

**EX PARTE WRIGHT, 1929-NMSC-093, 34 N.M. 422, 283 P. 53 (S. Ct. 1929)**

**Ex parte WRIGHT**

No. 3493

SUPREME COURT OF NEW MEXICO

1929-NMSC-093, 34 N.M. 422, 283 P. 53

November 20, 1929

Original petition by Carl G. Wright for habeas corpus.

**SYLLABUS**

**SYLLABUS BY THE COURT**

In habeas corpus to be admitted to bail, if proof of capital crime is plain and presumption great, court will not weigh it as against other facts and circumstances apparently contradictory.

**COUNSEL**

O. O. Askren, of Roswell, and Caswell S. Neal, of Carlsbad, for petitioner.

M. A. Otero, Jr., Atty. Gen., and J. A. Miller, Asst. Atty. Gen., for respondent.

**JUDGES**

Watson, J. Bickley, C. J., and Parker, J., concur. Catron and Simms, JJ., did not participate.

**AUTHOR: WATSON**

**OPINION**

{\*422} {1} OPINION OF THE COURT Carl G. Wright, by petition for writ of habeas corpus, claims that he is unlawfully restrained by reason of having been denied bail by the magistrate who committed him on a charge of murder in the first degree.

{2} To shorten the procedure, petitioner has chosen to submit with his application the evidence taken before the examining magistrate, and he says that he desires to make no further showing.

{3} It is admitted that the evidence establishes guilt of a felonious homicide. The only question is whether the proof is evident or the presumption is great that petitioner acted deliberately and premeditatedly, which would be {423} necessary to make his crime capital. Const. art. 2, § 13; Code 1915, §§ 1459, 1461.

{4} The test frequently, if not usually, applied is whether a verdict upon such evidence could be sustained. Unquestionably the evidence before us meets that test. But we shall not here endeavor to reduce the matter to formula. Petitioner is able, it is true, to point to some circumstances in support of his contention that the homicide resulted from heat of passion. There are other circumstances which point to premeditation and deliberation, and upon consideration of which it may well be concluded that the proof is evident and the presumption great. Where a nice weighing of the circumstances might result in a conclusion either way, we do not think that there is a denial of a constitutional right in refusing bail.

{5} In the present situation we have not deemed it wise to discuss the facts more fully.

{6} The petition will be denied, and it is so ordered.