STATE OF NEW MEXICO
COUNTY OF TAOS
EIGHTH JUDICIAL DISTRICT COURT

PRESIDING JUDGE:

NO. D-820-CR-201800167, D-820-CR-201800168,
D-820-CR-201800169, D-820-CR-201800170,
D-820-CR-201800171

STATE OF NEW MEXICO

Plaintiff,

vs.

SIRAJ IBN WAHHAJ, LUCAS ALLEN MORTON,
HUJRAH WAHHAJ, JANY LEVEILLE,
SUBHANNAH WAHHAJ

Defendants.

STATE'S MOTION FOR RECONSIDERATION AND SUPPLEMENTAL MOTION FOR PRETRIAL DETENTION/NO BOND PURSUANT TO RULE 5-409(K)

COMES NOW the State of New Mexico, Donald Gallegos, District Attorney for the Eighth Judicial District, by Timothy R. Hasson, Deputy District Attorney, and requests this Court to Reconsider its Order Denying State's Motion for Pretrial Detention/No Bond pursuant to NMRA Rule 5-409(K) and to consider new evidence for State's Supplemental Motion for Pretrial Detention/No Bond pursuant to NMRA Rule 5-409(K).

STATE'S REQUEST FOR RECONSIDERATION OF JUDICIAL ORDER DENYING STATE'S MOTION FILED AUGUST 14, 2018

Rule 5-409(K) expressly permits "motions to reconsider." The State has brought this motion within the 10-day time period for appeal, *see* Rule 12-204(C)(1), to toll the appeal time and allow this Court the opportunity to consider the new information and otherwise reconsider its

order. *See State v. Suskiewich*, 2014-NMSC-040, ¶ 17, 339 P.3d 614 ("We agree with the Court of Appeals that 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"). Motions to reconsider are "'a traditional and virtually unquestioned practice' and serve judicial economy by permitting lower courts to correct possible errors and thus avoid time-consuming and potentially unnecessary appeals." *State v. Roybal*, 2006-NMCA-043, ¶ 16, 139 N.M. 341 (quoting *United States v. Healy*, 376 U.S. 75, 78-80 (1964)). Motions to reconsider are an inherent power of the courts. *Suskiewich*, 2014-NMSC-040, ¶ 11.

The State moves this Court to reconsider its order because it does not comply with Rule 5-409 NMRA and the case law interpreting that rule. "In most cases, credible proffers and other summaries of evidence, law enforcement and court records, or other nontestimonial information should be sufficient support for an informed decision that the state either has or has not met its constitutional burden." *State ex rel. Torrez v. Whitaker*, 2018-NMSC-005, ¶ 3, 410 P.3d 201; *see also State v. Ferry*, 2018-NMSC-004, ¶ 3, 409 P.3d 918 ("We previously announced that the prosecuting authority--and defense counsel--may offer evidence in many different forms during a detention hearing. The litigants may introduce live testimony and proffer documentary evidence in a form that carries sufficient indicia of reliability, and the Rules of Evidence do not apply"). Here, the State proffered 35 exhibits, including police reports from state and federal authorities. This Court did not make any findings that these documents were not credible or otherwise insufficient. *See State v. Groves*, 2018-NMSC-006, ¶ 31, 410 P.3d 193 ("There is nothing in the record to raise serious doubts about the credibility of the police officers who conducted the investigations and prepared the resulting sworn and unsworn reports or of the independent

victims and other witnesses who reported their own interlocking and cross-corroborating observations of Defendant's activities to the police").

In addition, this Court's order does not discuss those proffered items of evidence and does not "specifically address the evidence presented and explain the district court's decision to order or deny detention within the context of its analysis of that evidence." *State v. Ricardo Soto*, Order Remanding to District Court, No. A-1-CA-37485 (Aug. 15, 2018) (non-precedential order on Rule 12-204 NMRA appeal). It is reversible on that basis. *Id.* "In determining whether any information presented at a detention hearing contains indicia of reliability, a court can consider, for example, whether the information is internally consistent; whether it is credibly contested; whether it originates from or is conveyed by suspect sources; and whether it is corroborated or supported by accounts of independent observers, tangible evidence, a defendant's statements or actions, other sources, or other information." *Torrez*, 2018-NMSC-005, ¶ 99. This Court's order does not contain any such findings to challenge the undisputed information contained in the State's exhibits. *Cf. State v. Ferry*, 2018-NMSC-004, ¶ 8, 409 P.3d 918 ("For this reason, we encourage judges to carefully reduce to writing all reliable information they have considered when deciding to detain or not to detain a defendant.").

Moreover, this Court found that it authorized the search warrants in this case and was thus "aware" of the allegations in those warrants regarding the "starvation of the children"; the "multiple hazards within the 'compound'; and the "lack of medical, dental or other care that the children allegedly suffered." Yet this Court then declined to factor this information into its conclusion because "[t]he State produced no such evidence in Court." *Order*, ¶ 5.

There is no requirement that the movant both provide the information and have a witness to testify as to that information. "We previously announced [in *Torrez*] that the prosecuting

authority--and defense counsel--may offer evidence in many different forms during a detention hearing. The litigants may introduce live testimony and proffer documentary evidence in a form that carries sufficient indicia of reliability, and the Rules of Evidence do not apply." *State v. Ferry*, 2018-NMSC-004, ¶ 3, 409 P.3d 918. Although the search warrant affidavits were not included in the exhibits, they were discussed at the hearing and were readily available to the Court. *See* Rule 11-201 NMRA (allowing a court to take judicial notice of adjudicative facts). For this Court to ignore this information because either the affidavits were not included in the exhibits or because the State did not produce a witness to present the same information unnecessarily elevates form over substance. These documents were part of the case and known to this Court because this same judge approved warrants based on those affidavits. Approval of that warrant necessarily includes a finding that its supporting affidavits were credible. *Cf. Torrez*, 2018-NMSC-005, ¶¶ 65-66 (discussing New Jersey case where preventative detention was ordered and affirmed based on "nontestimonial evidence consisting of, [in part,] the complaint-warrant[and] the affidavit of probable cause[.]" (*discussing State v. Ingram*, 165 A.3d 797 (N.J. 2017)).

This Court also found that the State did not "produce[] evidence of the condition of the children at the time they were taken from the compound," did not produce "medical reports" regarding the children's condition, and did not "produce any evidence of these allegations [that the defendants subjected the children to dangerous living conditions]." *Order*, ¶¶ 5, 11. This Court concluded that the State "produced no evidence of any abuse" and the defendants were all charged with child abuse. *Order*, ¶ 5.

But, as this Court itself acknowledged, the purpose of a Rule 5-409 hearing is not the guilt or innocence of the defendants on the charges, but an inquiry into the defendants'

dangerousness to the community at large.[1] The State's proof was offered to prove that no release conditions could protect the community and not to necessarily prove the underlying charges. *Torrez*, 2018-NMSC-005, ¶ 101 ("[T]he particular facts and circumstances in currently charged cases, as well as a defendant's prior conduct, charged or **uncharged**, can be helpful in making reasoned predictions of future dangerousness") (emphasis added).

As to the child's death, this Court again faulted the State's failure to file charges regarding the death, to prove the child's cause of death, and to otherwise present evidence on the child's medical needs and condition. *Order*, ¶ 7. This finding ignores information presented at the hearing (1) that Defendant Siraj Ibn Wahhaj took the child from Georgia; (2) that he made statements that he was taking the child off of his medications; (3) that the other children in the compound made statements that religious rituals were performed on the child and that he died as a consequence; and (4) that the child's body was found on the compound. Whether or not the State yet has information from OMI as to the cause of the child's death, and whether or not the State yet is able to file charges relating to the child's death, does not alter these salient points which indicate dangerousness. The unreported death of a young child on the compound is not irrelevant to the 5-409 inquiry simply because charges relating to that death have not yet been filed.

This Court's order generally indicates that it will not consider information that is not directly related to a filed criminal charge. This approach is not in accordance with the purpose of

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[1] At a bench conference at the hearing, defense counsel complained that the State's proffer of its exhibits did not relate to the charges of child abuse. This Court noted that the purpose of the hearing was to consider the defendants' dangerousness and not guilt or innocence of the charges. [8-13-18 CD at 2:47:00]

Rule 5-409, nor required by its text. Worse, it puts the prosecutor in the untenable position of seeking a possibly premature indictment. *See United States v. Lovasco*, 431 U.S. 783, 790-791 (1977) ("[P]rosecutors do not deviate from 'fundamental conceptions of justice' when they defer seeking indictments until they have probable cause to believe an accused is guilty; indeed it is unprofessional conduct for a prosecutor to recommend an indictment on less than probable cause. It should be equally obvious that prosecutors are under no duty to file charges as soon as probable cause exists but before they are satisfied they will be able to establish the suspect's guilt beyond a reasonable doubt"); *see also State v. Gonzales*, 1990-NMCA-040, ¶ 10, 110 N.M. 218 ("*Lovasco* recognizes that the interests of the suspect and society are better served if, absent bad faith or extreme prejudice to the defendant, the prosecutor is allowed sufficient time to weigh and sift evidence to ensure that an indictment is well founded." (internal quotation marks and citation omitted)).

The same principle applies to this Court's finding that the evidence of the weapons arsenal found at the compound was not relevant because the weapons were not stolen or illegal and because no charges regarding the weapons have been filed. *Order*, ¶ 8, 11. This narrow finding overlooks the evidence of the presence of a vast amount of weapons in proximity to children and a firing range. Again, the State's proof is not limited only to evidence that is directly related to criminal charges. *See Torrez*, 2018-NMSC-005, ¶ 101 ("[T]he particular facts and circumstances in currently charged cases, as well as a defendant's prior conduct, charged or uncharged, can be helpful in making reasoned predictions of future dangerousness.").

This Court also stresses that the children are now off the compound and in the custody of CYFD. *Order*, ¶¶ 6, 10. But this does not alter this Court's duty to consider a defendant's past conduct "to assess a defendant's likely future conduct." *Groves*, 2018-NMSC-006, ¶ 33. This

also does not take into account the evidence indicating that the defendants are a danger to the community at large.

Paragraph 15 of the Order states, "The Court is not aware of any law that allows the Court to take a person's faith into consideration in making a dangerousness determination." A person's faith and professed religious beliefs, however, may be considered by the Court when relevant to motive for criminal conduct, or to important facts in a case. *U.S. v. Rahman*, 189 F.3d 88, 118 (Court of Appeals, 2nd Cir. 1999)("The Government was free to demonstrate Abdel Rahman's resentment and hostility toward the United States in order to show his motive for soliciting and procuring illegal attacks against the United States and against President Mubarak of Egypt") The Court in this case should have considered the evidence that these Defendants' particular views concerning their faith required them to commit violent illegal acts at some unknown time in the future, to attack law enforcement personnel with firearms if such personnel came to their compound, and that they were currently taking active steps to train for that purpose. The State's evidence included testimony by FBI Special Agent Travis Taylor, who testified about statements made to him by two of the children, affirming that they had been trained in advanced firearms handling and had been instructed to shoot law enforcement personnel when the time came and that they would be instructed in the future to attack specific targets such as teachers, schools, banks, and other "corrupt institutions." The testimonial evidence was supported by the presence in the residence of a DVD concerning how to build an "untraceable assault rifle" at home (State's Exhibit 33) a book on the psychology of combat (State's Exhibit 34), and an FBI email reflecting a neighbor's complaint that the men were practicing too much with their assault rifles (State's Exhibit 13). State's Exhibit 11 – perhaps the strongest evidence on this point – was not analyzed or even mentioned in the Court's ruling. The exhibit is a letter

delivered by Defendant Lucas Morton to Muhammad, the brother of Defendant Siraj Ibn Wahhaj. It encourages Muhammad to follow Allah "until he makes you die as a martyr as you wanted and the only way is by joining the righteous (us)." In this day and age, to "die as a martyr" is a clear reference to violent jihad and acts of terror. The reference is reinforced by the admonition to "take all your money out the bank and bring your guns."

NEW MATERIAL INFORMATION IN SUPPORT OF STATE'S SUPPLEMENTAL MOTION FOR PRETRIAL DETENTION/NO BOND

The State has come into possession of a ten (10) page, handwritten document, self-titled "Phases of a Terrorist Attack". This document was collected as evidence from the Defendants' Amalia residence on August 6, 2018. Included within the document are instructions for "The one-time terrorist," instructions on the use of a "choke point," a location "called the ideal attack site," the "ability to defend the safe haven", the "ability to escape-perimeter rings", and "sniper position detection procedure". This document has been marked State's Exhibit 38.

New interviews with some of the children have revealed that Lucas Morton stated he wished to die in Jihad, as a Martyr. At times, Jany Leveille would laugh and joke about dying in Jihad as would Subhanna Wahhaj. Additionally, these interviews revealed that the religious rituals to which Abdul Ghani and other children were subjected, intended to cast out "jinn" and "shayateens," would at times last up to five (5) hours a day. During these rituals, Abdul Ghani would cry and his eyes would roll back into his head. One of the children assisted in the washing of Ghani's body, after Ghani died, and the body would be washed once a week at first, then once every two days. Additionally, the regular washing of the body would sometimes be used as a

tool of punishment against one of the children, if he disobeyed the requests of the adults or showed disrespect.

Interviews with some of the children revealed that Ms. Leveille intended to confront "corrupt" institutions or individuals, such as the military, big businesses, CIA, teachers/schools, and reveal the "truth" to these corrupt institutions or individuals. Siraj Wahhaj was to accompany Ms. Leveille as she did this, if these individuals or institutions were not persuaded by Leveille's message, and if Ms. Leveille provided a signal, then Suraj was to shoot or otherwise attack the non-believer. This plan would go into effect upon Ghani's resurrection. Before confronting the military, big business, CIA, teachers/school, Ms. Leveille and Siraj would bring their message to other members of their family. A specific "corrupt" institution named by one of the children was Grady Hospital. Jany Leveille, in her journal, expressed her displeasure with Grady Hospital, which is located in Atlanta, Georgia, due to treatment she and her mother received there. Further, Siraj told the group that if police ever came to the property at night, they were to defend the property using firearms.

Recent interviews have also disclosed the group's intended uses for the tunnel found on the property. Some of the children stated that if police arrived the group would use the tunnel as an escape route from the main compound while Siraj and Mr. Morton stayed behind and battled with police. The guns located at the exit of the tunnel were stored there in case police arrived, so that as the group exited the tunnel, the group could arm themselves with weapons and ammunition.

A new piece of evidence found is a journal, self-authored by Defendant Jany Leveille. This journal recounts events, from Ms. Leveille's perspective, that occurred in Georgia as well as Alabama, Texas, Oklahoma and New Mexico as the group made their journey to Taos County.

Ms. Leveille recounts that one of her children, M.W., possessed some form of telepathic abilities and could hear Ms. Leveile's thoughts. Ms. Leveille attributed M.W.'s ability to "jinn," supernatural entities that can inhabit the bodies of humans and may be either benevolent or malevolent. Much of Ms. Leveille's journal consists of accounts of these jinn entities terrorizing the group in several ways, from taking possession of the bodies of members of the group, to inhabiting vehicles and causing car wrecks and accidents. Ms. Leveille recounts one story in which Hakima Ramzi used some form of black magic and sent an invisible entity, possibly a jinn, to the home of Ms. Leveille. At the time, Ms. Leveille was holding her child N.W. and, according to Ms. Leveille's account, this entity attempted to physically pull the child from Ms. Leveille's grasp. Ms. Leveille used all her strength to pull back on N.W. During this struggle or, according to Ms. Leveille, the "unseen battle", N.W. was screaming.

Ms. Leveille describes, in part, the conception and gestation of Abdul Ghani. According to Ms. Leveille, Abdul Ghani was originally conceived in Ms. Leveille's womb. She states that Hakima Ramzi then used black magic and was able to remove the fetus from Ms. Leveille's womb and have the fetus transferred to Ms. Ramzi's womb. Ms. Leveille states Ms. Ramzi did this because Ms. Leveille had children and was very fertile; that Ms. Ramzi, however, had difficulty carrying a pregnancy to full-term, and therefore used black magic in the assistance of her own pregnancy. At the time in question, Hakima Ramzi and Jany Leveille were in a polygamous relationship with Siraj Wahhaj. Ms. Leveille also states in her journal that Abdul Ghani was born dead and that his body was inhabited by shayateens, malevolent supernatural entities that can inhabit a human's body. These shayateens were the reason Abdul Ghani could not walk or talk. After his death, all of the shayateens would be cast out of Abdul Ghani's body, leaving his body pure, and able to be resurrected as Jesus. Ms. Leveille also describes medicine

as being inhabited by shayateens and that it is dangerous. In interviews, some of the children stated they did not ever see Ghani receive medication during the group's trip from Alabama to New Mexico, nor did they see Ghani receive medication while the group was at New Mexico. The children stated the group did not visit any pharmacy or CVS to obtain medication for anyone.

During the groups travel from Georgia to New Mexico, Jany Leveille described a story in which the group stopped at an Arkansas gas station. While at the gas station, Lucas Morton drove his truck and bumped the side of a gas pump's hose and broke it. Due to the damage, Morton left his phone number so that arrangements could be made to compensate the owner for the damaged gas pump. Ms. Leveille immediately stated this was a trap, used by the shayateens to track the group's travel from Georgia to New Mexico, and Subhanah immediately contacted Verizon and requested Mr. Morton's phone number be changed. The manager of the gas station asked for Mr. Morton's driver's license and registration information, in addition to his phone number, to arrange payment for the damaged pump hose. Siraj stated the group would not give the manager their personal information. The manager of the gas station tried to copy down the license plate of the truck Mr. Morton drove, and Ms. Leveille instructed one of the older children to shield the license plate with his body so that the manager of the gas station could not write down the license plate. This issue goes to paragraph 14 of the Court's Order denying the State's Motion for Pretrial Detention, as the Court stated there was no evidence of criminal history. In this circumstance there is self-admitted evidence of members of the group damaging private property, not paying for the damage, refusing to provide information to set up payment and taking steps to prevent detection and therefore avoid payment of this damaged private property.

Jany Leveille also described a story about when the group was in Oklahoma. The group had experienced a flat tire and stopped by the side of the road. While awaiting a mobile company to repair the tire, a police officer encountered the group. He saw that there were children in a trailer being hauled by Lucas Morton's vehicle. The officer informed the parties it was illegal to transport children in a trailer in this way. During the officer's discussion with the group, Jany Laveille stated she heard a loud voice scream "I am going to kill everybody in this trailer." Ms. Leveille told Siraj what she had heard, however, Siraj stated no such words were spoken by anyone. Despite the officer stating transportation of children in the trailer was illegal, the group continued to transport the children in the trailer until they arrived in Amalia, New Mexico.

Ms. Levielle's journal recounts that on December 24, 2017, the group was at the property in Amalia, NM, and Siraj was performing religious rituals upon Abdul Ghani to remove jinn from Ghani's body. During one of these rituals, Ghani's heart stopped, then started again, then finally Ghani's heart stopped permanently and he passed away. Ms. Leveille recounts she was concerned the group would blame her for Ghani's death, but that it was revealed to her at this time Ghani would be resurrected as Jesus.

Ms. Levielle stated that each member of the group is a prophet, that: Siraj is Moses, Jany's brother Von-Chelet Leveille is Joseph, Hujrah Wahhaj is Aaron, Lucas Morton is Luqman the Wise, Subhanna Wahhaj is Job, and that Ms. Leveille is Mary, the mother of Jesus. All of the children were also described as being prophets. Ms. Leveille stated that she stayed in contact with her brother, Von-Chelet, on a regular basis and he shared the group's beliefs and would provide the group support. Von-Chelet lives in Haiti.

The contents of the journal show or suggest several things. First, that Jany Leveille and possibly others of the defendants may suffer from dangerous delusions. Second, that the defendants have history of endangering the welfare of children, as evidence by transporting them in a manner against the law, failure to provide needed medication, potentially unhealthy and unsanitary method of handling a deceased individual's body, the defendants have a history of taking steps to avoid detection and fleeing from a scene in which private property was damaged.

Conclusion

For these reasons, the State requests that this Court Reconsider its prior Order to deny the State's Motion for Pretrial Detention/No Bond. Further, the State requests this matter be set for a hearing wherein the State's motion may be held in an expedited manner.

RESPECTFULLY SUBMITTED
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CERTIFICATE OF SERVICE: I hereby certify that I delivered by bin drop\fax\mail\hand-delivery\electronic discovery a true and correct copy of the foregoing pleading to: Aleksander Kostich and Gregory Dawkins, Taos Public Defender Office, 5066 NDCBU 105 Sipapu St., Taos, NM, 87571; Thomas Clark, 432 Galisteo Street, Santa Fe, NM, 87501; Marie Legrand-Miller, Albuquerque, NM, 116 Granite Ave., NW, Albuquerque, NM 87102; Megan Mitsunaga, 510 Slate St. NW, Albuquerque, NM, 87102; Kelly Golightley, 111 Lomas Blvd., NW, Suite 201, Albuquerque, NM, 87102

For the State of New Mexico: _____ Dated: 8/24/18 /jal