

SUPREME COURT OF NEW MEXICO

State of New Mexico v. Mario Perez Barrera

22 P.3d 1177, 130 N.M. 227 (2001) · No. No. 25,347 · Decided April 19, 2001

SUMMARY

The Supreme Court of New Mexico affirmed Mario Perez Barrera’s convictions for first-degree murder, armed robbery, shooting at an occupied vehicle, and felon in possession of a firearm. The court rejected claims concerning change of venue, admission of Barrera’s statement, late disclosure of shoes introduced into evidence, and sentencing for both murder and armed robbery. It held that the consular-notification claim was unpreserved, the Miranda waiver was valid, the late-disclosed evidence did not prejudice Barrera, and the opinion excerpt proceeds to analyze the double-jeopardy claim.

CASE DETAILS

COURT	Supreme Court of New Mexico
WRITING FOR THE COURT	Serna, Chief Justice; Joseph F. Baca, Justice; Gene E. Franchini, Justice; Pamela B. Minzner, Justice; Petra Jimenez Maes, Justice
JURISDICTION	New Mexico
DECIDED	April 19, 2001
DOCKET	No. 25,347
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed his convictions for first-degree murder, armed robbery, shooting at an occupied vehicle, and felon in possession of a firearm directly to the Supreme Court of New Mexico because the sentence included life imprisonment.
STANDARD OF REVIEW	Change-of-venue decisions are reviewed for abuse of discretion, with the determination supported by substantial evidence. The trial court's factual findings on a Miranda waiver are reviewed for substantial evidence, while the ultimate validity of the waiver is reviewed de novo. The admission of evidence disclosed for the first time at trial is evaluated under the factors identified in State v. Mora. Preservation issues are reviewed under the applicable preservation and fundamental-error standards. Multiple-punishment double-jeopardy claims are analyzed under the two-part Swafford inquiry.

PRECEDENTIAL VALUE	Published New Mexico Supreme Court opinion; precedential
PARTIES	Mario Perez Barrera v. State of New Mexico

TOPICS

criminal procedure miranda rights right to counsel double jeopardy

PRACTICE AREAS

criminal law criminal procedure appellate practice

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by denying Barrera's motion to change venue based on pretrial publicity.
2. Whether Barrera knowingly, intelligently, and voluntarily waived his Miranda rights before giving his statement to police.
3. Whether Barrera's question during booking, 'Do I need an attorney?', sufficiently invoked his right to counsel.
4. Whether the court should consider Barrera's unpreserved claim that police violated his rights under the Vienna Convention on Consular Relations.
5. Whether the trial court erred by admitting shoes that the prosecution did not disclose until trial.
6. Whether imposing sentences for both first-degree felony murder and armed robbery violated the Double Jeopardy Clause because the offenses arose from unitary conduct.

HOLDINGS

1. The trial court did not abuse its discretion in denying a change of venue because substantial evidence supported its determination, based on voir dire, that the selected jurors were capable of impartiality.
2. The State established by a preponderance of the evidence that Barrera knowingly, intelligently, and voluntarily waived his Miranda rights, so the trial court properly denied suppression of his statement.
3. Barrera's booking question, 'Do I need an attorney?', was ambiguous and did not constitute a clear and unequivocal invocation of the right to counsel.
4. The court would not consider Barrera's consular-notification claim because he raised it for the first time on appeal and did not fairly invoke a ruling in the trial court; the claim also did not qualify for fundamental-error review.
5. The admission of the shoes did not warrant reversal because Barrera failed to show prejudice or that the trial court's opportunity to examine the shoes during a recess was an inadequate cure.
6. Sentences for first-degree felony murder and armed robbery did not violate double jeopardy because the conduct supporting the offenses was separate and distinct rather than unitary.

KEY QUOTATIONS

“Exposure of venire members to publicity about a case by itself does not establish prejudice or create a presumption of prejudice.” (22 P.3d at 1182)

“Defendant’s ambiguous question was not a clear unequivocal request for an attorney.” (22 P.3d at 1186)

FACTUAL BACKGROUND

Barrera approached Wendy Wagner as she returned to her pickup truck near the Glorieta exit of Interstate 25 and shot her three times after she screamed when he attempted to take the truck. He drove the truck out of New Mexico, disposed of Wagner’s body, attempted to clean the vehicle, and took several of her possessions. Police later recovered the truck, a firearm and ammunition associated with the shootings, and Wagner’s property at locations connected to Barrera; Barrera also gave a detailed confession after his arrest.

PROCEDURAL HISTORY

A jury convicted Barrera of first-degree murder, armed robbery, shooting at an occupied motor vehicle, and felon in possession of a firearm. The trial court sentenced him to life imprisonment plus twenty-two and one-half years. The Supreme Court of New Mexico reviewed his claims concerning venue, suppression of his statement, late-disclosed evidence, and double jeopardy, and affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. House, 1999-NMSC-014, 127 N.M. 151, 978 P.2d 967
- State v. Chamberlain, 112 N.M. 723, 819 P.2d 673 (1991)
- State v. McGuire, 110 N.M. 304, 795 P.2d 996 (1990)
- State v. Lasner, 2000-NMSC-038, 129 N.M. 806, 14 P.3d 1282
- State v. Hernandez, 115 N.M. 6, 846 P.2d 312 (1993)
- State v. Lucero, 104 N.M. 587, 725 P.2d 266 (Ct. App. 1986)
- State v. Gomez, 1997-NMSC-006, 122 N.M. 777, 932 P.2d 1
- State v. Orosco, 113 N.M. 780, 833 P.2d 1146 (1992)
- Miranda v. Arizona, 384 U.S. 436 (1966)
- State v. Martinez, 1999-NMSC-018, 127 N.M. 207, 979 P.2d 718
- State v. Boeglin, 100 N.M. 127, 666 P.2d 1274 (Ct. App. 1983)
- State v. Favela, 91 N.M. 476, 576 P.2d 282 (1978)
- State v. Pitts, 103 N.M. 778, 714 P.2d 582 (1986)
- State v. Setser, 1997-NMSC-004, 122 N.M. 794, 932 P.2d 484
- State v. Fekete, 120 N.M. 290, 901 P.2d 708 (1995)

- Moran v. Burbine, 475 U.S. 412 (1986)
- State v. Castillo-Sanchez, 1999-NMCA-085, 127 N.M. 540, 984 P.2d 787
- Davis v. United States, 512 U.S. 452 (1994)
- State v. Ninci, 262 Kan. 21, 936 P.2d 1364 (1997)
- State v. Mora, 1997-NMSC-060, 124 N.M. 346, 950 P.2d 789
- State v. Clifford, 117 N.M. 508, 873 P.2d 254 (1994)
- Swafford v. State, 112 N.M. 3, 810 P.2d 1223 (1991)
- State v. Cooper, 1997-NMSC-058, 124 N.M. 277, 949 P.2d 660

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