



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Respondent,

v.

S-1-SC-40017

GERALD CHAVEZ,

Defendant-Petitioner.

BRIEF IN CHIEF

ON CERTIORARI TO THE NEW MEXICO COURT OF APPEALS

Original Appeal from the Second Judicial District, Bernalillo County

The Honorable Cindy Leos, Presiding

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Note Regarding Citations to the Record

The hearings were recorded on an audio disc accessed using For the Record software. Citations to the recording are in the format [Tr. {date} {time}]. Citations to the record proper are in the format [RP {page}].

Nature of the Case

After Mr. Chavez was bound over to the district court for trial on felony charges, the State obtained a search warrant for evidence related to the case from a metropolitan court judge. The district court quashed the search warrant and suppressed the evidence seized. The State appealed. This case asks whether a magistrate court judge¹ has authority to issue a search warrant in a felony case that has been bound over to the district court.

Statement of Facts

On February 8, 2020, the State charged Mr. Chavez with great bodily harm by vehicle, either by driving while intoxicated or, in the alternative, recklessly; leaving the scene of an accident involving great bodily harm; shooting at or from a motor vehicle; and reckless driving, in two cases in the Metropolitan Court of Bernalillo County. **[RP 1-2]** The charges stemmed from an alleged high speed chase the previous day, with shots fired, involving a pickup truck and a sedan, along Coors Boulevard in Albuquerque. **[RP 31]** The pickup truck rolled over, and the driver fled the disabled truck on foot. **[RP**

¹ The “magistrate” court at issue in this case is the Metropolitan Court of Bernalillo County. A metropolitan court is a magistrate court, and has essentially the same jurisdiction. *See* § 34-8A-2 NMSA (1980) (establishing the metropolitan court as a magistrate court); § 34-8A-5 NMSA (2001) (defining jurisdiction of metropolitan court).

31] The police apprehended Mr. Chavez in the vicinity some distance from the disabled truck based on a supposed match with witness descriptions of a “Spanish adult male” wearing a torn white t-shirt and dark pants. **[RP 32]** The State moved to have Mr. Chavez held in pretrial detention, but he was released with conditions. **[RP 26]**

The State presented the charges to a grand jury on February 24, 2020. **[RP 26]** Based on the testimony of Zambrano, a police officer who was the State’s sole witness to the grand jury, an indictment was returned on February 25, 2020. **[RP 26]** The Metropolitan Court closed its cases on February 26, 2020 due to the supervening indictment. **[RP 26-27]**

Mr. Chavez was arraigned on March 9, 2020. **[FTR 3/9/20 10:13:00-14:30]** On March 30, 2020, the prosecution informed defense counsel that the State had obtained a search warrant to collect fingerprints and an oral swab from Mr. Chavez. **[RP 27]** Defense counsel requested and obtained a copy of the warrant from the prosecution. **[RP 27, 30-32]** The State had obtained the warrant from Metropolitan Court Chief Judge Henry A. Alaniz. **[RP 30]** The affidavit attached to the warrant, identified Mr. Chavez only as a suspect, and omitted any mention of the indictment. The affidavit had been prepared on March 24, 2020 by Zambrano, the officer who had testified to the grand jury

when the State obtained the indictment. **[RP 31-32]** The State did not execute the warrant before it expired on April 4, 2020. **[RP 43]**

On April 7, 2020, trial counsel moved to quash the State's efforts to obtain a warrant, complaining about the omission of the indictment from the affidavit in applying for search warrant, and arguing that the indictment had given the district court jurisdiction over the case and authority to issue search warrants. **[RP 26-29]** The State filed its response on April 13, 2020. **[RP 43-52]** The State's response failed to inform the district court that the State had obtained a second warrant on April 9, based on an affidavit identical in its particulars, from a second judge in the Metropolitan Court. **[RP 54-55]** The affidavit for the second warrant again referred to Mr. Chavez as a suspect and omitted any reference to the indictment. **[RP 60-62]** The warrant was executed on April 15, 2020, the day before the district court had set for a hearing on the motion to quash. **[RP 54-55, 59]**

The district court granted the motion to quash on May 7, 2020. **[RP 59-62]** The district court found that the metropolitan court had lost jurisdiction over the case once it had been indicted and transferred to the district court. **[RP 68]** The district court also found that, by seeking to gather the evidence by means of a search warrant, the State had circumvented the customary practice of obtaining it through a motion a collect body standards evidence,

and had therefore violated Mr. Chavez's due process right to a hearing on such a motion. **[RP 67-68]** The district court also noted that, while certain circumstances might require the State to seek a search warrant for a case already under indictment, their use undermines the case processing goals of LR2-308 because they give the State an additional nine months to disclose evidence. **[RP 68-69]**

The State filed a motion to reconsider on May 15, 2020. **[RP 70-73]** The district court issued its order denying the motion on July 27, 2020. **[RP 90-93]** The district court found that the State had failed to file a request for hearing with the motion for rehearing, and had failed to supply the court with a courtesy copy of the motion, such that the district court only become aware of the State's motion upon a periodic review of pending cases. **[RP 90-91]** The district court noted that the State had failed to provide any binding precedent that the State may seek a warrant from a lower court to obtain evidence relating solely to charges already under indictment in the district court. **[RP 91]** The district court again noted that the State could still seek the admission of the evidence related to the fingerprints and oral swab by simply filing a motion for the collection of body standards evidence. **[RP 93]**

The State appealed. **[RP 94-95]** The Court of Appeals reversed, holding that a magistrate court judge has the jurisdiction to issue a search warrant

even in a felony case that has already been bound over to the district court for trial. *See State v. Chavez*, 2023-NMCA-071, 535 P.3d 736. This Court granted Mr. Chavez’s petition for writ of certiorari.

Argument

A New Mexico magistrate court judge has no authority to issue a search warrant in a felony case bound over to the district court.

A. Standard of Review

This case involves the interpretation of court rules of criminal procedure, statutes, and constitutional provisions, all of which are subject to this Court’s de novo review. *See Allen v. LeMaster*, 2012-NMSC-001, ¶ 11, 267 P.3d 806 (court rules); *State v. Thompson*, 2022-NMSC-023, ¶ 17, 521 P.3d 64 (statutes); *State v. Isaac M.*, 2001-NMSC-003, ¶ 10, 458 P.3d 406 (constitutional provisions). The same rules of construction apply to each. *See LeMaster*, 2012-NMSC-001, ¶ 11; *State ex. rel. Wood v. King*, 1979-NMSC-106, 93 N.M. 715.

Interpretation seeks to give effect to the intent of the promulgating authority, as expressed in the rule’s language, history, and background. *See Lion’s Gate Water v. D’Antonio*, 2009-NMSC-057, ¶ 23, 147 N.M. 523 (citing *Key v. Chrysler Motors Corp.*, 1996-NMSC-038, ¶ 13, 121 N.M. 764). The primary indicator of that intent is the plain language of the rule itself. *Lion’s Gate*

Water, 2009-NMSC-057, ¶ 23 (citing *General Motors Acceptance Corp. v. Anaya*, 1985-NMSC-066, ¶ 15, 103 N.M. 72). However, this Court has cautioned against the “beguiling simplicity” of simply parsing words on the surface of a provision of law. *State v. Strauch*, 2015-NMSC-009, ¶ 13, 345 P.3d 317. “It is necessary to think thoughts and not words.” *Id.* (formatting modified²) (citing *State v. Office of Pub. Defender ex. rel. Muqqdin*, 2012-NMSC-029, ¶ 54, 285 P.3d 868).

B. A plain language reading of the rules for magistrate court search warrant rules leads to untenable results.

Rule 6-208 NMRA gives a magistrate court the jurisdiction to issue search warrants. Rule 7-208 NMRA does the same for a metropolitan court. A naïve, plain-language reading of these rules might suggest that magistrate courts continue to exercise jurisdiction to issue search warrants in a felony case that has been bound over to the district court. However, these rules exist in the context of constitutional and statutory provisions makes that plain-language reading untenable.

² This brief uses the parenthetical “(formatting modified)” to indicate that internal quotation marks, alterations, and citations have been omitted from quotations. See Jack Metzler, *Cleaning Up Quotations*, 18 J. App. Prac. & Process 143 (2017); see, e.g., *United States v. Trump*, ___ F.Supp. 3d ___ (D.D.C. December 1, 2023) (employing “formatting modified” parenthetical).

1. *New Mexico district courts have exclusive jurisdiction over the trial of felonies.*

Our Constitution gives the district court “original jurisdiction in all matters not excepted in this constitution” (the exceptions being, primarily, the original jurisdiction of this Court). N.M. Const. Art. VI, § 3 (Supreme Court original jurisdiction), § 13 (jurisdiction of district court). The New Mexico constitution gives exclusive jurisdiction over the trial of felony cases to the district court. *State v. Wyrostek*, 1994-NMSC-042, ¶ 8, 117 N.M. 514; *State v. McKinley*, 1949-NMSC-010, ¶ 15, 53 N.M. 106 (striking down statute giving juvenile court jurisdiction over adult defendants charged with contributing to the delinquency of a minor); *State v. Muise*, 1985-NMCA-090, ¶ 18, 103 N.M. 382 (rejecting claim that misdemeanors in a felony case must be tried in magistrate court).

Our Constitution specifically imbues district courts with writ powers: “district courts, or any judge thereof, shall have power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, prohibition and all other writs, remedial or otherwise, in the exercise of their jurisdiction.” N.M. Const. Art. VI, § 13. One type of those “other writs” is the search warrant. 79 C.J.S. Searches § 182 (2023) (search warrant as “writ of discovery”); *Davis v. State*, 234 P. 787 (Okla. Crim. App. 1925) (search warrant as “writ of

discovery”); *Lodyga v. State*, 179 N.E. 542, 545 (Ind. 1932) (search warrant “is, in its nature, a writ of discovery employed by the state for the purpose of procuring relevant evidence of a crime”); *Allen v. State*, 13 A.2d 352, 355 (Md. 1940) (search warrant as “writ of search and seizure”). *See also State v. Grossman*, 1991-NMCA-148, ¶ 11, 825 P.2d 249 (discussing writ of assistance as legal basis for search).

2. *New Mexico magistrate courts only have limited jurisdiction during the investigatory and preliminary phases of a felony case.*

Magistrate and metropolitan courts are courts of limited jurisdiction. *See* N.M. Const. Art. VI, § 26 (mandating the legislature establish magistrate courts of limited jurisdiction); § 34-8A-2 NMSA (establishing metropolitan courts as magistrate courts). “Magistrate courts are courts of limited jurisdiction and are without authority to take action unless authority is affirmatively granted by the Constitution or statutory provision.” *White v. Farris*, 2021-NMCA-014, ¶ 14, 485 P.3d 791 (formatting modified) (quoting *State v. De La O*, 1985-NMCA-023, ¶ 5, 102 N.M. 638). “As a court of limited jurisdiction, the metropolitan court's authority is restricted to authority affirmatively granted by the constitution or statute.” *Martinez v. Sedillo*, 2005-NMCA-029, ¶ 4, 137 N.M. 103 (citing *State v. Ramirez*, 1981-NMSC-125, ¶ 4, 97 N.M. 125; *State v. Vega*, 1977-NMCA-107, ¶ 21, 91 N.M. 22).

The New Mexico Constitution does not define the jurisdiction of magistrate courts except by the territory of their districts. N.M. Const. Art. VI, § 26; *State v. Rue*, 1963-NMSC-090, ¶ 11, 72 N.M. 212. Before the enactment of the current magistrate court system beginning in 1968, magistrate judges (then called justices of the peace) seem to have had jurisdiction to issue search warrants only by statute, and only for gambling houses and stolen goods. NMSA 1953, § 40A-19-12 (1963) (gambling houses); NMSA 1953, § 41-18-1 (stolen goods). The cases concerning search warrants issued by justices of the peace involve warrants for stolen property. *See, e.g., Stumpf v. Pohle*, 1923-NMSC-057, ¶ 1, 28 N.M. 606; *State v. Delentre*, 1966-NMSC-187, ¶ 4, 77 N.M. 497; *State v. Sedillo*, 1968-NMCA-035, ¶ 2, 79 N.M. 289; *Apodaca v. Miller*, 1968-NMSC-086, ¶ 2, 79 N.M. 160; *see also State v. Layman*, 1935-NMSC-024, ¶ 9, 39 N.M. 127 (discussing police efforts to obtain search warrant to look for subject of arrest warrant).

In 1968, the legislature established magistrate courts, abolished justices of the peace and invested magistrate judges with the powers formerly given to the justices of the peace. *See* N.M. Const. Art. VI, § 31 (mandating abolition of justices of the peace and investiture of magistrate courts with appropriate jurisdiction); § 35-1-1 NMSA (establishing magistrate courts); § 35-1-38 NMSA (abolishing justices of the peace and transferring their powers to

magistrate judges). The legislature gave magistrate courts criminal jurisdiction over misdemeanors and “any other criminal action where jurisdiction is specifically granted by law.” § 35-3-4 NMSA (1985). The legislature also gave this Court the authority to “by rules promulgated by it from time to time, regulate the pleading, practice and procedure in judicial proceedings in the magistrate court.” § 35-7-1(A) NMSA. Thus, the magistrate’s jurisdiction to issue search warrants exists only by this Court’s rules, subject to a delegation of authority by the legislature and the limits set by the New Mexico Constitution.

3. A plain-language reading of the rules violates the constitutional and statutory design of New Mexico’s judiciary.

The constitutional and statutory provisions defining the New Mexico judiciary evince a clearly hierarchical design. Article VI, Section 13 the district limits the writ power of the district court: “no such writs shall issue directed to judges or courts of equal or superior jurisdiction.” The same provision gives “supervisory control over the” “inferior courts and tribunals in their respective districts.” “The magistrate courts shall operate under the direction and control of the supreme court and the district court of the judicial district in which the court is located.” § 35-7-1 NMSA (2021).

The hierarchy of courts makes a plain-language reading of Rule 6-208 and Rule 7-208 untenable when it comes to a search warrant issuing from a magistrate court after a felony case has been bound over to the district court. A plain-language reading of our Constitution gives the district court *exclusive*, original jurisdiction over the trial of felonies, but the plain-language reading of the rules says the district court must exercise that supposedly exclusive jurisdiction encumbered by a residue of jurisdiction from the magistrate court. Appellate counsel has not been able to identify any prior New Mexico case law endorsing or approving of circumstances where a court of inferior jurisdiction entered an order of *any* sort concerning a felony case after it has been bound over. The plain reading of the rules leads to an absurd result: a jurisdictional inversion in which a magistrate court meant to be under the district court's supervision can interfere with the district court's control of a felony case because the State opted to exercise the jurisdiction of an inferior court.

Indeed, in this case the State's decision to seek a warrant from the metropolitan court after the case was transferred adversely impacted the district court's supervision of the case. **[RP 67-8]** The district court noted that the evidence at issue in this case could be obtained in a motion for body standards. **[Id.]** The district court noted that a warrant after bind over thwarts

this Court's case management order for the district court, and that the State was able to delay discovery by *nine months*. **[Id.]**

There appears to be little support for this sort of jurisdictional inversion among American legal systems. Many states have authorized courts of inferior jurisdiction to issue search warrants in the investigation of a case, but do not appear to allow them after a case has been bound over to a superior court. *See, e.g., Preventive Med. Assoc. v. Commonwealth*, 992 N.E.2d 257 (Mass. 2013) (ex parte warrant issued from superior court where case indicted; no issue of lower court jurisdiction); *People v. Mason*, 989 P.2d 757 (Colo. 1999) (subpoena issued from district court based on probable cause; no issue of lower court jurisdiction); *State v. Gubitosi*, 868 A.2d 264 (N.H. 2005) (allowing prosecutors to seek warrant for the same phone records in multiple courts where defendant had cases; no issue of lower court jurisdiction)

In other states, the judiciary operates under constitutional and statutory regimes so different that they do not provide useful analogies for New Mexico courts. For example, in *State v. Pennington*, 393 S.E.2d 847 (N.C. 1990), the North Carolina Supreme Court upheld a post-indictment search warrant issued by a district court clerk after the case had been bound over to the superior court. In North Carolina, the superior court does not have exclusive trial jurisdiction over felonies. N.C. Const., Art. IV, § 12(3). Our equivalent, the

district court, does. *See Wyrostek*, 1994-NMSC-042, ¶ 8. The North Carolina constitution does not make the district court a court of limited jurisdiction. N.C. Const. Art. IV, § 12(4). Our Constitution does. N.M. Const. Art. VI, § 26. Moreover, the North Carolina legislature explicitly granted search warrant jurisdiction by statute to a broad sweep of judicial officers. *See* N.C.G.S. § 15A-243 (authorizing justices, appellate judges, superior court judges, district court judges, clerks and magistrates to issue search warrants). Sometimes “calculations based on our experiences elsewhere fail in New Mexico.” Oakah L. Jones, *Lew Wallace: Hoosier Governor of Territorial New Mexico, 1878-81*, 60 N.M. Hist. Rev. 129, 150 (1985) (quote attributed to Wallace).

The federal judicial system certainly does not brook this kind of jurisdictional inversion. Under Fed. R. Crim. P. 41 (b), a federal search warrant *must* issue from a magistrate judge. Our Rule 5-211 is patterned on Fed. R. Crim. P. 41. *See* Committee commentary, Rule 5-211 NMRA. Aside from the use of the term “magistrate” in their titles, however, there is little in common between federal and New Mexico magistrate judges. New Mexico magistrate judges are constitutional officers of courts with their own, albeit limited, jurisdiction. N.M. Const., Art. VI, § 26. Federal magistrate judges are established by federal statute and do not have the constitutional status of federal district court judges. *See* Peter G. McCabe, *A Guide to the Federal*

Magistrate Judge System, Fed. Bar Assoc. (2014); Ruth Dapper, *A Judge by Any Other Name? Mistitling of the United States Magistrate Judge*, 9 Fed. Courts L.R. 1, 3 (2015) (highlighting the misuse of magistrate alone to identify a federal magistrate judge). Unlike other Article I federal judges, federal magistrate judges do not even have their own separate courts. *Id.*, 3-4. A federal magistrate judge is a judicial officer of the district court, selected by the judges of the district court, and performing only those duties assigned by the district court. *Id.*, 2-3.

In the federal system, whether a felony case has been bound over for trial is jurisdictionally irrelevant because the venue for a search warrant always lies with a magistrate serving as an officer of the district court. There are no federal courts of inferior jurisdiction to forum shop for a search warrant. Notably, the only exception to the requirement that a federal search warrant issue from a magistrate allows federal agents, when a magistrate is not reasonably available, to obtain a search warrant from a judge of a state court – *of record*. Fed. R. Crim. P. 41(b)(6). In New Mexico, “the magistrate court is not a court of record.” *See* § 35-1-1 NMSA (formatting modified). Of course, a federal prosecution may result from evidence obtained in the execution of search warrant validly issued by a New Mexico magistrate judge,

see, e.g., United States v. Sadlowski, 948 F.3d 1200, 1203 (10th Cir. 2020), but New Mexico magistrate judges cannot issue valid federal warrants.

4. *Reading the rules to accord with our Constitution and statutes, magistrate courts cannot issue search warrants in bound over felony cases.*

Although our Constitution and statutes make a plain-language reading of Rule 6-208 and Rule 7-208 untenable, they also provide straightforward guidance for reading the rules in accordance with them. Our Constitution gives the district court original exclusive jurisdiction over the trial of felonies, and the power to issue writs in furtherance of that jurisdiction, including search warrants. This Court, under a statutory grant of authority, has invested magistrate courts with the power to issue warrants. Our Constitution conditions the grant of writ powers to New Mexico courts on what is jurisdictionally necessary: “for the complete exercise of its jurisdiction” in the case of this Court or “in the exercise of their jurisdiction” for district courts. N.M. Const., Art. VI, § 3 (this Court), § 13 (district courts). Although “a court’s authority to hear a case and a court’s authority to issue a search warrant are two separate concepts,” *Sadlowski*, 948 F.3d at 1203, under our Constitution, the latter is granted only for the exercise of the former. This Court’s grant of writ power for search warrants in Rule 6-208 and Rule 7-208 by delegation of the legislature under § 35-7-1(A) NMSA should be similarly limited, especially

since the limited jurisdiction of the magistrate court means all its authority and jurisdiction must come from a specific grant of power. Once the district court exercises its exclusive jurisdiction upon bind over, the magistrate court loses the power to issue search warrants in a case the court no longer has jurisdiction over.

The criminal jurisdiction of our magistrate courts in felony cases is limited to investigatory and preliminary matters. *See* § 35-3-4(A), (C) NMSA. During the investigatory and preliminary phases of a prosecution, the magistrate court issues search warrants in the exercise of its investigatory and preliminary jurisdiction over criminal matters. That exercise does not interfere with the district court's exclusive jurisdiction of a felony case because there is no felony case as such. After a felony case has been bound over, however, the magistrate court no longer any jurisdiction over the matter to issue a search warrant in the exercise of. A common sense reading of the rules in accord with our Constitution and statutes leads to the conclusion that magistrate courts lose their power to issue search warrants after a case has been transferred to the district court's jurisdiction.

C. Based on a common sense reading of the rules, the district court correctly granted suppression.

Evidence seized in the execution of a search warrant issued without jurisdiction “is inadmissible in a New Mexico court.” *State v. Railey*, 1975-NMCA-019, ¶ 10, 87 N.M. 275. In *Railey*, the Court of Appeals determined that a search warrant issued by a tribal court was invalid because the tribal court lacked authority to issue it. *Id.* Mr. Chavez respectfully asks this Court to affirm the district court. What is really at stake in this appeal is the proper functioning of the district court. Even upon remand, the State will still be able to seek the evidence obtained in the execution of the invalid magistrate search warrant, simply by filing a motion for body standards. But the district court will have proper control, in accord with our Constitution and laws, over the matters before it.

RESPECTFULLY SUBMITTED,

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Certificate of Service

In compliance with Rule 12-307.2(D)(4) NMRA, undersigned counsel, email: matthew.edge@lopdm.us, hereby certifies that a copy of the foregoing Brief in Chief was filed with the Court by EFS, to be served upon Van Snow, Deputy Solicitor General, email: vsnow@nmag.gov, on this 5th day of February, 2024, or upon the Court's acceptance of this filing.

/s/
MJ Edge