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.

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT
DONA ANA COUNTY
THE HONORABLE MARCI E. BEYER, PRESIDING

STATE OF NEW MEXICO'S REPLY BRIEF

HECTOR H. BALDERAS
Attorney General

CHARLES J. GUTIERREZ
Assistant Attorney General
201 3rd St. NW, Ste. 300
Albuquerque, New Mexico 87102
(505) 717-3522

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Attorneys for the Plaintiff-Appellant

TABLE OF CONTENTS

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 does not exceed 15 pages. This brief was prepared using Corel WordPerfect 12.

TABLE OF AUTHORITIES

New Mexico Case Law

New Mexico Constitutional Provisions, Statutes, and Court Rules

INTRODUCTION

The State has raised three alternative grounds for reversal. **[BIC 14, 17, 20]** The overarching point as to all three arguments is that a second prosecution should not be barred by Rule 5-203(A) NMRA, a district court procedural rule, where the first prosecution is disposed of by a quick plea to mere citations in a municipal court lacking jurisdiction over the charge in the second prosecution (and vice versa). There was only one district court prosecution and one prosecution for Defendant's violations of state law. Regardless of whether the result in this case is couched as applying one of two "exceptions" to Rule 5-203(A) or whether the circumstances simply do not implicate Rule 5-203(A), the rule cannot reasonable be construed to bar a felony district court prosecution based on a separate prosecution in a municipal court for violations of municipal ordinances disposed of by plea and prosecuted by a city attorney that proceeded concurrently with the district court prosecution.

The State primarily relies on the arguments in its brief in chief but submits the following replies to several specific arguments raised in Defendant's brief.

ARGUMENT

I. This Court's unambiguous holding in *Aragon* mandates reversal

Contrary to Defendant's assertion, the State's is not "seek[ing] to expand" this Court's holding in *State v. Aragon*, 2017-NMCA-005, 387 P.3d 320. **[AB 5;**

addressing BIC 17] The State simply asks this Court to apply the unambiguous holding that " a defendant's entry of a . . . plea to a lesser offense . . . does not bar a subsequent prosecution of an additional, greater offense even if the two offenses occur during one episode." *Id.* ¶ 9.

Defendant argues that *Aragon's* holding - that a plea to a lesser offense in one prosecution does not bar a subsequent prosecution for a greater offense - only applies where the compulsory joinder rule is not otherwise implicated by the conduct comprising the offenses. **[AB 2]** Defendant seeks to limit *Aragon's* holding to situations where the lesser offense pleaded to is "unrelated" or has a "lack of connection" to the greater charge in the second prosecution. **[AB 6, 16]** In other words, Defendant contends that *Aragon*'s unambiguous holding only applies where the offenses are already outside the ambit of the compulsory joinder rule in any instance, ie. where a defendant's conduct comprising each offense is not based on the same or similar character, the same conduct, a series of acts connected together, or part of a single scheme or plan. Rule 5-203(A). This position is contradicted by the *Aragon* opinion.

First, although *Aragon* did indeed hold that the offenses at issue in that case did not implicate the language of the rule, *id.* ¶ 9, Defendant ignores that the holding pertaining to a plea to a lesser offense was "in addition," or an alternative basis. *Id.*

This Court expressly stated that the holding applies even where "the two offenses occur during one episode," ie. where they are otherwise within the ambit of the language of the rule. *Id.* Further, this Court explained in a footnote that this holding was premised on the need to apply reasonable limitations to the breadth of the compulsory joinder, belying any argument that this Court's discussion of pleas to lesser offense only applies to "unrelated" offenses not otherwise covered by the rule. *Id.* n.4.

Defendant's further attempts to distinguish *Aragon* rely on distinctions that are inaccurate under the facts of that case or on facts that were impertinent to the holding. Defendant argues that the prosecutors in *Aragon* "had an excuse for not making a conscious decision" in that case. **[AB 14]** Defendant's argument appears to be that the State in *Aragon* had no time to cure its potential error because the State initiated the second prosecution months after the defendant's plea in the first prosecution and only after conducting a further investigation into the second offense, and the second prosecution therefore did not result from a "conscious [charging] decision[,]" whereas here the State made a "conscious" decision to charge Defendant in two forums the day of his arrest. **[AB 8, 14]**[1] This argument is belied by the facts in *Aragon*. The

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[1]The State acknowledges Defendant's argument that the two officers who filed the respective charges in Municipal Court and district court were "fully aware" of the investigation of the other and that the record does not reveal why the

State in that case initially charged the DWI that was subject of the second prosecution but dismissed it pending an investigation into defendant's number of offenses. *Aragon*, 2017-NMCA-005, ¶ 3. Knowing that it was investigating the DWI, the State then made a "conscious" decision to charge a traffic offense in a different cause number and allow defendant to plea to the traffic offense while it conducted the investigation into the DWI. *Id.* ¶ 4. After the plea, the State then re-charged the DWI in the original cause number. *Id.* The State in *Aragon* clearly made "conscious" decisions to charge and try defendant in separate prosecutions, and the situation was

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charges were filed in two forums. **[AB 10]** First, this argument is a red herring. As noted in arguing a jurisdictional exception, the officers could not have filed all charges in one forum. The Municipal Court citations could not have been initiated in Dona County magistrate court. The methamphetamine possession charge could not have been initiated in Municipal Court. Second, the record does not reveal whether each officer was aware of the charges filed by the other when he initiated the respective charges. It appears the charging decisions resulted from the two parallel investigations: (1) by Officer Smith regarding the municipal code violations that led to Defendant's arrest, and (2) by Agent Flores from the metro narcotics unit who was called to investigate the methamphetamine possession charge at a police substation after its discovery during Defendant's search incident to arrest. **[RP 51-60]** The police report notes that Officer Smith initiated the Municipal Court citations and Agent Flores initiated the methamphetamine possession charge. **[Id.]** Contrary to Defendant's argument, however, the police report does not show that the officers were "fully aware" that the other filed charges in a different forum on the same day and that it was a "conscious decision" to do so. **[AB 4, 10, 13]** The officers appeared to be aware of the parallel investigations, but the report does not show whether each officer was aware of the charges filed by the other at the time the charges were initiated, it merely states that charges were filed in the two forums. **[RP 51-60]**

not "beyond the prosecutions' control." **[AB 16]** Any attempt to distinguish *Aragon* on the basis that *Aragon* reflects circumstances where the charging decisions were excused by the State's lack of awareness or control falls flat. It is not a case that creates an exception based on "the lack of prosecutorial control," and instead, recognizes that our compulsory joinder rule should be read with common sense and reasonableness. **[AB 16]** *See Aragon*, 2017-NMCA-005, n.4 The State in *Aragon* made the conscious decision to charge and allow defendant to plead to the traffic offense knowing that it would re-file the DWI charge.

Defendant also attempts to distinguish *Aragon* on the basis that "the case at issue in *Aragon* did not exist simultaneously in two jurisdictions at the point of decision." **[AB 14]** However, the majority in *Aragon* expressly rejected the position "that compulsory joinder only applies to related offenses that are concurrently pending." 2017-NMCA-005, n. 2. This Court reasoned that "prosecutors would be able to avoid the compulsory joinder rule by making sure only one charge is pending at any given time. That sort of piecemeal approach to prosecuting appears to be what the compulsory joinder rule seeks to prevent." *Id.* Under this reasoning, the fact that Defendant's Municipal Court citations and methamphetamine possession charge were initiated and pending at the same time evinces even less of a reason to apply the compulsory joinder rule because Defendant was not faced with a gauntlet of

successive prosecutions.

Despite Defendant's attempt to escape *Aragon*, it is simply on point. It is not a case that creates an exception based on"the lack of prosecut[orial] control," and instead, recognizes that our compulsory joinder rule should be read to apply with common sense and reasonableness. At best, it is a case containing distinctions without a legally significant difference.

II. This Court should apply a jurisdictional exception to the compulsory joinder rule under the facts of this case

A. Defendant's explanation as to how the State could have joined the Municipal Court citations and methamphetamine possession charge exemplifies why a jurisdictional exception is necessary

Attacking the premise of the State's jurisdictional exception argument, Defendant contends that a district court has original jurisdiction over citations for violating a municipal ordinance under N.M. Const. Art. VI, § 13. **[AB 2-3; addressing BIC 20]** However, it appears to the State that district courts only have appellate jurisdiction over citations for violating a municipal ordinance under N.M. Const. Art. VI, § 27. NMSA 1978, § 35-14-2(A) (2011) ("Each municipal court has jurisdiction over all offenses and complaints under ordinances of the municipality[.]"). Regardless, the State initiated the methamphetamine possession charge initially through a criminal complaint in Dona Ana county magistrate court.

The State unquestionably could not have joined the Municipal Court citations with the methamphetamine possession when it initiated the charge because the Dona Ana magistrate court unquestionably does not have original jurisdiction over Las Cruces municipal ordinances. *See* NMSA 1978. § 35-3-4(B) (1985) ("Magistrates have jurisdiction over all offenses and complaints under ordinances of a municipality . . . if that municipality has adopted an effective ordinance to provide for magistrate jurisdiction over municipal ordinances[.]"). Therefore, the State's premise that the Municipal Court citations could not have been joined with the methamphetamine possession charge (and vice versa) at inception, in the first instance, is correct. It could not have charged the Municipal Court citations with the methamphetamine possession charge when it initiated the charge in magistrate court and could not have charged the felony methamphetamine possession charge in Municipal Court.

Defendant's tortured explanation as to how the State could have joined the Municipal Court citations and the methamphetamine possession charge in this case exemplifies the need for a jurisdictional exception. **[AB 3-4; 6; 11-12]** Defendant posits that the State should have let Defendant plea to the Municipal Court citations, then appealed the Municipal Court judgments to the district court prior to sentencing, where it could then join the appealed Municipal Court citations with the methamphetamine possession charge. **[AB 3-4; 6]** Defendant does not explain what

the State's grounds for appealing a judgment resolving citations through a plea would be, and it is questionable, at best, whether the State can appeal a judgment based on a plea agreement merely to fulfil a joinder requirement. Moreover, such a procedure would result in a gross waste of judicial resources in both courts and a detriment to the parties' interest in finality over the citations by requiring a groundless appeal of minor municipal citations that otherwise were satisfactorily resolved by the parties in Municipal Court. If this procedure is what our compulsory joinder rule requires, the rule is absurd and unreasonable. *See State v. Moya*, 2007-NMSC-027, ¶ 6, 141 N.M. 817 (courts should not construe a provision in an unreasonable or absurd manner).

B. *Gonzales* and *Aragon* do not preclude application of a jurisdictional exception under the facts of this case

Defendant contends that neither *Aragon* or *Gonzales* support a jurisdictional exception to our compulsory joinder rule as advocated by the State. **[AB 16]** However, as Defendant's position on how the State should have joined the respective charges in this case exemplifies, recognizing a jurisdictional exception is the only reasonable reading of the rule, is consistent with this Court's approach in *Aragon*, and consistent with *Gonzales*.

Aragon expressly recognizes that reasonable limitations are necessary to apply to Rule 5-203(A), and that the model rules provide persuasive authority toward that

end. **[BIC 12-13]** Further, as discussed, Defendant's position that a jurisdictional exception is inconsistent with *Aragon* on the basis that *Aragon* only "embraces [exceptions premised on] circumstances beyond the prosecutions' control"or exceptions for unrelated offenses misreads the facts and circumstances in *Aragon*. **[AB 16]** Perhaps the best way of stating the underlying principle embodied in *Aragon* is reasonableness. *See* 2017-NMCA-005, n.4. Defendant's position as to how the State should have joined all the charges in this case by appealing the judgment convicting Defendant of the Municipal Court citations from Defendant's guilty plea to the district court is simply unreasonable and a waste of time and resources. A construction of a compulsory joinder rule requiring joinder of offenses that could not be joined together in one court at inception is an unreasonable reading of the rule.

Further, the State's position in this case is consistent with our Supreme Court's opinion in *Gonzales*. *Gonzales* did not address a case with a jurisdictional nuance or where a defendant pleaded to lesser charges in the first prosecution. It dealt with the classic case of what compulsory joinder rules are geared toward: Where the State sought to escape the consequences of its all-or-nothing strategy in a case where it had opportunities to join additional offenses and consciously declined to do so. *State v. Gonzales*, 2013-NMSC-016, ¶¶ 32-33, 301 P.3d 380. Here, the circumstances dictate a different result. This Court on two occasions has noted that the *Gonzales* opinion

does not require an inflexible approach to the joinder rule. *See State v. Radosevich*, 2016-NMCA-060, ¶22, 376 P.3d 871 (identifying two scenarios where our Supreme Court would be inclined to excuse joinder "[i]n an effort to limit unfairness" to the State); *Aragon*, 2017-NMCA-005 (generally).

CONCLUSION

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,

HECTOR H. BALDERAS
Attorney General

CHARLES J. GUTIERREZ
Assistant Attorney General
Counsel for Plaintiff-Appellant
201 3rd St. NW, Ste. 300
Albuquerque, NM 87102
(505) 717-3522

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 April 17, 2017:

John A. McCall
Law Works L.L.C.
120 B 10th St. NW
Albuquerque, NM 87102

CHARLES J. GUTIERREZ
Assistant Attorney General