

# ALBUQUERQUE CRIMINAL LAWYER BLOG

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## **New Mexico Court Addresses Knock & Announce Rule in the Execution of Search Warrants**

The New Mexico Court of Appeals addressed the knock and announce rule in the recent case of *State v. Gonzales*. It is well established in New Mexico that law enforcement must first knock and announce their presence and wait a reasonable amount of time for a response before entering a residence to execute a search warrant.

The rule avoids the needless destruction of property while recognizing the sanctity of the home and the right to privacy. Failure to comply with this rule constitutes unlawful search and seizure in violation of the 4th Amendment to the United States Constitution. The Court, in its ruling, reinforced these very important protections afforded by the knock and announce rule.

In *State v. Gonzales*, the Court addressed a situation where the facts indicated that the officers had not knocked and had waited only 8 seconds after announcing their presence before bursting through the front door with a battering ram. The Court determined that, under the circumstances, 8 seconds was not a reasonable amount of time to wait following announcement of their presence. The Court also deferred to the District Court's factual finding, based upon the officers' belt tapes, that the police had not knocked despite uncontroverted testimony to the contrary. As a result, the marijuana and cocaine seized from the residence was suppressed.

The Court, in determining the reasonableness of the 8 seconds, contrasted the facts in the case with several prior rulings. There are circumstances where a brief wait following announcement of the officer's presence would be deemed reasonable. The court cited several prior cases involving hotel/motel rooms and other small residences where a brief wait was justified due to the brief amount of time that it would require the resident to get to the door. A delay in these cases would indicate constructive refusal of the warrant.

Likewise, the Court indicated there might be exigent circumstances that would avoid completely the necessity of the knock and announce rule. These cases involved situations where the circumstances indicated announcement posed a danger to law enforcement. An indication that the target was attempting to destroy evidence would also obviate the need for a knock and announce.

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The Court was careful to indicate that the fact that evidence might be destroyed was insufficient to override the protections of the knock and announce rule. Therefore, the simple fact that drugs were involved, which could be easily destroyed, was insufficient grounds to avoid the knock and announce rule. There must be some indication under the circumstances that the suspect was in fact attempting to destroy evidence.

*State v. Gonzales* illustrates the great deference the New Mexico Courts have for the 4th Amendment and the U.S. Constitution, often exceeding federal constitutional protections.

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