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In the Supreme Court of the State of California

IN RE JOHN HARRIS, JR.,
ON HABEAS CORPUS.

First Appellate District, Case No. A162891
San Mateo County Superior Court, Case No. 21NF002568A
The Honorable Amarra A. Lee, Judge

ANSWER BRIEF ON THE MERITS

ROB BONTA (SBN 202668)
Attorney General of California
MICHAEL J. MONGAN (SBN 250374)
Solicitor General
JEFFREY LAURENCE (SBN 183595)
Senior Assistant Attorney General
*AIMEE FEINBERG (SBN 223309)
JOSHUA A. KLEIN (SBN 226480)
Deputy Solicitors General
KATIE L. STOWE (SBN 257206)
Deputy Attorney General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 210-6003
Fax: (916) 324-8835
Aimee.Feinberg@doj.ca.gov
Attorneys for Respondent

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TABLE OF CONTENTS

Page

Issue presented 8

Introduction 8

Statement of the case 9

A. Proceedings in the superior court 9

1. Harris's motion for release on his own recognizance 10

2. The superior court's detention decision 15

B. Proceedings in the Court of Appeal 17

Argument 21

I. The superior court properly considered offers of proof in applying article I, section 12 21

A. Detention hearings are not limited to live testimony subject to cross-examination 21

B. Allowing consideration of reliable offers of proof is consistent with due process 28

C. The Court of Appeal correctly held that section 12 authorized Harris's pretrial detention 37

II. Harris's arguments concerning other procedural protections are not properly presented and provide no basis for relief 39

Conclusion 43

TABLE OF AUTHORITIES

Page

CASES

Addington v. Texas
(1979) 441 U.S. 418 ..... 22, 34

Commonwealth v. Talley
(Pa. 2021) 265 A.3d 485 24

Conservatorship of O.B.
(2020) 9 Cal.5th 989 27

Gerstein v. Pugh
(1975) 420 U.S. 103 31

In re Brown
(2022) 76 Cal.App.5th 296 41

In re Humphrey
(2021) 11 Cal.5th 135 ..... *passim*

In re Nordin
(1983) 143 Cal.App.3d 538 22

In re White
(2020) 9 Cal.5th 455 ..... 21, 34, 37

Jauregi v. Superior Court
(1999) 72 Cal.App.4th 931 27

Mathews v. Eldridge
(1976) 424 U.S. 319 ..... 28, 29

Moore v. Superior Court
(2010) 50 Cal.4th 802 ..... 33, 35

Naidu v. Superior Court
(2018) 20 Cal.App.5th 300 ..... 32, 33

TABLE OF AUTHORITIES
(continued)

Page

People v. Allen
(2008) 44 Cal.4th 843 29

People v. Arbuckle
(1978) 22 Cal.3d 749 31

People v. Litmon
(2008) 162 Cal.App.4th 383 42

People v. Miranda
(2000) 23 Cal.4th 340 33

People v. Otto
(2001) 26 Cal.4th 200 36

People v. Superior Court (*Vasquez*)
(2018) 27 Cal.App.5th 36 42

Schraer v. Berkeley Property Owners' Assn.
(1989) 207 Cal.App.3d 719 27

Simpson v. Owens
(Ariz. Ct. App. 2004) 85 P.3d 478 24

State v. Ingram
(N.J. 2017) 165 A.3d 797 ..... 24, 30, 32, 36

State v. Zhukovskyy
(N.H. 2021) 265 A.3d 27 32

State ex rel. Torrez v. Whitaker
(N.M. 2018) 410 P.3d 201 ..... 24, 32, 36

Today's Fresh Start, Inc. v. Los Angeles County Off. of Education
(2013) 57 Cal.4th 197 ..... 28, 29

United States v. Acevedo-Ramos
(1st Cir. 1985) 755 F.2d 203 ..... 23, 24, 32

TABLE OF AUTHORITIES
(continued)

Page

United States v. Edwards
(D.C. 1981) 430 A.2d 1321 ..... *passim*

United States v. Gaviria
(11th Cir. 1987) 828 F.2d 667 24

United States v. LaFontaine
(2d Cir. 2000) 210 F.3d 125 34

United States v. Martir
(2d Cir. 1986) 782 F.2d 1141 ..... 23, 32

United States v. Portes
(7th Cir. 1985) 786 F.2d 758 36

United States v. Salerno
(1987) 481 U.S. 739 ..... 18, 30, 35

United States v. Smith
(D.C. Cir. 1996) 79 F.3d 1208 (*per curiam*) 24, 36

United States v. Winsor
(9th Cir. 1986) 785 F.2d 755 (*per curiam*) 24, 36

Wardius v. Oregon
(1973) 412 U.S. 470 40

Whitman v. Superior Court
(1991) 54 Cal.3d 1063 28

Yost v. Forestiere
(2020) 51 Cal.App.5th 509 27

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

Evidence Code
- Div. 3, ch. 4, art. 2 26
- § 140 ..... 18, 25
- § 300 ..... 18, 26, 27
- § 400 18
- § 401 ..... 18, 26
- § 1200, subd. (a) 25
- § 1200, subd. (b) 26

Penal Code
- § 187, subd. (a) 9
- § 189 9
- § 205 9
- § 664, subd. (a) 9
- § 825 23
- § 859b 28, 35
- § 872, subd. (b) 28, 35
- § 1203.075 10
- § 1269b, subd. (b) 23
- § 1270.1, subd. (b) 33
- § 1270.1, subd. (e) 27
- § 1275, subd. (a)(1) 27
- § 1289 35
- § 1319 ..... 18, 27
- § 1319, subd. (b)(3) 27
- § 1485 41
- § 1490 ..... 34, 41
- § 1491 41
- § 12022, subd. (d) 10

TABLE OF AUTHORITIES
(continued)

Page

CONSTITUTIONAL PROVISIONS

California Constitution, Article I,
§ 12 ..... *passim*
§ 12, subd. (b) ..... *passim*
§ 28, subd. (b)(8) 15
§ 28, subd. (f)(3) 21

RULES

Cal. Rules of Court
Rule 8.500, subd. (c)(1) 26, 39
Rule 8.516, subd. (a)(1) 39

Rules of Prof. Conduct
Rule 3.3 34
Rule 3.8 34

OTHER AUTHORITIES

Am. Heritage Dictionary (1982) 22

Black's Law Dictionary (5th ed. 1979) 22

Cal. Law Rev. Com. com., foll. Evid. Code, § 140 25

ISSUE PRESENTED

What evidence may a trial court consider at a bail hearing when evaluating whether the facts are evident or the presumption great with respect to a qualifying charged offense, and whether there is a substantial likelihood the person's release would result in great bodily harm to others? (Cal. Const., art. I, § 12, subd. (b).)

INTRODUCTION

A pretrial detention decision implicates important and sometimes competing interests: the defendant's fundamental liberty interest to remain free from pretrial custody and the State's compelling interests in protecting public and victim safety and ensuring the defendant's appearance at trial. But it is also an early and preliminary decision. It must be made in some cases within days of the defendant's arrest, before either the defense or the prosecution has fully marshalled its proof. And unlike the adjudication of a defendant's guilt at trial, at which the full panoply of formal procedures applies, the decision is necessarily temporary and may be reconsidered if the facts before the superior court change in advance of the criminal trial.

In making pretrial detention decisions, both state and federal law authorize superior courts to consider reliable offers of proof and other forms of hearsay evidence from both parties. Article I, section 12 of the California Constitution permits pretrial detention without bail in certain limited felony cases, including when "the facts are evident or the presumption great" and the court finds by clear and convincing evidence that the arrestee's release is substantially likely to result in great bodily

harm to others. Nothing in the text of this provision restricts cognizable evidence in a pretrial detention hearing to live testimony that would be admissible at trial. Such a restriction, moreover, would create significant practical concerns for both the prosecution and the defense, as each would face obstacles in securing live testimony from victims, fact witnesses, and friends and family in the days immediately following the defendant's arrest.

Allowing courts to base pretrial detention decisions on reliable offers of proof is also consistent with due process. Defendants' important liberty interests are properly protected against erroneous deprivation by superior courts' authority to scrutinize offers of proof for reliability, courts' discretion to require submission of documents or other evidence in individual cases, and a broad range of other procedural safeguards, including defendants' ability to present their own offers of proof and to renew requests for release in light of new facts developed over the course of the criminal proceeding. The Court of Appeal properly held that trial-like procedures need not be followed at a pretrial detention hearing.

STATEMENT OF THE CASE

A. Proceedings in the superior court

In February 2021, petitioner John Harris was arrested and charged with attempted willful, deliberate, and premeditated murder (Pen. Code, §§ 187, subd. (a), 189, 664, subd. (a)) and aggravated mayhem (Pen. Code, § 205) for a 1989 attack on a woman in her apartment. (Opinion 2; Petition for a Writ of Habeas Corpus, Exh. A.) The complaint alleged enhancements

based on Harris's use of a deadly and dangerous weapon and infliction of great bodily injury. (Petn., Exh. A at pp. 2-3; Pen. Code, §§ 12022, subd. (d), 1203.075.)

At Harris's arraignment, the superior court appointed counsel and set bail at $5 million. (Petn., Exh. C at pp. 10-11.) Defense counsel requested time to review discovery, and the case was continued. (Petn., Exh. G at p. 57; Petn., Exh. F at p. 23 fn. 1.)

1. Harris's motion for release on his own recognizance

In April 2021, after this Court issued its decision in *In re Humphrey* (2021) 11 Cal.5th 135, Harris filed a bail motion seeking release on his own recognizance, with nonfinancial conditions or affordable financial conditions if deemed necessary by the court. (Petn., Exh. F at p. 31.) In *Humphrey*, this Court held that conditioning an arrestee's release from pretrial custody solely on whether he can afford money bail is unconstitutional. (11 Cal.5th at p. 143.) Harris's motion argued that the $5 million bail previously ordered by the superior court amounted to impermissible pretrial detention. (Petn., Exh. F at p. 21.)

The motion described various "[f]acts [c]oncerning the [d]efendant." (Petn., Exh. F at pp. 23-24.) For example, it represented that Harris "has been employed for most of his adult life," that he "has shown his character of non-violence," and that "he has a stable residence to return to." (*Ibid.*) It stated that he "has a large group of family and friends that are very supportive," "is very active in his community church[,] and intends to continue attending church in Sacramento." (*Id.* at p. 24; see also *id.* at

p. 23 [noting Harris "has several references who describe him as a kind, even-tempered, and generous man"].) The motion also "noted that the defendant ha[d] received limited discovery" and that "the factual record may be expanded upon at the hearing, if necessary." (*Id.* at p. 23 fn. 1; see also *id.* at p. 32 [facts in Harris's motion taken "from the limited discovery provided by the prosecution"].)

The motion contained several exhibits, including letters from friends, family members, and a pastor describing Harris's character. (Petn., Exh. F at pp. 37-48.) Also included was a declaration from counsel averring on information and belief that Harris "well understood" the consequences of failing to appear under the terms of an own-recognizance release and that he had "neither incentive nor resources to evade the court's process." (*Id.* at p. 32.)

Harris's motion also attached a pretrial services report. (Petn., Exh. F at pp. 34-36.) That report recommended release with enhanced monitoring based on a matrix that scored factors such as his criminal history, history of appearing in court, and employment status. (*Ibid.*) The report did not describe the circumstances of the offense; and it noted that pretrial services had been unable to interview Harris. (Opn. 3 fn. 2, 19 fn. 9.)

The People, represented by the San Mateo District Attorney's Office, opposed Harris's motion. (Opn. 3; Petn., Exh. G.) The People argued that bail should remain as set because of Harris's dangerousness and risk of flight and because

nonfinancial conditions could not adequately protect the public. (Petn., Exh. G at pp. 52, 58-61.)

The People's opposition set out information about the offense, Harris's prior criminal history, and the prosecution's investigation. (Petn., Exh. G at pp. 52-57.) With respect to the March 1989 offense, the opposition explained that responding officers found the victim at her apartment with her hand across her neck as if she were "'holding her neck in place.'" (*Id.* at p. 52.) The victim's neck was cut in what one officer recalled as "'one of the worst neck wounds he had ever seen.'" (*Ibid.*) The physician who treated the victim recalled the length and depth of the laceration on the victim's throat and reported that the cut likely would have resulted in death had it been "'a hair more.'" (*Ibid.*)

The opposition also set forth information from police's interview of the victim. (Petn., Exh. G at pp. 53-54.) The victim woke from sleep with scarves tied around her ankles and with a man kneeling at the foot of her bed. (*Id.* at p. 53.) The man had a scarf on his forehead and over his mouth and tied bandanas around the victim's eyes and neck. (*Ibid.*) He ordered her to "'spread her legs'" and raped her. (*Ibid.*) He "'saw[ed]'" the back of her neck with a knife, hit her face, threatened to cut her eye out, strangled her, and tried to stab her. (*Ibid.*) "When she begged him not to kill her, he told her that he was not going to kill her." (*Ibid.*) She pleaded with him to leave; he responded that he could not trust her to not call the police. (*Id.* at p. 54.) When he ultimately left, the victim had three scarves tied to her. (*Ibid.*)

The People's opposition also described physical evidence. Scarves that did not belong to the victim were recovered at the crime scene, including one that was floral with a border. (Petn., Exh. G at p. 54.) The People represented that DNA analysis matched Harris's DNA to semen on the scarf and from the victim's vaginal swab. (*Ibid.*) Attached to the opposition were photographs of the knife, scarves, and the victim's injuries. (*Id.* at pp. 65-71.)

With respect to Harris's criminal history, the opposition noted that he had two prior misdemeanor convictions, including a 1991 conviction for petty theft. (Petn., Exh. G at pp. 54-55.) In that offense, Harris approached a woman in an office building and pulled the scarf she was wearing over her head. (*Ibid.*) He "told police that he had been having emotional and personal problems and out of frustration pulled the scarf from the victim's neck." (*Id.* at p. 55.)

With respect to the investigation into Harris, the People's opposition presented information from five interviews conducted by inspectors from the district attorney's office. (Petn., Exh. G at pp. 55-57.) One of Harris's ex-wives "reported that [he] had a collection of scarves that she had found in the garage." (*Id.* at p. 55.) He "had told her that he used the scarves for tying arms and legs on the posts," although "that never occurred during their relationship" because of her lack of interest. (*Ibid.*)

Another of Harris's ex-wives told an inspector that early in their marriage, he "was drunk and told her without prompting, 'This girl crawled into my bed naked and you're not going to lay

in my bed naked and not give me any. So she tried to say I raped her.'" (Petn., Exh. G at p. 56.) When the ex-wife asked him about it the next day, he denied making the statement. (*Ibid.*) She further stated that Harris "was 'into scarves,'" and while "he was not into bondage, . . . his big thing was, 'He had to be in control.'" (*Ibid.*)

Harris's live-in girlfriend from 2005 through 2015 "reported that [he] liked to tie her up with scarves and blindfolds during sex." (Petn., Exh. G at p. 55.) She "stated that [he] kept the scarves in a special bag that he hid and that nobody could touch them." (*Ibid.*) She indicated that he "liked to role play," and she gave the inspector an example "where he told her, 'I am going to break into your house and is your husband here, cause I am going to go in and rape you, don't say anything or I will kill you, something like that.'" (*Id.* at pp. 55-56.) She stated that this behavior occurred two to three times per month over the course of their 10-year relationship. (*Id.* at p. 56.)

A woman who dated Harris in 2019 recalled that he "disclosed that he had a sexual fetish associated with scarves." (Petn., Exh. G at p. 56.) He asked her to buy silk scarves with a border on the edges and a floral pattern in the middle. (*Ibid.*) She bought a scarf, but he "told her that it was the wrong type and asked her to purchase the correct one." (*Ibid.*) She also "disclosed that [Harris] liked to tie her to the bed and gag her with the scarves." (*Ibid.*) Another woman who met Harris on a dating website told an inspector that she had received silk scarves with a floral design in the mail from him. (*Id.* at p. 57.)

Based on these facts, the People urged the court to maintain bail at $5 million. (Petn., Exh. G at p. 64.) In the alternative, the People argued that the court could set "no bail" under article I, section 12 of the state constitution. (*Id.* at pp. 62-64.)

2. The superior court's detention decision

The court held a hearing on Harris's motion. The victim made a statement expressing fear of Harris and urging the court to detain him. (Petn., Exh. I at pp. 95-96; see generally Cal. Const., art. I, § 28, subd. (b)(8) [providing victim right to be heard].)

Also at the hearing, Harris addressed the People's alternative request for "no bail." (Petn., Exh. I at pp. 86-90.) Among other things, he argued that the prosecution had failed to carry its burden of establishing the prerequisites to detention because its factual presentation rested on inadmissible evidence that could not be subjected to cross-examination. (*Id.* at pp. 86-88, 97-101.)

Harris also pointed to statements and other material he had received in discovery to challenge the weight and credibility of the prosecution's presentation. (Petn., Exh. I at pp. 97-101.) For example, Harris asserted that the victim had identified two others as the perpetrators near the time of the offense, including one who had been arrested for rape and "had an M.O. that was similar to the rape" of the victim. (*Id.* at p. 97.) He also noted that the victim had identified a person who had left a note on her car saying "'gotcha.'" (*Ibid.*) He further argued that, although he had not received the DNA evidence, the police report disclosed

that he was not the only suspect with similar DNA. (*Id.* at pp. 98, 100.)

The superior court ordered Harris detained without bail. The court first rejected his contention that the prosecution was required to present live testimony to justify detention. (Petn., Exh. I at pp. 102-103.) The "prosecutor may show evidence of dangerousness or danger to return to court or concern for public safety via proffer and through evidence such as what has been presented to the court in the People's opposition to the bail motion[.]" (*Ibid.*)

The court then found that the elements of article I, section 12 of the state constitution were satisfied. (Petn., Exh. I at pp. 103-104.) That section permits pretrial detention in cases of "[f]elony offenses involving acts of violence on another person," "when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others." (Cal. Const., art. I, § 12, subd. (b).)[1] The court determined that Harris had been charged with a violent felony within the meaning of article I, section 12; and it found clear and convincing evidence that his release would be

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[1] Section 12 also authorizes detention in felony sexual assault cases when the facts are evident or the presumption great and when the court finds by clear and convincing evidence a substantial likelihood that release will lead to great bodily harm of another. (Cal. Const., art. I, § 12, subd. (b).) Harris was not charged with rape because the statute of limitations had expired. (Petn., Exh. I at p. 91.)

substantially likely to result in great bodily harm to others. (Petn., Exh. I at p. 103.) The court explained that it had "a very detailed account of what the People believe [the] evidence is[.]" (*Ibid.*) It also had statements from women involved with Harris about behavior that "does in some way mirror the details involving the scarves, involving the angry aggressive behavior of the defendant[.]" (*Ibid.*) The court acknowledged Harris's "de minimis record," but concluded that other facts demonstrated "a substantial likelihood that his result [*sic*] could cause great harm to other individuals." (*Id.* at p. 104.)

The court also stated that "the fact that [Harris] has been evading arrest according to the People for at least the last 32 years is a significant factor to consider in risk of flight." (Petn., Exh. I at p. 104.) And although Harris's 1991 misdemeanor conviction was only for petty theft, the court reasoned that it reflected "conduct that is very similar to what the People described as happening to the alleged complaining witness with the charge[d] offense." (*Ibid.*) Based on its findings, the court set bail at "no bail" and denied the motion for a bail reduction. (*Ibid.*)

B. Proceedings in the Court of Appeal

Harris filed a petition for a writ of habeas corpus in the Court of Appeal, which conditionally vacated the superior court's order and remanded for further proceedings. (Opn. 1, 27.) It held that the superior court had properly relied on the offers of proof presented by the prosecution, but that the court had failed to adequately set forth findings concerning the lack of alternatives to detention. (*Id.* at pp. 16, 27.)

With respect to the prosecution's factual presentation, the Court of Appeal explained that nothing in the Evidence Code's definition of "'evidence'" indicates that the term, as used in section 12, "denotes only evidence that is admissible at a formal trial." (Opn. 9 [discussing Evid. Code, §§ 140, 400, 401].) Significantly, section 12 "itself makes no mention" of any such requirement. (*Id.* at pp. 9-10.)

The court declined to consider Harris's argument based on Evidence Code section 300, which he asserted for the first time at oral argument. (Opn. 15-16.) Because he "neither previously raised nor properly briefed this statute-based issue," he failed to address relevant authorities, including, for example, Penal Code section 1319, which permits consideration of "'information'" presented by the prosecution in certain detention hearings, and case law allowing the use of "technically inadmissible evidence at hearings that implicate other liberty interests, such as sentencing and probation violation hearings." (*Id.* at pp. 15-16; *id.* at p. 16 fn. 8, italics omitted.)

The court also rejected Harris's claim that due process forbids reliance on offers of proof and instead requires the prosecution to present live testimony subject to cross-examination. (Opn. 10-16.) The court explained that federal courts had upheld the government's use of proffers in bail hearings. (*Id.* at p. 10.) In *United States v. Salerno* (1987) 481 U.S. 739, the high court upheld the facial constitutionality of the federal Bail Reform Act, which provides that bail hearings need not conform to the evidentiary rules that would apply at trial.

(Opn. 10.) Likewise, federal courts of appeals have specifically held that reliance on otherwise-inadmissible evidence does not violate due process. (See *ibid.*) These cases, the Court of Appeal explained, "would seem to foreclose a federal constitutional due process challenge to the sufficiency of proffers in bail hearings, at least where, as here, procedural safeguards are provided similar to those provided in the federal context." (*Id.* at p. 11.) The Court of Appeal further concluded that the state due process clause, which substantially overlaps with the federal guarantee, did not warrant a different conclusion. (*Id.* at pp. 12-13.)

Accordingly, the court concluded that, "as a general matter," "proffers of evidence may satisfy section 12(b)'s clear and convincing evidence standard without offending federal or state due process principles." (Opn. 16.) The court, however, "emphasize[d] that it remains within the discretion of the trial court to decide whether particular instances of proffered evidence may be insufficient, and whether to insist on the production of live testimony or other evidence in compliance with more stringent procedural requirements." (*Ibid.*)

Based on the record before it, the Court of Appeal also upheld the superior court's conclusion that Harris could properly be detained without bail under section 12. (Opn. 16-20.) First, the court concluded that the record contained substantial evidence of a qualifying offense. (*Id.* at p. 17.) Indeed, Harris did not contend otherwise. (*Ibid.*)

Second, the court determined that a reasonable fact finder could have found, by clear and convincing evidence, a substantial

likelihood that Harris's release would result in great bodily harm to another person. (Opn. 17.) The court explained that "the People's proffer of evidence concerning the circumstances of the underlying offenses was extensive and detailed[.]" (*Id.* at p. 18.) Moreover, multiple women who knew Harris between 1997 and 2020 provided statements to investigators demonstrating that, while they were willing partners, he "continues to act on a sexual fetish involving scarves and binding" and "consistently sought to exert sexual control over women involving fantasized violence and non-consent." (*Ibid.*) The proffered evidence thus "amply support[ed] the conclusion that [Harris] is an extremely dangerous person." (*Ibid.*)

The court, however, conditionally vacated the no-bail order, because the superior court failed to set out reasons on the record why less restrictive alternatives could not reasonably protect victim and public safety, as this Court required in *Humphrey*. (Opn. 1, 20-24.) The court remanded for further findings on this issue and for the superior court to provide an adequate statement of reasons and to correct the court minutes. (*Id.* at p. 27.) And "[f]or the sake of efficiency," the superior court "may, but need not, vacate its prior order denying bail and hold a new bail hearing in order to take new evidence or any other action it deems necessary." (*Ibid.*)

ARGUMENT

I. THE SUPERIOR COURT PROPERLY CONSIDERED OFFERS OF PROOF IN APPLYING ARTICLE I, SECTION 12

A. Detention hearings are not limited to live testimony subject to cross-examination

The Court of Appeal correctly held that the superior court could order detention based on the prosecution's offer of proof, without requiring live testimony. As noted above, section 12 of the state constitution authorizes courts to detain arrestees without bail in certain felony cases "when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others." (Cal. Const., art. I, § 12, subd. (b).)[2] This provision requires "evidence that would be sufficient to sustain a hypothetical verdict of guilt on appeal." (*In re White* (2020) 9 Cal.5th 455, 463.) When "viewed in the light most favorable to the prosecution," the record must "contain[] enough evidence of reasonable, credible, and solid value to sustain a guilty verdict on one or more of the qualifying crimes." (*Ibid.*)

As the Court of Appeal reasoned, section 12 itself contains no suggestion that detention findings must be based only on

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[2] Another provision of the California Constitution, article I, section 28, subdivision (f)(3), also addresses bail and pretrial detention. This case does not present the question of how section 12 and section 28 "can or should be reconciled" (*Humphrey*, *supra*, 11 Cal.5th at p. 155, fn. 7), because the superior court's detention decision relied on section 12 and because the issue on which this Court granted review is limited to the standards applicable under section 12.

evidence that would be admissible at trial. (Opn. 9-10.) To begin with, the text of section 12 specifically calls for consideration of "facts." (Cal. Const., art. I, § 12, subd. (b).) The plain meaning of "facts" is not limited to information admissible at a criminal trial. And while the provision also refers to "clear and convincing evidence," that term of art refers to the prosecution's burden of proof—not to the form of factual presentation the prosecution must use. (See *Addington v. Texas* (1979) 441 U.S. 418, 423-425 [discussing burdens of proof]; *In re Nordin* (1983) 143 Cal.App.3d 538, 543, 544 fn. 4 [finding "clear and convincing evidence" to justify denial of bail while declining to resolve questions about proffers or hearsay].)

Even taken in isolation, the word "evidence" is not limited to evidence that would be admissible at a formal trial. At the time of section 12's adoption, for example, one legal dictionary defined "[e]vidence" to include not only evidence presented at trial but also "[a]ll the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved." (Black's Law Dictionary (5th ed. 1979), p. 498; see also *ibid.* ["[a]ny matter of fact, the effect, tendency, or design of which is to produce in the mind a persuasion of the existence or nonexistence of some matter of fact"].) A nonlegal dictionary defined the term to include, in addition to admissible evidence, "[t]he data on which a judgment or conclusion may be based" and "[s]omething that indicates." (Am. Heritage Dictionary (1982), p. 471.) "Something that indicates" sweeps more broadly than live witness testimony that is admissible at a criminal trial.

The context of article I, section 12 also demonstrates that evidence does not have the narrow meaning suggested by Harris. Most importantly, a pretrial detention hearing occurs early in a criminal proceeding, when "neither the defense nor the prosecution is likely to have marshalled all its proof." (*United States v. Martir* (2d Cir. 1986) 782 F.2d 1141, 1145; see also *United States v. Acevedo-Ramos* (1st Cir. 1985) 755 F.2d 203, 206 (Breyer, J.) [similar].) In California, the initial detention decision may need to be made as early as the defendant's arraignment, which must occur within two days of arrest. (Pen. Code, §§ 825, 1269b, subd. (b).) Limiting a detention hearing to only trial evidence would preclude both the prosecution and the defense from presenting reliable and relevant information necessary for the pretrial detention decision.

Such a limitation, moreover, would pose significant practical concerns. For example, a victim of a recent violent crime may be physically unable to appear so soon after the crime occurs. Victims or witnesses suffering trauma from a serious crime may be emotionally or mentally unable to appear and face the defendant immediately after the defendant's arrest or the filing of charges. Other witnesses may be unable to make an immediate appearance because of previously scheduled work or childcare needs or an inability to travel. And defendants may be unable to immediately procure live testimony about their financial resources or their community ties. Consistent with these concerns, federal courts and a number of state courts permit informal modes of proof at pretrial detention hearings,

including hearsay and similar offers of proof from the parties. (See, e.g., *Acevedo-Ramos*, *supra*, 755 F.2d at p. 206; *United States v. Winsor* (9th Cir. 1986) 785 F.2d 755, 756 (*per curiam*) ["government may proceed in a detention hearing by proffer or hearsay"]; *United States v. Gaviria* (11th Cir. 1987) 828 F.2d 667, 669 [allowing government and defense proffers]; *United States v. Smith* (D.C. Cir. 1996) 79 F.3d 1208, 1210 (*per curiam*) [similar]; *State ex rel. Torrez v. Whitaker* (N.M. 2018) 410 P.3d 201, 217 [New Mexico courts "have routinely made pretrial release and bail decisions on the basis of recorded materials, proffers, and other nontestimonial information"]; *State v. Ingram* (N.J. 2017) 165 A.3d 797, 799 [prosecution not obligated to call live witnesses at every detention hearing]; *United States v. Edwards* (D.C. 1981) 430 A.2d 1321, 1337 ["government may proceed by the use of proffer and hearsay"].)[3]

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[3] Some state courts have restricted the use of informal offers of proof. (E.g., *Commonwealth v. Talley* (Pa. 2021) 265 A.3d 485, 524 fn. 35 [requiring "bulk of the Commonwealth's proof [to] consistent of admissible evidence"]; *Simpson v. Owens* (Ariz. Ct. App. 2004) 85 P.3d 478, 493-494 [allowing consideration of record of grand jury proceedings but not prosecution's "avowals of the State's evidence"]; see also *id.* at p. 492 [citing cases holding that bail hearings must conform to rules of evidence].) For the reasons explained in text, the California Constitution does not preclude the use of offers of proof in pretrial detention hearings. And a contrary rule would both lead to practical problems (*ante* p. 23) and risk undue delay in determining whether an arrestee may be released pending trial, as one of the decisions itself illustrates. (See *Simpson*, *supra*, at p. 495 [recognizing that, after probable cause determination, "'court can hold a defendant charged with an offense punishable by life

(continued…)

Definitions in the Evidence Code reinforce the conclusion that the term "evidence" in section 12 does not refer only to live testimony that could be introduced at a criminal trial. For example, Evidence Code section 140 defines "'[e]vidence'" to mean "testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact." That definition encompasses hearsay and other evidence that the parties would not necessarily be able to present at trial, as the Law Revision Commission comments confirm. (Cal. Law Rev. Com. com., foll. Evid. Code, § 140 [statute defines evidence "broadly to include the testimony of witnesses, tangible objects, sights . . . , sounds . . . , *and any other thing that may be presented as a basis of proof*," italics added].) "The definition includes anything offered in evidence whether or not it is technically inadmissible and whether or not it is received." (*Ibid.*)

At the same time, the Evidence Code recognizes that the type of factual presentation at issue here—hearsay statements summarized in the prosecution's opposition brief—is a form of "evidence." (See Evid. Code, § 1200, subd. (a) [defining "'[h]earsay evidence'" as "evidence of a statement that was made other than by a witness while testifying at the hearing and that

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(…continued)

imprisonment without bail for such time as is necessary to enable the parties to prepare for a full bail hearing'" and citing approvingly case "holding seventy-day delay acceptable absent allegations that delay hampered defense"].)

is offered to prove the truth of the matter stated"].) Hearsay is often inadmissible at trial (*id.*, § 1200, subd. (b)), but it is nonetheless "evidence."

The other provisions of the Evidence Code cited by Harris (OBM 21-22) do not suggest a different result. For example, Harris points to Evidence Code section 401, which defines the term "'proffered evidence'" to mean "evidence, the admissibility or inadmissibility of which is dependent upon the existence or nonexistence of a preliminary fact," and argues that "evidence" in section 12 does not encompass "proffered evidence." But Evidence Code section 401 defines "proffered evidence" only for the purpose of determining the admissibility of the evidence. (Evid. Code, § 401 [defining "'proffered evidence'" "[a]s used in this article"]; Evid. Code, Div. 3, ch. 4, art. 2 [entitling article "Preliminary Determinations on Admissibility of Evidence"].) The "proffers" at issue here—summaries of information learned from witnesses and other sources—are not "proffered evidence" in that same sense.

Harris also cites Evidence Code section 300, which says that the Evidence Code applies "in every action before" a superior court other than a grand jury proceeding, "[e]xcept as otherwise provided by statute." The Court of Appeal, however, did not consider that argument because it was not timely raised or properly briefed. (Opn. 15.) In such circumstances, this Court ordinarily declines to address the forfeited argument as well. (See Cal. Rules of Court, rule 8.500, subd. (c)(1).)

In any event, the argument is incorrect. Provisions of the Penal Code relating to pretrial bail hearings provide the sort of statutory exception that section 300 contemplates. Most significantly, Penal Code section 1319 generally requires that, where (as here) a defendant is charged with a violent felony and seeks release on his own recognizance, the superior court "shall consider," among other things, "*[a]ny other information presented by the prosecuting attorney*." (Pen. Code, § 1319, subd. (b)(3), italics added.) In addition, judicial bail-setting determinations may take into account "factors such as the information included in" a pretrial services report. (*Id.*, § 1275, subd. (a)(1); see also *id.*, § 1270.1, subd. (e) [allowing for increased bail in certain cases without a hearing based on sworn declaration from peace officer].) These provisions make clear that the Legislature did not intend for pretrial detention determinations to be limited to live witness testimony that would be admissible at trial.[4]

It is notable, moreover, that strict rules of evidence do not govern at a preliminary hearing, which often occurs after the

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[4] Harris cites *Jauregi v. Superior Court* (1999) 72 Cal.App.4th 931 for the proposition that the rules of evidence must apply to pretrial detention hearings. (OBM 21.) But that case involved a civil forfeiture action, not a bail or detention hearing. (*Jauregi*, *supra*, at pp. 939-940.) The other cases cited in the opening brief are inapt for the same reason. (OBM 22-23 [discussing *Yost v. Forestiere* (2020) 51 Cal.App.5th 509; *Schraer v. Berkeley Property Owners' Assn.* (1989) 207 Cal.App.3d 719; *Conservatorship of O.B.* (2020) 9 Cal.5th 989].) None involved a bail or detention hearing—or even a criminal proceeding—and thus none casts light on the forms of evidence that may be considered in making detention determinations under section 12.

pretrial detention hearing. (Pen. Code, §§ 859b [preliminary hearing held within 10 court days of arraignment], 872, subd. (b) [allowing officer's hearsay recounting of witness statements].) It would be anomalous for stricter evidentiary standards to apply at an even earlier pretrial hearing—and even more anomalous to require, in effect, a second trial in the course of a single criminal proceeding. (Cf. *Whitman v. Superior Court* (1991) 54 Cal.3d 1063, 1081-1082 ["'to impose the same rules of evidence at the preliminary hearing as at the trial stage would amount to the granting of a second trial'"].)

B. Allowing consideration of reliable offers of proof is consistent with due process

The Court of Appeal was also correct in concluding that reliance on offers of proof does not violate arrestees' due process rights, particularly in light of the many procedural safeguards applicable to pretrial detention determinations. (Opn. 10-11.) This Court has made clear that a "court's procedures for entering an order resulting in pretrial detention must . . . comport with . . . traditional notions of due process to ensure that when necessary, the arrestee is detained in a fair manner." (*Humphrey*, *supra*, 11 Cal.5th at p. 155, internal quotation marks omitted.) The "precise dictates" of the federal due process clause "are flexible and vary according to context." (*Today's Fresh Start, Inc. v. Los Angeles County Off. of Education* (2013) 57 Cal.4th 197, 212; see *Mathews v. Eldridge* (1976) 424 U.S. 319, 334; OBM 25.) The United States Supreme Court "has rejected absolute rules" and has instead adopted a balancing test that looks at three factors: (1) the private interest at stake; (2) "'the risk of an erroneous

deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards'"; and (3) the governmental interests, "'including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.'" (*Today's Fresh Start*, *supra*, at p. 213, quoting *Mathews v. Eldridge*, *supra*, at p. 335.)

"With a minor modification," this Court has adopted the federal framework for analyzing challenges under the state due process clause. (*Today's Fresh Start, supra*, 57 Cal.4th at p. 213; see also *People v. Allen* (2008) 44 Cal.4th 843, 863 fn. 14.) Under the state due process inquiry, the first three factors are the same, but California courts also consider a fourth element: "the dignitary interest in informing individuals of the nature, grounds, and consequences of the action and in enabling them to present their side of the story before a responsible government official." (*Today's Fresh Start*, *supra*, at p. 213, internal quotation marks omitted; see also *Allen*, *supra*, at pp. 862-863.)

These factors all support the conclusion that the state and federal constitutions do not categorically preclude the use of informal modes of proof at pretrial detention hearings. Both the arrestee and the State have vitally important interests at stake. Arrestees have a "fundamental constitutional right to liberty." (*Humphrey*, *supra*, 11 Cal.5th at p. 150.) Those detained pending trial "unquestionably suffer a direct grievous loss of freedom[.]" (*Id.* at p. 142, internal quotation marks omitted.) Pretrial custody can also have "immense and profound" consequences for

arrestees. (*Id.* at p. 147.) "If not released, courts have observed, the accused may be impaired to some extent in preparing a defense." (*Ibid.*) Detention also heightens risks of other significant losses for an arrestee, including the possible loss of employment, a home, and custody of a child. (*Ibid.*)

The State also has particularly weighty interests. This Court has recognized that the State has compelling interests in protecting the safety of the victim and the public and in ensuring defendants' presence at trial. (*Humphrey*, *supra*, 11 Cal.5th at p. 143; see also *United States v. Salerno* (1987) 481 U.S. 739, 749 ["government's interest in preventing crime by arrestees is both legitimate and compelling"].) In addition, the State has significant interests in the fair and efficient administration of criminal proceedings. That includes the interest in avoiding the significant fiscal and administrative burdens on the prosecution, law enforcement officers, and courts that would be imposed by a requirement to rely on live witnesses at every pretrial detention hearing. (See *Ingram*, *supra*, 165 A.3d at p. 809; *Edwards*, *supra*, 430 A.2d at p. 1337 [noting government's "obvious interest" in not conducting two trials or their equivalent—"once for pretrial detention and a second time for the trial on the charges"].) It also includes avoiding unnecessary pretrial detention of those who can properly be released and its related financial and social costs. (See *Humphrey*, *supra*, 11 Cal.5th at p. 147.)

Harris does not dispute the importance of the State's interests in public and victim safety, but argues that reliance on

offers of proof leads to unacceptable risks of error. (See OBM 28-33.) He is correct to note that the reliability of information on which a detention decision is based is a central question in measuring the adequacy of pretrial detention proceedings. (See *id.* at p. 29.) Indeed, in the sentencing context, this Court has recognized that "[r]eliability of the information considered by the court is the key issue in determining fundamental fairness." (*People v. Arbuckle* (1978) 22 Cal.3d 749, 754-755.)

But it does not follow that imposing trial-like procedures at pretrial detention hearings is required. Rather, as this Court and the high court have held in other contexts, fundamental fairness does not categorically require the State to present live witnesses subject to cross-examination before depriving an individual of a protected liberty interest. (*Arbuckle*, *supra*, 22 Cal.3d at pp. 754-755.) For example, in *Arbuckle*, this Court rejected a due process challenge to the use of an expert report in a sentencing proceeding, even though the defendant had no opportunity to cross-examine the personnel who prepared it. (*Ibid.*) Likewise, in *Gerstein v. Pugh* (1975) 420 U.S. 103, the high court approved the use of informal modes of proof in making probable cause determinations, which are required before an "extended restraint of liberty following arrest." (*Id.* at p. 114; *id.* at pp. 119-122; see also *Edwards*, *supra*, 430 A.2d at pp. 1336-1337 [analogizing probable cause determinations to pretrial detention decisions].)

Consistent with these holdings, numerous state and federal courts have concluded that, in pretrial detention proceedings, courts may properly "reconcile the competing demands of speed

and of reliability" by evaluating the reliability of offers of proof and by "selectively insisting upon the production of the underlying evidence or evidentiary sources where their accuracy is in question." (*Acevedo-Ramos*, *supra*, 755 F.2d at p. 207.)[5] The Court of Appeal correctly reached the same conclusion. (Opn. 16.)

Harris's contrary arguments rely principally on the Court of Appeal's decision in *Naidu v. Superior Court* (2018) 20 Cal.App.5th 300. (See OBM 31-33.) There, the court held that the superior court erred in suspending the defendants' contractor's licenses as a condition of bail, in the absence of evidence regarding whether the condition was necessary to protect the public. (*Naidu*, *supra*, at pp. 305, 319.) But the

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[5] See, e.g., *Martir*, *supra*, 782 F.2d at p. 1147 [recognizing magistrates' responsibility to "scrutinize government proffers for reliability . . . informed by an awareness of the high stakes involved"]; *Whitaker*, *supra*, 410 P.3d at p. 203 [showing of dangerousness "not bound by formal rules of evidence but instead focuses on judicial assessment of all reliable information presented to the court in any format worthy of reasoned consideration"]; *id.* at pp. 217-218 [requiring judges "to assess which information in any form carries sufficient indicia of reliability to be worthy of consideration by the court"]; *Edwards*, *supra*, 430 A.2d at p. 1337 [prosecution "may proceed by the use of proffer and hearsay, subject to the discretion of the judge as to the nature of the proffer and the need for admissible evidence"]; *Ingram*, *supra*, 165 A.3d at pp. 809-810 [State not required to call live witnesses but court retains "discretion to require direct testimony if it is dissatisfied with the State's proffer"]; cf. *State v. Zhukovskyy* (N.H. 2021) 265 A.3d 27, 31-32 [discussing statute mandating use of proffer subject to court's discretion to order hearing with live testimony].

licensing board's submission there was quite different from the prosecution's offer of proof here. In *Naidu*, the licensing board submitted a declaration from counsel stating the board's position that, "based on the [criminal] charges" filed, the licensees were "unsafe to work as a contractor and should be deprived of that privilege pending completion" of criminal and administrative licensing proceedings. (*Id.* at p. 313, internal quotation marks omitted.) In contrast here, the prosecution presented a detailed summary of facts it had gathered and explained the sources for those facts. (*Ante* pp. 12-14.) To the extent Harris suggests that *Naidu* requires live witnesses and trial-like procedures in order to satisfy due process, that is not what the court held. (See *Naidu*, *supra*, at p. 314 [agreeing that a license suspension could "at least in some cases, be supported by no more than the return of an indictment or the filing of an information"].)[6]

Beyond courts' discretion to scrutinize offers of proof, other procedural protections short of trial-like procedures adequately protect a defendant's interest in avoiding an erroneous detention decision. (See *Moore v. Superior Court* (2010) 50 Cal.4th 802, 824 [examining other procedural protections in determining whether due process required further safeguards].) For example, arrestees will be represented by counsel at the hearing. (See Pen. Code, § 1270.1, subd. (b) [requiring court to appoint counsel for

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[6] To the extent that Harris also asserts arguments based on the Confrontation Clause (OBM 35), that right is "basically a trial right." (*People v. Miranda* (2000) 23 Cal.4th 340, 350-351, internal quotation marks and italics omitted.)

release hearing if defendant is not already represented]; OBM 29 [Harris represented by counsel].) The People bear the burden of establishing the prerequisites to detention under a heightened standard: clear and convincing evidence. (*Humphrey*, *supra*, 11 Cal.5th at p. 153; see also *Addington*, *supra*, 441 U.S. at p. 423 [standard of proof "serves to allocate the risk of error between the litigants"].) The prosecutor is also an officer of the court, subject to the duty of candor and the special responsibilities of prosecutors. (Rules Prof. Conduct, rules 3.3, 3.8.) For example, a prosecutor may not present information to the court about the asserted bases for detention that is misleading, including misleading by omission. (Cf. *United States v. LaFontaine* (2d Cir. 2000) 210 F.3d 125, 131 [prosecutor disclosed in open court that witness providing information in proffer had previously lied to the grand jury].)

At the same time, arrestees may present facts to the judicial officer, by hearsay statements and otherwise, as Harris did here. (See *ante* pp. 10-11 [describing hearsay evidence presented by Harris]; OBM 29 [acknowledging Harris had right to present evidence and to testify].) Judges must set out their findings on the record and in the court minutes—a requirement that not only facilitates review but also "guard[s] against careless or rote decision-making." (*Humphrey*, *supra*, 11 Cal.5th at pp. 155-156.) And defendants are entitled to seek review through a petition for a writ of habeas corpus. (See, e.g., *White*, *supra*, 9 Cal.5th at p. 461; Pen. Code, § 1490 [defendant detained "for want of bail" may challenge bail through habeas petition].) These sorts of

procedures "are specifically designed to further the accuracy" of a court's determination regarding an arrestee's future dangerousness. (*Salerno*, *supra*, 481 U.S. at pp. 751-752.)

It is also significant that defendants may renew requests for release in light of new factual developments. (See *Moore*, *supra*, 50 Cal.4th at p. 825 [opportunities to reevaluate commitment determination "mitigate the effects of any 'error' in the commitment proceeding" attributable to the challenged procedure].) For example, defendants have the right to a preliminary hearing within ten court days of arraignment, which provides the opportunity for judicial confirmation that evidence, including reliable hearsay, supports the charges. (See Pen. Code, § 859b.) At the preliminary hearing, defendants have the right to cross-examine any witnesses who testify, which will generally include law enforcement witnesses with knowledge of investigative facts. (See *id.*, § 872, subd. (b).) And if new facts emerge, or there are discrepancies between the facts relied on by the magistrate in denying pretrial release and the evidence disclosed at the preliminary hearing or in discovery, the accused may raise the issue again—at which point the court will be required to take any new showing into account and determine if continuing detention is justified or if alternative conditions could meet the State's interests. (See generally Pen. Code, § 1289 [providing that, "[a]fter a defendant has been admitted to bail," a court may, "upon good cause shown, either increase or reduce the amount of bail"].)

In addition, at trial, the prosecution must prove each element of the charged offense beyond a reasonable doubt. At that proceeding, the full panoply of trial protections, including the right to confront witnesses, applies.

Numerous federal courts of appeals and other courts have concluded that due process does not require trial-like procedures at detention hearings where procedural protections such as these are in place. (E.g., *United States v. Portes* (7th Cir. 1985) 786 F.2d 758, 767; *Winsor*, *supra*, 785 F.2d at pp. 756-757; *Smith*, *supra*, 79 F.3d at p. 1210; *Edwards*, *supra*, 430 A.2d at pp. 1333-1338; *Ingram*, *supra*, 165 A.3d at pp. 805-810.) Indeed, "decades of federal circuit and district court opinions, as well as state appellate decisions, have consistently" held that the federal Constitution does not require live witnesses at detention hearings. (*Whitaker*, *supra*, 410 P.3d at p. 215.) Harris offers no reason to depart from these authorities; indeed, the opening brief does not even cite them.

Finally, a prohibition on hearsay and offers of proof is not required to satisfy the additional, fourth factor considered under the state due process inquiry. This Court has already recognized that reliance on hearsay evidence does not impair an individual's dignitary interest in being informed of the nature of the action and in presenting his side of the story. (*People v. Otto* (2001) 26 Cal.4th 200, 215 [discussing Sexually Violent Predator Act proceeding].) In addition, arrestees' dignitary interests are fully served by other procedural safeguards, such as notice of the proceeding, the ability to present offers of proof or other forms of

evidence, and the requirement of a statement of reasons both on the record and in the minutes. Harris offers no persuasive reason why the analysis under the state due process clause should be any different than under the federal constitution.

C. The Court of Appeal correctly held that section 12 authorized Harris's pretrial detention

On review of a superior court's order denying release, an appellate court considers whether "the record, viewed in the light most favorable to the prosecution, contains enough evidence of reasonable, credible, and solid value to sustain a guilty verdict on one or more of the qualifying crimes" and "whether any reasonable trier of fact could find, by clear and convincing evidence, a substantial likelihood that the person's release would lead to great bodily harm to others." (*White*, *supra*, 9 Cal.5th at pp. 463, 465.) Here, the prosecution's offer of proof included ample evidence of Harris's guilt for the charged offenses, including his DNA found in semen on a scarf collected at the scene and in a vaginal swab from the victim. (Petn., Exh. G. at p. 54.) The evidence also demonstrated Harris's decades-long interest in using scarves to bind sexual partners. (*Ante* pp. 13-14.)

The record likewise contained sufficient facts to support the superior court's finding of clear and convincing evidence that Harris's release would likely lead to great bodily harm. For decades after the offense, he acted on his scarf fetish, using scarves to tie up sexual partners. (*Ante* pp. 13-14.) He hid scarves in his garage, telling a former partner not to touch them. (Petn., Exh. G at p. 55.) Two or three times per month over a ten-year period, he role-played fantasies, including that he was

breaking into his then-girlfriend's house and asking if her husband was home because "'I am going to go in and rape you, don't say anything or I will kill you, something like that.'" (*Id.* at pp. 55-56.) On another occasion, he grabbed a scarf on the neck of a female stranger because of personal frustration he had been experiencing. (*Id.* at pp. 54-55.)

In addition, after Harris raped the victim in this case, he expressed concern that she would call the police. (Petn., Exh. G at p. 54.) After successfully evading detection for more than three decades, he has now been charged and knows that the victim is available to testify against him. These facts amply support the superior court's findings in support of its detention order.

The Court of Appeal, however, correctly ordered the case remanded. In *Humphrey*, this Court held that, before ordering detention based on safety concerns, courts must find clear and convincing evidence that no conditions of release could reasonably protect those interests. (11 Cal.5th at p. 153.) *Humphrey* further determined that courts must set forth the reasons for their decisions on the record and in the minutes. (*Id.* at p. 155.)

Here, while the superior court heard argument on alternatives to detention, it did not expressly set out reasons on the record why those alternatives could not reasonably protect victim and public safety. (Opn. 1, 20-24.) On remand, the superior court should make these findings and set them forth in the record and in the court's minutes.

II. HARRIS'S ARGUMENTS CONCERNING OTHER PROCEDURAL PROTECTIONS ARE NOT PROPERLY PRESENTED AND PROVIDE NO BASIS FOR RELIEF

Beyond contending that the superior court erred in considering the prosecution's offer of proof without requiring live witnesses subject to cross-examination, Harris claims that other procedural defects—relating to notice, discovery, and the speed of appellate review—violated his due process rights and warrant dismissal of the charges against him. (OBM 36-42.) These claims are not properly presented and in any event lack merit.

To begin with, Harris's claims are not encompassed within the issue on which this Court granted review. This Court limited the issues to be briefed and argued to "[w]hat evidence may a trial court consider at a bail hearing when evaluating" whether the elements of article I, section 12(b) are satisfied. (Order (Mar. 9, 2022).) Issues related to notice, discovery, and appellate review do not fairly fall within that question. (See Cal. Rules of Court, rule 8.516, subd. (a)(1) ["Unless the court orders otherwise, the parties must limit their briefs and arguments to those issues and any issues fairly included in them."].) Harris also did not raise these issues before the superior court or the Court of Appeal. That is another reason why the Court may decline to consider them. (See *id.*, rule 8.500, subd. (c)(1).)

In any event, none of Harris's contentions provides a basis for relief. He first contends that he did not receive notice before the hearing that the prosecution would make an alternative request for no bail. (OBM 36.) But the record here contradicts that claim. The prosecution's written opposition, filed the day before the hearing (and three days after Harris's motion was

filed), included an alternative request for no bail. (Petn., Exh. G at pp. 62-64.) And Harris's counsel addressed that request at the hearing without asserting a lack of notice or seeking a continuance to respond to the prosecution's factual presentation and arguments. (Petn., Exh. I at p. 86 ["if the court wants me to discuss any possibility of no bail, then I can also talk about that"].)

Harris is also mistaken in claiming that a lack of discovery violated his due process rights. (OBM 37-38.) As an initial matter, the record suggests that he was provided some discovery before his detention hearing, including a police report and at least some witness statements, notwithstanding that "the Due Process Clause has little to say regarding the amount of discovery which the parties must be afforded[.]" (*Wardius v. Oregon* (1973) 412 U.S. 470, 474; see Petn., Exh. F at p. 23 fn. 1; *id.* at p. 32.) Harris argued to the superior court that he had not received DNA reports, additional witness statements, and other information that he believed cast doubt on the prosecution's factual presentation. (Petn., Exh. I at pp. 97-101.) But he did not request that the court examine those materials or order their disclosure before ruling on his motion. And on remand, the superior court retains discretion to require the prosecution to provide documentation to substantiate the aspects of its offer of proof that Harris has challenged, if the defense has not received those materials already. (Opn. 27 [permitting superior court to hold a new bail hearing to consider new evidence or to take other action it deems necessary].)

Harris also argues that delays in appellate review violated his due process rights. (OBM 38-39.) He does not dispute, however, that arrestees may seek appellate review of a detention decision by filing a writ of habeas corpus in the Court of Appeal. And his assertion that the proceedings in his case have been unduly prolonged ignores the rapid pace at which the Court of Appeal addressed his petition and the unusual circumstances that led the court to seek additional briefing to address the significant legal issues, unsettled after *Humphrey*, that were presented in the petition. (See A162891 Order (Aug. 18, 2021).)[7] Harris cites no authority finding a due process violation under similar circumstances.

Finally, there is no basis for Harris's argument that the Court of Appeal should have ordered the charges dismissed instead of remanding for further proceedings. (See OBM 40-42.) When a superior court errs in a detention decision, the proper remedy is a new hearing or conditional release if warranted by the circumstances. (See *In re Brown* (2022) 76 Cal.App.5th 296, 306-309; Pen. Code, §§ 1485, 1490, 1491.)

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[7] Harris filed his petition for a writ of habeas corpus on June 21, 2021. The court ordered an informal response two days later and issued an order to show cause less than two weeks after that response was filed. In light of the complex legal contentions raised in the petition, the court asked for additional briefing. All briefing in the case—including an amicus brief, supplemental traverse, and reply—was completed by September 27, 2021, just over three months after the case was initiated. The court heard argument less than two months after briefing was complete and issued its decision 10 days after argument.

Harris's contrary argument incorrectly conflates proceedings governing a detention determination with the separate determination of guilt made at trial. For this reason, the cases Harris cites, *People v. Superior Court* (*Vasquez*) (2018) 27 Cal.App.5th 36 and *People v. Litmon* (2008) 162 Cal.App.4th 383, are inapposite. In *Vasquez* and *Litmon*, the courts dismissed petitions under the Sexually Violent Predator Act after defendants were held in civil commitment for extended periods without a trial to determine whether they were sexually violent predators as required under the Act. Unlike a detention hearing, the delayed trials at issue in *Vasquez* and *Litmon* were to determine whether the defendants could be civilly committed, and the remedy of dismissal was for violation of a due process speedy trial right for that commitment determination. (*Vasquez*, *supra*, at pp. 82-83; *Litmon*, *supra*, at pp. 399-406.) In contrast, Harris does not allege a violation of his state or federal rights to a speedy trial; nor could he, as a pretrial detention hearing is not related to the ultimate determination of guilt at trial.

At Harris's trial, the prosecution will be required to prove his guilt beyond a reasonable doubt based on evidence that is subject to confrontation and otherwise conforms to the rules of evidence. For the reasons explained above, neither section 12 nor federal or state due process principles required the superior court to follow those same trial procedures before it could determine whether Harris presented a substantial risk of danger to the victim or the public and whether it was therefore appropriate to continue to detain him pending his criminal trial.

CONCLUSION

The judgment of the Court of Appeal should be affirmed and the matter remanded for the superior court to make findings on whether conditions short of detention can reasonably protect victim and public safety, as required by this Court's decision in *Humphrey*.

Respectfully submitted,

ROB BONTA
Attorney General of California
MICHAEL J. MONGAN
Solicitor General
JEFFREY LAURENCE
Senior Assistant Attorney General

/s/ Aimee Feinberg
AIMEE FEINBERG
JOSHUA A. KLEIN
Deputy Solicitors General
KATIE L. STOWE
Deputy Attorney General
Attorneys for Respondent

June 8, 2022

CERTIFICATE OF COMPLIANCE

I certify that the attached **ANSWER BRIEF ON THE MERITS** uses a 13-point Century Schoolbook font and contains 9,366 words.

ROB BONTA
Attorney General of California

/s/ Aimee Feinberg
AIMEE FEINBERG
Deputy Solicitor General
Attorneys for Respondent

June 8, 2022

DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: **In re Harris**
No.: **S272632**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On June 8, 2022, I electronically served the attached ANSWER BRIEF ON THE MERITS by transmitting a true copy via this Court's TrueFiling system.

Marsanne Weese
Attorney at Law
marsanne@marsannelaw.com

Rose Mishaan
Attorney at Law
rose.mishaan@gmail.com

Hon. Amarra A. Lee
Superior Court of San Mateo County
dept19@sanmateocourt.org

San Mateo County District Attorney's Office
The Honorable Stephen Wagstaffe
smda@smcgov.org

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on June 8, 2022, at San Diego, California.

Angela Lopez	*/s/ Angela Lopez*
Declarant for eFiling	Signature

In compliance with CRC 8.212(c)(1), I served a paper copy on the superior court clerk for delivery to the trial judge on June 8, 2022, a true copy thereof enclosed in a sealed envelope has been placed in the internal mail collection system at the Office of the Attorney General at 600 West Broadway, Suite 1800, San Diego, CA 92101, addressed as follows:

Clerk of the Court
San Mateo County Superior Court
Chambers of The Honorable Amarra A. Lee
Department 19
400 County Center
Redwood City, CA 94063

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on June 8, 2022, at San Diego, California.

Tina Houston	
Declarant for U.S. Mail	Signature

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 6/8/2022 by Florentino Jimenez, Deputy Clerk

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **HARRIS (JOHN) ON H.C.**
Case Number: **S272632**
Lower Court Case Number: **A162891**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **Aimee.Feinberg@doj.ca.gov**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

6/8/2022

Date

/s/Angela Lopez

Signature

Feinberg, Aimee (223309)

Last Name, First Name (PNum)

California Dept of Justice, Office of the Attorney General

Law Firm