

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff,

vs.

Cause No. D-202-PD-2024-01408

KYLE BEARDEN,

Defendant.

ORDER DENYING STATE'S MOTION FOR PRETRIAL DETENTION

THIS MATTER having come before the Court on the State's Motion for Pretrial Detention filed on December 2, 2024, and heard on December 9, 2024, pursuant to Article II, Section 13 of the New Mexico Constitution and Rule 5-409 NMRA, and the Court having reviewed exhibits, having heard arguments of counsel, and being otherwise fully advised in the premises hereby **FINDS** as follows:

1. According to the State's Motion for Pretrial Detention, Defendant is charged with one count of Aggravated Assault (Deadly Weapon).
2. Probable cause was found by a Bernalillo County Metropolitan Court Judge at the Felony First Appearance on December 2, 2024.
3. At the detention hearing, the Court was directed to the State's three (3) exhibits which included the Odyssey search printout showing this case as the only case for Defendant's criminal history, the Criminal Complaint for T-4-FR-2024-008419 (this case), and the Pretrial Services Public Safety Assessment ("PSA") recommending ROR.

4. The Court also took judicial notice of Court's Exhibit 1 which was the Background Investigation Division Criminal History Report.
4. Neither party called witnesses.
5. The State has the burden to prove Defendant poses a threat to others or the community and that no release conditions will protect the safety of others or the community. *State v. Ferry*, 409 P.3d 918 (N.M., 2017).
6. The State's burden of clear and convincing evidence is much higher than the evidence needed to establish probable cause and is the exact same burden the State has to prevail in terminating a person's parental rights. *Termination of Parental Rights of Eventyr J., Matter of*, 902 P.2d 1066, 120 N.M. 463, 1995 NMCA 87 (N.M. App., 1995).
7. "For evidence to be clear and convincing, it must instantly tilt the scales in the affirmative when weighed against the evidence in opposition and the fact finder's mind is left with an abiding conviction that the evidence is true." *Adoption of Doe, Matter of*, 676 P.2d 1329, 100 N.M. 764, 1984 NMSC 24 (N.M., 1984).
8. "While prosecutors may make proffers, tender documents and other exhibits, and ask the court to consider information in court records, a court may find the weight of any evidence, testimonial or nontestimonial, insufficient to meet the clear and convincing standard for detention in particular cases." *State ex rel. Torrez v. Whitaker*, 410 P.3d 201 (N.M., 2018).
9. "A detention hearing requires a judge to make three categories of determinations in deciding whether pretrial detention should be ordered: (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*, 410 P.3d 193 (N.M. 2018).

10. The Supreme Court amended NMRA 5-409 at (F)(6) to provide the lower court with guidance on the factors to be considered on a motion seeking preventative detention:

Factors to be considered. 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 facts relevant to the issue of whether any conditions of release will reasonably protect the safety of any person or the community, including but not limited to the following:

- (a) the nature and circumstances of the offense charged, including whether the offense is a crime of violence;
- (b) the weight of the evidence against the defendant;
- (c) the history and characteristics of the defendant;
- (d) the nature and seriousness of the danger to any person or the community that would be posed by the defendant’s release;
- (e) any facts tending to indicate that the defendant may or may not commit new crimes if released;
- (f) 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; and

(g) any available results of a pretrial risk assessment instrument approved by the Supreme Court for use in the jurisdiction, provided that the court shall not defer to the recommendation in the instrument but shall make an independent determination of dangerousness and community safety based on all information available at the hearing.

11. “[P]retrial detention or release decisions cannot be made to turn on any single factor, be it the nature and circumstances of the charged offense(s) or otherwise.” *See Torres*, 2018-NMSC-005, ¶ 101 (“Detention decisions, like release conditions, should not be based categorically on the statutory classification and punishability of the charged offense.”); *Brown*, 2014-NMSC-038, ¶ 52 (“Neither the Constitution nor our rules of criminal procedure permit a judge to base a pretrial release decision solely on the severity of the charged offense.”); *Ferry*, 2018-NMSC-004, ¶ 7 (cautioning “litigants and the courts” against “automatically consider[ing] any one factor to be dispositive in pretrial detention hearings”).
12. “...Rule 5-409(6) must be read to require a detention court to engage in a delicate case-by-case balancing of *all* relevant factors, with the calculus limited only ‘by what evidence the litigants present.’ *Id.*
13. “To allow the State to rely solely on the nature and circumstances of the charged offenses, not only to prove that the defendant poses a future threat to others or the community but also to prove that no release conditions will reasonably protect the safety of any other person or the community, would all but eliminate Article II,

Section 13 and the corresponding constitutional burden of the State.” *State v. Mascareno-Haidle*, No. S-1-SC-38743 (2022).

14. After reviewing the exhibits and the Motion, and hearing argument of counsel, the Court finds that the State has failed to prove by clear and convincing evidence that Defendant poses a future threat to others or the community and noted It relied on the fact that Defendant lacked criminal history, but that even if the State had proven by clear and convincing evidence that defendant would pose a danger, the Court believes there are release conditions that can be set to ensure the safety of the community.
15. The State did not meet their burden to detain Defendant under Article II, Section 13.
16. Defendant is to comply with conditions of release set in open court and captured by way of separate order.

IT IS SO ORDERED.



HONORABLE BRETT R. LOVELESS
DISTRICT COURT JUDGE, DIV. III

Approved by:

Approved as to form 12/27/2024
STEVEN G. DIAMOND
Attorney for the State

/s/ Stefanie J. Gulley
STEFANIE J. GULLEY
Attorney for Defendant