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IN THE COURT OF APPEALS
FOR THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff/Petitioner,

Supreme Court No. 35,~~970~~ 565

vs.

NICHOLAS EDWARD BRAVO,

Defendant/Respondent.

NICHOLAS EDWARD BRAVO'S ANSWER BRIEF

Criminal Appeal from the District Court
Dona Ana County
The Honorable Marci E. Beyer Presiding

Submitted By:

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CITATIONS TO THE RECORD

The record in this case consists of the Record Proper and one compact disk containing digital audio recordings of the proceedings. When citing these sources, this brief follows the conventions of Rule 23-112 NMRA and its appendix.

The digital audio recordings are playable with the For-The-Record software. Citations to the recorded proceedings are in the form of **[CD-**_/_/_,_:_:_] The time and date stamp indicates the actual day and time into the recording that has elapsed time from the beginning of the recording. For example, the citation **[CD 4/1/15, 9:42 - 10:00:]** refers to the recording contained on the CD made on April 1, 2015 at 9:42 seconds through 10:00 into the recording.

The one-volume Record Proper filed on July 5, 2016 is cited by the abbreviation "RP" followed by a page number. For example, the citation **(RP 131)** refers to page 131 of the Record Proper.

STATEMENT OF COMPLIANCE

In accordance with Rule 12-213(F)(2) NMRA, this brief was prepared using Arial, a proportionally-spaced typeface, and the body of the brief is less than thirty-five (35) pages. This brief was prepared using Word 2010.

I. Introduction

The State erroneously argues that the District Court would not have original jurisdiction over Municipal Ordinance prosecutions in its efforts to frame this issue as one of equitable considerations. (BIC 10) ("Likewise, a district court does not have original jurisdiction over the prosecution of municipal ordinances.") The State relies on a 1979 case, *State v. James*, however, that case stands for an admonition to the State: "the solution is simple -- refrain from municipal court prosecutions of lesser included offenses if felony prosecutions are contemplated." 1979-NMCA-022, ¶ 22, 94 N.M. 7, 606 P.2d 1101. That admonition rings true throughout the case at bar. The special concurrence filed by Justice Andrews is not the law governing district court jurisdiction pursuant to N.M. Const. Art. VI, §13 which guarantees original jurisdiction in the District Court. The District Court's Opinion in this matter is clearly and soundly reasoned, and this Court should affirm it: "The acts and charges involved in both this case and the Municipal Court case are subject to mandatory joinder pursuant to Rule 5-203(A). and that the prosecution of the charges in the Municipal Court case acts as a bar to prosecution of the instant case, pursuant to *State v. Gonzales*, 2013-NMSC-016, 301 P.3d 380."

The State's assertion that a plea to a minor offense does not prevent

further prosecution of additional offenses directly related thereto and stemming from the very same incident and arrest, is applicable only to district court prosecutions not prohibited by the Compulsory Joinder Rule, therefore this assertion is not on point. NMRA 1979, Rule 5-203(A), *C.f. Gonzales* at ¶ 14 with *State v. Aragon*, 2017-NMCA-005, ¶ 9, 387 P.3d 320. As noted above, the State also fails to substantiate the idea that a rule should apply to allow Compulsory Joinder exceptions for Municipal Court cases because such a rule would directly conflict with Rule 5-203(A), if it were not crafted as narrowly as the holding in *State v. Aragon*.

A. Jurisdiction

According to the State Constitution: "The district court shall have original jurisdiction in all matters and causes not excepted in this constitution, and such jurisdiction of special cases and proceedings as may be conferred by law, and appellate jurisdiction of all cases originating in inferior courts and tribunals in their respective districts, and supervisory control over the same." N.M. Const. Art. VI, § 13. Municipal Court jurisdiction is not "excepted in this constitution." *Id.* The Municipal Courts are not even mentioned in the Constitution, therefore, their power is not "excepted in this constitution" pursuant to the language of the Constitution. Article VI, § 27, allows for appeals *de novo* from "inferior courts" to district

courts. The Legislature has created municipal courts as courts of "jurisdiction over all offenses and complaints under ordinances of the municipality . . ." NMSA 2016, S 35-14-2(A). Jurisdiction over municipal ordinances is also given to Magistrate Courts in municipalities (located in Class A Counties with over 200,000 in population) with less than 1500 residents. NMSA 2016, § 1. Thus, the State's argument would drag these Magistrate Court's into the alleged municipal court exception the State asks the Court to create out of whole cloth.

Prosecution in Municipal Court is not a defense to prosecution of a claim in another jurisdiction such as District Court. NMSA 2016, 35-15-1(A). However, this provision does not override the Constitutional provision that District Courts are Courts of general jurisdiction at Article VI, § 13, nor does it conflict with the requirement that claims arising from the same incident be joined as noted in Rule 5-203(A). Rather, the Municipality or Plaintiff has a right to appeal *any* Judgment issued by the Municipal Court within 15 days to District Court. Upon such appeal, the claims or charges can then be joined with a pending district court case. *See* NMSA 2016, 35-15-1(B). Thus, if the State has concerns about a quick plea at arraignment in a case like the one at bar involving poor charging decisions by the prosecution, the Judgement can be appealed and vacated and the case can be joined with

a District Court proceeding to satisfy the rule.

B. Offenses of a Same or Similar Character

The three police officers in this matter worked together on this case, their work was noted together on the police report and they were from the same police department. (RP 57-58). The police report of Officer Alexander Smith notes that both cases were filed at the same time by himself and Agent Flores. (RP 58). The prosecution was, aware of the name of each officer and their role in the Defendant's arrest. The police handling the investigation each filed cases contemporaneous to each other, one in Municipal Court on August 7, 2015 (RP 58, 62-65) and one in Magistrate Court on August 7, 2015 (RP 58, 8). The State's argument that this case would somehow confound the State's prosecution is belied by the coordination (belied in the hearing but documented in the record) between the patrol officer and the drug enforcement officer. (RP 58), CD 04/01/16; 9 min. 45 sec.

II. ARGUMENT

A. Standard of Review

"Since it involves interpretation of a rule, we review *de novo* the district court's conclusion" that Rule 5-203(A) applied to the case at bar. *State v. Smallwood*, 2007-NMSC-005, ¶ 12, 141 N.M. 178, 181-82, 152

P.3d 821, 824-25. If the Court reaches the State's arguments regarding particular facts or equitable principles governing the application of the rule in this matter then the Court should "review[ed] the issue using an abuse of discretion standard." *Id.*

B. Statutory Construction Principles

> We apply the same rules of construction to procedural rules adopted by the Supreme Court as we do to statutes. *See State v. Eden*, 108 N.M. 737, 741, 779 P.2d 114, 118 (Ct. App. 1989). We approach the interpretation of rules adopted by the Supreme Court in the same way that we approach the interpretation of legislative enactments, by seeking to determine the underlying intent, *see Roark v. Farmers Group, Inc.*, 2007 NMCA 74, P 50, 142 N.M. 59, 162 P.3d 896, *cert. denied*, 2007 NMCERT 6, 142 N.M. 16, 142 N.M. 16, 162 P.3d 171, and our interpretation of rules of criminal procedure "is guided by our review of rules *in pari materia*." *Walker v. Walton*, 2003 NMSC 14, P 11, 133 N.M. 766, 70 P.3d 756. In determining the proper application of procedural rules, our review is *de novo*. *State v. Rowell*, 121 N.M. 111, 114, 908 P.2d 1379, 1382 (1995).
>
> *State v. Miller*, 2008-NMCA-048, ¶ 11, 143 N.M. 777, 182 P.3d 158.

C. The Breadth of Rule 5-203(A)

The State relies on, and seeks to expand the holding of this Court in *State v. Aragon*, which basically states that a Magistrate Court misdemeanor DWI originally filed in District Court as a felony 6th DWI cannot be precluded by a plea to a simple traffic citation for Speeding occurring contemporaneously with the DWI. 2017-NMCA-005, ¶ 9, 387 P.3d 320. The Differences between the cases are significant. In the case at

bar the Defendant pled to three significant misdemeanor charges in Municipal Court of resisting or obstructing an Officer, Possession of Drug Paraphernalia and Concealing Identity on August 20, 2015 (RP 7-9) on the same day he was indicted in District Court for Felony Possession of Methamphetamine and Possession of Drug Paraphernalia. (RP 1) The State then had 15 days to appeal the Municipal Court sentence to District Court or until September 5, 2015, where the sentence could be vacated and the charges consolidated with the felony case that was indicted on August 20, 2015. (RP 62-64 and RP 1-2). NMSA 2015, S 35-15-1(B) ("The plaintiff or defendant may appeal to the district court from the judgment of any municipal court within fifteen days after judgment and sentence rendered in the municipal court. Failure of either party to appeal within the prescribed time is jurisdictional and an appeal not timely filed shall not be entertained by the district court.") Any Party may appeal without restriction, pursuant to this rule. Certainly a party prejudiced by the Court's Judgment or Sentence would be entitled to such an appeal.

The case in *Aragon* also turned on the civil/criminal nature of a basic traffic citation *not related* to the *per se* felony violation of DWI based solely on a breath test unrelated to the Defendant's speeding:

> . . . a defendant's entry of a no contest plea to a lesser offense such as the traffic citation here does not bar a subsequent

> prosecution of an additional, greater offense even if the two offenses occur during one episode. *See* ABA Standards § 13-2.3(d) ("Entry of a plea of guilty or *nolo contendere* to one offense does not bar the subsequent prosecution of any additional offense based upon the same conduct or the same criminal episode."); Model Penal Code § 1.11(2) (stating that *a prosecution is not barred where the "former prosecution was procured by the defendant without the knowledge of the appropriate prosecuting officer and with the purpose of avoiding the sentence that might otherwise be imposed"*). A defendant should not be allowed to bar his later prosecution simply by rushing to plead to a considerably lesser *traffic* offense.

Aragon, 2017-NMCA-005, ¶ 9, 387 P.3d 320 (emphasis added). As Chief Justice Vigil noted in his concurrence in *Aragon*, the speeding ticket was not pending at the time of the DWI prosecution and Rule 5-203(A) was not applicable. He cautioned that the above cited ABA model commentary citations were to be considered advisory only. *Id.* at ¶¶ 14-16.

Furthermore, *Aragon* was a case dealing with a completely different timeframe as to the coordination of the prosecution. In the case at bar, both officer's Smith and Agent Flores communicated with each other, (RP 58) and both filed charges on the same day. *Id.* The misdemeanor charges in Municipal Court were pled to and sentenced on the same day that the felony charges were indicted in District Court. The charges at issue in this case were also related as Felony possession of Methamphetamine and a paraphernalia charge for a glass meth pipe, the paraphernalia was directly connected to the consumption of the small quantity of Methamphetamine

allegedly tucked into the Defendant's wallet in this case. The time frames were such that the State had complete control and all options for prosecution and no problem fulfilling the mandate of Rule 5-203(A) that the prosecution "refrain from municipal court prosecutions of lesser included offenses if felony prosecutions are contemplated." *State v. James*, 1979-NMCA-022, ¶ 22, 94 N.M. 7, 606 P.2d 1101. ("[B]arring a district court felony prosecution on the basis of a municipal court conviction for a necessarily included lesser offense is a totally undesirable result. *See also State v. Tanton, supra*. If this is so, the solution is simple -- refrain from municipal court prosecutions of lesser included offenses if felony prosecutions are contemplated.") This was the law when Mr. Bravo was charged in this matter in municipal court and magistrate court.

This was not the case in *Aragon* where the State had no time to cure a potential error in Its charging documents and the case was charged months after the plea to the traffic citation due to the time required for an investigation into how many prior DWI's the Defendant had. *Aragon* at ¶ 4. It is well known, or should be, as alluded to by the judge herein CD 12:33-44, that officers are trained not to file misdemeanor charges against a Defendant when compulsory joinder would be required. This control of the docket and control over the ability of the State to overwhelm a Defendant's

due process rights are purposeful.

Contrary to the State's characterization of Rule 5-203(A), (BIC at 13), *Aragon* does not open the Rule to repeal in favor of the Model Penal Code, but rather *Aragon* acknowledges the Rule is not inflexible, taking into consideration the facts of a particular case in a particular court. The District court rule was promulgated by the Supreme Court, not for a desire to follow the Model Penal Code, but for the specific purposes cited by the Court itself: "In *Tanton*, however, we adopted as "judicial policy" our distaste for "piecemeal prosecutions" as described two years earlier in *Tijerina*. *Tanton*, 88 N.M. at 336, 540 P.2d at 816. Thus, in order to avoid "disorderly criminal procedures" that "threaten the existence of our judicial system [and] risk . . . prejudice to the accused," *Tijerina*, 86 N.M. at 36, 519 P.2d at 132, we require the State to join those offenses as laid out in Rule 5-203(A)." *State v. Gallegos*, 2007-NMSC-007, ¶ 14, 141 N.M. 185, 152 P.3d 828.

D. Rule 5-203(A) Does Apply in The Case at Bar

1. The Charges were of Same or Similar Character and based on the Same Conduct Connected to a Single Scheme or Plan

In the case at bar a patrolmen and a detective coordinated the investigation of the Defendant and charging him with violations of the law. Officer Alexander Smith first encountered the Defendant and charged him with three municipal code misdemeanors as a result. (RP 58). The record

does not reveal why he did this as he also called in Metro Narcotics and he notes in his report that they charged Mr. Bravo with one count of Felony Possession of Methamphetamine at the same time. *Id.* The alleged Methamphetamine was allegedly found as a result of the arrest of Mr. Bravo for the three misdemeanors during a search incident to the arrest. Detective Flores charged Mr. Bravo in Magistrate Court with Possession and Possession of Drug Paraphernalia which were both indicted by the Grand Jury based on Agent Flores testimony. (RP 67). His case was filed in Magistrate Court on August 7, 2015, (RP 8). The same day Smith filed in Municipal Court. (RP 58, 63-65) Both members of the Las Cruces Police Department were fully aware of what they were doing and neither was hampered by any investigatory delays or issues. The reasoning of the Officers in filing two simultaneous cases is not explained, however, it is clear that the municipal charge of possession of paraphernalia (a glass pipe presumably for meth use) was identical to the charge of Possession of Paraphernalia in Magistrate, then District Court and these charges were tied up inextricably with the Felony charge of Possession filed in Magistrate Court and then in District Court. The first three municipal court offenses were subject to citation and the Defendant was arrested on these charges by officer Smith. It is not clear if there was jurisdiction to arrest on these

municipal petty misdemeanors. The Felony charge, did not occur until after the arrest and the search incident to arrest which was then followed by the narcotics investigation while the Defendant was transported and detained at the police station. (RP 58). The Defendant's arrest resulted in a search of the Defendant's wallet. Thus, the Fourth Amendment and Article II, Section 10, issues in the case were tied up with events occurring in both cases. The entire course of events during the arrest, the items seized and the Defenses to them being seized were dependent on findings in both cases. The due process and double jeopardy implications are significant in comparison to the burden on the officers to file one criminal complaint in one court of jurisdiction.

As noted in *State v. Gonzales*: "The purpose of [a] compulsory joinder statute, viewed as a whole, is twofold: (1) to protect a defendant from the governmental harassment of being subjected to successive trials for offenses stemming from the same criminal episode; and (2) to ensure finality without unduly burdening the judicial process by repetitious litigation." 2013-NMSC-016, ¶ 26, 301 P.3d 380. The State claims its actions spared judicial resources by expeditiously allowing the resolution of part of the charges against Defendant. (BIC at 15) However, this is not apparent at all given the current status of the case and the "opportunities"

(August 7, August 20 and fifteen days (for appeal) thereafter) the State had to make the "conscious decision" to charge the Defendant in one forum only. *Gonzales* at ¶ 32.

While this case does not reflect the decisions of prosecutors to pursue an all or nothing strategy, it does reflect the decisions of the State's representatives to charge the Defendant with identical charges in two different forums despite established law and wisdom. The State does not explain why the Defendant was twice burdened with the charge of Possession of Drug Paraphernalia. (BIC at 17) However, distinguishing this case from *Gonzales* does not mean Compulsory Joinder does not apply under Rule 5-203(A). Rather, it applies for the reasons cited in *Gonzales.* The officers confronted the Defendant with two simultaneous cases likely involving two different public defenders, or *pro se* representation in one and counsel in another. Either way, the Defendant was forced to respond to two simultaneous cases that invoked his double jeopardy, *State v. Mora* 2003-NMCA-072, ¶17, 133 N.M. 69 P.3d 256 *See Gallegos* at ¶4, and due process rights. *State v. Dominguez*, 2008-NMCA-029, ¶ 5, 143 N.M. 549, 178 P.3d 834.

Gonzales was the controlling law that put the State on notice in this situation: "The State can claim no unfair surprise. Six years ago, we made

clear in *Gallegos*, 2007 NMSC 7, ¶ 14, that the compulsory joinder rule means what it says. There, we applied the rule to require joinder of offenses "of the same or similar character," even when arising from two different victims. *Id.* ¶ 15. Here, we have offenses "based on the same conduct" . . . . In *Gallegos*, we took the time to discuss the evolution of the joinder rule, from permissive to mandatory, and the reasons for it. *Gonzales* at ¶ 27. "In short, after reading our comprehensive opinion in *Gallegos*, the State should have had no doubt about the consequences of its decision not to join vehicular homicide with the other charges." *Id.* at ¶ 29. "A bar against a subsequent prosecution on charges that should have been joined under Rule 5-203(A) is the only effective remedy to enforce the mandatory nature of the rule." *Id.* at 30.

The State's argument appears to attempt to justify It's agents unconsciousness in failing to follow the mandatory nature of the rule. The exceptions discussed in *Aragon* are not to coddle the State when it simply fails to follow the Rule. They are in place for circumstances that do not involve "conscious decisions" like those described in *Gonzales*. In this case, the Officer's report notes both "conscious decisions" to charge the Defendant with the same crime in two courts on the same day. (RP 58). The State identifies nothing in the record that indicates problems with the

two cases that required the State to forgo "conscious decisions" to pursue these two prosecutions. The State does not effectively explain how the Defendant was not prejudiced by facing two prosecutions simultaneously, or why the Defendant chose to plea to the Municipal offenses, there being no evidence in the record he knew what the impact of that plea might be or that he was even counseled on that case as he would normally not have an attorney in Municipal Court.

2. Aragon's Holding Does Not Apply in This Case

As noted in Section II(C) (p.5-7) *supra*, the holding in *Aragon* does not apply in this case for a variety of reasons. A "straightforward application" (BIC 17) of *Aragon* is nowhere near on point in this case. First off, as noted above, the prosecution had an excuse for not making a conscious decision. *Aragon* at ¶4. Secondly, the case at issue in *Aragon* did not exist simultaneously in two jurisdictions at the point of decision as noted by Chief Justice Vigil in his special concurrence. *Id.* at 15. *Aragon* does not stand for a blanket rule that overrules the mandatory language in *Gonzales* used by Justice Bosson of our Supreme Court to, once again, caution and firmly state to the prosecution that it must make conscious decisions about prosecuting charges subject to Rule 5-203(A). *Gonzales* at ¶ 22. If the Prosecution is not held to this admonition and those in *James,*

Tanton, Tijerina and *Gallegos,* the entire purpose of the rule will be swallowed by exceptions designed very narrowly to prevent a Defendant from taking advantage of circumstances that prevent the prosecution from making "conscious decisions" about what forums and what charges to pursue when Rule 203(A) should apply.

Aragon is not "materially indistinguishable from this case" as argued by the State, (BIC at 19), in Its galling effort to extend an exception based on *dicta* about a Model Rule, into a hard and fast overrule of the Supreme Court's statement that "mandatory rule" means mandatory. *Aragon* at ¶30; *c.f. Aragon* with *Gonzales.* To belabor the differences between a traffic citation (a quasi-civil proceeding) and a case involving straightforward criminal charges that mirror each other in part and that rely on the same nexus of facts and events, facts admitted to in a guilty plea that could impact or otherwise prejudice the felony prosecution, gives great meaning to the idea of comparing apples to oranges. The differences between *Aragon* and the case at bar are further detailed in Section II(C) (p.5-7), *supra,* of this Brief and further recitation would be redundant. Suffice it to say, this case involved conscious decisions by two officers to charge a Defendant in two forums on the same day and the record demonstrates they were fully aware of their actions and they are detailed in Officer

Smith's report. (RP 58).

3. Neither *State v. Gonzales* or *State v. Aragon* excuse Prosecutorial decisions to Charge a Defendant in Two Jurisdictions for Crimes stemming from the Same Incident

The State, in Its final effort to push the Court over the edge of exception carving and into the abyss of swallowing the rule, asks the Court to craft a blanket exception that allows prosecutors and Officers to consciously charge a Defendant in a jurisdiction that does not have Constitutional or Statutory jurisdiction over all the charges and to charge the same Defendant in another jurisdiction that does have jurisdiction over charges resulting from similar or related acts, plans or schemes. (BIC at 20). The State's argumentation of the Model Rules is backwards because it does not first firmly grasp and acknowledge our Supreme Court's holding in *Gonzales,* ¶ 30, and Rule 5-203(A). Rather than attempting to craft an exception that embraces circumstances beyond the prosecutions' control, as in *Aragon*, the State simply asks to be able to harass a Defendant at will with two separate prosecutions whenever the State deems it desire-able to charge a Defendant in Municipal Court and District Court. Further, the State's request ignores the distinction made in *Aragon* with regards to the lack of connection between the traffic offense and a specific breed of DWI conviction, one based on a .08 *per se* breathalyzer test. *Id.* at ¶ 9. *Aragon*

actually leaves room to close the door on a DWI conviction based on an officer's observation of impairment that might be based on the citable traffic offense charged in Municipal Court for example. *Id.* The case at bar does not embrace that fact pattern, but clearly the language in *Aragon* does not embrace a holding that sweeps that wide. *Id.* ("Offenses not of the same or similar character . . . nor . . . based on the same conduct.")

The State again misconstrues New Mexico law, conflating it with the Model Code, and then further insisting the policy behind the Rule as stated in *Gonzales* by Justice Bosson does not exist: "[F]ailure to excuse joinder would contradict its underlying purposes by preventing the efficient disposition of pending minor charges in an inferior court while simultaneously wasting judicial resources in district court by preventing their disposal in the inferior court designed to hear such offenses." (BIC 21) This statement ignores the general jurisdiction of District Courts at N.M. Const. Art. VI, §13, which are designed to hear *all* such offenses and specifically touts conservation of judicial resources by having two judges, court staffs and facilities dealing with a Defendant instead of one. Further, the ability to plea a case is significantly diminished without potential trading cards on the table in the form of the lesser charges and the officer who may be an essential witness in each case is called to two courts instead of one,

two pre-trial interviews instead of one and so on. The State's idea simply falls flat in terms of judicial economy and further fails when the *Gonzales* test is applied. *Id.* ¶ 26. The State asks this Court to flout the Supreme Court's careful admonition as to the history of the policy, the Rule and the law as determined by the Supreme Court, to wit: the goal of the rule is "(1) to protect a defendant from the governmental harassment of being subjected to successive trials for offenses stemming from the same criminal episode; and (2) to ensure finality without unduly burdening the judicial process by repetitious litigation." *Id.* at 26 The fact that a municipality chooses to create crimes that mirror state law crimes does not mean it has created its own separate litigation repetition facility in a Municipal Court. Thus, the well measured and limited exception created in *Aragon* by this Court cannot be construed as a clarion call to open the Municipal Court doors to a continuous stream of consciously chosen dual prosecutions arising out of incidents of the same or similar character. New Mexico's law, as written by the Supreme Court in Its role as Superintending controller of the Rules, *Smallwood*, ¶ 15, and as arbiter of their meaning, cautions the prosecution quite thoroughly to 1) refrain from prosecuting serious cases in Municipal Courts and 2) prosecute Municipal Ordinance cases in Municipal Court as you like; and 3) Join Municipal Ordinance

violations with Felony cases in District court or lose one or the other. *James* ¶ 22. That is the only way to enforce the mandatory nature of the rule. *Gonzales* ¶ 29 *quoting* Committee Commentary to NMRA 1979, Rule 5-203.

In this case the crimes charged are of a same or similar character. The paraphernalia described had a white substance residue that could have supported a Methamphetamine charge. (RP 57). That could be relevant if the substance retrieved from the Defendant's wallet were to be suppressed given prior rulings that residue can support a possession charge. *See State v. Darkis*, 2000-NMCA-085, ¶ 18, 129 N.M. 547, 10 P.3d 871 ("The State's theory was simple: Defendant was found in possession of two pipes; these pipes were scorched, indicating previous use, and while field tests indicated no presence of cocaine, laboratory testing indicated the presence of cocaine residue."). The charges were all charged at 1:24 a.m., (RP 44), this includes the felony charge. There was no distinction made between the time frames or the time at which the charges were filed. The only difference in the two cases was that Officer Smith knowingly charged the Municipal Ordinance violations, inclusive of Possession of Drug Paraphernalia, while noting that Fuerte knowingly and simultaneously charged the Felony violation of Possession of a Controlled Substance. (RP

58). The prosecution, with Fuerte as the sole witness, thereafter indicted the Defendant for Possession of Drug Paraphernalia and the Possession of Controlled Substance charge despite being on Notice that Bravo had a Paraphernalia charge pending. (RP 1-2).

The State argues that the compulsory joinder rule would "swallow the double jeopardy jurisdictional exception" if Defendants are allowed to plea to charges in Municipal Court and assert Rule 5-203(A). This puts the cart before the horse, as it is the State that has been instructed to prevent this situation when charging a Defendant. *James* at ¶ 22. The State is in total control over the sequence and timing of a prosecution and, if a conscious decision is being made, there is no need for an exception. Only a lackadaisical prosecution, allowed to proceed willy-nilly would result in a situation like this when the extenuating circumstances of *Aragon* are not present. The State has made no record as to why there was a mandate on August 7, 2015, to charge Mr. Bravo in two courts with two sets of similar charges pending from one series of acts and one course of conduct with the same or similar circumstances (drug possession). CD 10:06. Therefore, there is no basis for the argument for a jurisdictional exception to Rule 5-203(A) and no basis for applying such an exception to the case at bar.

III. PRAYER FOR RELIEF

For the foregoing reasons Appellant-Respondent requests this Honorable Court uphold the District Court's Opinion and remand this case for further proceedings in District Court consistent with that Court's Opinion.

Respectfully Submitted,

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I hereby certify that a copy of the foregoing motion was sent to counsel for the State, Charles Gutierrez, on March 20, 2017 by e-mail and US Mail.

John McCall, Attorney for Defendant