



1 (Defendant) on suspicion of violating curfew as the latter was walking down a city  
2 street. The officer ultimately arrested and charged Defendant in Las Cruces Municipal  
3 Court with petty misdemeanor violations of resisting/obstructing arrest, concealing  
4 identity, and possession of drug paraphernalia under the Las Cruces Municipal Code.  
5 Defendant was charged under state law in Doña Ana County Magistrate Court, and  
6 later was indicted in the district court, for possession of a controlled substance  
7 (methamphetamine) (PCS), a felony, and possession of drug paraphernalia, a  
8 misdemeanor. After Defendant pled guilty in Las Cruces Municipal Court to the petty  
9 misdemeanors, he moved to dismiss the state law charges pursuant to the compulsory  
10 joinder rule set forth in Rule 5-203(A) NMRA. The district court granted the motion.  
11 We reverse.

## 12 **FACTUAL AND PROCEDURAL BACKGROUND**

13 {2} At around 1:24 a.m. on August 7, 2015, Officer Alexander Smith observed  
14 Defendant and a young female walking down a Las Cruces street. Believing  
15 Defendant was a minor, Officer Smith stopped Defendant to ask what he was doing  
16 out so early in the morning. While Officer Smith was speaking with Defendant,  
17 Defendant began to move his hand toward his waist band. Because Defendant's  
18 clothes were baggy and he could not see what Defendant was reaching for, Officer  
19 Smith asked if Defendant had any weapons. Defendant responded that he had a knife

1 in his pocket. Officer Smith instructed Defendant to refrain from reaching for the  
2 knife, conducted a pat down of Defendant, and recovered the knife. During the pat  
3 down of Defendant, the female dropped a second knife from her pants. Officer Smith  
4 instructed both Defendant and the female to back away from the knife and recovered  
5 it.

6 {3} Officer Smith then asked Defendant for identifying information. Defendant  
7 provided a name and date of birth that turned out to be false. Defendant then gave  
8 Officer Smith consent to search his person. After Officer Smith removed Defendant's  
9 wallet and found Defendant's ID, it was apparent that Defendant had been concealing  
10 his identity. Defendant attempted to run away, but Officer Smith grabbed Defendant  
11 by his shirt, handcuffed him, and placed him under arrest for concealing his identity  
12 and resisting arrest. Officer Smith finished his search of Defendant and found a black  
13 case containing a glass pipe with tar residue along with three unidentified pills. A  
14 second police officer transported Defendant to a police substation. The second officer  
15 conducted a search of Defendant incident to arrest and discovered two plastic  
16 baggies—one containing an orange plastic strip believed to be Suboxone and the other  
17 containing what appeared to be white, crystal methamphetamine.

18 {4} Pursuant to the Las Cruces Municipal Code of Ordinances, later the same day  
19 charges were filed against Defendant in the Las Cruces Municipal Court for resisting,

1 evading, or obstructing an officer, Las Cruces, N.M., Code of Ordinances, art V, § 19-  
2 296 (1988); concealing identity, *id.*, art I, § 19-4 (1988); and possession of drug  
3 paraphernalia, *id.*, art I, § 19-6 (1988). Each of the three ordinances specify that the  
4 offenses are petty misdemeanors. The same day, a criminal complaint was filed in  
5 Doña Ana County Magistrate Court, charging Defendant under state law with PCS,  
6 a felony. NMSA 1978, § 30-31-23(E) (2011).

7 {5} On August 20, 2015, a district court grand jury indicted Defendant on PCS, as  
8 well as possession of drug paraphernalia in violation of NMSA 1978, Section 30-31-  
9 25.1(A)(2001), a misdemeanor. On the same day, Defendant pled guilty to the three  
10 municipal court charges. On January 26, 2016, Defendant moved pursuant to Rule 5-  
11 203(A) to dismiss the district court charges. Defendant argued that the offenses to  
12 which he had pled guilty in municipal court and those with which he was charged in  
13 district court arose out of the same conduct; therefore, under Rule 5-203(A), the State  
14 was required to join the charges in one complaint, indictment or information. Citing  
15 *State v. Gonzales*, Defendant requested dismissal of the district court charges. 2013-  
16 NMSC-016, ¶ 30, 301 P.3d 380.

17 {6} The State conceded the facial applicability of Rule 5-203(A): “[t]he State  
18 concurs that Defendant’s offenses committed on August 7, 2015, do constitute a series  
19 of acts connected together or constituting parts of a single scheme or plan per Rule 5-

1 203(A), and, as such, would have been joined under normal circumstances.”  
2 (alteration and internal quotation marks omitted). The State nevertheless argued that  
3 the district court should limit application of the remedy announced in *Gonzales* for  
4 violation of the rule—dismissal of the second prosecution—to the circumstances  
5 present in *Gonzales* where the State has “deliberately ‘sav[ed] back’ charges to harass  
6 Defendant or disrupt the finality of the judicial process.” Alternatively, the State urged  
7 the court to recognize two limitations or exceptions to the application of Rule 5-  
8 203(A), either of which it argued would dictate denial of Defendant’s motion. First,  
9 compulsory joinder should be limited to offenses within the jurisdiction of the court.  
10 Second, the rule should not be applicable where the defendant quickly pleads guilty  
11 or no contest to a lesser charge and then uses that conviction as a basis for seeking  
12 dismissal of a greater charge.

13 {7} At an April 1, 2015, hearing the State acknowledged a double jeopardy  
14 infirmity as to the state law drug paraphernalia charge and stipulated to its dismissal.  
15 At the conclusion of the hearing, the district court dismissed the felony charge. The  
16 court ruled that the methamphetamine and drug paraphernalia possession charges and  
17 the three municipal court charges were subject to compulsory joinder pursuant to Rule  
18 5-203(A). The court declined to narrowly interpret or recognize an exception to the  
19 mandatory rule articulated in *Gonzales*, and therefore concluded that the municipal

1 court prosecution acted as a bar to the felony prosecution. Following entry of an order  
2 granting Defendant’s motion and dismissing the felony charge, the State has appealed.

3 **LEGAL BACKGROUND**

4 {8} Rule 5-203(A) states:

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

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

10 (2) are based on the same conduct or on a series of acts either  
11 connected together or constituting parts of a single scheme or plan.  
12

13 {9} In *Gonzales*, the defendant had driven while intoxicated; the vehicle she was  
14 driving collided with another vehicle, killing a child. 2013-NMSC-016, ¶ 1. The state  
15 charged defendant alternatively with intentional and negligent child abuse but,  
16 “[c]uriously,” not vehicular homicide. *Id.* ¶ 2. At trial, the defendant “was convicted  
17 of negligent child abuse.” This Court subsequently reversed the conviction for lack  
18 of substantial evidence. *Id.* ¶ 3. We further held that principles of double jeopardy  
19 barred the state from prosecuting the defendant for vehicular homicide. *See id.* ¶ 12.  
20 On certiorari, our Supreme Court affirmed the determination that the State was barred  
21 from bringing a new charge of vehicular homicide. *See id.* ¶ 3. However, noting that  
22 double jeopardy and compulsory joinder are “two sides of the same coin,” the Court

1 so ruled on Rule 5-203(A) as opposed to double jeopardy grounds. *Gonzales*, 2013-  
2 NMSC-016, ¶ 26.

3 {10} The Court stated that

4 [t]he purpose of a compulsory joinder statute, viewed as a whole, is  
5 twofold: (1) to protect a defendant from the governmental harassment of  
6 being subjected to successive trials for offenses stemming from the same  
7 criminal episode; and (2) to ensure finality without unduly burdening the  
8 judicial process by repetitious litigation.

9 *Id.* (alteration, internal quotation marks, and citation omitted). The Court emphasized  
10 that, “[t]he rule is mandatory; it is not a discretionary or permissive rule; it demands  
11 that the [s]tate join certain charges.” *Id.* ¶ 25 (internal quotation marks and citation  
12 omitted).

13 {11} Applying Rule 5-203(A) and its underlying principles, the Court concluded that  
14 the state initially should have charged the defendant with both vehicular homicide and  
15 child abuse. *See Gonzales*, 2013-NMSC-016, ¶ 25. “Joinder is designed to protect a  
16 defendant’s double[]jeopardy interests where the state initially declines to prosecute  
17 him for the present offense, electing to proceed on different charges stemming from  
18 the same criminal episode.” *Id.* ¶ 26 (alteration, internal quotation marks, and citation  
19 omitted). The Court emphasized that the state made deliberate, knowing decisions at  
20 three junctures in the first proceeding to *not* join vehicular homicide to the pending  
21 child abuse charge. *See id.* ¶ 32. Instead, the state elected to pursue an “all-or-nothing

1 trial strategy.” *Id.* ¶ 33. Particularly in light of these considerations, the Court  
2 determined that the proper remedy for the state’s failure to join the vehicular homicide  
3 charge in the first proceeding was to bar the state from bringing it in a second  
4 proceeding. *Id.* ¶¶ 30, 34.

5 {12} In *State v. Aragon*, 2017-NMCA-005, ¶ 2, 387 P.3d 320, this Court affirmed  
6 the denial of a defendant’s Rule 5-203(A) challenge on two independent grounds. In  
7 that case, the defendant was stopped by the police “for driving 111 miles per hour in  
8 a 55 mile-per-hour zone.” *Aragon*, 2017-NMCA-005, ¶ 2. During the traffic stop, the  
9 police officer determined that the defendant was impaired and arrested him for DWI.  
10 *Id.* The defendant initially was charged in magistrate court with felony DWI, but that  
11 charge was quickly dismissed when the prosecution decided it needed to investigate  
12 the number of the defendant’s prior DWI convictions. *Id.* ¶ 3. The defendant was  
13 separately charged two days later in magistrate court for speeding; the defendant pled  
14 no contest to that charge and paid the fine. *See id.* Three months later, after completing  
15 its investigation, the state charged the defendant with per se (0.08) DWI, a  
16 misdemeanor. *Id.* ¶¶ 4, 9. Pursuant to Rule 5-203(A), the defendant moved to dismiss  
17 the DWI charge, but the magistrate court denied the motion. *See Aragon*, 2017-  
18 NMCA-005, ¶ 4. Following conviction, the defendant appealed to the district court,  
19 which also rejected the defendant’s compulsory joinder argument, and then to this



1 Court. *Id.* ¶¶ 5-6.

2 {13} After noting the purpose of Rule 5-203(A) as articulated in *Gonzales*, and based  
3 in part on the fact that “the speeding offense played no part in the . . . 0.08 charge and  
4 conviction[,]” the Court held that the two offenses were “not of the same or similar  
5 character, nor [were] the offenses based on the same conduct.” *Aragon*, 2017-NMCA-  
6 005, ¶ 9. Consequently, Rule 5-203(A) did not apply and thus joinder was not  
7 required. *Aragon*, 2017-NMCA-005, ¶¶ 1, 9.

8 {14} However, the Court reached the same conclusion on the basis of a second,  
9 independent ground: “*In addition*, to hold that joinder here was compulsory would,  
10 in our view, not be a rational disposition.” *Id.* ¶ 9 (emphasis added). The Court cited  
11 the American Bar Association Standards for Criminal Justice Section 13-2.3(d) (2d  
12 ed. 1980), and the Model Penal Code Section 1.11(2) (Am. Law Inst. 2015), for the  
13 proposition that “a defendant’s entry of a no contest plea to a lesser offense such as  
14 the traffic citation here does not bar a subsequent prosecution of an additional, greater  
15 offense even if the two offenses occur during one episode.” *Aragon*, 2017-NMCA-  
16 005, ¶ 9. On that basis, we concluded that, “[a] defendant should not be allowed to bar  
17 his later prosecution simply by rushing to plead to a considerably lesser traffic  
18 offense.” *Id.* We therefore affirmed, on both of these grounds, the district court’s  
19 denial of the defendant’s Rule 5-203(A) motion to dismiss. *Aragon*, 2017-NMCA-

1 005, ¶ 10.

2 **DISCUSSION**

3 {15} On appeal, the State sets forth two arguments: First, it argues that the *Gonzales*  
4 remedy for violation of Rule 5-203 should not apply where a defendant quickly pleads  
5 to lesser charges in a court of limited jurisdiction, because in that situation the  
6 purposes underlying compulsory joinder are not present. Second, and alternatively,  
7 the State urges that we should recognize two exceptions to the scope of Rule 5-  
8 203(A): (1) the lesser–greater charge limitation as discussed in *Aragon*, where a  
9 defendant may not avoid prosecution on greater (here, felony) charges in district court  
10 by quickly pleading to lesser (here, petty misdemeanor) charges; and (2) the  
11 jurisdictional exception, where the initial prosecution occurs in a court (here,  
12 municipal) without jurisdiction to try the subsequently brought charges (here, felony).

13 {16} Defendant’s response is three-fold: First, he contends the *Aragon* exception to  
14 Rule 5-203(A) is limited to its facts, that is, where the greater charge and the lesser  
15 charge do not arise out of the same occurrence. Defendant effectively posits that  
16 *Aragon*’s alternative holding is dicta. Second, Defendant argues that the *Aragon*  
17 exception is limited to situations in which the agent of the State (here, the Las Cruces  
18 police officer) who initiates the lesser criminal charges is not aware of or otherwise  
19 has no prosecutorial control over filing the greater charges, and thus can be excused

1 for not bringing the charges in one proceeding. Third, Defendant maintains that the  
2 municipal code violations to which he pled could have been brought in the district  
3 court, and for that reason the State’s proposed jurisdictional exception is not  
4 applicable.

5 {17} “In determining the proper application of procedural rules, our review is de  
6 novo.” *State v. Miller*, 2008-NMCA-048, ¶ 11, 143 N.M. 777, 182 P.3d 158.

7 **A. The Lesser-Greater Charge Exception to Rule 5-203(A) Recognized In**  
8 ***Aragon* is Applicable to the Methamphetamine Charge Brought Against**  
9 **Defendant**

10 {18} This Court’s recognition in *Aragon* of a lesser-greater charge exception to the  
11 applicability of Rule 5-203(A) mandates reversal of the district court’s dismissal of  
12 the PCS charge against Defendant.

13 {19} First, we observe that where a court bases a decision on two independent  
14 grounds, both constitute the court’s holding and neither are mere dicta. *See, e.g.,*  
15 *Chase v. Lujan*, 1944-NMSC-027, ¶ 36, 48 N.M. 261, 149 P.2d 1003 (holding that  
16 where a court rules on the basis of two grounds, although it might have rested its  
17 decision on one ground only, the second ground is not dictum); *see also Martinez v.*  
18 *C. R. Davis Contracting Co.*, 1964-NMSC-008, ¶ 27, 73 N.M. 474, 389 P.2d 597  
19 (Noble and Carmody, JJ., dissenting) (holding that when more than one question is  
20 raised and argued, even though one point might have disposed of the entire case on

1 the merits, the determination of the other question or questions is not dicta). Because  
2 neither of the alternative holdings in *Aragon* is considered dicta, both constitute  
3 precedent that we ordinarily will follow. *See Padilla v. State Farm Mut. Auto. Ins.*  
4 *Co.*, 2003-NMSC-011, ¶ 7, 133 N.M. 661, 68 P.3d 901 (holding that “[t]he principle  
5 of stare decisis dictates adherence to precedent . . . and promotes the evenhanded,  
6 predictable, and consistent development of legal principles, fosters reliance on judicial  
7 decisions, and contributes to the actual and perceived integrity of the judicial process”  
8 (internal quotation marks and citation omitted)).

9 {20} Second, *Aragon* holds in the alternative that, where a defendant pleads guilty  
10 or no contest to a lesser offense, the State will not be barred by Rule 5-203(A) in  
11 bringing a second prosecution for an additional, greater offense even if the two  
12 offenses occur during one episode. Here, Defendant pled guilty in municipal court to  
13 three petty misdemeanors under the Las Cruces Municipal Code: resisting/obstructing  
14 arrest, concealing identity, and possession of drug paraphernalia. While the record  
15 does not reflect the sentence or fine that the municipal court imposed on Defendant,  
16 the offenses are punishable by imprisonment of not more than ninety days or a fine  
17 of not more than \$500 or both. *See* NMSA 1978, § 3-17-1(C)(1) (1993); *State v. Luna*,  
18 1980-NMSC-009, ¶ 11, 93 N.M. 773, 606 P.2d 183, *abrogated on other grounds by*  
19 *Horton v. California*, 496 U.S. 128 (1990). He then moved for dismissal of his PCS

1 charge, a felony punishable by up to eighteen months confinement, that was pending  
2 in district court. NMSA 1978 § 31-18-15(A)(13) (2016). Applying the exception  
3 recognized in *Aragon*, Defendant’s petty misdemeanor pleas do not bar prosecution  
4 of the PCS charge. Therefore, and irrespective of any possible jurisdictional obstacle  
5 to joint prosecution, the district court erred in dismissing the PCS charge based on the  
6 State’s failure to join the charge with the petty misdemeanor charges.

7 {21} In response, Defendant argues that the lesser-greater charge exception to  
8 compulsory joinder recognized in *Aragon* should not apply to situations in which the  
9 State’s charging agents are aware of the greater charge at the time they file the lesser  
10 charges. *Aragon* is not so limited. In *Aragon*, the State initially charged the defendant  
11 with DWI but then dismissed it temporarily to investigate the number of his prior  
12 DWI convictions. 2017-NMCA-005, ¶3. Pending that investigation, the State charged  
13 the defendant with, and allowed him to plead guilty to, the speeding offense. After the  
14 plea, the State then recharged the DWI. *See id.* It therefore cannot be said that  
15 *Aragon*’s holding is limited to circumstances where the charging decisions are  
16 excused by the State’s lack of awareness of the greater charge.

17 {22} Third, while *Gonzales* describes Rule 5-203(A)’s joinder requirement as  
18 “not . . . discretionary[,]” we do not believe the decision compels a different result.  
19 2013-NMSC-016, ¶25. *Gonzales* arose out of an entirely different procedural posture.

1 There, the state deliberately chose not to join the vehicular homicide charge with the  
2 child abuse charge in the first proceeding against the defendant, and instead sought to  
3 pursue the vehicular homicide charge only after trying and losing on the child abuse  
4 charge. *See id.* ¶ 12. Thus, that case fell squarely within the scenario against which  
5 compulsory joinder is intended to protect: “Joinder is designed to protect [against] a  
6 defendant’s double-jeopardy interests where the state initially declines to prosecute  
7 him for the present offense, electing to proceed on different charges stemming from  
8 the same criminal episode.” *Id.* ¶ 26 (alteration, internal quotation marks, and citation  
9 omitted). Given that posture, our Supreme Court determined that “[a] bar against a  
10 subsequent prosecution on charges that should have been joined under Rule 5-203(A)  
11 is the only effective remedy to enforce the mandatory nature of the rule.” *Gonzales*,  
12 2013-NMSC-016, ¶ 30.

13 {23} Here, in contrast, the State did not wait to bring the felony PCS charge against  
14 Defendant until after the petty misdemeanor charges were resolved, and instead acted  
15 immediately following his arrest in charging Defendant in magistrate court (indicting  
16 him two weeks later in district court). Further, Defendant’s decision to plead guilty  
17 to the petty misdemeanor charges (but not to the pending felony charge) raises a  
18 question if not an inference that he did so deliberately to set the stage for dismissal of  
19 the more serious charge. *Cf. State v. Rodriguez*, 2005-NMSC-019, ¶ 28, 138 N.M. 21,

1 116 P.3d 92 (stating that “the logistical difficulties inherent in our multi-tiered  
2 judiciary should [not] allow defendants to evade felony charges by pleading to minor  
3 charges in municipal court immediately following arrest”); *State v. Goodson*, 1950-  
4 NMSC-023, ¶ 18, 54 N.M. 184, 217 P.2d 262 (applying the jurisdiction exception to  
5 double jeopardy prohibition against successive prosecutions in context of prosecutions  
6 for greater and lesser included offenses). “Reason and logic do not support a rule  
7 whereby one guilty of the crime of rape may escape a possible sentence of [ninety-  
8 nine] years in the penitentiary by the expedient of pleading guilty to a charge of  
9 assault and battery in a justice court where the penalty may be as low as a fine of  
10 \$5.00.” *Id.*

11 {24} Rule 5-203(A) was first implicated on August 7, 2015, the day of Defendant’s  
12 arrest, when the felony PCS charge was filed in magistrate court. Defendant did not  
13 raise the issue at any time prior to August 20, 2015, when he pled guilty in magistrate  
14 court. Indeed, he did not file his motion to dismiss until January 26, 2016. Defendant  
15 could have invoked Rule 5-203(A) prior to August 20, 2015, to demand that the State  
16 prosecute all of the pending charges in one proceeding.<sup>1</sup> We do not assume that our

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15 <sup>1</sup>We assume, for purposes of discussion, the absence of any jurisdictional  
16 obstacles to prosecuting the municipal code offenses in magistrate or district court.  
17 *But see* NMSA 1978, Section 35-3-4(B) (1985) (explaining that the magistrate court  
18 has jurisdiction over offenses under municipal ordinance if municipality has adopted  
19 authorizing ordinance).

1 Supreme Court would intend that the extreme remedy of dismissal applied in the much  
2 different procedural context of *Gonzales* should be applied here *following* Defendant’s  
3 municipal court guilty pleas. In other words, Defendant should not be permitted to  
4 profit in that manner from his delay—whether deliberate or not—in asserting his  
5 rights under the rule.

6 **B. Remaining Issues**

7 {25} Because we reverse on the basis of the lesser-greater charge exception to Rule  
8 5-203(A) as recognized in *Aragon*, we decline as unnecessary to the resolution of this  
9 appeal the State’s invitation to recognize a jurisdiction exception to compulsory  
10 joinder.

11 **CONCLUSION**

12 {26} We reverse the dismissal of the indictment against Defendant and remand to the  
13 district court for further proceedings in accordance with this opinion.

14 {27} **IT IS SO ORDERED.**

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**HENRY M. BOHNHOFF, Judge**

17 **WE CONCUR:**

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19 **M. MONICA ZAMORA , Judge**



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2 **JULIE J. VARGAS, Judge**