IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Appellant,

vs.

MARGAUX SHANNON ORNELAS,

Respondent.

Docket No. 85159

Appeal from an Order of Suppression
Eighth Judicial District Court, Clark County
The Honorable Erika Ballou, District Judge
District Court No. C-13-288842-1

RESPONDENT'S APPENDIX – VOL. 1 OF 1

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CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2021, I served this document on the following:

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AFFIRMATION

Pursuant to NRS 239B.030, this document contains no social security numbers.

/s/ Michael Troiano — Michael Troiano, Esq.

05-12-21 — Date

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

MARGAUX ORNELAS, aka,
Margaux Shannon Ornelas, #7032495

Defendant.

CASE NO: C-19-340051-2

DEPT NO: XXIV

STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR OWN RECOGNIZANCE RELEASE/SETTING REASONABLE BAIL

DATE OF HEARING: APRIL 12, 2021
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through DAVID STANTON, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion For Own Recognizance Release/Setting Reasonable Bail.

This Opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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POINTS AND AUTHORITIES

The instant Motion concedes, as it must, that the MARGAUX ORNELAS, aka, Margaux Shannon Ornelas did not qualify for release conditions that require a residence. At the time of the numerous criminal charges MARGAUX ORNELAS, aka, Margaux Shannon Ornelas, along with her co-defendant, DUSTIN LEWIS were living in a tent trespassing on private property next to the storage units that were ultimately burglarized by MARGAUX ORNELAS, aka, Margaux Shannon Ornelas and DUSTIN LEWIS. Counsel claims, without any factual discussion of the underlying facts, that based upon this Court's granting of the recently heard motion to suppress, that "the strength of evidence against the defendant as well as the likelihood of conviction at trial" is somehow qualitatively changed.

MARGAUX ORNELAS, aka, Margaux Shannon Ornelas is seen on security video, along with DUSTIN LEWIS stealing the items from the storage unit property. The State disputes that the prints from DUSTIN LEWIS that were found on the subject storage units are properly within the scope of this Court's ruling regarding the suppression of the evidence. There are numerous photos/videos of MARGAUX ORNELAS, aka, Margaux Shannon Ornelas and DUSTIN LEWIS pawning and attempting to pawn stolen items from the storage units.

There is a viable and solid criminal case against both DUSTIN LEWIS and MARGAUX ORNELAS, aka, Margaux Shannon Ornelas that exists even after this Court's recent ruling. As such the instant Motion should be denied.

DATED this 9th day of April, 2021.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY /s/DAVID STANTON
DAVID STANTON
Chief Deputy District Attorney
Nevada Bar #03202

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that service of the above and foregoing was made this 9th day of April, 2021, by electronic transmission to:

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BY _____
CELINA LOPEZ
Secretary for the District Attorney's Office

DS/cl/L3

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. DUSTIN LEWIS, **MARGAUX ORNELAS, aka,** Margaux Shannon Ornelas, Defendants.	CASE#: C-19-340051-1 **C-19-340051-2** DEPT. XXIV

BEFORE THE HONORABLE ERIKA BALLOU, DISTRICT COURT JUDGE

WEDNESDAY, APRIL 14, 2021

RECORDER'S TRANSCRIPT OF PROCEEDINGS:
DEFENDANT'S MOTION FOR AN OWN RECOGNIZANCE RELEASE WITH INTENSIVE SUPERVISION

APPEARANCES VIA VIDEO CONFERENCE:

For the State: DAVID STANTON, ESQ.
Chief Deputy District Attorney

For the Defendant Lewis: CAESAR ALMASE, ESQ.

For the Defendant Ornelas: MICHAEL A. TROIANO, ESQ.

RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER

WEDNESDAY, APRIL 14, 2021 AT 8:51 A.M.

THE COURT: Page number 7, State of Nevada versus Dustin Lewis, case number C-19-340051-1 and page number 8, State of Nevada versus Margaux Ornelas, case number C-19-340051-2. Mr. Almase present on behalf of Mr. Lewis via BlueJeans, Mr. Lewis is present via BlueJeans, Mr. Troiano is present via BlueJeans for Ms. Ornelas who is also present via BlueJeans, and Mr. Stanton for the State. I've read all of the motions.

Mr. Almase, I've read the previous motion and the minutes from the previous hearings as well on your matter.

And I've read all of the motions for Mr. Troiano's client. I read the motion for the OR with ISU, the opposition, and the reply to the opposition. Does anybody have anything they'd like to add?

MR. ALMASE: No, Judge, I would like to note, though, as of yesterday afternoon about 3 o'clock, there had been no opposition filed to my motion.

THE COURT: Right, I saw that. I looked at it at. I had it at 4:14 p.m.

MR. ALMASE: Thank you.

THE COURT: Okay?

MR. STANTON: And, Judge, I had this calendared for Mr. Lewis on the 21st for the hearing on this motion. I did have Ms. Ornelas' hearing date actually Monday and I filed an opposition to

that. It is the same, in some sort, response to Mr. Lewis'. Obviously, the vast majority of Mr. Lewis' motion deals with a COVID issue. I'm here only to add any perspective and specific facts to the Court about the claims made by -- in the Ornelas motion and also obliquely in the Lewis motion that somehow this Court's ruling of last week would affect the State's ability to present this case to a jury trial.

THE COURT: Okay. So, as to Ms. Ornelas, I understood your motion about -- I mean, your stance is there's still a lot of evidence, including the surveillance videos and the stills; however, I do think that there's going to be a lot of issues presenting this to a jury with what you've got left, especially considering that the police officers were looking to other people who fit the description at the time.

So, I am inclined to grant the motion, Mr. Troiano's motion for the own recognizance release with intensive supervision. So, Ms. Ornelas is going to be released with intensive supervision.

As to Mr. Lewis, he's not necessarily in the same position as Ms. Ornelas because of the -- because he came back for the violations on the house arrest when he was released previously, Mr. Almase. The -- so, you talked about the fact that, you know, the conviction may be less likely and things of that nature, but one of the factors in NRS 178.4853 is the likelihood of more criminal activity by the person after release. And the issue is, I mean, I understand that everything that he was, you know, brought back on house arrest for was nonviolent and, you know, drug-related issues, but it's still additional, you know, potentially criminal activity. So, Mr. Almase, go ahead and address that.

MR. ALMASE: Well, Judge, as the Court's aware, those were deemed violations, but no new charges were filed against him. And I think what they found there, what they determined in one instance to be a weapon, a single bullet, shouldn't qualify and shouldn't --

THE COURT: But you were discounting all of the six knives that they also mentioned.

MR. ALMASE: I'm sorry?

THE COURT: You're discounting the six knives that they also mention and the fact of the locked room that they couldn't get into.

MR. ALMASE: That is troubling, Judge, but the six knives, there was no description of them.

THE COURT: That's true.

MR. ALMASE: I looked through and there's nothing to say that those were steak knives or ordinary kitchen knives or had any kind of special thing about them. They just noted -- the officer noted that there were knives present. Well, I have knives in my home and I assume the Court does as well. I don't know why that would be such an issue. Now, his drug use certainly --

THE COURT: Just so -- just for your record, I don't cook anything, so no, there are no knives in my house, but that's neither here nor there. Most normal people who actually use a kitchen --

MR. ALMASE: Yes.

THE COURT: -- have knives.

MR. ALMASE: Yes, Judge. I think certainly there -- his admittance to drug use is --

THE COURT: Mm-hmm.

MR. ALMASE: -- cause for concern, but that's -- can certainly be remedied.

THE COURT: Mm-hmm.

MR. ALMASE: And I would submit that given this case and the current posture and my conversations with Mr. Lewis, he certainly understands what's at stake and what's going to be expected of him if he --

THE COURT: Mm-hmm.

MR. ALMASE: -- is released, if he's given this opportunity by this Court to prove himself. And that's really what this case is about. He wants to prove himself. He's stood firm on what he's believed in this case. And it was unfortunate that he ran into some trouble when he was released --

THE COURT: Mm-hmm.

MR. ALMASE: -- but he's in a different position now.

Certainly with the status of the case and the issues that we have and the fact that this is certainly -- this is going up on appeal, it's going to take some time before this whole process unwinds, I would ask the Court to give him this opportunity, Judge. And I think he understands that -- what's at stake and he's going to be well-behaved while out.

THE COURT: Okay. Mr. Stanton, I know that you hadn't had an opportunity to reply, so go ahead and reply orally.

MR. STANTON: Well, because, Judge, look, the exact same

circumstance occurred when he was released before. He was on a rather high bail because, as this Court has reviewed, a number of the watches that were stolen have still not been recovered and it is -- that dovetails to the point about what this case remains after the court ruling. And put aside the issue of the appeal for a moment. Both Defendants are identified visually on very clear digital surveillance video inside the storage unit along with the items that are specifically delineated by the victims seen being carried by both victims in that videotape to include the wheelchair that was discovered close to the Defendants' tent that now this Court is certainly familiar with in the pretrial litigation in the motions of last week.

In addition, after this, the -- there is numerous video and still photos and testimony supporting and identifying both Defendants as attempting to and successfully pawning the stolen property from these storage units.

So, when -- I'm at a loss really to understand that the Court's ruling affects bail as it relates to this Defendant, frankly, both, but certainly this Defendant, when the exact same argument what -- that Mr. Almase made, you could have cut and pasted that when he was granted his previous release after the State requested a very high bail in attempts to further their recovery of the outstanding watches that still to this day are outstanding. And we'd ask that you deny it as to Mr. Lewis.

THE COURT: Mr. Almase, why should I be comfortable granting him an OR release when we know that he was unsuccessful when he had house arrest, we know that there are still outstanding

watches which could make him a flight risk? I just -- frankly, I just don't --

MR. ALMASE: Well, as to --

THE COURT: -- find that he's in the same position as Ms. Ornelas because she hasn't been released with problems.

MR. ALMASE: Judge, with regard to the watches, I would note that Judge Miley reduced his bail and this was --

THE COURT: Right.

MR. ALMASE: -- Mr. Stanton's argument last time --

THE COURT: Mm-hmm.

MR. ALMASE: -- that he's a flight risk, he's going to -- he's got all this access to millions of dollars because of the watches. Well, that simply isn't true. Ten thousand dollars -- it was reduced to $10,000.00; it was posted by his family, the bond.

THE COURT: Mm-hmm.

MR. ALMASE: And he stayed here in Clark County.

THE COURT: Mm-hmm.

MR. ALMASE: And he's going to return to the same apartment that he had been at where they were able to find him. He understands what's at stake.

And what's changed here is the likelihood of his conviction. And as much as Mr. Stanton would like to protest, it -- it's simply the law of this case that the identity -- the issue of identity with a suppression is very much in question or perhaps not even able to be proven before a jury. That remains to be seen.

Again, my client understands what's at stake. He knows he made a mistake last time. And I feel he can be trusted with an OR with low-level or mid-level electronic monitoring. He's going back to the same apartment where he was before, they're familiar with it, if he qualified for house arrest before. On all of this I would submit, Judge.

THE COURT: Okay. Because there is the issue of the identity being able to be established, because there is the outbreak of COVID that is currently happening in the jail where we've had a number of people on quarantine and I know that there are probably, I think, four units on quarantine right now, I am going to release him with mid-level electronic monitoring. The bail will remain the same. I think it was already posted and remains in it. So, he can be --

MR. ALMASE: Yes.

THE COURT: -- released as -- with mid-level electronic monitoring.

And I think Mr. Troiano had something else he wanted to add.

MR. TROIANO: Your Honor, can you hear me?

THE COURT: Yes.

MR. TROIANO: Just two things. One, I just wanted to pass on to Ms. Ornelas, she's been in custody for 27 months, please contact me as soon as you get out. It's vitally important you get ahold of me; otherwise, you're going to be right back into custody. Do you hear that, Margaux?

DEFENDANT ORNELAS: Yes.

MR. TROIANO: Okay.

And then secondly, for Your Honor, just briefly, I know you read my reply and the State mentioned again today in their arguments these photos, videos, I've been on the case since January, 2019, have yet to receive any of them. If the Court could just please order the State produce those in a timely fashion, I would appreciate that.

THE COURT: We do --

MR. ALMASE: And I would join in Mr. Troiano's request.

THE COURT: We do have a jury trial currently scheduled for May 24th. I understand that that might not be going, but I would still order the State to disclose the video and stills that they've got that they've made reference to in the opposition to the OR motion.

MR. ALMASE: Thank you, Judge.

THE COURT: Thank you.

[Proceedings concluded at 9:03 a.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Trisha Garcia
Court Transcriber