

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

**INDICATE FULL CAPTION:**

Ivonne Cabrera,  
Appellant

v.

State of Nevada,  
Respondent

No. 74341

**DOCKETING STATEMENT  
CRIMINAL APPEAL**

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

Electronically Filed  
Nov 28 2017 09:23 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**GENERAL INFORMATION**

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

**WARNING**

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions.

Revised December 2015

1. Judicial District Eighth County Clark

Judge Kathleen Delaney ☒ District Ct. Case No. C-12-283700-1

2. If the defendant was given a sentence,

(a) what is the sentence?

Ct 1 - 48 to 120 months; Ct 2 - 48 to 120 months concurrent to Ct 1; Ct 3 - Life Without  
& consecutive 48 to 120 months concurrent to Ct 2; Ct 4 - 84 to 240 months & consecutive  
84 to 240 months concurrent to Ct 3; Ct 5 - Life Without & consecutive 48 to 120 months  
concurrent Ct 4; Ct 6 - 84 to 240 months consecutive 84 to 240 months concurrent Ct 5

(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 filling this docketing statement:**

Attorney Patricia M. Erickson Telephone 702-388-1055

Firm Law Office of Patricia M. Erickson

Address: 601 S. Tenth St., Suite 108, Las Vegas, NV 89101

Client(s) Ivonne Cabrera

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 Owens ☒ Telephone 702-671-2500 ☒

Firm Clark County District Attorneys Office

Address: 200 Lewis Ave., 3rd Floor, Las Vegas, NV 89155

Client(s) State of Nevada

Attorney \_\_\_\_\_ 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 type="checkbox"/> Motion for new trial                   |  |
| <input type="checkbox"/> grant <input 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:

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> death sentence | <input type="checkbox"/> juvenile offender               |
| <input type="checkbox"/> life sentence             | <input checked="" type="checkbox"/> 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): N/A

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):

N/A

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

On April 24, 2012, Eric Morales lent Ivonne Cabrera a car to drive because he got into a car accident while driving Ivonne's car which was then towed. At about 5:30 a.m on 04.26.2012, Ivonne got into the loaned car and expected that her friend - Loca - would ride in the car with her. Loca didn't get in the car but Smokey aka Jose Gonzales did. Ivonne knew that Smokey had a gun, had been up all night using meth and could easily become extremely violent in this kind of situation. Ms. Cabrera decided to return the car to Morales who was staying at 2039 Webster #C with his girlfriend Melissa Marin. Ivonne thought that if she returned the car, Smokey would depart the area. After arriving at the Webster apartment, Ivonne got out of the car, went to the front of the apartment and looked through a window to see if anyone was awake. At this time, Smokey pointed the gun at Ivonne and told her to go around to the back of the apartment. Smokey followed Ivonne to the back of the apartment, saw that the bathroom window was opened and climbed into the apartment. Ivonne tried to get back to the car to leave the area but Smokey got to the front door and forced her to enter. Smokey shot all 4 people who were inside the apartment and 2 males were killed.

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13. **Issues on appeal.** State specifically all issues in this appeal (attach separate sheets as necessary): (1) Whether Cabrera's federal constitutional rights to due process and a fair trial were violated by the district court's preclusion of all evidence regarding a duress defense to First Degree Murder when Cabrera never possessed the firearm, never shot any of the people in the apartment and was charged solely as an aider/abettor and/or conspirator and/or felony murderer? (2) Whether preclusion of all evidence regarding the defense of duress to the crimes of conspiracy to commit murder, burglary while in possession of a firearm and attempt murder because each crime required the state to prove the offense of murder violated Cabrera's federal constitutional rights to due process and a fair trial? (3) Whether Cabrera's federal constitutional rights to due process and a fair trial were violated (continued on following pages)

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:

Continuation of Appellate Issues:

when the district court instructed the jury regarding duress as a defense to the assault and/or battery aspects of the burglary charge after Cabrera requested the instruction be withdrawn and informed the district court that duress would not be argued during either of the defense's guilt phase closing arguments?

- (4) Cabrera's federal constitutional right to due process was violated by prosecutorial misconduct, which occurred during the guilt phase, when the prosecutor "testified" regarding the purported meaning of Cabrera's nickname as there were no facts in the record regarding her nickname?
- (5) Whether denial of Cabrera's motion for a jury view of the Webster apartment violated her federal constitutional rights to due process and a fair trial when the viewing would have properly helped the jurors to better understand the distances involved and to weigh the evidence admitted during the trial?
- (6) Whether admission of other bad acts violated Cabrera's right to due process as protected by the Fourteenth Amendment?

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(A)

- (7) Whether the right to be free from cruel and unusual punishment, as protected by the Eighth Amendment and the Nevada state constitution, was violated when the trial jury was instructed regarding aggravating circumstances which only reflected the state of mind of the actual killer because Cabrera was charged as an aider/abettor, and/or conspirator and/or felony murderer and never possessed/used the firearm that killed the two men?
- (8) Whether the right to be free from cruel and unusual punishment, as protected by the Eighth Amendment and the Nevada state constitution, was violated when the trial jury was instructed regarding the application of aggravating circumstances to a person convicted of first degree murder as and aider/abettor and/or conspirator and/or felony murderer basically results in every single person convicted of first degree murder becoming death eligible?

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(B)

- (9) Whether application of NRS 200.033 subsections 2(b), 3 and 9 in Ms. Cabrera's case violated her right to be free from cruel and unusual punishment, as protected by the Eighth Amendments and the Nevada state constitution, when none of the specified aggravating circumstances required the a jury to find that Cabrera - a non-killer - had a more culpable mental state than the ordinary murderer and the challenged circumstances did not limit the death penalty to those whose extreme culpability makes them the most deserving of execution?



**15. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

According to NRAP Rule 17(b)(1), the present matter is retained by the Nevada Supreme Court because it involves the direct appeal of convictions for Category A felonies: Conspiracy to Commit Murder and two counts of First Degree Murder With Use of a Deadly Weapon

**16. 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

**17. 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?

14 days

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

☒ Yes ☐ No

**TIMELINESS OF NOTICE OF APPEAL**

19. Date district court announced decision, sentence or order appealed from 09.11.2017

20. Date of entry of written judgment or order appealed from 09.22.2017

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

21. 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 ☐

22. 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 (newly  
discovered evidence) \_\_\_\_\_ Date filed \_\_\_\_\_

New trial (other grounds) \_\_\_\_\_ Date filed \_\_\_\_\_

(b) Date of entry of written order resolving motion \_\_\_\_\_

23. Date notice of appeal filed 10.23.2017

24. 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

### SUBSTANTIVE APPEALABILITY

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

NRS 177.015(1)(b) _____	NRS 34.560 _____
NRS 177.015(1)(c) _____	NRS 34.575(1) _____
NRS 177.015(2) _____	NRS 34.560(2) _____
NRS 177.015(3) <u>XX</u> _____	Other (specify) _____
NRS 177.055 _____	

### VERIFICATION

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

Ivonne Cabrera

\_\_\_\_\_  
Name of appellant

11.27.2017

\_\_\_\_\_  
Date

Patricia M. Erickson

\_\_\_\_\_  
Name of counsel of record

/s/ Patricia M. Erickson

\_\_\_\_\_  
Signature of counsel of record

### CERTIFICATE OF SERVICE

I certify that on the 27 of Nov. 17 day of 20 17 , 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):

☒ By efilng the pleading with the clerk of this Court

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Dated this 27th + day of November , 20 17 .

/s/ Patricia M. Erickson

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Signature