



The Commonwealth of Massachusetts
Executive Office of Public Safety and Security

PAROLE BOARD

12 Mercer Road
Natick, Massachusetts 01760



Charles D. Baker
Governor

Karyn Polito
Lieutenant Governor

Daniel Bennett
Secretary

Telephone # (508) 650-4500

Facsimile # (508) 650-4599

Charlene Bonner
Chairperson

DECISION

IN THE MATTER OF

ROBERT CABRERA

W69095

TYPE OF HEARING: Initial Hearing

DATE OF HEARING: March 31, 2015

DATE OF DECISION: July 1, 2015

PARTICIPATING BOARD MEMBERS: Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Lee Gartenberg, Ina Howard-Hogan, Tina Hurley, Lucy Soto-Abbe.

DECISION OF THE BOARD: After careful consideration of all relevant facts, including the nature of the underlying offense, criminal record, institutional record, the inmate's testimony at the hearing, and the views of the public as expressed at the hearing or in written submissions to the Board, we conclude by unanimous vote that the inmate is not a suitable candidate for parole. Parole is denied with a review in three years from the date of the hearing.

I. STATEMENT OF THE CASE

The facts are derived from the *Brief and Supplemental Record Appendix for the Commonwealth, Comm. v. Cabrera*, No. 01-P-1591 (Mass. App. Ct., May 2002). On February 1, 2001, after a jury trial in Essex County Superior Court, Robert Cabrera was found guilty of second degree murder as a joint venturer, and was sentenced to life in prison with the possibility of parole after serving 15 years. On that same date, he was also found guilty of assault and battery by means of a dangerous weapon and a firearms violation. For those two convictions he was given a concurrent seven to 10 year sentence and a concurrent three to five year sentence, respectively.

On the evening of May 26, 2000, Danny Rios was shot and killed. Carlos Rivera was also shot during the incident, but survived. On that evening, Carlos Rivera was standing on the front porch of the apartment house where he lived, in Lawrence, having a beer and talking with

Daniel Rios. Mr. Rivera, a man in his young twenties, had known Mr. Rios for two weeks. Mr. Rios was a driver for the New Hampshire cement company where Mr. Rivera worked.

At some time between 8:00 and 8:30 p.m., a car carrying three people pulled up in front of the house. Robert Cabrera, whom Mr. Rivera knew as "Robbie," was driving. Mr. Rivera had seen Cabrera at the house once before, visiting one of Mr. Rivera's cousins. Mr. Rivera did not recognize the male sitting in the front passenger seat (later identified as Michael Vasquez) or the younger male in the passenger-side back seat (later identified as Argelis Gutierrez). Michael Vasquez got out of the car and approached the house. Mr. Rivera was standing in the frame of the doorway leading into the house, when Mr. Vasquez bumped him with his shoulder as he walked by. Nothing was said at the time, but several minutes later, when Mr. Vasquez exited the house, Mr. Rivera said to him, "What's your problem?" and "You didn't say excuse me." Mr. Vasquez did not respond, he just returned to the car and spoke with Cabrera.

Cabrera then got out of the car and said, "You got a problem? You have a problem?" As Mr. Rivera stepped off the porch, Cabrera got back into the car, but they began arguing back and forth, exchanging curses. Mr. Rivera then said, "All three of you can get out of the car and know we can get it on right here." Cabrera replied, "You ain't sh*t," then said, to Mr. Vasquez, "Do you have that?" Mr. Rivera said, "What, you got a strap for me?" Cabrera looked at him and said, "Don't worry. It's coming." Mr. Rivera started hitting his chest and saying, "What?" as his cousin Mimi, who had come outside, was holding him back. Cabrera then drove off.

Mimi went back inside, and Mr. Rivera returned to the porch where he continued his conversation with Mr. Rios. Ten to fifteen minutes later, Mr. Rivera was still standing on the porch, when he saw a flash and heard a loud noise, and then "everything slowed down." He remembers Mr. Rios grabbing him by his shoulders and turning him around towards the doorway of the house. Mr. Rivera tripped over the doorstep, and he "just kept hearing and seeing flashes and hearing bangs." He then felt his "legs go numb" and he fell. Mr. Rios fell down right next to him. Mr. Rivera then grabbed Mr. Rios by the shoulder of his jacket and pulled him toward the entryway, and then his family "came out screaming."

Police arrived soon after and observed both men lying halfway into the foyer. Mr. Rios was "bleeding profusely" and died soon thereafter of a single gunshot wound to his abdomen. Carlos Rivera suffered a gunshot wound to the leg. An infection developed in the wound, which led to an extended term of hospitalization and rehabilitation, and created a "very severe limp."

Based on information obtained from Mr. Rivera, police began investigating Cabrera. After continued investigation and several interviews with Cabrera, police arrested him (under a theory of joint venture) for the murder of Mr. Rios.¹

¹ There were no independent witnesses who could identify the shooter. Cabrera told police that Michael Vasquez was the shooter. Vasquez was charged and arrested, but his case was later dismissed. Cabrera's statements to the police, which constituted the primary evidence against Cabrera at his trial, could not be used against Vasquez. Argelis Gutierrez was unavailable to testify at either trial.

II. CRIMINAL HISTORY

Cabrera's conviction for second degree murder was not his first criminal conviction. Prior to the murder, Cabrera had several convictions and incarcerations on his record. In 1999, out of Lawrence District Court, he was convicted of knowingly receiving stolen property over \$250, and receiving a stolen motor vehicle. In 1991, out of Lawrence District Court, Cabrera was convicted of unlawful possession of a firearm, and served one year in jail. However, his most serious additional criminal convictions occurred from charges and convictions that happened after he was sentenced on the murder conviction.

In late 1999, troopers working in the Massachusetts State Police Gang Unit developed first-hand information about a burglary ring run out of Lawrence that they suspected was responsible for numerous robberies at retail businesses throughout Massachusetts from June-December of 1998. Cabrera was identified as a core member of this burglary ring. After a follow-up investigation by the State Police, in which substantial corroborative evidence was confirmed, Grand Juries in Essex, Hampden, Middlesex, and Norfolk Counties returned 116 indictments against nine men, including Cabrera, in connection with six burglaries that resulted in hundreds of thousands of dollars of stolen merchandise.

In 2004, in Hampden, Norfolk, Middlesex and Essex Superior Courts, Cabrera was convicted of a string of larcenous offenses, including five counts of breaking and entering in the nighttime. In addition to numerous sentences to run concurrent with his life sentence for murder, Cabrera was sentenced to a from and after term of eight years to eight years and one day, to be served upon parole from his second degree life sentence.

III. PAROLE HEARING ON MARCH 31, 2015

Robert Cabrera appeared for his initial parole hearing without an attorney. Cabrera is 43 years old and has served 15 years of his life sentence.

Cabrera provided an opening statement in which he extended an apology to family and friends for having taken the life of Daniel Rios and severely injuring Carlos Rivera. He acknowledged his sorrow and shame for the lifestyle he was leading at the time. He also spoke of his rehabilitation, as he took full advantage of the treatment and programming opportunities that have been afforded to him.

Since entering the institution, he has completed several programs to address his criminal behavior and enhance his reintegration into the community. Such programs covered issues of anger and violence, educational and vocational training, and substance abuse and dependency. Cabrera provided the Board with an overview of the specific treatment and programming that he has engaged in including: Emotional Awareness; Alternatives to Violence; Relapse Prevention; and religious services. He is on the waitlist for Culinary Arts, Project Youth, and Job Skills. According to his personalized program plan he is considered a low risk for violence and low risk to recidivate. He has been employed throughout his incarceration, and is currently employed in the maintenance department at MCI-Shirley, a job he has held since 2010. He does not perceive drugs or alcohol to be an issue. In accordance with Departmental records there is no indication of substance use in the past 15 years.

Cabrera informed the Board that his involvement in Alternatives to Violence provided him with a greater understanding as to how to respond to certain situations. He understands he can no longer just re-act, and he now possesses the skills to de-escalate situations. He told the Board he has learned to resolve matters through constructive, positive communication. He described his participation in the Emotional Awareness program, which required him to take risks and trust others, to drop the façade, and be true to his self.

Cabrera was born and raised in Methuen, Massachusetts by his mother and his grandmother. He described his up-bringing as "solid" with the exception of not having a father figure or male role model. His father left when he was still an infant. As a teen, he gravitated to the street life. He perceived the older kids to have their act together as they had money, jewelry, and dressed well. He began to cut classes in high school to "hang out." He indicates that he experimented with alcohol and smoked cigarettes, but did not like it and never made a habit of it. At the age of sixteen he resorted to stealing motor vehicles. Although Cabrera held several jobs while in the community, he felt the income was insufficient and began to commit burglaries. In 1990, he was employed in the food service department at Lawrence General Hospital. Through this experience he developed an interest in the medical field. He went on to earn his General Equivalency Diploma and further his education by studying phlebotomy and emergency medical training. Although a career in the medical field interested him, it did not provide him the financial stability he desired.

Cabrera provided a detailed and comprehensive version of all the offenses for which he has been convicted that is consistent with all known facts. He attributes his criminal record to the lifestyle he was leading and the rush he would obtain from committing burglaries. He assumed full culpability for the death of Daniel Rios and the life alternating injuries sustained by Carlos Rivera. Although he did not shoot the victims, he provided the weapon and was the aggressor; the catalyst for the murder once Michael Vasquez stepped out of the car. Cabrera told the Board that he obtained the weapon several months' before the shooting from an individual who was going to jail. He stored the gun in his mother's backyard. Cabrera has an extensive adult criminal history to include three prior county commitments and numerous felony convictions for larcenous offenses. The murder and serious bodily injury in this case occurred while Cabrera was on probation for his offenses out of Lawrence District Court.

In terms of his disciplinary issues, Cabrera has had two special management unit placements throughout his incarceration and has accrued approximately seven disciplinary reports. The most egregious incident occurred in April of 2006, when he received a disciplinary report for introducing controlled substances into a correctional facility. It was determined through a comprehensive investigation that Cabrera participated in an organized drug distribution ring while incarcerated at MCI-Cedar Junction. Cabrera was employed in the storehouse and routinely received large amounts of heroin and cocaine from an employee, for repacking and distribution within the institution for monetary gain. He was looking for a "hustle" to make some money.

Department of Correction reports indicate Cabrera was one of the influential leaders of a gang within the prison and was responsible for recruitment and the carrying out missions within the institution. Cabrera does not dispute this fact. He informed the Board he was the leader for approximately nine years and waited for the right time to step down as the membership considered him too passive. He stated he initially joined the gang for the purpose of protection,

and ultimately rose to the position of leader as others perceived him as trustworthy. Through his testimony, he appears to minimize his gang activity while incarcerated. Cabrera told the Board he would avail himself to provide new members with clothes, stamps, and an overview as to how the facility was run. He described his role as one to influence positive change and divert members to a life of pro-social behavior within the institution. Cabrera has yet to formally renounce his gang affiliation. He told the Board he has initiated the process through the Inner Perimeter Security and is on probation. According to Department of Classification reports, Cabrera is a suspected member of another gang.

Cabrera seeks a parole to his from and after sentence of eight years to eight years and one day for breaking and entering convictions. Upon completion of that sentence, Cabrera would have the support of his family, all of whom are gainfully employed and law abiding citizens. Cabrera would like to transition through lower security and reside at a long-term residential treatment program to aide in his in his reintegration.

Several family members and friends attended the hearing in support of his petition for parole. His sister and several cousins spoke in support of his parole, noting they will provide him with the necessary help to successfully re-enter the community.

There were no family or friends of Mr. Rios or Mr. Rivera present in opposition to Cabrera's release. There were also no such written submissions in opposition to his release. Essex County Assistant District Attorney Cathy Semel provided a letter and spoke in opposition to parole. She outlined the reasons for opposition at the hearing, citing in part "both the severity of this offense and the nature of Cabrera's involvement in it weigh against a grant of parole at the earliest opportunity. The shooting in this case not only caused serious injury of the intended target, but the death of an innocent bystander. Cabrera was an integral part of the undertaking. He provided the gun and transportation, with full knowledge and shared intent as to Vasquez's plan."

IV. DECISION

Cabrera was 27 years old when he took part in the shootings of Daniel Rios and Carlos Rivera in 2000. He has served 15 years of his life sentence and has maintained a moderate record within the correctional system. He became attracted to street life at an early age, and engaged in anti-social behavior within the community and within the correctional system. Since entering the institution, Cabrera has consistently increased his participation in rehabilitation, including skill building, education, and treatment for factors related to his criminal history. However, he has continued to make concerning decisions within the institution that demonstrate he still has more work to do. The Board is of the opinion that Cabrera needs to demonstrate his rehabilitative progress and success through a longer period of positive institutional adjustment and programming before his release is compatible with the welfare of society.

The standard we apply in assessing candidates for parole is set out in 120 C.M.R. 300.04, which provides that, "Parole Board Members shall only grant a parole permit if they are of the opinion that there is a reasonable probability that, if such offender is released, the offender will live and remain at liberty without violating the law and that release is not incompatible with the welfare of society." Applying that appropriately high standard here, it is

the unanimous opinion of the Board that Robert Cabrera does not merit parole at this time because he is not rehabilitated. The review will be in three years, during which time Cabrera should commit to a fuller rehabilitation that addresses criminal thinking and maintain a positive adjustment.

I certify that this is the decision and reasons of the Massachusetts Parole Board regarding the above referenced hearing. Pursuant to G.L. c. 127, § 130, I further certify that all voting Board Members have reviewed the applicant's entire criminal record. This signature does not indicate authorship of the decision.



Peter Mimmo, Staff Attorney



Date