



Joey D. Moya

**IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

STATE OF NEW MEXICO,	)	
Plaintiff-Petitioner,	)	
	)	No. S-1-SC-38743
vs.	)	Ct. App. No. A-1-CA-39561
	)	Dist Ct. No. D-202-LR-2021-000126
JESSE MASCARENO-HAIDLE,	)	
Defendant-Respondent.	)	

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DEFENDANT'S ANSWER BRIEF

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## TRANSCRIPT REFERENCES

The pretrial detention hearing on February 19, 2021, was stenographically recorded, and the State submitted a written transcript as an attachment to its Expedited Petition for Writ of Certiorari.

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## SUMMARY OF PROCEEDINGS

### I. Nature of the Case

The State's request to detain an individual should never be taken lightly. A person charged with a crime is innocent until proven guilty. Accompanying the presumption of innocence is the fundamental principle that a person is entitled to their freedom pending trial and an adjudication of guilt. *U.S. v. Salerno*, 481 U.S. 739, 754, 107, S.Ct. 2095, 2105 (1987) ("In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."). Thus, judicial decisions regarding pretrial release and detention require a nuanced, fact-based analysis that considers the current charges, the history and characteristics of each particular defendant, and countless other individualized factors. Every case is different because every defendant is different. Accordingly, New Mexico rejects a broad, categorical approach to judicial detention decisions in favor of a case-by-case individualized approach. New Mexico law has long placed the authority to determine these case-specific and individualized decisions regarding bail and pretrial release in the hands of the district courts.

Following the adoption of New Mexico's bail reform constitutional amendment in 2016, and New Mexico's overall rejection of a money-bond pretrial release system, the authority of the district courts regarding pretrial release decisions has become an even more crucial aspect of the criminal justice system. Under Article II, Section 13 of the New Mexico Constitution, and Rule 5-409

NMRA, the State may seek pretrial detention, and the courts may grant the request, when the State presents sufficient evidence to show that a defendant poses a threat to the community, and that there are no conditions of release that can reasonably protect the safety of the community.

The State's request for this Court to invalidate the district court's order denying the pretrial detention motion in this case would improperly limit the discretion of the district courts to consider all relevant factors for and against detention and fashion tailored conditions of release based on the unique characteristics of each case and defendant. The district court in the present case heard evidence of the allegations against the defendant, Jesse Mascareno; reviewed Mr. Mascareno's total lack of criminal history, his age, a Pretrial Services Public Safety Assessment ("PSR") recommending release on personal recognizance; and noted evidence of Mr. Mascareno's compliance with pretrial release conditions thus far. At the time of the hearing he was employed and planning to pursue his GED. After the hearing, the district court denied the State's petition for pretrial detention. The order denying the State's detention petition was based on substantial evidence and was well within the district court's discretion. For these reasons, this Court should affirm the district court's order as well within its discretion.

## **II. Course of Proceedings and Disposition Below**

This matter is before the Court on the State's Rule 12-204 appeal of a New Mexico Court of Appeals order affirming the Second Judicial District Court's denial of the State's petition for pretrial detention.

On January 29, 2021, the State filed a Criminal Complaint – Arrest Warrant Affidavit in Bernalillo County Metropolitan Court Case Number T-4-FR-2021-000430 (“First Complaint”) charging Mr. Mascareno with one count of residential burglary, one count of unlawful taking of a motor vehicle, and one count of receiving or transferring a stolen motor vehicle. The First Complaint was prepared by Albuquerque Police Department (“APD”) Detective Jason Allred and approved by Deputy District Attorney Natalie Lyon. The First Complaint documented Detective Allred's investigation into a series of burglaries between July 2020 and January 2021. The State alleges that Mr. Mascareno was involved in around 80 burglaries. However, the charges arose from only one of these incidents that allegedly occurred on November 19, 2020.

On January 29, 2021, Mr. Mascareno was arrested at his home by APD officers. He was cooperative and gave a lengthy statement to Detective Allred following the arrest. The State alleges that Mr. Mascareno admitted to involvement in 26 of the alleged incidents.

On January 30, 2021, the State filed a motion for pretrial detention and the case was transferred to the Second Judicial District Court under Case Number D-202-LR-2021-00085. At the hearing on February 3, 2021, the State relied substantially on the allegations contained in the First Complaint regarding the pattern of burglaries. The State's arguments at the hearing largely mirrored the arguments offered in its Brief in Chief, and focused on the large number of alleged incidents. At the Defense's request, the Court also considered Mr. Mascareno's lack of criminal history and the PSA recommendation of release on personal recognizance. The Court denied the State's motion for pretrial detention, finding that while the State had demonstrated that Mr. Mascareno may pose a danger, the State had failed to show by clear and convincing evidence that no conditions of release could ensure the safety of the community. An order setting conditions of release was filed on February 3, 2021, imposing the highest level of supervision by pretrial services and a strict curfew. The State did not seek appellate review of the February 3, 2021 order denying the motion for pretrial detention.

Mr. Mascareno complied with all conditions of release. He reported to pretrial services as ordered, was in regular contact with his pretrial services officer, and maintained excellent communication with his attorneys.

On February 5, 2021, the State filed a Criminal Complaint in Bernalillo Metropolitan Court Case Number T-4-FR-2021-00533 ("Second Complaint")



alleging seven felony charges arising from a burglary on December 17, 2021. The Second Complaint was prepared by Detective Allred on February 4, 2021 and approved by Deputy District Attorney Lyon the same day. The Second Complaint's narrative was copied word-for-word from the narrative portion of the First Complaint. The only information in the Second Complaint that was not included in the First Complaint is Detective Allred's account of his January 29 interview with Mr. Mascareno and APD's subsequent recovery of property from the December 17 burglary. In every other respect, the Second Complaint either exactly mirrors or abbreviates the narrative of the First Complaint, and adds new charges.

On February 12, 2021, APD arrested Mr. Mascareno on the Second Complaint. Mr. Mascareno was again cooperative with police. He was arrested at the address that he had previously provided the court during the court-imposed curfew period. He did not attempt to prevent his arrest or interfere with the APD investigation in any way.

On February 12, 2021 the State filed a new petition for pretrial detention based on the charges in the Second Complaint. The case was transferred to the district court under Case Number D-202-LR-2021-00126. At the motion hearing on February 19, 2021, the State again relied on the (mostly duplicative) allegations in the First and Second Criminal Complaints and the prosecutor's proffer that Mr.

Mascareno was a suspect in around 80 total burglaries. The State also presented testimony from Detective Allred regarding his investigation into the series of burglaries discussed in both complaints. Detective Allred also testified regarding his January 29 interview with Mr. Mascareno and the recovery of property allegedly stolen during some of the burglaries. During cross-examination, Detective Allred testified that, following the denial of the first petition for pretrial detention, Detective Allred and Deputy District Attorney Lyon decided to file additional charges specifically to gain another opportunity to incarcerate Mr. Mascareno under Rule 5-409. **[Tr. 2/19/21 at 42]** When asked by defense counsel if Mr. Mascareno was cooperative during the arrest and interrogation, Detective Allred answered “Definitely, yes.” **[Tr. 2/19/21 at 31]**

The Court also took testimony from Jessica Etoll, a licensed master social worker employed by the Law Office of the Public Defender (“LOPD”). Ms. Etoll testified that she was working with Mr. Mascareno to develop a plan for his release. **[Tr. 2/19/21 at 55]** She testified that Mr. Mascareno had stable housing with his mother and had secured employment. Ms. Etoll also testified that she would assist Mr. Mascareno in obtaining his GED. **[Tr. 2/19/21 at 56]** She informed the district court that following Mr. Mascareno’s release, she would meet with Mr. Mascareno to conduct a “needs assessment” to guide further social work through LOPD. **[Tr. 2/19/21 at 56]**

Following the presentation of evidence, the Court heard argument from both parties. The State argued that the nature of the charges and the strength of the State's evidence of those charges weighed in favor of detention. The State provided no argument or rationale as to why particular conditions of release would be inadequate to protect the community. For instance, the State failed to articulate why a curfew, intense supervision, GPS monitoring, drug testing, counseling, or any other possible conditions would have been ineffective at reducing or eliminating the risk of recidivism.

At the conclusion of the February 19 hearing, the Court again found that the State had failed to present clear and convincing evidence that there are no conditions of release that can reasonably protect the community. The Court, admitting into evidence the order denying the motion for pretrial detention in Case Number D-202-LR-2021-00085, reasoned that a prior judge presented with essentially the same evidence, including the exact same allegation that Mr. Mascareno was involved in around 80 burglaries, had already found and ordered that the State had failed to meet its burden of proof under Rule 5-409. The court also considered Mr. Mascareno's total lack of criminal history and the PSA recommendation for release on personal recognizance. The Court noted that Mr. Mascareno, who was only 18 years old at the time of the allegations, "is very

young.” Finally, the Court noted that Mr. Mascareno had complied with all conditions of release.

The Court denied the State’s second motion for pretrial detention and set strict conditions for Mr. Mascareno, filing a second order setting conditions of release on February 22, 2021, adding GPS monitoring. The Court explained that a strict curfew and GPS monitoring could address the concerns raised by the nature and circumstances of the present charges by prohibiting Mr. Mascareno from leaving his home during the time of day that the alleged nighttime charges occurred.

Mr. Mascareno’s current conditions of release include: supervision by pretrial services at the highest level, drug and alcohol testing, mental health and substance abuse treatment and counseling, and a curfew enforced by GPS monitoring. As of the filing of this brief, Mr. Mascareno is still in total compliance with all conditions of release, is currently employed, and is enrolled in classes at the Central New Mexico Community College where he is working toward a GED. Mr. Mascareno is also working with his LOPD social worker, Jessica Etoll, on services and treatment options.

## ARGUMENT

### **I. The district court did not err as a matter of law.**

The district court correctly applied the three-step legal analysis required under Rule 5-409. After applying the correct analysis to the facts and evidence presented at the detention hearing, and considering relevant factors under Rule 5-409, the district court denied the State's motion for pretrial detention, finding that the State had failed to prove by clear and convincing evidence that no conditions of release will reasonably protect the community. The order denying the motion was legally sound and well within the district court's discretion.

#### **A. This Court should review for abuse of discretion.**

Rule 12-204(D)(2)(b) NMRA provides that a district court pretrial detention decision shall be set aside only if it is shown that the decision (1) "is arbitrary, capricious, or reflects an abuse of discretion," (2) "is not supported by substantial evidence," or (3) "is otherwise not in accordance with law." *State v. Groves*, 2018-NMSC-006, ¶ 24. "An abuse of discretion occurs when the court exceeds the bounds of reason, all the circumstances before it being considered." *State v. Brown*, 2014-NMSC-038, ¶ 43, 338 P.3d 1276 (internal quotation marks and

citation omitted). Similarly, a decision “is arbitrary and capricious if it is unreasonable or without a rational basis, when viewed in light of the whole record.” *N.M. Att’y Gen. v. N.M. Pub. Reg. Comm’n*, 2013-NMSC-042, ¶ 10, 309 P.3d 89 (internal quotation marks and citation omitted). “Substantial evidence is such relevant evidence that a reasonable mind would find adequate to support a conclusion.” *State ex rel. King v. B&B Inv. Grp., Inc.*, 2014-NMSC-024, ¶ 12, 329 P.3d 658 (internal quotation marks and citation omitted).

**B. The district court acted within its discretion and did not err as a matter of law by denying the State’s Expedited Motion for Pretrial Detention.**

In *State v. Ferry*, 2018-NMSC-004, ¶ 2, 409 P.3d. 918, this Court summarized the analysis for appellate review of a district court’s detention decision, explaining:

Discretion is the authority of a district court judge to select among multiple correct outcomes. Appellate courts analyze a district court judge's discretionary decisions by first, without deferring to the district court judge, deciding whether proper legal principles were correctly applied. If proper legal principles correctly applied only lead to one correct outcome there is no discretion for the district court judge to exercise. If the district court judge arrives at the only correct outcome, the district court judge is affirmed; otherwise the district court judge is reversed. If proper legal principles correctly applied may lead to multiple correct outcomes, deference is given to the district court judge because if reasonable minds can differ regarding the outcome, the district court judge should be affirmed.

*Ferry*, 2018-NMSC-004, ¶ 2.

**1. The district court correctly applied New Mexico law in its denial of the State’s pretrial detention motion.**

Article II, Section 13 provides that “[b]ail may be denied by a court of record pending trial for a defendant charged with a felony if the prosecuting authority ... proves by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community.” This Court previously held that the State and the Defense “may offer evidence in many different forms during a detention hearing. The litigants may introduce live testimony and proffer documentary evidence in a form that carries sufficient indicia of reliability, and the Rules of Evidence do not apply.” *State v. Ferry*, 2018-NMSC-004, ¶ 3. Pursuant to Rule 5-409(F)(6) NMRA:

The court shall consider any fact relevant to the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release and any fact relevant to the issue of whether any conditions of release will reasonably protect the safety of any person or the community.

This Court has further stated that the State “has the burden of proving by clear and convincing evidence that (1) the defendant poses a future threat to others or the community, and (2) no conditions of release will reasonably protect the safety of another person or the community.” *Ferry*, 2018-NMSC-004, ¶ 3. In assessing the State’s petition for detention in a criminal case, the Court must make three determinations:

(1) which information in any form carries sufficient indicia of reliability to be worthy of consideration, (2) the extent to which that information would indicate that a defendant may be likely to pose a threat to the safety of others

if released pending trial, and (3) whether any potential pretrial release conditions ‘will reasonably protect the safety’ of others, as required by the new constitutional standard in Article II, Section 13.

*State v. Groves*, 2018-NMSC-006, ¶ 29, 410 P.3d 193 citing *Torrez v. Whitaker*, 2018-NMSC-005, ¶¶ 99-102, 410P.3d 201 (internal quotations omitted).

In *Ferry*, this Court provided additional guidance regarding the State’s burden of proof under Rule 5-409, stating “the nature and circumstances of a defendant's conduct in the underlying charged offense(s) may be sufficient, despite other evidence, to sustain the State's burden of proving by clear and convincing evidence that the defendant poses a threat to others or the community.” 2018-NMSC-004, ¶ 6. However, the *Ferry* Court made clear that “[i]f the State meets this initial burden of proof the State must still prove by clear and convincing evidence, under Article II, Section 13, that “no release conditions will reasonably protect the safety of any other person or the community.” *Id.* In assessing this final prong of the analysis, the *Ferry* Court noted that a trial judge may consider a wide array of evidence. *Id.* ¶ 6 (“The potential evidence of a person's dangerous inability or refusal to abide by the directives of an authority figure are so variable that it is difficult to catalog all of the circumstances that might satisfy the State's burden of proof.”). For instance, “the State may introduce evidence of a defendant's defiance of restraining orders; dangerous conduct in violation of a court order; intimidation tactics; threatening behavior; stalking of witnesses, victims, or victims' family



members; or inability or refusal to abide by conditions of release in other cases.”  
*Id.* The *Ferry* Court made clear that district courts “must not automatically consider any one factor to be dispositive in pretrial detention hearings.” *Id.* ¶ 7.

In the present case, the district court considered a wide array of factors prior to issuing an order, including: the State’s proffer of Mr. Mascareno’s alleged lawlessness, Mr. Mascareno’s lack of criminal history, the district court’s prior order denying the State’s first motion for pretrial detention, Mr. Mascareno’s compliance with conditions of release in Case Number D-202-LR-2021-00085, Mr. Mascareno’s young age and compliance with law enforcement throughout the case, and the resources available to Mr. Mascareno through representation by LOPD. After weighing the evidence, the District Court found that the State had established that Mr. Mascareno may be likely to pose a threat to the community, but that the State had not shown by clear and convincing evidence that there were no conditions of release that could reasonably ensure the safety of the community.

The State asks this Court to reverse the district court’s denial of the pretrial detention motion on the grounds that the district court misinterpreted this Court’s previous guidance regarding the Rule 5-409 analysis. Specifically, the State contends that the district court was required to find that the nature and circumstances of the charges in this case established that no conditions of release

can protect the community. The State’s argument misstates both the law and the court record in this case.

First, the legal question raised in the State’s appeal—whether the nature and circumstances of the present charges may be sufficient, alone, to sustain the State’s burden to prove that no release conditions will reasonably protect the community—is itself a red herring. Nothing in the *Ferry* decision prohibits a district court from considering the nature of the instant allegations in assessing a defendant’s ability or inability to comply with conditions of release. In fact, New Mexico district courts routinely consider the nature and circumstances of the charged offense as one of many factors when analyzing the “conditions of release prong” of the Rule 5-409 analysis and grant a substantial number of pretrial detention motions filed against first-time offenders. To the extent that the State suggests that district courts mistakenly believe they cannot consider the current charges for the final prong, there is no evidence to support the suggestion. Rather, it appears the State is asking for a departure from prior precedent that would *obligate* district courts to give the nature of the charges dispositive effect. By asserting that the district court erred as a matter of law in this case, the State essentially advocates for the exact analytical error that this Court has cautioned against: focusing on the “category or punishability” of the charged crime rather than the case and defendant specific inquiry that should guide a district court’s

decision under Rule 5-409. *See Groves*, 2018-NMSC-006, ¶ 33 (“We emphasize that the relevant consideration for a court is not the category or punishability of the charged crime”); *Torrez*, 2018-NMSC-005, ¶ 101 (“Detention decisions, like release conditions, should not be based categorically on the statutory classification and punishability of the charged offense. But the particular facts and circumstances in currently charged cases...”). In essence, Rule 5-409 permits the district court to consider the nature and circumstances of the present charges to answer both questions about dangerousness and conditions of release, but the district court still must make separate inquiries to determine whether the evidence, in any form, satisfies both prongs of the analysis.

More importantly, the legal question raised in the State’s appeal is not even at issue in this case. The district court *did* consider the nature and circumstances of the charges, but instead of considering them in isolation, it did so in addition to other relevant and enumerated factors under Rule 5-409(F). After considering and balancing these factors, the district court found that the State failed to meet its burden of proof by clear and convincing evidence. The district court correctly applied the law and did not abuse its discretion.

The district court did not find that State failed to meet its burden of proof because the nature and circumstances of charged crimes alone *may never* sustain the state’s burden proof, but that the nature and circumstances of *these charges*

were insufficient to meet the State's burden *in this case*, especially in light of other evidence supporting release under stringent supervision. The district court correctly applied New Mexico law in making its determination. The district court first determined what evidence presented by the parties bore a sufficient indicia of reliability such that they should be examined, then considered whether that evidence established that Mr. Mascareno may pose a threat to others, and finally considered whether the information presented showed that no conditions of release could reasonably ensure the safety of the community. *See Groves*, 2018-NMSC-006, ¶ 29. After engaging in each prong of the analysis, the district court found that the State had failed to carry its burden under the final prong.

Finally, the State's Brief in Chief apparently advocates for the application of federal law to questions of detention in New Mexico. Setting aside the fact that New Mexico has consistently rejected the adoption of legal presumptions that shift the burden of proof in pretrial detention determinations, it is unlikely that pretrial detention would have been granted or even requested in this case were this matter pending in federal court. *See* 18 USCA § 3142(f) (explaining the grounds on which pretrial detention may be sought and granted). The charges here are not crimes of violence or otherwise enumerated as crimes where detention is permitted, and there are no facts suggesting Mr. Mascareno is a flight risk. This Court should reject the

State's argument that federal authority establishes that the district court erred in this case or that it is persuasive in any way.

**2. The district court acted within its discretion in denying the State's motion for pretrial detention.**

The district court applied the correct legal principles governing the analysis under Rule 5-409, and arrived at a reasonable outcome that was supported by substantial evidence. The district court heard witness testimony, reviewed the evidence offered by the parties, and weighed the required factors in coming to a well-reasoned decision. The State asks this Court to second-guess two separate district court judges and substitute its judgement wholesale. Accordingly, this Court should defer to the district court's judgement and affirm the denial of the pretrial detention motion. *See Ferry*, 2018-NMSC-004, ¶ 2. The district court properly considered each factor from Rule 5-409(F) before issuing a decision.

For instance, the district court considered the February 3, 2021 order denying the motion for pretrial detention based on the First Complaint. *See* Rule 5-409(F)(6)(f) (providing that the district court shall consider "whether the defendant has been ordered detained under Article II, Section 13 of the New Mexico Constitution based on a finding of dangerousness in another pending case or was ordered detained based on a finding of dangerousness in any prior case"). At the hearing on February 3, 2021, the district court was presented with essentially the

same allegations as in this case, and found that the State had failed to meet its burden of proof.

Importantly, the State's argument that Mr. Mascareno posed a danger to the community and was not amenable to supervision was exactly same at both hearings. At the February 3, 2021 hearing based on the First Complaint, counsel for the State discussed the exact same December 17, 2021 allegations giving rise to the charges in the Second Complaint. Moreover, Detective Allred's testimony at the detention hearing in this case confirmed that the State's decision to file a second motion for pretrial detention was motivated by the State's desire for another chance at detaining Mr. Mascareno related to the same series of burglaries, not because of new evidence of additional lawlessness, or even any new activity at all. This motive is further evidenced by the fact that Detective Allred's January 29, 2021 interview with Mr. Mascareno, the purported source of "new" information supporting the Second Complaint, occurred *prior to the first detention hearing on February 3, 2021*. The district court properly considered the prior order denying pretrial detention as evidence weighing in favor of release in this case.

The district court further acted within its discretion by considering the history and characteristics of Mr. Mascareno that weighed in favor of release. *See* Rule 5-409(F)(6)(c). At the hearing, the district court was presented with information that Mr. Mascareno had stable housing, employment, and was working

on a needs assessment and release plan with a LOPD social worker. The district court also noted Mr. Mascareno's young age. The court reasonably concluded that these factors indicate an amenability to supervised release. Under Rule 5-409(F), the district court was required to consider Mr. Mascareno's personal characteristics and it was not an abuse of discretion for the district court to do so in this case.

It was also soundly within the district court's discretion to consider the PSA generated for this case. *See* Rule 5-409(F)(6)(g) (providing that the district court shall consider "any available results of a pretrial risk assessment instrument approved by the Supreme Court for use in the jurisdiction..."); *Groves*, 2018-NMSC-006, ¶ 40, 410 P.3d 193 ("The PSA is a nationally recognized scientifically validated risk assessment instrument that courts in an increasing number of jurisdictions use as an aid, though never as the only factor, in making detention and release decisions."). The PSA reflected Mr. Mascareno's lack of criminal history, reporting that Mr. Mascareno has no prior felony or misdemeanor convictions, no prior violent convictions, and no prior failures to appear. The PSA's recommendation was release on personal recognizance.

Finally, the court did not abuse its discretion by considering Mr. Mascareno's compliance with conditions or release following the denial of the first motion for pretrial detention. The State suggests that Mr. Mascareno's period of compliance, because it was brief, lacks predictive value in assessing the likelihood

of future performance on conditions or the risk of recidivism. The State's argument fails to appreciate a few essential points: first, not only did Mr. Mascareno not reoffend after release, he reported to pretrial services as ordered, contacted his attorneys, and began working with a LOPD social worker. By reporting to pretrial services, he submitted to supervision at the highest level including mandatory drug testing and treatment. Second, his compliance with conditions of release, including his curfew, allowed law enforcement officers to take him into custody at his residence without issue when he was arrested on the Second Complaint. Thus, while Mr. Mascareno's period of compliance on supervised release was brief, it demonstrated both Mr. Mascareno's ability and willingness to comply with court-ordered release conditions and the efficacy of the conditions at ensuring community safety. Mr. Mascareno's record of compliance on conditions of release was properly considered by the district court. As noted above, since denial of the second motion, Mr. Mascareno has continued to comply with his conditions up to the filing of this brief.

The State's argument that "individuals who commit violent crimes do not view laws differently than conditions of release, such that they feel a license to violate one but somehow bound by the other" **[BIC 13]** is not supported by any citations, or indeed anything other than a claim that the conclusion is mandated by "reasonableness." **[BIC 14]** This is nothing more than a circular argument—



claiming the desired conclusion is required only because anything else is unreasonable. Empirical data actually shows that people are most effectively deterred from violating laws by a belief that are likely to be caught—which is only increased during any type of supervision. *See* Valerie Wright, Ph.D., Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment, The Sentencing Project (Nov. 2010), available at <https://www.sentencingproject.org/publications/deterrence-in-criminal-justice-evaluating-certainty-vs-severity-of-punishment/> (“by increasing the certainty of punishment, potential offenders may be deterred by the risk of apprehension” more than by increasing the severity of punishment).

In sum, prior to denying the motion for pretrial detention, the district court considered multiple factors as required by Rule 5-409, including the nature and circumstances of the current alleged offenses in the First and Second Complaints, but found that other factors weighed in favor of release under strict supervision. In doing so, the district court engaged in precisely the kind of individualized analysis required under the law. The district court considered the unique characteristics of the case and the defendant, and crafted an order denying the State’s motion based on the evidence presented by the parties. The district court’s decision to deny the motion for pretrial detention was neither arbitrary nor capricious. The order was not an abuse of discretion. The order denying the State’s pretrial detention motion should be affirmed.

## CONCLUSION

For the foregoing reasons, the Defendant respectfully requests this Court quash its writ or otherwise affirm the order of the district court.

Respectfully submitted,

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## Certification of Service

I hereby certify that on the 3<sup>rd</sup> day of May, 2021, I caused this answer brief to be filed electronically through the Odyssey/E-File & Serve System, which caused opposing counsel to be served by electronic means.

/s/ Noah W. Gelb

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