

SUPREME COURT OF NEVADA

Ibarra (Gabriel) v. State

2018 NV 70 (Nev. 2018) · No. 69617 · Decided September 13, 2018

SUMMARY

The Nevada Supreme Court, sitting en banc, affirmed Gabriel Ibarra's conviction involving the taking of a cellular phone. The court addressed whether deceitfully asking to borrow the phone while intending to steal it constituted taking the property without the owner's consent under NRS 205.270. Justice Stiglich, joined by Chief Justice Cherry, dissented.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Pickering, J.; Douglas, J.; Gibbons, J.; Hardesty, J.; Parraguirre, J.
JURISDICTION	Nevada
DECIDED	September 13, 2018
DOCKET	69617
DISPOSITION	affirmed
PROCEDURAL POSTURE	Criminal appeal following Supreme Court of Nevada review of a Court of Appeals order vacating the district court judgment and remanding the matter.
PRECEDENTIAL VALUE	Published opinion; en banc
PARTIES	Gabriel Ibarra v. The State of Nevada

TOPICS

- criminal procedure
- statutory interpretation
- appellate procedure

PRACTICE AREAS

- criminal law
- criminal procedure
- appellate law

QUESTIONS PRESENTED

- Whether deceit in obtaining possession of a cellular phone while intending to steal it renders the taking without the other person's consent under NRS 205.270.

FACTUAL BACKGROUND

The full opinion text and factual discussion are not included in the source document. The docket indicates that the Supreme Court directed supplemental briefing on whether Ibarra's deceit in asking to borrow a cellular phone while intending to steal it rendered the taking without the owner's consent under NRS 205.270.

PROCEDURAL HISTORY

Ibarra appealed from a judgment in Clark County District Court. The matter was initially transferred to the Nevada Court of Appeals, which vacated the judgment and remanded. The State petitioned for review; the Supreme Court of Nevada granted review, ordered supplemental briefing concerning NRS 205.270, conducted en banc oral argument, and affirmed on September 13, 2018.

DISPOSITION

affirmed

OPINION

PER CURIAM.

69617: Case View Nevada Appellate Courts Appellate Case Management System C-Track, the browser based CMS for Appellate Courts Case Search Participant Search Cases Case Search Participant Search 18-35745: This document is currently unavailable. If you need a copy of this document, please contact Clerk's Office at (775)684-1600. Disclaimer: The information and documents available here should not be relied upon as an official record of action.Only filed documents can be viewed.

Some documents received in a case may not be available for viewing.Some documents originating from a lower court, including records and appendices, may not be available for viewing.For official records, please contact the Clerk of the Supreme Court of Nevada at (775) 684-1600. Case Information: 69617 Short Caption:IBARRA (GABRIEL) VS. STATECourt:Supreme Court Related Case(s):69617-COA Lower Court Case(s):Clark Co. - Eighth Judicial District - C308774Classification:Criminal Appeal - Fast Track - Direct Disqualifications:Case Status:Remittitur Issued/Case Closed Replacement:Panel Assigned: En Banc To SP/Judge:SP Status: Oral Argument:11/06/2017 at 2:00 PMOral Argument Location:Carson City Submission Date:11/06/2017How Submitted:After Oral Argument + Party Information RoleParty NameRepresented By AppellantGabriel IbarraHoward Brooks (Clark County Public Defender) Jeremy B. Wood (Clark County Public Defender) RespondentThe State of NevadaAdam Paul Laxalt (Attorney General/Carson City) Ryan J. MacDonald (Clark County District Attorney) Steven S. Owens (Clark County District Attorney) Docket Entries DateTypeDescriptionPending? Document 01/21/2016Filing FeeAppeal Filing fee waived.

Criminal. 01/21/2016Notice of Appeal DocumentsFiled Notice of Appeal/Fast Track. Filed certified copy of notice of appeal. (Fast Track Notice issued to counsel for appellant.)16-02127 02/19/2016TranscriptFiled Notice from Court Reporter. Michelle Ramsey stating that the requested transcripts were delivered. Dates of transcripts: 10/06/15, 10/08/15, 10/13/15, 10/15/15, 10/19/15, 10/20/15, 11/10/15, 12/10/15.16-05477 02/26/2016TranscriptFiled Notice from Court Reporter.

Kiara Schmidt stating that the requested transcripts were delivered. Dates of transcripts: 08/20/15.16-06150 03/01/2016Fast Track BriefFiled Fast Track Statement.16-06669 03/01/2016AppendixFiled Appendix to Fast Track Statement Vol I.16-06670 03/01/2016AppendixFiled Appendix to Fast Track Statement Vol II.16-06671 03/21/2016Order/Clerk'sFiled Order Granting Extension Per Telephonic Request.

Fast track Response due: March 28, 2016.16-08870 03/29/2016Fast Track BriefFiled Fast Track Response.16-09729 04/12/2016Fast Track BriefFiled Reply to Fast Track Response.16-11389 04/12/2016Case Status UpdateFast Track Briefing Completed. 04/29/2016Notice/OutgoingIssued Notice of Transfer to Court of Appeals.16-13520 11/08/2016Order/DispositionalFiled Order Vacating Judgment and Remanding.

ORDER the judgment of the district court VACATED AND REMAND this matter to the district court for proceedings consistent with this order. SILVER, J., concurring. TAO, J., dissenting. Court of Appeals-MG/JT/AS. 11/23/2016Case Status UpdateTransferred from Court of Appeals. 11/23/2016Post-Judgment PetitionFiled Respondent's Petition for Review.16-36575 01/20/2017Order/ProceduralFiled Order Directing Answer To Petition for Review.

Answer due: 15 days.17-02267 02/02/2017Post-Judgment PetitionFiled Appellant Ibarra's Response to State's Petition for Review.17-03920 02/28/2017Post-Judgment OrderFiled Order Granting Petition for Review. We grant review and, pursuant to NRAP 40B(g), direct supplemental briefing on NRS 205.270, specifically, whether Ibarra's deceit in asking to borrow the cellular phone while intending to steal it rendered the taking "without the other person's consent," as NRS 205.270 requires for conviction.

Respondent, as petitioner, shall have 20 days from the date of this order to file and serve its supplemental brief. Appellant shall file and serve his supplemental brief within 20 days after the respondent's supplemental brief is served. fn1[The Honorable Mark Gibbons, Justice, did not participate in the decision of this matter.] CHERRY, C.J., with whom STIGLICH, J., agrees, dissenting.

En Banc.17-06809 03/06/2017Order/ProceduralFiled Notice of Voluntary Disclosure. You are hereby notified that the undersigned, Mark Gibbons, Justice, is directly related to Michael Gibbons, Judge, who presided over this appeal in the Court of Appeals.

The Supreme Court has vacated the decision of the Court of Appeals and granted de novo review of the district court decision. The undersigned has no bias for or against any party to this appeal. The undersigned makes this disclosure, however, so that any party who believes it is appropriate to request recusal may do so. Any recusal request should be made in writing within seven (7) days of the filing date of this Voluntary Disclosure.17-07531 03/20/2017BriefFiled Respondent's Supplemental Brief.17-09240 04/10/2017BriefFiled Appellant Ibarra's Supplemental Brief in Response to Supreme Court Order Dated February 28, 2017.17-11740 08/03/2017Order/Clerk'sFiled Clerk's Order Re: Scheduling of Oral Argument.

This matter will be scheduled for oral argument on the next available calendar.17-25905 09/25/2017Notice/OutgoingIssued Notice Scheduling Oral Argument. Argument is scheduled for Monday, November 6, 2017, at 2:00 p.m. for 30 minutes in Carson City.17-32456 10/23/2017Notice/OutgoingIssued Oral Argument Reminder Notice.17-36257 11/06/2017Case Status UpdateOral argument held this day.

Case submitted for decision. Before the En Banc Court. 09/13/2018Opinion/DispositionalFiled Authored Opinion. "Affirmed." Before the Court En Banc. Author: Pickering, J. Majority: Pickering/Douglas/Gibbons/Hardesty/Parraguirre. Stiglich, J., with whom Cherry, J., agrees, dissenting. 134 Nev. Adv. Opn. No. 70. EN BANC18-35745 10/09/2018RemittiturIssued Remittitur.18-39488 10/09/2018Case Status UpdateRemittitur Issued/Case Closed.

11/02/2018RemittiturFiled Remittitur. Received by District Court Clerk on October 16, 2018.18-39488 Combined Case View