

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

CASE NO. 68338

Electronically Filed
Jul 06 2016 01:30 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

APPELLANT'S REPLY IN SUPPORT OF MOTION FOR RELEASE
PENDING APPEAL

In its Opposition, the State does not contest in any respect whatsoever *any* of the factual representations or legal arguments set forth in Appellant's Motion. Thus, the State does not dispute that Appellant made all of his court appearances while on pretrial release, (Motion page 2); that he has no prior criminal record, (*id.*); that he poses no risk of flight, (*id.*); that he presents no danger to the community, (*id.*); that he is a life-long resident of the Las Vegas community, (Motion page 3); that he has long-standing local ties, (*id.*); that he enjoys a substantial, extensive, loyal and very supportive network of family and close friends, (*id.*); that the charge against him was an aberration in his life, (*id.*); that the evidence against him at trial was hardly overwhelming, (*id.*); that there was ample evidence consistent with self-defense, (*id.*); and that he raises several very substantial constitutional issues on appeal which have a high likelihood of success on the merits. *Id.*

The State observes that “ordinarily” motions for release pending appeal are brought in the first instance in the District Court. Opposition page 2, paragraph 2. However, the State does not attempt to contest the fact that this Court, or a justice thereof, may independently grant such relief. NRS § 178.488.3; *Bergna v. State*, 120 Nev. 869, 877, 102 P.3d 549, 554 (2004) (*en banc*). The State further observes that, in considering such a motion, this Court “makes an independent judgment based on a review of the reasons for denying bail which were relied upon by the district court.” Opposition page 2, paragraph 2. Yet the State does not attempt to contest the fact that, as set forth in Appellant’s Motion, the *sole* reason that Appellant was remanded by the District Court on March 26, 2015 was because the jury returned a guilty verdict on that day. Motion page 2. Indeed, as pointed out *supra*, previous to the return of the verdict, the District Court had determined that Appellant was a proper candidate for release under the applicable statutory factors set for in Appellant’s Motion. And as the briefs on file thus far demonstrate, that verdict was affected by serious legal error at trial.

Thus, the only reason that Appellant has not brought this Motion until this juncture is because, on advice of counsel, Appellant has elected to wait for this Court to first have an opportunity to conduct a comparative evaluation of the substantive arguments presented in his Opening Brief and the State’s Answering Brief so as to enable this Court to make an informed determination that his appeal is not “frivolous

or taken for delay,” (*see* NRS 178.488(1)); “to evaluate the quality of the legal and factual underpinnings of [his] conviction,” (*Bergna v. State*, 120 Nev. 869, 873 – 874, 102 P.3d 549, 551 – 552 (2004) (*en banc*)); and to make an informed determination that “the nature and quality of [the] alleged legal errors at trial . . . raise serious concerns respecting the validity of [his] conviction . . . and weigh heavily in favor of granting an application for bail pending review.” *Id.*

Thus, Appellant has not brought this Motion “purely as a sanction against the State and without regard to the merits of the issue” as the State suggests. Opposition page 3. But rather, Appellant has done so because the respective briefs of the parties filed thus far show that, on appeal, he has “undermine[d] the quality and strength of the evidence presented at trial” and has 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.” *Bergna, supra*, 120 Nev. at 878, 102 P.3d at 555.

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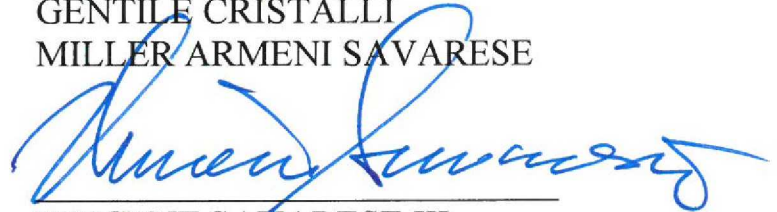
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CONCLUSION

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.

Respectfully submitted this 6th day of July, 2016.

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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On the 6th day of July, 2016, I caused to be served a true and correct copy of the foregoing

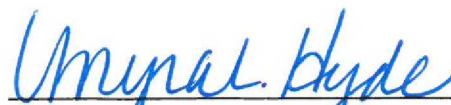
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PENDING APPEAL, by the method indicated:

- x **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.
- x **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

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