

# ALBUQUERQUE CRIMINAL LAWYER BLOG

PUBLISHED BY  
**COLLINS & COLLINS, P.C.**  
ATTORNEYS AT LAW

October 13, 2010

## Forensic Testimony in New Mexico Drug Prosecutions

In keeping with the New Mexico Supreme Court's decision in *State v. Aragon*, the New Mexico Court of Appeals upholds a defendant facing drug charges rights to confront and cross examine the State's forensic chemist.

The case of *State v. Delgado* has an interesting procedural history. The defendant's original appeal of his convictions for possession of cocaine and tampering with evidence was denied by the New Mexico Court of Appeals. However, the case was sent back to the Court of Appeals after a series of 6th Amendment right to confrontation cases beginning with the United States Supreme Court decision of *Melendez-Diaz*. Based upon *Melendez-Diaz*, the New Mexico Supreme Court held in *State v. Aragon* that the testimony of the forensic chemist who conducted the testing and prepared the forensic report was required. The Court held that it was a violation of a defendant's 6th Amendment rights to have a substitute forensic chemist testify on the opinions of the non-testifying chemist.

In light of the ruling in *Aragon*, the Supreme Court remanded the case of *State v. Delgado* back to the Court of Appeals. The Court of Appeals then issued its ruling consistent with the decisions in *Melendez-Diaz* and *Aragon*. On remand, the Court of Appeals issued its ruling in a Memorandum Opinion. Upon the motion of the defendant, the Court substituted the Memorandum with a formally published opinion.

In short, the Courts in New Mexico will, as they must, adhere to the *Melendez-Diaz* decision. The rash of cases from *State v. Aragon*, *State v. Bullcoming* and now *State v. Delgado* make clear the State's commitment to the 6th Amendment rights of confrontation. The prosecutor must bring the forensic chemist who tested the drugs and prepared the forensic report. In the absence of this testimony, the drug evidence is inadmissible.

Sadly for Mr. Delgado, the Court also ruled that he was not entitled to a dismissal, but a new trial. It may be expected that the prosecutor will have the appropriate chemist in court for the next trial.

Main Office:  
400 Gold Ave. SW  
Suite 500  
Albuquerque, NM 87102  
(505) 242-5958

<http://www.albuquerquecriminallawyerblog.com/>