IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO, **No. S-1-SC-40017**

Plaintiff-Respondent,

v.

GERALD CHAVEZ,

Defendant-Petitioner.

ON CERTIORARI TO THE
NEW MEXICO COURT OF APPEALS

STATE OF NEW MEXICO'S ANSWER BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

New Mexico Cases

Other State Cases

Federal Cases

Statutes

Rules

Constitutional Provisions

Statement Regarding Citations to the Record Proper

Citations to filings in the record proper will be in the form **[RP (Page # or Exhibit #)]**. References to the digitally recorded audio Compact Disc of the proceedings below are cited, at first occurrence, in a full form citation indicating the date of recording followed by "CD", and the time of the passage as indicated when played on "For the Record" software (e.g., May 9, 2007, counter 9:23:21 to 9:23:37 is cited as **[5-9-07 CD, 9:23:21-9:23:37]**). Subsequent occurrences, where applicable, will utilize a short form citation that includes "Id." followed by the time of the passage cited (e.g., **[Id. 9:24:45-9:25:15]**).

Statement of Compliance Pursuant to Rule 12-318(G)

Pursuant to New Mexico Rule of Appellate Procedure 12-318(G), I certify that this answer brief, written in 14 point Times New Roman contains: **6,602** words. The answer brief therefore complies with Rule 12-318(F)(3). I relied on the word count provided by Microsoft Word, Microsoft Office Standard.

INTRODUCTION

The plain language of Rule 7-208 NMRA broadly permits the metropolitan court to issue search warrants related to any criminal offense, and places no restrictions on the time for issuance of such warrants. Pursuant to that rule, the metropolitan court issued a search warrant for Defendant's DNA and fingerprints based on his involvement in several felony crimes. Because Defendant had been indicted in the district court at the time the warrant was issued, however, the district court ruled—in the absence of any controlling or supporting authority—that the metropolitan court was without jurisdiction to issue the warrant, and suppressed the evidence.

The Court of Appeals correctly reversed the district court upon finding that nothing in New Mexico's rules of criminal procedure or elsewhere restricts the metropolitan court's jurisdiction to issue post-indictment search warrants. In fact, courts have unanimously concluded that because jurisdiction over the trial of felony charges and jurisdiction to issue search warrants are distinct concepts, lower courts with statutory authority to issue search warrants are generally not prohibited from issuing post-indictment search warrants. Because all available authority supports the conclusion that the metropolitan court was not divested of jurisdiction to issue a warrant simply because Defendant was indicted in the district court, the Court of Appeals' holding should be affirmed.

SUMMARY OF PROCEEDINGS

In the winter of 2020, while driving down a major road in Albuquerque at high speeds, Defendant exchanged gunfire with the occupants of another vehicle before crashing into a third vehicle and fleeing the scene on foot. **[RP 31-32]** As a result, Defendant was charged in the metropolitan court (metro) with various felony crimes including great bodily harm by vehicle (DWI), leaving the scene of an accident resulting in great bodily harm or death, and shooting at or from a motor vehicle. **[RP 1-2, 26]**

A grand jury indicted Defendant in the district court on February 25, 2020, and the case in metro was closed. **[RP 1]**; *State v. Chavez*, 2023-NMCA-071, ¶ 3. A month later, Albuquerque Police Department Detective Anthony Zambrano obtained a search warrant[1] for Defendant's DNA and fingerprints ("body standards") from the metro court. **[RP 30-31]** This warrant was not executed, however, and expired on April 4, 2020. **[RP 43]**

Despite that the warrant was no longer valid, on April 7, 2020, Defendant filed a *Motion to Quash Warrant and for Sanctions* ("motion to quash"), asserting the search warrant was issued contrary to Rule 5-211 NMRA (governing the

[1] As Detective Zambrano's affidavit indicates, one search warrant had previously been executed on Defendant's truck three days after the gunfight and crash. The search uncovered a handgun and ammunition, and the warrant was filed in district court immediately thereafter. **[RP 32]**

issuance of search warrants by the district courts), which he construed to provide that in any case pending before the district court, a warrant may only be issued by that court rather than the metro court because the two courts did not "share concurrent jurisdiction over [the] matter[.]" **[RP 27-28]**

In its response, the State argued that notwithstanding the mootness of Defendant's request for relief, Rule 5-211 contains no requirement that only the district court may review and issue a warrant in a case pending in that court. **[RP 46-47]** The State also noted that search warrants are routinely obtained post-indictment because police investigations often continue beyond the point when charges are filed, and that no New Mexico precedent prohibits such a practice. **[RP 50]**

On April 9, 2020, Detective Zambrano submitted a second application for a search warrant to the metro court, using substantively the same affidavit previously submitted, seeking body standards from Defendant. **[RP 59-62]** The metro court again approved and issued the warrant, which Detective Zambrano executed on April 15, 2020. **[RP 59-63]**

The district court held a hearing on Defendant's motion to quash on April 16, 2020. Defense counsel argued the State should not have obtained a warrant from a metro court judge because, as the case had already been indicted, the defense "ha[d]

a right to be heard." **[4-16-2020 Tr., 15:12-7:19]** Counsel also asserted the State "circumvented" the district court's jurisdiction, and informed the court that a similar, renewed motion would be filed addressing the warrant executed the previous day. **[Id.]**

The prosecutor again pointed out that with respect to the first warrant, the issue was moot. **[Id. 8:2-9:8]** The district court inquired as to whether there was "a reason [the State] didn't just file a motion to obtain body standards" rather than obtaining a search warrant. **[Id. 9:9-11]** The prosecutor responded that it was the view of the Albuquerque Police Department that nothing prevented them from pursuing a search warrant in order to obtain the evidence at issue, and doing so was part of a *police* investigation—not part of the prosecution by the State. **[Id. 9:12-10:11]** The district court elected to take the matter under advisement and conduct additional research before making a ruling. **[Id. 14:1-19]**

On April 24, 2020, Defendant filed an addendum to his motion to quash and largely reiterated the same arguments. **[RP 54-57]** He again relied on Rule 5-211 and accused the State of obtaining an "ex parte" warrant from the metropolitan court, again requested that the warrant be quashed, demanded that all DNA evidence obtained be suppressed or that an order be entered preventing the State from processing and testing the DNA, and requested that, alternatively, the matter be

dismissed. **[RP 56-57]** The State filed a response incorporating the arguments advanced in its response to Defendant's original motion. **[RP 64]**

The district court issued an order granting Defendant's motion to quash on May 7, 2020. **[RP 66-69]** Relying on *State v. Muise*, 1985-NMCA-090, the court first found that "the Metropolitan Court lost jurisdiction over this case when the indictment was filed and therefore Metropolitan Court lacked jurisdiction to authorize a search warrant in this case." **[RP 67]** The court opined that Defendant's due process rights were violated by the issuance of a post-indictment warrant that referred to Defendant as a "suspect" and did not mention that he had been formally indicted, which the court deemed "deceptive." **[RP 67-68]** Noting that it is "common practice" for the State to "file a motion for body standards," the court expressed that had the State done so here, "Defendant would have had his due process right to file a response, be heard, and have a decision made by this court[.]" **[RP 68]**

The State filed a motion for reconsideration a week later. **[RP 70-73]** The State first sought clarification of the court's ruling, noting that because the court's order did not explicitly suppress evidence obtained as a result of the search warrant, it granted relief with no legal effect. **[RP 70]** As to the court's conclusion that the metro court lacked jurisdiction to issue the warrant under *Muise*, the State asserted that opinion was inapplicable to this matter and did not support the court's finding. **[RP 71]** Regarding the court's finding of a due process violation, the State argued

that per *Franks v. Delaware*, 438 U.S. 154 (1978), exclusion of evidence is required only where, with the false (or omitted) information from an affidavit set aside, the affidavit's remaining content is insufficient to establish probable cause. **[RP 72]** Here, the State asserted, the fact that Defendant had been indicted was not pertinent to a probable cause determination. **[RP 72-73]**

The district court heard the State's motion on July 23, 2020. The State argued that at issue was the validity of the warrant, not the validity of the methods by which the State elects to collect evidence. **[7-23-2020 CD, 8:52:00-9:01:24]** The prosecutor reiterated that under *Franks*, search warrants are customarily and necessarily issued *ex parte* to avoid intentional destruction or concealment of evidence before a warrant can be executed. **[Id.]** The prosecutor also stressed that under New Mexico law, suppression is generally only warranted where a material omission was made from the affidavit with reckless disregard occurred, which is not the case here. **[Id.]** The prosecutor clarified that the fact Defendant had already been indicted could have actually swayed the metro court in an unfair manner, and therefore its omission from the affidavit in fact preserved his right to an independent judgment by a neutral, detached magistrate. **[Id.]** And even if it may be "routine" to file a motion for body standards, the prosecutor argued, it is not required—the State is permitted to lawfully gather evidence by using a warrant. **[Id.]**

The district court denied the State's motion and suppressed the evidence obtained by way of the warrant in a written order filed on July 27, 2020. The court first reiterated that the "omissions from the[] affidavits were deceptive to the metropolitan court judge, that Defendant's due process rights were violated and that an adequate means, that is not *ex parte*, is available to the State" to obtain the same evidence. **[RP 90]** The court concluded that Defendant's due process rights under the Fifth and Fourteenth amendments were implicated, and again reasoned that had the State filed a motion for body standards, Defendant would have been afforded the opportunity to be heard. The court accused the State of "circumventing motion practice" to obtain the evidence by way of *ex parte* communication with the metro court, which the court deemed a constitutional violation. **[RP 92]** The State timely appealed.

In its brief in chief to the Court of Appeals, the State argued in relevant part that the metro court was not divested of jurisdiction to issue the search warrant when defendant was indicted in district court because: (1) nothing in Rule 5-211, 7-208, or elsewhere in New Mexico law prohibits the metro court from issuing search warrants related to a defendant who is facing charges in district court, (2) trial jurisdiction does not equate to exclusive jurisdiction to issue search warrants, (3) post-indictment search warrants are generally permissible, and (4) evidence is typically admissible in a New Mexico district court so long as a search warrant was

issued upon probable cause by a judge with jurisdiction to issue the warrant. **[See generally COA BIC]**

The Court of Appeals reversed the district court in a published opinion. *Chavez*, 2023-NMCA-071. First, the Court agreed that the metro court did not lose jurisdiction to issue the search warrant when Defendant was indicted because nothing in the plain language of Rule 7-208 or 5-211 divested the metropolitan court such authority. *Id.* ¶¶ 23-24. The Court observed that, rather, Rule 7-208(B) gives the metro court "express authority" to issue search warrants so long as certain requirements are met. *Id.* ¶ 23 (*comparing this case with State v. Railey*, 1975-NMCA-019, 87 N.M. 275 (holding evidence seized pursuant to a search warrant was inadmissible in state court because nothing in the tribal court's constitution or statutes authorized the issuance of such a warrant)). The Court similarly noted that no New Mexico appellate opinion holds that the metro court loses jurisdiction under such circumstances. *Id.* ¶ 25. The Court viewed *United States v. Sadlowski*, 984 F.3d 1020 (10th Cir. 2020) as persuasive because, there, the Tenth Circuit rejected the argument that Rule 7-208 precluded the metropolitan court from issuing a search warrant for evidence relevant to felony charges in the federal district court. *Id.* ¶ 26.

Second, the Court of Appeals concluded that post-indictment search warrants are permissible in New Mexico provided all other requirements for the issuance of such warrants are met, as supported by Federal Rule of Criminal Procedure 41. *Id.* ¶

28. The court noted the federal rule is substantially similar to Rules 7-208 and 5-211 and that federal authority indicates the issuance of post-indictment search warrants is permitted. *Id.* ¶ 30.

Third, the Court of Appeals rejected the district court's finding that issuance of the post-indictment warrant violated Defendant's due process rights because Defendant would have had an "opportunity to be heard" had the State pursued a motion for body standards instead. *Id.* ¶ 33. The Court noted that search warrants are governed by the Fourth Amendment and Article II, Section 10 of the New Mexico Constitution rather than the Due Process Clause, and pointed out that this Court has actually expressed a "clear preference in favor of warrants." *Id.* ¶ 35. The Court also noted that nothing in Rule 7-208, 5-211, the Fourth Amendment, or the New Mexico Constitution provide a defendant with a right to notice or opportunity to be heard before issuance of a search warrant. *Id.* ¶ 37. Moreover, the Court reasoned, the State's decision not to follow "common practice" by filing a motion for body standards rather than obtaining a search warrant, by itself, did not amount to a due process violation and the district court cited no authority to the contrary. *Id.* ¶ 38.

Finally, the Court of Appeals held that the district court erred by concluding that Detective Zambrano made a "material omission" from the affidavit for search warrant by not including the fact that Defendant had been indicted, rendering the search warrant invalid. *Id.* ¶ 40. The Court recognized that in New Mexico,

suppression of evidence is warranted if an affidavit for search warrant contains a "deliberate falsehood" or "reckless disregard for the truth" as to a material fact. *Id.* ¶ 42 (internal citation omitted). But here, the district court did not find either—it concluded only that the omission was "deceptive"—and neither finding would be supported by the facts. *Id.* ¶ 43. Thus, the Court of Appeals concluded, the affidavit was not "so insufficient that the reviewing judge could not independently pass judgment on the existence of probable cause[.]" *Id.* ¶ 46.

This Court granted Defendant's petition for writ of certiorari to review the sole question of whether the district court correctly held that the State may not seek a search warrant from a lower court relative to a defendant who is under indictment in the district court. **[Petition, 2; 10-6-23 Order]** Defendant does not discuss or take issue with the Court of Appeals' findings that post-indictment search warrants are generally permissible in New Mexico, that the district court incorrectly concluded Defendant's due process rights were violated, or that the district court incorrectly concluded the affidavit for search warrant omitted material facts. Accordingly, those determinations are not discussed in this answer brief.

ARGUMENT

I. The Court of Appeals correctly determined that, under New Mexico law, the metro court had authority and jurisdiction to issue a post-indictment search warrant.

Insofar as the issue before this Court requires interpretation of New Mexico's rules of criminal procedure or other legal provisions, the standard of review is de novo. *State v. Adame*, 2020-NMSC-015, ¶ 7. When construing procedural rules, this Court uses the same rules of construction applicable to the interpretation of statutes, which are further discussed below. *Allen v. LeMaster*, 2012-NMSC-001, ¶ 11. Applying those canons of construction to Rules 7-208 and 5-211 NMRA, the Court of Appeals correctly determined that the metro court was not without jurisdiction to issue the post-indictment search warrant.

A. Per the plain language of Rules 7-208 and 5-211 NMRA, the metro court was not divested of jurisdiction to issue a search warrant when Defendant was indicted in the district court.

This Court's guiding principle when interpreting rules of criminal procedure "is to determine and give effect to the legislative intent." *State v. Quintana*, 2021-NMSC-013, ¶ 12 (internal quotations and citation omitted). This Court first looks to the plain language of a rule, *Allen*, 2012-NMSC-001, ¶ 11, which is "the primary indicator of legislative intent." *Quintana*, 2021-NMSC-013, ¶ 12 (internal quotations and citation omitted); *see also State v. Willie*, 2009-NMSC-037, ¶ 9, 146 N.M. 481 ("The principal command of statutory construction is that the court should

determine and effectuate the intent of the [L]egislature, using the plain language of the statute as the primary indicator of legislative intent.").

Defendant acknowledges that, consistent with the Court of Appeals' reasoning, the plain language of Rules 7-208 and 5-211 support the conclusion that magistrate courts maintain jurisdiction to issue search warrants in felony cases that has been bound over for trial. **[BIC 6]** He therefore foregoes meaningful discussion of the plain language in his brief in chief, but that discussion is worthwhile. Indeed, if the language of a rule or statute is unambiguous, this Court gives effect to its language without further interpretation. *Id.*; *see also State v. Rivera*, 2004-NMSC-001, ¶ 10, 134 N.M. 768 ("Under the plain meaning rule of statutory construction, when a statute contains language which is clear and unambiguous, we must give effect to that language and refrain from further statutory interpretation." (internal quotation marks, alteration, and citation omitted)); *State v. Davis*, 2003-NMSC-022, ¶ 6, 134 N.M. 172 ("Under the plain meaning rule statutes are to be given effect as written without room for construction.").

It is clear on the face of Rules 7-208 and 5-211 that the metro court has jurisdiction and authority to issue post-indictment search warrants. Rule 7-208 provides that a warrant may be issued by the metro court "to search for and seize *any* … property which has been obtained or is possessed in a manner which constitutes *a criminal offense*" or "property which would be material evidence in *a*

criminal prosecution[.]" 7-208 (A)(1), (3) NMRA (emphasis added). The rule does not limit search warrants to evidence related only to misdemeanor offenses, nor does it restrict the time for issuance to the period before indictment. *C.f. State v. Cleve*, 1999-NMSC-017, ¶ 14, 127 N.M. 240 (observing that had the Legislature intended to include limiting language in a statute it "could have easily" done so, and declining to read a limit into the statute without such language). Rather, as the Tenth Circuit aptly observed, Rule 7-208 "grants the metro[] courts blanket authority to issue search warrants for any criminal offense" and thereby gives jurisdiction to issue felony-related search warrants. *Sadlowski*, 948 F.3d at 1203 (10th Cir. 2020).

As the Court of Appeals noted, Rule 5-208 also does not divest the metro court of jurisdiction to issue search warrants once the target of the warrant has been indicted—nothing in the rule's plain language even hints at such at such an intent. *Chavez*, 2023-NMCA-071, ¶ 24. Rather, Rule 5-802's language is substantially similar to that used in Rule 7-208 and provides that the district court may issue search warrants to search for and seize any property related to a criminal offense. Rule 5-211 (A) NMRA. Also like its metro court counterpart, Rule 5-211 contains no restrictions on the time for issuance of a warrant. *See Davis*, 2003-NMSC-022, ¶ 12 ("All of the provisions of a statute, together with other statutes in pari materia, must be read together to ascertain legislative intent."). Therefore, as the Court of Appeals correctly observed, "nothing in the plain language of either Rule 5-211 or Rule 7-

208 divests the metro court of its authority to issue search warrants in cases indicted or bound over to the district court for trial." *Chavez*, 2023-NMCA-071, ¶ 28.

Tellingly, both Rules 7-208 and 5-211 *do* implement certain strict limits on the issuance and execution of search warrants, but still do not limit jurisdiction in the manner Defendant asserts they ought to. Both provide that a warrant may only be requested via three specific methods, may only be issued upon probable cause, and may only be executed between the hours of 6:00 a.m. and 10:00 p.m. by a certified law enforcement officer within 10 days of issuance, among several other detailed limits and requirements. *See generally* Rules 7-208 and 5-211 NMRA. Thus, in promulgating these rules, the Rules Committee plainly contemplated the intended limits on a court's jurisdiction to issue warrants. Had the Committee intended to limit that jurisdiction based on the severity of the charges or the stage of the proceedings, it could have easily done so. *Cleve*, 1999-NMSC-017, ¶ 14; *see also State v. Trujillo*, 2009-NMSC-012, ¶ 11, 146 N.M. 14 ("We will not read into a statute any words that are not there, particularly when the statute is complete and makes sense as written.").

Moreover, nothing in Rule 5-211 or 7-208 prohibits the issuance of post-indictment search warrants generally. And under the federal equivalent of those rules, post-indictment search warrants may be issued by a magistrate judge who is not presiding over the indicted case. Rule 5-211 is patterned on Federal Rule of

Criminal Procedure 41, which is similar in its plain language. Fed. R. Crim. P. 41; *See Gandydancer, LLC v. Rock House CGM, LLC*, 2019-NMSC-021, ¶ 38 (confirming that it is "appropriate to look for guidance in analogous laws in … the federal system" where those laws are substantially similar to the New Mexico provisions being interpreted). As the Court of Appeals observed, nothing in the plain language of FRCP 41 prohibits a federal magistrate judge from issuing a search warrant after a subject has been indicted. *Chavez*, 2023-NMCA-071, ¶ 30; *and see United States v. Anderson*, 739 F.2d 1254 (7th Cir. 1984) (affirming federal magistrate's issuance of a post-indictment search warrant for the defendant's hair samples).

Defendant suggests FRCP 41 is inapposite here because under that rule, all search warrants *must* be issued by a magistrate judge. **[BIC 13-14]** However, Defendant ignores that a federal magistrate judge who does not have authority to oversee the prosecution of felony charges may nevertheless issue a post-indictment search warrant in a felony case pending before a district court judge who does have that authority. This only confirms the broader notion, discussed in more detail immediately below, that a court's trial jurisdiction does *not* equate to the same court's exclusive jurisdiction over the issuance of search warrants

B. Nothing in New Mexico law or elsewhere supports Defendant's proposed departure from the Court of Appeals' sound interpretation of Rules 7-211 and 5-208.

Defendant looks to several other areas of New Mexico law to bolster his claim that the Court of Appeals' interpretation of Rules 7-208 and 5-211 leads to "untenable results." However, nothing in New Mexico law or elsewhere supports his position. In fact, quite the opposite.

1. A court's trial jurisdiction is distinct from its jurisdiction to issue a search warrant.

Defendant first suggests that because the district courts have exclusive trial jurisdiction over felony prosecutions whereas the metro court's jurisdiction is limited to misdemeanor cases, it necessary follows that they retain exclusive jurisdiction to issue search warrants in indicted felony cases. **[BIC 7-10]** He continues to rely on *Muise*, which the district court incorrectly used to justify its conclusion that the metro court "lost" jurisdiction to authorize a search warrant when Defendant was indicted. **[BIC 7; RP 67]** As the Court of Appeals pointed out, however, *Muise* addressed a court's jurisdiction to oversee the *prosecution of criminal charges*, not a court's authority to issue a search warrant. 1985-NMCA-090, ¶¶ 18-19 (discussing the *trial* jurisdiction of district courts and stating, "[a]fter an information is filed in the district court, an identical charge or charges pending in a magistrate court should be abandoned"). This distinction is important.

The State agrees that the district court has exclusive jurisdiction over the trial of felony offenses, whereas the metro court's trial jurisdiction decidedly limited to misdemeanor offenses and other matters not relevant to this appeal. *See* NMSA 1978, §§ 34-8A-3(B), 35-3-4(A) (collectively affording the metro court trial jurisdiction over misdemeanor offenses, but not felonies); N.M. Const. Art. VI, § 13 (vesting exclusive jurisdiction over the trial of felony cases in the district courts). But trial jurisdiction simply does not equate to jurisdiction to issue search warrants—the two are quite separate and distinct. In reality, "the procuring of a search warrant ... is not, in any sense, the commencement of a prosecution. Such proceedings are merely inquisitorial in their nature, and may or may not result in a criminal prosecution, and are at best merely ancillary to a prosecution, if one takes place." *Bevington v. United States*, 35 F.2d 584 (8th Cir. 1929); *see also State v. Heylmun*, 708 P.2d 778, 781 (Ariz. Ct. App. 1985) ("Since the issuance of a search warrant does not commence a prosecution, the prosecutorial jurisdiction of state courts is not applicable to the issues involved here.").

This clear distinction prompted the *Sadlowski* court to confirm that under Rule 7-208, the metro court does *not* lack the authority to issue a felony-related search warrant simply because it lacks jurisdiction over the trial of related felony charges. 948 F.3d at 1203. Simply put, "a court's authority to hear a case and a court's authority to issue a search warrant are two separate concepts" such that "conflat[ing]

jurisdiction to hear a case with the authority to issue a search warrant" is misguided and improper. *Id.* Therefore, per the only published authority on the issue, the fact that the metro court did not have trial jurisdiction over Defendant's felony charges has no bearing on whether it could properly authorize a search warrant.

While *Sadlowski* is the only opinion addressing Rule 7-208 specifically, courts analyzing similar rules or statutes in other jurisdictions have reached the same conclusion. In *People v. Moss*, 244 N.W.2d 1, 2 (Mich. App. 1976), the Michigan Court of Appeals held that although one Michigan law affords "original and exclusive" trial jurisdiction to intermediate courts, lower court magistrates may nevertheless "issue search warrants" per a separate statute because the exclusiveness of the intermediate court's jurisdiction "does not apply to proceedings for the discovery of crime … and search warrants are for the discovery of crime."

The Georgia Supreme Court similarly reasoned that although the Georgia Constitution gives superior courts "exclusive jurisdiction over trials in felony cases," other Georgia statutes vest magistrate courts with jurisdiction to "issue search warrants"[2] and, therefore, a magistrate judge's authority to issue a search warrant is not "limited by a criminal case's status in the superior court." *State v. Lejeune*, 594

[2] Similar to Rules 7-208 and 5-211 NMRA, certified Ga. Code Ann. § 17-5-21 permits "any judicial officer authorized to hold a court of inquiry to examine into an arrest of an offender against penal laws" to issue a search warrant for evidence of "a crime" upon sufficient probable cause.

S.E.2d 637, 640-41 (Ga. 2004). The *Lejeune* court held that, accordingly, evidence gained via search warrant issued by a magistrate court should not have been suppressed even though the defendant was already indicted in the superior court when the warrant was issued. *Id.* 640; *see also Powell v. Walden*, 473 S.W.2d 147 (Ky. Ct. App. 1971) (rejecting the defendant's claim that the equivalent of a magistrate court was without authority to issue a search warrant in a case over which the circuit court had "exclusive jurisdiction" to prosecute by statute, because "[t]o interpret the statute as meaning the [magistrate] court cannot conduct the usual preliminary proceedings is to read into it something that simply is not there.").

The Supreme Court of North Carolina has taken the same approach. In *State v. Pennington*, 393 S.E.2d 847, 851-52 (N.C. 1990), the defendant argued that after he was indicted in the superior court, a lower district court was without jurisdiction to issue a search warrant for his blood and hair samples. The applicable state statute provided that search warrants could be issued by a judge of North Carolina's supreme court, court of appeals, superior court, magistrate court, or a clerk "in district court matters." *Id.* 851 (citing N.C.G.S. § 15A-243 (1988)). The Supreme Court disagreed that the charges pending in the superior court meant the search warrant, issued by a clerk, was not issued in a "district court matter." *Id.* 852. The court reasoned: "The issuance of a search warrant is neither a district court matter nor a superior court matter, but pertains to pretrial investigation which need not—

indeed, often cannot at that point—be classified according to the court where the defendant may eventually be tried." *Id.*

Ohio has also rejected the idea that the prosecution may only obtain a search warrant relative to an indicted defendant from the court where felony charges are pending. In *State v. Spriggs*, 770 N.E.2d 638, 640-41 (Ohio Com. Pl. 2000), the defendant claimed that because he had already been charged in the court of common pleas, obtaining a search warrant for his blood and hair samples was part of the felony case against him and the lower municipal court was without jurisdiction to issue a warrant. Like New Mexico, Ohio's municipal courts may issue search warrants but lack trial jurisdiction over felony crimes. *Id.* The *Spriggs* court reasoned:

> A felony case, at its simplest, consists of the state and the accused, through their respective counsel, adjudicating the issue of the guilt or innocence of an accused. A felony case ultimately results in a final determination as to the guilt or innocence of the accused. In contrast, the search warrant process historically is an ex parte proceeding exclusively within the province of law enforcement officers and/or the prosecution. The guilt or innocence of an accused is not an issue in the search warrant process; the issue in the search warrant process is merely whether there is probable cause to find that the search warrant will produce evidence of a crime.

Id. 642. On this basis, the court concluded the municipal court did not lack jurisdiction to issue a post-indictment search warrant and that the defendant was not entitled to suppression of the blood and hair samples in the felony case. *Id.* 640-43.

Nothing in New Mexico's jurisdictional rules or statutes meaningfully sets them apart from the provisions addressed in the cases above, which demonstrate that despite the district court's statutory trial jurisdiction over felony cases, the metro court is not without jurisdiction to issue search warrants related to suspected felonies. In fact, Appellate counsel was unable to locate a comparable case in which a court reached a conclusion different than the holdings in *Sadlowski*, *Moss*, *Lejeune*, *Pennington*, *Walden,* or *Spriggs*. Because trial jurisdiction is entirely separate from and has no bearing upon a lower court's jurisdiction to issue a search warrant, this Court should reject Defendant's invitation to construe Rule 5-208 and 7-211 in a manner they were plainly not meant to be construed.

2. New Mexico's hierarchical judicial structure in no way suggests the metro court lacks authority to issue a post-indictment search warrant.

Defendant's next argument is more of the same. He asserts the Court of Appeals' reading of Rules 7-211 and 5-208 "violates the constitutional and statutory design of New Mexico's judiciary," which is "clearly hierarchical." **[BIC 10]** He again references N.M. Const. Art. VI, § 13, prohibiting district courts from issuing writs to equal or superior courts and affording them supervisory control over the same, and also looks to NMSA 1978, § 35-7-1, providing that magistrate courts shall operate under the direction of this Court and the district court of their respective judicial districts. **[BIC 10]** Defendant claims this hierarchical structure renders a

plain reading of Rules 7-208 and 5-211 untenable by infringing on district courts' "*exclusive* original jurisdiction over the trial of felonies" and creating a "jurisdictional inversion." **[BIC 11]**

Again, the district court's exclusive trial jurisdiction over felony cases does not equate to exclusive jurisdiction to issue felony-related search warrants. In fact, the constitutional and statutory language Defendant relies on only undercuts his argument—it reaffirms that where a court's authority to act in a certain manner is meant to be curtailed, that intent is easily and clearly expressed. Indeed, the bounds of the district courts' and magistrate courts' authority are well-defined throughout New Mexico's Constitution, statutes and rules. N.M. Const. Art. VI, § 13; NMSA 1978, §§ 34-8A-2, 34-8A-3, 35-1-1, 35-3-4, 35-7-1. Yet, no similar limits on the metro court's authority to issue search warrants are articulated in either Rule 7-211 or 5-208. Again, this absence indicates that no such jurisdictional limits were intended. *See e.g.*, *State v. Carroll*, 2015-NMCA-033, ¶ 5 (reasoning that "[h]ad the Legislature intended to limit our jurisdiction to preclude review of the on-record appellate decisions of the district court, we assume it would have explicitly done so" by including limiting language in Section 34-5-8 (vesting the Court of Appeals with jurisdiction to review appeals in criminal cases), and concluding that because the Legislature "listed no other exceptions to this broad grant of jurisdiction … Section

34-5-8(A)(3) provides this Court with jurisdiction over appeals in criminal actions originating in courts of limited jurisdiction").

This Court recently confirmed that where an intent to limit a court's jurisdiction in a certain area is not *explicitly* expressed in a rule of criminal procedure, no such intent may be inferred. In *State v. Romero*, 2023-NMSC-008, this Court overruled a Court of Appeals' opinion holding that certain changes to Rule 5-801 NMRA abrogated the district courts' inherent jurisdiction to correct illegal sentences. This Court noted that "[t]he comprehensiveness of [a New Mexico court's] equitable jurisdiction is not to be denied or limited *in the absence of a clear and valid legislative command*," and that "[u]nless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction … the full scope of that jurisdiction is to be recognized and applied." *Id.* ¶ 28 (emphasis added; internal quotation marks and citation omitted)). Because a limitation on jurisdiction "appeared neither in our express language nor as a necessary implication of those changes" to Rule 5-801, this Court held the changes did not remove the authority of district courts to correct illegal sentences. *Id.* ¶ 29. The same reasoning should apply here: absent a clearly-articulated limit on the metro court's authority to issue post-indictment search warrants, no such limit can be read into Rule 7-208.

Defendant claims there is "little support" for the "jurisdictional inversion" in other states, but ignores most of the cases previously cited by the State condoning

the practice. **[BIC 12]** He also acknowledges that the cases he relies on do not actually implicate the issue of lower court jurisdiction to issue a warrant. **[Id.]** If anything, the cases only lend further support for the State's position. *See Preventive Medicine Associates, Inc. v. Com.*, 992 N.E.2d 257 (Mass. 2013) (addressing whether the prosecution was required to obtain a subpoena rather than a post-indictment search warrant to obtain the defendant's emails, and concluding that because the rules did not contain language restricting the issuance of post-indictment search warrants, using such a search warrant was permitted); *People v. Mason*, 989 P.2d 757 (Colo. 1999) (holding prosecutor may use subpoena duces tecum rather than a search warrant to obtain a defendant's bank and telephone records); *State v. Gubitosi*, 868 A.2d 264 (N.H. 2005) (finding prosecutor did not engage in misconduct by obtaining a warrant for telephone records from court in one county after the same records were suppressed by court in another county, where defendant was charged separately in both courts, and noting "[t]here is no requirement that the State must go to the original court to obtain a search warrant after charges have been filed").

Defendant also attempts to distinguish *Pennington* on the grounds that, in North Carolina, the superior court does not have exclusive jurisdiction over felonies. **[BIC 12]** While that may be true, the structure of North Carolina's judiciary was not a deciding factor in the *Pennington* court's decision. 393 S.E.2d at 851-52. As

already explained, the *Pennington* court confirmed what the Tenth Circuit recognized in *Sadlowski*: a lower court may properly retain statutory jurisdiction to issue a search warrant relevant to charges that court does not have trial jurisdiction over, because the authority to issue a search warrant is separate and unrelated to trial jurisdiction. *Id.* From this, it follows that the "hierarchical" structure of a state's judiciary does nothing to undercut a lower court's authority to issue search warrants simply because the court lacks trial jurisdiction.

C. Defendant's proposed reading of Rules 7-208 and 5-211 would lead to absurd results.

None of Defendant's arguments actually demonstrate that the Court of Appeals' holding leads to "untenable results," and Defendant largely fails to discuss any of the practical implications of the holding. In reality, his proposed reading of Rules 7-208 and 5-211 would lead to absurd results and this Court should therefore reject his position. *See Baker v. Hedstrom*, 2013-NMSC-043, ¶ 15 (noting that this Court construes statutory language in a manner that avoids "absurd results").

As the *Spriggs* court cautioned, "the implications are considerable in finding that obtaining a search warrant is part of a felony case against a defendant" and that a lower court therefore may not issue a post-indictment search warrant. 770 N.E.2d at 642. First, "search warrants typically are available at any time whether the state has initiated a felony case against a defendant," but the rule Defendant seeks "calls for two types of search warrant processes"—the first type "would be those conducted

prior to the initiation of a felony case in a [district court], the second type after such initiation." *Id.* Implementing this type of system "would radically alter criminal procedure and effectively eliminate search warrants as an investigatory tool after a felony case has begun against a defendant." *Id.*

The *Lejeune* court similarly cautioned against this kind of setup when it noted that "any rule that would require police officers to seek search warrants only from the superior court after indictment would result in different procedures for seeking search warrants depending on the location of the place to be searched." 594 S.E.2d at 641. And even if a case is indicted "the police would still have to apply for search warrants with judicial officers other than the [court where the indictment is pending] if the location to be searched is outside the superior court's judicial circuit." *Id.* Police "would also would also be required to monitor each case's status to determine if it has reached indictment" at any point in their investigation. *Id.*

Second, Defendant's reading of the search warrant rules could place district court judges in the awkward position of reviewing for probable cause the actual warrants they previously issued. *See* Rule 5-212(A) NMRA (providing that a defendant may move to suppress evidence gained by way of an illegal search); *State v. Trujillo*, 2011-NMSC-040, ¶ 17, 150 N.M. 721 (generally recognizing the right of a defendant to have an affidavit for search warrant reviewed for probable cause by a non-issuing judge or court). For example, in New Mexico's Tenth Judicial District,

one district court judge presides over all felony cases within Quay, De Baca, and Harding Counties. [3] Were that judge the only one with authority to issue search warrants related to any defendant facing felony charges, he would naturally be tasked with reviewing the warrants he previously issued. But as the *Spriggs* court found, seeking a search warrant from an *uninvolved* lower court judge actually "added a layer of due process" because "defendant received the added protection of review of the evidence necessary to support probable cause to issue the search warrant by two neutral and detached magistrates rather than one." 770 N.E.2d at 642. Therefore, the Court of Appeals' reading of Rules 7-211 and 5-208 does not eliminate or lessen the relief available to those aggrieved by unconstitutional searches—if anything, it allows for additional due process.

As the *Lejeune* Court observed, there is no need to "further complicate the procedures for applying for a search warrant" by holding that the metro court is barred from issuing post-indictment search warrants. 594 S.E.2d at 641. Defendant has offered this Court no valid reasons to depart from the plain language of Rules 7-211 and 5-802. The Court of Appeals should therefore be affirmed.

CONCLUSION

For the reasons set forth above, this Court should affirm the Court of Appeals.

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[3] New Mexico Courts, https://tenthdistrictcourt.nmcourts.gov/district-court-judge/ (last visited March 1, 2024).

Respectfully submitted,

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Electronically Filed

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of March, 2024, I electronically filed the foregoing Answer Brief, which caused opposing counsel, MJ Edge, to be served at matthew.edge@lopdnm.us.

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