

SUPREME COURT OF THE STATE OF NEW MEXICO

State v. Surratt

2016-NMSC-004 (2015) · No. S-1-SC-35049 · Decided December 10, 2015

SUMMARY

The New Mexico Supreme Court considered whether a special prosecutor appointed under NMSA 1978, Section 36-1-23.1, could appoint another special prosecutor to continue a criminal prosecution. The Court held that a properly appointed special prosecutor assumes the appointing district attorney’s authority and duties in the specific case, including the authority to appoint another special prosecutor for ethical reasons or other good cause. The Court reversed the Court of Appeals and reinstated Danny Surratt’s conviction.

CASE DETAILS

COURT	Supreme Court of the State 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	The New Mexico Supreme Court granted certiorari to review the Court of Appeals' reversal of Defendant's conviction based on the alleged lack of authority of a special prosecutor appointed by another special prosecutor.
STANDARD OF REVIEW	Statutory construction is reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	State of New Mexico v. Danny Surratt

TOPICS

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

PRACTICE AREAS

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

QUESTIONS PRESENTED

1. Whether NMSA 1978, Section 36-1-23.1 authorizes a district attorney appointed as a special prosecutor to appoint another special prosecutor when ethical reasons or other good cause prevent continued participation.
2. Whether the replacement special prosecutor's allegedly unauthorized appointment deprived the district court of subject-matter jurisdiction over the criminal proceedings.

HOLDINGS

1. A properly appointed special prosecutor assumes all powers and duties of the appointing district attorney in the specific case and may appoint another special prosecutor under Section 36-1-23.1 when an ethical reason or other good cause prevents continued prosecution.
2. The appointment of Chandler did not deprive the Lea County Fifth Judicial District Court of subject-matter jurisdiction over Surratt's criminal proceedings.
3. Section 36-1-23.1's reference to a practicing member of the New Mexico bar includes both private counsel and other public prosecutors.

KEY QUOTATIONS

“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, a Lea County law-enforcement officer, was charged with criminal sexual penetration offenses involving his two minor stepgranddaughters. The Fifth Judicial District Attorney, Janetta Hicks, recused her office because of a conflict and appointed Twelfth Judicial District Attorney Diana Martwick, or her designee, as special prosecutor. After the first trial resulted in a conviction on one count, a mistrial on another, and a new-trial order, Martwick determined that her office could not effectively continue and appointed Ninth Judicial District Attorney Matthew Chandler, or his designee, as special prosecutor. Chandler's office prosecuted the second trial, which resulted in Surratt's conviction.

PROCEDURAL HISTORY

Surratt was charged in magistrate court and bound over for trial in district court. After an initial conviction, the district court granted a new trial based on an improper jury instruction. Following a second trial, Surratt was convicted again, and the district court denied his motion challenging the authority of the replacement special prosecutor and entered judgment and sentence. The Court of Appeals reversed and effectively remanded for a third trial. The Supreme Court 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, ¶¶ 7, 21, 130 N.M. 464, 27 P.3d 456
- State v. Gonzales, 2005-NMSC-025, ¶¶ 14-19, 28, 37-38, 44, 51, 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. 1996)
- People v. Scott, 116 P.3d 1231, 1233 (Colo. App. 2005)

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