

Warrantless DWI Arrests in New Mexico Homes

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In the case of State v. Nance, the New Mexico Court of Appeals considered whether a warrantless home arrest in a DWI case was unconstitutional and found that under the circumstances of this case, it was not.

Steve Chavez was leaving a business when he saw Koulungjim Nance's vehicle collide with his own in a parking lot. Chavez confronted Nance upon which Nance returned to his vehicle and drove away. During this encounter, Chavez detected a strong odor of hard liquor on Nance's breath. Chavez called 911 and drove after Nance.

Chavez observed Nance swerving into oncoming traffic, pulling out in front of traffic, speeding, and running stop signs. Within a few minutes, Nance arrived at his home with Chavez and police arriving soon after. The officers tried to make contact with Nance by knocking on the door and identifying themselves. Initially, Nance did not respond but 15 minutes later, he came out of the house. At that time, the officers administered a breathalyzer test registering scores of 0.29 and a 0.27.

The facts in Nance's trial were undisputed. The only issue before the district court was the suppression of the breath score for the warrantless home arrest. The district court agreed with the defense finding the warrantless home arrest unlawful under the 4th Amendment thereby suppressing the breath score.

In its ruling, the district court cited the 1994 10th Circuit case of *Howard v. Dickerson* as follows; "minor offenses do not justify warrantless home arrests." The district court suggested that DWI was a minor offense for which there was no relevant exception under the misdemeanor arrest rule.

The Court of Appeals took exception to the characterization of DWI as a minor offense citing New Mexico Supreme Court precedent from the 2010 case of *City of Santa Fe v. Martinez*, "[t]he crime of DWI as defined by our Legislature is not a 'minor

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crime...compelling public interest in eradicating DWI occurrences and [their] potentially deadly consequences." As such, the Court justified the treatment of DWI as a felony for purposes of search and seizure analysis focusing on the exigent circumstances exception for warrantless searches.

The Court then addressed whether exigent circumstances existed sufficient to justify the warrantless encounter with Nance. Citing the 1997 New Mexico Supreme Court case of *State v. Gomez*, the Court defined exigent circumstances as "an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect, or destruction of evidence."

The Court cited a number of cases most notably the 1986 New Mexico Court of Appeals case of *State v. Copeland* for the proposition that the possible dissipation of alcohol levels does meet the exigent circumstances test. Copeland involved a hit and run accident that killed a police officer. The investigating officers traced the defendant back to a hotel room where they forcibly entered his room and made the arrest. In that case, the court found that "the alcohol thought to be in defendant's system would be metabolizing" and that "based on the destruction of evidence rationale alone, the trial court was warranted in finding exigent circumstances."

The Court did not go so far as to suggest that dissipation of alcohol by itself is sufficient grounds to justify a warrantless home entry, the court declined to read it that way because the Copeland case had an exceptional set of facts. Instead, the Court found that DWI arrests were still constrained by the reasonableness requirements in the probable cause inquiry of felony warrantless arrests.

In addressing the reasonableness requirement, the Court noted that the police did not enter Nance's house, did not draw their weapons, and did not search the premises but simply stood outside of his house for 15 minutes. The Court found this to be reasonable as only a "slight intrusion was well tailored to the exigency in this case."

In sum, the Court concluded that there were both exigent circumstances present for the warrantless encounter and that the warrantless encounter was reasonable under the circumstances. The court did not determine whether police would have been justified in entering Nance's house without a warrant under these conditions as it was unnecessary for the ruling. It is to be expected that this will be the next line of inquiry as law enforcement attempt to stretch the boundaries of this ruling.

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