

SUPREME COURT OF THE STATE OF NEW MEXICO

State of New Mexico v. Carlos Carrillo

State v. Carrillo, 2017-NMSC-023 · No. S-1-SC-34662 · Decided June 30, 2017

SUMMARY

The New Mexico Supreme Court reviewed Carlos Carrillo’s convictions for murders, tampering with evidence, breaking and entering, and related offenses. The court held that testimony describing cell phone business records was admissible without expert qualification, but testimony concerning how cell towers operate required expert testimony; any error was harmless, and the convictions were affirmed.

CASE DETAILS

COURT	Supreme Court of the State of New Mexico
WRITING FOR THE COURT	Barbara J. Vigil; Judith K. Nakamura; Petra Jimenez Maes; Edward L. Chávez; Charles W. Daniels
JURISDICTION	New Mexico
DECIDED	June 30, 2017
DOCKET	S-1-SC-34662
DISPOSITION	affirmed
PROCEDURAL POSTURE	Capital criminal appeal from convictions for first-degree murder, second-degree murder, felony murder, tampering with evidence, breaking and entering, possession of heroin, and related offenses.
STANDARD OF REVIEW	The court reviewed the legal question whether the correct evidentiary rule or standard was applied de novo; admission of expert or scientific evidence for abuse of discretion; unpreserved evidentiary error for plain error affecting a substantial right; evidentiary error under the nonconstitutional harmless-error standard; sufficiency of the evidence by viewing the evidence in the light most favorable to the verdict and asking whether any rational trier of fact could find the essential elements beyond a reasonable doubt; preserved prosecutorial-misconduct rulings for abuse of discretion and unpreserved claims for fundamental error; and cumulative error under the cumulative-error doctrine.
PRECEDENTIAL VALUE	published precedential opinion

TOPICS

expert testimony

evidence

preservation of error

harmless error

appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

evidence

appellate law

QUESTIONS PRESENTED

1. Whether the district court erred by allowing a lay witness to testify about how cell towers operate and interact with cell-phone signals without qualifying the witness as an expert.
2. Whether Carrillo preserved his objection to the cell-phone testimony of the second witness by relying only on an unresolved motion in limine.
3. Whether the erroneous admission of the cell-tower-operation testimony required reversal under the nonconstitutional harmless-error standard.
4. Whether sufficient evidence supported Carrillo's murder convictions.
5. Whether sufficient evidence supported the convictions for tampering with evidence and breaking and entering.
6. Whether the State committed prosecutorial misconduct by attempting to introduce statements allegedly excluded before trial.
7. Whether cumulative error deprived Carrillo of a fair trial.

HOLDINGS

1. Testimony by a qualified records custodian concerning the contents and meaning of a call-detail report and a cell-tower report is admissible as business-record testimony and need not satisfy the requirements for lay or expert opinion testimony.
2. A witness must be qualified as an expert before testifying about the technical operation of cell towers and the interaction of cell signals in a manner used to identify the general location of a cell-phone call.
3. The challenge to the second witness's testimony was not preserved because Carrillo did not object at trial and the district court had not ruled on the motion in limine; the testimony did not constitute plain error.
4. The admission of the unqualified cell-tower-operation testimony was harmless nonconstitutional error and did not require reversal.
5. The evidence was sufficient for a rational jury to find beyond a reasonable doubt that Carrillo committed the murders, tampered with evidence, and broke and entered the vehicle.
6. No prosecutorial misconduct or fundamental error occurred because the record did not show that the State attempted to introduce evidence previously excluded by court order, and the limiting instruction requested by the defense was given.

7. Cumulative error did not warrant relief because the only trial error was harmless and the record demonstrated that Carrillo received a fair trial.

KEY QUOTATIONS

“In our view, understanding how cell towers operate requires a duly qualified expert to explain the technical nature of the many variables that influence how cell tower signals connect with cell phones.” (¶ 35)

“We therefore conclude that Cabrera should have been identified and properly qualified as an expert before testifying about how cell towers interact with cell signals to identify the location of a cell phone call because this information required specialized knowledge.” (¶ 38)

“New Mexico’s breaking and entering statute . . . requires no intent to commit a crime upon entering, only the breaking and entering need be shown.” (¶ 48)

FACTUAL BACKGROUND

Police discovered Christopher Kinney and Lyndsey Frost fatally shot in a pickup truck at Tigues Park. Evidence connected Carrillo to Kinney through numerous calls and text messages during the early morning hours, and cell-phone records placed Carrillo's phone near the area around the approximate time of the murders. Later that morning, a witness saw Carrillo using what appeared to be a firearm to break into a car; he fled and was arrested without the firearm, and he gave police changing accounts about his whereabouts. The trial court admitted testimony and exhibits concerning cell-phone records and cell-tower operation, and the jury convicted Carrillo of multiple offenses.

PROCEDURAL HISTORY

Carrillo was indicted by a grand jury and tried in the Second Judicial District Court of Bernalillo County. The jury returned multiple guilty verdicts. The district court merged certain convictions and vacated one shooting conviction on double-jeopardy grounds, then imposed two life sentences plus additional prison time and habitual-offender enhancements. Carrillo appealed directly to the New Mexico Supreme Court, challenging the admission of cell-phone evidence, sufficiency of the evidence, alleged prosecutorial misconduct, and cumulative error.

DISPOSITION

affirmed

CASES CITED

- State v. Walters, 2007-NMSC-050, ¶ 18, 142 N.M. 644, 168 P.3d 1068
- State v. Lucero, 1993-NMSC-064, ¶ 11, 116 N.M. 450, 863 P.2d 1071
- State v. Leyva, 2011-NMSC-009, ¶ 36, 149 N.M. 435, 250 P.3d 861
- Kysar v. BP American Production Co., 2012-NMCA-036, ¶ 23, 273 P.3d 867
- State v. Begay, 1998-NMSC-029, ¶ 21, 125 N.M. 541, 964 P.2d 102
- State v. Torres, 1999-NMSC-010, ¶¶ 23, 28, 42, 127 N.M. 20, 976 P.2d 20

- State v. Alberico, 1993-NMSC-047, ¶ 58, 116 N.M. 156, 861 P.2d 192
- Collins v. State, 172 So. 3d 724, 743 (Miss. 2015) (en banc)
- State v. Blurton, 484 S.W.3d 758, 771-72 (Mo. 2016) (en banc)
- Burnside v. State, 352 P.3d 627, 636-37 (Nev. 2015) (en banc)
- State v. Vargas, 2008-NMSC-019, ¶ 8, 143 N.M. 692, 181 P.3d 684
- Trujillo v. Dimas, 1956-NMSC-043, ¶ 42, 61 N.M. 235, 297 P.2d 1060
- Carlsbad Broad. Corp. v. Bureau of Revenue, 1947-NMSC-047, ¶ 8, 51 N.M. 360, 184 P.2d 434
- United States v. Piggie, 622 F.2d 486, 488 (10th Cir. 1980)
- Rozelle v. Barnard, 1963-NMSC-101, ¶ 2, 72 N.M. 182, 382 P.2d 180
- United States v. Yeley-Davis, 632 F.3d 673, 684 (10th Cir. 2011)
- State v. Patton, 419 S.W.3d 125, 132 (Mo. Ct. App. 2013)
- State v. Tollardo, 2012-NMSC-008, ¶¶ 25, 31, 36, 275 P.3d 110
- State v. Leyba, 2012-NMSC-037, ¶¶ 23-24, 289 P.3d 1215
- State v. Cunningham, 2000-NMSC-009, ¶ 26, 128 N.M. 711, 998 P.2d 176
- State v. Garcia, 1992-NMSC-048, ¶ 26, 114 N.M. 269, 837 P.2d 862
- State v. Flores, 2010-NMSC-002, ¶ 23, 147 N.M. 542, 226 P.3d 641
- State v. Franklin, 1967-NMSC-151, 78 N.M. 127, 428 P.2d 982
- State v. Boyer, 1985-NMCA-029, 103 N.M. 655, 712 P.2d 1
- State v. Silva, 2008-NMSC-051, ¶¶ 17-19, 144 N.M. 815, 192 P.3d 1192
- State v. Guerra, 2012-NMSC-027, ¶¶ 12-16, 284 P.3d 1076
- State v. Paiz, 2006-NMCA-144, ¶ 53, 140 N.M. 815, 149 P.3d 579
- State v. Allen, 2000-NMSC-002, ¶ 95, 128 N.M. 482, 994 P.2d 728
- State v. Trevino, 1991-NMCA-085, ¶ 20, 113 N.M. 804, 833 P.2d 1170
- State v. Ortega, 2014-NMSC-017, ¶ 53, 327 P.3d 1076
- State v. Samora, 2013-NMSC-038, ¶ 28, 307 P.3d 328