

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
Nov 08 2016 09:28 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

**APPELLANT MICHAEL JOSEPH JEFFRIES' NOTICE OF
SUPPLEMENTAL AUTHORITIES**

Pursuant to Rule 31(e) of the Nevada Rules of Appellate Procedure ("NRAP"), 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, files this Notice of Supplemental Authorities in the above-entitled matter.

NRAP 31(e) (Supplemental Authorities) provides:

"When pertinent and significant authorities come to a party's attention after the party's brief has been filed, but before a decision, a party may promptly advise the Supreme Court or Court of Appeals by filing and serving a notice of supplemental authorities, setting forth the citations. The notice shall provide references to the page(s) of the brief that is being supplemented. The notice shall further state concisely and without argument the legal proposition for which each supplemental authority is cited. The notice may not raise any new points or issues. Any response must be made promptly and must be similarly limited. If filed less than 10 days before oral argument, a notice of supplemental authorities shall not be assured of consideration by the court at oral argument; provided, however, that no notice of supplemental authorities shall be rejected for filing on the ground that it was filed less than 10 days before oral argument."

Pursuant thereto, Appellant respectfully advises the Court of the pertinence and significance in this appeal of this Court's recent decision in *Bowman v. State of Nevada*, No. 67656, 132 Nev. Adv. Op. 74 (October 27, 2016) (en banc), which

decision of the full Court was rendered subsequent to the filing of all briefs in the instant case.

Appellant cites this recent en banc decision of this Court for the following legal propositions, which supplement the following corresponding pages of Appellant's Opening Brief and Appellant's Reply Brief, respectively:

1. Where the evidence shows that juror misconduct (1) has occurred; and (2) was prejudicial, a defendant found guilty in a criminal case pursuant to a jury verdict is entitled to a new trial. Nev. Adv. Op. 74 *5. (Appellant's Opening Brief pp. 22-32; Appellant's Reply Brief pp. 7-14).
2. The determination of whether juror misconduct occurred in the first instance is a factual inquiry. 132 Nev. Adv. Op. 74 *6. (Appellant's Opening Brief pp. 23-25; Appellant's Reply Brief pp. 9-16).
3. Where the evidence shows that, after commencement of jury deliberations, a juror conducted independent outside research; thereby accessed extrinsic information; and then returned to jury deliberations, juror misconduct has occurred. Nev. Adv. Op. 74 *6-7. (Appellant's Opening Brief pp. 23-25; Appellant's Reply Brief pp. 9-16).
4. The determination of whether juror misconduct was prejudicial is a legal inquiry. Nev. Adv. Op. 74 *7. (Appellant's Opening Brief pp. 25-29; Appellant's Reply Brief pp. 9-16).
5. Prejudice is shown whenever there is a reasonable probability or likelihood that juror misconduct affected the verdict. Nev. Adv. Op. 74 *5. (Appellant's Opening Brief pp. 25-29; Appellant's Reply Brief pp. 9-16).

6. A new trial is unnecessary where it appears beyond a reasonable doubt that no prejudice occurred. Nev. Adv. Op. 74 *5. (Appellant's Opening Brief p. 25; Appellant's Reply Brief pp. 9-16).
7. Prejudice attaches where the evidence shows that, after commencement of jury deliberations, a juror conducted independent outside research in the commission of juror misconduct; thereby accessed extrinsic information; and then returned to participate in jury deliberations "*after being influenced*" by that extrinsic information. Nev. Adv. Op. 74 *7. (Appellant's Opening Brief pp. 23-29; Appellant's Reply Brief pp. 9-16).
8. Such prejudice attaches where *a juror has personally acknowledged actual influence* under circumstances whereby, after having committed such juror misconduct by outside research, he or she then returned to participate in jury deliberations "*after being influenced*" by the extrinsic information thereby acquired. 132 Nev. Adv. Op. 74 *3-4, 6-7. (Appellant's Opening Brief pp. 23-29; Appellant's Reply Brief pp. 9-16).
9. Such prejudice also attaches where the evidence shows that the extrinsic information in question "would have influenced the average, hypothetical juror." 132 Nev. Adv. Op. 74 *3-4, 6-7. (Appellant's Opening Brief pp. 23-29; Appellant's Reply Brief pp. 9-16).
10. Factors which guide this determination include: how the extrinsic information was introduced to the jury (third-party contact, media source, independent research, etc.); the length of time it was discussed by the jury; the timing of its introduction relative to the verdict; whether the extrinsic information was ambiguous, vague, or specific in content; whether it was cumulative of other evidence introduced at trial; whether it involved a

material or collateral issue; or whether it was inadmissible. 132 Nev. Adv. Op. 74 *6. (Appellant's Opening Brief pp. 23-29; Appellant's Reply Brief pp. 9-16).

11. A trial of short duration; outside research conducted shortly before the return of the verdict, and conducting outside research regarding a specific and material matter are all factors that weigh in favor of concluding that that the extrinsic information in question was influential, and therefore, prejudicial. Nev. Adv. Op. 74 *7. (Appellant's Opening Brief pp. 23-29; Appellant's Reply Brief pp. 9-16).
12. It is not necessary that extrinsic information independently acquired by a juror pursuant to outside research undertaken in the commission of juror misconduct be disclosed to other members of the jury in order for prejudicial juror misconduct to attach, in that *a single juror's exposure to extrinsic information may still influence the verdict because that juror may interject opinions during deliberations while "under the influence" of the extrinsic information in question.* Nev. Adv. Op. 74 *6. (Appellant's Opening Brief pp. 23-29; Appellant's Reply Brief pp. 9-16).
13. Where, in view of the totality of the circumstances, both of the foregoing factual and legal inquiries weigh in favor of granting a new trial a district court abuses its discretion in denying such relief. Nev. Adv. Op. 74 *8. (Appellant's Opening Brief pp. 23-29; Appellant's Reply Brief pp. 9-16).
14. Such misconduct directly impacts "*the defendant's right to a fair trial.*" Nev. Adv. Op. 74 *9. (Appellant's Opening Brief pp. 23-30; Appellant's Reply Brief pp. 7-16).

15. Although failure to object generally precludes appellate review, unpreserved error is nonetheless subject to review where it is plain and affected the defendant's substantial rights. Nev. Adv. Op. 74 *10. (Appellant's Opening Brief pp. 30-32; Appellant's Reply Brief pp. 7-9, 15).
16. Failure to object does *not* preclude appellate review where the error is "*patently prejudicial*" and "*requires the court to act sua sponte to protect the defendant's right to a fair trial.*" Nev. Adv. Op. 74 *8. (Appellant's Opening Brief pp. 30-32; Appellant's Reply Brief pp. 7-9, 15).
17. "Thus the district court is **required** to objectively evaluate the effect [the extrinsic material] had on the jury and determine whether it would have influenced the average, hypothetical juror." Nev. Adv. Op. 74 *6. (Appellant's Opening Brief pp. 23-32; Appellant's Reply Brief pp. 7-9, 15).

Dated 7th day of November, 2016.

GENTILE CRISTALLI
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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 November 7th, 2016, I caused to be served a true and correct copy of the foregoing **APPELLANT MICHAEL JOSEPH JEFFRIES' NOTICE OF SUPPLEMENTAL AUTHORITIES**, by the method indicated:

☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).

☒ **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.

☐ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.

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BY PERSONAL DELIVERY: by causing personal delivery of the document(s) listed above to the person(s) at the address(es) set forth below.

☒

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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