

STATE OF MARYLAND	*	IN THE
Applicant	*	CIRCUIT COURT
v.	*	FOR
ADNAN SYED	*	BALTIMORE CITY
Respondent	*	CASE NOs. 199103042-46
	*	PETTITION NO. 10432
* * * * *		

**STATE’S RESPONSE TO MOTION FOR RELEASE**

The State of Maryland, by its attorneys, Brian E. Frosh, Attorney General of Maryland, and Charlton T. Howard, Chief Special Counsel, Office of the Attorney General, hereby files this response to Respondent Adnan Syed’s motion for release pending appeal. The State respectfully submits that, because Syed remains convicted and sentenced to life in prison for the premeditated strangulation of his 18-year-old ex-girlfriend, and because the order granting Syed post-conviction relief on a single ground has been stayed and is the subject of a pending appeal, Syed’s motion should be summarily denied. Under these circumstances, no hearing is required or appropriate.

The State has set forth in detail the factual background and procedural history of this case in its prior pleadings. For consistency and ease of reference, the State directs this Court (a) to the “Procedural History” in its Application for Leave to Appeal for a chronology of the proceedings to date, *see* Appendix 1 at 6-13 (filed August 1, 2016); and (b) to the “Statement of Facts” in its opening appellate brief (Brief of Appellee) for a summary of the overwhelming evidence presented by the prosecution at trial, *see* Appendix 2 at 2-10 (filed May 6, 2015).<sup>1</sup>

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<sup>1</sup> The State requests that all pleadings cited in this Response be incorporated by reference into the record. Considering the stay in this case, no hearing is required to address the secondary issue of appropriate conditions of release. Should Syed appeal a denial of his motion, the extant record and the extensive written pleadings by Syed and the State are sufficient for review.

The starting premise of Syed's motion for release is that he has been granted a new trial and is now therefore in a pretrial posture. This is misleading and legally untrue. As the State said in its request to stay the order granting Syed post-conviction relief, in February 2000, a jury convicted Syed of first-degree murder and kidnapping, for which he was sentenced to life in prison plus 30 years on June 6, 2000. Syed's motion for a new trial, his direct appeals, and original post-conviction petition were denied. While Syed's appeal of the denial of his post-conviction petition was pending before the Court of Special Appeals, a limited remand was ordered, and a hearing was held in February 2016. On June 30, 2016, the post-conviction court granted Syed's request for post-conviction relief on a single ground, vacated his conviction, and granted his request for a new trial.

But, on July 21, 2016, the State notified the Court of its intention to file an application for leave to appeal and requested, pursuant to Section 7-109(b)(2) of the Criminal Procedure Article of the Maryland Code, that the Court "stay its order vacating Petitioner's convictions and granting Petitioner's request for a new trial, pending further resolution of these matters by the Court of Special Appeals." *See* Notice of Intent to File Application for Leave to Appeal and Request to Stay Order Granting Post-Conviction Relief at 1-2. On August 2, 2016 (the day after the State filed its application for leave to appeal), the post-conviction court granted the State's request for a stay. *See* Appendix 3. As the Order noted, the court issued a stay of its prior order upon consideration of the State's notice of intent to seek an appeal and "no opposition having been filed by [Syed]." *Id.*

Thus, the earlier Order of June 30, 2016, vacating Syed's conviction was stayed by the post-conviction court, and the Order of August 2, 2016, was neither opposed by Syed nor has its validity or effect since been challenged. Syed therefore remains a convicted murderer and kidnapper and continues to serve his sentence of life in prison — and because of the stay, he is not in a pretrial posture awaiting trial nor is he cloaked in the presumption of innocence.

Even if the post-conviction court had considered setting a bail pursuant to Section 7-109(b)(2) when the State indicated its intent to appeal, there is no reason why Syed's bail status should be different than what it was when he was previously awaiting trial, *i.e.*, when a court, fully aware of Syed's correct age, U.S. citizenship, and lack of criminal record, ordered that he be denied a bail. While Syed is correct that the court presiding over his initial bail review hearing on March 1, 1999, mistakenly believed Syed was 18 years old, what Syed does not mention is that this mistake was corrected at the review of that bail determination on March 31, 1999. At that hearing, the Department of Pretrial Services told the court that Syed was a 17-year-old American citizen with no prior criminal record. (T. 3/31/99 at 5). Pretrial services also advised the court that it recommended Syed be held without bail — a recommendation that is consistent with the normal outcome in bail hearings in Baltimore City for a person charged with first degree murder and kidnapping.

In fact, that bail decision was made before evidence later emerged indicating that Syed had engaged in witness tampering by instructing a classmate he barely knew to type a letter for him as part of a false alibi the State contends Syed tried to manufacture from jail. *See* State's Conditional Application for Limited Remand at 19-22 (filed August 22, 2016, included as Appendix 4). It was also before the judge who presided over Syed's trial, observed the performance of his defense attorney, and considered the evidence and witnesses against him, sentenced him to life in prison. Significantly, that judge also commented on Syed's dangerous capacity, even then, to manipulate those around him:

Judge Heard: The evidence was, there was a plan, and you used that intellect. You used that physical strength. You used that charismatic ability of yours that made you the president or the -- what was it, the king or the prince of your prom? You used that to manipulate people. *And even today, I think you continue to manipulate even those that love you, as you did to the victim.* You manipulated her to go with you to her death.

*See* Appendix 5 (T. 6/6/00 at 16) (emphasis added); Cond. App. for Limited Remand at 34 n.29.

Aside from Syed's flawed premise that he is no longer a convicted felon serving a life sentence for premeditated, first-degree murder and kidnapping, Syed's filing contains his latest round of newly-minted arguments and affidavits concerning the underlying facts of his conviction. The State disputes Syed's characterization of the facts, law, and prior proceedings and is prepared to address those relevant to the pending appellate issues and defend Syed's conviction should the Court of Special Appeals grant the State's application for leave to appeal. But the State declines to encourage Syed's strategy of piecemeal litigation, manufacturing and inserting newfound claims in whatever his latest petition, no matter whether those claims are procedurally proper or factually relevant. A bail review is no forum to introduce new expert theories or disparage a witness whose testimony was apparently credited by the jury by listing allegations of unrelated subsequent incidents that may or may not be admissible at a retrial. And a court's evaluation of whether release pending appeal is appropriate is not an occasion to gauge the strength of the prosecution's case, consider the veracity of a defense expert's contrary opinion, or parse the credibility of witnesses. *Compare* Maryland Rule 4-216(d)(1)(A) (directing bail court to consider the "nature" of the charges and evidence, as well as the potential sentence, but not the "weight of the evidence") *with, e.g., United States v. Gebro*, 948 F.2d 1118, 1121 (9th Cir. 1991).<sup>2</sup> Indeed, conducting the mini-trial Syed invites would impose an impossibly onerous burden upon courts that already handle 153,000 bail reviews each year.<sup>3</sup>

This is particularly true where the defendant has been convicted after a full trial by jury conducted under the watchful eye of a judge. *See* Maryland Rule 4-349(b) (stating that, after

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<sup>2</sup> Unlike Maryland's bail provisions, federal law specifically authorizes courts to consider "the *weight* of the evidence against the defendant," in addition to the nature and circumstances of the charged offense. But even there, federal courts have held that this factor "is the least important, and the statute neither requires nor permits a pretrial determination of guilt." *United States v. Gebro*, 948 F.2d 1118, 1121 (9th Cir. 1991).

<sup>3</sup> Stephen I. Platt and Kristine Modica, "The Separation of Powers in Maryland and the Right to Counsel – Checks and Balances or Weights and Measures," *Maryland Bar Journal*, January 2015.

conviction, “[t]he burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.”). Although the weight of the evidence prior to trial is not germane to a bail review, Syed’s conviction was then, and continues to be today, supported by overwhelming evidence of guilt. The evidence presented by the prosecution to convict Syed of killing his ex-girlfriend less than two weeks after her first date with a new romantic interest included among other things:

... the testimony of Wilds who helped Syed bury the victim and later led police to the victim’s car; witnesses who spoke of Syed’s possessive behavior toward Lee, his ploy to get a ride from Lee after school on the day she disappeared, and his presence with Wilds that afternoon and evening; toll records and tower location data corresponding to Syed’s cell phone, which corroborated the testimony of Wilds and other witnesses, and placed Syed at Leakin Park that night a short distance from where Lee’s corpse was unearthed; a map page to Leakin Park, ripped from a map book with Syed’s palm print on the back cover, both left in Lee’s abandoned car; the diary of Hae Min Lee recounting the decline of her relationship with Syed and the bloom of her love for Cliendinst; a letter seized from Syed’s bedroom, written by Lee imploring Syed to respect her wishes and move on, with the ominous words “I’m going to kill” written in a separate script on the back side of the note; as well as Syed’s peculiar conduct after the murder and his incongruous statements to police.

Appellee’s Brief at 3 (citations omitted).

In an amicus brief recently filed in support of the State’s appeal, the State’s Attorneys for twenty-one Maryland counties recently characterized the evidence underlying Syed’s conviction as “crushing” and added that, “the evidence put before the jury in this case is stronger than what is routinely presented against criminal defendants who are tried and rightly convicted and whose convictions are affirmed all the time.” *See* Amicus Brief of State’s Attorneys in Support of Application for Leave to Appeal at 2 (filed October 4, 2016, included as Appendix 6).

An intact conviction for murder should be enough to dispense with Syed’s motion for release. Yet Syed contends that, although he has been charged, convicted, and sentenced to life in prison for the premeditated strangling of his 18-year-old ex-girlfriend, and although the order granting him a new trial has since been stayed and is the subject of a pending appeal, he should nevertheless be released because he is too famous to flee and no longer poses a threat to society

since, under the State's theory, he only wanted to kill one person. See Syed's Motion for Release at 10, 11 n. 4. Syed's argument is as unpersuasive as it sounds. First, by Syed's account, any defendant charged with (or convicted of) a domestic-violence murder is not a danger to society because he has already killed the only person he was interested in murdering. This is offensive and illogical. Most premeditated murders have a targeted victim. A defendant like Syed should not be viewed as less dangerous because he has succeeded in killing the person he most wanted dead.

Second, an inmate's notoriety and access to the financial capital of others can be as much an asset as an obstacle to flight. And, regardless, the State respectfully submits that Syed should not be treated differently than other defendants charged (and, in his case, convicted) of a brutal, first-degree murder. With any defendant even just charged with first-degree murder, an offense punishable by life in prison, the risk of flight and the threat to public safety is substantial. That risk is no less substantial (and likely far greater) where the inmate has been convicted and where the inmate knows with precision what his fate and sentence will be if the State prevails on appeal: a return to life in prison. See *Hilton v. Braunskill*, 481 U.S. 770, 777 (1987) ("The State's interest in continuing custody and rehabilitation pending a final determination of the case on appeal is . . . strongest where the remaining portion of the sentence to be served is long and weakest where there is little of the sentence remaining to be served.").

Syed also now claims, ironically, that he relishes the opportunity to prove his innocence even though one of his earlier claims — which remains pending on appeal — is that his attorney was constitutionally ineffective for failing to honor his request to solicit and secure a plea agreement for him. Syed's other answer that he may soon be eligible for parole also does nothing to strengthen his argument. The mere possibility of release on parole at some future hearing years away, by a commission charged with examining many factors besides an inmate's ability to avoid committing crimes while under close supervision in prison, is hardly persuasive. And, from the State's

perspective, Syed is an exquisitely unsuitable candidate for parole since he refuses to accept responsibility for his brutal murder of a young girl, has never apologized for his horrifying actions during and after the murder, baselessly implicates others in pursuit of his appeals, and clings stubbornly to the fiction that he is the sympathetic victim of a string of coincidences or a coordinated ploy to frame him for a murder he did not commit. The opportunity for redemption can only follow taking responsibility for one's actions. Since Syed has steadfastly refused to do so, his claim that the prospect of parole eligibility will keep him from fleeing is also unconvincing.

Because the order granting Syed a new trial has been stayed pending appellate resolution of Syed's post-conviction petition, and because Syed has been charged, convicted, and sentenced to life in prison for premeditated murder, there remains a risk of flight and a risk to public safety. For these reasons, the State respectfully submits that Syed's motion should be summarily denied.

Respectfully Submitted,

BRIAN E. FROSH  
ATTORNEY GENERAL

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Charlton T. Howard  
Chief Special Counsel  
Office of the Attorney General

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 7<sup>th</sup> day of November, 2015, a copy of the State's Response to Motion for Release was mailed, first-class, postage pre-paid, to:

C. Justin Brown, Esquire  
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