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Supreme Court finds double jeopardy violation in man's convictions for armed robbery and aggravated battery

SANTA FE – A Cibola County man's convictions for robbing a diner and shooting the diner's owner violate constitutional protections against multiple punishments for a singular course of criminal conduct, the state Supreme Court ruled today.

In a unanimous opinion, the Court ordered a district court to vacate Ramon Lorenzo's conviction for aggravated battery but the justices left in place the conviction for armed robbery of the diner in Milan in 2013.

"We conclude that the conduct underlying both charges was unitary and that the State used evidence of the same force – a shooting which occurred during the robbery – to prove both convictions," the Court wrote in an opinion by Justice David K. Thomson. "Because the Legislature did not intend to allow multiple punishments for the same conduct, we hold that the convictions violate double jeopardy."

The robbery occurred shortly after the diner closed. The owner, Richard Rivard, went to the door and two former employees – Lorenzo and Leo Galindo – pushed their way inside while holding guns. Lorenzo pointed a gun at Rivard's head and asked for money. The owner grabbed the gun and he was shot in the face when the gun discharged. The two men fled with about $1,800. Rivard survived the shooting.

Lorenzo had other convictions that were not subject to the appeal decided by the Supreme Court. A jury convicted him of armed robbery, conspiracy to commit armed robbery, aggravated burglary, conspiracy to commit aggravated burglary, aggravated battery with a deadly weapon and conspiracy to commit aggravated battery with a deadly weapon. He was sentenced to 26½ years in prison. The aggravated battery conviction carried a three-year sentence.

The state Court of Appeals found a double jeopardy violation because of the multiple conspiracy convictions, ordering two of them vacated but affirming Lorenzo's other convictions. In an

appeal to the Supreme Court, Lorenzo raised for the first time a double jeopardy argument about the aggravated battery and armed robbery convictions.

In reviewing the double jeopardy issue, the justices analyzed whether the armed robbery and aggravated battery were separate and distinct acts, considering the elements of the charged crimes, the defendant's state of mind, instructions given to the jury and facts presented at trial, including the sequence of the defendant's actions and whether those closely occurred in time and place.

"The commission of the armed robbery began when Defendant and Galindo displayed their guns and forcefully entered the diner. The robbery was not complete until they took possession of the money," the Court wrote. "The events between the initiation and completion of the robbery were part of a single course of conduct that occurred closely in time and space."

"Nothing in the record suggests that Defendant's actions, including gaining entry into the diner, pushing Victim back from the door, and shooting Victim in the face, were driven by anything other than the desire to steal money from the diner," the justices explained, concluding that Lorenzo's "conduct was unitary."

The state's closing argument at the trial "reveals its reliance on Defendant's shooting of the Victim as the legal theory supporting the conviction of both offenses," the justices wrote.

"Because the shooting was the sole force used to prove the aggravated battery and armed robbery offenses, we hold that the aggravated battery conviction is subsumed in the armed robbery conviction, violating Defendant's right to be free from double jeopardy," the Court concluded.

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To read the decision in *State v. Lorenzo*, No. S-1-SC-39355, please visit the New Mexico Compilation Commission's website using the following link:

https://nmonesource.com/nmos/nmsc/en/item/522298/index.do