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6 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

7 **STATE OF NEW MEXICO,**

8 Plaintiff-Appellant,

9 v.

**NO. 30,139**

10 **MANUEL TORRES,**

11 Defendant-Appellee.

12 **APPEAL FROM THE DISTRICT COURT OF TAOS COUNTY**

13 **Sam B. Sanchez, District Judge**

14 Gary K. King Attorney General

15 Farhan Khan, Assistant Attorney General

16 Santa Fe, NM

17 for Appellant

18 Hugh W. Dangler, Chief Public Defender

19 J.K. Theodosia Johnson, Assistant Appellate Defender

20 Santa Fe, NM

21 for Appellee

22 **MEMORANDUM OPINION**

23 **WECHSLER, Judge.**

1           The State appeals the district court's order excluding Defendant's breath  
2 alcohol test. The sole issue in this appeal is whether the district court erred in ruling  
3 that collateral estoppel precluded the State from introducing the results of Defendant's  
4 breath alcohol test based on a hearing officer's determination that the results were  
5 inadmissible during a license revocation hearing. We reverse the order of the district  
6 court excluding the results of the breath alcohol test and remand to the district court  
7 for further proceedings.

8 **BACKGROUND**

9           Defendant Manuel Torres was charged on September 22, 2008 in the Taos  
10 County magistrate court with (1) aggravated driving under the influence of  
11 intoxicating liquor in violation of NMSA 1978, Section 66-8-102(A), (D)(1) (2008)  
12 (amended 2010), and (2) criminal damage to property, in violation of NMSA 1978,  
13 Section 30-15-1 (1963). Pursuant to the Implied Consent Act, NMSA 1978, Sections  
14 66-8-105 to -112 (1978, as amended through 2007), Defendant was served with a  
15 notice of license revocation. The Motor Vehicle Division (MVD) held a telephonic  
16 license revocation hearing, pursuant to Section 66-8-112. At the license revocation  
17 hearing, Defendant challenged the admissibility of a breath alcohol test based on the  
18 assertion that the arresting officer failed to verify that his mouth was free of foreign  
19 substances for twenty minutes before administering the test. The hearing officer

1 rescinded the revocation of Defendant’s license, finding that the officer failed to  
2 present evidence that he looked into Defendant’s mouth or asked questions to verify  
3 that Defendant’s mouth was free of foreign substances, thereby violating the Scientific  
4 Laboratory Division (SLD) regulations that require verification as a necessary  
5 foundational requirement for administering a breath alcohol test.

6       The magistrate court subsequently convicted Defendant, and he appealed his  
7 conviction to the district court. While his appeal was pending in district court,  
8 Defendant mistakenly filed a motion-in-limine in magistrate court, arguing that  
9 collateral estoppel precluded the State from introducing the results of the breath  
10 alcohol test because the MVD hearing officer determined that it was inadmissible  
11 during the license revocation hearing. After amending the motion and refileing it in the  
12 district court, the district court orally granted the motion-in-limine after a hearing and  
13 subsequently entered an order stating “the State is precluded from re-litigating the  
14 admissibility of the breath alcohol tests, and therefore, orders: [t]hat the [b]reath  
15 [a]lcohol [t]est may not be admitted at trial.” Pursuant to NMSA 1978, Section 39-3-  
16 3(B)(2) (1972), the State filed a timely appeal of the order excluding the breath  
17 alcohol test results.

18 **STANDARD OF REVIEW**

19       We review the district court’s application of collateral estoppel under an abuse

1 of discretion standard. *Shovelin v. Cent. N.M. Elec. Co-op., Inc.*, 115 N.M. 293, 297,  
2 850 P.2d 996, 1000 (1993). “An abuse of discretion occurs when a ruling is clearly  
3 contrary to the logical conclusions demanded by the facts and circumstances of the  
4 case.” *Sims v. Sims*, 1996-NMSC-078, ¶ 65, 122 N.M. 618, 930 P.2d 153.

## 5 **APPLICATION OF COLLATERAL ESTOPPEL**

6 Collateral estoppel prevents the “relitigation of ultimate facts or issues actually  
7 and necessarily decided in a prior suit.” *Silva v. State*, 106 N.M. 472, 474, 745 P.2d  
8 380, 382 (1987), *limited on other grounds by Archibeque v. Moya*, 116 N.M. 616, 618,  
9 866 P.2d 344, 346 (1993). Under the proper circumstances, collateral estoppel may  
10 be permitted in a criminal proceeding as to issues necessarily determined in a civil  
11 proceeding. *State v. Bishop*, 113 N.M. 732, 734, 832 P.2d 793, 795 (Ct. App. 1992).  
12 Four elements must be met to establish a prima facie application of collateral estoppel:  
13 (1) the party against whom collateral estoppel is asserted must be the same party or  
14 in privity to the party in the original action, (2) the subject matter or the cause of  
15 action in the two proceedings must be different, (3) the ultimate issues must have  
16 been actually litigated, and (4) the issue must have necessarily been determined. *Id.*  
17 Even when a prima facie application of collateral estoppel is made, the district court  
18 may determine that the application of the doctrine would be fundamentally unfair to  
19 the party against whom it is asserted if the prior proceeding did not provide a full and

1 fair opportunity to litigate the issue. *Id.*; see also *Deflon v. Sawyers*, 2006-NMSC-  
2 025, ¶ 14, 139 N.M. 637, 137 P.3d 577 (“The main concern is that a party against  
3 whom collateral estoppel is sought must have had a full and fair opportunity to litigate  
4 the issue in the prior action.”). The party opposing the application of collateral  
5 estoppel has the burden to show that the prior proceeding did not provide a full and  
6 fair opportunity to litigate once a prima facie showing is made. *Padilla v. Intel Corp.*,  
7 1998-NMCA-125, ¶ 9, 125 N.M. 698, 964 P.2d 862.

8         The district court concluded that the Motor Vehicle Division and the Taos  
9 district attorney’s office were identical parties for purposes of collateral estoppel  
10 because “‘the State of New Mexico is the State of New Mexico, it doesn’t matter what  
11 department is pursuing an action, it is the State of New Mexico.’” However, our  
12 previous case law does not support the conclusion that different agencies of the state  
13 are necessarily identical parties for purposes of collateral estoppel. See *Albuquerque*  
14 *Police Dep’t v. Martinez*, 120 N.M. 408, 415, 902 P.2d 563, 570 (Ct. App. 1995)  
15 (holding that the Albuquerque police department and district attorney’s office are  
16 identical parties “in the circumstances presented by this case” only after concluding  
17 that both “have like interests in imposing punitive sanctions for violation of the  
18 [s]tate’s criminal laws”). While we have stated that the “general rule is that litigation  
19 by one agency is binding on other agencies of the same government” there are

1 “exceptions . . . if there are important differences in the authority of the respective  
2 agencies.” *Id.* at 414, 902 P.2d at 569 (internal quotation marks and citation omitted).  
3 We must therefore determine whether the State agency that was a party in the license  
4 revocation hearing, the Motor Vehicle Division, and the Taos district attorney’s office  
5 had sufficiently similar interests and purposes in the respective proceedings.

6       As our Supreme Court stated in *Maso v. State Taxation & Revenue Department*,  
7 2004-NMSC-028, ¶ 12, 136 N.M. 161, 96 P.3d 286, a “license- revocation proceeding  
8 is distinct from a criminal trial for driving under the influence.” The purpose of  
9 license revocation proceedings is to protect the public by the prompt removal of  
10 drivers who drive under the influence. *Id.* They are conducted by a hearing officer  
11 from the Motor Vehicle Division, an agency only vested with power to administer and  
12 enforce the Motor Vehicle Code. *See* NMSA 1978, § 66-2-3(A) (2007). In contrast,  
13 the “central purpose of a criminal trial is to decide the factual question of the  
14 defendant’s guilt or innocence.” *State v. Alvarez-Lopez*, 2004-NMSC-030, ¶ 57, 136  
15 N.M. 309, 98 P.3d 699 (Serna, J., concurring in part, dissenting in part) (internal  
16 quotation marks and citation omitted). The district attorney is elected by voters to  
17 make prosecutorial decisions in the best interests of the people of the state. *State v.*  
18 *Brule*, 1999-NMSC-026, ¶ 14, 127 N.M. 368, 981 P.2d 782. Given the differing  
19 purposes of the revocation proceedings and criminal trials, and the intended summary

1 nature of the license revocation hearings, we do not believe that the parties in  
2 Defendant's license revocation hearing and criminal trial were identical parties or in  
3 privity for the purposes of collateral estoppel. Indeed, this Court has already stated  
4 that "[t]he [S]tate simply was not represented during this [license revocation] hearing"  
5 in addressing a contention that collateral estoppel applies to a determination on the  
6 admissibility of breath alcohol tests made in a license revocation hearing in a  
7 subsequent criminal prosecution. *Bishop*, 113 N.M. at 734, 832 P.2d at 795. The  
8 district court therefore abused its discretion in finding that Defendant made a prima  
9 facie showing of collateral estoppel.

10       Even assuming Defendant made a prima facie showing of collateral estoppel,  
11 this Court has previously determined that applying collateral estoppel to a  
12 determination in a license revocation hearing that SLD regulations were violated, and  
13 therefore a breath alcohol test is inadmissible, in a subsequent criminal prosecution  
14 is fundamentally unfair to the State. *Bishop*, 113 N.M. at 734-35, 832 P.2d 795-96.  
15 In *Bishop*, this Court determined that the summary nature of the typical license  
16 revocation hearing may prevent the state from having a full and fair opportunity to  
17 litigate issues during the hearing. *Id.* at 735, 832 P.2d at 796. Additionally, we noted  
18 that "because the more serious issues of criminal guilt or innocence are not at stake  
19 in an administrative hearing, the state may lack the incentive to fully litigate issues."

1 *Id.* We expressed concern in *Bishop* that applying collateral estoppel in such  
2 situations would unnecessarily force the state to be represented in license revocation  
3 hearings and would lead to revocation hearings becoming “full-blown trials at which  
4 every possible issue regarding the defendant’s actions would have to be fully  
5 litigated.” *Id.* These concerns regarding the full and fair opportunity of the state to  
6 litigate the admissibility of the breath alcohol tests expressed in *Bishop* are identical  
7 to this case. The record indicates that Defendant’s license revocation hearing was  
8 held telephonically, and, although the arresting officer testified, no one from the Taos  
9 district attorney’s office was present. Additionally, a license revocation hearing is a  
10 “summary administrative proceeding designed to handle license revocation matters  
11 quickly.” *Maso*, 2004-NMSC-028, ¶ 12 (internal quotation marks and citation  
12 omitted). We therefore conclude that the district court abused its discretion by  
13 applying collateral estoppel in light of our decision in *Bishop*.

14 Moreover, this Court in *Bishop* stated that “we believe there are good policy  
15 reasons for not applying collateral estoppel” in this context. 113 N.M. at 735, 832  
16 P.2d at 796. First, we expressed concern that applying collateral estoppel would slow  
17 down what is meant to be a summary administrative hearing because the state “may  
18 feel compelled to intervene in every administrative action to effectively protect its  
19 interests in some future criminal proceeding.” *Id.* Second, we recognized “that the



