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

**STATE OF NEW MEXICO,**

**Plaintiff-Appellant,**

**vs.**

**No. 35,565**

**NICHOLAS EDWARD BRAVO,**

**Defendant-Appellee.**

COURT OF APPEALS OF NEW MEXICO  
ALBUQUERQUE  
FILED

OCT 14 2016

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**APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT  
COUNTY OF DONA ANA, STATE OF NEW MEXICO  
THE HONORABLE MARCI E. BEYER, PRESIDING**

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**STATE OF NEW MEXICO'S BRIEF IN CHIEF**

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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.

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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 Times New Roman, a proportionally-spaced typeface, and the body of the brief is less than thirty-five (35) pages. This brief was prepared using Corel WordPerfect 12.

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## NATURE OF THE CASE

This is the State's appeal from the District Court's Order Granting Defendant's Motion to Dismiss, dismissing Defendant's charge for felony possession of a controlled substance (methamphetamine) (hereafter the "methamphetamine possession" charge). The charge arose out of methamphetamine found in Defendant's wallet by a transport officer following Defendant's arrest after an investigatory detention.

On the date of Defendant's arrest, Defendant was cited in Las Cruces Municipal Court ("Municipal Court") for three violations of the Las Cruces Municipal Code: concealing identity; resisting, evading, or obstructing an officer; and possession of drug paraphernalia. These were the three offenses that led to Defendant's arrest. Also, the same day, the State initiated this methamphetamine possession prosecution by filing a criminal complaint in magistrate court, which subsequently resulted in a grand jury indictment in the District Court two weeks later. On the same day the grand jury indicted Defendant, he pleaded guilty to the citations in Municipal Court.

Defendant subsequently moved to dismiss the methamphetamine possession charge, arguing that it should have been joined with the Municipal Court citations pursuant to our compulsory joinder rule, Rule 5-203(A) NMRA, and the remedy for

violating the rule announced in *State v. Gonzales*, 2013-NMSC-016, ¶¶ 1, 25-26, 30, 301 P.3d 380. *See id.* (holding that the State's failure to join a charge as required by Rule 5-203(A) to an initial prosecution bars a subsequent prosecution for that charge). The District Court granted the motion.

The District Court erred by applying Rule 5-203(A) (1) where the two respective prosecutions do not violate Rule 5-203(A) because the purposes underlying compulsory joinder are not implicated under these circumstances, and (2) contrary to *State v. Aragon*, 2016-NMCA- \_\_\_, \_\_\_ P.3d \_\_\_ (July 7, 2016, No. 34,653), in which this Court held that a defendant's plea of guilty or no contest to a minor offense in an initial prosecution does not bar a subsequent prosecution for a greater offense. Alternatively, this Court should apply a jurisdictional exception to compulsory joinder where the court in the initial prosecution lacks jurisdiction over the offense charged in the second prosecution.

Accordingly, the State of New Mexico respectfully requests that this Court reverse the District Court's Order Granting Defendant's Motion to Dismiss and remand this case for trial.

## **SUMMARY OF PROCEEDINGS**

### **Factual Scenario**

All of Defendant's charges arose out of an investigatory detention that occurred



around 1:24 a.m. on August 7, 2015 in Las Cruces. Officer Alexander Smith was on duty working a saturation patrol and traveling eastbound on Griggs Avenue. [RP 42; 54] Officer Smith observed Defendant and a young female walking on Griggs Avenue near Water Street. [RP 42; 54] Believing Defendant and the female were minors, Officer Smith stopped Defendant to ask what they were doing out so early in the morning. [RP 54] Defendant gave inconsistent answers and informed Officer Smith that both he and the female were 17 years old. [RP 54]

Defendant moved his right hand to his waist, and Officer Smith asked if Defendant had any weapons because Defendant's clothing was baggy and he could not see what Defendant was reaching for near his waistband. [RP 54] Defendant responded that he had a knife in his pocket, and Officer Smith commanded Defendant to refrain from reaching for the knife, conducted a pat down, and recovered the knife. [RP 54] While Officer Smith conducted the pat down of Defendant, the female subject dropped a second knife from her pants, either by accident or in an attempt to conceal it. [RP 54] Officer Smith directed the female to back away from the knife and sat both Defendant and the female on the curb while he recovered the second knife. [RP 54]

Officer Smith next attempted to collect basic information from Defendant, and Defendant provided a name and date of birth that turned out to be false. [RP 54]

Officer Smith turned his attention to the female subject, who generally provided inconsistent answers regarding her identity, date of birth, and where she was headed, and Officer Smith placed her under arrest for concealing identity. [RP 54-56]

Officer Smith turned his attention back to Defendant, who was speaking with Officer Thaddeus Allen. [RP 56] Defendant gave Officer Smith consent to search his person. [RP 42; 56] Officer Smith removed Defendant's wallet and handed it to Officer Allen. [RP 56] Officer Allen found Defendant's ID, and the officers realized that Defendant had been concealing his identity. [RP 56] Once the officers found Defendant's ID, Defendant immediately attempted to run away from the officers. [RP 56] Officer Smith grabbed Defendant by his shirt to prevent him from fleeing, and the officers handcuffed Defendant and placed him under arrest for concealing identity and resisting arrest. [RP 57] Officer Smith finished his search of Defendant's person and found a black case with a glass pipe with tar and residue along with three unidentified pills. [RP 42; 57]

Transport Officer Alfredo Carbajal transported Defendant to a police substation. [RP 57-8] During a search incident to arrest, Officer Carbajal found two plastic baggies - one containing an orange plastic strip believed to be suboxone and the other containing a white, crystal-like substance believed to be methamphetamine - in Defendant's wallet. [RP 9; 43; 57] Accordingly, the officers called the Metro

Narcotics Task Force to the police substation, and Officer Smith “stood by” while Metro Narcotics investigated Defendant’s narcotic possession. [RP 57-8]

**Defendant’s Municipal Court citations and methamphetamine possession charge**

The same day of Defendant’s arrest, on August 7, 2015, Defendant was cited in Las Cruces Municipal Court for concealing identity and resisting, evading or obstructing an officer for his actions with the Las Cruces Police Department officers. [RP 43, 58, 62-3] Defendant was also cited for possession, delivery, manufacture of drug paraphernalia premised on the glass pipe found by Officer Smith. [RP 43, 58, 62, 64] These criminal citations (hereafter referred to collectively as the “Municipal Court citations”) were for violations of the Las Cruces Municipal Code. [RP 51, 62-64]

Also on August 7, 2015, Special Agent Arnulfo Flores of the Metro Narcotics Task Force filed a Criminal Complaint in Dona Ana Magistrate Court, charging Defendant with a felony count of methamphetamine possession for the methamphetamine possessed by Defendant found by Officer Carbajal. [RP 7-9] The Criminal Complaint subsequently resulted in a Grand Jury Indictment, charging Defendant in District Court with felony methamphetamine possession and possession of drug paraphernalia (for the glass pipe). [RP 1-2] The Grand Jury Indictment is

dated August 20, 2015. [Id.]

On August 20, 2015, Defendant pleaded guilty to, and was sentenced for, the three Municipal Court citations.<sup>1</sup> [RP 62-64]

### **Defendant's Motion to Dismiss**

After pleading guilty to the Municipal Court citations, Defendant filed a Motion to Dismiss and Memorandum in Support to dismiss the methamphetamine possession and possession of drug paraphernalia charges in District Court. [RP 42-70] Defendant argued that the Municipal Court citations and the District Court charges “are a bundle - all based upon the same conduct, a series of connected acts, or parts of a single scheme or plan that occurred at the same time.” [RP 42] Accordingly, Defendant argued that the compulsory joinder rule, Rule 5-203(A), and our Supreme Court’s decision in *Gonzales* required dismissal of the District Court charges. [RP 42-49]

The State conceded that Defendant’s Municipal Court citations and the District Court charges were based on a series of acts connected together or constituting part of a single scheme or plan. [RP 73] However, the State countered that Rule 5-203(A) and the *Gonzales* remedy do not apply because the purposes furthered by compulsory

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<sup>1</sup>Although Defendant’s Motion to Dismiss states that Defendant pleaded guilty on August 24, 2015, the In-Court Judgement/Finding from the Municipal Court is dated August 20, 2015. [RP 43; 62]

joinder were not implicated under the circumstances of the respective prosecutions, and, alternatively, that our courts should apply two limiting principles/exceptions in construing Rule 5-203(A), limitations that are incorporated in model rules and accepted by the majority of jurisdictions with compulsory joinder rules.<sup>2</sup> [RP 72-79]

After a hearing, believing it was bound by *Gonzales*, the District Court issued an Order Granting Defendant's Motion to Dismiss, from which the State appeals. [CD 4/1/15, 9:42:05-10:00:18 (particularly 9:58:42-59:55); RP 87-88] The District Court expressly stated that it agreed with the policy arguments advanced by the State but that it did not believe it was in the position to rule in a manner that it felt was contrary to *Gonzales*. [CD 4/1/15, 9:58:42-59:55]

At the hearing, the State conceded that it needed to dismiss the District Court possession of drug paraphernalia charge to avoid double jeopardy concerns based on the Municipal Code citation for possession of drug paraphernalia. [CD 4/1/15, 9:48:45-49:30] The State accordingly filed a Nolle Prosequi as to the District Court possession of drug paraphernalia charge. [RP 84]

Accordingly, the issue in this appeal is whether Defendant's prosecution and conviction in Municipal Court bars this prosecution for felony methamphetamine

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<sup>2</sup>As will be discussed, this Court has recently applied one of these limiting principles in *Aragon*, 2016-NMCA-\_\_\_, ¶ 9. See *supra*, § II.B.ii.

possession in District Court based on an application of Rule 5-203(A).

## ARGUMENT

### I. Statement of preservation and standard of review

The State preserved the arguments made herein in its Response to Defendant's Motion to Dismiss and during the April 1, 2015 hearing. [CD 4/1/15, 9:42:05-10:00:18; RP 72-79]

This case presents an issue regarding the intended scope of Rule 5-203(A). This Court determines whether Rule 5-203(A) applies to bar a subsequent prosecution under a de novo standard of review. *Aragon*, 2016-NMCA-\_\_, ¶ 7.

In its entirety, Rule 5-203(A) provides that

Two or more offenses shall be joined in one complaint, indictment or information with each offense stated in a separate count, if the offenses, whether felonies or misdemeanors or both:

(1) are of the same or similar character, even if not part of a single scheme or plan; or

(2) are based on the same conduct or on a series of acts either connected together or constituting parts of a single scheme or plan.

Rule 5-203(A).

This Court applies the same rules of construction to procedural rules adopted by our Supreme Court as it does to statutes. *State v. Miller*, 2008-NMCA-048, ¶ 11, 143 N.M. 777. The underlying inquiry is to determine the underlying intent of the

enactment. *Id.* Although the plain meaning is the primary indicator of intent, our Supreme Court has held that “we must exercise caution in applying the plain meaning rule.” *State v. Martinez*, 1998-NMSC-023, ¶ 9, 126 N.M. 39 (internal quotation marks and citation omitted). Our courts will not construe a provision in a manner that renders its application absurd or unreasonable and will construe it according to its obvious spirit or reason. *See State v. Moya*, 2007-NMSC-027, ¶ 6, 141 N.M. 817.

## **II. The District Court erred in granting Defendant’s Motion to Dismiss**

### **A. Prefatory Matters**

- i. The Municipal Court citations were for violations of the Las Cruces Municipal Code, offenses for which the District Court did not have jurisdiction. The Municipal Court does not have jurisdiction over felony offenses or violations of state law, such as the methamphetamine possession charge in this case**

In New Mexico, municipal courts are courts of limited jurisdiction. *See State v. Haar*, 1983-NMCA-140, 100 N.M. 609 (“By their enabling legislation, whether constitutional or statutory, the municipal, magistrate and metropolitan courts are courts of limited jurisdiction.”). “Each municipal court has jurisdiction over all offenses and complaints under ordinances of the municipality[.]” NMSA 1978, § 35-14-2(A) (2011). Because municipal courts only have jurisdiction over offenses violating municipal ordinances, municipal courts do not have jurisdiction over criminal offenses arising from state statutory law. *See id.*; *see also State v. James*,

1979-NMCA-022, ¶ 29, 94 N.M. 7 (Andrews J., specially concurring) (noting that “the district court did not have jurisdiction over the municipal charges and the municipal court did not have jurisdiction over the homicide charge”), *rev'd on other grounds by* 1979-NMSC-096, 93 N.M. 605. Likewise, a district court does not have original jurisdiction over prosecutions for violations of municipal ordinances. *See James*, 1979-NMCA-022, ¶ 29 (Andrews, J., specially concurring); NMSA 1978, §§ 35-15-1 to -15 (1984, as amended through 2001) (providing the authority to, and setting the procedure in, municipal courts for prosecutions for violations of municipal ordinances). A state district court does have appellate jurisdiction over municipal court prosecutions for violations of municipal ordinances. *See* NMSA 1978, § 35-15-1(B) (1969).

State law also limits the type of criminal offenses that a municipality can adopt through ordinance. Generally, a municipality can only adopt ordinances proscribing criminal offenses akin to petty misdemeanors, as municipalities are prohibited from adopting criminal ordinances proscribing offenses that are punishable by a fine greater than \$500 and/or imprisonment exceeding 90 days. NMSA 1978, § 3-17-1(B), (C)(1) (1993). Further, a municipality cannot adopt an ordinance that is “inconsistent” with the laws of New Mexico, meaning, for example, it cannot adopt an ordinance defining an offense as a petty misdemeanor in its municipal code where the same



offense would be a felony under state law. *Id.*

The City of Las Cruces has a municipal code that defines criminal offenses. *See* LCMC 1997, §§ 19-1 to -432 (defining criminal offenses in the Las Cruces Municipal Code). Defendant's Municipal Court citations, properly understood, were not for violations of state law. Instead, Defendant pleaded guilty to the following violations of the Las Cruces Municipal Code: (1) concealing identity, contrary to Las Cruces Municipal Code 1997, § 19.4, (2) possession of drug paraphernalia, contrary to Las Cruces Municipal Code 1997, § 19-6, and (3) resisting, evading or obstructing an officer, contrary to Las Cruces Municipal Code 1997, § 19-296. **[RP 62-64]** The Las Cruces Municipal Code does not proscribe the possession of methamphetamine, as state law defines possession of methamphetamine as a felony. NMSA 1978, § 30-31-23(E) (2011). Because state law restricts a municipality's ability to define criminal offenses to offenses that are in effect petty misdemeanors, the only substantive drug possession crime contained in the Las Cruces Municipal Code is for possession of marijuana. LCMC 1997, § 19-3.

Accordingly, properly understood, in pleading guilty to the Municipal Court citations, Defendant's plea was to three Las Cruces Municipal Code violations for which the District Court lacked jurisdiction. The offense at issue in this case, methamphetamine possession, is a state offense for which the Municipal Court lacked

jurisdiction and which does not have a Las Cruces Municipal Code analog offense because it is a felony offense under state law.

**ii. This Court has recognized the need for, and has recently applied, limitations on Rule 5-203(A) to ameliorate the overbreadth of New Mexico's compulsory joinder rule**

The State acknowledges, and this Court has acknowledged, that the language of our compulsory joinder rule, Rule 5-203(A), is susceptible to a broad reading. *See Aragon*, 2016-NMCA-\_\_\_, n.4 (acknowledging the breadth of the language in Rule 5-203(A)). Based on the breadth of Rule 5-203(A)'s language and this Court's concern with the lack of express limitations in the rule that take into account related expectations and consequences, this Court has pointed out the need for court imposed, reasonable, case-by-case limitations in applying the rule. *Aragon*, 2016-NMCA-\_\_\_, n.4 (citing Ryan C. Shotter, *State v. Gonzales: Reinvigorating Criminal Joinder in New Mexico*, 44 N.M. L. Rev. 467 (2014)); *see also* *Schotter*, 44 N.M. L. Rev. at 467 ("As a result, New Mexico's compulsory joinder rule is strikingly underdeveloped by comparison to the compulsory joinder provisions of other states, which have explicitly recognized the remedy embodied in the *Gonzales* decision for decades and have restricted its application to situations in which the policies behind the rule are best served without punishing legitimate prosecutorial conduct.")).

As will be discussed herein, the *Aragon* Court therefore relied on a limiting

principle contained in the compulsory joinder provisions promulgated by the American Bar Association (ABA) Standards for Criminal Justice Section and the Model Penal Code in concluding that applying the compulsory joinder rule would not be a “rational disposition” under the facts of that case. *See Aragon*, 2016-NMCA-\_\_\_, ¶9; *see also State v. Gallegos*, 2007-NMSC-007, ¶12, 141 N.M. 185 (stating that the “trend toward mandatory joinder in order to protect a defendant from multiple prosecutions was largely motivated by the American Law Institute’s Model Penal Code”).

Consistent with this Court’s recognition that the contours of Rule 5-203(A) need further development on a case-by-case basis that take into consideration related expectations and concerns about the consequences, and with this Court’s reading of the rule in conjunction with the Model Penal Code and the ABA Standards for Criminal Justice, this Court should carefully consider the purposes underlying compulsory joinder, the expectations and consequences of its application under the facts of the case, and the limiting principles articulated in the model provisions in construing the rule and deciding this case.

**B. Rule 5-203(A) did not require joinder of the methamphetamine possession charge and the Municipal Court citations**

- i. The purposes underlying compulsory joinder and the *Gonzales* remedy are not furthered by its application where a defendant expeditiously pleads to minor offenses in a court of limited jurisdiction. Rule 5-203(A) does not apply**

The circumstances surrounding the two respective prosecutions for Defendant's Municipal Court citations and methamphetamine possession in District Court do not implicate the purposes underlying the compulsory joinder rule and, therefore, this case is outside the scope of Rule 5-203(A). Stated another way, this Court should not apply the compulsory joinder rule to this case, because to do so would not further the objectives to which our compulsory joinder is addressed. *See State v. Benally*, 2016-NMSC-010, ¶ 10, 368 P.3d 403 (statutes are construed to give effect to their object and purpose); *Miller*, 2008-NMCA-048, ¶ 11 (“We apply the same rules of construction to procedural rules adopted by the Supreme Court as we do to statutes.”).

The purpose of Rule 5-203(A) is two-fold: (1) to protect a defendant from governmental harassment of being subject 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. *Gonzales*, 2013-NMCA-016, ¶ 26. Further, joinder “is designed to protect a defendant’s double jeopardy interests where the state initially declines to prosecute him for the present offense, electing to proceed

on different charges stemming from the same criminal episode.” *Id.* (quoting *Commonwealth v. Laird*, 988 A.2d 618, 628 (Pa. 2010) (alteration omitted) (emphasis added)).

This case does not implicate either purpose of compulsory joinder. This is not a case where the State elected to hold back the methamphetamine possession charge to harass Defendant with subsequent prosecutions or to disrupt finality of the judicial proceedings once the Municipal Court citations were disposed. The separate prosecutions arose out of the jurisdiction of the respective courts. The Municipal Court has no jurisdiction over the felony methamphetamine possession charge and the District Court had no jurisdiction over the Municipal Court citations that were based on violations of municipal ordinances. The State timely initiated both prosecutions on the date of Defendant’s arrest: The municipal violations in Municipal Court through citation and the felony methamphetamine possession charge in magistrate court through the Criminal Complaint, which subsequently resulted in the Grand Jury Indictment in District Court. The cases proceeded parallel, not successive, to one another until Defendant expeditiously pleaded guilty to the Municipal Court citations. The State is not requiring Defendant to run through a gauntlet of successive prosecutions, and its actions actually furthered Defendant’s interest in finality as to the petty misdemeanor Municipal Court citations and saved judicial resources in

District Court by not charging state law analogs of these petty misdemeanors in District Court. *See Gonzales*, 2013-NMCA-016, ¶ 26.

Our Supreme Court's decision in *Gonzales*, which adopted the remedy applied by the District Court, is instructive as to why joinder was not required under the circumstances of this case. In *Gonzales*, the Court held that the State's failure to join a charge of vehicular homicide to a child abuse resulting in death charge was a fatal barrier to a subsequent prosecution for vehicular homicide. The State charged the case only as child abuse, and the Court subsequently determined that there was insufficient evidence of proof to sustain that conviction. 2013-NMSC-016, ¶ 19. Our Supreme Court held that Rule 5-203(A) obligated the State to charge vehicular homicide in the first instance. The Court stressed that the State had "at least three different opportunities" to do so but made the conscious decision to proceed on an "all-or-nothing trial strategy" and proceeded only under a child abuse theory. *Gonzales*, 2013-NMSC-016, ¶¶ 32-33. The State's decision "ha[s] consequences" and a bar against retrial was the remedy for violation of the rule. *Id.* ¶ 33; *see also State v. Radosevich*, 2016-NMCA-060, ¶ 23, 376 P.3d 871 (applying *Gonzales* to bar retrial on remand where the State made a conscious charging decision based on an all-or-nothing trial strategy). *Gonzales*, and this Court's application in *Radosevich*, show the circumstances to which compulsory joinder is addressed: Where the State seeks

to back out of the consequences of its all-or-nothing trial strategy, which causes harassment to a defendant, infringes on his interest in finality, and burdens the judicial system with needless litigation.

This case is different. The State's charging decisions were not an "all-or-nothing trial strategy" and, as argued, arose reasonably out of the circumstances. *Gonzales*, 2013-NMSC-016, ¶ 33. The State did not "initially decline" or "elect[]" to forego prosecuting Defendant for the methamphetamine possession charge with the Municipal Court citations, and charged the felony methamphetamine possession charge in magistrate court the same day, resulting in the indictment in District Court. The State is not seeking to go back and change its mind to proceed under a separate charge and theory but only to fully and fairly prosecute Defendant for all the offenses he committed in the respective courts with jurisdiction over the offenses.

Rule 5-203(A) does not apply to this case.

- ii. **Alternatively, Defendant's guilty plea to the petty misdemeanor Municipal Court citations does not bar this subsequent prosecution for felony methamphetamine possession under the limitation to compulsory joinder applied in *Aragon***

Alternatively, a straightforward application of this Court's recent opinion in *Aragon* mandates reversal. *Aragon* stands for the proposition that a defendant's entry of a no contest (or guilty) plea to a lesser offense in one prosecution does not bar the

subsequent prosecution of an additional, greater offense even if the two offenses arose out of one criminal episode. Applying this rule, Defendant's guilty plea to the minor Municipal Court citations does not bar this felony prosecution for methamphetamine possession.

In *Aragon*, 2016-NMCA \_\_\_, ¶ 2, the defendant was stopped for speeding and subsequently arrested during the traffic stop for DUI. The State charged the defendant with DUI and speeding in separate magistrate court cause numbers, but quickly dismissed the DUI charge pending investigation into whether it was the defendant's sixth offense. *Id.* ¶ 3. The defendant pleaded no contest to the speeding charge, and the State subsequently re-charged the DUI in magistrate court in the original DUI cause number, which the defendant moved to dismiss on the basis that the compulsory joinder rule required it be joined with the speeding charge. *Id.* ¶¶ 3-4. Rejecting that the compulsory joinder rule applied, this Court held that the defendant "should not be allowed to bar his later prosecution [for DUI] simply by rushing to plead to a considerably lesser traffic offense." *Id.* ¶ 9.

In formulating its holding, this Court relied on exceptions contained in the model criminal joinder provisions promulgated by the ABA Standards for Criminal Justice Section and the Model Penal Code. *Id.* ¶ 9; see ABA Standards for Criminal Justice Section 13-2.3(a), (d) (1980) ("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 Section 1.11(2) (Am. Law Inst. 2015) (allowing a second prosecution for an offense arising out of the same conduct as a former prosecution where the first prosecution “was procured by the defendant without knowledge of the appropriate prosecuting officer and with the purpose of avoiding the sentence that might otherwise be imposed”); *see also* Wayne R. LaFare, 5 Crim. Proc. § 17.4(c), n. 173 (2015) (collecting court rules and case law adopting exceptions to joinder and allowing a second prosecution for offenses based on the same conduct where the defendant pleads guilty or no contest to one or more offenses in an initial prosecution). Applying this rule, this Court held that Rule 5-203(A) did not bar the State from prosecuting the defendant a second time for DUI, where the defendant previously pleaded no contest to traffic offenses arising out of the same traffic stop in the initial prosecution, and where the State did not join the DUI charges to the traffic offenses. *Id.* ¶ 9. In this Court’s view, applying compulsory joinder would not have been a “rational disposition.” *Aragon*, 2016-NMCA-\_\_, ¶ 9.

*Aragon* is materially indistinguishable from this case. Similar to the separate prosecutions for minor traffic offenses and the greater DUI charge in *Aragon*, Defendant faced separate prosecutions for minor Municipal Court citations and a

greater, felony methamphetamine possession charge in this case in District Court. Applying *Aragon*, Defendant's guilty plea to the Municipal Court citations does not bar this prosecution for methamphetamine possession under the compulsory joinder rule. A contrary holding would not be a "rational disposition" and would violate *Aragon's* holding that a plea to a lesser offense does not bar a subsequent prosecution of an additional greater offense. *Id.* ¶ 9. The District Court erred in applying the compulsory joinder rule and dismissing the methamphetamine possession charge.

**iii. Alternatively, this Court should apply a jurisdictional exception to compulsory joinder where the initial Municipal Court prosecution occurred in a court without jurisdiction over the methamphetamine possession charge in District Court**

This Court should adopt a limitation excusing compulsory joinder where the State initially prosecutes a defendant for an offense(s) in a court lacking jurisdiction over an offense(s) charged in a subsequent prosecution. Referred to as jurisdictional exceptions, such exceptions are prevalent in both the model rules and states that have compulsory joinder rules. The Model Penal Code's joinder rule, upon which Rule 5-203(A) is based, embodies this limitation. *See* Model Penal Code Section 1.11(1) (Am. Law Inst. 2015) (a second prosecution is not barred by failure to join where the first prosecution "was before a court that lacked jurisdiction over the defendant or the offense); *see also Gallegos*, 2007-NMSC-007, ¶ 12 (stating that the "trend toward

mandatory joinder in order to protect a defendant from multiple prosecutions was largely motivated by the American Law Institute's Model Penal Code"). The ABA Standards for Criminal Justice Section 13-2.3(a), (c) (1980) similarly allows a second prosecution arising out of the same conduct as a former prosecution where "the two offenses are not within the jurisdiction of the same court." Jurisdictional exceptions are prevalent in states with compulsory criminal joinder rules. *See* 5 Crim. Proc. § 17.4(c), n. 170 (noting jurisdictions that have jurisdictional exceptions to compulsory joinder rules).

Recognizing a jurisdictional exception would not conflict with either purpose furthered by our compulsory joinder rule. Where the State initially prosecutes a defendant in a court lacking jurisdiction over an offense charged in a second prosecution, neither protection from governmental harassment by successive prosecutions nor finality/judicial economy are implicated due to the State's inability to charge the greater offense in the inferior court. Failure to excuse joinder in such a situation is unreasonable in light of the State's inability to join the subsequent offense in the initial prosecution. Instead, failure 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.

Further supporting a jurisdictional exception to compulsory joinder, New Mexico recognizes a jurisdictional exception in the double jeopardy context. Because of the relationship between compulsory joinder and double jeopardy protections, this Court should not apply the compulsory joinder rule in a manner that is inconsistent with the double jeopardy jurisdictional exception. *See Gonzales*, 2013-NMSC-016, ¶26 (“In terms of barring successive prosecutions, however, compulsory joinder and double jeopardy are closely related - two sides of the same coin.”). If this Court were to decline to recognize a jurisdictional exception to compulsory joinder, because Rule 5-203(A) is broader in scope than double jeopardy based on the rule’s conduct-based focus, the effect would be to eradicate the double jeopardy jurisdictional exception based on application of a court rule designed to further, not contradict, double jeopardy protections.

A very brief history of the evolution of the double jeopardy jurisdictional exception, and where it applies, exemplifies why such an exception is necessary to apply to our compulsory joinder rule. New Mexico first recognized a jurisdictional exception to double jeopardy in *State v. Goodson*, 1950-NMSC-023, 54 N.M. 184, in the context of lesser-included offenses. The Court held that “[a]n acquittal or conviction for a minor offense included in a greater will not bar a prosecution for the greater if the court in which the acquittal or conviction was had was without

jurisdiction to try the accused for the greater offense.” *Id.* ¶ 9. This Court last addressed the double jeopardy jurisdictional exception in *State v. Darkis*, 2000-NMCA-085, ¶¶ 7-11, 129 N.M. 547, noting that New Mexico has “resolutely adhered to this [exception,]” and holding that the double jeopardy jurisdictional exception continues to have vitality in New Mexico.

Five years later, our Supreme Court visited the jurisdictional exception in *State v. Rodriguez*, 2005-NMSC-019, ¶ 17, 138 N.M. 21, holding that it continues to be recognized in New Mexico but adopting limitations to its application. The Court held that the jurisdictional exception does not apply (1) to permit a successive prosecution for a greater offense following an acquittal of a lesser-included offense, (2) where the successive prosecution pertains to a lesser-included offense for which the defendant has been convicted, or (3) where the first prosecution resulted in a trial, not a plea, and where the State deliberately sought the first prosecution on a lesser-included charge in a court of limited jurisdiction.<sup>3</sup> *Id.*

Even if this case presented a double jeopardy, not compulsory joinder, issue, the limitations in *Rodriguez* would not apply to defeat application of the jurisdictional

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<sup>3</sup>In appropriate cases, our courts can apply the jurisdictional exception to compulsory joinder in the same manner with the same limitations that are recognized by *Rodriguez* in double jeopardy context in light of the close relationship between joinder and double jeopardy. *Gonzalez*, 2013-NMSC-016, ¶ 26.

exception. First, the methamphetamine possession charge is not a greater-inclusive offense of any of the Municipal Court citations, and, even if it was, Defendant was not acquitted of any of the Municipal Court citations. *Rodriguez*, 2005-NMSC-019, ¶ 17. Second, the methamphetamine possession charge is not a lesser-included offense of any of the offenses comprising the Municipal Court citations for which Defendant was convicted. *Id.* Further, this is not a case where Defendant faced trial in Municipal Court, as opposed to a plea, nor did the State deliberately seek a separate prosecution on a lesser-included charge in Municipal Court. *Id.* In fact, the circumstances surrounding the separate prosecutions in this case are virtually indistinguishable from *Rodriguez* and fit squarely into the jurisdictional exception even under a narrow reading of the *Rodriguez* holding. *See Rodriguez*, 2005-NMSC-019, ¶ 32 (Chavez, J., specially concurring) (stating that under the majority's holding, the only time the jurisdictional exception could arise "is when a defendant has either been acquitted or convicted in a court of limited jurisdiction and the State later seeks to prosecute the defendant in a court of general jurisdiction on a greater offense arising from the same transaction or occurrence"); *see also id.*, ¶ 33 (stating that "the majority limits the application of the jurisdictional exception to cases in which a defendant pleads guilty to the lesser offense in a court of limited jurisdiction as opposed to actually being tried and found guilty").

New Mexico courts have applied the double jeopardy jurisdictional exception in precisely this context - where a defendant was convicted of minor offenses in a municipal court and subsequently the State prosecuted the defendant for felony offenses from the same criminal episode in district court. *See, e.g., Rodriguez*, 2005-NMSC-019, ¶¶ 21, 28 (applying the jurisdictional exception to allow a felony district court prosecution after the defendant previously pleaded no contest to municipal court charges arising from the same episode); *State v. Padilla*, 1984-NMSC-026, ¶¶ 3-5, 101 N.M. 58 (applying the jurisdictional exception to permit a subsequent prosecution of defendant in district court on a charge of homicide by vehicle after that defendant had entered a plea of nolo contendere to charges of DWI and careless driving in municipal court); *State v. James*, 1979-NMSC-096, ¶ 12, 93 N.M. 605 (“It is clear that the municipal court in this case was acting pursuant to its authority to punish defendant for his traffic infractions, but it is equally clear that it had no authority to prosecute for vehicular homicide. Consequently, under the jurisdictional exception the State’s felony prosecution [in district court] against defendant may proceed.”). The fact that this case would fit squarely into the double jeopardy jurisdictional exception exemplifies why it is appropriate to adopt a similar exception to compulsory joinder, to avoid allowing the compulsory joinder rule to swallow the double jeopardy jurisdictional exception.

Moreover, the salutary benefits supporting a jurisdictional exception are well-established in our double jeopardy jurisprudence in light of New Mexico's multi-tiered judicial system that contains courts of limited jurisdiction over criminal offenses, and these benefits apply with equal weight to compulsory joinder. A jurisdictional exception is necessary to prevent a defendant from abusing the multi-tiered system by pleading to the lesser charges in a court of limited jurisdiction and evading prosecution for the more serious felony offenses committed during the same criminal episode. Our Supreme Court, in holding that a plea to a misdemeanor DWI does not bar a subsequent prosecution for vehicular homicide, has reasoned that

[t]he problem with tests that do not recognize the jurisdictional exception is that they allow defendants to abuse the multi-level judicial system which exists in New Mexico and in other jurisdictions. Without the exception, a defendant can plead guilty to all misdemeanor charges arising from a criminal act in magistrate court and never be in jeopardy of a felony prosecution involving similar evidence in the district court. . . . [R]eason and logic do not support a rule where one guilty of a crime of homicide by vehicle may escape a possible sentence of three years imprisonment by the expedient of pleading guilty to a charge of DWI or reckless driving where the penalty may be as low as a \$25.00 fine and five days in jail.

*State v. Manzanares*, 1983-NMSC-102, ¶ 11, 100 N.M. 621. The *Rodriguez* Court quoted *Manzanares*' reasoning in determining that the jurisdictional exception still has vitality. *Rodriguez*, 2005-NMSC-019, ¶ 11; *see also James*, 1979-NMSC-096, ¶ 7 (holding that a municipal court DWI conviction did not bar a subsequent



prosecution for vehicular homicide because “[t]o hold otherwise would pave the way for defendants to evade vehicular homicide prosecutions by” accepting nominal punishment for DWI in municipal court). As recognized by a law review article favorably cited by this Court, the same reasoning and concerns squarely favor a jurisdictional exception in the specific context of New Mexico’s compulsory joinder rule. *See Schotter*, 44 N.M. L. Rev. at 482 (“The purpose of [a jurisdictional exception to joinder] is to prevent the defendant from escaping a felony prosecution simply because he was already prosecuted for a joinable offense in a different court of limited jurisdiction.”).

Further, jurisdictional exceptions to compulsory joinder rules actually further a key purpose of compulsory joinder: judicial economy/finality. *See Gonzalez*, 2013-NMCA-016, ¶ 26; *see also* Rule 5-101(B) NMRA (stating that the rules of criminal procedure shall be construed “to secure simplicity in procedure, fairness in administration[,] and elimination of unjustifiable expense and delay”). It would further a defendant’s interest in finality as to minor offenses to allow their expeditious disposal in a court of limited jurisdiction instead of requiring the offenses to be joined to a more complex felony prosecution in district court. To hold otherwise would require the State to hold back charges as to the minor offenses if there is any possibility that the defendant’s conduct was also felonious. *See Schotter*, 44 N.M. L.

Rev. at 493 (“Absent some explicit limitation that takes vulnerability into account, prosecutors would be expected to forestall prosecuting misdemeanor offenses that are joinable with their felony counterparts, thereby delaying the administration of justice and imperiling defendant’s right to a speedy trial under the Sixth Amendment.”). In a similar vein, not recognizing a jurisdictional exception would unnecessarily clog our district court dockets with prosecutions that include minor offenses more efficiently disposed of in inferior courts. This case illustrates this point: Defendant pleaded to the Municipal Court citations and received his nominal punishment roughly two weeks after his arrest. It would have thwarted judicial economy in District Court to require the joinder of the state law analogs of these minor offenses to the methamphetamine possession charge.

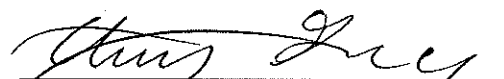
Accordingly, this Court should adopt a limitation excusing joinder where the State initially prosecutes a defendant for an offense(s) in a court of limited jurisdiction lacking jurisdiction over an offense(s) charged in a subsequent prosecution. Applying this rule, because the Municipal Court does not have jurisdiction over felony offenses or violations of state law, our compulsory joinder rule, Rule 5-203(A), should not apply to bar this prosecution in District Court for methamphetamine possession.

## CONCLUSION

For the various reasons argued herein, the State respectfully requests that this Court reverse the District Court's Order Granting Defendant's Motion to Dismiss and remand this case for trial.

Respectfully submitted,


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### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by placing it in the mail on or before the close of business on the next business day following the filing of this brief in the Court of Appeals on October 14, 2016:

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