



New Mexico Supreme Court Cases – Nov. 1 – 20, 2016

***Hand v. Winter*, 2017-NMSC-005, 388 P.3d 651 (November 7, 2016) (Chavez, J.).**

Petitioners sought writ of mandamus, injunction, and declaratory judgment asking the Supreme Court to declare that Secretary of State acted arbitrarily, capriciously, and in violation of law by placing appointed judge on general election ballot after district court judge resigned following primary election. The Supreme Court denied petitioners and held that the Secretary of State was required to place appointed judge on general election ballot.

Keywords: elections, New Mexico election law, judicial elections

New Mexico Court of Appeals Cases – Nov. 1 – 20, 2016

***Ciulli v. McFarland Land & Cattle Co.*, 2016-NMCA-____, --- P.3d ---, 2016 WL 6702043 (November 14, 2016) (Kennedy, J.).**

Owners of landlocked ranch brought action against owner of adjacent ranch, seeking to compel the recognition of an easement across adjacent ranch to the public highway. The District Court, Quay County, entered judgment in favor of landlocked ranch owners. Adjacent owner appealed. The Court of Appeals reversed and remanded. The District Court, Quay County, [Gary Clingman](#), D.J., entered summary judgment in favor of landlocked ranch owners. Adjacent owner appealed. On appeal, the Court of Appeals affirmed the judgment.

Keywords: property, easements, landlocked property

***Walsh v. Montes*, 2017-NMCA-015, 388 P.3d 262 (November 14, 2016) (Zamora, J.).**

Estate and children of participant in Employee Retirement Income Security Act (ERISA) plan brought suit against participant's former husband for recovery of proceeds of a Fidelity savings and investment plan. The District Court granted former husband's motions to strike stipulated agreement and to dismiss complaint for failure to state claim. Estate and children appealed. On appeal, the New Mexico Court of Appeals reversed the lower court and remanded in holding that (i) the Plaintiffs have a viable legal theory and claim that Defendant waived his right to the Fidelity plan proceeds in the divorce decree, and (ii) the district court erred in granting Defendant's motion to strike the stipulated agreement since the sole basis for that decision was the district court's erroneous conclusion that Plaintiffs' stated claim was not viable.

Keywords: family law, estate planning, stipulated agreements, ERISA

***State v. Pacheco*, 2017-NMCA-014, 388 P.3d 307 (November 3, 2016) (Hanisee, J.)**

Defendant was charged with intentional misappropriation or taking by fraud of anything of value greater than \$ 20,000. The District Court granted defendant's motion to dismiss after opening statement but before first witness was called. State appealed. On appeal, the Court of Appeals reversed the lower court in holding that: (i) the double jeopardy clause did not bar State's appeal, and (ii) dismissal of charge based on trial court's determination that State would not be able to



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prove pecuniary loss element of offense was improper pretrial determination of sufficiency of evidence.

Keywords: criminal law, double jeopardy

New Mexico Court of Appeals Cases Dec. 12, 2016 - Jan 1, 2017

State v. Bregar, 2017-NMCA-028, 390 P.3d 212 (Hanisee, J.)

Defendant was convicted in the District Court, Bernalillo County of vehicular homicide and per se driving while intoxicated (DWI). Defendant appealed. The Court of Appeals held that statements from a hospital bed were not involuntary, it was not plain error to allow a police officer to be qualified as an expert in accident reconstruction, and it was not plain error to allow the officer testimony, despite that it was not based on a reliable methodology.

Article Utility: Interesting fact pattern. Article lends itself to a discussion of sufficiency of evidence, expert testimony, and per se violations of the law.

Keywords: Criminal Law, Evidence, Experts

State v. Jones, No. 35,037, 2016 WL 7971817 (N.M. Ct. App. Dec. 15, 2016) (Vanzi, J.)

Defendant Adam Jones appeals his convictions for false imprisonment and battery against a household member. Defendant argues that double jeopardy barred conviction for both offenses because the false imprisonment was incidental to the battery and that there was insufficient evidence to convict him of false imprisonment. Court of Appeal upheld the conviction.

Article Utility: Potential analysis of double jeopardy and its application to closely related crimes.

Keywords: Double Jeopardy, Criminal law, False Imprisonment, Battery

State v. Hernandez, No. 34,156, 2016 WL 7971984, at *1 (N.M. Ct. App. Dec. 15, 2016) (Vanzi, J.)

Defendant Etienne Hernandez appeals his convictions related to an incident in which Defendant allegedly rammed Stephen Mason's truck with his car, unprovoked, and subsequently disobeyed police orders and resisted arrest. Defendant argues that (1) the district court erred when it found him competent to stand trial, despite evidence that he could not assist in his defense; (2) double jeopardy barred retrial after mistrial because a police officer testifying for the State violated a pretrial evidentiary order; and (3) there was insufficient evidence to convict him for battery upon a peace officer, and aggravated assault with a deadly weapon. The Court of Appeal held that, under the factual circumstances of this case, it was a violation of Defendant's procedural due process rights for the district court to not issue any findings of fact in determining that he was competent to stand trial when the only relevant evidence before the district court was that he was incompetent. We further hold that double jeopardy did not bar retrial in this case, and there was sufficient evidence for a jury to convict Defendant for battery on a peace officer and aggravated assault with a deadly weapon.



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Article Utility: This case offers a plethora of issues ranging from competency to prosecutorial misconduct. An article analyzing how New Mexico handles these relevant issues may be informative.

Keywords: Criminal Law, Competency, Double Jeopardy, Mistrial, Trial Practice, Trial Procedure

***State v. Montoya*, 2017-NMCA-033, 392 P.3d 223 (Sutin, J.)**

This case turns on whether Defendant's conviction for his robbery of the victim he earlier robbed and killed can stand given that the victim was already dead at the time of the second robbery. The question presented is one of "personhood." Defendant asserts that just as one cannot kill a person already dead, one cannot rob a person already dead. The Court of Appeals held that under the facts of this case, the robbery statute was properly applied, and Defendant was properly convicted of robbery despite the posthumous—by several hours—nature of the second robbery.

Article Utility: Interesting topic. Although narrow in scope, an article on this case may shed light on unexplored areas of New Mexico Law.

Keywords: Criminal Law, Personhood,

10th Circuit Court of Appeals Cases Dec. 21, 2016 - Jan. 1, 2017

***Coal. of Concerned Citizens To Make Art Smart v. Fed. Transit Admin. of U.S. Dep't of Transportation*, 843 F.3d 886 (10th Cir. 2016) (Briscoe, J.)**

Plaintiffs, a group of entities and individuals that own businesses or real property on site of planned rapid transit bus system project, brought action against City and Federal Transit Administration (FTA), alleging violation of National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA). Plaintiffs moved for preliminary injunction to bar City from proceeding with construction. The United States District Court for the District of New Mexico denied motion. 10th Cir. Affirmed.

Article Utility: High profile case in New Mexico. Article may explore the how government driven projects relate to voter and citizen initiatives. There is ample room for discussion based on the environment and infrastructure. Also, there may be fertile ground in an analysis between city, state, and citizen relationships.

Keywords: Environmental Law, Injunctions, Infrastructure, Human Impact

***United States v. Gonzales*, 844 F.3d 929 (10th Cir. 2016) (Hartz, J.)**

Defendant Jasonn Gonzales pleaded guilty in the United States District Court for the District of New Mexico to four counts of mail fraud, conspiracy to commit mail fraud, and aggravated identity theft, arising out of his fraudulent scheme to obtain unemployment benefits from three state agencies. On appeal his sole argument is that the district court erred in calculating his sentencing-guidelines offense level by including as victims those persons whose identities had been stolen even though they suffered no financial loss. The Court of Appeals held that



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imposition of four-level sentencing enhancement for offenses involving 50 or more victims was warranted and affirmed.

Article Utility: Mechanism for discussion of federal sentencing guidelines. Useful for a discussion what should be the measure of damages when sentencing a criminal—i.e. harm to victim, financial loss, etc.

Keywords: Sentencing, Punishment, Mail Theft, Fraud

***Hammond v. Stamps.com, Inc.*, 844 F.3d 909 (10th Cir. 2016) (Gorsuch, J.)**

Customer who purchased postage stamps from online seller filed putative class action in state court alleging unlawful trade practices. After seller removed, the United States District Court for the District of New Mexico granted customer's motion to remand. Seller appealed. The Court of Appeals, Gorsuch, Circuit Judge, held that amount in controversy was sufficient to meet Class Action Fairness Act (CAFA) minimum for removal. The remand order was vacated and the case remanded for further consideration in federal district court.

Article Utility: What are Gorsuch's views on business? What will be his effect on a business friendly Court? This case is interesting in that it is class action friendly. As of late, the Supreme Court has been business friendly, and thus averse to class actions. This article also, and more narrowly, presents some issues with certifying a class action and what qualifies under the Class Action Fairness Act.

Keywords: Class actions, certification, removal

An interesting topic may be an analysis of Justice Gorsuch's 10th Cir. Opinions and how New Mexico or the 10th will be affected by his arrival on the Supreme Court. Or an analysis of his opinions and an article attempting to predict his impact or stance on the Supreme Court.

New Mexico Supreme Court Cases Feb. 14 – Mar. 8, 2017

***State v. Gonzales*, No. S-1-SC-35926, 2017 WL 747874 (Feb. 28, 2017)**

Ms. Gonzales was stopped for a traffic violation after a police officer observed her speeding and swerving into the wrong traffic lane. At the trial court, the officer testified that marijuana intoxication can be detected by a suspect's leg tremors. The defense objected to this testimony, but Gonzales was convicted. The Court of Appeals reversed, finding that without the officer's erroneous testimony, there was insufficient evidence to convict. The Supreme Court disagreed, finding that despite the erroneous admission of the testimony, there was nevertheless sufficient evidence to support the trial court's conviction.

Article Utility: This case could be a great jumping off point to discuss the sufficiency of the evidence standard in general and whether or not the court came to the right conclusion regarding this particular case.

Key Words: sufficiency of the evidence, traffic stop, evidence, testimony



New Mexico Court of Appeals Cases Feb. 14 – Mar. 8, 2017

***Hegerty v. Skilled Healthcare, LLC*, No. 34,846, 2017 WL 1019632 (N.M. Ct. App. Feb. 15, 2017)**

Hegerty, as the personal representative of his mother's estate, brought a wrongful-death action against a rehabilitation facility which had treated his mother. The District Court found that the arbitration clause in the mother's admission paperwork was substantively unconscionable as a matter of law and granted the son's motion for summary judgment. The Rehabilitation facility appealed and the Court of Appeals found that as per the recent Supreme Court decision in *Dalton*, a bilateral the arbitration clause was not, on its face, substantively unconscionable, and that federal law did not preempt the son's argument that the arbitration agreement was substantively unconscionable.

Article Utility: Discussing the exceptions to unconscionability created by *Dalton* and applied to subsequent cases would prove useful, as issues with arbitration clauses are a reoccurring problem in the context of rehabilitation facilities and other litigation.

Key Words: Arbitration, unconscionability, wrongful death, contracts

***State v. Holguin*, No. 34,853, 2017 WL 1018597 (N.M. Ct. App. Feb. 27, 2017)**

The Defendant was pulled over for a traffic violation and his vehicle was searched and impounded. The district court denied the Defendant's motion to suppress on two grounds: First, because the Defendant's father owned the vehicle, the Defendant failed to affirmatively establish either a subjective or an objectively reasonable expectation of privacy, and the district court concluded that Defendant lacked standing to challenge the search of the vehicle. Second, the district court concluded that the search and impounding of the Defendant's car was lawful. The Court of Appeals affirmed.

Article Utility: An analysis of standing and whether the defendant had a reasonable expectation of privacy in a car he was driving but that was owned by his father would be informative.

Key Words: Search and seizure, traffic stop, reasonable expectation of privacy

***State v. Brown*, No. 34,388, 2017 WL 887169 (N.M. Ct. App. Mar. 2, 2017)**

Defendant, who had been charged with murder, filed a motion to dismiss based on speedy trial grounds. The District Court dismissed the case, finding that the four *Barker* factors to be considered when evaluating violation to the right to a speedy trial, all weighed in favor of the Defendant. The State appealed and the Court of Appeals affirmed the dismissal.

Article Utility: Interesting analysis of the *Barker* factors and the right to a speedy trial is possible.

Key Words: Criminal law, speedy trial, 6th Amendment

***State v. Bello*, No. 34,165, 2017 WL 882080 (N.M. Ct. App. Mar. 2, 2017)**

Defendant was convicted in the District Court of trafficking cocaine by distribution and of trafficking cocaine by possession with intent to distribute. Defendant on appeal contends that these



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convictions violate the prohibition against double jeopardy. He also challenges the sufficiency of the evidence and claims ineffective assistance of counsel. The Court of Appeals affirmed his convictions.

Article Utility: A discussion of double jeopardy in New Mexico and the sufficiency of evidence standard would make an interesting article.

Key Words: double jeopardy, criminal law, ineffective assistance of counsel, sufficiency of evidence

U.S. District Court for the District of New Mexico Cases Feb. 14 – Mar. 8, 2017

***Mora v. Bernalillo County Metropolitan Detention Center*, 2017 U.S. Dist. LEXIS 25166 (D.N.M. Feb. 23, 2017) (Browning, J.)** The Defendant, a prisoner appearing pro se, states a claim under 42 U.S.C. § 1983 against prison guards alleging sexual harassment, cruel and unusual punishment, and retaliation. According to the Defendant, the guards stripped him naked and made graphic sexual comments to him, denied him adequate medical care, and denied him various necessities like daily exercise and showers. The court found that the Defendant could proceed on the claims for sexual harassment and cruel and unusual punishment, but dismissed without prejudice the claim of retaliation.

Article Utility: The opinion discusses the Bell Atl. Corp. v. Twombly standard of pleading in dismissing the third claim for retaliation. A discussion of the standard and its utility might prove interesting. Also, a discussion of the pleading standards for a pro se prisoner defendant could be analyzed.

Key Words: civil rights, prisoners' rights, retaliation, cruel and unusual punishment, sexual harassment, protected rights

***Garcia v. Geier*, 2017 U.S. Dist. LEXIS 26516 (D.N.M. Feb. 24, 2017) (Johnson, W.)** The Plaintiff, a police officer, was placed on administrative leave and investigated for possible misconduct after attending a union meeting as an off-duty, private citizen. Eventually, the Plaintiff was restored to his original position, but the Plaintiff claims that his forced administrative leave caused him to suffer the loss of certain job benefits and violated his constitutional rights to free speech, due process, and equal protection under both the federal Constitution and the New Mexico Constitution. The court found that Plaintiff's claims under the 1st and 14th Amendments failed as a matter of law, and that his other claims applying state law failed as well for lack of supplemental jurisdiction. Thus, the court dismissed with prejudice all of the Plaintiff's claims.

Article Utility: This is an extensive opinion that details qualified immunity, constitutional rights, and employment law. Any one of these issues could be explored and analyzed.

Key words: constitutional rights, employment, qualified immunity, supplemental jurisdiction, free speech, due process, equal protection

10th Circuit Court of Appeals Cases Feb. 14 – Mar. 8, 2017

***United States v. Anderson*, No. 16-2167 (10th Cir. Feb. 16, 2017)**



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The Defendant, a woman with a diagnosis of mild mental retardation, was charged with drug trafficking offenses but deemed incompetent to stand trial. Due to her mental condition and according to statute, she was forcibly hospitalized by the Attorney General to determine whether she would regain competency to stand trial after treatment. The Defendant argued that this mandatory commitment violated her constitutional rights to due process of law. The Court disagreed with her and cited *Jackson*, saying it is permissible to hold a defendant for a reasonable amount of time to determine if there is a substantial probability that he or she will regain capacity so long as the procedure has a reasonable relation to the commitment.

Article Utility: A discussion of the Jackson standard and the state statute might prove interesting.

Key Words: incapacity to stand trial, due process, forcible commitment

***State of Wyoming v. Environ. Protect. Ag'y*, No. 14-9512 (10th Cir. Feb. 22 2017)**

The State of Wyoming and the Wyoming Farm Bureau Federation challenge an EPA decision granting regional tribes the authority to administer certain Clean Air Act provisions on their reservation land. Specifically disputed is the boundary of the reservation, with the tribes claiming jurisdiction over boundaries laid out in 1868. The state argued that the boundary was last settled in 1905 by an act of Congress, which intended to limit the land to the new boundary. The Court, in reviewing the EPA's determination, agreed with the state and found that Congress intended to limit the boundaries of the reservation in 1905. In coming to this conclusion, the Court employed the three part *Solem* test to determine congressional intent.

Article Utility: This is a multi-layer opinion and it might be interesting to analyze the strength of the *Solem* test and whether or not the Court reached the right conclusion as to congressional intent or if this is even a good test to begin with.

Key Words: Indian law, congressional intent, EPA

***Park v. Gaitan*, No. 15-2020 (10th Cir. Mar. 1, 2017)**

Park brought a § 1983 action against three county police officers, alleging that officers illegally seized surveillance equipment from his business and used excessive force when they arrested him. The US District Court for the District of New Mexico granted the officers' motion for summary judgment, which Park appealed. The 10th Circuit Court of appeals found that under the excessive-force analysis, the officers' use of force was reasonable and that the officers' were entitled to qualified immunity with regards to the First Amendment claims. The 10th Circuit reversed and remanded on Park's claims of false imprisonment and false arrest.

Article Utility: An analysis of what constitutes excessive force might prove useful, as well as addressing the other constitutional claims and keeping in mind the defendant might have had some language barriers.

Key Words: Civil rights, constitutional rights, qualified immunity, excessive force

New Mexico Supreme Court Cases Mar. 9 – Mar. 30, 2017

***State v. Linares*, 2017 WL 931476**

Defendant, who had been charged as a serious youthful offender with first-degree (willful and deliberate) murder and alternatively first-degree felony murder, was found by the District Court,



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Lincoln County, James Waylon Counts, D.J., to be **incompetent** due to mental retardation, and was civilly committed to the Department of Health, with the **criminal charges dismissed**. The State appealed.

The Supreme Court held that: (1) District Court's decision to allow court-appointed psychologist to attend an independent evaluation of defendant by State's expert did not constitute an abuse of discretion; (2) substantial evidence existed to support District Court's determination that defendant was incompetent to stand trial on murder charges; and (3) District Court complied with the statutory mandate to obtain a dangerousness evaluation from the Department of Health before civil commitment proceedings could be commenced. Affirmed.

Montaño v. Frezza, 2017 WL 962447

Patient who was New Mexico resident sued Texas surgeon in New Mexico court for, inter alia, medical negligence stemming from complications arising from bariatric surgery performed by surgeon at Texas university health center. Surgeon moved to dismiss, arguing that he was immune from suit under the Texas Tort Claims Act. The District Court, Bernalillo County, C. Shannon Bacon, D.J., denied the motion. Surgeon filed petition for writ of error under collateral order doctrine. The Supreme Court held that it would **extend comity** to Texas and apply Texas Tort Claims Act, and therefore, **require dismissal** of patient's medical malpractice action, which arose out of a surgery performed in Texas and named as a defendant a surgeon employed by a governmental unit of Texas.

Vigil, J., filed an opinion concurring in part and dissenting in part.

New Mexico Court of Appeals Cases Mar. 9 – Mar. 30, 2017

State v. Lindsey, 2017 WL 1076537

Defendant was convicted in the District Court of fourth-degree felony shoplifting and fourth-degree felony conspiracy to commit shoplifting, and was sentenced to a five-year term of imprisonment, including two **mandatory one-year habitual offender** enhancements, but the District Court **suspended the sentence** in its entirety and placed defendant on probation. State appealed.

The NMCA held that the District Court was within its discretion to find that substantial reasons justified suspension of portion of defendant's sentence required by habitual-offender status, under statute which permitted such departure for substantial and compelling reasons; the statute permitting district courts to depart from a mandatory sentence for a habitual offender, if there are substantial and compelling reasons for the departure, grants district courts standard sentencing discretion that is limited only by the legislatively-imposed requirements contained in the statute; and District Court did not abuse its discretion by finding that substantial and compelling considerations supported suspending mandatory habitual-offender portion of defendant's sentence, under statute which permitted such departure. Affirmed.



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10th Circuit Court of Appeals Cases Mar. 9 – Mar 30, 2017

Stanley v. Gallegos, acting in individual capacity

Landowner brought § 1983 action against district attorney who forcibly removed a barrier that landowner had placed on a road to prevent traffic through his property, asserting claims for violation of Fourth, Fifth, and Fourteenth Amendments based on unlawful seizure of personal property and creation of public right-of-way without due process of law. The United States District Court for the District of New Mexico denied district attorney's motion for summary judgment on the ground of **qualified immunity**. District attorney appealed.

The Court of Appeals held that New Mexico law did **not clearly establish** that district attorney acted beyond **scope of his authority**.

Reversed and remanded.

Pompeo v. Bd. of Regents Univ. of N.M., 852 F.3d 973 (10th Cir. 2017)

Student brought state action against public university professor, department chair, and university board of regents, asserting § 1983 claim for violation of First Amendment, and seeking declaratory judgment and damages. Following **removal**, the United States District Court for the District of New Mexico denied defendants' motion to dismiss, and subsequently, granted defendants' motion for summary judgment. Student appealed.

The Tenth Circuit held that the professor was **entitled to qualified immunity** and department chair was entitled to qualified immunity.