

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL JOSEPH JEFFRIES,
Defendant/Appellant,
vs.
THE STATE OF NEVADA,
Plaintiff/Respondent.

CASE NO. 68338

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Tracie K. Lindeman
Clerk of Supreme Court

APPELLANT'S MOTION FOR RELEASE PENDING APPEAL

COMES NOW Michael Joseph Jeffries, Appellant in the above-entitled matter, by and through his attorney, Vincent Savarese III, Esq. of the law firm of Gentile Cristalli Miller Armeni Savarese, and pursuant to Rule 27 of the Nevada Rules of Appellate Procedure ("NRAP") and Nevada Revised Statutes ("NRS"), Sections 177.145, 178.4851, 178.4853, 178.488, and 178.489, hereby respectfully requests that this Court admit him to release from custody pending appeal.

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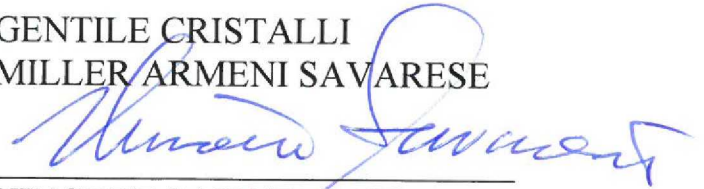
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THIS MOTION is made and based upon all pleadings and papers on file herein and the following Memorandum of Points and Authorities.

Dated this 1st day of July, 2016.

GENTILE CRISTALLI
MILLER ARMENI SAVARESE



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MEMORANDUM OF POINTS AND AUTHORITIES

1.

STATEMENT OF RELEVANT FACTS

Appellant Michael Jeffries was admitted to pretrial release by the District Court in this case without incident and duly made all of his court appearances. He was not remanded by the District Court until the jury returned its verdict in open court finding him guilty of murder of the second degree on March 26, 2015. And he has remained in custody ever since.

The record shows that Appellant has no prior criminal record, poses no risk of flight, and presents no danger to the community.

The record shows that he is a life-long resident of the Las Vegas community with long-standing local ties, who enjoys a substantial, extensive, loyal and very supportive network of family and close friends, including both parents, a very supportive stepmother, a fiancé and her daughter from a previous marriage, who is very close to, and lived together with Michael and her mother prior to his arrest in connection with this case.

The record shows that the charge against Appellant in this case was truly an aberration in his life; that the evidence adduced against him at trial was hardly overwhelming; and, indeed, that there was ample evidence consistent with self-defense. Moreover, as demonstrated in Appellant's Opening Brief, Appellant raises several very substantial constitutional issues on appeal involving substantial structural error based upon clear juror misconduct; failure of requisite jury instruction; and prosecutorial misconduct, which Appellant respectfully submits, have resulted, by his conviction, in a manifest miscarriage of justice; and which he submits, upon detached and objective assessment, have a high probability of success on the merits.

Moreover, despite several enlargements of time granted by this Court without opposition by counsel for Appellant, the State has demonstrated palpable indifference to Appellant's liberty interests in the circumstances, as set forth with particularity in Appellant's Motion for Imposition of Sanctions Against Respondent

State of Nevada, filed together herewith and which is incorporated herein by reference in all respects.

2.

LEGAL ARGUMENT

NRS § 178.488.1 provides that “[b]ail may be allowed pending appeal or certiorari unless it appears that the appeal is frivolous or taken for delay.” NRS § 178.488.3 provides that “[p]ending appeal or certiorari to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution, bail may be allowed by the district court or any judge thereof, by the Court of Appeals or any judge thereof or by the Supreme Court or a justice thereof.” And NRS § 177.105 provides that “[a] sentence of imprisonment shall be stayed if an appeal is taken and the defendant is admitted to bail.”

NRS § 178.4851.1 provides that “[u]pon a showing of good cause, a court may release without bail any person entitled to bail if it appears to the court that it can impose conditions on the person that will adequately protect the health, safety and welfare of the community and ensure that the person will appear at all times and places ordered by the court. And NRS § 178.4851.1 provides that “[i]n releasing a person without bail, the court may impose such conditions as it deems necessary to protect the health, safety and welfare of the community and to ensure that the person

will appear at all times and places ordered by the court, including, without limitation, any condition set forth in subsection 11 of NRS 178.484.”

NRS § 178.4853 provides:

In deciding whether there is good cause to release a person without bail, the court as a minimum shall consider the following factors concerning the person:

1. The length of residence in the community;
2. The status and history of employment;
3. Relationships with the person’s spouse and children, parents or other family members and with close friends;
4. Reputation, character and mental condition;
5. Prior criminal record, including, without limitation, any record of appearing or failing to appear after release on bail or without bail;
6. The identity of responsible members of the community who would vouch for the reliability of the person;
7. The nature of the offense with which the person is charged, the apparent probability of conviction and the likely sentence, insofar as these factors relate to the risk of not appearing;
8. The nature and seriousness of the danger to the alleged victim, any other person or the community that would be posed by the person’s release;
9. The likelihood of more criminal activity by the person after release; and
10. Any other factors concerning the person’s ties to the community or bearing on the risk that the person may willfully fail to appear.

And NRS § 178.498 provides, in pertinent part:

If the defendant is admitted to bail, the bail must be set at an amount which will reasonably ensure the appearance of the defendant and the safety of other persons and of the community, having regard to:

1. The nature and circumstances of the offense charged;
2. The financial ability of the defendant to give bail;
3. The character of the defendant; and
4. The factors listed in NRS 178.4853.

In *Bergna v. State*, 120 Nev. 869, 102 P.3d 549 (2004) (*En Banc*), this Court, sitting *en banc*, categorically rejected the State's contention that a defendant convicted of even first-degree murder is precluded from receiving bail pending appeal. 120 Nev. at 871, 102 P.3d at 550.

NRS Chapter 178 is replete with clear and unambiguous references to the discretionary power of the courts to grant bail pending appeal or other review following a conviction. For example, NRS 178.488(1) quite plainly states: "Bail may be allowed pending appeal or certiorari unless it appears the appeal is frivolous or taken for delay." NRS 178.488(3) further empowers district courts, district judges, this court, and any of the justices of this court to grant bail pending appeal or certiorari. The language of NRS 178.4875(1), which specifies where subsequent proceedings for the forfeiture of any bail pending appeal or other review of a conviction must take place, also illustrates that the Legislature contemplated that an applicant could be granted release on bail pending appeal or other post-conviction review. Although NRS 178.4871 and 178.4873 specifically address conditions under which a petitioner pursuing a post-conviction writ of habeas corpus may be released on bail, they also clearly evince a legislative intent to permit bail following a conviction. Reading these provisions together, we discern no legislative intent to deprive the courts of this state of jurisdiction to release a defendant convicted of first-degree murder on bail pending appeal. To the contrary, to adopt the interpretation proposed by the State, would nullify the numerous, unambiguous expressions of legislative intent within the provisions cited above expressly contemplating bail pending appeal.

We also reject the State's contention that reading the plain language of NRS Chapter 178 to permit bail pending appeal creates a "bizarre incongruity" by requiring a standard for release on bail after conviction that is "extraordinarily less onerous" than the standard to be applied before conviction. The State apparently contends that, while bail must

be denied prior to trial where the proof of guilt is evident and the presumption is great, the strength of the proof and presumption of guilt may not be considered after conviction in evaluating an applicant's request for bail pending appeal. Our reading of NRS Chapter 178, however, does not preclude a court empowered to consider a request for bail pending appeal from evaluating the strength and quality of the evidence and other indicia of guilt, as well as the nature and circumstances of the offense, in resolving an application for bail pending appeal.

In our view, such factors are quite properly considered in any evaluation of whether, under NRS 178.488(1), “it appears that the appeal is frivolous or taken for delay,” or of whether the applicant's release on bail would pose a danger to the community or a risk of flight. The mere fact of a conviction does not end the court's authority to evaluate the quality of the legal and factual underpinnings of a conviction in considering a motion for bail or to give “due weight to the evidence and to the nature and circumstances of the offense.” While the evidence in support of the conviction in one case may be overwhelming, in another it may be quite tenuous. As in the instant case, evidence relating to an applicant's commission of a violent and serious felony and the manner in which it was committed is highly relevant to the danger that might be posed by the applicant's release. Still in other circumstances, the nature and quality of alleged legal errors at trial may raise serious concerns respecting the validity of a conviction and may weigh heavily in favor granting an application for bail pending review. In sum, we conclude that NRS 178.484(4) does not conflict, but rather can be read in harmony, with NRS 178.488(1), as well as with the other factors relevant to the consideration of a motion for bail pending appeal of a conviction of first-degree murder.

120 Nev. at 873-874, 102 P.3d at 551-552.

As the *Bergna* Court further pointed out: “this court will not decline to review a motion for bail pending appeal . . . if the record before us . . . provides an adequate

basis for this court to independently resolve the matter. 120 Nev. at 877, 102 P.3d at 554. And Appellant most respectfully submits that this Court can and should independently admit him to release pending appeal in this case at this time.

Thus, here, in contradistinction to *Bergna*, in his Opening Brief, Appellant Jeffries has indeed “undermine[d] the quality and strength of the evidence presented at trial” and has indeed both “alleged . . . [and] established . . . errors at trial that . . . erode . . . [and] undermine the validity of the conviction and sentence [such] that . . . [this Court] . . . can confidently conclude that his release on bail poses no danger of further violence or risk of flight.” 120 Nev. at 878, 102 P.3d at 555. And Appellant further respectfully submits that, upon comparative consideration of the arguments set forth in Respondent’s Answering Brief, a detached and objective assessment supports the conclusion that the arguments raised by Appellant in this case have a high probability of success on the merits.

Moreover, the State has, in seeking undue delay of the appellate process in this case, demonstrated palpable indifference to Appellant’s liberty interests in the circumstances, as set forth with particularity in Appellant’s Motion for Imposition of Sanctions Against Respondent State of Nevada, filed together herewith and herein incorporated by reference in all respects.

Appellant therefore respectfully submits that, in view of the fact that he poses no realistic likelihood of flight; that he presents no danger to the community; and

that he enjoys a substantial probability of success on the merits, he should not be required to languish in custody pending the resolution of this appeal.¹

3.

CONCLUSION

THEREFORE, for all the foregoing reasons, Appellant respectfully prays that this Court admit him to release from custody pending appeal, together with such other and further relief as the Court deems fair and just in the premises.

Dated this 1st day of July, 2016.

Respectfully submitted,

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Michael Joseph Jeffries

¹ Appellant further respectfully submits that, under the above-enumerated factors set forth in NRS § 178.4853, he is an appropriate candidate for release without bail; and in the alternative, that, under the above-enumerated factors set forth in NRS § 178.498, he is certainly at least an appropriate candidate for release on bail in an especially reasonable amount.

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on this 1st day of July, 2016. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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