominated.

All officers involved in the questioning of the Defendant were in civilian clothing. All officers that work in the ISD building are out of uniform and wear civilian clothing. The office in which the Defendant was taken is not within the Clark County Detention Center. The building has multiple floors and is essentially an office building.

6. Strong Arm Tactics, Nor Deception was Utilized During the Questioning

The Defendant was never subjected to any "strong-arm tactics" nor deception. Detectives never presented any untrue information to the Defendant during any of the three statements. Detectives did not scream or yell at the Defendant. They did not bang on the table, nor attempt to intimidate the Defendant. Twice during the interview the Defendant actually stood up, and the Detectives did not; they allowed him to make his point and continue with the statement.

7. The Defendant Was Arrested After He Confessed to Killing the Victim.

The Defendant not arrested on March 25, 2010. He was actually driven home by the Detectives. He was arrested March 26, 2010, after he admitted to facts that only the murderer would have known and ultimately admitting to killing the victim.

In summary, the Defendant was not in custody during the statements he gave. He was

told such and specifically acknowledged that he was not under arrest. The Defendant was even taken home after his statement on March 25, 2010. He was allowed to move about freely during his interviews. He was not subject to strong arm tactics or deception. The Defendant was asked open ended questions. The Defendant never asked to leave. The Defendant never complained about the circumstances in which he was being questioned. It was not until the Defendant admitted to killing the victim that he was ultimately arrested and questioning stopped. Under a totality of these circumstances, it is clear the Defendant was not in custody, and therefore, not entitled to his Miranda rights.

B. In the Alternative, If the Defendant Was "In Custody," he was properly Mirandized, Any "Invocation" Was Equivocal, and There Was A Break In Custody Following The "Invocation."

a) The Defendant Was Extensively Explained the Rights Under Miranda.

As noted supra, "a custodial situation cannot be created by the mere giving of modified Miranda warnings" U.S. v. Akin 435 F.2d 1011, 1013 (1970). Nevertheless, in this case the Defendant was sufficiently and more than adequately explained the rights that exist under Miranda twice. As noted in the Statement of Facts supra, the Defendant was read the rights under Miranda line by line. After each line was read to him on both occasions, he was then asked the question: "[w]hat does that mean to you?" If the Defendant's answer did not comport with the right read to him, Officer Flohr took the time to explain to the Defendant what the right meant. Officer Flohr would not proceed with the next right until he felt the Defendant understood the right he was being explained.

b) Any "Invocation" Was Equivocal.

"A suspect must actually invoke the right to counsel in order for officers to be barred from questioning the suspect." Davis v. United States, 512 U.S. 452, 458, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994); United States v. Washington, 462 F.3d 1124, 1134 (9th Cir.2006). "If a suspect merely makes an equivocal or ambiguous reference to an attorney, this is insufficient to require the cessation of questioning." Davis, 512 U.S. at 459 ("reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect might be invoking the right to

counsel ... do[es] not require the cessation of questioning") (emphasis in original); Washington, 462 F.3d at 1134.

The basis of the Defendant's claim that he unequivocally requested an attorney is as follows:

Q: Okay. Um, if you waive your right to have an attorney present and later change your mind, the questioning will stop until you've had a chance to speak with an attorney. Do you understand that right? What's it mean to ya?

A: I can get a attorney if I want one.

Q: Yeah. At any point in time. You could say 'Hey, you know what Geoff. Before we go any further, I'm gonna want an attorney.'

A: Mmm hmm.

Q: You just gotta verbalize that to me. I'm gonna stop. I won't get angry. I won't get upset. Okay. We'll just stop.

A: Well, could I get an attorney then?

Q: It's up to you.

A: I just wanna ax [sic] him a couple of questions before I take this.

Q: Okay. Okay. We'll be with you in just a second.

A: I mean, I'm not opposed to taking it. I just wanna get some counsel about this cause I don't _____ (inaudible).

Q: Okay.

A: …not sure about that.

Q: Alright. Okay.

A: _____.

Q: Okay. We understand.

A: I, I seen the show man. It's got me skeptical about this.

Q: Okay.

(Sound of Geoff leaving the room, door opening/closing) (pause) (Geoff returns) Yeah. Okay. Do you have a name of an attorney that you need to call or, or you

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wanna contact?

A: I thought y'all was gonna provide me one.

Q: _____. (Inaudible) If you're charged in this investigation …

A: (Both talking-inaudible)

Q: … yeah. When, if you're charged in the investigation, okay, and you don't have the funds to have an attorney then one would be provided for ya. Uh, right now this is in the investigative stage as I understand at this point. So if, if you know a name of an attorney we'll provide you with a phone and you can make a call and talk to him about it and make a decision on what you wanna do.

A: I don't understand.

DL: We're, we're not arresting you.

A: _____ . (Both talking-inaudible)

DL: You're not under arrest.

A: Yeah. I know that.

DL: So we don't provide you an attorney for you because you're not under arrest.

Q: You're not under arrest.

Q: If you have an attorney you wanna consult with, then you can consult with … because this involves a criminal investigation and because it involves this type of, ah, ah, information test, okay, examination here. Um, we have to advise you of these rights. So if you say to me 'Hey Geoff, you know what, I think I wanna talk to an attorney before I go in through this process here'. Um, then I have to stop, mmm, and afford you that opportunity to go ahead and go, go do that if that's what you wanna do. Um, but like he said, you're not under arrest at this point so we don't have to provide you with an attorney, but we provide you the means to make a phone call tonight if you want.

DL: Absolutely.

Q: To call an attorney and talk to him.

A: I don't know any attorneys.

Q: Well, give him a phone book I guess, if you wanna call. What do you wanna do?

A: I wanna make sure this is right.

Q: The examination that you're going to go under is called concealed information test. Okay. And basically it's based on knowledge. If you didn't have anything to do with this you wouldn't know specific information about this case. That's what this is gonna involve.

A: Come on. Let's get it over with.

Q: Okay. Hold on for just a second. Alright, So, you're telling me Geoff you know what, you don't wanna consult with an attorney at this point? Verbalize that to me so…

A: No.

Q: No. You don't. It's okay to continue?

A: Yeah.

Q: Okay. Hold on for just a second. (Leaves room) (pause)

A: _____ (inaudible)

Q: (returns to room) Okay. Here's the deal. I wanna give you an opportunity here tonight to, to leave. Okay. So what I'd like to do is I wanna administer, ah, this examination, the concealed information test, tomorrow at noon. Okay. So, I'm gonna kick you outta [sic] here. These guys will come and pick ya [sic] up and bring you down here if that's alright with ya [sic], tomorrow morning, and I'll see you here at noon. Well enough?

DL: Tomorrow noon. (Laughs)

Q: Yeah. Tomorrow. Tomorrow at noon.

A: _____ (both talking – inaudible)

DL: Because if they, the, the, they, I mean, you, you wanna consult with, go consult with attorneys.

Q: Yeah. We got, we gotta give you that opportunity. That's the right thing to do….

(Exhibit Two, pp. 2 – 7).

As shown above, at no point does the Defendant unequivocally request an attorney. At the end of the first set of Miranda rights they Defendant discussed the idea of getting an attorney; nevertheless, he never unequivocally asked for one and instead he chose to proceed with the test. (Exhibit Two, pp. 6). The Defendant stated he did not want to consult with an attorney. (Exhibit Two, pp. 7). Nevertheless, at that point Detectives decided to end the interview and take him home. They encouraged him to speak with whomever he needed to. Id. At no point during the interview does the Defendant unequivocally invoke the rights under Miranda.

The Defendant's "request" was similar to the one made by the defendant in State v. Lanning. In Lanning, the defendant stated, "she should see an attorney because she did not want to incriminate herself." 109 Nev. 1198, 1199. The court held the defendant's statement was merely equivocal. Id. at 1201.

Here, as opposed to the Detective in Lanning, when the Defendant mentions the mere idea of an attorney, the Detectives encourage such and do not proceed with the CIT examination. They even tell him it's the right thing to do. Clearly the Defendant is more concerned with the reliability of the examination as opposed to seeking the aid of counsel. When specifically asked if he wants an attorney, the Defendant says no and that he wants to take the examination. Even after that, the Detectives stop the interview and take him home. They wait until the next day to perform the test, allowing the Defendant the opportunity to speak with whomever he chooses and decide whether he wants to take the test. Clearly, there is not an unequivocal request for an attorney.

c) There Was A Break In Custody Following The "Invocation."

Even if this court were to find that the Defendant was "in custody" and that the Defendant unequivocally invoked the right to counsel, it is the subsequent release from custody and return to his residence and the Defendant then being re-Mirandized the following day that allowed resumption in questioning. See Maryland v. Shatzer, 130 S.Ct. 1213, 1222 (2010) ("The protections offered by Miranda, which we have deemed sufficient to ensure that the police respect the suspect's desire to have an attorney present the first time

police interrogate him, adequately ensure that result when a suspect who initially requested counsel is re-interrogated after a break in custody that is of sufficient duration to dissipate its coercive effects.").

II. THE DEFENDANT'S STATEMENTS WERE VOLUNTARY

In Rosky v. State, the Nevada Supreme court held that

> "...voluntariness analysis involves a subjective element as it logically depends on the accused's characteristics. In this context, the prosecution has the burden of proving by a preponderance of the evidence that the statement was voluntary i.e. the defendant's will was not overborne. A confession is involuntary if it was coerced by physical intimidation or psychological pressure. Several factors are relevant in deciding whether a suspect's statements are voluntary: the youth of the accused; his lack of education or his low intelligence; the lack of any advice of constitutional rights; the length of detention; the repeated and prolonged nature of questioning; and the use of physical punishment such as the deprivation of food or sleep. A suspect's prior experience with law enforcement is also a relevant consideration.

111 P.3d, 690, 121 Nev. 184, 194 (2005). In order to make a determination the court must look at the totality of the circumstances. Jackson v. Denno, 378 U.S. 368 (1964).

In this case, the Defendant was twenty-six (26) years old at the time of the interview with Detectives. There's no indication that he has a low IQ. In fact, the Defendant answered all the questions appropriately, explained what each of his rights meant to him and even expressed some prior knowledge of the CIT prior to it being explained to him. The Defendant did represent any mental issues until after he confessed to minimize his culpability. As previously indicated, the Defendant was Mirandized not once, but twice over a two day period. The Defendant was never detained during the entire interview process. In the course of his first Miranda warning, and while repeatedly being told he was not under arrest, the Defendant, himself, explicitly stated that he knew he was not under arrest. (Exhibit Two, pp. 5). He was even given a ride home after the first day's interviews on March 25, 2010. The following day, prior to his confession, the Defendant stated that he got seven (7) hours sleep, ate breakfast, and was not on any medication. The Defendant was finally placed under arrest after the final interview was over. He did not complain of any

physical maladies that affected him. (Exhibit Three, pp. 19-20). The questioning was not repetitious and no deceit was used. There was absolutely no physical force or threat offered. There was no intimidation or deprivation of any kind. The Defendant had bathroom breaks and never complained for the lack of food, water, sleep or any other deprivation. The Defendant never expressed any desire to terminate any of his interviews. He never expressed any discomfort. The Defendant told detectives multiple times that he just wanted to clear his name. The Defendant also has a lengthy criminal record and, on at least two prior occasions was read Miranda rights and agreed to speak with officers.

In case C-221452 , the Defendant was convicted of Robbery. In relation to that robbery case, on April 1, 2006, the Defendant was read Miranda rights by Detective Wolfenbarger. (Exhibit Four). The Defendant was asked if he understood those rights, to which he responded "yes." Id. The Defendant was then asked if he wanted to talk, to which he responded "yes." Id. In another case, 03F20632X, the Defendant was being investigated for attempting to cash a fraudulent check. (Exhibit Three). Officer Mueller made contact with the Defendant and informed him of the Miranda rights. Id. The Defendant indicated he understood those rights and again spoke with the officer. Id.

Under a totality of the circumstances as noted above, it is clear that the Defendant's statement was given voluntarily.

CONCLUSION

The Defendant was never in custody in this case until after his confession. Therefore, the Defendant was not entitled to the rights under Miranda v. Arizona. Nevertheless, if the Defendant was entitled to such, he was given his rights, and he did not unequivocally invoke them. Finally, even if this court finds that he was not in custody and he unequivocally invoked his rights, there was a break in custody such that his subsequent Miranda warning and confession was proper.

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Additionally, the Defendant's confession was voluntarily given. The State requests this court set a Jackson v. Denno hearing to establish such.

DATED this_____day of April, 2011.

Respectfully submitted,

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY /s/ SHANON CLOWERS
SHANON CLOWERS
Deputy District Attorney
Nevada Bar #0010008

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of State's Opposition To Defendant's Motion To Supress Statement Of Facts, was made this _____ day of April, 2011, by Electronic Filing to:

PUBLIC DEFENDER
Email: pdclerk@co.clark.nv.us

/s/ T. SCHESSLER
Secretary for the District Attorney's Office

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CLERK OF THE COURT

SUPP

DAVID ROGER
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Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, -vs- KEVIN MARQUETTE GIPSON, #1582343 Defendant.	CASE NO: C264079 DEPT NO: XVIII

SUPPLEMENT TO OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS

DATE OF HEARING: 05/02/11
TIME OF HEARING: 8:15 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through SHANON CLOWERS, Deputy District Attorney, and hereby submits the attached Exhibits to Supplement the State's Opposition to Defendant's Motion to Suppress.

DATED this 27th day of April, 2011.

Respectfully submitted,

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY /s/ SHANON CLOWERS
SHANON CLOWERS
Deputy District Attorney
Nevada Bar #0010008

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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing was made this 19th day of March, 2010, by Electronic Filing to:

PUBLIC DEFENDER
E-mail Address: pdclerk@co.clark.nv.us

BY: /s/ T. SCHESSLER
Secretary for the District Attorney's Office

EXHIBIT 1

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

EVENT #: **100325-0682**

SPECIFIC CRIME: HOMICIDE

DATE OCCURRED: 03-25-10 **TIME OCCURRED:** 0545 HRS.

LOCATION OF OCCURRENCE: 7510 W. LAKE MEAD

CITY OF LAS VEGAS **CLARK COUNTY**

NAME OF PERSON GIVING STATEMENT: KEVIN MARQUETTE GIPSON

DOB:	06-26-83	**SOCIAL SECURITY #:**	430-53-6654
RACE:		**SEX:**	
HEIGHT:		**WEIGHT:**	
HAIR:		**EYES:**	
WORK SCHEDULE:		**DAYS OFF:**	
HOME ADDRESS:		**HOME PHONE:**	
WORK ADDRESS:		**WORK PHONE:**	

BEST PLACE TO CONTACT:

BEST TIME TO CONTACT:

The following is the transcription of a tape-recorded interview conducted by DETECTIVE D. LONG, P# 3969, AND DETECTIVE D. TREMEL, P#2038, LVMPD HOMICIDE SECTION, on 03-25-10 at 1520 hours.

Q. This is Detective D. Long, P#3969. I'll be taking a recorded voluntary statement under Event #100325-0682, be the investigation of a murder with deadly weapon. Date and time of occurrence is 03-25-2010. Location of occurrence is 7510 W.

Lake Mead Boulevard, Las Vegas, Nevada. It is currently 03-25-2010, at 1520 hours. We're at the ISD building. With me is Kevin Gipson, G-I-P-S-O-N, middle name of Marquette, M-A-R-Q-U-E-T-T-E. His date of birth if 06-26-83, social of 430-53-6654. He currently resides sometimes with his mother at 3630 E. Owens, Apartment 1032. Ah, that's Linda Jackson, telephone number of 488-4979, and also with his friend Denise Nelson at 824 Levy, Las Vegas, Nevada 89106. Telephone there is 522-7817. He is currently not employed. Ah, can I call you Kevin?

A. (Inaudible response).

Q. Do you realize I'm recording this?

A. Yeah.

Q. Is that okay?

A. Fine with me.

Q. All right. Um, you had a relationship with a girl by the name of Brittany Lavoll?

A. Lavoll.

Q. Lavoll. And how long has that been going on?

A. Uh, we broke up over a year ago.

Q. I mean how long's--how long you been together? When did you start seeing her?

A. Oh, we was together about five years.

Q. Okay.

A. Ah, 2004.

Q. All right. And you lived together at some point?

A. Uh huh (yes).

Q. And you have children together?

A. We got two kids.

Q. And what are their names?

A. Keoni and Khali (phonetic).

Q. How old is Keoni?

A. Keoni is four, and Khali is one.

Q. Okay. And you broke up about one year ago?

A. Yeah.

Q. Okay.

A. A little over a year.

Q. Okay. Um, tell me about...well start last night, where were you last night?

A. I--we was at Denise's house. Me, Denise and Larry. That's my friend.

Q. Larry?

A. Lindsey.

Q. Lindsey?

A. Glinsey, G-L-I-N-S-E-Y

Q. Okay.

A. And we was going to a friend house, Rosie, to play cards. We came out. We backed out the car. We backed out the driveway. We got stopped by the gang unit. They took Larry to jail, 'cause he had a warrant for domestic violence.

Q. Okay. About what time was that?

A. Oh, 11:00, 12:00 maybe. I'm not sure, but you can find it on his arrest record approximate time.

Q. Okay. All right.

A. And after that we went back in the house, and I was like well shit.

Q. So you didn't go to Rosie's?

A. Yeah, we went. I'm telling you what's...

Q. Oh, okay. All right.

A. We went back in the house and I was like well damn, my brother in jail, I really don't feel like going. She was like nah, fuck that, I'm getting wasted 'cause of that. I like well fine, I'll go. So we went to Rosie's house. It was about, I'd say a good ten, eleven people there, playing cards, drinking beers, having liquor. I played Rummy 1500 with her friend. I can't--I don't remember her name. But Rosie knows everybody. So she can verify it. To about 2:30, 3:00.

Q. Okay. Uh huh.

A. Drove home, fell asleep, whatever. Larry called Niecy, she was talking to Larry for a minute. I fell asleep. Got a phone call about little bit after 8:00 saying something happened to Brittany. I like okay, what's going on? You know what I'm saying?

Q. Who called you?

A. My mom.

Q. Okay. All right.

A. That's how I _____(unintelligible).

Q. Right.

A. That something was wrong. So she called. I was trying to find out what happened. She didn't know. She said she'd get back to me. So the only number that I knew to call was, ah, a girl named Kia. I axed [sic] her had she heard from her. She said no. I said do you know how to get in touch with her? She said no, she just calls me.

Q. Okay.

A. And I was like okay. Well when she call you, have her call me.

Q. What's Kia's number?

A. Um, I don't know it by heart.

Q. Okay.

A. It was in a phone.

Q. Which phone?

A. Um, a old cell phone.

Q. In a old cell phone?

A. Uh huh.

Q. What's the old cell phone number?

A. 502-8458.

Q. Where's that phone?

A. It's at the house.

Q. Okay. And who's that service through?

A. Metro PCS.

Q. That's at the Levy house?

A. Uh huh.

Q. Okay. Okay.

A. But that phone was not on.

Q. That's just where you have the number for it.

A. (Both talking).

Q. Okay. And so you pulled it up in that and called I from the house line?

A. The house phone.

Q. Okay. All right, go ahead.

A. She--we talked, hung up.

Q. What's Kia's last name, or how do I?

A. Jackson.

Q. Kia Jackson?

A. Uh huh.

Q. Okay. Is that how you spell Kia?

A. Your guess is as good as mine.

Q. Okay.

A. It looks right.

Q. All right.

A. And after that I stayed up 'cause I was worried, thinking about my kids, wondering if she was all right. Got a call couple hours later. Well, my brother called me, he was like everybody call? I was like for what? I ain't been no where. I got in the house, I went to sleep. I was drunk, you know.

Q. Uh huh.

A. I got in the house about 3:00, tired, you know, threw my clothes off, went to sleep. Got the phone call at 8:00, and that's how I found out.

Q. Right. And your brother, who's your brother?

A. Isaiah. Well he's, he's my cousin, but he like a brother to me.

Q. Okay. Do you--what's his last name?

A. Martin.

Q. Was he at the party?

A. No.

Q. Okay. How would I get a hold of Isaiah?

A. 628-2007.

Q. Okay. And what--how do I get a hold of Rosie?

A. I don't, I don't know the number by heart but Niecy knows everybody number. Denise.

Q. Okay.

A. And they'll verify where I was at, and what happened.

Q. Okay. And Denise spent the night with you when you got home at 3:00?

A. Yeah.

Q. She stayed in the house?

A. She stayed in the house.

Q. Okay. Anybody else in the house?

A. Just the kids.

Q. Okay. Uh, Rosie, whereabout does she live?

A. Cheyenne and Martin Luther King, but it's not Martin Luther King. It's the street right after Martin Luther King. So you saying this--Martin Luther King, that street...

Q. Simmons...Simons...Simmons?

A. (Both talking).

Q. Is it to the west or to the east?

A. West...east.

Q. To the east.

A. East this way, right?

Q. Ah, yeah.

A. Yeah, east.

Q. East. Um, Martin Luth--sheez. Uh, okay. We'll work on it. All right, so it's out there somewhere. All right. Um, why did you and Brittany break up?

A. I was cheatin'.

Q. Oh, okay. With who?

A. A girl name _____(unintelligible). (Laughs) Key-Key-Keyona-Kiana...Kiana.

Q. Kiana? Okay. And this is about a year ago?

A. Yeah, a little over a year.

Q. How would you describe your relationship with her?

A. It was cool. And I was cheatin' though.

Q. Yeah, I get that. Um, were you guys--did you guys become verbally angry at each other? Yell at each other?

A. Yeah, she would yell.

Q. Okay, what about you?

A. I would just tell her--I would just call her, like I would play jokes with her. Like _____(both talking).

Q. Would she get mad?

A. Yeah.

Q. Okay.

A. She got tired of it. So she left.

Q. Okay. Did you ever get physical with her?

A. (Inaudible response)

Q. Did you ever hit her?

A. Huh uh.

Q. No?

A. No.

Q. Okay. Have you--the police ever come out?

A. No, never.

Q. Okay. Um, have you ever made threats to her?

A. Never.

Q. Nothing like that?

A. (Inaudible response)

Q. Okay. If she would of told somebody that you had threatened her that would be a lie?

A. I don't see why she would say that.

Q. Okay, I'm just saying...

A. She did dislike me though. (Laughs)

Q. Okay.

A. So she could say anything.

Q. Did you call her often, call her at work?

A. I really didn't call her that much at work, but I had stopped calling her for like five months. In the beginning I called her like 'cause I wanted to get back with her, and after that, I stopped.

Q. Okay.

A. I didn't even call her at work.

Q. She get a new boyfriend?

A. Uh huh.

Q. Who's that?

A. Some guy named Kevin.

Q. Kevin? Do you know his last name?

A. Nah.

Q. Do you know where he is now?

A. Huh uh.

Q. Okay. Um, did you just recently start calling her again?

A. I don't have any number on her.

Q. Okay. But you didn't start calling her at work or anything like that?

A. I called her at work.

Q. Recently?

A. At Jack-in-the-Box, the 649 number says she don't work there no more, so.

Q. Okay.

A. That's it.

Q. Did--what I'm saying is so you didn't start calling her recently?

A. I only called her one time.

Q. Okay. There was not more than one phone call?

A. 'Cause I didn't see my kids.

Q. Okay.

A. And I was trying to get in touch with her 'cause of my son's birthday.

Q. When is that?

A. March 23.

Q. Okay. Um, so did you have the birthday together with him?

A. I didn't see him. I didn't talk to him. I haven't talked to her.

Q. Okay.

A. I haven't talked to her. She called me on the, the 12th. That's how I got __(unintelligible) number. We talked for 45 seconds. She was gonna bring the kids by, but she never did.

Q. Okay.

A. That's the last time I talked to her.

Q. And how long ago was that?

A. The 12th of this month.

Q. Okay. About two weeks ago.

A. The last time I talked to her.

Q. Okay. Did you see Keyone about two weeks ago?

A. Uh huh.

Q. And where was that?

A. She brung him to my house.

Q. Okay. Um, all right. And there was--you didn't make any threats?

A. Nope.

Q. Anything like that?

A. Nope. I got--she gave me his bed, and my mom was right there. My whole family was right there. They'll tell you.

Q. Well, I'm talking about phone calls.

A. Oh, no.

Q. Nothing like that? Okay. We're getting people that were...that's why we wanted to talk to you, is because we're getting people that are telling us that you were calling her.

A. Well they would say that.

Q. Why would they say that?

A. I don't know. Her mom never liked me. She, she said I stole some money from her long time ago. She didn't like me from the jump. And we always got into it.

DT (DON TREMEL). That's, that's why we talk to you and get your side because if we believed everything everybody told us already, you'd been handcuffed and on your way to jail. So that's why we gotta find out what's going on.

A. She never liked me. She, she, she wouldn't talk to me. She wouldn't even come in the house. I say hi to her and she wouldn't say nothing back. So I _____(unintelligible).

Q. Okay. How do you feel about Brittany being dead now?

A. Hurting. I cried, but you know. _____ (unintelligible) my kids' mom.

Q. Okay. Who do you think did it?

A. I have no idea. I'm not in her life no more. We barely talked.

Q. If you were to guess, who would you, would you think did it?

A. I have no idea.

Q. Nothing. You have no ideas?

A. I don't know _____ (unintelligible) with.

Q. Okay.

A. Me and her didn't even socialize.

Q. Okay. It, ah, the way it was done is, is personal, and so it--I get the feeling from it that it's somebody that was close to her. How did she--how is her relationship with the other guy?

A. I don't know. I never talked to him.

Q. Okay.

A. I don't know nothing about that.

Q. What did Kia tell you?

A. She didn't tell me nothing. She just said that she was--she talked to her yesterday, and she would have her call me. We didn't talk that long.

Q. Okay. You talked to her today though?

A. Yeah. After my mom called me.

Q. And what did Kia say then?

A. She didn't say nothing. She said she haven't talked to her, and I was like well, you know, she okay? If anything happened to her. My mom, who just called me, saying something happened.

Q. Okay.

A. Do you know how to get in touch with her. That's--and she was like no, she calls me. And I was like do you know where she work at? She said no.

Q. Okay. Do you own any guns?

A. No sir.

Q. When was the last time you handled a gun, actually picked one up?

A. I haven't picked up a gun.

Q. How long?

A. Since I was a teenager.

Q. Okay. So you haven't had a gun, you haven't fired a gun, and haven't been in contact with a gun in a long time.

A. Exactly.

Q. Nothing in the last three days?

A. Huh uh.

Q. Okay. Um, would you mind if we took a test on your hands to see if there's any substance from a firearm?

A. Sure.

Q. Okay. Um, did you kill Brittany?

A. No sir.

Q. Okay. Um, would you be willing to take a polygraph?

A. I was watching the show, and they say them things aren't accurate.

Q. We're not gonna present it in court. All I wanted you to do is take one of these to prove it to me. I can't take it to court, it will not prove you as guilty, it has nothing to do like that.

DT. (Both detectives talking at the same time.)

Q. All I'm trying to do is get past you. I wanna...if, if you did it, then I wanna talk to you some more. If you didn't do it, then I'm done with you, and I can move on. That's what I'm asking. Will you help me in that way?

A. (Both talking).

Q. I know, I can't take it to court.

A. (Both talking).

Q. It was not prove your innocence or guilt. I can't show it to anybody. All I wanna do is you prove to me that you didn't kill her. That's it. That's, that's the grand total of why I would want you to take that.

A. I know, but if it's not accurate...

Q. Well don't--I--I--what I can't do is I can't take it to court. I can't prove it to anybody. If it shows that you did shoot her, then I'm gonna actually have more questions for you. But I can't take it to anybody _____(both detectives talking)

DT. (Both detectives talking at same time.) Basically what it is, is it's an investigative tool.

Q. That's it.

DT. We give you a polygraph, and you pass it, we're done. Okay? That's the last time you're gonna see us. If you fail it, and the examiner says there's some form of deception in any of the questions he's asked you, then of course, you know, we, you

know, we can't, we can't move on. We have, we have to _____(both detectives talking at the same time.)

Q. _____(both detectives talking at the same time) trick you. I'm gonna tell you exactly what the question is gonna be before you take it. You'll know exactly what's going on. Um, if you're uncomfortable with it, you don't have to answer it. But the question I wanna ask you is did you kill Brittany?

A. No, I didn't.

Q. Okay. That's all...I want you to do it on the machine. If it says you're being truthful, I'm done with you, and I can move onto the next one.

A. I know but if it's not accurate, then how am I suppose to, you know what I'm saying, I don't wanna _____(both talking).

Q. It's just between...this is really just between you and me. It will never go anywhere else.

DT. If you fail the polygraph then we can't, we can't exclude you as a suspect, and we still have to investigate you further. If you don't...

Q. I'm trying to exclude you.

DT. ...if you don't take a polygraph we can't exclude you as a suspect, and, and, and still have to investigate you further. It doesn't mean, it doesn't mean that the polygraph test comes back and says well hey, Kevin's been untruthful with you, it means we're gonna hook you up and take you to jail. We can't do that 'cause they're

inadmissable in court. Alls it is, is a tool for us to move on, or we gotta dig a little deeper is all.

Q. That's what we wanna do is we wanna move on. We wanna eliminate you, and find out who the next one is. The way a homicide investigation works is you start at the inside. So the people that are closest to the victim are the people we start with, and it's gonna upset people, and we understand that. But we need to eliminate from the inside out. And you were obviously one of the people that's closest to her. So we wanna start with you. Especially when people tell us that you made threats to her.

A. That's a total ___(unintelligible). They bullshittin'.

Q. Okay. All right. But you gotta still get it from my point of view. Right? I don't know you.

A. 'Cause I...

Q. And you talk to me straight in the eyes, you're, you're pretty straight forward to me, um, I wanna move away from you. I wanna say okay, he didn't--nothing there. _____(both detectives talking at the same time).

DT. You cooperate, you pass the polygraph test and we're, we're barking up the wrong tree, we gotta move on.

A. So when do I take the test?

Q. Uh, we can do it whenever. We can do it right now if you want.

DT. We got this _____(unintelligible) schedule it, but I mean we probably could, you know, pull a few strings, I don't know. But...

Q. I don't either. We can make a phone call.

DT. Yeah.

A. Let's schedule it.

Q. All right, we'll do that. Good, I appreciate that.

DT. Is she, ah, have you ever had a protection order or a restraining order served against you by her, or anybody in her family?

A. No sir.

DT. There's been no protective order?

A. No. I never been served with anything.

Q. What kind of car does Nicey--Niecy have? When you went to Rosie's what kind of car were you in?

A. (No response)

Q. What color car was it?

A. Tan.

Q. Tan car?

A. Yeah.

Q. Four door car?

A. Four door.

Q. Older, newer?

A. Think in the 2000's.

Q. Okay. Is it Niecy's car?

A. She say it is.

Q. Okay. (Laughs) I'm just--I'll know. I just need to verify. The more I can verify that you tell me, the better. Um, were you on a CAT bus at all today?

A. No sir.

Q. Okay. Okay. Um, do you have any other clothes at Niecy's?

A. This it. This all I got.

Q. That's it. Okay.

A. 'Cause I really wasn't gonna stay but then one day turned into two, and two turned into three, and you know, so I just kept _____(detective talking over).

Q. You were getting along and everything's good, huh?

A. Uh huh.

Q. Okay. And Niecy just has the one car?

A. Uh huh.

Q. Okay. What did Larry go to jail for, warrants?

A. Yeah.

Q. Okay. And did you get patted down by the gang guys?

A. Uh huh.

Q. So they patted you down, everything. This is prior to you going out?

A. Yeah.

Q. Okay. Good.

DT. If, if I were to go and get a DNA sample, it's a kit that we have, it's not needles, just like a little toothbrush, swab the inside of your cheek, would you provide us with a DNA sample?

A. Sure.

DT. Okay. I'm gonna go do that, and it's, it ain't gonna hurt at all. It's not like we gotta draw blood. It's like a toothbrush. You know we're gonna give you the thing and you're gonna get some saliva on _____(unintelligible).

Q. Okay.

DT. I'll be _____(unintelligible).

Q. That'll be the end of the interview. It's 1535 (tape ends in middle of sentence).

THIS VOLUNTARY STATEMENT WAS COMPLETED AT 4750 W. OAKEY ON THE 26TH DAY OF MARCH, 2010 AT 1535 HOURS.

DL:DT:sd
10V0387

EXHIBIT 2

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 1

EVENT #: **100325-0682**

SPECIFIC CRIME: HOMICIDE

DATE OCCURRED: **TIME OCCURRED:**

LOCATION OF OCCURRENCE:

CITY OF LAS VEGAS **CLARK COUNTY**

NAME OF PERSON GIVING STATEMENT: GIPSON, KEVIN

DOB:	**SOCIAL SECURITY #:**
RACE:	**SEX:**
HEIGHT:	**WEIGHT:**
HAIR:	**EYES:**
WORK SCHEDULE:	**DAYS OFF:**
HOME ADDRESS:	**HOME PHONE:**
WORK ADDRESS:	**WORK PHONE:**
BEST PLACE TO CONTACT:	
BEST TIME TO CONTACT:	

The following is the transcription of a tape-recorded interview conducted by POLYGRAPH EXAMINER GEOFFREY FLOHR AND DETECTIVE DAN LONG, P# 3969, LVMPD HOMICIDE Detail, on at hours.

Q: _____. _____. Hey.

A: How you doing?

Q: I'm Geoff Flohr. How you doing man?

A: Kevin Gipson.

(2)

Q: Nice to meet you. Come on in here. Kevin have a seat right there. Just to let you know everything is being audio and video recorded from this point forward. Okay? Just so you know that. Alright?

A: Mmm hmm. Okay.

Q: Good. Okay. Before we get going here today, because this investigation involves the death of an individual, uh, I have to advise anybody that sits in that chair of their rights. Okay? Number one. You have the right to remain silent. Tell me what that means to you.

A: That I don't gotta say nutten [sic].

Q: That's right. All you gotta do is say, 'You know, Geoff, I don't wanna talk anymore' and we're done. I won't get angry. I'm not gonna get upset. Okay. Uh, anything that you say can and will be used against you in a court a law. Tell me what that would mean to you.

A: Whatever I say y'all gonna use it against me.

Q: If you were to say anything in here about this case, okay, and ultimately be charged in this case, uh, I could be subpoenaed and then have to testify to everything that you said. Okay. Um, you have the right to have an attorney with before or during any questioning, and if you can't afford an attorney, attorney would be appointed to represent ya [sic] at public expense. Do you understand that right?

A: Shouldn't I have a attorney for this?

Q: Well, that's up to you.

DL (DAN LONG): Completely up to you.

Q: That's completely up to you.

A: Oh, okay. Think I seen a story on the history channel about these things and they not always accurate.

Q: Well, the examination that I'm gonna provide you with today is not about deception. It's about knowledge. Okay. So all the questions that I'm going to ask you on this thing would only be know by the person that did this. If you didn't do it, you won't know any information about this case. Does that make sense to ya? So anyway, you understand the right about the attorney?

A: Mmm hmm.

Q: Okay. If you waive your right to remain silent and later change your mind all questioning will stop. Tell me what that means to ya.

A: I'm, I'm not sure.

Q: Okay. If you agree to talk to me and say, hey Geoff, I'll start out talking to ya, and you change your mind and say 'Oh, I don't wanna talk to you anymore.' All you gotta do is just say, 'Geoff, I don't wanna talk anymore,' and all questioning is gonna stop. Okay. Do you understand that? I need a verbal.

A: Oh, yes.

Q: Okay. Um, if you waive your right to have an attorney present and later change your mind, the questioning will stop until you've had a chance to speak with an attorney. Do you understand that right? What's it mean to ya?

A: I can get a attorney if I want one.

Q: Yeah. At any point in time. You could say 'Hey, you know what Geoff. Before we go any further, I'm gonna want an attorney.'

A: Mmm hmm.

Q: You just gotta verbalize that to me. I'm gonna stop. I won't get angry. I won't get upset. Okay. We'll just stop.

A: Well, could I get a attorney then?

Q: It's up to you.

A: I just wanna ax [sic] him a couple questions before I take this.

Q: Okay. Okay. We'll be with you in just a second.

A: I mean, I'm not opposed to taking it. I just wanna get some counsel about this cause I don't _____ (inaudible).

Q: Okay.

A: ...not sure about that.

Q: Alright. Okay.

A: _____.

Q: Okay. We understand.

A: I, I seen the show man. It's got me skeptical about this.

Q: Okay.

(Sound of Geoff leaving the room, door opening/closing) (pause) (Geoff returns) Yeah. Okay. Do you have a name of an attorney that you need to call or, or you wanna contact?

A: I thought y'all was gonna provide me one.

Q: _____. (Inaudible) If you're charged in this investigation...

A: (Both talking-inaudible)

Q: ...yeah. When, if you're charged in the investigation, okay, and you don't have the funds to have an attorney then one would be provided for ya. Uh, right now this is in the investigative stage as I understand at this point. So if, if you know a name of an attorney we'll provide you with a phone and you can make a phone call and talk to him about it and make a decision on what you wanna do.

A: I don't understand.

DL: We're, we're not arresting you.

A: _____. (Both talking-inaudible)

DL: You're not under arrest.

A: Yeah. I know that.

DL: So we don't provide you an attorney for you because you're not under arrest.

Q: You're not under arrest.

Q: If you have an attorney you wanna consult with, then you can consult with...because this involves a criminal investigation and because it involves this type of, ah, ah, information test, okay, examination here. Um, we have to advise you of these rights. So if you say to me 'Hey Jeff, you know what, I think I wanna talk to an attorney before I go in through this process here'. Um, then I have to stop, mmm, and afford you that opportunity to go ahead and go, go do that if that's what you wanna do. Um, but like he said, you're not under arrest at this point so we don't have to provide you with an attorney, but we can provide you the means to make a phone call here tonight if you want.

DL: Absolutely.

Q: To call an attorney and talk to him.

A: I don't know any attorney's.

Q: Well, give him a phone book I guess, if you wanna call. What do you wanna do?

A: I wanna make sure this is right.

Q: The examination that you're going to go under is called concealed information test. Okay. And basically it's based on knowledge. If you didn't have anything to do with this you wouldn't know specific information about this case. That's what this is gonna involve.

A: Come on. Let's get it over with.

Q: Okay. Hold on for just a second. Alright. So, you're telling me Jeff you know what, you don't wanna consult with an attorney at this point? Verbalize that to me so...

A: No.

Q: No. You don't. It's okay to continue?

A: Yeah.

Q: Okay. Hold on for just a second. (Leaves room) (pause)

A: _____(inaudible)

Q: (returns to room) Okay. Here's the deal. I wanna give you an opportunity here tonight to, to leave. Okay. So what I'd like to do is I wanna administer, ah, this examination, the concealed information test, tomorrow at noon. Okay. So, I'm gonna kick you outta [sic] here. These guys will come and pick ya [sic] up and bring you on down here if that's alright with ya [sic], tomorrow morning, and I'll see you here at noon. Well enough?

DL: Tomorrow noon. (Laughs)

Q: Yeah. Tomorrow. Tomorrow at noon.

A: _____ (both talking-inaudible)

DL: Because if they, the, the, they, I mean, you, you wanna consult with, go consult with attorneys.

Q: Yeah. We got, we gotta give you that opportunity. That's the right thing to do. Okay. If, if, if you didn't have nothing to do with this I'll get you through this thing.

Okay. It's not that hard. It's not that long. Okay. And it's definitely not gonna be what you see on t.v. Okay.

DL: No.

Q: It's a completely different type of format. Alright?

A: Cause this gave me a little...

Q: No. It, it, that's fine. Yeah, I understand that. But, I'm, the, the questions I'm gonna ask you are gonna be questions that have direct information about the incident, okay, that only the person that would've done it would know about.

A: Mmm hmm.

Q: Does that make sense to you?

A: That makes sense.

Q: Okay. So it's very simple. It's based on knowledge. Okay. So it's very simple. I'll explain it to you and still all your rights will apply tomorrow too, just like here today. And then there's some polygraph rights the, that I have to advise you of, okay, in, in regards to this, this test, and I'll, uh, I'll do that tomorrow. Okay?

A: Okay.

Q: Alright.

DL: So I'll come pick you up then like 11:30 tomorrow.

A: That's fine with me.

Q: Cool? Excellent. Alright. Good job.

DL: And I'll take you home right now.

Q: I'll see you tomorrow.

A: What changed y'all [sic] mind?

Q: Well because of the fact that you're, ah...

DL: Because you asked.

Q: ...you're a little, _____(both talking-inaudible), and we gotta do the right thing.

Okay? Alright.

(Statement ends)

THIS VOLUNTARY STATEMENT WAS COMPLETED AT ON THE DAY OF , AT HOURS.

GF/DL/jc
10V0657

EXHIBIT 3

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

CONCEALED INFORMATION TEST

EVENT #: **100325-0682**

SPECIFIC CRIME: HOMICIDE

DATE OCCURRED: 03-25-10 **TIME OCCURRED:** 0545 HRS.

LOCATION OF OCCURRENCE: 7510 W. LAKE MEAD

CITY OF LAS VEGAS **CLARK COUNTY**

NAME OF PERSON GIVING STATEMENT: KEVIN GIPSON

DOB:	**SOCIAL SECURITY #:**
RACE:	**SEX:**
HEIGHT:	**WEIGHT:**
HAIR:	**EYES:**
WORK SCHEDULE:	**DAYS OFF:**
HOME ADDRESS:	**HOME PHONE:**
WORK ADDRESS:	**WORK PHONE:**
BEST PLACE TO CONTACT:	
BEST TIME TO CONTACT:	

The following is the transcription of a tape-recorded Concealed Information Test conducted by Polygraph Examiner Geoffrey Flohr, P#12912, LVMPD, on 03-26-10 at 1157 hours. Also present is Detective D. Long, P#3969, LVMPD Homicide Section.

Q (GEOFFREY FLOHR). ...advised of your rights again.

DL (DAN LONG). Okay.

Q. It is the 26th, right?

DL. Huh?

Q. Today's the 26th, right?

DL. Correct.

Q. Today's date is, ah, March 26, 2010. It's 11:57 am, and this is concealed information test involving Kevin Gipson. Okay, Kevin.

A. See I thing I know about these is they go off your heart rate.

Q. That's okay.

A. I got a irregular heartbeat. My heart always...

Q. Okay. You're not gonna have to worry about that, okay? This is different than anything that you've ever seen on TV.

A. What is it?

Q. Okay, I'm gonna explain it to you here in a second. Let's go through your rights though. Okay? 'Cause this is a criminal investigation again, I have to advise you of your Miranda Rights. Okay?

A. Uh huh (yes).

Q. Number one, you have the right to remain silent. Tell me what that means to you.

A. I ain't gotta say nothin'.

Q. That's right. At any point in time you can say Geoff, I don't wanna talk. We're done, stop right where we're at, out we go. Okay? Anything that you say can and will be used again you in a court of law. Tell me what means to you.

A. Whatever I say that'll be used against me.

Q. Right. If charges should be brought in this investigation against you, I can be subpoenaed and I have to testify to what you may have said to me. Okay? You

have the right to have an attorney present with you before or during any questioning, and if you can't afford one, one will be appointed to represent you at public expense. Do you understand that?

A. Sure.

Q. Okay. If you waive your right to remain silent, and later wish to stop answering questions, the questions will stop. Tell me what that means to you.

A. If I don't wanna say nothing I don't have to.

Q. Right. If you decide you're gonna talk to me, and then you change your mind, all you gotta do is just say Geoff, I don't wanna answer anymore questions, and we're done. Okay? If you waive your right to have attorney present and later change your mind, all questioning will stop until you've had a chance to speak with an attorney. Tell me what means to you.

A. I _____(unintelligible).

Q. Right. All you gotta do is just say hey, Geoff, I wanna talk to an attorney before I go any further, and I'm done. Okay? Do you understand each of these rights, Kevin, that I've advised you of?

A. Uh huh (yes).

Q. Are you willing to waive them at this time, and continue this, ah, interview with me here today?

A. Sure.

Q. Okay, great. You satisfied?

DL. Yes sir.

Q. You're out of here.

(DETECTIVE LONG LEAVES INTERVIEW)

Q. Kevin, if you would do me a favor, what I'm gonna ask you to do is I'm gonna ask you to print your name right here. Okay? Then I'm gonna read each one of these things. Okay? And as I go through 'em I'm just gonna ask you to check 'em off on the side, you know just a check-mark. Okay? And make sure that I cover everyone of 'em, and that I don't miss any, and that you don't have any questions. Okay? If you decide you wanna continue, down here is where you're gonna sign. I'll give you the date and time, and then I'll sign my name at the bottom as the witness. Okay? All right. There you go, bub. Sign here. Print your name right there. I'm gonna read each one, okay? Just do me a favor and print your name on that first line. Okay. The first paragraph says I, Kevin, Gipson, do hereby voluntarily consent to be examined by the instrument for the purposes of determining if I possess any concealed information surrounding this police investigation. I am in good health, and I know of no reason why I cannot proceed with this examination. If that's accurate, I need you to just check it off on the side. If you have any questions let me know.

A. What does that mean?

Q. What does this mean?

A. Uh huh (yes).

Q. The examination that I'm going to give you today is called a concealed information test. Okay? And what it's gonna determine is whether or not you have any concealed information, involvement in this case. Okay? All right. And it also says that you're in good health as of this moment right here, and that you don't know of anything that can't--that would preclude you or keep you from taking this exam. Okay? You wanna check if off there on the side?

A. Which side, this side?

Q. Either one. I don't care, whatever. Now you've never had this type of a, a examination before, right?

A. No sir.

Q. Okay. So what I'm gonna do is I'm gonna explain this components, tell you where they're gonna go on your body. Okay? These two components right here, Kevin, they're gonna be attached to your chest wall, basically above and below your heart. It's gonna let me know what's going on with your breathing. Okay? These components right here, they're gonna be attached to your finger. That's gonna tell me what's going on with your sweat. Okay? This one right here, that's gonna be attached to your finger also. It's gonna shoot that little beam of light through the tip of your finger, and that's gonna let me know what's going on with the volume of

blood in the tip of your finger. Okay? This right here, is going to be your blood pressure cuff. That's gonna go on your thumb. Okay? I choose to use this one as opposed to the ones that most people are com--ah, familiar with, the arm one, because this doesn't have any significant level of discomfort with it, and it'll allow me to get through the examination a heck of lot quicker. Okay? This pad right here, and these pads right down here, when we go to do the examination they're gonna be out on the chair. They're designed to let me know if you're moving in a chair when I'm asking you to sit still. Okay? All right. So next one reads this way, go ahead, grab your clipboard there. I've had the details of this examination explained to my satisfaction, and voluntarily give me permission for the necessary instrument components to be attached to my body. If that's accurate, check it off. If you have any questions let me know. I further understand that I have the right to stop this examination at any time. If that's accurate, check it off. If you have any questions let me know. Okay? And the next one says, ah, this examination will be audio and video taped. Right up there's the camera. Okay? Everything's being taped. Okay. And the final one says I've read this agreement form, and completely and fully understand it's contents. If that's accurate, check it off. If you have any questions let me know. In order for us to continue, I need your signature right here. Underneath it today's date, March 26, and it's now 12:03 p.m. by my clock, on my phone here. And I'll sign as a witness. _____(inaudible) Let me tell you a little

bit about my background, okay? You were brought to me specifically. Okay? And it's because of my background. Right? I been in law enforcement, ah, going on my thirty-third year now. Okay? Uh, I started out in a sheriff's department in the upper Midwest, ah, outside of Detroit. I worked there for about four and a half years. Ah, then I was hired by the Michigan Department of State Police, and I spent the next 25 years, uh, or so with them. Okay? I spent a total of about 22 years on the street. Okay? The majority of it was, ah, spent within 25 miles of downtown Detroit, if not in the city itself. So I'm real familiar with the urban policing environment. In Michigan when you, uh, become a trooper, uh, you are taught and trained how to handle everything from smashed mailbox complaints all the way to and including homicides. _____ (unintelligible) of a homicide, you won't see a detective unless you ask for one. So you pretty much handle each investigation by yourself. The reason you're here with me is because I have an extensive background in, in, in administering these types of examinations, ah, with regards to homicides and cold case homicides. Okay? So that's why you're here with me today. All right? I wanna give you some rules about how you and I will interact in here today. Would that be all right?

A. Sure.

Q. I want a promise from you that you're gonna be a hundred percent truthful with me here today. You won't leave any information out. Will you do that for me?

A. Yeah, sure.

Q. Okay, great. If I ask you a question that you don't understand, if I misinterpret something that you tell me, or I cause you an confusion, I am giving you permission to confront me about it. Okay? I won't get angry. I'm not gonna get upset, and it's not gonna affect this examination here today. It's just gonna insure that you and me stay on the same page at all time with regards to this investigation, and, and this examination. Okay? Flip side of the coin, if I see or hear something, you say I don't understand, sounds wrong to me, or causes me confusion, can I have your permission to confront you about it?

A. Uh huh (yes).

Q. Okay. I want you to do well here today. That's the goal. If you don't possess any intimate knowledge about this case, okay, then you're gonna be fine here. All right? These questions that you're gonna be asked are about information that has not been released. The only person that would know anything about it was the person that was there and did it. Does that make sense? Okay, real good. Now, if you need a break, you're gonna have to verbalize it to me. Just say hey, Geoff, I need a break. All right? Um, when we get to the examination, I'm gonna give you a set of specific physical instructions. I want you to promise that you'll just listen to what I tell you to do and follow my directions, just the way I give 'em to you. Will you do that for me?

A. Uh huh.

Q. Okay. Answer me this. How do you want me to treat you in here today?

A. Whatch you mean by that?

Q. Think about it. What do you think? How do you wanna be treated in here today?

A. With respect.

Q. Okay. So that's what I hear you saying. I hear you saying hey, Geoff, you know what, uh, make sure this examination is done right, make it fair, make it, make it ethical. There's no reason to yell and scream at me. Okay? I'm a big guy, you know. Don't have to worry about. How old are you now?

A. Twenty-six.

Q. Yeah, 26. You're about, ah, the age of my youngest boy. Um, and you know what, Geoff, I want you to know that I am nervous about this, but it doesn't mean that I'm gonna try to hide anything from you. It's just that I'm nervous. Okay?

A. Uh huh (yes).

Q. All right. This, this test will, uh, work without the fact that you're...or with the fact that you're nervous, because it's not about any sort of level of deception. It's about knowledge. Okay? So it's, it's different than any type of examination that you may be familiar with. Okay? All right. Um, let's do this. Why don't you tell me everything that you do know about this case, and where you got that information from.

A. I told you everything I know.

Q. You haven't told me.

A. About the day I did it?

Q. The day that you did what?

A. The day I did, uh, tell y'all about everything I know. Yesterday.

Q. No. You didn't tell me. You didn't talk to me yesterday. ____(both talking).

A. ____(both talking) the whole story again.

Q. Well, what I want you to do is just tell me what you do know about this case. That's what I want you to do.

A. I know that my parents said the dude was like 5'8".

Q. Okay.

A. ___(unintelligible).

Q. Anything else?

A. (No audible response)

Q. That's it? No other information about the case?

A. It's only been a day.

Q. Well, I'm, I'm, well, I don't know what you do or don't know. Okay? So I need to know that. That's all.

A. I don't know nothing.

Q. Okay. All right. So all you know right now is what you're telling me is that the individual that did it was about 5'8", and wore what?

A. A hoodie.

Q. A hoodie? Any particular color or anything like that?

A. (No audible response)

Q. Where, where did, where did this information come from?

A. From my mom.

Q. Your mom? Okay. Anything else?

A. That she's been threatening to kill me.

Q. Okay.

A. But I ain't did shit though.

Q. Okay. All right, cool. Um, what I, what I do wanna do is this. I want go over these questions with you. Okay? And once we agree on the questions, okay, that you understand what I'm asking you to do, okay, they won't change. There won't be any surprise questions in this process. Okay? Does that make sense to you?

A. Uh huh (yes).

Q. All right, great. All right. One of the questions that I'm gonna ask you to do, and this is how the questions is gonna, is gonna read. It's gonna have a statement, and then I'm gonna ask you to repeat a series of words after me. Okay? So it's gonna sound just like this. This will be one of the questions that I'm going to, uh, ask.

Okay? (Pause) What's going on here? (Pause) All right, here's one of the questions I'm going to ask you. Okay? If you were involved in the death of Brittany you would know what caliber of weapon was used. Repeat after me. Okay? So that'll be the first thing that you hear come out of my mouth. All right?

A. I was involved?

Q. If you were involved in the death of Brittany you would know what caliber of weapon was used. Repeat after me. And then what I'll do is I'm going to say .45. You'll say .45. I'll say .40. You'll say .40. I'll say 9. You'll say 9. I'll say .25. You'll say .25. I'll say .22. You'll say .22. I'll say .38. You'll say .38. Do you understand that question?

A. Okay.

Q. Okay. So let's just go a dry run, all right? You're not connected to anything. I just wanna make sure you understand the question. Okay? All right. If you were involved in the death of Brittany you would know what caliber of weapon was used. Repeat after me. .45.

A. .45.

Q. .40.

A. .40.

Q. 9.

A. 9.

Q. .25.

A. .25.

Q. .22.

A. .22.

Q. .38.

A. .38.

Q. Okay. You understand that question?

A. (Inaudible response)

Q. Okay, very good. Now the only person that would know what the caliber was would be the person that did the shooting. Would you agree?

A. ___(unintelligible).

Q. Okay. Next one, if you were involved in the death of Brittany, you would know where she was shot on her body. Repeat after me. Lower back.

A. Lower back.

Q. Chest.

A. Chest.

Q. Stomach.

A. Stomach.

Q. Neck.

A. Neck.

Q. Head.

A. Head.

Q. Leg.

A. Leg.

Q. Do you understand that question?

A. Yeah.

Q. The only person that would know that would be the person that did it and was there. Do you agree?

A. Yeah.

Q. Okay, very good. If you were involved in the death of Brittany, you would know how many shots were fired. Repeat after me. Five.

A. Five.

Q. Four.

A. Four.

Q. Three.

A. Three.

Q. Two.

A. Two.

Q. One.

A. One.

Q. Six.

A. Six.

Q. You understand that question?

A. Uh huh.

Q. The person that did the shooting, can I get you to agree would know exactly how many shots they fired.

A. Uh huh (yes).

Q. Okay, very good. The next question. If you were involved in Brittany's death, you would know the last location of her body. Repeat after me. Behind the counter.

A. Behind the counter.

Q. Dining area.

A. Dining area.

Q. By her vehicle.

A. By her vehicle.

Q. On Lake Mead.

A. On Lake Mead.

Q. Outside the front door.

A. Outside the front door.

Q. Outside the back door.

A. Outside the back door.

Q. Okay. You would agree that the person that did this would know where her body was after he shot, would you agree?

A. Uh huh (yes).

Q. Okay, very good. And the final question we're gonna ask will be this. If you were involved in the death of Brittany, you would know what item of Brittany's was found near the Jack-in-the-Box. Repeat after me. Purse.

A. Purse.

Q. Wallet.

A. Wallet.

Q. Jewelry.

A. Jewelry.

Q. Money.

A. Money.

Q. Keys.

A. Keys.

Q. Watch,

A. Watch.

Q. You would agree that the person that did this would know that there was a piece of property that was left, agreed?

A. Agree.

Q. Okay. Now, do you understand each one of these questions?

A. Uh huh (yes).

Q. That I've asked you? Do you possess any intimate knowledge about this that you have not revealed to us at this point?

A. No.

Q. Okay, very good. If I could get you to do me a favor, and move over to this chair, take off your shoes. Okay? Leave your socks on. Now what I'm gonna ask you to do, Kevin, when you come back here, is I'm gonna ask you to remain standing. You're gonna put one foot in the middle, one foot on the outside of the pads, remain standing, and face me. Okay? Thank you. Very good. Excellent. Alrighty. All right. Okay, with your right hand here, I want you to grab the chain, pull it around your back some. Other way. And bring it out here. Wonderful. Okay, that's good, I got it. It'll feel a little tight at first. That's normal. Okay? Same thing. Wonderful. Okay, you can let it go. Thanks. Beautiful. Okay, have a seat in the chair, all the way to the back. Oh, popped it right off of that shirt of yours. I was afraid that was gonna happen. Let's try it again. Your shirt's kinda thick up there. Thanks. Okay, go ahead and have a seat. Wonderful. Feet on the pads, please. Okay, great. Take this hand and place it on top of your head for me that'd be great. Okay. Go ahead and drop it down. Okay, the next three components that I placed on you are gonna be very sensitive to movement. Okay? What does that mean?

A. Sensitive to movement.

Q. Yeah. Also means don't move during this examination. Okay?

A. Uh huh (yes).

Q. (Whistling) Okay. Thank you. Okay. What we are looking for during this examination is whether or not the person possesses concealed information about evidence that has not been released. Okay?

A. Uh huh (yes).

Q. So what we will do is look at your body and see whether or not there's any recognition. Does that make sense to you?

A. Uh huh (yes).

Q. Okay. Good. Now grab that. The thumb will get a little numb, kinda feel like it's falling asleep. That's normal. Okay? I don't want you to move it because it's very sensitive to movement. Okay?

A. Uh huh (yes).

Q. All right, you're gonna feel some air come in there. That's as much as would ever be in there. That's not so bad, is it?

A. (No audible response)

Q. I'm gonna take a whole bunch out, 'cause I don't need that much in there. I just need to make sure that I get a good seal. During a polygraph, here are the instructions that I'm going to give you. I'm going to ask you to remain absolutely

still. Okay? I'm gonna ask you to keep your eyes gently closed. All right? And then we're gonna go through these questions. In a couple seconds here I'm going to ask you some health questions and make sure you're okay to take the exam today, and then we'll go right into the exam. Okay?

A. (No audible response)

Q. Great. How much sleep did you get last night?

A. Um, I went to bed around 9:00.

Q. Okay. What time--how many hours did you get?

A. Got seven.

Q. Seven? Did you sleep good?

A. Yeah, it was all right.

Q. Great. Did you have any breakfast yet this morning?

A. Yeah, I ate.

Q. Okay. How about lunch?

A. No.

Q. Are you taking any medicines right now?

A. No.

Q. Okay. What have you had in the way of any illegal drug use in the last 24 hours?

A. Vodka.

Q. Well, that's just alcohol. Any illegal drugs?

A. Yeah, we was at a party 'til 3:00 in morning.

Q. Okay. So you had some, uh...

A. Marijuana.

Q. Okay. Anything else?

A. No.

Q. You have any heart problems?

A. I got a irregular heart beat.

Q. That's fine. Do you have any respiratory problems?

A. No.

Q. Okay. Do you have any general health problems today that you think might affect the exam?

A. No.

Q. Okay. How would you describe your physical health right now, poor, fair, good, or excellent?

A. I'm okay.

Q. Okay. You're gonna feel those loosen up just a little bit. Okay. Okay. You're in good shape to take, ah, take this exam here today.

A. Uh huh.

Q. Great. Got your eyes gently closed?

A. Sure.

Q. Okay. To ahead. Okay. You're gonna feel a little more air coming through the cuff. Okay, keep your eyes gently closed. Don't move during this examination. It's gonna begin here in just a bit. If you were involved in the death of Brittany you would know what caliber of weapon was used. Repeat after me. .45.

A. .45.

Q. .40.

A. .40.

Q. 9.

A. 9.

Q. .25.

A. .25.

Q. .22.

A. .22.

Q. .38.

A. .38.

Q. Okay, that examination is over with. Go ahead and gently open up your eyes, but don't move around a lot. Okay. You did a good job following my directions. I need you to keep doing that, okay?

A. Uh huh (yes).

Q. All you hear me doing over here is printing out that chart. Okay?

A. Uh huh (yes).

Q. That's all I'm doing over here.

A. That's cool.

Q. Okay. It goes to another room there. Okay. I'm going into--we're gonna do the next examination. Go ahead and gently close your eyes. Okay, we'll begin in just a minute. Don't move. If you were involved in the death of Brittany you would know how many shots were fired. Repeat after me. Five.

A. Five.

Q. Four.

A. Four.

Q. Three.

A. Three.

Q. Two.

A. Two.

Q. One.

A. One.

Q. Six.

A. Six.

Q. Exam's over with. Go ahead and gently open up your eyes, but don't move around a lot. Good job following my directions. Go ahead and gently close your eyes.

Next exam will begin here in just a moment. The exam's gonna begin here in just a minute. If you were involved in the death of Brittany, you would know where she was shot on her body. Repeat after me. Lower back.

A. Lower back.

Q. Chest.

A. Chest.

Q. Stomach.

A. Stomach.

Q. I'm gonna repeat that question 'cause you're licking your lips, okay?

A. Oh, my bad.

Q. No problem. Stomach.

A. Stomach.

Q. Neck.

A. Neck.

Q. Head.

A. Head.

Q. Leg.

A. Leg.

Q. And exam's over with. Go ahead and open up your eyes, but don't move around a lot. You're doing a good job following my directions. I appreciate it.

A. Uh huh (yes).

Q. Again, I'm just printing this chart out. Okay? That's what you hear me doing over here.

A. That's fine.

Q. Next exam's gonna begin here in just a bit. Go ahead and gently close your eyes. Don't move during the exam. If you were involved in Brittany's death, you would know the last location of her body. Repeat after me. Behind the counter.

A. Behind the counter.

Q. Dining area.

A. Dining area.

Q. By her vehicle.

A. By her vehicle.

Q. On Lake Mead.

A. On Lake Mead.

Q. Outside the front door.

A. Outside the front door.

Q. Outside the back door.

A. Outside the back door.

Q. Okay, the exam's over with. Go ahead and gently open up your eyes. Again, Kevin, good job following my instructions. I appreciate it.

A. That's cool.

Q. Again, uh, I'm just sending it to the printer. That's what you hear me doing over here.

A. Uh huh (yes).

Q. Next exam's gonna begin here in just a bit.

A. Okay.

Q. You have to close your eyes again. Don't move during the exam. If you were involved in the death of Brittany, you would know what item of Brittany's was found near the Jack-in-the-Box. Repeat after me. Purse.

A. Purse.

Q. Wallet.

A. Wallet.

Q. Jewelry.

A. Jewelry.

Q. Money.

A. Money.

Q. Keys.

A. Keys.

Q. Watch.

A. Watch.

Q. The exam's over with. Go ahead and gently open up your eyes. Don't move around a lot. Good job following my directions again. Kevin, I may want to repeat that one, uh, test where you licked your lips and I had to repeat the question. Okay?

A. Okay.

Q. All right. _____ (unintelligible). Give me a second and let me look at it, okay? I'll be right back.

A. Okay.

(EXAMINER LEAVES ROOM)

(EXAMINER RETURNS TO ROOM)

Q. Okay. All right. I wanna thank you for, ah, following my directions the way you did. You did give me good charts to look at.

A. (unintelligible).

Q. ____(unintelligible) put your shoes on. You can come back and have a seat. Okay. Kevin, I need to confront you about something, can I?

A. Uh huh (yes).

Q. I know you killed her. Yep. You hit every one of the questions. The only way you could do that, 'cause you did it.

A. (unintelligible)

Q. Yeah. This test is not based on deception. This is based on knowledge. Okay?

A. I don't have any knowledge.

Q. Yeah, you do. Your body reacted to every one of the questions with direct knowledge of information that's been concealed. _____(both talking).

A. I never even moved.

Q. No, no, no, your body reacted because you recognized that information. That's why it's called a concealed information test. The only way that you could do that, is because you did it.

A. No.

Q. Yeah. And let me tell you this. I made the test fair for you. Okay? One of the questions I wanted to ask you, the scene, somebody left the scene, the suspect when he left the scene was wearing something on his head.

A. What?

Q. A hoodie. So I didn't ask you that question, 'cause it wouldn't of been fair for you, 'cause you'd already had that information. You see? You told me, I asked you what you knew about this case, and you said to me, hey, Geoff, this is what I do know, black male, about 5'8", fled the scene wearing a hoodie. One of the questions that was not released was the hoodie. That information was not released, but you had it coming in here. So it wouldn't of been fair for me to ask you that question. So I didn't even throw that question.

A. (unintelligible)

Q. What do you mean what do I mean by that? It's pretty simple. Come on, you're an intelligent guy. Come on.

A. My mama told me _____(both talking).

Q. That's what I'm saying, you walked in the door with the information, so I didn't ask you that. Do you understand? It wouldn't of been fair for you 'cause you already had that information. This examination I provided you with today, it's not based on, uh, deception, whether or not you did, or didn't do it. That's now what I'm asking you. What I'm asking you is whether or not you have concealed information about the test. And because of the format that we use, you hit every one of the questions. Okay? Location of where the body was shot, caliber of the weapon that was used, uh, where the body was, uh, left after the shooting, the, uh, uh, keys that were left at the end of the driveway. You hit everyone of those things. The only way you can do that is 'cause you did it. So now I'm asking myself okay, how do I get you to confess to killing Brittany, because I know you did it.

A. I did not do it.

Q. Yeah, you did. Yeah, you did.

A. _____(unintelligible).

Q. You don't have to understand it other than the fact that you did it.

A. ___(unintelligible) I don't even know how you...nah.

Q. Yes. And that's just the way the report's gonna read. Okay? So now you gotta ask yourself okay, what do I do? All right? Look, man, I don't, I don't profess to understand why somebody's gonna kill somebody. I know what the major motives are. Anger is usually right up there. Okay? And the one thing we do know, is there was a lot of friction between you and Brittany. Okay? I don't know what it was all about. We just know what it--that, that it existed, and they got that information from people that they've been talking to. So my guess is that you're really angry at her, 'cause that's the only reason that you could of taken a .25 caliber, put it up against her head, and shot her one time, okay, and then fled the scene, dropping the keys. Okay? That's the only way. Okay? You did it. I know you did it, you know you did it. Yeah. The unfortunate thing for you is the prosecutor's gonna know that you did it, and my report's gonna reflect that you did it. Because you have information that only the person...

A. I have no information.

Q. Yeah, you do, you had the intimate information, the concealed information that has not been released. These detectives have been trained by our polygraph unit that when they have cases like this, we don't want you to give out all the information, because this format that we can use, we can get this format and this stuff entered into court and I can say with absolute certainty that you were the person that pulled

that trigger, because you hit every one of the key questions with regards to the event. So I know you did it.

A. I don't see how.

Q. I know how. Well, I know how, you were angry. That's how. You're angry at her. Something's going on.

A. I don't see how I hit it.

Q. You hit it because you did it. That's, that's the simple part.

A. (Both talking)

Q. 'Cause it would be like, it would be--you would have responses like you did on everyone of those other questions, that didn't have anything to do with the case. Okay? You didn't have any reactions. As soon as I asked you to repeat the word of the key, okay, and the key is the piece of information that we know about that hasn't been released, you come right through the roof.

A. Right through the roof how?

Q. Your body reacts. Okay? And the only...

A. No.

Q. It reacts. Your body changes when you repeat that information. That's because you were concealing that information. You had that information up front.

A. My body did not change. I didn't do nothing.

Q. Yes, it did, that's why we, that's why we attached a component. You're gonna have to trust me on this. This is a very delicate instrument. Man, we're watching everything. We're watching your heartbeat, we're watching your sweat, we're watching your breathing, we're watching ___(unintelligible).

A. I'm not even sweating.

Q. It's not about sweating, it's about changes that take place in the body. When you recognize something, and I ask you to repeat it, your body changes. Why? Because you know that I caught you. I caught you. And I caught you based on your reactions.

A. I ain't even react. I ain't have no reaction.

Q. Yes, you did. You did.

A. I don't believe it.

Q. You don't believe it? You can, you can say whatever you want, but I'm telling you the way my report's gonna read is that you're the shooter. You have concealed information that nobody but the shooter would have. Do you understand what I'm saying?

A. I didn't have any information.

Q. I got you, yes, you do, because I got you to agree that if a person reacted to anyone of those questions, if that question, if the person that did it, they would know exactly what that key was. You knew it every time. Every...yeah, you did, buddy. So I'm

gonna show you. Here's a good one. We look for the purple line on here. The purple line is the determiner. See the purple line?

A. Uh huh (yes).

Q. This is me at the beginning. Okay? Watch the purple line, okay. Here's that one time where I said I was gonna repeat the question, because that was a pretty big reaction what you were licking your lips. Remember you said to me my bad? That's me repeating the question. So that's not a reaction. Okay? Here I repeat the question, no big thing. Number five, see the five with the green on it? Look on here. If you were involved in the death of Brittany, you would know where she was shot on her body. Repeat after me. Okay? That's where she was shot. Look at your reaction. See that purple line? The only person that would know that was the shooter, because that information was withheld. It didn't go out.

A. That's the only thing?

Q. No, it's not the only thing. That's one of the five.

A. How?

Q. Because you knew. Purple line again. We look for the tallest one, the biggest response. Okay? If you were involved in the death of Brittany, you would know what caliber weapon was used. Repeat after me. What's 4C? Twenty-five caliber. That wasn't released.

A. (Both talking).

Q. No, they aren't. This one is smaller, this one is taller. The biggest one gets the reaction. This one's taller.

A. They look the same height to me.

Q. They aren't. They are not the same height. Look at it this way. Right here. See that? It starts right there. Okay? See where this one ends? Way above it. That gets the reaction. Twenty-five caliber, you're the only that would know that because you're the one that shot her.

A. Nope.

Q. Yep. And here's the other one. Here's you're moving, so we don't count that one. Okay? Here we go. By her vehicle. That's where she's at. The green 13, 3C. That's your reaction. Your reaction too right there in your breathing. You are the one.

A. I didn't change anything.

Q. Yeah, you did. That's your body. That's not me making any adjustments to this thing. That's your body doing it. Every one of 'em, without fail. The keys, the shots, everything. You knew it.

A. No.

Q. Yeah, you did. You're the shooter. You're the shooter. You're flat up it. You're the shooter. And I'm gonna be able to say that. I'm gonna be able to write the report that says you're the shooter. No doubt about it. So now you gotta ask yourself,

okay, what do I do? Well look, man, you been around. I caught you. I caught you. So now you gotta ask yourself what do I do? Well, you tell the truth. You tell why you did it. You tell what's going on. You just tell the frickin' truth. It's that simple. It's that simple. Is there gonna be a consequence to you? Heck yeah, there'll be a consequence to you. You're a smart guy. You know. All right? The question is what are you gonna do about it, how you gonna do it? You gonna tell the truth? 'Cause you're not. When you say to me I didn't do it, Geoff, that's not the truth. I know it. I know it because you're the only person that has that information. You're the shooter. My guess is you're angry at her. I don't know what she was doing to you, okay, and I'm not trying to give you an excuse. I can give you an explanation. I've been dealing with enough people who've killed people to know that there are all sorts of reason to kill. I don't get upset or mad about it anymore. Okay? I just try to get people to walk in the truth. That's my job. Straight up and simple. It's just the truth. The question is whether or not you got enough inside you to tell the truth. Tell the reason that you did it, sort it out, take your punishment like a man. Look, you're a tough guy, okay. You don't time before?

A. Little bit.

Q. Okay. So you know what's coming. You understand it. You understand it.

A. But I don't see how I had a reaction to it.

Q. You had a reaction 'cause it's this simple, you were the shooter. You killed her. It's that simple. I can't make it any easier than that. Watch my lips. You put the gun, shot her in the head. Okay? Yeah, you did. There's no doubt in my mind, there's no doubt in your mind. I've sat in this room with people who have been accused of murder before. You're not the first pony to sit in this chair with me. All right? I know you did it. I know you did it. Okay? Now, I think we've treated each other respectfully. I think so. Yeah? And I'm confronting you about it. The question is whether or not you got enough balls to tell the truth. 'Cause I caught you. I caught you. And I caught you with your own body. So here's the one thing I do know. There is a piece of you, even that angry piece of you, that feels bad about what you did. Maybe just a little bit. Maybe she ran you through the ringer. I don't know if there was child support issues. I don't know if she's sleeping around with your friends. I don't know what the heck may be going on. I do know this, okay, for you to pull the trigger in that way, you had to be angry. You had to be upset with her. Okay? To do that. It's not easy to pull the trigger and kill somebody. It's not easy to be involved in a shooting. Okay? It's not easy. Some people it might be. I don't know. Are you in, belong to a gang? What's your gang? Blood?

A. I'm _____(unintelligible).

Q. Crip? What are you?

A. Nothing.

Q. Nothing? Have you been in a gang in the past? No? Well, I don't know what this woman was doing to you to get that upset, man. I would of--you seem like a pretty decent guy. I'd like to see you just walk away, 'cause it's not worth it. It's not worth it. This relationship that you had with her, it's messed up, man. It's messed up. 'Cause it caused you to pick up a gun and cap her. Right when she's getting ready to go into work. Leave her body right there by the car. You left her. How many babies you got with her?

A. Two.

Q. Okay. Babies don't got no mommy now. So I don't know if that's part of the issue. I don't know what it is. Okay? I just know you did it. I just know you did it.

(KNOCK AT DOOR)

DL. Can I come in?

Q. Yeah. So the question is whether or not you're gonna have the courage to just tell the truth, man. Just tell the truth. Okay? It's gonna go one way or the other here. It's one way. Just by telling the truth. The hole's already dug, man, it dug, and you're in it. I think you can see that. You're a smart guy. All right? But you gotta make the decision what you're gonna do. 'Cause there's only so much that people are gonna be able to tolerate. And you already got people who know you did it. So there's some sort of friction going on. Apparently there was some death threats or something involved in the past. I don't know if they were both ways. I don't know

if the death threats were coming towards you, and you felt like you had to do it. I'm not sure. Okay? All I do know is you did it. That much I do know. I just don't know why. And I didn't ask you why, I asked you whether or not you had knowledge that hadn't been released. You got it. I know you did it. There's no doubt about it. That's why I'm coming right in here and confronting you right off the bat. I don't have to play games. I don't have to try to catch you. I already did. I don't have to try to convince you. You already know. You already gave it up. You know that I know. Your body knows that I know. So you gotta try to make that decision, what the heck you gonna do. How you gonna tell the truth? How you gonna explain it. How you gonna explain that you got so upset that this person deserved to die. 'Cause in your mind, they deserved to die. And it's up close and personal when you do it in the head. From a profile aspect, that's an angry shot right there. This is I'm gonna teach you a lesson, bitch. That's what this is about. So my guess is she probably made your life a living hell. She probably made your life a living hell. Okay? And so the reality of it is you gotta decide, okay, they caught me, what do I do? So what kind of man are you, man? You gonna still play this game, or you gonna just tell the truth? I'm hoping that you're kinda guy that'll just tell the truth, get through it, move through it, and be done with it. 'Cause guess what? It's not going away. You know that. You been around enough. You know it. These guys aren't gonna go away. All right? This isn't gonna go away. It's just not gonna go away.

So the opportunity that you have is to start dig yourself up out the hole. One of the first things you start to do, man, is start doing it with the truth. Okay? The truth is gonna start to pull you up out of this thing. Okay? You gotta decide what you wanna do. You gotta decide how you're life's gonna play out. Geoff Flohr has nothing more than to just get you to tell the truth. That's my job. Okay? That's my job. Just to get you to tell the truth. You're either gonna do it, or you're not. That's gonna be your choice. You have the ultimate choice. But it's the same ultimate choice that you had when you put the gun up by her head and popped off the round. Okay? It's the same type of choice. Okay? There's gonna be that momentary second where you're gonna be able to figure out what the right thing might be to do. I hope that you just got so angry that you couldn't control yourself. I hope that you're not a cold calculating killer. I hope that you didn't plan this thing out well in advance, stalk her down the line, and come after her. I'm hoping that it was a momentary lapse of good judgement where you decided I just gotta take care of this problem 'cause I can't deal with it anymore. I understand what pressure's all about. Okay? I know that. I know how you can get that upset.

A. You don't know what it's like to hear, like you don't know what it's like to hear all types of shit.

Q. No, that's not true. I do.

A. I been in a mental hospital and shit. I been seeing things. I been hearing shit.

Q. You want, you wanna know, you wanna know, you wanna know the difference between you and me?

A. You got your family.

Q. You know what, buddy, I'm not that far behind you. I been there. I been right to the edge before. Okay? I understand. Okay? I, I, I do. Look in my eyes. I'm telling you I understand, man. I do. That's not a lie. I'm telling you the truth, buddy. You ever been on a rubber gun squad? You know what it is in our lingo? They take your badge and they take your shit 'cause you're having a lot of issues with something that you're involved in. I was involved in the death of a kid. Took me right to the edge. So I understand. I understand where you're at. This is the truth. And I'm telling you buddy. Nine weeks I was off. So I know.

DL. Go ahead and tell him.

Q. Come on, man, just tell me the truth of what she did to you. Tell me what happened, tell me why it occurred, and we'll figure it out. It's that simple.

A. I told you.

Q. Why'd you kill her?

A. She drove me crazy.

DL. What was she doing?

Q. What'd she do to you?

DL. We wanna understand it. Explain it all to us.

A. I just had--I can't explain it. I...

Q. Yeah, you can.

A. ...it was, it was one of those out of body experiences.

Q. All right. Let me ask you this.

DL. Le-le-le-let--go ahead and finish it. What was Brittany doing? Tell us everything she was doing to you. I wanna understand that part of it first.

A. She was playing with my head.

Q. How so? What did she do to you to drive you to the point where you'd wanna kill her?

DL. Playing with the kids?

A. Yeah.

DL. With a new, new boyfriend?

A. I wouldn't--I, I didn't know--I wouldn't see my kids for months at a time.

DL. Okay.

Q. Okay. Look...

A. Put me through it.

Q. ...look at me, I know she did. I appreciate you telling me the truth, man. Now what I want you to do, I want you to walk me right through it, exactly what you did. Okay? On that day, at the Jack-in-the-Box. Tell me exactly how you did it.

A. I just shot her, and I ran.

Q. Okay. Tell me where the gun's at.

A. I don't know.

Q. What'd you do with it?

A. I gave it back to some dude.

Q. Okay, we're gonna...

A. I didn't know his name.

Q. We're gonna need that dude's name, man. You're gonna know how to be able to get him, _____(both talking).

DL. _____(both talking)...how did you get up to the Jack-in-the-Box?

A. I walked.

DL. You walked the whole way? How'd you get home?

A. Walked.

DL. The whole way? You didn't bus, nobody picked you up?

A. (No audible response)

DL. Okay.

Q. What I need for you to do, okay, is this. Walk us through the whole thing, right from the beginning, all the way to the end. Okay. All the details. Tell us exactly what you did, how you did it.

A. That's it. I just walked up Jack-in-the-Box, seen her get out of the truck, and shot her, and I walked home.

Q. Okay. Tell me how you shot her.

A. I just shot her.

Q. Okay. This is what I want you to do.

DL. He's Brittany. Okay?

Q. Use me as Brittany, who me how you shot her.

A. She was a little back.

Q. Big, back, what, tell me where she was at, buddy.

DL. Where's the car?

A. The car is right here. She was right here.

Q. She was standing up outside the car?

A. Uh huh (yes).

Q. Okay. Show me, come up behind me just like you did her.

A. I wasn't behind her.

Q. Okay, show me how you did it.

A. She was in front, _____(unintelligible).

DL. _____(unintelligible).

Q. Like this?

A. Like this.

Q. What'd you do?

A. And I was a little back, and I shot.

Q. Okay, where'd you shoot her at?

A. I guess it hit her in the head. I didn't stay to see.

Q. You didn't stay to see? Where'd you point the gun at?

A. To upwards.

Q. Okay. Then what did you do?

A. I ran.

Q. Okay. Where, where did her body lay?

A. It fell she was standing.

Q. Right there next to what?

A. To the truck.

Q. The truck? Okay. Tell us about the keys.

A. I don't know about the keys. I swear.

Q. Did you pick the keys up?

A. No.

Q. Did she throw 'em? What happened?

A. I don't know.

DL. Did--was she _____(both talking).

Q. How did you know the keys were there, 'cause you knew that they were there. Did you see 'em on the ground when you ran away?

A. Yeah.

Q. Okay. So how did they get to the ground?

A. I guess they fell out of her hand.

Q. Out of her hand?

A. I never touched the keys.

Q. Okay.

DL. Did she, ah, what were you wearing?

A. What I got on.

DL. This?

A. Uh huh.

Q. The hoodie?

DL. What color was the hoodie?

A. Gray.

Q. How many times did you shoot her?

A. Once.

Q. Okay. Twenty-five cal?

A. Uh huh (yes).

Q. Okay. What's the buddy's name that has it? We gotta get that gun back.

A. I don't know his name.

Q. You gonna be able to take these guys to him to get the gun?

A. I don't know where he's at, I swear. You can ask me all you want.

DL. _____(unintelligible). Um...

Q. You need anymore from me?

DL. No.

Q. You all set?

DL. Yeah.

Q. Okay. All right. Look at me. Thank you, I appreciate it.

DL. You did right.

A. ___(unintelligible) off my meds...

DL. I understand that. And absolutely I was _____(unintelligible).

(EXAMINER LEAVES ROOM)

(DETECTIVE TREMEL ENTERS ROOM)

DL. Um, when you approached, where were you when she parked?

A. Sitting down.

DL. Where?

A. In the bushes. Well, not in the bushes, next to a van, behind the van.

DL. Okay, what color was the van?

A. I can't remember.

DL. It was parked close to Lake Mead?

A. It was parked in the parking lot.

DL. Well I know. What I'm saying is it...here's Lake Mead, right here, was it parked right here, and you were in these bushes?

DT (DON TREMEL). Was it parked close to her car?

DL. It was away. I had walked to the car. She didn't see me.

DL. Okay. Okay. I, I think I know the van you're talking about. It was down a little ways. Okay. And then she pulled up. She parks. And then what'd you do? How did you approach?

A. Just walked up to her.

DL. From behind?

A. Uh huh (yes).

DL. Okay. And what did--did she see you?

A. (No audible response)

DL. She didn't see you?

A. No, until I shot her.

DL. And then she--what'd she do when you shot her?

A. She fell.

DL. Did she--was there a scream?

A. No.

DL. There's, there's a lot of people saying that she let out a scream, or you did. But it sounded like a female.

A. I don't know, I was out of it.

DL. Okay. All right. You were wearing the gray hoodie. Did you have the hood up or down?

A. Up.

DL. Up. All right. And, ah, what did--what kind of gun was it?

A. A .25.

DL. What kind? I mean what color? Was it black, was it silver?

A. Like faded.

DL. Faded, an old one?

A. Yeah.

DL. Okay. Was it faded black, or a fade of silver?

A. Faded black.

DL. Faded black. Okay.

A. But I swear, I don't know the dude.

DL. I, I'm not, I'm not looking to get anybody else in trouble.

A. No, I swear I don't know him.

DL. Okay. How did you get it from him?

A. He was walking one day and I, you know what I'm saying, I talked to him and he loaned it to me.

DL. Okay. Did you pay for it?

A. Yeah.

DL. How much did you pay for it?

A. I gave him, uh, fifty dollars in weed, and fifty dollars.

DL. Okay. And then you gave it back to him?

A. Yep.

DL. Did you tell him it was dirty?

A. (unintelligible)

DL. You didn't tell him it was dirty?

A. No.

DL. Is he over in the Coast?

A. No.

DL. Where is it? What area is he in?

A. On, uh, uh, by the McDonald's, in them apartments on Sahara and Arville.

DL. Sahara and Arville. Okay. A black male?

A. Uh huh, light skinneded [sic].

DL. Older, younger?

A. About 23, 24.

DL. Okay. How did you get a hold of him to give him his gun back?

A. I went to, um, we met at the McDonald's.

DL. No, how did you get a hold of him is what I meant. How did you reach him?

A. I called him.

DL. Do you know his number?

A. Not by heart. It's in my phone. I don't got my phone.

DL. Okay. All right. We'll work on that. Um, like I said, I'm not looking to get anybody in trouble. We're just trying to tie this all, tie it all parts together. Okay? Um, so then you, you actually ran all the way home. Okay. So tell me about which way you ran when you left.

A. Down Lake Mead.

DL. Okay, so you run along Jack-In-The-Box, right, and then where?

A. Other side.

DL. You ran to the other side?

A. Uh huh.

DL. And then where'd you go from there, when you got to the other side?

A. Ran straight.

DL. Straight down Lake Mead, or did you...

A. I cut through the, I was cutting through like the parking lot and stuff.

DL. Okay. So you went across the street and then farther in, and then just made your way all the way across. Did, did you cross at Lake Mead, or did you cross somewhere else, when you crossed the freeway?

A. I went through the intersection.

DL. The freeway?

A. Uh huh (yes). Over the overpass.

DL. That's what I ___(unintelligible). Did you do it at Lake Mead, or did you do it at the next street over?

A. At Lake Mead.

DL. At Lake Mead. Okay. And you literally walked the whole way?

A. Yep.

DL. How do you feel about Brittany being dead now?

A. I'm hurtin'.

DL. It, it...

A. But I, I had no control of myself.

DL. Because you'd stopped taking your meds?

A. And they wouldn't give it to me.

DL. Because the insurance had run out?

A. Yep.

DL. And if you were taking the, what was it called again?

A. __(unintelligible).

DL. Invaga (phonetic) you wouldn't...

A. _____(unintelligible) it have me in like, like it's for psychosis.

DL. Okay. So did you have--what kind of problems were you having when you decided, or when you did this?

A. I was seeing things, hearing shit.

DL. Hearing what?

A. Voices.

DL. What were they telling you?

A. Telling me all type of shit, man. Kept saying murder, kill, kill yourself, everything. _____(unintelligible).

DL. Are you still thinking about killing yourself?

A. It's the voices. I been, I been in mental hospitals and shit, in padded rooms.

DL. Okay. There was--a few days prior to this, uh, you went over with a pair of binoculars?

A. No.

DL. You didn't go over there and look at her from across the street?

A. Nope.

DL. So how did you know she was there?

A. I didn't. I was guessing.

DL. You were guessing?

A. Yep.

DL. Was this your first guess?

A. Yep.

DL. You just __(unintelligible)?

A. _____ in one.

DL. You guessed which store, or did you know which store?

A. I didn't know. Just said it was on Buffalo.

DL. I, I missed--I don't understand that.

A. They just said it was on Buffalo.

DL. Okay. You weren't on Buffalo. Oh yeah, you were close to Buffalo.

DT. Who said, who said it was on Buffalo?

A. One of her co-workers.

DL. Somebody told you?

A. Uh huh (yes).

DL. Was it--who?

A. One of the Mexicans. I don't know.

DL. Oh, okay. All right. So you never went up prior to this?

A. No, this was my first time.

DT. When did you get--when did you get this information that she was at this, this new Jack-in-the-Box?

A. When I called on the 23rd.

DT. And again, you called from your cell phone?

A. No.

DT. You said your...

A. My cell phone been off.

DT. It's been off?

A. For, since the 15th.

DT. Okay.

DL. Okay. The whole thing about going to the party that night, is that true?

A. Uh huh, it's true.

DL. You did get drunk?

A. Uh huh.

DL. You did go home with Denise, and you did go to bed?

A. And I left.

DL. Then you left. What--so you left at about what time? You said you got home about 2:00 or 3:00.

A. Close to 3:00.

DL. Close to 3:00 in the morning.

A. She went in her room, closed the door, and I left.

DL. Okay. And, ah, what time, do you remember what time you got back?

A. Yeah.

DL. What time was it?

A. It was daylight. I don't know, it was before 8:00 something, 'cause my mom called.

DL. It was before your mom called.

A. Uh huh (yes).

DL. Okay. And Denise was still in bed, and you __(unintelligible), you knew how to get back into the apartment?

A. Uh huh (yes).

DL. Did you go to bed?

A. No, I stayed up.

DL. You stayed up?

A. 'Cause my mom called.

DL. Okay. Did you tell your mom what happened?

A. No, I didn't tell nobody.

DL. You didn't tell anybody.

A. Nope.

DL. You didn't tell Denise?

A. No, 'cause she thought I was asleep.

DL. Okay.

DT. You didn't take her car over there? You walked over there, right?

A. Uh huh (yes).

DL. You didn't have your cell phone, or any cell phone with you___(unintelligible)?

A. (Unintelligible/coughing in background)

DL. Okay. Are these the shoes you were wearing?

A. No.

DL. What shoes were you wearing?

A. Some gray Chucks.

DL. And where are those?

A. I threw 'em out on the freeway.

DT. Where's the hoodie at?

A. I don't know. _____(unintelligible/coughing)

DT. What's that?

A. Somewhere in Summerlin.

DT. Were you--when did you take it off?

A. When I got over the pass.

DT. So you--when you--after you, after you ran, cut through some businesses, you continued on, and then you took it off and got rid of it?

A. Uh huh.

DL. Did you just throw--you throw it in the trash can, or did you throw it just?

A. I threw it in a dumpster.

DL. In a dumpster. Did--so Brittany never, you guys actually never tussled? You never got close enough?

A. Uh huh.

DL. Did you help her to the truck?

A. No, I didn't touch her.

DL. You never touched her? Okay. You didn't help her to get into the Jeep afterwards, or ____ (unintelligible) fall out, anything like that?

A. (Inaudible response)

DL. Okay. All right.

A. I was, I was fucked up, man.

DL. Okay. What do you think should happen to you now?

A. I get punished.

DL. Okay. What do you think the punishment should be?

A. Whatever it's gonna be.

DL. Okay. You think you need help?

A. Yeah, I know I need...I'm tired of hearing voices and shit, man.

DL. Okay.

A. I ain't been taking my medicine. I been_____ (unintelligible), shit, man, this shit it's crazy.

DL. Okay.

A. Look at buildings in a different way, wanna jump off shit. I don't know. I'm thinking, man, this shit's crazy.

DL. Okay.

DT. What are the chances we can get that gun back with your help? Without getting your buddy in trouble.

DL. We won't get him in trouble. We can actually have him put it somewhere, wipe it down, put it somewhere. We just need to get it off the street. It's one of those things that...

A. I don't know how to get in touch with that dude.

DL. Well if we get you the phone number can we like tell him to put it in a bag, wipe it down, put it in a bag, we'll just come get it?

A. Uh huh.

DL. Okay.

DT. You think he's gonna do that?

A. I don't know. I don't know him like that.

DT. Would you be willing to give that a try, if we were to take you over to where your phone's at, get that number, and use one of our phones to make a phone call? Would you call him and?

A. Uh huh.

DL. Okay.

DT. 'Cause that's something that we really wanna do, and it would benefit you to, to do that.

DL. Were these the pants you were wearing?

A. (Inaudible response)

DL. Um, damn, uh, all right. I, I think you need help too. Um...

A. All I needed was my medicine. It had me so calm. I was, I was doing real good.

DL. Okay. Did--your, your family doesn't know what's going on right now, right?

A. No.

DL. Okay.

DT. You tell anybody about what happened, your buddy you got the gun from, anybody, anybody?

A. (Inaudible response)

DL. Okay. Um...

DT. Let me run upstairs for a second and, ah...

DL. Yeah.

DT. ...and, uh...

DL. I think all mine are in my car.

DT. I got some upstairs.

DL. Okay.

DT. Be right back.

(DETECTIVE TREMEL LEAVES ROOM)

DL. Brittany because, I mean it literally is because she just was making your life hell, and the voices were...

A. And she knew, she knew, man.

DL. She knew what?

A. She knew I was hearing voices and shit.

DL. Okay.

A. Seeing shit, man, like I don't know.

DL. Okay. I mean she wouldn't let you see your son on his birthday. How did that affect you? I mean real--really how did that affect you?

A. _____(unintelligible) and I was just tired of just not seeing my kids. And then...

DL. You wanted...

A. I ain't been in control.

DL. Right.

A. In a long time.

DL. You wanted her back?

A. ____(both talking).

DL. There's nothing here to hurt you.

A. After a while I did, but then I just, just went numb. I didn't care about nothing.

DL. Okay. Did it affect you that she was seeing somebody else?

A. Yeah.

DL. And he was with your kids?

A. (No response)

DL. Okay. Did you--when did you get the gun? How long before?

A. Day.

DL. One day?

A. Yep.

DL. How long had you been thinking about it?

A. That day.

DL. That, just that one day?

A. Yeah.

DL. It wasn't like something that was eating you alive for a while? No, just one day it just got in your head and?

A. It was just like go kill her.

DL. And you knew what time she goes to work. How long did you wait?

A. Couple minutes.

DL. Really, that's all? You just timed it right?

A. It was just how it played out. Wasn't no plan.

DL. So she never said anything to you?

A. I can't remember. I was...

DL. Did you say anything to her?

A. I don't know.

DL. You don't remember? No?

(DETECTIVE TREMEL RETURNS TO ROOM)

DL. Okay. What's gonna happen now, um, we are gonna have to take you to the county, and, ah, I'll make sure medical, the doctors know what's going on. Um, I'll, I'll let your mom know. Is there anything else you need?

A. (No response)

DL. You, you'll work on getting us that, maybe make a phone call to where we might be able to get that gun back?

A. I can try.

DL. Okay.

DT. That's all we can ask, you know, if the guy don't answer the phone, or doesn't wanna cooperate, that's--it's not on you. You know, at least you tried. Uh, the only clothing you had on during this whole thing would be the pants, right?

DL. The Chucks and the sweatshirt. You remember where the dumpster was?

A. No.

DL. Okay. Okay. And there's, you don't remember anything else about the actual event? Anything else that would help us?

A. I was out of it.

DL. Okay. Could there of been some movement around, could you guys have moved around a little bit, more than you remember?

A. I don't know.

DT. Was there a struggle? Did she grab you, fling her arms away, did you grab at her, was there some sort of a struggle before all this happened?

A. I went blank.

DT. I'm sorry?

A. Like I said, I went blank.

DL. Okay.

DT. I mean that there probably was a struggle based on what I saw this morning with the marks on her arm, and the fact that you popped out of some bushes. There, there-- I don't believe she was willing to stand there and talk to you.

A. She didn't see me come out of the bushes.

DT. She didn't see you? Let me ask you this. When you got the gun from your buddy, okay, how many days before this did that, did you get that gun?

A. One.

DT. One day?

DL. We just went through all that.

DT. You went through all that, and you got that for the specific reason of doing this?

DL. Yes.

DT. Okay. We'll go upstairs and work on getting somebody to come and take the pants. We'll get him...

DL. Yeah.

DT. We're gonna take you back upstairs to our office. Same place we were yesterday. We'll tell your family what's happening.

DL. Those loose enough? You all right?

A. (No audible response)

DL. Yeah, there you go, keep your hand. I'm gonna lock 'em so they don't crank down on you.

DT. Geez. Got your jacket and stuff in there.

DL. Yeah, I'm gonna, I'm gonna go in and get it. You got him?

DT. Yeah.

(END OF INTERVIEW)

THIS VOLUNTARY STATEMENT WAS COMPLETED AT 4750 W. OAKEY, ON THE 26th DAY OF MARCH, 2010 AT ____ HOURS.

GF:DL:DT:sd
10V0660

EXHIBIT 4

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

OFFICER'S REPORT

EVENT #: 060401-0982

Statements made by Kevin Gipson
SUBJECT

DIVISION REPORTING: Robbery

DIVISION OF OCCURRENCE: Robbery

DATE AND TIME OCCURRED: 04-01-06 1218

LOCATION OF OCCURRENCE: 4255 S Tamarus

On 04-01-06 at approximately 1218 hours, Robbery Detectives were clearing the residence at 4255 S Tamarus #403. Sgt. Tomaino ordered Kevin Gipson to get on the ground and he complied. I then proceeded to handcuff Gipson. As I was handcuffing Gipson he said, "I got the money in my pocket." I replied, "What?" and Gipson said, "I got the money in my pocket. This dude who left pointed a gun at me and told me to take his money." At the time I ignored his comment and continued to secure the residence. When I came back to Gipson, I helped him stand up and he said, "The money is in my pocket." I reached into his right front pocket and pulled out a wad of money that was so thick I had trouble grasping it with one hand. The money was later counted by Detective Smith and he relayed to me the amount was $3,325 in miscellaneous U.S currency.

At approximately 1500 hours, I transported Kevin Gipson from 4255 Tamarus to 4750 W Oakey. While enroute Gipson started talking to me about the robbery. He said, "You got the wrong man but I do know what happened." I told him that before I talk to him about anything that I am required to afford him his Miranda Rights Warning. I pulled my Miranda Warning Card from my badge holder and I read it to him. When I asked him if he understood his rights he said, "Yes." When I asked him if he wanted to talk to me, he said, "Yes." I then asked him how does he know what happened. He said, "Because I seen it happen." I asked him if he was there and then he paused and said, "I don't know if I should say that or not." I then told him that he does not have to say anything to me now but I do want to talk to him when I get to the office. A few seconds later he said, "How is that lady going to ID me?" I said, "You hurt her pretty good when you knocked her to the ground. We had to have the ambulance come and look at her." Gipson then said, "Man, I didn't knock her to the ground." I then asked, "So, you just grabbed the bank bag?" and he paused and said, "I ain't snitching nobody out. Just let me think about things for when we talk."

After we arrived at 4750 W Oakey I placed Gipson into Interview Room #1. Approximately one half hour later, Detective Harrison Mayo and I sat down with Gipson. I turned on my digital recorder and readvised Gipson of his Miranda Warning. At that time he invoked his 5th amendment rights and requested that an attorney be present before he made any statements. The interview immediately concluded.

Date and Time of Report: 04-01-06 1937 Officer: Wolfenbarger, A. P#: 5980

Approved: Officer: P#:

SIGNATURE: 5980

LVMPD 82 (REV. 8/01) - AUTOMATED/WP12

EXHIBIT 4

EXHIBIT 5

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

ARREST REPORT

03F20632 X/7

☐ City ☒ County ☒ Adult ☐ Juvenile Sector/Beat K1

EVENT#	ARRESTEE'S NAME (Last, First, Middle)	S.S.#
1582343	GIPSON, KEVIN MARQUETT	

ARRESTEE'S ADDRESS (Number, Street, City, State, Zip Code)

CHARGES: FORGERY OF CHECKS
BURGLARY

OCCURRED: DATE	DAY OF WEEK	TIME	LOCATION OF ARREST (Number, Street, City, State, Zip Code)

RACE	SEX	D.O.B.	HT	WT	HAIR	EYES	PLACE OF BIRTH

CIRCUMSTANCES OF ARREST

OFFICERS INVOLVED: T. Mueller, P#6489
J. Hewes, P#6797, Unit 2H2

DETAILS:

I, Officer T. Mueller, P#6489, while working as marked patrol unit 2H3, was dispatched to the location of 2500 E Desert Inn, Las Vegas, Nevada, reference a subject, who was later identified as Kevin Gipson, ID# 1582343, who was attempting to cash a fraudulent check. Upon my arrival I made contact with Gipson, and informed him why I was there. At this time I placed him into handcuffs, and read him his rights. I asked Gipson if he understood his rights, to which he stated, "yes". I then asked Gipson where he had gotten the check from, and he stated it was given to him by a guy named "K", and that it was to pay for a car that K had bought from him. (It should be noted that on the check the name of the endorser was Scot Kreeger, and it should also be noted that in the section on the check that stated what it was for was written the word "cabinets").

At this time Officer J. Hewes, P#6797, who was operating as marked unit 2H2, made contact with the teller, who had been helping Gipson. The teller was identified as Nicole Devault, DOB 02-06-81. She stated that when Gipson came to the counter he looked very nervous, and that when she looked at the check, "it didn't look right." So, she called Scot Kreeger, which was the name that was on the check, to see if he had written it to this individual. After making contact with him he stated that he did not know the individual, and he did not write the check to him. (It should be noted that the check number is 3234, had already been cashed on 11-03-03). Upon hearing this Devault then called the police. Devault also stated that the paper the check was printed on was, "computer stock paper", and that, "the spelling of some of the words were incorrect".

Gipson was then placed under arrest for Forgery and Burglary, and transported to CCDC, where he was booked accordingly.

TM/vp7251 (Records)
Job# 136407

ARRESTING OFFICER(S)	P#	APPROVED BY	CONNECTING RPTS. (Type or Event Number)
T. MUELLER	6489	Lt. Graham, 3753	031122-1559

LVMPD 602 (REV. 12-90) - AUTOMATED

EXHIBIT 5

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04/28/2011 12:16:08 PM

CLERK OF THE COURT

NOTC

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Clark County District Attorney
Nevada Bar #002781
SHANON CLOWERS
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Nevada Bar #0010008
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

KEVIN MARQUETTE GIPSON, #1582343

Defendant.

CASE NO: C-10-264079

DEPT NO: XVIII

NOTICE OF WITNESSES
[NRS 174.234(1)(a)]

TO: KEVIN MARQUETTE GIPSON, Defendant; and

TO: PUBLIC DEFENDER, Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF NEVADA intends to call the following witnesses in its case in chief:

NAME	ADDRESS
BAILEY, CHRISTINA	5317 GIPSY AVE LV NV
BARRINGER, DAMON	LVMPD #7178
BATES, ANDRE	LVMPD #6892
BENITEZ, CHRISTIAN	1068 CRESENT FALL HENDERSON NV
BROWN, ARICA RENEE	1683 MARION BENNETT LV NV
BUNDY, DUSTIN	LVMPD #13975
CHARLES-MADDOX, TISHA	JACK IN THE BOX

1	COOK, MATTHEW	LVMPD #8088
2	CROSBY, HOWARD	LVMPD #6827
3	CUSTODIAN OF RECORDS	CLARK COUNTY PARK POLICE
4	CUSTODIAN OF RECORDS	CCDC
5	CUSTODIAN OF RECORDS	CRICKETT CELLUAR PHONE CO
6	CUSTODIAN OF RECORDS	DMV
7	CUSTODIAN OF RECORDS	HENDERSON CITY JAIL
8	CUSTODIAN OF RECORDS	HOMEQUITY REAL ESTATE
9	CUSTODIAN OF RECORDS	JACK IN THE BOX
10	CUSTODIAN OF RECORDS	LVMPD COMMUNICATIONS
11	CUSTODIAN OF RECORDS	LVMPD RECORDS
12	CUSTODIAN OF RECORDS	LV FIRE DEPARTMENT
13	CUSTODIAN OF RECORDS	METRO PCS CELLUAR PHONE CO
14	DAHN, ROBBIE	LVMPD #5947
15	DIGAETANO, J.	LV FIRE DEPARTMENT
16	EMBRY, BUDDY	LVMPD #8644
17	FARIS, DAVE	UNKNOWN
18	FLEMING, WADE	7037 FORT UNION CT LV NV
19	FLOHR, GEOFFREY	1123 LAKE BLVD ST JOSEPH MI
20	FORTNER, B.	LVMPD #13152
21	GILMORE, ROBERT	10837 ELFSTROM LV NV
22	GLINSEY, LARRY	824 LEVY LN LV NV
23	GONZALEZ-MARTINEZ, VICTOR	JACK IN THE BOX
24	GREGO-SMITH, M.	LVMPD #13451
25	GRIMES, MICHELLE	LVMPD #7603
26	GUENTHER, EDWARD	LVMPD #5891
27	HARDY, KENNETH	LVMPD #3031
28	JACKSON, B.	LVMPD #9690

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1	JACKSON, KEYA NICHEL	5880 BOULDER FALLS ST HEN NV
2	JACKSON, LENDA	3630 E OWENS #1032 LV NV
3	KERNS, E.	LVMPD #4331
4	KNEPP, ELAINE/OR DESIGNEE	D.A. INVESTIGATOR
5	KYGER, TERESA	LVMPD #4191
6	LAVOLL, CHARLES	5916 HUDSON WOODS CT LV NV
7	LAVOLL, CHARLETTE	3760 PRAIRIE ORCHID NLV NV
8	LAVOLL, MECHELE	2312 JASEN LV NV
9	LAVOLL, RENECE	5916 HUDSON WOODS CT LV NV
10	LAVOLL, SHAENA	9025 DESERT INN #246 LV NV
11	LONG, DANIEL	LVMPD #3969
12	LOPEZ, WENDY	JACK IN THE BOX
13	MARSCHNER, JULIE	LVMPD #8806
14	MARTIN, ISAJIAH	5032 WILD BUFFALO LV NV
15	MCGINN, K.	LV FIRE DEPARTMENT
16	MOGG, CLIFFORD	LVMPD #5096
17	MOORE, T.	LVMPD #3878
18	NELSON, DENISE LATRICE	824 LEVY LN LV NV
19	NIVON. A.	LV FIRE DEPARTMENT
20	NORMAN, SHEREE	LVMPD #3110
21	ORTEGA, EDWARD	LVMPD #6747
22	PROIETTO, DANIEL	LVMPD #8180
23	RALYEA, CHARLES	LVMPD #13357
24	ROBERTSON, JEREMY	LVMPD #7626
25	SCHELLBERG, PETER	LVMPD #5413
26	SCHMIT, ROBERT	LVMPD #1400
27	SEEBOCK, J.	LVMPD #4555
28	SMITH, STEPHANIE	LVMPD #6650

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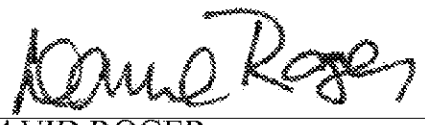
STEPHENS, SHAREESE	4820 CHARLESTON #10 LV NV
STONE, RANDALL	LVMPD #2887
THAXTON, S	LVMPD #4464
TREMEL, DONALD	962 UPPER MEADOWS HND NV
VAN EPPS, JENNIFER	LVMPD #7724
WHITE, RENEE	1728 WENDELL WILLIAMS LV NV
WOLFENBARGER, A.	LVMPD #5980
YOUNG, DAMON	LVMPD #8252

These witnesses are in addition to those witnesses endorsed on the Information and any other witness for which a separate Notice has been filed.

BY 
DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of NOTICE OF WITNESSES, was made this day of April, 2011, by Electronic Filing to:

PUBLIC DEFENDER
Email: pdclerk@co.clark.nv.us.com

/s/ T. SCHESSLER
Secretary for the District Attorney's Office

Electronically Filed
04/29/2011 01:33:06 PM

CLERK OF THE COURT

NOTC

DAVID ROGER
Clark County District Attorney
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200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

KEVIN MARQUETTE GIPSON,
#1582343

Defendant.

CASE NO: C264079

DEPT NO: XVIII

SUPPLEMENTAL NOTICE OF WITNESSES
[NRS 174.234(1)(a)]

TO: KEVIN MARQUETTE GIPSON, Defendant; and

TO: PUBLIC DEFENDER, Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF NEVADA intends to call the following witnesses in its case in chief:

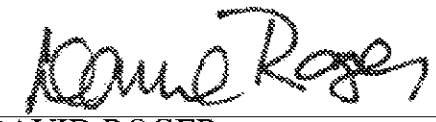
NAME	ADDRESS
CAMPBELL, LAKEYA	UNKNOWN
CRUZ, TERESITA	NAPHCARE CLARK COUNTY DETENTION CENTER
MCGINLEY, DR. DAN	NAPHCARE CLARK COUNTY DETENTION CENTER

These witnesses are in addition to those witnesses endorsed on the Information and

///

///

any other witness for which a separate Notice has been filed.

BY 
DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of SUPPLEMENTAL NOTICE OF WITNESSES, was made this 29TH day of April, 2011, by Electronic Filing to:

PUBLIC DEFENDER
Email: pdclerk@co.clark.nv.us.com

/s/ T. SCHESSLER
Secretary for the District Attorney's Office

ORIGINAL

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APR 29 3 42 PM '11
CLERK OF THE COURT

NOTC
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite #226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

KEVIN MARQUETT GIPSON,

Defendant.

CASE NO. C264079X

DEPT. NO. XVIII

DATE: May 9, 2011
TIME: 8:15 a.m.

DEFENDANT'S NOTICE OF WITNESSES, PURSUANT TO NRS 174.234

TO: CLARK COUNTY DISTRICT ATTORNEY:

You, and each of you, will please take notice that the Defendant, KEVIN MARQUETT GIPSON, intends to call the following witness in his case in chief:

NAME	ADDRESS
BAILEY, Christina	5317 Gipsy Ave, LV, NV
BARRINGER, Damon	LVMPD #7178
BATES, Andre	LVMPD #6892
BENITEZ, Christian	1068 Cresent Fall, Henderson, NV
BROWN, Arica Renee	1683 Marion Bennett, LV, NV
CUSTODIAN OF RECORDS	Jack In The Box
BUNDY, Dustin	LVMPD #13975
CHARLES-MADDOX, Tisha	Jack In The Box
PEREZ, Efren	2140 E. Pebble Rd., Suite 230, LV, NV, 89123
COOK, Matthew	LVMPD #8088
CROSBY, Howard	LVMPD #6827
CUSTODIAN OF RECORDS	Clark County Park Police

RECEIVED
APR 29 2011
CLERK OF THE COURT

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Notice of Witnesses
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1	CUSTODIAN OF RECORDS	CCDC
2	CUSTODIAN OF RECORDS	Crickett Cellular Phone Co.
3	CUSTODIAN OF RECORDS	DMV
4	CUSTODIAN OF RECORDS	HENDERSON CITY JAIL
5	FLOHR, Geoffrey	Louisiana
6	CUSTODIAN OF RECORDS	CCSD
7	CUSTODIAN OF RECORDS	HOMEQUITY REAL ESTATE
8	CUSTODIAN OF RECORDS	JACK IN THE BOX
9	CUSTODIAN OF RECORDS	LVMPD COMMUNICATIONS
10	CUSTODIAN OF RECORDS	LVMPD RECORDS
11	CUSTODIAN OF RECORDS	LV FIRE DEPARTMENT
12	CUSTODIAN OF RECORDS	METRO PCS CELLULAR PHONE CO
13	BENNETT, Paul	C/O Desert Pines HS, 3800 Harris Ave, LV, NV 89110
14	DAHN, Robbie	LVMPD #5947
15	DIGAETANO, J.	LV FIRE DEPARTMENT
16	EMBRY, Buddy	LVMPD #8644
17	FARIS, DAVE	UNKNOWN
18	FLEMING, Wade	7037 Fort Union Ct, LV, NV
19	FLOHR, Geoffrey	1123 Lake Blvd., St. Joseph, MI
20	FORTNER, B.	LVMPD #13152
21	GILMORE, Robert	10837 Elfstrom, LV, NV
22	GONZALES, Felicia	C/O CCSD, 5100 W. Sahara Ave, 89146
23	GLINSEY, Larry	824 Levy Ln, LV, NV
24	GONZALEZ-MARTINEZ, Victor	JACK IN THE BOX
25	GREGO-SMITH, M.	LVMPD #13451
26	GRIMES, Michelle	LVMPD #7603
27	GUENTHER, Edward	LVMPD #5891
28	HARDY, Kenneth	LVMPD #3031

1	JACKSON, B.	LVMPD #9690
2	JACKSON, Keya Nichel	5880 Boulder Falls St., Henderson, NV
3	JACKSON, LENDA	3630 E. Owens, #1032, LV, NV
4	KERNS, E.	LVMPD #4331
5	KNEPP, Elaine/or Designee	D.A. INVESTIGATOR
6	KYSGER, Teresa	LVMPD #4191
7	LAVOLL, Charles	5916 Hudson Woods Ct., LV, NV
8	LAVOLL, Charlette	3760 Prairie Orchid, NLV, NV
9	LAVOLL, Mechele	2312 Jasen, LV, NV
10	LAVOLL, RENECE	5916 Hudson Woods Ct., LV, NV
11	LAVOLL, Sheana	9025 Desert Inn, #246, LV, NV
12	LONG, Daniel	LVMPD #3969
13	LOPEZ, Wendy	JACK IN THE BOX
14	Marschner, Julie	LVMPD #8806
15	MARTIN, Isajiah	5032 Wild Buffalo, LV, NV
16	MCGINN, K.	LV FIRE DEPARTMENT
17	MOGG, Clifford	LVMPD #5096
18	MOORE, T.	LVMPD #3878
19	NELSON, Denise Latrice	824 Levy Ln, LV, NV
20	NIVON, A.	LV FIRE DEPARTMENT
21	NORMAN, Sheree	LVMPD #3110
22	ORTEGA, Edward	LVMPD #6747
23	PROIETTO, Daniel	LVMPD #8180
24	RALYEA, Charles	LVMPD #13357
25	ROBERTSON, Jeremy	LVMPD #7626
26	SCHELLBERG, Peter	LVMPD #5413
27	SCHMIT, Robert	LVMPD #1400
28	SEEBOCK, J.	LVMPD #4555

SMITH, Stephanie	LVMPD #6650
STEPHENS, Sharecse	4820 Charleston, #10, LV, NV
STONE, Randall	LVMPD #2887
THAXTON, S.	LVMPD #4464
TREMEL, Donald	962 Upper Meadows, Henderson, NV
VAN EPPS, Jennifer	LVMPD #7724
WHITE, Renee	1728 Wendell Williams, LV, NV
WOLFENBARGER, A.	LVMPD #5980
YOUNG, Damon	LVMPD #8252

These witnesses are in addition to those witnesses endorsed on the Information and any other witness for which a separate Notice has been filed.

DATED this 21 day of April, 2011.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: _____
CHRISTY L. CRAIG, #6262
Deputy Public Defender

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Notice is hereby acknowledged this 29 day of April, 2011.

CLARK COUNTY DISTRICT ATTORNEY

By: _____

Case Name: Kevin Marquett Gipson
Case No.: C264079X
Dept. No.: XVIII

ORIGINAL

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PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

MAY 0 2 2011

BY, Roshonda Mayfield
ROSHONDA MAYFIELD, DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. KEVIN MARQUETT GIPSON, Defendant.	CASE NO. C264079X DEPT. NO. XVIII DATE: May 2, 2011 TIME: 8:15 a.m.

DEFENSE REPY TO STATE'S MOTION IN LIMINE TO ADMIT PRIOR BAD ACTS

COMES NOW, the Defendant, KEVIN MARQUETT GIPSON, by and through CHRISTY L. CRAIG, Deputy Public Defender and hereby requests that this court deny the state's motion.

This Motion is made and based upon all the papers and pleadings on file herein, the attached Declaration of Counsel, and oral argument at the time set for hearing this Motion.

DATED this 2 day of May, 2011.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: _____
CHRISTY L. CRAIG, #6262
Deputy Public Defender

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STATEMENT OF FACTS

Kevin Gipson is charged by way of indictment with one count of Murder with Use of a Deadly Weapon. The state alleges that on March 25, 2010 at about 5:45 am, Brittney Lovall was shot once in the head.

There were no witnesses to the actual shooting. A number of witnesses heard some shouting, some were able to see the outlines of two people, some heard the sound of a gunshot, some saw a man running. At best some witnesses saw a black male adult running and he may have had facial hair.

Family members immediately point the finger at Kevin Gipson. Brittney and Kevin had been involved in a relationship since high school. Early in their relationship, Brittney ran away from home to be with Kevin. The family called the police to force her to leave Kevin and return home. Despite this family intervention, the relationship continued for many years.

Kevin and Brittney lived together off and on for a number of years. During their nearly decade long on-again and off-again relationship, they had two children together. At the time of her death, the oldest child Keone was about 4 years of age and the youngest Khali had just turned one.

Kevin Gipson and Brittney ended their relationship sometime in November of 2009. However, they still had two children together. Family members, co-workers and friends admit that Kevin was often asking to see the children, particularly after November 2009 and as it got closer the one of the children's birthday.

As it got closer to the birthday, Kevin was trying to spend some time with his child. Keya Jackson reported that Kevin had called her trying to get in contact with Brittney so he could say Happy Birthday to his son. That child was in custody of Brittney and his only contact with his children was through Brittney, or her family and friends if she was ducking him.

Brittney also had a child from another relationship. The father of that child is currently in prison. A former employer told police that Brittney feared the father of that child and was worried for her safety when he was released from prison

At the time of her death, Brittney was not with Kevin Gipson and was in fact already living with another man, Kevin Eppenger. It appears that she had been with Kevin Eppenger for several

months at the time of her death. Charles Lavoll, Brittney's father noted that he was "upset with her" because she was dating Kevin Eppenger. In fact, he was so unhappy about her new boyfriend Kevin Eppenger that he had not spoken to Brittney for a month as a result. Mr. Lavoll claimed that he had a very close relationship with her and that they spoke nearly every day. Her decision to date Kevin Eppenger in spite of her father's feelings on the matter, lead to a communication break with her father.

Brittney Lavoll was employed by Jack-In-The-Box beginning in January, 2004. According to Keya Jackson a friend and co-worker at Jack-In-The-Box, Brittney transferred to another store because she did not get along with the store manager and was "gonna take a demotion." Instead, an area manager transferred Brittney to another store.

Shareese Stephens echoes Ms. Jackson's report, telling police that with the bad economy, sales had dropped a lot. That Brittney had a lot of stress from being a single parent with the father of one child in prison, and not getting along with the father of the other two children. Ms. Stephens says that Brittney was trying to demote herself assistant manager to a regular crew member and that instead a higher management employee suggested moving another store where she could make more money.

Despite what Brittney may have decided to tell her father about why she moved stores, there are no facts to support the conclusion that Brittney was transferred by Jack-In-The-Box management in order to protect her from Kevin.

Additionally, the state claims that "during the same time period" but never specifies the actual time period, Kevin went to Jack-In-The-Box and demanded money from Brittney. There is no police report, no internal report from Jack-In-The-Box nothing to substantiate this story. Brittney's father claims that Brittney told him this story but he is not clear on when it happened.

Mr. Lavoll reported that he had insisted that Brittney file charges against Kevin. Brittney lied to her father and told him that she had filed charges against Kevin Gipson for a number of things that Brittney claimed Kevin had done to her. Mr. Lavoll believed Brittney when she said that she had filed charges with the police. It is clear that Brittney, like many adult children, was not always truthful with her parents about the details of her personal life.

Clearly, she did not share all of the details of her life with her father given that he had the idea that she requested a transfer in order to avoid Kevin Gipson. Brittney also lied to him about filing a police reports about Kevin's alleged behavior.

The state admits that there are no police reports or actual witnesses to any prior physical abuse by Kevin Gipson. Nor are there any Jack-In-The-Box records to support the contention that Brittney changed physical job locations in order to avoid Kevin Gipson. There are no lease records to support the state's contention that Brittney left any apartment in order to avoid Kevin Gipson. The state fails to state a date or location of this move from one apartment to another.

Finally the state alleges that on some unknown occasions, unknown friends and unnamed family members observed "indications" of abuse and determined that Kevin was the abuser. Again, the state fails to provide any specific information. There is no attempt to date the alleged "indications" of abuse, not a month or even a year that this act might have occurred. There is no attempt to provide any detail of what the "indications" of abuse might actually be, especially important since there is no official record of any "indications" of abuse.

It is clear that Brittney did not always share accurate details about her complicated private life with her family and friends. She had a child with a man she feared and was living with another man (who coincidentally had the same first name as Kevin Gipson) and she alone controlled Kevin Gipson's visitation with his young children. These circumstances do not lend any reliability or credibility to second and third hand observations by unknown friends and family from some unknown date and time.

ARGUMENT

The state seeks to introduce unreliable observations of "indications" of abuse. The alleged abuse was not directly observed by any witness, nor are there any official reports. It is likely that the state will also seek to use statements allegedly made by Brittney to these witnesses as well as their direct observations.

According to the state, the rationale for admitting the unreliable observations of "indications" of abuse is that it helps to establish a motive for the killing that occurred much later,

6 months or maybe even years later. The state fails to provide a date for these observations, but it had to be at least 6 months prior to her death since according to the state they ended relationship in November of 2009. The State's motion fails to consider several factors, the most important of which is the limitations of Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004) puts upon their ability to present such evidence.

Even to the extent that the proof of unreliable observations of "indications" of abuse to the victim are subject to proof which does not violate Kevin Gipson's right to confront and cross-examine witnesses pursuant to the Sixth Amendment of United States Constitution, they are still inadmissible. Statements about the observations of "indications" of abuse made by the victim to persons other than government agents are hearsay absent some demonstration of an applicable exception.

Even if the Sixth Amendment and hearsay hurdles were met, it is not clear how the unreliable observations of "indications" of abuse are relevant. The State makes a blanket claim that the threats are "extremely probative of his premeditation and deliberation", but this claim is not supported. Even assuming that Kevin Gipson was responsible for some kind of physical abuse to Brittney some unknown number of months or years before the killing, it is difficult to divine how these issues would be relevant to the issues claimed by the state. The state's motion conveniently fails to mention the up and down nature of their relationship over a very long period of time. That they had lived together separated and return to one another many times during their long relationship.

That fact that the defendant was or was not angry with the victim some unknown number of months or years before the killing say little or nothing about his state of mind the day of the incident. Simply put, given their remoteness in time and the intervening reconciliations and separations between the parties, the relevance of the unreliable observations of "indications' of

abuse is minimal at best. See Philips v. State, 121 Nev. Adv. Rep. 58 (2005). Obviously, the minimal probative worth of this testimony is heavily outweighed by their highly prejudicial nature. As a result, they are inadmissible. Id.

Even if the unreliable observations of "indications" of abuse could overcome the Sixth Amendment, hearsay and relevance problems, they would still run afoul of NRS 48.045, which creates a prohibition against the admission of prior bad acts save a few specific exceptions. In this instance the State claims that this prohibition can be overcome because the "acts" and unreliable observations of "indications" of abuse somehow prove "motive" and "intent". This is ridiculous, as unreliable observations of "indications" of abuse occurring some unknown months or years before the incident have nothing to do with the question at hand, to wit: Kevin Gibson's state of mind on the day of the killing.

That fact that the Kevin Gipson was or was not angry with the victim some unknown number of months or years before the killing say little or nothing about his state of mind the day of the incident. Simply put, given their remoteness in time and the intervening reconciliations and separations between the parties, the relevance of the unreliable observations of "indications' of abuse is minimal at best. See Philips v. State, 121 Nev. Adv. Rep. 58 (2005). Obviously, the minimal probative worth of this testimony is heavily outweighed by their highly prejudicial nature. As a result, they are inadmissible. Id.

What the State is attempting to do is wrongfully admit propensity/bad character evidence, hoping that the jury might infer that Kevin Gipson is a bad person or that he's done wrong, before so he must have done wrong this time. This is exactly what NRS 48.045 was intended to prevent. Id.

I. THE STATE FAILS TO PROVIDE EVIDENCE PURSUANT TO NRS 48.045 THAT WOULD ALLOW THE ADMISSION OF BAD CHARACTER EVIDENCE

The general rule with regard to character evidence is that evidence of other crimes or bad acts is inadmissible to prove the character of a person in order to show he acted in conformity with such character. NRS 48.045. Motive, intent, plan, and identity are some of the objectives for which such evidence **may** be admitted. NRS 48.045(2) emphasis added.

Evidence of alleged misconduct may be acceptable if three conditions are met at a hearing held outside the presence of the jury: (1) the incident is relevant to the crime charged; (2) the incident is proven by clear and convincing evidence; and (3) the evidence is more probative than prejudicial. See Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985), United State v. DeLuna, 763 F.2d 897 (8th Cir.), cert. denied, 474 U.S. 980 (1985); Walker v. State, 116 Nev. 442, 997 P.2d 803 (2000) (citing Finch v. State, 113 1170, 1176, 946 P.2d 1061 (1994). The Court has emphasized that NRS 48.045(2) is merely an exception to the general presumption that uncharged bad acts are inadmissible. Tavares v. State, 117 Nev. Adv. Rep. 61, 30 P.3d 1128 (2001).

A. RELEVANCY

In evaluating the relevance of prior bad acts to the crime charged, the Courts have consistently noted that events remote in time from the charged incident have less relevance in proving later intent. Walker v. State, 116 442, 997 P.2d 803 (2000). Also, when the connection between two acts is not clearly perceived, evidence of the uncharged act should be excluded. Berner v. State, 104 Nev. 695, 765 P.2d 1144 (1988) (citing McMichael v. State, 94 Nev. 184, 577 P.2d 398 (1978); People v. Kelley, 424 P.2d 947 (1967).

The state spends several pages providing the court with lengthy recitations of facts from other cases describing relevance but fails to provide any mention of the "facts" it wants to try to introduce in the instant case. The state simply makes sweeping statements devoid of any pertinent facts. Using the most limited, vague and uninformative language possible, the state demands to

use "the evidence" and insists is relevant because "it" establishes that his motive was to dominate and control her.

The state's failure to communicate does not get any better as the argument moves from motive to an attempt to explain intent. The state actually argues that "it" shows that his "acts" were not a misunderstanding. The defense is at a loss to try to figure out what evidence "it" is supposed to represent and which "acts" the state is sure is evidence of intent.

The state must establish and clearly describe "the evidence" it insists is so relevant before it can even effectively argue this motion. Simply calling "it" relevant does not make it so. It would be easier if the state defined "it". The state's failure to even minimally describe "the evidence" it seeks to admit requires the Court deny this motion without hearing.

What the State is attempting to do is wrongfully admit vague and undefined propensity/bad character evidence, with little indicia of reliability, hoping that the jury might infer that Kevin Gipson is a bad person or that he's done wrong, before so he must have done wrong this time. This is exactly what NRS 48.045 was intended to prevent.

B. CLEAR AND CONVINCING EVIDENCE

Unsubstantiated charges of misconduct hinder the defense and present a grave danger to the fairness of the trial. Berner v. State 104 Nev. 695 at 698. The prosecution cannot be allowed to make its case on the basis of unreliable observations of "indications" of abuse about some undated events(s). The state may not simply call "it" relevant and end the argument as if all of the requirements of NRS 48.045 don't exist.

The use of specific conduct to show a propensity to commit the crime is clearly prohibited and is commonly regarded as sufficient grounds for reversal. NRS 44.045(1); Berner v. State, 104 Nev. 695, 765 P.2d 1144 (1988).

The state failed to hint, mention or argue that the unknown "evidence" of the "acts" is clear and convincing. In fact, in this motion, the state fails to provide clear and convincing evidence that they even have any evidence at all.

C. PREJUDICIAL VS. PROBATIVE

This evidence must nevertheless be limited according to prejudicial effect. NRS 48.035. Although the admission of evidence of separate and independent criminal acts rests within the sound discretion of the trial court, it is, nevertheless, the duty of that court to strike a proper balance between the probative value of the evidence and its prejudicial dangers. Mayes v. State, 95 Nev. 140, 591 P.2d 250 (1979). Care must be taken to require that such evidence be probative of something beyond mere bad character, such as intent, motive or play. Berner v. State, 104 Nev. 695 at 697.

The Court has also established that in evaluating whether the probative value of the evidence is substantially outweighed by the danger of prejudice, the evidence of prior bad acts may unduly influence the jury and result in a conviction based on the accused's propensity to commit a crime rather than on the State's ability to prove all the elements of the crime. Walker v. State 166 Nev. 442 at 447.

The use of uncharged bad act evidence to convict a defendant is heavily disfavored in our criminal justice system because bad acts are often irrelevant and prejudicial and force the accused to defend against vague and unsubstantiated charges. Tavares v. State, 117 Nev. Adv. Rep. 61, 30 P.3d 1128 (2001); Walker v. State, 116 Nev. 442, 997 P.2d 803 (2000) (citing Berner v. State, 104 Nev. 695, 696-97, 765 P.2d 1144, 1145-46 (1988). The principal concern with admitting such acts is that the jury will be unduly influenced by the evidence, and thus convict the accused because it believes the accused is a bad person. Id.

The state's failure to explain "the evidence" limits an effective argument, but assuming arguendo that it unreliable observations of "indications" of abuse from some unknown time; obviously, the minimal probative worth of this testimony is heavily outweighed by their highly prejudicial nature. As a result, they are inadmissible.

For the plethora of reasons cited above, the state's attempt to admit evidence of Kevin Gipson's bad character via alleged unreliable observations of "indications" of abuse made some time before the killing must fail.

II. THE STATE FAILS TO PROVIDE ANY EVIDENCE TO ALLOW AN END RUN AROUND NRS 48.045 REQUIRMENTS

The state argues that NRS 48.061 allows them to present evidence of domestic violence and expert testimony regarding the effect of domestic violence on the alleged victim. The state has not endorsed a domestic violence expert, nor is there any mention of domestic violence in the charging document. The state admits it has no witnesses to any acts of domestic violence between Kevin Gipson and Brittney Lavoll. The state admits it has no police reports regarding any acts of domestic violence between Kevin Gipson and Brittney Lavoll. Therefore the state does not meet even the minimal requirements of NRS 48.061.

Pursuant NRS 48.061 the state must establish, by way of a domestic violence expert[1] as required by the statute, that Brittney's decisions to move from one apartment to another (on some unknown date) change her phone number (on some unknown date) and change her work location were the result of the effects of domestic violence. In this case, co-workers told police that Brittney had a problem with her manager and was seeking a demotion. Instead an area manger moved her to another store. Another co-worker told police that because of the bad economy she was moving to a more profitable store.

[1] NRS 48.061 in part.... evidence of domestic violence and expert testimony concerning the effect of domestic violence, including, without limitation, the effect of physical, emotional or mental abuse, on the beliefs, behavior and

With regard to her alleged moves from apartment to apartment in order to hide from Kevin Gipson. The state has provided no evidence to the defense showing a broken lease or rental agreement indicating that Brittney moved from one apartment to another to escape Kevin Gipson. Assuming that the state manages to provide some specific evidence that Brittney moved from one apartment to another simply to avoid Kevin Gipson and that she did so after November 2009, that is not evidence of domestic violence pursuant to NRS 48.045 or NRS 33.018.

In fact, the state has failed to provide any indication at all about the date the alleged apartment move might have occurred. We do know that she moved in and began to live with her new boyfriend Kevin Eppenger in the months prior to her death. There is no evidence to suggest that she moved in with Kevin as the result of the effects of domestic violence by Kevin Gipson.

Finally, the state claims that Brittney changed her phone number in order to avoid Kevin Gipson. To date, the state has provided no telephone records to the defendant that would indicate that Brittney had changed her phone number for that reason.

Kevin Gipson and Brittney had two children together. They shared parenting responsibilities. The family and friends report that Kevin often called to ask about seeing his children. Brittney controlled access to his children. The only way to see his children was to contact Brittney. Telephone calls to Brittney is not evidence of domestic violence, changing her number or refusing to talk with Kevin is also not evidence of domestic violence.

The state does not meet the requirements of NRS 48.061 because it has no credible evidence of domestic violence in the days or weeks or months before Brittney's death. The state has no credible evidence of domestic violence at all in their relationship. Additionally, the statue

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perception of the alleged victim of the domestic violence that is offered by the prosecution or defense is admissible in a criminal proceeding for any relevant purpose,

requires that evidence of the effects of credible domestic violence must be presented by an expert in domestic violence. The state has not noticed an expert in domestic violence

Even assuming that the state has some credible evidence of domestic violence, the evidence must still pass muster under NRS 48.045 and of course the limitations of Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004) puts upon their ability to present such evidence.

The state's transparent attempts to shade every decision that Brittney made from November of 2009 until her death as the result of the residual effects of prior incidents of domestic violence are pure character assassination prohibited by NRS 48.045. They have absolutely nothing to do with premeditation, motive, or the complete story of the crime, nothing to do with her state of mind.

Additionally NRS 48.061(2) provides that expert testimony concerning the effects of domestic violence may NOT be offered against a defendant to prove the occurrence of an act which forms the basis of a criminal charge against the defendant. The state is certainly seeking to do just that in this case and it is directly prohibited by the statute.

Finally, NRS 48.061 is unconstitutional in that it specifically allows for the presentation of evidence as to the effects of domestic violence specifically including physical, emotional or mental abuse. Emotional and mental abuse is not included in the statutory definition of domestic violence. NRS 33.018 provides that domestic violence is limited to very specific acts and does not include mean words or hurting someone's feelings.[2] As such NRS 48.061 unconstitutionally expands the definition of domestic violence to include words and feelings.

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CONCLUSION

The defense respectfully requests that this court deny the state's Motion In Limine to Admit Bad Acts and Other Acts of the Defendant Against the Victim. The state fails to establish any credible, specific and reliable evidence and is simply scrambling for a way to wrongfully admit propensity/bad character evidence, hoping that the jury might infer that Kevin Gipson is a bad person or that he's done wrong, before so he must have done wrong this time. This is exactly what NRS 48.045 was intended to prevent.

DATED this 2 day of May, 2011.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: _____
CHRISTY L. CRAIG, #6262
Deputy Public Defender

[2] NRS 33.018 defines domestic violence as batter, assault, coercion, sexual assault, course of harassing conduct such as stalking, arson, trespassing, larceny, destruction of private property, injuring or killing an animal, false imprisonment, unlawful entry with a risk of harm.

NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion on for hearing before the Court on the 2nd day of May, 2011, at 10:00 a.m.

DATED this 2 day of May, 2011.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: _____
CHRISTY L. CRAIG, #6262
Deputy Public Defender

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing is hereby acknowledged this _____ day of May, 2011.

CLARK COUNTY DISTRICT ATTORNEY

By: _____

Electronically Filed
05/03/2011 08:11:50 AM

CLERK OF THE COURT

NOTC

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
SHANON CLOWERS
Deputy District Attorney
Nevada Bar #0010008
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

KEVIN MARQUETTE GIPSON,
#1582343

Defendant.

CASE NO: C264079

DEPT NO: XVIII

SECOND SUPPLEMENTAL NOTICE OF WITNESSES
[NRS 174.234(1)(a)]

TO: KEVIN MARQUETTE GIPSON, Defendant; and

TO: PUBLIC DEFENDER, Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF NEVADA intends to call the following witnesses in its case in chief:

NAME	ADDRESS
RUSSEL, NIKKI	UNKNOWN

These witnesses are in addition to those witnesses endorsed on the Information and

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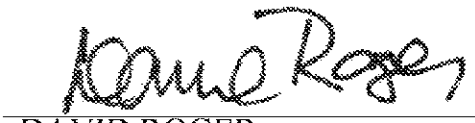
any other witness for which a separate Notice has been filed.

BY 
DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of SECOND SUPPLEMENTAL NOTICE OF WITNESSES, was made this 3rd day of May, 2011, by Electronic Filing to:

PUBLIC DEFENDER
Email: pdclerk@co.clark.nv.us.com

/s/ T. SCHESSLER
Secretary for the District Attorney's Office

ts/dvu

ORIGINAL

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PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. KEVIN MARQUETT GIPSON, Defendant.	CASE NO. C264079X DEPT. NO. XVIII DATE: May 4, 2011 TIME: 8:15am

DEFENDANT'S REPLY TO STATE'S MOTION IN LIMINE REGARDING DEFENDANT'S EXPERT WITNESSES

COMES NOW, the Defendant, KEVIN MARQUETT GIPSON, by and through CHRISTY L. CRAIG, Deputy Public Defender and hereby deny the state's motion.

This Motion is made and based upon all the papers and pleadings on file herein, the attached Declaration of Counsel, and oral argument at the time set for hearing this Motion.

DATED this 2nd day of May, 2011.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: _____
CHRISTY L. CRAIG, #6262
Deputy Public Defender

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Reply to Motion
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"Few rights are more fundamental than that of an accused to present witnesses in his own defense." Chambers v. Mississippi, 410 U.S. 284, 302 (1973). "'The Due Process Clauses in our constitutions assure an accused the right to introduce into evidence any testimony or documentation which would tend to prove the defendant's theory of the case." Vipperman v. State, 96 Nev. 592, 596 (1980) (internal citations omitted).

A. The Defendant is Entitled to Present State of Mind Evidence

The state is correct is stating that Nevada does not recognize "diminished capacity" as a defense. However, the Defendant is entitled to present evidence of the Defendant's state of mind and how it may negate the elements of premeditation and deliberation as well as the impact on his ability to perceive and respond to the police during questioning.

In States where "diminished capacity" is recognized, the only showing required is that a mental illness is partially responsible for the defendant's conduct. It does not require a showing that the defendant could not appreciate the nature of his acts or determine whether his acts were right or wrong. Miller v. State of Nevada, 112 Nev. 168, 911 P.2d 1183 (1996) citing State v. Wilcox, 70 Ohio St. 2d 182, 436 N.E.2d 523 (Ohio 1982). The Defendant in the case at bar is not arguing that the Defendant did not have the capacity to premeditate.

In presenting state-of-mind evidence, the question posed is, "assuming that the defendant was capable of premeditating, did he in fact premeditate?" The mental health of the defendant at the time of the crime undoubtedly is a factor in reaching an ultimate conclusion. See Geary v. State of Nevada, 110 Nev. 261 (1994). The Defendant is in no way arguing that his mental illness in and of itself destroyed his capacity to premeditate. See Singleton v. State, 90 Nev. 216, 522 p. 2d 1221 (1974).

Assuming that the Defendant's statement to police is entered into evidence, his state of mind, his ability to perceive and accurate report and respond to the police is a factor to be

considered by the trier of fact. The defendant's mental illness, his lack of medication for that illness and the effect on his state of mind are simply factors to be considered by the jury.

DATED this 2nd day of May, 2011.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: _____
CHRISTY L. CRAIG, #6202
Deputy Public Defender

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Reply is hereby acknowledged this 3 day of May, 2011.

CLARK COUNTY DISTRICT ATTORNEY

By: Erin McCarthy

ORIGINAL

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CLERK OF THE COURT

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PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

KEVIN MARQUETT GIPSON,

Defendant.

CASE NO. C264079X

DEPT. NO. XVIII

DATE: May 16, 2011
TIME: 8:15 am

MOTION IN LIMINE T TO BAR THE ADMISSION OF CUMULATIVE VICTIM IMPACT EVIDENCE IN VIOLATION OF THE DUE PROCESS CLAUSE

COMES NOW, the Defendant, KEVIN MARQUETT GIPSON, by and through CHRISTY L. CRAIG, Deputy Public Defender and hereby respectfully requests that this Court bar the admission of cumulative victim impact evidence.

This Motion is made and based upon all the papers and pleadings on file herein, the attached Declaration of Counsel, and oral argument at the time set for hearing this Motion.

DATED this 3rd day of May, 2011.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: _____
CHRISTY L. CRAIG, #6262
Deputy Public Defender

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STATEMENT OF FACTS

Kevin Gipson is charged by way of indictment with one count of Murder with Use of a Deadly Weapon. The state alleges that on March 25, 2010 at about 5:45 am, Brittney Lovall was shot once in the head.

There were no witnesses to the actual shooting. A number of witnesses heard some shouting, some were able to see the outlines of two people, some heard the sound of a gunshot, some saw a man running. At best some witnesses saw a black male adult running and he may have had facial hair.

Ultimately Kevin Gipson was arrested and charged in this case with the murder of Brittney Lavoll.

The U.S. Supreme Court in Payne v. Tennessee, has held that the Eighth Amendment erects no per se bar to the admission of certain victim impact evidence during the sentencing phase of a capital case. The Court, however, has acknowledged that victim impact evidence can be so unduly prejudicial as to render the sentencing proceeding fundamentally unfair and violative of the Due Process Clause of the Fourteenth Amendment. Id. at 2608, 115 L.Ed.2d at 735.

The victim impact evidence which the State may produce at the sentencing phase may be so cumulative, redundant and oppressive in nature as to encourage a shifting of the focus of the sentencing proceedings away from the defendant and on to the victim and her family. Such a result was not intended by the Court in Payne which repeatedly reasoned that the sentencing authority was entitled to see only "a quick glimpse of the life petitioner chose to extinguish." Id. at 2611, 115 L.Ed.2d 739. [quoting Mills v. Maryland, 486 U.S. 367, 397, 100 L.Ed.2d 384, 108 S.Ct 1860 (1988)], (Rehnquist, C.J., dissenting).

The introduction of such cumulative, redundant and oppressive victim impact evidence is so unduly prejudicial as to violate the principles of fundamental fairness and the constitutional requirements of the Due Process Clause of the Fourteenth Amendment of the United States Constitution and Nevada Constitutional Declaration of Article I, Section 8 of the Due Process Clause.

For these reasons and others to be raised at the time of the hearing on this Motion, the defendant's motion to bar the admission of victim impact evidence must be granted.

CONCLUSION

For the foregoing reasons, the Defendant herein respectfully requests that this Honorable Court enter an Order barring the admission of cumulative victim impact evidence.

DATED this 3rd day of May, 2011.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: _____
CHRISTY L. CRAIG, #6262
Deputy Public Defender

NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion on for hearing before the Court on the 11th day of May, 2011, at 8:15 am

DATED this 3rd day of May, 2011.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: _____
CHRISTY L. CRAIG, #6262
Deputy Public Defender

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Motion is hereby acknowledged this 3 day of May, 2011.

CLARK COUNTY DISTRICT ATTORNEY

By: _____

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CLERK OF THE COURT

PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

KEVIN MARQUETT GIPSON,

Defendant.

CASE NO. C264079X

DEPT. NO. XVIII

DATE: May 4, 2011
TIME: 8:15 am

MOTION IN LIMINE TO PRECLUDE THE STATE FROM MOVING TO ADMIT INTO EVIDENCE PHOTOGRAPHS PREJUDICIAL TO KEVIN GIPSON

COMES NOW, the Defendant, KEVIN MARQUETT GIPSON, by and through CHRISTY L. CRAIG, Deputy Public Defender and hereby respectfully requests that this Court, pursuant to the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Article 1 of the Nevada Constitution, and applicable state law, preclude the State from moving to admit into evidence the gruesome and highly prejudicial photographs of Brittney Lavoll.

This Motion is made and based upon all the papers and pleadings on file herein, the attached Declaration of Counsel, and oral argument at the time set for hearing this Motion.

DATED this 3rd day of May, 2011.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

BY: _____
CHRISTY L. CRAIG, #6262
Deputy Public Defender

10C264079
MLIM
Motion In Limine
1390391

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MAY 03 2011
CLERK OF THE COURT

STATEMENT OF FACTS

Kevin Gipson is charged by way of indictment with one count of Murder with Use of a Deadly Weapon. The state alleges that on March 25, 2010 at about 5:45 am, Brittney Lovall was shot once in the head.

There were no witnesses to the actual shooting. A number of witnesses heard some shouting, some were able to see the outlines of two people, some heard the sound of a gunshot, some saw a man running. At best some witnesses saw a black male adult running and he may have had facial hair.

Ultimately Kevin Gipson was arrested and charged in this case with the murder of Brittney Lavoll.

It is improper for the State to seek to introduce into evidence gruesome and highly prejudicial autopsy photographs of the deceased which advance no evidentiary purpose and serve only to inflame the passions of the jury in violation of Kevin Gipson's right to a fair trial as guaranteed by the state and federal constitutions.

Although this is not a capital case, Kevin Gipson is facing the possibility of life in prison without the possibility of parole if he is convicted therefore, exacting standards must be met to assure that it is fair. Johnson v. Mississippi, 486 U.S. 578, 584 (1988); Gardner v. Florida, 430 U.S. 349, 363 - 64 (1977); Woodson v. North Carolina, 428 U.S. 280, 305 (1976) (White, J., concurring). At a trial, the avoidance of inflammatory appeals to the passions and prejudices of juries is constitutionally protected. Certainly, the United States Supreme Court has repeatedly held that "because of the qualitative difference [between death and any other form of punishment], there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case." Woodson v. North Carolina, 428 U.S. 280, 305 (1976); Gardner v. Florida, 430 U.S. 349, 357 - 58 (1977); Lockett v. Ohio, 438 U.S. 586, 604 (1978); Beck v. Alabama, 447 U.S. 625, 637 - 38 (1980). The same holds true when there is potential for a life sentence without the possibility of parole.

The Nevada Supreme Court has held, under NRS 48.035(1), that the relevance of the deceased photographs may be "substantially outweighed by the danger of unfair prejudice".

Where the proffered photographs are "gruesome or unduly prejudicial," they should be excluded. Clem v. State, 104 Nev. 351, 356; 760 P.2d 103 (1988); Dearman v. State, 93 Nev. 364, 369; 566 P.2d 407 (1977). It is well established that where the prejudicial effect of photographs outweighs their probative value, they should not be admitted. Caylor v. State, 353 So.2d 8 (Ala.Cr.App. 1977). See also, Commonwealth v. Scaramuzzino, 317 A.2d 225, 226 (Pa. 1974) ("photograph of a wound at the back of the ear with the hair pulled away" too prejudicial); State v. Clawson, 270 S.E.2d 659, 671 (W.Va. 1980) (citing cases); accord McCullough v. State, 341 S.E.2d 706 (Ga. 1986); People v. Coleman, 451 N.E.2d 973, 977 (Ill.App.Ct. 1983); Brown v. State, 302 S.E.2d 347 (Ga. 1983); Commonwealth v. Richmond, 358 N.E.2d 999, 1001 (Mass. 1976); State v. Childers, 536 P.2d 1349, 1354 (Kan. 1975); People v. Burns, 241 P.2d 308, 318 (Cal.App. 1952).

Here, we must analyze the probative value of allowing such photographic evidence against the danger of unfair prejudice to Gipson. Generally, photographs may assist in the interpretation of an expert's testimony. In this, case where the cause of death is not in issue, the introduction of photographic evidence would not assist the trier of facts in performing their duties in analyzing the evidence. Thus, the probative value of such evidence is severely diminished.

Conversely, the impact made by the introduction of such evidence is highly prejudicial to Gipson. Because the photographs of the deceased are gruesome, inflammatory, cumulative, and serve no evidentiary purpose they will have an enraging impact on the jury. The jury could be overwhelmed by the nature of the photographs, which are used to inflame their passions and prejudice, which in turn will have an improper affect on their decision making process. Therefore, the Court must not permit these photographs to be introduced at trial to avoid any improper inflammatory appeals by the prosecution to the jury.

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WHEREFORE, we respectfully requests that this Court enter an Order granting the Motion in Limine and prohibiting the State from introducing into evidence any gruesome and inflammatory photographs of the deceased at either the trial or penalty phase of the trial.

DATED this 3rd day of May, 2011.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: _____
CHRISTY L. CRAIG, #6262
Deputy Public Defender

NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion on for hearing before the Court on the 4th day of May, 2011, at 8:15 am

DATED this 3rd day of May, 2011.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: _____
CHRISTY L. CRAIG, #6262
Deputy Public Defender

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Motion is hereby acknowledged this 3 day of May, 2011.

CLARK COUNTY DISTRICT ATTORNEY

By: _____

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CLERK OF THE COURT

MOT

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
SHANON CLOWERS
Deputy District Attorney
Nevada Bar #0010008
200 Lewis Avenue
Las Vegas, Nevada 89155-2211
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

KEVIN MARQUETTE GIPSON,
1582343

Defendant.

Case No. 10-C-264079

Dept No. XVIII

NOTICE OF MOTION AND MOTION TO MOVE TRIAL DATE

DATE OF HEARING: July 11, 2011

TIME OF HEARING: 8:15 AM

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through SHANON CLOWERS, Deputy District Attorney, and files this Notice of Motion and Motion to Move Trial Date.

This Motion is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

/ / /

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NOTICE OF HEARING

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing motion on for setting before the above entitled Court, in Department XVIII thereof, on Monday, the 11th day of July, 2011, at the hour of 8:15 o'clock am, or as soon thereafter as counsel may be heard.

DATED this 28th day of June, 2011.

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY /s/ Shanon Clowers
SHANON CLOWERS
Deputy District Attorney
Nevada Bar #0010008

STATEMENT OF CASE/FACTS/ARGUMENT

The State is currently seeking to change the trial date currently set for September 12, 2011. One of the assigned prosecutors will be out of the jurisdiction teaching a Continuing Legal Education course. This information has been relayed to Chief Deputy Public Defender Christy Craig. The State will coordinate with the Defense and the Court's calendar prior to the hearing and propose a trial date, in the hopes that the State's Motion is granted at that time.

DATED this 28th day of June, 2011.

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY /s/ Shanon Clowers
SHANON CLOWERS
Deputy District Attorney
Nevada Bar #0010008

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of Notice of Motion and Motion to State's Move Trial Date, was made this 28th day of June, 2011, by facsimile transmission to:

LYNN AVANTS, Deputy Public Defender
CHRISTY CRAIG, Deputy Public Defender
FAX #455-5112

/s/ C. Bush
Secretary for the District Attorney's Office

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CLERK OF THE COURT

OPPS

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
ROBERT TURNER
Chief Deputy District Attorney
Nevada Bar #006526
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, -vs- KEVIN MARQUETT GIPSON, #1582343 Defendant.	CASE NO: C-10-264079-1 DEPT NO: XVIII

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO BAR THE ADMISSION OF CUMULATIVE VICTIM IMPACT EVIDENCE IN VIOLATION OF THE DUE PROCESS CLAUSE

DATE OF HEARING: 11/14/2011
TIME OF HEARING: 10:00 AM

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through ROBERT TURNER, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's State's Opposition To Defendant's Motion To Bar The Admission Of Cumulative Victim Impact Evidence In Violation Of The Due Process Clause .

This opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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POINTS AND AUTHORITIES

The Eighth Amendment of the United States Constitution does not prohibit a capital sentencing jury from considering "victim impact" evidence as it pertains to the victim's character and the emotional impact that the murder may have on the victim's family. Moreover, the prosecution is not precluded from arguing this type of evidence at the sentencing hearing. Payne v. Tennessee, 501 U.S. 808, 111 S.Ct. 2597, 115 L.Ed.2d 720 (1991). In Payne, the Court stated:

> "[T]he State has a legitimate interest in counteracting the mitigating evidence which the defendant is entitled to put in, by reminding the sentencer that just as the murderer should be considered as an individual, so too the victim is an individual whose death represents a unique loss to society and in particular to his family." By turning the victim into a "faceless stranger at the penalty phase of a capital trial," Booth deprives the State of the full moral force of its evidence and may prevent the jury from having before it all the information necessary to determine the proper punishment for a first-degree murder.

Payne, 111 S.Ct. at 2608 (internal citations omitted). The Nevada Supreme Court in Homick v. State explained:

> We applaud the decision in Payne as a positive contribution to capital sentencing, and conclude that it fully comports with the intendment of the Nevada Constitution.
>
> Homick urges us to disapprove of the ruling in Payne and search for loftier heights in our own constitution. We are cautioned that otherwise defendants who murder more reputable and valued citizens will be more likely to suffer the imposition of death than the murderer who kills citizens of lesser

stature. We find the argument unpersuasive. The key to a criminal sentencing in capital cases is the ability of the sentencer to focus upon and consider both the individual characteristics of the defendant and the nature and impact of the crime he committed. Only than can the sentencer truly weigh the evidence before it and determine a defendant's just deserts."

Homick v. State, 108 Nev. 127, 825 P.2d 600 (1992).

NRS 175.552, which provides the procedure for the penalty phase sentencing hearing in a First Degree Murder conviction, states in subsection three (3):

> During the hearing, evidence may be presented concerning aggravating and mitigating circumstances relative to the offense, defendant or **victim** and on any other matter which the court deems relevant to sentence, whether or not the evidence is ordinarily admissible. Evidence may be offered to refute hearsay matters. No evidence which was secured in violation of the Constitution of the United States or the Constitution of the State of Nevada may be introduced. The State may introduce evidence of additional aggravating circumstances as set forth in NRS 200.033, other than the aggravated nature of the offense itself, only if it has been disclosed to the defendant before the commencement of the penalty hearing.

(emphasis added). NRS 176.015 mandates the admissibility of victim impact evidence at a sentencing hearing. *See* Smith v. State, 110 Nev. 1094, 1106, 881 P.2d 649 (1994). As such, victim impact testimony is not only encouraged, it is required under the law.

Even if victim impact testimony was not required by law, this Court would still have the discretion to admit the evidence. The Nevada Supreme Court has held that the admissibility of evidence during the penalty phase of a capital murder trial is largely left to

the discretion of the trial judge. Lane v. State, 110 Nev. 1156, 1166, 881 P.2d 1358, 1365 (1994)(citing Milligan v. State, 101 Nev. 627, 636, 708 P.2d 289, 295 (1985)). In reviewing the evidence the court must look to see that the evidence is relevant and more probative than prejudicial. Pellegrini v. State, 104 Nev. 625, 631, 764 P.2d 484, 488 (1988)(citing NRS 48.035; Crump v. State, 102 Nev. 158, 716 P.2d 1387 (1986)). Further, the trial court's decision will not be overturned absent an abuse of discretion. Pellegrini, 104 Nev. at 631, 764 P.2d at 488 (citing Milligan v. State, 101 Nev. 627, 708 P.2d 289, cert. denied, 479 U.S. 870, 107 S. Ct. 238 (1986)). Because a sentencing proceeding is not a second trial, the court "is privileged to consider facts and circumstances that would not be admissible at trial." Denson v. State, 112 Nev. 489, 915 P.2d 284 (1996); See also, Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

In the instant matter, the victim is survived by two divorced parents, two sisters and three minor children. It is not the State's intention to present an overwhelming amount of victim impact testimony at the hearing. However, pursuant to statute, each one of these family members has a right to testify, and may do so, at the sentencing hearing. Each one of them has had a lasting affect placed upon them by Defendant. It should be noted that State had no control over the number of family members that the Defendant chose to adversely impact when he murdered Ms. Lavoll.

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CONCLUSION

Based on the foregoing, Defendant's Motion To Bar The Admission Of Cumulative Victim Impact Evidence In Violation Of The Due Process Clause should be denied.

DATED this_____day of October, 2011.

Respectfully submitted,

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY /s/ ROBERT TURNER
ROBERT TURNER
Chief Deputy District Attorney
Nevada Bar #006526

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of STATE'S OPPOSITION TO DEFENDANT'S MOTION TO BAR THE ADMISSION OF CUMULATIVE VICTIM IMPACT EVIDENCE IN VIOLATION OF THE DUE PROCESS CLAUSE , was made this day of October, 2011, by Electronic Filing to:

CHRISTY CRAIG, Deputy Public Defender
Email: pdclerk@co.clark.nv.us.com

/s/ T. SCHESSLER
Secretary for the District Attorney's Office

ts/dvu

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CLERK OF THE COURT

OPPS

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
ROBERT TURNER
Chief Deputy District Attorney
Nevada Bar #006526
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, -vs- KEVIN MARQUETT GIPSON, #1582343 Defendant.	CASE NO: C-10-264079-1 DEPT NO: XVIII

STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO PRECLUDE THE STATE FROM MOVING TO ADMIT INTO EVIDENCE PHOTOGRAPHS PREJUDICIAL TO KEVIN GIBSON

DATE OF HEARING: 11/14/2011
TIME OF HEARING: 10:00 AM

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through ROBERT TURNER, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion in Limine to Preclude the State from Moving to Admit into Evidence Photographs Prejudicial to Kevin Gibson.

This opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

/ / /

/ / /

POINTS AND AUTHORITIES

The Defendant motions this court to preclude the State from moving to admit into evidence any photographs. However, such motion is unsupported by the law. In Browne v. State, 113 Nev. 305, 933 P.2d 187 (1997), the Nevada Supreme Court stated,

> We have repeatedly held that "[d]espite gruesomeness, photographic evidence has been held admissible when ... utilized to show the cause of death and when it reflects the severity of wounds and the manner of their infliction." Theriault v. State, 92 Nev. 185, 193, 547 P.2d 668, 674 (1976) (citations omitted). Thus, gruesome photos will be admitted if they aid in ascertaining the truth. Scott v. State, 92 Nev. 552, 556, 554 P.2d 735, 738 (1976); Allen v. State, 91 Nev. 78, 82, 530 P.2d 1195, 1197-98 (1975).
>
> In addition, the admission of photographs lies within the sound discretion of the district court. Absent an abuse of discretion, we will not reverse that admission. Domingues v. State, 112 Nev. 683, 695, 917 P.2d 1364, 1367 (1996); Redmen v. State, 108 Nev. 227, 231, 828 P.2d 395, 398 (1992); Benson, 276 Cal.Rptr. at 845-46, 802 P.2d at 348.

Id at 314. In Browne, the pictures depicted a woman beaten with a baseball bat. Moreover, the Court has upheld the admissibility of even more gruesome photographs than Browne. See Castillo v. State, 114 Nev. 271, 956 P.2d 103 (1998) (Crushing injuries and post-mortem burning); Flores v. State, 121 Nev. 706, 120 P.3d 1170 (2005) (The skull, scalp and peeled-back face of a five-year old child.)

In the instant case, the victim died as the result of a single gunshot wound to the head as well as suffering from numerous abrasions and contusions on her body. The State is entitled to present, and the jury has a right to see photographs, depicting the entry and exit wounds caused by the bullet as well as photographs of the various

injuries sustained at or near the time of death. Such photographs are clearly relevant and are not prejudicial in light of the Nevada Supreme Court's previous rulings. The defendant's motion should, therefore, be denied.

CONCLUSION

Based on the foregoing, the Court should rule on the individual pictures when they are admitted and deny Defendant's motion.

DATED this_____day of October, 2011.

Respectfully submitted,

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY /s/ ROBERT TURNER
ROBERT TURNER
Chief Deputy District Attorney
Nevada Bar #006526

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of STATE'S OPPOSITION TO DEFENDANT REID'S MOTION IN LIMINE TO EXCLUDE AUTOPSY, CRIME SCENE, AND OTHER GRUESOME PHOTOGRAPHS, was made this 12th day of October, 2011, by Electronic Filing to:

CHRISTY CRAIG, Deputy Public Defender
Email: pdclerk@co.clark.nv.us.com

/s/ T. SCHESSLER
Secretary for the District Attorney's Office

ts/dvu

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

NOV 09 2011

BY, APRIL WATKINS, DEPUTY

PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

10C264079
CRTF
Certificate
1691478

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

KEVIN MARQUETT GIPSON,

Defendant.

CASE NO. C264079X

DEPT. NO. XVIII

DATE: November 9, 2011
TIME: 8:15 a.m.

CERIFICATE OF THE EIGHTH JUDICIAL DISTRICT COURT OF NEVADA

COMES NOW, the EIGHTH JUDICIAL DISTRICT COURT OF NEVADA, through the HONORABLE JUDGE DAVID BARKER, upon Defendant, Kevin Marquett Gipson's Motion to Secure the Attendance of An Out of State Witness and Issuance of a Certificate Under Seal of the Court pursuant to the Uniform Act regarding Attendance of Witnesses Outside State, NRS 174.395 et seq, and in making this Certificate under seal of the Court, hereby finds that:

1. Geoffrey Flohr, who currently resides in St. Joseph, Michigan and is within the jurisdiction of the 45th Circuit Court of St. Joseph County, Michigan, is a necessary witness for the defendant in a First Degree Murder trial.

2. Geoffrey Flohr was employed by the Las Vegas Metropolitan Police Department and conducted two separate interrogations of defendant Kevin Gipson on March 25 and 26, 2010.

3. It is anticipated that Mr. Flohr's testimony will be required at an evidentiary hearing currently scheduled for December 7, 2011. It is anticipated that his testimony will take about one day.

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WHEREFORE, for the forging reasons, this Court has deemed it necessary and appropriate to issue this Certificate Under Seal of the EIGHTH JUDICIAL DISTRICT COURT OF NEVADA pursuant to the Uniform Act regarding Attendance of Witnesses Outside State, NRS 174.395 et seq.

DATED this 4th day of November, 2011.

The Honorable David Barker
Circuit Court of Clark County
Criminal Division — DC 18
200 E. Lewis Ave.
Las Vegas, NV 89155

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

NOV 09 2011

BY: APRIL WATKINS, DEPUTY

PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

10C264079
MOT
Motion
1891488

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

KEVIN MARQUETT GIPSON,

Defendant.

CASE NO. C264079X

DEPT. NO. XVIII

DATE: November 9, 2011
TIME: 8:15 a.m.

MOTION TO SECURE THE ATTENDANCE OF AN OUT OF STATE WITNESS AND FOR ISSUANCE OF A CERTIFICATE UNDER SEAL OF THE COURT

COMES NOW the Defendant, KEVIN MARQUETT GIPSON, by and through his attorney, CHRISTY CRAIG, Deputy Public Defender, and respectfully requests that this court enter an order securing the attendance of Geoffrey Flohr and issue an order under seal. In support of this request, the defendant states the following:

1. Defendant, Kevin Gipson is charged with first degree murder, inter alia.

2. Geoffrey Flohr, who currently resides in St. Joseph, Michigan and is within the jurisdiction of the 45th Circuit Court of St. Joseph County, Michigan, is a necessary witness at the Jackson v Denno evidentiary hearing.

3. That Geoffrey Flohr was an employee of the Las Vegas Metropolitan Police Department in March 2010. That Mr. Flohr conducted both of the interrogations of defendant Kevin Gipson on March 25 and 26, 2010.

4. That Mr. Flohr has personal knowledge of relevant information that necessary for at the Jackson v Denno evidentiary hearing.

2

5. Mr. Flohr cannot be served through typical service procedures because he is beyond the scope of this Court's jurisdiction.

6. The uniform Act regarding ATTENDANCE OF WITNESSES OUTSIDE STATE, NRS 174.395 — 174.445 provides for uniform procedures that will allow for service of subpoenas on such witnesses.

7. NRS 174.425 provides that, "If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in this state, is a material witness in a prosecution pending in a court of record in this state, or in a grand jury investigations which has commenced or is about to commence, a judge of such a court may issue a certificate under seal of the court stating these facts and specifying the number of days the witness will be required."

8. The testimony of Somalia Stenson is material to the issues in Defendant, Kevin Gipson's case, in particular the Jackson v Denno evidentiary hearing.

9. It is anticipated that Mr. Flohr would be needed for one day of testimony.

10. Mr. Flohr's testimony will be relevant and not cumulative.

WHEREFRORE, defendant, Kevin Gipson respectfully requests that this Court grants his Motion to Secure the Attendance of An Out of State Witness and enter the Certificate attached hereto as Exhibit A under seal of the Court.

Dated this 9 day of November, 2011.

By: _____
CHRISTY CRAIG, #6262
Chief Deputy Public Defender

ORIGINAL

PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT
NOV 09 2011
BY, APRIL WATKINS, DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

KEVIN MARQUETT GIPSON,

Defendant.

CASE NO. C264079X

DEPT. NO. XVIII

DATE: November 9, 2011
TIME: 8:15 a.m.

MOTION FOR WITNESS LIST AND EVIDENCE IN SUPPORT OF ALLEGATIONS OF PRIOR BAD ACTS

COMES NOW, the Defendant, KEVIN MARQUETT GIPSON, by and through CHRISTY L. CRAIG, Deputy Public Defender and hereby requests that this court grant this motion.

This Motion is made and based upon all the papers and pleadings on file herein, the attached Declaration of Counsel, and oral argument at the time set for hearing this Motion.

DATED this 7 day of November, 2011.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: _____
CHRISTY L. CRAIG, #8262
Deputy Public Defender

10C264079
MOT
Motion
1891496

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ARGUMENT

The State of Nevada filed a motion seeking to admit prior bad acts by the defendant against the alleged victim in this case. A hearing is set for November 9th, 2011. The state's motion fails to provide any specifics regarding the allegations such as the date of the incident and the identity of a competent witness that would testify to the event. Additionally, the state fails to provide clear and convincing evidence of the relevance of the event.

The state alleges the following:

1. Brittney moved from one apartment to another in November of 2009 so that Kevin would not know where she lived.

The state fails to indicate the location of the first apartment or the location of the second apartment. There is no evidence of any apartment leases that would indicate that a move occurred. Additionally the state fails to indicate the names of witnesses that could competently testify as to her motivations at the time of this alleged move.

2. On several occasions "abuse was noted by her close friends and family members" and it was determined that the Kevin was the abuser.

The state fails to provide any specifics at all about this allegation. The state acknowledges that there are no official police reports. The state fails to explain what "abuse" was noted by the unnamed witnesses. Was it physical? Was it emotional? Were they fighting over their children? The state does not allege that anyone witnessed an actual abusive event, but instead witnessed "indications" of abuse. The state fails to state what "indications" of abuse means. The state fails to specify who these witnesses might be. The state fails to provide a time frame. Kevin and Brittney have been involved in an on again and off again relationship for nearly a decade.

3. The state alleges that Kevin controlled Brittney. The state fails to provide any hint of the evidence that would be presented to support this allegation. The state does not provide any indication of how this allegation would be relevant to the alleged offense. The state fails to provide any time frame.

4. That "during the same time period" Kevin went to Jack-In-The-Box and demanded money from Brittney.

The state fails to indentify the time frame, instead using the very vague "during the same time period" without any reference points. The state fails to specify who witnessed this demand for money. The state does not provide any indication of how this allegation would be relevant to the alleged offense.

5. That Brittney transferred to another Jack-In-The-Box after Kevin demanded money from her.

The state fails to indicate when that transfer would have occurred. The state fails to indicate the locations that were involved in this transfer. Additionally the state does not indicate a competent single witness that could testify that the transfer from one location to another was the result of Kevin demanding money. Kenya Jackson, a co-worker told police that Brittney was having difficulties with her manager and transferred as a result.

6. That Brittney had received threatening calls and texts from Kevin.

The state has never provided the defense with any phone records to support this contention. The state fails to allege the time frame of these alleged calls and texts. While Brittney did change her phone number, there is no competent evidence or witness to testify as to the reason for the change.

7. That Brittney had instructed her co-workers that if a phone call was for her, they were not to tell anyone where she worked.

The state has never provided the defense with any information regarding the time from for that alleged request to her co-workers. The state has never provided any information to indicate that her blanket request to not tell anyone that she worked at a particular Jack-In-The-Box was meant to avoid Kevin as opposed to avoiding a bill collector.

8. That Kevin made attempts to contact Brittney by way of friends and family and even visited Brittney's parents asking for her.

The state has failed to provide any evidence that he was seeking her for some nefarious purpose. While for this act, the state does provide a 5 month time frame, the state fails to provide any evidence that these attempts to contact Brittney are evidence of "other crimes or bad acts" such as motive, intent, plan or identity.

Brittney and Kevin shared children. They had to maintain some lines of communication in order to arrange visits. Brittney controlled access to her children. The only way to see his children was to contact Brittney.

The defense is in the untenable position of preparing for a Petrocelli hearing without having any of the most basic facts. The defense does not have a list of witnesses to the various acts claimed by the state. The state's description of "close friends and family members" does not allow the defense to adequately prepare for this hearing. The defense does not have any supporting documents, such as apartment leases (or even the location of the apartments) relating to the various acts claimed by the state. The defense does not have dates for many of the acts alleged by the state. Without this basic information, the defense is unable to contact and interview witnesses, subpoena documents and witnesses for this hearing.

The state fails to provide any credible, specific and reliable evidence, fails to provide any particular time frame, fails to name competent witnesses which effectively prevents the defense from properly preparing for the Petrocelli hearing. The state's failure leaves the defendant with so little notice of the alleged prior bad acts as to render him incapable of adequately defending himself. Absent greater specificity as to when and where these alleged acts of misconduct occurred, the Petrocelli hearing cannot go forward.

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The defense is requesting that this court compel the state to provide the defense with a more definite statement as to what-happened-where-and-when, including the name of witness(s) to a particular incident, the date of the incident, any documents which support the claim and the exception pursuant to NRS 48.085 that would permit the evidence to be admitted.

DATED this 7 day of November, 2011.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: _____
CHRISTY L. CRAIG, #6262
Deputy Public Defender

NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion on for hearing before the Court on the 9th day of November, 2011, at 8:15 a.m.

DATED this 7 day of November, 2011.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: _____
CHRISTY L. CRAIG, #6262
Deputy Public Defender

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Motion is hereby acknowledged this _____ day of November, 2011.

CLARK COUNTY DISTRICT ATTORNEY

By: _____

ORIGINAL

PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

FILED
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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. KEVIN MARQUETT GIPSON, Defendant.	CASE NO. C264079X DEPT. NO. XVIII DATE: November 21, 2011 TIME: 8:15 a.m.

MOTION FOR IN CAMERA REVIEW OF PERSONNEL RECORDS

COMES NOW, the Defendant, KEVIN MARQUETT GIPSON, by and through CHRISTY L. CRAIG, Deputy Public Defender and hereby files this motion seeking in-camera review of the personnel records of former Las Vegas Metropolitan Police Department Polygraph Unit's employee Geoffrey Flohr.

It is requested this Court issue a Court Order to the Las Vegas Metropolitan Police Department for the personnel records of Geoffrey Flohr. It is further requested that this Court conduct an in-camera review of said records and release relevant portions to the Defendant.

This Motion is made and based upon all the papers and pleadings on file herein, the attached Declaration of Counsel, and oral argument at the time set for hearing this Motion.

DATED this 8th day of November, 2011.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: _____
CHRISTY L. CRAIG, #6262
Deputy Public Defender

MC

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Kevin Gipson is charged by way of indictment with one count of Murder with Use of a Deadly Weapon. The state alleges that on March 25, 2010 at about 5:45 am, Brittney Lovall was shot once in the head.

Geoffrey Flohr was employed by the Las Vegas Metropolitan Police Department Polygraph Unit. He conducted interrogations of Kevin Gipson on March 25 and 26, 2010 that are the subject of a Motion To Suppress. In State of Nevada v Francisco Vazquez-Rosas, a District Court Judge found that Flohr had violated Miranda and coerced a statement from a defendant in a homicide case. The Court found that Flohr's tactics resulted in a coerced interrogation and suppressed the statement suppressed. Sometime later, Flohr left the employ of the Las Vegas Metropolitan Police Department.

In his website, Geoffrey Flohr Investigative Services, Inc, Flohr touts his years of service and claims that he received "numerous commendations while working for Las Vegas Metropolitan Police." (See attached).

ARGUMENT

In **Pitchess v. Superior Court**, 11 Cal.3d 531 (1974), the California Supreme Court outlined a process by which defendants in that state could request access to police personnel files. The court recognized the compelling interest police officer's have in maintaining the privacy of their personnel files, but also recognized that as a matter of fairness, a defendant should be entitled to any information contained in the personnel file which might bear upon a claim that an officer has engaged in misconduct. Under the current state of practice in California, a defendant only needs to show "good cause" for the requested review.

In **Sonner v. State**, 112 Nev. 1328 (1996), the Nevada Supreme court addressed a claim by a death penalty defendant that his motion to discover the personnel records of the state trooper he had shot in the head had been wrongfully denied. The Court denied because Sonner's request had

been "...based upon nothing more than the assertion of a general right to search for whatever mitigating evidence might be found...". The court, quoting **State v. Blackwell**, 845 P.2d 1017, 1022 (1993), also noted that, "A defendant must advance some factual predicate which makes it reasonably likely the requested file will bear information material to his or her defense."

In this instance, the defense has already filed a Motion To Supress Kevin's statement and a Jackson v Denno hearing is tentatively scheduled for December 2011.

One of the issues noted in the Motion To Supress is that Flohr has a history of coercive interrogations and playing fast and loose with Miranda warnings. As a result of his coercive techniques a court granted a Motion to Supress. The Court went so far as to make a record that it could not imagine a more coercive statement.

Flohr left the Las Vegas Metropolitan Police Department sometime after the ruling that he used coercive interrogation techniques in the Rosas case.

Based upon the foregoing, the defense respectfully submits that there is a strong factual predicate to indicate a reasonable likelihood that an in camera review of Flohr's personnel files will reveal information exculpatory to the defense, in particular, information relating to other instances in which complaints and/or reprimands have been filed against Flohr for violating the rights of persons suspected of crimes, particularly those complaints and/or reprimands related to alleged violations of **Miranda**. Additionally, the circumstances of Flohr's departure from the Department.

Counsel is well aware of the privacy concerns involved with the review of an officer's personnel file, but in this instance, submits that an in-camera review of the file in question will protect against those concerns, guaranteeing against a violation of Gipson's right to exculpatory evidence pursuant to **Brady v. Maryland**, 373 U.S. 83, 83 S.Ct. 1194 (1963) and its progeny. If, as the defense suspects, the requested materials exist, then they are material and necessary to

Gipson's defense in that they will assist in perfecting Gipson's claim that the statements he gave to Flohr must be suppressed.

DATED this 9th day of November, 2011.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: _____
CHRISTY L. CRAIG, #6262
Deputy Public Defender

NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion on for hearing before the Court on the 21st day of November, 2011, at 8:15 a.m.

DATED this 9th day of November, 2011.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: _____
CHRISTY L. CRAIG, #6262
Deputy Public Defender

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing is hereby acknowledged this 10th day of November, 2011.

CLARK COUNTY DISTRICT ATTORNEY

By: Jackie Mayo

EXHIBIT A

ME-10-7455-1

Geoffrey Flohr Investigative Services Inc.

[Home] [Contact Us]

Polygraph Examinations | Investigations | Forensic Computer Examinations | GPS Asset Tracking | Traffic Accident Reconstruction | Legal Nurse Consultant | Forensic Vehicle Examinations | Department of Transportation Compliance

Professionalism Through Integrity

Our company has over 160 years of combined active duty and retired Michigan State Police and Las Vegas Metropolitan Police major case investigative experience. All members of our staff maintain the highest quality of professional ethics and integrity. We offer in-house services of licensed, insured, certified and recognized experts in the following Forensic Disciplines and Technical Fields for Civil Issue Litigation Support:

- Polygraph Examinations and Post Conviction Sexual Offender Testing
- Civil and Criminal Professional and Private Investigations
- Forensic Computer Examinations and Investigations
- GPS Asset Tracking
- Traffic Accident Investigations
- Medical Investigations
- Forensic Vehicle Examinations
- Department of Transportation Compliance Reviews

Geoffrey Flohr retired in 2007 from the Michigan State Police after 25 years of service. Geoffrey then went to work for the Las Vegas Metropolitan Police Department's Polygraph Unit retiring in 2011 to return to Michigan full-time. As a Polygraph Examiner for the last ten years with these two major law enforcement organizations, Geoffrey has been involved in hundreds of major case investigations and completed over 2,000 polygraph examinations. In 1998, he received the Gerstacker Award for "Trooper of the Year" from the Michigan State Police.

Geoffrey has also received numerous commendations while working for Las Vegas Metropolitan Police. He has been requested on numerous occasions by outside agencies to assist in complex and difficult high profile homicide and cold case investigations. Geoffrey has been recognized by several organizations for his integrity and professionalism over his 30+ year law enforcement career. As a fully licensed Professional Investigation Agency in the State of Michigan, we at GFIS Inc. offer a comprehensive investigative capability to all of our clients.

Geoffrey Flohr Investigative Services Inc.

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Exh 1.1

ORIGINAL

PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

FILED
NOV 10 2011
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FILED IN ERROR
CLERK OF THE COURT
DATE

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

KEVIN MARQUETT GIPSON,

Defendant.

CASE NO. C264079X

DEPT. NO. XVIII

DATE: November 9, 2011
TIME: 8:15 a.m.

CERTIFICATE OF THE EIGHTH JUDICIAL DISTRICT COURT OF NEVADA

COMES NOW, the EIGHTH JUDICIAL DISTRICT COURT OF NEVADA, through the HONORABLE JUDGE DAVID BARKER. upon Defendant, Kevin Marquett Gipson's Motion to Secure the Attendance of An Out of State Witness and Issuance of a Certificate Under Seal of the Court pursuant to the Uniform Act regarding Attendance of Witnesses Outside State, NRS 174.395 et seq, and in making this Certificate under seal of the Court, hereby finds that:

1. Geoffrey Flohr, who currently resides in St. Joseph, Michigan and is within the jurisdiction of the Berrien Court in Niles, Michigan, is a necessary witness for the defendant in a First Degree Murder trial.

2. Geoffrey Flohr was employed by the Las Vegas Metropolitan Police Department and conducted two separate interrogations of defendant Kevin Gipson on March 25 and 26, 2010.

3. It is anticipated that Mr. Flohr's testimony will be required at an evidentiary hearing currently scheduled for December 2, 2011.

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Certificate for Attendance of Out-Of-Stat
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WHEREFORE, for the forging reasons, this Court has deemed it necessary and appropriate to issue this Certificate Under Seal of the EIGHTH JUDICIAL DISTRICT COURT OF NEVADA pursuant to the Uniform Act regarding Attendance of Witnesses Outside State, NRS 174.395 et seq.

DATED this 8th day of November, 2011.

The Honorable David Barker
Circuit Court of Clark County
Criminal Division — DC 18
200 E. Lewis Ave.
Las Vegas, NV 89155

ORIGINAL

PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

FILED
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CLERK OF COURT

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

KEVIN MARQUETT GIPSON,

Defendant.

CASE NO. C264079X

DEPT. NO. XVIII

DATE: December 2, 2011
TIME: 1:00pm

MOTION TO SECURE THE ATTENDANCE OF AN OUT OF STATE WITNESS AND FOR ISSUANCE OF A CERTIFICATE UNDER SEAL OF THE COURT

COMES NOW the Defendant, KEVIN MARQUETT GIPSON, by and through his attorney, CHRISTY CRAIG, Deputy Public Defender, and respectfully requests that this court enter an order securing the attendance of Geoffrey Flohr and issue an order under seal. In support of this request, the defendant states the following:

1. Defendant, Kevin Gipson is charged with first degree murder, inter alia.

2. Geoffrey Flohr, who currently resides in Eau Clair, Michigan and is within the jurisdiction of the Berrien County Court in Niles, Michigan, is a necessary witness at the Jackson v Denno evidentiary hearing.

3. That Geoffrey Flohr was an employee of the Las Vegas Metropolitan Police Department in March 2010. That Mr. Flohr conducted both of the interrogations of defendant Kevin Gipson on March 25 and 26, 2010.

4. That Mr. Flohr has personal knowledge of relevant information that necessary for at the Jackson v Denno evidentiary hearing.

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Motion
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5. Mr. Flohr cannot be served through typical service procedures because he is beyond the scope of this Court's jurisdiction.

6. The uniform Act regarding ATTENDANCE OF WITNESSES OUTSIDE STATE, NRS 174.395 — 174.445 provides for uniform procedures that will allow for service of subpoenas on such witnesses.

7. NRS 174.425 provides that, "If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in this state, is a material witness in a prosecution pending in a court of record in this state, or in a grand jury investigations which has commenced or is about to commence, a judge of such a court may issue a certificate under seal of the court stating these facts and specifying the number of days the witness will be required."

8. The testimony of Geoffrey Flohr is material to the issues in Defendant, Kevin Gipson's case, in particular the Jackson v Denno evidentiary hearing.

9. It is anticipated that Mr. Flohr would be needed for one day of testimony.

10. Mr. Flohr's testimony will be relevant and not cumulative.

WHEREFRORE, defendant, Kevin Gipson respectfully requests that this Court grants his Motion to Secure the Attendance of An Out of State Witness and enter the Certificate attached hereto as Exhibit A under seal of the Court.

Dated this 15 day of November, 2011.

By: _____
CHRISTY CRAIG, #6262
Chief Deputy Public Defender

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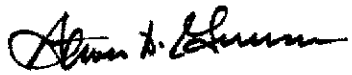

CLERK OF THE COURT

MLIM

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
ROBERT TURNER
Chief Deputy District Attorney
Nevada Bar #006526
200 Lewis Avenue
Las Vegas, Nevada 89155-2211
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

KEVIN M. GIPSON,
#1582343

Defendant.

Case No. C-10-264079

Dept No. XVIII

STATE'S SUPPLEMENTAL MOTION IN LIMINE TO ADMIT BAD ACTS AND OTHER ACTS OF THE DEFENDANT

DATE OF HEARING: 11-16-2011

TIME OF HEARING: 8:15 AM

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through ROBERT TURNER, Chief Deputy District Attorney, and files this Notice of Motion and Motion STATE'S SUPPLEMENTAL MOTION IN LIMINE TO ADMIT BAD ACTS AND OTHER ACTS OF THE DEFENDANT.

This Motion is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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The State is withdrawing it's Motion as to evidence of Other Bad Acts, pursuant to NRS 48.045(2) & NRS 48.061, at this time.

However, it is still the State's intention to present non-bad act evidence regarding the history of the relationship between the defendant and the victim. The State will call friends of the victim and defendant as well as family members of the victim to testify how the relationship began and how it ended. They will relate that it was the victim's decision to the leave the defendant and the defendant wanted the victim back. They will testify regarding the custody arrangement the victim and defendant had regarding the children and which the defendant referenced as a reason for shooting the victim. Such evidence do not constitute other bad acts and are clearly relevant to establish the relationship of the victim and defendant which led to the murder.

DATED this _____ day of November, 2011.

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY /s/ ROBERT TURNER
ROBERT TURNER
Chief Deputy District Attorney
Nevada Bar #006526

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of STATE'S SUPPLEMENTAL MOTION IN LIMINE TO ADMIT BAD ACTS AND OTHER ACTS OF THE DEFENDANT, was made this day of November, 2011, by facsimile transmission to:

PUBLIC DEFENDER

FAX #455-5112

/s/ T. SCHESSLER
Secretary for the District Attorney's Office

Electronically Filed
11/15/2011 03:43:23 PM

CLERK OF THE COURT

OPPS
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
SHANON CLOWERS
Deputy District Attorney
Nevada Bar #0010008
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, -vs- KEVIN M. GIPSON, #1582343 Defendant.	CASE NO: C-10-264079 DEPT NO: XVIII

STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR IN CAMERA REVIEW OF PERSONNEL RECORDS

DATE OF HEARING: 11/16/2011
TIME OF HEARING: 8:15 AM

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through SHANON CLOWERS, Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's State's Opposition To Defendant's Motion For In Camera Review Of Personnel Records.

This opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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POINTS AND AUTHORITIES

STATEMENT OF THE FACTS (RELEVANT TO INSTANT MOTION)

On March 25, 2010 at approximately 3:20 p.m., detectives met with the Defendant, hereinafter "Gipson" at the Homicide offices. Gipson was told that he was not under arrest and could stop the interview at any time.

Gipson stated that he dated Brittany for five years and had two children with her, but broke up approximately one year before. The previous night, Gipson had spent the night at Denise Nelson's house located at 824 Levy, Las Vegas, Nevada. Gipson, Denise, and her boyfriend Larry "Mississippi" Glinsey went to a party at a friend's house named Rosie. During the drive they were stopped by LVMPD and Glinsey was taken in for outstanding warrants. Gipson and Nelson drank alcohol and played cards until 2:30-3:00 a.m. when they went back to Nelson's place to sleep.

Gipson stated he received a call from his mother at approximately 8:00 a.m. stating that something had happened to Brittany. Eventually, Gipson's cousin, Isaiah Martin, notified Gipson that everyone was looking for him.

According to Gipson, the reason he and Brittany broke up was because he was cheating on her. Gipson denied any kind of abuse towards Brittany during their relationship. After the initial breakup, Gipson unsuccessfully attempted to get back together with Brittany. Gipson had no contact with Brittany for five months until he tried to contact her at her work but was informed that Brittany no longer worked at that location. Gipson recently had been trying to get in touch with Brittany to see his son on his birthday on March 23 but was unable to.

After giving his initial statement, Gipson agreed to speak further about the case and possibly take a polygraph test. Officer Flohr arrived and advised that it would be preferable that Gipson take a Concealed Information Test (CIT). Gipson was unsure of taking the test and wanted to talk it over with his mother or an attorney. Gipson again was advised that he was not under arrest. Gipson was then taken back to Nelson's apartment with the understanding that Gipson would again meet with detectives the following day.

On March 26, 2010, at approximately 11:20 a.m., detectives went back to Nelson's apartment and picked up Gipson. Gipson agreed to take the CIT. Detective Flohr administered the test to Gipson asking him a series of questions regarding the murder of which only someone who had distinct knowledge of the murder would be able to answer. Detective Flohr advised Gipson that the CIT does not test deception but only knowledge of events. Gipson took the CIT and failed, meaning that he had knowledge of the murder that only the killer would know.

Gibson was confronted with the fact that he failed the CIT. Gipson explained that he had been "in and out of the mental hospital" and that he killed Brittany because "she drove me crazy." Gipson further stated that he would not see his kids for months.

Gipson previously had called the Jack in the Box and found out that Brittany worked at the West Lake Mead location. He walked to the Jack in the Box and waited for Brittany to arrive. He hid in the bushes behind the green van in the photo below.

Shortly thereafter, the victim arrived. When she got out of her car, a brown Jeep, Gipson approached her from behind and shot her one time in the head. Gipson did not know where she had been shot but that she collapsed on the ground next to her vehicle. Gipson then stated that he ran across the Vons shopping center intersection as Christina Bailey had described and ran all the way back to the 824 Levy address.

Gipson bought the .25 caliber gun on March 24, 2010, from an individual he knew only as Tramaine. He paid $50 in cash and $50 worth of Marijuana for the gun. After the shooting, he returned the gun to Tramaine without telling him he had used it in the murder. Gipson also discarded the shoes he was wearing as well as the dark hooded sweatshirt. Detectives searched for these items, but none were located.

Gipson stated that he is bipolar and suffered from psychosis. He was prescribed Invega medication but his insurance ran out two months prior and he therefore had not been taking the medication. Gipson was hearing voices in his head telling him to kill Brittany and kill himself.

ARGUMENT

Certainly, due process mandates the disclosure of favorable evidence, material for impeachment or exculpatory purposes, to an accused upon request. Brady v. Maryland, 373 U.S. 83 (1963). However, the evidence must be material for one of those purposes in order for Brady to apply. United States v. Pitt, 717 F.2d 1334, 1339 (11th Cir. 1983). In Pitt, the defense requested the personnel file for the chief case agent to search for impeachment information, without any showing that evidence material to the defense would be found in that file. The Court there stated:

> We fail to see how, and the appellant has failed to show us how, the contents of FBI Agent Lewis' personnel file would likely contain anything material to an alleged threat against Pitt, especially when the official records show that the agent was out of town on the day the alleged threat was made.
>
> The request for the agent's personnel file, under the facts of this case, was frivolous. Pitt was entitled to fish, but not with this thin a pole.

Id. at 1339

Most importantly, and most conveniently omitted from Defendant's authorities, the Nevada Supreme Court has ruled on this exact issue. In Sonner v. State, 112 Nev. 1328, 930 P.2d 707 (1996), the defense requested the personnel file of the Nevada Highway Patrol Trooper who was allegedly shot by the defendant. The Nevada Supreme Court emphatically stated:

> Although the State may not withhold evidence favorable to the accused and material to either guilt or sentence, the State is under no obligation to accommodate a defendant's desire to flail about in a fishing expedition to try to find a basis for discrediting a victim. *See* State v. Blackwell, 120 Wash.2d 822, 845 P.2d

> 1017, 1021 (1993) ("Defense counsel's broad unsupported claim that the police officers' personnel files may lead to material information does not justify automatic disclosure of the documents.") As the Washington Supreme Court observed: "A defendant must advance some factual predicate which makes it reasonably likely that requested file will bear information material to his or her defense. A bare assertion that a document 'might' bear such fruit is insufficient.

Id. at 1340-41.

Additionally, the LVMPD has serious concerns regarding the disclosure of material from personnel files. Confidentiality is one of the chief requirements in maintaining the effective ability to investigate complaints against officers. Confidentiality ensures that both police officers and citizens will freely contact the department without fear. As one court has stated:

> It is clear a very real and very important need exists to maintain confidential integrity of the internal investigation in the police division. To do otherwise would seriously inhibit the chief in his control over the members of the division and their wide-ranging duties and responsibilities. This stream of information available to the chief and the persons within and without the division would diminish to a bare trickle if the source or sources of this information were stripped of its confidential character. That such an event would serve to defeat the general public good is supported by a logic almost tautological in its persuasiveness -- for the desirability of an efficient well disciplined police force is manifest.

McMillan v. Ohio Civil Rights Comm'n, 315 N.E.2d 508, 515 (Ohio 1974).

Personnel files are confidential. All witnesses, including police officers, are assured

that the information provided by them will not be voluntarily disclosed and that all legal means will be employed to protect this confidentiality. Police officers are compelled to cooperate with internal affairs investigations. Failure to cooperate can result in termination. Officers, knowing that their statements were subject to disclosure, would be less likely to completely cooperate. The knowledge that statements compelled from officers could later be disclosed to third parties for other cases would also act as disincentive for the department to fully investigate. As one court noted:

> The members of a police department must be able to rely on their confidential records and notations being preserved for their internal use ... for if it were otherwise, the knowledge that some of the confidential information recorded might later be exposed to outside parties would have a certain and chilling effect upon the internal use of such record-making.

City of Los Angeles v. Superior Court, 109 Cal. Rptr. 365, 369 (Ct. App. 1973).

Alternatively, if the Court finds grounds, the Court should be the only entity to review the files *in camera* to determine whether any of the material contained in them is subject to disclosure only after notice and a chance to be heard is had by the real party in interest, The Las Vegas Metropolitan Police Department. *See* Roberts v. State, 110 Nev. Adv. Op. 131, 881 P.2d 1, 8 (1994) *overruled on other grounds*, Foster v. State, ___ Nev. ___, 13 P.3d 61 (December 4, 2000). Personnel files are considered so sensitive that generally they are not even released to the prosecution. It is therefore requested that any review of these materials be done directly by the Court *in camera*.

In this case, there has not been a showing that there would be any reprimands contained within his files, and if there were, how that information would be exculpatory in this case. The facts of this case are independent of any other case in which this officer was involved in. There is simply no indication that the facts or circumstances of any other case some how would effect this courts determination of whether or not the Defendant's statement should be suppressed in this case, other than an attempt to taint the mind of this

court.

CONCLUSION

Based on the foregoing, Defendant's Motion for Production of Discovery should be denied.

DATED this_____day of November, 2011.

Respectfully submitted,

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY /s/ SHANON CLOWERS
SHANON CLOWERS
Deputy District Attorney
Nevada Bar #0010008

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR IN CAMERA REVIEW OF PERSONNEL RECORDS, was made this 15th day of November, 2011, by facsimile transmission to:

PUBLIC DEFENDER
FAX #455-5112

/s/ T. SCHESSLER
Secretary for the District Attorney's Office

ts/dvu

Electronically Filed
11/30/2011 11:58:34 AM

CLERK OF THE COURT

MOTN

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
ROBERT TURNER
Chief Deputy District Attorney
Nevada Bar #006526
200 Lewis Avenue
Las Vegas, Nevada 89155-2211
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

KEVIN MARQUETTE GIPSON, #1582343

Defendant.

Case No. C-10-264079

Dept No. XVIII

NOTICE OF MOTION AND MOTION IN LIMINE REGARDING JAIL PHONE CALL

DATE OF HEARING: 12/12/2011

TIME OF HEARING: 8:15 AM

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through ROBERT TURNER, Chief Deputy District Attorney, and files this Notice of Motion and Motion IN LIMINE REGARDING JAIL PHONE CALL.

This Motion is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

NOTICE OF HEARING

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing motion on for setting before the above entitled Court, in Department

XVIII thereof, on Monday, the 12th day of December, 2011, at the hour of 8:15 o'clock AM, or as soon thereafter as counsel may be heard.

DATED this _____ day of November, 2011.

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY /s/ ROBERT TURNER
ROBERT TURNER
Chief Deputy District Attorney
Nevada Bar #006526

STATEMENT OF FACTS

On March 25, 2010, at approximately 5:45 a.m., Robert "Lee" Gilmore and Wade Fleming were leaving Einstein Bagels located at 7541 West Lake Mead Boulevard, Las Vegas, Nevada. As they were nearing Fleming's truck they heard what they thought was a woman screaming loudly across the street at the Jack in the Box restaurant located at 7510 West Lake Mead Boulevard, Las Vegas, Nevada. Gilmore and Fleming then heard a single gunshot from the Jack in the Box area and immediately called 911.

As they approached the area of the gunshot, they were joined by another individual, Christian Benitez, who had been at Starbucks just next to Einstein Bagels. All three noticed what appeared to be a male in a dark hooded sweatshirt running south easterly down Lake Mead Boulevard. Neither Benitez, nor Gilmore, nor Fleming could identify the individual running away from the Jack in the Box. Fleming approached the victim as she lay in a parking stall at the Jack in the Box. Fleming noticed the victim's Jack in the Box name tag and yelled "Brittany" over and over to see if she would respond. Fleming got no response and thought she was dead.

Christina Bailey works at the Vons grocery store located in the same shopping complex as the Jack in the Box. She works the graveyard shift at Vons and was leaving the

store in her vehicle when she heard the scream coming from Jack in the Box. Bailey drove towards the Jack in the Box and noticed a female laying on the ground with a male in a dark hooded sweatshirt standing over her. It appeared to Bailey that the male was helping the female, who appeared drunk, to her vehicle. Bailey did not hear a gunshot and thought everything appeared to be okay.

Bailey proceeded to the stoplight at the intersection of the Vons shopping center and Lake Mead. She was there for approximately 30 seconds when she noticed the same male with the hooded sweatshirt sprint past her vehicle onto Lake Mead Boulevard heading east. Bailey decided to follow the individual as he raced down Lake Mead, but eventually lost him as he darted between buildings. Bailey could not identify the individual other than to say he was an African-American.

Homicide Detectives arrived to the scene and were notified that the victim had been transported to UMC Trauma as she was still showing signs of life. Detectives were able to determine that the victim was Brittany Lavoll, who was on her way into work as an assistant manager at the Jack in the Box. At 6:15 a.m., Dr. Cousins of UMC Trauma pronounced Brittany dead of an apparent gunshot wound to the head. An autopsy performed by Dr. Telgenhoff on March 26, 2010, revealed that the cause of death was a distant penetrating gunshot wound to the head.

At the scene, detectives located two sets of keys belonging to Brittany Lavoll, a cartridge case bearing the head stamp "25 AUTO CBC" , and a spit puddle containing potential DNA next to Brittany. Brittany's 1995 Jeep Grand Cherokee was parked in a stall near the Jack in the Box. Inside the vehicle, Detectives located a black jacket with apparent blood stains.

Charles Lavoll, Brittany's father, came to the scene and spoke to detectives. Upon learning that his daughter was shot, Charles immediately advised that the shooter was likely Kevin Gipson. Charles intimated that Gipson and Brittany had been in a dating relationship for several years and had two children together. They broke up because Gipson was abusive towards Brittany and refused to leave her alone. Brittany had to switch Jack in the Box

locations due to Gipson harassing her at work, as well as move to a different apartment. According to Mechele Lavoll, Brittany's mother, Gipson was looking for Brittany approximately four to five months before the shooting and had threatened Mechele that he would shoot Brittany.

In an attempt to locate Gipson, Detectives went to the Summerhill Apartment Complex at 3630 E. Owens, Las Vegas, Nevada where Gipson's mother Lenda Jackson resided. While at the apartment, Gipson called his mother. Lenda handed the phone to Detective Long. Gipson denied any involvement in the murder saying that he had spent the night at a friend's house and did not learn of the murder until his mother called and notified him. Gipson agreed to meet with detectives to discuss the incident further.

On March 25, 2010 at approximately 3:20 p.m., detectives met with Gipson at the Homicide offices. Gipson was told that he was not under arrest and could stop the interview at any time.

Gipson stated that he dated Brittany for five years and had two children with her, but broke up approximately one year before. The previous night, Gipson had spent the night at Denise Nelson's house located at 824 Levy, Las Vegas, Nevada. Gipson, Denise, and her boyfriend Larry "Mississippi" Glinsey went to a party at a friend's house named Rosie. During the drive they were stopped by LVMPD and Glinsey was taken in for outstanding warrants. Gipson and Nelson drank alcohol and played cards until 2:30-3:00 a.m. when they went back to Nelson's place to sleep.

Gipson stated he received a call from his mother at approximately 8:00 a.m. stating that something had happened to Brittany. Eventually, Gipson's cousin, Isaiah Martin, notified Gipson that everyone was looking for him.

According to Gipson, the reason he and Brittany broke up was because he was cheating on her. Gipson denied any kind of abuse towards Brittany during their relationship. After the initial breakup, Gipson unsuccessfully attempted to get back together with Brittany. Gipson had no contact with Brittany for five months until he tried to contact her at her work but was informed that Brittany no longer worked at that location. Gipson recently had been

trying to get in touch with Brittany to see his son on his birthday on March 23 but was unable to.

After giving his initial statement, Gipson agreed to speak further about the case and possibly take a polygraph test. Detective Flohr arrived and advised that it would be preferable that Gipson take a Concealed Information Test (CIT). Gipson was unsure of taking the test and wanted to talk it over with his mother or an attorney. Gipson again was advised that he was not under arrest. Gipson was then taken back to Nelson's apartment with the understanding that Gipson would again meet with detectives the following day.

On March 26, 2010, at approximately 11:20 a.m., detectives went back to Nelson's apartment and picked up Gipson. Gipson agreed to take the CIT. Detective Flohr administered the test to Gipson asking him a series of questions regarding the murder of which only someone who had distinct knowledge of the murder would be able to answer. Detective Flohr advised Gipson that the CIT does not test deception but only knowledge of events. Gipson took the CIT and failed, meaning that he had knowledge of the murder that only the killer would know.

Detectives confronted Gipson with the fact that he failed the CIT. Gipson explained that he had been "in and out of the mental hospital" and that he killed Brittany because "she drove me crazy." Gipson further stated that he would not see his kids for months.

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Shortly thereafter, the victim arrived. When she got out of her car, a brown Jeep, Gipson approached her from behind and shot her one time in the head. Gipson did not know where she had been shot but that she collapsed on the ground next to her vehicle. Gipson then stated that he ran across the Vons shopping center intersection as Christina Bailey had described and ran all the way back to the 824 Levy address.

Gipson bought the .25 caliber gun on March 24, 2010, from an individual he knew only as Tramaine. He paid $50 in cash and $50 worth of Marijuana for the gun. After the

shooting, he returned the gun to Tramaine without telling him he had used it in the murder. Gipson also discarded the shoes he was wearing as well as the dark hooded sweatshirt.

POINTS AND AUTHORITIES

In the Defendant's confession, just prior to admitting to murdering the victim, he claims that he had been in a mental hospital and that the victim was "driving him crazy." The Defendant has also Noticed a mental health expert.

Under circumstances in which the Defendant proffers any defense or allegations that his crimes are mitigated by reason of a "mental defect," the State intends to introduce as rebuttal evidence in the form of a jail call made by the Defendant from the Henderson Detention Center on or about January 19, 2010. He was in custody for what appears to be a Marijuana misdemeanor charge. On the call, the Defendant instructs the Victim and his mother to get his medical records to prove the he has a "mental illness." He insists that if they show the jail his records of "mental illness," that they will let him out of custody and drop the charges.

The State is only bringing this information forth in a motion as a precautionary measure, because the State would have to inform the Jury that the Defendant was in custody in order to lay a foundation for the admission of the statements. Such statements are relevant in that they establish manipulation and malingering on the part of the Defendant regarding his professed "mental illness" and would rebut a claim of "mental defect" in this case.

DATED this _____ day of November, 2011.

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY /s/ ROBERT TURNER
ROBERT TURNER
Chief Deputy District Attorney
Nevada Bar #006526

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of NOTICE OF MOTION AND MOTION IN LIMINE REGARDING JAIL PHONE CALL, was made this 30th day of November, 2011, by facsimile transmission to:

CHRISTY CRAIG, Deputy Public Defender
FAX #455-5112

/s/ T. SCHESSLER
Secretary for the District Attorney's Office

ORDR
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite #226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

FILED
Nov 30 11 01 AM '11
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

KEVIN MARQUETT GIPSON,

Defendant.

CASE NO. C264079X

DEPT. NO. XVIII

ORDER

THIS MATTER having come before the Court on November 21, 2011, and good cause appearing therefor,

IT IS HEREBY ORDERED that the Las Vegas Metropolitan Police Department turn over the entire personnel file of Geoffrey Flohr including but not limited to commendations awarded, reprimands both written and oral, disciplinary actions of any kind, job description, assignments, separation agreement/details and hiring records for an in-camera review. Records are to be provided to the court within 5 working days upon receipt of this order.

DATED 30th day of November, 2011.

DISTRICT COURT JUDGE

Submitted by:

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By
CHRISTY L. CRAIG, #6262

10C264079
ORDR
Order
1711207

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IN THE SUPREME COURT OF THE STATE OF NEVADA

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Sep 28 2017 10:06 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

KEVIN MARQUETTE GIPSON,
Appellant(s),

vs.

STATE OF NEVADA,
Respondent(s),

Case No: 10C264079

Docket No: 73307

RECORD ON APPEAL
VOLUME
1

ATTORNEY FOR APPELLANT
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ATTORNEY FOR RESPONDENT
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10C264079 STATE OF NEVADA vs. KEVIN M. GIPSON

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IND

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
SHANON CLOWERS
Deputy District Attorney
Nevada Bar #010008
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

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

Defendant(s).

Case No. C264079
Dept. No. XVIII

INDICTMENT

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

The Defendant(s) above named, KEVIN MARQUETTE GIPSON, aka, Kevin Marquette Gipson, accused by the Clark County Grand Jury of the crime of MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030, 193.165), committed at and within the County of Clark, State of Nevada, on or about the 25th day of March, 2010, as follows:

did then and there wilfully, feloniously, without authority of law, and with malice aforethought, kill BRITNEY LAVOLL, a human being, by shooting at or into the body of

///

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BRITNEY LAVOLL, with a deadly weapon, to-wit: a firearm, said killing having been: (1) willful, deliberate and premeditated; and/or (2) committed by Defendant lying in wait to commit the killing.

DATED this 27 day of April, 2010.

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DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

BY _____
SHANON CLOWERS
Deputy District Attorney
Nevada Bar #010008

ENDORSEMENT: A True Bill

_____
Foreperson, Clark County Grand Jury

P:\WPDOCS\IND\005\00579601.doc

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Names of witnesses testifying before the Grand Jury:

BAILEY, CHRISTINA, c/o CCDA, 200 Lewis Ave, LV, NV

FLEMING, WADE, c/o CCDA, 200 Lewis Ave, LV, NV

LAVOLL, CHARLES, c/o CCDA, 200 Lewis Ave, LV, NV

LONG, DANIEL, LVMPD #3969

ROBERTSON, JEREMY, LVMPD

SIMMS, DR. LARY, CLARK COUNTY CORONER

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Additional witnesses known to the District Attorney at time of filing the Indictment:

BENITEZ, CHRISTIAN, c/o CCDA, 200 Lewis Ave, LV, NV

CUSTODIAN OF RECORDS, CCDC

CUSTODIAN OF RECORDS, CLARK COUNTY PARK POLICE

CUSTODIAN OF RECORDS, LVMPD COMMUNICATIONS

CUSTODIAN OF RECORDS, LVMPD RECORDS

FLOHR, GEOFFREY, LVMPD #12912

GILMORE, ROBERT, c/o CCDA, 200 Lewis Ave, LV, NV

TELGENHOFF, GARY, CLARK COUNTY CORONER

TREMEL, DONALD, LVMPD #2038

09AGJ167X/10F05796X/sam
LVMPD EV# 1003250682
(TK7)

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DISTRICT COURT

CLARK COUNTY, NEVADA

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THE STATE OF NEVADA,

Plaintiff,

-vs-

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

Defendant.

CASE NO: C264079

DEPT NO: XVIII

WARRANT FOR ARREST

INDICTMENT WARRANT

THE STATE OF NEVADA,

To: Any Sheriff, Constable, Marshall, Policeman, or Peace Officer in This State:

An Indictment having been found on the 28th day of April, 2010, in the above entitled Court, charging Defendant KEVIN MARQUETTE GIPSON, aka Kevin Marquett Gipson, above named, with the crime(s) of: MURDER WITH USE OF A DEADLY WEAPON (Felony).

YOU ARE, THEREFORE, COMMANDED forthwith to arrest and bring said Defendant before the Court to answer the Indictment. If the Court is not in session, you are to deliver Defendant into the custody of the Sheriff of Clark County, or if requested by Defendant, take Defendant before any Magistrate in the County where arrested that bail may be given to answer to the Indictment. Defendant shall be admitted to bail in the sum of $ NO BAIL.

I HEREBY AUTHORIZE THE SERVICE OF THE WITHIN WARRANT BY TELETYPE, PURSUANT TO NRS 171.148. The Warrant may be served at any hour day or night

GIVEN under my hand this 28th day of April, 2010.

DAVID ROGER
District Attorney
Nevada Bar #002781

BY

DAVID SCHUBERT
Chief Deputy District Attorney
Nevada Bar #007900

DISTRICT JUDGE
LINDA MARIE BELL
BAIL $ NO BAIL

DA#09AGJ167X/10F05796X/sam
LVMPD EV#1003250682
06/26/1983; BMA; 430-53-6654
(TK7)

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DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781
DAVID SCHUBERT
Chief Deputy District Attorney
Nevada Bar #007900
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

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

Defendant.

CASE NO: C264079
DEPT NO: XVIII

INDICTMENT WARRANT RETURN

An Indictment having heretofore been found on the 28th day of April, 2010, in the above entitled Court, charging Defendant KEVIN MARQUETTE GIPSON, aka Kevin Marquett Gipson, above named, with the crime of: MURDER WITH USE OF A DEADLY WEAPON (Felony), and upon finding the said Indictment, the court issued a warrant for the arrest of said Defendant.

I hereby certify that I received a certified copy of the Indictment Warrant and served the same by arresting the within Defendant on the 29TH day of APRIL 2010.

DOUGLAS C. GILLESPIE, Sheriff,
Clark County, Nevada

BY 5040 LVMPD
Deputy

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REBOOKING

Page 1 of 1

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
TEMPORARY CUSTODY RECORD

I.D. #: 1582343 Event #:

DATE OF ARREST: 9/29/10 TIME OF ARREST: 1811

I.D. ESTAB. BY:

INTAKE NAME (AKA, ALIAS, ETC.) Last	First	Middle	TRUE NAME Last	First	Middle
			GIPSON	KEVIN	MARQUETT

ADDRESS NUMBER & STREET	BLDG./APT. #	CITY	STATE	ZIP
2633 OWENS	1032	LV	NV	89110

DATE OF BIRTH	AGE	SEX	HEIGHT	WEIGHT	HAIR	EYES	SOCIAL SECURITY #	Speak English?	PLACE OF BIRTH
6/26/83	27	M	604	188	BLK	BRO	430536654	X Yes ☐ No	AR

LOCATION OF CRIME (No. - Street - City - State - Zip)	☐ CC ☐ LV	Citizen Arrest Y (N)	LOCATION OF ARREST	Sector/Beat	PCN #
			CCDC		

BKG. CODE	CHARGE ORD / NRS #	M	GM	F	ARR TYPE*	EVENT NUMBER	WARR / NCIC NUMBER	COURT LV	COURT JC	COURT DC	COURT OTHER
5045	MURDER W/USE OF DW 200.030 NO BAIL	☐	☐	X	[redacted]	[redacted]	C2164079	☐	☐	X	☐
		☐	☐	☐				☐	☐	☐	☐
		☐	☐	☐				☐	☐	☐	☐
		☐	☐	☐				☐	☐	☐	☐
		☐	☐	☐				☐	☐	☐	☐
		☐	☐	☐				☐	☐	☐	☐

*ARREST TYPE: PC – PROBABLE CAUSE BS – BONDSMAN SURRENDER BW – BENCH WARRANT WA – WARRANT RM – REMAND GJI – GRAND JURY IND.

OTHER COURT:

[redacted]

DVGRAZ1050 / 5040 / LVMPD

Arresting Officer's Signature (Print Name) P # Agency

S/A

Transporting Officer's Signature (Print Name) P # Agency

APPROVAL CONTROL # FOR ADDITIONAL CHARGES:

Time Stamp BOOKING

09/29/10 19:55 LVMPD RECORDS

P #:

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

☐ BENCH WARRANT SERVED ON _____

☐ WARRANT SERVED ON _____

☐ GRAND JURY INDICTMENT SERVED ON _____

TYPE OF I.D. FOR VERIFICATION _____

FIRST APPEARANCE: DATE: _____ TIME: _____

COURT

☐ JUSTICE ☐ MUNICIPAL ☐ JUVENILE

☐ STANDARD BAIL ☐ O.R. RELEASE ☐ PROBABLE CAUSE ☐ I.A.D.

JUDGE: _____

LVMPD 22 (REV. 3-85) (2) COURT • ORIGINAL

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STEVEN D GRIERSON CLERK OF THE COURT

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Clerk of Supreme Court

RAO

Eighth Judicial District Court
Clark County, Nevada

State of Nevada

Plaintiff,

vs.

Kevin Gipson

Defendant

Case No.: 10-[illegible]

Dept No.: 18

MEDIA REQUEST AND ORDER FOR CAMERA ACCESS TO COURT PROCEEDINGS

Carolyn Kresser of KVVU-Fox5, requests permission to broadcast, record, photograph or televise proceedings in the above-entitled case in the courtroom of Dept. No. 18, the Honorable Judge Barker, commencing on the 4 day of May, 2010. 8:15 B/W return

I certify that I am familiar with the contents of Nevada Supreme Court Rules 229-249, inclusive, and understand this form MUST be submitted to the Court at least SEVENTY-TWO (72) hours before the proceedings commence, unless good cause can be shown. IT IS FURTHER UNDERSTOOD that approved media must arrange camera pooling prior to any hearing, without asking this Court to mediate disputes.

DATED this 30 day of April, 2010.

Carolyn Kresser

Media Representative

The Court determines camera access to proceedings, in compliance with the court's policy, ☐ WOULD ☒ WOULD NOT distract participants, impair the dignity of the court or otherwise materially interfere with the achievement of a fair trial or hearing herein;

Therefore, the Court hereby ☐ DENIES ☒ GRANTS permission for camera access to _____ of _____, as requested for each and every hearing on the above-entitled case, at the discretion of the judge, and unless otherwise notified. This Order is in accordance with Nevada Supreme Court Rules 229-249, inclusive, and is subject to reconsideration upon motion of any party to the action.

IT IS FURTHER ORDERED that this entry shall be made a part of the record of the proceedings in this case.

DATED this MAY 03 2010 day of _____, 20___.

District Court Judge

Fax Form 72 hours prior to the hearing to (702)671-4548.

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Clerk of Supreme Court

Eighth Judicial District Court
Clark County, Nevada

State of Nevada
Plaintiff,

vs.

Kevin Gipson
Defendant

Case No.: C264079
Dept No.: 18

NOTIFICATION OF MEDIA REQUEST

TO: COUNSEL OF RECORD IN THE ABOVE-CAPTIONED CASE:

You are hereby notified pursuant to Supreme Court Rules 229-249, inclusive, that media representatives from KVVU FOX 5 News have requested to obtain permission to broadcast, televise, record or take photographs of all hearings in this case. Any objection should be filed at least 24 hours prior to the subject hearing.

DATED this 3 day of May, 2010.

E. Ehrhardt
Eighth Judicial District Court

CERTIFICATE OF SERVICE BY FACSIMILE TRANSMISSION

I hereby certify that on the 3 day of May, 2010, service of the foregoing was made by facsimile transmission only, pursuant to Nevada Supreme Court Rules 229-249, inclusive, this date by faxing a true and correct copy of the same to each Attorney of Record addressed as follows:

Plaintiff	Defendant
District Attorney	Public Defender
455-2294	455-5112

E. Ehrhardt
Eighth Judicial District Court

Docket 73307 Document 2017-33011

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

BEFORE THE GRAND JURY IMPANELED BY THE AFORESAID DISTRICT COURT

ORIGINAL

THE STATE OF NEVADA,

Plaintiff,

vs.

KEVIN MARQUETTE GIPSON, aka Kevin Marquell Gipson,

Defendant.

No. 09AGJ167X

C244079

Taken at Las Vegas, Nevada

Tuesday, April 27, 2010

8:41 a.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Reported by: Danette L. Antonacci, C.C.R. No. 222

GRAND JURORS PRESENT ON APRIL 27, 2010

DUANE SCHLIEMANN, Foreperson

PATRICK RICHEAN, Deputy Foreperson

DONNA FISHER-BROWN, Assistant Secretary

ALEXIS BLANCHARD

CINDY ERECK

GUY DUBOIS

HAL LA VINE

KATHRYN MOSEMAN

FRANCINE MURRAY

JEAN PARDEE

WILLIAM ROBERTS

IRENE RODRIGUEZ

TONYA SWARTWOOD

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Clerk of Supreme Court

Also present at the request of the Grand Jury:

Sharon Clowers,
Deputy District Attorney

Michael Bolenbaker,
Deputy District Attorney

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LAS VEGAS, NEVADA, APRIL 27, 2010

* * * * * * * *

DANETTE L. ANTONACCI,

having been first duly sworn to faithfully and accurately transcribe the following proceedings to the best of her ability.

THE FOREPERSON: Let the record reflect that I have canvassed the waiting area and no one has appeared in response to Notice of Intent to Seek Indictment.

MS. CLOWERS: My name is Shanon Clowers. This is Michael Bolenbaker. We are both deputy district attorneys here in Clark County. We are assigned to prosecute the case of State of Nevada versus Kevin Marquette Gipson. It is in Grand Jury case 09AGJ167X. The charges in this case are murder with use of a deadly weapon. I believe that everybody has been provided a copy of the Indictment which has been marked as Grand Jury Exhibit Number 1. I also believe everybody has been provided a copy of Grand Jury Exhibit Number 2 which will be the jury instructions in this case. And so at this time I would like to call my first witness, Dr. Simms.

THE FOREPERSON: Please remain standing and raise your right hand.

You do solemnly swear the testimony you are about to give upon the investigation now pending before this Grand Jury shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE FOREPERSON: Please be seated.

You are advised that you are here today to give testimony in the investigation pertaining to the offense of murder with use of a deadly weapon, involving Kevin Marquette Gipson.

Do you understand this advisement?

THE WITNESS: Yes.

THE FOREPERSON: Please state your first and last name and spell both slowly for the record into the microphone.

THE WITNESS: My first name is Lary, spelled L-A-R-Y, my last names is Simms, spelled S-I-M-M-S.

THE FOREPERSON: Thank you, sir.

MS. CLOWERS: May I proceed, sir?

THE FOREPERSON: Please.

MS. CLOWERS: Thank you.

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LARY SIMMS,

having been first duly sworn by the Foreperson of the Grand Jury to testify to the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MS. CLOWERS:

Q. Sir, where do you currently work?

A. At the Clark County Coroner's Office.

Q. What position do you hold?

A. I'm a forensic pathologist.

Q. Can you quickly tell us what a forensic pathologist is?

A. Well, it's a specialty, a pathology that deals with the violent death, it would be accidents, suicides or homicides.

Q. What kind of education and training do you have to be able to do that job, sir?

A. Well, I've been in medicine 30 years, graduated from medical school, have a license to practice in Nevada, and you also have to have specialty training in not only just pathology but forensic pathology, and I'm board certified in anatomic pathology, clinical pathology and forensic pathology and

I've done about 6,000 autopsies.

Q. Do you stay up to date with your training; is that fair to say, sir?

A. That is part of maintaining your licensure.

Q. And a forensic pathologist performs autopsies; is that correct?

A. Correct.

Q. And an autopsy is an internal and an external examination of a body?

A. Correct.

Q. Okay. And you said you performed about 6,000; is that fair to say?

A. Correct.

Q. During the performance of an autopsy is it fair to say you document everything that's going on?

A. That's the ultimate goal.

Q. By documentation there is a report that's generated?

A. Well, there is usually a set of pictures and a report so there is some redundancy of information there.

Q. Today you're here to testify about an autopsy that Dr. Telgenhoff performed; is that fair to say?

A. Correct.

Q. He's also a forensic pathologist here in Clark County?
A. Correct.
Q. And he's one of your colleagues?
A. Correct.
Q. In order for you to testify today I asked you to review photos and X-rays; is that correct?
A. Correct.
Q. And that was for the autopsy performed on Britney Lavoll?
A. Correct.
Q. Was that autopsy performed on March 26th of 2010?
A. Correct.
Q. Okay. And so it's fair to say you reviewed Dr. Telgenhoff's report?
A. Correct.
Q. And the photographs?
A. Yes.
Q. As well as X-rays?
A. Yes.
Q. Now based upon the report that you reviewed did you note any external, that there was an external exam performed?
A. Correct.

Q. Were there any significant findings during that external exam?
A. Well, the significant findings, she did have some old injuries and then she had some new abrasions and then of course she had a gunshot wound in her head.
Q. Was there also any presence of medical intervention?
A. Yes.
Q. What was that, sir?
A. Well, she had an endotracheal tube which is a tube that's put in the lungs to help the person breath, she had multiple needle punctures intravenous in order to administer intravenous medications. It looked like she also had CPR performed because she did have bruises in her central chest.
Q. The abrasions that you said appeared to be new, where were they located, sir?
A. One was on the inside of the left elbow and one was on the front of the left forearm.
Q. Okay. I'm going to show you some photographs, sir. If you could look through these and tell me if you recognize them.
A. Yes, these are the photographs of the autopsy that counselor sent me this morning in relation

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to case number 10-2513, Miss Lavoll.
Q. And these are the photos you reviewed in order to testify today, sir?
A. Correct.
Q. Showing you Grand Jury Exhibit Number 13 on the screen beside you, sir, can you please describe what's in this photograph?
A. Well, that's the decedent's head. She has a hard immobilizing device around her neck and she also has one small abrasion on her right forehead and then you can't see it very well from this but in her hair on the right side is a gunshot wound.
Q. And she also has the trach tube; is that what you described?
A. There is an endotracheal tube extending from her mouth, correct.
Q. Showing you Grand Jury Exhibit Number 14, can you please describe the abrasion in this photograph?
A. There is, it's an oval shaped abrasion there, it's about an inch and a half above, directly above her eyebrow and then there's a gunshot wound that's farther up there on the right upper corner -- or in the left -- in your left upper corner.
Q. And this is a picture of her forehead; is that fair to say?

A. Correct.
Q. Showing you Grand Jury Exhibit Number 15, what is in this photograph, sir?
A. It's just another view of the same thing although you can see the gunshot wound there right just about half an inch inside the hairline, it's a round gunshot wound.
Q. And I'm just going to show you 16, is this just a closer up view of that gunshot wound?
A. Correct.
Q. And is it right here where I'm pointing, sir?
A. Correct.
Q. And that's in the center of the photograph?
A. Correct.
Q. Okay. Were there any other significant external findings on this particular person?
A. No.
Q. Okay. And were there -- there was also an internal examination of the body done; is that fair to say?
A. Correct.
Q. Were there any significant findings during that?
A. The only finding was that the bullet, in

relation to the bullet went through the brain and a bullet was recovered from the cranial cavity.

Q. So other than the damage done to the brain there was no other internal findings?

A. No.

Q. That were significant at least.

The entrance from the gunshot wound, is it fair to say that it was at the top of the head near the right of the crown; is that correct?

A. I don't have any problem with that.

Q. Okay. And let me ask you this. Based upon your examination of the photographs and everything else did you see any stippling or soot or unburned gunpowder or gunpowder?

A. No, it wasn't described by the examining physician who did the autopsy and there is none present that I can see in the photographs.

Q. What does that indicate to you, sir, based upon your training and experience?

A. Well, if there was those kind of signs on the skin that would indicate that the barrel of the weapon would be in fairly close proximity to the skin.

Q. And so based upon the fact that none of that was present what would you determine?

A. As a general rule for a handgun, if this is

a handgun, the end of the barrel has to be anywhere between 18 and 24 inches from the skin in order to leave signs of close range fire which would be stippling, et cetera, so one would infer from this the fact that it's not there it would be greater than 24 inches.

Q. And based upon your examination of all of this do you have an opinion as to the cause of death in this case?

A. Yes.

Q. What would that be, sir?

A. Gunshot wound to the head.

Q. And the manner would be?

A. Homicide.

Q. Thank you, sir. And is that consistent with Dr. Telgenhoff's report?

A. He called it a distant penetrating gunshot wound to the head. I don't have any problem with that.

MS. CLOWERS: Okay. Thank you very much, sir.

Are there any questions from the ladies and gentlemen of the Grand Jury?

THE FOREPERSON: By law, these proceedings are secret and you are prohibited from disclosing to anyone anything that has transpired before us, including evidence and statements presented to the Grand Jury, any

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event occurring or statement made in the presence of the Grand Jury, and information obtained by the Grand Jury.

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Do you understand this admonition?

THE WITNESS: Yes.

THE FOREPERSON: Thank you for your testimony. You are excused.

MR. BOLENBAKER: State next calls Officer Robertson.

THE FOREPERSON: Please remain standing and raise your right hand.

You do solemnly swear the testimony you are about to give upon the investigation now pending before this Grand Jury shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: Yes, I do.

THE FOREPERSON: Please be seated.

MR. BOLENBAKER: May I proceed?

THE FOREPERSON: No, not yet.

You are advised that you are here today to

give testimony in the investigation pertaining to the offense of murder with use of a deadly weapon, involving Kevin Marquette Gipson.

Do you understand this advisement?

THE WITNESS: Yes.

THE FOREPERSON: Please state your first and last name and spell both slowly for the record and speak into the microphone.

THE WITNESS: Jeremy Robertson. J-E-R-E-M-Y, R-O-B-E-R-T-S-O-N.

THE FOREPERSON: Thank you, sir.

MR. BOLENBAKER: Now I'll proceed.

JEREMY ROBERTSON,

having been first duly sworn by the Foreperson of the Grand Jury to testify to the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MR. BOLENBAKER:

Q. Officer, where do you work?

A. I work in Northwest Area Command.

Q. Is that with the Las Vegas Metropolitan Police Department?

A. Correct.

Q. And how long have you been there for?
A. A little over eight years.
Q. Does the Northwest Area Command cover the area of Buffalo Drive and Lake Mead Boulevard?
A. Yes, it does.
Q. Were you working on the morning hours of March 25, 2010?
A. Yes, I was.
Q. What were you doing at around 5:00 or 5:30 in the morning?
A. I was actually at lunch with Officer Matt Cook at Beano's restaurant on Lake Mead and Tenaya.
Q. At some point did you get a call about a possible shooting in that area?
A. Yes. While we were finishing up our lunch over the radio call of shots fired in the area of Lake Mead and Buffalo came out, at which time Officer Matt Cook and myself immediately left the restaurant and drove to that location. On our way to the location the call was updated that a subject had been shot in the parking lot of Jack in the Box on Lake Mead just east of Buffalo on the north side of the road. Officer Andre Bates and myself both pulled into the Jack in the Box parking lot at the same time, I drove around the building to the drive-thru section, the start of the

drive-thru where I noticed a female laying on the ground next to a vehicle with a door open. I immediately got on the radio and asked dispatch to expedite medical and then got out of the vehicle, immediately grabbed crime scene tape from the back of my trunk and placed a small perimeter around the crime scene until we could get more people there to set up a bigger crime scene. I also asked dispatch to get some officers to shut down traffic, both westbound and eastbound traffic on Lake Mead from Buffalo and Tenaya due to the, being early in the morning we had a large amount of traffic starting to form up, people going to work, and also the other concern was several high school kids walking to Cimarron High School which is right around the corner off of Tenaya and Lake Mead.

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Q. Okay. What I'm going to do is show you a couple of photographs. This is Grand Jury Exhibits Number 3 and 4. Do you recognize those photos?
A. Yes, it's an aerial view of Lake Mead and Buffalo.
Q. What I'm going on to do is put this one on the screen. This is Grand Jury Exhibit Number 4. Can you describe what this building is in the middle of the photograph?
A. That is the Jack in the Box.

Q. Can you describe where you put the perimeter up when you got to the area?
A. Am I allowed to point out?
Q. Yeah. Why don't you just stand up and point it out and describe it for the record because she's recording everything.
A. Okay. I entered through this entrance off of Lake Mead, drove northbound through the parking lot, then westbound, and came around to where the drive-thru begins right here. I pulled my car up to where this car approximately is and that's where I noticed the female laying in a parking, empty parking stall next to a vehicle with the door open. I immediately set up tape, started from here, just a small perimeter right in this area just until we got more officers there because there was a small group of witnesses that were formed up standing in this area.
Q. So that appears to be the southwest corner of the Jack in the Box and then you set up a perimeter. Is this a tree or what is it?
A. Yes, it's a tree.
Q. You set up the perimeter at the first tree to the west and then down south you said there was a vehicle right here?
A. Right in this area, I can't remember which

stall it was but there was a vehicle in one of these stalls and then the victim was laying in an empty stall and there was a car next to that stall.
Q. So it looks like the parking stalls are to the southwest of the Jack in the Box?
A. Correct.
Q. Did you say at some point that you shutdown traffic? I'm showing you Grand Jury Exhibit Number 3. This is actually just a larger view of that. Can you show where you shut down the traffic at?
A. We had westbound traffic shutdown at Tenaya and Lake Mead and then we also had eastbound traffic shutdown at Buffalo and Lake Mead and then officers were staged throughout these parking lots to make sure cars couldn't drive through parking lots and come out onto Lake Mead.
Q. So you said you actually observed the victim laying in the parking stall?
A. Correct.
Q. And how did she appear to you when you saw her?
A. She was laying, her feet were close to the vehicle, her head further away from the vehicle, victim was not moving at all. After setting up the crime scene tape I walked up to the victim and observed a gunshot

wound at the top of her head. At this time medical arrived, it was a city fire department, I believe it was rescue 44 arrived on scene, I told them that we had a female shot in the head, the two paramedics walked up and they hooked up their machines and they found a small basically heartbeat going on still so they decided to transport the victim to the hospital.

Q. Are you familiar with how medical response teams, what they do when they do find a heart beat still at the scene, what are they required to do?

A. It's their policy to transport the subject, they cannot call them deceased at the scene if they still have any kind of signs of life.

Q. I'm going to show you some more photographs. I'm showing you Grand Jury Exhibit 6, 7, 8, 9 and 10, sorry, and 5 as well. Let's start with with 5, do you recognize that?

A. Yes.

Q. What is that?

A. It's a photo of the Jack in the Box, picture's taken from the north side of the, sorry, south side of the street pointing north.

Q. Is that the tape, the perimeter tape that you put around that area?

A. Let's see. Mine is actually not the one on

the outside, mine is not this tape right here. Mine started over here and it's connected to the entrance of the Jack in the Box, coming in at an angle. This was set up later as a bigger crime scene when another officer arrived and it goes around the whole building. So mine is from here, this little stretch, and then it stretch going in here to the front door of the Jack in the Box.

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Q. Now I'm showing you Grand Jury Exhibit Number 6, do you recognize that?

A. Yes.

Q. What is that?

A. That's a photo north facing south of the parking lot and where we found the victim.

Q. And where, can you show in that photograph where you found the victim?

A. She was laying right here, feet near the vehicle, head in this area right here.

Q. And you said the vehicle, you're pointing the vehicle to the right, what kind of car is that?

A. A Jeep Grand Cherokee.

Q. Was there anything about the doors that you noticed on that vehicle?

A. The front door was open when we arrived.

Q. And what is the stuff that's here in the

parking stall, do you know what that is?

A. All these items here are from the fire department. They, when they transport her they had to open up several medical equipment and they left it on scene. The orange cone was placed later by an officer that is marking where we found a shell casing. I actually found that while medical was working on the victim and I stood there until we got her out of the scene and then I advised another officer to make sure they placed a cone there so no one would knock or move the shell casing.

Q. So you were the first, were you the first officer that arrived there?

A. Yes.

Q. And you were the one who noticed that there was a shell casing in that parking stall?

A. Yes.

Q. Is there any possibility that anyone could have kicked that shell casing while you were there or anything like that?

A. Not unless one of the witnesses had walked up and done it, but as I arrived there was no contamination of that from the point that I arrived.

Q. Is that why you put a cone there?

A. Yes.

Q. I'm going to show you Grand Jury Exhibit Number 7, do you recognize that?

A. Yes.

Q. I'm going to publish this as well.

Can you describe to the Grand Jury members what that is?

A. Again it's a photo from the south pointing north of the parking lot with the Jack in the Box right here, victim was right in this location here on the ground, my crime scene tape which is right around in this area here.

Q. And those two cars on the right of the photograph, those are the two cars we saw on the previous photograph?

A. Yes. The victim's vehicle where she was laying and then the other vehicle that was next to it.

Q. That white vehicle there?

A. Yes.

Q. Okay. This is Grand Jury Exhibit Number 8.

A. Yes.

Q. Do you recognize that?

A. Yes.

Q. I'll publish that as well.

Will you describe to the Grand Jury what you see in that photograph?

A. Again this is from the west pointing east, victim's vehicle, where we found the shell casing, the other vehicle that was in the stall next to that, and my crime scene tape that I initially had set up the small ring right here.

Q. So that small ring of tape that you see in this photograph, that's the one that you actually put up yourself?

A. Yes.

Q. Okay. Now showing you Grand Jury Exhibit Number 9, do you recognize that?

A. Yes.

Q. Why don't you describe to the Grand Jury what we see in that photograph?

A. Again it's the crime scene, picture's from the north to facing south, we've got the victim's vehicle, the car that was in the stall next to it, and just the items that were laying around. And at this time the cone has been moved and a placard with a number three is marking where the shell casing was located.

Q. Is that for evidentiary purposes?

A. Correct.

Q. And finally Grand Jury Exhibit Number 10, do you recognize that?

A. Yes.

Q. I'm going to publish that.

Can you describe what you see in those photographs?

A. Again from the east pointing west we've got the vehicle in the first stall where the victim was laying, here's the cone where the shell casing was located, the victim's vehicle, and again all this debris is from the medical fire department equipment.

Q. Now Officer, these Grand Jury exhibits 5 through 10, do they fairly and accurately depict what these photographs looked like or what this area looked like on March 25, 2010?

A. Yes.

Q. I think I have a couple others to show you. Okay, two more. We've got Grand Jury Exhibits 11 and 12. This is 11 right here. Do you recognize that?

A. Yes.

Q. Okay. I'm going to publish that for the Grand Jury.

Can you describe what you see in that photograph?

A. This is a picture of where the victim was laying. This is actually her car keys and then a piece of clothing she had which was cut off by the fire department rescue 44. And again some of the baggies of

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medical equipment that they had to open up while they were working on her.

Q. These are the same items we saw in the earlier photographs?

A. Yes.

Q. Okay. And then Number 12, Grand Jury Exhibit Number 12, do you recognize that?

A. Yes.

Q. Okay. Publish that for the Grand Jury.

Could you describe what you see in that photograph?

A. This is the shell casing which I had marked or that I had located and was marked by another officer with a cone. This is where we located that shell casing. Again you can see the white stripe, that's the white striping of the markings of where the parking stall was.

Q. And then someone either Metro or someone put the ruler right there?

A. Right, ID, our crime scene puts these out so they can measure.

Q. So those pictures, the two that I just showed you, do they fairly and accurately represent what the scene looked like on March 25, 2010?

A. Yes.

Q. Okay. So what was the initial call, what did it come out as?

A. Just came out as shots fired in the area of Lake Mead and Buffalo, no other, I believe there was a small detail that someone across the street at an Einstein Bagels heard some screaming and yelling and then they heard a shot fired but no victim was seen at that time. As we were getting in our car leaving lunch we drove up the road and the call was updated that a subject was shot and that they had seen a subject wearing a dark colored hooded sweatshirt running south across Lake Mead towards the parking lot, there is a Golds Gym across the street and south and that's where the suspect was last seen running.

Q. After you went to the scene at some point did you go to the hospital with the victim?

A. Yes, after securing the scene my sergeant asked me to respond to the hospital with the victim driving behind the fire truck, at which time I did respond to the hospital, UMC Trauma was where the victim was taken to, and shortly after arriving there she was pronounced by the doctors as to be deceased.

MR. BOTZNAKER: Does the Grand Jury members have any questions for Officer Robertson?

BY THE FOREPERSON:

Q. Did you initially check the victim to see if she was still alive?

A. I didn't touch her at all that I can remember. She wasn't moving. I waited for medical to come up to do that.

BY A JUROR:

Q. The original call was shots fired. Was there one shot fired or two shots?

A. I can't remember what -- the actual call came out just as shots fired call in that area.

Q. Only one casing was found?

A. That I'm aware of, yes.

Q. Any idea of the caliber?

A. I didn't get a look at that, no.

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additional $500 fine and 25 days in the Clark County Detention Center.

Do you understand this admonition?

THE WITNESS: Yes, I do.

THE FOREPERSON: Thank you for your testimony. You are excused.

THE WITNESS: Thank you.

MR. BOLENBAKER: [illegible]

THE FOREPERSON: [illegible] your right hand.

You do solemnly swear the testimony you are about to give upon the investigation now pending before this Grand Jury shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: Yes.

THE FOREPERSON: Please be seated.

You are advised that you are here today to give testimony in the investigation pertaining to the offense of murder with use of a deadly weapon, involving Kevin Marquette Gipson.

Do you understand this advisement?

THE WITNESS: Yes.

THE FOREPERSON: Please state your first and last name and spell both slowly for the record and speak into the microphone.

THE WITNESS: My name is Wade Fleming. W-A-D-E, F-L-E-M-I-N-G.

THE FOREPERSON: Thank you, sir.

WADE FLEMING,

having been first duly sworn by the Foreperson of the Grand Jury to testify to the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MR. BOLENBAKER:

Q. Wade, what do you do for a living?

A. I'm a surveyor.

Q. Wade, what I want to do is focus your attention on the morning hours of March 25, 2016. What were you doing that morning?

A. We had left the office on the way to the job site and decided to stop by and grab something to eat that morning.

Q. You say we. Who were you with?

A. Robert Gilmore.

Q. Where did you stop?

A. We stopped at Einstein Bagels on Lake Mead Boulevard.

Q. What I'm going to do is show you a

photograph. This is Grand Jury Exhibit Number 3. It's an aerial photo of that area. Do you recognize that photograph?

A. Yeah. Yes.

Q. Do you know where the Einstein Bagels is?

A. Yeah, it would be that building there.

Q. Okay. What I'm going to do is publish this on this right here and you can just kind of show the Grand Jury members, you can just show here where the Einstein Bagels is that you were at.

A. That building right there.

Q. So it looks like it's the fifth building over or actually looking the other way third building east from Buffalo Drive?

A. That would be correct.

Q. On the south side?

A. Yes.

Q. When I say south I meant Lake Mead Boulevard.

So about what time did you get there do you remember?

A. Probably around 5:20 a.m.

Q. And did you order in or were you getting something to go?

A. Our order was to go.

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Q. And at some point did you leave the Einstein Bagels?
A. Yes.
Q. And what happened when you left?
A. As we walked out of the building and started walking towards our truck we heard some screaming coming from the direction of the Jack in the Box directly south across Lake Mead Boulevard, excuse me, north across Lake Mead Boulevard.
Q. When you heard screaming was it a male or female screaming?
A. It sounded to be female.
Q. And can you describe the scream that you heard?
A. Distressed, maybe bloodcurdling.
Q. Could you see anything over there in that area that you heard the scream coming from?
A. We looked that direction but didn't see anything.
Q. What happened after you heard the scream?
A. We continued to walk towards our truck and opened the doors on the truck and then heard a gunshot.
Q. About how long after the screaming did you hear the gunshot?
A. I would say less than ten seconds probably.

Q. What did you do in response to hearing the gunshot?
A. Again looked that direction, put our food in the truck and were just kind of standing there on the sidewalk out in front of Einstein Bagels.
Q. What made you think it was a gunshot? Have you heard gunshots before?
A. Yeah, I grew up in Nebraska, I hunted with my life, I knew what a gunshot sounded like.
Q. And that's what it sounded like to you?
A. Yes.
Q. After you heard that did you go over to that area?
A. Not immediately.
Q. What did you do immediately after the gunshot?
A. We noticed somebody running from the direction of the Jack in the Box across the intersection, southeast across the intersection.
Q. When you say you saw a person running, what did that person look like to you? Can you describe that person?
A. Dark hooded sweatshirt with the hood up, dark pants, I would say 5'9" or 5'10", medium build.
Q. I'm going to show you this Grand Jury

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Exhibit Number 3. Why don't you just kind of show the Grand Jury the path that you saw this individual running.
A. It would be from this building here across this intersection towards the southeast and then down the sidewalk in an easterly direction down Lake Mead.
Q. So crossing a diagonal direction southeast across Lake Mead Boulevard and then heading east on Lake Mead?
A. That's correct.
Q. About how far were you do you think?
A. Well, I would have been standing out in front of the building here kind of off the corner so when I saw him I would say four or 500 feet.
Q. Were you able to get any kind of characteristics about the individual? Could you tell if he was black, white, Hispanic, anything like that?
A. No.
Q. You said he was wearing a hoodie?
A. Yes.
Q. What did you do after you saw an individual running?
A. We decided to cross the street over to the Jack in the Box to see if anybody was hurt or see what was going on.

Q. When you say we, that was you and you said Robert Gilmore?
A. Yes.
Q. And what happened when you got across the street?
A. As we got closer to the parking lot of the Jack in the Box I noticed a Jeep Cherokee parked in the parking lot, it would have been facing Lake Mead Boulevard, and as we approached it I noticed that the two doors on the driver's side were open.
Q. I'm showing you Grand Jury Exhibit Number 6, do you recognize that photograph?
A. Yes.
Q. Okay. What I'm going to do is the same thing, put it up here for the Grand Jury to see, and if you can just kind of point out to them what you saw. You said you saw some doors open on a Grand Cherokee. Which vehicle was that?
A. It was this vehicle and both of these two doors were open here. Do you have a pen? I can point better instead of my fat hand.
Q. Sure. Both driver's side doors on the Grand Cherokee on the right?
A. Yeah, these two here.
Q. Did you see anything in that area?

A. We came, actually we came across this side of the vehicle.
Q. The passenger side?
A. Yeah, the passenger side of the vehicle and rounded it this way and then when I rounded the end of the vehicle I saw a woman laying on the ground in this area right here.
Q. And how did she appear to you?
A. Motionless, lifeless.
Q. Did you notice any injuries on her?
A. Yeah, as I took a couple of steps closer I noticed a wound on the side of her head.
Q. And so she didn't appear to be moving at all?
A. No, not at all. As I was standing there I noticed a name tag, a Jack in the Box name tag on her shirt and it said Britney and so I hollered her name several times to see if she would respond.
Q. And did she respond?
A. No.
Q. Did either you or Robert call the police?
A. Robert called the police. He was more over in this direction, he was on the phone dialing 911 as well as banging on the door of the Jack in the Box to try to get the employees' attention.

Q. When you pointed you said closer to the white car. He was over there?
A. Yeah, he went off in this direction.
Q. Let me grab that photograph from you.
I'm going to show you Grand Jury Exhibit Number 17. Is that the individual that you saw in the parking lot of Jack in the Box?
A. Yes.
Q. I'm just going to publish this for the Grand Jury.
This is the individual that you saw?
A. Yes, it is.
Q. She didn't have any of this stuff around her at the time you saw her though?
A. No, she didn't.
MR. BOLENBAKER: Does the Grand Jury members have any questions for Mr. Fleming?
BY THE FOREPERSON:
Q. 911 wasn't called until you actually came around and saw that there was somebody there?
A. Say it again, sir.
Q. The screaming, the gunshot, the person running, wasn't enough to call 911 until you got over there and saw someone on the ground?
A. No. Actually Robert Gilmore had called 911

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at the Einstein Bagels previously.
THE FOREPERSON: Anymore?
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Do you understand this admonition?
THE WITNESS: Yes.
THE FOREPERSON: Thank you for your testimony. You are excused.
MR. BOLENBAKER: Next the State calls Christina Bailey.
THE FOREPERSON: Please raise your right hand.
You do solemnly swear the testimony you are about to give upon the investigation now pending before this Grand Jury shall be the truth, the whole truth, and

nothing but the truth, so help you God?
THE WITNESS: I do.
THE FOREPERSON: Please be seated behind the desk there.
You are advised that you are here today to give testimony in the investigation pertaining to the offense of murder with use of a deadly weapon, involving Kevin Marquette Gipson.
Do you understand this advisement?
THE WITNESS: I do.
THE FOREPERSON: Please state your first and last name and spell both slowly for the record and speak into the microphone.
THE WITNESS: Christina Bailey.
C-H-R-I-S-T-I-N-A, B-A-I-L-E-Y.
THE FOREPERSON: Thank you, ma'am.

CHRISTINA BAILEY,

having been first duly sworn by the Foreperson of the Grand Jury to testify to the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MR. BOLENBAKER:
Q. Miss Bailey, you go by Chris?

A. I do.
Q. Chris, where do you work?
A. For Vons.
Q. Where is Vons located at?
A. On Buffalo and Lake Mead.
Q. I'm going to show you a photograph. This is Grand Jury Exhibit Number 3. Do you need to get your glasses?
A. Yeah, I do.
Q. Okay. Do you recognize this aerial view?
A. I do.
Q. Where is the Vons?
I'm going to show this -- you can show the Grand Jury members where the Vons is located at. Again this is Grand Jury Exhibit Number 3. What you can do is see how my hand, if you want to stand up and just point and show the Grand Jury where the Vons is located.
A. It's difficult from here.
Q. You can do it right here, just point on there.
A. I'm so nervous I'm afraid I'll make a mistake.
Right there.
Q. And that's on the corner of Lake Mead and Buffalo?

A. It's in the shopping center there and it's not exactly on the corner, it's kind of in, you turn into the, I think it's Boca Park Shopping Center and it's to the left, just to the left, with a Jack in the Box in the front.
Q. Do you know where the Jack in the Box is on this photograph?
A. It looks like that's it right there and this is the driveway that I go down.
Q. Where is the driveway you go down?
A. This one. I always come down this way and turn into the shopping center here.
Q. You come down west on Lake Mead and turn into the shopping center?
A. Right.
Q. It's just east of the Jack in the Box?
A. Yeah.
Q. So what are your normal hours at Vons?
A. I work 10:00 to 6:30. I work graves.
Q. What shift were you working? What was your shift on March 24th to March 25th?
A. We had inventory that night so I had gone in at 9:00 so I got off at about 5:30.
Q. What did you do when you got off work?
A. I picked up a few groceries and chatted a

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few minutes and then went out the door.
Q. So do you know about how long it took you to get out the door?
A. Oh, maybe ten minutes.
Q. And what did you do when you got out the door?
A. I went and got into my car.
Q. Where was your car parked?
A. I park right in front of the ice cream parlor close to Vons convenience as I can get under a light. That driveway I pointed that you turn to go into the Vons, there's a parking area right there, I always park right under the streetlight.
Q. I'm going to wear out this carpet walking back and forth.
I'm going to show you that same Exhibit 3. Show us where you normally park on that photograph.
A. Okay. I always park right there.
Q. You're pointing at it looks like the eastern side of the Vons closest to the Jack in the Box?
A. Well, actually I'm farther from the Jack in the Box, closest to the Vons, and all I have to do is walk across the street and I'm almost right in the door.
Q. Do you generally park there every time you go to work?

A. If I can, yeah.
Q. And so when you got to your car what happened when you got to your car?
A. Well, I got in my car and I was pulling out and I got maybe one or two or three areas and I heard a scream.
Q. And where did you hear the scream coming from?
A. Well, I rolled down, I stopped my car and rolled my window down and looked and it was from Jack in the Box.
Q. And did you see anything after you heard the scream?
A. There was a lady on the ground and a guy had ahold of her arm and it looked like he was trying to help her up, but he had ahold of her arm pulling her up and I couldn't see other than it was a man and a woman.
Q. What did the man look like?
A. I, facial I couldn't tell you. He was wearing a light gray hoodie thing over his head, sweatshirt type hoodie, and because I don't like the shirts he had like four to six inches of white T-shirt hanging underneath which drew my attention to the shirt.
Q. So you said he had a hooded sweatshirt. Did he have the hood over his head?

A. He had the hood up, yes, he did.
Q. You said it looked like he was helping her up?
A. Well, he had her by the arm pulling her up. I assumed at that point because I didn't hear another scream that he was helping her up.
Q. You're saying when you finally looked and saw these two individuals you didn't hear anything else coming from that area?
A. Nothing.
Q. What else did you see?
A. Well, I sat there and I was watching and when she got up they kind of stumbled and bumbled over to this car, not a car, an SUV type car.
Q. Both of them?
A. Both of them, him holding onto her the whole time, and he kind of pushed and shoved her into the driver's side, and I had already made assumptions in my head about what might be happening, but he went in after her so I thought okay, everything's okay. So I rolled up my window and proceeded to go to the stoplight which, you know, so I could make my turn to go home on Lake Mead east.
Q. And so you didn't hear any other screams so at this point —

A. Just one scream.
Q. Did anything raise your suspicion?
A. Well, in that parking lot we hear a lot of things so I stopped and I looked and I thought if she screams again then I'll do what I usually do which I probably shouldn't, but she never screamed again. I only heard one scream.
Q. Did you hear a gunshot at any time?
A. I didn't. I was [illegible] with the windows up and my radio on at that point.
Q. At some point you then started to exit the shopping center. Can you show again where you exit to go east on Lake Mead?
A. Okay. I come back out, I came around here behind the Jack in the Box and turned and I was sitting right here waiting for the light.
Q. So at that little intersection going into the shopping center, it's just to the east of the Jack in the Box?
I'm going to show you a different photo that might help you out. This is Grand Jury Exhibit Number 5. Is that better?
A. Yeah.
Q. Why don't we put that one on there and you can show the Grand Jury where your car was.

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A. Okay. I was right where that black one is getting ready to make my left hand turn.
Q. Going east on Lake Mead?
A. Right, go east on Lake Mead to go home.
Q. While you were at this intersection did anything catch your eye?
A. He ran up to the corner, that caught my eye, the flash. I looked, I saw that it was a man and that he was African American, but it was a blur because he took off diagonally across the street like this, straight across all four lanes. He never looked right, he never looked left, he just was running, and I thought oh dear, you know, he's robbed the Jack in the Box.
Q. Let me stop you there.
So you pointed almost in a southeasterly direction down?
A. Yeah. He was on this corner right here and he just took straight across. I mean he just went across all lanes without looking left or right and he was running really, really fast.
Q. Is that the same individual that you saw with the female earlier?
A. It was the individual with the gray hoodie.
Q. So it was the same individual?
A. Yeah.

Q. And you said that he was running. How fast did he appear to be running?
A. Oh my gosh, he was fast. Really, really fast. He was a blur going by me.
Q. Did you see, was he, I think you said he wasn't looking in any direction?
A. No. He was looking at where he was going, it was almost like he was focused, like he had a destination. He didn't look left, he didn't look right. If there had been a car coming they'd have probably hit him because he didn't look.
Q. And what did you do after you saw that?
A. Well, I thought oh my, you know, and my light changed, and he was flying down the street so I pulled slowly up behind him to see where he was going in such a hurry.
Q. Is it safe to say you were suspicious or there were suspicions raised about something?
A. Yeah, I thought maybe he had robbed the Jack in the Box and was running because he was in trouble or didn't want to get caught.
Q. But obviously you didn't see no robbery or anything like that, that was just something that you thought?
A. I saw nothing other than what I told you.

I had a lot of assumptions, I was tired and I was heading home and --

Q. Chris, then did you follow him down Lake Mead?

A. Yes, slowly.

Q. Was he still running?

A. Oh, he was running but he was pretty good distance ahead of me and about the time I came up behind him he went around the corner back into that real dark area.

Q. Do you know which corner that is on here? I know it's kind of hard with the aerial.

A. I'm not absolutely sure. I know that they're executive suites back there. I thought they might be apartments. I'm turned around.

Q. So this right here is the Vons, this is the Jack in the Box that you had referred to earlier.

A. He went this way and came back right around there, back into this area here.

Q. So not all the way --

A. And it was really dark back there.

Q. About what time was this, do you remember?

A. It was about, it had to be about 5:40, 5:45 and it was still dark out and the only reason I saw what I did was the lights in the parking lot.

Q. Why don't you show again, show the Grand Jury just the general area where you saw him turn.

A. Okay. He went straight across like this, down like -- or -- I'm turned around on this one.

Q. And then you broke it.

A. Okay. He went straight across the street like this, down into here and he went, and where I lost him was like right in here where it was really, really dark, but he was heading back this way.

Q. And you said there were some executive suites in that area?

A. I thought they were apartments at first but I looked, when I found out what had happened I looked to see what was back there and it said executive suites.

Q. What did you do after that?

A. Well, after that I went home and totally forgot about it. I was going to tell my husband but I was really tired, I fell asleep, and then the next night at work everybody was talking about what had happened and I was like oh, you've got to be kidding me, and then I realized what I had seen so when I got --

Q. Did you contact the police?

A. I did when I got off that morning, I contacted the police and went in and gave my statement.

MR. BOLENBAKER: Okay. Does the Grand Jury

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have any questions for Miss Bailey?

BY A JUROR:

Q. Did you ever see his face?

A. I saw, what I saw was a fast profile, he was running so fast, only enough to see that he was African American, because the hoodie was still up, and this is what I saw, and envision running, okay, you would see nothing but a blur go by and know that I was Caucasian, but I did notice that it was the guy with the gray hoodie.

THE FOREPERSON: Anymore?

BY MR. BOLENBAKER:

Q. Just a follow-up on that. Do you remember was he a thin, medium or a big build?

A. Well, he was thin, and I thought he was about 5'8" to 5'10" because when he was helping her into the SUV thing he wasn't all the way up to the top of the door. Does that make sense? But he was bent over also because he was pushing her in, but he did not come across as a big man, and when he ran by he was not a big man.

MR. BOLENBAKER: Any other questions?

THE FOREPERSON: By law, these proceedings are secret and you are prohibited from disclosing to anyone anything that has transpired before us, including

evidence and statements presented to the Grand Jury, any event occurring or statement made in the presence of the Grand Jury, and information obtained by the Grand Jury.

Failure to comply with this admonition is a gross misdemeanor punishable by a year in the Clark County Detention Center and a $2,000 fine. In addition, you may be held in contempt of court punishable by an additional $500 fine and 25 days in the Clark County Detention Center.

Do you understand this admonition?

THE WITNESS: I do.

THE FOREPERSON: Thank you for your testimony. You are excused.

THE WITNESS: Thank you.

MR. BOLENBAKER: The State next calls Charles Lavoll.

THE FOREPERSON: Please raise your right hand.

You do solemnly swear the testimony you are about to give upon the investigation now pending before this Grand Jury shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: Yes.

THE FOREPERSON: Please be seated behind the desk.

You are advised that you are here today to give testimony in the investigation pertaining to the offense of murder with use of a deadly weapon, involving Kevin Marquette Gipson.

Do you understand this advisement?

THE WITNESS: Yes.

THE FOREPERSON: Please state your first and last name and spell both slowly for the record into the microphone.

THE WITNESS: Charles Lavoll. C-H-A-R-L-E-S, L-A-V-O-L-L.

CHARLES LAVOLL,

having been first duly sworn by the Foreperson of the Grand Jury to testify to the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MR. BOLENBAKER:

Q. Charles, where do you work?

A. City of Las Vegas Housing Authority.

Q. Do you know an individual named Britney Lavoll?

A. Yes.

Q. Who is Britney?

A. My daughter.

Q. Charles, what I want to do is focus your attention on the morning hours of March 25, 2010. At some point did you receive a phone call from your wife?

A. Yes.

Q. What was the phone call about?

A. That something had happened at the store where my daughter worked.

Q. Where does she work?

A. Jack in the Box at Lake Mead and Buffalo.

Q. How did your wife appear when you were speaking to her on the phone?

A. She was really upset.

Q. And based on that information that you received from your wife what did you do?

A. I started heading to the store.

Q. Do you remember about what time you got to the store?

A. I think it was around 7:15.

Q. What did you do when you got there?

A. I just went in and approached it, it was surrounded with tape so I, there was an officer outside there and I told him who I was and he let me inside.

Q. Inside the Jack in the Box?

A. Yes.

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Q. Did you go in and sit down at the Jack in the Box?

A. Yes, I did.

Q. At some point did you have a conversation with an officer?

A. Yes.

Q. Do you remember which officer that was?

A. I can't remember, no.

Q. Could it possibly have been Detective Mogg?

A. Mogg, yes.

Q. And did you have a conversation about Britney with Detective Mogg?

A. Yes, I did.

Q. Detective Mogg described a little bit about what happened that morning?

A. Yes.

Q. Did he describe that there was a victim of a gunshot?

A. Yes.

Q. And did the description victim match Britney Lavoll?

A. Yes, it did.

Q. Charles, I'm going to show you a photograph, it's Grand Jury Exhibit Number 17, who is that individual?

A. That's my daughter.

Q. That's Britney?

A. Yes, it is.

Q. I'm going to publish this photograph I showed to Charles Lavoll.

Does Britney have any children?

A. Yes.

Q. How many children does she have?

A. Three children.

Q. Do you know who the father of those children are?

A. The oldest is --

Q. Well, is Kevin Gipson one of the fathers?

A. Yes, he is. He's the father of her last two children.

Q. And you've met Kevin Gipson before?

A. Yes.

Q. I'm going to show you Grand Jury Exhibit Number 18, do you know who that individual is?

A. That's Kevin.

MR. BOLENBAKER: I'm just publishing for the Grand Jury Grand Jury Exhibit Number 18.

Does the Grand Jury members have any questions for Mr. Lavoll?

THE FOREPERSON: By law, these proceedings

are secret and you are prohibited from disclosing to anyone anything that has transpired before us, including evidence and statements presented to the Grand Jury, any event occurring or statement made in the presence of the Grand Jury, and information obtained by the Grand Jury.

Failure to comply with this admonition is a gross misdemeanor punishable by a year in the Clark County Detention Center and a $2,000 fine. In addition, you may be held in contempt of court punishable by an additional $500 fine and 25 days in the Clark County Detention Center.

Do you understand this admonition?

THE WITNESS: Yes, I do.

THE FOREPERSON: Thank you for your testimony. You are excused.

THE WITNESS: Thank you.

MS. CLOWERS: May I call my next witness?

THE FOREPERSON: Please.

MS. CLOWERS: The State calls Dan Long.

THE FOREPERSON: Please raise your right hand.

You do solemnly swear the testimony you are about to give upon the investigation now pending before this Grand Jury shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: Yes, sir.

THE FOREPERSON: Please be seated.

You are advised that you are here today to give testimony in the investigation pertaining to the offense of murder with use of a deadly weapon, involving Kevin Marquette Gipson.

Do you understand this advisement?

THE WITNESS: Yes, sir.

THE FOREPERSON: Please state your first and last name and spell both slowly for the record into the microphone.

THE WITNESS: Dan Long. D-A-N, L-O-N-G.

THE FOREPERSON: Thank you, sir.

MS. CLOWERS: May I proceed, sir?

THE FOREPERSON: Yes.

MS. CLOWERS: Thank you.

DAN LONG,

having been first duly sworn by the Foreperson of the Grand Jury to testify to the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MS. CLOWERS:

Q. Good morning, sir. Where do you work?

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A. Las Vegas Metropolitan Police Department.

Q. In what capacity do you work?

A. Homicide.

Q. How long have you worked for Metro?

A. Just shy of 20 years.

Q. How long have you been in homicide?

A. Nine and a half years.

Q. Do you have a partner?

A. Yes, ma'am.

Q. What's his name?

A. Don Tremel.

Q. I want to direct your attention to March 25th of 2010, were you contacted by your sergeant regarding a homicide?

A. Yes, ma'am.

Q. Who was your sergeant at that time or which sergeant contacted you?

A. Matt Sanford.

Q. And based upon him contacting you what did you do?

A. I responded to the Jack in the Box restaurant at 7510 West Lake Mead Boulevard regarding a female that had been shot in the head.

Q. Is that in Las Vegas, Clark County?

A. Yes, ma'am.

Q. Who did you proceed to that location with?

A. Most of my squad. We usually pull as many as we feel are going to be necessary for an event so myself, Don Tremel, Cliff Mogg, Ken Hardy, Dean O'Kelley, and we actually called in Teresa Kyger from another squad to go with us.

Q. When you respond to a scene such as this do you breakdown the responsibilities between the different detectives?

A. Yes, ma'am.

Q. What was your responsibility at that particular scene?

A. I was going to be the lead so I took the crime scene investigation, I was going to be working with CSI. And then Don Tremel and Kenny Hardy were going to take any follow-up investigation and witnesses that are were not at the scene. Cliff Mogg was going to take the witnesses that were at the scene and Theresa Kyger went to the hospital to take the scene there.

Q. When you arrived at that location can you describe what you saw?

A. It was very, very, very early in the morning so it was still a little dark out, I pulled up and they had Lake Mead blocked at Tenaya, which I came from the east, they also had Lake Mead blocked at

Buffalo, so all of Lake Mead was shutdown. They allowed me to go through on the east side of the Jack in the Box, there is a entryway or driveway into that shopping center, that's where they directed me to park, that's where they briefed me. I saw that the entire parking lot around the Jack in the Box had been cordoned off with yellow tape and there were police officers posted throughout the parking lot and in the street to make sure the scene was secure.

Q. I'm going to show you, I'm just going to publish it behind you, sir, Grand Jury Exhibit Number 5. Is this, where it says Gateway Plaza, that's where you pulled in?

A. Yes, ma'am, I actually parked behind that black vehicle there.

Q. Okay. And this is the crime scene tape that you were indicating?

A. Yes, it was. The red tape, the one you see on the inner perimeter there, I don't know if you can see the red, that is the primary crime scene, nobody and I mean nobody goes inside the red.

Q. And when you arrived is it fair to say the media had already been there?

A. Yes, ma'am.

Q. And you were briefed as to what happened;

is that correct?

A. What little information they had at that point they gave us that information and they showed us where the scene was and then let us take over.

Q. Okay. Did you survey the scene?

A. Yes, ma'am.

Q. Were crime scene analysts there at that point in time?

A. Yes, I did. [illegible] with us.

Q. I'm going to publish it to you. You said this was the inner scene?

A. Yes, ma'am. That is the, on the other side of that red tape is Lake Mead, okay, so we're standing in the Jack in the Box parking lot, the Jack in the Box will be to our right or to the east. The gray Jeep is the victim's vehicle and the white Explorer belonged to another employee inside the restaurant.

Q. When you survey a scene what do you typically do?

A. Take note of all evidence, visible evidence that we can see at the crime scene and any other indicators of what we may be looking for.

Q. Did you take note of anything of evidentiary value at this scene?

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A. Quite a few things actually.

Q. Showing you State's Exhibit, or, I'm sorry, Grand Jury Exhibit Number 9, are some of the things that you noted marked in this photograph?

A. Yes. Can I stand?

Q. Of course. And please just point on the overhead.

A. Okay. Right here next to the tire of the white Explorer is a casing for a .25 caliber auto handgun. This right here, the yellow one underneath the driver's door of the Jeep, is a wad of spit. The scarf right here is what we were being told is what Britney was wearing and then there is a set of keys on the ground next to the scarf.

Q. Is it fair to say the victim had been transported by the time you arrived at the scene?

A. Yes, ma'am, and we were told that when they got to her there was still activity so they took her to the hospital.

Q. And that's where Teresa Kyger from homicide responded?

A. Yes, ma'am.

Q. Showing you State's Exhibit 12, is that the casing that you located?

A. Yes, ma'am.

Q. And you said it was a .25 caliber?

A. Yes, ma'am.

Q. And all of this evidence was preserved by a crime scene analyst?

A. Yes, we document its position with photographs and then it's recovered by one of the crime scene analysts.

Q. Okay. Showing you 11, in the center of the photograph is that the scarf you were describing?

A. The scarf and the keys, to the upper right is the set of keys on a lanyard and the scarf. The other material you see there is debris from medical personnel that were trying to save Britney's life.

Q. I'm going to show you Exhibit Number 8. There are two orange cones in this photograph. The orange cone on the left, what was that indicating?

A. At this distance it's either going to be the tissues or the other set of keys.

Q. So there was a second set of keys found; is that fair to say?

A. Yes. We also found two tissues in the drive-thru, that's a drive-thru lane next to the white Explorer, there was a set of tissues we found on the ground there that we wanted and then the other set of keys. The other set of keys, the one on the lanyard

were keys to the business itself, the other set of keys that were in the drive-thru lane were Britney's personal keys.

Q. Okay. So after all of the evidence was collected that you felt should be what did you guys do next?

A. We periodically will meet up and discuss what we found separately to get everybody on the same page. I went in and I talked to Detective Mogg who was inside the business talking to the employees. It turned out that the phone for the business had been ringing off the hook and people were asking obviously who was hurt, but they were asking for Britney. Several of those phone calls Detective Mogg or myself would take. One of them was an Erica Brown who said that she was Britney's babysitter and she was at Britney's house with two of Britney's children and she was extremely upset. We sent Detective Tremel and Detective Hardy to her location where Britney lived.

Q. And did they interview her?

A. Yes, ma'am.

Q. Is it fair to say that multiple people were interviewed in this case?

A. Yes, ma'am.

Q. And in a homicide case where do you usually

start your investigation looking for suspects?

A. It can be a little hard on people because you start at the victim, you have to do a victimology to begin with, find out what the victim was into, anything that could lead us somewhere, then you go, you move outward, so her lovers, roommates, best friends, we'll talk to family members, and we just move outward until we get to where we need to go.

Q. Was one of the things you did determine who her current boyfriend was?

A. Yes, ma'am.

Q. Who was that?

A. Kevin Eppinger.

Q. And did you follow-up on Kevin Eppinger?

A. Yes.

Q. What did you determine about Mr. Eppinger?

A. He had a great alibi.

Q. What was that, sir?

A. He was in the Clark County Detention Center.

Q. After Kevin Eppinger did you develop a suspect of Kevin Gipson?

A. Yes, ma'am.

Q. And you actually went to an apartment complex and came into contact with somebody by the name

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of Linda Jackson; is that correct?

A. Yes, ma'am.

Q. And who is Linda Jackson?

A. Kevin's mother. Kevin Gipson's mother.

Q. And you spoke to Mr. Gipson's mother?

A. Yes.

Q. And was she on the telephone at some point?

A. Yes.

Q. And did she give you the telephone?

A. Yes.

Q. Did she indicate to you who was on that phone?

A. Yes.

Q. Did you speak to the person on the phone?

A. Yes, ma'am.

Q. Did the person identify themselves?

A. Yes.

Q. Who was it that was on the phone?

A. Kevin Gipson.

Q. And what did Mr. Gipson say to you?

A. This will be the same day as the murder, just a little later in the day. He told me right away that he had spent the night at a friend's house and he had an alibi for the murder, that was his words, I never even indicated he was a suspect. He said he was more

than willing to talk to officers and that he would get a ride and come over to the apartment complex where we were. I told him that wasn't a great idea and that I would come to him.

Q. He indicated to you though flat out that he had nothing to do with it; is that right?

A. Yes, ma'am.

Q. And then you agreed to go meet with him at another location; is that fair to say?

A. Yes, ma'am.

Q. What was that location?

A. 824 Levy.

Q. Who lived at that location?

A. Denise Nelson and Larry Glinsey also known as Mississippi.

Q. When you proceeded to that location that was the same day; is that correct?

A. Yes, ma'am.

Q. Who did you go there with?

A. My partner Detective Tremel, Detective Mogg and Detective Hardy.

Q. Did you come into contact with Mr. Gipson?

A. Yes, I knocked on the door and he answered the door.

Q. Okay. Showing you Grand Jury Exhibit

Number 10, I'm just going to publish it up here, do you recognize the person in this photograph?

A. That's Kevin Gipson.

Q. That's the person you came into contact with when you went to 8124 Levy?

A. Yes.

Q. It's L-E-V-Y, the street; is that correct?

A. Yes, ma'am.

Q. What did he say to you when you first came into contact with him?

A. He stepped out, he said he was more than willing to talk to detectives, he wanted to clear his name, he had nothing to do with this, and again he reiterated that he had an alibi for the time of the murder.

Q. Where did you eventually decide that you would speak to him, at what location?

A. I asked him if he would go with us to our office, we could sit down in peace and quiet because we were starting to draw a crowd, he said he was more than willing to go with us, I told him he was not under arrest, that we were hoping that he might be able to direct us in the right direction of had who possibly hurt or shot and killed Britney.

Q. So you informed him that you just wanted to

gather information from him?

A. Yes.

Q. Did you transport him to your offices?

A. Yes, he got into my truck with me and my partner Detective Tremel and we --

Q. He rode in the front seat?

A. Yes, ma'am.

Q. Was he handcuffed?

A. No, ma'am.

Q. Did you inform him that at any point in time he could stop the interview?

A. Yes, stop the interview, not answer questions, leave, he was free to do whatever he wanted, we were looking for his help in the investigation of Britney's death.

Q. Once you arrive at your office you speak with him; is that fair to say?

A. Yes, ma'am.

Q. Is it the same situation, that he's free to leave at any time?

A. Yes.

Q. And he's not in handcuffs or anything of that sort?

A. Correct.

Q. So when you're speaking to him does he

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indicate to you who Britney was to him?

A. Yes.

Q. And who did he say -- what did he say?

A. He said Britney and he had had a five year relationship, they had the two children together, Keone and Khali, Keone was four and Khali had just turned one.

Q. And Keone is K-E-O-N-E?

A. Yes.

Q. And Khali is K-H-A-L-I?

A. Yes, ma'am.

Q. Okay.

A. Britney also had an older son by the name of Teijuan who is seven.

Q. And that's T-E-I-J-U-A-N?

A. Right, last name of Thomas. Keone and Khali both had the last name Gipson.

Q. Okay.

A. That they met when she was 17, she had actually moved in with him for awhile, they had some problems but they were together for quite a long period of time. He said that --

Q. Did he indicate -- I'm sorry.

A. He said that he started an affair with a girl by the name of Kiana, K-I-A-N-A, and that was about a year ago, and Britney didn't like the fact that he was

cheating on her, they broke up, that he was never physically abusive to her or verbally abusive to her, she was abusive to him, occasionally he would joke with her, she didn't like the joking either so she broke it off with him, he said at the very beginning he called her and wanted to get back with her but it was over so he went on about his life and she went on about hers but he had the children to think of.

Q. Now prior to March 25th of 2010 did he indicate to you when the last time he spoke to her was?

A. Yeah. He was trying to reach her, his son was having a birthday on the 23rd and during that conversation, I know he had a conversation with her on the 12th about having the birthday together, but he was trying to get ahold of her again for the 23rd so he could be with his son on his birthday.

Q. Was he able to, did he indicate to you whether or not he was able to contact her?

A. At that time he said no, he was not.

Q. Okay.

A. And that he did not get to spend the son's birthday with his son.

Q. Okay. Did he discuss with you at that time where he was the night before the 25th?

A. Yes. He, Larry and Denise, who he calls

Neicy, were going to go to a Rosie Daniels' house and they were going to play cards and drink alcohol, have a little party. As they are were leaving there, Denise's apartment, they were stopped by the police and Larry was arrested for outstanding warrants.

Q. Okay. And where did Mr. Gipson and Neicy proceed to after that?

A. This was about 10:00 or 11 o'clock on the day before in the evening, they then went over to a store and bought cigarettes and some other stuff and then they went to Rosie's and they played cards and drank alcohol until somewhere in the area of 2:00 to 3 o'clock in the morning.

Q. Where did he say he went after that?

A. That he and Denise drove back to Denise's apartment at 824 Levy, that they went inside separate bedrooms and they both went to bed.

Q. Okay. Did he indicate to you where he was when the murder occurred?

A. He says that the next thing he knew that he was woke up in the morning at 8 o'clock by his mother calling him and telling him that something had happened to Britney but she didn't know what.

Q. So when you spoke with Kevin Gipson on March 25th of 2010 he indicated to you that he was

asleep during the murder of Britney?

A. Yes, ma'am.

Q. At some point in time this interview is terminated; is that correct?

A. Yes, ma'am.

Q. And you take Kevin home; is that correct?

A. Yes, I take him back to 824 Levy where he wanted to go, again he was not handcuffed, and he exited the vehicle and I asked if we could talk again and he said yes.

Q. So I'm going to direct your attention to the next day, March 26th of 2010, did you again come into contact with Mr. Gipson?

A. Yes.

Q. Where was your initial contact on the 26th?

A. 824 Levy.

Q. And were you with Detective Tremel at that time?

A. Yes, ma'am.

Q. About what time of day was this?

A. It was approximately 11:30 in the morning.

Q. When you came in contact with him what occurred?

A. I asked him if he would like to come back to our offices and talk again, he indicated that he very

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much wanted to do that, that he wanted to, quote unquote, clear his name. And again he was not handcuffed, he was not under arrest, he was free to stop the interview or leave at any time he wanted. We got back into my truck and we drove back to my office.

Q. After you arrived at your office a Detective Flohr assisted you with interviewing Mr. Gipson; is that fair to say?

A. Yes, ma'am.

Q. And his first name is Geoff, G-E-O-F-F?

A. Yes. And the last name is F-L-O-H-R. It's one of those common names.

Q. And the interview that you had with the defendant, or, I'm sorry, Mr. Gipson, was in a room; is that correct?

A. Yes, ma'am.

Q. He wasn't under arrest at that time?

A. That's correct.

Q. And this was a room with video recording; is that fair to say?

A. Video and audio, yes. As well as the first day was also video and audio.

Q. Okay. Perfect.

Detective Flohr does advise Mr. Gipson of his Miranda rights though; is that correct?

A. Extensively.

Q. So the Miranda rights, there were several rights, several sentences contained within like a card that you receive at Metro; is that fair to say?

A. Yeah, by the Supreme Court there is four rights that you're afforded, we actually give five. And he went through each one separately and made sure he understood each separate part of Miranda before he was done.

Q. Okay. And so after the rights were given did Mr. Gipson during each one indicate that he understood?

A. Yes. And at the end he understood them completely and still wanted to give a statement or discuss this situation with detectives.

Q. Okay. At one -- I'm going to start that sentence over. During the first part of the interview there are times where he denies having anything to do with the murder of Britney; is that fair the to say?

A. At the beginning, yes, he denied any knowledge or any participation in it in any way.

Q. But at one point in time it changes; is that correct?

A. Yes, ma'am.

Q. What is the first thing he says when it

changes?
A. He told Detective Flohr and I that we didn't know what it was like to have mental, I believe he said problems, it might be issues, what it was like to be in a mental hospital or to have the problems that he had. Detective Flohr started talking to him about something in relation to that but Kevin's body language had changed dramatically so I had actually stopped Detective Flohr and I wanted Kevin to go ahead and tell us, he then wanted to talk about Britney, which is fine, so he told us that she was driving him crazy or she was doing things to him as she was holding his kids away from him months at a time and it was hurting him, he then, Detective Flohr and I then asked him to go ahead and tell us, and he said "I shot her and I ran away."
Q. And he said the reason he shot her was because she was driving him crazy; is that fair to say?
A. Yes, ma'am.
Q. And the interview proceeds from there. At some point in time during the interview he describes how he went about doing this; is that correct?
A. Yes, ma'am.
Q. I'd like to start with the gun. Does he discuss the gun with you during this interview?
A. Yes, ma'am.

Q. Does he indicate where he got it from?
A. Yes.
Q. Where was that?
A. He told us that he got it from a man by the name of Tremaine.
Q. Did he pay for the gun?
A. Yes.
Q. Did he tell you why he got the gun?
A. Specifically to kill Britney.
Q. And did he say when he got that gun?
A. The day before the murder.
Q. Did he tell you what the caliber of the gun was?
A. Yes. He described it as a faded black .25 caliber semi-automatic handgun.
Q. Did he describe to you what he was wearing that day?
A. Yes, ma'am.
Q. Starting with his pants, what kind of pants did he indicate he was wearing?
A. He said he was wearing the pants he still had on, those blue jeans, he was also wearing a gray hooded sweatshirt with the hood up over his head, and that he was wearing gray Chuck Taylor athletic shoes.
Q. Did you actually take his pants at some

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point in time?
A. Yes.
Q. You impounded them into evidence?
A. Yes. Well, I had a CSA come and do it.
Q. Starting with how he got to the Jack in the Box, how did he tell you he got there?
A. That he walked.
Q. Actually, I'm sorry, let me back up, sir. How did he tell you he determined where she worked?
A. On the 23rd, which would be his son's birthday, he called the Jack in the Box where she used to work, Las Vegas Boulevard and Bruce, he spoke to an employee there who told him, who told Kevin that Britney was now working at a Jack in the Box on Lake Mead. I'm sorry, strike that. On Buffalo.
Q. And so on the morning of the 25th did he go to a Jack in the Box?
A. He said they did go to the party at Rosie Daniels' house, that they did get back, that Britney went into, I'm sorry, Denise went into one room with her children and that he went into one of the other rooms and --
Q. And that Denise -- I'm sorry, sir.
A. And about 3 o'clock in the morning he left the apartment and walked from Levy, which is near the

intersection of Bonanza and Martin Luther King, to the intersection of Lake Mead and Buffalo and waited near, in the planter near the parking lot for the Jack in the Box.
Q. If I may show you, sir, you indicated he indicated to you that he waited in the planter; is that correct?
A. Yes, ma'am.
Q. I'm going to publish this photo.
A. Okay.
Q. And this one after that.
A. Okay.
Q. Did he indicate what the planter was near?
A. Right next to the Jack in the Box. He said that there was a van parked a little ways away from the Jack in the Box and that he sat in the planter next to the van.
Q. Let me show you Grand Jury Exhibit Number 10, do you see a van in that picture?
A. Yes, it belongs to another one of the employees, this van right here.
Q. And then showing you Grand Jury Exhibit 11, this is a view from the street looking at that van from Lake Mead. Are there plants there?
A. Yes. There is -- actually Lake Mead drops

down into the parking lot there, the planter is actually on a slope. And I'll just leave it at that.

Q. He said he waited there; is that correct?

A. Yes.

Q. And what happened while he was waiting there?

A. He said he didn't have to wait long, that it, just the way it worked out was he sat there for a couple of minutes and he saw Britney arrive, he walked from the van into the parking lot and came around from behind to the Jeep, he indicated --

Q. Okay. Showing you Grand Jury Exhibit Number 10, the Jeep is the car in the middle; is that fair to say?

A. That's the gray Jeep, yes.

Q. And he came from the area where the green van is?

A. Right. He looked around, came in, he indicated that the Jeep was on his right hand side, that he was farther forward, she didn't see him, she got out of the car, he indicated to us that he took the gun in his right hand and fired it one time at her, we asked where he was shooting for, he said the upper body or the head, he said he fired the gun, she immediately dropped to the ground and then he ran away.

Q. Did he actually show you during the interview how he was firing that gun?

A. Yes, ma'am.

Q. Do you recall what that was? Could you show us?

A. Yes. He indicated that he pulled the gun high and fired, fired with his right hand in this position here.

Q. And you're showing the Court using your finger and your thumb to point a gun into the air a little bit above your shoulder; is that fair to say?

A. Yes, ma'am. That's virtually what he showed us. He says that he then ran to Lake Mead, crossed over to the other side of Lake Mead which would be from the north side to the south side, ran east towards the freeway, he said that he moved into the parking lot, he was cutting through parking lots and that kind of thing, didn't want to run on the street.

Q. And showing you this exhibit, sir, 3, can you indicate where he informed you he ran after he shot her?

A. You've got me backward here.

Here is the Jack in the Box right here. This is where the shooting took place just on the west side of it. He said he ran out, crossed the street,

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moved into the parking lots and then continued east, when you get past Tenaya you come to the freeway, 95, Lake Mead has an overbridge over the freeway, he says he crossed that bridge, as he was crossing the bridge or just before or just after, somewhere near the freeway, he took the Chuck Taylor athletic shoes that he was wearing and threw them, he thinks it might have been somewhere near the freeway, after the freeway he ran into some other place close by and took off the gray hooded sweatshirt and put that in a dumpster.

Q. And based upon the information you received about his shoes and his sweatshirt did you then go and try to locate those items?

A. Yes, ma'am.

Q. Starting with the shoes, what were you able to do?

A. We didn't find any Chuck Taylor's on the freeway, we searched the area fairly extensively, three squads of police officers, we didn't find the Chuck Taylor's. We searched the dumpsters, we weren't able to find a gray hooded sweatshirt in the dumpsters, but we also learned that Silver State empties those dumpsters daily and they would have been emptied that morning and anything in those dumpsters by the time we called would have already been at the landfill.

Q. But nevertheless you did try to locate those items?

A. Oh, yes, and we looked extensively for the, hoping that maybe he dumped the gun too, so we had officers walking all kinds of places for that.

Q. Since we're on the gun let me ask you about that. What did he tell you he did with the gun?

A. He went all the way back to 824 Levy, walked all the way home, he then made a phone call from Denise's landline in that apartment to Tremaine, he says that he met with Tremaine at the McDonald's at Sahara and Arville and gave the gun back to Tremaine. He says that he did not tell Tremaine that the gun was now, I'm going to use some lingo here, sorry, dirty, that the gun had been used in a crime of any sort, he gave the gun back to him.

Q. And Tremaine is who he originally got the gun from?

A. Yes, ma'am.

Q. Now I want to go back to when he's describing how he shot her. Did he indicate to you how many times he thought he fired the gun?

A. One time.

Q. Do you recall whether or not he said he heard her scream?

A. He, the very first time I asked him if there was any conversation, he said no that there was not. At the end of the interview I asked him again what did she say, did she say anything, did she scream, he goes, "I don't think so, no, I don't remember." And then I was asking him did you say something and it looked like he was going to say something to me but Detective Tremel entered the room and he didn't say anything.

Q. At one point in time though he says to you that during the shooting he was out of it; is that fair to say?

A. Yes.

Q. Meaning, did you take that to mean in the mental sense?

A. He went on — the way -- I explained to him that he was under arrest at that point and we were going to take him to the county jail, enroute to the jail he went, he explained extensively the mental problems he was having and how out of it he was at this time.

Q. Did he tell you whether or not he had ever been diagnosed with any mental health issue?

A. Yes, he told me that a year to two years prior that, he told me the doctor's name but I can't remember, I'm sorry, I can't remember it, but he told me

that he was diagnosed with bopolar schizophrenia and that the doctor had prescribed one drug called Invega which was supposed to take care of his psychosis and another drug that was supposed to take care of his anxiety, that he was doing very very well while he was taking these medications, he had terminated [illegible] prior to this shooting his insurance ran out and he wasn't able to get his medication anymore and that he was having hallucinations [illegible] the voices were telling him to kill himself and just prior to the murder they were telling him to kill Britney.

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Q. And the voices also told him that Britney was evil; is that fair to say?

A. Evil, that she was the devil, that she was the cause of all the troubles in his life.

Q. Okay. So he then tells you that, he also told you about, when he was speaking to you during the taped interview, that he couldn't control himself; is that fair to say, in regards to the shooting?

A. No.

Q. I'm sorry, I will withdraw that.

Back to his alibi. What he originally told you the day before is that he went to bed and he was asleep during the murder?

A. Yes.

Q. And then on the 26th what he tells you is that when Denise goes to her room he left the house about 3:00 a.m. and walked to the Jack in the Box; is that fair to say?

A. Yes, ma'am.

Q. And then he told you after he ditched the Chuck's and the hoodie he went back to the house; is that correct?

A. Yes, ma'am.

Q. Does that all coincide with him returning the gun to Sahara and Arville, the time line?

A. He said he got a call from his mother at 8 o'clock at the Levy address, I don't meet with him until the afternoon, but we have no indication that he ever left that apartment, nobody ever gives us any indication that he made a drive all the way up to Sahara and Arville to drop off the gun or that he had made that walk. I don't see where there would be time to do that but that's what his story is.

Q. Okay. So after your interview with Mr. Gibson you then booked him for the murder of Britney; is that fair to say?

A. Short time later, yes. We, there was a few things we needed to do. I needed to get a CSA, a crime

scene analyst to our location and impound the pants, we needed pictures taken, he was then transported by myself to the county jail.

Q. Okay. During your investigation -- it is quite extensive, is that fair to say? Let me ask you this. You interviewed multiple witnesses in this case?

A. Yes.

Q. In the end were there any suspects that you did not follow-up on that you developed?

A. Suspects, no.

Q. So the only suspect at the end of the day was Kevin Gipson?

A. Well, Kevin Eppinger was my number one suspect until I found out he had a great alibi.

Q. So after the alibi panned out on Mr. Eppinger and the interview with Mr. Gipson he became the suspect?

A. Yes, ma'am.

MS. CLOWERS: Okay. I have no further questions if the ladies and gentlemen of the Grand Jury have any questions.

BY A JUROR:

Q. Did you ever talk to the individual that the victim said he gave the gun to to see whether the story was accurate?

MS. CLOWERS: Do you mean the defendant, sir?

A JUROR: Yes.

BY MS. CLOWERS:

Q. Okay. Did you follow-up?

A. On Tremaine?

Q. On Tremaine.

A. Yes, we attempted, as a matter of fact I'm still attempting to locate Tremaine. I do have a phone number but it's one of those phones that does not take incoming phone calls and it's also one of those phone calls that I can't locate, but I have not been able to find Tremaine yet, but I'm not done.

Q. So it's an ongoing investigation?

A. Yes, ma'am.

BY A JUROR:

Q. Was there any kind of history of domestic violence prior to between him and --

MS. CLOWERS: Unfortunately I'm going to ask that you not answer that question, Detective. I'm sorry, sir.

THE FOREPERSON: Anymore?

By law, these proceedings are secret and you are prohibited from disclosing to anyone anything that has transpired before us, including evidence and

statements presented to the Grand Jury, any event occurring or statement made in the presence of the Grand Jury, and information obtained by the Grand Jury.

Failure to comply with this admonition is a gross misdemeanor punishable by a year in the Clark County Detention Center and a $2,000 fine. In addition, you may be held in contempt of court punishable by an additional $500 fine and 25 days in the Clark County Detention Center.

Do you understand this admonition?

THE WITNESS: Yes, sir.

THE FOREPERSON: Thank you for your testimony. You are excused.

THE WITNESS: Thank you very much.

THE FOREPERSON: Counsel, I think it's time for a 15 minute break.

MS. CLOWERS: Actually that's my last witness.

THE FOREPERSON: Are we ready to vote?

MS. CLOWERS: Yes. If I may just see the Indictment, sir.

So at this time I'm going to go to page 1 of the Indictment, line 21, Marquette, his middle name is spelled incorrectly, we need to add an E to the end of that.

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And with that, ladies and gentlemen, the State has no further -- I'm sorry. Ma'am.

A JUROR: The victim's name is spelled incorrectly. Her father spelled it this way.

MS. CLOWERS: Okay. Thank you so much.

Line 26, we're going to spell Britney's last name L-A-V-O-I-E, and as well as on page 2, line 1.

With that, ladies and gentlemen, the State is going to ask that you read through the jury instructions that have been provided and marked as Grand Jury Exhibit Number 2. If you require any further instructions prior to your deliberation we'll wait outside. If not we would ask that you begin deliberating.

THE FOREPERSON: Thank you.

(At this time, all persons, other than members of the Grand Jury, exit the room at 10:18 a.m. and return at 10:20 a.m.)

THE FOREPERSON: Madame and Mr. District Attorney, by a vote of 12 or more Grand Jurors a true bill has been returned against defendant Kevin Marquette Gipson charging the crime of murder with use of a deadly weapon, in Grand Jury case number 09AGJ167X. We

instruct you to prepare an Indictment in conformance with the proposed Indictment previously submitted to us with the two corrections in the name spelling.

MS. CLOWERS: Yes. Thank you very much.

THE FOREPERSON: Thank you.

(Proceedings concluded.)

--oOOo--

REPORTER'S CERTIFICATE

STATE OF NEVADA)
: Ss
COUNTY OF CLARK)

I, Danette L. Antonacci, C.C.R. 222, do hereby certify that I took down in Shorthand (Stenotype) all of the proceedings had in the before-entitled matter at the time and place indicated and thereafter said shorthand notes were transcribed at and under my direction and supervision and that the foregoing transcript constitutes a full, true, and accurate record of the proceedings had.

Dated at Las Vegas, Nevada,
May 11, 2010.

Danette L. Antonacci, C.C.R. 222

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding TRANSCRIPT filed in GRAND JURY CASE NUMBER 09AGJ167X:

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X Does not contain the social security number of any person,

-OR-

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

A. A specific state or federal law, to-wit: NRS 656.250.

-OR-

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

Signature 5-11-10 Date

Danette L. Antonacci
Print Name

Official Court Reporter
Title

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DISTRICT COURT
CLARK COUNTY, NEVADA

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Attorney of Record:
Public Defender (Christy L. Craig-Rohan)

State of Nevada **Case No. C264079**

Vs. **Dept No. XVIII**

Kevin M Gipson

Receipt for Grand Jury Transcript(s)

Volume(s) N/A

Date of notice: 5/18/10

I have received the above Grand Jury Transcript(s).

Signature: _____

Date: 5/18/10

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RAO

Eighth Judicial District Court
Clark County, Nevada

STATE OF NEVADA
Plaintiff,
vs.
KEVIN GIPSON
Defendant

Case No.: 10-C-264079-C
Dept No.: 18

FILED AFTER HOURS
MAY 25 2010
STEVEN D. GRIERSON
CLERK OF THE COURT

MEDIA REQUEST AND ORDER FOR CAMERA ACCESS TO COURT PROCEEDINGS

LARRY ISH of KTNV, requests permission to broadcast, record, photograph or televise proceedings in the above-entitled case in the courtroom of Dept. No. 18, the Honorable Judge BARKER, commencing on the 15th day of September, 2010. cc 8:15 am TD 9/20 10am

I certify that I am familiar with the contents of Nevada Supreme Court Rules 229-249, inclusive, and understand this form MUST be submitted to the Court at least SEVENTY-TWO (72) hours before the proceedings commence, unless good cause can be shown. IT IS FURTHER UNDERSTOOD that approved media must arrange camera pooling prior to any hearing, without asking this Court to mediate disputes.

DATED this 19TH day of MAY, 2010.

LARRY ISH
Media Representative

The Court determines camera access to proceedings, in compliance with the court's policy, ☐ WOULD ☒ WOULD NOT distract participants, impair the dignity of the court or otherwise materially interfere with the achievement of a fair trial or hearing herein;

Therefore, the Court hereby ☐ DENIES ☒ GRANTS permission for camera access to LARRY ISH of KTNV, as requested for each and every hearing on the above-entitled case, at the discretion of the judge, and unless otherwise notified. This Order is in accordance with Nevada Supreme Court Rules 229-249, inclusive, and is subject to reconsideration upon motion of any party to the action.

IT IS FURTHER ORDERED that this entry shall be made a part of the record of the proceedings in this case.

DATED this MAY 24 2010 day of _____, 20__.

District Court Judge

Fax Form 72 hours prior to the hearing to (702)671-4535

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Eighth Judicial District Court
Clark County, Nevada

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Elizabeth A. Brown
Clerk of Supreme Court

State of Nevada

Plaintiff,

vs.

Kevin Gipson

Defendant

Case No.: 10C264079C

Dept No.: 18

NOTIFICATION OF MEDIA REQUEST

TO: COUNSEL OF RECORD IN THE ABOVE-CAPTIONED CASE:

You are hereby notified pursuant to Supreme Court Rules 229-249, inclusive, that media representatives from KTNV have requested to obtain permission to broadcast, televise, record or take photographs of all hearings in this case. Any objection should be filed at least 24 hours prior to the subject hearing.

DATED this 24 day of May, 2010

E. Ahe Elhaney

Eighth Judicial District Court

CERTIFICATE OF SERVICE BY FACSIMILE TRANSMISSION

I hereby certify that on the 24 day of May, 2010, service of the foregoing was made by facsimile transmission only, pursuant to Nevada Supreme Court Rules 229-249, inclusive, this date by faxing a true and correct copy of the same to each Attorney of Record addressed as follows:

Plaintiff	Defendant
State of Nevada	Public Defender
455-2294	455-5112

E. Ahe Elhaney

Eighth Judicial District Court

ORDR
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite #226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

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JUN 04 2010
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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

CASE NO. C264079X

DEPT. NO. XVIII

KEVIN MARQUETT GIPSON,

Defendant.

ORDER

UPON EX PARTE APPLICATION having come before the Court on June 2, 2010, and good cause appearing therefor,

IT IS HEREBY ORDERED that the deadline for filing a writ in the above entitled matter shall be extended to 21 days after defense counsel's receipt of all of the transcripts of defendant's statements to the police.

DATED 4th day of June, 2010.

DISTRICT COURT JUDGE

Submitted by:

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By
CHRISTY L. CRAIG, #6262
Deputy Public Defender

x
Agreed to by Shannon Clowers, District Attorney 10008

Kevin M. Gipson #1582343
330 S. Casino Center
Las Vegas, Nevada 89101

Petitioner - In Pro Se

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DISTRICT COURT
CLARK COUNTY, NEVADA

1/19/11

Kevin M. Gipson,
Petitioner,
vs.
The State Of Nevada,
Respondent.

CASE NO. C264079
DEPT. NO. XVIII

10C264079
MOT
Motion
7139590

DATE OF HEARING:
TIME OF HEARING:

NRS 7.055 / 7.40
MOTION SEEKING DISMISSAL OF COURT-APPOINTED COUNSEL WHERE ATTORNEY HAS BEEN IN NON-COMPLIANCE WITH ADKT 4-1, 4-7, 4-8(a); NOR THE NEVADA RULES OF PROFESSIONAL CONDUCT Rule 1.4.(3), 3.2(a) RENDERING COUNSEL INEFFECTIVE:

COMES NOW, Kevin M. Gipson, the above-mentioned petitioner moves this court to entertain the above-Mentioned Motion and grant the relief sought.

///

///

Docket 73307 Document 2017-33011

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Clerk of Supreme Court

I.

First, Petitioner Gipson (hereinafter "Gipson") Notice, when indigent "a criminal defendant can not choose attorney's as he pleases", however, there is a standard outlined within the Nev. R. Prof. Cond. and the ADKT that must be complied with that ensures a criminal defendant receives effective assistence of counsel.

II.

Gipson believes its highly unethical for court-appointed attorney, **Kristy Craig**, to conceal and withhold Gipson's discovery, where there are strong possibilities the grand jury proceedings were not held within statutory standard, nor has counsel investigated such and communicated this matter.

III.

That during and after each court appearance Gipson has sought out his discovery, so, he to can possibly aid court-appointed attorney, counsel promises the production of the discovery, however, has not yet provided a copy of the discovery nor has Gipson been permitted to inspect the States case against him, due to counsel non-compliance of Rule 1.4(a)(3) which reads;

" A lawyer shall keep the client reasonably informed about the status of the matter" . . .

IV.

The record is completely absent, there is an investigation being conduct, where counsel lacks the want of

communication, after advising Gipson of waiving his 60 day Speedy Trial.

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Clerk of Supreme Court

V.

It very apparent, where there is a "lack of want to communicate" Gipson case is not receiving pre-trial motions, not even, the motions are commonly dreamed up by court-appointed attorneys that are meant to fail.

Rule 3.2(a) reads; Nev. R. Prof. Cond.

"A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client"

Further, ADKT 4-7(a) holds;

"Counsel should conduct, or secure the resources to conduct, a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case"... see also ADKT 4-8 (a) and (b) 1 thru 8 and (c). habeas petition.

VI.

Moreover, the above-stated is a violation of Gipson 6th Amendment right (right to effective counsel) and 14th Amendment Rights (substantive and Procedural Due Process) of the U.S. Constitution, where Gipson has been afforded procedural safeguards thru ADKT and Nev. R. Prof. Cond. and they are not being complied with by court-appointed counsel.

///

///

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VII.

The adversarial process protected by the Sixth Amend. of U.S. Const. requires that the accused have "counsel" acting in the role of an advocate. Anders V. California, 87 S.Ct. 1396, 1480 (1967) and when counsel can not provide effective or adquate assistance is no better than one who has no counsel at all. Evitts V. Lucey, 105 S.Ct. 830.

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Clerk of Supreme Court

VIII.

Finally, there is a lacking that equality demanded by the fourteenth amendment, where the "rich man" enjoys the benefit of the law being righteously practiced.

IX.

WHEREFORE, it is prayed, that Kristy Craig be compelled to comply with the Rules and ADKT or remove her from the record and appoint counsel that will promptly comply with the Rules and ADKT standards, and

Gipson is not to be retaliated against for exercising his first amendment right to access to the court.

RESPECTFULLY SUBMITTED,

DATED: 12-7-10

Kevin Gipson
Declarant/Petitioner In Pro Se
under penalty of perjury
NRS 171.102 (2)

Electronically Filed
Sep 18 2017 [illegible] m.
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Clerk of Supreme Court

CERTIFICATE OF SERVICE

I, hereby certify, that On the 7 day of [illegible], 2010, I mailed-my MOTION SEEKING DISMISSAL OF COURT-APPOINTED COUNSEL WHERE ATTORNEY HAS BEEN IN NON-COMPLIANCE WITH ADKT 4-1, 4-7, 4-8(a); NOR THE NEVADA RULES OF PROFESSIONAL CONDUCT Rule 1.4.(a)(3) and 3.2(a) RENDERING COUNSEL INEFFECTIVE to the following;

Clerk Of
Eighth Judicial Dist. Ct
Dept. 18
200 Lewis Ave
Las Vegas, Nevada 89101

[signature]
WITNESS

KEVIN GIBSON #1052240
330 S. CASINO CENTER
LAS VEGAS NV 89101

18

JUDGE DAVID BARKER
CLERK OF COURT DEPT. 19
200 LEWIS AVE.
LAS VEGAS NV 89101

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PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. KEVIN MARQUETT GIPSON, Defendant.	CASE NO. C264079X DEPT. NO. ~~XXVII~~ XVIII DATE: April 25, 2011 TIME: ~~8:30~~ 8:15 AM

MOTION TO COMPEL DISCOVERY

COMES NOW, the Defendant, KEVIN MARQUETT GIPSON, by and through CHRISTY L. CRAIG, Deputy Public Defender and hereby grant this motion.

This Motion is made and based upon all the papers and pleadings on file herein, the attached Declaration of Counsel, and oral argument at the time set for hearing this Motion.

DATED this 13 day of April, 2011.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: _____
CHRISTY L. CRAIG, #6262
Deputy Public Defender

10C264079
MCDM
Motion to Compel
1350867

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On March 26, 2010 Geoff Flohr conducted a CIT/polygraph examination of Kevin Gipson. The examination included charts and graphs or other physical documentation of the results of examination.

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During the March 26, 2010 interrogation, Flohr pointed out the results, charts and graphs and discussed them with Kevin. None of these items have been provided to the defense.

The defense is respectfully requesting the name of the equipment used by Geoff Flohr, including serial number, manufacturer, operating manual, confidence or standardized control testing prior to the examination of Kevin Gipson, all charts, graphs and all raw data from the testing of Kevin Gipson.

DATED this 13 day of April, 2011.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: _____
CHRISTY L. CRAIG, #6262
Deputy Public Defender

NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion on for hearing before the Court on the 25th day of April, 2011, at 8:30 a.m.

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DATED this 13 day of April, 2011.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: _____
CHRISTY L. CRAIG, #6262
Deputy Public Defender

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Motion is hereby acknowledged this 13 day of April, 2011.

CLARK COUNTY DISTRICT ATTORNEY

By: _____

Docket 73307 Document 2017-33011

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0208
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

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APR 13 2011
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Sep 28 2017 10:06 a.m.
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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

KEVIN MARQUETT GIPSON,

Defendant.

CASE NO. C264079X

DEPT. NO. XVIII

DATE: April 25, 2011
TIME: ~~8:30 a.m.~~ 8:15 AM

MOTION TO SUPPRESS OR IN THE ALTERNATIVE A JACKSON V DENNO

COMES NOW, the Defendant, KEVIN MARQUETT GIPSON, by and through CHRISTY L. CRAIG, Deputy Public Defender and hereby requests that this Court order the suppression of all statements made by the Defendant to agents of the Las Vegas Metropolitan Police Department, or, in the alternative, order an evidentiary hearing to determine the voluntariness of the Defendant's statements as required by Jackson v. Denno, 378 U.S. 368 (1964).

This Motion is made based upon all the papers and pleadings on file herein, the attached Declaration of Counsel, Memorandum of Points and Authorities in support hereof, and oral argument at the time set for hearing this Motion.

DATED this 13 day of April, 2011.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: _____
CHRISTY L. CRAIG, #6262
Deputy Public Defender

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Motion to Suppress
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POINTS AND AUTHORITIES

FACTS

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Kevin Gipson is charged by way of indictment with one count of Murder with Use of a Deadly Weapon. The state alleges that on March 25, 2010 at about 5:45 am Brittney Lovall was shot once in the head.

There were no witnesses to the actual shooting. A number of witnesses heard some shouting, some were able to see the outlines of two people, some heard the sound of a gunshot, some saw a man running. At best some witnesses saw a black male adult running and he may have had facial hair.

Family members immediately point the finger at Kevin Gipson. Brittney and Kevin had been involved in a relationship since high school. During their decade long on-again and off-again relationship, they had two children together. At the time of her death, Brittney was not with Kevin and was in fact living with another man, Kevin Eppenger. Police quickly ruled out Kevin Eppenger out as a possible suspect because he was in custody at the Clark County Detention Center at the time of her death.

Long and Tremmel spoke with Kevin's mother Lenda Jackson on March 25, 2010 who warned them that Kevin had a history of mental illness. She told them that Kevin suffers from Bi-polar Disorder and is not currently on his medications.

On March 25, 2010 at about 3pm, Detectives Long and Trammel picked up Kevin Gipson taking him to LVMPD offices for an interview. Kevin spoke with detectives explaining his long relationship with Brittney and his whereabouts at the time of her death. Long and Trammel asked Gipson to agree to gun shot residue testing (GSR) and to provide a DNA sample. Gipson agreed to both tests, telling them that he had not handled a gun in a very long time and nothing would show up on the test. He also agreed to return for a polygraph test.

During the time between the death of Brittney Lavoll and the time Gipson spoke with police, he had discussed the details of "what happened to Brittney" with his mother Lenda Jackson, Keya Jackson, and Isaiah Martin.

At the end of the first interrogation on March 25, 2010 instead of leaving the station returning for the agreed upon polygraph on some later date, Kevin was detained. While Kevin waited, Long and Trammel met with polygrapher Geoff Flohr who advised that a Concealed Information Test (CIT) was the preferable test since Kevin had not received any details about the murder. Of course, Kevin had spoken with Detectives Trammel and Long about the case. Kevin had also spoken with his mother and other family and friends about Brittney's death. Flohr either ignored or failed to consider this when advising Trammel and Long about the *truth tests*..

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On March 25, 2011 at approximately 5:30 pm Geoff Flohr began the CIT/polygraph test. Flohr Mirdandized Kevin warning that he had the right to remain silent and that he had the right to have an attorney before and during questioning and if he could not afford an attorney one would be provided to him. Flohr emphasizes that Kevin can call a stop to the questioning at any time and Flohr won't be "angry or upset." If Kevin wants a lawyer, Flohr will stop.

Kevin immediately questions whether or not he needs a lawyer. Flohr and Long tell him that it is up to him to decide if he wants to speak with a lawyer. Without pause, Flohr immediately launches into to the benefits of the CIT/polygraph exam, claiming that it simply a search for knowledge.

Kevin clearly requests a lawyer. He explains to Flohr that he was to ask the lawyer questions *before* he begins the test. Kevin tries to explain that he wants to get counsel before beginning the test , that he is skeptical about the test.

A stunned Flohr leaves the room for a few minutes, presumably to get some advice, then returns and asks Kevin for the name of his attorney. A very surprised Kevin throws Flohr's own promise back at him –"I thought y'all was gonna provide me one."

A clearly flustered Flohr stumbles as he tries to explain that what he promised just moments earlier was not really the truth, not really a promise and that no lawyer was going to be provided for him prior to questioning. Flohr admits he had told Kevin that he had a right to speak with a lawyer before or during questioning and could not afford one, that yes, a lawyer would provided but now that Kevin has really asked for a lawyer they are not going to actually provide one.

Kevin "I thought y'all was gonna provide me one."

Flohr "..yeah. When, if you're charged in the investigation, okay, and you don't have the funds to have an attorney then one would be provided for youa. Uh, right not, this is in the investigative phase and you understand at this point. So if, if you know a name of an attorney we'll provide you with a phone and you can make a phone call and talk to him about it and make a decision on what you wanna do."

Kevin "I don't understand."

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Long and Flohr go on to try to explain that despite their earlier promise of a lawyer to consult with before questioning, that Kevin was on his own, without a lawyer. Flohr tries to explain why Kevin is entitled to some of his rights, but not all of them. Flohr tries to explain why they will stop questioning him as promised but not provide a lawyer for him to consult before submitting to questioning.

Flohr "if you have an attorney you wanna consult with, then you can consult with.. because this involves a criminal investigation and because it involves this type of, ah, ah, information test, ok, examination here. Um, we have to advise you of these rights. So if you say to me 'Hey, Jeff, you know what, I think I wanna talk to an attorney before I do in though this process here' Um, then I have to stop, mmm, and afford you that opportunity to go ahead and go, go do that if that's what you wanna do. Um, but like he said, you're not under arrest at this point so we don't have to provide you with an attorney, but we can provide you the means to make a phone call here tonight if you want."

Long "Absolutely"

Flohr "To call an attorney and talk to him".

Kevin "I don't know any attorney's"

Flohr " Well, give him a phone book, I guess, if you wanna call. What do you wanna do?

Kevin " I wanna make sure this is right."

Flohr's solution to Kevin's request to speak with a lawyer before questioning is to hand him a phone book so that he can *cold call* attorneys. It is after 5pm on a Thursday night. Kevin does not know any lawyers, and has no idea who to call. A pointless, hopeless exercise in futility at best since Kevin has no hope of actually contacting a lawyer under these circumstances.

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Despite his promise to stop if Kevin asked for a lawyer, a relentless Flohr continues the questioning of Kevin, touting the CIT/polygraph examination, telling him that it is based on knowledge. Recognizing the futility of Flohr following through on his promise to let him speak with a lawyer before questioning and the practical impossibility of finding a lawyer, while locked inside a police station, after regular business hours a hopeless Kevin gives up. Kevin understands that the police are giving him no feasible options. He agrees to take the test.

Flohr seizes this opportunity and immediately jumps into action. He asks Kevin to confirm that he no longer wants to consult with a lawyer. Flohr again touts the helpful nature of the CIT/polygraph examination. He continues to persuade and discuss the falsely exaggerate the "simple, knowledge" based exam. At this point, some unknown person again stops the Flohr and pulls Flohr out of the room.

It is important to note that earlier that same day a District Court Judge found that Flohr had violated Miranda and coerced a statement from a defendant. In that case, Flohr conducted a "truth finding" interrogation using a polygraph. The Court found that Flohr's tactics resulted in a coerced interrogation and the statement suppressed.[1] Clearly, someone, evidently not Flohr, had learned some hard lessons as a result of that decision.

After a few moments, Flohr returns from his sojourn in the hallway a new man with a new agenda. Suddenly he no longer wants to do the CIT/polygraph examination; instead he wants to "do the right thing".

> Flohr "Okay, Here's the deal. I wanna give you an opportunity here tonight, to leave. Okay. So what I'd like to do is, I wanna administer, ah, this examination, the concealed information test, tomorrow at noon. Okay. So, I'm gonna kick you outta here. Theses guys will come and pick ya up and

[1] State of Nevada v Francisco Vazquez-Rosas C-261197X , DC 24 "Court stated it can not imagine a more coercive statement".

ring on down here if that's alright with ya tomorrow morning, and I'll see you here at noon. Well enough?"

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Long "Tomorrow noon."

Flohr "yeah. Tomorrow. Tomorrow at noon."

Long "because if they, the, the, they, I mean, you, you wanna consult with, go consult with attorneys."

Flohr " Yeah. We go, we gotta give you that opportunity. That's the right thing to do. "

Flohr tells Kevin to go home, that they would pick him up at 11:30 the next morning to do the test. Neither Long nor Flohr make it clear that he is being allowed to go see a lawyer. Long and Flohr are quite clear that they will pick him and bring him back for the CIT/polygraph examination. The exam is a given.

Kevin still clearly confused by the entire process asks Flohr and long why they had changed their minds and were letting him leave the station without taking the test. A flustered Flohr stumbles a bit, "Well, because of the fact you're ah..." and Long steps in to clarify telling Kevin "because you asked." They don't tell him it is so he can consult with a lawyer. Oddly, Flohr continues to tell Kevin that he has rights and that they will still "apply tomorrow too, just like here today" along with some unknown polygraph rights. Of course, Kevin has already learned that his "rights" are elusive and that a lawyer is not going to be available before questioning.

As promised, the police return to collect Kevin at 11:30 on March 26th, 2010. He has had all of 2 ½ hours or so within which to find an attorney and somehow get in to see that attorney immediately. Allowing Kevin only 2 ½ hours within which to find an attorney is the same as giving him a phone book and a phone at 6 pm on a Thursday evening, that is to say no chance at all. It is simply a sham meant to try and clean up the Flohr mess from the night before. Kevin understands that the police are giving him no feasible options

Flohr begins the CIT/polygraph examination with a recitation of Kevin's rights...again. Ironically Flohr again tells Kevin that he has the right to have an attorney before and during questioning, and if he "can't afford one, one will be appointed to represent you at public expense."

Except as Kevin already knows... he has no access to an attorney either before or during questioning and one will NOT be appointed to help him. Flohr and Long made it clear the night before that Kevin is on his own and there is no point in asking for lawyer cause he won't get one.

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Flohr goes on to further explain Kevin's right to speak with an attorney telling him "all questioning will stop until you've had a chance to speak with an attorney." Of course, Kevin already knows that is not what will happen. The night before, Flohr never stopped, he just kept on going with the interrogation. Kevin also know that if he asks for a lawyer, they will just hand him a a phone book and phone. So, despite the promises, despite the recitation of his rights, no lawyers for Kevin and the questioning will not stop.

Flohr hooks Kevin up to the special machine and begins to administer the CIT/polygraph examination. Even under optimal conditions, the "lie detector" test is worthless junk science, inadmissible in every criminal courtroom in the country. Assuming for the sake of argument that a perfectly-administered polygraph test carried any semblance of legitimacy, the test given to Kevin was about as scientific as a palm reading at a carnival. CIT/Polygraphs do not, and cannot, detect lies. They monitor changes in stress level. Someone nervous about taking the test, or nervous about being interrogated by police, or nervous about being falsely accused will not pass a polygraph test. A calm liar will perform better on the test than a nervous man telling the truth. It is for these reasons, and many others, that the polygraph test has failed to gain any respect in criminal courts of law.

The police know CIT/polygraph results are inadmissible. So why use the test at all? The answer is simple. Many suspects do not realize that the CIT/polygraph is neither reliable nor admissible. Tricked into thinking that the CIT/polygraph is flawless, a suspect confronted with a failed polygraph test will feel that his odds of prevailing at trial are hopeless, regardless of his actual culpability. It is the same reason that interrogators will frequently confront suspects with false inculpatory evidence, such as fingerprints, DNA, or videotapes that do not exist. A suspect who feels his conviction at trial is unavoidable will be more willing to confess in order to mitigate his punishment. Successful interrogators are taught that the best way to secure a confession is to convince the suspect that evidence of his guilt is overwhelming, and that his only hope is to confess

and beg for mercy. The polygraph is an important tool for this function. This tactic is undoubtedly effective. The problem is that it works on the innocent as well as the guilty.

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Geoff Flohr has made a career out of his ability to extract confessions. He became nationally known for eliciting a confession to a 25-year-old "cold case" homicide in California, a feat for which he earned recognition on *Dateline NBC*. He has also earned notoriety in Las Vegas for the Vazequez-Rosas case which resulted in a finding that he had coerced a confession from the defendant during CIT/polygraph examination. Dubbed a "real-life 'Closer,'" Flohr uses his experience to establish immediate authority over Kevin. Flohr touts his thirty-two years in law enforcement. Flohr's job in an interrogation is to get a confession. He wastes no time getting to work.

Flohr's first tactic is to falsely exaggerate the reliability of the "lie detector." Only if a suspect believes the polygraph is infallible will he be persuaded by its evidentiary value. This is why the first step in any polygraph examination is convincing the test subject that the machine is perfect.

Flohr hooks Kevin up to the magic truth-finding machine and the computer calculates that Kevin is a murderer. "I caught you" Flohr boasts. "So now I'm asking myself okay, how do I get you to confess to killing Brittany, because I know you did it."

Flohr's professional demeanor disappears, and he begins the second stage of the interrogation: convincing Kevin that the evidence is overwhelming, that his conviction at trial is a certainty, and his only hope for mercy is to confess. Kevin continues to deny involvement in Brittney's death. Based on the CIT/polygraph exam Flohr claims "I can say with absolute certainty that you were the person that pulled the trigger" pointing to the foolproof magic machine tapes and graphs. Kevin insists that he not kill Brittney and that he did not respond physically , that the machine is wrong.

At one point Kevin and Flohr begin to bicker about the changes on the graphs and printouts. A frustrated Flohr finally insists "I know you did it." Armed with the infallible polygraph results, he warns Kevin, "You're the shooter. And I'm going to be able to say that. I'm gonna be able to write the report that says you're the shooter. No doubt about it."

Flohr then introduces a theme common to most police interrogations. He provides Kevin two and only two alternatives: either continue to deny guilt and look like a cold-blooded murderer, or admit the mistake and appear more deserving of mercy. "The question is whether or not you got enough balls to tell the truth." Flohr cautions. He reminds Kevin that he has the opportunity to "dig himself up out the hole" by telling Flohr what he wants to hear and what he knows from the reading the foolproof graphs.

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Kevin warns Flohr and Long that has had prior mental health issues and that has been seeing and hearing voices. Long and Trammel had been warned by Kevin's mother that he had a mental health history and was not currently taking his medications. Flohr completely ignores Kevin's warning.

Flohr and Long press Kevin to explain why he did it. Flohr suggests an explanation telling Kevin "My guess is your' angry at her. I don't know what she was doing to you, okay, and I'm not trying to give you an excuse. I can give you an explanation. I've been dealing with enough people who've killed people to know that there are all sorts of reasons to kill."

Flohr then violates another cardinal rule of interrogation, and actually reveals all the important, undisclosed facts of the crime. The Reid technique handbook warns interrogators, "[I]t is imperative that interrogators do not reveal details of the crime so that they can use the disclosure of such information by the suspect as verification of the confession's authenticity." Fred E. Inbau, John E. Reid, 238 (2005). One of the key factors of reliability in a confession is the presence of independently corroborated facts, i.e., details only the guilty party would know. By actually telling Kevin all of the facts of the crime. it is impossible to tell whether a confession is based on actual knowledge or what he learned from Flohr.

Flohr "...And the one thing we do know, is there was a lot of friction between you and Brittany. Okay? I don't know what it was all about. We just know what it-that, that it existed, and they got that information from people they've been talking to. So my guess is that you're really angry at her, cause that's the only reason that you could of taken a .25 caliber, put it up against her head,

and shot her one time, okay, and then fled the scene, dropping the keys." (3/26/10 statement, pg. 29).

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Finally Kevin simply says he shot her and ran. Trammel, Flores and Long continue to press and pull to fit Kevin's story into the framework they have already revealed and uncovered.

Finally near end of interview, long after the CIT/polygraph examination, Long returns to the question of Kevin's mental illness and medication issues.

The "confession" that resulted from the interrogation in this case was not voluntarily made. Neither the statement itself, nor the unprofessional tactics that produced it, belong in the American criminal justice system. The statement is inadmissible under both the Nevada and United States Constitutions and should be suppressed.

ARGUMENT

1. KEVIN GIPSON WAS NOT AFFORDED HIS RIGHT TO COUNSEL UNDER MIRANDA, WAS NOT ADEQUATELY ADVISED AND DID NOT PROVIDE A KNOWING, INTELLIGENT, AND VOLUNTARY WAIVER OF HIS MIRANDA RIGHTS.

A person's right not to incriminate himself is protected by the Fifth Amendment to the United States Constitution and Article 1, Section 8 of the Nevada Constitution. Holyfield v. Townsell, 101 Nev. 793 (1985). "[T]he accused must be adequately and effectively apprised of his rights and the exercise of those rights must be fully honored." Miranda v. Arizona, 384 U.S. 436, 467 (1966). The protections of the Fifth Amendment, including Miranda, apply to illegal aliens. United States v. Henry, 604.F.2d 908 (5th Cir. 1979).

In order for a defendant's statements to be admissible at trial, Miranda warnings must be provided prior to any custodial interrogation. "Custodial interrogation" takes place when a suspect is (1) in custody, (2) being questioned by an agent of the police, and (3) subject to interrogation. Boehm v. State, 113 Nev. 910, 913 (1997). An individual is deemed "in custody" for purposes of Miranda where "...there has been a formal arrest, or where there has been a restraint on freedom of movement of the degree associated with a formal arrest so that *a reasonable person would not feel free to leave*." State v. Taylor, 114 Nev. 1071, 1082; 968 P.2d 315, 323 (1998) (emphasis added);

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also see United States v. Bengivenga, 845 F.2d 593, 598 (5th Cir. 1998); United States v. Moya, 74 F.3d 1117, 1119 (11th Cir. 1996).

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There can be no legitimate debate regarding whether Kevin was subjected to a custodial interrogation on March 25 and March 26, 2010. He was questioned for several hours by law enforcement, inside an interrogation room at a police station.

When he asked for a lawyer, Flohr told him he would have to find his own but it was quite clear that he was not free to leave the interrogation room in order to find his own lawyer. Instead they simply handed him a phone book and phone so that he could try to find a lawyer from the back room of a police station. Flohr told Kevin he had the "right to consult with an attorney" and that if he could "not afford it, one would be provided for him" then made it clear he could not leave to go speak with an attorney.

It is clear that but for someone else tugging on Flohr's strings and reminding him what Miranda means, what Flohr had promised Kevin and the devastating findings by a District Court Judge earlier that *same day* that Flohr's interrogation tactics were coercive, Kevin would never have left the police station on March 25. Despite Kevin's expressed wish to speak with a lawyer, Flohr continued the interrogation until Kevin finally gave in and agreed to the CIT/polygraph examination.

At the time of the third interview only a few hours later, Flohr again is compelled by the circumstances to give Kevin a Miranda warning, and at the end of the second interview Kevin is arrested. This was clearly a custodial interrogation, and Miranda warnings were required.

While Kevin was informed of his Miranda rights at the start of the third interrogation, the mere mechanical recitation of these rights by the police is not necessarily sufficient to establish a knowing, intelligent, and voluntary waiver of their protections. An accused is entitled to a pretrial hearing to determine the voluntariness of his statements before those statements are admitted into evidence and offered to a jury. Jackson v. Denno, 378 U.S. 368, 376-77 (1964). The State bears the burden of demonstrating that Miranda has been honored. Miranda v. Arizona, 384 U.S. 436, 444 (1966). "Since the State is responsible for establishing the isolated circumstances under which interrogation takes place... the burden is rightly on its shoulders." Miranda at 475. Reviewing courts "...must presume that a defendant did not waive his rights." North Carolina v. Butler, 441 U.S. 369, 373 (1966).

An incriminating statement obtained on the basis of a waiver must be excluded unless the State establishes by a preponderance of the evidence that the waiver was voluntarily, knowingly, and intelligently given. Colorado v. Connelly, 479 U.S. 157, 168 (1986). The government's burden to make such a showing "is great," and the court will "indulge every reasonable presumption against waiver of fundamental constitutional rights." United States v. Heldt, 745 F.2d 1275, 1277 (9th Cir. 1984) (citing Johnson v. Zerbst, 304 U.S. 458, 464 (1938)); North Carolina v. Butler, 441 U.S. 369, 373 (1966).

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To satisfy this burden, the prosecution must prove (1) that the relinquishment of the right was "voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception" and (2) that the defendant had a "full awareness of the nature of the right being abandoned and the consequences of the decision to abandon it." Moran v. Burbine, 475 U.S. 412, 421 (1986). Only if the "totality of the circumstances surrounding the interrogation" reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the Miranda rights have been waived. Fare v. Michael C., 442 U.S. 707, 725 (1979); United States v. Broussard, 80 F.3d 1025, 1033 (5th Cir. 1996). The validity of a Miranda waiver must be determined on a case-by-case basis, considering the particular facts and circumstances surrounding the case, including the background, experience, and conduct of the accused. Edwards v. Arizona, 451 U.S. 477 (1981).

A. Kevin Gipson invoked his right to counsel and was denied the opportunity in violation of Miranda.

"A request for counsel must be, at minimum, 'some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney.' The right to counsel 'must be affirmatively invoked by the suspect' and requires more than an expression of one's desire to remain silent." Dewey v. State, 169 P.3d 1149, 1152 (Nev. 2007) (internal citations omitted). Edwards and Jackson are meant to prevent police from badgering defendants into changing their minds about their rights, but a defendant who never asked for counsel has not yet made up his mind in the first instance. Montejo v. Louisiana, 129 S. Ct. 2079 (U.S. 2009), 2009 LEXIS 3973, 18-19 The Supreme Court forbids further interrogation in the *absence of counsel* unless the defendant

initiates the subsequent communication. Edwards v. Arizona, 451 U.S. 477 (1981). (emphasis added).

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Kevin Gipson could not have been more clear. He asked to speak with a lawyer. Flohr told him that he had the right to speak with a lawyer before and during questioning and that if he could not afford a lawyer, one would be provided to him. Kevin said he wanted counsel, to be sure he was doing the right thing.

Kevin asked for a lawyer four times during the first few minutes of the March 25 interrogation. He told Flohr that he was "skeptical" about the CIT/polygraph examination. He flat out told Flohr that he wanted to ask an attorney a couple of questions before he participated in the CIT/polygraph exam. A stunned Flohr had to take a break, leave the room to find out what to do. What is Flohr's solution to a suspect who actually exercises his Miranda rights and requests a lawyer? To give him a phone book and a phone. It was well after 5 pm on a Thursday evening. Kevin understands that the police are giving him no real feasible options The offer of a phone book and a phone long after the time that law offices close is quite simply a denial of his right to counsel.

Kevin told Flohr that he did not know any attorneys and then parroted Flohr's promises right back to him.." I thought y'all was gonna provide me one." A fluster Flohr stammered and stuttered as he claimed that only those arrested were entitled to a lawyer during questioning. Kevin continued to request a lawyer, Flohr continues to insist that he will just have to open the phone book and make some calls.

There is no question that Kevin's words constituted an unambiguous and unequivocal request for counsel: "Could I get a attorney then? I want to ask him a couple of questions before I take this [exam]" I just wanna get some counsel about this [exam]".

Courts have found less definite phrases adequate under the Fifth Amendment. In United States v. de la Jara, 973 F.2d 746, 750 (9th Cir. 1992), the defendant said, "Can I call my lawyer?"

or "I should call my lawyer," and the Ninth Circuit found an invocation of the right to counsel. In Cannady v. Dugger, 931 F.2d 752, 755 (11th Cir. 1991), the defendant said, "I think I should call my lawyer," a phrase slightly more ambiguous than Kevin's words, but the Court found an invocation of the right to counsel. In Robinson v. Borg, 918 F.2d 1387, 1393 (9th Cir. 1990), the defendant said, "I have to get me a good lawyer, man. Can I make a phone call?" and the Court found an invocation of the right to counsel. In Smith v. Endell, 860 F.2d 1528, 1529-31 (9th Cir. 1988), the defendant asked, "Can I talk to a lawyer?" and the Court found an invocation of the right to counsel. In United States v. Hughes, 921 F. Supp. 656, 657-58 (D. Ariz. 1996), the defendant asked, "Can I call a lawyer?" and the Court found an invocation of the right to counsel. In Shedelbower v. Estelle, 885 F.2d 570, 571, 573 (9th Cir. 1989), *cert. denied*, 111 S. Ct. 975 (1991), the defendant said, "I think I should call an attorney," a phrase more ambiguous than Kevin's comments, and the Court found an unequivocal request for counsel.

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The fact that Kevin ultimately made incriminating statements under police interrogation after his initial invocation of the right to counsel should not undermine his invocation: "Using an accused's subsequent responses to cast doubt on the adequacy of the initial request itself is even more intolerable. *'No authority, and no logic, permits the interrogator to proceed . . . on his own terms and as if the defendant had requested nothing, in the hope that the defendant might be induced to say something casting retrospective doubt on his initial statement that he wished to speak through an attorney or not at all.'*" Smith v. Illinois, 469 U.S. 91, 98-99 (U.S. 1984) (internal citations omitted) (emphasis added). This is precisely what happened to Kevin: Flohr ignored Kevin's invocation of the right to counsel and proceeded as though Kevin had never invoked this right, a clear violation of his constitutionally protected rights.

B. Flohr Failed To Honor Kevin Gipson Invocation of His Rights

The general rule is that after a defendant has invoked his right to remain silent, he cannot be questioned. Michigan v. Mosley, 423 U.S. 96, 104-05 (1975). In Edwards v. Arizona 451 U.S. 477 (1981), the U.S. Supreme Court recognized that the invocation of the right to counsel requires the cessation of interrogation. The Court subsequently affirmed the silence/counsel dichotomy and made clear that Mosley still stands. Arizona v. Roberson, 486 U.S. 675 (1988). Under Edwards' prophylactic protection of the Miranda right, once such a defendant 'has invoked his right to have counsel present,' interrogation must stop. 451 U.S., at 484, 101 S. Ct. 1880, 68 L. Ed. 2d 378. And under Minnick's prophylactic protection of the Edwards right, ***no subsequent interrogation may take place until counsel is present, "whether or not the accused has consulted with his attorney***." 498 U.S., at 153, 111 S. Ct. 486, 112 L. Ed. 2d 489. **Montejo**, 129 S. Ct. 2079, 2009 U.S. at 27-28. (emphasis added).

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Thus, even if this Court somehow determines that Kevin's invocation of the right to counsel was not explicit enough, once Kevin also invoked his right to silence, Flohr's initiation of re-questioning still violated Kevin's Fifth Amendment rights:

> For example, if a suspect requests counsel following Miranda warnings, all questioning must cease and the police may not question the suspect again without an attorney present unless the suspect herself initiates further communication or conversation. **If on the other hand the suspect only asserts her right to remain silent, then the police may subsequently initiate a new round of interrogation, provided that they "'scrupulously honored'" the suspect's initial exercise of her "'right to cut off questioning'" and again fully advise the suspect of her Miranda rights before resuming any further questioning.**

Dewey, 169 P.3d 1149 at 1153 (emphasis added) (internal citations omitted).

Thus, once Kevin invoked his right to counsel all questioning should have stopped unless Kevin himself initiated the conversation or until counsel was present. Kevin never initiated a conversation with Flohr, in fact Flohr never stopped the interrogation at all. Flohr made it clear that contacting a lawyer was a hopeless, silly and futile wish. Flohr was not going to provide him a lawyer to speak with (despite promising that if Kevin asked for a lawyer one would be provided for him) leaving Kevin to sit in interrogation room late on a Thursday night with a phone book and

phone. When Kevin tells Flohr and Long that he does not know any attorneys to call, like a pit-bull, Flohr returns to the interrogation pressing Kevin to agree to the CIT/polygraph examination.

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As Kevin digested his hopeless situation, Flohr in continued to pressure Kevin, prodding him to continue the CIT/polygraph examination. Flohr touted the nature of the CIT/polygraph exam and that it is a search for knowledge. This Court can only conclude that Flohr's continued interrogation, the use of emotional pressure to get Kevin to talk, and the zealousness with which Flohr pursued the admissions mandate a finding that officers failed to scrupulously honor Kevin's invocation of his right to counsel.

Refusing to provide Kevin with a lawyer directly deprived him of his Miranda right to counsel. Limiting his ability to consult with by throwing him a phone book and a phone, after normal work hours, with no real chance of speaking with a lawyer directly deprived Kevin of his Miranda right to counsel. Finally, releasing Kevin from custody with only a couple of hours to consult with an attorney indirectly deprives Kevin of his Miranda right to counsel.

Flohr's refusal to provide Kevin with counsel both directly and indirectly thereby deprived Kevin of his Mirdanda right to counsel before proceeding with questioning.

The lame attempt to tidy up the Flohr mess by releasing Kevin with the admonition that they would return to pick him up in a few hour at 11:30 to take the CIT/polygraph examination does relieve the police of their duty under Miranda. Flohr allowed Kevin a 2 ½ hour window within which Kevin had to complete this impossible, Sisyphean task of finding a criminal lawyer, actually in their office, in the morning, willing to advise him for little or no money.

Flohr proudly trumpeted his 33 years in law enforcement experience. It is clear that he knew that most lawyer's offices do not open before 9 am and that most criminal lawyers are in court in the morning and therefore not available to speak with a desperate defendant. Allowing Kevin to leave the police station for a few hours in order to tidy up Flohr's mess was a pointless, sham exercise which did nothing to scrupulously honor Kevin's invocation of his right to an attorney and his concurrent right to remain silent until he has a lawyer present. As such, Kevin's statement must be suppressed.

Finally, Kevin did nothing to initiate further conversation with the police. Instead they came to his home and picked him up. The police failed to abide by Miranda, they did not stop questioning Kevin, and continued the questioning the next day without a lawyer present and without Kevin initiating any further communication. As a result, the police violated Miranda and the statement must be suppressed.

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II. KEVIN GIPSON'S STATEMENTS WERE NOT VOUNTARILY MADE.

When a prosecutor wants to use the statement of an accused against him in Court, there must first be a hearing outside the presence of the jury to determine voluntariness and compliance with Miranda requirements, if applicable. Jackson v. Denno, 378 U.S. 368 (1964). At this hearing, the Court analyzes what the suspect told the police, and the circumstances under which the statements were made. The Court must then decide (1) whether, after reviewing the totality of the circumstances, the statements were voluntarily made, and (2) if Miranda warnings should have been provided to the suspect, and if so, whether such warnings were actually given.

The burden of requesting a Jackson v. Denno hearing initially rests with the Defendant. Wilkins v. State, 96 Nev. 267 (1980). Once the hearing has been requested, the burden then shifts to the prosecution to demonstrate voluntariness by a preponderance of the evidence. Brimmings v. State, 93 Nev. 434 (1977); Falcon v. State, 110 Nev. 530 (1994); Colorado v. Connelly, 479 U.S. 157 (1986).

If, after a Jackson v. Denno hearing, the Court finds that the statement was not voluntarily given, the statement cannot be used at trial for any purpose. See, e.g., Mimey v. Arizona, 437 U.S. 385 (1978). If the Court finds that the statement is voluntary, but a Miranda violation occurred, the statement can not be used in the State's case-in-chief. Under these circumstances, however, the statement may still be used for impeachment purposes. Harris v. New York, 401 U.S. 222 (1971); Oregon v. Hass, 420 U.S. 714 (1975).

The issue of whether a defendant's statements to authorities are voluntarily made is a separate inquiry from the issue of whether proper Miranda warnings were given. "The fact that Miranda warnings precede a challenged confession does not insulate the confession from an inquiry into whether it was voluntarily given." People v. Raffaelli, 647 P.2d 230, 235 (Colo. 1982). The test for voluntariness is whether, under the totality of the circumstances surrounding the statement, "...the government obtained the statement by physical or psychological coercion or by improper inducement so that the suspect's will was overborne." United States v. Harrison, 34 F.3d 886, 890 (9th Cir. 1994), quoting United States v. Leon Guerrero, 847 F.2d 1363, 1366 (9th Cir. 1988). After the voluntariness of a statement has been challenged, the government bears the burden of showing voluntariness by a preponderance of the evidence. Lego v. Twomey, 404 U.S. 477, 489 (1972).

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The law draws no distinction between confessions extracted by physical threats and those extracted by psychological tactics. A confession is involuntary whether coerced by physical intimidation or psychological pressure. Townsend v. Sain, 372 U.S. 293, 307 (1963); Passama v. State, 103 Nev. 212 (1987). "[C]oercion can be mental as well as physical... the blood of the accused is not the only hallmark of an unconstitutional inquisition... prolonged interrogation of an accused who is ignorant of his rights and who has been cut off from the moral support of friends and relatives is not infrequently an effective technique of terror." Blackburn v. Alabama, 361 U.S. 199, 206 (1960). "Law enforcement conduct which renders a confession involuntary does not consist only of express threats so direct as to bludgeon a defendant into failure of the will. Subtle psychological coercion suffices as well, and at times more effectively, to overbear 'a rational intellect and a free will.'" United States v. Tingle, 658 F.2d 1332, 1335 (9th Cir. 1981), quoting Blackburn, 361 U.S. at 208.

Due process takes into consideration "the totality of the surrounding circumstances -- both the characteristics of the accused and the details of the interrogation," Schneckloth v. Bustamonte,

412 U.S. 218, 223 (1973), and is determined by "a weighing of the circumstances of pressure against the power of resistance of the person confessing." Stein v. New York, 346 U.S. 156 (1953); see also State v. Xiong, 504 N.W.2d 428 (Wis. Ct. App. 1993) (police coercion and defendant's personal characteristics are interdependent concepts: the more vulnerable a person is because of his unique characteristics, the more easily he may be coerced by subtle means).

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Thus, in support of conclusions of involuntariness, courts have cited evidence that the defendant was a slow learner with a low mentality who left school after the second grade, with an IQ ranging from 55 to 80. State v. Cook, 47 N.J. 402; 221 A.2d 212. The fact that the defendant had only a junior high education and a history of emotional instability. Spano v. New York, 360 U.S. 315; 3 L.Ed.2d 1265; 79 S.Ct. 1202. The fact that the 21-year-old defendant was mentally deficient and had only a seventh grade education, with his last year having been spent in a school for slow learners. United States v. Blocker, (D.C. Dist.Col.) 354 F.Supp. 1195. And the fact that the defendant had a history of mental illness.

In this case detectives spoke with Kevin's mother early on March 25, 2010 before they began the interrogation of Kevin. Ms. Jackson told police that Kevin suffered from a mental illness. She also warned the detectives that Kevin was not taking his medications. Despite having this information, neither Flohr or Long bothered to ask Kevin about his mental illness and whether or not he was taking any medication until the end of the third and final interrogation on March 26, 2010.

Here, the detectives and Flohr in this case employed coercive techniques to illicit an inherently unreliable statement and false statement from a man who they knew suffered from a serious, untreated mental illness. As a result, Kevin's due process rights were violated and his statement must be suppressed.

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CONCLUSION

The burden is on the prosecution to demonstrate voluntariness by a preponderance of the evidence. Brimmings v. State, 93 Nev. 434 (1977); Falcon v. State, 102 Nev. 530 (1986); Colorado v. Connelly, 479 U.S. 157 (1986). The State must show that it is more likely than not that the "confession" provided in this case was a product of free will, and obtained by proper, lawful methods of interrogation. This is a burden that cannot be met. It is respectfully requested that this Court grant the instant motion and order the statement of Kevin Gipson suppressed. If this Court feels that additional fact-finding is necessary, the defense would also respectfully request a hearing pursuant to Jackson v. Denno.

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Sep 28 2017 10:06 a.m.
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DATED this 13 day of April, 2011.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: _____
CHRISTY L. CRAIG, #6262
Deputy Public Defender

Docket 73307 Document 2017-33011

NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the foregoing Motion to Suppress will be heard on 25th day of April, 2011, at ~~10:00~~ 8:15 a.m. in Department No. XVIII of the District Court.

DATED this 13 day of April, 2011.

Electronically Filed
Sep 28 2017 10:06 a.m.
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PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: _____
~~CHRISTY~~ L. CRAIG, #6262
Deputy Public Defender

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Motion to Suppress is hereby acknowledged this 13 day of April, 2011.

CLARK COUNTY DISTRICT ATTORNEY

By: Erin McCarthy

Gipson, Kevin
10C264079X

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Sep 28 2017 10:06 a.m.
Elizabeth A. Brown
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Voluntary Statement - Gipson

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

EVENT #: 100325-0682

Electronically Filed
Sep 28 2017 10:06 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

SPECIFIC CRIME: HOMICIDE

DATE OCCURRED: TIME OCCURRED:

LOCATION OF OCCURRENCE:

CITY OF LAS VEGAS CLARK COUNTY

NAME OF PERSON GIVING STATEMENT: GIPSON, KEVIN

DOB:	SOCIAL SECURITY #:
RACE:	SEX:
HEIGHT:	WEIGHT:
HAIR:	EYES:
WORK SCHEDULE:	DAYS OFF:
HOME ADDRESS:	HOME PHONE:
WORK ADDRESS:	WORK PHONE:
BEST PLACE TO CONTACT:	
BEST TIME TO CONTACT:	

The following is the transcription of a tape-recorded interview conducted by POLYGRAPH EXAMINER GEOFFREY FLOHR AND DETECTIVE DAN LONG, P# 3969, LVMPD HOMICIDE Detail, on at hours.

Q: _____. _____. Hey.

A: How you doing?

Q: I'm Geoff Flohr. How you doing man?

A: Kevin Gipson.

Docket 73307 Document 2017-33011

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Q: Nice to meet you. Come on in here. Kevin have a seat right there. Just to let you know everything is being audio and video recorded from this point forward. Okay? Just so you know that. Alright?

A: Mmm hmm. Okay.

Q: Good. Okay. Before we get going here today, because this investigation involves the death of an individual, uh, I have to advise anybody that sits in that chair of their rights. Okay? Number one. You have the right to remain silent. Tell me what that means to you.

A: That I don't gotta say nutten [sic].

Q: That's right. All you gotta do is say, 'You know, Geoff, I don't wanna talk anymore' and we're done. I won't get angry. I'm not gonna get upset. Okay. Uh, anything that you say can and will be used against you in a court a law. Tell me what that would mean to you.

A: Whatever I say y'all gonna use it against me.

Q: If you were to say anything in here about this case, okay, and ultimately be charged in this case, uh, I could be subpoenaed and then have to testify to everything that you said. Okay. Um, you have the right to have an attorney with before or during any questioning, and if you can't afford an attorney, attorney would be appointed to represent ya [sic] at public expense. Do you understand that right?

A: Shouldn't I have a attorney for this?

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Q: Well, that's up to you.

DL (DAN LONG): Completely up to you.

Q: That's completely up to you.

A: Oh, okay. Think I seen a story on the history channel about these things and they not always accurate.

Q: Well, the examination that I'm gonna provide you with today is not about deception. It's about knowledge. Okay. So all the questions that I'm going to ask you on this thing would only be know by the person that did this. If you didn't do it, you won't know any information about this case. Does that make sense to ya? So anyway, you understand the right about the attorney?

A: Mmm hmm.

Q: Okay. If you waive your right to remain silent and later change your mind all questioning will stop. Tell me what that means to ya.

A: I'm, I'm not sure.

Q: Okay. If you agree to talk to me and say, hey Geoff, I'll start out talking to ya, and you change your mind and say 'Oh, I don't wanna talk to you anymore.' All you gotta do is just say, 'Geoff, I don't wanna talk anymore,' and all questioning is gonna stop. Okay. Do you understand that? I need a verbal.

A: Oh, yes.

EVENT #: 100325-0682
STATEMENT OF: GEOFFREY HUNT

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Q: Okay. Um, if you waive your right to have an attorney present and later change your mind, the questioning will stop until you've had a chance to speak with an attorney. Do you understand that right? What's it mean to ya?

A: I can get a attorney if I want one.

Q: Yeah. At any point in time. You could say 'Hey, you know what Geoff. Before we go any further, I'm gonna want an attorney.'

A: Mmm hmm.

Q: You just gotta verbalize that to me. I'm gonna stop. I won't get angry. I won't get upset. Okay. We'll just stop.

A: Well, could I get a attorney then?

Q: It's up to you.

A: I just wanna ax [sic] him a couple questions before I take this.

Q: Okay. Okay. We'll be with you in just a second.

A: I mean, I'm not opposed to taking it. I just wanna get some counsel about this cause I don't _____ (inaudible).

Q: Okay.

A: ...not sure about that.

Q: Alright. Okay.

A: _____.

Q: Okay. We understand.

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A: I, I seen the show man. It's got me skeptical about this.

Q: Okay.

(Sound of Geoff leaving the room, door opening/closing) (pause) (Geoff returns) Yeah. Okay. Do you have a name of an attorney that you need to call or, or you wanna contact?

A: I thought y'all was gonna provide me one.

Q: _____. (Inaudible) If you're charged in this investigation...

A: (Both talking-inaudible)

Q: ...yeah. When, if you're charged in the investigation, okay, and you don't have the funds to have an attorney then one would be provided for ya. Uh, right now this is in the investigative stage as I understand at this point. So if, if you know a name of an attorney we'll provide you with a phone and you can make a phone call and talk to him about it and make a decision on what you wanna do.

A: I don't understand.

DL: We're, we're not arresting you.

A: _____. (Both talking-inaudible)

DL: You're not under arrest.

A: Yeah. I know that.

DL: So we don't provide you an attorney for you because you're not under arrest.

Q: You're not under arrest.

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10-7455

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Q: If you have an attorney you wanna consult with, then you can consult with... because this involves a criminal investigation and because it involves this type of, ah, ah, information test, okay, examination here. Um, we have to advise you of these rights. So if you say to me 'Hey Jeff, you know what, I think I wanna talk to an attorney before I go in through this process here'. Um, then I have to stop, mmm, and afford you that opportunity to go ahead and go, go do that if that's what you wanna do. Um, but like he said, you're not under arrest at this point so we don't have to provide you with an attorney, but we can provide you the means to make a phone call here tonight if you want.

DL: Absolutely.

Q: To call an attorney and talk to him.

A: I don't know any attorney's.

Q: Well, give him a phone book I guess, if you wanna call. What do you wanna do?

A: I wanna make sure this is right.

Q: The examination that you're going to go under is called concealed information test. Okay. And basically it's based on knowledge. If you didn't have anything to do with this you wouldn't know specific information about this case. That's what this is gonna involve.

A: Come on. Let's get it over with.

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Q: Okay. Hold on for just a second. Alright. So, you're telling me Jeff you know what, you don't wanna consult with an attorney at this point? Verbalize that to me so...

A: No.

Q: No. You don't. It's okay to continue?

A: Yeah.

Q: Okay. Hold on for just a second. (Leaves room) (pause)

A: _____(inaudible)

Q: (returns to room) Okay. Here's the deal. I wanna give you an opportunity here tonight to, to leave. Okay. So what I'd like to do is I wanna administer, ah, this examination, the concealed information test, tomorrow at noon. Okay. So, I'm gonna kick you outta [sic] here. These guys will come and pick ya [sic] up and bring you on down here if that's alright with ya [sic], tomorrow morning, and I'll see you here at noon. Well enough?

DL: Tomorrow noon. (Laughs)

Q: Yeah. Tomorrow. Tomorrow at noon.

A: _____ (both talking-inaudible)

DL: Because if they, the, the, they, I mean, you, you wanna consult with, go consult with attorneys.

Q: Yeah. We got, we gotta give you that opportunity. That's the right thing to do. Okay. If, if, if you didn't have nothing to do with this I'll get you through this thing.

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Okay. It's not that hard. It's not that long. Okay. And it's definitely not gonna be what you see on t.v. Okay.

DL: No.

Q: It's a completely different type of format. Alright?

A: Cause this gave me a little...

Q: No. It, it, that's fine. Yeah, I understand that. But, I'm, the, the questions I'm gonna ask you are gonna be questions that have direct information about the incident, okay, that only the person that would've done it would know about.

A: Mmm hmm.

Q: Does that make sense to you?

A: That makes sense.

Q: Okay. So it's very simple. It's based on knowledge. Okay. So it's very simple. I'll explain it to you and still all your rights will apply tomorrow too, just like here today. And then there's some polygraph rights the, that I have to advise you of, okay, in, in regards to this, this test, and I'll, uh, I'll do that tomorrow. Okay?

A: Okay.

Q: Alright.

DL: So I'll come pick you up then like 11:30 tomorrow.

A: That's fine with me.

Q: Cool? Excellent. Alright. Good job.

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DL: And I'll take you home right now.

Q: I'll see you tomorrow.

A: What changed y'all [sic] mind?

Q: Well because of the fact that you're, ah...

DL: Because you asked.

Q: ...you're a little, _____(both talking-inaudible), and we gotta do the right thing.

Okay? Alright.

(Statement ends)

THIS VOLUNTARY STATEMENT WAS COMPLETED AT ON THE DAY OF , AT HOURS.

GF/DL/jc
10V0657

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Sep 28 2017 10:06 a.m.
Elizabeth A. Brown
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Voluntary Statement – Gipson
3/25/10

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

CONCEALED INFORMATION TEST

EVENT #: 100325-0682

Electronically Filed
Sep 28 2017 10:06 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

SPECIFIC CRIME: HOMICIDE

DATE OCCURRED: 03-25-10 TIME OCCURRED: 0945 HRS.

LOCATION OF OCCURRENCE: 7510 W. LAKE MEAD

CITY OF LAS VEGAS CLARK COUNTY

NAME OF PERSON GIVING STATEMENT: KEVIN GIPSON

DOB:	SOCIAL SECURITY #:
RACE:	SEX:
HEIGHT:	WEIGHT:
HAIR:	EYES:
WORK SCHEDULE:	DAYS OFF:
HOME ADDRESS:	HOME PHONE:
WORK ADDRESS:	WORK PHONE:
BEST PLACE TO CONTACT:	
BEST TIME TO CONTACT:	

The following is the transcription of a tape-recorded Concealed Information Test conducted by Polygraph Examiner Geoffrey Flohr, P#12912, LVMPD, on 03-26-10 at 1157 hours. Also present is Detective D. Long, P#3969, LVMPD Homicide Section.

Q (GEOFFREY FLOHR). ...advised of your rights again.

DL (DAN LONG). Okay.

Q. It is the 26th, right?

DL. Huh?

Q. Today's the 26th, right?

DL. Correct.

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Q. Today's date is, ah, March 26, 2010. It's 11:57 am, and this is concealed information test involving Kevin Gipson. Okay, Kevin.

A. See I thing I know about these is they go off your heart rate.

Q. That's okay.

A. I got a irregular heartbeat. My heart always...

Q. Okay. You're not gonna have to worry about that, okay? This is different than anything that you've ever seen on TV.

A. What is it?

Q. Okay, I'm gonna explain it to you here in a second. Let's go through your rights though. Okay? 'Cause this is a criminal investigation again, I have to advise you of your Miranda Rights. Okay?

A. Uh huh (yes).

Q. Number one, you have the right to remain silent. Tell me what that means to you.

A. I ain't gotta say nothin'.

Q. That's right. At any point in time you can say Geoff, I don't wanna talk. We're done, stop right where we're at, out we go. Okay? Anything that you say can and will be used again you in a court of law. Tell me what means to you.

A. Whatever I say that'll be used against me.

Q. Right. If charges should be brought in this investigation against you, I can be subpoenaed and I have to testify to what you may have said to me. Okay? You

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have the right to have an attorney present with you before or during any questioning, and if you can't afford one, one will be appointed to represent you at public expense. Do you understand that?

A. Sure.

Q. Okay. If you waive your right to remain silent, and later wish to stop answering questions, the questions will stop. Tell me what that means to you.

A. If I don't wanna say nothing I don't have to.

Q. Right. If you decide you're gonna talk to me, and then you change your mind, all you gotta do is just say Geoff, I don't wanna answer anymore questions, and we're done. Okay? If you waive your right to have attorney present and later change your mind, all questioning will stop until you've had a chance to speak with an attorney. Tell me what means to you.

A. I _____(unintelligible).

Q. Right. All you gotta do is just say hey, Geoff, I wanna talk to an attorney before I go any further, and I'm done. Okay? Do you understand each of these rights, Kevin, that I've advised you of?

A. Uh huh (yes).

Q. Are you willing to waive them at this time, and continue this, ah, interview with me here today?

A. Sure.

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Q. Okay, great. You satisfied?

DL. Yes sir.

Q. You're out of here.

(DETECTIVE LONG LEAVES INTERVIEW)

Q. Kevin, if you would do me a favor, what I'm gonna ask you to do is I'm gonna ask you to print your name right here. Okay? Then I'm gonna read each one of these things. Okay? And as I go through 'em I'm just gonna ask you to check 'em off on the side, you know just a check-mark. Okay? And make sure that I cover everyone of 'em, and that I don't miss any, and that you don't have any questions. Okay? If you decide you wanna continue, down here is where you're gonna sign. I'll give you the date and time, and then I'll sign my name at the bottom as the witness. Okay? All right. There you go, bub. Sign here. Print your name right there. I'm gonna read each one, okay? Just do me a favor and print your name on that first line. Okay. The first paragraph says I, Kevin, Gipson, do hereby voluntarily consent to be examined by the instrument for the purposes of determining if I possess any concealed information surrounding this police investigation. I am in good health, and I know of no reason why I cannot proceed with this examination. If that's accurate, I need you to just check it off on the side. If you have any questions let me know.

A. What does that mean?

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Q. What does this mean?

A. Uh huh (yes).

Q. The examination that I'm going to give you today is called a concealed information test. Okay? And what it's gonna determine is whether or not you have any concealed information, involvement in this case. Okay? All right. And it also says that you're in good health as of this moment right here, and that you don't know of anything that can't--that would preclude you or keep you from taking this exam. Okay? You wanna check if off there on the side?

A. Which side, this side?

Q. Either one. I don't care, whatever. Now you've never had this type of a, a examination before, right?

A. No sir.

Q. Okay. So what I'm gonna do is I'm gonna explain this components, tell you where they're gonna go on your body. Okay? These two components right here, Kevin, they're gonna be attached to your chest wall, basically above and below your heart. It's gonna let me know what's going on with your breathing. Okay? These components right here, they're gonna be attached to your finger. That's gonna tell me what's going on with your sweat. Okay? This one right here, that's gonna be attached to your finger also. It's gonna shoot that little beam of light through the tip of your finger, and that's gonna let me know what's going on with the volume of

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blood in the tip of your finger. Okay? This right here, is going to be your blood pressure cuff. That's gonna go on your thumb. Okay? I choose to use this one as opposed to the ones that most people are com–ah, familiar with, the arm one, because this doesn't have any significant level of discomfort with it, and it'll allow me to get through the examination a heck of lot quicker. Okay? This pad right here, and these pads right down here, when we go to do the examination they're gonna be out on the chair. They're designed to let me know if you're moving in a chair when I'm asking you to sit still. Okay? All right. So next one reads this way, go ahead, grab your clipboard there. I've had the details of this examination explained to my satisfaction, and voluntarily give me permission for the necessary instrument components to be attached to my body. If that's accurate, check it off. If you have any questions let me know. I further understand that I have the right to stop this examination at any time. If that's accurate, check it off. If you have any questions let me know. Okay? And the next one says, ah, this examination will be audio and video taped. Right up there's the camera. Okay? Everything's being taped. Okay. And the final one says I've read this agreement form, and completely and fully understand it's contents. If that's accurate, check it off. If you have any questions let me know. In order for us to continue, I need your signature right here. Underneath it today's date, March 26, and it's now 12:03 p.m. by my clock, on my phone here. And I'll sign as a witness. _____(inaudible) Let me tell you a little

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bit about my background, okay? You were brought to me specifically. Okay? And it's because of my background. Right? I been in law enforcement, ah, going on my thirty-third year now. Okay? Uh, I started out in a sheriff's department in the upper Midwest, ah, outside of Detroit. I worked there for about four and a half years. Ah, then I was hired by the Michigan Department of State Police, and I spent the next 25 years, uh, or so with them. Okay? I spent a total of about 22 years on the street. Okay? The majority of it was, ah, spent within 25 miles of downtown Detroit, if not in the city itself. So I'm real familiar with the urban policing environment. In Michigan when you, uh, become a trooper, uh, you are taught and trained how to handle everything from smashed mailbox complaints all the way to and including homicides. _____ (unintelligible) of a homicide, you won't see a detective unless you ask for one. So you pretty much handle each investigation by yourself. The reason you're here with me is because I have an extensive background in, in, in administering these types of examinations, ah, with regards to homicides and cold case homicides. Okay? So that's why you're here with me today. All right? I wanna give you some rules about how you and I will interact in here today. Would that be all right?

A. Sure.

Q. I want a promise from you that you're gonna be a hundred percent truthful with me here today. You won't leave any information out. Will you do that for me?

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A. Yeah, sure.

Q. Okay, great. If I ask you a question that you don't understand, if I misinterpret something that you tell me, or I cause you an confusion, I am giving you permission to confront me about it. Okay? I won't get angry. I'm not gonna get upset, and it's not gonna affect this examination here today. It's just gonna insure that you and me stay on the same page at all time with regards to this investigation, and, and this examination. Okay? Flip side of the coin, if I see or hear something, you say I don't understand, sounds wrong to me, or causes me confusion, can I have your permission to confront you about it?

A. Uh huh (yes).

Q. Okay. I want you to do well here today. That's the goal. If you don't possess any intimate knowledge about this case, okay, then you're gonna be fine here. All right? These questions that you're gonna be asked are about information that has not been released. The only person that would know anything about it was the person that was there and did it. Does that make sense? Okay, real good. Now, if you need a break, you're gonna have to verbalize it to me. Just say hey, Geoff, I need a break. All right? Um, when we get to the examination, I'm gonna give you a set of specific physical instructions. I want you to promise that you'll just listen to what I tell you to do and follow my directions, just the way I give 'em to you. Will you do that for me?

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A. Uh huh.

Q. Okay. Answer me this. How do you want me to treat you in here today?

A. Whatch you mean by that?

Q. Think about it. What do you think? How do you wanna be treated in here today?

A. With respect.

Q. Okay. So that's what I hear you saying. I hear you saying hey, Geoff, you know what, uh, make sure this examination is done right, make it fair, make it, make it ethical. There's no reason to yell and scream at me. Okay? I'm a big guy, you know. Don't have to worry about. How old are you now?

A. Twenty-six.

Q. Yeah, 26. You're about, ah, the age of my youngest boy. Um, and you know what, Geoff, I want you to know that I am nervous about this, but it doesn't mean that I'm gonna try to hide anything from you. It's just that I'm nervous. Okay?

A. Uh huh (yes).

Q. All right. This, this test will, uh, work without the fact that you're...or with the fact that you're nervous, because it's not about any sort of level of deception. It's about knowledge. Okay? So it's, it's different than any type of examination that you may be familiar with. Okay? All right. Um, let's do this. Why don't you tell me everything that you do know about this case, and where you got that information from.

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A. I told you everything I know.

Q. You haven't told me.

A. About the day I did it?

Q. The day that you did what?

A. The day I did, uh, tell y'all about everything I know. Yesterday.

Q. No. You didn't tell me. You didn't talk to me yesterday. ____(both talking).

A. ____(both talking) the whole story again.

Q. Well, what I want you to do is just tell me what you do know about this case. That's what I want you to do.

A. I know that my parents said the dude was like 5'8".

Q. Okay.

A. ___(unintelligible).

Q. Anything else?

A. (No audible response)

Q. That's it? No other information about the case?

A. It's only been a day.

Q. Well, I'm, I'm, well, I don't know what you do or don't know. Okay? So I need to know that. That's all.

A. I don't know nothing.

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Q. Okay. All right. So all you know right now is what you're telling me is that the individual that did it was about 5'8", and wore what?

A. A hoodie.

Q. A hoodie? Any particular color or anything like that?

A. (No audible response)

Q. Where, where did, where did this information come from?

A. From my mom.

Q. Your mom? Okay. Anything else?

A. That she's been threatening to kill me.

Q. Okay.

A. But I ain't did shit though.

Q. Okay. All right, cool. Um, what I, what I do wanna do is this. I want go over these questions with you. Okay? And once we agree on the questions, okay, that you understand what I'm asking you to do, okay, they won't change. There won't be any surprise questions in this process. Okay? Does that make sense to you?

A. Uh huh (yes).

Q. All right, great. All right. One of the questions that I'm gonna ask you to do, and this is how the questions is gonna, is gonna read. It's gonna have a statement, and then I'm gonna ask you to repeat a series of words after me. Okay? So it's gonna sound just like this. This will be one of the questions that I'm going to, uh, ask.

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Okay? (Pause) What's going on here? (Pause) All right, here's one of the questions I'm going to ask you. Okay? If you were involved in the death of Brittany you would know what caliber of weapon was used. Repeat after me. Okay? So that'll be the first thing that you hear come out of my mouth. All right?

A. I was involved?

Q. If you were involved in the death of Brittany you would know what caliber of weapon was used. Repeat after me. And then what I'll do is I'm going to say .45. You'll say .45. I'll say .40. You'll say .40. I'll say 9. You'll say 9. I'll say .25. You'll say .25. I'll say .22. You'll say .22. I'll say .38. You'll say .38. Do you understand that question?

A. Okay.

Q. Okay. So let's just go a dry run, all right? You're not connected to anything. I just wanna make sure you understand the question. Okay? All right. If you were involved in the death of Brittany you would know what caliber of weapon was used. Repeat after me. .45.

A. .45.

Q. .40.

A. .40.

Q. 9.

A. 9.

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Q. .25.

A. .25.

Q. .22.

A. .22.

Q. .38.

A. .38.

Q. Okay. You understand that question?

A. (Inaudible response)

Q. Okay, very good. Now the only person that would know what the caliber was would be the person that did the shooting. Would you agree?

A. ___(unintelligible).

Q. Okay. Next one, if you were involved in the death of Brittany, you would know where she was shot on her body. Repeat after me. Lower back.

A. Lower back.

Q. Chest.

A. Chest.

Q. Stomach.

A. Stomach.

Q. Neck.

A. Neck.

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Q. Head.

A. Head.

Q. Leg.

A. Leg.

Q. Do you understand that question?

A. Yeah.

Q. The only person that would know that would be the person that did it and was there. Do you agree?

A. Yeah.

Q. Okay, very good. If you were involved in the death of Brittany, you would know how many shots were fired. Repeat after me. Five.

A. Five.

Q. Four.

A. Four.

Q. Three.

A. Three.

Q. Two.

A. Two.

Q. One.

A. One.

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Q. Six.

A. Six.

Q. You understand that question?

A. Uh huh.

Q. The person that did the shooting, can I get you to agree would know exactly how many shots they fired.

A. Uh huh (yes).

Q. Okay, very good. The next question. If you were involved in Brittany's death, you would know the last location of her body. Repeat after me. Behind the counter.

A. Behind the counter.

Q. Dining area.

A. Dining area.

Q. By her vehicle.

A. By her vehicle.

Q. On Lake Mead.

A. On Lake Mead.

Q. Outside the front door.

A. Outside the front door.

Q. Outside the back door.

A. Outside the back door.

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Q. Okay. You would agree that the person that did this would know where her body was after he shot, would you agree?

A. Uh huh (yes).

Q. Okay, very good. And the final question we're gonna ask will be this. If you were involved in the death of Brittany, you would know what item of Brittany's was found near the Jack-in-the-Box. Repeat after me. Purse.

A. Purse.

Q. Wallet.

A. Wallet.

Q. Jewelry.

A. Jewelry.

Q. Money.

A. Money.

Q. Keys.

A. Keys.

Q. Watch,

A. Watch.

Q. You would agree that the person that did this would know that there was a piece of property that was left, agreed?

A. Agree.

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Q. Okay. Now, do you understand each one of these questions?

A. Uh huh (yes).

Q. That I've asked you? Do you possess any intimate knowledge about this that you have not revealed to us at this point?

A. No.

Q. Okay, very good. If I could get you to do me a favor, and move over to this chair, take off your shoes. Okay? Leave your socks on. Now what I'm gonna ask you to do, Kevin, when you come back here, is I'm gonna ask you to remain standing. You're gonna put one foot in the middle, one foot on the outside of the pads, remain standing, and face me. Okay? Thank you. Very good. Excellent. Alrighty. All right. Okay, with your right hand here, I want you to grab the chain, pull it around your back some. Other way. And bring it out here. Wonderful. Okay, that's good, I got it. It'll feel a little tight at first. That's normal. Okay? Same thing. Wonderful. Okay, you can let it go. Thanks. Beautiful. Okay, have a seat in the chair, all the way to the back. Oh, popped it right off of that shirt of yours. I was afraid that was gonna happen. Let's try it again. Your shirt's kinda thick up there. Thanks. Okay, go ahead and have a seat. Wonderful. Feet on the pads, please. Okay, great. Take this hand and place it on top of your head for me that'd be great. Okay. Go ahead and drop it down. Okay, the next three components that I placed on you are gonna be very sensitive to movement. Okay? What does that mean?

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A. Sensitive to movement.

Q. Yeah. Also means don't move during this examination. Okay?

A. Uh huh (yes).

Q. (Whistling) Okay. Thank you. Okay. What we are looking for during this examination is whether or not the person possesses concealed information about evidence that has not been released. Okay?

A. Uh huh (yes).

Q. So what we will do is look at your body and see whether or not there's any recognition. Does that make sense to you?

A. Uh huh (yes).

Q. Okay. Good. Now grab that. The thumb will get a little numb, kinda feel like it's falling asleep. That's normal. Okay? I don't want you to move it because it's very sensitive to movement. Okay?

A. Uh huh (yes).

Q. All right, you're gonna feel some air come in there. That's as much as would ever be in there. That's not so bad, is it?

A. (No audible response)

Q. I'm gonna take a whole bunch out, 'cause I don't need that much in there. I just need to make sure that I get a good seal. During a polygraph, here are the instructions that I'm going to give you. I'm going to ask you to remain absolutely

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still. Okay? I'm gonna ask you to keep your eyes gently closed. All right? And then we're gonna go through these questions. In a couple seconds here I'm going to ask you some health questions and make sure you're okay to take the exam today, and then we'll go right into the exam. Okay?

A. (No audible response)

Q. Great. How much sleep did you get last night?

A. Um, I went to bed around 9:00.

Q. Okay. What time--how many hours did you get?

A. Got seven.

Q. Seven? Did you sleep good?

A. Yeah, it was all right.

Q. Great. Did you have any breakfast yet this morning?

A. Yeah, I ate.

Q. Okay. How about lunch?

A. No.

Q. Are you taking any medicines right now?

A. No.

Q. Okay. What have you had in the way of any illegal drug use in the last 24 hours?

A. Vodka.

Q. Well, that's just alcohol. Any illegal drugs?

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A. Yeah, we was at a party 'til 3:00 in morning.

Q. Okay. So you had some, uh...

A. Marijuana.

Q. Okay. Anything else?

A. No.

Q. You have any heart problems?

A. I got a irregular heart beat.

Q. That's fine. Do you have any respiratory problems?

A. No.

Q. Okay. Do you have any general health problems today that you think might affect the exam?

A. No.

Q. Okay. How would you describe your physical health right now, poor, fair, good, or excellent?

A. I'm okay.

Q. Okay. You're gonna feel those loosen up just a little bit. Okay. Okay. You're in good shape to take, ah, take this exam here today.

A. Uh huh.

Q. Great. Got your eyes gently closed?

A. Sure.

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Q. Okay. To ahead. Okay. You're gonna feel a little more air coming through the cuff. Okay, keep your eyes gently closed. Don't move during this examination. It's gonna begin here in just a bit. If you were involved in the death of Brittany you would know what caliber of weapon was used. Repeat after me. .45.

A. .45.

Q. .40.

A. .40.

Q. 9.

A. 9.

Q. .25.

A. .25.

Q. .22.

A. .22.

Q. .38.

A. .38.

Q. Okay, that examination is over with. Go ahead and gently open up your eyes, but don't move around a lot. Okay. You did a good job following my directions. I need you to keep doing that, okay?

A. Uh huh (yes).

Q. All you hear me doing over here is printing out that chart. Okay?

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A. Uh huh (yes).

Q. That's all I'm doing over here.

A. That's cool.

Q. Okay. It goes to another room there. Okay. I'm going into--we're gonna do the next examination. Go ahead and gently close your eyes. Okay, we'll begin in just a minute. Don't move. If you were involved in the death of Brittany you would know how many shots were fired. Repeat after me. Five.

A. Five.

Q. Four.

A. Four.

Q. Three.

A. Three.

Q. Two.

A. Two.

Q. One.

A. One.

Q. Six.

A. Six.

Q. Exam's over with. Go ahead and gently open up your eyes, but don't move around a lot. Good job following my directions. Go ahead and gently close your eyes.

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Next exam will begin here in just a moment. The exam's gonna begin here in just a minute. If you were involved in the death of Brittany, you would know where she was shot on her body. Repeat after me. Lower back.

A. Lower back.

Q. Chest.

A. Chest.

Q. Stomach:

A. Stomach.

Q. I'm gonna repeat that question 'cause you're licking your lips, okay?

A. Oh, my bad.

Q. No problem. Stomach.

A. Stomach.

Q. Neck.

A. Neck.

Q. Head.

A. Head.

Q. Leg.

A. Leg.

Q. And exam's over with. Go ahead and open up your eyes, but don't move around a lot. You're doing a good job following my directions. I appreciate it.

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A. Uh huh (yes).

Q. Again, I'm just printing this chart out. Okay? That's what you hear me doing over here.

A. That's fine.

Q. Next exam's gonna begin here in just a bit. Go ahead and gently close your eyes. Don't move during the exam. If you were involved in Brittany's death, you would know the last location of her body. Repeat after me. Behind the counter.

A. Behind the counter.

Q. Dining area.

A. Dining area.

Q. By her vehicle.

A. By her vehicle.

Q. On Lake Mead.

A. On Lake Mead.

Q. Outside the front door.

A. Outside the front door.

Q. Outside the back door.

A. Outside the back door.

Q. Okay, the exam's over with. Go ahead and gently open up your eyes. Again, Kevin, good job following my instructions. I appreciate it.

EVENT #: 100325-0682
STATEMENT OF: KEVIN GIBSON

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A. That's cool.

Q. Again, uh, I'm just sending it to the printer. That's what you hear me doing over here.

A. Uh huh (yes).

Q. Next exam's gonna begin here in just a bit.

A. Okay.

Q. You have to close your eyes again. Don't move during the exam. If you were involved in the death of Brittany, you would know what item of Brittany's was found near the Jack-in-the-Box. Repeat after me. Purse.

A. Purse.

Q. Wallet.

A. Wallet.

Q. Jewelry.

A. Jewelry.

Q. Money.

A. Money.

Q. Keys.

A. Keys.

Q. Watch.

A. Watch.

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Q. The exam's over with. Go ahead and gently open up your eyes. Don't move around a lot. Good job following my directions again. Kevin, I may want to repeat that one, uh, test where you licked your lips and I had to repeat the question. Okay?

A. Okay.

Q. All right. ____ (unintelligible). Give me a second and let me look at it, okay? I'll be right back.

A. Okay.

(EXAMINER LEAVES ROOM)

(EXAMINER RETURNS TO ROOM)

Q. Okay. All right. I wanna thank you for, ah, following my directions the way you did. You did give me good charts to look at.

A. (unintelligible).

Q. ___(unintelligible) put your shoes on. You can come back and have a seat. Okay. Kevin, I need to confront you about something, can I?

A. Uh huh (yes).

Q. I know you killed her. Yep. You hit every one of the questions. The only way you could do that, 'cause you did it.

A. (unintelligible)

Q. Yeah. This test is not based on deception. This is based on knowledge. Okay?

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A. I don't have any knowledge.

Q. Yeah, you do. Your body reacted to every one of the questions with direct knowledge of information that's been concealed. _____(both talking).

A. I never even moved.

Q. No, no, no, your body reacted because you recognized that information. That's why it's called a concealed information test. The only way that you could do that, is because you did it.

A. No.

Q. Yeah. And let me tell you this. I made the test fair for you. Okay? One of the questions I wanted to ask you, the scene, somebody left the scene, the suspect when he left the scene was wearing something on his head.

A. What?

Q. A hoodie. So I didn't ask you that question, 'cause it wouldn't of been fair for you, 'cause you'd already had that information. You see? You told me, I asked you what you knew about this case, and you said to me, hey, Geoff, this is what I do know, black male, about 5'8", fled the scene wearing a hoodie. One of the questions that was not released was the hoodie. That information was not released, but you had it coming in here. So it wouldn't of been fair for me to ask you that question. So I didn't even throw that question.

A. (unintelligible)

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Q. What do you mean what do I mean by that? It's pretty simple. Come on, you're an intelligent guy. Come on.

A. My mama told me _____(both talking).

Q. That's what I'm saying, you walked in the door with the information, so I didn't ask you that. Do you understand? It wouldn't of been fair for you 'cause you already had that information. This examination I provided you with today, it's not based on, uh, deception, whether or not you did, or didn't do it. That's now what I'm asking you. What I'm asking you is whether or not you have concealed information about the test. And because of the format that we use, you hit every one of the questions. Okay? Location of where the body was shot, caliber of the weapon that was used, uh, where the body was, uh, left after the shooting, the, uh, uh, keys that were left at the end of the driveway. You hit everyone of those things. The only way you can do that is 'cause you did it. So now I'm asking myself okay, how do I get you to confess to killing Brittany, because I know you did it.

A. I did not do it.

Q. Yeah, you did. Yeah, you did.

A. _____(unintelligible).

Q. You don't have to understand it other than the fact that you did it.

A. ___(unintelligible) I don't even know how you...nah.

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Q. Yes. And that's just the way the report's gonna read. Okay? So now you gotta ask yourself okay, what do I do? All right? Look, man, I don't, I don't profess to understand why somebody's gonna kill somebody. I know what the major motives are. Anger is usually right up there. Okay? And the one thing we do know, is there was a lot of friction between you and Brittany. Okay? I don't know what it was all about. We just know what it–that, that it existed, and they got that information from people that they've been talking to. So my guess is that you're really angry at her, 'cause that's the only reason that you could of taken a .25 caliber, put it up against her head, and shot her one time, okay, and then fled the scene, dropping the keys. Okay? That's the only way. Okay? You did it. I know you did it, you know you did it. Yeah. The unfortunate thing for you is the prosecutor's gonna know that you did it, and my report's gonna reflect that you did it. Because you have information that only the person...

A. I have no information.

Q. Yeah, you do, you had the intimate information, the concealed information that has not been released. These detectives have been trained by our polygraph unit that when they have cases like this, we don't want you to give out all the information, because this format that we can use, we can get this format and this stuff entered into court and I can say with absolute certainty that you were the person that pulled

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that trigger, because you hit every one of the key questions with regards to the event. So I know you did it.

A. I don't see how.

Q. I know how. Well, I know how, you were angry. That's how. You're angry at her. Something's going on.

A. I don't see how I hit it.

Q. You hit it because you did it. That's, that's the simple part.

A. (Both talking)

Q. 'Cause it would be like, it would be--you would have responses like you did on everyone of those other questions, that didn't have anything to do with the case. Okay? You didn't have any reactions. As soon as I asked you to repeat the word of the key, okay, and the key is the piece of information that we know about that hasn't been released, you come right through the roof.

A. Right through the roof how?

Q. Your body reacts. Okay? And the only...

A. No.

Q. It reacts. Your body changes when you repeat that information. That's because you were concealing that information. You had that information up front.

A. My body did not change. I didn't do nothing.

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Q. Yes, it did, that's why we, that's why we attached a component. You're gonna have to trust me on this. This is a very delicate instrument. Man, we're watching everything. We're watching your heartbeat, we're watching your sweat, we're watching your breathing, we're watching ___(unintelligible).

A. I'm not even sweating.

Q. It's not about sweating, it's about changes that take place in the body. When you recognize something, and I ask you to repeat it, your body changes. Why? Because you know that I caught you. I caught you. And I caught you based on your reactions.

A. I ain't even react. I ain't have no reaction.

Q. Yes, you did. You did.

A. I don't believe it.

Q. You don't believe it? You can, you can say whatever you want, but I'm telling you the way my report's gonna read is that you're the shooter. You have concealed information that nobody but the shooter would have. Do you understand what I'm saying?

A. I didn't have any information.

Q. I got you, yes, you do, because I got you to agree that if a person reacted to anyone of those questions, if that question, if the person that did it, they would know exactly what that key was. You knew it every time. Every...yeah, you did, buddy. So I'm

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gonna show you. Here's a good one. We look for the purple line on here. The purple line is the determiner. See the purple line?

A. Uh huh (yes).

Q. This is me at the beginning. Okay? Watch the purple line, okay. Here's that one time where I said I was gonna repeat the question, because that was a pretty big reaction what you were licking your lips. Remember you said to me my bad? That's me repeating the question. So that's not a reaction. Okay? Here I repeat the question, no big thing. Number five, see the five with the green on it? Look on here. If you were involved in the death of Brittany, you would know where she was shot on her body. Repeat after me. Okay? That's where she was shot. Look at your reaction. See that purple line? The only person that would know that was the shooter, because that information was withheld. It didn't go out.

A. That's the only thing?

Q. No, it's not the only thing. That's one of the five.

A. How?

Q. Because you knew. Purple line again. We look for the tallest one, the biggest response. Okay? If you were involved in the death of Brittany, you would know what caliber weapon was used. Repeat after me. What's 4C? Twenty-five caliber. That wasn't released.

A. (Both talking).

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Q. No, they aren't. This one is smaller, this one is taller. The biggest one gets the reaction. This one's taller.

A. They look the same height to me.

Q. They aren't. They are not the same height. Look at it this way. Right here. See that? It starts right there. Okay? See where this one ends? Way above it. That gets the reaction. Twenty-five caliber, you're the only that would know that because you're the one that shot her.

A. Nope.

Q. Yep. And here's the other one. Here's you're moving, so we don't count that one. Okay? Here we go. By her vehicle. That's where she's at. The green 13, 3C. That's your reaction. Your reaction too right there in your breathing. You are the one.

A. I didn't change anything.

Q. Yeah, you did. That's your body. That's not me making any adjustments to this thing. That's your body doing it. Every one of 'em, without fail. The keys, the shots, everything. You knew it.

A. No.

Q. Yeah, you did. You're the shooter. You're the shooter. You're flat up it. You're the shooter. And I'm gonna be able to say that. I'm gonna be able to write the report that says you're the shooter. No doubt about it. So now you gotta ask yourself,

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okay, what do I do? Well look, man, you been around. I caught you. I caught you. So now you gotta ask yourself what do I do? Well, you tell the truth. You tell why you did it. You tell what's going on. You just tell the frickin' truth. It's that simple. It's that simple. Is there gonna be a consequence to you? Heck yeah, there'll be a consequence to you. You're a smart guy. You know. All right? The question is what are you gonna do about it, how you gonna do it? You gonna tell the truth? 'Cause you're not. When you say to me I didn't do it, Geoff, that's not the truth. I know it. I know it because you're the only person that has that information. You're the shooter. My guess is you're angry at her. I don't know what she was doing to you, okay, and I'm not trying to give you an excuse. I can give you an explanation. I've been dealing with enough people who've killed people to know that there are all sorts of reason to kill. I don't get upset or mad about it anymore. Okay? I just try to get people to walk in the truth. That's my job. Straight up and simple. It's just the truth. The question is whether or not you got enough inside you to tell the truth. Tell the reason that you did it, sort it out, take your punishment like a man. Look, you're a tough guy, okay. You don't time before?

A. Little bit.

Q. Okay. So you know what's coming. You understand it. You understand it.

A. But I don't see how I had a reaction to it.

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Q. You had a reaction 'cause it's this simple, you were the shooter. You killed her. It's that simple. I can't make it any easier than that. Watch my lips. You put the gun, shot her in the head. Okay? Yeah, you did. There's no doubt in my mind, there's no doubt in your mind. I've sat in this room with people who have been accused of murder before. You're not the first pony to sit in this chair with me. All right? I know you did it. I know you did it. Okay? Now, I think we've treated each other respectfully. I think so. Yeah? And I'm confronting you about it. The question is whether or not you got enough balls to tell the truth. 'Cause I caught you. I caught you. And I caught you with your own body. So here's the one thing I do know. There is a piece of you, even that angry piece of you, that feels bad about what you did. Maybe just a little bit. Maybe she ran you through the ringer. I don't know if there was child support issues. I don't know if she's sleeping around with your friends. I don't know what the heck may be going on. I do know this, okay, for you to pull the trigger in that way, you had to be angry. You had to be upset with her. Okay? To do that. It's not easy to pull the trigger and kill somebody. It's not easy to be involved in a shooting. Okay? It's not easy. Some people it might be. I don't know. Are you in, belong to a gang? What's your gang? Blood?

A. I'm _____(unintelligible).

Q. Crip? What are you?

A. Nothing.

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Q. Nothing? Have you been in a gang in the past? No? Well, I don't know what this woman was doing to you to get that upset, man. I would of--you seem like a pretty decent guy. I'd like to see you just walk away, 'cause it's not worth it. It's not worth it. This relationship that you had with her, it's messed up, man. It's messed up. 'Cause it caused you to pick up a gun and cap her. Right when she's getting ready to go into work. Leave her body right there by the car. You left her. How many babies you got with her?

A. Two.

Q. Okay. Babies don't got no mommy now. So I don't know if that's part of the issue. I don't know what it is. Okay? I just know you did it. I just know you did it.

(KNOCK AT DOOR)

DL. Can I come in?

Q. Yeah. So the question is whether or not you're gonna have the courage to just tell the truth, man. Just tell the truth. Okay? It's gonna go one way or the other here. It's one way. Just by telling the truth. The hole's already dug, man, it dug, and you're in it. I think you can see that. You're a smart guy. All right? But you gotta make the decision what you're gonna do. 'Cause there's only so much that people are gonna be able to tolerate. And you already got people who know you did it. So there's some sort of friction going on. Apparently there was some death threats or something involved in the past. I don't know if they were both ways. I don't know

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if the death threats were coming towards you, and you felt like you had to do it. I'm not sure. Okay? All I do know is you did it. That much I do know. I just don't know why. And I didn't ask you why, I asked you whether or not you had knowledge that hadn't been released. You got it. I know you did it. There's no doubt about it. That's why I'm coming right in here and confronting you right off the bat. I don't have to play games. I don't have to try to catch you. I already did. I don't have to try to convince you. You already know. You already gave it up. You know that I know. Your body knows that I know. So you gotta try to make that decision, what the heck you gonna do. How you gonna tell the truth? How you gonna explain it. How you gonna explain that you got so upset that this person deserved to die. 'Cause in your mind, they deserved to die. And it's up close and personal when you do it in the head. From a profile aspect, that's an angry shot right there. This is I'm gonna teach you a lesson, bitch. That's what this is about. So my guess is she probably made your life a living hell. She probably made your life a living hell. Okay? And so the reality of it is you gotta decide, okay, they caught me, what do I do? So what kind of man are you, man? You gonna still play this game, or you gonna just tell the truth? I'm hoping that you're kinda guy that'll just tell the truth, get through it, move through it, and be done with it. 'Cause guess what? It's not going away. You know that. You been around enough. You know it. These guys aren't gonna go away. All right? This isn't gonna go away. It's just not gonna go away.

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So the opportunity that you have is to start dig yourself up out the hole. One of the first things you start to do, man, is start doing it with the truth. Okay? The truth is gonna start to pull you up out of this thing. Okay? You gotta decide what you wanna do. You gotta decide how you're life's gonna play out. Geoff Flohr has nothing more than to just get you to tell the truth. That's my job. Okay? That's my job. Just to get you to tell the truth. You're either gonna do it, or you're not. That's gonna be your choice. You have the ultimate choice. But it's the same ultimate choice that you had when you put the gun up by her head and popped off the round. Okay? It's the same type of choice. Okay? There's gonna be that momentary second where you're gonna be able to figure out what the right thing might be to do. I hope that you just got so angry that you couldn't control yourself. I hope that you're not a cold calculating killer. I hope that you didn't plan this thing out well in advance, stalk her down the line, and come after her. I'm hoping that it was a momentary lapse of good judgement where you decided I just gotta take care of this problem 'cause I can't deal with it anymore. I understand what pressure's all about. Okay? I know that. I know how you can get that upset.

A. You don't know what it's like to hear, like you don't know what it's like to hear all types of shit.

Q. No, that's not true. I do.

A. I been in a mental hospital and shit. I been seeing things. I been hearing shit.

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Q. You want, you wanna know, you wanna know, you wanna know the difference between you and me?

A. You got your family.

Q. You know what, buddy, I'm not that far behind you. I been there. I been right to the edge before. Okay? I understand. Okay? I, I, I do. Look in my eyes. I'm telling you I understand, man. I do. That's not a lie. I'm telling you the truth, buddy. You ever been on a rubber gun squad? You know what it is in our lingo? They take your badge and they take your shit 'cause you're having a lot of issues with something that you're involved in. I was involved in the death of a kid. Took me right to the edge. So I understand. I understand where you're at. This is the truth. And I'm telling you buddy. Nine weeks I was off. So I know.

DL. Go ahead and tell him.

Q. Come on, man, just tell me the truth of what she did to you. Tell me what happened, tell me why it occurred, and we'll figure it out. It's that simple.

A. I told you.

Q. Why'd you kill her?

A. She drove me crazy.

DL. What was she doing?

Q. What'd she do to you?

DL. We wanna understand it. Explain it all to us.

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A. I just had--I can't explain it. I...

Q. Yeah, you can.

A. ...it was, it was one of those out of body experiences.

Q. All right. Let me ask you this.

DL. Le-le-le-let--go ahead and finish it. What was Brittany doing? Tell us everything she was doing to you. I wanna understand that part of it first.

A. She was playing with my head.

Q. How so? What did she do to you to drive you to the point where you'd wanna kill her?

DL. Playing with the kids?

A. Yeah.

DL. With a new, new boyfriend?

A. I wouldn't--I, I didn't know--I wouldn't see my kids for months at a time.

DL. Okay.

Q. Okay. Look...

A. Put me through it.

Q. ...look at me, I know she did. I appreciate you telling me the truth, man. Now what I want you to do, I want you to walk me right through it, exactly what you did. Okay? On that day, at the Jack-in-the-Box. Tell me exactly how you did it.

A. I just shot her, and I ran.

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Q. Okay. Tell me where the gun's at.

A. I don't know.

Q. What'd you do with it?

A. I gave it back to some dude.

Q. Okay, we're gonna...

A. I didn't know his name.

Q. We're gonna need that dude's name, man. You're gonna know how to be able to get him, _____(both talking).

DL. _____(both talking)...how did you get up to the Jack-in-the-Box?

A. I walked.

DL. You walked the whole way? How'd you get home?

A. Walked.

DL. The whole way? You didn't bus, nobody picked you up?

A. (No audible response)

DL. Okay.

Q. What I need for you to do, okay, is this. Walk us through the whole thing, right from the beginning, all the way to the end. Okay. All the details. Tell us exactly what you did, how you did it.

A. That's it. I just walked up Jack-in-the-Box, seen her get out of the truck, and shot her, and I walked home.

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STATEMENT OF: KEVIN GIBSON

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Elizabeth A. Brown
Clerk of Supreme Court

Q. Okay. Tell me how you shot her.

A. I just shot her.

Q. Okay. This is what I want you to do.

DL. He's Brittany. Okay?

Q. Use me as Brittany, who me how you shot her.

A. She was a little back.

Q. Big, back, what, tell me where she was at, buddy.

DL. Where's the car?

A. The car is right here. She was right here.

Q. She was standing up outside the car?

A. Uh huh (yes).

Q. Okay. Show me, come up behind me just like you did her.

A. I wasn't behind her.

Q. Okay, show me how you did it.

A. She was in front, _____(unintelligible).

DL. _____(unintelligible).

Q. Like this?

A. Like this.

Q. What'd you do?

A. And I was a little back, and I shot.

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Clerk of Supreme Court

Q. Okay, where'd you shoot her at?

A. I guess it hit her in the head. I didn't stay to see.

Q. You didn't stay to see? Where'd you point the gun at?

A. To upwards.

Q. Okay. Then what did you do?

A. I ran.

Q. Okay. Where, where did her body lay?

A. It fell she was standing.

Q. Right there next to what?

A. To the truck.

Q. The truck? Okay. Tell us about the keys.

A. I don't know about the keys. I swear.

Q. Did you pick the keys up?

A. No.

Q. Did she throw 'em? What happened?

A. I don't know.

DL. Did--was she _____(both talking).

Q. How did you know the keys were there, 'cause you knew that they were there. Did you see 'em on the ground when you ran away?

A. Yeah.

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STATEMENT OF: KEVIN SPOON

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Elizabeth A. Brown
Clerk of Supreme Court

Q. Okay. So how did they get to the ground?

A. I guess they fell out of her hand.

Q. Out of her hand?

A. I never touched the keys.

Q. Okay.

DL. Did she, ah, what were you wearing?

A. What I got on.

DL. This?

A. Uh huh.

Q. The hoodie?

DL. What color was the hoodie?

A. Gray.

Q. How many times did you shoot her?

A. Once.

Q. Okay. Twenty-five cal?

A. Uh huh (yes).

Q. Okay. What's the buddy's name that has it? We gotta get that gun back.

A. I don't know his name.

Q. You gonna be able to take these guys to him to get the gun?

A. I don't know where he's at, I swear. You can ask me all you want.

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Clerk of Supreme Court

DL. _____(unintelligible). Um...

Q. You need anymore from me?

DL. No.

Q. You all set?

DL. Yeah.

Q. Okay. All right. Look at me. Thank you, I appreciate it.

DL. You did right.

A. ___(unintelligible) off my meds...

DL. I understand that. And absolutely I was _____(unintelligible).

(EXAMINER LEAVES ROOM)

(DETECTIVE TREMEL ENTERS ROOM)

DL. Um, when you approached, where were you when she parked?

A. Sitting down.

DL. Where?

A. In the bushes. Well, not in the bushes, next to a van, behind the van.

DL. Okay, what color was the van?

A. I can't remember.

DL. It was parked close to Lake Mead?

A. It was parked in the parking lot.

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DL. Well I know. What I'm saying is it...here's Lake Mead, right here, was it parked right here, and you were in these bushes?

DT (DON TREMEL). Was it parked close to her car?

DL. It was away. I had walked to the car. She didn't see me.

DL. Okay. Okay. I, I think I know the van you're talking about. It was down a little ways. Okay. And then she pulled up. She parks. And then what'd you do? How did you approach?

A. Just walked up to her.

DL. From behind?

A. Uh huh (yes).

DL. Okay. And what did--did she see you?

A. (No audible response)

DL. She didn't see you?

A. No, until I shot her.

DL. And then she--what'd she do when you shot her?

A. She fell.

DL. Did she--was there a scream?

A. No.

DL. There's, there's a lot of people saying that she let out a scream, or you did. But it sounded like a female.

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A. I don't know, I was out of it.

DL. Okay. All right. You were wearing the gray hoodie. Did you have the hood up or down?

A. Up.

DL. Up. All right. And, ah, what did--what kind of gun was it?

A. A .25.

DL. What kind? I mean what color? Was it black, was it silver?

A. Like faded.

DL. Faded, an old one?

A. Yeah.

DL. Okay. Was it faded black, or a fade of silver?

A. Faded black.

DL. Faded black. Okay.

A. But I swear, I don't know the dude.

DL. I, I'm not, I'm not looking to get anybody else in trouble.

A. No, I swear I don't know him.

DL. Okay. How did you get it from him?

A. He was walking one day and I, you know what I'm saying, I talked to him and he loaned it to me.

DL. Okay. Did you pay for it?

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A. Yeah.

DL. How much did you pay for it?

A. I gave him, uh, fifty dollars in weed, and fifty dollars.

DL. Okay. And then you gave it back to him?

A. Yep.

DL. Did you tell him it was dirty?

A. (unintelligible)

DL. You didn't tell him it was dirty?

A. No.

DL. Is he over in the Coast?

A. No.

DL. Where is it? What area is he in?

A. On, uh, uh, by the McDonald's, in them apartments on Sahara and Arville.

DL. Sahara and Arville. Okay. A black male?

A. Uh huh, light skinneded [sic].

DL. Older, younger?

A. About 23, 24.

DL. Okay. How did you get a hold of him to give him his gun back?

A. I went to, um, we met at the McDonald's.

DL. No, how did you get a hold of him is what I meant. How did you reach him?

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A. I called him.

DL. Do you know his number?

A. Not by heart. It's in my phone. I don't got my phone.

DL. Okay. All right. We'll work on that. Um, like I said, I'm not looking to get anybody in trouble. We're just trying to tie this all, tie it all parts together. Okay? Um, so then you, you actually ran all the way home. Okay. So tell me about which way you ran when you left.

A. Down Lake Mead.

DL. Okay, so you run along Jack-In-The-Box, right, and then where?

A. Other side.

DL. You ran to the other side?

A. Uh huh.

DL. And then where'd you go from there, when you got to the other side?

A. Ran straight.

DL. Straight down Lake Mead, or did you...

A. I cut through the, I was cutting through like the parking lot and stuff.

DL. Okay. So you went across the street and then farther in, and then just made your way all the way across. Did, did you cross at Lake Mead, or did you cross somewhere else, when you crossed the freeway?

A. I went through the intersection.

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DL. The freeway?

A. Uh huh (yes). Over the overpass.

DL. That's what I ___(unintelligible). Did you do it at Lake Mead, or did you do it at the next street over?

A. At Lake Mead.

DL. At Lake Mead. Okay. And you literally walked the whole way?

A. Yep.

DL. How do you feel about Brittany being dead now?

A. I'm hurtin'.

DL. It, it...

A. But I, I had no control of myself.

DL. Because you'd stopped taking your meds?

A. And they wouldn't give it to me.

DL. Because the insurance had run out?

A. Yep.

DL. And if you were taking the, what was it called again?

A. __(unintelligible).

DL. Invaga (phonetic) you wouldn't...

A. _____(unintelligible) it have me in like, like it's for psychosis.

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DL. Okay. So did you have--what kind of problems were you having when you decided, or when you did this?

A. I was seeing things, hearing shit.

DL. Hearing what?

A. Voices.

DL. What were they telling you?

A. Telling me all type of shit, man. Kept saying murder, kill, kill yourself, everything. ____(unintelligible).

DL. Are you still thinking about killing yourself?

A. It's the voices. I been, I been in mental hospitals and shit, in padded rooms.

DL. Okay. There was--a few days prior to this, uh, you went over with a pair of binoculars?

A. No.

DL. You didn't go over there and look at her from across the street?

A. Nope.

DL. So how did you know she was there?

A. I didn't. I was guessing.

DL. You were guessing?

A. Yep.

DL. Was this your first guess?

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A. Yep.

DL. You just __(unintelligible)?

A. ____ in one.

DL. You guessed which store, or did you know which store?

A. I didn't know. Just said it was on Buffalo.

DL. I, I missed--I don't understand that.

A. They just said it was on Buffalo.

DL. Okay. You weren't on Buffalo. Oh yeah, you were close to Buffalo.

DT. Who said, who said it was on Buffalo?

A. One of her co-workers.

DL. Somebody told you?

A. Uh huh (yes).

DL. Was it--who?

A. One of the Mexicans. I don't know.

DL. Oh, okay. All right. So you never went up prior to this?

A. No, this was my first time.

DT. When did you get--when did you get this information that she was at this, this new Jack-in-the-Box?

A. When I called on the 23rd.

DT. And again, you called from your cell phone?

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A. No.

DT. You said your...

A. My cell phone been off.

DT. It's been off?

A. For, since the 15th.

DT. Okay.

DL. Okay. The whole thing about going to the party that night, is that true?

A. Uh huh, it's true.

DL. You did get drunk?

A. Uh huh.

DL. You did go home with Denise, and you did go to bed?

A. And I left.

DL. Then you left. What--so you left at about what time? You said you got home about 2:00 or 3:00.

A. Close to 3:00.

DL. Close to 3:00 in the morning.

A. She went in her room, closed the door, and I left.

DL. Okay. And, ah, what time, do you remember what time you got back?

A. Yeah.

DL. What time was it?

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A. It was daylight. I don't know, it was before 8:00 something, 'cause my mom called.

DL. It was before your mom called.

A. Uh huh (yes).

DL. Okay. And Denise was still in bed, and you __(unintelligible), you knew how to get back into the apartment?

A. Uh huh (yes).

DL. Did you go to bed?

A. No, I stayed up.

DL. You stayed up?

A. 'Cause my mom called.

DL. Okay. Did you tell your mom what happened?

A. No, I didn't tell nobody.

DL. You didn't tell anybody.

A. Nope.

DL. You didn't tell Denise?

A. No, 'cause she thought I was asleep.

DL. Okay.

DT. You didn't take her car over there? You walked over there, right?

A. Uh huh (yes).

DL. You didn't have your cell phone, or any cell phone with you___(unintelligible)?

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A. (Unintelligible/coughing in background)

DL. Okay. Are these the shoes you were wearing?

A. No.

DL. What shoes were you wearing?

A. Some gray Chucks.

DL. And where are those?

A. I threw 'em out on the freeway.

DT. Where's the hoodie at?

A. I don't know. _____(unintelligible/coughing)

DT. What's that?

A. Somewhere in Summerlin.

DT. Were you--when did you take it off?

A. When I got over the pass.

DT. So you--when you--after you, after you ran, cut through some businesses, you continued on, and then you took it off and got rid of it?

A. Uh huh.

DL. Did you just throw--you throw it in the trash can, or did you throw it just?

A. I threw it in a dumpster.

DL. In a dumpster. Did--so Brittany never, you guys actually never tussled? You never got close enough?

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A. Uh huh.

DL. Did you help her to the truck?

A. No, I didn't touch her.

DL. You never touched her? Okay. You didn't help her to get into the Jeep afterwards, or ____ (unintelligible) fall out, anything like that?

A. (Inaudible response)

DL. Okay. All right.

A. I was, I was fucked up, man.

DL. Okay. What do you think should happen to you now?

A. I get punished.

DL. Okay. What do you think the punishment should be?

A. Whatever it's gonna be.

DL. Okay. You think you need help?

A. Yeah, I know I need...I'm tired of hearing voices and shit, man.

DL. Okay.

A. I ain't been taking my medicine. I been_____ (unintelligible), shit, man, this shit it's crazy.

DL. Okay.

A. Look at buildings in a different way, wanna jump off shit. I don't know. I'm thinking, man, this shit's crazy.

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DL. Okay.

DT. What are the chances we can get that gun back with your help? Without getting your buddy in trouble.

DL. We won't get him in trouble. We can actually have him put it somewhere, wipe it down, put it somewhere. We just need to get it off the street. It's one of those things that..

A. I don't know how to get in touch with that dude.

DL. Well if we get you the phone number can we like tell him to put it in a bag, wipe it down, put it in a bag, we'll just come get it?

A. Uh huh.

DL. Okay.

DT. You think he's gonna do that?

A. I don't know. I don't know him like that.

DT. Would you be willing to give that a try, if we were to take you over to where your phone's at, get that number, and use one of our phones to make a phone call? Would you call him and?

A. Uh huh.

DL. Okay.

DT. 'Cause that's something that we really wanna do, and it would benefit you to, to do that.

EVENT #: 100326-0682

STATEMENT OF: KEVIN GIBSON

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Elizabeth A. Brown
Clerk of Supreme Court

DL. Were these the pants you were wearing?

A. (Inaudible response)

DL. Um, damn, uh, all right. I, I think you need help too. Um...

A. All I needed was my medicine. It had me so calm. I was, I was doing real good.

DL. Okay. Did--your, your family doesn't know what's going on right now, right?

A. No.

DL. Okay.

DT. You tell anybody about what happened, your buddy you got the gun from, anybody, anybody?

A. (Inaudible response)

DL. Okay. Um...

DT. Let me run upstairs for a second and, ah...

DL. Yeah.

DT. ...and, uh...

DL. I think all mine are in my car.

DT. I got some upstairs.

DL. Okay.

DT. Be right back.

(DETECTIVE TREMEL LEAVES ROOM)

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DL. Brittany because, I mean it literally is because she just was making your life hell, and the voices were...

A. And she knew, she knew, man.

DL. She knew what?

A. She knew I was hearing voices and shit.

DL. Okay.

A. Seeing shit, man, like I don't know.

DL. Okay. I mean she wouldn't let you see your son on his birthday. How did that affect you? I mean real--really how did that affect you?

A. _____(unintelligible) and I was just tired of just not seeing my kids. And then...

DL. You wanted...

A. I ain't been in control.

DL. Right.

A. In a long time.

DL. You wanted her back?

A. ____(both talking).

DL. There's nothing here to hurt you.

A. After a while I did, but then I just, just went numb. I didn't care about nothing.

DL. Okay. Did it affect you that she was seeing somebody else?

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A. Yeah.

DL. And he was with your kids?

A. (No response)

DL. Okay. Did you--when did you get the gun? How long before?

A. Day.

DL. One day?

A. Yep.

DL. How long had you been thinking about it?

A. That day.

DL. That, just that one day?

A. Yeah.

DL. It wasn't like something that was eating you alive for a while? No, just one day it just got in your head and?

A. It was just like go kill her.

DL. And you knew what time she goes to work. How long did you wait?

A. Couple minutes.

DL. Really, that's all? You just timed it right?

A. It was just how it played out. Wasn't no plan.

DL. So she never said anything to you?

A. I can't remember. I was...

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DL. Did you say anything to her?

A. I don't know.

DL. You don't remember? No?

(DETECTIVE TREMEL RETURNS TO ROOM)

DL. Okay. What's gonna happen now, um, we are gonna have to take you to the county, and, ah, I'll make sure medical, the doctors know what's going on. Um, I'll, I'll let your mom know. Is there anything else you need?

A. (No response)

DL. You, you'll work on getting us that, maybe make a phone call to where we might be able to get that gun back?

A. I can try.

DL. Okay.

DT. That's all we can ask, you know, if the guy don't answer the phone, or doesn't wanna cooperate, that's--it's not on you. You know, at least you tried. Uh, the only clothing you had on during this whole thing would be the pants, right?

DL. The Chucks and the sweatshirt. You remember where the dumpster was?

A. No.

DL. Okay. Okay. And there's, you don't remember anything else about the actual event? Anything else that would help us?

A. I was out of it.

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DL. Okay. Could there of been some movement around, could you guys have moved around a little bit, more than you remember?

A. I don't know.

DT. Was there a struggle? Did she grab you, fling her arms away, did you grab at her, was there some sort of a struggle before all this happened?

A. I went blank.

DT. I'm sorry?

A. Like I said, I went blank.

DL. Okay.

DT. I mean that there probably was a struggle based on what I saw this morning with the marks on her arm, and the fact that you popped out of some bushes. There, there-- I don't believe she was willing to stand there and talk to you.

A. She didn't see me come out of the bushes.

DT. She didn't see you? Let me ask you this. When you got the gun from your buddy, okay, how many days before this did that, did you get that gun?

A. One.

DT. One day?

DL. We just went through all that.

DT. You went through all that, and you got that for the specific reason of doing this?

DL. Yes.

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DT. Okay. We'll go upstairs and work on getting somebody to come and take the pants. We'll get him...

DL. Yeah.

DT. We're gonna take you back upstairs to our office. Same place we were yesterday. We'll tell your family what's happening.

DL. Those loose enough? You all right?

A. (No audible response)

DL. Yeah, there you go, keep your hand. I'm gonna lock 'em so they don't crank down on you.

DT. Geez. Got your jacket and stuff in there.

DL. Yeah, I'm gonna, I'm gonna go in and get it. You got him?

DT. Yeah.

(END OF INTERVIEW)

THIS VOLUNTARY STATEMENT WAS COMPLETED AT 4750 W. OAKEY, ON THE 26TH DAY OF MARCH, 2010 AT ____ HOURS.

GF:DL:DT:sd
10V0660

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Affidavit – Lenda Jackson

AFFIDAVIT OF LENDA JACKSON

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

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Lenda Jackson, being first duly sworn, deposes and says:

1. That she spoke with the detectives on the morning March 25, 2010 at her home. At that time she warned them that Kevin Gipson suffered from a mental illness. That he had been diagnosed with Bi-Polar Disorder and Schizophrenia. Additionally she warned them that he might not have taken his medication.

2. That the detectives questioned her about the names of his medications. She was able to tell them about only one of his medications, that is the Invega.

3. That the detectives assured her that they understood the information and that they would take care of it.

4. That the detectives never asked her any more questions about Kevin's mental health history.

5. That on the morning of March 25, 2010 she had talked to Kevin about what she had heard about the death of Brittnay Lavoll.

Lenda Jackson

Subscribed to and Sworn before me
this 13th day of April, 2011.

Notary Public

MARTHA ADAMCZYK
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: August 10, 2014
Certificate No: 02-77018-1

ORIGINAL

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NOTC
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite #226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. KEVIN MARQUETT GIPSON, Defendant.	CASE NO. C264079X DEPT. NO. XVIII DATE: May 9, 2011 TIME: 8:30 am

DEFENDANT'S NOTICE OF EXPERT WITNESSES, PURSUANT TO NRS 174.234(2)

TO: CLARK COUNTY DISTRICT ATTORNEY:

You, and each of you, will please take notice that the Defendant, KEVIN MARQUETT GIPSON, intends to call the following expert witness in his case in chief:

Dodge Slagle M.D. 1090 N. Wigwam Pkwy, Henderson, NV 89074

Dr. Slagle will testify as to Kevin's past and current mental health issues. CV Attached

Jerome Nwokiki M.D. 6850 N. Durango Drive, #302, LV, NV 89149

Dr. Nwokiki will testify as to Kevin's past mental health diagnosis and treatment. CV Attached.

DATED this 15 of April, 2011.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By _____
CHRISTY L. CRAIG, #6262
Deputy Public Defender

10C264079
noew
Notice of Expert Witnesses
1356664

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RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Notice is hereby acknowledged this 15 day of April, 2011.

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CLARK COUNTY DISTRICT ATTORNEY

By: _____

Case Name: Kevin Marquett Gipson
Case No.: C264079X
Dept. No.: XVIII

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CV – Dr. Dodge Slagle

DODGE A. SLAGLE, D.O.

1090 Wigwam Parkway, Suite 100
Henderson, Nevada 89074
(702)-454-0007

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CURRICULUM VITAE

EDUCATION:

Undergraduate:	University of Michigan, Ann Arbor, Michigan, 1977-1980; Bachelor of Science
Medical School:	Ohio University College of Osteopathic Medicine; 1981-1985; Class Vice President; USAF Health Professions Scholarship Program
Internship:	United States Air Force Medical Center Wright-Patterson, Wright State University, Dayton, 1985-1986, Rotating Internship including Internal Medicine, Surgery, Psychiatry, Pediatrics, Neurology, Obstetrics and Gynecology, Emergency Medicine
Residency:	United States Air Force Medical Center Wright-Patterson, Wright State University Integrated Residency in Psychiatry, Dayton, Ohio, 1986-1989.

CREDENTIALS:

Diplomate in the Specialty of Psychiatry: American Board of Psychiatry and Neurology, April 1992.

Diplomate of the American Board of Forensic Medicine: American College of Forensic Examiners, January 1999.

National Board of Examiners, 1986.

Dodge A. Slagle, D.O.
Curriculum Vitae

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Full licensure to practice medicine:

State of Ohio, August 1986 to present, license #4198.
State of Nevada, November 1989 to present, #500

PROFESSIONAL EXPERIENCE:

Chief, Mental Health Services, USAF Hospital Nellis, June 1991-1992; Medical Director, 1989 to June 1991; Acting Chief of Mental Health Clinic, September 1990 to April 1991. Provided outpatient psychiatric care to servicemen and their families, provided consultation / liaison for 40-bed general hospital; medical consultant to Nellis AFB Social Actions Substance Abuse Committee; developed outpatient treatment program for Pathological Gambling and Anxiety Disorders; medical consultant to Smoking Cessation Program. Responsible for overseeing clinical care rendered by two other psychiatrists, five psychologists, and six social workers and for providing administrative leadership for clinic. Developed clinic quality improvement program.

Staff Psychiatrist, Southern Nevada Adult Mental Health Services, Las Vegas, Nevada, August 1990 to December 1991. Provided part-time outpatient psychiatric services, including evaluations and psychotropic medication management in a community mental health setting.

Clinical Director, Adult Services, Montevista Hospital, Las Vegas, Nevada, May 1992 to March 2000. Acting Director, Chemical Dependency Unit, Montevista Hospital, August to November 1992. Provided supervision to staff on a psychiatric unit regarding clinical issues. Monitored clinical care. Participated in the revision of the hospital quality improvement process and the development of quality improvement teams. Developed program structure for Partial Hospitalization Program. Assisted in developing and revising medical staff bylaws.

Dodge A. Slagle, D.O.
Curriculum Vitae

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Associate Medical Director, Montevista Hospital, Las Vegas, Nevada, March 2000 to October 2000. Provided leadership to the hospital performance improvement and credentialing systems. Provided in-service training to staff. Assisted in development of clinical procedures and oversight of hospital clinical care.

Medical Director, Legal Rehabilitation Services, Las Vegas Nevada, November 2000 to December 2001. Provided clinical supervision to counselors for outpatient chemical dependence rehabilitation program for adult and adolescent patients. Provided patient education on the medical aspects of chemical dependence and recovery. Provided leadership to the development and implementation of clinical programs.

Private practice in Psychiatry, Henderson, Nevada, June 1992 to present. Inpatient and outpatient treatment of adult, adolescent, and geriatric patients. Provided consultation/liaison services to medical/surgical hospitals, a rehabilitation hospital, and assisted living facilities. Provided forensic evaluations for local courts.

Assistant Professor, Touro University College of Osteopathic Medicine, September 2010 to present. Course director for Behavioral Medicine and Psychiatry class. Provided didactic and clinical training to medical students at all levels of training.

SPECIALIZED TRAINING EXPERIENCES:

Combat Casualty Care Course, San Antonio, Texas, 1987.

Chemical Dependency Program, Samaritan Hall, Dayton, Ohio, November 1988.

Forensic Psychiatry, Dayton Medical Health Center, Dayton, Ohio, January – February 1989.

Docket 73307 Document 2017-33011

Dodge A. Slagle, D.O.
Curriculum Vitae

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Sleep Disorders Medicine, Kettering Medical Center, Dayton, Ohio, March 1989.

Community Mental Health, Mental Health Resources Corporation, Xenia, Ohio, April – June 1989.

Administrative Psychiatry Conference, Wright State University, Dayton, Ohio, November 1988.

Introductory Workshop on Clinical Hypnosis, University of Minnesota, June 1987.

Advanced Hypnosis in Psychiatry, American Psychiatric Association, May 1988.

Manager's / Supervisor's Orientation to Total Quality Leadership, Nellis AFB, Las Vegas, Nevada, March, 1991.

Dementia Congress, Chicago, Illinois, September 2002.

PUBLICATIONS:

Slagle, D.A.; The Acute Withdrawal of Diltiazem and Atenolol: A Possible Challenge to Affective Stability. Journal of Clinical Psychopharmacology, 9(5): 381-2; 1989.

Slagle, D.A.; Psychiatric Disorders Following Closed Head Injury: An Overview of Biopsychosocial Factors in their Etiology and Management. The International Journal of Psychiatry in Medicine, 20(1): 1-35; 1990.

Slagle, D.A., Reichman, M., Rodenhauser, P., et. al.,: Community Psychological Effects Following a Non-fatal Aircraft Accident. Aviation, Space and Environmental Medicine, 61(10); 879-86; 1990.

Dodge A. Slagle, D.O.
Curriculum Vitae

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Slagle, D.A., Martin, T.A.: Trichotillomania. American Family Physician, 43(6): 2020-2024; 1991.

EDUCATIONAL PRESENTATIONS:

"Pathological Gambling," Wright State University, Dayton, Ohio, October, 1986.

"Issues in Child Development," Wright State University, Dayton, Ohio, April 1987.

"Psychiatric Disorders Following Closed Head Injury," Wright State University, Dayton, Ohio, November 1987.

"Calcium Channel Blockers in Psychiatry," Wright State University, Dayton, Ohio, August 1988.

"Trichotillomania: An Overview of the Diagnosis and Treatment,' Wright State University Scientific Day, Dayton, Ohio, April, 1989.

"Psychological Reactions to Aircraft Accidents," Wright State University, Dayton, Ohio, May 1989.

"Combat Psychiatry," Nellis AFB Hospital, Las Vegas, Nevada, November 1989.

"Patient Sensitivity,' Nellis AFB Hospital, Las Vegas, Nevada, March-April, 1990.

"Treatment Program for Pathological Gambling," Family Support Center, Nellis AFB, Las Vegas, Nevada, March, 1990.

"Emergency Psychiatry," Nellis AFB Hospital, Las Vegas, Nevada, May, 1990.

Dodge A. Slagle, D.O.
Curriculum Vitae

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"Suicide Prevention," Nellis AFB Hospital, Las Vegas, Nevada, September 1990.

"Suicide Prevention," Nellis AFB Hospital, Las Vegas, Nevada, November-December, 1990.

"Patient Sensitivity," Nellis AFB Hospital, Las Vegas, Nevada, February 1991.

"Stress Management," Family Support Center, Nellis AFB, Las Vegas, Nevada, April, 1991.

"Patient Sensitivity," Nellis AFB Hospital, Las Vegas, Nevada, July 1991.

"Destigmatizing Mental Health Treatment," Nellis AFB Community, Las Vegas, Nevada, January, 1992.

"Recognizing Suicide Risk," Governor's Conference on Suicide Prevention, Las Vegas, Nevada, June, 1992.

"The Role of the Community in Preventing Suicide," Governor's Conference on Suicide Prevention, Las Vegas, Nevada, September 1992.

"Involuntary Hospitalization," Montevista Hospital, Las Vegas, Nevada, February 1994.

"DSM IV," Montevista Hospital, Las Vegas, Nevada, January 1995.

"The Impaired Professional," Professionals Reaching Nevada, Reno, Nevada, March 1995.

"Alcoholism and Other Addictions," Nevada Pharmacists Association, Las Vegas, Nevada, May 1995.

"National Anxiety Disorders Screening Day," Montevista Hospital, Las Vegas, Nevada, May 1995.

Dodge A. Slagle, D.O.
Curriculum Vitae

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"National Depressive Disorders Screening Day," Montevista Hospital, Las Vegas, Nevada, October 1995.

"Insomnia," Nevada Osteopathic Medical Association, Las Vegas, Nevada, November 1999.

"Insomnia," Grand Rounds, Sunrise Hospital, Las Vegas, Nevada, January 2000.

"Creating Healthy Marriages," Nellis Air Force Base, Las Vegas, Nevada, May 2000.

"Depression and Anxiety Treatment Update," Nevada Osteopathic Medical Association Winter Symposium, Lake Tahoe, Nevada, January, 2001

"Insomnia and Sleep Disturbances," Nevada Osteopathic Medical Association Winter Symposium, Lake Tahoe, Nevada, January, 2001

"Psychopharmacology," Nevada Speech and Hearing Association Annual Meeting, Las Vegas, Nevada, March, 2001.

"Treatment of Depression in Dementia," Sierra Health Services, Las Vegas, Nevada, May 2001.

"Treatment of Psychosis in Dementia," Sierra Health Services, Las Vegas, Nevada, May 2001.

"Advances in the Treatment of Depression: Achieving Remission," Sunrise Hospital Grand Rounds, Las Vegas, Nevada, May 2002.

"The Evaluation and Management of Anxiety Disorders," Nevada Osteopathic Medical Association Spring Symposium, Henderson, Nevada, May, 2002.

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"Achieving Remission in Depression," Nevada Association of Family Physicians Fall Conference, Las Vegas, Nevada, September, 2002.

"Making Sense of Antidepressants," Magellan Behavioral Health, Las Vegas, Nevada, September 2002.

"Insomnia: Effects on Staff and Patients," Summerlin Hospital Medical Center Fall Conference, Las Vegas, Nevada, October, 2002.

"Management of Psychosis and Depression in Dementia," Dementia Seminar, Sierra Health Services, Las Vegas, Nevada, November, 2002.

"Bipolar Disorder," University Medical Center Grand Rounds, Las Vegas, Nevada, November 2003.

"Management of Behavioral Disturbances Associated With Dementia," Sunrise Hospital Dementia Seminar, Las Vegas, Nevada, December 2003.

"Treating the Spectrum of Psychiatric Disorders," Nevada Psychiatric Association, Reno, Nevada, May 2004.

"Update on Psychiatry and Psychopharmacology," Nevada Osteopathic Medical Association Spring Meeting, Henderson, Nevada, May 2004.

"Emotional and Physical Symptoms of Depression: A New Treatment Option for Depression," Nevada Psychiatric Association, Las Vegas, Nevada, September 2004.

"Achieving Remission in Depession: Strategies for the Primary Care Physician," Prime Med Update, May, 2005.

"Psychological and Physical Symptoms of Depression," Managing Complexity: Depression and COPD, Albuquerque, New Mexico, September, 2005.

Dodge A. Slagle, D.O.
Curriculum Vitae

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"Understanding the Management of Depression," Managing Complexity: Depression and COPD, Albuquerque, New Mexico, September, 2005.

"Evaluating and Effectively Managing Depression," New Mexico Osteopathic Medical Association 25th Annual Balloon Fiesta Medical Symposium, Albuquerque, New Mexico, October, 2005.

"Insomnia: Clinical Impact and Interventions," Western States Physician's Assistant Conference, Las Vegas, Nevada, March 2006.

"Attention Deficit Hyperactivity Disorder," Nevada Osteopathic Medical Association Spring Symposium, Las Vegas, Nevada, May 2006.

"Atypicality, from Theory to Practice," Nevada Psychiatric Association, Las Vegas, Nevada, March 2008.

"Adult ADHD: Diagnostic and Treatment Issues," Nevada Osteopathic Medical Association Annual Convention, Las Vegas, Nevada, April-May 2010.

COMMITTEE ACTIVITIES:

Resident Representative to Didactic Subcommittee, Wright State University Department of Psychiatry, 1988-1989.

Pharmacy and Therapeutics Committee, Nellis AFB Hospital, 1989-1992.

Executive committee of the Medical Staff, Nellis AFB Hospital, 1990-1992.

Paper Reviewer, The International Journal of Psychiatry in Medicine, 1991; Journal of Neuropsychiatry, 1994 to present.

Docket 73307 Document 2017-33011

Dodge A. Slagle, D.O.
Curriculum Vitae

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Performance Improvement Committee (past Chairman), Montevista Hospital, 1992-1999.

Medical Executive Committee (past Chairman), Montevista Hospital, 1992 to 2001.

Peer Review Committee, Montevista Hospital, 1992-2002.

Pharmacy and Therapeutics Committee (past Chairman), Montevista Hospital, 1992-2000.

Bylaws Committee (past Chairman), Montevista Hospital, 1993 to 1999.

Credentials Committee (past Chairman), Montevista Hospital, 1992 to 2000.

Quality Council (past Chairman), Montevista Hospital, 1999 to 2000.

Medical Records / Utilization Review Committee (past Chairman), Montevista Hospital, 2000.

Safety Committee, Montevista Hospital, 1994-1996.

Secretary of the Medical Staff, Montevista Hospital, 1994-1996.

Professionals Reaching Nevada – Pharmacists Recovery Network, Nevada (Medical Director), 1995-2000.

Vice Chief of Staff, Montevista Hospital, 1996-1997.

Chief of Staff, Montevista Hospital, 1998-2000.

Peer Review Committee, Western Region, Magellan Behavioral Health, 2001 to 2004.

Dodge A. Slagle, D.O.
Curriculum Vitae

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Nevada Medical Director, MHNet Behavioral Health, 2009 to present.

CURRENT SPEAKER'S BUREAUS:

Novartis	Astra Zeneca
Forest	Merck
Pfizer	Sanofi Aventis

OTHER FACULTY APPOINTMENTS

MIDWESTERN UNIVERSITY COLLEGE OF OSTEOPATHIC MEDICINE
(ADJUNCT CLINICAL FACULTY)

CONSULTANT:

Cephalon
Forest

CLINICAL INVESTIGATOR (PAST ACTIVITY):

Pfizer
Bristol Myers
Forest
Glaxo Smith Kline
Eli Lilly

PROFESSIONAL ORGANIZATIONS:

American Osteopathic Association (1981 to present)
American Psychiatric Association (1985 to present)
Nevada Osteopathic Medical Association (1990 to present)
Nevada Association of Psychiatric Physicians (1989 to present)

Updated:
9/1/10

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CV – Dr. Jerome Nwokiki

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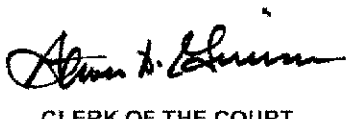

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NOTC

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
SHANNON CLOWERS
Deputy District Attorney
Nevada Bar #0010008
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

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

Defendant.

CASE NO: 10C264079

DEPT NO: XVIII

NOTICE OF EXPERT WITNESSES
[NRS 174.234(2)]

TO: KEVIN MARQUETTE GIPSON, aka, Kevin Marquett Gipson, Defendant; and

TO: PUBLIC DEFENDER, Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF NEVADA intends to call the following witnesses in its case in chief:

DR. BROWER – is a physician employed by University Medical Center. He is expected to testify regarding the injuries, medical care and treatment of Brittney Lavoll.

DR. COUSINS – is a physician employed by University Medical Center. He is expected to testify regarding the injuries, medical care and treatment of Brittney Lavoll.

R. DAHN, LVMPD P#5947 – is a Crime Scene Analyst with the Las Vegas Metropolitan Police Department. She is an expert in the area of the identification, documentation, collection and preservation of evidence and will give opinions related thereto. She is expected to testify regarding the identification, documentation, collection and preservation of evidence in this case.

G. FLOHR, LVMPD P#12912 – is a detective with the Las Vegas Metropolitan Police Department and an expert in the area of Concealed Information Testing (CIT). He has knowledge of the administration of the CIT examination, and the responses received and the measured reactions of the Defendant upon being posed various questions.

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E. GUENTHER, LVMPD P#5891 – is a Latent Print Examiner with the Las Vegas Metropolitan Police Department. He is an expert in the area of latent print examination and comparison and will give scientific opinions related thereto. He will testify regarding the various latent print comparisons he performed in this case.

A. MACEO, LVMPD P#7828 – is a Latent Print Examiner with the Las Vegas Metropolitan Police Department. She is an expert in the area of latent print examination and comparison and will give scientific opinions related thereto. She will testify regarding the various latent print comparisons she performed in this case.

J. MARSCHNER, LVMPD P#8806 – is a Forensic Scientist with the Las Vegas Metropolitan Police Department. She is an expert in the area DNA technology and will give scientific opinions related thereto. She is expected to testify regarding the DNA profiling analysis and related procedures she performed in this case.

S. NORMAN, LVMPD P#3110 – is a Crime Scene Analyst with the Las Vegas Metropolitan Police Department. She is an expert in the area of the identification, documentation, collection and preservation of evidence and will give opinions related thereto. She is expected to testify regarding the identification, documentation, collection and preservation of evidence in this case.

D. PROIETTO, LVMPD P#8180 – is a Crime Scene Analyst with the Las Vegas Metropolitan Police Department. He is an expert in the area of the identification, documentation, collection and preservation of evidence and will give opinions related thereto. He is expected to testify regarding the identification, documentation, collection and preservation of evidence in this case.

P. SCHELLBERG, LVMPD P#5413 – is a Crime Scene Analyst with the Las Vegas Metropolitan Police Department. He is an expert in the area of the identification,

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documentation, collection and preservation of evidence and will give opinions related thereto. He is expected to testify regarding the identification, documentation, collection and preservation of evidence in this case.

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DR. L. SIMMS, CCME #0002 and/or DR. G. TELGENHOFF, CCME #0003 – is a medical doctor employed by the Clark County Coroner Medical Examiner. He is an expert in the area of forensic pathology and will give scientific opinions related thereto. He is expected to testify regarding the cause and manner of death of Brittney Lovall.

S. SMITH, LVMPD P#6650 – is a Crime Scene Analyst with the Las Vegas Metropolitan Police Department. She is an expert in the area of the identification, documentation, collection and preservation of evidence and will give opinions related thereto. She is expected to testify regarding the identification, documentation, collection and preservation of evidence in this case.

R. STONE, LVMPD P#2887 – is a Firearm/Toolmark Examiner with the Las Vegas Metropolitan Police Department. He is an expert in the area of firearm/toolmark analysis and will give opinions related thereto. He is expected to testify regarding the firearms and bullet trajectory comparison of certain evidence collected from the various crime scenes.

The substance of each expert witness's testimony and a copy of all reports made by or at the direction of the expert witness have been provided in discovery.

A copy of each expert witness's curriculum vitae, if available, is attached hereto.

BY _____
DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing was made this 19th day of April, 2011, by Electronic Filing to:

PUBLIC DEFENDER
E-mail Address: pdclerk@co.clark.nv.us

BY: /s/ J. Georges
Secretary for the District Attorney's Office

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Las Vegas Criminalistics Bureau
Statement of Qualifications

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Sep 28 2017 10:06 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Name: Robbie Dahn P# 5947 Date: 8-28-03

CURRENT CLASSIFICATION

	Classification	*Minimum Qualifications*
	Crime Scene Analyst I	AA Degree with major course work in Criminal Justice, Forensic Science, Physical Science or related field, including specialized training in Crime Scene Investigation.
	Crime Scene Analyst II	18 months - 2 years continuous service with LVMPD as a Crime Scene Analyst I.
X	Senior Crime Scene Analyst	Two (2) years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst.
	Crime Scene Analyst Supervisor	Four (4) years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a Bachelor's Degree from an accredited college or university with major course work in Criminal Justice, Forensic Science, Physical Science or related field.

FORMAL EDUCATION

Institution	*Major*	*Degree/Date*
UNLV	Criminal Justice	Bachelors Degree

TESTIMONY

Yes	*No*	

EMPLOYMENT HISTORY

Employer	*Title*	*Date*
LVMPD	Sr. Crime Scene Analyst	1997

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DAHN, ROBBIE P# 5947

CRIMINALISTICS BUREAU - FIELD

SENIOR CSA SS#: 530-56-4095 DOH: 07-13-97

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DATE	CLASS TITLE	AGENCY	CREDIT HOURS
08-15-97	Bachelor of Arts - Criminal Justice	UNLV	
07-28-98	New Civilian Employee Orientation	LVMPD	14
08-10-98	Stress Management	LVMPD	4
08-10-98	Capstun for Civilians	LVMPD	1.50
07-13 to 08-14-98	Crime Scene Analyst Academy - Criminalistics Bureau	LVMPD	175
08-12-98	Civilian Use of Force & Firearms Training	LVMPD	21
08-12-98	Duty Weapon Qualification	LVMPD	2
08-13-98	Combat Shooting Simulator - FATS	LVMPD	1
10-20-98	Criminalistics Bureau - Field Training	LVMPD	400
11-01-98	Nevada State Division of the International Assoc. for Identification (NSDIAI) - Active Charter Member # 00055	NSDIAI	
12-10-98	WordPerfect 8.0	LVMPD	4
01-07-99	Class II - Driver Training	LVMPD	8
02-17-99	Understanding Death and Grief Issues	LVMPD	4
01-12-99	Training - Motor Home Driving	LVMPD	4
03-15-99	International Assoc. for Identification (IAI) - Active Member # 16926	IAI	
03-16-99	Award Presentation and PR Photography	LVMPD	2
03-23 to 03-26-99	Clandestine Laboratory Safety Certification Course	LVMPD	40
04-07-99	Certificate of Achievement, graduated course in Forensic Science and Investigation (AIAS)	American Institute of Applied Science, Inc.	260
04-07-00	Winning Courtroom Confrontations Seminar		4
04-28 to 04-30-99	First Annual Educational Conference Opening Ceremonies (2) Banquet (3)	NSDIAI	
"	Fingerprint Classification	NSDIAI	2
"	Laboratory Photography	NSDIAI	2
"	Death Investigations	NSDIAI	2
"	Traffic Photography	NSDIAI	2

"	Footwear/Tire Tracks	NSDIAI	2
"	Superglue	NSDIAI	2
05-07-99	Critical Procedures Test	LVMPD	2
09-13 to 09-17-99	Crime Scene Technology 2	Northwestern University Traffic Institute	40
10-25 to 10-29-99	Basic Fingerprint Classification	FBI	40
05-03 to 05-05-00	Second Annual Educational Conference Shoebox Labeling (Also see items below)	NSDIAI	1
"	Gadgets and Gizmos	NSDIAI	2
"	Handwriting	NSDIAI	2
"	Polly Klass	NSDIAI	3
"	WIN-AFIS	NSDIAI	2
"	Galaxy Air Crash	NSDIAI	2
"	Photo FP Tech	NSDIAI	2
"	Child Abuse	NSDIAI	2
"	Arson Investigations	NSDIAI	2
09-13-00	Trial Testimony for Law Enforcement		
12-23-00	Crime Scene Certification Board - Completed all requirements and tests for - Crime Scene Technician	IAI	
03–19 to 03-21-01	Practical Homicide Investigation	P.H.I. Investigative Consultants, Inc.	24
04-11 to 04-13-01	NSDIAI - 3rd Annual Educational Conference Florazine	NSDIAI	2
"	Officer Involved Shootings	NSDIAI	3
"	Child Exploitation	NSDIAI	2
06-04 to 06-08-01	Bloodstain Evidence Workshop I	Northwestern University Center for Public Safety	40
11-27-01	Bloodstain Pattern Analysis - Angle of Impact Proficiency Exercise - Certificate #28	LVMPD Criminalistics Bureau	3
03-25 to 03-26-02	Medical Death Investigation	Public Agency Training Council - National Crime Justice	16
03-30-02	Documentation of Footwear & Tire Impressions	LVMPD	1
04-01-02	Chemical Enhancements of Bloodstains, Preliminary Steps	LVMPD Criminalistics Bureau	1
04-02-02	Objective Approach to the Crime Scene	LVMPD	1

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04-02-02	Clandestine Laboratory Safety - Fingerprint Processing	LVMPD	1
04-02-02	Major Case Prints	LVMPD	3
04-16-02	Forensic Anthropology	LVMPD - Criminalistics Bureau	1.5
07-01-02	Successfully completed all requirements and tests - Qualified as Crime Scene Analyst (Level 2)	International Association for Identification (IAI)	
08-04 to 08-10-02	87th International Educational Conference - See below	IAI	
"	W-57: Examination of Bloodstained Clothing	"	4
"	W-39: Intermediate Dye Staining Workshop	"	2
"	W-60: Impact Pattern Reconstruction	"	2
"	W-75: Techniques of Electrostatic Lifting at Crime Scenes	"	2
12-18-02	Civilian Use of Force & Firearms Training	LVMPD	24
01-20 to 01-24-03	Advanced Ridgeology Science Workshop	Forensic Identification Training Seminars	40
02-03 to 02-05-03	Shooting Incident Reconstruction - Forensic Identification Training Seminars	LVMPD	24
02-06 to 02-08-03	Advanced Shooting Incident Reconstruction (for LVMPD)	Forensic Identification Training Seminars	24
06-04-03	Evidence Impounding - Areas of Concern	LVMPD	3

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT
FORENSIC LABORATORY
STATEMENT OF QUALIFICATIONS

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Date: 12/20/2013

Name: Edward S. Guenther P#: 5891 Classification: Forensic Scientist II

Current Discipline of Assignment: Latent Prints

EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)			
Controlled Substances		Blood Alcohol	
Toolmarks		Breath Alcohol	
Trace Evidence		Arson Analysis	
Toxicology		Firearms	
Latent Prints / Shoe Track Analysis	X	Crime Scene Investigations	X
Serology		Clandestine Laboratory Response Team	
Document Examination		DNA Analysis	
Quality Assurance		Technical Support /	

EDUCATION

Institution	Dates Attended	Major	Degree Completed
University of South Florida	9/82 - 12/84	Criminal Justice	BA
Ohio University	9/77 - 12/79	Criminal Justice	n/a
University of Akron	9/73 - 6/75	Biology	n/a

ADDITIONAL TRAINING / SEMINARS

Course / Seminar	Location	Dates
Fingerprint Technician School	FBI - Washington, D.C.	9/75 - 11/75
Basic Latent Print Training	London, Ohio	2/77 - 5/77
Basic Footwear Identification Training	Tallahassee & Tampa, FL	10/81 - 12/82
Identification Photography	Quantico, VA	4/83
Latent Fingerprint Analyst Seminar	Tallahassee,FL	11/83
Bloodstain Evidence Workshop	Tallahassee, FL	3/85
Basic Crime Scene Training	Tampa & Tallahasse, FL	8/85 - 10/85
Forensic Footwear and Tire Track Seminar	Tallahassee, FL	3/86
Forensic Archeology and Anthropology Seminar	Tallahassee, FL	2/87

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ADDITIONAL TRAINING / SEMINARS		
Course / Seminar	Location	Dates
Police Arson School	Quantico, VA	4/88
Forensic Identification of Shoe & Tire Prints	Tallahassee, FL	4/88
Collection and Preservation of Physical Evidence	Quantico, VA	3/89
Advanced Techniques in Crime Scene Seminar	Tallahassee, FL	3/90
Advanced Latent Fingerprint Examiners Seminar	Tampa, FL	9/90
Demystifying Palm Prints	Tampa, FL	1/92
AFIS Training Seminar	Tampa, FL	12/92
Identification of Vehicles Through Tire Tracks	Tallahassee, FL	5/93
Latent Print Development Techniques	Tallahassee, FL	11/95
Tire Tracks as Evidence	Panama City, FL	10/96
NFSTC Laboratory Auditing	Las Vegas, NV	6/99
Digital Enhancement for the ID/Forensic Section	El Cajon, CA	8/99
Conducting Performance Audits	Las Vegas, NV	3/00
Forensic Identification Training Seminars, LLC - Advanced Ridgeology Comparison Techniques	Las Vegas, NV	1/01
Digital Imaging Workshop	Las Vegas, NV	9/01
Digital Imaging Workshop	Las Vegas, NV	10/01
ABFDE Daubert Seminar - The Daubert World - Past, Present and Future	Las Vegas, NV	6/02
NEC AFIS Training / FW21-Latent User Methods and Operations	Las Vegas, NV	7/02
NEC / Archive User Methods and Operations	Las Vegas, NV	8/02
Computer Basics	Las Vegas, NV	1/04
Nevada State Division of the International Association for Identification - *A Friction Ridge Story*	Las Vegas, NV	4/04
Nevada State Division of the International Association for Identification - *Death Investigations Role of the Medical Examiner*	Las Vegas, NV	4/04
Nevada State Division of the International Association for Identification - *Digital Imagery*	Las Vegas, NV	4/04

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ADDITIONAL TRAINING / SEMINARS		
Course / Seminar	**Location**	**Date**
Audit Refresher	Las Vegas, NV	11/08
Ridgeology Science Workshop	Las Vegas, NV	11/06
Paradigm Shift in Forensic Sciences	Las Vegas, NV	11/06
Analysis of Distortion in Latent Prints	Las Vegas, NV	5/07
FBI-Universal Latent Workstation Training Program	Phoenix, AZ	09/27/07
Forensic Digital Imaging	Las Vegas, NV	01/07-01/10/08
Meetings		
International Association for Identification	Orlando, FL	8/83
International Association for Identification	Savannah, GA	7/85
FDIAI Conference	Stuart, FL	10/87
FDIAI Conference	Tallahassee, FL	10/91
FDIAI Conference	Tampa, FL	10/95
FDIAI Conference	Panama City, FL	10/96
FDIAI Conference	Palm Beach, FL	10/97
1998 Printrak Users Conference	Anaheim, CA	9/98
International Association for Identification - 87th International Educational Conference	Las Vegas, NV	8/02
International Association for Identification - 92nd International Educational Conference	San Diego, CA	7/07

COURTROOM EXPERIENCE		
Court	**Discipline**	**Number of Times**
State Courts of Florida, Ohio & Nevada	Latent Prints	>200
Federal Courts of Florida & Nevada	Latent Prints	> 10
State Courts of Florida & Nevada	Shoe Tracks	> 50
Federal Courts of Nevada	Shoe Tracks	1
State Courts of Florida	Crime Scene Analysis	approx 30

EMPLOYMENT HISTORY		
Employer	**Job Title**	**Date**
Las Vegas Metropolitan Police Dept.	Forensic Scientist II	5/98 - current

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EMPLOYMENT HISTORY		
Employer	Job Title	Date
Florida Department of Law Enforcement	Senior Crime Lab Analyst - Latents, Shoes, Crime Scene	3/80 - 5/98
Ohio Bureau of Criminal Identification and Investigation	Latent Print Examiner	2/77 - 3/80
Federal Bureau of Investigation	Fingerprint Technician	6/75 - 11/76

PROFESSIONAL AFFILIATIONS	
Organization	Date(s)
Active member of the International Association for Identification	current
Active member of the Florida Division of the International Association for Identification	1986 - 1998

PUBLICATIONS / PRESENTATIONS:
None

OTHER QUALIFICATIONS:
Certified Latent Print Examiner by the International Association for Identification - expires 12/18/10 (certified since December 1997)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
FORENSIC LABORATORY
STATEMENT OF QUALIFICATIONS

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Date: 12/13/07

Name: Alice V. Maceo P#: 7828 Classification: Forensic Lab Manager

Current Discipline of Assignment: Supervise Latent Prints Detail

EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)			
Controlled Substances		Blood Alcohol	
Toolmarks		Breath Alcohol	
Trace Evidence		Arson Analysis	
Toxicology		Firearms	
Latent Prints	X	Crime Scene Investigations	X
Serology		Clandestine Laboratory Response Team	
Document Examination		DNA Analysis	
Quality Assurance		Technical Support /	

EDUCATION

Institution	Dates Attended	Major	Degree Completed
University of Alaska, Anchorage	1/92 - 8/94	Biology	BS
St. Mary's College of Maryland	9/90 - 12/91	Biology	

ADDITIONAL TRAINING / SEMINARS

Course / Seminar	Location	Dates
The Management Conference	Las Vegas, NV	12/13/07
The Women's Conference	Las Vegas, NV	10/22/07
Interpersonal Communication Skills for Business Professionals	Las Vegas, NV	10/9 - 10/10/07
The Biometric Consortium Conference	Baltimore, MD	9/11 - 9/13/07
Managing Emotions Under Pressure	Las Vegas, NV	9/10/07
IAI 92nd Educational Conference	San Diego, CA	7/23 - 7/27/07
Indiana University Expert Cognitive Psychology Study	Bloomington, Indiana	5/17 - 5/20/07
The Paradigm Shift in Forensic Sciences	Las Vegas, NV	11/9 - 11/10/06
ASCLD Meeting	San Francisco, CA	10/2 - 10/5/06

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ADDITIONAL TRAINING / SEMINARS		
Course / Seminar	**Location**	**Dates**
Management Problems of the Technical Person in a Leadership Role	Las Vegas, NV	8/11/06
Forensic Digital Imaging	Thornton, CO	7/24 - 7/26/06
IAI 91st Educational Conference	Boston, MA	7/3 - 7/7/06
International Symposium on Fingerprints	Interpol Headquarters, Lyon, France	5/17 - 5/18/06
Indiana University Latent Print Research Consulting Meeting	Bloomington, Indiana	5/15 - 5/16/06
NIST Latent Testing Workshop	Gaithersburg, MD	4/5 - 4/6/06
Workshop on Ethical and Social Implications of Biometric Identification Technology: Towards and International Approach	European Commission on Science and Society, Brussels, Belgium	12/15 -12/16/05
New England Division IAI Educational Conference	Burlington, VT	11/2/05 - 11/405
ANSI/NIST Fingerprint Standard Update	Gaithersburg, MD	4/26 - 4/28/05
Fingerprint Society Lectures 30th Annual Conference	Brighton, England	3/18 - 3/20/05
Daubert and The Comparative Sciences	Las Vegas, NV	10/29 - 10/30/04
Team Building is for Everyone	Las Vegas, NV	9/28/04
IAI 89th Educational Conference	St. Louis, MO	8/23 - 8/2704
Problem Solving, Independent Decision Making Alt	Las Vegas, NV	8/12/04
Indiana University Expert Cognitive Psychology Study	Bloomington, Indiana	12/15/03
Indiana Division IAI Training Conference	Indianapolis, Indiana	10/21 -10/23/03
IAI 88th Educational Conference	Ottawa, Ontario Canada	7/7 - 7/11/03
Driver's Training	Las Vegas, NV	4/17/03
28th Annual Educational Conference of Fingerprint Society	Oxford, England	3/7 - 3/9/03
FW21 and LEXS Upgrade User Methods and Operations	NEC, Las Vegas, NV	2/5/03
Southern California Association of Fingerprint Officers (SCAFO) Meeting	West Covina, CA	10/11- 10/12/02
IAI 87th Educational Conference	Las Vegas, NV	8/4 - 8/10/02
"The Daubert World: Past, Present, and Future"	Las Vegas, NV	6/21 - 6/23/02
Physical Fracture Match Workshop	Arlington, TX	12/01
The Fingerprint Society Centennial Conference on Identification	London, England	6/25 - 6/29/01

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ADDITIONAL TRAINING / SEMINARS		
Course / Seminar	**Location**	**Dates**
Crime Scene Reconstruction	Miami, FL	8/00
IAI 85th Educational Conference	Charleston, WV	7/23 - 7/29/00
Latent Print Searches in AFIS 21	Anchorage, AK	6/21 - 6/22/00
Combined Advanced Ridgeology, Demystifying Palm Prints and Comparison Techniques: Research and Graduate Assistant	Salem, Oregon	10/18 - 10/29/99
IAI 84th Educational Conference	Milwaukee, WI	7/11 - 7/17/99
Investigative Photography - Intermediate Level	Anchorage, AK	4/99
Administrative Advanced Latent Fingerprint School	Quantico, VA	3/8 - 3/26/99
Bloodstain Pattern Analysis	Miami, FL	12/98
Combined Advanced Ridgeology, Demystifying Palm Prints and Comparison Techniques	Meridian, Mississippi	10/26 - 11/6/98
Crime Scene Investigation II	Miami, FL	8/98
Advanced Ridgeology Comparison Techniques	Mesa, AZ	5/4 - 5/8/98
Mastering Expert Testimony	Mesa, AZ	4/27 - 5/1/98
Crime Scene Investigation	Miami, FL	2/98
Methods of Instruction	Anchorage, AK	1/12 - 1/16/98
Photography	Anchorage, AK	11/13/97
Latent Fingerprint Development	Anchorage, AK	6/3 - 6/5/97
Uniform Investigator Training	Anchorage, AK	5/19 - 5/22/97

COURTROOM EXPERIENCE		
Court	**Discipline**	**Number of Times**
District Court of Clark County	Latent Print Examination	12
Nevada Grand Jury	Latent Print Examination	11
Nevada Justice Court	Latent Print Examination	10
Nevada Federal Court	Latent Print Examination	7
Alaska Superior Court	Latent Print Examination	5
Alaska Grand Jury	Latent Print Examination	2

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EMPLOYMENT HISTORY		
Employer	**Job Title**	**Date**
LVMPD Forensic Laboratory	Forensic Lab Manager	7/06 - present
LVMPD Forensic Laboratory	Latent Print Examiner II	9/02 - 6/06
Henderson Police Department	Crime Scene Analyst II	8/01 - 7/02
Henderson Police Department	Forensic Consultant	5/01 - 8/01
State of Alaska Crime Laboratory	Latent Print Examiner III	4/97 - 4/01

PROFESSIONAL AFFILIATIONS	
Organization	**Date(s)**
Journal of Forensic Identification Editorial Review Board	2007 - present
General Forensics Technology Working Group	2007 - present
The Fingerprint Society, Fellow	2002 - present
International Association for Identification (IAI), Distinguished Member 2004	1997 - present
Scientific Working Group on Friction Ridge Analysis, Study and Technology (SWGFAST)	2001 - present

PUBLICATIONS / PRESENTATIONS:
Publications:
Maceo, Alice. "Scars in Friction Ridge Skin", Evidence Technology Magazine, July 2005, p.26-28.
Maceo, Alice. "The Basis for The Uniqueness and Persistence of Scars in the Friction Ridge Skin", Fingerprint Whorld, 2005, 31:121, p. 147-161.
Maceo, Alice. "The Biology of Skin", Journal of Forensic Identification 2003, 53 (5), 585-595.
Wertheim, Kasey and Maceo, Alice. "The Critical Stage of Friction Ridge and Pattern Formation", Journal of Forensic Identification, 2002, 52:1, P. 23 - 73.
Maceo, Alice and Wertheim, Kasey. "Use of Ninhydrin in the Recovery of Latent Prints on Adhesive Surfaces Attached to Porous Surfaces", Journal of Forensic Identification, 2000, 50:6, p. 581 - 594.
Presentations:
11/8/07 "Analysis of Distortion in Latent Prints", NEDIAI, Newport, RI
9/13/07 "Analysis of Distortion in Latent Prints", Maryland State Police, Pikesville, MD
8/9 - 8/10/07 "Analysis of Distortion in Latent Prints", Los Angeles County Sheriff's Department, San Dimas, CA
7/27/07 "Analysis of Distortion in Latent Prints", 92nd IAI Educational Conference, San Diego, CA

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PUBLICATIONS / PRESENTATIONS:
7/25/07 "Analysis of Distortion in Latent Prints", 92nd IAI Educational Conference, San Diego, CA
7/24/07 "Analysis of Distortion in Latent Prints", 92nd IAI Educational Conference, San Diego, CA
7/23/07 "Moving Forward with Objectivity" - Panel Discussion, 92nd IAI Educational Conference, San Diego, CA
6/18/07 "Latent Print Evidence", LVMPD CSA Academy, Las Vegas, NV
6/6/07 "Introduction to Forensic Science: Latent Prints", Clark County District Attorney's Office, Las Vegas, NV
5/31 - 6/1/07 "Analysis of Distortion in Latent Prints", Contra Costa County Sheriff's Office, Martinez, CA
5/14 - 5/15/07 "Analysis of Distortion in Latent Prints", Las Vegas Metro Police Dept., Las Vegas, NV
5/3 - 5/4/07 "Analysis of Distortion in Latent Prints", New York Department of Criminal Justice, Albany, NY
3/19 - 3/20/07 "Analysis of Distortion in Latent Prints", Arizona Identification Council, Mesa, AZ
12/18 - 12/19/06 "Analysis of Distortion in Latent Prints", Dutch National Police, Zoettermeer, Netherlands
12/15/06 "Forensic Science Series: Latent Prints", Clark County District Attorney's Office, Las Vegas, NV
11/10/06 "Error Rates in Non-Forensic Disciplines", ABFDE Daubert Symposium, Las Vegas, NV
10/9/06 "Error Rates: Method, Theory, and Practice", Indiana IAI Division 13th Annual Educational Conference of Forensic Investigation, Examination and Identification, Indianapolis, IN
10/9/06 "Aging and Wound Healing of the Friction Ridge Skin", Indiana IAI Division 13th Annual Educational Conference of Forensic Investigation, Examination and Identification, Indianapolis, IN
9/29/06 "Persistence of Scars in Friction Skin", SCAFO 15th Annual Forensic Training Seminar, Diamond Bar, CA
9/29/06 "Friction Ridge Skin Distortion", SCAFO 15th Annual Forensic Training Seminar, Diamond Bar, CA
8/24/06 "Biology of Friction Ridge Skin", NSDIAI Tri-State Educational Conference, Las Vegas, NV
7/7/06 "Analysis of Distortion in Latent Prints", IAI 91st Educational Conference, Boston, MA
7/5/06 "Error Rates: Method, Theory, and Practice", IAI 91st Educational Conference, Boston, MA
7/4/06 "Analysis of Distortion in Latent Prints", IAI 91st Educational Conference, Boston, MA
7/4/06 "Aging and Wound Healing in the Friction Ridge Skin", IAI 91st Educational Conference, Boston, MA
7/3/06 "Analysis of Distortion in Latent Prints", IAI 91st Educational Conference, Boston, MA
5/17/06 "Analysis of Distortion in Fingerprints", International Symposium on Fingerprints, Interpol Headquarters, Lyon, France
12/16/05 "Biometrics: Gold Mine or Land Mine For Law Enforcement", Workshop on Ethical and Social Implications of Biometric Identification Technology: Towards an International Approach organized by the European Commission on Science and Society, Brussels, Belgium
10/21/05 "Biological Basis of Uniqueness and Persistence of the Friction Ridge Skin", Arizona Identification Council Conference, Maricopa, Arizona

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PUBLICATIONS / PRESENTATIONS:
10/5/05 "Analysis of Distortion in Latent Prints", Midwestern Association of Forensic Scientists, St. Louis, Missouri
3/31/05 "Biological Basis of the Uniqueness, Persistence and Pattern Formation", Wisconsin IAI Educational Conference, Madison, WI
3/21/05 "Biological Basis of the Uniqueness, Persistence and Pattern Formation", Dutch National Police, Ridgeology Workshop, Zoettermeer, Netherlands
3/20/05 "Aging and Wound Healing of the Friction Ridge Skin", Fingerprint Society Lectures, Brighton, England
2/22/05 "Biological Basis of the Uniqueness, Persistence and Pattern Formation", Toronto Police Identification Conference, Toronto, Canada
1/13/05 "Introduction to Physical Evidence", Nevada Department of Wildlife, Las Vegas, Nevada
12/15/04, "A Friction Ridge Story", Phoenix Police Department, Phoenix, AZ
11/18/04, "The Impact of Check 21 on Latent Print Examinations", International Association of Financial Crimes Investigators, Las Vegas, NV
10/30/04, "A Friction Ridge Story", Daubert and the Comparative Sciences, Las Vegas, NV
9/21/04, "Crime Scene Chemicals", American Bio-Recovery Association, Las Vegas, NV
8/25/04, "A Friction Ridge Story", IAI 89th Educational Conference, St. Louis, Missouri
5/12/04, "A Friction Ridge Story", California State Division IAI Conference, Sacramento, California
4/8/04, "A Friction Ridge Story", Nevada State Division IAI Conference, Las Vegas, Nevada
3/9/04, "CSI: The 9 Part Series - Session 3: Latent Print Examinations", Clark County Bar Association, Las Vegas, Nevada
10/23/03, "Scientific Working Groups Update", Indiana Division IAI Training Conference
10/21/03, "Pattern Formations in Nature and Fetal Ridge Formation", Indiana Division IAI Training Conference
7/8/03, "Patterns in Nature: Natural Selection vs. Physics", IAI 88th Educational Conference, Ottawa, Canada
3/9/03 "Biology of Friction Ridge Skin", 28th Annual Educational Conference of Fingerprint Society, Oxford, England
10/11/02 "Biology of Friction Ridge Skin", Southern California Association of Fingerprint Officers (SCAFO) Meeting, West Covina, CA
6/29/01 "Friction Ridge Skin and Pattern Formation During the Critical Stage: Fact and Theory", Centennial Conference on Identification - London, England
7/25/00 "Friction Ridge Skin and Pattern Formation During the Critical Stage: Fact and Theory", IAI 85th Educational Conference - Charleston, West Virginia
7/14/99 "Use of Ninhydrin in the Recovery of Latent Prints on Adhesive Surfaces Attached to Porous Surfaces", IAI 84th Educational Conference, Milwaukee, Wisconsin
OTHER QUALIFICATIONS:
Certified Latent Print Examiner by the International Association for Identification (IAI) 2001 to present

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Certified Crime Scene Analyst by the International Association for Identification (IAI) 2000 – 2003

[FL 11/00]

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
FORENSIC LABORATORY
STATEMENT OF QUALIFICATIONS

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Date: 01/15/08

Name: Julie Marschner P#: 8806 Classification: Forensic Scientist II

Current Discipline of Assignment: Biology/DNA

EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)			
Controlled Substances		Blood Alcohol	
Toolmarks		Breath Alcohol	
Trace Evidence		Arson Analysis	
Toxicology		Firearms	
Latent Prints		Crime Scene Investigations	
Serology	X	Clandestine Laboratory Response Team	
Document Examination		DNA Analysis	X
Quality Assurance		Technical Support /	

EDUCATION

Institution	Dates Attended	Major	Degree Completed
Virginia Commonwealth University	08/2003 - 12/2004	Forensic Science	M.S.
CA Polytechnic State University, San Luis Obispo	06/1997 - 06/2001	Biological Sciences	B.S.

ADDITIONAL TRAINING / SEMINARS

Course / Seminar	Location	Dates
Internship: Virginia Department of Forensic Science - Forensic Biology and DNA Section	Richmond, VA	6/04 to 08/04
Orientation for Civilian Employees	Las Vegas, NV	10/05
Drivers Training II	Las Vegas, NV	10/05
11 th National CODIS Conference	Arlington, VA	11/05
National Institute of Justice Expert Systems Testbed Project	Huntington, WV	2/06
American Academy of Forensic Sciences 58th Annual Meeting	Seattle, WA	2/06
Serological Techniques and DNA Screening - Colleen Proffitt, MFS	Las Vegas, NV	5/06
Bode Advanced DNA Technical Workshop	Captiva Island, FL	06/06

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ADDITIONAL TRAINING / SEMINARS		
Course / Seminar	**Location**	**Dates**
Bode Workshop - "Presenting Statistics in the Courtroom"	Captiva Island, FL	06/06
Differential Extraction	Las Vegas, NV	06/06
Complex Mixture Interpretation	Lakewood, CO	08/06
17th International Symposium on Human Identification	Nashville, TN	10/06
Advanced Topics in Statistics	Nashville, TN	10/06
CODIS 5.7.3 Software Training	McLean, VA	11/06
Forensic Population Genetics and Statistics	Las Vegas, NV	11/27/06
13th National CODIS Conference	Burlingame, CA	10/07
FBI DNA Auditor Training	Burlingame, CA	10/07

COURTROOM EXPERIENCE		
Court	**Discipline**	**Number of Times**
Clark County District Court	Biology/DNA	4

EMPLOYMENT HISTORY		
Employer	**Job Title**	**Date**
Las Vegas Metropolitan Police Department Forensic Lab	Forensic Scientist	07/2005 - Present
Perlegen Sciences, Mountain View, CA	Research Assistant II	07/2001 - 08/2003

PROFESSIONAL AFFILIATIONS	
Organization	**Date(s)**
American Academy of Forensic Sciences - Trainee Affiliate in Criminalistics	02/07 - Present

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PROFESSIONAL AFFILIATIONS	
Organization	Date(s)

PUBLICATIONS / PRESENTATIONS:
None

OTHER QUALIFICATIONS:
None

[FL 11/00]

LAS VEGAS CRIMINALISTICS BUREAU
STATEMENT OF QUALIFICATIONS

Name:	SHEREE NORMAN	P#	3110	Date:	October 24, 1997

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CURRENT CLASSIFICATION

	CLASSIFICATION	*MINIMUM QUALIFICATIONS*
	CRIME SCENE ANALYST I	AA DEGREE WITH MAJOR COURSE WORK IN CRIMINAL JUSTICE, FORENSIC SCIENCE, PHYSICAL SCIENCE OR RELATED FIELD, INCLUDING SPECIALIZED TRAINING IN CRIME SCENE INVESTIGATION
	CRIME SCENE ANALYST II	18 MONTHS - 2 YEARS CONTINUOUS SERVICE WITH LVMPD AS A CRIME SCENE ANALYST I
X	SENIOR CRIME SCENE ANALYST	2 YEARS AS A CRIME SCENE ANALYST II TO QUALIFY FOR THE PROMOTIONAL TEST FOR SENIOR CRIME SCENE ANALYST
	CRIME SCENE ANALYST SUPERVISOR	4 YEARS CONTINUOUS SERVICE WITH LVMPD AND COMPLETION OF PROBATION AS A SENIOR CRIME SCENE ANALYST. MUST HAVE THE EQUIVALENT OF A BACHELOR'S DEGREE FROM AN ACCREDITED COLLEGE OR UNIVERSITY WITH MAJOR COURSE WORK IN CRIMINAL JUSTICE, FORENSIC SCIENCE, PHYSICAL SCIENCE OR RELATED FIELD.

FORMAL EDUCATION

Institution	*Major*	*Degree/Date*

TESTIMONY

Yes	*No*	
x		Eighth Judicial District, Clark County Nevada
x		Justice Courts of Las Vegas Township

EMPLOYMENT HISTORY

Employer	*Title*	*Date*
LAS VEGAS METROPOLITAN POLICE DEPARTMENT	CRIME SCENE ANALYST	12/85 present

PROFESSIONAL AFFILIATIONS

Organization	*Date(s)*
INTERNATIONAL ASSOCIATION FOR IDENTIFICATION	1990 present
IAI CERTIFICATION CRIME SCENE ANALYST	1990 present
IAI CALIFORNIA	1986 present

Curriculum Vitae

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Las Vegas Criminalistics Bureau
Statement of Qualifications

Name: PROIETTO, Daniel P# 8180 Date: 06-15-05

CURRENT CLASSIFICATION

	Classification	*Minimum Qualifications*
X	Crime Scene Analyst I	AA Degree with major course work in Criminal Justice, Forensic Science, Physical Science or related field, including specialized training in Crime Scene Investigation.
X	Crime Scene Analyst II	18 months - 2 years continuous service with LVMPD as a Crime Scene Analyst I.
X	Senior Crime Scene Analyst	Two (2) years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst.
	Crime Scene Analyst Supervisor	Four (4) years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a Bachelor's Degree from an accredited college or university with major course work in Criminal Justice, Forensic Science, Physical Science or related field.

FORMAL EDUCATION

Institution	*Major*	*Degree/Date*
UNLV	Sociology	BA 5/2000
New England School of Law	Law	JD 5/2003

TESTIMONY

Yes	*No*	
X		District Court, Justice Court

EMPLOYMENT HISTORY

Employer	*Title*	*Date*
LVMPD	CSA II	11-15-03 to Present

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LAS VEGAS CRIMINALISTICS BUREAU
STATEMENT OF QUALIFICATIONS

Name:	PETER SCHELLBERG	P#	5413	Date:	October 24, 1997

CURRENT CLASSIFICATION

	CLASSIFICATION	*MINIMUM QUALIFICATIONS*
X	CRIME SCENE ANALYST I	AA DEGREE WITH MAJOR COURSE WORK IN CRIMINAL JUSTICE, FORENSIC SCIENCE, PHYSICAL SCIENCE OR RELATED FIELD, INCLUDING SPECIALIZED TRAINING IN CRIME SCENE INVESTIGATION
	CRIME SCENE ANALYST II	18 MONTHS - 2 YEARS CONTINUOUS SERVICE WITH LVMPD AS A CRIME SCENE ANALYST I
	SENIOR CRIME SCENE ANALYST	2 YEARS AS A CRIME SCENE ANALYST II TO QUALIFY FOR THE PROMOTIONAL TEST FOR SENIOR CRIME SCENE ANALYST
	CRIME SCENE ANALYST SUPERVISOR	4 YEARS CONTINUOUS SERVICE WITH LVMPD AND COMPLETION OF PROBATION AS A SENIOR CRIME SCENE ANALYST. MUST HAVE THE EQUIVALENT OF A BACHELOR'S DEGREE FROM AN ACCREDITED COLLEGE OR UNIVERSITY WITH MAJOR COURSE WORK IN CRIMINAL JUSTICE, FORENSIC SCIENCE, PHYSICAL SCIENCE OR RELATED FIELD.

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FORMAL EDUCATION

Institution	*Major*	*Degree/ Date*
SADDLEBACK COMMUNITY COLLEGE	CRIMINAL JUSTICE	AA 5/84

TESTIMONY

Yes	*No*	
X		Eighth Judicial District, Clark County Nevada
X		Justice Courts of Las Vegas Township

EMPLOYMENT HISTORY

Employer	*Title*	*Date*
LAS VEGAS METROPOLITAN POLICE DEPARTMENT	CRIME SCENE ANALYST	1/97present
CLARK COUNTY AMINAL CONTROL	AMINAL CONTROL OFFICER 1	12/89-1/97
ORANGE COUNTY SHERIFF-CORONER DEPARTMENT	SPECIAL OFFICER 1	10/81-8/89

PROFESSIONAL AFFILIATIONS

Organization	*Date(s)*

PROFESSIONAL AFFILIATIONS	
Organization	*Date(s)*

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Curriculum Vitae

LARY A. SIMMS, D.O., M.P.H.

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4548 SPECIAL COURT
LAS VEGAS, NEVADA 89130
Telephone: 702-658-3578
e-mail: MEDXMNR@aol.
Marital Status: Married (June Elizabeth Clee Simms)

PRESENT POSITION

Chief Medical Examiner
Clark County Coroner/Medical Examiner Office
1704 Pinto Lane
Las Vegas, Nevada 89106
702-455-3210
POSITION: Chief Medical Examiner

PREVIOUS WORK EXPERIENCE

Perry Memorial Hospital
Perry, Oklahoma
July 1979 to September 1981
POSITION: Private solo office and hospital practice in family medicine including obstetrics (approximately 75 deliveries); 2000 hours of Emergency Department coverage; total patient contacts for period: 6,000.

Rock County Hospital and Clinic
Bassett, Nebraska
September 1981 to July 1982
POSITION: Private solo office and hospital practice in family medicine and obstetrics (approximately 10 deliveries); 2500 hours of Emergency Department coverage; total patient contacts for period: 1,200.

Park Medical Centers
2255 Fort Street
Lincoln Park, Michigan 48146
313-385-7505
August 1982 to June 1986
POSITION: Member of 20+ physician group that renders primary care in the Detroit and suburban area; hospital privileges at 250 bed acute care hospital, total patient contacts for period: 30,000.

Taylor Physicians-Van Born Clinic, P.C.

21711 Van Born Road
Taylor, Michigan
313-562-6040
June 1986 to January 1987
POSITION: Member of four physician group that renders primary care in the suburban Detroit area and trains family practice residents at Botsford General Hospital; hospital privileges at a 250 bed acute care hospital and a 125 bed acute care hospital; total patient contacts for period: 4500.

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Michigan Health Care Center – Park Medical Centers, Inc.
2255 Fort Street
Lincoln Park, Michigan 48146
313-385-7505
January 1987 to June 1989
POSITION: Member of 60+ physician group that renders primary care in the Detroit and suburban area; hospital privileges at 250 bed acute care hospital; total patient contacts for period: 18,000.

Blodgett Memorial Medical Center
1840 Wealthy, S.E.
East Grand Rapids, Michigan 49506
616-774-7722
July 1, 1991 to January 30, 1993
POSITION: Independent contractor for autopsy services for in-house autopsies and Kent County Medical Examiner autopsies; completed approximately one hundred thirty autopsies on a fee-for-service basis.

Cook County Office of the Medical Examiner
Stein Institute of Forensic Medicine
2121 West Harrison Street
Chicago, Illinois 60612-3705
312-666-0500
July 1, 1994 to August 15, 1998
POSITION: Deputy Medical Examiner performing approximately 500-600 medico-legal investigations per year and testify 10-15 times per year.

BOARD STATUS

Board Certified in Anatomic Pathology and Clinical Pathology in 1993 by the American Board of Pathology

Board Certified in Forensic Pathology in 1994 by the American Board of Pathology
LICENSES

Diplomate of the National Board of Osteopathic Medical Examiners (1979)
Active licenses in Illinois and Nevada

Inactive licenses in Nebraska, Michigan, Ohio and Oklahoma

EDUCATION

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Oklahoma State University
Stillwater, Oklahoma
1970-71
Completed freshman year and transferred to University of Tulsa

University of Tulsa
Tulsa, Oklahoma
1971-74
MAJOR: Philosophy
G.P.A.: 3.34
DEGREE: Bachelor of Science (B.S.)

Oklahoma State University College of Osteopathic Medicine and Surgery
(formerly Oklahoma College of Osteopathic Medicine and Surgery)
1111 West 17th Street
Tulsa, Oklahoma
1974-78
DEGREE: Doctor of Osteopathy (D.O.)

Dallas Memorial Hospital (formerly Dallas Osteopathic Hospital)
5003 Ross Avenue
Dallas, Texas
One year rotating internship with elective time in anesthesiology
1978-79

Grand Rapids Medical Education Center/Michigan State University
200 Cherry Street
Grand Rapids, Michigan
Four year Anatomic and Clinical Pathology Residency
1989-1993

Office of the Medical Examiner of Cook County
Stein Institute of Forensic Medicine
2121 West Harrison Street
Chicago, Illinois 60612-3705
312-666-0500
Fellowship in Forensic Medicine
July 1, 1993 to June 30, 1994

University of Illinois at Chicago
Office of the Dean [MC 922]
School of Public Health

2121 West Taylor Street
Chicago, Illinois 60612-7260
312-966-3832
MAJOR: Health Policy Administration and Health Information Management
G.P.A.: 4.56 (5 point grading system)
DEGREE: Master of Public Health (M.P.H.)

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ASSOCIATION MEMBERSHIPS

National Association of Medical Examiners

International Association of Coroners and Medical Examiners

PRESENTATIONS, LECTURES AND ACADEMIC CONTRIBUTIONS

Ectopic Thyroid Gland in Neck: Report of a Case (clinical staff presentation 1983)

Simultaneous Intrauterine and Extra-uterine Pregnancies: Report of a Case (clinical staff presentation 1984)

Heterozygous 21-OH Deficiency in the Father of a Neonate with Congenital Adrenal Hyperplasia: Report of a Case (clinical staff presentation 1985)

Hyperprolactinemia in an Ambulatory Clinic: Incidence, Diagnosis and Management (1985 unpublished manuscript)

Use of Plasmid Fingerprinting in the Diagnosis of Coagulase Negative Staphylococcal Septicemia (Grand Rapids Research Day presentation 1992)

Forensic Aspects of DNA (1993 Office of the Medical Examiner staff lecture series presentation)

Case Report: Lethal Morphine Doses Administered by Family Member in an Elderly Patient Admitted to a Nursing Home (1994 unpublished manuscript)

Forensic Sciences and the Medical Examiner (1994 Office of the Medical Examiner staff lecture series presentation)

Case Report: Sudden Death in A 60 Day Old Male Infant with Hypoplastic Right Coronary Artery (1995 unpublished manuscript)

Modern Death Investigation (Illinois Histology Society Annual Meeting presentation 1995)

Database Information System for Tracking Unknown Bodies in a Medical Examiner System (1996 Office of the Medical Examiner staff lecture series presentation)

Modern Death Investigation (University of Illinois at Chicago Criminal Justice Department presentation 1996)

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Case Report: Sudden Death in a 6 Day Old Male Infant with Thymic Hypoplasia and Congenital Heart Disease (1996 unpublished manuscript)

Case Report: Sudden Death and Right Ventricular Cardiomyopathy in an Adolescent Male (1996 unpublished manuscript)

Medical Examiner Information Management System: Experience of a Practicing Forensic Pathologist (1996 unpublished manuscript)

Case Report: Sudden Death in a Neonate with Congenital Aneurysm of the Right Ventricle (in preparation)

Case Report: Sudden Death Due to Group A Streptococcal Necrotizing Fascitis in an HIV-Positive Adult (in preparation)

Modern Death Investigation (University of Illinois at Chicago Criminal Justice Department presentation 1997)

Modern Death Investigation (Midwestern University Faculty Guest Lecture Series presentation 1997)

Modern Death Investigation (Clinical Staff Cook County Department of Corrections and Cermack Hospital presentation 1997)

Suicide and Illinois Law (1997 Office of the Medical Examiner staff lecture series presentation)

Total Quality management in a Medical Examiner System (1997 Master of Public Health program)

Lymphoid Activation in Sudden Infant Death Syndrome: Histology of the Lymph Nodes and Spleen in SIDS Deaths in Chicago 1995-97 (grant application in preparation)

ACADEMIC APPOINTMENTS, AWARDS AND ACTIVITIES

Office of the Medical Examiner Liaison for the University of Illinois at Chicago Department of Criminal Justice (1996 to 1998)

Medical Consultant to the Industrial Commission of the Illinois State Attorney General's Office (1996 to 1998)

Grand Rapids Area Medical Education Council Research Foundation Award (1992) for Clinical Research of Bacterial Plasmids

Chief Resident, Grand Rapids Area Medical Education Center/Michigan State University Pathology Program (1991-1992)

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Clinical Instructor, Michigan State University, Colleges of Human and Osteopathic Medicine (1990-1992)

Clinical Instructor to clinical clerks from the College of Osteopathic Medicine in Des Moines, Iowa (1985 to 1989)

Clinical Instructor to Family Practice Residents at Botsford General Hospital and Michigan Osteopathic Medical Center, Detroit, Michigan (1986-1989)

Advanced Trauma Life Support Certified, 1984

Advanced Cardiac Life Support Certified, 1983

CURRICULUM VITAE

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GARY DEAN TELGENHOFF, M.S., D.O.

Home Address:
1700 Alta Drive
Apt. 1071 Las
Vegas, NV 89106
(702) 383-7016

Office Address:
Office of the Coroner/Medical Examiner
1704 Pinto Ln.
Las Vegas, NV 89106
(702) 455-3210
E-mail: gte@co.clark.nv.us
Fax: (702) 455-0416

CERTIFICATIONS

- National Osteopathic Boards, parts I, II & III.
- Anatomic Pathology, American Board of Pathology

LICENSURE

- State of Ohio and Nevada

EMPLOYMENT

- Deputy Medical Examiner/Forensic Pathologist – Clark County Coroner's Office. Las Vegas, Nevada 8/1/98 – Present.
- Deputy Coroner/Forensic Pathologist – Montgomery County Coroner's Office Dayton, Ohio 7/1/97 – 6/30/98.

EDUCATION

FELLOWSHIP:

- Forensic Pathology, Montgomery County Coroner's Office, Dayton, Ohio 7/97 – 6/30/98.

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RESIDENCY:

- Pathology (AP)
  Medical College of Ohio at Toledo and Mercy Hospital
  Toledo, Ohio 8/95 – 6/97.
- Elective, Forensic Pathology (6 months)
  Lucas County Coroner's Office
  Toledo, Ohio.
- Pathology (AP/CP)
  Cleveland Clinic Foundation
  Cleveland, Ohio, 7/93 – 6/95.
- Forensic Training (1 month)
  Cayahoga County Coroner's Office
  Cleveland, Ohio.

INTERNSHIP:

- Transitional/rotating
  Ingham Medical Center
  Lansing, Michigan, 7/92 – 6/93.

MEDICAL SCHOOL:

- 9/88 – 6/92
  D.O.
  College of Osteopathic Medicine
  Michigan State University
  East Lansing, Michigan
  95th percentile.

GRADUATE SCHOOL:

- 8/86 – 10/89
  M.S. Biology/Physiology
  Eastern Michigan University
  Ypsilanti, Michigan

UNDERGRADUATE:

- 9/75 – 6/79
  B.A. Biology/Chemistry
  Spring Arbor College
  Spring Arbor, Michigan,

Magna Cum Laude.

OTHER:

Electron Microscopy: Eastern Michigan University, 1988. Autopsy Electron Microscopy: medical school and internship, Sparrow Hospital and Ingham Medical Center, Lansing, Michigan, 1989, 1993. Electronics: Wexford/Missaukee Vocational School, 1975.

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ABSTRACTS:

- **Telgenhoff GD,** Nine, JS. "A Fatal Automobile Accident Following an Anaphylactic Reaction to Bee Venom." Submitted for poster presentation at The *American Academy of Forensic Sciences, March 1998 meeting.*

RESEARCH:

- **Telgenhoff GD,** Renk C. "The Effect of Exercise Stress on the Mitogen-Stimulated Proliferation of Peripheral Blood Lymphocytes." Eastern Michigan University. Funded by the School of Clinical Laboratory Sciences, Department of Biology and the National Science Foundation. 10/89.

HONORS AND AWARDS:

- **Dean's List:** four years undergraduate, one-year post-graduate and two years graduate.
- **National Dean's List:** 1979, 1987, 1988.

FORMAL PRESENTATIONS:

- **"Electrical Injury; a forensic perspective."** Scientific Day, Medical College of Ohio, 5/97.
- **"Coccidioidomycosis; review and update."**
  Grand Rounds; Medical College of Ohio, 9/95.
  Grand Rounds; Cleveland Clinic Foundation, 4/95
- **"IgM Nephropathy; a distinct Clinicopathologic entity?"**
  Grand Rounds; Medical College of Ohio, 3/97.
  Grand Rounds; Cleveland Clinic Foundation, 5/94.
- **"Primary, Diffuse, Leptomeningeal Gliomatosis."**
  Scientific Day, Medical College of Ohio, 4/96.
- Numerous microbiology, internal medicine, hematology, surgical, tumor board, radiology, and morbidity and morality conferences:
  Medical College of Ohio, Mercy Hospital, Toledo 8/95 – 6/97.
  Cleveland Clinic Foundation, Cleveland, 7/93 – 6/95.

CONFERENCES AND COURSES ATTENDED:

- Practical Homicide Investigation, Las Vegas, Nevada. 5/99.
- Second Annual Pediatric Forensic Issues, San Diego, California. 10/98.

- Evidence Technician Course, Montgomery County Crime Lab, Dayton, Ohio. 10/1/97 – 10/31/97.
- American Academy of Forensic Sciences:
  - Nashville, Tennessee. 2/96.
  - San Francisco, California. 2/98.
- American Society of Clinical Pathologists:
  - Orlando, Florida. 5/95.

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TEACHING APPOINTMENTS:

- **Staff Instructor of Medical Students, Residents, Law enforcement students, Pathology assistant and investigation reservists.** Clark County Coroner's Office. 8/1/98 – present.
- **Clinical Faculty, Pathology**: School of Medicine, Wright State University. Dayton, Ohio. 7/97 – 6/98.
- **Resident Instructor of Pathology Laboratories**: Medical College of Ohio, Toledo, Ohio. 8/95 – 6/97.
- **Resident Instructor of Medical Technology Students**: Cleveland Clinic Foundation, Cleveland, Ohio. 7/93 – 6/95.
- **Resident Instructor of Medical Students**: Cleveland Clinic Foundation, Cleveland, Ohio. 7/93 – 6/95.
- **Teaching Assistant:** Medical students, histology. College of OsteopathicMedicine, Michigan State University, 9/88 – 12/88.
- **Medical Student Tutor:** Histology, Immunology, Physiology and Neuroanatomy. College of Osteopathic Medicine, Michigan State University, 9/88 – 6/90.
- **Graduate Teaching Assistant of Nursing Students:** Human Gross Anatomy, physiology and histology. Eastern Michigan University, Ypsilanti, Michigan. 9/86 – 6/88.
- **Teaching Assistant:** Genetics, Microbiology, Botany. Spring Arbor College, Spring Arbor, Michigan. 9/78 – 6/79.

OTHER EXPERIENCE:

- **Cardiac Research Assistant:** Cleveland Clinic Foundation, 7/93 – 6/95.
- **Autopsy Pathologist ("moon-lighting"):** Cleveland, Ohio, 7/94 – 6/95.
- **Autopsy Assistant (diener):** Veteran's Administration Hospital, Ann Arbor, Michigan, 1988.
- **Phlebotomist:** Veteran's Administration Hospital, Ann Arbor, Michigan, 1988.

PROFESSIONAL ORGANIZATIONS:

- Member, National Association of Medical Examiners (NAME).
- Provisional Member, American Academy of Forensic Sciences (AAFS).
- American Society of Clinical Pathologists (ASCP).

COMMITEE APPOINTMENTS:

- Child Death Review Board, Las Vegas, Nevada, 8/98 – present.

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OTHER EMPLOYMENT/EXPERIENCE:

- Full-time, professional musician, 1979 – 1989.
- Part-time, professional musician, 1994 – present.

INTERESTS:

Photography, music, travel, hiking, camping, downhill and cross-country skiing, oil and acrylic painting.

PERSONAL:

- **Birthdate** 8/3/57
- **Birthplace** Cadillac, Michigan
- **Marital Status** Single

Curriculum Vitae

STEPHANIE SMITH

Las Vegas Criminalistics Bureau
P#6650

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EMPLOYEMENT HISTORY

01/2003 LVMPD Crime Scene Analyst II

CURRENT CLASSIFICATION

-Crime Scene Analyst II-	18 months- 2 years continuous service with LVMPD as a Crime Scene Analyst I.
-Crime Scene Analyst I-	AA Degree with major course work in Criminal Justice, Forensic Science, Physical Science or related field, including specialized training in Crime Scene Investigation.
-Senior Crime Scene Analyst-	Two (2) years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst I.
-Crime Scene Analyst Supervisor-	Four (4) years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a Bachelor's Degree from an accredited college or university with major course work in Criminal Justice, Forensic Science, Physical Science or related field.

FORMAL EDUCATION

UNIVERSITY OF NEVADA, LAS VEGAS
Major: Biology
Degree/Date: Bachelors Degree/1999

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
FORENSIC LABORATORY
STATEMENT OF QUALIFICATIONS

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Date: 11-13-07

Name: Randall D. Stone P#: 2887 Classification: Forensic Scientist II

Current Discipline of Assignment: Firearms/Toolmarks

EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)			
Controlled Substances	X	Blood Alcohol	X
Toolmarks	X	Breath Alcohol	X
Trace Evidence		Arson Analysis	X
Toxicology	X	Firearms	X
Latent Prints		Crime Scene Investigations	
Serology		Clandestine Laboratory Response Team	X
Document Examination		DNA Analysis	
Quality Assurance		Technical Support /	

EDUCATION			
Institution	**Dates Attended**	**Major**	**Degree Completed**
Metropolitan State College	8/79 - 5/84	Criminalistics	BS

ADDITIONAL TRAINING / SEMINARS		
Course / Seminar	**Location**	**Dates**
Internship - Aurora Police Dept. Forensic Lab	Aurora, CO	1/84 - 5/84
Forensic Chemist Seminar	McLean, VA	12/85
Instrumental Analysis of Explosives	FBI Academy	9/86
Fundamentals of GC/MS	Portland, OR	10/88
Macro Programming	Paramus, NJ	10/88
59970C Operator Training	Paramus, NJ	9/88
Chromatographic Methods in Forensic Science	FBI Academy	7/89
Clandestine Laboratory Investigation/Safety Certification Program	Las Vegas	2/90
Abuscreen "On Trak" Workshop	Las Vegas	8/90

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ADDITIONAL TRAINING / SEMINARS		
Course / Seminar	**Location**	**Date**
Computer Basics, MS-DOS	In-service training LVMPD	10/90
Laboratory Aspects of Forensic Urine Drug Testing	Salt Lake City, UT	3/92
Clandestine Laboratory Safety Recertification Program	Salt Lake City, UT	9/92
Clandestine Laboratory Investigators Association 5th Annual Training Seminar	Salt Lake City, UT	9/92
Clandestine Laboratory Investigators Association 6th Annual Training Seminar	Las Vegas, NV	9/93
Clandestine Laboratory Safety Recertification Program	Las Vegas, NV	9/93
Hazmat Awareness Level I	In-service training LVMPD	1/94
Hazardous Materials Awareness Level I	Las Vegas, NV	1/94
Forensic Toxicology Course - Armed Forces Institute of Pathology	Washington, D.C.	4/94
Soft Conference on Drug Testing in Hair	Tampa, FL	10/94
Drug Recognition, Detection, and Evaluation	In-service training LVMPD	3/95
Clandestine Laboratory Recertification	In-service training LVMPD	3/95
Drugs That Impair Driving	In-service training LVMPD	4/95
Forensic Toxicology - Pharmacology	Orange County, CA	8/95
Clandestine Laboratory Investigating Chemists	Steamboat Springs, CO	9/95
Soft Fall Meeting	Denver, CO	10/96
Clandestine Laboratory Safety Recertification Program	San Diego, CA	9/97
CAT/NWAFS/SWAFS/SAT Meeting	Las Vegas, NV	11/97
International Association for Chemical Testing (IACT)	Las Vegas, NV	4/98
Intoxilyzer 5000 - Breath Alcohol Analysis Instrument Operation, Maintenance, & Repair	Owensboro, KY	6/98
NV State Division for the International Association for Identification Conference	Las Vegas, NV	4/99
The Robert F. Borkenstein Course on Alcohol, Drugs and Highway Safety: Testing, Research and Litigation	Bloomington, IN	8/99

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ADDITIONAL TRAINING / SEMINARS		
Course / Seminar	**Location**	**Date**
Intoxilyzer 5000 Users Group Meeting	Harrisburg, PA	8/99
California Association of Toxicologists Alcohol Workshop and Quarterly Meeting	Berkeley, CA	8/00
Intoxilyzer 5000 Users Group Meeting	Breckenridge, CO	8/00
Intoxilyzer 5000EN Breath Alcohol Analysis - Operation, Maintenance and Repair	Owensboro, KY	5/01
Intoxilyzer 5000 Users Group Meeting	Washington, DC	8/01
Digital Imaging Workshop	Las Vegas, NV	9/01
Clandestine Laboratory Safety Re-certification	Las Vegas, NV	11/01
Clandestine Laboratory Safety Re-Certification	Las Vegas, NV	7/03
Intoxilyzer 5000 User's Group Meeting	Overland Park, KS	8/03
Perkin-Elmer HS100 Training	Las Vegas, NV	1/04
Audio / Video Enhanced Terrorism Training	Las Vegas, NV	1/04
Radiological WMD Training	Las Vegas, NV	2/04
Biological/Chemical Sample Collection	Las Vegas, NV	4/04
Forensic Toxicology - Clark County Bar Association	Las Vegas, NV	4/04
Symposium on Blood and Breath Alcohol Test Program Management and Administration	Bloomington, IN	10/04
Colt 1911 Armorers School	Las Vegas, NV	8/05
Colt AR-15 / M16 Armorers School	Las Vegas, NV	8/05
Southern CA Firearms Study Group	San Bernardino, CA	10/05
Firearms & Toolmarks Introduction II - CA Department of Justice	Sacramento, CA	1/06
ATF National Firearms Academy	Ammendale, MD	10/05-9/06
Remington Factory Tour	Lonoke, AK	2/06
Ruger Factory Tour	Newport, NH	3/06
Sigarms Factory Tour	Exeter, NH	3/06
Marlin Factory Tour	North Haven, CT	3/06
Mossberg Factory Tour	North Haven, CT	3/06
Springfield Factory Tour	Springfield, MA	3/06

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ADDITIONAL TRAINING / SEMINARS		
Course / Seminar	**Location**	**Dates**
Smith & Wesson Factory Tour	Springfield, MA	3/06
Savage Factory Tour	Westfield, MA	3/06
Drill Master Factory Tour	Milford, CT	5/06
Wilson Arms Factory Tour	Branford, CT	5/06
H&R Factory Tour	Gardner, MA	5/06
Kahr Factory Tour	Gardner, MA	5/06
Charter Arms Factory Tour	Shelton, CT	5/06
Connecticut Shotgun Factory Tour	New Britain, CT	5/06
Lyman Factory Tour	Middletown, CT	5/06
U.S. Firearms Factory Tour	Hartford, CT	5/06
Colt Factory Tour	West Hartford, CT	5/06
Long Mountain Outfitters LLC-M16 Class Certified	Henderson, NV	10/06
Long Mountain Outfitters LLC-AK47 Factory Certified	Henderson, NV	10/06
NIBIN/IBIS Data Acquisition	Largo, FL	12/06
AFTE Training Seminar	San Francisco, CA	05/07
Innov-X Operators Training	Las Vegas, NV	08/07
Long Mountain Outfitters LLC-Suppressor History, Technology, & Testing Class	Henderson, NV	09/21/07
2nd Tri-Division Educational Conference / IAI / NWAFS	Salt Lake City, UT	11/07
North American Arms Factory Tour	Provo, UT	11/07
Barnes Bullets Factory Tour	American Fork, UT	11/07

COURTROOM EXPERIENCE		
Court	**Discipline**	**Number of Times**
North Las Vegas Municipal Court	Blood Alcohol	> 10
Las Vegas Municipal Court	Blood Alcohol	> 50
Las Vegas Municipal Court	Breath Alcohol	45
Clark County Justice Court	Blood Alcohol/Toxicology/Controlled Substances/Clandestine Lab	> 110
Clark County District Court	Blood Alcohol/Toxicology/Controlled Substances/Clandestine Lab/Firearms	> 26

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COURTROOM EXPERIENCE		
Court	**Discipline**	**Number of Times**
Henderson Municipal Court	Blood Alcohol/Toxicology/Controlled Substances	> 11
Henderson Municipal Court	Breath Alcohol	22
Nye County Justice Court	Blood Alcohol/Breath Alcohol/Toxicology/Controlled Substances	> 16
Lincoln County Justice Court	Breath Alcohol	7
Federal Court	Blood Alcohol/Toxicology/Controlled Substances/Clandestine Labs	> 11
Nye County District Court	Breath Alcohol/Blood Alcohol	7
Federal Court	Breath Alcohol	19
Boulder City Municipal Court	Breath Alcohol/Blood Alcohol	5
Mesquite Municipal Court	Breath Alcohol	9

EMPLOYMENT HISTORY		
Employer	**Job Title**	**Date**
United Parcel Service	Sorter/Loader	8/81 - 10/84
LVMPD Forensic Lab	Forensic Scientist I/II	11/84 - present

PROFESSIONAL AFFILIATIONS	
Organization	**Date(s)**
Northwest Association of Forensic Scientists	1985 - present
Clandestine Laboratory Investigating Chemists Association	1995 - 2006
Association of Firearms and Toolmark Examiners	2006 - present

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PUBLICATIONS / PRESENTATIONS:
05/07 Hammer Forging of Rifle Barrels - Individuality of Barrels Forged from a Single Mandrel/2007 AFTE Training Seminar-San Francisco, CA
OTHER QUALIFICATIONS:
None

[Forensic Rev. 1, 6/01]

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MLIM

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, -vs- KEVIN MARQUETTE GIPSON, aka, Kevin Marquett Gipson, #1582343 Defendant.	Case No.	10C264079
	Dept No.	XVIII

STATE'S NOTICE OF MOTION AND MOTION IN LIMINE TO ADMIT BAD ACTS AND OTHER ACTS OF THE DEFENDANT AGAINST THE VICTIM

DATE OF HEARING: 05-02-11
TIME OF HEARING: 8:15 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through SHANNON CLOWERS, Deputy District Attorney, and files this Notice of Motion and Motion in Limine to Admit Bad Acts and Other Acts of the Defendant Against the Victim.

This Motion is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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Docket 73307 Document 2017-33011

NOTICE OF HEARING

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing motion on for setting before the above-entitled Court in Department XVIII thereof, on Monday, the 2nd day of May, 2011, at the hour of 8:15 o'clock A.M., or as soon thereafter as counsel may be heard.

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DATED this 19th day of April, 2011.

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY /s/ Shannon Clowers
SHANNON CLOWERS
Deputy District Attorney
Nevada Bar #010008

STATEMENT OF FACTS

On March 25, 2010, at approximately 5:45 a.m., Robert "Lee" Gilmore and Wade Fleming were leaving Einstein Bagels located at 7541 West Lake Mead Boulevard, Las Vegas, Nevada. As they were nearing Fleming's truck they heard what they thought was a woman screaming loudly across the street at the Jack in the Box restaurant located at 7510 West Lake Mead Boulevard, Las Vegas, Nevada. Gilmore and Fleming then heard a single gunshot from the Jack in the Box area and immediately called 911.

As they approached the area of the gunshot, they were joined by another individual, Christian Benitez, who had been at Starbucks just next to Einstein Bagels. All three noticed what appeared to be a male in a dark hooded sweatshirt running south easterly down Lake Mead Boulevard. Neither Benitez, nor Gilmore, nor Fleming could identify the individual running away from the Jack in the Box. Fleming approached the victim as she lay in a parking stall at the Jack in the Box. Fleming noticed the victim's Jack in the Box name tag and yelled "Brittney" over and over to see if she would respond. Fleming got no response and thought she was dead.

Christina Bailey works at the Vons grocery store located in the same shopping complex as the Jack in the Box. She works the graveyard shift at Vons and was leaving the store in her vehicle when she heard the scream coming from Jack in the Box. Bailey drove towards the Jack in the Box and noticed a female laying on the ground with a male in a dark hooded sweatshirt standing over her. It appeared to Bailey that the male was helping the female, who appeared drunk, to her vehicle. Bailey did not hear a gunshot and thought everything appeared to be okay.

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Bailey proceeded to the stoplight at the intersection of the Vons shopping center and Lake Mead. She was there for approximately 30 seconds when she noticed the same male with the hooded sweatshirt sprint past her vehicle onto Lake Mead Boulevard heading east. Bailey decided to follow the individual as he raced down Lake Mead, but eventually lost him as he darted between buildings. Bailey could not identify the individual other than to say he was an African-American.

Homicide detectives arrived to the scene and were notified that the victim had been transported to UMC Trauma as she was still showing signs of life. Detectives were able to determine that the victim was Brittney Lavoll, who was on her way into work as an assistant manager at the Jack in the Box. At 6:15 a.m., Dr. Cousins of UMC Trauma pronounced Brittney dead of an apparent gunshot wound to the head. An autopsy performed by Dr. Telgenhoff on March 26, 2010, revealed that the cause of death was a distant penetrating gunshot wound to the head.

At the scene, detectives located two sets of keys belonging to Brittney Lavoll, a cartridge case bearing the head stamp "25 AUTO CBC", and a spit puddle containing potential DNA next to Brittney. Brittney's 1995 Jeep Grand Cherokee was parked in a stall near the Jack in the Box. Inside the vehicle, detectives located a black jacket with apparent blood stains.

Charles Lavoll, Brittney's father, came to the scene and spoke to detectives. Upon learning that his daughter was shot, Charles immediately advised that the shooter was likely Kevin Gipson. Charles intimated that Gipson and Brittney had been in a dating relationship

for several years and had two children together. They broke up because Gipson was abusive towards Brittney and refused to leave her alone. Brittney had to switch Jack in the Box locations due to Gipson harassing her at work, as well as move to a different apartment. According to Mechele Lavoll, Brittney's mother, Gipson was looking for Brittney approximately four to five months before the shooting and had threatened Mechele that he would shoot Brittney.

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In an attempt to locate Gipson, detectives went to the Summerhill Apartment Complex at 3630 E. Owens, Las Vegas, Nevada where Gipson's mother Lenda Jackson resided. While at the apartment, Gipson called his mother. Lenda handed the phone to Detective Long. Gipson denied any involvement in the murder saying that he had spent the night at a friend's house and did not learn of the murder until his mother called and notified him. Gipson agreed to meet with detectives to discuss the incident further.

On March 25, 2010 at approximately 3:20 p.m., detectives met with Gipson at the Homicide offices. Gipson was told that he was not under arrest and could stop the interview at any time.

Gipson stated that he dated Brittney for five years and had two children with her, but broke up approximately one year before. The previous night, Gipson had spent the night at Denise Nelson's house located at 824 Levy, Las Vegas, Nevada. Gipson, Denise, and her boyfriend Larry "Mississippi" Glinsey went to a party at a friend's house named Rosie. During the drive they were stopped by LVMPD and Glinsey was taken in for outstanding warrants. Gipson and Nelson drank alcohol and played cards until 2:30-3:00 a.m. when they went back to Nelson's place to sleep.

Gipson stated he received a call from his mother at approximately 8:00 a.m. stating that something had happened to Brittney. Eventually, Gipson's cousin, Isaiah Martin, notified Gipson that everyone was looking for him.

According to Gipson, the reason he and Brittney broke up was because he was cheating on her. Gipson denied any kind of abuse towards Brittney during their relationship. After the initial breakup, Gipson unsuccessfully attempted to get back together with Brittney.

Gipson had no contact with Brittney for five months until he tried to contact her at her work but was informed that Brittney no longer worked at that location. Gipson recently had been trying to get in touch with Brittney to see his son on his birthday on March 27th but was unable to.

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After giving his initial statement, Gipson agreed to speak further about the case and possibly take a polygraph test. Detective Flohr arrived and advised that it would be preferable that Gipson take a Concealed Information Test (CIT). Gipson was unsure of taking the test and wanted to talk it over with his mother or an attorney. Gipson again was advised that he was not under arrest. Gipson was then taken back to Nelson's apartment with the understanding that Gipson would again meet with detectives the following day.

On March 26, 2010, at approximately 11:20 a.m., detectives went back to Nelson's apartment and picked up Gipson. Gipson agreed to take the CIT. Detective Flohr administered the test to Gipson asking him a series of questions regarding the murder of which only someone who had distinct knowledge of the murder would be able to answer. Detective Flohr advised Gipson that the CIT does not test deception but only knowledge of events. Gipson took the CIT and failed, meaning that he had knowledge of the murder that only the killer would know.

Detectives confronted Gipson with the fact that he failed the CIT. Gipson explained that he had been "in and out of the mental hospital" and that he killed Brittney because "she drove me crazy." Gipson further stated that he would not see his kids for months.

Gipson previously had called the Jack in the Box and found out that Brittney worked at the West Lake Mead location. He walked to the Jack in the Box and waited for Brittney to arrive. He hid in the bushes behind a van.

Shortly thereafter, the victim arrived. When she got out of her car, a brown Jeep, Gipson approached her from behind and shot her one time in the head. Gipson did not know where she had been shot but that she collapsed on the ground next to her vehicle. Gipson then stated that he ran across the Vons shopping center intersection as Christina Bailey had described and ran all the way back to the 824 Levy address.

Gipson bought the .25 caliber gun on March 24, 2010, from an individual he knew only as Tramaine. He paid $50 in cash and $50 worth of Marijuana for the gun. After the shooting, he returned the gun to Tramaine without telling him he had used it in the murder. Gipson also discarded the shoes he was wearing as well as the dark hooded sweatshirt.

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STATEMENT OF PRIOR BAD ACTS AND OTHER ACTS

Defendant controlled the victim from the beginning of their relationship, but in November of 2009, the victim had had enough. After learning that Defendant had used drugs, she had decided to move from an apartment in which she shared with his sister to a location unknown to Defendant. The victim was to a point where she would no longer speak with Defendant.

During that same time period, Defendant had gone to her place of business and demanded money from the victim. After such, the victim was transferred to another location to work. The victim also received threatening calls and texts from Defendant, so she also changed her phone number. The co-workers of the victim were instructed that if anyone called looking for her, they were not to tell anyone where she worked.

Between November 2009 and the time she was murdered on March 25, 2010, Defendant made attempts through the victim's family and friends to contact her. He went to her father's house on one occasion demanding to know where the victim was. The victim's state of mind was such that when she went to visit her father she parked down the street so that Defendant did not know she was there.

Although no police reports have ever been generated for the abuse by the victim in this case at the hands of Defendant, the abuse was noted by her close friends and family members. There are several occasions where the victim was observed by her friends and family with indications that she was abused and it was determined Defendant was the abuser. The State will seek to introduce any competent evidence regarding these prior bad acts and other bad acts.

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POINTS AND AUTHORITIES

PRIOR INSTANCES OF DOMESTIC VIOLENCE BY THE DEFENDANT AGAINST THE VICTIM ARE ADMISSIBLE PURSUANT TO NEVADA REVISED STATUTE 48.045 AND 48.061.

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The State seeks to admit evidence concerning Defendant's prior instances of domestic violence committed against the victim pursuant to NRS 48.045 and NRS 48.061 as evidence of motive, intent, identity, and absence of mistake. Additionally, the State seeks to admit the evidence to provide a much needed context for the facts and circumstances of the instant offense. The State respectfully submits that the jury should not be forced to judge the facts and circumstances of the events of March 25, 2010 in a vacuum; rather, the trier of fact should be entitled to fully understand the dynamics of the relationship between Defendant and the victim.

The evidence is relevant to Defendant's motive, intent, identity, or absence of mistake or accident in this case and additionally to establish that this murder was committed with premeditation and deliberation.

As set forth more fully below, this Court has the authority to introduce such evidence pursuant to NRS 48.045 and the Domestic Violence Statute, NRS 48.061.

I. THE EVIDENCE IS ADMISSIBLE PURSUANT TO NRS 48.045(2) AS PROOF OF MOTIVE, INTENT, AND ABSENCE OF MISTAKE

Section 48.045(2) of the Nevada Revised Statutes provides:

> Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Prior to admitting such evidence, the State must establish that (1) the prior act is relevant to the crime charged; (2) the act is proven by clear and convincing evidence; and (3) the evidence is more probative than prejudicial. Cipriano v. State, 111 Nev. 534, 541, 894 P.2d 347, 352 (1995), overruled on other grounds by State v. Sixth Judicial District Court, 114 Nev. 739, 964 P.2d 48 (1998). With regard to a determination of prejudice:

"prejudicial" is not synonymous with "damaging." **Rather, evidence is unduly prejudicial...only if it "uniquely tends to evoke an emotional bias against the defendant as an individual and...has very little effect on the issues**" or if it invites the jury to prejudge "a person or cause on the basis of extraneous factors." **Painting a person faithfully is not, per se, unfair.**

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People v. Johnson, 185 Cal.App.4th 520, 534 (2010). The admissibility of prior bad acts is within the sound discretion of the trial court and will not be overturned on appeal unless the decision is manifestly wrong. Canada v. State, 104 Nev. 288, 291-293, 756 P.2d 552, 554 (1988).

In Fields v. State, -- Nev. --, 220 P.3d 709 (2009), the Nevada Supreme Court affirmed the District Court Judge's determination to admit evidence that the defendant owed debts to the victim and that he had previously engaged in a conversation about killing a man to whom he owed money. The Nevada Supreme Court agreed with the District Court's decision that such evidence was admissible as proof of motive, to disprove his contention that he was just an innocent bystander to his wife's scheme, and to prove identity.

Likewise in Ledbetter v. State, 122 Nev. 252, 262-263, 129 P.3d 671, 678-679 (2006), the Supreme Court held that it was proper for the District Court to admit evidence of other bad acts to establish the defendant's motive to repeatedly subject his stepdaughter to sexual assaults. The bad act evidence in that case consisted of evidence that the defendant sexually assaulted other young female members of his own family. In reaching its decision, the Court noted that the evidence was relevant to motive, proven by clear and convincing evidence (due to four (4) different witnesses' testimony) and highly probative as it showed the defendant's sexual attraction to, and an obsession with, young female members of his family.

Most on point is Hogan v. State, 130 Nev. 21 (1987), wherein the Nevada Supreme Court upheld the trial court's determination to admit evidence of a prior domestic violence incident committed by the defendant against the victim in the days preceding her murder. In Hogan, the trial court admitted evidence that several days prior to the murder, the defendant dropped the victim to the ground from shoulder height. In affirming the District Court's ruling, the Nevada Supreme Court recognized that such evidence was "other acts" evidence

pursuant to NRS 48.045(2) which was properly admitted to establish "ill-will as a motive to the crime." Hogan v. State, 130 Nev. 21, 23 (1987).

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Other jurisdictions have also permitted the admission of evidence concerning prior acts of domestic violence pursuant to "other acts" statutes in murder cases as evidence of motive/ill-will, intent, absence of mistake, etc. For instance, in People v. Bierenbaum, 301 A.D.2nd 119, 748 N.Y.S.2d 563 (2002), the defendant was charged with murdering his wife, who disappeared in 1985. His wife's body was never recovered and the case against him was circumstantial. The trial court admitted evidence that throughout the course of the marriage, the relationship between the two was volatile. In addition, it admitted evidence that the defendant choked her to the point of unconsciousness on at least one occasion, and that he had been physically violent with her on many occasions. On appeal, the defendant challenged the admission of such evidence and claimed that it was improperly admitted "propensity" evidence. However, the reviewing Court recognized that the evidence was relevant to intent and stated:

> **[T]he proof here evinces defendant's intent to focus his aggression on one person, namely, his wife—his victim. That key factor in the context of marital or other intimate relationships frequently differentiates domestic violence assaults and homicides—wherein prior bad acts have often been deemed admissible during the People's direct case—from other cases wherein evidence of past assaultive behavior against people other than the victim has most properly been precluded. In the former, the previous aggression principally indicates intent, or motive, or identity; whereas in the latter it can predominately give rise to an inference of propensity.**

Id. (emphasis added). It also acknowledged that the evidence of prior abuse evinced that the defendant was motivated and had intent to harm the victim.

Similarly, in Benjamin v. Kentucky, 266 S.W.3d 775 (2008), the Supreme Court of Kentucky found that evidence of the defendant's prior assault against the decedent was properly admitted as evidence of his motive and absence of mistake. In Benjamin, the evidence established that the relationship between the defendant and victim was riddled with discord and that the two often fought after consuming alcohol together. The two had recently broken-up, but on the night of the murder were together, drinking again. While together, the two began to argue over the victim's alleged infidelities. Ultimately, the

defendant strangled the victim to death. At the trial, the defendant claimed he acted in self-defense but could remember very little of the details leading up to her death because of his alleged intoxication. In reviewing the trial court's decision to admit evidence of the prior assault, the Court found that it was relevant in that it tended to prove the defendant intentionally murdered his wife, had a motive to do so, and that the killing was not a mistake. Id. at 791.

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Likewise, in People v. Illgen, 145 Ill.2d 353, 366-367, 583 N.E.2d 515, 52, 164 Ill.Dec. 599, 604 (1991), the court upheld a trial court's decision to admit evidence that throughout the course of the marriage of the defendant and victim, the defendant was violent and abusive. The Court determined that "the evidence of the defendant's prior assaults on the victim was probative of the defendant's criminal intent." It further noted that "evidence which shows that an event was not caused by accident tends to show that it was caused intentionally." Id. at 367, citing, 2 D. Louisell & C. Mueller, Federal Evidence § 140, at 224-25 (1985) (defining intent as "merely the absence of an accident"). It concluded that the defendant's prior unprovoked assaults on his wife tended to negate the likelihood that the shooting was an accident and thereby tended to prove his intent. Importantly, it recognized:

> Whereas the shooting incident, standing alone, might appear accidental, when considered together with the evidence of the defendant's prior unprovoked attacks upon his wife, the circumstances suggest that the shooting was deliberate and not accidental. This evidence, taken together with other evidence in the case, tends to make it more probable that the defendant acted with the criminal intent required for murder and less probable that his actions were inadvertent or the product of an innocent state of mind.

Id at 367. Additionally, the Court reasoned that the evidence was also relevant to proof of motive, "in this case, a hostility showing him likely to do further violence. Id. at 367.

The Supreme Court of Vermont has also held that such "evidence was relevant…to portray the history surrounding the abusive relationship, providing the needed context for the behavior in issue." See also, State v. Laprade, 184 Vt. 251, 256 (2008), citing State v Sanders, 168 Vt. 60, 716 A.2d 11 (1998). Furthermore, it has acknowledged that such evidence is relevant in cases where a defendant claims self-defense. Id., citing, State v. Hendricks, 173 Vt. 132, 143, 787 A.2d 1270, 1279 (2001). The Laprade Court noted that

without admitting such evidence in domestic violence cases, the jury would be left without knowledge of the context in which the acts occur and would not be able to understand the victim's actions or inactions. Id. at 259.

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In light of the foregoing binding and persuasive authority, the State respectfully submits that evidence concerning these prior acts of domestic violence committed against the victim by Defendant should be admitted as evidence of motive, intent, identity, or absence of mistake or accident.

In regard to motive, the evidence is relevant because it establishes ill-will, that Defendant was motivated by a desire to dominate and control her; in essence, if he could not have her, no one could.

In regard to intent, it shows Defendant's acts were not merely a misunderstanding between the two parties, but that his intent was to murder her.

As for identity, it shows that this is a person familiar with her, with a motive and an intent to harm her. This is not a senseless crime of violence between two unknown parties; the two clearly had a prior relationship that the jury is entitled to understand.

It was not an accident or a mistake and the prior nature of their relationship and the violence therein establishes such.

II. EVIDENCE OF PRIOR DOMESTIC VIOLENCE SHOULD BE ADMITTED PURSUANT TO NRS 48.061.

Pursuant to NRS 48.061,

> Except as otherwise provided in subsection 2, **evidence of domestic violence** and expert testimony concerning the effect of domestic violence, **including, without limitation, the effect of physical, emotional or mental abuse, on the beliefs, behavior and perception of the alleged victim of the domestic violence** that is offered by the prosecution or defense **is admissible** in a criminal proceeding **for any relevant purpose….**

Prior to the statute's amendment in 2001, it inadvertently limited the use of evidence of prior domestic violence to those cases wherein a criminal defendant claimed to be suffering from battered women's syndrome as a defense to charged crimes. More specifically, prior to its amendment in 2001, the statute read,

/ / /

Evidence of domestic violence as defined in NRS 33.018 and expert testimony concerning the effect of domestic violence on the beliefs, behavior and perception of the person alleging the domestic violence is admissible in chief and in rebuttal, when determining:

1. Whether a person is excepted from criminal liability pursuant to subsection 7 of NRS 194.010, to show the state of mind of the defendant.

2. Whether a person in accordance with NRS 200.200 has killed another in self-defense, toward the establishment of the legal defense.

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In 2001, prosecutors who were frustrated by the repeated thwarting of their efforts to explain to jurors the cycle of domestic violence and the effects of repeated abuse on victims of domestic violence, urged legislators to amend the statute to its current form. More specifically, when lobbying in support of Assembly Bill 417 during the 71st session, Gemma Waldron, the Legislative Representative for the Washoe County District Attorney's Office and Nevada District Attorney's Association, argued that the bill was much needed due to the unique dynamics of domestic violence cases. Waldron contended that the ability to call an expert in the field of domestic violence, as well as the ability to present the jury with evidence of repeated abuse of the victim by the defendant, would help jurors understand the reaction and behavior of the victim (recanting, minimizing, etc.). See, Minutes of the Meeting of the Assembly Committee on the Judiciary, Seventy-First Session, April 5, 2001; see also, Minutes of the Senate Committee on the Judiciary, Seventy-First Session, May 16, 2001. Assembly Bill 417 was fashioned after California's legislation dealing with the issue. See, Minutes of the Senate Committee on the Judiciary, Seventy-First Session, May 16, 2001. Ultimately the Bill passed the House and the Senate unanimously. Since the statute's enactment in its revised form, the Nevada Supreme Court has yet to address the use of the statute by the State in a published opinion. However, it has permitted the introduction of such evidence in an unpublished opinion. See, Holcomb v. State, 2010 WL 4019626 (Nev. 2010) (upholding District Court's decision to admit testimony of domestic violence expert to explain the varying ages of the injuries to victim).

While there is no binding authority in Nevada concerning the admission of evidence pursuant to NRS 48.061 by the State absent the statute itself, California Courts interpreting

and applying California Evidence Code § 1109 (the statute after which NRS 48.061 was apparently modeled) have allowed the introduction of domestic violence evidence in a variety of instances. For example, in People v. Hoover, 77 Cal.App.4th 1197 (2000), the Court upheld the trial court's decision to admit evidence of previous attacks against the victim by the defendant who was charged with aggravated assault under circumstances involving domestic violence pursuant to § 1109 of the California Evidence Code. In reaching its conclusion the Court examined the intent of the legislature when it enacted § 1109 and noted:

> The [admission of evidence of prior incidents of domestic violence] is particularly appropriate in the area of domestic violence because on-going violence and abuse is the norm in domestic violence cases. **Not only is there a great likelihood that any one battering episode is part of a larger scheme of dominance and control, that scheme usually escalates in frequency and severity. Without [the admission of prior instances of domestic violence], the escalating nature of domestic violence is likewise masked.** If we fail to address the very essence of domestic violence, we will continue to see cases where perpetrators of this violence will beat their partners, even kill them, and go on to beat or kill the next intimate partner. **Since criminal prosecution is one of the few factors which may interrupt the escalating pattern of domestic violence, we must be willing to look at that pattern during the criminal prosecution, or we will miss the opportunity to address this problem at all.** (citing, Assem. Com. Rep. on Public Safety Report (Jun. 25, 1996) pp. 3-4.)
>
> Based on the foregoing, **the California Legislature has determined the policy considerations favoring the exclusion of evidence of uncharged domestic violence offenses are outweighed in criminal domestic violence cases by the policy considerations favoring the admission of such evidence** (emphasis added).

Id. at 1027-1028 (internal citations omitted). In that case, the defendant struck the victim in the nose causing it to break after she informed him that she was involved in a new relationship. The trial court permitted the victim to testify regarding prior incidents of violence wherein the defendant hit her in the face and/or choked her and threatened to kill her. While upholding the Court's determination to admit the evidence under § 1109, the reviewing Court held that the State could have also sought to admit the evidence as proof of motive, intent, etcetera because it tended to show that the defendant intended to inflict great bodily injury upon her. Id. at 1027.

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Similarly, in People v. Johnson, 185 Cal.App.4th 520 (2010), the Court upheld the trial Court's decision to admit evidence of two (2) prior domestic violence related offenses committed by the defendant. Johnson was convicted of attempted first degree murder, firearm assault, injury to cohabitant, felon in possession of a firearm, criminal threats, and mayhem following an incident wherein he shot his ex-girlfriend (Henderson) in the back. Prior to the commencement of trial, the prosecution sought to admit evidence of three (3) prior incidents of domestic violence by the defendant.

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The first incident was in 1984 when the defendant struck Lynn Webb in the jaw, breaking it in two places. However, because it did not involve the use of a weapon the trial court did not admit it. The second incident was in 1988 against Amanda Floyd whom the defendant dated for a year. Floyd broke up with the defendant after she caught him using drugs and told him to move out. Three (3) weeks later, the defendant tracked Floyd down at her apartment and visited her. They argued again and the defendant threatened to burn down the apartment and kill her. Floyd tried to escape at which point the defendant grabbed her by the hair and said, "Bitch, I'm going to kill you." The defendant put the gun to Floyd's forehead and pulled the trigger, but the gun did not fire. He pulled the trigger two (2) more times as Floyd backed away, but it still did not fire. Floyd then tripped over a chair and covered her face with her arms. The fourth time the defendant pulled the trigger, the gun fired, hitting her in the left elbow. Her arm was broken and the bullet was still lodged in her arm at the time of trial.

The third incident occurred in 1992 and involved Lynn Webb. The defendant and Webb were arguing in front of his mother's house at which time he pulled out a gun. Webb ducked and heard two (2) shots. She looked down and saw she was struck in the leg. Webb's femur was broken and she had to undergo hip surgery. The trial court admitted evidence of the 1988 and 1992 shootings finding the evidence more probative than prejudicial and concluding that it would "assist the trier of fact in determining elements and issues that will be relevant in this case." People v. Johnson, supra, 185 Cal.App.4th at 530-531.

The reviewing Court in Johnson, in evaluating the Court's determination of probativeness, once again examined the legislature's intention in enacting Section 1109 and noted the uniqueness of domestic violence cases.

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> The statute reflects the legislative judgment that in domestic violence cases, as in sex crimes, similar prior offenses are 'uniquely probative' of guilt in later accusations...Indeed, proponents of the bill that became section 1109 argued for admissibility of such evidence because of the 'typically repetitive nature' of domestic violence...This pattern suggests a psychological dynamic not necessarily involved in other types of crimes.

Id. at 532. It noted that the principal factor in determining probativeness is the similarity to the charged offense. Furthermore, it determined that the probative value of the prior incidents was great because in each incident the defendant resorted to shooting his girlfriend when she either decided to leave him or engaged in an argument with him. Additionally, the defendant's drug usage was a factor in each incident and each incident resulted in serious injury. The Court also reasoned that the fact that the defendant was convicted in each incident weighed in favor of admissibility, as did the fact that the evidence came from independent sources.

While the Court noted the evidence was inflammatory, it agreed with the trial court's decision that it was less offensive than the allegations in the instant case wherein the defendant lured the victim to the parking lot and shot her in the back in front of children. Id. at 534 (citations omitted)(emphasis added). It also rejected the defendant's contention that the evidence was more prejudicial than probative because the victim was cooperative. Instead, the reviewing Court determined the probativeness should be evaluated independent of the victim's cooperativeness with the principal consideration being the similarity of the incident to the charged offenses. The Court also concluded that the prejudicial impact was diminished by the fact that evidence of the current crime was strong because it was less likely the jury would convict based upon the defendant's past misdeeds. Id. at 536.

In addition, the Court declined to find error with the trial court's decision to admit the evidence despite the fact that the events took place more than ten (10) years prior to the charged offenses. It noted that the trial court determined there was a significant issue of

intent and found the evidence relevant to intent, motive and lack of mistake. As such, the Court concluded that the trial court properly considered the issues.

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Alaska has also enacted a statute similar to that enacted in California and Nevada. See, Alaska R. Evid. 404(b)(4). Following the passage of that statute, the Alaska Court of Appeals developed several factors that the courts are to examine prior to admitting evidence of prior incidents of domestic violence. Those factors include: (1) the strength of the government's evidence that the defendant committed the other acts; (2) the character trait the other acts tend to prove; (3) whether that trait is relevant to any material issue in the case; (4) if so, how relevant; and, (5) how strongly the other acts tend to prove that trait. Bennett v. Municipality of Anchorage, 205 P.3d 1113, 1116 (Alaska App.2009) citing, Bingaman v. State, 76 P.3d 398, 408, 415 (Alaska App.2003). Like California, Alaska requires an evaluation of remoteness and similarity to the charged offenses in determining the probative value of the evidence. Id.

In Bennett v. Municipality of Anchorage, supra, 205 P.3d 1113, the trial court admitted evidence of a prior 2005 attack by the defendant against the named victim because it was relevant to his propensity to attack his wife and then claim self-defense. The charges in Bennett arose from an incident in 2008 wherein the defendant was angry and drinking all day. The two began arguing and the victim began to call the police, at which point the defendant took the phone and threw it against the wall repeatedly until it broke. Then, the defendant started to scream at the victim, held her down by the throat and put his hand over her mouth and nose so she could not breathe. The defendant then struck her in the head several times and slammed her head into the wall.

The victim testified to a 2005 incident in which the defendant struck her repeatedly in the face and choked her causing her to sustain two black eyes, bruises around her neck, and broken blood vessels in her eye. As with the 2008 incident, the defendant was drunk at the time of the offense. In both the 2005 incident and the 2008 incident for which the defendant was on trial, the defendant claimed self-defense. The Appellate Court upheld the trial court's determination to admit the evidence due to the similarities between the two incidents.

It noted that the 2005 incident had some tendency to make more or less probable the defendant's propensity to assault his wife and then claim he acted in self-defense. As such, that character trait was material to the government's case because [illegible] whether he intended to assault the victim or merely acted in self-defense—was the only disputed issue. Id. at 1118.

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Illinois has also enacted a statute similar to the above-mentioned statutes. See, 725 ILCS 5/115-7.4. That statute provides that "in a criminal prosecution in which the defendant is accused of an offense of domestic violence evidence of the defendant's commission of another offense or offenses of domestic violence is admissible, and may be considered for its bearing on any matter to which it is relevant." The statute also sets forth the factors a court should consider in determining the admissibility of such evidence. Those specific factors include weighing the probative value against the prejudicial effect, remoteness, factual similarities, and other relevant facts and circumstances. Id.

In People v. Dabbs, 396 Ill.App.3d 622 (2010), the Illinois Court of Appeals was called upon to determine the constitutionality of the statute following the defendant's conviction for domestic battery. During the trial, the Court admitted evidence that the defendant previously abused his ex-wife (not the victim in the case). On appeal, Gregory Dabbs claimed that the statute violated both the Equal Protection Clause and the Due Process Clause. As to the equal protection claim, the Court determined that domestic violence defendants are not a "suspect class" and, therefore, the statute must only pass the rational basis test. The Court adopted the rationale of the California Courts and held that domestic violence is a repetitive and secretive crime that is highly unreported and typically turned into a credibility contest and noted that § 115-7.4 was passed as an attempt to address the difficulties of proof unique to the prosecution of domestic violence cases by strengthening the evidence and promoting the prosecution of such cases. Id. at 627. Ultimately, the Court concluded that those reasons were sufficient to satisfy the rational basis test. Dabbs' Due Process argument failed because of the safeguards built into the statute – the requirement that the State provide notice to the defendant of its intent to present such evidence and the

requirement that the Court weigh the probative value of the evidence against its prejudicial effect.

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While the Nevada Supreme Court has yet to interpret NRS 48.061 in a published opinion in which the State has sought to introduce evidence of prior acts of domestic violence, the plain language of the statute indicates that the evidence may be admitted for "any relevant purpose." Furthermore, the legislative history of the statute indicates that the legislative intent was to model the statute after California's equivalent statute (§ 1109). Moreover, it evinces that the intent in amending the statute in 2001 was to permit the State to admit evidence of prior instances of domestic violence to provide context to the relationship between the defendant and the victim in domestic violence cases. Similarly, California and the numerous jurisdictions cited above have liberally interpreted similar statutes and/or general bad acts statutes to authorize the admission of such evidence because of the unique problems faced by the prosecution of domestic violence cases as well as the repetitiveness of domestic violence.

In light of the plain language of NRS 48.061, which states that such evidence may be admitted "for any relevant purpose" as well as the above-cited persuasive authority, the State respectfully submits that evidence concerning the prior acts of domestic violence committed by Defendant against the victim should be admitted in this case. The evidence is relevant to provide the jury with information concerning the context of the relationship between Defendant and the victim (State v. Laprade, supra, 184 Vt. 251), to establish Defendant's intent to kill/intentionally harm (People v. Hoover, supra, 77 Cal.App.4th 1020; People v. Johnson, supra, 185 Cal.App.4th 520; People v. Bierenbaum, supra, 301 A.D.2d 119; State v. Laprade, supra, 184 Vt. at 256), to explain why the victim would return to Defendant after he hit her before, as well as to refute any claim that it was not him, or it was an accident. (See, Bennett v. Municipality of Anchorage, supra, 205 P.3d 1113).

Specifically in this case, the prior acts of Defendant establish why the victim moved, changed her number, and changed work locations. Defendant then sought her out, tried getting her new number, tried finding where she worked – all of which establishes that

Defendant premeditated and deliberated this murder, which is essential in a conviction for first degree murder.

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III. THE PRIOR BAD ACT CAN BE PROVEN BY CLEAR AND CONVINCING EVIDENCE THROUGH THE MEANS OF A PETROCELLI HEARING

Before evidence of a prior bad act can be admitted, the State must show by plain, clear and convincing evidence that the defendant committed the offense. The State's offer of proof fulfills this requirement. Petrocelli v. State, 101 Nev. 46, 52, 692 (1985). Under Petrocelli, clear and convincing proof of collateral acts can be established by an offer of proof outside the presence of the jury combined with the quality of the evidence actually presented to the jury. Salgado v. State, 968 P.2d 324 (1998).

CONCLUSION

The State respectfully requests that this court allow the State to present information regarding the prior acts of violence against this victim in order to establish the motive, identity, intent, and the absence of mistake or accident, and additionally to prove that this murder was premeditated and deliberated. The State therefore requests this court grant the instant motion and schedule a Petrocelli hearing at the Court's convenience.

DATED this 19th day of April, 2011.

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY /s/ Shannon Clowers
SHANNON CLOWERS
Deputy District Attorney
Nevada Bar #010008

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing was made this 19th day of April, 2011, by Electronic Filing to:

PUBLIC DEFENDER
E-mail Address: pdclerk@co.clark.nv.us

BY: /s/ J. Georges
Secretary for the District Attorney's Office

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Docket 73307 Document 2017-33011

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

KEVIN GIPSON

Defendant.

CASE NO. C264079X

DEPT. NO. XVIII

REQUEST TO FILE EX PARTE ORDER UNDER SEAL

Upon the order of the above-named Defendant, KEVIN GIPSON, by and through CHRISTY CRAIG, Clark County Deputy Public Defender, and good cause appearing therefore,

IT IS HEREBY ORDERED that upon request of this Court, that CHRISTY CRAIG, Deputy Public Defender, may file an order under seal.

DATED 19th day of April 2011.

DISTRICT COURT JUDGE

Submitted by:

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By
CHRISTY CRAIG #6262
Deputy Public Defender

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ORDR
Order
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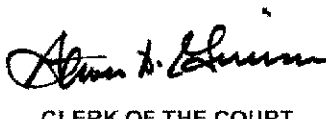

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

KEVIN MARQUETTE GIPSON, #1582343

Defendant.

Case No. C-10-264079-1

Dept No. XVIII

STATE'S NOTICE OF MOTION AND MOTION IN LIMINE REGARDING THE DEFENDANT'S EXPERT WITNESSES AND REQUEST FOR DISCOVERY

DATE OF HEARING: 05/02/2011

TIME OF HEARING: 8:15 AM

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through SHANON CLOWERS, Deputy District Attorney, and files this Notice of Motion and Motion In Limine Regarding the Defendant's Expert Witnesses and Request for Discovery.

This Motion is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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PLEADING CONTINUES IN NEXT VOLUME