

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

EVARISTO GARCIA,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 64221

Electronically Filed
Nov 05 2013 08:59 a.m.

Tracie K. Lindeman

DOCKETING STATEMENT
CRIMINAL APPEALS

(Including appeals from pretrial and post-conviction rulings and other requests for post-conviction relief)

GENERAL INFORMATION

1. Judicial District Eighth County Clark
Judge Abbi Silver District Ct Case No. 10C262966-1

2. If the defendant was given a sentence,
(a) what is the sentence?

Defendant sentenced to maximum of life with a MINIMUM parole eligibility after TEN (10) YEARS in the Nevada Department of Corrections (NDC), plus an EQUAL and CONSECUTIVE MAXIMUM of LIFE with a MINIMUM parole eligibility after TEN (10) YEARS in the Nevada Department of Corrections for the use of a Deadly Weapon and with ONE THOUSAND, NINE HUNDRED FIFTY NINE (1,959) DAYS CREDIT FOR TIME SERVED.

- (b) has the sentence been stayed pending appeal?

No.

- (c) was defendant admitted to bail pending appeal?

No.

3. Was counsel in the district court appointed ☐ or retained ☒?

4. Attorney filing this docketing statement:

Attorney Ross C. Goodman, Esq. Telephone 702-383-5088

Firm: Goodman Law Group, P.C.

Address: 520 South Fourth Street, 2nd Floor, Las Vegas, Nevada 89101

Client(s) _____

5. Is appellate counsel appointed ☒ or retained ☐?

If this is a joint statement by multiple appellants, add the names and addresses of other counsel on an additional sheet accompanied by a certification that they concur in the filing of this statement.

6. Attorney(s) representing respondent(s):

Attorney Steven Wolfson Telephone 702-671-2500
Firm: Clark County District Attorney's Office
Address: 200 Lewis Avenue, Las Vegas, Nevada 89155

Client(s) The State of Nevada

Attorney n/a Telephone _____
Firm: _____
Address: _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

7. Nature of disposition below:

- | | |
|---|--|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Grant of pretrial habeas |
| <input checked="" type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Grant of motion to suppress evidence |
| <input type="checkbox"/> Judgment upon guilty plea | <input type="checkbox"/> Post-conviction habeas (NRS ch. 34) |
| <input type="checkbox"/> Grant of pretrial motion to dismiss | <input type="checkbox"/> grant <input type="checkbox"/> denial |
| <input type="checkbox"/> Parole/Probation revocation | <input type="checkbox"/> Other disposition (specify) |
| <input checked="" type="checkbox"/> Motion for new trial | |
| <input type="checkbox"/> grant <input checked="" type="checkbox"/> denial | |
| <input type="checkbox"/> Motion to withdraw guilty plea | |
| <input type="checkbox"/> grant <input type="checkbox"/> denial | |

8. Does this appeal raise issues concerning any of the following:

☐ death sentence

☒ life sentence

☐ juvenile offender

☐ pretrial proceedings

9. **Expedited appeals:** The court may decide to expedite the appellate process in this matter. Are you in favor of proceeding in such manner?

Yes ☐ No ☒

10. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal (e.g, separate appeals by co-defendants, appeal after post-conviction proceedings):

None.

11. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts that are related to this appeal (e.g., habeas corpus proceedings in state or federal court, bifurcated proceedings against co-defendants):

None.

12. **Nature of action.** Briefly describe the nature of the action and the result below:

Defendant, Evaristo Garcia, 16, was accused of shooting and killing Victor Gamboa, 15, as the ostensible outgrowth of a schoolyard brawl. The jury was presented with a two-count indictment alleging conspiracy to commit murder and murder (which included as an alternate theory - conspiracy). The Defendant was acquitted of conspiracy and found guilty of second-degree murder with use of a deadly weapon.

13. Issues on appeal. State concisely the principal issue(s) in this appeal:

1. The Trial Court Committed Error by Not Granting Defendant's Motion for a Mistrial based on the State's bad faith of bringing gang charges when there was no sufficient basis and prejudice to the Defendant having to endure voir dire, opening statements, and the first half of the trial under the specter of being in a gang.
2. The Trial Court Committed Error by Not Granting Defendant's Motion for to Suppress the In-Court identification of Ms. Gamboa as overly suggestive who was unable to identify the Defendant during trial.
3. The State committed error by producing Edshel Calvillo in chains under a so-called material witness warrant and knowing that Mr. Calvillo had perjured himself in a separate hearing.
4. The Trial Court Committed Error by Denying Defendant's Motion to Dismiss based on the State's failure to preserve any DNA on the gun at issue.
5. The Trial Court Committed Error by Denying Defendant's Motion to Exclude Jonathan Harper base on medical evidence that his testimony was the result of either confabulation or falsehood.
6. There were issues of error relating to improper argument, admissibility of evidence, prosecutorial error and jury instructions which were objected to contemporaneously and any other issues developed upon review of the record.

14. Constitutional issues. If the State is not a party and if this appeal challenges the constitutionality of a statute or municipal ordinance, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A ☒ Yes ☐ No ☐
If not, explain

15. Issues of first-impression or of public interest. Does this appeal present a substantial legal issue of first-impression in this jurisdiction or one affecting an important public interest?

First-impression: Yes ☐ No ☒
Public interest: Yes ☐ No ☒

16. **Length of trial.** If this action proceeded to trial or evidentiary hearing in the district court, how many days did the trial or evidentiary hearing last?

6 days

17. **Oral argument.** Would you object to submission of this appeal for disposition without oral argument?

Yes ☒ No ☐

TIMELINESS OF NOTICE OF APPEAL

18. Date district court announced decision, sentence or order appealed from 08/29/13

19. Date of entry of written judgment or order appeal from 09/11/13

(a) If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

20. If this appeal is from an order granting or denying a petition for a writ of habeas corpus, indicate the date written notice of entry of judgment or order was served by the district court

(a) Was service by delivery ☐ or by mail ☐.

21. If the time for filing the notice of appeal was tolled by a post judgment motion,

(a) Specify the type of motion, and the date of filing of the motion:

Arrest judgment _____

Date filed _____

New trial _____

Date filed 07/22/2013

(newly discovered evidence)

New trial _____

Date filed _____

(other grounds)

(b) Date of entry of written order resolving motion no written order - ruling 08/01/13

22. Date notice of appeal filed 10/11/13

23. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(b), NRS 34.560, NRS 34.575, NRS 177.015(2), or other

NRAP 4(b)

SUBSTANTIVE APPEALABILITY

24. Specify statute, rule or other authority that grants this court jurisdiction to review from:

| | |
|------------------------------|-------------------------|
| NRS 177.015(1)(b) <u>xxx</u> | NRS 34.560 <u></u> |
| NRS 177.015(1)(c) <u></u> | NRS 34.575(1) <u></u> |
| NRS 177.015(2) <u></u> | NRS 34.575(2) <u></u> |
| NRS 177.015(3) <u></u> | Other (specify) <u></u> |
| NRS 177.055 <u></u> | |

VERIFICATION

I certify that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief.

Evaristo Garcia

Name of appellant

11-04-2013

Date

Ross C. Goodman, Esq.

Name of counsel of record

/s/ Ross C. Goodman, Esq.

Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 4th day of Nov., 2013, I served a copy of this completed docketing statement upon all counsel of record:

☐ by personally serving it upon him/her; or

☒ by mailing it by first class mail with sufficient postage prepaid to the following address(es):

Dated this 4th day of November, 2013.

/s/ Tiffanie Johannes

Signature
Employee of Goodman Law Group, P.C.