

NMDPS - SEARCH WARRANT – NIGHTTIME SEARCH

A nighttime search can escalate into a dangerous situation, for the public and law enforcement alike. For this, and for a number of reasons, officers are required by the Supreme Court of New Mexico to get special permission from a judge to serve a warrant after 10:00 p.m. Rule of Criminal Procedure 5-211 (B) states:

“A search warrant shall . . . be served between the hours of 6:00 a.m. and 10:00 p.m., according to local time, unless the issuing judge . . . for reasonable cause, authorizes its execution at any time.”

A district judge signed a search warrant for Albuquerque Police at 8:54 p.m. There was no authorization for a nighttime search. Entry was made prior to 10:00 p.m. but the search began after 10:00 p.m. A shell casing in the residence linked Defendant with a homicide that occurred a year before.

Was this a violation of Rule 5-211? To decide this, one needs to look at when officers first breach the privacy of a household, not what happens afterwards. Service of a warrant occurs “once an officer crosses the threshold for the purpose of beginning the search or for securing the residence for a later search.”

Based upon APD lawfully entering and securing the premises during the day, doing continuous surveillance to ensure its vacancy, and lawfully obtaining a warrant, all before 10:00 p.m., they didn’t need nighttime authorization. Supreme Court held Rule 5-211 was not violated. State v. Santiago (2010). --- ADA Elliott Guttman, Law Enforcement Academy



I know we served this search warrant last week but it still should be good.