

1 and determining that this case is appropriate for resolution on Track 1 as defined in
2 that order, we affirm for the following reasons.

3 **BACKGROUND**

4 {2} Defendant pled guilty to one count of sexual exploitation of children
5 (distribution), contrary to NMSA 1978, Section 30-6A-3(C) (2016), [RP 212-18]
6 reserving the right to challenge jurisdiction. [RP 214] Insofar as Defendant pled to
7 the offense, the operative facts are undisputed. Defendant admitted that he
8 distributed child pornography through the internet from his residence in Durango,
9 Colorado to a resident of New Mexico. [BIC 7] That individual reported her receipt
10 of the material to New Mexico authorities, prompting the underlying investigation
11 and criminal prosecution. [BIC 5, 7] Defendant moved to dismiss, theorizing his
12 physical presence in Colorado at all relevant times, as well as the pendency of
13 charges in Colorado based on the same incident, precluded New Mexico from
14 exercising jurisdiction. [BIC 6; RP 145-51] The district court denied the motion. [RP
15 189-90] Both arguments are renewed on appeal. [BIC 7-15]

16 **STANDARD OF REVIEW**

17 {3} “Determining whether the district court properly exercised its jurisdiction is a
18 question of law that we review de novo.” *State v. Barraza*, 2011-NMCA-111, ¶ 5,
19 267 P.3d 815. Similarly, Defendant’s challenge to his successive prosecutions is
20 subject to de novo review. *See State v. Haskins*, 2008-NMCA-086, ¶ 15, 144 N.M.

1 287, 186 P.3d 916 (observing that double jeopardy guarantees protect against
2 successive prosecutions and multiple punishments for the same offense, and relative
3 to such issues, we apply de novo review).

4 **DISCUSSION**

5 **I. Territorial Jurisdiction**

6 {4} “[A] criminal charge must have been committed within the territorial reach of
7 the court for it to have authority (i.e., jurisdiction) to try the case.” *State v. Allen*,
8 2014-NMCA-111, ¶ 10, 336 P.3d 1007. Defendant contends that insofar as he was
9 physically present in Colorado at all relevant times, he cannot be convicted in New
10 Mexico. [BIC 8-12, 14-15] We disagree.

11 {5} As we explained in *Allen*, the principles of law governing the territorial
12 jurisdiction of the state have evolved over time. *Id.* ¶¶ 15-17. Under the strict
13 historical approach, a state court had jurisdiction only over crimes that occurred
14 entirely within that state’s boundaries; if any essential element occurred in another
15 state, neither state possessed jurisdiction over the criminal offense. *Id.* ¶ 15.
16 However, the United States Supreme Court subsequently expanded the limits of
17 strict territorial jurisdiction, such that if a crime has a detrimental effect in a state,
18 that state has territorial jurisdiction to prosecute the perpetrator notwithstanding the
19 fact that the acts were committed entirely within another state. *Id.* ¶ 16.

1 {6} The district court properly applied this well-established authority to the matter
2 at hand, finding and concluding that insofar as Defendant’s act of distributing child
3 pornography caused detrimental impact within New Mexico, where the illicit
4 material was received, this State has jurisdiction to prosecute. [RP 189]

5 {7} We understand Defendant to contend that a different result should be reached
6 in this case because the Sexual Exploitation of Children Act does not contain
7 language making clear the full extent of the State’s authority to prosecute. [BIC 9-
8 11] However, as we observed in *Allen*, the operative principles do not turn upon the
9 existence of a specific legislative enactment that encompasses the detrimental effects
10 theory. *Id.* ¶ 18. To the contrary, those principles provide the basis for New Mexico’s
11 exercise of jurisdiction even in the absence of such legislation. *Id.*

12 {8} Significantly, the New Mexico Supreme Court has rejected a challenge to the
13 jurisdiction of the courts of this State under highly analogous circumstances. In
14 *Cummings v. State*, 2007-NMSC-048, ¶ 23, 142 N.M. 656, 168 P.3d 1080, the
15 defendant advanced a claim of ineffective assistance based upon counsel’s failure to
16 challenge the district court’s subject matter jurisdiction in light of the fact that he
17 was in Texas at the time he sent images that were received in New Mexico. The New
18 Mexico Supreme Court summarily rejected the argument as entirely lacking merit.
19 *Id.* Although Defendant suggests that this aspect of the *Cummings* decision should
20 be regarded as “mere dicta,” [BIC 14] it is consistent with the authorities discussed

1 above. As such, we regard it as reflective of the operative principles of law, and
2 indicative of the appropriate outcome in this case. We therefore reject Defendant’s
3 argument and uphold the district court’s determination.

4 **II. Dual Sovereignty**

5 {9} We further understand Defendant to renew his argument that his conviction
6 should be overturned on grounds that he has already been convicted and sentenced
7 for the same acts in Colorado. [BIC 6, 12-15; RP 150]

8 {10} This issue is controlled by the dual sovereignty doctrine, which reflects the
9 common-law conception of crime as an offense against the sovereignty of the
10 government. *State v. Glascock*, 2008-NMCA-006, ¶ 23, 143 N.M. 328, 176 P.3d
11 317. Therefore, when a single act violates the laws of two sovereigns, two distinct
12 offenses have been committed. *Id.*

13 {11} The New Mexico Supreme Court explicitly adopted the dual sovereignty
14 doctrine in the case of *State v. Rogers*, 1977-NMSC-057, ¶ 7, 90 N.M. 604, 566 P.2d
15 1142. “Accordingly, where a defendant’s conduct amounts to the commission of a
16 criminal offense within the geographical authority of more than one sovereign, each
17 sovereign may prosecute regardless of what the other has done.” *Glascock*, 2008-
18 NMCA-006, ¶ 24 (internal quotation marks and citation omitted).

19 {12} “[T]he dual sovereignty doctrine applies to all cases in which multiple
20 sovereigns have a legitimate interest in pursuing prosecutions, including cases in

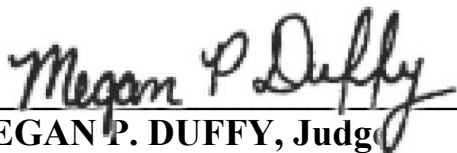
1 which defendants are prosecuted in more than one state.” *Id.* ¶ 25. This is dispositive
2 of Defendant’s challenge.

3 {13} In closing, we observe that authority addressing jurisdictional limitations
4 pertaining to sex offender registration and enforcement efforts in Indian Country
5 [BIC 12] is not applicable to the situation at hand. Similarly, we reject Defendant’s
6 suggestion that the existence of a statute in Colorado, which might have barred
7 prosecution there if Defendant’s conviction in New Mexico had preceded it, should
8 preclude subsequent prosecution in this state. [BIC 13] The adoption of any such
9 reciprocal statutory provision would be a matter for the Legislature.

10 **CONCLUSION**

11 {14} In light of the foregoing considerations, we affirm.

12 {15} **IT IS SO ORDERED.**

13 
14 MEGAN P. DUFFY, Judge

15 **WE CONCUR:**

16 
17 JENNIFER L. ATTREP, Chief Judge

18 
19 GERALD E. BACA, Judge