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ADVANCE SHEET HEADNOTE

June 20, 2023

23 CO 41

No. 21SC473, *Garcia v. People* – Double jeopardy – Multiple prosecutions – Simultaneous proceedings; multiplicity.

Garcia was prosecuted in Mexico for a murder that took place in Colorado. To assist Mexican authorities, the Mesa County District Attorney's Office compiled a casebook containing information on Garcia and his alleged crime. Garcia was acquitted in Mexico. After returning to Colorado several years later, Garcia was charged and convicted of the same murder. Garcia appealed, arguing that section 18-1-303, C.R.S. (2022) barred his trial in Colorado and that the dual-sovereignty exception to double jeopardy should not apply because the Mesa County District Attorney's collaboration with Mexican authorities was merely a sham to permit duplicative proceedings.

The court holds that Garcia's Colorado trial was not barred by double jeopardy because section 18-1-303 does not prohibit prosecution in Colorado following a prosecution in a foreign country. The court further holds that

cooperative law enforcement, without more, is an insufficient ground on which to claim that one sovereign acted as a tool of another. The dual sovereignty exception to double jeopardy thus applied here to permit Garcia's prosecution in Colorado.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

23 CO 41

Supreme Court Case No. 21SC473
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 17CA1911

Petitioner:

Rafael Aguilar Garcia,

v.

Respondent:

The People of the State of Colorado.

Judgment Affirmed

en banc

June 20, 2023

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JUSTICE HART delivered the Opinion of the Court, in which **CHIEF JUSTICE BOATRIGHT, JUSTICE MÁRQUEZ, JUSTICE HOOD, JUSTICE GABRIEL, JUSTICE SAMOUR,** and **JUSTICE BERKENKOTTER** joined.

JUSTICE HART delivered the Opinion of the Court.

¶1 Rafael Aguilar Garcia murdered his estranged wife’s neighbor in Palisade, Colorado, in the summer of 1989. He immediately fled to Mexico. After unsuccessfully seeking his extradition back to Colorado, the Mesa County District Attorney’s Office compiled a casebook on the crime and sent it to the Mexican authorities. In 2009, Garcia was tried for the murder in Mexico and was acquitted in that jurisdiction. When, in 2016, he returned to Colorado, he was immediately arrested, tried for murder, and convicted.

¶2 Garcia now argues that he should not have been tried for the murder in Colorado because he was acquitted in Mexico. Specifically, he argues that the preparation of a casebook by Mesa County made the prosecution in Mexico an act of Mesa County and therefore the second prosecution violated his Fifth Amendment right against double jeopardy. In the alternative, he asserts that Colorado statutory law limiting the so-called “dual sovereignty” doctrine applies to bar prosecution in Colorado after an acquittal in another country. We reject these claims and conclude that, under both the United States Constitution and state law, Mesa County was entitled to prosecute Garcia despite his earlier prosecution and acquittal in Mexico.

I. Facts and Procedural History

¶3 In 1989, after eighteen years of marriage, Garcia and his wife, J.G., separated. Garcia moved out of the family home and told J.G. that if he ever saw a man at her home, he would kill that man. J.G. obtained a restraining order against Garcia.

¶4 On the evening of July 4, 1989, J.G. and her neighbor, C.P., were watching a movie in J.G.'s living room. Shortly after midnight, Garcia arrived at the front door with a gun and forced his way into the home. He attacked C.P., stabbing him multiple times with a knife and fatally shooting him in the head and chest.

¶5 Garcia then fled to Mexico. The Mesa County District Attorney's Office ("DA") attempted to extradite Garcia, but at the time, Mexico generally did not extradite individuals facing the possibility of the death penalty. When extradition was unsuccessful, the DA worked with the Foreign Prosecutions Unit at the Colorado Attorney General's Office to compile a casebook containing information on Garcia and his alleged crime and sent it to Mexican authorities so they could prosecute Garcia under Article IV of Mexico's Federal Penal Code.¹

¹ Article IV provides that a crime committed in another country by a Mexican citizen will be punished in Mexico if (1) the accused is in Mexico; (2) the defendant has not been tried in the other country; and (3) the offense is a crime both in Mexico and the other country.

¶6 In 2009, Garcia was apprehended in the Mexican state of Colima and prosecuted by Mexican authorities for C.P.'s murder in Colorado. He was acquitted of all charges three years later. A Mexican appellate court affirmed the acquittal.

¶7 In 2016, Garcia returned to Colorado. He was arrested upon his arrival at Denver International Airport and charged with C.P.'s murder. Garcia moved to dismiss, arguing that the constitutional ban on double jeopardy barred his prosecution. He claimed that the dual-sovereignty doctrine didn't apply in his case because the Mexican prosecution did not have independent authority to prosecute him but rather had acted as "an arm of the Colorado authorities." Garcia also argued that section 18-1-303, C.R.S. (2022), barred his prosecution in Colorado. Section 18-1-303 provides that for crimes "within the concurrent jurisdiction of this state and of the United States, or another state, or of a municipality," prosecution "in any other of these jurisdictions" bars subsequent prosecution in Colorado. § 18-1-303(1).

¶8 The trial court denied Garcia's motion. He was tried and convicted of first degree murder and sentenced to life in prison with the possibility of parole after forty years.

¶9 Garcia appealed, and a division of the court of appeals affirmed his conviction. The division held that Garcia's trial was not barred by double jeopardy

and decided as a matter of first impression that section 18-1-303(1) does not bar prosecution in Colorado after a prior prosecution in a foreign country. *People v. Garcia*, 2021 COA 65, ¶ 1, 493 P.3d 929, 932.

¶10 Garcia petitioned this court for certiorari review, and we granted his petition.²

II. Analysis

¶11 We begin by setting out the applicable standards of review. Next, we consider the Fifth Amendment’s Double Jeopardy Clause and the federal “dual-sovereignty” exception to the prohibition against double jeopardy. We then turn to the limitation on the dual-sovereignty doctrine that applies when prosecution by one jurisdiction is essentially “a sham and a cover” for prosecution by another. *Bartkus v. Illinois*, 359 U.S. 121, 124 (1959). We consider whether this exception is implicated by one sovereign compiling a casebook to be used by the prosecution in another separate sovereign and conclude that it is not.

² We granted certiorari on the following issues:

1. [REFRAMED] Whether section 18-1-303, C.R.S. (2021), barred the defendant’s prosecution for a Colorado offense after he was prosecuted in Mexico for his conduct in Colorado.
2. [REFRAMED] Whether double jeopardy barred the defendant’s second prosecution because the dual sovereignty doctrine did not apply.

¶12 After concluding that Garcia’s federal double jeopardy rights were not violated by the Colorado trial, we examine section 18-1-303(1)—Colorado’s statutory prohibition on successive prosecution—and conclude that it does not bar prosecution in Colorado after a prior prosecution in a foreign country. Because we reject both of Garcia’s arguments for why he should not have been prosecuted in Colorado for the 1989 murder of C.P., we affirm his conviction for that crime.

A. Standard of Review

¶13 We review de novo a defendant’s claim that a conviction violates the constitutional protection against double jeopardy. *Magana v. People*, 2022 CO 25, ¶ 18, 511 P.3d 585, 589.

¶14 Matters of statutory interpretation are similarly subject to de novo review. *Nieto v. Clark’s Mkt., Inc.*, 2021 CO 48, ¶ 12, 488 P.3d 1140, 1143. In interpreting a statute, our primary goal is “to effectuate the legislature’s intent.” *Blooming Terrace No. 1, LLC v. KH Blake St., LLC*, 2019 CO 58, ¶ 11, 444 P.3d 749, 752. In so doing, we look first to a statute’s plain language. *Smith v. Exec. Custom Homes, Inc.*, 230 P.3d 1186, 1189 (Colo. 2010). We do not add words to the legislature’s chosen text. *People v. Diaz*, 2015 CO 28 ¶ 12, 347 P.3d 621, 624. Where the plain language is clear and unambiguous, we apply it as written. *Nieto*, ¶ 12, 488 P.3d at 1143.

B. Colorado's Cooperation with Mexican Authorities Did Not Negate the Dual-Sovereignty Doctrine

¶15 Both the United States Constitution and the Colorado Constitution provide that no person shall be placed twice in jeopardy for the same offense. U.S. Const. amend. V; Colo. Const. art. II, § 18. As relevant here, this constitutional guarantee protects criminal defendants from multiple prosecutions arising from the same offense. *Brown v. Ohio*, 432 U.S. 161, 165 (1977); *People v. Viburg*, 2021 CO 81M, ¶ 15, 500 P.3d 1123, 1127.

¶16 Under the dual-sovereignty doctrine, however, separate sovereigns may each prosecute a person for the same act without violating the constitutional prohibition against double jeopardy. *Gamble v. United States*, 139 S. Ct. 1960, 1964 (2019); *Chatfield v. Colo. Ct. of Appeals*, 775 P.2d 1168, 1174 n.7 (Colo. 1989). This doctrine is based on the common-law notion that a criminal act is an offense against the sovereignty of the government. *Heath v. Alabama*, 474 U.S. 82, 88 (1985). So, an offense that is punishable in more than one jurisdiction is independently punishable in each, and “it cannot be truly averred that the offender has been twice punished for the same offence; but only that by one act he has committed two offences, for each of which he is justly punishable.” *Id.* (quoting *Moore v. Illinois*, 55 U.S. 13, 20 (1852)).

¶17 The Supreme Court has recognized a limitation on this dual-sovereignty exception to the protection against double jeopardy. Under what is known as the

Bartkus exception, the dual-sovereignty doctrine may not apply where one prosecution “was merely a tool” of another jurisdiction or acted as “a sham and a cover” to permit duplicative prosecution. *Bartkus*, 359 U.S. at 123–24. Thus, a defendant may invoke double-jeopardy protection in situations where “one sovereign so thoroughly dominates or manipulates the prosecutorial machinery of another that the latter retains little or no volition in its own proceedings.” *United States v. Guzman*, 85 F.3d 823, 827 (1st Cir. 1996); *see also* *United States v. Raymer*, 941 F.2d 1031, 1037 (10th Cir. 1991).

¶18 Garcia argues that the DA’s production of a “comprehensive and legally essential ‘casebook’” was an abdication of Colorado jurisdiction to the Mexican government and that the Mexican authorities could not have prosecuted Garcia without Colorado’s assistance. He asserts that the DA was therefore so involved in his prosecution in Mexico that the *Bartkus* exception should apply and that his acquittal in Mexico was effectively a Colorado acquittal for double jeopardy purposes. We disagree. Routine intergovernmental assistance between sovereigns, without more, does not rise to the level required to meet the *Bartkus* exception.

¶19 To be sure, the record does show that the DA requested the Article IV prosecution by the Mexican authorities, compiled the casebook, and assisted with the prosecution by providing additional information and coordinating interviews.

But this does not meet the requisite threshold of domination, control, or manipulation to trigger the *Bartkus* exception. The Mexican prosecutor presented the case to a Mexican court. No Colorado or United States authorities were involved in the courtroom proceedings. No Colorado or United States law was applied. Garcia was tried under Mexican law and acquitted in a Mexican court, and his acquittal was affirmed by a Mexican appellate court.

¶20 We agree with other courts that have explained that “[c]ooperative law enforcement efforts between independent sovereigns are commendable, and, without more, such efforts will not furnish a legally adequate basis for invoking the *Bartkus* exception to the dual sovereign rule.” *Guzman*, 85 F.3d at 828; *see also United States v. Villanueva*, 408 F.3d 193, 201 (5th Cir. 2005) (“Although United States officials assisted the Mexican government, defendants-appellants presented no evidence that the United States had any ability to control the prosecution, so they have failed to prove that the Mexican prosecution was a sham.”). We therefore conclude that Colorado’s limited assistance to Mexican authorities did not negate the dual-sovereignty doctrine, and we reject Garcia’s argument to the contrary. The Fifth Amendment did not bar Garcia’s prosecution in Colorado following his acquittal in Mexico.

**C. Section 18-1-303 Did Not Bar Garcia’s Prosecution
Because the Statute Does Not Apply to Prior
Prosecutions in Foreign Countries**

¶21 Our analysis does not end with the federal constitution, however. Colorado is one of many states that recognizes the potential harshness of the dual-sovereignty doctrine because the doctrine permits a defendant to be punished twice for the same conduct – albeit in different jurisdictions. In response to this concern, our General Assembly enacted section 18-1-303(1), which prohibits prosecution in Colorado following prosecution for the same offense by the federal government or another state. *People v. Morgan*, 785 P.2d 1294, 1296 (Colo. 1990). Garcia argues that this statute applies to his circumstances and prohibited his Colorado trial.

¶22 Section 18-1-303(1) provides, in relevant part, that successive prosecutions are barred in Colorado where (1) the first prosecution resulted in a conviction or an acquittal; (2) the same conduct forms the basis of both prosecutions; (3) the offense requires the same proof in both jurisdictions; (4) the law defining the offense is intended to prevent the same harm or evil; and (5) the conduct constitutes an offense within the concurrent jurisdiction of Colorado, “and of the United States, or another state.” § 18-1-303(1)(a)-(b).

¶23 This court has never confronted the question of whether section 18-1-303 operates to bar a prosecution in Colorado after a defendant has been prosecuted in a foreign country.

¶24 In *Morgan*, however, we considered a different question involving section 18-1-303: whether the statute applies when an earlier prosecution occurred in a tribal court, even though the statutory language does not specifically reference prosecution in tribal courts. 785 P.2d at 1297–98. We concluded that it did. *Id.* We explained that section 18-1-303(1) had been enacted in its then-applicable form prior to the Supreme Court’s ruling that Native American tribes are separate sovereigns from the United States for double-jeopardy purposes. *Id.* (citing *United States v. Wheeler*, 435 U.S. 313, 322 (1978)). Thus, we observed “when section 18-1-303 was first adopted, the legislature justifiably could have believed that tribal prosecutions were comprehended within prosecutions by the United States.” *Id.* We therefore found that it was consistent with the enacting legislature’s intent to include tribal prosecutions within the reach of the statute.

¶25 Garcia argues that we should similarly find that foreign jurisdictions are covered by the statute despite their absence from the text itself. The division rejected this argument, and we do so as well.

¶26 It is true that *Morgan* used sweeping language, stating that section 18-1-303 “uniformly abolishes the dual sovereignty doctrine” when there has been a “prior

prosecution by *any* separate sovereign.” *Id.* at 1298. Importantly, though, that broad language was immediately followed by the limitation to “federal, state, or tribal” sovereigns. *Id.* And we explained why the exception to the statute’s plain language for tribal jurisdiction was consistent with legislative intent. No such rationale applies to justify a departure from the plain language of section 18-1-303(1) in this context.

¶27 Garcia argues that the statute could be read to include foreign countries if we consider an expansive definition of the word “state” to include all foreign countries. Where, however, the General Assembly intends to include foreign countries in a statute, it does so unambiguously and as a category distinct from “another state.” *See, e.g.*, § 8-73-111, C.R.S. (2022) (“another state . . . or a foreign country”); § 13-21-803(5), C.R.S. (2022) (“another state, or a foreign country”); § 15-14-107(2)(a), C.R.S. (2022) (“another state or a foreign country”); § 42-3-103(2), C.R.S. (2022) (“a foreign country or another state”). Given our obligation to “respect the legislature’s choice of language,” *Turbyne v. People*, 151 P.3d 563, 568 (Colo. 2007), we must assume that the legislature did not include foreign countries in the text of section 18-1-303(1) because it did not intend the statute’s prohibition to apply to prosecutions by foreign countries.

¶28 Garcia also contends that, because his prior prosecution took place in the Mexican *state* of Colima, the statute applies because Colima is “another state.” But

we must avoid a statutory interpretation that leads to an illogical or absurd result. *Skillett v. Allstate Fire & Cas. Ins. Co.*, 2022 CO 12, ¶ 9, 505 P.3d 664, 666. And, while Mexico is made up of *states*, many other foreign countries are not—for example, Canada is made up of provinces, and France of regions and departments. The idea that the General Assembly meant for section 18-1-303(1) to apply in one foreign jurisdiction but not in another based simply on the terminology a country uses for its political subdivisions is illogical and absurd.

¶29 In sum, the plain language of section 18-1-303(1) bars successive prosecutions in Colorado only in a limited set of circumstances. The statute does not contemplate prior prosecutions by foreign countries, and we decline to extend the statute further than the plain language dictates.

III. Conclusion

¶30 Cooperative law enforcement efforts between separate sovereigns, without more, is an insufficient ground on which to establish the *Bartkus* exception. Garcia’s Colorado prosecution was therefore not barred by the Double Jeopardy Clause of the Fifth Amendment. Nor was it barred by section 18-1-303(1), as that statute does not prohibit prosecution in Colorado following a prior prosecution in a foreign country. Accordingly, we affirm the division’s judgment.