

STATE OF NEW MEXICO
COUNTY OF SANDOVAL
THIRTEENTH JUDICIAL DISTRICT COURT

D-1329-CR-2018-00063
DA File # SV 17 2539

STATE OF NEW MEXICO,
Plaintiff,

v.

KIMSEY BARBOAN,
Defendant.

STIPULATED EXPEDITED MOTION FOR PRETRIAL DETENTION

COMES NOW the State of New Mexico, by and through Assistant District Attorney Mathew Wadsworth, and requests that this honorable Court set this matter for a detention hearing within three days pursuant to NMRA Rule 5-409, where the State will prove by clear and convincing evidence that no release conditions will reasonably protect the safety of the community if Defendant is released from custody prior to trial. The State requests that Defendant be held without bail until this matter is resolved by trial, pursuant to Article II, §13 of the New Mexico Constitution. In support of this motion, the State asserts the following:

Facts

1. On December 16, 2017, Defendant killed Anthony Martinez with a baseball bat. Defendant was detained a short time later and arrested for Driving Under the Influence and related offenses.
2. Defendant was interviewed by State Police agents on December 18, 2017, and he admitted to

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killing Anthony Martinez, though he claimed that the killing was in self-defense.

3. On February 1, 2018, a Grand Jury indicted Defendant with one count of Second Degree Murder and several related offenses.
4. At the time that this offense was committed, Defendant under conditions of release for three cases pending in Magistrate Court.
 - a. On August 3, 2017, Defendant was charged with Aggravated Battery (Deadly Weapon) and related misdemeanor offenses in M-46-FR-2017-00056. On October 23, 2017, Defendant pled guilty to Unlawful Carrying of a Handgun by a Person under 19 and Negligent Use of a Deadly Weapon. That case was set for sentencing on December 7, 2017, and a bench warrant was issued when Defendant failed to appear at that sentencing.
 - b. On September 8, 2017, Defendant was charged with Aggravated Battery (Deadly Weapon), Aggravated Assault (Deadly Weapon), and related misdemeanor offenses in M-46-FR-2017-00055. On October 23, 2017, Defendant pled guilty to Unlawful Possession of a Switchblade and Possession of Marijuana (Less than One Ounce). That case was set for sentencing on December 7, 2017, and a bench warrant was issued when Defendant failed to appear at that sentencing.
 - c. On November 7, 2017, Defendant was charged with False Imprisonment and Battery against a Household Member in M-46-FR-2017-00070. Defendant appeared at his first appearance on December 5, 2017, and he was released under conditions of release including to obey all state laws and to not consume any alcohol or drugs.

5. On January 4, 2018, Defendant was sentenced by the Magistrate Court in the two cases which he was convicted of, and he is currently serving those sentences.
 - a. In M-46-FR-2017-00055, Defendant was sentenced to 364 days incarceration and given credit for thirty days of pre-sentence confinement time.
 - b. In M-46-FR-2017-00056, Defendant was sentenced to 180 days incarceration and given credit for pre-sentence confinement time. This sentence is to be served consecutive to the sentence in M-46-FR-2017-00055.
 - c. M-46-FR-2017-00070 is set for a preliminary hearing on March 1, 2018.

Argument

6. On November 8, 2016, New Mexico voters amended Article II, §13 of the New Mexico Constitution to read “Bail may be denied by a court of record pending trial for a defendant charged with a felony if the prosecuting authority requests a hearing and proves by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community.”
7. Under NMRA Rule 5-409(A), the Court may deny Defendant bail if the State “proves by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community.”
8. In this case, Defendant has been charged with Second Degree Murder for bludgeoning Anthony Martínez to death with a baseball bat. This is a crime of violence that was committed while Defendant was released under conditions of release in three other cases. Defendant had outstanding bench warrants in two of those cases because of his failure to appear at sentencing less than ten days before he committed murder in this case.

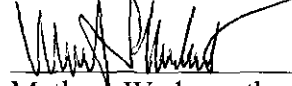
Additionally, Defendant was intoxicated when he was arrested on December 16, which was a violation of his conditions of release requiring him not to consume alcohol.

9. Based on the undisputed fact that Defendant killed Anthony Martinez, Defendant is a danger to the community. The State asserts based on the fact that Defendant was under conditions of release in three cases when this crime occurred, that there is clear and convincing evidence that there are no release conditions that will reasonably ensure the safety of the community.
10. Defendant has been contacted via defense counsel Michael Rosenfield, and Defendant stipulates that it is appropriate to hold him without bond at this time. This stipulation is made under the following conditions:
 - a. The Defendant reserves the right to move to review conditions of release when he feels that it is appropriate. The first time and only the first time that Defendant moves to review conditions of release, the parties agree to waive the requirement of NMRA Rule 5-409(K) that the motion to review conditions of release be based on new information that was not known to the movant at the time of the initial motion for pretrial detention.
 - b. If and when Defendant moves to review conditions of release in this case, the State reserves the right to supplement this motion with any additional evidence and argument that is relevant.

WHEREFORE, the State requests that this Court issue an order finding that there is clear and convincing evidence that no conditions of release can reasonable ensure the safety of the community if Defendant is released from custody. The State requests that the Court hold

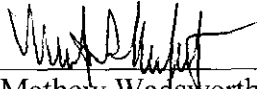
Defendant without bail until this case is resolved by trial, pursuant to NMRA Rule 5-409 and Article II, §13 of the New Mexico Constitution.

Respectfully submitted,
Lemuel Martinez
District Attorney



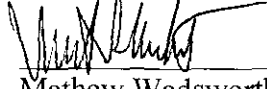
Mathew Wadsworth
Assistant District Attorney
PO Box 1750
Bernalillo, NM 87004
505-771-7400

I hereby certify that a copy of the foregoing was sent to Michael Rosenfield, counsel for Defendant on 3/1/18.



Mathew Wadsworth
Assistant District Attorney

I hereby certify that a copy of the foregoing was served upon the Sandoval County Detention Center on 3/1/18.



Mathew Wadsworth
Assistant District Attorney