

ALBUQUERQUE CRIMINAL LAWYER BLOG

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State Has Burden Under New Mexico Law to Prove Reasonable Wait Under "Knock and Announce" Rule

The "knock and announce" rule that has arisen under the 4th Amendment protections against unlawful search and seizure requires officers to wait a reasonable amount of time for an occupant's response before resorting to forcible entry. The amount of time that is reasonable is dependent upon the circumstances.

In *State v. Ulibarri*, the New Mexico Court of Appeals found that 10 to 12 seconds was insufficient under the circumstances of the case. In *Ulibarri*, the defendant was convicted on a conditional plea to felony possession of heroin and cocaine. The evidence was seized during the search of the defendant's grandfather's home. The defendant was not present at the time of the search. He was already in custody. The only occupant at the time of the search was the defendant's 75 year old grandfather.

It was admitted by the 12 member police team that executed the warrant that they waited only 10 to 12 seconds after knocking and announcing before kicking in the door. Unfortunately, the grandfather who was trying to get to the door was knocked down and injured as the door struck him.

The Court spelled out the purposes of the "knock and announce" rule which is to prevent the needless destruction of property, avoid violence toward both the police and the occupants, to protect individual privacy, and particularly relevant here, to avoid unnecessary injury to the occupants. Failure to abide by the rule results in the suppression of the evidence.

The State in its appeal argued that it was customary to wait only 10 to 12 seconds based upon a couple of cases involving hotel rooms and mobile homes. The Court distinguished these cases stating that 10 to 12 seconds might be reasonable in such small quarters. The Court further distinguished these cases since the suspects were known to be present during these forced entries.

The State further argued that exigent circumstances will allow for shorter waiting times to protect officer safety. However, the Court pointed out that the State had not argued exigent circumstances at trial but rather that 10 to 12 seconds was by law a sufficient waiting period.

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The Court emphasized that there were no bright line rules for proper waiting period. Instead the reasonableness of the wait is viewed under the totality of the circumstances. Most importantly, the Court reaffirmed that it is the State's burden to "show the reasonableness of the execution of the warrant." In this case, the Court determined the State had not met its burden and therefore the conviction of Mr. Ulibarri was reversed.

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