

CLERK OF THE COURT

MCNT  
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DISTRICT COURT

CLARK COUNTY, NEVADA

|                               |   |                        |
|-------------------------------|---|------------------------|
| THE STATE OF NEVADA,          | ) | CASE NO. C-12-283700-2 |
|                               | ) | DEPT. NO. 25           |
| Plaintiff,                    | ) |                        |
|                               | ) |                        |
| vs.                           | ) |                        |
|                               | ) |                        |
| JOSE A. GONZALES, ID 2636822, | ) |                        |
|                               | ) |                        |
| Defendant.                    | ) |                        |

**MOTION TO CONTINUE TRIAL DATE**

Date: \_\_\_\_\_  
Time: \_\_\_\_\_

COMES NOW, Defendant, Jose Gonzales, by and through his attorneys, David M. Schieck, Special Public Defender, Clark W. Patrick, Deputy Special Public Defender, and Alzora B. Jackson, Deputy Special Public Defender, and respectfully requests that this Honorable Court continue the trial date in this matter which is currently scheduled for June 23, 2014.

This Motion is made and based upon the papers and pleadings on file herein, the Points and Authorities herein, and the Declaration attached hereto, and any oral argument as may be adduced at the time of the hearing of this matter.

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**NOTICE OF MOTION**

TO: The State of Nevada, Plaintiff; and  
TO: The Clark County District Attorney, Attorney for Plaintiff:

PLEASE TAKE NOTICE that the undersigned will bring on the above and foregoing **Motion to Continue Trial Date** on 4 - 21 - 14 at the hour of 9:00 a.m., in Department No. 25 of the above-entitled Court, or as soon thereafter as counsel may be heard.

**POINTS AND AUTHORITIES**

**A. Mr. Gonzales has the Right to Effective Assistance of Counsel**

Under the Sixth Amendment to the United States Constitution, a defendant has the right to effective assistance of counsel. This is especially important when the State is requesting the imposition of the death penalty. The ABA has set forth guidelines for the Appointment and Performance of Defense Counsel in Capital Cases. The objective of the guidelines is to set forth a national standard of practice for the defense of capital cases in order to ensure high quality legal representation for all persons facing the possible imposition or execution of a death sentence in any jurisdiction. The ABA states that in order to effectively represent a capital defendant during the guilt portion of his trial, defense counsel must, “independently investigate the circumstance of the crime and all evidence - whether testimonial, forensic - or otherwise - purporting to inculcate the client.” See ABA Guideline 1.1.

These guidelines are not aspirational. Instead they embody the current consensus about what is required to provide effective defense representation in capital cases.

The United States Supreme Court has held counsel as being ineffective when counsel’s conduct “fell short of the standards for capital defense work articulated by the ABA standard to which we have long referred as guides to determining what is reasonable.” Wiggins v. Smith, 539 U.S. 510, 524 (2003).

At the core of the ABA Guidelines is the need to perform a complete and detailed investigation into all aspects of the case, both at the guilt phase and the penalty phase. At every stage of the proceedings, counsel has a duty to investigate the case thoroughly. This duty is intensified (as are many duties) by the unique nature of the death penalty, has been emphasized by recent statutory changes, and is broadened by the bifurcation of capital trials. See ABA Guideline 10.7. “The ABA Guidelines provide that investigations into mitigating evidence should comprise efforts to discover all reasonable available

1 mitigation evidence and evidence to rebut any aggravation evidence that may be introduced by the  
2 prosecutor.” Rompilla v. Beard, 545 U.S. 374, n. 7 (2005).

3 Because the sentencer in a capital case must consider in mitigation, “anything in the life of a  
4 defendant which might mitigate against the appropriateness of the death penalty for that defendant.”  
5 Brown v. State, 526 So. 2d 903, 908 (Fla. 1988) (citing Hitchcock v. Dugger, 481 U.S. 393, 394 (1987));  
6 see also Eddings v. Oklahoma, 455 U.S. 104, 113-15 (1982); Lockett v. Ohio, 438 U.S. 586, 604 (1978);  
7 infra text accompanying note 277. “Penalty phase preparations requires extensive and generally  
8 unparalleled investigation into personal and family history.” In the case of a client facing the death  
9 penalty, this begins with the moment of conception. In addition to any prenatal problems the parents may  
10 have caused the child, counsel must explore a complete:

- 11 1. Medical History
- 12 2. Family and Social History
- 13 3. Educational History
- 14 4. Military Service
- 15 5. Employment and Training History
- 16 6. Prior Juvenile and Adult Correctional Experience.

17 ABA Standard 10.7. See also, The Nevada Indigent Defense Standards of Performance for Capital Case  
18 Representation, (further affirming that mitigation investigation begins from conception and continues  
19 to the time of sentencing.) ADKT No. 411 Standard 14, Order November 2007.

20 In Allen v. Woodford, 395 F.3d 979, 1001 (9<sup>th</sup> Cir. 2005), the Court citing Strickland v.  
21 Washington, 466 U.S. 668, 689 (1984), held “counsel’s untimely, hasty, and incomplete investigation  
22 of potential mitigation evidence for the penalty phase fell outside the range of reasonable professional  
23 assistance.

24 The California Supreme Court held that trial counsel’s “failure to investigate petitioner’s early  
25 social history was not consistent with norms that directed counsel in death penalty cases to conduct a  
26 reasonably thorough independent investigation of the defendant’s social history as reflected in the ABA  
27 standards relied upon by the court in the Wiggins case.” In re Larry Douglas Lucas, 94 P.3d 477, 504  
28 (Cal. 2004).

Summing up the need to thoroughly investigate all evidence and mitigating factors in a capital  
case, “counsel’s failure to inquire into an area specifically mentioned in the ABA Guidelines is a good

1 indicator that his performance was constitutionally deficient.” Kandies v. Polk, 385 F.3d 457, 479 (4<sup>th</sup>  
2 Cir. 2004).

3 In the instant case, the defense team has been diligently investigating and preparing a mitigation  
4 case for Jose. However, there are still many of Jose’s family members and other people who have been  
5 intimately involved in his life to be interviewed.

6 At this time, counsel has not completed the mitigation investigation that is required prior to  
7 counsel being prepared to take this matter to trial. Until the mitigation investigation is complete and in  
8 compliance with the ABA Guidelines as discussed in Wiggins and ADKT 411, counsel for Jose  
9 Gonzales would be per se ineffective during a penalty phase of a capital murder trial. Therefore, counsel  
10 must be allowed the appropriate amount of time to finish the mitigation investigation.

11 **B. Thorough and Independent Investigation is Good Cause for Delay**

12 The Eighth Judicial District Court Rule 7.30 states in pertinent part that “Any party may, for  
13 good cause, move the court for an order continuing the date set for trial.....”

14 In the instant case, Mr. Gonzales waived his right to a speedy trial and has been made  
15 fully aware of the on-going investigation and need for more time to complete the mandatory  
16 work. He has been fully cooperative with his defense team and agrees with this request for a  
17 continuance of his trial date.

18 As set forth above, the United States Supreme Court has cited to the ABA Guidelines  
19 as the standard for representation in capital cases. In order to comply with those guidelines  
20 and provide Mr. Gonzales with reasonably competent representation as he faces death,  
21 counsel must be given the appropriate amount of time to thoroughly and independently  
22 investigate all aspects of the allegations in the case and Mr. Gonzales’ life.

23 Moreover, this Honorable Court has a vested interest in Mr. Gonzales having a firm  
24 and constitutionally sound death penalty trial. Death is qualitatively different from another  
25 other punishments that can be imposed by the State. See, e.g. Ford v. Wainwright, 477 US  
26 399, 106 S. Ct. 2595, 2603 (1986); California v. Ramos, 463 US 992, 998-99, 103 S. Ct.  
27 3446 (1983). This difference necessitates heightened scrutiny to assure that the capital  
28 sentencing decision does not violate the Eight Amendment prohibition against cruel and



1 unusual punishment. Cartwright v. Maynard, 822 F.2d. 1477, 1483 (10<sup>th</sup> Cir. Okla 1987).

2 **CONCLUSION**

3 Based upon the foregoing, it is respectfully requested that the trial date of June 23,  
4 2014 be vacated and reset.

5 DATED this 9<sup>th</sup> day of April, 2014.

7 SUBMITTED BY:

8 DAVID M. SCHIECK  
9 SPECIAL PUBLIC DEFENDER

10 /s/ CLARK W. PATRICK

12 CLARK W. PATRICK  
13 Alzora B. Jackson  
14 Attorneys for Gonzales

15 **DECLARATION OF CLARK W. PATRICK**

16 Clark W. Patrick, makes the following declaration:

17 I am the Deputy Special Public Defender representing Mr. Gonzales along with co-  
18 counsel Alzora B. Jackson, mitigation specialist, Maribel Yanez and investigator, Steven  
19 Simmons. Mr. Gonzales' capital trial is set for June 23, 2014.

20 I make this Affidavit based upon my own knowledge except as to those matters stated  
21 upon information and belief. The underlying incident occurred on April 26, 2012, the  
22 Information was not filed until August 27, 2012, and the Notice of Intent to Seek Death  
23 Penalty was filed on September 25, 2012. As such this case is still, by comparison to other  
24 capital cases in this jurisdiction, not old or unnecessarily delayed in proceeding toward a trial  
25 date.

26 Every reasonable effort is being made to prepare this case for trial and penalty hearing  
27 in a timely fashion, but at the same time, proceeding to trial before the case is ready only  
28

1 leads to decades of litigation over what was or what could have been presented at trial.

2 In order to properly investigate both the guilt portion and penalty portion of this case  
3 in accordance with the ABA Guidelines for the Appointment and Performance of Defense  
4 Counsel in Death Penalty Cases and ADKT 411 Standards for Capital Cases it is required  
5 that considerable time be spent locating and collecting records from schools, medical  
6 providers. Law enforcement and courts as well as the other matters discussed herein below.

7 Jose was born in California, spent time in Mexico as a child and later moved to Clark  
8 County with his mother and siblings.

9 An investigative trip to California has been completed. While a great deal was  
10 accomplished, the defense team discovered new mitigation information that was not  
11 anticipated prior to the trip. This newly discovered information necessitates further  
12 mitigation investigations in Mexico, Florida and a possible second trip to California.

13 Affiant is submitting, under seal, a second affidavit which contains specific  
14 information that is not discoverable to the State at this time. This information pertains to  
15 possible defense theories that are confidential and privileged from disclosure to the State  
16 unless the evidence is going to be offered at trial.

17 Mr. Gonzales is aware of and has consented to this Motion to Continue Trial.  
18 Counsel for Co-Defendant and the State have been informed that we are filing a motion to  
19 continue.

20 I declare that I make this request in good faith and not for purposes of delay.

21  
22 /s/ CLARK W. PATRICK

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25 CLARK W. PATRICK  
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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the foregoing Motion was made on April 9, 2014, by  
Electronic Filing to:

DISTRICT ATTORNEY’S OFFICE

email: [motions@clarkcountyda.com](mailto:motions@clarkcountyda.com)

courtesy copy to Michael Staudaher at  
[Michael.Staudaher@clarkcountyda.com](mailto:Michael.Staudaher@clarkcountyda.com)

And Patricia Erickson, Esq.  
[pme@pmericksonlaw.com](mailto:pme@pmericksonlaw.com)

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of the foregoing Motion was made this 3<sup>rd</sup> day of July,  
2013 by facsimile transmission to: BRET WHIPPLE, ESQ., attorney for co-defendant  
Ivonne Cabrera at Fax 974-4008.

/s/ Kathleen Fitzgerald

\_\_\_\_\_  
Legal Executive Assistant for  
Special Public Defender



CLERK OF THE COURT

1 **OPPS**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 MICHAEL V. STAUDAHER  
6 Chief Deputy District Attorney  
7 Nevada Bar #008273  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

12 JOSE GONZALES aka  
13 Jose Alejandro Gonzales, #2636822  
14 Defendant.

CASE NO: C-12-283700-2

DEPT NO: XXV

15 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO CONTINUE TRIAL**

16 **DATE**

17 DATE OF HEARING: 4/21/14  
18 TIME OF HEARING: 9:00 A.M.

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
20 District Attorney, through MICHAEL V. STAUDAHER, Chief Deputy District Attorney, and  
21 hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to  
22 Continue Trial Date.

23 This Opposition is made and based upon all the papers and pleadings on file herein, the  
24 attached points and authorities in support hereof, and oral argument at the time of hearing, if  
25 deemed necessary by this Honorable Court.

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1 POINTS AND AUTHORITIES

2 STATEMENT OF FACTS

3 On April 26, 2012, North Las Vegas officers and detectives responded to 2039 Webster  
4 in reference to a possible gunshot victim. Initial responding officers on scene discovered two  
5 gunshot victims. Police first located victim, Melissa Marin, at the gateway entrance to the  
6 apartment complex, and later discovered victim, Ashley Wantland, at the front door of  
7 apartment C. Both victims were conscious.

8 Officers asked Marin who had shot them and she responded that a subject known to her  
9 as "Smokey" had done it. Officers then spoke with victim Ashley Wantland who stated that  
10 she and her boyfriend had been shot and that her boyfriend was still inside the residence. Both  
11 females were subsequently transported to University Medical Center (UMC) for treatment of  
12 their multiple gunshot wounds.

13 Officers then went inside the residence to check for additional victims and located the  
14 two deceased victims, later identified as Erik Quezada-Morales and James Headrick, in  
15 separate bedrooms within the residence. During the initial sweep of the residence, officers  
16 noticed that the bathroom window was open and various bathroom items had been knocked  
17 onto the floor. Officers further noted that footprints were located inside the bathtub and that it  
18 appeared that someone may have entered the residence through the bathroom window.  
19 Officers also saw several shell casings in the bedrooms, as well as the hallway and living room  
20 area.

21 The residence was subsequently sealed while detectives obtained a search warrant for  
22 the 2039 Webster, Apartment C location. It was later determined that victim Morales was in  
23 the southeast bedroom and deceased victim Headrick was on the floor in the northeast  
24 bedroom. Both victims appeared to have suffered numerous gunshot wounds. In the  
25 bathroom, police observed that the shower curtain had been knocked down and additionally  
26 they located a crowbar on the floor of the bathroom. Crime scene personnel processed the  
27 scene for prints and DNA and recovered other evidence.

1 While at the scene, detectives learned that Marin was able to talk and was giving  
2 information to officers at UMC. Detectives responded to UMC and interviewed Marin. Marin  
3 told detectives that two suspects came into her residence: a Hispanic male known to her as  
4 "Smokey" and a female known to her as "Chinola." Marin recalled that earlier in the morning  
5 she heard knocking at her bedroom door. Marin said she recognized Chinola's voice and that  
6 Chinola asked her to open the door. At about the same time, her boyfriend, Morales, got up  
7 to answer the door and she heard several gunshots. Marin said she told her boyfriend not to  
8 open the door. The door was then forced open and she saw Smokey with a gun pointed at  
9 them. Marin pleaded with Smokey not to shoot them, but he proceeded to shoot both Morales  
10 and her several times. Marin then saw Smokey and Chinola flee out of the front door of the  
11 residence.

12 Marin stated that despite her injuries, she was able to go into Wantland's and Headrick's  
13 bedroom, where she saw Headrick laying on the floor and Wantland laying in the bed – both  
14 with apparent gunshot wounds. Marin said she was able to get Wantland up from the bed and  
15 get out of the residence.

16 Detectives asked Marin if she knew why Smokey and Chinola shot them. Marin  
17 responded that they let Chinola use their vehicle and Chinola failed to bring it back. Marin  
18 said Morales had called Chinola and left a message, asking them to return the vehicle. Marin  
19 said that started some type of verbal altercation and she believed that is the reason why Smokey  
20 and Chinola came over and shot them.

21 Marin was able to give police directions to Chinola's residence, which was located at  
22 1927 Bassler in North Las Vegas. With the names supplied by Marin, police were able to  
23 identify Ivonne Cabrera as a possible female suspect who used the name Chinola. Police  
24 obtained and then showed Marin a picture of Cabrera. Marin positively identified Cabrera as  
25 the suspect who entered Marin's apartment and shot both her and Morales.

26 At approximately 11:00 p.m., on the same day, police, who were watching the Bassler  
27 location, observed Cabrera get in a vehicle with several other subjects. Police saw Cabrera  
28 packing numerous items into the trunk of a vehicle before leaving. Police subsequently

1 stopped Cabrera's vehicle and detained her. Police were able to locate a large amount of  
2 Cabrera's clothing in the trunk, which was consistent with the clothing that the witnesses had  
3 described Cabrera wearing at the time of the shooting. It appeared as though Cabrera was  
4 trying to escape before being apprehended.

5 Detectives then responded to the location where Cabrera was being detained and took  
6 her into custody. Detectives transported Cabrera to the Detective Bureau, where she was  
7 questioned after being advised of her Miranda rights. During the taped interview of Cabrera,  
8 she initially denied any involvement in the shooting. Later, however, Cabrera admitted to  
9 going to the victim's residence with Smokey. Cabrera said she knew Smokey had a gun at the  
10 time. Cabrera said that Smokey climbed through the bathroom window and then let her into  
11 the apartment through the front door. Cabrera admitted to knocking on the bedroom doors  
12 and asking the victims to let them into the rooms. Cabrera said that Smokey shot about nine  
13 times at the victims. Cabrera further stated that they both fled from the residence following  
14 the shooting, leaving in the grey Dodge Intrepid they had borrowed from Morales.

15 Cabrera said they later abandoned the vehicle on Bonanza Road and that they were  
16 picked up by Smokey's sister. Cabrera said Smokey told her that he was only going to scare  
17 them. Cabrera told police that she did it because she was scared. After the shooting, however,  
18 Cabrera made no attempts to contact the police. Cabrera was then questioned as to why she  
19 and Smokey went to the apartment and shot the victims. Cabrera would only respond that  
20 there was some type of problem between them.

#### 21 **INJURIES TO LIVING VICTIMS:**

22 According to the nurses at UMC, Marin suffered bullet "grazes" to her right buttock  
23 and her right arm. Marin also had gunshot wounds to her left shoulder, right arm, back and  
24 right breast. Marin had to have a tube inserted into her chest cavity to drain the blood which  
25 had collected around her lungs. It also appeared as though she suffered several broken bones.

26 Wantland also suffered multiple gunshot wounds: two to her right arm; at least two in  
27 her chest; and one at the base of her chin underneath her jaw. According to the nurses, at the  
28 time of her initial hospitalization, there were still two bullets inside Wantland's body (one had

1 lodged in her tongue and one was near her right breast). Wantland also had to have a chest  
2 tube inserted to drain blood from around her lungs.

3 **AUTOPSY:**

4 On April 27, 2012, Dr. Gary D. Telgenhoff conducted an autopsy of Morales and  
5 Headrick. Dr. Telgenhoff determined that cause of death for both victims was multiple gunshot  
6 wounds and that the manner of death was homicide.

7 **FOLLOW UP INVESTIGATION:**

8 On April 28, 2012, police identified Jose Alejandro Gonzales as a possible suspect who  
9 went by the name of "Smokey." Gonzales fit the description of the suspect given by the  
10 victims. Armed with this information, police obtained a photo of Gonzales and took that photo  
11 to the North Las Vegas Jail where Cabrera was being detained. Police showed Cabrera the  
12 photograph of Gonzales and she identified him as the suspect who went into the residence with  
13 her and shot the victims. Cabrera wrote on the edge of the picture, "this is the guy that shot  
14 the individuals," and signed her name. Cabrera further told police that she and Gonzales were  
15 the only ones who entered the residence on the night of the shooting.

16 Police later went to UMC and contacted victims Marin and Wantland. Because the  
17 victims personally knew both Smokey and Chinola, police showed them the photographs of  
18 Cabrera and Gonzales. Marin positively identified Gonzales as the person who shot both her  
19 and Morales. Wantland also viewed the photograph of Gonzales and positively identified him  
20 as the person who shot both her and Headrick. Wantland also identified Cabrera as the other  
21 suspect.

22 On April 26, 2012, crime scene investigators processed the following shooting scenes  
23 at 2039 Webster St "C" for fingerprints: the exterior of the northeast bedroom window, the  
24 exterior and interior of the bathroom window, the exterior of the sliding glass door, the exterior  
25 of the living room window, and the bathtub/shower walls. All recovered latent lifts suitable  
26 for comparison purposes were compared to Jose Gonzales and Ivonne Cabrera. The results of  
27 those comparisons revealed that a latent lift recovered from the bathtub edge opposite the  
28



1 bathroom window of the residence was a positive match to the left middle finger of Jose  
2 Gonzales.

3 **SUBSEQUENT APPREHENSION OF JOSE GONZALES:**

4 On June 11, 2012, at approximately 1:33a.m., the primary operator of the Z portal at  
5 the Otay Mesa Port of Entry (OTM POE), processed a grey Chevrolet Impala  
6 (NVUS/4PEG102) driven by Marsha Darlene Miller as it attempted to enter the United States.  
7 As the Impala moved through the Z portal at the port of entry, the vehicle underwent an X-ray  
8 examination. The Z portal operator observed X-ray anomalies in the trunk area of the vehicle.

9 As Miller applied for entry as the driver of the silver Chevy Impala, she presented a  
10 Nevada State Driver's License as her only form of identification, and declared herself to be a  
11 United States Citizen. Miller appeared to be abnormally talkative and her hands were shaking  
12 as she presented her documents. Miller stated that she was in Mexico "for fun" and presented  
13 two negative declarations.

14 The passenger in the vehicle was Crystal Hoag (the girlfriend of Jose Alejandro  
15 Gonzales). Hoag also presented an identification card from Nevada and declared that she was  
16 a United States Citizen. When the customs agent queried Hoag's name on her computer, she  
17 received a computer generated alert from the FBI. The agent then referred the vehicle and  
18 occupants to the vehicle secondary lot for further inspection.

19 The Otay Mesa Port of Entry Port Enforcement Team inspected the Impala and  
20 subsequently discovered – concealed in the truck of the Impala – an individual who was  
21 attempting to elude Customs and Border Protection (CPB) inspection. That individual was  
22 identified as Jose Alejandro Gonzales (aka Jose Alex Gonzales). The San Ysidro Port of Entry  
23 Criminal Enforcement Unit was immediately contacted and later confirmed that there was an  
24 active arrest warrant for Jose Gonzales for the double homicide from the State of Nevada.  
25 Gonzales was then referred to the aforementioned CBP Enforcement Unit for further  
26 processing and disposition and was subsequently extradited back to Las Vegas, Nevada to  
27 answer to the charges against him.

28 **STATEMENT OF THE CASE**

1 On August 27, 2012, Defendant and his co-defendant, Ivonne Cabrera, were charged  
2 by way of Information with Count 1 – Conspiracy to Commit Murder; Count 2 – Burglary  
3 While in Possession of Deadly Weapon; Count 3 – Murder With a Deadly Weapon; Count 4  
4 – Attempt Murder With a Deadly Weapon; Count 5- Murder With a Deadly Weapon; and  
5 Count 6 – Attempt Murder With a Deadly Weapon. Following several status checks on a trial  
6 setting, this Court set a trial date of October 7, 2013 over Cabrera's objections. Cabrera's  
7 counsel, Ms. Patricia Erickson, objected to the trial date on the basis that her client had invoked  
8 her right to a speedy trial and wished for an earlier trial date. The Court overruled the  
9 objection, stating there were grounds to pursue a later trial date.

10 On July 3, 2013, Defendant filed a Motion to Continue Trial Date stating his attorneys  
11 needed more time to investigate and prepare a mitigation case. Amongst his reasons for  
12 requesting a continuance, Defendant claimed his attorneys still needed to interview his family  
13 members, friends, and teachers.

14 On July 24, 2013, Cabrera and her attorneys objected to Defendant's request for a  
15 continuance, claiming Defendant's attorneys had this case for over a year and the reason for  
16 their request for a continuance had nothing to do with the guilt phase. The State indicated it  
17 would agree to a continuance only if both defendants' cases were continued. Following  
18 arguments from all parties, this Court denied Defendant's motion.

19 On July 31, 2013, Defendant filed a Renewed Motion to Continue Trial Date. On  
20 August 19, 2013, Cabrera joined in Defendant's motion to continue the trial based upon a  
21 conflict with her attorney's trial schedule. Trial was reset for June 23, 2014.

22 On April 9, 2014, Defendant again filed a Motion to Continue Trial Date. The State's  
23 Opposition follows.

#### 24 ARGUMENT

25 The State is ready to proceed to trial on June 23, 2014 and opposes Defendant's request  
26 for a continuance. Defendant has had almost two (2) years to conduct all necessary  
27 investigations and prepare for trial in this case. In Defendant's 2013 Motion to Continue Trial,  
28 the defense indicated it needed more time to investigate mitigating evidence. In the instant

1 motion, the defense is now claiming they need additional time to investigate “new mitigation  
2 information.” At the last trial setting, the defense represented that they would need to make a  
3 trip to Mexico to gather mitigation evidence. Nine months later, the defense is still saying  
4 they need to go to Mexico. The defense has not provided an explanation for the delay in  
5 conducting their investigation.

6 Furthermore, if co-defendant Cabrera announces ready for this trial setting, and the  
7 Court grants Defendant’s current request for a continuance, this would in essence de facto  
8 sever the State’s cases against the defendants. Absent a compelling reason to further delay  
9 these proceedings, the State opposes Defendant’s request for a continuance.

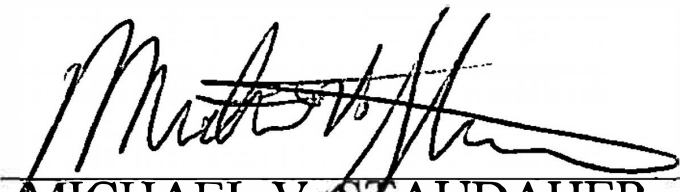
10 CONCLUSION

11 Wherefore, the State respectfully requests that Defendant’s Motion to Continue Trial  
12 Date be DENIED.

13 DATED this 14th day of April, 2014.

14 Respectfully submitted,

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

17 BY   
18 MICHAEL V. STAUDAHER  
19 Chief Deputy District Attorney  
20 Nevada Bar #008273

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1 CERTIFICATE OF FACSIMILE TRANSMISSION AND/OR ELECTRONIC MAIL

2 I hereby certify that service of State's Opposition to Defendant's Motion to Continue  
3 Trial Date, was made this 14<sup>th</sup> day of April, 2014, by facsimile transmission to:

4  
5 CLARK W. PATRICK, Deputy Special Public Defender

6 E-Mail: [cpatrick@clarkcountynv.gov](mailto:cpatrick@clarkcountynv.gov)

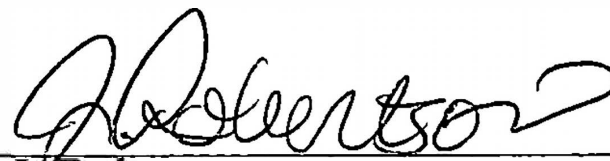
7 ALZORA B. JACKSON, Deputy Special Public Defender

8 E-Mail: [ajackson@clarkcountynv.gov](mailto:ajackson@clarkcountynv.gov)

9 KATHLEEN FITZGERALD, Legal Executive Assistant

10 E-Mail: [kfitzger@clarkcountynv.gov](mailto:kfitzger@clarkcountynv.gov)

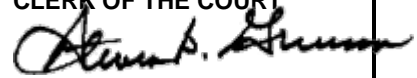
11  
12  
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14 BY:



15 J. Robertson

16 Secretary for the District Attorney's Office  
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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, )

Plaintiff, )

vs. )

JOSE GONZALES, )

Defendant. )

Case No: C-12-283700-2

Dept. No: 25

BEFORE THE HONORABLE KATHLEEN DELANEY

APRIL 21, 2014, 9:00 A.M.

REPORTER'S TRANSCRIPT  
OF  
PROCEEDINGS

APPEARANCES:

(See separate page)

REPORTED BY: BRENDA SCHROEDER, CCR NO. 867

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APPEARANCES:

For the Plaintiff:

HETTY WONG, ESQ.  
Chief Deputy District Attorney  
200 Lewis Avenue  
Las Vegas, Nevada 89155

For Defendant JOSE GONZALES:

CLARK W. PATRICK, ESQ.  
Deputy Special Public Defender  
330 S. Third Street, Suite 800  
Las Vegas, Nevada 89155

ALZORA B. JACKSON, ESQ.  
Deputy Special Public Defender  
330 S. Third Street, Suite 800  
Las Vegas, Nevada 89155

For Defendant IVONNE CABRERA:

PATRICIA M. ERICKSON, ESQ.  
601 S. Tenth Street, Suite 108  
Las Vegas, Nevada 89101

1 LAS VEGAS, CLARK COUNTY, NEVADA

2 WEDNESDAY, APRIL 21, 2014, 9:00 A.M.

3 PROCEEDINGS

4 \* \* \*

5 THE COURT: Calling the State of Nevada versus  
6 Jose Gonzales.

7 MS. WONG: Hetty Wong for the State.

8 THE COURT: On calendar this morning we have a  
9 motion filed by the defendant -- one of the defendants --  
10 to continue the trial date. The specifics of it are  
11 there was an authorization to -- well, technically, on  
12 the calendar is a Motion to File Under Seal, which just  
13 got set on the same calendar date that the Court is  
14 seeking that information and that would not be  
15 appropriate to be shared with the other side.

16 I have reviewed it and the Motion to File Under  
17 Seal is granted and we'll take care of the particular  
18 filing after today's date.

19 But for consideration the Motion to Continue  
20 Trial Date, obviously, there has been quite a bit of  
21 discussion about this issue in the case already.

22 I also do want to note, of course, that  
23 Mr. Gonzales is present in custody.

24 Do we have Ms. Cabrera?

25 MS. ERICKSON: No, we don't, Your Honor.

1 THE COURT: All right. Well, let me first get  
2 the position of the folks in terms of have there been any  
3 developments since this matter was filed?

4 MS. ERICKSON: No.

5 MR. PATRICK: No, Your Honor. And since we  
6 filed the two motions to comply with Howard, I thought  
7 maybe the Court would like to grant the Motion to File  
8 Under Seal; that is let us file our affidavit and give  
9 the Court a chance to review it before the Court ruled on  
10 any motion to continue, or would the Court like to do all  
11 of that today?

12 THE COURT: Let me just double check something.

13 Okay. I certainly think that we obviously want  
14 to give due consideration to everything that needs to be  
15 considered, and as I said, I wanted to address the Motion  
16 to File Under Seal first and grant that and have that  
17 done.

18 But we need to get this done quickly and -- are  
19 we going to have Ms. Cabrera present in the future matter  
20 because depending on the ruling, I am not necessarily  
21 saying we need to hear from her, but I don't know if you  
22 want to make representations today at this point or not.

23 MS. ERICKSON: I am ready to make  
24 representations, Judge, but if the Court is considering  
25 granting it I think my client has to be here.



1           THE COURT: I think we need to have everybody  
2 present first and foremost; that is one of my concerns  
3 and that is what I thought right out of the gate when she  
4 wasn't here.

5           Certainly, I have the gist of and have an  
6 understanding of what is necessitating the additional  
7 time frame, but the specifics of it obviously need to be  
8 fully considered before any determination is made.

9           What is the State's position on a brief  
10 continuance? And what date works for everybody because  
11 these are folks that are not typically here so I  
12 definitely need your schedule.

13          MS. ERICKSON: I know I'll agree to a brief  
14 continuance.

15          THE COURT: All right.

16          MR. PATRICK: Judge, we can have the affidavit  
17 filed today, so whatever the Court's pleasure.

18          Ms. Jackson and I will be available.

19          THE COURT: Well, we have Monday's and  
20 Wednesday's calendars. And I don't think we need to  
21 necessarily offset it in any way but we want to make sure  
22 that it fits with everybody's schedule.

23          We could come back Monday -- oh, no. We can't.  
24 I'm sorry. We don't have calendar on Monday because  
25 there is the civil court judges' conference and we will

1 be dark on Monday, so it will have to be either the next  
2 Monday or Wednesday.

3 MR. PATRICK: Monday is fine, Your Honor.

4 MS. ERICKSON: Monday is fine, Judge.

5 THE COURT: Okay. Thank you. We will see you  
6 all Monday.

7 And we need to make sure that we get Ms. Cabrera  
8 here as well so we'll make sure that is noted. It looks  
9 like the officer is writing that down, too, so we'll have  
10 both defendants here.

11 MR. PATRICK: Thank you.

12 MS. ERICKSON: Thank you.

13 THE CLERK: That will be April 28th at 9:00 a.m.

14 (Proceedings were concluded.)  
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2 REPORTER'S CERTIFICATE  
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4 STATE OF NEVADA )  
5 ) ss.  
6 COUNTY OF CLARK )

7 I, BRENDA SCHROEDER, a certified court reporter  
8 in and for the State of Nevada, do hereby certify that  
9 the foregoing and attached pages 1-8, inclusive, comprise  
10 a true, and accurate transcript of the proceedings  
11 reported by me in the matter of THE STATE OF NEVADA,  
12 Plaintiff, versus JOSE GONZALES, Defendant, Case No.  
13 C283700-2, on December 16, 2015.  
14

15  
16  
17 Dated this 11th day of June, 2017.  
18

19 /s/ Brenda Schroeder  
20 BRENDA SCHROEDER, CCR NO. 867  
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25

TRAN

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CLERK OF THE COURT

THE STATE OF NEVADA,

Plaintiff,

vs.

JOSE ALEJANDRO GONZALES and  
IVONNE CABRERA,

Defendants.

CASE NO.

C-12-283700-2

DEPT. NO. 25

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE KATHLEEN E. DELANEY

MONDAY, APRIL 28, 2014

APPEARANCES:

For the State:

HETTY WONG,  
DEPUTY DISTRICT ATTORNEY

For the Gonzales Defendant:

ALZORA JACKSON, ESQ.  
CLARK PATRICK, ESQ.

For the Cabrera Defendant:

PATRICIA ERICKSON, ESQ.  
BRET O. WHIPPLE, ESQ.

REPORTED BY:

DANA J. TAVAGLIONE, RPR, CCR No. 841

1 LAS VEGAS, NEVADA, MONDAY, APRIL 28, 2014

2 \* \* \* \* \*

3  
4 THE COURT: Back to the matter on page 4.  
5 State of Nevada vs. Ivonne Cabrera and Jose  
6 Gonzales.

7 MR. WHIPPLE: Your Honor, with the Court's  
8 permission, I spoke with Mr. Turner. Ms. Holthus is  
9 here on one other case of mine, and she's running to  
10 another hearing.

11 Is it possible to call that one first?

12 THE COURT: That's fine.

13 MS. HOLTHUS: I am so sorry, Judge. But  
14 it's the only thing on calendar, and so --

15 THE COURT: I don't have a problem.

16 I'm just calling them in the order which  
17 you signed in. But you can make your apologies to  
18 everybody else later.

19 MR. WHIPPLE: Page 13.

20 (Pause in the proceedings.)

21 THE COURT: Now, re-calling page 4,  
22 Cabrera and Gonzales.

23 MR. PATRICK: Good morning, Your Honor.

24 Clark Patrick and Alzora Jackson for  
25 Mr. Gonzales.

1 THE COURT: Thank you.

2 And I do want to note now that I do have  
3 both the defendants present. We had Mr. Gonzales,  
4 but we needed to get Ms. Cabrera present to fully  
5 entertain the motion and, you know, to make sure  
6 everybody was aware at the time of what the outcome  
7 was.

8 Let me go ahead though and just take a  
9 moment. I had one appearance stated. I apologize.  
10 I keep forgetting because I do have somebody  
11 covering for the court reporter today, and I need  
12 all the appearances.

13 So let's start with the State.

14 MS. WONG: Hetty Wong on behalf of the  
15 State. Bar Number 11324.

16 THE COURT: You can just do it again,  
17 Counsel.

18 MR. PATRICK: Sure. Clark Patrick and  
19 Alzora Jackson for Mr. Gonzales.

20 THE COURT: Thank you.

21 MS. ERICKSON: Patricia Erickson and Bret  
22 Whipple for Ms. Cabrera, who's present in custody.

23 THE COURT: All right. Thank you so much.

24 And we obviously had this on the calendar  
25 before in terms of what the general arguments were,

1 but we needed to take a chance -- take the time,  
2 sorry -- to look at what was filed under seal and  
3 the circumstances that are set forth there. I  
4 appreciate that we cannot or will not have on the  
5 record any specific discussion. I just want to  
6 assure you that the Court has reviewed all the  
7 circumstances.

8 Do you have any additional generalized  
9 statement you'd like to make to the Court?

10 And then I'll hear from you.

11 MR. PATRICK: The only thing, Your Honor,  
12 is in the State's opposition, they mentioned that we  
13 had talked about going to Mexico previously and that  
14 we haven't in the preceding nine months. As the  
15 Court is well aware, these mitigation things are  
16 very fluid.

17 At one point, we thought we may not need to  
18 go. But after the new information that we've  
19 received, we know it's absolutely imperative that we  
20 go before trial. And as someone who has done  
21 international travel for litigation trips, I can  
22 assure the Court that there's a lot of levels that  
23 it needs to go through for approval to get this  
24 done.

25 The only other thing I would add, that I

1 did not put in the affidavit -- my apologies to the  
2 Court -- but I do also have a capital case starting  
3 June 2nd, which is older than this and will go.

4 THE COURT: which department, just for our  
5 record, is that one?

6 what case number is that one?

7 MR. PATRICK: It's Mr. Park, and it is in  
8 Department 11, Your Honor.

9 THE COURT: Case number?

10 MR. PATRICK: I'm sorry, Judge. I don't  
11 have that available.

12 THE COURT: That's okay. No problem. Just  
13 checking to see --

14 But you're sure it's going to go?

15 MR. PATRICK: It is, Your Honor. It's  
16 considerably older than this case. We are going.  
17 Judge Gonzales understands that it's going. There's  
18 no doubt.

19 THE COURT: Let me hear from counsel for  
20 Ms. Cabrera first, and then we'll hear from the  
21 State, and then we'll give any opportunity.

22 MS. ERICKSON: Judge, you well know we  
23 invoked from the beginning. We've objected to every  
24 continuance. We only had to agree to the last one  
25 because Judge Earl set a federal trial at the same



1 time that the September hearing was, the September  
2 trial in this case was set. So we did join at that  
3 point. But at this point, we're ready to go. We've  
4 been ready to go.

5 We want to go. So we ask that you consider  
6 severing this again, which the Court has already  
7 heard. But we have a right, you know, to ask you to  
8 think about that again. And should the Court be  
9 thinking of doing, of continuing the case -- because  
10 I have no idea what's in the affidavit -- I would  
11 suggest that the Court also consider perhaps  
12 bifurcating the guilt phase from the penalty phase.

13 It's not done nearly as much now as it has  
14 been in the past. But I was involved in a capital  
15 case that was trialed in June and the penalty phase  
16 was in October, which gave me five-and-a-half months  
17 to do more investigation for the penalty phase, and  
18 that's the only thing that counsel is saying they  
19 need to do is penalty phase. And so I think that  
20 that is an alternative remedy to just continuing our  
21 trial.

22 MS. JACKSON: And, for the record, we would  
23 ask the Court to not consider bifurcation in our  
24 case that opposing counsel -- that is not our  
25 request, and that is not something that we would ask

1 the Court to consider on behalf of Mr. Gonzales.

2 That is not an option.

3 THE COURT: Thank you.

4 MS. WONG: And, Your Honor, the State would  
5 also oppose bifurcating the guilt phase from the  
6 penalty phase.

7 The State's opposition to the defense's  
8 motion to continue is really twofold. The first one  
9 is potential witness issues. This case is already  
10 two years old. We had problems getting our two  
11 victims to the preliminary hearing. The State had  
12 previously filed a motion to take their video  
13 depositions, which the Court denied. Our concern is  
14 if the case continues again, it's going to be more  
15 difficult to locate these witnesses.

16 But more importantly, obviously, the  
17 co-defendant, Ms. Cabrera, is insisting on going to  
18 trial. So if the Court grants Mr. Gonzales's motion  
19 to continue, it would in essence, de facto, sever  
20 the State's cases. And so we would oppose the  
21 continuance on that basis.

22 THE COURT: Just on that last point, again,  
23 because, as we know, we already had one argument for  
24 bifurcation. The Court denied that argument but  
25 still, nevertheless, put the matter out beyond what

1 would be any invoked time frame.

2 And the Court, I believe -- and I have not  
3 looked at this recently, but I did look at it back  
4 contemporaneous with the prior motion -- that the  
5 Court still, nevertheless, maintains the discretion,  
6 especially in the circumstance of a case such as  
7 this, to determine what the trial date shall be and  
8 that it wouldn't necessarily mandate bifurcation.

9 And I just want to make sure I'm clear on  
10 what you're arguing. So you oppose certainly the  
11 bifurcation of the guilt and the penalty phases.  
12 But are you indicating that you think, by operation  
13 of law, that cases have to be severed if the Court  
14 were to continue?

15 MS. WONG: No. I'm asking the Court not to  
16 grant the defendant's invalid motion to continue.

17 THE COURT: I understand.

18 MS. WONG: So that does not sever the  
19 State's cases.

20 THE COURT: But if the Court does grant the  
21 motion to continue, is it your argument that, by  
22 operation of law, it would automatically sever the  
23 cases?

24 MS. WONG: No, no.

25 The Court has discretion to sever the cases

1 if Ms. Cabrera insists on going to trial and  
2 Mr. Gonzales cannot. The State's position is we're  
3 asking the Court not to do that.

4 THE COURT: I understand. Okay. No, I  
5 appreciate the clarification. That's why I asked.

6 Anything further from either of the  
7 defendants' counsel? Let me start with Ms. Cabrera's  
8 counsel, and I'll let you finish, Ms. Jackson.

9 MS. JACKSON: Certainly.

10 MS. ERICKSON: Judge, with regard to the  
11 severance issue, you previously ruled that the Court  
12 retains the right to grant a trial after -- over  
13 the, you know, the invocation, and we did that, and  
14 it was set in September of 2013.

15 THE COURT: Right.

16 MS. ERICKSON: I think that, while the  
17 Court may still retain the jurisdiction to do that,  
18 the more that we do this, the more likely it is that  
19 that's going to be an error on our part because we  
20 have been ready each and every time. We have not  
21 requested a continuance.

22 We are ready to go, and we want, you know,  
23 we want to go to trial. And we're asking the  
24 Court -- you know, I think that if you're thinking  
25 of granting it, I think you have to also consider,

1 strongly consider severing it because I think that  
2 we are building in an issue should Ms. Cabrera be  
3 convicted.

4 THE COURT: Thank you.

5 MR. PATRICK: Judge -- I'm sorry,  
6 Your Honor. The only thing I would add is that I  
7 have a client that's been waiting six years to go to  
8 trial. We've also announced every time that we are  
9 ready. But because the capital co-defendant keeps  
10 requesting continuances, we're drug right along with  
11 it. So there is precedence to -- if the Court is  
12 not willing to the sever these cases --

13 THE COURT: But you would agree, that's not  
14 an ideal situation, Counsel.

15 MR. PATRICK: I agree, Your Honor. And  
16 believe me, I've been making the same argument that  
17 Ms. Cabrera's counsel has been making for six years.  
18 And the Court just says, "Go on. We're going to  
19 continue this" because they know the importance of  
20 being ready in capital cases.

21 MS. JACKSON: Your Honor, if I may.

22 THE COURT: You may. Sure.

23 MS. JACKSON: Having done a few of these,  
24 the co-defendant is capital. If one complies with  
25 the cases we've cited in our motion, if one complies

1 with Rule 250, these cases typically -- to go to  
2 Mexico has to be approved by a lead county manager.  
3 It has to be done in a very unique fashion. It's  
4 just difficult for -- these cases happened just a  
5 few years ago; this case happened a few years ago.  
6 This case is not at all in a posture --

7 THE COURT: It's dragging around. It's  
8 been hanging around.

9 MS. JACKSON: It's in a posture where  
10 counsel needs to come in and, and -- and I just  
11 don't think that based upon, you know, my  
12 experience, that it's just impossible -- I mean,  
13 Mr. Patrick went to Korea on Parks. Parks is five  
14 years old. It just takes time in order to comply  
15 with the requirements that we have to adhere to as  
16 capital defenders.

17 MS. ERICKSON: Just one more thing.

18 THE COURT: Go ahead.

19 MS. ERICKSON: I went over the transcripts,  
20 and the last time that we continued with the trial,  
21 Ms. Alzora Jackson made the statement that she  
22 wanted the Court to recognize that they had asked  
23 for a trial September in the spring of 2014 and that  
24 it's based on her experience that they would be  
25 ready to go at that time.

1           And here we are again with them saying that  
2 they didn't go to Mexico in the last nine months  
3 because maybe it wasn't necessary the first time but  
4 now it absolutely is. So we are in the place where  
5 they said they wanted to be -- we're farther along  
6 than that with June 23rd. That's not spring.  
7 That's the beginning of summer.

8           We'd ask that we be severed and that we go  
9 to trial on June 23rd.

10           MS. JACKSON: And as co-counsel stated,  
11 Your Honor, we're trying to avoid the Mexico trip.  
12 But based upon our investigation --

13           THE COURT: I've seen that.

14           MS. JACKSON: -- we uncovered documents.

15           And I would suggest to the Court that  
16 Ms. Cabrera is also of Mexican descent and that if  
17 she were my client, I probably would be interested  
18 in going to Mexico on her behalf as well.

19           THE COURT: Well, I mean, we can go back  
20 and forth on this all day.

21           But Mr. Whipple, I'm not going to cut you  
22 off. Go ahead.

23           MR. WHIPPLE: And I appreciate that,  
24 Your Honor. You know, just a couple things to point  
25 out. Death is different. We always say that.

1           This is a death case, and we're just asking  
2   for severance. They have their own case to try, and  
3   they have their own background and their own  
4   reasons. We're now at the two-year mark. When a  
5   person is taken into custody, they lose most of  
6   their rights, but one of the rights they retain is  
7   the right to a speedy trial.

8           And my client invoked that right, and that  
9   right was violated or breached for various reasons.  
10   So we may, one day, have to deal with it. But it's  
11   now two years, two years. If not now, when?  
12   Because it's the same thing.

13           We respect our co-defendants. I've been to  
14   that office. I've tried cases with both of those  
15   individuals. We respect them immensely. But they  
16   have their job and we have our job, and those jobs  
17   are different now. They were different before.  
18   This case cries for severance. It's not that much  
19   more work to do this case twice. Let them do their  
20   job. Let us do our job. I'm just asking that the  
21   court sever it and allow us to do our job.

22           THE COURT: Let me conclude the arguments  
23   there and say, "If not, when?" I'll tell you  
24   unfortunately when. I am privy and obviously counsel  
25   for Mr. Gonzales is privy to the circumstances.



1 Nobody really has addressed what Mr. Patrick kind of  
2 threw in here at the last minute which result though  
3 with potential conflict in this case is. But at the  
4 end of the day, I believe it's -- what has been  
5 brought to the Court's attention does warrant some  
6 continuance, not a significant one, from the Court's  
7 perspective.

8           Although, I very much appreciate from  
9 Ms. Cabrera and her counsel's perspective and from  
10 the State's perspective as well, it may seem  
11 significant. But I am going to put this case at the  
12 last stack available in this year, and it is going  
13 to go. And that may not give all the time in the  
14 world to Mr. Gonzales' counsel, but it should be  
15 enough.

16           I will be honest with you -- and, again,  
17 I'm not going to go into the details -- some of the  
18 items listed, to me, would warrant the continuance;  
19 others would not. I'm not going to specify which,  
20 but you'll have to prioritize and focus if the time  
21 frame is difficult to manage. But, nevertheless, I  
22 trust you'll be able to complete what you need to  
23 complete.

24           Our last stack of the year of calendar call  
25 and trial dates that you'll be given -- and, again,

1 we will go at that time, regardless of where we are  
2 positioned, because I do believe we have, yes,  
3 brought this out to the point where we are -- we  
4 should be sufficiently prepared to go.

5 Go ahead. Here's your date.

6 THE CLERK: Calendar call November 3rd at  
7 9:30.

8 MS. JACKSON: Your Honor, for the record,  
9 I have State vs. Michael Rodriguez at November 3rd.  
10 I don't have the case number. It's a capital case  
11 in front of Judge Herndon that happened in 2010.

12 MS. ERICKSON: And, Judge, I have trial in  
13 front of Judge Silver that starts on September 15th.  
14 That may go two weeks.

15 THE COURT: We have a stack that runs  
16 through December 8th. So tell me as well what time  
17 frame we think this trial is going to take, if we  
18 have any estimate of that at this point.

19 MS. ERICKSON: I can go anytime -- that  
20 trial is the last two weeks of September. So I need  
21 two weeks or more to get ready. So that's all I'm  
22 asking.

23 MR. WHIPPLE: For the record, Your Honor, I  
24 have a firm murder case set for December 8th.

25 THE COURT: That's the last week of the

1 stack.

2 MR. WHIPPLE: November is good. November  
3 is open.

4 THE COURT: How much time do we think the  
5 trial will take? If anybody can give me ballpark  
6 estimate on that.

7 MS. JACKSON: This case --

8 MS. ERICKSON: With penalty or without?

9 THE COURT: At this point, it's not the  
10 Court's intention to sever either of the parties,  
11 nor the guilt or penalty.

12 MS. ERICKSON: No, I'm just asking if you  
13 want the entire trial.

14 THE COURT: Yeah, no. I'm saying we're not  
15 severing anything.

16 MR. WHIPPLE: Two weeks, Your Honor.

17 MS. JACKSON: No, no.

18 MS. ERICKSON: I would say three weeks.

19 MS. JACKSON: Given the adverse nature of  
20 the co-defendants and two, four, six attorneys, it's  
21 going to go three weeks.

22 MS. ERICKSON: Three weeks.

23 THE COURT: Ms. Wong.

24 MS. WONG: I agree.

25 THE COURT: Tell us the rest of your

1 schedule, Ms. Jackson.

2 Your trial, your case is when?

3 MS. JACKSON: November 3rd, 2014.

4 Department 3, State vs. Rodriguez.

5 THE COURT: All right. And how long is  
6 that one expected to take?

7 MS. JACKSON: That is a severed capital  
8 case. Two and a half weeks, perhaps.

9 THE COURT: Give me some more information,  
10 folks. The stack is a five-week stack from  
11 November 10th to December 8th.

12 what's your other case on the 8th?

13 MR. WHIPPLE: It's a murder case. It's  
14 called "Joshua," District Court 6, Your Honor.

15 THE COURT: what's the time frame on that  
16 one? When did that one arise?

17 MR. WHIPPLE: What was the date of the  
18 incident?

19 THE COURT: what's your priority in terms  
20 of age, the case?

21 MR. WHIPPLE: That one is older. I have to  
22 double-check.

23 MS. WONG: Your Honor, may I recommend  
24 something? I actually don't have Mr. Staudaher's  
25 schedule anyways. Would the Court mind maybe

1 setting it on a status check two weeks. That way we  
2 can all coordinate and come back with a date for the  
3 Court.

4 THE COURT: That seems to be the best way  
5 to proceed at this point. Again, the Court is  
6 denying any request to sever the parties or to sever  
7 guilt versus penalty phase.

8 But the Court does want this set before the  
9 end of the year and will look at reasonable  
10 opportunities where it might be able to also fit in  
11 beginning somewhere around the criminal stack and  
12 trailing into the civil stack, if need be -- not  
13 ideal, but we'll figure it out. And so you know our  
14 stack ranges, and you can contact chambers maybe for  
15 additional information.

16 Two week status check.

17 THE CLERK: May 12th at 9:30.

18 MS. WONG: I'm sorry, Your Honor. Can you  
19 tell me what the last criminal stack is again, the  
20 dates for the criminal stack.

21 THE COURT: Runs from November 10th through  
22 December 8th.

23 I'm sorry. Ms. Jackson, were you concerned  
24 about your status check date?

25 MS. JACKSON: Yes, Your Honor. I will not

1 be in the jurisdiction on May 12th.

2 THE CLERK: May 14th at 9:30.

3 THE COURT: Is that fine, Ms. Jackson?

4 MS. JACKSON: Yes, ma'am. Thank you so  
5 much, Your Honor.

6 THE COURT: All right. Thank you.

7 See you all then.

8

9 (The proceedings concluded at 9:55 a.m.)

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C E R T I F I C A T E

STATE OF NEVADA     )  
                              )SS:  
COUNTY OF CLARK    )

I, Dana J. Tavaglione, RPR, CCR 841, do  
hereby certify that I reported the foregoing  
proceedings; that the same is true and correct as  
reflected by my original machine shorthand notes  
taken at said time and place before the  
Hon. Kathleen E. Delaney, District Court Judge,  
presiding.

Dated at Las Vegas, Nevada, this 25th day  
of June 2014.

/S/Dana J. Tavaglione

\_\_\_\_\_  
Dana J. Tavaglione, RPR, CCR NO. 841  
Certified Court Reporter  
Las Vegas, Nevada



CLERK OF THE COURT

MCNT  
DAVID M. SCHIECK  
SPECIAL PUBLIC DEFENDER  
Nevada Bar #0824  
CLARK W. PATRICK  
Deputy Special Public Defender  
Nevada Bar #9451  
ALZORA B. JACKSON  
Deputy Special Public Defender  
Nevada Bar #2255  
330 So. Third Street, Suite #800  
Las Vegas, Nevada 89155  
(702) 455-6265  
FAX: (702) 455-6273  
E-MAIL: cpatrick@clarkcountynv.gov  
E-MAIL: ajackson@clarkcountynv.gov  
Attorneys for GONZALES

DISTRICT COURT

CLARK COUNTY, NEVADA

|                               |   |                        |
|-------------------------------|---|------------------------|
| THE STATE OF NEVADA,          | ) | CASE NO. C-12-283700-2 |
|                               | ) | DEPT. NO. 25           |
| Plaintiff,                    | ) |                        |
|                               | ) |                        |
| vs.                           | ) |                        |
|                               | ) |                        |
| JOSE A. GONZALES, ID 2636822, | ) |                        |
|                               | ) |                        |
| Defendant.                    | ) | Date: _____            |
| _____                         | ) | Time: _____            |

**RENEWED MOTION TO CONTINUE TRIAL DATE  
AND MOTION TO FILE DECLARATION IN SUPPORT UNDER SEAL**

COMES NOW, Defendant, Jose Gonzales, by and through his attorneys, David M. Schieck, Special Public Defender, Clark W. Patrick, Deputy Special Public Defender, and Alzora B. Jackson, Deputy Special Public Defender, and respectfully requests that this Honorable Court continue the trial date in this matter which is currently scheduled for October 7, 2013.

This Motion is made and based upon the papers and pleadings on file herein, the Points and Authorities herein, and the Declaration of Counsel which is submitted herewith.

Mr. Gonzales is not required to reveal any possible defenses and/or strategy available to him at trial, therefore, Mr. Gonzales requests that the Declaration be filed under seal, or in the alternative an ex parte hearing in camera be held, and any oral argument as may be



adduced at the time of the hearing of this matter.

## NOTICE OF MOTION

TO: The State of Nevada, Plaintiff; and

TO: The Clark County District Attorney, Attorney for Plaintiff:

PLEASE TAKE NOTICE that the undersigned will bring on the above and foregoing **Motion to Continue Trial Date** on 08/ 19/ 2013 at the hour of 9:00 a.m., in Department No. 25 of the above-entitled Court, or as soon thereafter as counsel may be heard.

## POINTS AND AUTHORITIES

The Eighth Judicial District Court Rule 7.30 states in pertinent part that “Any party may, for good cause, move the court for an order continuing the date set for trial....”

Under the Sixth Amendment to the United States Constitution, a defendant has the right to effective assistance of counsel. This is especially important when the State is requesting the imposition of the death penalty. The ABA has set forth guidelines for the Appointment and Performance of Defense Counsel in Capital Cases. The objective of the guidelines is to set forth a national standard of practice for the defense of capital cases in order to ensure high quality legal representation for all persons facing the possible imposition or execution of a death sentence in any jurisdiction. See ABA Guideline 1.1.

These guidelines are not aspirational. Instead they embody the current consensus about what is required to provide effective defense representation in capital cases.

The United States Supreme Court has held counsel as being ineffective when counsel’s conduct “fell short of the standards for capital defense work articulated by the ABA standard to which we have long referred as guides to determining what is reasonable.” Wiggins v. Smith, 539 U.S. 510, 524 (2003).

At the core of the ABA Guidelines is the need to perform a complete and detailed investigation into all aspects of the case, both at the guilt phase and the penalty phase. At every stage of the proceedings, counsel has a duty to investigate the case thoroughly. This duty is intensified (as are many duties) by the unique nature of the death penalty, has been

1 emphasized by recent statutory changes, and is broadened by the bifurcation of capital trials.  
2 See ABA Guideline 10.7. “The ABA Guidelines provide that investigations into mitigating  
3 evidence should comprise efforts to discover all reasonable available mitigation evidence and  
4 evidence to rebut any aggravation evidence that may be introduced by the prosecutor.”  
5 Rompilla v. Beard, 545 U.S. 374, n. 7 (2005).

6 Because the sentencer in a capital case must consider in mitigation, “anything in the  
7 life of a defendant which might mitigate against the appropriateness of the death penalty for  
8 that defendant.” Brown v. State, 526 So. 2d 903, 908 (Fla. 1988) (citing Hitchcock v.  
9 Dugger, 481 U.S. 393, 394 (1987)); see also Eddings v. Oklahoma, 455 U.S. 104, 113-15  
10 (1982); Lockett v. Ohio, 438 U.S. 586, 604 (1978); infra text accompanying note 277.

11 “Penalty phase preparations requires extensive and generally unparalleled investigation into  
12 personal and family history.” In the case of a client facing the death penalty, this begins with  
13 the moment of conception. Counsel needs to explore:

- 14 1. Medical History
- 15 2. Family and Social History
- 16 3. Educational History
- 17 4. Military Service
- 18 5. Employment and Training History
- 19 6. Prior Juvenile and Adult Correctional Experience.

20 ABA Standard 10.7.

21 In Allen v. Woodford, 395 F.3d 979, 1001 (9<sup>th</sup> Cir. 2005), the Court citing Strickland  
22 v. Washington, 466 U.S. 668, 689 (1984), held “counsel’s untimely, hasty, and incomplete  
23 investigation of potential mitigation evidence for the penalty phase fell outside the range of  
24 reasonable professional assistance.”

25 The California Supreme Court held that trial counsel’s “failure to investigate  
26 petitioner’s early social history was not consistent with norms that directed counsel in death  
27 penalty cases to conduct a reasonably thorough independent investigation of the defendant’s  
28 social history as reflected in the ABA standards relied upon by the court in the Wiggins  
case.” In re Larry Douglas Lucas, 94 P.3d 477, 504 (Cal. 2004).

Summing up the need to thoroughly investigate all evidence and mitigating factors in

1 a capital case, “counsel’s failure to inquire into an area specifically mentioned in the ABA  
2 Guidelines is a good indicator that his performance was constitutionally deficient.” Kandies  
3 v. Polk, 385 F.3d 457, 479 (4<sup>th</sup> Cir. 2004).

4 Further, the ABA Guidelines provide that investigations into mitigating evidence  
5 should comprise efforts to discover all reasonably available mitigation evidence and any  
6 evidence to rebut aggravation evidence that may be introduced by the prosecutor. Rompilla  
7 v. Beard, 545 U.S. 374 (2005). In Rompilla, the United States Supreme Court specifically  
8 held that counsel was required to review the record of the Defendant’s previous conviction  
9 when they had been put on notice by the prosecution that these priors would be introduced as  
10 aggravating evidence during any possible penalty phase. Rompilla further provides:

11 Counsel must investigate prior convictions that could be used as aggravating  
12 circumstances or otherwise come into evidence. If a prior conviction is legally  
13 flawed, counsel should seek to have it set aside. Counsel may also find  
extenuating circumstances that can be offered to lessen the weight of a  
conviction.

14 Id at pg. 8.

15 The ABA Guideline 1.1 further provides that:

16 Defense counsel must comprehensively investigate together with a defense  
17 investigator a mitigation specialist any other members of the defense team, the  
18 defendant’s behavior and the circumstances of the conviction. Only then can  
19 counsel protect the accused Fourteenth Amendment right to deny or rebut  
factual allegations made by this prosecution in support of a death sentence and  
the client’s Eighth Amendment right not to be sentenced to death based on  
prior convictions obtained in violation of his constitutional rights.

20 ABA Guideline 1.1.

21 In the instant case, the Notice of Intent to Seek Death alleges two prior convictions for  
22 “A felony involving the use of threat of violence to the person of another.” (**Exhibit “A”**)  
23 One from an incident in 2007 and the other from an incident in 2009. Therefore, counsel in  
24 this case will have to retain the services of a panel of experts to assist defending Mr.  
25 Gonzales in this capital case. The prior convictions, being used as aggravators must be fully  
26 and completely investigated just as if counsel were defending those cases, together with the  
27 extensive criminal history Mr. Gonzales.

28 In the instant case, the defense team has been diligently investigating and preparing a

1 mitigation case for Jose. However, there are still many of Jose's family members, friends and  
2 teachers to be interviewed. During his youth, Jose had health issues and accidents that must  
3 be investigated in order to complete the "extensive and generally unparalleled investigation  
4 into personal and family history," that is required by the ABA Guidelines and the United  
5 States Supreme Court.

6 At this time, counsel has not completed the mitigation investigation that is required  
7 prior to counsel being prepared to take this matter to trial. Until the mitigation investigation  
8 is complete counsel for Jose Gonzales would be per se ineffective during a penalty phase of a  
9 capital murder trial. The current trial date of October 7, 2013 was set at a hearing on October  
10 17, 2012. At that hearing, counsel for Mr. Gonzales stated that the earliest reasonable trial  
11 date would be in the Spring of 2014. (Reporter's Transcript of Proceedings, October 17,  
12 2012, pg. 5.) (**Exhibit "B"**)

13 Mr. Gonzales is aware of and has consented to this Renewed Motion to Continue  
14 Trial.

### 15 CONCLUSION

16 Based upon the foregoing, Mr. Gonzales requests that the trial date of October 7, 2013  
17 be vacated and reset.

18 In addition, as Mr. Gonzales is not required to reveal any possible defenses and/or  
19 strategy available to him at trial, and due to the sensitive information contained in the  
20 Declaration, Defendant's requests that the Declaration in Support of the Renewed Motion to  
21 Continue Trial be filed under seal, or in the alternative an ex parte hearing in camera be held.

22 DATED this 31st day of July 2013.

23 SUBMITTED BY:

24 /s/ CLARK W. PATRICK

25  
26  
27 Clark W. Patrick  
28 Alzora B. Jackson  
Attorneys for Gonzales

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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the foregoing Motion was made on July 31, 2013, by  
Electronic Filing to:

DISTRICT ATTORNEY’S OFFICE

email: pdmotions@ccdανv.com

courtesy copy to Michael Staudaher at  
Michael.Staudaher@ccdανv.com

/s/ Kathleen Fitzgerald

\_\_\_\_\_  
Legal Executive Assistant for  
Special Public Defender

CERTIFICATE OF SERVICE

The undersigned does hereby certify that service of the foregoing Motion was made  
this 31st day of July, 2013 by facsimile transmission to the attorneys for Co-Defendant  
Cabrera as follows: BRET WHIPPLE, ESQ., Fax 974-4008; and Patty Erickson by  
electronic mail at PME@pmericksonlaw.com.

/s/ Kathleen Fitzgerald

\_\_\_\_\_  
Legal Executive Assistant for  
Special Public Defender

**EXHIBIT A**

1 NOTC

2 STEVEN B. WOLFSON

3 Clark County District Attorney

4 Nevada Bar #001565

5 MICHAEL V. STAUDAHER

6 Chief Deputy District Attorney

7 Nevada Bar #008273

8 200 Lewis Avenue

9 Las Vegas, Nevada 89155-2212

10 (702) 671-2500

11 Attorney for Plaintiff

12 DISTRICT COURT  
13 CLARK COUNTY, NEVADA

14 THE STATE OF NEVADA,

15 Plaintiff,

16 -vs-

17 JOSE GONZALES, aka  
18 Jose Alejandro Gonzales, #2636822

19 Defendant.

CASE NO: C-12-283700-2

DEPT NO: XXV

20 NOTICE OF INTENT TO SEEK DEATH PENALTY

21 COMES NOW, the State of Nevada, through STEVEN B. WOLFSON, Clark County  
22 District Attorney, by and through MICHAEL V. STAUDAHER, Chief Deputy District  
23 Attorney, pursuant to Supreme Court Rule 250, NRS 175.552 and NRS 200.033, and  
24 declares its intention to seek the death penalty at a penalty hearing for a conviction on Count  
25 3 and/or Count 5. Furthermore, the State of Nevada discloses that it will present evidence of  
26 the following aggravating circumstances:

27 1. *The murder was committed by a person who, at any time before a penalty hearing is  
28 conducted for the murder pursuant to NRS 175.552, is or has been convicted of:*

(a) *Another murder and the provisions of subsection 12 do not otherwise apply  
to that other murder; or*

///

1           **(b) A felony involving the use or threat of violence to the person of another and**  
2 **the provisions of subsection 4 do not otherwise apply to that felony.**

3  
4           That on or about April 26, 2012, Defendants IVONNE CABRERA and JOSE  
5 GONZALES did then and there wilfully, feloniously, without authority of law, and with  
6 premeditation and deliberation, and with malice aforethought, kill JAMES HEADRICK, a  
7 human being, by shooting at the said JAMES HEADRICK multiple times, with a deadly  
8 weapon, to-wit: firearm; Defendant JOSE GONZALES, aka, Jose Alejandro Gonzales  
9 directly committing said crime, Defendant IVONNE CABRERA, aka, Yvonne Cabrera  
10 aiding or abetting by counsel and encouragement and by accompanying Defendant JOSE  
11 GONZALES, aka, Jose Alejandro Gonzales to JAMES HEADRICK'S residence and  
12 knocking on doors to and within JAMES HEADRICK'S apartment to allow Defendant  
13 JOSE GONZALEZ, aka, Jose Alejandro Gonzales to gain access to JAMES HEADRICK to  
14 facilitate shooting him, Defendant IVONNE CABRERA, aka, Yvonne Cabrera also being  
15 criminally liable as a co-conspirator vicariously in that said crime was a foreseeable act of  
16 the conspiracy. (See NRS 200.033(2)(a))

17           That on or about September 9, 2012, Defendants were charged by way of an  
18 Information in the Eighth Judicial District Court, case number C283700, in **Count 3** with  
19 **MURDER WITH USE OF A DEADLY WEAPON.** The State anticipates that both  
20 defendants may be convicted of such charge prior to any penalty hearing in the instant case.  
21 If such conviction occurs for First or Second Degree Murder, the conviction would qualify  
22 as an aggravating circumstance under NRS 200.033(2)(a). If such conviction occurs for any  
23 lesser offense, the conviction would qualify as an aggravating circumstance under NRS  
24 200.033(2)(b).

25           The evidence upon which the State will rely is the testimony of the witnesses, the  
26 pleadings, transcripts, judgment of conviction, court minutes in C283700, as well as the police  
27  
28



1 reports, statements, photographs, and/or physical evidence from North Las Vegas Police  
2 Department Event Number 120426007466.

3 **2. The murder was committed by a person who, at any time before a penalty hearing is**  
4 **conducted for the murder pursuant to NRS 175.552, is or has been convicted of:**

5 **(c) Another murder and the provisions of subsection 12 do not otherwise apply**  
6 **to that other murder; or**

7 **(d) A felony involving the use or threat of violence to the person of another and**  
8 **the provisions of subsection 4 do not otherwise apply to that felony.**

9 That on or about April 26, 2012, Defendants IVONNE CABRERA and JOSE  
10 GONZALES did then and there wilfully, feloniously, without authority of law, and with  
11 premeditation and deliberation, and with malice aforethought, kill ERIK QUEZADA  
12 MORALES, a human being, by shooting at the said ERIK QUEZADA MORALES multiple  
13 times, with a deadly weapon, to-wit: firearm; Defendant JOSE GONZALES, aka, Jose  
14 Alejandro Gonzales directly committing said crime, Defendant IVONNE CABRERA, aka,  
15 Yvonne Cabrera aiding or abetting by counsel and encouragement and by accompanying  
16 Defendant JOSE GONZALES, aka, Jose Alejandro Gonzales to ERIK QUEZADA  
17 MORALES' residence and knocking on doors to and within ERIK QUEZADA MORALES'  
18 apartment to allow Defendant JOSE GONZALEZ, aka, Jose Alejandro Gonzales to gain  
19 access to ERIK QUEZADA MORALES to facilitate shooting him, Defendant IVONNE  
20 CABRERA, aka, Yvonne Cabrera also being criminally liable as a co-conspirator  
21 vicariously in that said crime was a foreseeable act of the conspiracy. (See NRS  
22 200.033(2)(a))

23 That on or about September 9, 2012, Defendants were charged by way of an  
24 Information in the Eighth Judicial District Court, case number C283700, in Count 5 with  
25 MURDER WITH USE OF A DEADLY WEAPON. The State anticipates that both  
26 defendants may be convicted of such charge prior to any penalty hearing in the instant case.  
27 If such conviction occurs for First or Second Degree Murder, the conviction would qualify  
28 as an aggravating circumstance under NRS 200.033(2)(a). If such conviction occurs for any

1 lesser offense, the conviction would qualify as an aggravating circumstance under NRS  
2 200.033(2)(b).

3 The evidence upon which the State will rely is the testimony of the witnesses, the  
4 pleadings, transcripts, judgment of conviction, court minutes in C283700, as well as the police  
5 reports, statements, photographs, and/or physical evidence from North Las Vegas Police  
6 Department Event Number 120426007466.

7 **3. The murder was committed by a person who, at any time before a penalty hearing is**  
8 **conducted for the murder pursuant to NRS 175.552, is or has been convicted of:**

9 (e) **Another murder and the provisions of subsection 12 do not otherwise**  
10 **apply to that other murder; or**

11 (f) **A felony involving the use or threat of violence to the person of**  
12 **another and the provisions of subsection 4 do not otherwise apply to that felony.**

13 That on or about April 26, 2012, Defendants IVONNE CABRERA and JOSE  
14 GONZALES did then and there, without authority of law, and malice aforethought, willfully  
15 and feloniously attempt to kill ASHLEY WANTLAND, a human being, by shooting at the  
16 said ASHLEY WANTLAND multiple times, with a deadly weapon, to-wit: a firearm;  
17 Defendant JOSE GONZALES, aka, Jose Alejandro Gonzales directly committing said  
18 crime, Defendant IVONNE CABRERA, aka, Yvonne Cabrera aiding or abetting by counsel  
19 and encouragement and by accompanying Defendant JOSE GONZALES, aka, Jose  
20 Alejandro Gonzales to ASHLEY WANTLAND'S residence and knocking on doors to and  
21 within ASHLEY WANTLAND'S apartment to allow Defendant JOSE GONZALEZ, aka,  
22 Jose Alejandro Gonzales to gain access to ASHLEY WANTLAND to facilitate shooting her,  
23 Defendant IVONNE CABRERA, aka, Yvonne Cabrera also being criminally liable as a co-  
24 conspirator vicariously in that said crime was a foreseeable act of the conspiracy. (See NRS  
25 200.033(2)(b))

26 That on or about September 9, 2012, Defendants were charged by way of an  
27 Information in the Eighth Judicial District Court, case number C283700, in Count 4 with  
28 ATTEMPT MURDER WITH USE OF A DEADLY WEAPON. The State anticipates that

1 both defendants may be convicted of such charge prior to any penalty hearing in the instant  
2 case. If such conviction occurs for Attempt Murder with Use of a Deadly Weapon or or any  
3 lesser offense, the conviction would qualify as an aggravating circumstance under NRS  
4 200.033(2)(b).

5 The evidence upon which the State will rely is the testimony of the witnesses, the  
6 pleadings, transcripts, judgment of conviction, court minutes in C283700, as well as the police  
7 reports, statements, photographs, and/or physical evidence from North Las Vegas Police  
8 Department Event Number 120426007466.

9 ***4. The murder was committed by a person who, at any time before a penalty hearing is***  
10 ***conducted for the murder pursuant to NRS 175.552, is or has been convicted of:***

11 ***(g) Another murder and the provisions of subsection 12 do not otherwise apply***  
12 ***to that other murder; or***

13 ***(h) A felony involving the use or threat of violence to the person of another and***  
14 ***the provisions of subsection 4 do not otherwise apply to that felony.***

15 That on or about April 26, 2012, Defendants IVONNE CABRERA and JOSE  
16 GONZALES did then and there, without authority of law, and malice aforethought, willfully  
17 and feloniously attempt to kill MELISSA MARIN, a human being, by shooting at the said  
18 MELISSA MARIN twice, with a deadly weapon, to-wit: a firearm; Defendant JOSE  
19 GONZALES, aka, Jose Alejandro Gonzales directly committing said crime, Defendant  
20 IVONNE CABRERA, aka, Yvonne Cabrera aiding or abetting by counsel and  
21 encouragement and by accompanying Defendant JOSE GONZALES, aka, Jose Alejandro  
22 Gonzales to MELISSA MARIN'S residence and knocking on doors to and within MELISSA  
23 MARIN'S apartment to allow Defendant JOSE GONZALEZ, aka, Jose Alejandro Gonzales  
24 to gain access to MELISSA MARIN to facilitate shooting him, Defendant IVONNE  
25 CABRERA, aka, Yvonne Cabrera also being criminally liable as a co-conspirator  
26 vicariously in that said crime was a foreseeable act of the conspiracy. (See NRS  
27 200.033(2)(b))  
28

1 That on or about September 9, 2012, Defendants were charged by way of an  
2 Information in the Eighth Judicial District Court, case number C283700, in Count 6 with  
3 ATTEMPT MURDER WITH USE OF A DEADLY WEAPON. The State anticipates that  
4 both defendants may be convicted of such charge prior to any penalty hearing in the instant  
5 case. If such conviction occurs for Attempt Murder with Use of a Deadly Weapon or any  
6 lesser offense, the conviction would qualify as an aggravating circumstance under NRS  
7 200.033(2)(b).

8 The evidence upon which the State will rely is the testimony of the witnesses, the  
9 pleadings, transcripts, judgment of conviction, court minutes in C283700, as well as the police  
10 reports, statements, photographs, and/or physical evidence from North Las Vegas Police  
11 Department Event Number 120426007466.

12 **5. The murder was committed by a person who, at any time before a penalty hearing is**  
13 **conducted for the murder pursuant to NRS 175.552, is or has been convicted of:**

14 **(i) Another murder and the provisions of subsection 12 do not otherwise apply**  
15 **to that other murder; or**

16 **(j) A felony involving the use or threat of violence to the person of another and**  
17 **the provisions of subsection 4 do not otherwise apply to that felony.**

18 On December 31, 2007, in case number C239888, Defendant pled guilty to Stop  
19 Required on Signal of a Police Officer in Department 2 of the Eighth Judicial District Court.  
20 Defendant was sentenced to 12-36 months in the Nevada Department of Corrections. The  
21 charges stemmed from an incident where the defendant was driving at speeds in excess of posted  
22 limits and reaching 80 to 90 miles per hour, colliding with numerous vehicles and driving on  
23 U.S. 95 at Flamingo in the direction opposite the flow of traffic.

24 The evidence upon which the State will rely is the testimony of the witnesses, the  
25 pleadings, transcripts, judgment of conviction, court minutes in C239888, as well as the police  
26 reports, statements, photographs, and/or physical evidence from Las Vegas Metropolitan Police  
27 Department Event Number 071202-3217.

28

1 **6. The murder was committed by a person who, at any time before a penalty hearing is**  
2 **conducted for the murder pursuant to NRS 175.552, is or has been convicted of:**

3 **(k) Another murder and the provisions of subsection 12 do not otherwise apply**  
4 **to that other murder; or**

5 **(l) A felony involving the use or threat of violence to the person of another and**  
6 **the provisions of subsection 4 do not otherwise apply to that felony.**

7 On July 16, 2009, in case number C256027, Defendant pled guilty to Assault with a  
8 Deadly Weapon in Department 21 of the Eighth Judicial District Court. Defendant was  
9 sentenced to 14-48 months in the Nevada Department of Corrections. The charges stemmed  
10 from an incident where the defendant drove his vehicle at Las Vegas Metropolitan Police  
11 Department Sergeant W. Wilson intending to strike him. In addition, the plea to assault with a  
12 deadly weapon is a plea to a crime of violence as the crime of assault inherently involves the use  
13 or threat of violence. Furthermore, the defendant had possession of a .45 caliber Hi-Point  
14 firearm at the time despite his status as an ex-felon.

15 The evidence upon which the State will rely is the testimony of the witnesses, the  
16 pleadings, transcripts, judgment of conviction, court minutes in C256027, as well as the police  
17 reports, statements, photographs, and/or physical evidence from Las Vegas Metropolitan Police  
18 Department Event Number 090623-1741.

19 **7. The murder was committed by a person who knowingly created a great risk of death**  
20 **to more than one person by means of a weapon, device or course of action which**  
21 **would normally be hazardous to the lives of more than one person.**

22 On the date of this double homicide, April 26, 2012, the location where the shooting  
23 took place was occupied by four individuals who were sleeping in their beds. After breaking  
24 into the victims' home, the defendant shot at and into the bodies of all four occupants, killing  
25 two and severely injuring two others. The defendant fired at least nine rounds from his  
26 weapon at these victims and struck each victim multiple times.

27 ///

28 ///



1 **8. The murder was committed while the person was engaged, alone or with others, in**  
2 **the commission of, or an attempt to commit or flight after committing or attempting to**  
3 **commit, any robbery, arson in the first degree, burglary, invasion of the home or**  
4 **kidnapping in the first degree, and the person charged:**

5 **(a) Killed or attempted to kill the person murdered; or**

6 **(b) Knew or had reason to know that life would be taken or lethal force used.**

7  
8 On the date of this double homicide, April 26, 2012, the location where the shooting took  
9 place was occupied by four individuals who were sleeping in their beds. The defendants not  
10 only broke into the victims' home, but they also forcibly entered each of the victims'  
11 bedrooms. This entry was made while in possession of a firearm and for the express purpose  
12 of shooting and killing the victims residing therein. The defendants knew that life would be  
13 taken and that lethal force would be used after entering the bedrooms of the victims.

14 **9. The murder was committed upon one or more persons at random and without**  
15 **apparent motive.**

16 Although there may have initially been some type of disagreement between one of the  
17 victims and Defendant Cabrera, there does not appear to be any motive for the shooting and  
18 killing of the remaining victims. Furthermore, there is no evidence that Defendant Gonzales  
19 was part of any dispute with any of the victims.

20 Defendant Cabrera had borrowed a vehicle from one of the victims and that victim  
21 wanted the vehicle returned, which Defendant Cabrera had refused to do. The victims did  
22 not confront or threaten Defendants Cabrera or Gonzales yet despite that fact, the defendants  
23 broke into the victim's home while they slept and shot everyone inside.

24 ///

25 ///

26 ///

27 ///

28 ///

1 Regardless of whether or not there was any legitimate dispute between the defendants  
2 and one or two of the victims, there is no evidence that all of the victims had even interacted  
3 with the defendants prior to the shooting.

4 DATED this 25th day of September, 2012.

5 Respectfully submitted,

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

9  
10 BY



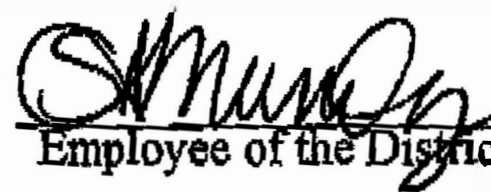
11 MICHAEL V. STAUDAHER  
12 Chief Deputy District Attorney  
13 Nevada Bar #008273  
14  
15

16 CERTIFICATE OF FACSIMILE TRANSMISSION

17 I hereby certify that service of Notice of Intent to Seek Death Penalty, was made this  
18 25th day of September, 2012, by facsimile transmission to:

19 SPD - CLARK  
20 FAX: 455-6273

21 BY



22 Employee of the District Attorney's Office  
23  
24  
25  
26

27 12FN0864A/sam-MVU  
28

**EXHIBIT B**



DISTRICT COURT

CLARK COUNTY, NEVADA

**ORIGINAL COPY**

THE STATE OF NEVADA,

Plaintiff,

VS.

JOSE ALEJANDRO GONZALES,

Defendant.

)  
)  
) Case No: C-12-283700-2  
)  
) Dept No: XXV

BEFORE THE HONORABLE KATHLEEN DELANEY

OCTOBER 17, 2012, 9:00 A.M.

REPORTER'S TRANSCRIPT  
OF  
PROCEEDINGS

APPEARANCES:

(See separate page)

REPORTED BY: BRENDA SCHROEDER, CCR NO. 867

1 APPEARANCES:

2 For the Plaintiff:

3 MICHAEL V. STAUDAHER, ESQ.  
4 Chief Deputy District Attorney  
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Las Vegas, Nevada 89155

6 For the Defendant JOSE GONZALES:

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8 Deputy Special Public Defender  
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9 ALZORA B. JACKSON, ESQ.  
10 Deputy Special Public Defender  
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11 Las Vegas, Nevada 89155

12 For the Defendant IVONNE CABRERA:

13 PATRICIA ERICKSON, ESQ.  
14 601 S. Tenth Street, Suite 206  
Las Vegas, Nevada 89155

1 LAS VEGAS, CLARK COUNTY, NEVADA

2 WEDNESDAY, OCTOBER 17, 2013, 9:00 A.M.

3 PROCEEDINGS

4 \* \* \*

5 THE COURT: Call the matter on page 10, State of  
6 Nevada versus Ivonne Cabrera and Jose Gonzales.

7 MR. PATRICK: Good morning, Your Honor. Clark  
8 Patrick and Alzora Jackson for Mr. Gonzales.

9 THE COURT: Thank you.

10 MS. ERICKSON: Good morning, Your Honor.  
11 Patricia Erickson on behalf of Ivonne Cabrera.

12 THE COURT: Thank you.

13 And I think we put this matter on for status  
14 check to make a determination on trial setting. But I  
15 also have State's motion to correct the file with regard  
16 to Notice of Intent to Seek Death Penalty.

17 MS. ERICKSON: Judge, I informed Mr. Staudaher  
18 that I was out of the jurisdiction since the 5th and I  
19 got back on the 15th. Just to let everyone know, I am  
20 going to be responsible for pleadings and discovery  
21 issues, so if the Court would give me a week to file an  
22 opposition, I would appreciate that.

23 THE COURT: Any objection, Mr. Staudaher?

24 MR. STAUDAHER: No, Your Honor.

25 THE COURT: Okay. That's fine. You'll file by

1 next week and then have it reset to --

2 MR. STAUDAHER: The following week.

3 MR. ERICKSON: That would be fine, Judge.

4 THE CLERK: That will be October 31st for the  
5 hearing, and then you have until October 24th to file the  
6 response.

7 MS. ERICKSON: October 31st?

8 THE CLERK: Yes.

9 THE COURT: That will be the hearing date. Your  
10 filing date would be the 24th.

11 MS. ERICKSON: Thank you, Judge.

12 THE COURT: And then as to the trial setting. I  
13 don't know that we ever resolved the fact that we had  
14 split, for lack of a better term here, with one invoking  
15 and one not invoking --

16 MR. STAUDAHER: It is not been dealt with yet.  
17 I think one of the issues was that because it was a death  
18 penalty case in this other matter and I don't know if  
19 Mr. Whipple, who now has Ms. Erickson because it's a  
20 death penalty case, was still under the impression of --  
21 if I'm not misquoting counsel -- that they were ready to  
22 go forward within 60 days on the death case, so that's  
23 where we stand right now.

24 MR. PATRICK: Judge, if I remember correctly,  
25 the last time we were in court I believe the Court said

1 that you were going to find that under the law that you  
2 had good cause to not follow the rule with regard to my  
3 client. I spoke to Mr. Whipple, we would have been ready  
4 for a 60 day trial. We have our witnesses. We are  
5 working furiously on the case, so we would like the trial  
6 set as soon as possible for the first availability in the  
7 month of May this year. And we would ask for any date  
8 close to that.

9 MR. PATRICK: Your Honor, we still have a wildy  
10 different opinion on this, being this is a death penalty  
11 case, looking at Rule 250, the ABA standards and how the  
12 Supreme Court handles the ABA standards in the Wiggins  
13 and Rofilla case. There is a great deal of information  
14 we need to get as far as mitigation before we're prepared  
15 to go with a death penalty case.

16 Ms. Jackson and I do almost primarily death  
17 penalty work and we know how much time it takes to put  
18 one of these together. In our opinion, if you want a  
19 trial date that is going to be reasonable to shoot at to  
20 have a one trial setting on this we'd be looking at  
21 sometime in the spring of 2014.

22 If the Court does not want to go out that far,  
23 the earliest we would be prepared to even think about a  
24 trial date would be October of next year. And we'll make  
25 the representation at this time that if the Court wishes

1 to set that October date we will not guarantee that we  
2 will be ready. We'll have a way better shot sometime  
3 late in spring of 2014 to have a one trial date setting  
4 in this case.

5 MR. ERICKSON: And, Judge, just for the record,  
6 both Mr. Whipple and I have done multiple death penalty  
7 cases. We do know all of the rules, Wiggins and 250. We  
8 are very responsible about that.

9 Our clients between the defendants are in very  
10 different positions. Ms. Cabrera has no prior criminal  
11 history. Their client does. So therefore, they may have  
12 different ideas of what they need to do. It takes much  
13 longer than what we need. So I am saying that we will be  
14 ready as of May.

15 THE COURT: I appreciate that. All right. I am  
16 going to do a trial setting that I think from the  
17 information that I have available to me, and I am also  
18 familiar, although, I have not overseen the case, I  
19 certainly have become familiar with our settings and our  
20 needs. I appreciate everybody's statements today in  
21 terms of readiness and preparation and time, and I don't  
22 know what's going to transpire between now and then.

23 I obviously did not grant the motion to sever  
24 and there may be differences that would impact time in  
25 preparing this, but I am going to set it in our stack

1 next August and split the difference a little bit,  
2 perhaps, in what's being requested, although that is much  
3 shorter than, and I appreciate representations by counsel  
4 for Mr. Gonzales regarding readiness, but I think that is  
5 a fair amount of time for us to get this case moving.  
6 And then, of course, who knows what will transpire  
7 between now and --

8 MR. PATRICK: Your Honor, if I may.

9 THE COURT: Yes.

10 MR. PATRICK: On August 19th I have an older  
11 death penalty case that has no hope of resolving and we  
12 are set to go on that. In fact, we're going on a trip to  
13 the Philippines in January to get ready for that case, so  
14 I would hate to put something over the top of that  
15 knowing that one will have to go because it is much older  
16 than this one.

17 THE COURT: The stack is very early in the month  
18 so obviously I do not necessarily want to force you to be  
19 on back to back death penalty cases either.

20 MR. PATRICK: Could we go July, then, Your  
21 Honor?

22 THE COURT: It's my civil stack and the last two  
23 weeks in July are not available at all.

24 MR. PATRICK: Could we go in to that early  
25 September date you mentioned?

1           THE COURT: Also a civil stack. I know Judge  
2 Mosley did not have one but we do. Now, I certainly  
3 would be willing to accommodate, and I think we could  
4 make -- my civil stack is actually quite small compared  
5 to others. For instance, we are in one right now and I  
6 don't have one single trial that was ready to go.

7           I am going to go ahead and put it in October. I  
8 don't want to risk that we sometimes pick up firm  
9 settings for med medical or who knows what, and I don't  
10 want to risk that stack. And I appreciate that we were  
11 going to try to go earlier, but there was also some  
12 mention in October that could also work for both sides on  
13 the defense side of the table, so let's just go to  
14 October and we will expect it to move then.

15          THE CLERK: Your calendar call will be September  
16 30th at 9:30 with a trial date of October 7th at 10:30.

17          THE COURT: Hopefully that will meet everybody's  
18 needs. I appreciate it is longer than what counsel for  
19 Ms. Cabrera was asking, but I think in the grand scheme  
20 of things that is the right thing to do and not to  
21 compromise our civil stack just in case.

22          MR. PATRICK: Thank you.

23          MS. ERICKSON: Thank you. Just for the record,  
24 Judge, we do have a continuing objection to this as we  
25 have invoked.



1           THE COURT: And I will note for the record that  
2           you did invoke and that the Court has what appears to be  
3           grounds to pursue past that date, and I appreciate your  
4           representations for readiness in May.

5           MS. ERICKSON: Thank you, Judge.

6           MR. STAUDAHER: And I just want to make sure to  
7           put on the record that I was informed by counsel that  
8           there was a misplacement or that discovery was lost, I  
9           think on Mr. Whipple's side, and I made that available to  
10          both -- actually because of that, and I don't think that  
11          counsel for Mr. Gonzales has an issue, but there was a  
12          few additional items that have been produced.

13          We put discovery at the DA reception which  
14          contains all the previous discovery produced as well as  
15          some new items. Both of those items are available for  
16          respective counsel at the reception. They were placed  
17          there yesterday and I don't know if your runners picked  
18          them up yet or not. I wanted to make sure that counsel  
19          knew that that was available.

20          THE COURT: Okay. Let's make sure we get that  
21          and notify counsel for some reason if you don't --

22          MR. PATRICK: I believe we were notified, Your  
23          Honor.

24          THE COURT: Okay.

25          MR. PATRICK: One last thing. The last time we

1       were in Court or the time before the Court granted our  
2       motion for the juvenile records of our client. I have  
3       the order. May I approach for signature?

4               THE COURT: Sure. Do you want the clerk to file  
5       as well?

6               MR. PATRICK: That would be great.

7               THE COURT: Since we have that option in  
8       criminal. All right. Thank you everyone.

9               (End of proceedings.)

REPORTER'S CERTIFICATE

STATE OF NEVADA )  
COUNTY OF CLARK ) ss.

I, BRENDA SCHROEDER, a certified court reporter in and for the State of Nevada, do hereby certify that the foregoing and attached pages 1-11, inclusive, comprise a true, and accurate transcript of the proceedings reported by me in the matter of THE STATE OF NEVADA, Plaintiff, versus JOSE GONZALES, Defendant, Case No. C-12-283700-2, on October 17, 2012.

Dated this 22nd day of July, 2013.

Brenda Schroeder  
BRENDA SCHROEDER, CCR NO. 867

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DISTRICT COURT  
CLARK COUNTY, NEVADA

Original  
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|--------------------------|---|------------------------|
| THE STATE OF NEVADA,     | ) |                        |
|                          | ) |                        |
| Plaintiff,               | ) | Case No: C-12-283700-2 |
|                          | ) |                        |
| vs.                      | ) | Dept No: XXV           |
|                          | ) |                        |
| JOSE ALEJANDRO GONZALES, | ) |                        |
|                          | ) |                        |
| Defendant.               | ) |                        |
|                          | ) |                        |
|                          | ) |                        |

BEFORE THE HONORABLE KATHLEEN DELANEY

AUGUST 19, 2013, 9:00 A.M.

REPORTER'S TRANSCRIPT  
OF  
PROCEEDINGS

APPEARANCES:

(See separate page)

REPORTED BY: BRENDA SCHROEDER, CCR NO. 867

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APPEARANCES:

For the Plaintiff:

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For the Defendant JOSE GONZALES:

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For the Defendant IVONNE CABRERA:

PATRICIA ERICKSON, ESQ.  
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Las Vegas, Nevada 89155

1 LAS VEGAS, CLARK COUNTY, NEVADA

2 MONDAY, AUGUST 19, 2013

3 PROCEEDINGS

4 \* \* \*

5 THE COURT: State of Nevada versus Jose  
6 Gonzales. Seeing Mr. Gonzales present in custody. This  
7 is on calendar styled as Defendant's Renewed Motion to  
8 Continue Trial Date and Motion to File Declaration In  
9 Support Under Seal, which I understand this matter was  
10 heard by Judge Bonaventure in my absence and I see what  
11 has been further argued.

12 Let me go ahead and hear from the defense and  
13 then we will hear from the State as well.

14 MS. JACKSON: Good morning, Your Honor. And for  
15 the record, Mr. David Schieck is here with myself, Alzora  
16 Jackson, on behalf of Jose Gonzales who is here in  
17 custody.

18 Your Honor, it is our understanding from the  
19 codefendant that they now are joining the Motion to  
20 Continue. I have had ongoing discussions with the State  
21 and they have never opposed our motion.

22 THE COURT: I'm sorry to interrupt you, but  
23 since this has come up before, I just want to make sure  
24 we address this on the record; I note that Ms. Cabrera  
25 does not appear to be here.

1                   Now we don't actually have a joinder to the  
2 motion in the record that I'm aware of, and in that  
3 respect I would think it would be understood that the  
4 Detention Center would not know to transport Ms. Cabrera  
5 here. So I don't know if that's an issue with going  
6 forward today or if you are seeking to waive her presence  
7 and want to go ahead and continue to argue.

8                   MS. ERICKSON: I had hoped that she would be  
9 here, Judge. Our position on this hearing changed on  
10 Wednesday, but Mr. Whipple's Federal Court Judge Pro  
11 ordered him to begin a five-week trial on September 16th  
12 last Wednesday, so we then had to agree that we would  
13 have to move the trial date on the capital case. I can't  
14 do it by myself and I can't get somebody up to speed fast  
15 enough to continue on in this case. So whatever the  
16 Court's pleasure is. I know Ms. Cabrera wants her trial  
17 as soon as possible. We have talked to your clerk about  
18 different dates.

19                   We would be available in February but it won't  
20 work for the codefendants. But if you want her present,  
21 fine. I know her position, and she does not want to lose  
22 counsel.

23                   THE COURT: Forgive me in this one if I don't  
24 recall. This one was not a -- we have already had a  
25 waiver of the speedy trial or was this one forced upon --

1 MS. ERICKSON: Yes. This is the one that was  
2 forced upon us. That is why the last hearing we were  
3 objecting saying we were ready to go and we were not  
4 agreeing.

5 THE COURT: And I recall that is why I used that  
6 language so that you wouldn't have to. But in that  
7 respect then my belief is that if we are going to have  
8 this discussion and if we are going to make that  
9 determination then we need all the parties present for  
10 that discussion. I just do not feel that would be  
11 appropriate without Ms. Cabrera here.

12 And, again, I don't think there is any fault in  
13 Ms. Cabrera not being here because the only thing  
14 technically on the calendar was for Mr. Gonzales, so I am  
15 happy to move this over to Wednesday if that works with  
16 everybody's schedule, and if not, whatever most  
17 convenient date we can to get all the parties present.

18 MS. WONG: Your Honor, is it possible to move it  
19 to Monday?

20 THE COURT: That's fine with me if it works for  
21 everybody else.

22 MS. JACKSON: Well, Monday the 26th Mr. Patrick  
23 and I actually have a mitigation trip planned on this  
24 matter. Your Honor, if I may -- -

25 THE COURT: Go ahead.



1 MS. JACKSON: We are prepared to go forward on  
2 our motion. It's not our responsibility to get Ms.  
3 Cabrera here. We have spoken with your clerk and with  
4 the State, Mr. Staudaher indicated that he had advised  
5 Ms. Wong of his position.

6 Part of what takes so much time is coming back.  
7 We would like to be in California investigating  
8 mitigation so that when we set the next date we can be  
9 ready.

10 THE COURT: When are you guys leaving for  
11 California?

12 MS. JACKSON: At 8:00 a.m. we are headed down to  
13 Southern California. We have a whole host of relatives,  
14 some coming in from Mexico who have agreed to rendezvous  
15 with us on this particular --

16 THE COURT: Can you come back on Wednesday?

17 MS. JACKSON: Sure.

18 THE COURT: Ms. Wong, can you get someone to  
19 cover?

20 MS. WONG: Yes.

21 THE COURT: We will see you on Wednesday.

22 THE CLERK: August 21st at 9:00 a.m.

23 MS. JACKSON: Thank you, Your Honor.

24 (Proceedings were concluded.)

25



DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, )  
 )  
 Plaintiff, ) Case No: C-12-283700-2  
 )  
 vs. ) Dept No: XXV  
 )  
 JOSE ALEJANDRO GONZALES, )  
 )  
 Defendant. )  
 )  
 \_\_\_\_\_ )

BEFORE THE HONORABLE KATHLEEN DELANEY

AUGUST 21, 2013, 9:00 A.M.

REPORTER'S TRANSCRIPT  
OF  
PROCEEDINGS

APPEARANCES:

(See separate page)

REPORTED BY: BRENDA SCHROEDER, CCR NO. 867

1 APPEARANCES:

2 For the Plaintiff:

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20 BRETT O. WHIPPLE, ESQ.  
21 JUSTICE LAW CENTER  
22 1100 S. Tenth Street  
23 Las Vegas, Nevada 89104  
24  
25

1 LAS VEGAS, CLARK COUNTY, NEVADA

2 WEDNESDAY, AUGUST 21, 2013, 9:00 A.M.

3 PROCEEDINGS

4 \* \* \*

5 THE COURT: The State of Nevada versus Ivonne  
6 Cabrera and Jose Gonzales. Do we have both defendants  
7 present in custody today?

8 MS. ERICKSON: Yes.

9 THE COURT: This matter is on for Renewed Motion  
10 to Continue Trial Date filed on behalf of Mr. Gonzales  
11 and a joinder by Ms. Cabrera.

12 MR. PATRICK: Good morning, Your Honor.

13 Your Honor, the parties have talked and we  
14 talked with your clerk and have come up with a date of  
15 June 23rd for the trial.

16 THE COURT: All right. And the parties are  
17 aware of this date and the circumstances, that was the  
18 main reason we obviously wanted to have everybody here.  
19 I think under the circumstances I didn't previously  
20 explain that the continuation was going to be necessary,  
21 there really wasn't any, I think, significant dispute to  
22 that and the Court was amenable but we wanted to make  
23 sure the parties were present and could acknowledge that  
24 they were aware.

25 Okay. I am seeing a nod of the head from the

1 defendants who are present in custody that they are aware  
2 of that date.

3 MS. ERICKSON: Just for the record, we were  
4 going to be ready but Mr. Whipple had to go to trial.  
5 You had an end of February date that we would have  
6 preferred but co-defense counsel already had cases that  
7 were set later on that would have impeded so we are  
8 agreeing to the June date as long as we can have it be a  
9 firm date because we don't want anybody to come in and  
10 say, Oh, by the way, we have another date that happened  
11 to be missed or something. We would like to sort of have  
12 it be a firm date so that we aren't put in the position  
13 of someone coming in again, unless it is something  
14 unexpected, of course.

15 THE COURT: I will state for the record, of  
16 course, you had mentioned Mr. Whipple's schedule and we  
17 do appreciate that counsel's schedule has to be  
18 accommodated as well. I will state for the record that  
19 as long as everybody at this point in time thinks that  
20 their schedules will accommodate, the Court does always  
21 consider any trial date to be firm and only absent some  
22 extraordinary circumstances and I can tell from argument  
23 made last time on Monday that counsel is diligently  
24 pursuing the investigation and there are things that are  
25 occasioned needing additional time, so I don't see any

1 reason why we wouldn't be able to maintain that date.

2 MR. PATRICK: That's fine, Your Honor. As far  
3 as Mr. Gonzales is concerned, as the Court is aware, we  
4 forwarded to the Court under seal what he had left to do  
5 and we are diligently working on that; however, we would  
6 be remiss in saying that while we believe this is a firm  
7 date, while we believe we will be ready, we are certainly  
8 not going to be expected to be held to that should  
9 something come up because this is a capital case and  
10 capital cases we need to be ready.

11 THE COURT: I do not think we are saying  
12 anything that anybody disagrees with. I think little  
13 less a year from now and even when we have required that  
14 the day be pushed out even with an objection and an  
15 invocation that time frame usually fits. So that's my  
16 hope we'll keep this and deal with whatever comes in the  
17 meantime.

18 For the record, say again the calendar call and  
19 trial date.

20 THE CLERK: Calendar call June 16th at 9:30,  
21 with a trial date of June 23rd at 10:30.

22 THE COURT: All right. Thank you.

23 MS. JACKSON: Your Honor, may the record reflect  
24 October 17th, 2012 is when we first talked about a trial  
25 date. We actually stood here and told the Court at that

1 time that the date that we were looking for would be  
2 towards mid or late 2014. It is my practice to evaluate  
3 a case based upon my experience to determine how much  
4 time it will take. And typically when I am given the  
5 date that I asked for I am ready. Thank you.

6 THE COURT: Thank you for that additional  
7 representation.

8 Ms. Wong.

9 MS. WONG: If the Court can just ask the  
10 defendant whether or not she is waving her right to a  
11 speedy trial.

12 THE COURT: I did ask -- well, I believe I  
13 asked. I asked if she was aware. I did not use the  
14 exact language that we actually asked for and obtained a  
15 waiver at this time. And I think by the acknowledgements  
16 here she understands the circumstances of why we are  
17 setting it in June of next year.

18 But let me ask at this time -- Mr. Gonzalez has  
19 already officially stated in the record -- Ms. Cabrera,  
20 do you at this time waive the right to a speedy trial for  
21 that date?

22 THE DEFENDANT: Yes.

23 THE COURT: I appreciate the initial waiver, if  
24 you will, was not at your choosing and it was at the  
25 Court's direction. But at this time I do appreciate your



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acknowledgement for the record that you do waive.

Thank you, Ms. Wong. Thank you, Ms. Jackson.

MS. JACKSON: Thank you, Your Honor.

MS. WONG: Thank you, Your Honor.

(Proceedings were concluded.)

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REPORTER'S CERTIFICATE

STATE OF NEVADA                                 )  
  ) ss.  
COUNTY OF CLARK                                )

I, BRENDA SCHROEDER, a certified court reporter  
in and for the State of Nevada, do hereby certify that  
the foregoing and attached pages 1-8, inclusive, comprise  
a true, and accurate transcript of the proceedings  
reported by me in the matter of THE STATE OF NEVADA,  
Plaintiff, versus JOSE GONZALES, et al., Defendants, Case  
No. C283700-2, on August 21, 2013.

Dated this 22nd day of August, 2013.

Brenda Schroeder  
BRENDA SCHROEDER, CCR NO. 867



CLERK OF THE COURT

**MOT**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**MICHAEL V. STAUDAHER**  
Chief Deputy District Attorney  
Nevada Bar #008273  
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-

IVONNE CABRERA, aka  
Yvonne Cabrera, #1617623

Defendant.

CASE NO: C-12-283700-1

DEPT NO: XXV

**NOTICE OF MOTION AND MOTION TO FILE CORRECTED NOTICE OF  
INTENT TO SEEK THE DEATH PENALTY**

**DATE OF HEARING:** October 17, 2012  
**TIME OF HEARING:** 9:00 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, District Attorney,  
through MICHAEL V. STAUDAHER, Chief Deputy District Attorney, and files this Notice  
of Motion and Motion to File Corrected Notice of Intent to Seek the Death Penalty.

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.

///

///

///

1 **NOTICE OF HEARING**

2 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned  
3 will bring the foregoing motion on for setting before the above entitled Court, in Department  
4 XXV thereof, on Wednesday, the 17th of October, 2012, at the hour of 9:00 o'clock AM, or  
5 as soon thereafter as counsel may be heard.

6 DATED this 4th day of October, 2012.

7  
8 STEVEN B. WOLFSON  
Clark County District Attorney  
9 Nevada Bar #001565

10  
11 BY /s/MICHAEL STAUDAHER  
MICHAEL V. STAUDAHER  
12 Chief Deputy District Attorney  
Nevada Bar #008273  
13  
14

15 **POINTS AND AUTHORITIES**

16 **STATEMENT OF FACTS**

17 On September 20, 2012, defense counsel's met with and presented potential  
18 mitigation evidence in the instant matter to the Clark County District Attorney's Office death  
19 penalty assessment committee. Following the committee meeting, the State informed  
20 defense counsel that it would be seeking the death penalty for Defendant Cabrera. (See  
21 Exhibit 1) Defense counsel subsequently appeared with and informed the Court at an  
22 October 1, 2012 hearing that Attorney Patricia Erickson had been appointed to the case  
23 because the State was seeking the death penalty.

24 On September 25, 2012, within the 30 day requirement delineated by Supreme Court  
25 Rule 250, that the State filed a notice of intent to seek the death penalty which was, because  
26 of a clerical error, mistitled as a "Notice of Evidence in Support of Aggravating  
27 Circumstances."

28 ///

1           On October 4, 2012, the State subsequently received a telephone call from Drew  
2 Christiansen at the office of appointed counsel. In that call, Mr. Christiansen asked the State  
3 for confirmation that it was seeking the death penalty as to Defendant Cabrera. Mr.  
4 Christiansen stated that although he had seen the Notice of Intent to Seek Death which was  
5 filed for Co-Defendant Gonzales, he had not seen a similarly entitled filing for Defendant  
6 Cabrera. The State informed Mr. Christensen that the State was seeking the death penalty as  
7 to both Defendant Gonzales and Defendant Cabrera and that it was the State's understanding  
8 and belief that notices of intent to seek death has been filed for both defendants at the same  
9 time.

10           The State then looked in Odyssey, the court filing system, and confirmed that notices  
11 for both defendants had been filed, but due to a clerical error, the notice for Defendant  
12 Cabrera had been mistitled as a Notice of Evidence in Support of Aggravating  
13 Circumstances. The State then immediately contacted Defense Counsels Erickson and  
14 Whipple via email and later that same day spoke with Defense Counsel Erickson via phone  
15 about this issue.

16           Based on the State's communication with defense counsel the State is now bringing  
17 this motion to file a corrected notice to reflect the proper titling of the notice and also to  
18 clearly specify within the body of the notice that the State is seeking the death penalty for  
19 Defendant Cabrera. It should be noted that the proposed corrected notice **does not** allege  
20 any new aggravators.

21           While it is the State's position that timely notice of the State's intent to seek death  
22 was provided to Defendant Cabrera, despite a clerical error in the title of the filing, out of an  
23 abundance of caution and in adherence to the requirements of SCR 250(4)(d) the State now  
24 brings the instant motion. This correction, therefore, is being filed to remedy clerical errors  
25 in the original notice and not as the primary filing of notice. The original aggravators in this  
26 correction remain the same as in the previous notice.

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1 ARGUMENT

2 The Nevada Supreme Court Rules (SCR) outline the notice requirements in a first  
3 degree murder case when the State is seeking the death penalty as a form of punishment.  
4 Specifically, SCR 250(4)(c), which governs the notice requirement and SCR 250(4)(d),  
5 which governs late notice, state that:

6 (c) No later than 30 days after the filing of an information or  
7 indictment, the state must file in the district court a notice of intent  
8 to seek the death penalty. The notice must allege all aggravating  
9 circumstances which the state intends to prove and allege with  
10 specificity the facts on which the state will rely to prove each  
11 aggravating circumstance.

12 (d) Upon a showing of good cause, the district court **may grant a**  
13 **motion to file a late notice of intent to seek the death penalty or**  
14 **of an amended notice alleging additional aggravating**  
15 **circumstances.** The state must file the motion within 15 days after  
16 learning of the grounds for the notice or amended notice. If the court  
17 grants the motion, it shall also permit the defense to have a  
18 reasonable continuance to prepare to meet the allegations of the  
19 notice or amended notice. The court shall not permit the filing of an  
20 initial notice of intent to seek the death penalty later than 30 days  
21 before trial is set to commence.  
22 **(emphasis added)**

23 While it is the State's position that because this proposed corrected notice is not the  
24 primary notice to Defendant Cabrera and because the corrected notice does not allege any  
25 new aggravators, the State submits that the provisions of SCR 250(4)(d) do not apply and  
26 that this correction is sufficient to perfect the original notice as required in SCR 250(4)(c).  
27 Out of an abundance of caution, however, the State is formally bringing this motion pursuant  
28 to SCR 250(4)(d) within 15 days of learning of its clerical error.

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1 CONCLUSION

2 Defendant Cabrera has had notice of the State's intent to seek the death penalty  
3 against Defendant Cabrera since at least September 20, 2012. See Exhibit 1. In addition,  
4 Defendant Cabrera has had notice of the aggravators that the State intends to use in this case  
5 since at least September 25, 2012, as evidenced by the State's filing of that notice. Because  
6 both the notice to seek the death penalty, as well as the aggravators the State intends to used  
7 against Defendant Cabrera were provided to her within the 30 day requirement of SCR 250  
8 (4)(c), the State seeks leave of this Court to file a corrected Notice of Intent to Seek the  
9 Death Penalty which reflects these facts.

10 Since the State submits that it has met, in both spirit and in substance, the  
11 requirements of SCR 250 (4)(c) and asserts that good cause has been shown, the State  
12 respectfully requests that the Court grant the State's request to file an amended notice of  
13 intent to seek the death penalty.

14 DATED this 4th day of October, 2012.

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

17 BY /s/MICHAEL STAUDAHER  
18 MICHAEL V. STAUDAHER  
19 Chief Deputy District Attorney  
Nevada Bar #008273

20 CERTIFICATE OF FACSIMILE TRANSMISSION

21 I hereby certify that service of the State's Corrected Notice of Intent to Seek the  
22 Death Penalty, was made this 4th day of October, 2012, by facsimile transmission to:

23 BRET WHIPPLE, ESQ.  
24 FAX: 974-4008

25 PATRICIA M. ERICKSON, ESQ.  
26 FAX: 384-3664

27 BY /s/S. Munoz  
Employee of the District Attorney's Office

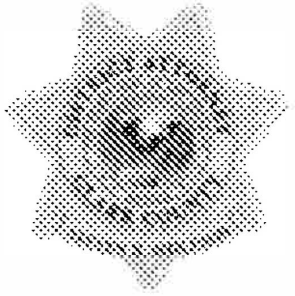
28 12FN0864A/sam-MVU

## **Staudaher, Michael**

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**From:** Michael Staudaher  
**Sent:** Thursday, September 20, 2012 5:46 PM  
**To:** Bret Whipple; Clark Patrick; Jackson, Alzora  
**Subject:** Gonzales/Cabrera

Just to let you know, the committee voted to seek the death penalty on both Gonzales and Cabrera.



Michael V. Staudaher  
Chief Deputy District Attorney  
Office of the District Attorney  
Major Violators Unit  
301 East Clark Place, 10th Floor  
Box 552212  
Las Vegas, NV 89155-2212  
E-mail: [Michael.Staudaher@clarkcountyda.com](mailto:Michael.Staudaher@clarkcountyda.com)  
Office: (702) 671-2600  
Fax: (702) 477-2994

***EXHIBIT "1"***



ORIGINAL COPY

THE STATE OF NEVADA, )  
 )  
 Plaintiff, ) Case No: C-12-283700-2  
 )  
 vs. ) Dept No: XXV  
 )  
 JOSE ALEJANDRO GONZALES, )  
 )  
 Defendant. )

REPORTER'S TRANSCRIPT  
OF  
PROCEEDINGS

REPORTED BY: BRENDA SCHROEDER, CCR NO. 867

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APPEARANCES:

For the Plaintiff:

MICHAEL V. STAUDAHER, ESQ.  
Chief Deputy District Attorney  
200 Lewis Avenue  
Las Vegas, Nevada 89155

For the Defendant JOSE GONZALES:

CLARK W. PATRICK, ESQ.  
Deputy Special Public Defender  
330 S. Third Street, Suite 800  
Las Vegas, Nevada 89155

ALZORA B. JACKSON, ESQ.  
Deputy Special Public Defender  
330 S. Third St., Ste. 800  
Las Vegas, Nevada 89155

For the Defendant IVONNE CABRERA:

PATRICIA ERICKSON, ESQ.  
601 S. Tenth Street, Suite 206  
Las Vegas, Nevada 89155

1 LAS VEGAS, CLARK COUNTY, NEVADA

2 WEDNESDAY, OCTOBER 17, 2013, 9:00 A.M.

3 PROCEEDINGS

4 \* \* \*

5 THE COURT: Call the matter on page 10, State of  
6 Nevada versus Ivonne Cabrera and Jose Gonzales.

7 MR. PATRICK: Good morning, Your Honor. Clark  
8 Patrick and Alzora Jackson for Mr. Gonzales.

9 THE COURT: Thank you.

10 MS. ERICKSON: Good morning, Your Honor.  
11 Patricia Erickson on behalf of Ivonne Cabrera.

12 THE COURT: Thank you.

13 And I think we put this matter on for status  
14 check to make a determination on trial setting. But I  
15 also have State's motion to correct the file with regard  
16 to Notice of Intent to Seek Death Penalty.

17 MS. ERICKSON: Judge, I informed Mr. Staudaher  
18 that I was out of the jurisdiction since the 5th and I  
19 got back on the 15th. Just to let everyone know, I am  
20 going to be responsible for pleadings and discovery  
21 issues, so if the Court would give me a week to file an  
22 opposition, I would appreciate that.

23 THE COURT: Any objection, Mr. Staudaher?

24 MR. STAUDAHER: No, Your Honor.

25 THE COURT: Okay. That's fine. You'll file by

1 next week and then have it reset to --

2 MR. STAUDAHER: The following week.

3 MR. ERICKSON: That would be fine, Judge.

4 THE CLERK: That will be October 31st for the  
5 hearing, and then you have until October 24th to file the  
6 response.

7 MS. ERICKSON: October 31st?

8 THE CLERK: Yes.

9 THE COURT: That will be the hearing date. Your  
10 filing date would be the 24th.

11 MS. ERICKSON: Thank you, Judge.

12 THE COURT: And then as to the trial setting. I  
13 don't know that we ever resolved the fact that we had  
14 split, for lack of a better term here, with one invoking  
15 and one not invoking --

16 MR. STAUDAHER: It is not been dealt with yet.  
17 I think one of the issues was that because it was a death  
18 penalty case in this other matter and I don't know if  
19 Mr. Whipple, who now has Ms. Erickson because it's a  
20 death penalty case, was still under the impression of --  
21 if I'm not misquoting counsel -- that they were ready to  
22 go forward within 60 days on the death case, so that's  
23 where we stand right now.

24 MR. PATRICK: Judge, if I remember correctly,  
25 the last time we were in court I believe the Court said

1       that you were going to find that under the law that you  
2       had good cause to not follow the rule with regard to my  
3       client. I spoke to Mr. Whipple, we would have been ready  
4       for a 60 day trial. We have our witnesses. We are  
5       working furiously on the case, so we would like the trial  
6       set as soon as possible for the first availability in the  
7       month of May this year. And we would ask for any date  
8       close to that.

9               MR. PATRICK: Your Honor, we still have a wildly  
10       different opinion on this, being this is a death penalty  
11       case, looking at Rule 250, the ABA standards and how the  
12       Supreme Court handles the ABA standards in the Wiggins  
13       and Rofilla case. There is a great deal of information  
14       we need to get as far as mitigation before we're prepared  
15       to go with a death penalty case.

16              Ms. Jackson and I do almost primarily death  
17       penalty work and we know how much time it takes to put  
18       one of these together. In our opinion, if you want a  
19       trial date that is going to be reasonable to shoot at to  
20       have a one trial setting on this we'd be looking at  
21       sometime in the spring of 2014.

22              If the Court does not want to go out that far,  
23       the earliest we would be prepared to even think about a  
24       trial date would be October of next year. And we'll make  
25       the representation at this time that if the Court wishes

1 to set that October date we will not guarantee that we  
2 will be ready. We'll have a way better shot sometime  
3 late in spring of 2014 to have a one trial date setting  
4 in this case.

5 MR. ERICKSON: And, Judge, just for the record,  
6 both Mr. Whipple and I have done multiple death penalty  
7 cases. We do know all of the rules, Wiggins and 250. We  
8 are very responsible about that.

9 Our clients between the defendants are in very  
10 different positions. Ms. Cabrera has no prior criminal  
11 history. Their client does. So therefore, they may have  
12 different ideas of what they need to do. It takes much  
13 longer than what we need. So I am saying that we will be  
14 ready as of May.

15 THE COURT: I appreciate that. All right. I am  
16 going to do a trial setting that I think from the  
17 information that I have available to me, and I am also  
18 familiar, although, I have not overseen the case, I  
19 certainly have become familiar with our settings and our  
20 needs. I appreciate everybody's statements today in  
21 terms of readiness and preparation and time, and I don't  
22 know what's going to transpire between now and then.

23 I obviously did not grant the motion to sever  
24 and there may be differences that would impact time in  
25 preparing this, but I am going to set it in our stack

1 next August and split the difference a little bit,  
2 perhaps, in what's being requested, although that is much  
3 shorter than, and I appreciate representations by counsel  
4 for Mr. Gonzales regarding readiness, but I think that is  
5 a fair amount of time for us to get this case moving.  
6 And then, of course, who knows what will transpire  
7 between now and --

8 MR. PATRICK: Your Honor, if I may.

9 THE COURT: Yes.

10 MR. PATRICK: On August 19th I have an older  
11 death penalty case that has no hope of resolving and we  
12 are set to go on that. In fact, we're going on a trip to  
13 the Philippines in January to get ready for that case, so  
14 I would hate to put something over the top of that  
15 knowing that one will have to go because it is much older  
16 than this one.

17 THE COURT: The stack is very early in the month  
18 so obviously I do not necessarily want to force you to be  
19 on back to back death penalty cases either.

20 MR. PATRICK: Could we go July, then, Your  
21 Honor?

22 THE COURT: It's my civil stack and the last two  
23 weeks in July are not available at all.

24 MR. PATRICK: Could we go in to that early  
25 September date you mentioned?

1           THE COURT: Also a civil stack. I know Judge  
2 Mosley did not have one but we do. Now, I certainly  
3 would be willing to accommodate, and I think we could  
4 make -- my civil stack is actually quite small compared  
5 to others. For instance, we are in one right now and I  
6 don't have one single trial that was ready to go.

7           I am going to go ahead and put it in October. I  
8 don't want to risk that we sometimes pick up firm  
9 settings for med medical or who knows what, and I don't  
10 want to risk that stack. And I appreciate that we were  
11 going to try to go earlier, but there was also some  
12 mention in October that could also work for both sides on  
13 the defense side of the table, so let's just go to  
14 October and we will expect it to move then.

15           THE CLERK: Your calendar call will be September  
16 30th at 9:30 with a trial date of October 7th at 10:30.

17           THE COURT: Hopefully that will meet everybody's  
18 needs. I appreciate it is longer than what counsel for  
19 Ms. Cabrera was asking, but I think in the grand scheme  
20 of things that is the right thing to do and not to  
21 compromise our civil stack just in case.

22           MR. PATRICK: Thank you.

23           MS. ERICKSON: Thank you. Just for the record,  
24 Judge, we do have a continuing objection to this as we  
25 have invoked.



1           THE COURT: And I will note for the record that  
2           you did invoke and that the Court has what appears to be  
3           grounds to pursue past that date, and I appreciate your  
4           representations for readiness in May.

5           MS. ERICKSON: Thank you, Judge.

6           MR. STAUDAHER: And I just want to make sure to  
7           put on the record that I was informed by counsel that  
8           there was a misplacement or that discovery was lost, I  
9           think on Mr. Whipple's side, and I made that available to  
10          both -- actually because of that, and I don't think that  
11          counsel for Mr. Gonzales has an issue, but there was a  
12          few additional items that have been produced.

13          We put discovery at the DA reception which  
14          contains all the previous discovery produced as well as  
15          some new items. Both of those items are available for  
16          respective counsel at the reception. They were placed  
17          there yesterday and I don't know if your runners picked  
18          them up yet or not. I wanted to make sure that counsel  
19          knew that that was available.

20          THE COURT: Okay. Let's make sure we get that  
21          and notify counsel for some reason if you don't --

22          MR. PATRICK: I believe we were notified, Your  
23          Honor.

24          THE COURT: Okay.

25          MR. PATRICK: One last thing. The last time we

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were in Court or the time before the Court granted our motion for the juvenile records of our client. I have the order. May I approach for signature?

THE COURT: Sure. Do you want the clerk to file as well?

MR. PATRICK: That would be great.

THE COURT: Since we have that option in criminal. All right. Thank you everyone.

(End of proceedings.)

1 REPORTER'S CERTIFICATE

2  
3 STATE OF NEVADA )  
4 COUNTY OF CLARK ) ss.  
5 )

6 I, BRENDA SCHROEDER, a certified court reporter  
7 in and for the State of Nevada, do hereby certify that  
8 the foregoing and attached pages 1-11, inclusive,  
9 comprise a true, and accurate transcript of the  
10 proceedings reported by me in the matter of THE STATE OF  
11 NEVADA, Plaintiff, versus JOSE GONZALES, Defendant, Case  
12 No. C-12-283700-2, on October 17, 2012.

13  
14  
15  
16 Dated this 22nd day of July, 2013.

17  
18 Brenda Schroeder  
19 BRENDASCHROEDER, CCR NO. 867  
20  
21  
22  
23  
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25



CLERK OF THE COURT

Bret O. Whipple, Esq.  
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pme@pmericksonlaw.com

Counsel for Defendant:  
IVONNE CABRERA

DISTRICT COURT

COUNTY OF CLARK, NEVADA

|                      |   |            |         |
|----------------------|---|------------|---------|
| THE STATE OF NEVADA, | ) | Case No.:  | C283700 |
|                      | ) | Dept. No.: | XXV     |
| Plaintiff,           | ) |            |         |
|                      | ) |            |         |
| vs.                  | ) |            |         |
|                      | ) |            |         |
| IVONNE CABRERA,      | ) |            |         |
|                      | ) |            |         |
| Defendant.           | ) |            |         |
| _____                | ) |            |         |

**OPPOSITION TO STATE'S MOTION TO FILE CORRECTED NOTICE OF INTENT  
TO SEEK THE DEATH PENALTY**

Hearing Date: October 31, 2012  
Hearing Time: 9:00 a.m.

COMES NOW, Bret O. Whipple, Esq. and Patricia M. Erickson, Esq., counsel for Defendant, IVONNE CABRERA, and submits the following as Ms. CABRERA's Opposition to the State's Motion to File Corrected Notice of Intent to Seek the Death Penalty.

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1 This motion is made and based upon Ms. CABRERA's federal constitutional right  
2 to due process as guaranteed by the Fifth and Fourteenth Amendments of the United  
3 States Constitution, the attached Memorandum of Points and Authorities and any oral  
4 argument, at the time of the hearing on the State's Motion, deemed necessary by this  
5 court.

6 DATED this 24th day October, 2012.

7 Respectfully Submitted,  
8

9 /s/ Patricia M. Erickson  
10 Patricia M. Erickson, Esq.  
11 Nevada Bar No. 3506  
12 601 South Tenth St., Suite 206  
13 Las Vegas, NV 89101  
14 (702) 388-1055  
15 Counsel for Defendant:  
16 IVONNE CABRERA

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **Statement of Facts**

16 On August 27, 2012, the state filed the Information underlying the case at bar.  
17 Thereafter, on September 25, 2012, the state filed a pleading entitled Notice of Evidence  
18 in Support of Aggravating Circumstances; the state failed to file a Notice of Intent to Seek  
19 the Death Penalty.

20 On October 4, 2012, counsel for the state learned that he had failed to file the  
21 appropriate Notice of Intent to Seek the Death Penalty and filed a pleading entitled Motion  
22 to File Corrected Notice of Intent to Seek the Death Penalty. The state's motion clearly  
23 enunciates that the failure to file the required Notice of Intent is based upon a "clerical  
24 error" which resulted in the Notice of Intent being "mistitled" Notice of Evidence in Support  
25 of Aggravating Circumstances. Unfortunately for the state, its Motion completely fails to  
26 enunciate any facts that establish "good cause" for this Court to permit the late filing of  
27 the required Notice of Intent.

Argument

Nevada Supreme Court Rule 250(4)(c) specifies that "no later than 30 days after the filing of an information..., the state must file in the district court a notice of intent to seek the death penalty" which alleges all of the aggravating circumstances which the state intends to prove at a potential penalty phase. In the case at bar, it is clear that the state has completely failed to file the mandatory notice of intent to seek the death penalty within thirty days of August 27, 2012.<sup>1</sup>

Given the state's failure to file any notice of intent, pursuant to Rule 250(4)(d), the state is permitted to request permission to late file the notice of intent in the case at bar because it filed the mistitled Motion to File Corrected Notice of Intent to Seek the Death Penalty within 15 days of learning of the grounds for the filing of the notice. However, this Honorable Court may permit the late filing of the required Notice of Intent to Seek the Death Penalty only if this Court finds that the state's pending motion enunciates facts that establish "good cause" for the state's failure to timely file the mandatory notice of intent.<sup>2</sup>

It is submitted that "clerical error" and the supposed mistitling of the filed pleading can not be found to be good cause. In State v. Second Judicial District Court (Marshall), the Nevada Supreme Court specifically discussed the "good cause" requirement of Rule 250(4)(d).<sup>3</sup> In Marshall, it was undisputed that the prosecutor failed to timely file the Notice of Intent to Seek the Death Penalty.<sup>4</sup> The state's motion to permit the late filing of the notice specified that the failure to timely file the notice was based upon the facts that (1) the state had been gathering information regarding the prior convictions of the

---

<sup>1</sup> Given this fact, it is submitted that the state's pending Motion is mistitled and requests an inappropriate remedy from this Court. A Notice of Intent has not been filed in the case at bar, therefore, a corrected Notice cannot be filed. Rather, the state should be requesting permission to late file an initial Notice of Intent.

<sup>2</sup> See Rule 250(4)(d).

<sup>3</sup> 116 Nev. 953 (2000).

<sup>4</sup> Marshall at 964.

1 defendant and (2) during the time within which the notice should have been filed, the  
2 prosecutor had been involved in the prosecution of a two (2) separate co-defendant  
3 murder trials, one of which was a retrial that required review of more than two thousand  
4 pages of trial transcripts.<sup>5</sup> The district court found that the enunciated facts for the failure  
5 to timely file did **not** establish the required good cause. In reviewing this conclusion, the  
6 Nevada Supreme Court found that the district court “reasonably determined that the  
7 workload of the prosecutor and the complexity of the case did not constitute good  
8 cause.”<sup>6</sup> Further, the Supreme Court specifically recognized that,

9 the district court correctly concluded that mere oversight on the part of a  
10 prosecutor does not constitute good cause. The reason for the late filings  
11 in this case was simply that the prosecutor overlooked the deadline. ‘When  
I discovered that I had failed to file the notice, I filed it that day.’ ... An  
attorney’s inadvertence alone does is not good cause.<sup>7</sup>

12 In the case at bar, the state has clearly stated that the failure to timely file the  
13 mandatory notice of intent was due to the prosecutor’s “clerical error” which lead to the  
14 mistitling of the pleading that was actually filed on September 25, 2012. Such a “clerical  
15 error” is no more “good cause” than the oversight on the part of the prosecutor in  
16 Marshall. A “clerical error” cannot be distinguished from “an attorney’s inadvertence” thus  
17 good cause has not been established to permit the late filing of the notice of intent in the  
18 case at bar.<sup>8</sup>

---

19 <sup>5</sup> Marshall at 963.

20 <sup>6</sup> Marshall at 966.

21 <sup>7</sup> Marshall at 966-67.

22 <sup>8</sup> All of the other facts enunciated in the state’s motion - death penalty  
23 committee hearing, oral notice of intent to seek death, appointment of second counsel  
24 and informing defense counsel of issue on day it was discovered - can only be viewed as  
25 an argument that Ms. CABRERA will not be prejudiced by the late filing of the notice of  
26 intent. Unfortunately for the state, in Marshall, the Nevada Supreme Court clearly found  
27 that “nothing in the [notice of intent] rule suggests that lack of prejudice to the defendant  
can supplant the express requirement of a showing of good cause before the district court  
may grant a motion to file a late notice of intent to seek death.” Nunnery v. State, 127  
Adv. Op. 69, 263 P.3d 235, 246 (2011); accord Bennett v. Eighth Judicial District Court,  
121 Nev. 802, 810 (2005).

1 In the only other case discussing the “good cause” prong of Supreme Court Rule  
2 250(d)(4), the Nevada Supreme Court noted that in the Marshall decision, it had set the  
3 ceiling and the floor of what may and may not constitute good cause permitting the late  
4 filing of a notice of intent. Thus, good cause contemplates discovery of formerly unknown  
5 evidence of aggravating circumstance(s) but is not established due to mere oversight on  
6 the part of the prosecutor.<sup>9</sup> In the Bennett case, the Court ultimately held that good cause  
7 for the late filing of the notice of intent was not established even when the basis for the  
8 late filing is a new Supreme Court decision which announced a fundamental departure  
9 from death penalty precedent. “Good cause requires something more.”<sup>10</sup>

10 If the “good cause” prong of Rule 250(4)(d) cannot be based upon a new rule of  
11 law which announces a fundamental departure from death penalty precedent existing at  
12 the time that the notice of intent should be filed, it is clear that “clerical error” - which is  
13 **not** a fact external to the prosecutor for the failure to serve notice<sup>11</sup> - is also not “good  
14 cause” permitting the late filing of the mandatory Notice of Intent to Seek Death Penalty.<sup>12</sup>

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19 <sup>9</sup> Bennett, supra at 811.

20 <sup>10</sup> Id.

21 <sup>11</sup> Nunnery, supra at 245 (citing Marshall, 116 Nev. 953, 968).

22 <sup>12</sup> The fact that the proposed “correction” to the Notice of Intent does not add  
23 any new aggravating circumstances is a vain attempt by the state to rely, without citation,  
24 upon the holding of the Nevada Supreme Court in Hidalgo v. Eighth Judicial District  
25 Court, 124 Nev. 330, 341 (2008). In Hidalgo, the Court distinguished Marshall based  
26 upon the fact that the state was not seeking to amend its notice of intent to allege new  
27 aggravating circumstances but was rather seeking to clarify the factual allegation  
28 supporting an aggravator which was alleged in a timely notice of intent. Id. As the state  
completely failed to file a timely notice of intent in the case at bar, the fact that the  
proposed correction doesn’t add any new aggravating circumstances does not permit the  
state to “amend” the notice as was found appropriate in Hidalgo.



As the state has completely failed to establish good cause for its failure to timely file the notice of intent, it is submitted that this Honorable Court must deny the state's mistitled Motion to File Corrected Notice of Intent to Seek the Death Penalty.

DATED this 24th day October, 2012.

Respectfully Submitted,

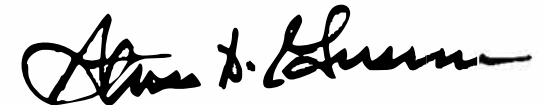
/s/ Patricia M. Erickson  
Patricia M. Erickson, Esq.  
Nevada Bar No. 3506  
601 South Tenth St., Suite 206  
Las Vegas, NV 89101  
(702) 388-1055  
Counsel for Defendant:  
IVONNE CABRERA

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CERTIFICATE OF SERVICE

I hereby certify that on the 24<sup>th</sup> day of October, 2012, a true and correct copy of the copy of the forgoing **OPPOSITION TO STATE'S MOTION TO FILE CORRECTED NOTICE OF INTENT TO SEEK THE DEATH PENALTY** was served by sending an email, to which the **OPPOSITION** was attached in pdf. format, to the following email address:  
Michael.Staudaher@ccdandv.com

/s/ Patricia M. Erickson  
\_\_\_\_\_  
Patricia M. Erickson



CLERK OF THE COURT

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
MICHAEL STAUDAHER  
Chief Deputy District Attorney  
Nevada Bar #008273  
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-

IVONNE CABRERA, aka,  
Yvonne Cabrera, #1617623,  
JOSE GONZALES, aka,  
Jose Alejandro Gonzales #2636822

Defendant.

CASE NO: C-12-283700-1

DEPT NO: XXV

**RECEIPT OF COPY**

**RECEIPT OF COPY** of the following attached listing of documents in **Case No.**  
**12FN0864A-B, DEFENDANT IVONNE CABRERA** is hereby acknowledged this  
16<sup>th</sup> day of October, 2012.

BRET O. WHIPPLE, ESQ.,  
ATTORNEY FOR DEFENDANT  
IVONNE CABRERA

BY Aissarah Kahlman for Jones Legal

PREPARED BY:  
STEVEN B. WOLFSON  
District Attorney  
Nevada Bar #001565

BY

  
MICHAEL V. STAUDAHER  
Chief Deputy District Attorney  
Nevada Bar #008273

1 Produced on May 7, 2012:

2 Original Hardcopy Discovery – Complaint and Police Reports – 136 pgs

3 Produced on May 16, 2012:

4 (1) DVD Containing the following:

- 5 1. Discovery Designated “DA-Gonzales/Cabrera” Bates numbers “1 →  
6 136” (Inclusive) - (Original Discovery Produced on May 7, 2012 – Now  
7 Bates Numbered)
- 8 2. Discovery Designated “DA-Gonzales/Cabrera” Bates numbers “137 →  
9 151” (Inclusive) - (JOC - Cabrera)
- 10 3. Discovery Designated “DA-Gonzales/Cabrera” Bates numbers “152 →  
11 158” (Inclusive) - (Search Warrant – Telephonic Application – (4-30-12))
- 12 4. Discovery Designated “DA-Gonzales/Cabrera” Bates number “159”  
(Booking Photo - Cabrera)
- 13 5. Crime Scene Photos – 408 Images - (Color)
- 14 6. Audio Recordings of the following:
  - 15 - Interview – Ashley Wantland
  - 16 - Interview – Melissa Marin
  - 17 - Interview – Christina Sanjuan
  - 18 - Interview – Ivonne Cabrera – 1<sup>st</sup> (In four subparts)
  - 19 - Interview – Ivonne Cabrera – 2<sup>nd</sup>
- 20 7. Transcribed Statements of the following:
  - 21 - Interview – Ashley Wantland
  - 22 - Interview – Melissa Marin
  - 23 - Interview – Christina Sanjuan
  - 24 - Interview – Ivonne Cabrera – 1<sup>st</sup> – April 27, 2012
  - 25 - Interview – Ivonne Cabrera – 2<sup>nd</sup> – May 1, 2012
- 26 8. Discovery Designated “DA-Gonzales/Cabrera” Bates number “160”  
(Consent to Search)

1 Produced on June 26, 2012:

2 (1) DVD Containing the following:

- 3 1. Autopsy Photographs of Erik Quezada Morales - #12-3895 – 142 images
- 4 2. Discovery Designated “DA-Gonzales/Cabrera” Bates numbers “161 →
- 5 177” (Inclusive) - (Autopsy Report for Erik Quezada Morales - #12-
- 6 3895)
- 6 3. Transcribed Interview of Jose Gonzales – (6-13-12)

7 Produced on July 24, 2012:

8 (1) CD-ROM Containing the following:

- 9 1. Discovery Designated “DA-Gonzales/Cabrera” Bates numbers “178 →
- 10 454” (Inclusive) - (UMC Medical Records – Victim - Ashley Wantland)
- 11 2. Discovery Designated “DA-Gonzales/Cabrera” Bates numbers “455 →
- 12 822” (Inclusive) - (UMC Medical Records – Victim – Melissa Marin)
- 13 3. Discovery Designated “DA-Gonzales/Cabrera” Bates numbers “823 →
- 14 831” (Inclusive) - (Latent Print Report)
- 14 4. Autopsy Photographs of James Jay Headrick - #12-3896 – 156 images
- 15 5. Discovery Designated “DA-Gonzales/Cabrera” Bates numbers “832 →
- 15 848” (Inclusive) - (Autopsy Report for James Jay Headrick - #12- 3896)

16 Produced on August 10, 2012:

- 17 1. Discovery Designated “DA-Gonzales/Cabrera” Bates numbers “849”
- 18 (Color Booking Photo – Gonzales)
- 19 2. Discovery Designated “DA-Gonzales/Cabrera” Bates numbers “850 →
- 20 870” (Inclusive) - (Certified JOCs for Gonzales)
- 21 3. Discovery Designated “DA-Gonzales/Cabrera” Bates numbers “871 →
- 21 875” (Inclusive) - (Color Photos Shown to Victims)

22 Produced on August 21, 2012:

- 23 1. Crime Scene Diagrams and Notes – 13 pgs
- 24 2. Transcript – (non-translated) – 911 recording – 3 pgs

25 ///

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1 **Produced on October 16, 2012:**

2 **(1) DVD Containing all previous discovery produced to date (as outlined above). In**  
3 **addition to the previously produced discovery, the State is also producing the**  
4 **following:**

- 5 1. **BMP converted files for all Crime Scene Diagrams**
- 6 2. **Discovery Designated "DA-Gonzales/Cabrera" Bates numbers "876 →**  
7 **881" (Inclusive) - (911 Call – (Full Translation) \_**
- 8 3. **Discovery Designated "DA-Gonzales/Cabrera" Bates numbers "882 →**  
9 **891" (Inclusive) – (Search Warrant – Buccal Swabs)**
- 10 4. **Discovery Designated "DA-Gonzales/Cabrera" Bates numbers "892 →**  
11 **893" (Inclusive) – (Trace Evidence Report – Gun Shot Residue)**

12 **Please Note: The State formally invites the defense to review the State's case**  
13 **file in the instant matter. This invitation is ongoing and is intended to**  
14 **make all discovery in the State's possession available and accessible to the**  
15 **defense. In addition, the State, at the request of the defense, will facilitate**  
16 **a review of the case file information housed at the North Las Vegas Police**  
17 **Department (NLVPD) under the following event number:**  
18 **#120426007466. In addition, the State, at the request of defense counsel,**  
19 **will also facilitate access to all evidence at the evidence vault which has**  
20 **been impounded under event number: #120426007466.**  
21 **It is the desire of the State to provide the defense with full access to all**  
22 **discovery in the possession of the State. That access is available now.**

23 **The State acknowledges that its discovery obligations are continuing and**  
24 **the State will make all subsequent discovery received, if any, available to**  
25 **the defense in compliance with the requirements of NRS 174.235, as well**  
26 **as Brady v. Maryland, 373 U.S. 83 (1963) and Giglio v. United States, 405**  
27 **U.S. 150 (1972).**

28 **The State also takes this opportunity to formally request reciprocal**  
**discovery from the defense and for the defense to provide timely access to**  
**any discovery that it intends to use at trial.**

ORIGINAL

NOTC

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
MICHAEL V. STAUDAHER  
Chief Deputy District Attorney  
Nevada Bar #008273  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

OCT 31 2012

BY, Kristen Brown  
KRISTEN BROWN, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

C-12-283700-1  
NISD  
Notice of Intent to Seek Death Penalty  
1995613



THE STATE OF NEVADA,  
Plaintiff,

-vs-

IVONNE CABRERA, aka  
Yvonne Cabrera, #1617623  
Defendant.

CASE NO: C-12-283700-1  
DEPT NO: XXV

CORRECTED NOTICE OF INTENT  
TO SEEK DEATH PENALTY<sup>1</sup>

COMES NOW, the State of Nevada, through STEVEN B. WOLFSON, Clark County District Attorney, by and through MICHAEL V. STAUDAHER, Chief Deputy District Attorney, pursuant to Supreme Court Rule 250, NRS 175.552 and NRS 200.033, and declares its intention to seek the death penalty at penalty hearing for a conviction on COUNT 3 and/or COUNT 5. Furthermore, the State of Nevada discloses<sup>2</sup> that it will present

<sup>1</sup> On September 25, 2012, within the thirty (30) day requirement delineated by Supreme Court Rule 250, that the State filed a notice of intent to seek the death penalty which was, because of a clerical error, mistitled as a "Notice of Evidence in Support of Aggravating Circumstances." The State is now, therefore, filing a corrected notice to reflect the proper titling of the notice and also to clearly specify within the body of the notice that the State is seeking the death penalty for Defendant Cabrera. It should be noted that this corrected notice does not allege any new aggravators.

<sup>2</sup> On September 20, 2012, following the defense presentation to the death penalty assessment committee, the State informed defense counsel that the State would be seeking the death penalty in this case. (See Exhibit 1) In addition, Defense counsel was aware of the State's intent to seek the death penalty since counsel appeared with and informed the Court at an October 1, 2012 hearing that Attorney Patricia Erickson had been appointed to the case because the State was seeking the death penalty. This correction, therefore, is being filed to remedy clerical errors in the original notice and not as the primary filing of notice. The original aggravators in this correction remain the same as in the previous notice.

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evidence of the following aggravating circumstances:

**1. The murder was committed by a person who, at any time before a penalty hearing is conducted for the murder pursuant to NRS 175.552, is or has been convicted of:**

- (a) Another murder and the provisions of subsection 12 do not otherwise apply to that other murder; or**
- (b) A felony involving the use or threat of violence to the person of another and the provisions of subsection 4 do not otherwise apply to that felony.**

That on or about April 26, 2012, Defendants IVONNE CABRERA, aka, Yvonne Cabrera and JOSE GONZALES, aka, Jose Alejandro Gonzales did then and there wilfully, feloniously, without authority of law, and with premeditation and deliberation, and with malice aforethought, kill JAMES HEADRICK, a human being, by shooting at the said JAMES HEADRICK multiple times, with a deadly weapon, to-wit: firearm; Defendant JOSE GONZALES, aka, Jose Alejandro Gonzales directly committing said crime, Defendant IVONNE CABRERA, aka, Yvonne Cabrera aiding or abetting by counsel and encouragement and by accompanying Defendant JOSE GONZALES, aka, Jose Alejandro Gonzales to JAMES HEADRICK'S residence and knocking on doors to and within JAMES HEADRICK'S apartment to allow Defendant JOSE GONZALEZ, aka, Jose Alejandro Gonzales to gain access to JAMES HEADRICK to facilitate shooting him, Defendant IVONNE CABRERA, aka, Yvonne Cabrera also being criminally liable as a co-conspirator vicariously in that said crime was a foreseeable act of the conspiracy. (See NRS 200.033(2)(a))

That on or about September 9, 2012, Defendants were charged by way of an Information in the Eighth Judicial District Court, Case Number C283700, in **COUNT 3** with

It should be noted that the State learned of this clerical error on October 4, 2012, when the State received a telephone call from Drew Christiansen at the office of appointed counsel. In that call, Mr. Christiansen asked for confirmation that the State was seeking the death penalty as to Defendant Cabrera. Mr. Christiansen stated that although he had seen the Notice of Intent to Seek Death which was filed for Defendant Gonzales, he had not seen a similarly entitled filing for Defendant Cabrera. The State informed Mr. Christensen that the State was seeking the death penalty as to both Defendant Gonzales and Defendant Cabrera and that it was the State's understanding and belief that notices of intent to seek death were filed for both defendants at the same time. The State then looked in Odyssey, the court filing system, and confirmed that notices for both defendants had been filed, but due to a clerical error, the notice for Defendant Cabrera had been mistitled as a Notice of Evidence in Support of Aggravating Circumstances. The State, therefore, immediately filed a motion with the district court for leave to file this correction. Because this notice is not the primary notice to Defendant Cabrera and because the corrected notice does not allege any new aggravators, it is the State's position that the provisions of SCR 250(4)(d) do not apply and that this correction is sufficient to perfect the original notice as required in SCR 250(4)(c). Out of an abundance of caution, however, the State is following the provisions of SCR 250 (4)(d) in its attempt to comply with the notice requirements.



1 MURDER WITH USE OF A DEADLY WEAPON. The State anticipates that both  
2 defendants may be convicted of such charge prior to any penalty hearing in the instant case.  
3 If such conviction occurs for First or Second Degree Murder, the conviction would qualify  
4 as an aggravating circumstance under NRS 200.033(2)(a). If such conviction occurs for any  
5 lesser offense, the conviction would qualify as an aggravating circumstance under NRS  
6 200.033(2)(b).

7 The evidence upon which the State will rely is the testimony of the witnesses, the  
8 pleadings, transcripts, judgment of conviction, court minutes in Case Number C283700, as  
9 well as the police reports, statements, photographs, and/or physical evidence from North Las  
10 Vegas Police Department Event Number 120426007466.

11 2. *The murder was committed by a person who, at any time before a penalty hearing is*  
12 *conducted for the murder pursuant to NRS 175.552, is or has been convicted of:*

13 (c) *Another murder and the provisions of subsection 12 do not otherwise apply*  
14 *to that other murder; or*

15 (d) *A felony involving the use or threat of violence to the person of another and*  
16 *the provisions of subsection 4 do not otherwise apply to that felony.*

17 That on or about April 26, 2012, Defendants IVONNE CABRERA, aka, Yvonne  
18 Cabrera and JOSE GONZALES, aka, Jose Alejandro Gonzales did then and there wilfully,  
19 feloniously, without authority of law, and with premeditation and deliberation, and with  
20 malice aforethought, kill ERIK QUEZADA MORALES, a human being, by shooting at the  
21 said ERIK QUEZADA MORALES multiple times, with a deadly weapon, to-wit: firearm;  
22 Defendant JOSE GONZALES, aka, Jose Alejandro Gonzales directly committing said  
23 crime, Defendant IVONNE CABRERA, aka, Yvonne Cabrera aiding or abetting by counsel  
24 and encouragement and by accompanying Defendant JOSE GONZALES, aka, Jose  
25 Alejandro Gonzales to ERIK QUEZADA MORALES' residence and knocking on doors to  
26 and within ERIK QUEZADA MORALES' apartment to allow Defendant JOSE  
27 GONZALEZ, aka, Jose Alejandro Gonzales to gain access to ERIK QUEZADA MORALES  
28 to facilitate shooting him, Defendant IVONNE CABRERA, aka, Yvonne Cabrera also being  
criminally liable as a co-conspirator vicariously in that said crime was a foreseeable act of  
the conspiracy. (See NRS 200.033(2)(a)).

1 That on or about September 9, 2012, Defendants were charged by way of an  
2 Information in the Eighth Judicial District Court, Case Number C283700, in **COUNT 5** with  
3 **MURDER WITH USE OF A DEADLY WEAPON**. The State anticipates that both  
4 defendants may be convicted of such charge prior to any penalty hearing in the instant case.  
5 If such conviction occurs for First or Second Degree Murder, the conviction would qualify  
6 as an aggravating circumstance under NRS 200.033(2)(a). If such conviction occurs for any  
7 lesser offense, the conviction would qualify as an aggravating circumstance under NRS  
8 200.033(2)(b).

9 The evidence upon which the State will rely is the testimony of the witnesses, the  
10 pleadings, transcripts, judgment of conviction, court minutes in Case Number C283700, as  
11 well as the police reports, statements, photographs, and/or physical evidence from North Las  
12 Vegas Police Department Event Number 120426007466.

13 3. *The murder was committed by a person who, at any time before a penalty hearing is*  
14 *conducted for the murder pursuant to NRS 175.552, is or has been convicted of:*

- 15 (e) *Another murder and the provisions of subsection 12 do not otherwise apply*  
16 *to that other murder; or*  
17 (f) *A felony involving the use or threat of violence to the person of another and*  
18 *the provisions of subsection 4 do not otherwise apply to that felony.*

19 That on or about April 26, 2012, Defendants IVONNE CABRERA, aka, Yvonne  
20 Cabrera and JOSE GONZALES, aka, Jose Alejandro Gonzales did then and there, without  
21 authority of law, and malice aforethought, willfully and feloniously attempt to kill ASHLEY  
22 WANTLAND, a human being, by shooting at the said ASHLEY WANTLAND multiple  
23 times, with a deadly weapon, to-wit: a firearm; Defendant JOSE GONZALES, aka, Jose  
24 Alejandro Gonzales directly committing said crime, Defendant IVONNE CABRERA, aka,  
25 Yvonne Cabrera aiding or abetting by counsel and encouragement and by accompanying  
26 Defendant JOSE GONZALES, aka, Jose Alejandro Gonzales to ASHLEY WANTLAND'S  
27 residence and knocking on doors to and within ASHLEY WANTLAND'S apartment to  
28 allow Defendant JOSE GONZALEZ, aka, Jose Alejandro Gonzales to gain access to  
29 ASHLEY WANTLAND to facilitate shooting her, Defendant IVONNE CABRERA, aka,  
30 Yvonne Cabrera also being criminally liable as a co-conspirator vicariously in that said

1 crime was a foreseeable act of the conspiracy. (See NRS 200.033(2)(b)).

2 That on or about September 9, 2012, Defendants were charged by way of an  
3 Information in the Eighth Judicial District Court, Case Number C283700, in **COUNT 4** with  
4 **ATTEMPT MURDER WITH USE OF A DEADLY WEAPON**. The State anticipates that  
5 both defendants may be convicted of such charge prior to any penalty hearing in the instant  
6 case. If such conviction occurs for Attempt Murder with Use of a Deadly Weapon or or any  
7 lesser offense, the conviction would qualify as an aggravating circumstance under NRS  
8 200.033(2)(b).

9 The evidence upon which the State will rely is the testimony of the witnesses, the  
10 pleadings, transcripts, judgment of conviction, court minutes in Case Number C283700, as  
11 well as the police reports, statements, photographs, and/or physical evidence from North Las  
12 Vegas Police Department Event Number 120426007466.

13 **4. The murder was committed by a person who, at any time before a penalty hearing is**  
14 **conducted for the murder pursuant to NRS 175.552, is or has been convicted of:**

- 15 (g) **Another murder and the provisions of subsection 12 do not otherwise apply**  
16 **to that other murder; or**  
17 (h) **A felony involving the use or threat of violence to the person of another and**  
18 **the provisions of subsection 4 do not otherwise apply to that felony.**

19 That on or about April 26, 2012, Defendants IVONNE CABRERA and JOSE  
20 GONZALES did then and there, without authority of law, and malice aforethought, willfully  
21 and feloniously attempt to kill MELISSA MARIN, a human being, by shooting at the said  
22 MELISSA MARIN twice, with a deadly weapon, to-wit: a firearm; Defendant JOSE  
23 GONZALES, aka, Jose Alejandro Gonzales directly committing said crime, Defendant  
24 IVONNE CABRERA, aka, Yvonne Cabrera aiding or abetting by counsel and  
25 encouragement and by accompanying Defendant JOSE GONZALES, aka, Jose Alejandro  
26 Gonzales to MELISSA MARIN'S residence and knocking on doors to and within MELISSA  
27 MARIN'S apartment to allow Defendant JOSE GONZALEZ, aka, Jose Alejandro Gonzales  
28 to gain access to MELISSA MARIN to facilitate shooting him, Defendant IVONNE  
CABRERA, aka, Yvonne Cabrera also being criminally liable as a co-conspirator  
vicariously in that said crime was a foreseeable act of the conspiracy. (See NRS

1 200.033(2)(b)).

2 That on or about September 9, 2012, Defendants were charged by way of an  
3 Information in the Eighth Judicial District Court, Case Number C283700, in **COUNT 6** with  
4 **ATTEMPT MURDER WITH USE OF A DEADLY WEAPON**. The State anticipates that  
5 both defendants may be convicted of such charge prior to any penalty hearing in the instant  
6 case. If such conviction occurs for Attempt Murder with Use of a Deadly Weapon or or any  
7 lesser offense, the conviction would qualify as an aggravating circumstance under NRS  
8 200.033(2)(b).

9 The evidence upon which the State will rely is the testimony of the witnesses, the  
10 pleadings, transcripts, judgment of conviction, court minutes in Case Number C283700, as  
11 well as the police reports, statements, photographs, and/or physical evidence from North Las  
12 Vegas Police Department Event Number 120426007466.

13 **5. The murder was committed by a person who knowingly created a great risk of death**  
14 **to more than one person by means of a weapon, device or course of action which would**  
**normally be hazardous to the lives of more than one person.**

15 On the date of this double homicide, April 26, 2012, the location where the shooting  
16 took place was occupied by four (4) individuals who were sleeping in their beds. After  
17 breaking into the victims' home, the defendant shot at and into the bodies of all four (4)  
18 occupants, killing two (2) and severely injuring two (2) others. The defendant fired at least  
19 nine (9) rounds from his weapon at these victims and struck each victim multiple times.

20 **6. The murder was committed while the person was engaged, alone or with others, in**  
21 **the commission of, or an attempt to commit or flight after committing or attempting to**  
22 **commit, any robbery, arson in the first degree, burglary, invasion of the home or**  
**kidnapping in the first degree, and the person charged:**

- 23 (a) **Killed or attempted to kill the person murdered; or**  
24 (b) **Knew or had reason to know that life would be taken or lethal force used.**

25 On the date of this double homicide, April 26, 2012, the location where the shooting  
26 took place was occupied by four (4) individuals who were sleeping in their beds. The  
27 defendants not only broke into the victims' home, but they also forcibly entered each of the  
28 victims' bedrooms. This entry was made while in possession of a firearm and for the  
express purpose of shooting and killing the victims residing therein. The defendants knew

1 that life would be taken and that lethal force would be used after entering the bedrooms of  
2 the victims.

3 **7. *The murder was committed upon one or more persons at random and without***  
4 ***apparent motive.***

5 Although there may have initially been some type of disagreement between one of the  
6 victims and Defendant Cabrera, there does not appear to be any motive for the shooting and  
7 killing of the remaining victims. Furthermore, there is no evidence that Defendant Gonzales  
8 was part of any dispute with any of the victims.

9 Defendant Cabrera had borrowed a vehicle from one (1) of the victims and that victim  
10 wanted the vehicle returned, which Defendant Cabrera had refused to do. The victims did  
11 not confront or threaten Defendants Cabrera or Gonzales yet despite this fact, the defendants  
12 broke into the victim's home while they slept and shot everyone inside.


13 Regardless of whether or not there was any legitimate dispute between the defendants  
14 and one (1) or two (2) of the victims, there is no evidence that all of the victims had even  
15 interacted with the defendants prior to the shooting.

16 DATED this 5<sup>th</sup> day of October, 2012.

17 Respectfully submitted,

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

20  
21 BY

  
22 MICHAEL V. STAUDAHER  
23 Chief Deputy District Attorney  
24 Nevada Bar #008273  
25  
26  
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28

## **Staudaher, Michael**

---

**From:** Michael Staudaher  
**Sent:** Thursday, September 20, 2012 5:46 PM  
**To:** Bret Whipple; Clark Patrick; Jackson, Alzora  
**Subject:** Gonzales/Cabrera

Just to let you know, the committee voted to seek the death penalty on both Gonzales and Cabrera.



Michael V. Staudaher  
Chief Deputy District Attorney  
Office of the District Attorney  
Major Violators Unit  
301 East Clark Place, 10th Floor  
Box 552212  
Las Vegas, NV 89155-2212  
E-mail: [Michael.Staudaher@clarkcountyda.com](mailto:Michael.Staudaher@clarkcountyda.com)  
Office: (702) 671-2600  
Fax: (702) 477-2994

***EXHIBIT "1"***

COPY

NOV 01 2012

BY, \_\_\_\_\_  
PHYLLIS IRBY

1

00116

1 APPEARANCES:

2 For the Plaintiff:

3 MICHAEL V. STAUDAHER, ESQ.  
4 Chief Deputy District Attorney  
5 200 Lewis Avenue  
6 Las Vegas, Nevada 89155

7 For Defendant:

8 BRET O. WHIPPLE, ESQ.  
9 JUSTICE LAW CENTER  
10 1100 South Tenth Street  
11 Las Vegas, Nevada 89101

12 PATRICIA M. ERICKSON, ESQ.  
13 601 South Tenth Street, Suite 206  
14 Las Vegas, Nevada 89101  
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1 LAS VEGAS, CLARK COUNTY, NEVADA

2 WEDNESDAY, OCTOBER 31, 2012

3 9:00 A.M.

4 \* \* \*

5 THE COURT: Call the matter on page 8, The State  
6 of Nevada versus Ivonne Cabrera. Seeing Ms. Cabrera  
7 present in custody. This matter is on for the State's  
8 Motion to File Corrected Notice of Intent to Seek the  
9 Death Penalty.

10 MR. STAUDAHER: That is correct, Your Honor.

11 THE COURT: And I have read the pleadings and I  
12 have looked at several cases, some of which were cited,  
13 perhaps some that were not, but I wanted to make sure  
14 that I covered everything in these matters.

15 I would like at this time to have full argument  
16 as well. Whatever you would like to put on the record.

17 Is there anything, Mr. Whipple? I'm sorry. It  
18 is the State's motion.

19 Mr. Staudaher.

20 MR. STAUDAHER: Your Honor, I think I put in  
21 there what the issues were. And obviously, from the  
22 State's perspective the spirit, not only the spirit but  
23 the literal requirements of Rule 250(4)(d) and (c), and  
24 in this particular case require if there is an issue with  
25 the notice that we bring formal motions, so that is why

1 we have done that.

2 THE COURT: All right.

3 MR. STAUDAHER: As far as this case is  
4 concerned, counsel had both constructive notice and  
5 actual notice before that. What's in written form as far  
6 as the Notice of Intent to Seek Death prior to the  
7 expiration of 30 days; however, the Notice of  
8 Aggravating, which is the reason why there is the  
9 requirements so that they are aware of what aggravators  
10 there are, the State intends to use was also provided in  
11 a timely fashion before that time.

12 In fact, I believe what I attached to the motion  
13 was the e-mail that I sent following the death penalty  
14 substance committee meeting to both counsel, including  
15 Mr. Whipple, indicating that the State was seeking the  
16 death penalty for both defendants. You have that.

17 In response to that, obviously, he contacted the  
18 office of appointed counsel and had Ms. Erickson  
19 appointed to the case because it was a death case. On  
20 the 1st of October he came to the court and said that  
21 Ms. Erickson was now on the case because it was a death  
22 case. So at this point everybody was believing that was  
23 the case.

24 We filed the notices. Actually the one for  
25 Mr. Gonzalez is entitled correctly, but when

1 Mr. Christensen called my office on, I think it was the  
2 4th of October, and asked if we were seeking the death  
3 penalty for Ms. Cabrera because he appointed Ms. Erickson  
4 to the case, that he said he didn't see a document  
5 entitled that. I sent both of them. I believe have been  
6 filed. I looked on Odyssey immediately and found out  
7 that in fact the document which was the Notice of Intent  
8 was mistitled as Notice of Aggravators, essentially, in  
9 this case. The same aggravators that are in the  
10 corrected version. It is essentially the title of the  
11 document that is different.

12 Counsel obviously has had notice and also has  
13 had the aggravators well within the 30 days, which is the  
14 main crux of the requirements. It was a clerical error  
15 in our office. I think that that is good cause to show  
16 that they were (1) knowledgeable of the fact that there  
17 was an intent to seek the death penalty and they were  
18 provided with the statutory required aggravators within a  
19 30 day period of time.

20 The titling of the document, I think it speaks  
21 really to a clerical issue and wanted to make sure that  
22 it was correct.

23 I know that they are opposing this change but I  
24 believe the State has met both the spirit and the  
25 substance of the requirements under 250.

1 THE COURT: Thank you, Mr. Staudaher.

2 Ms. Erickson.

3 MS. ERICKSON: Judge, I couldn't disagree more.

4 First off, there has been no Notice of Intent to

5 Seek the Death Penalty filed. That has not been filed.

6 That document has not been filed.

7 THE COURT: A document with that title has not

8 been filed.

9 MS. ERICKSON: Correct. So therefore, that

10 document has not been filed.

11 The secondary part of what the State has to do

12 under 250, which is the Notice of Evidence in Support of

13 Aggravating Circumstances. Therefore, this is not a case

14 where we get to amend a Notice of Intent because there is

15 no Notice of Intent.

16 As there is no Notice of Intent the only thing

17 -- the Court can certainly allow them to file a late

18 Notice of Intent, but they must establish good cause.

19 The Nevada Supreme Court has discussed in

20 several cases, Marshall being the first, where they said

21 attorney inadvertence is not good cause. A clerical

22 error cannot be distinguished from attorney inadvertence.

23 It is exactly the same thing; it is not good cause.

24 In Bennett the State requested to file

25 additional aggravating circumstances late because it was

1 based on the Supreme Court's new decision of -- I can't  
2 think of the name -- but it was making the felony murder  
3 aggravators inapplicable to a case where felony murder  
4 was the underlying basis for the first degree murder.

5 The Nevada Supreme Court specified in that case,  
6 which it was new precedent, different from all the other  
7 cases that they've held, that even that was not good  
8 cause. Certainly, clerical error does not even rise to  
9 the status of a new case that distinguishes how we deal  
10 with procedural issues in death penalty cases.

11 But finally, the Nunnery case, even though that  
12 is a case where the issue was requesting additional  
13 aggravating evidence that had not been enunciated in a  
14 timely manner. The Supreme Court discussed good cause  
15 with regard to the notice of intent as a comparison to  
16 what was required with regard to filing new or late  
17 notice of aggravating circumstances.

18 And in Nunnery the Supreme Court specified very  
19 clearly that everything that the State has said, that  
20 there was a hearing in front of the committee, that there  
21 was notice given, that the death penalty was going to be  
22 sought, that counsel has been appointed, that everybody  
23 thought this was a death penalty case, that would be okay  
24 under filing a late or changed evidence of aggravating  
25 circumstances.

1           It is not good cause because that is an argument  
2       that we're not prejudiced. There is no prejudice for  
3       filing this new document or changed document or whatever  
4       they want to call it, but that has no applicability in  
5       decision on good cause for filing a notice of intent.  
6       The Supreme Court has said it in numerous cases. It said  
7       it in Marshall. It clarified it in Bennett and it  
8       specified it in Nunnery.

9           In Nunnery they state that 250(4)(d) provides a  
10      bright-line rule that in no event can an initial notice  
11      of intent be filed later than 30 days before trial.  
12      Based in part on that provision we defined in Marshall to  
13      allow a good cause showing under Supreme Court 250(4)(d)  
14      to be based on lack of prejudice.

15           The bright-line rule and restriction from lack  
16      of prejudice to establish good cause serve the purpose of  
17      this notice by requiring accountability and diligence by  
18      the State when deciding what aggravators to pursue in the  
19      first instance.

20           In Nunnery the Court even went further and  
21      clarified that what they meant in Marshall by good cause  
22      is that it has to be a fact external to the prosecutor.  
23      Now that's the same kind of language that we use in  
24      postconviction for cause and prejudice. But what's the  
25      other language; good cause external to the defense. The

1 Nevada Supreme Court has discussed in evidence in 2001  
2 what that meant under that statute under those  
3 provisions, and good cause there was the fact that the  
4 Federal Court had overruled their determination. That is  
5 external to the defense.

6 So external to the prosecutor cannot be clerical  
7 error. It can't be inadvertent. It can't be based on  
8 his misunderstanding. It can't be based on anything that  
9 is in the thought process of the prosecutor.

10 If this Court allows the filing of a Notice of  
11 Intent based solely on their statement that it was a  
12 mistitled document that opens the floodgates for them not  
13 to fulfill the bright-line rule that's established by  
14 Rule 250(d). And that would be our submission.

15 THE COURT: Okay. Thank you.

16 MR. STAUDAHER: And I will follow up, Your  
17 Honor, if I may.

18 First of all, we are really getting into  
19 semantics here, but it is important in a case like this  
20 obviously. But whether it is a corrected notice or a  
21 late notice the fact of the matter is that the document  
22 was filed. It is in substance not changed but  
23 essentially the change is the title of the document.

24 Counsel was fully aware that this was a death  
25 case and postured the case themselves in that realm. So

1       it's not that there is a prejudice in the sense that they  
2       believe they were not going to be facing that. There's  
3       no punishment essentially to Defendant for that, but in  
4       fact they were aware of that and is why they have second  
5       counsel appointed to this case.

6               The issue with regard to all the cases that have  
7       been cited essentially have dealt with aggravators.  
8       Whether there has been new evidence that has come forward  
9       to add an aggravator or to change the aggravators that  
10      the defendant may be facing, we do not have that here.  
11      The aggravators have not changed. They are the same as  
12      when they were filed initially as they are today. There  
13      is no new addition. The State is not asking for any  
14      additional change to that.

15             So the substance of the Notice is essentially  
16      what it was with the correction to the fact that it is a  
17      Notice of Intention to Seek Death versus a Notice of  
18      Aggravators that was filed initially. So I do not  
19      believe that the prejudice issue even comes into play  
20      because we are not changing anything from what has been  
21      done before with exception of the title.

22             And counsel was aware of that so they cannot be  
23      prejudiced based on their acknowledgment that this was a  
24      death case. The notice to them beforehand and the fact  
25      that we are essentially asking to correct the record, we



1 have to bring the motion under 250(4)(c)(d) to bring this  
2 issue before the Court, ask leave to do it, whether the  
3 Court wishes us to entitle it "late notice of filing" or  
4 "corrected notice of filing" that is really a semantic  
5 issue as far as the State is concerned.

6 But we do believe we did give the appropriate  
7 notice within the time frame. We are not asking for any  
8 additional aggravators for this Court to be ruling on and  
9 the defense obviously knew that we were doing this  
10 initially so they cannot be prejudiced.

11 THE COURT: Thank you. I have read everything.  
12 I have looked at all the cases, obviously, in a situation  
13 like this we have to give the most care and consideration  
14 to the circumstances, and we also would hope that the  
15 same is happening in the offices respectfully that have  
16 pleadings to file.

17 But what I have to look at here and what I think  
18 does distinguish this case from Marshall and from Bennett  
19 and from Nunnery is that the substance of the document  
20 that was filed is the one that was required to be filed.  
21 I do not believe that the fact that the title is not  
22 indicating that the document is what it is in fact is, it  
23 is sufficient grounds to find that the Notice was not  
24 filed timely, and I do believe that this is tantamount to  
25 asking to correct the record to have the correct title of

1 the document, but the substance of the document is clear.

2 The subsequent actions of the party make it  
3 clear to the Court that the substance was clear. I do  
4 not believe that this is a situation that is requiring  
5 good cause to show for a late filing. Marshall is  
6 clearly distinguishable in that circumstance that the  
7 filing hadn't occurred within 30 days; this filing did  
8 occur.

9 Bennett also is distinguishable for a number of  
10 reasons as well. It indicates including that there had  
11 been an attempt to change or add aggravators that  
12 previously had been not considered or not added. And, of  
13 course, Nunnery does go into the prejudice issue.

14 I do have the same reading that this prejudice  
15 is not the issue that we're looking at here, but I do not  
16 think that this is a matter of allowing a late filing  
17 because of a clerical error. I do believe that this was  
18 a filing that was done timely and that the Court is being  
19 asked to allow the record to be corrected, and is going  
20 to grant the motion to allow the record to be corrected.  
21 And on those grounds argued by the State the Motion is  
22 granted.

23 MR. STAUDAHER: Thank you, Your Honor. And I do  
24 have the corrected Notice of to Intent Seek Death that --

25 THE COURT: The Court will allow that to be

1 filed to supplement the record and allow the record to be  
2 corrected.

3 MR. STAUDAHER: Thank you.

4 THE COURT: In the order that the State prepares  
5 to reflect that this is the basis upon which the Court  
6 has made this decision so we do not have -- should this  
7 matter be challenged -- that we do not have any  
8 indication of the Court in finding that this was a  
9 clerical error that warrants for late filing or that  
10 there is a prejudice issue involved here.

11 I am distinguishing these matters from Marshall  
12 and Bennett because I do believe that it was filed, and  
13 that we simply have a title that needs to be corrected.

14 MS. ERICKSON: And Judge, we will be doing a  
15 writ of mandamus so we would request that the order be  
16 filed as quickly as possible so that we can take care of  
17 this issue in a timely manner before our trial date.

18 And then we also had a question about the trial  
19 date because when I first looked online the calendar call  
20 date that we have been given was different. And then  
21 when I got an e-mail from the clerk saying that the dates  
22 we got were really appropriate and I don't know if we  
23 resolved that yet.

24 THE COURT: I know my clerk has been working on  
25 it. The dates that were given when we tried to sort of

1       come up with something that worked that was not as early  
2       in August as we know the defense was looking, but not  
3       quite as late as the State perhaps had looked at as well,  
4       happens to be our civil stack in our trial stacks. It is  
5       an error. It does not mean that we couldn't leave it  
6       there, but given perhaps that we are talking about next  
7       year, we thought perhaps we could adjust it. And I think  
8       we ended up adjusting it to just a week prior to correct  
9       that.

10               So we do have dates that we can give now that  
11       would clarify what those dates are and it would probably  
12       be helpful to do that now.

13               MS. ERICKSON: Yes, if we could. That would be  
14       great.

15               THE COURT: I know that the other counsel is not  
16       here but we need to make sure everybody is aware and we  
17       can do that through the minutes.

18               MS. ERICKSON: And I will also send an e-mail to  
19       Ms. Jackson and Mr. Patrick.

20               THE COURT: I appreciate that.

21               THE CLERK: The calendar call date will be  
22       September 23rd at 9:30 with a trial date of September  
23       30th at 10:30.

24               THE COURT: And I do think that it is important  
25       that the State get that order to us so that we can in

1 turn, turn it around and allow the opportunity for that  
2 challenge to take place. And of course the Court wants  
3 to have the opportunity to review the language to make  
4 sure it comports with what we discussed here today.

5 MR. STAUDAHER: In that regard, Your Honor, I am  
6 going to have my secretary send over an order for  
7 transcript so that we can make sure that we have what the  
8 Court's ruling is.

9 THE COURT: I'm sure my reporter can turn it  
10 around very quickly, so we'll do that. And as soon as we  
11 see it we'll get it right back to you.

12 MS. ERICKSON: It is a capital case so it does  
13 require without order that the daily transcripts be done.

14 THE COURT: Okay. Good.

15 MR. WHIPPLE: And also I just want to confirm I  
16 was not present at the last date when we set the trial  
17 date. I'm just curious how we got the September date of  
18 next year. Is that the ordinary course or is that the  
19 first opening?

20 THE COURT: It wasn't the ordinary course. It  
21 wasn't what was requested by the defense. It was what  
22 the Court determined was an appropriate amount of time.  
23 We could not proceed -- the Court did not feel it would  
24 be appropriate in the circumstances to proceed with it  
25 being invoked in that circumstance and there was a lot of

1 discussion at the time, which I am not going to try to  
2 recall now and misstate anything, but we came up with  
3 that date as what we felt was a fair balance in doing  
4 this case as expeditiously as possible given the request  
5 to invoke, but on the other hand, to make sure that  
6 everybody was fully prepared in the appropriate time  
7 span.

8 MR. WHIPPLE: For the record, of course, because  
9 everything will be looked at later, it was clear that my  
10 client never waived their right to trial within 60 days.

11 THE COURT: That was definitely done.

12 MR. WHIPPLE: Okay.

13 MR. STAUDAHER: Your Honor, there are two things  
14 on the record now related to that issue and because if it  
15 does become an issue later I want it to be clear. I was  
16 informed and requested at the last court date, which was  
17 the 17th, that counsel for the defendant Ms. Cabrera had  
18 either lost, misplaced or did not have discovery. They  
19 asked me to reproduce the discovery, which I did. So I  
20 think it is disingenuous for them to indicate that they  
21 would be ready and willing to go to trial in 60 days when  
22 they don't in fact have possession of or have lost their  
23 discovery.

24 Secondly, Ms. Erickson has also indicated that  
25 they are going to appeal the decision of this Court to

1 the Nevada Supreme Court on a writ of mandamus, which  
2 would further, as the Court knows, the Supreme Court  
3 doesn't turn things around typically in a rapid manner as  
4 far as a few days or anything, so I will indicate that  
5 that also is another cog in the wheel from the defense  
6 side.

7 The State had no sort of stave. We just stood  
8 off to the side with regard to the setting of the trial.  
9 It was not our decision related to that. It was both  
10 counsel for Ms. Cabrera and counsel for Mr. Gonzalez who  
11 were working back and forth trying to come up with a date  
12 that the Court finally set.

13 The State would have been fine with any date  
14 that the Court set. But again, based on the procedural  
15 posture of this case thus far the 60-day window was not  
16 something that was doable. And also that we believe that  
17 that is something that is essentially asking for  
18 defense's severance and is the only reason that it was  
19 brought by the defense.

20 THE COURT: And again, I believe we discussed  
21 the numerous reasons why we had the date that we set.  
22 But it was clear that Ms. Cabrera had not waived.

23 MS. ERICKSON: Judge, just for the record, that  
24 is not a correct statement of the missing discovery. The  
25 missing discovery was two CDs that had a minimal amount

1 of documentation on it. One of it was pictures and one  
2 of it was a few reports, so therefore, that is a  
3 disingenuous statement.

4 We had all of the written reports, voluntarily  
5 statement, all of the things that we needed to go forward  
6 with the trial. We would have been ready within 60 days,  
7 and the State can't decide for us whether we're ready or  
8 not.

9 And Mr. Staudaher did argue against the 60 days  
10 because he said we couldn't be prepared, which he had no  
11 right to say. But I wanted to clarify what we were  
12 missing.

13 THE COURT: In these cases, again, it is very  
14 important that we have a complete record. I understand  
15 different ways to view the record.

16 The Court is not making any comment on or  
17 judgment on whether or not the defendant would have been  
18 ready to go or not. The defendant did invoke; did not  
19 waive that. The Court did, however, determine what was  
20 appropriate for this case, as I believe was in the  
21 Court's discretion to set the trial date when it did and  
22 that's what it chose to do. I'm clarifying that for the  
23 record.

24 MS. ERICKSON: Thank you, Judge.

25 MR. STAUDAHER: And the last thing, Your Honor,



1 just so we are clear on the record --

2 THE COURT: Okay, Mr. Staudaher.

3 MR. STAUDAHER: I was requested to produce all  
4 of the discovery that had been produced thus far and that  
5 is what I did produce. In fact, it is contained in the  
6 receipt of copy that counsel picked up the discovery for.  
7 It was not the last two CDs. It was not a certain  
8 segment. It was all of the discovery. So that was  
9 indeed copied and was indicative of what was requested of  
10 the State when the State did produce, just so we're clear  
11 on that.

12 MS. ERICKSON: No. No. We are not clear. I  
13 sent the e-mail and I said specifically that the two CDs  
14 that were misplaced were the last ones that were  
15 disclosed, as set forth in the ROC before the one that we  
16 just got. I did not request all of the discovery. I can  
17 submit the e-mail that I specified completely that it was  
18 two CDs and it was not all of the discovery.

19 THE COURT: Well, I will tell you what I recall  
20 being stated when we were last here in court, and I don't  
21 remember the exchange that we are having now, was that  
22 discovery was being replaced in its entirety.

23 Whatever the truth of that is or is not, if  
24 somebody feels that that is something that is going to be  
25 relevant, then at the time you are doing your briefing on

1        whatever issue may arise then you can clarify. But at  
2        this point in time the Court made its decision based on a  
3        lot of factors and a lot of circumstances, and what it  
4        felt was appropriate and within its exercise of  
5        discretion of when to set this trial date and had already  
6        made the determination not to sever, and so independent I  
7        believe of those circumstances the Court made its  
8        decision.

9                So we'll have the agree-to-disagree record on  
10       the discovery issue should that become an issue you will  
11       each have your communications and your position on that.

12               But for now I am not sure that it is an issue  
13       and Mr. Whipple asked to clarify and I did clarify that  
14       at no time was I of the opinion, nor did I hear that  
15       Ms. Cabrera was waving any of these rights. The Court  
16       set the date it set because it felt it was appropriate.

17               MS. ERICKSON: Thank you, Judge.

18               MR. WHIPPLE: Thank you, Your Honor.

19               MR. STAUDAHER: Thank you, Your Honor.

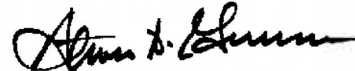
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I, BRENDA SCHROEDER, a certified court reporter in and for the State of Nevada, do hereby certify that the foregoing and attached pages 1-24, inclusive, comprise a true, and accurate transcript of the proceedings reported by me in the matter of THE STATE OF NEVADA, Plaintiff, versus IVONNE CABRERA, Defendant, Case No. C-12-283700-1, on October 31, 2012.

Dated this 31st day of October, 2012.

Brenda Schroeder  
BRENDA SCHROEDER, CCR NO. 867



CLERK OF THE COURT

1 NEO

2 **DISTRICT COURT**  
3 **CLARK COUNTY, NEVADA**  
4

5 IVONNE CABRERA,

6 Petitioner,

7 vs.

Case No: C-12-283700-1

Dept No: XXV

8 THE STATE OF NEVADA,

9 Respondent,  
10

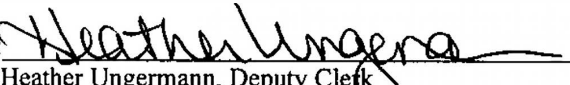
**NOTICE OF ENTRY OF FINDINGS OF  
FACT, CONCLUSIONS OF LAW AND  
ORDER**

11 **PLEASE TAKE NOTICE** that on November 13, 2012, the court entered a decision or order in this matter,  
12 a true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you  
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is  
15 mailed to you. This notice was mailed on December 3, 2012.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 By:

  
Heather Ungermann, Deputy Clerk  
18

19 **CERTIFICATE OF MAILING**

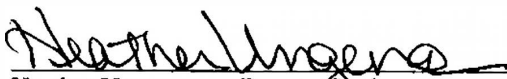
20 I hereby certify that on this 3 day of December 2012, I placed a copy of this Notice of Entry of Decision  
21 and Order in:

22 The bin(s) located in the Office of the District Court Clerk of:  
23 Clark County District Attorney's Office  
Attorney General's Office – Appellate Division

24 ☒ The United States mail addressed as follows:

25 Ivonne Cabrera # 1617623  
330 S. Casino Center Blvd.  
26 Las Vegas, NV 89101

Bret O. Whipple, Esq.  
1100 S. Tenth St.  
Las Vegas, NV 89104

27   
28 Heather Ungermann, Deputy Clerk

  
CLERK OF THE COURT

**FOF**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**MICHAEL V. STAUDAHER**  
Chief Deputy District Attorney  
Nevada Bar #008273  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA

Plaintiff,

vs.

**IVONNE CABRERA, aka**  
**Yvonne Cabrera, #1617623**  
**JOSE GONZALES, aka,**  
**Jose Alejandro Gonzales, #2636822,**  
Defendants.

Case No. C-12-283700-1  
Dept No. XXV

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

**DATE OF HEARING: 10/31/12**  
**TIME OF HEARING: 9:00 A.M.**

THIS CAUSE having come on for hearing before the Honorable KATHLEEN DELANEY, District Judge, on the 31st day of October, 2012, the Defendant being present and represented by BRET O. WHIPPLE, ESQ. and PATRICIA M. ERICKSON, ESQ. and the State being represented by STEVEN B. WOLFSON, District Attorney, by and through MICHAEL V. STAUDAHER, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, testimony and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

///

///

NOV 07 2012

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1                                   **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

2           The Court has reviewed the briefs filed by the parties, has heard argument from the  
3 parties and has also reviewed the applicable law including State v. Dist. Ct. (Marshall), 116  
4 Nev. 953, 11 P.3d 1209 (2000), Bennett v District Court, 121 Nev. 802, 121 P.3d 605 (2005)  
5 and Nunnery v. State, 263 P.3d 235, 127 Nev. Ad. Op. 69 (2011).

6           The Court finds from the records on file that the substance of the required notice of  
7 intent to seek death was timely filed by the State and the fact that the titling of that document  
8 was incorrect is not sufficient grounds to find that said notice was not timely filed. The  
9 Court also finds that subsequent actions by defense counsel shows that the substance of the  
10 original filing was clear to the defense. The Court further finds that correcting the title to the  
11 notice does not require a showing of good cause since the notice was timely filed.

12           The Court finds that the situation at bar is distinguishable from Marshall, Bennett and  
13 Nunnery for a number of reasons including the fact that there was no attempt by the State to  
14 add any aggravators to the original filing and that there was no request for leave to file the  
15 notice late because of a clerical error. The Court further finds that the original notice was  
16 timely filed and the Court is simply granting the State leave to allow the record to be  
17 corrected. The Court further finds that there is no prejudice to the defendant in allowing the  
18 State to file a corrected notice of intent to seek death.

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**ORDER**

1. **THEREFORE, IT IS HEREBY ORDERED** that the State's Motion to File  
Corrected Notice of Intent to Seek Death is granted.

DATED this 9<sup>th</sup> day of November, 2012.

  
DISTRICT JUDGE  
CB

STEVEN B. WOLFSON  
DISTRICT ATTORNEY  
Nevada Bar #001565

BY

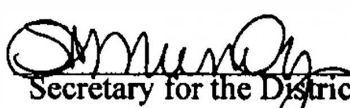
  
MICHAEL V. STAUDACHER  
Chief Deputy District Attorney  
Nevada Bar #008273

**CERTIFICATE OF FACSIMILE TRANSMISSION**

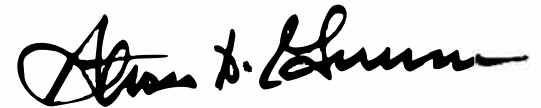
I hereby certify that service of the above document, was made this 13<sup>th</sup> day of  
November, 2012, by facsimile transmission to:

BRET O. WHIPPLE, ESQ.  
FAX #974-4008

PATRICIA M. ERICKSON, ESQ.  
FAX #384-3664

  
Secretary for the District Attorney's Office

12FN0864A/MVS/sam-MVU



CLERK OF THE COURT

MCNT  
DAVID M. SCHIECK  
SPECIAL PUBLIC DEFENDER  
Nevada Bar #0824  
CLARK W. PATRICK  
Deputy Special Public Defender  
Nevada Bar #9451  
ALZORA B. JACKSON  
Deputy Special Public Defender  
Nevada Bar #2255  
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Las Vegas, Nevada 89155  
(702) 455-6265  
FAX: (702) 455-6273  
E-MAIL: cpatrick@clarkcountynv.gov  
E-MAIL: ajackson@clarkcountynv.gov  
Attorneys for GONZALES

DISTRICT COURT

CLARK COUNTY, NEVADA

|                               |   |                        |
|-------------------------------|---|------------------------|
| THE STATE OF NEVADA,          | ) | CASE NO. C-12-283700-2 |
|                               | ) | DEPT. NO. 25           |
| Plaintiff,                    | ) |                        |
|                               | ) |                        |
| vs.                           | ) |                        |
|                               | ) |                        |
| JOSE A. GONZALES, ID 2636822, | ) |                        |
|                               | ) |                        |
| Defendant.                    | ) |                        |

**MOTION TO CONTINUE TRIAL DATE**

Date: 7 - 25 - 13  
Time: 9 : 00 a m

COMES NOW, Defendant, Jose Gonzales, by and through his attorneys, David M. Schieck, Special Public Defender, Clark W. Patrick, Deputy Special Public Defender, and Alzora B. Jackson, Deputy Special Public Defender, and respectfully requests that this Honorable Court continue the trial date in this matter which is currently scheduled for October 7, 2013.

This Motion is made and based upon the papers and pleadings on file herein, the Points and Authorities herein, and the Declaration attached hereto, and any oral argument as may be adduced at the time of the hearing of this matter.



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TO: The Clark County District Attorney, Attorney for Plaintiff:

**Motion to Continue Trial Date** on July 15, 2013 at the hour of 9:00 a.m., in  
Department No. 25 of the above-entitled Court, or as soon thereafter as counsel may be heard.

## 7

for good cause, move the court for an order continuing the date set for trial....”

Under the Sixth Amendment to the United States Constitution, a defendant has the right to effective assistance of counsel. This is especially important when the State is requesting the imposition of the death penalty. The ABA has set forth guidelines for the Appointment and Performance of Defense Counsel in Capital Cases. The objective of the guidelines is to set forth a national standard of practice for the defense of capital cases in order to ensure high quality legal representation for all persons facing the possible imposition or execution of a death sentence in any jurisdiction. See ABA Guideline 1.1.

These guidelines are not aspirational. Instead they embody the current consensus about what is required to provide effective defense representation in capital cases.

The United States Supreme Court has held counsel as being ineffective when counsel's conduct "fell short of the standards for capital defense work articulated by the ABA standard to which we have long referred as guides to determining what is reasonable." Wiggins v. Smith, 539 U.S. 510, 524 (2003).

At the core of the ABA Guidelines is the need to perform a complete and detailed investigation into all aspects of the case, both at the guilt phase and the penalty phase. At every stage of the proceedings, counsel has a duty to investigate the case thoroughly. This duty is intensified (as are many duties) by the unique nature of the death penalty, has been emphasized by recent statutory changes, and is broadened by the bifurcation of capital trials. See ABA Guideline 10.7. “The ABA Guidelines provide that investigations into mitigating evidence

1 should comprise efforts to discover all reasonable available mitigation evidence and evidence  
2 to rebut any aggravation evidence that may be introduced by the prosecutor.” Rompilla v. Beard,  
3 545 U.S. 374, n. 7 (2005).

4 Because the sentencer in a capital case must consider in mitigation, “anything in the life  
5 of a defendant which might mitigate against the appropriateness of the death penalty for that  
6 defendant.” Brown v. State, 526 So. 2d 903, 908 (Fla. 1988) (citing Hitchcock v. Dugger, 481  
7 U.S. 393, 394 (1987)); see also Eddings v. Oklahoma, 455 U.S. 104, 113-15 (1982); Lockett v.  
8 Ohio, 438 U.S. 586, 604 (1978); infra text accompanying note 277. “Penalty phase preparations  
9 requires extensive and generally unparalleled investigation into personal and family history.” In  
10 the case of a client facing the death penalty, this begins with the moment of conception. Counsel  
11 needs to explore:

- 12 1. Medical History
- 13 2. Family and Social History
- 14 3. Educational History
- 15 4. Military Service
- 16 5. Employment and Training History
- 17 6. Prior Juvenile and Adult Correctional Experience.

18 ABA Standard 10.7.

19 In Allen v. Woodford, 395 F.3d 979, 1001 (9<sup>th</sup> Cir. 2005), the Court citing Strickland v.  
20 Washington, 466 U.S. 668, 689 (1984), held “counsel’s untimely, hasty, and incomplete  
21 investigation of potential mitigation evidence for the penalty phase fell outside the range of  
22 reasonable professional assistance.

23 The California Supreme Court held that trial counsel’s “failure to investigate petitioner’s  
24 early social history was not consistent with norms that directed counsel in death penalty cases  
25 to conduct a reasonably thorough independent investigation of the defendant’s social history as  
26 reflected in the ABA standards relied upon by the court in the Wiggins case.” In re Larry  
27 Douglas Lucas, 94 P.3d 477, 504 (Cal. 2004).

28 Summing up the need to thoroughly investigate all evidence and mitigating factors in a  
capital case, “counsel’s failure to inquire into an area specifically mentioned in the ABA  
Guidelines is a good indicator that his performance was constitutionally deficient.” Kandies v.

1 Polk, 385 F.3d 457, 479 (4<sup>th</sup> Cir. 2004).

2 In the instant case, the defense team has been diligently investigating and preparing a  
3 mitigation case for Jose. However, there are still many of Jose's family members, friends and  
4 teachers to be interviewed. During his youth, Jose had health issues and accidents that must be  
5 investigated in order to complete the "extensive and generally unparalleled investigation into  
6 personal and family history," that is required by the ABA Guidelines and the United States  
7 Supreme Court.

8 At this time, counsel has not completed the mitigation investigation that is required prior  
9 to counsel being prepared to take this matter to trial. Until the mitigation investigation is  
10 complete counsel for Jose Gonzales would be per se ineffective during a penalty phase of a  
11 capital murder trial.

12 Mr. Gonzales is aware of and has consented to this Motion to Continue Trial.

13  
14 **CONCLUSION**

15 Based upon the foregoing, it is respectfully requested that the trial date of July 30,  
16 2012 be vacated and reset.

17 DATED this 3rd day of July 2013.

18 SUBMITTED BY:

19 DAVID M. SCHIECK  
20 SPECIAL PUBLIC DEFENDER

21 /s/ CLARK W. PATRICK

22  
23 

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CLARK W. PATRICK  
24 Alzora B. Jackson  
25 Attorneys for Gonzales  
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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the foregoing Motion was made on July 3, 2013, by  
Electronic Filing to:

DISTRICT ATTORNEY’S OFFICE

email: pdmotions@ccdανv.com

courtesy copy to Michael Staudaher at  
Michael.Staudaher@ccdανv.com

/s/ Kathleen Fitzgerald

\_\_\_\_\_  
Legal Executive Assistant for  
Special Public Defender

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of the foregoing Motion was made this 3<sup>rd</sup> day of July,  
2013 by facsimile transmission to: BRET WHIPPLE, ESQ., attorney for co-defendant  
Ivonne Cabrera at Fax 974-4008.

/s/ Kathleen Fitzgerald

\_\_\_\_\_  
Legal Executive Assistant for  
Special Public Defender

DISTRICT COURT  
CLARK COUNTY, NEVADA

Original

THE STATE OF NEVADA, )  
 )  
Plaintiff, ) Case No: C-12-283700-2  
 )  
vs. ) Dept No: XXV  
 )  
JOSE ALEJANDRO GONZALES, )  
 )  
Defendant. )

BEFORE THE HONORABLE JOSEPH BONAVENTURE

JULY 24, 2013, 9:00 A.M.

REPORTER'S TRANSCRIPT  
OF  
DEFENDANT'S MOTION TO  
CONTINUE TRIAL DATE

APPEARANCES:

(See separate page)

REPORTED BY: BRENDA SCHROEDER, CCR NO. 867

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APPEARANCES:

For the Plaintiff:

MICHAEL V. STAUDAHER, ESQ.  
Chief Deputy District Attorney  
200 Lewis Avenue  
Las Vegas, Nevada 89155

For the Defendant JOSE GONZALES:

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Las Vegas, Nevada 89155

ALZORA B. JACKSON, ESQ.  
Deputy Special Public Defender  
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For the Defendant IVONNE CABRERA:

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Las Vegas, Nevada 89155

BRET O. WHIPPLE, ESQ.  
Justice Law Center  
1100 S. Tenth Street  
Las Vegas, Nevada 89101

1 LAS VEGAS, CLARK COUNTY, NEVADA

2 WEDNESDAY, OCTOBER 17, 2012

3 PROCEEDINGS

4 \* \* \*

5 THE COURT: State of Nevada versus Ivonne  
6 Cabrera and Jose Gonzales.

7 MS. ERICKSON: Good morning, Your Honor.  
8 Patricia Erickson and Bret Whipple appearing on behalf of  
9 Ivonne Cabrera.

10 MR. PATRICK: Clark Patrick and Alzora Jackson  
11 for Mr. Gonzales, Judge.

12 MR. STAUDAHER: Michael Staudaher on behalf of  
13 the State, Your Honor.

14 THE COURT: You filed a Motion to Continue; is  
15 that correct?

16 MR. PATRICK: Yes, Your Honor. This is our  
17 Motion to Continue.

18 THE COURT: Do you agree?

19 MS. ERICKSON: No, Judge, we oppose. We invoked  
20 our 60 days.

21 THE COURT: Go ahead.

22 MR. PATRICK: Well, Judge, the simple fact of  
23 the matter is this is a death penalty case and under Rule  
24 250 and the Supreme Court cases Wiggins and Rompella we  
25 have not completed our necessary mitigation



1 investigation, and should we be forced to go trial at  
2 this time, or in September on our trial date, Ms. Jackson  
3 and I would be per se ineffective. Any trial would not  
4 stand by any means through any appellate review. We need  
5 to do mitigation, and until mitigation is done we cannot  
6 go to trial.

7 I understand that codefendant may feel that they  
8 are ready, but we're not. And if we are forced to go to  
9 trial it will be for naught because the conviction, if  
10 there is one, will be overturned.

11 THE COURT: Wasn't it bifurcated -- or you  
12 might be ready for trial but you are not ready for the  
13 penalty phase?

14 MR. PATRICK: Well, Judge --

15 THE COURT: The judge gives you plenty of time  
16 for the penalty phase.

17 MR. PATRICK: Well, that's not how it works in  
18 Nevada, Judge, you know that.

19 THE COURT: I was just asking you. Bifurcate  
20 and then after the trial, if he's convicted, then you  
21 have a penalty phase. Why doesn't it work like that?

22 MR. PATRICK: The penalty phase starts the next  
23 day, Your Honor.

24 THE COURT: Well, sometimes. I mean, it doesn't  
25 have to start the next -- there's no law saying it has to

1 be. Is there a statute saying that the penalty phase has  
2 to be done the next day? It could be a week later or two  
3 weeks later.

4 MR. PATRICK: Yes, Judge. And I filed many  
5 motions for bifurcating trial phases like that and they  
6 have never been granted in the 8th Judicial District  
7 Court.

8 THE COURT: Well, the problem with this is you  
9 have a codefendant that is not agreeing to the  
10 continuance of the trial.

11 What does the State have to say? And then I'll  
12 hear from you.

13 MR. STAUDAHER: Well, the State, obviously, they  
14 initially brought a motion to sever, which was denied by  
15 the Court. And it is the State's position that this is a  
16 ploy to get a de facto severance. We are opposed to any  
17 continuance if both parties are not in the case. If they  
18 are both in the case then we don't oppose a continuance,  
19 for the reason that they have this was originally set out  
20 a year from the actual date for both parties to be able  
21 to get ready for trial.

22 So at this stage, the State would oppose a  
23 continuance unless both of the defense parties agree to  
24 the continuance.

25 THE COURT: Well, they say, you know, that it's

1       ineffective assistance of counsel. That's what he's  
2       saying.

3               MR. STAUDAHER: It's the same for both, Your  
4       Honor. We feel that we don't want to sever the case. So  
5       if they both are in agreement for the continuance --

6               THE COURT: Well, they're not. They are not  
7       both in agreement, so now we have to take it as it is.  
8       They are not both in agreement.

9               So is that going to affect the State's case if  
10      the Court denies the Motion to Continue, wouldn't that be  
11      ineffective assistance of counsel?

12              MR. STAUDAHER: Well, I think we are in the same  
13      position. If we are going to try it once or twice,  
14      depending on what's going on. I mean, the Court  
15      initially set this case out a year for both parties to  
16      get ready. So whether a year is enough time to get ready  
17      in a case of this type would be something that the  
18      Supreme Court would have to review. But at this stage  
19      the State would oppose a continuance unless both parties  
20      are in agreement.

21              THE COURT: Okay.

22              MR. PATRICK: Judge, if I may, one more thing.

23              THE COURT: Yes. Make your record.

24              MR. PATRICK: And I understand the Court's  
25      position and I understand that this Court doesn't

1 necessarily care about what other courts in the 8th  
2 Judicial District do, but I can tell you that I have a  
3 client that has been waiting to go to trial for five  
4 years because the codefendant keeps saying that they are  
5 not ready to do the penalty phase and it would be  
6 ineffective assistance of counsel to make us go to trial.  
7 Well, we've been ready for five years but we don't get  
8 our trial date because the codefendant is not ready.

9 And I know that it was not Judge Delaney's court  
10 or your court, but if my client has to wait for five  
11 years because codefendant is not ready, I don't see the  
12 difference here where I'm saying I'm not ready and it  
13 will be ineffective assistance of counsel, which I will  
14 be more than happy to give Mr. Gonzales an affidavit at  
15 the end of September's trial saying that I was per se  
16 ineffective just because they are trying to get a de  
17 facto severance on this issue.

18 MS. ERICKSON: Judge, we are not trying to get a  
19 de facto severance. We've been ready. We announced  
20 ready at the first arraignment on September 6th. We  
21 announced ready again on September 12th. We filed a  
22 Motion to Sever on September 21, within nine days of  
23 invoking.

24 That motion was denied on the 1st of October,  
25 and the State filed a motion to correct the Notice of

1 Intent on October 4th. On October 17th the trial date  
2 was set over our objection for September 30th. We  
3 explained why we were objecting, that we were ready to go  
4 and we would be ready to go. The trial would have been  
5 in November and it was continued over our objection.

6 At this time we are ready to go. We're not  
7 asking -- I'm renewing my motion for severance,  
8 obviously, but we are not seeking a de facto. We are  
9 ready to go.

10 THE COURT: Anything else?

11 MR. STAUDAHER: No, Your Honor.

12 MR. PATRICK: Your Honor, if I may just very  
13 briefly. The first two times that co-counsel announced  
14 ready we had not even received all of the discovery in  
15 this case.

16 MS. ERICKSON: The discovery that we received  
17 after that date was minimal. It was pictures. We have  
18 not received anything of substance.

19 THE COURT: The Court reviewed this. You have  
20 had over a year to get ready on this. Again, this has  
21 nothing to do with the trial phase, perhaps with the  
22 penalty phase, but the trial judge could take care of it.  
23 I am going to deny the Motion to Continue.

24 MS. JACKSON: Your Honor, if I may.

25 THE COURT: I am going to deny the Motion to

1 Continue. Now, if you are going to try to change my  
2 mind, I'm not going to change my mind. If you want to  
3 make a quick record, make a record.

4 MS. JACKSON: I do.

5 THE COURT: All right.

6 MS. JACKSON: In all the years I have been  
7 trying capital cases I have never had the opportunity to  
8 go out of the country between a first phase and a second  
9 phase. Mr. Gonzales is from Mexico and we have not been  
10 able to go out there with our calendars. A year, I've  
11 never been able to try a capital case within a year, and  
12 the record will so reflect.

13 THE COURT: Thank you.

14 (End of proceedings.)  
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1 REPORTER'S CERTIFICATE

2  
3 STATE OF NEVADA )  
4 COUNTY OF CLARK ) ss.  
5

6 I, BRENDA SCHROEDER, a certified court reporter  
7 in and for the State of Nevada, do hereby certify that  
8 the foregoing and attached pages 1-10, inclusive,  
9 comprise a true, and accurate transcript of the  
10 proceedings reported by me in the matter of THE STATE OF  
11 NEVADA, Plaintiff, versus JOSE GONZALES, Defendant, Case  
12 No. C283700-2, on July 24, 2013.  
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16 Dated this 26th day of July, 2013.

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18 Brenda Schroeder  
19 BRENDA SCHROEDER, CCR NO. 867  
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IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed  
Aug 02 2018 10:26 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

IVONNE CABRERA, )  
 )  
Appellant, )  
 )  
vs. )  
 )  
THE STATE OF NEVADA, )  
 )  
Respondent. )  
\_\_\_\_\_ )

Case No. 74341

---

**APPENDIX TO APPELLANT'S OPENING BRIEF VOLUME I**

---

**Appeal from Judgment of Conviction  
Eighth Judicial District Court**

Patricia M. Erickson, Esq.  
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pme@pmericksonlaw.com

Attorney for Appellant

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Clark County District Attorney  
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Las Vegas, Nevada 89155  
(702) 671-2500

Attorney for Respondent



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| Court Exhibit 11 - Objections to Jury Instructions                      | XI 2300 - 2318          |
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| Defense Exhibit Marked MMM  | XII 2349 - 2365         |
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|--|---------------|
| Notice of Motion and Motion to File Corrected<br>Notice of Intent to Seek the Death<br>Penalty filed 10.04.2012  | I 80 - 85     |
| Notice of Motion and Motion to Preclude<br>Introduction of Statement, or in the<br>Alternative, to Redact Statement<br>filed on 08.10.2018   | II 398 - 442  |
| Notice of Motion and Motion Requesting an Order<br>Requiring the State Update the Addresses of<br>the Witnesses That Will Be Called to Testify<br>During Their Case in Chief filed on 08.10.2015 | II 453 - 456  |
| Notice of Motion and Motion to Continue Trial<br>filed on 09.07.2015   | III 547 - 564 |
| Notice of Motion and Motion to Strike<br>Aggravating Circumstances filed 08.10.2015  | II 443 - 452  |
| Opposition to State's Motion in Limine to Preclude<br>Duress as a Defense to Murder filed on<br>06.21.2016   | III 726 - 733 |
| Opposition to State's Motion in Limine to Preclude<br>Duress as a Defense to All the Charges in<br>the Information filed on 07.27.2016   | IV 759 - 767  |
| Opposition to State's Motion to Admit Evidence of<br>Other Crimes, Wrongs or Acts filed<br>on 09.12.2015   | III 588 - 591 |
| Opposition to State's Motion to File Corrected Notice<br>of Intent so Seek the Death Penalty<br>filed 10.25.2012   | I 97 - 103    |
| Order for Production of Inmate Jose<br>Alejandro Gonzales, BAC #1016762  | V 1155 - 1157 |

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| Order Granting Motion to Sever Trials<br>filed on 03.16.2015  | II 335           |
| Order Granting State's Motion in Limine to Preclude<br>Duress as a Defense to all the Charges in<br>the Information filed on 12.01.2016   | IV 785 - 786     |
| Order Granting State's Motion to Admit Evidence<br>of Other Crimes, Wrongs or Acts filed on<br>01.31.2015   | III 713 - 714    |
| Penalty Phase Verdict filed on 07.20.2017   | X 2263 - 2274    |
| Receipt of Copy of Discovery filed 10.29.2012   | I 104 - 107      |
| Renewed Motion to Continue Trial Date and Motion<br>to File Declaration in Support Under Seal<br>filed on behalf of co-defendant Jose Gonzales<br>filed 07.31.2013  | I 157 - 184      |
| Reply to State's Opposition to Motion to<br>Continue Trial filed on 09.11.2015  | III 575 - 587    |
| Reply to State Response to Defendant's Motion for an Order<br>Requiring the State Update the Addresses of the<br>Witnesses That Will Be Called to Testify During<br>Their Case in Chief filed on 08.16.2015 | II 460 - 464     |
| Reply to State/Response to Motion to Strike<br>Aggravating Circumstances filed on 08.21.2015  | III 492 - 524    |
| Second Amended Notice of Intent to Seek<br>Death Penalty filed on 12.10.2015  | III 673 - 678    |
| Sentencing Memorandum filed on 09.08.2017   | X 2275 - 2293    |
| State Exhibit 19  | XIII 2368 - 2369 |
| State Exhibit 47  | XIII 2370 - 2371 |

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| State Exhibit 153   | XIII 2372        |
| State Exhibit 154   | XIII 2373 - 2375 |
| State Exhibit 169   | XIII 2376        |
| State Exhibit 170   | XIII 2377 - 2378 |
| State's Opposition to Cabrera Motion to Sever filed 09.25.2012  | I 56 - 71        |
| State's Opposition to Defendant's Motion to Continue Trial filed on 09.10.2015  | III 571 - 574    |
| State's Response to Defendant's Motion for a Jury View and Motion in Limine to Preclude Duress as a Defense to Murder filed on 06.14.2016   | III 721 - 725    |
| State's Response to Defendant's Motion for an Order Requiring the State Update the Addresses of the Witnesses That Will Be Called to Testify During Their Case in Chief filed on 08.14.2015 | II 457 - 459     |
| State's Response to Defendant's Motion to Preclude Introduction of Statement, or in the Alternative, to Redact Statement filed 08.18.2015   | II 474 - 481     |
| State's Response to Defendant's Motion to Strike Aggravating Circumstances filed on 08.18.2015  | II 465 - 473     |
| State's Opposition to Defendant [Gonzales] Motion to Continue Trial Date filed on 04.14.2014  | I 207 - 215      |
| Transcript Hearing on 09.06.2012  | I 22 - 25        |
| Transcript Hearing on 09.12.2012  | I 26 - 34        |
| Transcript Hearing on 10.01.2012  | I 72 - 79        |

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|----------------------------------|---------------|
| Transcript Hearing on 10.17.2012 | I 86 - 96     |
| Transcript Hearing on 10.31.2012 | I 116 - 136   |
| Transcript Hearing on 07.24.2013 | I 147 - 156   |
| Transcript Hearing on 08.19.2013 | I 185 - 191   |
| Transcript Hearing on 08.21.2013 | I 192 - 199   |
| Transcript Hearing on 04.21.2014 | I 216 - 222   |
| Transcript Hearing on 04.28.2014 | I 223 - 242   |
| Transcript Hearing on 05.14.2014 | II 243 - 255  |
| Transcript Hearing on 03.04.2015 | II 317 - 334  |
| Transcript Hearing on 03.16.2015 | II 336 - 377  |
| Transcript Hearing on 04.06.2015 | II 378 - 386  |
| Transcript Hearing on 07.22.2015 | II 387 - 397  |
| Transcript Hearing on 08.19.2015 | III 482 - 491 |
| Transcript Hearing on 08.26.2015 | III 525 - 534 |
| Transcript Hearing on 09.09.2015 | III 565 - 570 |
| Transcript Hearing on 09.14.2015 | III 592 - 621 |
| Transcript Hearing on 11.20.2015 | III 622 - 657 |
| Transcript Hearing on 12.09.2015 | III 658 - 672 |
| Transcript Hearing on 12.16.2015 | III 679 - 701 |
| Transcript Hearing on 12.21.2015 | III 702 - 712 |

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| Transcript Hearing on 06.22.2016                      | IV 734 - 751 |
| Transcript Hearing on 08.08.2016                      | IV 768 - 784 |
| Transcript Hearing for Jose Gonzales on<br>04.12.2017 | IV 787 - 802 |
| Transcript Hearing for Jose Gonzales on<br>05.22.2017 | IV 813 - 877 |
| Transcript Preliminary Hearing on 08.21.2012          | I 5 - 16     |



**FILED**  
JUSTICE COURT, NORTH LAS VEGAS TOWNSHIP  
CLARK COUNTY, NEVADA

2012 MAY -2 P 1:47

THE STATE OF NEVADA,

Plaintiff,

-vs-

IVONNE CABRERA, aka,  
Yvonne Cabrera #1617623,  
JOSE GONZALES, aka,  
Jose Alejandro Gonzales #2636822,

Defendants.

CASE NO: 12FN0864A-B

DEPT NO: 3

CRIMINAL COMPLAINT

The Defendants above named having committed the crimes of CONSPIRACY TO COMMIT MURDER (Category A Felony - NRS 199.480, 200.010, 200.030); BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony - NRS 205.060); MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165) and ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165), in the manner following, to-wit: That the said Defendants, on or about the 26th day of April, 2012, at and within the County of Clark, State of Nevada,

COUNT 1 - CONSPIRACY TO COMMIT MURDER

did then and there meet with each other and between themselves, and each of them with the other, wilfully, unlawfully, and feloniously conspire and agree to commit a crime, to-wit: murder, and in furtherance of said conspiracy, Defendants did commit the acts as set forth in Counts 2-6, said acts being incorporated by this reference as though fully set forth herein.

COUNT 2 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

did then and there wilfully, unlawfully, and feloniously enter with intent to commit a felony, to-wit: murder, that certain building occupied by ERIK QUEZADA MORALES and/or JAMES HEADRICK and/or MELISSA MARIN and/or ASHLEY WANTLAND, located at 2039 Webster, Apartment No. C, North Las Vegas, Clark County, Nevada, the

1 Defendant did possess and/or gain possession of a deadly weapon consisting of a firearm  
2 during the commission of the crime and/or before leaving the structure.

3 COUNT 3 - MURDER WITH USE OF A DEADLY WEAPON

4 did then and there wilfully, feloniously, without authority of law, and with  
5 premeditation and deliberation, and with malice aforethought, kill JAMES HEADRICK, a  
6 human being, by shooting at the said JAMES HEADRICK multiple times, with a deadly  
7 weapon, to-wit: firearm; Defendant JOSE GONZALES, aka, Jose Alejandro Gonzales  
8 directly committing said crime, Defendant IVONNE CABRERA, aka, Yvonne Cabrera  
9 aiding or abetting by counsel and encouragement and by accompanying Defendant JOSE  
10 GONZALES, aka, Jose Alejandro Gonzales to JAMES HEADRICK'S residence and  
11 knocking on doors to and within JAMES HEADRICK'S apartment to allow Defendant  
12 JOSE GONZALEZ, aka, Jose Alejandro Gonzales to gain access to JAMES HEADRICK to  
13 facilitate shooting him, Defendant IVONNE CABRERA, aka, Yvonne Cabrera also being  
14 criminally liable as a co-conspirator vicariously in that said crime was a foreseeable act of  
15 the conspiracy set forth in Count 1 hereinabove.

16 COUNT 4 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

17 did then and there, without authority of law, and malice aforethought, willfully and  
18 feloniously attempt to kill ASHLEY WANTLAND, a human being, by shooting at the said  
19 ASHLEY WANTLAND multiple times, with a deadly weapon, to-wit: a firearm; Defendant  
20 JOSE GONZALES, aka, Jose Alejandro Gonzales directly committing said crime,  
21 Defendant IVONNE CABRERA, aka, Yvonne Cabrera aiding or abetting by counsel and  
22 encouragement and by accompanying Defendant JOSE GONZALES, aka, Jose Alejandro  
23 Gonzales to ASHLEY WANTLAND'S residence and knocking on doors to and within  
24 ASHLEY WANTLAND'S apartment to allow Defendant JOSE GONZALEZ, aka, Jose  
25 Alejandro Gonzales to gain access to ASHLEY WANTLAND to facilitate shooting her,  
26 Defendant IVONNE CABRERA, aka, Yvonne Cabrera also being criminally liable as a co-  
27 conspirator vicariously in that said crime was a foreseeable act of the conspiracy set forth in  
28 Count 1 hereinabove.

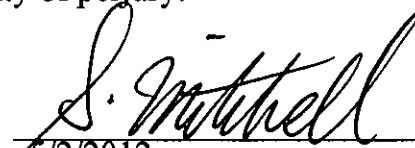
1  
2 COUNT 5 - MURDER WITH USE OF A DEADLY WEAPON

3 did then and there wilfully, feloniously, without authority of law, and with  
4 premeditation and deliberation, and with malice aforethought, kill ERIK QUEZADA  
5 MORALES, a human being, by shooting at the said ERIK QUEZADA MORALES multiple  
6 times, with a deadly weapon, to-wit: firearm; Defendant JOSE GONZALES, aka, Jose  
7 Alejandro Gonzales directly committing said crime, Defendant IVONNE CABRERA, aka,  
8 Yvonne Cabrera aiding or abetting by counsel and encouragement and by accompanying  
9 Defendant JOSE GONZALES, aka, Jose Alejandro Gonzales to ERIK QUEZADA  
10 MORALES' residence and knocking on doors to and within ERIK QUEZADA MORALES'  
11 apartment to allow Defendant JOSE GONZALEZ, aka, Jose Alejandro Gonzales to gain  
12 access to ERIK QUEZADA MORALES to facilitate shooting him, Defendant IVONNE  
13 CABRERA, aka, Yvonne Cabrera also being criminally liable as a co-conspirator  
14 vicariously in that said crime was a foreseeable act of the conspiracy set forth in Count 1  
15 hereinabove.

16 COUNT 6 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

17 did then and there, without authority of law, and malice aforethought, willfully and  
18 feloniously attempt to kill MELISSA MARIN, a human being, by shooting at the said  
19 MELISSA MARIN twice, with a deadly weapon, to-wit: a firearm; Defendant JOSE  
20 GONZALES, aka, Jose Alejandro Gonzales directly committing said crime, Defendant  
21 IVONNE CABRERA, aka, Yvonne Cabrera aiding or abetting by counsel and  
22 encouragement and by accompanying Defendant JOSE GONZALES, aka, Jose Alejandro  
23 Gonzales to MELISSA MARIN'S residence and knocking on doors to and within MELISSA  
24 MARIN'S apartment to allow Defendant JOSE GONZALEZ, aka, Jose Alejandro Gonzales  
25 to gain access to MELISSA MARIN to facilitate shooting him, Defendant IVONNE  
26 CABRERA, aka, Yvonne Cabrera also being criminally liable as a co-conspirator  
27 vicariously in that said crime was a foreseeable act of the conspiracy set forth in Count 1  
28 hereinabove.

1 All of which is contrary to the form, force and effect of Statutes in such cases made  
2 and provided and against the peace and dignity of the State of Nevada. Said Complainant  
3 makes this declaration subject to the penalty of perjury.

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DEPARTMENT 3

DISTRICT COURT CASE NO. C283700-1, C283700-2

IN THE JUSTICE'S COURT OF NORTH LAS VEGAS TOWNSHIP

CLERK OF THE COURT

CLARK COUNTY, STATE OF NEVADA

\* \* \* \* \*

THE STATE OF NEVADA,

Plaintiff,

vs.

IVONNE CABRERA, JOSE  
ALEJANDRO GONZALES,

Defendants.

CASE NO. 12FN0864A, 12FN0684B  
12CRN000826-0001, 0002

**RECORDED TRANSCRIPT**

OF  
UNCONDITIONAL WAIVER OF PRELIMINARY HEARING  
BEFORE TERA K. AMES,  
JUSTICE OF THE PEACE PRO TEM  
TUESDAY, AUGUST 21, 2012, 9:00 A.M.

**APPEARANCES:**

For the State:

MICHAEL STAUDAHNER, ESQ.  
Deputy District Attorney

For the Defendant Cabrera:

BRET WHIPPLE, ESQ.

For the Defendant Gonzales:

ALZORA JACKSON, ESQ.  
CLARK PATRICK, ESQ.  
Deputy Special Public Defenders

TRANSCRIBED BY: NORMA JEAN SILVERMAN, COURT RECORDER

RECEIVED

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1 NORTH LAS VEGAS, CLARK COUNTY, NEVADA

2 TUESDAY, AUGUST 21, 2012, 9: 00A.M.

3 \* \* \* \* \*

4 P R O C E E D I N G S

5  
6 THE COURT: THE COURT: 12FN0864A and B, State of Nevada  
7 versus Ivonne Cabrera and Jose Gonzales.

8 Morning.

9 UNIDENTIFIED SPEAKER: Good morning, your Honor.

10 THE COURT: This is the time set for the preliminary hearing in this  
11 matter?

12 MR. WHIPPLE: Yes, your Honor.

13 UNIDENTIFIED SPEAKER: Correct, judge.

14 THE COURT: All right. Are you read to proceed?

15 UNIDENTIFIED SPEAKER: No, your Honor.

16 THE COURT: All right.

17 UNIDENTIFIED SPEAKER: Yes, your Honor, we're not. And the  
18 problem we have, judge, is we've been having some discovery issues that on July  
19 23<sup>rd</sup> we subpoenaed the North Las Vegas Police Department for the crime scene  
20 diagrams and 911 tapes. They sent us back a letter saying they were not gonna  
21 honor our subpoena, and the really strange thing about this letter, judge, is it's word  
22 for word the exact wording that Metro's done (indiscernible) within the last several  
23 months to refuse our subpoenas which leads us to believe that this is not coming  
24 from the city of North Las Vegas or Metro.

25 This coming straight from the District Attorney's Office. So the District

1 Attorney's Office -- and I'm not saying it's Mr. Staudaher. It's somebody in the  
2 District Attorney's Office -- has decided it's to play games with discovery in double  
3 homicide cases.

4 The letter we got back from North Las Vegas didn't come 'til weeks later  
5 approximately on August 8<sup>th</sup> saying (indiscernible) you don't get this stuff unless you  
6 get it from the D.A. I immediately emailed Mr. Staudaher and asked him for both the  
7 911 calls and the crime scene diagram on August 9<sup>th</sup>.

8 And I mentioned in my email that this was important discovery and that  
9 prelim is less than two weeks away.

10 Today this morning about ten minutes ago we got crime scene  
11 diagrams. It's a dozen pages. It's very disjointed. It's very hard to read. It looks  
12 like a puzzle you have to put together to see what's going on with it.

13 Our position is very clear that we'd asked for this stuff over a month ago  
14 to be ready for preliminary hearing. We feel that this crime scene diagram is very  
15 important in a double homicide case because it lays out where the people were,  
16 where the bodies were found and where the evidence was discovered.

17 Now, normally in a case we would go to the crime scene and try to do  
18 this ourselves; however, in this case as the court may or may not be aware it was  
19 several weeks from the time of the incident until Mr. Gonzales was arrested so the  
20 crime scene was of no use to us. We couldn't go see it. Everything was gone.

21 So our position is today we cannot go forward 'cause we have to  
22 disseminate this discovery, see what it means, see how it works into our case before  
23 we're ready to proceed, and had it been provided to us when we asked then we  
24 would not need this delay, but since somebody in the District Attorney's Office and  
25 the North Las Vegas Police Department decided on playing games with our

1 discovery we have no choice but to ask for this continuance.

2 THE COURT: (Indiscernible)?

3 MR. WHIPPLE: Your Honor, (indiscernible).

4 THE COURT: The State?

5 MR. STAUDAHER: First of all, it probably should be -- I'm sure the  
6 court's aware, defense actually has no right to discovery (indiscernible). What they  
7 are entitled to is whatever the State has physically in its possession. While  
8 (indiscernible) constructive possession, what it actually has which counsel does  
9 have.

10 I actually have signed receipts a copy of this case actually two different  
11 productions of the discovery, original discovery, which was produced at the time of  
12 initial arraignment (indiscernible) and then again on July 24<sup>th</sup>, discovery which would  
13 have allowed defendants be prepared to proceed today was provided to  
14 (indiscernible), and I will (indiscernible) the court -- this is -- these are all filed with  
15 the court. I just wanna make sure the court's aware (indiscernible). (Indiscernible)  
16 none of 'em, the audio (indiscernible) all the interviews, all the transcribed  
17 statements of those interviews, the original discovery which included all the police  
18 reports, the booking photos of both defendants, the autopsy reports of both  
19 deceased victims in this case, all of that (indiscernible), all of the medical records for  
20 (indiscernible) victims in this case which is an unusual thing for them to have in  
21 advance of preliminary hearing (indiscernible) as far as they have had it.

22 In addition the consent to search, the autopsy photographs, the autopsy  
23 reports again themselves, latent print report that was provided, all the photographs  
24 that were present regarding the crime scene itself which would allow them to look at  
25 the crime scene and see different things on it.



1           That's -- that's what they have, they have all that information. The only  
2 two pieces of information that they have subsequently received after the July 24<sup>th</sup>  
3 date was at the request of counsel I did get an email from him on 8-10 of 2012  
4 requesting some additional items. One of those was the color booking photo of Mr.  
5 Gonzales which was provided actually on that day.

6           Certified Judgments of Conviction for Mr. Gonzales, previously Certified  
7 Judgments of Conviction for Mr. Cabrera, had been provided to both counsel, color  
8 photographs shown to the victims, that was (indiscernible) that they had requested,  
9 those were provided. So those were all provided on the 10<sup>th</sup>.

10           We come to the 21<sup>st</sup>. The only items that they received since that time  
11 are the crime scene diagram which they requested which was provided by Mr. -- or  
12 Detective Prieto and (Indiscernible) as well as a transcript of the 911 call, it's  
13 relatively short, about half the transcript says Spanish speaking, apparently it was  
14 not completely translated.

15           I've indicated to counsel that (indiscernible) the recording completely  
16 translated at this point. I do have a copy of the recording. I can't physically make a  
17 copy of it (indiscernible) it's not important for that to be introduced necessarily to go  
18 forward with the preliminary hearing.

19           They have much more discovery than would normally be present at a  
20 preliminary hearing in a homicide case and they've had it well in advance. Never  
21 was there a request for a continuance until this morning to come in and say because  
22 we don't have a diagram we can't go forward.

23           They know what the situation is, that we have victims in this case, two  
24 (indiscernible) victims who are both very reluctant to come. I have subpoenas that  
25 have been served upon them. We had to go to great lengths to get one of those

1 victims here this morning. The other one although she said that she would be here,  
2 gave us a promise to appear, was aware of the court date, is not here.

3 It's not to say I can't proceed without that witness present, there are  
4 other ways for me to get the information in, but needless to say it's a very difficult  
5 case to put on and delay and delay for whatever reason. Again, the big point here is  
6 that they're not entitled to send out discovery and have discovery before the  
7 preliminary hearing to the extent that they wish to have it.

8 The things that they sent to North Las Vegas Police Department were  
9 not legally sufficient to provide that. That's why they received the letters from them.

10 We don't get the letters to North Las Vegas to give to them. That's their  
11 legal counsel. Same thing with Metro. What they typically do in the request for  
12 discovery is they had a (indiscernible) amount of discovery, they were asking for all  
13 D.N.A. forensics. That all has not even -- it has been submitted, it's certainly not  
14 that (indiscernible). They're not entitled to have all that before we go to a  
15 preliminary hearing.

16 When they say that they want all this stuff and they get a date to do it, it  
17 has to be a court date. It has to be something where there is -- there's something  
18 present for them to appear to provide that. They are not legally entitled to have that  
19 information from those entities provided to them in lieu of appearance. That's not  
20 the way discovery statutes work, that's not the way it works for a preliminary  
21 hearing.

22 So because of that, um, the State submits that they have every legally  
23 available sufficient piece of information to go forward with the preliminary hearing  
24 today which there's no reason for delay and we would like to proceed.

25 UNIDENTIFIED SPEAKER: Your Honor, if I may. I'd like -- I'll start at

1 the end.

2 Mr. Staudaher said that we sent out blanket subpoenas. This would be  
3 very specific. It says crime scene diagram created by C.S.I. (Indiscernible), P No.  
4 1915 in reference to North Las Vegas Event No. 120426-7466 and that's all that's  
5 on that subpoena. That is not a blanket subpoena. That's a request for some very  
6 specific information that defense team knew was important to proceed to preliminary  
7 hearing.

8 Um, now the question here is not what we did get from Mr. Staudaher  
9 because he is correct, on all the things that he said we got we got. That's not -- that  
10 is not what's important here today. What's important is what we do not have, and it  
11 is not true that we don't have full files in discovery when we go to preliminary  
12 hearing.

13 When -- every case we do we have everything in discovery and half the  
14 time in discovery before prelim we've talked to all the witnesses and we've done a  
15 full investigation because we have all the discovery, not bits and pieces and not  
16 important parts in a double homicide that we need.

17 And, you know, the fact that Mr. Staudaher may or may not have -- and,  
18 you know, the fact that Mr. Staudaher may or may not have witness problems is not  
19 an excuse to not give us the discovery that we need and the tools that we need to  
20 properly defend Mr. Gonzales today.

21 And, you know, should -- I'm representing to the court that right now  
22 without this information disseminated and knowing what's in it we are not prepared  
23 to go forward with this preliminary hearing.

24 Should we be forced to go then I will be happy to write Mr. Gonzales an  
25 affidavit to tell anybody that wants to know that I was ineffective today because I

1 was forced to go to a prelim when I was not prepared to do so.

2 THE COURT: All right. But certainly reviewed all the other discovery  
3 that's been provided to you; is that correct?

4 UNIDENTIFIED SPEAKER: Yes, your Honor.

5 THE COURT: All right. And the crime scene report was something that  
6 the State received this morning as well?

7 MR. STAUDAHER: That's correct, your Honor.

8 THE COURT: And that both of you received it this morning as well?

9 UNIDENTIFIED SPEAKER: That's correct, your Honor.

10 THE COURT: All right. And is the State introducing that crime scene  
11 report into evidence today having testimony (indiscernible) about that today?

12 MR. STAUDAHER: The State was not going to put this (indiscernible),  
13 but if counsel wishes and I don't have no objection to its admission.

14 THE COURT: All right. I think --

15 UNIDENTIFIED SPEAKER: I'm sorry, your Honor. I didn't hear what  
16 the prosecutor said.

17 MR. STAUDAHER: I said was not intending to, but if counsel wishes to  
18 have it introduced I would not object to its admission (indiscernible) for whatever  
19 questioning they wish to do.

20 UNIDENTIFIED SPEAKER: But, judge, whether or not --

21 THE COURT: But the crime scene analyst isn't on the list of witnesses  
22 for today; is that correct?

23 MR. STAUDAHER: That's correct, judge.

24 THE COURT: All right.

25 UNIDENTIFIED SPEAKER: Judge, whether or not it's admitted it gives

1 us inquiry and ideas of what we can use for cross-examination of some of the  
2 witnesses that Mr. Staudaher will call. I mean, whether or not it's admitted doesn't  
3 prevent us from using it to properly cross-examine the witnesses that he intends to  
4 call today.

5 THE COURT: All right. And I understand that. I also know that the --  
6 in a preliminary hearing the finding of the court is only for slight or marginal evidence  
7 that crimes have been committed and that the individuals charged have committed  
8 said crimes.

9 What I am willing to do is if you wanna take a brief recess so that you  
10 can review that crime scene report we can take a break for a half hour, hour,  
11 however long you need to do that and come back, but I think we will go forward with  
12 the preliminary hearing today. So if you would like some time to talk with your client  
13 about the crime scene diagram, we can take a recess for a half hour so that you can  
14 review that document and Mr. Whipple can do the same with his client and then we'll  
15 resume in a half hour.

16 UNIDENTIFIED SPEAKER: That'll be fine, your Honor.

17 THE COURT: All right. Thank you.

18 THE BAILIFF: Court is in recess.

19 (Recess taken.)

20 THE COURT: All right. Recalling 12FN0864A and B, State of Nevada  
21 versus Ivonne Cabrera and Jose Gonzales.

22 Are there any other preliminary matters before we begin?

23 UNIDENTIFIED SPEAKER: Yes, your Honor. For the record we have  
24 discussed with Mr. Gonzales the new discovery that we just received today and we  
25 discussed the importance of it and we discussed with him the fact that we are not

1 ready to proceed (indiscernible) we asked for over a month ago. Because we're  
2 being forced to go into this prelim unprepared we feel we have no (indiscernible) but  
3 to unconditionally waive and ask that this be sent up to district court.

4 THE COURT: All right. Mr. Whipple?

5 MR. WHIPPLE: Well, (indiscernible) position (indiscernible).

6 THE COURT: So your client would like to unconditionally waive that  
7 preliminary hearing?

8 MR. WHIPPLE: Yes, your Honor.

9 THE COURT: All right. Would your clients please stand.

10 All right. Mr. Gonzales, you understand that you have the right to have  
11 a preliminary hearing today?

12 THE DEFENDANT GONZALES: Yes, your Honor.

13 THE COURT: You understand that you have a right to confront the  
14 witnesses that the State would have presented against you?

15 THE DEFENDANT GONZALES: Yes, your Honor.

16 THE COURT: You understand that you would have had the right to  
17 present any evidence or witnesses that you wanted on your behalf?

18 THE DEFENDANT GONZALES: Yes, your Honor.

19 THE COURT: You understand that by unconditionally waiving this right  
20 to a preliminary hearing you're giving up those rights and you cannot come back  
21 here for a preliminary hearing?

22 THE DEFENDANT GONZALES: Yes, ma'am.

23 THE COURT: All right. And Mr. -- er, I'm sorry -- Ms. Cabrera, you  
24 understand that you have a right to a preliminary hearing in this matter?

25 THE DEFENDANT CABRERA: Yes.

1 THE COURT: You understand that you have a right to hear the  
2 testimony of the witnesses that the State would have presented against you?

3 THE DEFENDANT CABRERA: Yes.

4 THE COURT: And that your attorney could cross-examine those  
5 witnesses?

6 THE DEFENDANT CABRERA: (Indiscernible).

7 THE COURT: You understand that you also could present witnesses in  
8 your defense and that you yourself could testify?

9 THE DEFENDANT CABRERA: (Indiscernible).

10 THE COURT: You understand you're giving up these rights in order to  
11 unconditionally waive your right to the preliminary hearing?

12 THE DEFENDANT CABRERA: (Indiscernible).

13 THE COURT: All right. And it's still your desire to waive your right to a  
14 preliminary hearing?

15 THE DEFENDANT CABRERA: (Indiscernible).

16 THE COURT: All right. Then it appears to me from the Amended  
17 Criminal Complaint on file that the crimes of conspiracy to commit murder, burglary  
18 while in possession of a deadly weapon, murder with use of a deadly weapon, and  
19 attempt murder with use of a deadly weapon, have been committed and that said  
20 defendants Ivonne Cabrera and Jose Gonzales have committed these crimes.

21 I'll hold you to answer for these crimes in the Eighth Judicial District  
22 Court on....

23 THE CLERK: September 4<sup>th</sup>, 10:30 a.m., lower level arraignment court  
24 to be tracked to Department 25.

25 UNIDENTIFIED SPEAKER: Thank you.

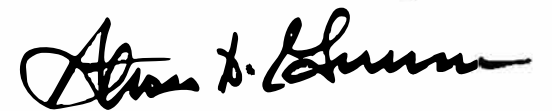
1 THE COURT: Thank you.

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4 \* \* \* \* \*

5  
6 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-  
7 video recording of this proceeding in the above-entitled case to the best of my  
8 ability.

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11 NORMA JEAN SILVERMAN  
12 Court Recorder/Transcriber  
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CLERK OF THE COURT

1 **INFM**  
2 **STEVEN B. WOLFSON**  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 **MICHAEL V. STAUDAHER**  
6 Chief Deputy District Attorney  
7 Nevada Bar #008273  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

12 I.A. 09/04/2012  
13 10:30 AM  
14 WHIPPLE/SPD

DISTRICT COURT  
CLARK COUNTY, NEVADA

15 THE STATE OF NEVADA,  
16  
17 Plaintiff,

18 -vs-

19 **IVONNE CABRERA, aka**  
20 **Yvonne Cabrera, #1617623**  
21 **JOSE GONZALES, aka**  
22 **Jose Alejandro Gonzales, #2636822**  
23 Defendants.

CASE NO: C-12-283700-1

DEPT NO: XXV

I N F O R M A T I O N

24 STATE OF NEVADA )  
25 ) ss.  
26 COUNTY OF CLARK )

27 STEVEN B. WOLFSON, Clark County District Attorney within and for the County  
28 of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs  
the Court:

That IVONNE CABRERA, aka Yvonne Cabrera and JOSE GONZALES, aka Jose  
Alejandro Gonzales, the Defendant(s) above named, having committed the crimes of  
**CONSPIRACY TO COMMIT MURDER (Category A Felony - NRS 199.480, 200.010,**  
**200.030); BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON**  
**(Category B Felony - NRS 205.060); MURDER WITH USE OF A DEADLY WEAPON**  
**(Category A Felony - NRS 200.010, 200.030, 193.165) and ATTEMPT MURDER WITH**

1 **USE OF A DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330,**  
2 **193.165),** on or about the 26th day of April, 2012, within the County of Clark, State of  
3 Nevada, contrary to the form, force and effect of statutes in such cases made and provided,  
4 and against the peace and dignity of the State of Nevada,

5 COUNT 1 - CONSPIRACY TO COMMIT MURDER

6 did then and there meet with each other and between themselves, and each of them  
7 with the other, wilfully, unlawfully, and feloniously conspire and agree to commit a crime,  
8 to-wit: murder, and in furtherance of said conspiracy, Defendants did commit the acts as set  
9 forth in Counts 2-6, said acts being incorporated by this reference as though fully set forth  
10 herein.

11 COUNT 2 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

12 did then and there wilfully, unlawfully, and feloniously enter with intent to commit a  
13 felony, to-wit: murder, that certain building occupied by ERIK QUEZADA MORALES  
14 and/or JAMES HEADRICK and/or MELISSA MARIN and/or ASHLEY WANTLAND,  
15 located at 2039 Webster, Apartment No. C, North Las Vegas, Clark County, Nevada, the  
16 Defendants did possess and/or gain possession of a deadly weapon consisting of a firearm  
17 during the commission of the crime and/or before leaving the structure.

18 COUNT 3 - MURDER WITH USE OF A DEADLY WEAPON

19 did then and there wilfully, feloniously, without authority of law, and with  
20 premeditation and deliberation, and with malice aforethought, kill JAMES HEADRICK, a  
21 human being, by shooting at the said JAMES HEADRICK multiple times, with a deadly  
22 weapon, to-wit: firearm, and/or by the killing occurring in the perpetration or attempted  
23 perpetration of a Burglary; Defendant JOSE GONZALES, aka Jose Alejandro Gonzales  
24 directly committing said crime, Defendant IVONNE CABRERA, aka Yvonne Cabrera  
25 aiding or abetting by counsel and encouragement and by accompanying Defendant JOSE  
26 GONZALES, aka Jose Alejandro Gonzales to JAMES HEADRICK's residence and  
27 knocking on doors to and within JAMES HEADRICK's apartment to allow Defendant JOSE  
28 GONZALEZ, aka Jose Alejandro Gonzales to gain access to JAMES HEADRICK to

1 facilitate shooting him, Defendant IVONNE CABRERA, aka Yvonne Cabrera also being  
2 criminally liable as a co-conspirator vicariously in that said crime was a foreseeable act of  
3 the conspiracy set forth in Count 1 hereinabove.

4 COUNT 4 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

5 did then and there, without authority of law, and malice aforethought, willfully and  
6 feloniously attempt to kill ASHLEY WANTLAND, a human being, by shooting at the said  
7 ASHLEY WANTLAND multiple times, with a deadly weapon, to-wit: a firearm; Defendant  
8 JOSE GONZALES, aka Jose Alejandro Gonzales directly committing said crime, Defendant  
9 IVONNE CABRERA, aka Yvonne Cabrera aiding or abetting by counsel and  
10 encouragement and by accompanying Defendant JOSE GONZALES, aka Jose Alejandro  
11 Gonzales to ASHLEY WANTLAND's residence and knocking on doors to and within  
12 ASHLEY WANTLAND's apartment to allow Defendant JOSE GONZALEZ, aka Jose  
13 Alejandro Gonzales to gain access to ASHLEY WANTLAND to facilitate shooting her,  
14 Defendant IVONNE CABRERA, aka Yvonne Cabrera also being criminally liable as a co-  
15 conspirator vicariously in that said crime was a foreseeable act of the conspiracy set forth in  
16 Count 1 hereinabove.

17 COUNT 5 - MURDER WITH USE OF A DEADLY WEAPON

18 did then and there wilfully, feloniously, without authority of law, and with  
19 premeditation and deliberation, and with malice aforethought, kill ERIK QUEZADA  
20 MORALES, a human being, by shooting at the said ERIK QUEZADA MORALES multiple  
21 times, with a deadly weapon, to-wit: firearm, and/or by the killing occurring in the  
22 perpetration or attempted perpetration of a Burglary; Defendant JOSE GONZALES, aka  
23 Jose Alejandro Gonzales directly committing said crime, Defendant IVONNE CABRERA,  
24 aka Yvonne Cabrera aiding or abetting by counsel and encouragement and by accompanying  
25 Defendant JOSE GONZALES, aka Jose Alejandro Gonzales to ERIK QUEZADA  
26 MORALES' residence and knocking on doors to and within ERIK QUEZADA MORALES'  
27 apartment to allow Defendant JOSE GONZALEZ, aka Jose Alejandro Gonzales to gain  
28 access to ERIK QUEZADA MORALES to facilitate shooting him, Defendant IVONNE

1 CABRERA, aka Yvonne Cabrera also being criminally liable as a co-conspirator vicariously  
2 in that said crime was a foreseeable act of the conspiracy set forth in Count 1 hereinabove.

3 COUNT 6 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

4 did then and there, without authority of law, and malice aforethought, willfully and  
5 feloniously attempt to kill MELISSA MARIN, a human being, by shooting at the said  
6 MELISSA MARIN twice, with a deadly weapon, to-wit: a firearm; Defendant JOSE  
7 GONZALES, aka Jose Alejandro Gonzales directly committing said crime, Defendant  
8 IVONNE CABRERA, aka Yvonne Cabrera aiding or abetting by counsel and  
9 encouragement and by accompanying Defendant JOSE GONZALES, aka Jose Alejandro  
10 Gonzales to MELISSA MARIN'S residence and knocking on doors to and within MELISSA  
11 MARIN'S apartment to allow Defendant JOSE GONZALEZ, aka Jose Alejandro Gonzales  
12 to gain access to MELISSA MARIN to facilitate shooting him, Defendant IVONNE  
13 CABRERA, aka Yvonne Cabrera also being criminally liable as a co-conspirator vicariously  
14 in that said crime was a foreseeable act of the conspiracy set forth in Count 1 hereinabove.

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

17  
18 BY /s/MICHAEL STAUDAHER  
MICHAEL V. STAUDAHER  
19 Chief Deputy District Attorney  
Nevada Bar #008273

20  
21  
22 Names of witnesses known to the District Attorney's Office at the time of filing this  
23 Information are as follows:

| 24 | <u>NAME</u>          | <u>ADDRESS</u>        |
|----|----------------------|-----------------------|
| 25 |                      |                       |
| 26 | BUTLER, MATTHEW      | DA INVESTIGATOR       |
| 27 | CUSTODIAN OF RECORDS | CLARK COUNTY CORONER  |
| 28 | CUSTODIAN OF RECORDS | NLV PD COMMUNICATIONS |

|   |                      |                           |
|---|----------------------|---------------------------|
| 1 | CUSTODIAN OF RECORDS | NLV PD CRIME LAB          |
| 2 | CUSTODIAN OF RECORDS | NLV PD RECORDS            |
| 3 | HEADRICK, JAMES      | ADDRESS UNKNOWN           |
| 4 | MARIN, MELISSA       | 4313 Jade Stone Ave, LVN  |
| 5 | PRIETO, JESUS JR     | NLV PD #674               |
| 6 | TELGENHOFF, DR GARY  | CLARK COUNTY CORONER      |
| 7 | WANTLAND, ASHLEY     | 3768 Garden South Dr, LVN |

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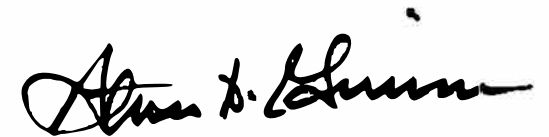
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27 DA#12FN0864A-B/sam-MVU  
NLVPD EV#1207466  
28 (TK2)



CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,  
vs.

IVONNE CABRERA, aka,  
Yvonne Cabrera,

JOSE GONZALES, aka,  
Jose Alejandro Gonzales,  
Defendants.

)  
)  
) CASE NO. C-12-283700-1  
) CASE NO. C-12-283700-2  
)  
) DEPT. XXV  
)  
) (ARRAIGNMENT HELD IN DEPT. LLA)

BEFORE THE HONORABLE MELISA DE LA GARZA, HEARING MASTER  
THURSDAY, SEPTEMBER 6, 2012

**RECORDER'S TRANSCRIPT OF HEARING RE:  
ARRAIGNMENT CONTINUED**

APPEARANCES:

For the State:

LYNN M. ROBINSON, ESQ.,  
Chief Deputy District Attorney

For the Defendant [Cabrera]:

BRET O. WHIPPLE, ESQ.,  
Attorney at Law

For the Defendant [Gonzales]:

CLARK W. PATRICK, ESQ.,  
Deputy Special Public Defender,

RECORDED BY: KIARA SCHMIDT, COURT RECORDER

1 THURSDAY, SEPTEMBER 6, 2012

2 \* \* \* \* \*

3 P R O C E E D I N G S

4  
5 THE COURT: Top of ten, State of Nevada versus Ivonne Cabrera, Gonzales.  
6 And it looked -- oh, Jose Gonzales. I'm sorry. This is C283700-1 and C283700-2.  
7 They are both present in custody. Counsels, if you would state your appearances.

8 MR. WHIPPLE: Good morning, your Honor. Bret Whipple, Bar No. 6168, on  
9 behalf of Ivonne Cabrera.

10 MR. PATRICK: Good morning, your Honor. Clark Patrick, 9451, on behalf of  
11 Mr. Gonzales.

12 THE COURT: All right. And they're Informations or amended Informations?

13 MR. PATRICK: They're Informations, your Honor. We have received them.  
14 Mr. Gonzales will waive the reading. He's going to plead not guilty to all the charges  
15 today, and he is going to waive his right to a speedy trial.

16 THE COURT: Is the same true for Ms. Cabrera?

17 MR. WHIPPLE: No --

18 THE COURT: Is she invoking?

19 MR. WHIPPLE: She is, your Honor.

20 THE COURT: Okay. Ms. Cabrera, please stand to that microphone. Did you  
21 receive a copy of the Information stating the charges against you?

22 THE DEFENDANT [Cabrera]: Yes, ma'am.

23 THE COURT: Did you read through it and understand it?

24 THE DEFENDANT [Cabrera]: Yes, ma'am.

25 THE COURT: Do you want to waive a formal reading of the charges?

1 THE DEFENDANT [Cabrera]: Correct.

2 THE COURT: How do you plead?

3 THE DEFENDANT [Cabrera]: Not guilty.

4 THE COURT: You do have a right to a trial within 60 days. It's my  
5 understanding that you want to invoke that right; is that correct?

6 THE DEFENDANT [Cabrera]: Yes, ma'am.

7 THE COURT: Speedy trial.

8 Then as to Mr. Gonzales, would you please state -- stand to that  
9 microphone. Did you receive a copy of the Information stating the charges against  
10 you?

11 THE DEFENDANT [Gonzales]: Yes, I did.

12 THE COURT: Did you read through it?

13 THE DEFENDANT [Gonzales]: Yes.

14 THE COURT: Did you understand it?

15 THE DEFENDANT [Gonzales]: Yes.

16 THE COURT: Do you want to waive a formal reading of the charges?

17 THE DEFENDANT [Gonzales]: Yes.

18 THE COURT: How do you plead?

19 THE DEFENDANT [Gonzales]: Not guilty.

20 THE COURT: You do have a right to a trial within 60 days. It's my  
21 understanding you want to waive that right; is that correct?

22 THE DEFENDANT [Gonzales]: Yes, ma'am.

23 THE COURT: Speedy trial as to both.

24 MR. PATRICK: Your Honor, could we just get a status check date next week  
25 upstairs?



1 THE COURT: Okay. Status check, one week, for trial setting.

2 THE CLERK: That one-week date will be September 12<sup>th</sup> at nine a.m. in  
3 District Court 25.

4 THE COURT: All right.

5 MR. PATRICK: Thank you, Judge.

6 THE COURT: Thank you.

7 MR. WHIPPLE: What day of the week is the 12<sup>th</sup>, your Honor?

8 THE COURT: September 12<sup>th</sup> is --

9 THE CLERK: Is a Wednesday.

10 THE COURT: -- Wednesday.

11 MR. WHIPPLE: Okay. Good enough, your Honor. Thank you.

12 MR. PATRICK: Great. Thank you.

13 THE COURT: All right. Thank you.

14 (Whereupon, the proceedings concluded.)

15 \* \* \* \* \*

16 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
17 audio/video proceedings in the above-entitled case to the best of my ability.

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Kiara Schmidt, Court Recorder/Transcriber

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DISTRICT COURT  
CLARK COUNTY, NEVADA

FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

JUL 24 2013

**COPY**

BY KRISTEN BROWN  
KRISTEN BROWN, DEPUTY

THE STATE OF NEVADA,

Plaintiff,

vs.

JOSE ALEJANDRO GONZALES,

Defendant.

Case No: C-12-283700-2

Dept No: XXV

BEFORE THE HONORABLE KATHLEEN DELANEY

SEPTEMBER 12, 2012, 9:00 A.M.

REPORTER'S TRANSCRIPT  
OF  
PROCEEDINGS

APPEARANCES:

(See separate page)

REPORTED BY: BRENDA SCHROEDER, CCR NO. 867

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APPEARANCES:

For the Plaintiff:

MICHAEL V. STAUDAHER, ESQ.  
Chief Deputy District Attorney  
200 Lewis Avenue  
Las Vegas, Nevada 89155

For Defendant JOSE GONZALES:

CLARK W. PATRICK, ESQ.  
Deputy Special Public Defender  
330 S. Third Street, Suite 800  
Las Vegas, Nevada 89155

ALZORA B. JACKSON, ESQ.  
Deputy Special Public Defender  
330 S. Third Street, Suite 800  
Las Vegas, Nevada 89155

For Defendant IVONNE CABRERA:

BRET O. WHIPPLE, ESQ.  
Justice Law Center  
1100 S. Tenth Street  
Las Vegas, Nevada 89101

1 LAS VEGAS, CLARK COUNTY, NEVADA

2 WEDNESDAY, SEPTEMBER 12, 2013, 9:00 A.M.

3 PROCEEDINGS

4 \* \* \*

5 THE COURT: State of Nevada versus Ivonne  
6 Cabrera and Jose Gonzales. This matter is on for status  
7 check and trial setting. And we have Mr. Whipple.

8 I understand as the arraignments took place on  
9 the 6th and the defendants invoked that we needed to get  
10 this set for status check and trial setting.

11 MR. PATRICK: Excuse me, Your Honor. Mr.  
12 Gonzales waived and because this is a double homicide, as  
13 the Court is aware, it is going to be impossible for the  
14 person that they are alleging as the shooter to be ready  
15 within 60 days. The fact that Mr. Whipple's client  
16 invoked we have to deal with because there is no way that  
17 we can be ready within 60 days.

18 The next thing we have to be concerned about is  
19 that the State has not given us notice whether or not  
20 they are taking Mr. Gonzales to the Death Review  
21 Committee. Should they do that and should by some chance  
22 they come back with wanting to seek the death penalty  
23 then, again, as the Court is aware that adds a whole new  
24 dimension to this and we would be grossly inadequate  
25 should we even attempt to do a death penalty case within

1       60 days.

2               THE COURT: I do not disagree with anything you  
3       said, Counsel, however, my information coming in is that  
4       they both had invoked.

5               Mr. Staudaher, do you have representations to  
6       make with regard to what the State's position is at this  
7       time as far as the Death Review Committee?

8               MR. STAUDAHER: Well, obviously, there has not  
9       been a submission and the committee has not reviewed  
10      anything else. It is my intention to submit on both  
11      defendants for that and so I would anticipate that that  
12      would occur and there would be a meeting on that.

13              As the Court is aware, I cannot predict how that  
14      will come out, but certainly the concerns raised by  
15      counsel are now --

16              THE COURT: What is the expectation on trial in  
17      terms of setting a status check?

18              MR. STAUDAHER: We have 30 days to get it  
19      essentially filed with the court, so we have that time  
20      frame from the time of arraignment.

21              THE COURT: We are going to need to set a status  
22      check to see where we are.

23              Mr. Whipple.

24              MR. WHIPPLE: Your Honor, we've invoked. We're  
25      ready to go. I had 20 family members in our office

1 yesterday preparing for trial. It is unusual to do a  
2 speedy trial on a murder case, however, I --

3 THE COURT: It is highly unusual, Mr. Whipple.

4 MR. WHIPPLE: -- have having said that, if you  
5 look back at the prelim, I continued the prelim on one  
6 occasion just so that I could be prepared to do the trial  
7 in a speedy matter. And to be honest with you -- I don't  
8 want to argue the facts of the case -- but to be honest  
9 with you, it really comes down to he said, she said.  
10 There are two individuals out there. It's going to be  
11 straight forward.

12 I don't think my client by any means will be  
13 subject to a capital punishment or the death penalty. I  
14 don't think that that really is an issue. What it really  
15 comes down to is a he said, she said.

16 We will be filing a motion to sever --

17 THE COURT: And my suggestion would be then you  
18 need to be following up with a motion based on what  
19 you're citing.

20 MR. WHIPPLE: Sure.

21 THE COURT: I am not sure how they're going to  
22 pan out. But I think at this point the status check and  
23 see that the motion is filed and give that in the normal  
24 course as well.

25 Mr. Staudaher, recommendation for status check

1 date in light of your office filing in the time frame?

2 MR. STAUDAHER: I would say probably within  
3 30 days or give the Court 30 days from now.

4 THE COURT: We are going to be pushing us tight  
5 against what's been invoked but we are going to have to  
6 take a very close look at this. And, Mr. Whipple, you  
7 will have to be prepared to address all the concerns.

8 MR. WHIPPLE: Sure.

9 THE COURT: 30-day status check on trial  
10 setting.

11 THE CLERK: October 10th at 9:00 a.m.

12 MR. STAUDAHER: Your Honor, just in light of  
13 that whole process, and certainly I will let counsel know  
14 what the status of that is whether it goes forward, what  
15 date it is and so forth. But if it turns out that is  
16 around that time or a little thereafter, would the Court  
17 entertain, with the approval of counsel, obviously, of  
18 moving that date by a few days or so.

19 THE COURT: If you will let the chambers know we  
20 will certainly accommodate and make sure that everybody's  
21 on board if that is the case, otherwise, if we could  
22 expedite things we would appreciate it.

23 MR. PATRICK: We would have no objection to not  
24 having the status check until after the Death Committee  
25 meets, if they are, on this case because that will drive

1 the whole --

2 THE COURT: And I'm sure Mr. Whipple will feel  
3 otherwise, or he can at least --

4 MR. WHIPPLE: Actually, I will be filing a  
5 motion right away, a motion to sever I think very, very  
6 quickly and that will be earlier than these other hearing  
7 dates.

8 My only concern is can you give me an  
9 anticipated if we had a speedy trial what date that would  
10 be because I have other -- I would like to plan that as  
11 quickly as possible because my intent is to do this  
12 within a 60 day time period.

13 THE CLERK: The earliest is October 1st. One  
14 week is November 13th and they would have to waive a  
15 week.

16 THE COURT: My clerk was explaining, unlike  
17 Judge Mosley, we have a civil stack as well and that  
18 speedy trial date would fall on our civil stack, so a  
19 brief waiver to get to this next trial stack for criminal  
20 would be November 13th.

21 MR. WHIPPLE: Okay, Judge. That's fine.

22 MR. PATRICK: Your Honor, for the record, on the  
23 13th Ms. Jackson has a trial in another court and I have  
24 a trial in another court already set.

25 THE COURT: I have a hunch that we are going to



1 address all of these details when we are here on the  
2 motion to sever --

3 MR. WHIPPLE: Thank you.

4 THE COURT: -- and we will discuss some of that  
5 timing then. But let's go ahead and have a 30-day date  
6 for the continuation of this status check for trial  
7 setting and we will deal with Mr. Whipple's motion in the  
8 normal course.

9 MR. WHIPPLE: Thank you, Your Honor.

10 MR. PATRICK: Thank you, Your Honor.

11 THE CLERK: October 10th.

12 THE COURT: We'll see you all then.

13 (End of proceedings.)  
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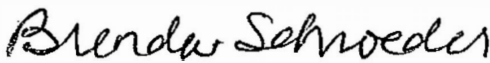
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REPORTER'S CERTIFICATE

STATE OF NEVADA                                 )  
  ) ss.  
COUNTY OF CLARK                                 )

I, BRENDA SCHROEDER, a certified court reporter  
in and for the State of Nevada, do hereby certify that  
the foregoing and attached pages 1-9, inclusive, comprise  
a true, and accurate transcript of the proceedings  
reported by me in the matter of STATE OF NEVADA,  
Plaintiff, versus JOSE GONZALES, Defendant, Case No.  
C283700, on September 12, 2012.

Dated this 19th day of July, 2013.

  
BRENDA SCHROEDER, CCR NO. 867

JUSTICE LAW CENTER  
1100 South Tenth Street, Las Vegas NV 89104  
Tel (702) 731-0000 Fax (702) 974-4008

CLERK OF THE COURT

SEP 21 2012

RECEIVED

MOT

Bret O. Whipple, Esq.  
Nevada Bar No. 6168  
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1100 South Tenth Street  
Las Vegas, Nevada 89104  
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Fax: (702) 974-4008

*Attorney for Defendant Ivonne Cabrera*

FILED

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ORIGINAL  
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA )

Plaintiff, )

vs. )

Case No.: C283700

Dept. No.: XXV

IVONNE CABRERA, aka, )  
Yvonne Cabrera #1617623, )  
JOSE GONZALES, aka, )  
Jose Alejandro Gonzales #2636822, )

Defendants. )

DEFENDANT IVONNE CABRERA'S MOTION FOR SEVERANCE

COMES NOW, Defendant, IVONNE CABRERA, by and through his counsel of record, BRET O. WHIPPLE, ESQ., and hereby files this MOTION FOR SEVERANCE.

This motion is made and based on the pleadings and papers on file, the Memorandum of Points and Authorities attached hereto as well as any arguments as may be heard at the hearing of this motion.

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C-12-283700-1  
MSVR  
Motion to Sever  
1985160



JUSTICE LAW CENTER  
1100 South Tenth Street, Las Vegas NV 89104  
Tel (702) 731-0000 Fax (702) 974-4008

1 DATED this \_\_\_\_ day of September, 2012.

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3  
4 JUSTICE LAW CENTER

5  
6  
7 Bret O. Whipple, Esq.  
8 Nevada Bar No. 6168  
9 1100 S. Tenth Street  
10 Las Vegas, Nevada 89104

11 NOTICE OF MOTION

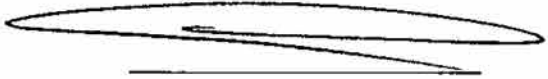
12 TO: THE STATE OF NEVADA, Plaintiff; and

13 TO: STEVEN B. WOLFSON, District Attorney, Attorney for Plaintiff

14 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring on the above and  
15 foregoing MOTION FOR SEVERANCE on the 01 day of October, 2012, at the hour of  
16 9:00 Am., in Department No. XXV of the above-entitled Court, or as soon thereafter as  
17 counsel may be heard.

18 DATED this 21 day of September, 2012.

19 JUSTICE LAW CENTER

20  
21   
22 Bret O. Whipple, Esq.  
23 Nevada Bar No. 6168  
24 1100 S. Tenth Street  
25 Las Vegas, Nevada 89104

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**FACTUAL SUMMARY**

On or about April 26, 2012, Jose Gonzales (hereinafter "Smokey") entered the home of Melissa Marin (hereinafter "Marin") and Ashley Wantland (hereinafter "Ashley") and opened fire on four (4) individuals sleeping inside the home. (Voluntary Statement of Melissa Marin dated 4/27/12 pg 2, ll 40-57). Marin stated Ivonne Cabrera (hereinafter "Ivonne") was present while the shootings were taking place, but that Ivonne had no gun and fled shortly after Smokey began opening fire. (Marin's Statement pg. 2, ll 62). Specifically, Marin stated that Ivonne had knocked on the door and said she was outside. Subsequently, Smokey kicked the bedroom doors in and fatally shot Marin's boyfriend Eric Quezada and Ashley's boyfriend James Headrick while severely wounding both Ashley and Marin in the process. *Id.* The reasons for the shooting are unknown, but Marin believes it to have something to do with text messages exchanged between Smokey and Eric involving a dispute over a car that was borrowed by Ivonne and a dispute over an unemployment debit card. (Marin's Statement pg. 5, ll 139-52). Marin considers Ivonne a friend and stated that there was no tension between them before the night of the shooting. (Marin's Statement pg. 4, ll 93-94).

Formal charges were brought against Ivonne on August 27, 2012, and she was arraigned on September 4, 2012. The charges brought against her are one (1) count of Conspiracy to Commit Murder, one (1) count of Burglary While in Possession of a Deadly Weapon, two (2) counts of Murder with a Deadly Weapon and two (2) counts of Attempted Murder with use of a

1 Deadly Weapon. A status check is scheduled for October 10, 2012 in order to set a date for a  
2 Calendar Call and Trial Date.

3 This motion now follows.

4 **II.**

5 **ARGUMENT**

6  
7 **A. In Order To Protect Ivonne Cabrera From Unfair Prejudice, This Court**  
8 **Must Sever Cabrera's Case From Her Co-Defendant's Case For Separate**  
9 **Trials.**

10 NRS 174.165(1) provides in pertinent part relief from prejudicial joinder:

11 If it appears that a defendant or the State of Nevada is prejudiced by a joinder of  
12 offenses or of defendants in an indictment or information, or by such joinder for  
13 trial together, the court may order an election or separate trials of counts, grant a  
14 severance of defendants or provide whatever other relief justice requires.

15 NRS 174.165 allows the Court to order separate trials where joinder will unjustly  
16 prejudice one of the parties. There is a preference for joint trials. Nevertheless, severance is  
17 mandatory if joinder violates a Defendant's substantive rights, i.e., unavailability of full cross-  
18 examination, lack of opportunity to present an individual defense, denial of Sixth Amendment  
19 confrontation rights, lack of separate counsel among defendants with conflicting interests, or  
20 failure to properly instruct the jury on the admissibility of evidence as to *each* defendant. See:  
21 *Marshall v. State*, 118 Nev. 642, 56 p.3d 376 (2002); *United States v. Escalante*, 637 F.2d 1197,  
22 1201 (9<sup>th</sup> Cir. 1980).

23 In the case where a co-defendant in a joint trial has made a confession implicating  
24 another co-defendant and the prosecution seeks to use the confession, the non-confessing  
25 defendant has the right to exclusion of the confession, severance, or redaction of the confession.  
26 The co-defendant's confession violates the co-defendant's Sixth Amendment right of  
27

1 confrontation and cross-examination, and as a result is inadmissible. SEE *Bruton v. United*  
2 *States*, 391 U.S. 123 (1968).

3 In *Bruton*, (Id) the Supreme Court held that a defendant's Sixth Amendment right to  
4 confront the witness against him was violated when the prosecution entered into evidence the  
5 confession of a co-defendant implicating both the confessing defendant and *Bruton*. The  
6 Supreme Court held that *Bruton's* Sixth Amendment right to confront and cross-examine  
7 witnesses was violated.  
8

9 Cases after the *Bruton* decision suggested that redaction of the statements, including the  
10 names from statements raising *Bruton* issues could serve to cure any prejudice obviating the  
11 need for a severance. See for example *Richardson v. Marsh*, 481 U.S. 200, 95 L.Ed.2d 176, 107  
12 S.Ct. 1702 (1987). The United States Supreme Court recently had the opportunity to revisit and  
13 revise the issues raised in *Richardson* and *Bruton* in the case of *Kevin Gray v. Maryland*, 523  
14 U.S. 185 (1998)  
15

16 In *Gray*, (Id) the Supreme Court limited the holding in *Richardson vs. Marsh*. (Supra).  
17 Specifically, the *Gray* court found the redacted confession still obviously referred directly to  
18 someone, obviously *Gray*. Thus, *Gray's* confessions fell squarely within *Bruton*. The Supreme  
19 Court found that redacting references to a co-defendant in a confession does not adequately  
20 protect that defendant's constitutional rights. This is especially the case when the redacted  
21 version obviously refers to another individual, usually the co-defendant.  
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23

24 The Nevada Supreme Court addressed the issue of co-defendants statements in joint  
25 trials in the case of *Ronald Ducksworth v. Nevada* 113 Nev. 780; 942 P2.d 157 (1997); where  
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1 the Court held that the district court abused its discretion in failing to grant a severance. The  
2 Court reversed the conviction and remanded the matter to the district court for a new trial.

3 In the case of *Ronald Ducksworth*, Defendant and Codefendant were convicted of two  
4 counts of murder. The Codefendant made a confession to persons who later testified. The  
5 Court concluded that because the Codefendant did not testify, the introduction of his confession,  
6 which probably inculpated the Defendant, violated the Defendant's right of cross examination  
7 secured by the Confrontation Clause of the Sixth Amendment. *Stevens v. State*, 97 Nev. 443,  
8 444-45, 634 P.2d 662, 663-64 (1981) (citing *Bruton v. United States*, 391 U.S. 123, 126, 88  
9 S.Ct. 1620, 1622-23, 20 L.Ed.2d 476 (1968)). *Ducksworth v. State*, 113 Nev. 780, 795, 942  
10 P.2d 157, 167 (1997).  
11

12 Here, Ivonne has presented statements that incriminate Smokey as being the sole  
13 perpetrator of the shooting. Ivonne claims that she was forced from her home and brought with  
14 Smokey to assist him. The victims have given statements that collaborate her theory in that  
15 neither of them saw her with a gun and that Smokey kicked in the door himself and opened fire  
16 on the victims. Like the case in *Ducksworth*, the introduction of her statement, which severely  
17 inculpates her co-defendant, violates the Co-Defendant's right of cross examination secured by  
18 the Confrontation Clause of the Sixth Amendment. Furthermore, it is unclear at this time as to  
19 what type of defense Smokey will present at trial, however it is likely that he will attempt to  
20 inculpate Ivonne by offering evidence that may otherwise been excluded from her trial. Thus, a  
21 failure to sever the trials of the defendants in this matter would result in a violation of the  
22 constitutional trial rights of both defendants.  
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**B. Mutually Antagonistic Defenses Will Prejudice The Co-Defendants**

"Conflicting defenses may cause prejudice warranting severance if the defendant seeking severance shows that the codefendants have 'conflicting and irreconcilable defenses and that there is a danger that the jury will unjustifiably infer that this conflict alone demonstrates that both are guilty.'" *Chartier v. State*, 2008 Nev. LEXIS 73, 8-9, 191 P.3d 1182, 1185 (2008) (citing *Marshall v. State*, 118 Nev. 642, 646, 56 P.3d 376, 378 (2002) (quoting *Jones v. State*, 111 Nev. 848, 854, 899 P.2d 544, 547 (1995)). A defense is mutually antagonistic where acceptance of a co-defendant's defense precludes acquittal of the other co-defendant. *Marshall* at 545-46, 56 P.3d at 378. In *Zafiro*, the United States Supreme Court recognized that "mutually antagonistic defenses are not prejudicial per se." 506 U.S. 534, 538, 113 S.Ct. 933, 938 (1993). Also see *Chartier*, 2008 Nev. LEXIS at 11, 191 P.3d at 1186 (citing *Marshall*, 118 Nev. At 648, 56 P.3d at 379). A defendant must show that the joint trial compromised a specific trial right or prevented the jury from making a reliable judgment regarding guilt or innocence. *Marshall*, 118 Nev. At 647, 56 P.3d at 379 (citing *Zafiro*, 506 U.S. at 539); Also see *Chartier* at 8, 191 P.3d 1185.

In *Chartier v. State*, the Nevada Supreme Court recently considered the issue of mutually antagonistic defenses. 2008 Nev. LEXIS at 73, 191 P.3d at 1182. In that case, defendant argued that the district court should have severed his trial from his co-defendant's because his defense was antagonistic to his co-defendant's defense, his ability to present his theory of defense was impaired by the joinder and the cumulative effect of these issues resulted in prejudice to him and an unfair trial. *Id.* at 7, 191 P.3d at 1185. In *Chartier*, the co-defendant's counsel essentially became a second prosecutor arguing that *Chartier* was present at the scene

1 and was the murderer although that was not the State's theory. Therefore, Chartier was not as  
2 strong as the evidence against his co-defendant and the defendants had different approaches and  
3 concerns in jury selection.

4 While recognizing that antagonistic defenses alone may not be sufficient grounds for  
5 severance, the Nevada Supreme Court confirmed it is clearly a relevant consideration. *Chartier*  
6 at 11, 191 P.3d at 1186 (citing *Marshall* at 646, 59 P.3d at 378). The Court found that the co-  
7 defendant's defenses were in fact mutually antagonistic, *Id.* at 12, 191 P.3d at 1186, and partly  
8 relied on this factor when reversing the district court and holding that the cumulative effect of  
9 the joinder rendered the trial unfair. *Id.* at 14, 191 P.3d at 1187.

10 In the instant case, Ivonne's entire theory is dependent on the fact that she was forced to  
11 go along with Smokey. Ivonne had no knowledge of Smokey's intentions to kill the victims  
12 and played no role in the shooting. Although it is unclear what Smokey's attorney will offer at  
13 trial, it is likely that his theory will involve Ivonne and her alleged involvement in the case. Like  
14 in *Chartier*, Smokey would essentially become a second prosecutor against her in this case by  
15 stating that she was involved and had intentions to harm the victims. Furthermore, Ivonne's  
16 entire defense is to blame Smokey for the shootings and that he forced her to go along. This is  
17 severely prejudicial towards Smokey and would greatly violate his trial rights. Thus, a  
18 severance is warranted because of the mutually antagonistic defenses present in this case.

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22 **C. Disparity In Evidence Will Unfairly Prejudice Ivonne At A Joint Trial.**

23 Joinder of defendants for the purpose of obtaining the overlapping consideration of  
24 evidence or use of innuendo based on the strength of one case is fundamentally unfair. The  
25 Courts have recognized that "a great disparity in the amount of evidence introduced against  
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1 joined defendants may, in some cases, be grounds for severance.” *United States v. Douglass*,  
2 780 F.2d 1472, 1479 (9th Cir. 1986); *United States v. Patterson*, 819 F.2d 1495, 1503 (9th Cir.  
3 1987). Severance may be mandated in those instances where a weak evidentiary case and a  
4 strong one are joined in the hope that an overlapping consideration of the evidence would lead  
5 to conviction on both cases. *Amen*, 106 Nev. at 755, 801 P.2d at 1358-59 (concluding that  
6 joinder was not error where evidence against the codefendants would have been cross-  
7 admissible at separate trials, the evidence against one was not disproportionate to the evidence  
8 against the other so as to create an unfair overlapping effect, and the defenses were not mutually  
9 exclusive). In other words, the prejudice due to a “spillover” effect may warrant severance.

11       “The ‘spillover’ or ‘rub-off’ theory involves the question of whether a jury’s  
12 unfavorable impression of [one] defendant against whom the evidence is properly admitted will  
13 influence the way jurors view the other defendant.” *Lisle v. State*, 113 Nev. 679, 689, 941 P.2d  
14 459, 466 (1997) (quoting *State v. Rendon*, 148 Ariz. 524, 715 P.2d 777, 782 (Ariz. App. 1986)).  
15 “The test as far as the ‘rub off’ theory is concerned is whether the jury can keep separate the  
16 evidence that is relevant to each defendant and render a fair and impartial verdict as to him.”  
17 *Redon*, 715 P.2d at 782; *Lisle*, 113 Nev. at 689, 941 P.2d at 466 (“the ultimate issue is ‘whether  
18 a jury can reasonably be expected to compartmentalize the evidence as it relates to separate  
19 defendants.’”) (quoting *Jones v. State*, 111 Nev. 848, 854, 899 P.2d 544, 547 (1995). “[A]  
20 defendant is entitled to separate trial if he presents a sufficient showing of facts demonstrating  
21 substantial prejudice would result in a joint trial.” *Lisle*, 113 Nev. At 689, 941 P.2d at 466  
22 (citing *Amen*, 106 Nev. at 755, 801 P.2d at 1358). When defendants are tried together in a  
23 complex case and they have markedly different degrees of culpability, this risk of prejudice is  
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1 heightened. *Zafiro*, 506 U.S. at 540, 113 S.Ct. at 938. Where there is disparity in the evidence,  
2 or the evidence is admissible as to one defendant and inadmissible as to a co-defendant, the jury  
3 cannot reasonably be expected to compartmentalize the evidence as it related to the separate  
4 defendant.

5  
6 In the instant case, the evidence that the State possesses against Smokey is incredibly  
7 strong. There is evidence of text messages between Smokey and Eric Quezada, Smokey was  
8 positively identified by both victims, it was clear that Smokey wanted the unemployment debit  
9 card from the victims and both of the surviving witnesses have testified that Smokey was the  
10 one that kicked in the bedroom doors and opened fire on the four victims. The only evidence  
11 that has been collected against Ivonne was the testimony that Ivonne was present during the  
12 shooting. However, neither of the victims can testify to her involvement with the crime or  
13 whether she was there willfully or on her own free will. In fact, it was stated by the victim that  
14 she was a friend of Ivonne's. As discussed in *Zafiro*, this case involves two co-defendants that  
15 have remarkably different degrees of culpability and the jury cannot be reasonably expected to  
16 compartmentalize the evidence as it relates to Ivonne. Thus, because of the incredibly  
17 significant disparity of evidence against Smokey and Ivonne, a severance is warranted to protect  
18 the trial rights of both defendants.  
19  
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21 **D. Joinder Of Trials May Unfairly Prevent Ivonne From Presenting A Theory**  
22 **Of Defense And Force Her To Defend Against Evidence Not Admissible**  
23 **Against Him At A Separate Trial.**

24 Severance of defendants may be required when evidence that the jury should not  
25 consider against a defendant and that would not be admissible if a defendant were tried alone is  
26 admissible in a joint trial or when essential exculpatory evidence that would be available to a  
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1 defendant tried alone were unavailable in a joint trial, handicapped a defendant in presenting a  
2 theory of defense. See *Zafiro*, 506 U.S. at 540, 113 S.Ct. at 938. See also *Bluff v. State*, 114  
3 Nev. 1237, 970 P.2d 564 (1998) (district court erred in denying a motion for severance which  
4 resulted in the defendant being precluded from offering exculpatory evidence in the form of his  
5 co-defendant's statement as a statement against his interest; "the district court should have  
6 severed the joining trial so as to diminish the possibility of prejudice to either defendant in  
7 proving their theory of the case"). See also *Chartier v. State*, 2008 Nev. LEXIS 73, 191 P.3d  
9 1182 (2008) (district court erred in denying the motion for severance which resulted in  
10 precluding defendant from introducing evidence of recorded conversations between him and his  
11 co-defendant in which the co-defendant made inculpatory statements that supported defendant's  
12 theory of defense).

14 In the instant case, severance is warranted to protect Ivonne's right to present evidence  
15 against her co-defendant that may not be admissible in a joint trial and challenge the State's  
16 theory that she was involved in the shooting of the four victims. For example, Ivonne intends to  
17 present evidence of Smokey's violent nature (this includes prior acts of violence) as a person  
18 and his affiliation with violent gangs. This all goes towards the theory that Ivonne was  
19 intimidated by Smokey and was brought to the scene against her own will.

21 This type of evidence pertaining to the co-defendant would be evidence that Ivonne,  
22 would seek to admit as part of the theory of her case. However, character evidence of this type  
23 would be generally inadmissible against Smokey. Thus, severance must be granted to protect  
24 Ivonne's right to present her theory of the case while at the same time, protecting her co-  
25

1 defendant from being unconstitutionally prejudiced by having to defend against Ivonne's use of  
2 evidence that would be inadmissible against them in a separate trial.

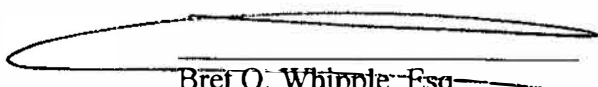
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4 III.

5 CONCLUSION

6  
7 Because of the substantial prejudice to the trial rights of Ivonne, as well as constitutional  
8 violations, she respectfully requests that this Court sever the trials of the co-defendant so that  
9 she may be tried alone, and her rights protected.

10  
11 DATED this 21 day of September, 2012.

12 JUSTICE LAW CENTER

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15   
16 Bret O. Whipple, Esq.  
17 Nevada Bar No. 6168  
18 1100 S. Tenth Street  
19 Las Vegas, Nevada 89104  
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1 **ROC**

2 Bret O. Whipple, Esq.

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8 Fax: (702) 974-4008

9 *Attorney for Defendant Ivonne Cabrera*

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 THE STATE OF NEVADA )

13 Plaintiff, )

14 vs. )

Case No.: C283700

Dept. No.: XXV

15 IVONNE CABRERA, aka, )

16 Yvonne Cabrera #1617623, )

17 JOSE GONZALES, aka, )

18 Jose Alejandro Gonzales #2636822, )

19 Defendants. )

20 **RECEIPT OF COPY**

21 RECEIPT OF COPY of the foregoing MOTION FOR SEVERANCE is acknowledged  
22 this \_\_\_\_ day of September, 2012.

23 By: \_\_\_\_\_

District Attorney Representative



CLERK OF THE COURT

1 **NOTC**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 MICHAEL V. STAUDAHER  
6 Chief Deputy District Attorney  
7 Nevada Bar #008273  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,  
11 Plaintiff,

12 -vs-

13 IVONNE CABRERA, aka  
14 Yvonne Cabrera, #1617623  
15 Defendant.

CASE NO: C-12-283700-1

DEPT NO: XXV

16 **NOTICE OF EVIDENCE IN SUPPORT OF**  
17 **AGGRAVATING CIRCUMSTANCES**

18 COMES NOW, the State of Nevada, through STEVEN B. WOLFSON, Clark County  
19 District Attorney, by and through MICHAEL V. STAUDAHER, Chief Deputy District  
20 Attorney, pursuant to Supreme Court Rule 250, NRS 175.552 and NRS 200.033, and  
21 declares its intention to present the following evidence in support of aggravating  
22 circumstance at a penalty hearing:

23 **1. *The murder was committed by a person who, at any time before a penalty hearing is***  
24 ***conducted for the murder pursuant to NRS 175.552, is or has been convicted of:***

25 ***(a) Another murder and the provisions of subsection 12 do not otherwise apply***  
26 ***to that other murder; or***

27 ***(b) A felony involving the use or threat of violence to the person of another and***  
28 ***the provisions of subsection 4 do not otherwise apply to that felony.***



1 That on or about April 26, 2012, Defendants IVONNE CABRERA and JOSE  
2 GONZALES did then and there wilfully, feloniously, without authority of law, and with  
3 premeditation and deliberation, and with malice aforethought, kill JAMES HEADRICK, a  
4 human being, by shooting at the said JAMES HEADRICK multiple times, with a deadly  
5 weapon, to-wit: firearm; Defendant JOSE GONZALES, aka, Jose Alejandro Gonzales  
6 directly committing said crime, Defendant IVONNE CABRERA, aka, Yvonne Cabrera  
7 aiding or abetting by counsel and encouragement and by accompanying Defendant JOSE  
8 GONZALES, aka, Jose Alejandro Gonzales to JAMES HEADRICK'S residence and  
9 knocking on doors to and within JAMES HEADRICK'S apartment to allow Defendant  
10 JOSE GONZALEZ, aka, Jose Alejandro Gonzales to gain access to JAMES HEADRICK to  
11 facilitate shooting him, Defendant IVONNE CABRERA, aka, Yvonne Cabrera also being  
12 criminally liable as a co-conspirator vicariously in that said crime was a foreseeable act of  
13 the conspiracy. (See NRS 200.033(2)(a))

14 That on or about September 9, 2012, Defendants were charged by way of an  
15 Information in the Eighth Judicial District Court, case number C283700, in **Count 3** with  
16 MURDER WITH USE OF A DEADLY WEAPON. The State anticipates that both  
17 defendants may be convicted of such charge prior to any penalty hearing in the instant case.  
18 If such conviction occurs for First or Second Degree Murder, the conviction would qualify  
19 as an aggravating circumstance under NRS 200.033(2)(a). If such conviction occurs for any  
20 lesser offense, the conviction would qualify as an aggravating circumstance under NRS  
21 200.033(2)(b).

22 The evidence upon which the State will rely is the testimony of the witnesses, the  
23 pleadings, transcripts, judgment of conviction, court minutes in C283700, as well as the police  
24 reports, statements, photographs, and/or physical evidence from North Las Vegas Police  
25 Department Event Number 120426007466.

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1 **2. The murder was committed by a person who, at any time before a penalty hearing is**  
2 **conducted for the murder pursuant to NRS 175.552, is or has been convicted of:**

3 (c) *Another murder and the provisions of subsection 12 do not otherwise apply*  
4 *to that other murder; or*

5 (d) *A felony involving the use or threat of violence to the person of another and*  
6 *the provisions of subsection 4 do not otherwise apply to that felony.*

7 That on or about April 26, 2012, Defendants IVONNE CABRERA and JOSE  
8 GONZALES did then and there wilfully, feloniously, without authority of law, and with  
9 premeditation and deliberation, and with malice aforethought, kill ERIK QUEZADA  
10 MORALES, a human being, by shooting at the said ERIK QUEZADA MORALES multiple  
11 times, with a deadly weapon, to-wit: firearm; Defendant JOSE GONZALES, aka, Jose  
12 Alejandro Gonzales directly committing said crime, Defendant IVONNE CABRERA, aka,  
13 Yvonne Cabrera aiding or abetting by counsel and encouragement and by accompanying  
14 Defendant JOSE GONZALES, aka, Jose Alejandro Gonzales to ERIK QUEZADA  
15 MORALES' residence and knocking on doors to and within ERIK QUEZADA MORALES'  
16 apartment to allow Defendant JOSE GONZALEZ, aka, Jose Alejandro Gonzales to gain  
17 access to ERIK QUEZADA MORALES to facilitate shooting him, Defendant IVONNE  
18 CABRERA, aka, Yvonne Cabrera also being criminally liable as a co-conspirator  
19 vicariously in that said crime was a foreseeable act of the conspiracy. (See NRS  
20 200.033(2)(a))

21 That on or about September 9, 2012, Defendants were charged by way of an  
22 Information in the Eighth Judicial District Court, case number C283700, in **Count 5** with  
23 MURDER WITH USE OF A DEADLY WEAPON. The State anticipates that both  
24 defendants may be convicted of such charge prior to any penalty hearing in the instant case.  
25 If such conviction occurs for First or Second Degree Murder, the conviction would qualify  
26 as an aggravating circumstance under NRS 200.033(2)(a). If such conviction occurs for any  
27 lesser offense, the conviction would qualify as an aggravating circumstance under NRS  
28 200.033(2)(b).

1 The evidence upon which the State will rely is the testimony of the witnesses, the  
2 pleadings, transcripts, judgment of conviction, court minutes in C283700, as well as the police  
3 reports, statements, photographs, and/or physical evidence from North Las Vegas Police  
4 Department Event Number 120426007466.

5 **3. The murder was committed by a person who, at any time before a penalty hearing is**  
6 **conducted for the murder pursuant to NRS 175.552, is or has been convicted of:**

7 (e) *Another murder and the provisions of subsection 12 do not otherwise*  
8 *apply to that other murder; or*

9 (f) *A felony involving the use or threat of violence to the person of*  
10 *another and the provisions of subsection 4 do not otherwise apply to that felony.*

11 That on or about April 26, 2012, Defendants IVONNE CABRERA and JOSE  
12 GONZALES did then and there, without authority of law, and malice aforethought, willfully  
13 and feloniously attempt to kill ASHLEY WANTLAND, a human being, by shooting at the  
14 said ASHLEY WANTLAND multiple times, with a deadly weapon, to-wit: a firearm;  
15 Defendant JOSE GONZALES, aka, Jose Alejandro Gonzales directly committing said  
16 crime, Defendant IVONNE CABRERA, aka, Yvonne Cabrera aiding or abetting by counsel  
17 and encouragement and by accompanying Defendant JOSE GONZALES, aka, Jose  
18 Alejandro Gonzales to ASHLEY WANTLAND'S residence and knocking on doors to and  
19 within ASHLEY WANTLAND'S apartment to allow Defendant JOSE GONZALEZ, aka,  
20 Jose Alejandro Gonzales to gain access to ASHLEY WANTLAND to facilitate shooting her,  
21 Defendant IVONNE CABRERA, aka, Yvonne Cabrera also being criminally liable as a co-  
22 conspirator vicariously in that said crime was a foreseeable act of the conspiracy. (See NRS  
23 200.033(2)(b))

24 That on or about September 9, 2012, Defendants were charged by way of an  
25 Information in the Eighth Judicial District Court, case number C283700, in **Count 4** with  
26 ATTEMPT MURDER WITH USE OF A DEADLY WEAPON. The State anticipates that  
27 both defendants may be convicted of such charge prior to any penalty hearing in the instant  
28 case. If such conviction occurs for Attempt Murder with Use of a Deadly Weapon or or any

1 lesser offense, the conviction would qualify as an aggravating circumstance under NRS  
2 200.033(2)(b).

3 The evidence upon which the State will rely is the testimony of the witnesses, the  
4 pleadings, transcripts, judgment of conviction, court minutes in C283700, as well as the police  
5 reports, statements, photographs, and/or physical evidence from North Las Vegas Police  
6 Department Event Number 120426007466.

7 **4. *The murder was committed by a person who, at any time before a penalty hearing is***  
8 ***conducted for the murder pursuant to NRS 175.552, is or has been convicted of:***

9 ***(g) Another murder and the provisions of subsection 12 do not otherwise apply***  
10 ***to that other murder; or***

11 ***(h) A felony involving the use or threat of violence to the person of another and***  
12 ***the provisions of subsection 4 do not otherwise apply to that felony.***

13 That on or about April 26, 2012, Defendants IVONNE CABRERA and JOSE  
14 GONZALES did then and there, without authority of law, and malice aforethought, willfully  
15 and feloniously attempt to kill MELISSA MARIN, a human being, by shooting at the said  
16 MELISSA MARIN twice, with a deadly weapon, to-wit: a firearm; Defendant JOSE  
17 GONZALES, aka, Jose Alejandro Gonzales directly committing said crime, Defendant  
18 IVONNE CABRERA, aka, Yvonne Cabrera aiding or abetting by counsel and  
19 encouragement and by accompanying Defendant JOSE GONZALES, aka, Jose Alejandro  
20 Gonzales to MELISSA MARIN'S residence and knocking on doors to and within MELISSA  
21 MARIN'S apartment to allow Defendant JOSE GONZALEZ, aka, Jose Alejandro Gonzales  
22 to gain access to MELISSA MARIN to facilitate shooting him, Defendant IVONNE  
23 CABRERA, aka, Yvonne Cabrera also being criminally liable as a co-conspirator  
24 vicariously in that said crime was a foreseeable act of the conspiracy. (See NRS  
25 200.033(2)(b))

26 That on or about September 9, 2012, Defendants were charged by way of an  
27 Information in the Eighth Judicial District Court, case number C283700, in **Count 6** with  
28 **ATTEMPT MURDER WITH USE OF A DEADLY WEAPON.** The State anticipates that

1 both defendants may be convicted of such charge prior to any penalty hearing in the instant  
2 case. If such conviction occurs for Attempt Murder with Use of a Deadly Weapon or any  
3 lesser offense, the conviction would qualify as an aggravating circumstance under NRS  
4 200.033(2)(b).

5 The evidence upon which the State will rely is the testimony of the witnesses, the  
6 pleadings, transcripts, judgment of conviction, court minutes in C283700, as well as the police  
7 reports, statements, photographs, and/or physical evidence from North Las Vegas Police  
8 Department Event Number 120426007466.

9 **5. *The murder was committed by a person who knowingly created a great risk of death***  
10 ***to more than one person by means of a weapon, device or course of action which***  
11 ***would normally be hazardous to the lives of more than one person.***

12 On the date of this double homicide, April 26, 2012, the location where the shooting  
13 took place was occupied by four individuals who were sleeping in their beds. After breaking  
14 into the victims' home, the defendant shot at and into the bodies of all four occupants, killing  
15 two and severely injuring two others. The defendant fired at least nine rounds from his  
16 weapon at these victims and struck each victim multiple times.

17 **6. *The murder was committed while the person was engaged, alone or with others, in***  
18 ***the commission of, or an attempt to commit or flight after committing or attempting to***  
19 ***commit, any robbery, arson in the first degree, burglary, invasion of the home or***  
20 ***kidnapping in the first degree, and the person charged:***

21 ***(a) Killed or attempted to kill the person murdered; or***

22 ***(b) Knew or had reason to know that life would be taken or lethal force used.***

23 On the date of this double homicide, April 26, 2012, the location where the shooting took  
24 place was occupied by four individuals who were sleeping in their beds. The defendants not  
25 only broke into the victims' home, but they also forcibly entered each of the victims'  
26 bedrooms. This entry was made while in possession of a firearm and for the express purpose  
27 of shooting and killing the victims residing therein. The defendants knew that life would be  
28 taken and that lethal force would be used after entering the bedrooms of the victims.

7. *The murder was committed upon one or more persons at random and without apparent motive.*

Although there may have initially been some type of disagreement between one of the victims and Defendant Cabrera, there does not appear to be any motive for the shooting and killing of the remaining victims. Furthermore, there is no evidence that Defendant Gonzales was part of any dispute with any of the victims.

Defendant Cabrera had borrowed a vehicle from one of the victims and that victim wanted the vehicle returned, which Defendant Cabrera had refused to do. The victims did not confront or threaten Defendants Cabrera or Gonzales yet despite this fact, the defendants broke into the victim's home while they slept and shot everyone inside.

Regardless of whether or not there was any legitimate dispute between the defendants and one or two of the victims, there is no evidence that all of the victims had even interacted with the defendants prior to the shooting.

DATED this 25th day of September, 2012.

Respectfully submitted,

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

BY /s/MICHAEL STAUDAHER  
MICHAEL V. STAUDAHER  
Chief Deputy District Attorney  
Nevada Bar #008273

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of Notice of Evidence in Support of Aggravating  
Circumstances, was made this 25th day of September, 2012, by facsimile transmission  
to:

BRET WHIPPLE, ESQ.  
FAX: 974-4008

BY /s/S. Munoz  
Employee of the District Attorney's Office

12FN0864A/sam-MVU



CLERK OF THE COURT

**OPPM**

STEVEN B. WOLFSON  
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Nevada Bar #001565  
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Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

-vs-

**IVONNE CABRERA, aka**  
**Yvonne Cabrera #1617623,**  
JOSE GONZALES, aka  
Jose Alejandro Gonzales, #2636822  
Defendants.

CASE NO: C-12-283700-1

DEPT NO: XXV

**STATE'S OPPOSITION TO DEFENDANT CABRERA'S MOTION TO SEVER**

DATE OF HEARING: 10/01/2012

TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through MICHAEL V. STAUDAHER, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant Cabrera's Motion To Sever.

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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1 POINTS AND AUTHORITIES

2 FACTS

3 On April 26, 2012, North Las Vegas Detectives responded to 2039 Webster  
4 apartment C in North Las Vegas, in reference to a possible gunshot victim. When the  
5 detectives arrived, they learned that the initial responding officers on scene had come in  
6 contact with two gunshot victims. Police located one of these victims, Melissa Marin  
7 (hereinafter "Marin"), at the gateway entrance to the apartment complex and the other,  
8 Ashley Wantland (hereinafter "Wantland"), at the front door of apartment C. Both victims  
9 were conscious.

10 Officers asked Marin who had shot them and she responded that a subject known to  
11 her as "Smokey" had done it. Officers then spoke with Wantland who told officers that she  
12 and her boyfriend had been shot and that her boyfriend was still inside the residence. Both  
13 Marin and Wantland were subsequently transported to University Medical Center (UMC) for  
14 treatment of their multiple gunshot wounds.

15 Officers then went into the residence to check for additional victims and located two  
16 deceased victims in separate bedrooms who were later identified as Erik Quezada-Morales  
17 (hereinafter "Morales") and James Headrick (hereinafter "Headrick"). During the  
18 protective sweep of the residence, officers noticed that a bathroom window was open and  
19 various bathroom items apparently knocked to the floor. Officers also noted that there were  
20 foot prints inside the bath tub and it appeared as though someone may have entered the  
21 residence through the bathroom window. Officers also saw several cartridge shell casings in  
22 the bedrooms, as well as the hallway and living room.

23 Police then sealed the residence while Detectives obtained a search warrant. Justice  
24 of the Peace Tyrrell approved the search warrant and the subsequent search revealed  
25 numerous expended shell casings in addition to deceased victim Morales in the south east  
26 bedroom and deceased victim Headrick in the north east bedroom. Both victims appeared to  
27 have suffered numerous gunshot wounds.

28 ///

1 Police also found the bathroom in disarray with the shower curtain knocked down and  
2 a crowbar on the floor. Crime scene personnel took photographs, recovered evidence and  
3 processed the scene for prints and DNA.

4 While at the scene, detectives learned that Marin was able to talk and was providing  
5 information to officers at UMC. Detectives responded to UMC and interviewed Marin.  
6 Marin told detectives that two suspects came into her residence, a Hispanic male known to  
7 her as "Smokey" and a female known to her as "Chinola." Marin stated that earlier in the  
8 morning she heard knocking at her bedroom door. Marin said she recognized Chinola's  
9 voice and that Chinola asked her to open the door. Marin said that at about the same time  
10 her boyfriend, Morales, got up to answer the door and she heard several gunshots. Marin said  
11 she told her boyfriend not to open the door. Marin said the door was then forced open and  
12 she saw Smokey with a gun pointed at them. Marin said she pleaded with Smokey not to  
13 shoot them, but he proceeded to shoot both she and Morales several times. Marin said that  
14 she then saw Smokey and Chinola flee together out of the front door of the residence.

15 Marin stated that despite her injuries, she was able to go into Wantland and  
16 Headrick's room where she saw Headrick lying on the floor and Wantland lying in the bed,  
17 both with apparent gunshot wounds. Marin said Wantland was still alive and she was able to  
18 get Wantland up from the bed and get out of the residence.

19 Detectives asked Marin if she knew why Smoky and Chinola shot them. Marin  
20 responded that they let Chinola use their vehicle and Chinola failed to bring it back. Marin  
21 said, Morales had called Chinola and left a message, asking her to return the vehicle. Marin  
22 said this exchange started some type of verbal altercation and she believes that was the  
23 reason why Smokey and Chinola came over and shot them.

24 Marin was able to give police directions to Chinola's residence which was located at  
25 1927 Bassler in North Las Vegas. With the names supplied by Marin, police were able to  
26 identify Ivonne Cabrera as a possible female suspect who used the name Chinola. Police  
27 obtained and showed Marin a picture of Cabrera and Marin positively identified Chinola as  
28 the suspect who entered Marin's apartment and shot both her and Morales.

1 At approximately 11:00 p.m., on the same day, police, who were watching the Bassler  
2 location, observed Cabrera get in a vehicle with several other subjects. Police saw Cabrera  
3 packing numerous items into the trunk of the vehicle before leaving. Police subsequently  
4 stopped Cabrera's vehicle and detained her. Police located a large quantity of Cabrera's  
5 clothing in the trunk of the vehicle, some of which were consistent with the clothing that the  
6 witnesses had described Cabrera wearing at the time of the shooting. It appeared as though  
7 Cabrera was trying to escape before being apprehended.

8 Detectives then responded to the location where Cabrera was being detained and took  
9 her into custody. Detectives transported Cabrera to the Detective bureau where she was  
10 questioned after being advised of her Miranda rights.

11 During Cabrera's taped interview, she initially denied any involvement in the  
12 shooting. Later, however, Cabrera admitted to going to the victim's residence with Smokey.  
13 Cabrera said she knew Smokey had a gun at the time. Cabrera said that Smokey climbed  
14 through the bathroom window and then let her into the apartment through the front door.  
15 Cabrera admitted to knocking on the bedroom doors and asking the victims to let them into  
16 the rooms. Cabrera said that Smokey fired his gun at the victims about nine times. Cabrera  
17 further stated that they both fled from the residence following the shooting, leaving in the  
18 gray Dodge Intrepid they had borrowed from Morales.

19 Cabrera said they later abandoned the vehicle on Bonanza Road and that they were  
20 picked up by Smokey's sister. Cabrera said Smokey told her that he was only going to scare  
21 the victims. Cabrera told police that she did it because she was scared. After the shooting,  
22 however, Cabrera made no attempt to contact the police. Cabrera was then questioned as to  
23 why she and Smokey went to the apartment and shot the victims. Cabrera would only  
24 respond that there was some type of problem between them.

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26 ///

27 ///

28 ///

1 **INJURIES TO LIVING VICTIMS:**

2 According to medical personnel at UMC, Marin suffered bullet "grazes" to her right  
3 buttock and her right arm. Marin also suffered gunshot wounds to her left shoulder, right  
4 arm, back and right breast. Marin had to have a tube inserted into her chest cavity to drain  
5 the blood which had collected around her lungs. It also appeared as though she suffered  
6 some broken bones from the gunshots.

7 Wantland also suffered multiple gunshot wounds: two to her right arm; at least two in  
8 her chest; and one at the base of her chin underneath her jaw. According to the nurses, at the  
9 time of her initial hospitalization there were two bullets still inside Wantland's body (one had  
10 lodged in her tongue and one was near her right breast). Wantland also had to have a chest  
11 tube inserted to drain blood from around her lungs.

12 **AUTOPSY:**

13 On April 27, 2012, Dr. Gary D. Telgenhoff conducted an autopsy of Morales and  
14 Headrick. Dr. Telgenhoff determined that cause of death for both victims was multiple  
15 gunshot wounds and the manner of death was homicide.

16 **FOLLOW UP INVESTIGATION:**

17 On April 28, 2012, Police identified Jose Alejandro Gonzales as a possible suspect  
18 who went by the name of "Smokey." Gonzales fit the description of the suspect given by  
19 both of the surviving victims. Armed with this information, police obtained a photo of  
20 Gonzales and took that photo to the North Las Vegas Jail where Cabrera was being detained.  
21 Police showed Cabrera the photograph of Gonzales and she identified him as the suspect  
22 who went into the residence with her and shot the victims. Cabrera wrote on the edge of the  
23 picture, "this is the guy that shot the individuals," and signed her name. Cabrera further told  
24 police that Gonzales and she were the only ones who entered the residence on the night of  
25 the shooting.

26 Police later went to UMC and contacted victims Marin and Wantland. Based on the  
27 fact that the victims both knew Smokey and Chinola police showed them the photographs of  
28 Cabrera and Gonzales. Marin positively identified Gonzales as the person who shot both her

1 and Morales. Wantland had previously told police that she had met Gonzales before and she  
2 could identify him from a picture. When Wantland viewed the picture of Gonzales she  
3 positively identified him as the person who shot both her and Headrick. Wantland also  
4 identified Cabrera as the other suspect.

5 On April 26, 2012, crime scene investigators processed the exterior of northeast  
6 bedroom window, exterior and interior of bathroom window, exterior of sliding glass door,  
7 exterior of the living room window and bath tub/shower walls of the shooting scene at 2039  
8 Webster St "C" for fingerprints. All recovered latent lifts suitable for comparison purposes  
9 were compared to Jose Gonzalez and Ivonne Cabrera. Of particular interest were the latent  
10 lifts collected from the bath tub edge opposite of the bathroom window, the apparent entry  
11 point for the perpetrators. The results of the comparisons of the latent prints collected from  
12 that location showed a positive match to Jose Alejandro Gonzalez, specifically his left  
13 middle finger.

#### 14 **SUBSEQUENT APPREHENSION OF JOSE GONZALES:**

15 On June 11, 2012, at approximately 0133 hours, the primary operator of the Z portal  
16 at the Otay Mesa Port of Entry border crossing near San Diego, California, processed a gray  
17 Chevrolet Impala (NVUS/4PEG102) driven by Marsha Darlene Miller (hereinafter "Miller")  
18 as it attempted to enter the United States. As the Impala went thru the Z portal for X ray  
19 examination, the operator observed anomalies in the trunk area of the vehicle.

20 As Miller applied for entry into the United States as the driver of the silver Chevy  
21 Impala, she presented a Nevada State Driver's License as her only form of identification, and  
22 declared herself to be a US Citizen. Miller was abnormally talkative and her hands were  
23 shaking as she presented her documents. Miller stated that she was in Mexico "for fun" and  
24 presented two negative declarations.

25 The passenger in the vehicle was Crystal Hoag (hereinafter "Hoag" - the girlfriend of  
26 Jose Alejandro Gonzales). Hoag also presented an identification card from Nevada and  
27 declared that she was a US Citizen. When the customs agent at the port of entry queried  
28 Hoag's name in her computer she received a computer generated alert from the Federal

1 Bureau of Investigation (FBI). The customs agent then referred the vehicle and its occupants  
2 into the vehicle secondary lot for further inspection.

3 The Otay Mesa Port of Entry Port Enforcement Team who received the Impala for  
4 further inspection discovered an individual concealed in the truck of the Impala who was  
5 attempting to elude Customs and Border Protection (CBP) inspection. That individual was  
6 identified at JOSE ALEJANDRO GONZALES (aka Jose Alex Gonzales). The San Ysidro  
7 Port of Entry Criminal Enforcement Unit was then immediately contacted at approximately  
8 0215 hours with an immediate response and confirmation on Gonzales' warrant of arrest for  
9 double homicide from the State of Nevada. Subject was referred to the aforementioned CBP  
10 enforcement Unit for further processing and disposition. Defendant Gonzales was later  
11 transported back to Clark County, Nevada.

## 12 ARGUMENT

### 13 **I. THE DEFENDANT'S MOTION TO SEVER SHOULD BE DENIED** 14 **BECAUSE THE COMBINED ACTIONS OF THE DEFENDANT AND HER** 15 **CO-DEFENDANT ARE AT ISSUE IN THIS CASE**

16 Defendant Cabrera moves this Court to sever the forthcoming trial with her co-  
17 defendant based on NRS 174.165. The defendant claims that severance should be granted  
18 because she was supposedly not involved in the alleged criminal activity and because she  
19 was supposedly forced at gun point to accompany Defendant Gonzales to the shooting  
20 location. NRS 174.165 provides that severance may be granted when there is likelihood  
21 of prejudice to either the defendant or the State if the trial is not severed. However,  
22 "[m]erely having a better chance at acquittal if the defendants are tried at separate trials is  
23 not sufficient to establish prejudice." Lisle v. State, 113 Nev. 679, 689-90 (1997). The  
24 joinder of defendants is within the discretion of the trial court and its decision will not be  
25 reversed absent an abuse of discretion. Lisle, 113 Nev. at 689; see also Jones v. State, 111  
26 Nev. 848, 853 (1995). "While making this decision, a court must consider not only the  
27 possible prejudice to the defendant but also the possible prejudice to the Government  
28 resulting from two time-consuming, expensive and duplicitous trials." Lisle, 113 Nev. at  
689. The possibility of prejudice may be cured by the issuance of a limiting instruction to

1 the jury mandating them to consider the evidence only against the confessing party. Id. The  
2 ultimate test of whether severance is required is “whether the jury can reasonably be  
3 expected to compartmentalize the evidence as it relates to the separate defendants.” Jones,  
4 111 Nev. at 854.

5 In fact both our Supreme Court and the Ninth Circuit Court of Appeals have held that  
6 severance is not necessary even in situations where there are statements or confessions by  
7 one defendant implicating another defendant. Lisle v. State, 113 Nev. 679, 941 P.2d 459,  
8 (1997); Stevens v. State, 97 Nev. 443, 634 P.2d 662 (1981); U.S. v. Enriquez-Estrada, 999  
9 F.2d 1355 (1993); and Richardson v. Marsh, 481 U.S. 200 (1987).

10 In the case of Chartier v. State, 191 P.3d 1182 (2008), however, the Nevada Supreme  
11 Court held that the cumulative affect of a joint trial was so prejudicial that it did warrant  
12 severance. Id. at 1186. The Chartier case involved two defendants where one, Chartier,  
13 claimed that he was not present at the scene of the murders while the co-defendant claimed  
14 that Chartier was the mastermind and killer. Id. at 1184. In addition, Chartier argued that  
15 because of the joinder of the defendants in one trial, that “his ability to prove his theory of  
16 the defense was impaired by the joinder.” Id. at 1185. The Court subsequently ruled that the  
17 antagonistic defenses, the diminished ability to present a theory of defense and the  
18 cumulative affect of the joint trial warranted severance. Id. at 1186-87.

19 In the instant case, the type of situation described in Chartier does not exist. Both  
20 defendants were not only present at the scene, but both actively participated in the crimes. In  
21 addition, both fled together after the shooting and later separated in their attempts to escape.  
22 While it is true that Defendant Cabrera was captured early on in the investigation, it is clear  
23 from the circumstances of her arrest that she was attempting to flea the jurisdiction.  
24 Furthermore, she was the one who waited outside the residence while Defendant Gonzales  
25 broke into the house and it was she who yelled to the occupants to open their doors, all the  
26 while knowing that Gonzales had a weapon.

27 Although the defense claims that there are antagonistic defenses in this case the facts  
28 and evidence belie those claims. As described *supra*, Defendant Cabrera actively



1 participated in all aspects of these crimes, she attempted to flee immediately afterward and  
2 she failed to even attempt to call 911 or the police after separating from Defendant Gonzales.  
3 It should be noted that the Court in Chartier specifically stated that antagonistic defenses are  
4 not sufficient grounds standing alone to warrant severance. Id. at 1186. In fact the Court  
5 reiterated this position by referencing its prior holdings and stating that “[t]o establish that  
6 joinder was prejudicial requires more than simply showing that severance made acquittal  
7 more likely; misjoinder requires reversal only if it has a substantial and injurious effect on  
8 the verdict.” Id. at 1185.

9 The defendant’s motion to sever is completely devoid of any showing that severance  
10 is warranted. It is clear from even the latest cases addressing this issue that severance is  
11 required only in situations where a defendant is denied her right to a fair trial because the  
12 jury is prevented from making a reliable judgment as to her guilt or innocence.

13 In the instant case, the proof against both defendants consists of both direct and  
14 circumstantial evidence which does not rely on any statement made by any co-defendant.  
15 The charges against Defendant Cabrera are a direct result of her actions as either an  
16 individual or in conjunction with Defendant Gonzales.

17 Since the evidence against these defendants is strong and consists of both direct and  
18 circumstantial evidence, Defendant Cabrera’s motion to sever should be denied. A limiting  
19 instruction should, however, be given to the jury instructing them to only use the evidence  
20 against each defendant individually. Such a procedure balances both the defendant’s right to  
21 a fair trial and the community’s interest in an efficiently run judicial system. It also  
22 comports with the decisions in Lisle, Enriquez-Estrada and Richardson.

23 **II. DEFENDANT ACTIVELY PARTICIPATED IN THE CRIMES CHARGED**  
24 **AND, THEREFORE, THE SPILLOVER DOCTRINE DOES NOT REQUIRE**  
25 **SEVERANCE.**

26 Courts have universally held that where conspiracy as a theory of criminal liability is  
27 charged a joint trial is particularly appropriate. United States v. Polizzi, 500 F.2d 856, 901  
28 (9<sup>th</sup> Cir. 1974), cert. denied 419 U.S. 1120; Davenport v. United States, 260 F.2d 591, 594  
(9<sup>th</sup> Cir. 1958). See also, United States v. Cirard, 601 F.2d 69, 72 (2<sup>nd</sup> Cir. 1979), cert.



1 denied 444 U.S. 871.

2 The fact that some evidence may be admissible against only one defendant does not  
3 constitute such prejudice as to require severance. United States v. Nace, 561 F.2d 763, 769  
4 (9<sup>th</sup> Cir. 1977); Opper v. United States, 248 U.S. 84, 75 S.Ct. 158 (1954). Speaking to this  
5 issue, the Court in United States v. Kennedy, 564 F.2d 1329, 1334 (9<sup>th</sup> Cir. 1977) cert. den.  
6 435 U.S. 994 stated:

7 “Here the claim of prejudice is based upon the fact that  
8 because a conspiracy was charged (Kennedy was not specifically  
9 named as a conspirator), much hearsay evidence could be  
10 expected to be admitted. Likewise, he pointed out that great  
11 portions of the evidence admitted to prove the numerous counts  
12 would be inapplicable to him, but would have a prejudicial  
13 effect. He contends that the government’s ploy was to infect  
14 each defendant with the acts and transgressions of the other  
15 defendants, and that a parade of horrors would be admitted  
16 against the only conspirator on trial (Carlson) which would never  
17 come to the attention of the jury if he were tried alone. It is not  
18 surprising that a defendant might prefer to be tried separately so  
19 that only evidence admissible strictly against him would be heard  
20 by the jury. However, if this formed the only basis for prejudice  
21 required for severance, the consequent volume of separate trials  
22 of multiple actions in a series of similar and connected illegal  
23 transactions would create an intolerable burden on the trial  
24 courts.”

25 The fact that evidence against one defendant is more damaging to one than to others  
26 is also not grounds for severance. United States v. Escalante, 637 F.2d 1197, 1202 (9<sup>th</sup> Cir.  
27 1980); United States v. Brady, 579 F.2d 1121, 1128 (9<sup>th</sup> Cir. 1978), cert. denied, 439 U.S.  
28 1074; see also United States v. Anderson, 626 F.2d 1358, 1373 (8<sup>th</sup> Cir. 1980).

In Lisle v. State, 113 Nev. 679, 689, 941 P.2d 459, 466 (1997), the Court held:

Severance of defendants will not be granted if based on “guilt by  
association” alone. United States v. Boffa, 513 F.Supp. 444,  
487 (D. Del 1980). Merely having a better chance at acquittal if  
the defendants are tried at separate trials is not sufficient to  
establish prejudice. United States v. Baker, 10 F.3d 1374, 1388  
(9<sup>th</sup> Cir. 1993), cert denied, 513 U.S. 934 (1994). In addition, a  
defendant is not entitled to a severance merely because the  
evidence is admissible against a co-defendant is more damaging  
than the moving party.

Id.

///

1 Any potential prejudice may be cured by a limiting instruction to the jury and the jury  
2 is expected to follow the instruction in limiting it's review of the evidence. Spencer v.  
3 Texas, 385 U.S. 554, 562, 87 S.Ct. 648 (1967).

4 Defendant Cabrera complains that she will be prejudiced by being tried with  
5 Defendant Gonzales. The State has great confidence in the jury system. The prosecution  
6 believes the jury will base their verdict on the facts adduced at trial. There is no doubt jurors  
7 will abide by the courts instructions and render a fair and just verdict.

8 Defendant Cabrera also argues that she will be a victim of spill-over prejudice if she  
9 is tried alongside Defendant Gonzales. Defendant Cabrera's argument is flawed in several  
10 respects.

11 First, severance will not be granted based on "guilt by association" alone. Lisle v.  
12 State, 113 Nev. 679, 689, 941 P.2d 459, 466 (1997). A defendant cannot establish prejudice  
13 merely by showing that he would have had a better chance at acquittal if tried alone. Id. at  
14 689-90. Moreover, a defendant is not entitled to a severance simply because the evidence  
15 against his co-defendant is more damaging than that admissible against him. Id. at 690.  
16 Indeed, Defendant Cabrera is not entitled to severance simply because her co-defendant may  
17 be the one who actually did the shooting. Defendant Gonzales' connection to these victims  
18 is through Defendant Cabrera. Although the victims knew who Defendant Gonzales was, it  
19 was Cabrera's car that was borrowed and she who the victims interacted with prior to the  
20 shooting. The disagreement at issue appears to have been between the victims and  
21 Defendant Cabrera, not Defendant Gonzales. As such, Defendant Cabrera's involvement is  
22 integral to and the reason why she brought Defendant Gonzales to the victim's home that  
23 night. Although he was the one who possessed the gun, Defendant Cabrera used him as her  
24 weapon that night.

25 Second, Defendant Cabrera misconstrues the doctrine of "spill-over prejudice."  
26 According to Cabrera, she will be prejudiced because much of the evidence related to the  
27 various charges will be raised during her joint trial. What Defendant Cabrera neglects to  
28 address, however, is the fact that virtually all of this evidence would be admissible even in a

1 severed trial with her alone.

2 The “spillover” theory “involves the question of whether a jury’s unfavorable  
3 impression of [one] defendant against whom the evidence is properly admitted will influence  
4 the way the jurors view the other defendant.” Id. at 689, 941 P.2d at 466. In Lisle, the  
5 defendant claimed that because his co-defendant was adorned with visible tattoos, was  
6 involved in the drug trade, and had an abundance of evidence presented against him, he was  
7 found guilty based on his association with the co-defendant. Id. at 689. In rejecting the  
8 defendant’s claim, the Nevada Supreme Court concluded that the defendant’s argument  
9 amounted to nothing more than he would have had a better chance at acquittal in a separate  
10 trial. Id. at 690.

11 Here, Defendant Cabrera fails to allege what evidence would be admissible against  
12 Defendant Gonzales and would not be admissible against her. She additionally fails to show  
13 how such potential evidence would unfairly influence the way jurors view her. As in Lisle,  
14 Defendant Cabrera’s argument constitutes nothing more than she would have had a better  
15 chance at acquittal if Defendant Gonzales were not sitting with her at the defense table. It  
16 was Defendant Cabrera who chose to associate with Defendant Gonzales and participate in  
17 the alleged crimes. Defendant Cabrera played an integral role in the execution of the various  
18 crimes and it was her direct actions which resulted in the deaths of Morales and Headrick, as  
19 well as the injuries to the surviving victims. Her involvement in all aspects of the criminal  
20 acts perpetrated in this case is pervasive.

21 Defendant Cabrera actively participated in these crimes and cannot now claim  
22 prejudice by being tried alongside her confederate. Her involvement with Defendant  
23 Gonzales was of her own doing – not of the State’s. Defendant Cabrera could have decided  
24 not to go to the house that night and she could have walked away when Defendant Gonzales  
25 was breaking in through the bathroom window. There is no evidence from the victim  
26 witnesses that Defendant Gonzales aimed his gun at anyone but them that night. There is no  
27 evidence that Defendant Gonzales held a gun to Defendant Cabrera’s head or that he forced  
28 her in any way. Defendant Cabrera also, was able to separate from Defendant Cabrera after

1 the shooting and did not suffer any injuries herself as a result. Accordingly, the defendant's  
2 motion to sever should be denied.

3 **III. DEFENDANT CABRERA HAS FAILED TO SUFFICIENTLY ESTABLISH**  
4 **THAT HER DEFENSE IS ANTAGONISTIC TO THAT OF HER CO-**  
5 **DEFENDANT**

6 Defendant Cabrera does not adequately address the issues of antagonistic or mutually  
7 exclusive defenses and such a showing must be made to justify severance. Severance is not  
8 warranted or justified simply because each defendant seeks to blame the other for the crime.  
9 Marshall v. State, 118 Nev. 642, 56 P.3d 376 (2002). In Marshall, co-defendants Marshall  
10 and Currington were tried and convicted together of first degree murder, robbery, and  
11 conspiracy to commit robbery. At trial, Marshall's strategy was to exclusively blame  
12 Currington; Currington's strategy was to blame Marshall. Id. at 644-45, 56 P.3d at 377-78.

13 On appeal, Marshall claimed that the district court erred in not severing his trial from  
14 Currington's. Id. at 645, 56 P.3d at 378. He maintained that he and Currington had  
15 "antagonistic defenses" in that each argued that the other was responsible for the murder.  
16 Id., 56 P.3d at 378. Marshall relied on the standard the Nevada Supreme Court articulated in  
17 Rowland v. State, 118 Nev. 31, 39 P.3d 114 (2002). In Rowland, the Nevada Supreme Court  
18 stated that "defenses must be antagonistic to the point that they are 'mutually exclusive'  
19 before they are to be considered prejudicial," and necessitate severance. Id. at 45, 39 P.3d at  
20 122. The court further noted in Rowland that defenses are mutually exclusive when the core  
21 of the co-defendant's defense is so irreconcilable with the core of the defendant's own  
22 defense that the acceptance of the co-defendant's theory by the jury precludes acquittal of  
23 the defendant. Id. at 45, 39 P.3d at 123.

24 In Marshall, the Nevada Supreme Court expressed concern that the Rowland decision  
25 implied severance was justified in too broad of circumstances. The court explained the  
26 Rowland holding and limited the standard under which severance is appropriate. It stated:

27 To the extent that this language suggests that prejudice requiring  
28 severance is presumed whenever acceptance of one defendant's  
defense theory logically compels rejection of another defendant's  
theory, it is too broadly stated. As we have explained elsewhere,  
where there are situations in which inconsistent defenses may

1 support a motion for severance, the doctrine is a very limited  
2 one. A defendant seeking severance must show that the  
3 codefendants have conflicting and irreconcilable defenses and  
4 that there is a danger that the jury will unjustifiably infer that this  
conflict alone demonstrates that both are guilty. We take this  
opportunity to further clarify this issue.

5 Id. at 646, 56 P.3d at 378. The Court then explained the standard for severance.

6 The decisive factor in any severance analysis remains prejudice  
7 to the defendant. NRS 174.165(1) provides in relevant part: “If it  
8 appears that a defendant . . . is prejudiced by a joinder . . . of  
9 defendants . . . for trial together, the court may order an election  
10 or separate trials of counts, grant a severance of defendants or  
11 provide whatever other relief justice requires.” Nevertheless,  
12 prejudice to the defendant is not the only relevant factor: a court  
13 must consider not only the possible prejudice to the defendant  
14 but also the possible prejudice to the State resulting from  
15 expensive, duplicative trials. Joinder promotes judicial economy  
16 and efficiency as well as consistent verdicts and is preferred as  
long as it does not compromise a defendant’s right to a fair trial.  
Despite the concern for efficiency and consistency, the district  
court has a continuing duty at all stages of the trial to grant a  
severance if prejudice does appear. Joinder of defendants is  
within the discretion of the district court, and its decision will not  
be reversed absent an abuse of discretion. To establish that  
joinder was prejudicial requires more than simply showing that  
severance made acquittal more likely; misjoinder requires  
reversal only if it has a substantial and injurious effect on the  
verdict.

17 Marshall, 118 Nev. at 646-47, 56 P.3d at 378-79 (citations omitted).

18 Significantly, the Nevada Supreme Court specifically has held that antagonistic  
19 defenses are a factor, but not, in themselves, sufficient grounds upon which to grant  
20 severance of defendants. Indeed, in Marshall, even though the defenses offered by Marshall  
21 and co-defendant Currington were antagonistic, the Nevada Supreme Court held that the  
22 joinder of the defendants at trial was proper. Id. at 648, 56 P.3d at 378. Finding Marshall’s  
23 assertion that his and Currington’s defenses were prejudicial by virtue of their antagonistic  
24 nature unpersuasive, the court explained that to prevail on the ground that severance was  
25 warranted, Marshall had to show that the “joint trial compromised a specific trial right or  
26 prevented the jury from making a reliable judgment about guilt or innocence.” Id. at 648, 56  
27 P.3d at 380. The court also noted that the State’s case was not dependent on either  
28 defendant’s statement and did not use joinder to unfairly bolster a marginal case. Id., 56

1 P.3d at 380. Moreover, the State argued both defendants were guilty and presented evidence  
2 to establish their separate guilt. Id., 56 P.3d at 380. The court affirmed Marshall's  
3 conviction.

4 The United States Supreme Court conducted a similar analysis in Zafiro v. United  
5 States, 506 U.S. 534, 113 S. Ct. 933 (1993). In that case, petitioners contended that it was  
6 prejudicial whenever two defendants each claim innocence and accuse the other of the crime.  
7 506 U.S. at 538, 113 S. Ct at 938. The United States Supreme Court rejected this contention,  
8 holding that "mutually antagonistic defenses are not prejudicial per se." Id., 113 S. Ct. at  
9 938. The Court explained that severance should only be granted if there is a serious risk that  
10 a joint trial would compromise a specific trial right of one of the defendants or prevent the  
11 jury from making a reliable judgment about guilt or innocence. Id. at 539, 113 S. Ct. at 938.  
12 It is not prejudicial for a co-defendant to introduce relevant, competent evidence that would  
13 be admissible against defendant at a severed trial. Id. at 540, 113 S. Ct. at 938. The Court  
14 also noted that the trial court can cure any potential of prejudice by properly instructing the  
15 jury that it must consider the case against each defendant separately. See id. at 540-41, 113  
16 S. Ct. at 939.

17 Since the defendant has not adequately addressed the issue of her defense being  
18 antagonistic and mutually exclusive to her co-conspirator's defense there is no showing of  
19 prejudice by the defense and no basis, therefore, to mandate a separate trial.

#### 20 **IV. JUDICIAL ECONOMY REQUIRES A JOINT TRIAL.**

21 Separate trials will be financially costly to all involved. Moreover, almost all of the  
22 very same witnesses who would testify in a trial involving Defendant Cabrera would also be  
23 called by the State in a case involving Defendant Gonzales. Multiple trials are only required  
24 when a defendant can show substantial prejudice. Defendant has failed to meet her burden  
25 in this case. Accordingly, defendant's motion to sever should be denied.

26 ///

27 ///

28 ///

1 CONCLUSION

2 Based on the forgoing arguments, the State, therefore, requests that this Honorable  
3 Court deny the defense Motion for Severance.

4 DATED this 25th day of September, 2012.

5 Respectfully submitted,

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

9 BY /s/MICHAEL STAUDAHER  
10 MICHAEL V. STAUDAHER  
11 Chief Deputy District Attorney  
12 Nevada Bar #008273  
13  
14  
15

16 CERTIFICATE OF FACSIMILE TRANSMISSION

17 I hereby certify that service of State's Opposition to Defendant Cabrera's Motion To  
18 Sever was made this 25th day of September, 2012, by facsimile transmission to:

19 BRET WHIPPLE, ESQ.  
20 FAX#: 974-4008

21 BY: /s/S. Munoz  
22 Employee of the District Attorney's Office  
23  
24  
25  
26  
27

28 12FN0864A/MVS/sam-MVU

27 JAN 2013

BY, KRISTEN BROWN  
KRISTEN BROWN, DEPUTY

COPY

Defendant.

1



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1 LAS VEGAS, CLARK COUNTY, NEVADA

2 WEDNESDAY, OCTOBER 01, 2012

3 PROCEEDINGS

4 \* \* \*

5 THE COURT: State of Nevada versus Ivonne  
6 Cabrera, and then we also have Gonzales as a separate  
7 matter on the calendar having to do with a motion for  
8 records.

9 MR. WHIPPLE: Good morning, Your Honor.

10 THE COURT: And seeing Ms. Cabrera present in  
11 custody. This matter is on for Defendant's Motion to  
12 Sever. And we did anticipate this forthcoming when we  
13 had prior hearing on this matter. We have seen the  
14 subsequent filings from the State's office in terms of  
15 their intention on how they intend to proceed.

16 I obviously have the motion, the opposition and  
17 have reviewed all of the arguments. But, of course, this  
18 is important argument to be made today, so if you have  
19 anything you want to further add or flush out for the  
20 record, I am happy to hear it.

21 MR. WHIPPLE: I would, Your Honor. I'd  
22 appreciate it, Your Honor. First, I would like to  
23 introduce Ms. Erickson. She has also been appointed to  
24 this case because of the capital status, so the two of us  
25 will be going forward at this time.

3

1 THE COURT: Okay. Thank you.

2 MR. WHIPPLE: Your Honor, I am going to try to  
3 be pretty quick. This past April 26th, Mr. Gonzales  
4 killed two people. The factual issue in this case is  
5 whether Ms. Cabrera intended to be part of that killing.  
6 It is uncontested that she was present. It is  
7 uncontested that they both returned in the same car. The  
8 factual issue is why she did that.

9 The State is taking the position that she did it  
10 at her own free will. They suggested that she actually  
11 participated and that she chose to be with people like  
12 Mr. Gonzales.

13 Your Honor, we are going to provide evidence  
14 that is 180 degrees contrary to that. The evidence that  
15 they have is simply what they refer to as circumstantial  
16 evidence. They have the two individuals that were in the  
17 room that heard my client's voice say something about get  
18 up, or can you open the door. That is the extent of the  
19 evidence that I am aware of that they have.

20 Whether she was actively involved or not is  
21 clearly something that only she knows what her personal  
22 state of mind is with that issue. We have a polygraph  
23 examination that she took specifically to those issues.

24 If I could just very briefly, she was asked,  
25 Before you got to that apartment --

4

1 MR. STAUDAHER: Your Honor, I am going to object  
2 to the nature of him introducing polygraph information.  
3 This was done by his own polygraph person with selected  
4 questions. If he wishes to subject his client to a Metro  
5 polygraph, we can talk about it. But I would ask that  
6 that not be introduced at this level.

7 THE COURT: And, Mr. Whipple, I think  
8 Mr. Staudaher's point is well taken. I see what you are  
9 saying. And why don't we, just for the purposes of the  
10 State's argument, take at face value that you have pulled  
11 together some information that you think is relevant or  
12 loosely relevant as to what was going on with Ms. Cabrera  
13 at the time. But for purposes of today, I don't know  
14 that we need to go into the details of the polygraph.  
15 It's probably best that we don't.

16 MR. WHIPPLE: That's fine, Your Honor.  
17 Obviously, for evidentiary purposes at trial there is a  
18 whole criteria with regard to matters coming before the  
19 court. My understanding is it is certainly free to  
20 argue.

21 THE COURT: I am not sure that that kind of  
22 substance is perhaps something that at the tail end of  
23 the argument if we needed it to be flushed out or if I  
24 had a question that might be valuable.

25 But what I am really looking for you to advise

5

1 me on and get to the point of how these defendants are so  
2 mutually antagonistic that they cannot simply be held  
3 together. And other aspects, obviously, of what we would  
4 need to consider of whether or not severance would be  
5 appropriate because it's not automatically mutual.

6 MR. WHIPPLE: Sure. I understand, Your Honor.

7 Your Honor, it's mutually antagonistic because  
8 my client was present. Not just present because she was  
9 forced to be present but she observed the entire  
10 shooting. She is going to be able to point a finger at  
11 Mr. Gonzales and explain to you exactly how he  
12 painstakingly killed two people and wounded two other  
13 individuals. She was there. There is no question about  
14 that.

15 She will point the finger at him and say, He's  
16 the one who did it. I saw him go into the room. I heard  
17 the shooting. He came back; he told me he did it. He  
18 called his mother on the phone; asked her to pray for  
19 him. And she was firsthand present there. It couldn't  
20 be more mutually antagonistic in my opinion.

21 Now the other issue is what other injurious  
22 evidence would come in. The fact of the matter is she is  
23 going to testify that the reason she was forced to go  
24 along or the reason she went with him is because she was  
25 scared of him, because she knew of his character. She

6

1 knew of his prison record. She knew the gangs that he  
2 was involved with. She was afraid of him. She heard of  
3 the violence he had been involved with. There's a reason  
4 she told the officers after this that she was scared.  
5 Because she was scared. She was scared of this  
6 individual. She was forced to go along at his request,  
7 his demand. And the reason she did that is because she  
8 knew of his history. She knew that she could be beaten  
9 up and she could be the next victim if she didn't do  
10 exactly what she was told to do.

11 So in order for us to come in and present  
12 defense, we are going to bring in all kinds of character  
13 evidence, all kinds of prior bad acts that normally would  
14 not be brought in. So this is mutually antagonistic. We  
15 are going to bring in all types of evidence that  
16 otherwise would not normally be brought up. And we have  
17 a right to do that because that was why she was there.

18 It goes to the very heart of what was in her  
19 state of mind. The one factual issue in this case: What  
20 was she thinking and why did she do it. And she is going  
21 to take the stand and she is going to tell you that she  
22 did it because she's afraid of Mr. Gonzales.

23 MS. ERICKSON: And, Judge, with regard to the  
24 case law with regard to severance, State always argues  
25 that mutually antagonistic offenses is that it is really

7

1 hard for us to show. But it's not. If you look at the  
2 Chartier case, they cite the Marshall case and discuss  
3 the fact that in that case the codefendant took the stand  
4 and testified exculpatory to himself and inculpatory to  
5 the codefendant. The Nevada Supreme Court in Chartier  
6 recognized that in Marshall that was mutually  
7 antagonistic.

8 The only reason they didn't find severance was  
9 required was because the State didn't use any of that  
10 evidence against the defendants. They said that they  
11 were significant enough evidence apart from the testimony  
12 of the defendant to convict the defendant.

13 And in this case I don't think that's the same.  
14 And the 9th Circuit has also found the same thing in the  
15 Toothlittle case. They said, basically, when one person  
16 is asserting that they are innocent and the other person  
17 is guilty that is enough for antagonistic defenses.

18 It is not this superstructure high level of  
19 evidence that the State always wants to argue. And this  
20 case law is very clear on that and I just wanted to point  
21 that out for the Court.

22 THE COURT: I appreciate that and I have looked  
23 at length at Chartier and Marshall and the others.

24 Mr. Staudaher.

25 MR. STAUDAHER: Yes, Your Honor. Counsel is

8

1 incorrect in that there is only circumstantial evidence  
2 involved in this case that shows Ms. Cabrera's  
3 involvement, her acquiescence, acknowledgment and  
4 participation in this crime.

5 I mean she was the one to have the beef, if  
6 there was one between the victim or victims, in this  
7 case. And there were four ultimate victims. Two which  
8 end up dead and two which end up being shot multiple  
9 times in the chest and body when they were basically at  
10 their weakest.

11 That's the ultimate end to the victims in this  
12 case; however, the issue, the dispute arose between Ms.  
13 Cabrera and these victims over a car that the victims had  
14 loaned them. Mr. Gonzales is not directly involved in  
15 this. They know who he is but they don't know -- they  
16 don't have any specific relationship with him. The only  
17 way he comes into the picture is through her.

18 So initially whether she is using him as a  
19 weapon or for enforcement or to get back at some slight,  
20 she is actively using him. I mean that's part of the  
21 evidence.

22 Now take it beyond that and we go to the event  
23 that occurred that night. When it happens that night she  
24 is far from having a gun held to her head. As a matter  
25 of fact there is evidence that the victims who were still

9

1 living saw Ms. Cabrera and heard Ms. Cabrera and saw how  
2 she participated, and there was no indication that there  
3 was a gun held to her head or she was forced into a room,  
4 she was actively asked to participate in any way.

5 Counsel mentions that she flees and that Mr.  
6 Gonzales runs to her and tells her what he did. That's  
7 not what the evidence is going to show. The direct  
8 evidence from the victims in this case is that she was  
9 present at both doorways.

10 The Court has to realize the way that this house  
11 is set up there are two bedrooms with locked doors and  
12 behind those bedroom doors are two individual couples.  
13 Two in each bedroom. And they are the ones that get shot  
14 in two different rooms. She's present after shooting  
15 one. She's present after shooting two. They both then  
16 flee together.

17 Upon entering, he enters through a bathroom  
18 window with a crowbar, breaks into the bathroom window  
19 and then comes and lets her in. Far from her being held  
20 at gunpoint at anytime. And even if that was the case  
21 there is no defense of duress to murder that you are then  
22 essentially forced to help kill someone and that is not  
23 an issue.

24 All of the evidence even if you exclude  
25 completely her statements in this case it's going to be

10

1 not only cross-admissible between the two of them but  
2 virtually all of it will come in for both trials. That  
3 is one of the key things related to the Chartier and the  
4 Marshall decisions that were made is the fact that you  
5 have someone who was not participating, not present who  
6 this evidence is coming forth to convict and that's why  
7 severance was maybe important there; however, that is not  
8 the case here.

9 She's actively participating in the crime from  
10 the get go. Her involvement relates to the dispute  
11 initially with these individuals bringing Mr. Gonzales  
12 in. And then when they are at the scene, when they are  
13 at the house that night she is every bit a participant.  
14 She is the one who was at the door of the bedrooms after  
15 they had broke into the apartment.

16 And with her own statement, not implicating him  
17 in the sense, but she knew that he had a gun. So  
18 according to counsel she is in fear of her life because  
19 she knows of his history. She knows what he is capable  
20 of. She knows what he will do and that he has a gun and  
21 breaking into a home that night to confront individuals  
22 in their bedrooms while they are sleeping there is no  
23 question that she at least should have known what was  
24 about to go down or could have gone down.

25 The fact that afterward she's not injured in any

11

1 way. She didn't have to suffer any battery or any  
2 shooting herself to get away from Mr. Gonzales. They  
3 separate. Mr. Gonzales flees to Mexico. He is  
4 eventually caught reentering the country.

5 But Ms. Cabrera she's the one who actually goes  
6 home, gathers her clothes and is taking off. She doesn't  
7 call the police. She doesn't call 911. She doesn't do  
8 any of those things.

9 All of the evidence points to her being not only  
10 an active participant but every bit as important of a  
11 participant as Mr. Gonzales based on the fact that that  
12 is the case that she actively participated in all aspects  
13 of the crime, was present during the commission of the  
14 crime and participated at that level, I don't think shows  
15 that Chartier is even applicable here.

16 So as far as that's concerned, Your Honor, we  
17 believe that the evidence shows that there is both direct  
18 and circumstantial evidence that ties both defendants to  
19 the crime and that they should be tried together.

20 THE COURT: One thing that wasn't mentioned in  
21 the motion necessarily but did come up the last time we  
22 were court, and I will ask you, Mr. Staudaher, to address  
23 it and then I will ask counsel for the last word, is this  
24 idea that one of the defendants has invoked and the other  
25 has not and that there might be some basis from that

12

1 standpoint that would warrant the cases being handled  
2 separately. Do you want to address that.

3 MR. STAUDAHER: Well, since we have filed notice  
4 of intent to seek death on both defendants that wasn't  
5 the situation the last time we were here. I don't know  
6 if that is what they intend to continue for and proceed  
7 on at this point.

8 I think that that would be potentially  
9 problematic in the sense that there are two attorneys now  
10 that have been appointed to represent Ms. Cabrera in a  
11 capital case with an invoke for 60 days -- I tried a case  
12 this year where that same thing happened. Ultimately, we  
13 tried the case within about I think six months. It's  
14 completely up to them. They don't get to gain the system  
15 to get a de facto severance so that we can go forward.

16 The Court can set for, you know, the Court's  
17 reasons, for judicial reasons to set the trial out to a  
18 reasonable time with the idea that the defendant wishes  
19 to have his trial in a speedy manner. But counsel has  
20 already indicated that there is information that they are  
21 going to be looking into the bad acts stuff, things that  
22 they are going to be bringing in. Whether or not they  
23 can be ready in this window of 60 days is another matter.

24 I would submit to the Court that if they are  
25 ready to go forward that we have to go forward. But if

13

1 in fact they are not that is not a reason to sever.

2 Essentially, in the State's opinion in a capital  
3 case forcing a trial within 60 days knowing what they  
4 have to go through for both mitigation and so forth is  
5 probably not a responsible way to proceed. But of course  
6 that is their decision.

7 THE COURT: Thank you.

8 Anything you want to add, obviously, final  
9 rebuttal then, Mr. Whipple.

10 MR. WHIPPLE: Yes. With the Court's permission,  
11 can both Ms. Erickson and I speak to the issue?

12 THE COURT: You may.

13 MR. WHIPPLE: I appreciate it.

14 Again, I just want to speak to the factual issue  
15 and that is the issue of she actively participated. We  
16 believe that everything that they suggest will show 180  
17 degrees the opposite. In other words, the reason she was  
18 there is because she wasn't afraid. She didn't know any  
19 shooting was going to happen and she was told to come  
20 along. And at the conclusion she was held against her  
21 will, you're going to hear testimony, in the apartment  
22 for over ten hours.

23 So everything that they can suggest one way we  
24 can show the other. So it really comes down to what was  
25 she thinking and that is why it's so important that she

14

1 is going to take the stand and explain to you and give  
2 all this information.

3 Now with regard to character evidence, we do not  
4 have to do any investigation. We don't even know if it's  
5 true or not. It really doesn't matter. What's factual  
6 is that she believed it was true and she believed these  
7 things were true and that is why she was afraid and  
8 that's why she was scared and that's why she went along.

9 We are going to bring in the fact that he was in  
10 prison. That she was told by his sister that he was in a  
11 gang. All this information that we have a right to  
12 produce to show why she did what she did. So that there  
13 is the issue.

14 With regard to our desire to have a speedy  
15 trial, Ms. Cabrera spoke to me at the very beginning and  
16 she wanted to get to trial as quickly as possible because  
17 she did not do anything wrong. We continued the  
18 preliminary hearing the first time so that we could when  
19 the time of arraignment comes invoke the right to a  
20 speedy trial. I have hired Dr. Consort, that was the  
21 last thing that I had to do to find an expert for  
22 mitigation purposes that could work with us within the  
23 60-day window. We are ready to go. We are planning to  
24 go, and we are going, Your Honor.

25 MS. ERICKSON: And, Judge, just with regard to  
15

1 the facts, you will see that in the setup of the  
2 apartment the two rooms that were broken into were across  
3 the hall from each other. The statements of the victims  
4 do not say that they saw Ms. Cabrera doing anything.  
5 They say they saw her in the hallway. She did not enter  
6 either room. And it is very unclear as to whether she  
7 knocked on one door and both sets heard it or whether she  
8 knocked on both doors. There is no evidence, at least as  
9 far as I know, that he went in through a broken window.  
10 There is only evidence that she was there.

11 And then her statement is taken by a North Las  
12 Vegas police detective, who doesn't really want to hear  
13 about why she was doing this and what she thought at the  
14 time. He cuts her off and he verbally says, you know,  
15 that's not true. You can't do this. And we go from  
16 there. So the statement itself is not that indicative of  
17 what was going on in her mind because the police officer  
18 was acting in the matter that he did.

19 So I think, as Mr. Whipple said, there are very  
20 different factual scenarios going on from the State and  
21 from the defendant. But the thing that is really  
22 important the evidence that we are going to admit is not  
23 admissible against a codefendant. They are going to be  
24 objecting vociferously that that cannot come in front of  
25 their jury.

16

1 I don't know if they have been informed of the  
2 motion but every time I have been in this situation where  
3 we become the second prosecutor, which is basically what  
4 we will be doing, saying the codefendant did everything,  
5 we didn't do anything. There was nothing we could do  
6 about it.

7 They have joined in the motion for severance  
8 recognizing that they are in a situation where it is much  
9 worse for them because evidence is going to be coming in  
10 against them that they don't want and we can't be  
11 precluded in a capital case from putting forth our  
12 defense just because this is a codefendant who is  
13 objecting to it.

14 MR. WHIPPLE: Your Honor, I will be very brief.  
15 And that is I'm kind of going full circle where I  
16 started. It comes down to her state of mind. We put her  
17 on direct examination and I have the information that we  
18 believe is viable and important to this court of her  
19 before trial. This is certainly something that this  
20 court can take into consideration. I will be more than  
21 happy to provide it to you.

22 THE COURT: Thank you. I appreciate the  
23 additional argument here today and I have had the  
24 opportunity to read the motion and the opposition and to  
25 review the cases, and it is my determination at this time

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1 to deny the motion for severance. I do not believe from  
2 what has been argued -- I think that there are not  
3 necessarily different factual scenarios. I think there  
4 is different interpretations, obviously, of what the  
5 evidence will show us. But I do not see mutually and  
6 antagonistic defenses of the level that would be  
7 required.

8 I do not disagree, by the way, Counsel, Chartier  
9 is not some hurdle to overcome and that it is so high  
10 that it is hardly ever overcome, I just don't see it as  
11 applicable in this case. I think closest that you  
12 potentially come is with the second prong in the idea  
13 that perhaps there would be some comprise to the ability  
14 to put on your defense.

15 But as Mr. Whipple himself argued, it's what was  
16 potentially in the state of mind of Ms. Cabrera not  
17 necessarily the factual existence of these things, which  
18 then would be potentially difficult if and when they are  
19 going to come in.

20 I think as Mr. Staudaher pointed out that  
21 basically there is going to be a lot of evidence  
22 potentially argued to come in on both defendants. But  
23 what I don't see here, it is honestly not even that close  
24 a call for me, when I really boil down what the arguments  
25 are and what we see here, it's just because we have a

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1 couple of defendants who one might be pointing the finger  
2 at the other and/or one seeking to defend based on the  
3 behavior of the other. That is enough here in this case  
4 to warrant severance.

5 The last issue that we however talked about was  
6 the right to speedy trial to be invoked. We do have some  
7 case law that gives us guidance on this point and as long  
8 as the non-invoking party is not unreasonably requesting  
9 continuances that work to the prejudice against the  
10 defendant, the fact that one has invoked and one has not  
11 alone is not enough to sever.

12 And I think it is possible to set this trial  
13 within a reasonable time frame to meet the needs of  
14 everybody and the Court does have the discretion to make  
15 those decisions. And I think ultimately that alone also  
16 is not a basis to sever even in the totality of the  
17 circumstances.

18 I don't see that Chartier, Marshall or the facts  
19 of this case warrants severance at this time. I am going  
20 to deny the motion based on those reasons and I will ask  
21 Mr. Staudaher to please prepare the order and run it by  
22 defense counsel so we have that order for our record.

23 And do address as well the speedy trial issue  
24 that was raised here today even though, again, it was not  
25 necessarily specifically highlighted in the motion or the

19

1 opposition, because we had addressed it the last time we  
2 were here and because I wanted to have argument on it  
3 today I did not want that included in the order.

4 MR. WHIPPLE: All right.

5 With regard to the speedy trial issue, Your  
6 Honor, I'm just curious, in the order itself just the  
7 fact that it was raised and discussed.

8 THE COURT: Just the fact that the Court  
9 believes that it would have the discretion to set the  
10 trial in an appropriate time frame, it may not  
11 necessarily be 60 days but would be a reasonable time  
12 frame set. And, again, as long as the defense is not the  
13 non-invoking defense -- sorry -- the party is not  
14 requesting continuances that might prejudice the  
15 codefendant that we have the ability to do things in the  
16 appropriate course of action. We still equate in these  
17 circumstances in this type of case what would equate to a  
18 speedy trial, but not necessarily, again, the 60 days.

19 The Court does intend to as we proceed to  
20 structure this case appropriately in a speedy way but  
21 does not believe it warrants severance for that reason  
22 alone.

23 MR. WHIPPLE: We understand, Your Honor.  
24 So at this point the trial date --

25 THE COURT: We haven't really set a date at this

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1 point, and in fact we might need a status check to look  
2 at that.

3 MR. STAUDAHER: Your Honor, I believe we have a  
4 status check date set for the 10th.

5 THE COURT: I thought we had one coming up.

6 MR. STAUDAHER: And it is for that issue.

7 THE COURT: I don't think that is realistic in  
8 these circumstances to consider that that November date  
9 will be our date. But I think when we have that status  
10 check coming up it is one of the things that we will look  
11 at at that time.

12 MR. WHIPPLE: Your Honor, we set the status  
13 check before Ms. Erickson was on board. She just  
14 whispered to me that she is not available on the 10th.

15 THE COURT: We can reset it.

16 MS. ERICKSON: Just one week. I am out of the  
17 jurisdiction that week.

18 THE COURT: That's fine. Let's go out one week  
19 from the date that we had originally set the status check  
20 for trial setting and other matters at that time.

21 THE CLERK: It will be October 17th for the  
22 status check.

23 MS. ERICKSON: That's fine.

24 MR. WHIPPLE: That's fine.

25 THE COURT: The other matter that was on

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1 calendar related to this case was the Defendant's Motion  
2 for Juvenile Records that Mr. Gonzales filed.

3 MR. WHIPPLE: I assumed that was for their own  
4 client's juvenile records.

5 MR. PATRICK: Yes.

6 THE COURT: Correct. Yes. For Mr. Gonzales'  
7 own records. And he doesn't seem to be aware that it has  
8 been requested; however, it has been requested. It was  
9 included with the Brady motion and then juvenile criminal  
10 history records, any guardianship proceedings and  
11 otherwise. And I have not seen any opposition.

12 MR. STAUDAHER: There was no opposition.

13 THE COURT: Okay. So I will go ahead and grant  
14 that motion with the understanding that Brady motions are  
15 early days but the State knows their obligations and then  
16 these juvenile records will enable those to be provided.

17 MR. WHIPPLE: Thank you, Your Honor.

18 MS. ERICKSON: Thank you, Judge.

19 MR. STAUDAHER: So, Your Honor, do I have to  
20 appear for that June motion. I assume that was going to  
21 be the day as well.

22 THE COURT: Yes. You mean to return to --

23 MR. STAUDAHER: Yes.

24 THE COURT: I have your non-opposition on the  
25 record so we will not require that.

22

1 MR. STAUDAHER: Okay. Thank you.

2 THE COURT: I don't know where the Special  
3 Public Defender is but when they are here we will call it  
4 again.

5 MR. STAUDAHER: All right. Thank you, Your  
6 Honor.

7 (End of proceedings.)  
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1 REPORTER'S CERTIFICATE  
2

3 STATE OF NEVADA )  
 ) ss.  
4 COUNTY OF CLARK )  
5

6 I, BRENDA SCHROEDER, a certified court reporter  
7 in and for the State of Nevada, do hereby certify that  
8 the foregoing and attached pages 1-28, inclusive,  
9 comprise a true, and accurate transcript of the  
10 proceedings reported by me in the matter of THE STATE OF  
11 NEVADA, Plaintiff, versus JOSE GONZALES, Defendant, Case  
12 No. C-12-283700-2, on October 1, 2012.  
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16 Dated this 23rd day of July, 2013.

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18 BRENDA SCHROEDER, CCR NO. 867  
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