

NMDPS - CONSENT – BEING PROFESSIONAL

New Mexico State Police, along with other agencies, utilized two helicopters and ground teams to look for marijuana plantations in Taos County. Upon seeing a greenhouse and marijuana in Defendant's backyard, officers created a perimeter around the property. While a helicopter hovered above, Defendant, seventy-two years old, came to the door.

A state police officer asked for permission to search the residence. Defendant: "What happens if I say no?" The officer said he would secure the residence and try to get a warrant at the DA's office. Defendant: "Well, I guess I don't really have any options, do I?" Officer said it was his decision. Defendant signed a consent form and marijuana plants (14) were seized.

Was his consent voluntary? A number of factors were considered. Only one officer spoke to Defendant, in a polite, non-confrontational tone. At least three times the officer said it was his decision. Defendant moved about freely. No weapons were drawn. All officers remained outside and did not begin searching until consent was given.

It could have been a coercive environment but professionalism helped make a difference. Supreme Court held Defendant voluntarily consented to the search of his residence. Telling Defendant he would try to get a warrant was a reasonable explanation of what the officer was going to do. State v. Davis (2013).

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You guys make it hard to say no.