# Administrative Office of the Courts

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**NM Supreme Court declines to lessen State's evidentiary burden for pretrial detention**

SANTA FE – Evidence about the "nature and circumstances" of a charged offense is not enough by itself to prove that a defendant should be jailed while awaiting trial, the state Supreme Court concluded in an opinion issued today.

Under a 2016 amendment to Article II, Section 13 of the New Mexico Constitution, a felony defendant can be held in jail while awaiting trial if prosecutors prove two elements — that a defendant is dangerous and that pretrial detention of the person is the only way to protect the safety of the community.

"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," the Court concluded in its unanimous opinion by Justice Michael E. Vigil.

The opinion provides the legal reasoning for the justices upholding the denial of pretrial detention of Jesse Mascareno-Haidle, who was charged with residential burglaries in the Albuquerque area. The Court announced its decision from the bench after hearing oral arguments in the case last year.

The Bernalillo County District Attorney's twice sought to detain Mascareno-Haidle after he was arrested in separate cases in 2021. Two different judges denied the detention requests. Prosecutors appealed the second judge's decision, which was upheld by the state Court of Appeals. A challenge was then filed with the Supreme Court.

In the district court hearing on the first detention motion, prosecutors used documents, including an arrest warrant affidavit by a police detective, as evidence. In the second hearing, the police detective testified about Mascareno-Haidle's alleged offenses to show that he posed a danger to the public. According to the detective, Mascareno-Haidle admitted in a police interview to committing about 28 burglaries. He was a suspect in dozens more. The defense pointed out that

he had complied with the conditions of his initial release, including a court-ordered curfew and staying in contact with his pretrial services officer. The alleged offenses in both cases occurred in late 2020.

In today's opinion, the justices noted that prosecutors "failed to present any evidence or make any argument that no release conditions could be imposed to reasonably protect the safety of any other person or the community." That left the judge "with no alternative but to deny the State's motion to detain Defendant," the Court stated.

Since statehood, New Mexico's Constitution has guaranteed that a person charged with a crime has the right to remain free pending trial except in limited circumstances. That constitutional right, "upholds the fundamental principle that a defendant is not to be punished – imprisoned – until the charges brought by the state are proven beyond a reasonable doubt in a court of law," the Court explained. Both federal and state law for decades have provided a presumption in favor of the pretrial release of defendants under the least restrictive conditions.

The voter-approved constitutional amendment in 2016 granted district courts the authority to detain felony defendants proven by "clear and convincing evidence" to be so dangerous that that no release conditions would reasonably protect the public. Before the constitutional change, a person charged with a crime – regardless of the danger they might pose to a victim or the public – generally could obtain their release before trial by posting a money bond.

"When one of our district court judges is asked to decide whether a person charged with committing a felony will be jailed pending trial, that judge must predict what that person's future behavior will be if released," the Court wrote.

"To reduce the margins of error, this inexact, consequential task demands that the judge be given as much information as possible prior to making a decision. This allows for an informed decision to be made that not only protects the dignity and constitutional rights of the accused, but it also protects society," the Court explained.

The prosecution requested in its appeal "that it be allowed to present less, not more, information to a judge attempting to predict what a person's future behavior will be," the Court wrote.

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To read the decision in *State v. Mascareno-Haidle*, No. S-1-SC-38743, please visit the New Mexico Compilation Commission's website using the following link:

https://nmonesource.com/nmos/nmsc/en/item/521288/index.do