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.

REPLY BRIEF

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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Reply

In contrast to the common sense interpretation of Rules 6-208 and 7-208 NMRA that magistrate courts lose search warrant authority in felony cases already bound over to the district court for trial, the State argues for a plain language interpretation. First, the lack of an affirmative grant of authority to issue search warrants after bind over is fatal to a plain language interpretation. Second, the State recites authority from other jurisdictions with laws and constitutions so different from New Mexico's that this Court should not consider them persuasive. Finally, rather than address the district court's concern that the plain language interpretation results in the magistrate court interfering with a district court's jurisdiction over the cases bound over to it for trial, the State instead recites concerns about the common sense interpretation that are unfounded in light of current and historical practice.

Argument

Reply Point 1. The lack of an affirmative grant of authority to magistrate courts to issue search warrants after bind over is fatal to the plain language interpretation.

The State reiterates that the Court of Appeals held that "nothing in the plain language of either Rule 5-211 or Rule 7-208 divests the metro court of its authority of issue search warrants in cases indicted or bound over for

trial." **[Answer Brief, 13-14** (quoting *State v. Chavez*, 2023-NMCA-071, ¶ 28, 535 P.3d 736)**]** This is one point that the Court of Appeals got wrong: magistrate courts have *limited jurisdiction*, meaning that their authority must be *affirmatively granted* by statute or the New Mexico Constitution. *See White v. Farris*, 2021-NMCA-014, ¶ 14, 485 P.3d 791; *State v. De La O*, 1985-NMCA-023, ¶ 5, 102 N.M. 638; *Martinez v. Sedillo*, 2005-NMCA-029, ¶ 4, 137 N.M. 103; *State v. Ramirez*, 1981-NMSC-125, ¶ 4, 97 N.M. 125; *State v. Vega*, 1977-NMCA-107, ¶ 21, 91 N.M. 22.

The State cites this Court's analysis of Rule 5-801 NMRA in *State v. Romero*, 2023-NMSC-008, ¶¶ 20-29, 528 P.3d 640, as authority for the proposition that "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." **[Answer Brief, 23]** The State's reliance on *Romero* is misplaced because *Romero* deals with the authority of the *district* court, which is a court of *general* jurisdiction. While a court of general jurisdiction has implied judicial powers that must be affirmatively limited by law, a court of limited jurisdiction only has those judicial powers expressly granted by law. *See White*, 2021-NMCA-014, ¶ 14; *De La O*, 1985-NMCA-023, ¶ 5; *Martinez*, 2005-NMCA-029, ¶ 4; *Ramirez*, 1981-NMSC-125, ¶ 4; *Vega*, 1977-NMCA-107, ¶ 21. The inquiry is not whether there is some express limitation on the

search warrant jurisdiction of magistrate courts, but whether there is an affirmative grant of such authority. That this is an issue of first impression in New Mexico indicates that authority to issue search warrants in felony cases after bind over has not been affirmatively granted to magistrate courts.

Reply Point 2. The State's out-of-state authorities rely on constitutions and laws that are too different from New Mexico's to provide persuasive authority here.

The State argues that courts of limited jurisdiction in other states have authority to issue search warrants after a case has been bound over and transferred to the district court, citing North Carolina, Georgia and Ohio. **[Answer Brief, 24-27]** The State cites *State v. Pennington*, 393 S.E.2d 847 (N.C. 1990); *State v. Lejeune*, 594 S.E.2d 637 (Ga. 2004); and *State v. Spriggs*, 770 N.E.2d 638 (Ohio Court of Common Pleas, Delaware County 2000). The State ignores differences between the constitutional schemes of those states and New Mexico which makes those decisions inapplicable in New Mexico.

A. North Carolina is not New Mexico.

The State ignored Petitioner's analysis of *Pennington*. **[Brief in Chief, 12-13]** In short, *Pennington* does not apply to New Mexico due to key differences in the laws and constitutions of the two states. **[Id.]** This is also true of Georgia and Ohio.

B. Georgia is not New Mexico.

Unlike New Mexico, Georgia has a unified judicial system encompassing "all courts of the state." Ga. Const. Art. VI, § 1, ¶ 2. The Georgia constitution *allows any judge from any court to exercise judicial power in any other court* by mutual consent "under rules prescribed by law." Ga. Const. Art. VI, § 1, ¶ 3. Given these features of Georgia's constitutional order, the Georgia Supreme Court could essentially decide *Lejeune* by making "rules prescribed by law" under which a magistrate court judge can be deemed to exercise judicial power in a superior court case by consent decreed by the Court. 594 S.E.2d at 640-1.

C. Ohio is not New Mexico.

Unlike the New Mexico constitution, which directly grants the district court (but not the magistrate court) writ powers, including the authority to issue search warrants, Ohio has a constitution under which the search warrant powers of the judiciary are dictated by the legislature. *See Spriggs*, 770 N.E.2d at 640¶4. The magistrate court in *Spriggs* had statutory authority to issue search warrants because it was a court of record. *Id.* The metropolitan court is not a court of record. *See* § 35-1-1 NMSA (specifying that magistrate courts are not courts of record); § 34-8A-2 NMSA (1980) (specifying that metropolitan courts are magistrate courts).

Moreover, the county court judge who authored *Spriggs* acknowledged that it relied on a grant of authority that was not expressly stated in law: "this opinion is perhaps nothing more than an express statement of what is already implicit criminal procedure in Ohio courts. Nevertheless, defendant presents a unique issue exposing an apparent gap in Ohio law." 770 N.E.2d at 643¶13. Because a court of limited jurisdiction in New Mexico must have its authority affirmatively granted by statute or constitution, *Spriggs*' reliance on implied authority would not work under our Constitutional scheme.

Reply Point 3. The State's plain language interpretation leads to absurdity; concerns about "absurd" results from the common sense interpretation are unfounded in light of current and historical New Mexico practice.

A. The State failed to address the absurd result – the interference with the exercise of district court's jurisdiction over the cases bound over to it – that follows from the plain language interpretation.

In Mr. Chavez's case, the district court found that, by circumventing the district court and seeking a search warrant in the metropolitan court *after* bind over, the State could delay disclosure of the resulting discovery under LR 2-308 NMRA until required by the case management order, a delay of *nine months.* **[Brief in Chief, 11-12; RP 67-68]** The State has not challenged this finding. Captivated by an inapt analogy to the federal judicial system, which has no courts of limited jurisdiction and magistrates who are officers of the

district court, the Court of Appeals brushed off this absurdity in a footnote. *See Chavez*, 2023-NMCA-071, ¶ 9 fn. 1 (dismissing as "undeveloped"). The plain language reading leads to this absurd result of allowing a magistrate court to interfere with a district court's jurisdiction over a case based on the State's choice of forum to shop a search warrant application.

B. The common sense interpretation merely continues current and historical New Mexico practice.

Relying on (as noted above, inapposite) out-of-state authority, the State contends that the common sense interpretation would lead to absurd results, namely the difficulty in knowing whether a case is bound over **[Answer Brief, 25-26]** and the possibility that a district court judge may have to review a suppression motion challenging a search warrant he issued. **[Answer Brief, 26-27]** However, the common sense interpretation is simply the continuation of current and historical practice in New Mexico, in which search warrant applications after bind over go to the district court.

C. Historical practice shows that prosecutors and law enforcement communicate about the bind over status of cases before seeking search warrants.

As argued in the brief in chief, magistrates before 1968 had very limited search warrant authority limited to stolen goods and gambling houses. **[Brief in Chief, 9]** Every other search warrant issued from a judge of a district court.

Even today, New Mexico's constitution and laws allow district court judges to issue search warrants after bind over. *See* N.M. Const. Art. VI, § 13 (granting district courts original jurisdiction and writ powers "in the exercise of their jurisdiction"); Rule 5-211 NMRA. Given that this is an issue of first impression in over a century of New Mexico constitutional history and almost sixty years of practice since the establishment of magistrate courts, the common sense interpretation has worked fine until the State attempted to bypass the district court in this case.

The State complains that the common sense interpretation of the rule would make seeking a search warrant hopelessly complicated because prosecutors and law enforcement somehow cannot communicate which cases have been bound over. **[Answer Brief, 25-26]** The State never claimed that the search warrant in this case resulted from miscommunication, rather than a simple desire to circumvent the district court and delay the proceedings. Moreover, this is an issue of first impression, meaning that even if the State acted inadvertently here, cases in which State actors in district attorney offices and law enforcement agencies could not communicate such basic information seem extraordinarily rare occurrences.

D. Judges routinely review their own search warrants.

The State argues that when a district court judge (in the State's example, the Honorable James W. Counts, serving pro tem as the sole judge of the Tenth Judicial District) issues search warrants in cases after bind over, a defendant may have to challenge that search warrant in a motion before the same judge. **[Answer Brief, 26-27]** First, district court judges routinely make probable cause determinations. The fact that a judge issued a warrant does not necessarily bar him or her from presiding over a criminal trial involving the subject of the warrant. *People v. Antoine*, 781 N.E.2d 444, 453-54(Ill. App. Ct. 2002). In fact, some states, like Illinois and Minnesota, do not have courts of limited jurisdiction; district court judges issue all search warrants, all without offending due process. *See Withrow v. Larkin*, 421 U.S. 35, 56 (1975).

Second, the State's argument here suggests that the *district court* somehow lacks search warrant jurisdiction when a case might get bound over as a felony. This reveals the absurdity of the State's argument: avoiding this supposedly absurd result would require reading some limitation into the plain language of Rule 5-211 to prohibit the district court from issuing search warrants in felony cases. The State's position demands the kind of judicial inversion that is foreign to our Constitution: magistrate courts that can issue

search warrants in any case, but district courts that can issue search warrants only in misdemeanor cases.

Conclusion

Respondent 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

Undersigned counsel hereby certifies that a copy of the foregoing Reply Brief was served upon Meryl Francolini, Assistant Solicitor General, email: mfrancolini@nmag.gov, on this 12th day of March, 2024.

/s/
MJ Edge