S-1-SC-38937

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellant,

v. **No. A-1-CA-38812**

RICKY AYON,

Defendant-Appellee,

APPEAL FROM THE SECOND JUDICIAL DISTRICT COURT
Bernalillo County, New Mexico
The Honorable Christina P. Argyres, District Judge

PLAINTIFF-APPELLANT'S REPLY BRIEF

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Statement of Compliance

I certify that although this reply brief exceeds the 15-page limit set forth in Rule 12-318(F)(2) NMRA, the body of the complies with the word limitation set forth in subsection (F)(2) of the rule and contains: **4,304** words according to Microsoft Word's word count feature.

TABLE OF AUTHORITIES

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NATURE OF THE CASE

The State appealed a district court order dismissing the case against Defendant during a preliminary hearing, upon the court's finding that the arresting officer lacked reasonable suspicion to contact Defendant and that therefore the subsequent search of Defendant's person resulting in the discovery of a controlled substance was unconstitutional. The court did not make a finding or address the issue of probable cause, or lack thereof, to bind the Defendant over for trial.

Specifically, the court declined to bind the case over because although the court "underst[ood] the officer's concern" when he encountered Defendant on the sidewalk and called him over because he knew Defendant had an active warrant for his arrest, there was "no reason to detain [Defendant] to begin with," because "he wasn't doing illegal activity" such that there was no reasonable suspicion for the deputy to stop him. **[1-9-2020 CD, 11:36:00-11:37:27]** In its written order dismissing the case, the court explained only that: "The Court found there was no reasonable suspicion to detain the defendant and therefore the search was illegal." **[RP 8]**

In its brief in chief, the State argued that given the limited purpose and scope of a preliminary hearing, the district court exceeded its authority by dismissing the case for a lack of reasonable suspicion. The State asserted that even if such a finding were permissible, suppression of evidence rather than dismissal would be the

appropriate remedy. Finally, the State argued the district court's conclusion was error because a law enforcement officer may stop an individual for purposes of executing a valid arrest warrant.

In his answer brief, Defendant asserts that absent reasonable suspicion of criminal activity, Deputy Limon's stop of Defendant was unlawful because the deputy merely suspected that Defendant "might" have a warrant out for his arrest. He also argues that the district court's ruling was simply an application of the "exclusionary rule," which should apply at preliminary hearings in New Mexico. For the reasons explained below, Defendant's arguments fail.

This reply brief is timely if filed on or before April 5, 2021. Although Defendant's answer brief was filed in this Court on March 12, 2012, the State was not served with the brief until the following Monday, March 15, 2021. *See* Rule 12-310(C)(2)(c) NMRA ("the appellant may file and serve a reply brief within twenty (20) days after service of the brief of the appellee[.]").

ARGUMENT

I. The district court's ruling was an improper dismissal, not an application of the exclusionary rule.

Defendant characterizes the issue before this Court as "whether the exclusionary rule applies to a preliminary hearing" **[AB 4]** and urges this Court to treat the district court's ruling as an "application[] of the exclusionary rule." **[AB 20]** However, the district court did not address this issue and made no finding on whether the exclusionary rule applies at a preliminary hearing, nor did it exclude any evidence. The district court heard all evidence presented by the State and—without making any findings as to probable cause or lack thereof to bind Defendant over for trial—dismissed the charges upon a finding that Deputy Limon lacked reasonable suspicion to contact Defendant at all. Despite Defendant's efforts, the district court's ruling annot be viewed as merely excluding or suppressing evidence.

Even if this Court agrees with the district court and finds that Defendant was unlawfully detained resulting in the inadmissibility of certain evidence, dismissal was not the appropriate remedy. *See State v. Eder*, 1985-NMCA- 076, ¶¶ 2-4, 9, 103 N.M. 211 (reversing district court's dismissal of grand jury indictments obtained using information resulting from unlawful subpoenas, reasoning that grand jury indictments should stand unless a prosecutor has engaged in "deceitful or malicious overreaching which subverts the grand jury proceedings" and that where "inadmissible evidence is presented to the grand jury, the proper remedy is

suppression at trial" and not dismissal of the indictment); *State v. Cardenas-Alvarez*, 2001-NMSC-017, ¶¶ 19-20, 130 N.M. 386 (emphasizing that when courts are concerned with the methods by which evidence is obtained, the remedy is to exclude that evidence from use in state court).

Under similar circumstances, this Court held the children's court erred by dismissing the State's delinquency petition based on a finding of unconstitutional police conduct, because New Mexico's Children's Code does not afford the court the authority to do so. *In re Jade G.*, 2001-NMCA-058, ¶ 12, 130 N.M. 687. This Court reasoned: "Section 32A-2-14 itself does not provide for the remedy of dismissal for a violation of its provisions. Thus, the plain meaning of Section 32A-2-14 does not lead to a conclusion that the Code contemplates dismissal." *Id.*16. This Court further explained: "We believe that the legislature would have clearly provided for such a significant and extreme remedy in the Children's Code if it had intended the children's court to possess such power[,]" and "decline[d] to read it into the Code." *Id.* ¶ 20.

Applying that reasoning here, while Rule 5-302 NMRA does provide the remedy of dismissal at a preliminary hearing, it does so only if the State fails to demonstrate probable cause to believe the defendant committed the charged offense, or violates the time limits set out in the rule. Had the Committee intended that preliminary hearing judges possess authority to dismiss the State's case on any

grounds at that stage of the proceedings, then presumably the remedy of dismissal would not be explicitly limited to only two specific circumstances. *See Id.*

In *State v. Montoya*, 2008–NMSC–043, ¶ 18, 144 N.M. 458, our Supreme Court noted that once some of the State's evidence is suppressed, the State is entitled "to pursue its case with its remaining evidence, dismiss its case with prejudice or dismiss its case and refile it in district court." None of those options were afforded to the State here, where the district court, without suppressing any evidence or inquiring into the possibility of additional evidence, simply dismissed the State's case entirely. This was done at a time early on in the case when the State did not yet have the full benefit of discovery, pretrial interviews, etc., further rendering the dismissal inappropriate. The district court's ruling should be treated as the dismissal it plainly is, and not as a suppression order Defendant would prefer it to be.

II. Because Deputy Limon's contact with Defendant was lawful based on his recently-acquired knowledge of Defendant's outstanding arrest warrant, no "illegally obtained" evidence eligible for exclusion was introduced at the preliminary hearing.

The district court did not merely apply the exclusionary rule as Defendant asserts. Indeed, there was not illegally obtained evidence eligible for exclusion here. Nevertheless, Defendant contends that because Deputy Limon did not confirm the existence of an active arrest *immediately* before making contact with him, the stop

was illegal. **[AB 20-25]** This argument mischaracterizes both the Deputy's testimony and the State's arguments in its brief in chief.

First, nothing supports Defendant' assertion that the deputy detained him based on a belief that Defendant "might" have a warrant out for his arrest. **[AB 21]** Deputy Limon testified that when he saw Defendant walking, he recognized Defendant from the multiple encounters he had with him since 2016 and "knew" Defendant had an active warrant for his arrest. **[1-9-2020 CD, 11:17:53-11:25:42, 11:30:01-30:43]** The deputy knew Defendant frequented a problem residence in the South Valley where he and other deputies had been called to repeatedly. **[*Id.* 11:30:08-42, 11:32:46-33:36]** Earlier that week, "just in case" he was called out to that residence while on duty, he checked the New Mexico Courts website to see whether Defendant or any of the other usual subjects had active warrants. He discovered an active warrant for Defendant's arrest. **[*Id.* 11:30:08-42, 11:32:46-33:36]** When Deputy Limon saw Defendant, he called him over and told him there was a warrant out for his arrest—evidence that the deputy did not merely suspect Defendant *might* have a warrant. **[*Id.* 11:33:37-34:08]**

Deputy Limon never specified exactly how much time had passed since he learned of the warrant, but again, explained he discovered it "within the week." **[*Id.* 11:34:17-52]** Although the deputy agreed on cross-examination that he could not be absolutely "positive" immediately before contacting Defendant that the warrant was

active at that moment, he repeatedly testified earlier that he "knew" the warrant was active when he called Defendant over to his patrol vehicle. **[*Id.* 11:17:53-11:25:42, 11:30:01-30:43, 11:25:55-26:23, 11:32:46-33:36]** Nothing in his testimony aligns with Defendant's claim that the deputy merely believed he "might" have a warrant out for his arrest. **[AB 21]** Moreover, the deputy quickly confirmed through NCIC that the warrant was active, at which point Defendant was formally arrested. **[*Id.* 11:25:55-26:23]**

Based on the above considerations, Defendant's claim that the State fails to cite authority to support the proposition that police may detain a person based on "the suspicion" the person has a warrant, to "check for the existence of warrants," should be ignored. **[AB 23-25]** This is plainly not a case of mere suspicion—this officer knew, based on knowledge acquired mere days prior from an official state resource, that a suspect had a valid outstanding arrest warrant which was then immediately confirmed upon contact with the suspect. Deputy Limon did not stop Defendant to "check for warrants," he intended execute the warrant he was already aware of and told Defendant as much immediately upon encountering him.

When a law enforcement officer stops a subject for the purpose of executing an arrest warrant issued previous to the stop, as Deputy Limon did here, "the unchallenged warrant render[s] the stop constitutionally reasonable." *State v. Peterson*, 2014-NMCA-008, ¶ 5, 315 P.3d 354; *see also State v. Hamilton*, 2012-

NMCA-115, ¶ 13, 290 P.3d 271 (stating that "a search pursuant to a valid search warrant establishes that the search was constitutionally reasonable"). Accordingly, "officers [do] not need reasonable suspicion to stop Defendant when they ha[ve] a valid outstanding arrest warrant." *Peterson*, 2014-NMCA-008, 7; *see also State v. Ryon*, 2005-NMSC-005, ¶ 20, 137 N.M. 174 (explaining that it is inappropriate to apply an exception to the reasonable suspicion requirement where a police encounter is justified by a rule that does not require reasonable suspicion of criminal activity).

Defendant attempts to distinguish this case from *State v. Grijalva*, 1973-NMCA-061, 85 N.M. 127 and *Peterson*, 2014-NMCA-008, by suggesting that unlike this matter, there was "no ambiguity about the status of the warrant" in those cases. **[AB 21]** Again, this is not a case involving ambiguity—Deputy Limon knew Defendant had an active warrant. That the deputy could not be absolutely, unequivocally positive of that fact at the moment he contacted Defendant does not change this conclusion, nor does it render *Grijalva* or *Peterson* inapplicable. In *Grijalva*, the officers relied on a dispatcher's report that a suspect had a warrant, and this Court found that was sufficient and that the officers need not physically have the warrant in order to arrest the suspect. 1973-NMCA-061, ¶ 12. This case is directly comparable in that Deputy Limon relied on a trustworthy secondary source that indicated the Defendant had a warrant; *Grijalva* supports a finding that the stop was lawful. The same is true of *Peterson*, where officers discovered at some point

"during their investigation" of the defendant for narcotics that he had an outstanding warrant, and later stopped him in his car to execute the warrant. 2014-NMCA-008, ¶ 2. Neither case held that an officer may only gain knowledge of a warrant from a specific source or within a certain period before encountering the defendant in order to justify a stop to execute the warrant, and Defendant points to no authority to support that notion.

Defendant's disregard of *State v. Widmer* 2020-NMCA-___, ___ P.3d ___, 2020 WL 6111476 (No. A-1-CA-34272, Sept. 15, 2020), is also unavailing. **[AB 23-24]** In *Widmer*, this Court noted that New Mexico courts "have never held that arrest upon a NCIC-reported felony arrest warrant may only follow some secondary confirmation that the warrant is accurate or remains active." *Id.* ¶ 5. This suggests that in general, a law enforcement officer in New Mexico who learns of a subject's arrest warrant through a trustworthy government-managed database need not confirm the warrant's existence or active status before detaining the suspect. An opposite standard would be unworkable: officers with knowledge of a warrant that is more than a few hours old would be unable to immediately detain a suspect on that warrant where the need to do so arises quickly.

Because Deputy Limon's stop of Defendant was lawful, none of the evidence flowing from that stop was eligible for the exclusive remedy of suppression or exclusion. *See Cardenas–Alvarez*, 2001–NMSC–017, ¶ 17 ("The exclusionary rule

requires suppression of the fruits of searches and seizures conducted in violation of the New Mexico Constitution."). Even if the district court's outright dismissal of the State's case can be construed as an application of the exclusionary rule, which, as explained below it should not be, it was improper and should be reversed.

III. The district court was without statutory authority to dismiss the charges against Defendant for lack of reasonable suspicion at the preliminary hearing stage.

A. The scope of a preliminary hearing, as well as the district court's function during such a hearing, is limited by statute and does not include dismissals based on the legality of an arrest.

As mentioned above, Defendant paints the issue before this Court as being whether "a judge (or magistrate) presiding over a preliminary hearing in New Mexico may rule that evidence was unlawfully acquired and refuse to consider it in the bindover determination." **[AB 7]** Again, that is not what occurred in this case—the district court outright dismissed the State's case upon finding that Deputy Limon's actions were without legal justification. Defendant acknowledges that New Mexico "does not have a statute or rule either allowing or prohibiting the use of illegally obtained evidence at the preliminary hearing stage," and suggests this court look for "clues" in other areas of New Mexico law for guidance. **[AB 8]**

Critically, Defendant ignores that the conduct of a preliminary hearing as well as a court's function and authority during that hearing are clearly defined by statute and do not include the sort of functions Defendant suggests the court should be

permitted to undertake. Per Rule 5-302(A)(1) and (D)(2) NMRA, a defendant is entitled to a preliminary hearing early on in a criminal case at which time the district court must determine whether there is probable cause to believe the defendant has committed a felony offense. If so, the court must bind the defendant over for trial, and if not, it must dismiss the charges without prejudice. *Id.* at (D)(2). A district court's determination of probable cause is the *sole finding* explicitly contemplated in the Rule, and the dismissal of charges without prejudice is referenced only upon a finding of no probable cause or the prosecution's failure to comply with certain time limits. *Id.* at (A)(3), (D)(2), Committee Commentary.

The plain language of Rule 5-203 provides that at the preliminary examination stage, the court's function is limited to a probable cause determination and its discretion to dismiss is expressly curtailed. *See State v. Andrews*, 1997-NMCA-017, ¶ 5, 123 N.M. 95 (stating that legislative intent is discerned through the plain meaning of the words of a statute); *State v. Gutierrez*, 2006-NMCA-090, ¶ 7, 140 N.M. 157; *see also State v. Armijo*, 2016-NMSC-021, ¶ 19, 375 P.3d 415 ("A court's jurisdiction derives from a statute or constitutional provision."). New Mexico courts have made clear that during a preliminary hearing, a court should not exclude its statutory authority by addressing issues beyond the existence or absence of probable cause to believe the defendant committed the crime charged. In *State ex rel. Hanagan*, 1963-NMSC-057, ¶ 6, 72 N.M. 50, our Supreme Court rejected the idea

that a trial judge may reopen a preliminary hearing "in the absence of statutory authority." In *State v. Vallejos*, 1979-NMCA-089, 93 N.M. 387, this Court rejected the defendant's claim that at a preliminary hearing the State was required to prove the corpus delicti of the crime and reiterated that a court's only function during a preliminary hearing—as codified by statute—is to determine whether there is probable cause to believe the defendant committed the offense with which he is charged. *Id.* ¶¶ 6-7; *see also State v. Masters*, 1982-NMCA-166, 99 N.M. 58 (reversing district court's dismissal based on factual finding at preliminary hearing, because despite the possibility that the prosecution might be unable to prove its case beyond a reasonable doubt at trial, "at a preliminary hearing the only issue is whether there exists probable cause to believe defendant committed the offense.").

To the extent Defendant asserts a preliminary hearing is akin to a bench trial to suggest that the same general rules should apply to both **[AB 7]**, this Court has long recognized the differences between the two proceedings. *Masters*, 1982-NMCA-166, ¶ 5 ("The preliminary hearing is not a trial on the merits with a view of determining defendant's guilt or innocence ... Only a reasonable probability that a crime was committed by the accused need be shown."); *accord State v. Garcia*, 1968-NMSC-119, ¶ 5, 79 N.M. 367 ("A preliminary hearing is not a trial of the person charged with the view of determining his guilt or innocence. The preliminary hearing and the trial are separate and distinct."). This suggests that, simply because

the exclusionary rule applies at trial, the same is not necessarily true of a preliminary hearing. This Court should not read language into Rule 5-203 NMRA that does not exist.

Indeed, the New Mexico Supreme Court has confirmed that at an initial proceeding to decide whether the State may proceed with criminal charges, "trial inadmissibility or improprieties in the procurement of evidence that was considered" by the tribunal are not grounds for the dismissal of charges absent explicit statutory authority. *State v. Martinez*, 2018-NMSC-031, ¶ 1,420 P.3d 568. In *Martinez*, the prosecution issued witness subpoenas without any lawful authority and presented the resulting witness testimony to a grand jury, who indicted the defendant. *Id.* ¶¶ 2-6. The district court later granted the defendant's motion to quash the indictment and suppress all evidence obtained through use of the unlawful subpoenas. *Id.* ¶ 16. Our Supreme Court reasoned that although the State's use of the subpoenas in the grand jury proceedings was indeed unlawful, it was not fatal to the validity of the resulting indictment in part because the district court was without the statutory authority to review the legality of the evidence presented to a grand jury. *Id.* ¶¶ 24- 32 The *Martinez* court emphasized that "suppression is a remedy for court determination in pretrial proceedings and is not one the grand jury is either equipped or called upon to decide." *Id.* ¶ 31.

Defendant's attempt to draw a distinction between preliminary hearings and grand jury proceedings that would negate the applicability of the above principles should be rejected. **[AB 6]** In *State v. Lopez*, 2013-NMSC-047, ¶ 19, 314 P.3d 236, the New Mexico Supreme Court explained: "There is nothing in the structure or text of the New Mexico Constitution that would make it any more reasonable to apply the full panoply of constitutional trial rights at preliminary examinations conducted to determine probable cause to prosecute than it would be to do so at grand jury determinations of probable cause to prosecute or pretrial determinations of probable cause for a search or arrest."

Contrary to Defendant's assertion, the fact that the rules of evidence apply at a preliminary hearing does not support a finding that the exclusionary rule applies as well. **[AB 8-10]** The rules of evidence do not apply in hearings to determine whether evidence should be excluded based on an illegal search. *See* rule 5-212 NMRA Committee Commentary ("At a hearing on a motion to suppress, the Rules of Evidence, except for the rules on privileges, do not apply."). Therefore, as Defendant would have it, the rules would both apply and not apply at a preliminary hearing. A court would first have to ignore the rules of evidence to determine whether a defendant's arrest was lawful, and then apply them—disregarding any inadmissible evidence the court already heard—to determine whether probable cause existed to bind the defendant over for trial. This is unworkable and illogical.

Defendant also argues that the exclusionary rule should apply at preliminary hearings to exclude evidence collected in violation of the Fourth Amendment because preliminary hearing judges are sometimes tasked with determining the admissibility of a confession in the context of the Fifth Amendment. **[AB 9-10]** The cases he relies on do not actually support that conclusion, however. In *State v. Hardy*, 2012-NMCA-005, ¶ 10, 268 P.3d 1278, this Court noted that judges commonly apply the *corpus delicti* rule at a preliminary hearing based on "a long and unbroken line of cases" that have done so. Moreover, the rule is applied only to determine whether the defendant's confession would later be admissible *at trial*, not at the preliminary hearing. *Id.* ¶¶ 10-11. In fact, this Court held in *Hardy* that at a preliminary hearing, "a judge can use inadmissible evidence to determine the trustworthiness of a confession." *Id.* ¶ 12. This does not support a finding that a judge may not use inadmissible evidence to make its statutorily required finding of probable cause or lack thereof under Rule 5-203 NMRA. Indeed, "[i]f a confession that was provisionally admitted at a preliminary hearing is not coupled with admissible evidence establishing the corpus delicti at trial, a court may still exclude the confession at trial," again suggesting the appropriate method by which to challenge reasonable suspicion is a motion to suppress filed after a preliminary hearing. *Id.* ¶ 12.

The occasional existence of Fifth Amendment protections preliminary hearings does not equate to a finding that all constitutional rights are triggered at every preliminary hearing. Certain constitutional and statutory rights enjoyed by a criminal defendant at trial and pretrial proceedings do not apply at a preliminary hearing given its narrow purpose. *See State v. Lopez*, 2013-NMSC-047, ¶ 26, 314 P.3d 236 (holding that "based the differing purposes of pretrial hearings and trials on the merits," the Sixth Amendment's Confrontation Clause does not apply at preliminary hearings); *McCormick v. Francoeur*, 1983-NMSC-077, ¶ 9, 100 N.M. 560 ("An accused suffers neither irreparable harm nor denial of a right to a fair and impartial preliminary examination of charges against him, by the preclusion of a Rule 510 contention [that the identity of an informant be revealed] in a preliminary hearing. He can present his Rule 510 contention in the court that has trial jurisdiction."). Accordingly, Defendant's reliance on *Vogt v. City of Hays*, 844 F.3d 1235, 1241-42 (10th Cir. 2017) is unavailing. **[AB 9-10]**

To the extent Defendant relies on out-of-state cases for the proposition that New Mexico should apply the exclusionary rule to preliminary hearings, this Court should be mindful that Courts in other jurisdictions have applied reasoning similar to our State's courts as laid out above. *See State v. Moats*, 457 N.W. 299, 303-305 (Wis. 1990) (explaining: "The preliminary hearing is not a trial. The presiding judge therein is called upon only to determine the plausibility of a witness's story and

whether, if plausible, the evidence would support bindover" and "[u]se at the preliminary hearing of [unconsituional] tainted evidence does not violate the United States Constitution because the proper remedy for unconstitutional acquisition of evidence is exclusion at trial, not suppression in a probable cause proceeding."); *State v. Kane*, 588 A.2d 179, 184 (Conn. 1991) (noting that "[a] substantial majority of the states, including many which require a general adherence to the rules of evidence, do not recognize exclusionary rule objections at the preliminary hearing" and that "under the federal rules of criminal procedure, motions to suppress must be made to the trial court." (internal citations omitted)).

B. New Mexico law does not contemplate dismissal of charges as a sanction for the introduction of illegally obtained evidence at a preliminary hearing.

In *State v. Miller*, 1966-NMSC-041, ¶¶ 3-6, 412 P.2d 240, the defendant moved to suppress evidence of his fingerprints—which he claimed were obtained in the course of an illegal arrest—at a preliminary hearing. The motion was apparently denied, and the fingerprints were introduced at the preliminary hearing and later at the defendant's trial. On review, our Supreme Court determined that the defendant's arrest had been illegal, meaning the fingerprints were indeed illegally obtained. *Id.* ¶¶ 21-23. Nevertheless, the Court held the defendant should not be granted a new preliminary hearing based on the introduction of illegally seized evidence because there was other evidence supporting a bind over and "the appellant's rights are

sufficiently guarded by requiring that he be granted a new trial at which the illegally obtained fingerprints are excluded." *Id.* ¶ 25.

Most importantly, *Miller* makes clear that there is a difference between the introduction of illegally obtained evidence during a preliminary hearing and during trial, and that a Defendant's rights may remain intact despite introduction of such evidence at a preliminary hearing. *Miller* suggests not only that issues regarding whether evidence was illegally obtained do not control at the preliminary hearing stage, but also that such considerations come into play later in the proceedings at trial. It also demonstrates that the introduction of illegally obtained evidence at a preliminary hearing—by itself—is not a basis on which to dismiss the charges against the defendant outright. Here, even if the evidence against Defendant was illegally obtained, the district court conducted no analysis regarding whether that justified a dismissal. The district court's ruling should be reversed.

CONCLUSION

For the foregoing reasons, the State respectfully request that this Court reverse the district court's order dismissing the case and remand the matter for a determination of probable cause under Rule 5-203 NMRA.

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CERTIFICATE OF SERVICE

I hereby certify that on the April 5, 2021, I filed the foregoing brief electronically through the Odyssey/E-File & Serve System, which caused opposing counsel, Caitlin C.M. Smith, to be served by electronic means at: caitlim.smith@lopdnm.us

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