

**IN THE SUPREME COURT  
STATE OF NORTH DAKOTA**

FILED  
IN THE OFFICE OF THE  
CLERK OF SUPREME COURT  
OCTOBER 4, 2018  
STATE OF NORTH DAKOTA

Santos Regalado Casarez, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 The Honorable M. Jason McCarthy )  
 and the State of North Dakota, )  
 )  
 Respondent. )

Supreme Court No. 20180355  
  
District Court No. 18-2017-CR-02521

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RESPONSE TO SUPERVISORY WRIT  
FROM THE DISTRICT COURT  
FOR THE NORTHEAST CENTRAL JUDICIAL DISTRICT  
GRAND FORKS COUNTY, NORTH DAKOTA  
THE HONORABLE JUDGE JASON MCCARTHY, PRESIDING

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**BRIEF OF RESPONDENT**

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**TABLE OF CONTENTS**

Table of Authorities ..... ii

Statement of the Issue ..... iii

Statement of the Facts ..... ¶1

Law and Argument ..... ¶6

**I. The district court did not abuse its discretion in setting bond.**

Conclusion ..... ¶14

**TABLE OF AUTHORITIES**

**North Dakota State Cases**

State v. Hayes, 2012 ND 9, 809 N.W.2d 309 .....¶8

State v. Skarsgard, 2007 ND 160, 739 N.W.2d 786 .....¶7

**North Dakota Rules**

N.D. Const. Art. I § 11 .....¶7

N.D.R.Crim.P 46.....¶6, 10, 11, 12

**STATEMENT OF THE ISSUE**

- I. Whether the district court abused its discretion in setting bond?**

## STATEMENT OF THE FACTS

[¶1] On December 11, 2017, Casarez was charged by Information with Aggravated Assault, Terrorizing, and Felonious Restraint, all Class C Felonies. An affidavit of probable cause was filed with the district court to support the charges. Affidavit of Probable Cause, December 11, 2017. Casarez is alleged to have strangled the victim causing her to lose consciousness. Affidavit of Probable Cause, December 11, 2017. Casarez is alleged to have thrown the victim to the ground, fractured a rib, and ruptured the victim's spleen. Affidavit of Probable Cause, December 11, 2017. Further, the victim relayed trying to flee from Casarez, however he dragged her back to the apartment as she was yelling for help. Affidavit of Probable Cause, December 11, 2017. During that time, Casarez was reported to have threatened to kill the victim and indicated he would bring her body to a location where no one would find her. Affidavit of Probable Cause, December 11, 2017. The victim was admitted to and treated at Altru hospital for severe injuries. (Plaintiff's Appendix 1-3, Non-Record Item.) The victim suffered a rib fracture, pneumothorax, and a spleen laceration, among other injuries. (Plaintiff's Appendix 1-3, Non-Record Item.)

[¶2] A bond hearing was held on December 11, 2017. The district court set bond at \$100,000 cash or surety along with an order prohibiting contact after hearing from both parties. Appearance Bond Order, December 11, 2017, Initial Appearance Tr., December 11, 2017.

[¶3] On January 16, 2018, Casarez requested and received a second bond hearing. Casarez's counsel set forth his objection to what he perceived as an unreasonable bond. Bond Hearing Tr., January 16, 2018, pp. 2-3. The State objected and reiterated concerns

regarding the severity of the offense, safety concerns for the victim, and Casarez's prior domestic violence related conviction. Bond Hearing Tr., January 16, 2018, p.4. The district court reviewed the Affidavit of Probable Cause and found that given the information in the affidavit, the circumstances of the offense charged, and the nature and seriousness of the danger to the alleged victim that the bond was appropriate and not excessive under the circumstances. Bond Hearing Tr., January 16, 2018, p. 5.

[¶4] On August 16, 2018, a final dispositional conference was held. Casarez requested the district court review bond, which was permitted. The court heard Casarez's request and after considering the facts of the case and public safety concerns, denied the request for a bond reduction. Final Dispositional Conference Hearing Tr., August 16, 2018, p. 4.

[¶5] On September 21, 2018 this Petition for Supervisory Writ was filed.

## LAW AND ARGUMENT

### **I. The district court did not abuse its discretion in setting bond.**

[¶6] Rule 46(a)(1) of the North Dakota Procedure provides that at the initial appearance before a magistrate of a person charged with an offense the magistrate must order the person released pending trial on the person's personal recognizance or on execution of an unsecured appearance bond in an amount specified by the magistrate, unless the magistrate determines, in the exercise of the magistrate's discretion, that the unconditional release will not reasonably assure the appearance of the person as required. N.D.R.Crim.P. 46(a)(1). If the magistrate concludes that unconditional release is not appropriate, release conditions may be imposed, either in lieu of or in addition to the methods of release specified in Rule 46(a)(1). N.D.R.Crim.P. 46(a)(2). Further, the court may impose any release conditions that would reasonably assure the appearance of the person for trial. N.D.R.Crim.P. 46(a)(2). In determining conditions of release that would reasonably assure appearance of a person, the magistrate, on the basis of available information, must consider factors set forth in Rule 46(3) (A)-(G). N.D.R.Crim.P. 46(a)(3). Those factors include the nature and circumstances of the offense charged, the weight of the evidence against the person, the person's family ties, employment, financial resources, character, and mental condition, length of residence in the community, criminal history, record of prior appearances or flight, and the nature and seriousness of the danger to any person or the community posed by the person's release. N.D.R.Crim.P. 46(a)(3).

[¶7] In addition to Rule 46 of the North Dakota Rules of Criminal Procedure, defendants are protected by both the United States and North Dakota Constitution to be free from excessive bail. N.D. Const. art. 1, § 11, U.S. Const. Amend. VIII. Pre-trial

detainees are protected from excessive bail under the Fourteenth Amendment Due Process Clause. State v. Skarsgard, 2007 ND 160, ¶ 20, 739 N.W.2d 786.

[¶8] A review of bond and pretrial release conditions is reviewed under an abuse of discretion standard. State v. Hayes, 2012 ND 9, ¶ 27, 809 N.W.2d 309. A district court abuses its discretion when it acts in an arbitrary, unreasonable, or unconscionable manner, when it misinterprets or misapplies the law, or when its decision is not the product of a rational mental process leading to a reasoned determination. Id.

[¶9] In the case at hand, Casarez alleges that the district court failed to properly follow Rule 46 of the North Dakota Rules of Criminal Procedure and that the bail is excessive. The State resists both arguments.

[¶10] Rule 46(a)(1) provides that the preference is to release an individual on their own recognizance or an unsecured bond, unless the court determines, in its discretion, that unconditional release will not reasonably assure the appearance of the person as required. N.D.R.Crim.P. 46(a)(1). Casarez interprets this rule to require the court to make specific findings on the record that unconditional release does not satisfy the court. However, Casarez does not cite any rule, case law, or statute that requires the court to make such findings. It is apparent that the district court did not believe an unconditional release was appropriate, based on the record. The district court specifically articulated that a \$100,000L bond was appropriate pursuant to N.D.R.Crim.P. 46(a)(2)(L) which applies when unconditional release is not appropriate. Furthermore, counsel for Casarez did not even request an unconditional or unsecured release. In fact, counsel for Casarez requested a \$5,000 cash or surety bond pursuant to N.D.R.Crim.P. 46(a)(2)(L). It appears all parties agreed that unconditional release was not appropriate in the case.



[¶11] The district court also considered the factors set forth in Rule 46(3)(A)-(G) by determining that, based on the severity of the offenses, the allegations set forth in the affidavit of probable cause, the nature and seriousness of the danger to the alleged victim, and the concerns for public safety that the bond imposed was appropriate and not excessive under the circumstances.

[¶12] Casarez has failed to cite any legal support to establish that the district court abused its discretion in setting bail in this case. The district court properly considered the factors set forth in Rule 46(3)(A)-(G) which included the allegations of the offense set forth in the affidavit of probable cause. The bottom line is that this is a case where Casarez, a previously convicted domestic violence offender, is alleged to have severely beaten his girlfriend (at the time), strangling the victim, beating her so severely that she did, in fact, have a lacerated spleen and a broken rib and was admitted to the hospital for several days. Furthermore, the violent behavior was coupled with Casarez's threat to kill the victim. Certainly it is not an unreasonable, arbitrary, or unconscionable decision to impose a \$100,000L bond in light of these facts. Furthermore, Casarez fails to articulate how the district court misinterpreted or misapplied the law or how the decision was not the product of a rational mental process leading to a reasoned determination. Casarez may be indigent, but the district court is required to consider the nature and seriousness of the danger to any person or to the community posed by his release, the nature and circumstances of the offense charged, and the prior convictions of the defendant when determining what conditions will reasonably assure the defendant's appearance. After considering those factors, the district court found that \$100,000L was the requisite amount and condition to impose to assure the defendant's appearance.

[¶13] Because the court properly followed the requirements set forth in Rule 46 of the North Dakota Rules of Criminal Procedure when imposing bond and because the bond is not excessive under the circumstances, the requests for relief should be denied.

**CONCLUSION**

[¶14] For the above-stated reasons, Casarez's request for a writ should be denied.

DATED this 3 day of October, 2018.



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**AFFIDAVIT OF SERVICE**

SA#145237

STATE OF NORTH DAKOTA )  
 ) SS  
COUNTY OF GRAND FORKS)

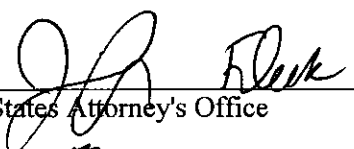
[¶1] The undersigned, being of legal age, being first duly sworn deposes and says that on the 4<sup>th</sup> day of October, 2018, she served via e-mail true copies of the following documents:

**BRIEF OF RESPONDENT  
RESPONDENT'S APPENDIX**

and that said email was served on the address of:

Samuel A. Gereszek and said e-mail address is: sam@egflawyer.com  
M. Jason McCarthy and said e-mail address is: JMcCarthy@nd.gov

At the office of the Grand Forks County States Attorney's Office.

  
States Attorney's Office

Subscribed and sworn to before me this 4<sup>th</sup> day of October, 2018.

  
Notary Public

jlf

JENNIFER ALVSTAD  
Notary Public  
State of North Dakota  
My Commission Expires March 26, 2021