

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellant,

v.

A-1-CA-_____
D-202-PD-2024-00573

CRISTIAN BENCOMO,

Defendant-Appellee.

**STATE'S MOTION FOR REVIEW OF ORDER DENYING
PRETRIAL DETENTION**

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JURISDICTIONAL STATEMENT

The State moves to appeal from the district court’s order denying pretrial detention **[St. Ex. 3]** pursuant to Rule 12-204 NMRA. The court entered its order on May 15, 2024. The ten-day deadline for taking an appeal would have fallen on May 25. Because May 25 was a Saturday and Monday, May 27 was Memorial Day, this motion to appeal is timely filed on May 28, 2024. *See* Rule 12-204(B). Regardless, the State filed a motion to reconsider in the district court on May 15. That motion tolled the deadline to move to appeal until the court ruled on the motion to reconsider on May 22. *See State v. Suskiewich*, 2014-NMSC-040, ¶ 17 (“[A] motion to reconsider filed within the permissible appeal period suspends the finality of an appealable order or judgment and tolls the time to appeal until the district court has ruled on the motion.”).

FACTS AND PROCEDURAL BACKGROUND

On May 8, 2024, Southwest Charter School held its graduation ceremony at the Convention Center Kiva Auditorium in Albuquerque. **[St. Ex. 1]** The auditorium was filled with young graduates and their parents. **[See 5-14-24 CD 1:44:20-39 (noting that the forum was “very crowded” with children and families present)]**

Victoria Bencomo was there to see her son graduate high school. After the ceremony, she was congratulating her son when she saw Defendant, her stepson, approach her. When she went to hug Defendant, he, without saying anything, produced a gun and shot Victoria in the neck.

James Whenri, a bystander who was also present at the ceremony, heard a loud pop. When he looked over, he saw Victoria throw her arms in the air and collapse. He saw Defendant “lifting his leg as if he was going to stomp her head.” **[St. Ex. 1]** James grabbed Defendant by the belt and pulled him backwards before he could do so. With the help of another bystander, James restrained Defendant until the police arrived and arrested him.

Emergency responders rushed Victoria to the University of New Mexico Hospital. Before surgery, she told officers that Defendant “never said anything to her before shooting her, and there were no issues that she could think of that would cause him to shoot her.” **[Id.]** Thankfully, Victoria survived.

The State charged Defendant with, among other crimes, aggravated battery and moved to detain him before trial under Rule 5-409 NMRA.

[St. Ex. 2] At the hearing, it acknowledged that Defendant did not have any criminal history beyond the charged crimes. It represented that Victoria, who was still in the hospital, was frightened and worried about what would happen if the district court released Defendant. **[5-14-24 CD 1:44:55-1:45:11]** The State argued that there were no conditions of release that would reasonably protect Victoria or the public: Defendant had already shot her in public, without any provocation. Because his seemingly “random” and unprovoked actions had placed “dozens of people in danger,” conditions of release, such as placing him on a GPS monitor, would not protect the community. **[5-14-24 CD 1:51:20-1:52:39]**

The district court agreed that Defendant was dangerous but found that the State failed to prove that there were no appropriate conditions of release. **[St. Ex. 3]** It ordered that Defendant be placed in the Community Custody Program (CCP). The State moved for clarification and reconsideration for two reasons. **[St. Ex. 4]** First, it noted that there was a conflict in the court’s order – only inmates can qualify for CCP, and the court had ordered that Defendant be released. Second, it had obtained a copy of a cell phone video recording of the incident.

At the reconsideration hearing, the court watched the video. Defendant called his grandmother, Marie Bencomo, as a witness. Marie testified that Defendant had lived with her since he was three years old. **[5-22-24 CD 10:22:07-26]** She was willing to supervise him if the court ordered his release and ensure that he complied with any conditions. **[Id. 10:23:20-45]** Defendant had been living with Marie on May 8. **[Id. 10:22:14-20]** She did not know that he had obtained a gun. **[Id. 10:26:10-25, 10:30:23-33]** She did not have any guns in the house and believed that Defendant's brother (who also lived with her) did not have one either. **[Id. 10:30:52-10:31:02]** When the State asked Marie if she had directly questioned Defendant's brother about owning a gun, she responded: "We talk, yes. They know how I feel about guns." **[Id. 10:31:02-07]**

Defendant had last participated in mental health counseling approximately three years before the shooting. **[Id. 10:28:03-30]** When the State asked Marie if she had noticed any signs of Defendant's mental health deteriorating in the years between the end of his counseling and the shooting, Marie responded only by noting that "[Defendant] was very quiet." **[Id. 10:29:53-10:30:06]**

The court again found that there were appropriate conditions of release. It imposed various restrictions, including Level Four supervision through Pretrial Services and a GPS monitor. It ordered that Defendant be confined to his grandmother's house except as needed for medical and legal appointments.

ARGUMENT

A district court may detain a defendant charged with a felony if the State proves by clear and convincing evidence that the defendant “is likely to pose a threat to the safety of others[,]” and that “no release conditions will reasonably protect the safety of any other person or the community.” Rule 5-409(F)(4). This Court will reverse a district court’s decision if it was “arbitrary, capricious, or reflects an abuse of discretion”; was unsupported by substantial evidence; or was “otherwise not in accordance with law.” Rule 12-204(D)(2)(b) NMRA. Although this is a “stringent standard for reversal,” *State v. Anderson*, 2023-NMSC-019, ¶ 39, appellate courts can and do reverse district courts. *See id.* ¶ 61 (reversing a district court’s denial of pretrial detention).

Here, the district court denied the State’s motion for pretrial detention because, even though it recognized that Defendant poses a

danger to the community and to his victim, it believed that it could fashion appropriate conditions of release. This Court should reverse because the district court abused its discretion.

I. The District Court’s Conclusion That There Were Appropriate Conditions of Release Was an Abuse of Discretion.

The district court correctly found that the State proved, by clear and convincing evidence, that Defendant poses “a danger to any person or the community if released.” [St. Ex. 3 p. 7 ¶ 22] The only question for this Court is whether the district court abused its discretion when it found that it could craft conditions of release sufficient to address this danger.

A district court’s decision is arbitrary or capricious when it is “unreasonable or without a rational basis, when viewed in light of the whole record.” *Sais v. N.M. Dep’t of Corr.*, 2012-NMSC-009, ¶ 16, (internal quotation marks and citation omitted). When this Court reviews on this basis, it is “careful not to substitute [its] own judgment” for that of the fact finder below. *Id.* (internal quotation marks and citation omitted). “An abuse of discretion occurs when the ruling is clearly against the logic and effect of the facts and circumstances of the case.”

State v. Smith, 2016-NMSC-007, ¶ 27 (internal quotation marks and citation omitted)

The district court facially considered the enumerated factors under Rule 5-409(F)(6). But the conclusions it reached were in tension with its factual findings, and, in one case, unexplainable.

Below, the evidence was largely uncontested. There was no substantial dispute about what the facts were; the parties differed only on which inferences the court should draw from them. The district court made several factual findings about Defendant’s crime. It noted that Defendant “is alleged to have discharged a firearm in a crowded public place injuring one person and exposing many others to the possibility of being shot” – he acted “without regard for the safety of the public[.]” [**St. Ex. 3 p. 5**] It recognized that he shot his stepmother “without provocation in front of many witnesses and the incident was video recorded.” [**Id.**] Using the present tense, it found that “Defendant *is* a threat to the victim” and “*poses* a danger to the victim.” (Emphasis added.) [**Id. pp. 5 ¶ D, 7 ¶ 22**]

Given these factual findings, the district court’s conclusion that it could address these harms by, for example, putting Defendant on a GPS

monitor and requiring him to live at his grandmother's house, was illogical and without a rational basis. The district court found that Defendant walked into a public place and – while being recorded, and in front of a large number of witnesses – shot his stepmother in the neck without provocation. And, instead of finding that this was a one-off act without the possibility of recurring, the court found that Defendant is a threat and poses a danger to Victoria. A GPS monitor is not sufficient to address the ongoing risk: Defendant shot his stepmother while being recorded in a crowded room during a celebration. He acted without regard for the law or any public perception of him.

Similarly, ordering Defendant to live with his grandmother cannot address Defendant's dangerousness or his disregard for public safety, his stepmother's safety, or the law. Such an order does not change the circumstances that existed when he shot Victoria in the first place. Defendant was living with his grandmother when he decided to shoot Victoria. Defendant's grandmother testified that she would ensure that Defendant would comply with conditions and would not have access to a gun. But her efforts will not keep Victoria or the public safe: she did not

know that Defendant had a gun in the first place and has no enforcement authority over Defendant.

In determining whether proposed conditions will reasonably protect the public, a district court must consider “*not only* whether a defendant is likely to comply with release conditions *but also* the likely consequences to any person or the community should a defendant fail to comply.” *Anderson*, 2023-NMSC-019, ¶ 58 (emphasis added). The second inquiry “is related to, and must be viewed in light of, the magnitude of a defendant’s dangerousness.” *Id.* Here, Defendant endangered a large number of people who were gathered in public celebration of his brother’s accomplishment, and the district court found that Defendant posed a continuing danger to Victoria. The court was required to also consider the likely consequences to Victoria and the community and whether the proposed conditions would suffice. *See id.* Here, where Defendant poses an immense danger, ordering him to be supervised by a person he had already successfully deceived once was unreasonable, illogical and, therefore, an abuse of discretion.

To be sure, a court cannot “rely *solely* on the charged offense to order a defendant’s detention” – a district court must “always conduct a

totality of the circumstances analysis in reaching a decision on pretrial detention.” *Id.* ¶ 60 (emphasis added). But the manner in which a defendant committed an alleged crime is plainly a relevant consideration because it may predict whether conditions of release will protect the public. Here, Defendant committed a potentially lethal crime in public, while being observed, without making any serious effort to escape or evade detection. Indeed, shooting his stepmother in the neck was not enough for Defendant; after shooting her, he lifted his leg in preparation to stomp on her head. Defendant’s actions strongly suggest that he will not be deterred by conditions of release in the same way that an ordinary defendant might be. And the State here did not rely solely on the nature and circumstances of the crime. It also pointed to the inadequacy of the court’s conditions under the facts of the case by arguing that Defendant’s grandmother had shown that she could not appropriately supervise him. Looking beyond “*only* whether [D]efendant is likely to comply with release conditions” to “*also* the likely consequences to any person or the community should [D]efendant fail to comply,” *see Anderson*, 2023-NMSC-019, ¶ 58 (emphasis added), it is apparent from the record that

the court's fashioned conditions of release and, indeed, any conditions of release, will not suffice to keep Victoria or the public safe.

The district court's conclusion that the State failed to present even "some evidence for the court to consider that [Defendant] wouldn't comply with conditions of release" is revealing. **[5-22-24 CD 10:50:02-24]** For one, there was evidence from which the court should have concluded that Defendant would not comply: as discussed above, he committed a brazen crime without any apparent fear of consequences to himself or innocent bystanders, and successfully deceived the person who is now responsible for supervising him. And the State also elicited his grandmother's testimony at the reconsideration hearing, showing that living in her house does not impact his actions. Despite this new evidence, the court did not update or change its reasoning in a new order afterwards. *See Ledbetter v. Webb*, 1985-NMSC-112, ¶ 34, 103 N.M. 597 (stating that, "although [a court's oral statements] may be used to clarify a finding of fact," they "may not provide the basis for reversing that finding"). The court's articulated reasoning either simply ignored evidence or failed to comport with the required analysis. *See Anderson*, 2023-NMSC-019, ¶ 58.

In addition, the district court's conclusions on several of the Rule 5-409(F)(6) factors were even more out of step with its findings. After noting the serious and violent nature of the charges, the court concluded, without explanation, that "the nature and circumstances of the offense do not demonstrate an unlikelihood to comply with conditions of release[.]" [St. Ex. 3 pp. 4-5] But the court found that Defendant committed his crime without provocation, in public, while being recorded. Committing such an act under those circumstances would lead to immediate capture and punishment; Defendant's actions showed his disregard for both any legal consequences and any public perception of him. The court's analysis failed to account for this.

The district court's next conclusion was even more confusing. It seemed to recognize that the weight evidence against Defendant was overwhelming; it noted that the factor "weighs in favor of the State." [*Id.* p. 5] It nonetheless found, without explanation, that "[t]his factor does not demonstrate an unlikelihood to comply with conditions of release." [*Id.*] Setting aside the apparent internal conflict in the court's conclusions, it is difficult to see how the district court would ever find that this factor could weigh in favor of detention if not under the

circumstances of this case. The weight of evidence against Defendant was overwhelming, and, as discussed above, it depicted an unprovoked act of extreme violence committed in public. To conclude without explanation that this failed to show that Defendant would not follow rules designed to protect the public was an abuse of discretion.

When it considered the “history and characteristics of the defendant,” the court concluded that, because Defendant “has no[] prior criminal history,” this factor “weighed in favor of the Defendant” on both prongs of the Rule 5-409 inquiry. [*Id.* p. 5] The court’s phrasing shows that it only performed half of its analysis under this step: it only considered Defendant’s criminal history. But Rule 5-409(F)(6)(c) requires a court to consider a defendant’s “history *and* characteristics.” (Emphasis added.) In light of the court’s findings about the manner in which Defendant committed the crime as well as the uncontroverted evidence that he successfully procured a gun without his grandmother knowing, this conclusion produced by artificially truncated analysis was an abuse of discretion.

The district court’s most confusing conclusion came when it considered “the nature and seriousness of the danger to any person or the

community that would be posed by the defendant’s release.” [St. Ex. 3 pp. 5-6] The court correctly, and consistently with its findings elsewhere, concluded that “Defendant is a threat to the victim.” [Id. p. 5] Inexplicably, it then ruled that this factor “weigh[ed] *in favor* of the Defendant’s likelihood of *complying* with conditions of release.” [Id. p. 6 (emphasis added)] There is no basis for such a conclusion; that Defendant poses an ongoing threat to Victoria cannot possibly weigh in his favor.

Finally, when the court considered “[a]ny facts tending to indicate that the defendant may or may not commit new crimes if released,” it noted that Defendant had no criminal history. [Id. p. 6] It then remarked that “[t]he State did not provide evidence other than the current offense to suggest that the Defendant may commit new crimes if released.” [Id.] After that, it declined to say how it weighed this factor.

But, as discussed above, the State did point to other evidence, namely that Defendant’s grandmother had already been unable to stop Defendant from obtaining and using a gun. Nothing in *Anderson* or *State v. Mascareno-Haidle*, 2022-NMSC-015, requires a court to ignore the charged offense when weighing the Rule 5-409 factors. So even if the

State had not presented additional evidence, the court still should have considered the nature of the offense under this factor and at least given the factor its proper weight.

Although two Rule 5-409 factors weighed in favor of release – Defendant had not previously been ordered detained and the pretrial risk assessment recommended his release [*Id.* p. 6] – the numerous errors and inconsistencies noted above so undermine the court’s reasoning that its conclusion is not tenable. By failing to fully judge the adequacy of its proposed conditions of release against the risk that Defendant continues to pose to Victoria and the public, and misapprehending the inquiry under several factors, the court’s conclusion was illogical, unreasonable, and contrary to the facts and circumstances of the case. Accordingly, its decision to release Defendant was an abuse of discretion.

CONCLUSION

Because the district court’s decision to release Defendant was an abuse of discretion, the State respectfully requests that this Court grant this motion and reverse.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on May 28, 2024, I filed a true and correct copy of the foregoing Response electronically through the Odyssey E-File & Serve System, which caused opposing counsel to be served by electronic means.

/s/ Van Snow
Deputy Solicitor General