

SUPREME COURT OF NEW MEXICO

State v. Franco

2005 NMSC 13 (2005) · No. 28,791 · Decided June 8, 2005

SUMMARY

The Supreme Court of New Mexico held that convictions for possession of a controlled substance and tampering with evidence did not violate the constitutional prohibition against double jeopardy. Applying New Mexico's unitary-conduct and legislative-intent framework, including the Blockburger test, the court concluded that each offense required proof of an element the other did not and that the Legislature intended separate punishments. The court reversed the Court of Appeals and affirmed the defendant's convictions and sentence.

CASE DETAILS

COURT	Supreme Court of New Mexico
WRITING FOR THE COURT	Pamela B. Minzner; Richard C. Bosson; Patricio M. Serna; Petra Jimenez Maes; Edward L. Chávez
JURISDICTION	New Mexico
DECIDED	June 8, 2005
DOCKET	28,791
DISPOSITION	reversed
PROCEDURAL POSTURE	The State petitioned the Supreme Court of New Mexico for certiorari after the Court of Appeals reversed Defendant's convictions for possession of a controlled substance and tampering with evidence on double-jeopardy grounds.
STANDARD OF REVIEW	Whether multiple convictions constitute multiple punishment for the same offense under the Double Jeopardy Clause is a question of legislative intent reviewed de novo.
PRECEDENTIAL VALUE	binding
PARTIES	State of New Mexico v. Gina Franco

TOPICS

- double jeopardy
- criminal procedure
- statutory interpretation
- appellate procedure
- constitutional law

PRACTICE AREAS

criminal law

criminal procedure

constitutional law

appellate practice

QUESTIONS PRESENTED

1. Whether Defendant's convictions for possession of a controlled substance and tampering with evidence constituted multiple punishment for the same offense in violation of the Double Jeopardy Clause.
2. Whether the Court of Appeals correctly determined that possession was subsumed within tampering by examining the State's factual theory that Defendant possessed the cocaine while throwing it from the window.
3. Whether the conduct underlying the offenses was unitary and, if so, whether the Legislature intended separate punishments for the two offenses.

HOLDINGS

1. Convictions for possession of cocaine and tampering with evidence did not violate double jeopardy because each offense requires proof of an element that the other does not, and other indicia of legislative intent supported separate punishments.
2. The State's trial theory does not necessarily determine whether conduct is unitary; the court must examine the elements and trial evidence to determine whether the jury reasonably could have inferred independent factual bases for the offenses.
3. The Court of Appeals erred by treating possession as subsumed within tampering based on the State's theory that Defendant possessed the cocaine while throwing it from the window; the Blockburger inquiry compares the elements of the specific charged offenses without examining the facts in detail.

KEY QUOTATIONS

"the sole limitation on multiple punishments is legislative intent" (§ 12)

"We conclude the Legislature intended separate punishments for possession of a controlled substance and for tampering with evidence." (§ 19)

FACTUAL BACKGROUND

Police executed a warrant at an apartment associated with drug activity and found drug paraphernalia inside. Defendant had been in the apartment for approximately thirty to forty-five minutes, admitted handling a Tylenol bottle, and was seen running into the bathroom as officers entered. Police later found the bottle containing crack cocaine outside the apartment beneath the bathroom window, and the jury convicted Defendant of possessing cocaine and tampering with evidence.

PROCEDURAL HISTORY

Following a jury trial, Defendant was convicted of possession of a controlled substance and tampering with evidence. The Court of Appeals held that possession was a lesser-included offense of tampering and reversed the

possession conviction and sentence. The Supreme Court granted the State's petition for certiorari, reversed the Court of Appeals on the double-jeopardy issue, and affirmed Defendant's judgment and sentence.

DISPOSITION

reversed

CASES CITED

- State v. Foster, 1999-NMSC-007, ¶ 28, 126 N.M. 646, 974 P.2d 140
- Swafford v. State, 112 N.M. 3, 810 P.2d 1223 (1991)
- State v. Dominguez, 2005-NMSC-001, ¶ 23, 137 N.M. 1, 106 P.3d 563
- State v. Smith, 104 N.M. 729, 726 P.2d 883 (Ct. App. 1986)
- State v. Crain, 1997-NMCA-101, ¶ 22, 124 N.M. 84, 946 P.2d 1095
- State v. Mora, 2003-NMCA-072, ¶¶ 20-22, 27, 133 N.M. 746, 69 P.3d 256
- Blockburger v. United States, 284 U.S. 299, 304 (1932)
- State v. Rodriguez, 113 N.M. 767, 833 P.2d 244 (Ct. App. 1992)
- Pandelli v. United States, 635 F.2d 533, 538-39 (6th Cir. 1980)
- State v. LeFebvre, 2001-NMCA-009, ¶¶ 22-23, 130 N.M. 130, 19 P.3d 825
- State v. Medina, 87 N.M. 394, 534 P.2d 486 (Ct. App. 1975)
- State v. Reams, 98 N.M. 372, 648 P.2d 1185 (Ct. App. 1981)
- State v. Reams, 98 N.M. 215, 647 P.2d 417 (1982)
- State v. Sosa, 1997-NMSC-032, ¶ 36, 123 N.M. 564, 943 P.2d 1017