FILED
2ND JUDICIAL DISTRICT COURT
Bernalillo County
10/26/2026 2:45 PM
KATINA WATSON
CLERK OF THE COURT
Ramiro Hernandez

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO,
Plaintiff

v. D-202-CR-2001-02063

LINDA HENNING,
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 October 21, 2026 and heard on October 23, 2026 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 hereby **FINDS** as follows:

1. Pursuant to the State's Motion Defendant is charged with first degree murder, conspiracy, kidnapping, conspiracy to commit kidnapping, perjury and tampering with evidence.
2. This matter is currently pending in District Court following this Court granting Ms. Henning's habeas corpus petition.
3. The incident giving rise to this matter occurred in September of 1999 and it is alleged that Defendant and her co-defendant, Diazan Hossencofft kidnapped and killed Mr. Hossencofft's wife. Defendant stood for trial in this matter and was convicted in October 2002. This Court overturned this conviction. *See October 23, 2026 Order on Writ of Habeas Corpus.*
4. At the hearing, the Court took judicial notice of the State's exhibits. No witnesses testified.

5. Defendant has no criminal history prior to this incident in 1999. As noted in the hearing, Defendant had lived a law-abiding and successful life until she met the co-defendant several weeks prior to the incident.
6. Following her conviction, Defendant was sentenced to the New Mexico Department of Corrections where she remained housed for the past 27 years. The State proffered that Defendant should be detained on the allegations in this case and on her behavior since she was incarcerated. In support of their assertion for her detention, the State submitted a Motion filed Defendant seeking release during the COVID-19 pandemic and 17 disciplinary write-ups she received while in DOC. The motion for release due to the pandemic was a common motion filed by inmates in various institutions around the State of New Mexico. That motion does not relate to Defendant's dangerousness or whether conditions of release are available to reasonably protect the safety of the community. The 17 disciplinary write-ups were likewise not persuasive to the Court. Given the length of time Ms. Henning spent in DOC, this is a very small number of infractions, given this Court's experience. Additionally, none of the write ups related to violence or new charges. Instead, Ms. Henning was written up for trivial matters. Nothing within these write-ups supported the State's Motion for Pretrial Detention.
7. "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." *Whitaker*, 2018-NMSC-005, ¶98.
8. The Court must engage in the following analysis in deciding a pretrial detention motion: (1) is the information tendered to the Court reliable; (2) does the information tendered to

the Court indicate that a defendant may be likely to pose a threat to the safety of others if released; and (3) can the court fashion any conditions of release that will reasonably protect the safety of others. *See Whitaker*, 2018-NMSC-005, ¶99, 100 and 102.

9. The Supreme Court modified 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:

   a. *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 fact 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:

      i. the nature and circumstances of the offense charged, including whether the offense is a crime of violence;

         1. Analysis: The allegations are violent.

      ii. the weight of the evidence against the defendant;

         1. Analysis: The weight of the evidence against Defendant is unknown. The State made no representations about whether the evidence in this matter still exists nor did they indicate whether witnesses continued to be available almost 30 years later. The Court fully recognizes that Defendant was convicted in 1999, however as noted in the Order on the habeas petition, the conviction was overturned for due process violations.

      iii. the history and characteristics of the defendant;

1. Analysis: Defendant, a 73-year-old woman, has no criminal history. Prior to becoming involved with the co-defendant, who is currently serving a lengthy prison sentence, Defendant was leading a successful and law-abiding life. This factor weighs in Defendant's favor.

iv. the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release;

1. Analysis: Little evidence was presented to indicate that Defendant presents a danger should she be released.

v. any facts tending to indicate that the defendant may or may not commit new crimes if released;

1. Analysis: None.

vi. 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;

1. Analysis: None.

10. 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,* 2018-NMSC-004, ¶6, 409 P.3d 918 (Dec. 28, 2017).

11. In *State v. Mascareno-Haidle* the New Mexico Supreme Court, in a slip opinion, upheld the District Court's denial of a pretrial detention motion (S-1-SC-38743). The Court noted that the State challenged the requirement that "it must prove that there are no

release conditions that will reasonably protect the safety of any other person or the community of Defendant was released." *Id* at ¶ 2. The Court noted that the State was requesting that they "present less, not more, information to a judge attempting to predict what a person's future behavior will be" and the Supreme Court denied that request. *Id.*

12. The *Mascareno-Haidle* Court went onto State, "The state's burden of proving the first element required to obtain pretrial detention has been considerably lessened. The state may rely solely on "the nature and circumstances of a defendant's conduct in the underlying charged offense(s)" as sufficient to prove by clear and convincing evidence that a defendant is dangerous—that is, "that the defendant poses a [future] threat to others or the community." *Id* at ¶ 30, citing *Ferry*, 2018-NMSC-004, ¶ 6. Thus the state, the prosecuting authority that decides which offenses to charge the defendant with in the first place, may now rely on those same charges for proof of dangerousness. *Id.* However, we also emphasized in *Ferry* that even if this initial burden is satisfied, "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* at ¶ 31, citing *Ferry*, 2018-NMSC-004, ¶ 6. Here, the State's burden of proving this second element required for pretrial detention cannot be lessened. It is the constitutional standard mandated by Article II, Section 13. Rule 5-409(F)(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,* citing *Ferry*, 2018-NMSC-004, ¶ 7.

13. 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. *In re Termination of Parental Rights of Eventyr J.* 1995-NMSA-087, ¶ 2, 120 N.M. 463.

14. For evidence to be clear and convincing, it must instantly tilt the scale 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." *In re Adoption of Doe*, 1984-NMSC-042, ¶9.
15. The Court recognizes that "liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *Groves*, 2018-NMSC-006, ¶44, citing *United States v. Salerno*, 481 U.S. 739, 755 (1987).
16. For the reasons stated herein, the Court finds that the State has not met their burden to detain Defendant.

IT IS THEREFORE ORDERED that the State's Motion for Pretrial Detention is hereby **DENIED.**

