



Administrative Office of the Courts

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Supreme Court rejects prosecution arguments for change in legal tests in double jeopardy cases

SANTA FE – The state Supreme Court today reaffirmed the legal framework followed in New Mexico to determine whether a defendant’s convictions violate constitutional double jeopardy protections against multiple punishments for the same crime.

In a unanimous opinion deciding an appeal of a criminal case, New Mexico’s highest court declined “to take the drastic step of overruling decades of our own precedent” and explained that state prosecutors in the Colfax County case “might have obtained multiple convictions under our current approach without violating double jeopardy had it pled and tried the case differently.”

The attorney general, representing the State of New Mexico, contended that the Court’s longstanding double jeopardy approach was “complex, fact-intensive, and produces unjust results.” The Court disagreed.

“This case demonstrates the tension felt by prosecutors between the desire to ensure a conviction on the most serious charge and the objective of securing convictions on multiple lesser charges without violating double jeopardy,” the Court stated in an opinion written by Justice Julie J. Vargas. “Here, the State chose to present the jury with multiple factual and legal alternatives to support a general verdict of guilt on the most serious charge, apparently prioritizing that conviction over multiple valid convictions using discreet theories for each offense. While the State is entitled to elect such a trial strategy, that choice may, as in this case, implicate double jeopardy.”

A jury convicted Samuel Neal of three crimes for kidnapping, beating and raping a woman who had stopped to spend the night at a Raton hotel in 2019 during a trip from Texas to Colorado. Neal approached the victim as she talked on a cell phone with her mother while walking outside after checking into a hotel. He lured her to a nearby abandoned motel where he hit her in the head, strangled and sexually assaulted her.

Neal appealed his convictions, and the state Court of Appeals vacated two of the offenses – second-degree criminal sexual penetration (CSP II) and aggravated battery – on double jeopardy grounds.

The state challenged the decision, and in today’s opinion the Supreme Court reinstated the aggravated battery conviction. The justices concluded that Neal’s first-degree kidnapping and

aggravated battery convictions did not violate constitutional double jeopardy protections “because the jury could have reasonably inferred independent factual bases for each offense.”

The Court affirmed the Court of Appeals decision that vacated Neal’s CSP II conviction. The justices explained that double jeopardy protections prohibited the criminal sexual penetration conviction because prosecutors used the sexual offense to raise the kidnapping charge to first-degree kidnapping, which is punishable by a mandatory 18 years in prison rather than nine years for second-degree kidnapping.

“The State did not present the jury with any other sexual offenses that would support more than one conviction, and thus the conviction for the base offense must be vacated,” the Court concluded.

Prosecutors offered two alternate legal theories for Neal’s kidnapping charge — he “intended to and did inflict a physical injury *or* a sexual offense during the kidnapping,” the Court explained.

To avoid a possible double jeopardy issue, the justices wrote, prosecutors could have “tried the kidnapping under a physical injury theory without providing a sexual assault alternative to the jury. Victim was brutally battered; she had a black eye and goose eggs on her head. She had neck injuries from the strangulation. These physical injuries occurred separate and apart from the sexual offense and were more than sufficient for a jury to convict Defendant of kidnapping in the first degree. If the State had pursued kidnapping under a theory of physical injury, it could have pursued CSP II as a standalone sexual offense.”

The Court, in analyzing double jeopardy issues, initially determines whether a defendant’s alleged criminal conduct was “unitary or distinct.” The Court examines several factors, including the timing of the acts, the location of the victim during each action, whether any intervening events separated the crimes, and the defendant’s intent based on what was said and done.

In Neal’s case, the Court wrote, jurors had to find that he “‘took, restrained or confined [Victim] by force by pulling her into the motel room or pulling her away from the window and choking her or *holding her down on the mattress.*’ It is this last alternative that provided the jury with a legally and factually viable theory to convict Defendant for both kidnapping and aggravated battery.”

Neal’s case returns to the Eighth Judicial District Court for further proceedings to carry out the Supreme Court’s decision. The trial court had sentenced Neal to nine years in prison for the now vacated CSP II conviction, and three years for the reinstated aggravated battery conviction.

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To read the decision in *State v. Neal*, No. S-1-SC-40407, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/538058/index.do>