

SUPREME COURT OF NEW MEXICO

State v. Surratt

9 N.M. 131 (2015) · No. S-1-SC-35049 · Decided December 10, 2015

SUMMARY

The New Mexico Supreme Court considered whether a properly appointed special prosecutor could appoint another district attorney as a replacement special prosecutor when unable to proceed because of an ethical conflict or other good cause. The court held that under NMSA 1978, Section 36-1-23.1, the original special prosecutor possessed the authority and duties of the appointing district attorney, including the authority to make a further appointment. The court reversed the Court of Appeals and reinstated Danny Surratt’s conviction.

CASE DETAILS

COURT	Supreme Court of New Mexico
WRITING FOR THE COURT	Charles W. Daniels; Barbara J. Vigil; Petra Jimenez Maes; Edward L. Chávez
JURISDICTION	New Mexico
DECIDED	December 10, 2015
DOCKET	S-1-SC-35049
DISPOSITION	reversed
PROCEDURAL POSTURE	Original proceeding on certiorari reviewing the Court of Appeals' reversal of Defendant's conviction following his second trial.
STANDARD OF REVIEW	Statutory construction is reviewed de novo.
PRECEDENTIAL VALUE	Published New Mexico Supreme Court opinion; precedential.
PARTIES	State of New Mexico v. Danny Surratt

TOPICS

- criminal procedure
- statutory interpretation
- appellate procedure
- appellate jurisdiction
- standard of review

PRACTICE AREAS

- criminal procedure
- statutory interpretation
- prosecutorial authority
- appellate procedure

QUESTIONS PRESENTED

1. Whether NMSA 1978, Section 36-1-23.1 authorizes a district attorney serving as a special prosecutor to appoint another special prosecutor when an ethical conflict or other good cause prevents continued participation.
2. Whether the second special prosecutor had authority to prosecute Surratt's case.
3. Whether the district court lost subject-matter jurisdiction because of the alleged defect in the prosecutor's appointment.

HOLDINGS

1. Section 36-1-23.1 applies to the appointment of any practicing member of the New Mexico bar, including another elected district attorney, when the original district attorney cannot prosecute a case for ethical reasons or other good cause.
2. A properly appointed special prosecutor steps into the shoes of the appointing district attorney and possesses all of that district attorney's powers and duties in the specific case, including the authority to appoint another special prosecutor when ethical reasons or other good cause arise.
3. The district court retained subject-matter jurisdiction over the criminal proceedings because Chandler had authority to prosecute, and the substitution of prosecutors did not divest the court of jurisdiction.

KEY QUOTATIONS

“We hold that a properly appointed special prosecutor is given all the authority and duties of the appointing district attorney to prosecute the case for which that special prosecutor was appointed, including the authority to name another special prosecutor if unable to proceed for an ethical reason or other good cause.” (¶ 1)

“Under the facts of this case, we conclude that District Attorney Martwick, as the duly appointed special prosecutor, stepped into the shoes of elected District Attorney Hicks for all matters relating to the prosecution of this specific case in accordance with Section 36-1-23.1.” (¶ 30)

“We hold that the lawful appointment of District Attorney Martwick as Special Prosecutor vested her with all the powers and duties of the original district attorney to investigate and prosecute this case, including the authority to appoint another special prosecutor pursuant to Section 36-1-23.1.” (¶ 32)

FACTUAL BACKGROUND

Danny Surratt was charged with criminal sexual penetration offenses involving his two minor stepgranddaughters. The Fifth Judicial District Attorney recused her office because of a conflict and appointed Twelfth Judicial District Attorney Diana Martwick, or her designee, as special prosecutor. After Martwick's office could no longer effectively prosecute the case because of experience, victim-prosecutor conflict, and Martwick's illness, Martwick appointed Ninth Judicial District Attorney Matthew Chandler, or his designee, as a second special prosecutor. Surratt was convicted at the second trial and challenged Chandler's authority, arguing that the appointment was invalid and deprived the district court of jurisdiction.

PROCEDURAL HISTORY

Surratt was charged in magistrate court and bound over for trial in district court. After a first trial resulted in a conviction on one count and a mistrial on another, the district court granted a new trial based on an improper jury instruction. Following a second trial, Surratt was convicted again. He challenged the authority of the special prosecutor appointed for the second trial, but the district court denied the challenge. The Court of Appeals reversed, concluding that the second special prosecutor lacked authority and that the district court lacked jurisdiction. The New Mexico Supreme Court granted certiorari, reversed the Court of Appeals, and reinstated the conviction.

DISPOSITION

reversed

CASES CITED

- State v. Surratt, 2015-NMCA-039, ¶ 16, 346 P.3d 419
- State v. Nick R., 2009-NMSC-050, ¶ 11, 147 N.M. 182, 218 P.3d 868
- State v. Tafoya, 2010-NMSC-019, ¶ 10, 148 N.M. 391, 237 P.3d 693
- State v. Smith, 2004-NMSC-032, ¶ 10, 136 N.M. 372, 98 P.3d 1022
- State ex rel. Att’y Gen. v. Reese, 1967-NMSC-172, ¶ 26, 78 N.M. 241, 430 P.2d 399
- State v. Naranjo, 1980-NMSC-061, ¶¶ 5, 10-11, 94 N.M. 407, 611 P.2d 1101
- State v. Brule, 1999-NMSC-026, ¶ 14, 127 N.M. 368, 981 P.2d 782
- State v. Santillanes, 2001-NMSC-018, ¶ 21, 130 N.M. 464, 27 P.3d 456
- State v. Gonzales, 2005-NMSC-025, ¶¶ 14-19, 28, 38, 44, 138 N.M. 271, 119 P.3d 151
- State v. Hill, 1975-NMCA-093, ¶ 14, 88 N.M. 216, 539 P.2d 236
- State v. Hollenbeck, 1991-NMCA-060, ¶¶ 8-12, 112 N.M. 275, 814 P.2d 143
- State v. Cherryhomes, 1996-NMSC-072, ¶¶ 6, 8, 11, 18, 122 N.M. 687, 930 P.2d 1139
- State v. Robinson, 2008-NMCA-036, ¶¶ 16-17, 143 N.M. 646, 179 P.3d 1254
- State v. Estrada, 2001-NMCA-034, ¶¶ 10-11, 130 N.M. 358, 24 P.3d 793
- Petition of Padget, 678 P.2d 870, 874 (Wyo. 1984)
- People v. Hastings, 903 P.2d 23, 25 (Colo. App. 1995)
- State v. Rosenbaum, 852 S.W.2d 525, 526-28 (Tex. Crim. App. 1993) (en banc)
- Weems v. Anderson, 516 S.W.2d 895, 901 (Ark. 1974)
- People v. Dellavalle, 259 A.D.2d 773, 775 (N.Y. App. Div. 1999)
- Quillen v. Crockett, 928 S.W.2d 47, 51 (Tenn. Crim. App. 1995)
- People v. Scott, 116 P.3d 1231, 1233 (Colo. App. 2005)