IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Respondent,

v.

S-1-SC-38937
A-1-CA-38812

RICKY ANTHONY AYON,

Defendant-Petitioner.

ON WRIT OF CERTIORARI
TO THE NEW MEXICO COURT OF APPEALS

STATE OF NEW MEXICO'S ANSWER BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii
SUMMARY OF FACTS & PROCEEDINGS.....1
ARGUMENT.....9

I. The Court of Appeals correctly concluded that Rule 5-302 does not authorize a district court at a preliminary hearing to determine whether evidence was illegally obtained 10

A. The plain language of Rule 5-302 contains no authorization for district courts to decide whether evidence was illegally obtained at a preliminary hearing.....11

B. Consideration of other procedural rules in pari materia demonstrates that challenges to the legality of evidence are not contemplated as part of preliminary hearings.....15

C. Defendant's proposed reading of Rule 5-302 would lead to an unworkable result.....17

II. The Court of Appeals correctly relied on this Court's decision in *Martinez*, which confirms that like grand jury proceedings, judicial review of the lawfulness of evidence at preliminary hearings is not authorized absent statutory authority.....23

A. Grand juries and preliminary hearings serve the same purpose, and the full panoply of trial rights—which includes suppression of unlawfully gathered evidence—does not apply at either proceeding. 26

B. None of the technical differences between grand juries and preliminary hearings justify permitting judicial review of the evidence at one but not at the other 34

III. Because Deputy Limon stopped Defendant in order to execute a valid arrest warrant, the district court erred by dismissing the case for a lack of reasonable suspicion.....36

CONCLUSION.....40

TABLE OF AUTHORITIES

New Mexico Cases

Allen v. LeMaster, 2012-NMSC-001, 267 P.3d 806 10
Buzzbee v. Donnelly, 1981-NMSC-097, 96 N.M. 692 ..... 19, 26, 33
Elane Photography, LLC v. Willock, 2013-NMSC-040, 309 P.3d 53 21
Ferrell v. Allstate Ins. Co., 2008-NMSC-042, 144 N.M. 405 21
In re Jade G., 2001-NMCA-058, 130 N.M. 687 25
Kipnis v. Jusbasche, 2017-NMSC-006, 388 P.3d 654 11
McCormick v. Francoeur, 1983-NMSC-077, 100 N.M. 560 28
Rodriguez ex rel. Rodarte v. Sanchez, 2019-NMCA-065, 451 P.3d 105 ..... 10, 11
State ex rel. Hanagan v. Armijo, 1963-NMSC-057, 72 N.M. 50 15
State ex rel. Whitehead v. Vescovi-Dial, 1997-NMCA-126, 124 N.M. 375 ... passim
State v. Armijo, 2016-NMSC-021, 375 P.3d 415 25
State v. Ayon, 2021-NMCA-___ (No. A-1-CA-38812, July 27, 2021) ..... passim
State v. Brown, 1996-NMSC-073, 122 N.M. 724 12
State v. Burk, 1971-NMCA-018, 82 N.M. 466 18
State v. Eder, 1985-NMCA-076, 103 N.M. 211 ..... 31, 36
State v. Edwards, 2019-NMCA-070, 452 P.3d 413 ..... 38, 39
State v. Fierro, 2014-NMCA-004, 315 P.3d 319 31
State v. Garcia, 1968-NMSC-119, 79 N.M. 367 ..... 12, 13
State v. Gutierrez, 1993-NMSC-062, 116 N.M. 431 ..... 30, 34
State v. Hamilton, 2012-NMCA-115, 290 P.3d 271 37
State v. Hardy, 2012-NMCA-005, 268 P.3d 1278 33
State v. Heinsen, 2005-NMSC-035, 138 N.M. 441 22
State v. Lopez, 2013-NMSC-047, 314 P.3d 236 ..... 18, 27
State v. Lucero, 2001–NMSC–024, 130 N.M. 676 32
State v. Marshall, 2004-NMCA-104, 136 N.M. 240 17
State v. Martinez, 2018-NMSC-031, 420 P.3d 568 ..... 5, 16, 24, 31
State v. Massengill, 1983-NMCA-001, 99 N.M. 283 ..... 15, 17
State v. Masters, 1982-NMCA-166, 99 N.M. 58 14
State v. Miller, 2008-NMCA-048, 143 N.M. 048 ..... 10, 15
State v. Peterson, 2014-NMCA-008, 315 P.3d 354 ..... 37, 38
State v. Ryon, 2005-NMSC-005, 137 N.M. 174 37
State v. Salazar, 1970-NMCA-056, 81 N.M. 512 35
State v. Santillanes, 2001-NMSC-018, 130 N.M. 464 ..... 6, 16
State v. Vallejos, 1979-NMCA-089, 93 N.M. 387 14
State v. White, 2010- NMCA-043, 148 N.M. 214 14
State v. Widmer, 2021-NMCA-003, 482 P.3d 1254 ..... 39, 40

State v. Wyrostek, 1988-NMCA-107, 108 N.M. 140 18
Walker v. Walton, 2003-NMSC-014, 133 N.M. 766 15
Williams v. Sanders, 1969-NMSC-124, 80 N.M. 619 27

Federal Cases

Brinegar v. United States, 338 U.S. 160 (1949) 14
Gerstein v. Pugh, 420 U.S. 103 (1975) 29
Giordenello v. United States, 357 U.S. 480 (1958) 16, 20, 32
United States v. Blue, 384 U.S. 251 (1966) 31
United States v. Donisio, 410 U.S. 1 (1973) 19
United States v. McKinnon, 721 F.2d 19 (7th Cir. 1983) 32
United States v. Riviecco, 919 F.2d 812 (2nd Cir. 1990) 32
Utah v. Strief, 579 U.S. 232 (2016) 38

Other Cases

Baker v. State, 450 So.2d 470 (Ala. Crim. App. 1984) 32
Blevins v. Tihonovich, 728 P.2d 732 (Colo. 1986) 30
State v. Randolph, 933 A.2d 1158 (Conn. 2007) 30

Constitutional Provisions

N.M. Const. Art. II, § 14 ..... 10, 26, 31

Statutes

N.M.S.A. § 41-3-12 (1953) 12

Rules

Fed. R. Crim. P. 5.1 32
Rule 5-212 NMRA 16, 17, 36
Rule 5-302 NMRA ..... passim
Rule 11-404 NMRA 22

Citations to the Record

Citations to the Record Proper are in the form **[RP (page #)]**. References to the digitally recorded audio Compact Disc of the proceedings below are cited, at first occurrence, by the date of recording, and the time of the passage as indicated when played on "For the Record" software (e.g., May 9, 2007, counter 9:23:21 to 9:23:37 is cited as **[5-9-2007 CD, 9:23:21-37]**). Subsequent occurrences, where applicable, will utilize a short form citation that includes "*Id.*" followed by the time of the passage cited (e.g., **[*Id.* 9:24:45-9:25:15]**).

Statement of Compliance Pursuant to Rule 12-318 NMRA

This Brief in Chief complies with the 11,000 word limit set forth in section 12-318(F)(3). I certify that the body of this Brief in Chief, written in 14 point Times New Roman contains: **9,586** words. I relied on the word count provided by Microsoft Word, Microsoft Office Standard.

NATURE OF THE CASE

The State appealed the district court's order granting Defendant-Petitioner Ricky Ayon's oral motion, made during his preliminary hearing, to dismiss the charge against him for an alleged lack of reasonable suspicion to support the detention leading to his arrest. The Court of Appeals reversed, holding the district court has no authority—either by statute or otherwise—to determine whether evidence was illegally obtained at a preliminary hearing, where the only issue before the court is whether probable cause exists to believe the defendant committed the charged offense. This Court issued a writ of certiorari to review the Court of Appeals' reasoning.

SUMMARY OF FACTS & PROCEEDINGS

In July of 2018, Deputy Andrew Limon of the Bernalillo County Sheriff's Department arrested Defendant on an outstanding warrant and conducted a search incident to arrest, which uncovered a small amount of heroin in Defendant's pocket. **[1-9-2020 CD, 11:17:00-21:22]** A criminal information was filed in the district court charging Defendant with one count of possession of a controlled substance (heroin) in violation of NMSA 1978, § 30- 31-23.1 **[RP 1-4]**

At a preliminary hearing, Deputy Limon testified that in the early morning hours on the date of the arrest, he was on regular patrol when he saw Defendant walking with his bicycle and carrying some groceries. **[1-9- 2020 CD, 11:17:53-**

11:25:42, 11:29:40-30:00] Defendant was not doing anything illegal, but Deputy Limon recognized him from the multiple encounters beginning in 2016, and knew Defendant had an active warrant for his arrest. **[*Id.* 11:17:53-11:25:42, 11:30:01-30:43]** Specifically, the deputy knew Defendant frequented a problem residence to which deputies had been dispatched repeatedly, and he had previously checked through the "NMCourts" website whether Defendant or others associated with the residence had outstanding warrants. **[*Id.* 11:30:08-42]**

Deputy Limon called Defendant by name, and Defendant approached the deputy's vehicle to speak with him. Because Defendant had run from Deputy Limon in the past, and because there was a warrant out for his arrest, the deputy placed Defendant in handcuffs to prevent him from fleeing. **[*Id.* 11:25:55-26:23]** Deputy Limon then confirmed through NCIC that the warrant he knew of was indeed valid and active, searched Defendant incident to arrest and discovered heroin in his pocket, and read him his *Miranda* rights. **[*Id.* 11:26:24-28:57]** He explained that initially Defendant was detained in that he was not free to leave, but he was not under arrest until after the warrant was confirmed. **[*Id.*]**

Following questioning by the attorneys, the district court questioned Deputy Limon. The deputy again clarified that he was aware of the outstanding warrant for Defendant's arrest because he knew Defendant to be associated with a problem residence in the South Valley, and "just in case" he was called to that residence he

checked whether Defendant and other subjects had any outstanding warrants using the NMCourts system. **[*Id.* 11:32:46- 33:36]**

The Deputy also confirmed that when he encountered Defendant he called him over and told him there was a warrant for his arrest, that Defendant came to him freely, and that he was then placed in handcuffs. **[*Id.* 11:33:37-34:08]** Defense counsel asked how recently the deputy had checked for the active warrant, and the deputy responded that it was "within the week" of the arrest and that therefore he could not be positive when he initially encountered Defendant whether the warrant was still active. **[*Id.* 11:34:17-52]**

The State asked the court to find probable cause that Defendant was in possession of heroin. **[*Id.* 11:34:53-35:03]** Defense counsel argued that Deputy Limon had no reasonable suspicion to approach the Defendant because he was not engaged in illegal activity, and was placed in handcuffs and detained before the warrant was confirmed when the officer could have confirmed the warrant prior to approaching him. On that basis, counsel argued that probable cause to bind Defendant over for trial should not be found. **[*Id.* 11:35:04-35:56]** The prosecutor responded that an argument as to reasonable suspicion was moot at that point and should be raised after the court decided whether or not to bind the case over for trial. **[*Id.* 11:35:58-36:08]**

The court declined to bind the case over because although the court "underst[ood] the officer's concern" when he encountered someone he knew by name who had an active warrant, Defendant was "[not] under arrest for anything" at the time of the search because he had "complied with" the Deputy's directions and the Deputy had made "a lot of assumptions." **[*Id.* 11:36:09-42]**

The State clarified that Defendant was detained in handcuffs for purposes of the investigation, but was not searched incident to arrested until after Deputy Limon confirmed the arrest warrant was active. **[*Id.* 11:36:46-37:00]** The district court responded that there was "no reason to detain [Defendant] to begin with," because "he wasn't doing illegal activity" such that there was no reasonable suspicion for the deputy to stop him. **[*Id.* 11:37:00-27]**

The court filed an Order Dismissing Without Prejudice ("Order") the same day, dismissing the case because: "The Court found there was no reasonable suspicion to detain the defendant and therefore the search was illegal." **[RP 8]**

The State timely appealed the district court's Order. In its brief in chief to the Court of Appeals, the State argued the district court was without the authority to decide the legality of evidence, and to ultimately dismiss the case based on its ruling, at the preliminary hearing stage. Specifically, the State asserted that Rule 5-302 NMRA sets out the limited purpose of preliminary hearings—deciding whether probable cause exists to bind a defendant over for trial—and does not contemplate

decisions on motions to suppress, which are accounted for in other rules of procedure unrelated to preliminary hearings. **[COA BIC 6-17]** The State also relied on *State v. Martinez*, 2018-NMSC-031, 420 P.3d 568, where this Court held that at an initial proceeding to decide whether the State may proceed with criminal charges—in that instance, grand jury proceedings—"trial inadmissibility or improprieties in the procurement of evidence that was considered" are not grounds for the dismissal of charges absent explicit statutory authority. **[*Id.*]** The State further argued that even if the district court *was* within its authority, its finding that reasonable suspicion was lacking was incorrect. **[COA BIC 17-22]**

The Court of Appeals reversed the district court in a published opinion. *State v. Ayon*, 2021-NMCA-___ (No. A-1-CA-38812, July 27, 2021). The Court acknowledged that this case presents an issue of first impression: "whether, under Rule 5-302 NMRA ... the district court 1s authorized to exclude illegally obtained evidence." *Id.* ¶ 6. The Court applied New Mexico's well-settled canons of construction for statutes and procedural rules, seeking to "determine the underlying intent" of this Court. *Id.* ¶7. First looking to the plain language of Rule 5-302(D) stating that at a preliminary hearing the district court must find either (1) there is no probable cause that defendant has committed the charged offense and dismiss the charge without prejudice; or (2) there is probable cause to believe the defendant committed the offense and bind the defendant over for trial, the Court concluded the

rule "contains no authorization for the district court to consider whether evidence was illegally obtained" at this stage of the proceedings. *Id.* ¶ 9. As such, the

Turning to a review of other New Mexico procedural rules in *pari materia* with Rule 5-302, the Court of Appeals noted that Rule 5-212, specifically governing motions to suppress evidence, contains no provision allowing such motions to be heard at preliminary hearings. *Id.* ¶ 12. Citing to *State v. Santillanes*, 2001-NMSC-018, 130 N.M. 464, where this Court explained that "[a] more specific statute will prevail over the more general statute," the Court concluded "the fact that a separate rule exists that specifically allows a defendant to move for suppression of illegally obtained evidence is consistent with the conclusion that the district court's authority at a preliminary hearing does not include the authority to rule on the illegality of evidence presented." *Id.*

Looking to *Martinez*, 2018-NMSC-031, the Court of Appeals emphasized the fact that this Court "has consistently honored a strong policy of resisting dismissal of otherwise valid grand jury indictments based on disputes about the source or trial admissibility of the evidence considered by the grand jury." *Id.* ¶ 10. Given "the common purpose between grand jury proceedings and preliminary hearings"—determining whether probable cause exists to proceed with felony charges—the Court found *Martinez* persuasive. In particular, the Court reasoned that because no statutory authority permits a district court to review the legality of evidence at a

preliminary hearing, to hold that Rule 5-302 somehow silently gives that permission would be inconsistent with *Martinez*. *Id.* The Court expressed concern that implementing "[d]ifferent rules regarding the district court's authority to review illegally obtained evidence based solely on the choice" of either a grand jury proceeding or a preliminary hearing would "encourage favoring one proceeding over another, undercutting efficient judicial administration and causing confusion." *Id.*

Rejecting Defendant's argument that because a preliminary hearing "resembles a bench trial" it follows that the district court should be permitted to consider the legality of evidence, the Court of Appeals noted the obvious and telling inconsistency between preliminary hearings and hearings on motions to suppress: the rules of evidence generally do not apply at a motion to suppress, but do apply at a preliminary hearing. *Id.* ¶ 13. The Court concluded that to apply different evidentiary rules within the same proceeding "could cause confusion and create an unreasonable risk of error." *Id.*

The Court also rejected Defendant's argument that Rule 5-302 should be construed to encompass the authority to determine whether evidence was illegally obtained because "a district court's reliance upon inadmissible evidence undercuts the screening function of a preliminary hearing." *Id.* ¶ 14. The primary purpose of a preliminary hearing, the Court noted, is "to provide an independent evaluation of whether the State has met its burden of demonstrating probable cause," rather than

consideration of the nature of the evidence against the defendant. *Id.* A finding of probable cause based on unlawful evidence will not necessarily "force a defendant to trial on incompetent evidence" because, again, a motion to suppress can be filed prior to trial. *Id.* (internal citation and quotation marks omitted).

Finally, the Court noted that construing a district court's authority at a preliminary hearing to include assessing the legality of evidence would encourage mini-trials on evidentiary issues without regard for judicial efficiency, and would also ignore the fact that preliminary hearings are held on "an accelerated timeline" such that both sides could be deprived of adequate time to investigate and prepare for exclusionary rule objections. *Id.* ¶¶ 15-16. The Court reversed the district court's ruling and remanded the matter. *Id.* The Court of Appeals did not reach the State's argument the district court erred because there was in fact valid reasonable suspicion to detain Defendant.

Defendant petitioned this Court for a writ of certiorari, which this Court issued on January 11, 2022. Defendant filed his brief in chief on March 1, 2022, and the New Mexico Criminal Defense Lawyers Association ("NMCDLA") filed an amicus brief on March 10, 2022. Pursuant to this Court's February 1, 2022 Order, in conjunction with Rule 12-308(B) NMRA, this answer brief is timely if filed on or before April 4, 2022. The State sets forth additional factual and procedural history as necessary throughout the argument section that follows.

ARGUMENT

The Court of Appeals correctly concluded that at Defendant's preliminary hearing, the district court was not authorized to decide whether evidence was unlawfully obtained. The only issue the district court should have addressed at that stage—per the limited authority afforded by Rule 5-302 NMRA—was whether the State established probable cause to believe Defendant possessed a controlled substance. The Court of Appeals was right that a plain reading of Rule 5-302 coupled with a reading of other rules in *pari materia* confirms that preliminary hearings serve a narrow purpose not including consideration of motions to suppress, which are explicitly and fully accounted for by a separate rule. Any other reading would lead to an unworkable result that would cause delays and inconsistencies.

The Court was also correct that in light of the shared purpose of preliminary hearings and grand jury proceedings, *Martinez* guides the analysis and confirms that, just like grand jury proceedings, preliminary hearings do not include decisions regarding the legality of evidence. Both New Mexico and federal law confirm that where evidence is gathered unlawfully, the remedy is suppression of the evidence *at trial*—not at a preliminary hearing or grand jury proceeding. Even if the district court was authorized to rule on suppression issues during the preliminary hearing, its analysis was incorrect; reasonable suspicion supported the detention, and reversal of the district court's Order is therefore still required.

I. The Court of Appeals correctly concluded that Rule 5-302 does not authorize a district court at a preliminary hearing to determine whether evidence was illegally obtained.

The New Mexico Constitution requires that before a person can be held to answer on a criminal information, a preliminary examination shall be held. N.M. Const. art. II, § 14. Per Rule 5-302(A)(l) and (D)(2) NMRA, a defendant is entitled to a preliminary hearing early on in a criminal case at which time the district court must determine whether there is probable cause to believe the defendant has committed a felony offense. If so, the court must bind the defendant over for trial, and if not, it must dismiss the charges without prejudice. *Id.* at (D)(2).

As the Court of Appeals recognized, this appeal presents an issue of first impression: "whether, under Rule 5-302 NMRA, which governs preliminary hearings, the district court is authorized to exclude illegally obtained evidence." *Ayon*, 2021-NMCA-____, ¶ 6. The proper interpretation of Rules of Criminal Procedure is a question of law that this Court reviews de novo. *Allen v. LeMaster*, 2012-NMSC-001, ¶ 11, 267 P.3d 806. When a court interprets a procedural rule, it seeks "to determine the underlying intent" of this Court in enacting the rule. *State v. Miller*, 2008-NMCA-048, ¶ 11, 143 N.M. 048. A reviewing court "appl[ies] the same canons of construction as applied to statute and, therefore, interpret[s] the rules in accordance with their plain meaning." *Rodriguez ex rel. Rodarte v. Sanchez*, 2019-NMCA-065, ¶ 12, 451 P.3d 105 (internal quotation marks and citation omitted).

A. The plain language of Rule 5-302 contains no authorization for district courts to decide whether evidence was illegally obtained at a preliminary hearing.

The first canon of construction is an examination of the rule's plain language. *Id.* If the rule is unambiguous, a reviewing court "give[s] effect to its language and refrain[s] from further interpretation." *Id.* This Court also looks to the context in which the rule was promulgated, "including the history of the rule and the object and purpose[.]" *Kipnis v. Jusbasche*, 2017-NMSC-006, ¶ 11, 388 P.3d 654 (alteration, internal quotation marks, and citation omitted).

Examining the plain language of Rule 5-302, the Court of Appeals correctly noted the rule does not expressly authorize district courts to address or decide the legality of the evidence presented. *Ayon*, 2021-NMCA-___, ¶ 9. As mentioned above, the Rule provides in pertinent part that at the close of a preliminary examination, the district court shall either "find[] that there is no probable cause to believe that the defendant has committed a felony offense[and] dismiss without prejudice," or "find[] that there is probable cause to believe that the defendant committed an offense[and] bind the defendant over for trial." Rule 5-302(D) NMRA. A district court's determination of probable cause is the sole legal finding contemplated in the Rule, and dismissal of charges is referenced only upon a finding of no probable cause or upon the prosecution's failure to comply with time limits. *Id.* at (A)(3), (D)(2), Committee Commentary.

The Rule does indicate with specificity when the district court can exclude or decline to consider certain evidence at a preliminary hearing: "The Rules of Evidence apply, subject to any specific exceptions in the Rules of Criminal Procedure for the District Courts." *Id.* at (B)(5). Deciding whether evidence was unconstitutionally obtained, however, is clearly not set out as part of the district court's duties or authority, and nothing in the rules of evidence accounts for the suppression of such evidence. The fact that the type of evidence district courts may consider at a preliminary hearing is explicitly included in the rule, but does not come along with the permission to render decisions on the lawfulness of evidence, is illuminating. *See State v. Brown*, 1996-NMSC-073, ¶ 26, 122 N.M. 724 (noting: "While the legislature could have easily written a specific exclusion rule into the change in the prior law, it did not."). The rule also lacks any provision for defendants to raise motions to suppress.

Overall, the plain language of the Rule demonstrates that the preliminary hearing serves a narrow purpose—a determination of probable cause or lack thereof to bind a defendant over for trial—which does not include decisions on the legality of evidence. This reading enjoys ample support in New Mexico jurisprudence. In *State v. Garcia*, 1968-NMSC-119, 79 N.M. 367, this Court interpreted the language of Section 41-3-12 NMSA (1953) which at the time governed preliminary hearings. Like the current Rule 5-302, that section required that "at the preliminary hearing

both the fact of an offense having been committed and probable cause that it was committed by the accused must be established." *Id.* ¶ 5. Rejecting the defendant's claim that the evidence presented at his preliminary hearing identifying the marijuana he was accused of possessing was insufficient under article II, section 14 of the New Mexico constitution, this Court explained:

> A preliminary hearing is not a trial of the person charged with the view of determining his guilt or innocence. The preliminary hearing and the trial are separate and distinct. The preliminary hearing is to determine whether a crime has been committed, the connection the accused has with it thereby informing him of the nature and character of the crime charged, to perpetuate testimony, and to establish bail, if the offense is bailable.
> …
>
> We do not believe that, in determining the facts essential to comply with [Section 41-3-12], it is necessary the evidence be such as would sustain a verdict of guilty upon a trial. The test at a preliminary hearing is not whether guilt is established beyond a reasonable doubt, but whether there is that degree of evidence to bring within reasonable probabilities the fact that a crime was committed by the accused.

Id. ¶¶ 5-6 (internal citations omitted). Thus, this Court has long recognized that the inquiry at a preliminary hearing is narrow and does not include consideration of evidentiary issues apart from whether probable cause exists to believe the defendant committed the charged offense.

Our Court of Appeals has similarly observed that "[t]he primary purpose of the preliminary examination is to provide an independent evaluation of whether the state has met its burden of demonstrating probable cause." *State ex rel. Whitehead*

v. Vescovi-Dial, 1997-NMCA-126, ¶ 5, 124 N.M. 375. "The preliminary hearing is not a trial on the merits with a view of determining defendant's guilt or innocence ... Only a reasonable probability that a crime was committed by the accused need be shown." *State v. Masters*, 1982-NMCA-166, ¶ 5, 99 N.M. 58 (internal citations omitted); *see also Brinegar v. United States*, 338 U.S. 160, 173 (1949) ("There is a large difference between ... things to be proved, as well as between the tribunals which determine [criminal guilt as opposed to probable cause], and therefore a like difference in the quanta and modes of proof required to establish them.").

In light of the above principles, "at a preliminary hearing the *only* issue is whether there exists probable cause to believe defendant committed the offense." *Masters*, 1982-NMCA-166, ¶ 5 (emphasis added); *see also State v. White*, 2010-NMCA-043, ¶ 11, 148 N.M. 214 ("At the preliminary hearing, the state is required to establish, to the satisfaction of the examining judge, two components: (1) that a crime has been committed; and (2) probable cause exists to believe that the person charged committed it."); *State v. Vallejos*, 1979-NMCA-089, ¶ 6, 93 N.M. 387 (rejecting the argument that at a preliminary hearing the State was "required to prove the corpus delicti of murder by showing the fact of death and that death resulted from the criminal agency of another and not from natural causes, accident or suicide[,]" because the State's only required showing is that a crime has been committed and there is probable cause to believe that the person charged committed it).

Of the few other fixed functions of a preliminary hearing, none contemplate adjudication of substantive evidentiary issues. *See Whitehead*, 1997- NMCA-126, ¶ 7 (noting "our courts have acknowledged that preservation of testimony is a legitimate use of a preliminary examination" and citing *State v. Massengill*, 1983-NMCA-001, ¶ 4, 99 N.M. 283 ("One purpose of the preliminary hearing in New Mexico is to preserve testimony.")). The limited procedural breadth of a preliminary hearing compared to subsequent pretrial proceedings is further highlighted by the fact that a presiding judge—regardless of whether he or she presides over both the preliminary hearing and trial in the same case—"is acting in two entirely different capacities" during each, such that "[i]t is as though there are two distinct courts." *State ex rel. Hanagan v. Armijo*, 1963-NMSC-057, ¶ 5, 72 N.M. 50. In sum, the Court of Appeals was correct that the plain language of Rule 5-302 does not expressly authorize preliminary hearing judges to determine whether evidence was illegally obtained. *Ayon*, 2021-NMCA-____, ¶¶ 6-9.

B. Consideration of other procedural rules in pari materia demonstrates that challenges to the legality of evidence are not contemplated as part of preliminary hearings.

As recognized by the Court of Appeals, a court's review of the plain language of a rule in order to discern this Court's intent is "guided by [the court's] review of rules in pari materia." *Miller*, 2008-NMCA-048, ¶ 11 (internal quotation marks and citation omitted); *accord Walker v. Walton*, 2003-NMSC-014, ¶ 11, 133 N.M. 766.

The Court noted that motions to suppress illegally obtained evidence are specifically provided for in Rule 5-212 NMRA. *Ayon*, 2021-NMCA-___, ¶ 12. That rule does not provide for motions to suppress to be filed at a preliminary hearing or make any mention of preliminary hearings at all. *See generally* Rule 5-212 NMRA. Rather, the rule states that motions to suppress shall be filed no less than sixty days prior to trial. *Id.* at (C).

This Court has found that the existence of Rule 5-212 and its provision that motions to suppress shall be filed no less than sixty days prior to trial supports the notion that suppression issues are reserved for pretrial proceedings that occur *after* an initial finding of probable cause. *Martinez*, 2018-NMSC-031, ¶ 31; *see also Giordenello v. United States*, 357 U.S. 480, 484 (1958) (holding that preliminary hearing judge had no authority to decide whether evidence was gathered in violation of the Fourth Amendment because it was an issue for the trial court, as "specifically recognized by Rule 41(e) of the Criminal Rules, which provides that a defendant aggrieved by an unlawful search and seizure may 'move the district court to suppress for use as evidence anything so obtained on the ground that' the arrest warrant was defective on any of several grounds." (alterations omitted)). Under the general/specific rule of statutory construction, "the more specific statute will prevail over the more general statute absent a clear expression of legislative intent to the contrary." *Santillanes*, 2001-NMSC-018, ¶ 7. Rule 5-212 also demonstrates that the

suppression of illegally obtained evidence is contemplated primarily in the context of evidence subject to introduction at trial, as further discussed later in this brief.

The Committee Commentary to Rule 5-212 sets motions to suppress even further apart, procedurally speaking, from preliminary hearings. It provides in part: "At a hearing on a motion to suppress, the Rules of Evidence, except for the rules on privileges, do not apply." This is in direct contradiction to the fact that the rules of evidence *do* apply during preliminary hearings, again demonstrating the inconsistent nature of the two types of proceedings. Rule 5-302(B)(5) NMRA; *Massengill*, 1983-NMCA-001, ¶ 7. A preliminary hearing and a suppression hearing are plainly treated by this Court's rules as separate and distinct events, and the district court here should not have exceeded the bounds of Rule 5-302 NMRA by conflating the two.

C. Defendant's proposed reading of Rule 5-302 would lead to an unworkable result.

The Court of Appeals was correct that reading Rule 5-302 as authorizing determinations on the lawfulness of evidence at a preliminary hearing would produce unworkable results. *Ayon*, 2021-NMCA-___, ¶¶ 11-13. Such a reading would create complications not only for the district courts, but for criminal defendants and prosecutors. When interpreting the language of a rule to give effect to its plain meaning, an appellate court takes care to avoid absurd or unreasonable results. *State v. Marshall*, 2004-NMCA-104, ¶ 7, 136 N.M. 240; *State v. Wyrostek*,

1988-NMCA-107, ¶ 8, 108 N.M. 140 ("a court will not give a statute a literal reading when to do so leads to absurd or unreasonable results, or requires useless acts").

The Court of Appeals' first concern with Defendant's proposed reading of the Rule was the creation of "inconsistencies" between grand jury proceedings and preliminary hearings. *Ayon*, 2021-NMCA-___, ¶ 11. As further discussed below, no judicial review of the lawfulness of evidence leading to an indictment is permitted absent statutory authorization, per *Martinez*. Thus, to permit such a review at one type of proceeding to determine probable cause to proceed with a prosecution, but not at the other, would create "different rules regarding the district court's authority" at each proceeding. *Id.* This would undoubtedly "encourage favoring one proceeding over another, undercutting efficient judicial administration and causing confusion." *Id. See generally State v. Burk*, 1971-NMCA-018, ¶ 6, 82 N.M. 466 (disfavoring a defendant's attempts to "force the prosecutor" to choose one type of probable cause proceeding over the other). If the State favored either proceeding, a real and unjustifiable risk of creating backlogs and delays would arise.

Second, if delay did not result from the tendency to favor one procedure over another, permitting "mini-trials" to decide the lawfulness of evidence at preliminary hearings would certainly cause disruption and delay. This Court has already flatly rejected the idea of permitting mini-trials at preliminary hearings. *See State v. Lopez*, 2013-NMSC-047, ¶ 20, 314 P.3d 236 (rejecting the application of Sixth Amendment

confrontation rights at preliminary hearings and noting another court's holding that "[t]he preliminary hearing is not intended to be a mini-trial."). Similarly, "[c]ourts do not want exclusionary rules, suppression hearings, evidentiary rules or mini-trials to disrupt or delay the grand jury's function." *Buzzbee v. Donnelly*, 1981-NMSC-097, ¶ 53, 96 N.M. 692; *see also United States v. Donisio*, 410 U.S. 1, 17 (1973) ("Any holding that would saddle a grand jury with minitrials and preliminary showings would assuredly impede its investigation and frustrate the public's interest in the fair and expeditious administration of the criminal laws."). The preliminary hearing's purpose is limited. The expansion of these hearings into mini-trials would clog the courts, resulting in the exact kind of intolerable complications and delays this Court and the United States Supreme Court have refused to permit.

Third, the preliminary hearing is a premature juncture at which to assess the lawfulness of law enforcement's conduct. At a preliminary hearing, discovery has often not been gathered or disclosed in full, as a case is still in its early stages. *See* Rule 5-302(D) NMRA; Committee Commentary (limiting a defendant's right to discovery to only what is in the prosecution's possession, and explaining the defendant does not have a right to discover evidence that has not been prepared and is not ready for use at the preliminary examination); *Ayon*, 2021-NMCA-___, ¶ 11 (noting that preliminary hearings are held on an accelerated timeline, which could leave inadequate time for the parties to investigate and prepare for motions to

exclude evidence). As the United States Supreme Court recognized in *Giordenello*, Fourth Amendment claims should not be raised at a preliminary hearing because "[a] claim of this nature may involve legal issues of subtlety and complexity" which cannot be fully developed "so soon after arrest." 357 U.S. at 483.

For defendants, premature motions to suppress could lead to potentially binding rulings early in a case permitting admission of evidence at trial where, had the motion been raised after full discovery as contemplated by Rule 5-212, it may have been granted based on additional information. The converse is true for the prosecution—some of the information needed to adequately defend against a motion to suppress will not have been borne out in discovery that early, and baseless motions to suppress may be granted on a partial view of the facts, leading to premature dismissals. *See id.*

Defendant's claim that the impact of erroneous suppression rulings at the preliminary hearing stage "will generally be low" **[BIC 24]** is belied by the record in this case—as explained below, the district court made an incorrect ruling and dismissed the case based on defense's oral motion, which the State had no real opportunity to prepare for. Had the State been afforded an opportunity to respond to a written suppression motion via the procedures laid out in Rule 5-212, the State likely would have pointed the court to the precedent discussed later in this brief

holding that no reasonable suspicion is necessary when an officer approaches an individual to execute a valid arrest warrant.

This case is a clear example of the problems associated with reading Rule 5-302 as permitting decisions on the lawfulness of evidence. All of Defendant's proposed "solutions"—the prosecution appealing the rulings, presenting additional evidence at a second preliminary hearing, or taking the case before the grand jury—would promote multiple, piecemeal proceedings where only one hearing is truly required per Rule 5-212 NMRA. *See Elane Photography, LLC v. Willock*, 2013-NMSC-040, ¶ 70, 309 P.3d 53 (avoiding a procedure that would "create a substantial risk of error and cause a waste of judicial resources, resulting in a disservice to the parties and the public."); *c.f. Ferrell v. Allstate Ins. Co.*, 2008-NMSC-042, ¶ 63, 144 N.M. 405 ("Allowing a defendant to wait to raise a forum-selection clause defense until after certification … is inefficient and may result in a waste of judicial resources. The district court would have spent unnecessary time and effort analyzing the laws of each implicated state[.]").

In particular, this case illustrates that premature decisions on the lawfulness of evidence—made at a stage of the proceedings where neither side has had time to prepare or discover all the facts—lead to appeals that would likely be unnecessary had the decision been made after a full suppression hearing later in the proceedings, when the available arguments and evidence would lead to a different ruling. *See*

State v. Heinsen, 2005-NMSC-035, ¶ 14, 138 N.M. 441 (generally disfavoring "piecemeal appeals or appeals of issues that may be moot after further proceedings in the lower court.").

Fourth, as the Court of Appeals noted, Defendant's urged reading of Rule 5-302 would require that the rules of evidence both do and do not apply at a preliminary hearing. *Ayon*, 2021-NMCA-___, ¶ 13. As previously explained, the rules of evidence apply at preliminary hearings. Rule 5-302(B)(5) NMRA. Conversely, they generally do not apply at a hearing on a motion to suppress allegedly illegal evidence. Rule 11-404 NMRA. Asking a district court to consider certain evidence in deciding the motion to suppress, and then to disregard that same evidence in reaching its probable cause determination, is impractical and illogical.

Finally, the Court of Appeals correctly determined that its reading of Rule 5-302 would not "undercut[] the screening function of the preliminary hearing" as Defendant claims. *Ayon*, 2012-NMCA-___, ¶ 14. As explained above, the function of a preliminary hearing is not to decide the admissibility of evidence, but rather to independently evaluate whether the State has established probable cause to continue with a prosecution. *Whitehead*, 1997-NMCA-126, ¶ 5. A separate and distinct mechanism exists in Rule 5-212 for seeking decisions on the lawfulness of evidence, and suppression of that evidence at trial if it was indeed unlawfully obtained. Thus, as the Court of Appeals observed, "allowing the defense to raise the suppression

issue before the [district court] is viewed as unnecessary to achieving effective screening" at a preliminary hearing. *Ayon*, 2021-NMCA-___, ¶ 14 (alteration in original)(quoting 4 Wayne R. LaFave, et al., Criminal Procedure § 14.4(b) (4th ed. 2020)).

Not one of New Mexico's canons of statutory interpretation lends itself to Defendant's proposed reading of Rule 5-302 NMRA, which would lead to substantially unworkable results. This Court should therefore affirm the Court of Appeals' decision.

II. The Court of Appeals correctly relied on this Court's decision in *Martinez*, which confirms that like grand jury proceedings, judicial review of the lawfulness of evidence at preliminary hearings is not authorized absent statutory authority.

Defendant objects to the Court of Appeals' reliance on *Martinez* because in that case, this Court addressed the use of inadmissible evidence at a grand jury proceeding, which Defendant claims is "structurally and legally different" from a preliminary hearing such that the same law should not apply. **[BIC 8-16]** Defendant is incorrect. Grand jury proceedings and preliminary hearings share a common purpose and an identical function, and this Court has suggested that because of that limited purpose, the same general rights apply at each and do not include the "full panoply" of trial rights. *Martinez* therefore controls and was correctly applied by the Court of Appeals.

In *Martinez*, this Court reviewed a then-recent amendment to Rule 5-302A NMRA, governing grand jury proceedings, which provided: "the grand jury proceedings, the indictment, and the lawfulness, competency, and relevancy of the evidence shall be reviewable by the district court." 2018-NMSC-031, ¶ 7. The district court below quashed an indictment after it was revealed that the prosecution presented unlawful evidence to the grand jury. *Id.* ¶ 6. This Court reviewed the history of New Mexico's grand jury statutes and found the Court has "consistently honored a strong policy of resisting dismissal of otherwise valid grand jury indictments based on disputes about the source or trial admissibility of the evidence considered by the grand jury." *Id.* ¶ 15.

The *Martinez* Court noted in part that "the grand jury was not misled about Defendant's guilt, whether or not it was implicitly or explicitly misled about the potential suppressibility of the [unlawfully obtained] evidence." *Id.* ¶ 31. The Court added that "suppression is a remedy for court determination in pretrial proceedings [per Rule 5-212] and is not one the grand jury is either equipped or called upon to decide," and cautioned that the judicial review of grand jury evidence would be "unworkable in practice." *Id.* ¶¶ 31, 37.

Ultimately, this Court ruled that "absent statutory authorization, a court may not overturn an otherwise lawful grand jury indictment because of trial inadmissibility or improprieties in the procurement of evidence that was considered

by the grand jury," and directed that Rule 5-302A be revised to omit the language authorizing judicial review of grand jury evidence. *Id.* ¶¶ 33-38; *see also In re Jade G.*, 2001-NMCA-058, ¶¶ 12-20, 130 N.M. 687 (holding children's court erred by dismissing the State's delinquency petition based on a finding of unconstitutional police conduct because New Mexico's Children's Code does not afford the court the authority to do so, and "the legislature would have clearly provided for such a significant and extreme remedy … had intended the children's court to possess such power[,]"); *and see generally State v. Armijo*, 2016-NMSC-021, ¶ 19, 375 P.3d 415 ("A court's jurisdiction derives from a statute or constitutional provision.").

Here, the Court of Appeals found *Martinez* persuasive "[g]iven the common purpose between grand jury proceedings and preliminary hearings," and concluded that "no specific statutory authority[] authorizes a district court to review the legality of evidence used to support probable cause at a preliminary hearing." *Ayon*, 2021-NMCA-___, ¶ 11. Defendant's attempt to undercut this holding by contrasting technical aspects of grand jury proceedings and preliminary hearings fails because despite technical differences, grand juries and preliminary hearings serve an identical purpose that does not take into consideration the trial admissibility of evidence. As the Court of Appeals suggested, it therefore makes no sense to create such a substantial inconsistency between them.

A. Grand juries and preliminary hearings serve the same purpose, and the full panoply of trial rights—which includes suppression of unlawfully gathered evidence—does not apply at either proceeding.

The New Mexico Constitution draws no substantive distinction between grand juries and preliminary hearings which might impact the applicability of the exclusionary rule at either one. Instead, it sets out grand jury proceedings and preliminary hearings in the same section of the same article, as two alternative means by which a person may be charged with capital or felony offenses. N.M. Const. art. II, § 14. The primary purpose of each proceeding is identical: to determine whether probable cause exists to permit prosecution of an individual. *See Whitehead*, 1997-NMCA-126, ¶ 5 (stating the primary purpose of preliminary hearings is to evaluate whether the state has met its burden of demonstrating probable cause); *Buzzbee,* 1981-NMSC-097, ¶ 16 (stating the responsibilities of the grand jury include determination of probable cause). In furtherance of that purpose, this Court has recognized that grand juries have wide latitude to make a probable cause determination "unrestrained by the technical, procedural and evidentiary rules governing the conduct of criminal trials." *Id.* ¶ 16.

Defendant's suggestion that preliminary hearings should be treated differently than grand jury proceedings because they are essentially bench trials where a defendant enjoys the full gamut of "trial-like rights"—which he argues should include the right to exclusion of unlawfully gathered evidence **[BIC 10]**—is flawed.

Similarly, the NMCDLA's claim that the exclusionary rule applies at a preliminary hearings because it "has a constitutional dimension" in that it is rooted in Article II, Section 10 of the New Mexico Constitution, fails.

What Defendant and the NMCDLA fail to acknowledge is that it is well-settled in New Mexico that not all constitutional trial rights apply at a preliminary hearing. As this Court has observed:

> There is nothing in the structure or text of the New Mexico Constitution that would make it any more reasonable to apply the full panoply of constitutional trial rights at preliminary examinations conducted to determine probable cause to prosecute than it would be to do so at grand jury determinations of probable cause to prosecute or pretrial determinations of probable cause for a search or arrest.

Lopez, 2013-NMSC-047, ¶ 19; *see also Williams v. Sanders*, 1969-NMSC-124, ¶¶ 6-7, 80 N.M. 619 (rejecting the notion that "a preliminary hearing is an essential prerequisite to a guilt-determining process which comports with fundamental fairness and due process," and reasoning that rather, complying with those constitutional requirements is "accomplished by the trial to a jury.").

In *Lopez*, this Court held the right to confront witnesses afforded by Article II, Section 14 of the New Mexico Constitution "is a trial right that does not apply to probable cause determinations in preliminary examinations." *Id.* Specifically, this Court reasoned that concluding full confrontation rights must be afforded in all stages of a criminal proceeding would be:

> [A]n an unworkable precedent that would require not only personal attendance by laboratory analysts as in this case but more broadly all other features of trial-type confrontation in warrant procedures, grand jury determinations, bail hearings, motions hearings, extradition hearings, sentencings, and every other pretrial and posttrial event, without regard for our rules of evidence or procedure, creating substantial and unnecessary logistical difficulties throughout the course of a criminal case.

Id. ¶ 24. The same is true of permitting mini-trials on motions to suppress at preliminary hearings: as explained above, an unworkable precedent would arise.

In addition to the right to confrontation, this Court has acknowledged that other procedural rights available pretrial are not necessary at a preliminary hearing to guarantee a fair hearing. *See e.g., McCormick v. Francoeur*, 1983-NMSC-077, ¶ 9, 100 N.M. 560 ("An accused suffers neither irreparable harm nor denial of a right to a fair and impartial preliminary examination of charges against him, by the preclusion of a Rule 510 contention [that the identity of an informant be revealed] in a preliminary hearing. He can present his Rule 510 contention in the court that has trial jurisdiction."). A defendant's right to discovery is also limited to what is available and in the prosecution's immediate possession at the preliminary hearing stage, differing from his right to full discovery in advance of trial. Committee Commentary to Rule 5-302 NMRA (also stating, "[f]or example, the defendant does not have a right to discover a laboratory report that has not been prepared and is not ready for use at the preliminary examination.").

In *Whitehead*, the Court of Appeals discussed the constitutional nature of preliminary hearings generally, acknowledging that because the right to a preliminary hearing is afforded by the New Mexico Constitution, "[t]he preliminary examination is more than just a rule of procedure available to either side in a dispute." 1997-NMCA-126, ¶ 12. Nevertheless, in the court's discussion of the rights that stand "shoulder to shoulder" with the right to a preliminary hearing, the rights afforded by art. II, § 10 are not mentioned. *Id.* Instead, the court listed "the most basic guarantees of individual liberty against the power of the state," like "the right of self-government (art. II, § 3), the right to life, liberty and property (art. II, § 4), the right of habeas corpus (art. II, § 7), the right to bear arms (art. II, § 6), the freedom of elections (art. II, § 8)" and "the freedoms of speech, press, and religion (art. II, §§ 11, 17)." *Id.*

The United States Supreme Court has similarly held that while the Fourth Amendment requires "a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest," the United States Constitution does not require trial formalities for such a determination. *Gerstein v. Pugh*, 420 U.S. 103, 113-14, 120 (1975). The NMCDLA attempts to distinguish New Mexico's exclusionary rule from the federal exclusionary rule on the grounds that the federal rule is "merely evidentiary" whereas New Mexico's rule is more deeply rooted in constitutional protections. **[Amicus brief, 9-11]** However, this Court observed in

State v. Gutierrez, 1993-NMSC-062, ¶ 45, 116 N.M. 431, "[l]ike its federal counterpart, Article II, Section 10 simply states a right—the right to be free from unreasonable searches and seizures."

Other states also agree that not all constitutional trial rights must be afforded at a preliminary hearing. *State v. Randolph*, 933 A.2d 1158, 1191 n. 15 (Conn. 2007) (determining that the majority of the states conclude that the right of confrontation is a trial right that does not apply to preliminary examinations); *Blevins v. Tihonovich*, 728 P.2d 732, 734 (Colo.1986) ("The preliminary hearing is not intended to be a mini-trial ..., and a defendant has no constitutional right to an unrestricted confrontation of all witnesses.").

Additionally, contrary to Defendant's claims, it appears clear in New Mexico law that suppression of unlawfully gathered evidence is a trial right not necessarily implicated during early stages of criminal proceedings. As our Court of Appeals has aptly reasoned:

> The grand jury in this case heard illegal evidence which was subject to suppression at trial. When inadmissible evidence is presented to the grand jury, the proper remedy is suppression *at trial*. As stated in *United States v. Blue*, [384 U.S. 251 (1966)] the barring of prosecution altogether in such a circumstance, 'might advance marginally some of the ends served by exclusionary rules, but it would also increase to an intolerable degree interference with the public interest in having the guilty brought to book.' The appropriate remedy is ordering the illegally obtained evidence suppressed, rather than barring the prosecution altogether.

State v. Eder, 1985-NMCA-076, ¶ 9, 103 N.M. 211 (emphasis added). Defendant argues that because the right to a preliminary hearing is a constitutional right in New Mexico, it follows that the preliminary hearing should "comply with other constitutional protections" including the suppression of unlawful evidence. **[BIC 21]** This argument fails in light of *Eder*. Grand jury hearings are constitutionally afforded as an alternative to preliminary hearings, and as *Eder* demonstrates, suppression of unlawfully gathered evidence at those hearings is not available—suppression is not contemplated as a remedy until trial. *Id.*; N.M. Const. art. II, § 14.

This Court in *Martinez* cited the above passage from *Eder* favorably, and explicitly acknowledged that the remedy for presentation of illegal evidence in a grand jury hearing "is suppression *at trial*," rather than dismissal. 2018-NMSC-031, ¶ 29; *accord State v. Fierro*, 2014-NMCA-004, ¶¶ 33-34, 315 P.3d 319 (holding that where a grand jury in one court returned an indictment based on an inadmissible confession that was suppressed by another court, suppression of the illegal confession at trial in the second court would be "constitutionally proper relief" rather than quashing the indictment, which was "unnecessary"); *see also United States v. Blue*, 384 U.S. 251, 255 (1966) (emphasis added) (reasoning that the remedy for the government's use of illegally obtained evidence prior to trial is suppression at trial and not dismissal or prevention of the prosecution).

Eder, *Martinez*, and *Fierro* show that where the purpose of a proceeding is to determine whether probable cause exists to prosecute an individual, the remedy for the presentation of unlawfully gathered evidence is suppression of that evidence *at trial*. This again demonstrates that rulings on the legality of evidence have no place in preliminary hearings. Federal courts approach the issue similarly. The federal rule of criminal procedure on the matter actually states that at a federal preliminary hearing, "the defendant may cross-examine adverse witnesses and may introduce evidence but may not object to evidence on the ground that it was unlawfully acquired." Fed. R. Crim. P. 5.1(c); *See also State v. Lucero*, 2001–NMSC–024, ¶ 8, 130 N.M. 676 (indicating that federal authority is persuasive in interpreting our state rules of criminal procedure when they are essentially identical to the federal rules). This reflects the general federal view that unlawful evidence implicates trial rights. *Giordenello*, 357 U.S. at 484; *United States v. McKinnon*, 721 F.2d 19 (7th Cir. 1983) (holding presentation of unlawful evidence to the grand jury "does not require dismissal of the indictment … the proper remedy … is suppression at trial."); *United States v. Rivieccio*, 919 F.2d 812, 816 (2d Cir.1990) (collecting cases demonstrating that the proper remedy for an indictment based on evidence obtained in violation of the privilege against self-incrimination is not dismissal of the indictment, but suppression at trial of the defendant's compelled testimony); *see also Baker v. State*, 450 So. 2d 470, 472 (Ala. Crim. App. 1984) (relying on *Giordenello* to hold that at

a juvenile hearing "analogous to a preliminary hearing," the remedy for admission of unlawful evidence is suppression at trial rather than dismissal—"[t]he fact that evidence was illegally obtained simply does not require the dismissal of the charges against a defendant" at that stage.).

The above precedents also demonstrate that whether evidence is competent to establish probable cause to prosecute and whether it would be admissible in a trial are two separate considerations, and dismissal of a case at the preliminary probable cause stage on the grounds that evidence would be inadmissible at trial is neither authorized nor appropriate. *See e.g., Buzzbee*, 1981-NMSC-097, ¶ 21 ("Perjured testimony [presented to the grand jury] does not call for dismissal where the testimony before the grand jury, excluding the allegedly perjured testimony, showed sufficient competent evidence to prove probable cause."). From this, it is clear that a preliminary hearing judge in New Mexico may consider evidence that might not be admissible at trial. *See e.g., State v. Hardy*, 2012-NMCA-005, ¶ 11, 268 P.3d 1278 (holding that "at this preliminary hearing, a judge can use inadmissible evidence to determine the trustworthiness of a confession" and stating: "Hearings on admissibility reflect a concern that only reliable evidence is introduced *at trial*" (emphasis added)).

Both Defendant and the NMCDLA rely on this *Gutierrez*, 1993-NMSC-014, for the proposition that evidence obtained in violation of art. II, § 10 of the New

Mexico constitution must be excluded at all stages of a criminal proceeding including the preliminary hearing. **[BIC 19; Amicus brief 11]** While it is true that the *Gutierrez* Court reasoned that "the New Mexico constitutional prohibition against unreasonable searches and seizures requires that [a court] deny the state the use of evidence obtained in violation of Article II, Section 10 in a criminal proceeding," the court was not addressing suppression in the early stages of a criminal case. Rather, the defendant in *Gutierrez* had already been indicted, and later sought and was granted suppression of unlawfully gathered evidence for use at trial. *Id.* ¶¶ 1-8. In *Gutierrez*, the court was not contemplating use of such evidence at a preliminary hearing. The defense's broad reading of the phrase "criminal proceeding" reads into the opinion content that is not actually there, and *Gutierrez* therefore does not change the analysis here. Instead, *Martinez*—which *specifically* addressed the use of unlawful evidence in pretrial proceedings to determine probable cause—governs the analysis.

B. None of the technical differences between grand juries and preliminary hearings justify permitting judicial review of the evidence at one but not at the other.

While it is true that preliminary hearings differ from grand jury proceedings in several formalistic or technical respects, which Defendant lays out in detail in his brief in chief, none of those differences support a finding that the right to suppression

of evidence that would be inadmissible at trial extends to preliminary hearings but does not extend to grand jury proceedings.

The reason for the differences between the two should be considered, and that reason does nothing to support Defendant's position. As our Court of Appeals explained in *State v. Salazar*, 1970-NMCA-056, ¶ 6, 81 N.M. 512, the nature of the two proceedings is different in that the grand jury is "secret" because "at the time of these proceedings, the defendant has not been charged with the crime," whereas "[a] preliminary examination is held after a criminal complaint has been made against the defendant." As explained above, the remedy for a Fourth Amendment violation is prohibiting the State from using illegally gathered evidence at trial. There is therefore no determinative difference between pre-arrest probable cause determinations and post-arrest probable cause findings in this context, where the available remedy for the illegal collection of evidence is one that is triggered later in the process.

Defendant also points out that unlike the grand jury discussed in *Martinez*, who was not "equipped or called up to decide" the legality of evidence, a district court judge is certainly equipped to make those rulings. While Defendant is correct, district court judges are still not "called upon" to do so—again, nothing in Rule 5-302 obligates or even *permits* a preliminary hearing judge to make suppression rulings. Defendant suggests allowing courts to rule on suppression issues at

preliminary hearings would not be "more onerous" that addressing other evidentiary issues that arise at such hearings **[BIC 18]**, ignoring that suppression requests require written motions and in almost all cases, the introduction of testimony or other evidence that would not be necessary to rule on an objection based on the rules of evidence. *See generally* Rule 5-212 NMRA.

Insofar as Defendant argues the Court of Appeals' decision should be overturned because it would permit charges based on unlawfully gathered evidence to remain pending until a motion to suppress is filed, that consideration should be weighed against the "intolerable degree [of] interference with the public interest in having the guilty brought to book" that Defendant's reading of Rule 5-302 would permit. *Eder*, 1985-NMCA-076. Under *Martinez*, the Court of Appeals correctly determined that absent statutory authorization, the district court was not permitted to decide the lawfulness of evidence at a preliminary hearing.

III. Because Deputy Limon stopped Defendant in order to execute a valid arrest warrant, the district court erred by dismissing the case for a lack of reasonable suspicion.

Even if the district court was permitted to make a finding on reasonable suspicion at the preliminary hearing stage, that finding was legally incorrect and must be reversed because a law enforcement officer's knowledge that a subject has a valid outstanding arrest warrant ultimately justifies a detention for purposes of executing that warrant, even where no illegal activity has been observed.

Generally, law enforcement's temporary detention of a person must comport with constitutional requirements and typically requires reasonable suspicion of criminal activity. *State v. Peterson*, 2014-NMCA-008, ¶ 5, 315 P.3d 354. When a law enforcement officer stops a subject for the purpose of executing an arrest warrant issued previous to the stop, however, "the unchallenged warrant render[s] the stop constitutionally reasonable." *Id.*; *see also State v. Hamilton*, 2012-NMCA-115, ¶ 13, 290 P.3d 271 (stating that "a search pursuant to a valid search warrant establishes that the search was constitutionally reasonable"). Accordingly, "officers [do] not need reasonable suspicion to stop Defendant when they ha[ve] a valid outstanding arrest warrant." *Peterson*, 2014-NMCA-008, ¶ 7; *see also State v. Ryon*, 2005-NMSC-005, ¶ 20, 137 N.M. 174 (explaining that it is inappropriate to apply an exception to the reasonable suspicion requirement where a police encounter is justified by a rule that does not require reasonable suspicion of criminal activity).

In *Peterson*, officers were investigating the defendant for possible drug activity when "they discovered that Defendant had an outstanding misdemeanor warrant and that his driver's license had been suspended or revoked." 2014-NMCA-008, ¶ 2. Upon seeing the defendant driving in his car, the officers stopped him to execute the warrant. *Id.* During a search incident to the arrest, narcotics were discovered in the defendant's pocket. *Id.* On appeal, the defendant argued the officers lacked reasonable suspicion of criminal activity, rendering the stop pretextual and

unconstitutional. *Id.* ¶ 10. The Court of Appeals held that because the stop occurred pursuant to the warrant, the usual reasonable suspicion requirement did not apply. *Id.* In particular, the court reasoned that "when the police have a warrant for a person's arrest, it is because a neutral magistrate or judge has determined that there is probable cause to believe that the particular individual named in the warrant has already committed an offense for which he may be arrested" such that suspicion of criminal activity preceding the stop is unnecessary. *Id.* ¶ 9.

Similar to *Peterson*, the United States Supreme Court has held that even where an officer does not discover the existence of a valid arrest warrant until after a detention has occurred, the warrant essentially cures the lack of reasonable suspicion under the "attenuation doctrine" exception to the exclusionary rule, so long as the officer did not engage in flagrant official misconduct. *Utah v. Strief*, 579 U.S. 232, 238-239 (2016). The *Strief* court assumed without deciding that an officer lacked reasonable suspicion to stop the defendant while leaving a "drug house," but that the officer's subsequent discovery of a valid warrant for the defendant's arrest "was a sufficient intervening event to break the causal chain between the unlawful stop and the discovery of drug-related evidence on Strief's person" such that suppression of the evidence was not warranted. *Id.*

Our Court of Appeals applied *Strief* in *State v. Edwards*, 2019-NMCA-070, 452 P.3d 413. In that case, an officer randomly approached each vehicle in the area

of a shooting to ask whether the occupants had seen or heard anything. *Id.* ¶ 2-3. When he encountered the defendant and found his answers to be "suspicious," the officer initiated an investigative detention, requested his identification, and learned he had two outstanding felony warrants. *Id.* ¶ 3-4 The defendant was arrested, and narcotics were found in his possession. On review, the court determined that under *Strief*, the defendant's preexisting arrest warrant operated to excuse any potential unlawful action by the police officer. *Id.* ¶ 6, 8-12.

Here, Deputy Limon's knowledge of a valid warrant for Defendant's arrest justified the stop even in the absence of reasonable suspicion of criminal activity. This case is analogous to *Peterson* in that Deputy Limon knew of the arrest warrant before contacting Defendant, and then stopped Defendant for the specific purpose of executing the warrant. Also like *Peterson*, Defendant has not challenged the validity of the warrant. The Deputy became aware of the warrant through a state website within the week of the stop, and even before he confirmed its validity, "the unchallenged warrant rendered the stop constitutionally reasonable." *Peterson*, 2014-NMCA-008, ¶ 5. New Mexico courts "have never held that arrest upon a NCIC-reported felony arrest warrant may only follow some secondary confirmation that the warrant is accurate or remains active." *State v. Widmer*, 2021-NMCA-003, ¶ 5, 482 P.3d 1254. After conducting a constitutionally valid stop and arrest, Deputy Limon was permitted to conduct a search incident to arrest, as "[o]ur jurisprudence

permits a contemporaneous search incident to an arrest when an outstanding warrant forms the basis of the arrest." *Id.*¶ 9. The evidence discovered was therefore admissible, and the district court erred by concluding otherwise.

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Court affirm the Court of Appeals, or in the alternative, quash certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2022, I filed the foregoing brief electronically through the Odyssey/E-File & Serve System, which caused opposing counsel, Caitlin C.M. Smith, to be served by electronic means.

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