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# STATE CONSTITUTIONAL LAW—New Mexico Requires Exigent Circumstances for Warrantless Public Arrests: *Campos v. State*

## I. INTRODUCTION

In *Campos v. State*,<sup>1</sup> the New Mexico Supreme Court addressed for the first time whether warrantless public arrests require exigent circumstances in order to be constitutional in New Mexico.<sup>2</sup> The court held that a warrantless public arrest must be based upon both probable cause *and* sufficient exigent circumstances.<sup>3</sup> In requiring exigent circumstances for warrantless public arrests to be constitutional, the New Mexico Supreme Court interpreted Article II, Section 10 of the New Mexico Constitution to extend more protection from unreasonable searches and arrests than its federal analog, the Fourth Amendment to the United States Constitution.<sup>4</sup> This Note will provide an overview of the Fourth Amendment, examine New Mexico law on searches and seizures, analyze the rationale of the *Campos* court, and explore the ramifications of the decision.

## II. STATEMENT OF THE CASE

On December 7, 1989, an informant alerted Officer Luis Lara that Frank Martin Campos would be conducting a drug transaction the following morning in Roswell.<sup>5</sup> The informant described two cars, either of which Campos might be driving, and where the transaction would take place. Officer Lara then set up a surveillance team in the area the informant described. Lara knew Campos used vehicles like those described by the informant because he had been investigating Campos for suspected drug activity for approximately one year before receiving the informant's tip. On the following morning, a member of the surveillance team observed Campos driving one of the cars the informant had described in the area the informant had indicated. The officers stopped Campos, ordered him

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1. 117 N.M. 155, 870 P.2d 117 (1994).

2. *Id.* at 158, 870 P.2d at 120.

3. *Id.* at 156, 870 P.2d at 118. Exigent circumstances are those emergencies requiring swift action to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect or the destruction of evidence. *State v. Copeland*, 105 N.M. 27, 31, 727 P.2d 1342, 1346 (Ct. App.), *cert. denied*, 104 N.M. 702, 726 P.2d 856 (1986).

4. *See Michigan v. Long*, 463 U.S. 1032 (1983) (holding that a state decision is subject to review by a federal court unless the state court clearly relied on state law). The *Campos* court declined to adopt the blanket federal rule that all warrantless arrests of felons in public places that are based on probable cause are constitutionally permissible. *Campos*, 117 N.M. at 158, 870 P.2d at 120. *See also United States v. Watson*, 423 U.S. 411, 423 (1976). The *Watson* Court held that warrantless public arrests did not require exigent circumstances and stated that it would not transform a "judicial preference" for arrest warrants into a constitutional rule for fear of creating endless litigation over the existence of exigent circumstances. *Id.*

5. The facts in this opinion are set out in *Campos*, 117 N.M. at 156-57, 870 P.2d at 118-19.

out of his car, and arrested him without either an arrest or search warrant. The officers then searched Campos and his car, finding seven packages of heroin. Campos was convicted of illegal possession of heroin.<sup>6</sup>

Prior to trial, Campos moved to suppress all evidence seized pursuant to the warrantless arrest and search.<sup>7</sup> The trial court denied the motion, and Campos appealed. The court of appeals affirmed the trial court's decision.<sup>8</sup> The New Mexico Supreme Court reversed the court of appeals.<sup>9</sup>

### III. HISTORICAL AND CONTEXTUAL BACKGROUND

#### A. Federal Law

Federal law defining the circumstances under which people may be searched and arrested has developed from the Fourth Amendment to the United States Constitution. The Fourth Amendment guarantees every individual the right to be free from unreasonable government searches and seizures.<sup>10</sup> The Fourth Amendment is enforced through the exclusionary rule, which provides that evidence seized as a result of an illegal search or seizure is inadmissible at trial.<sup>11</sup>

#### 1. The Fourth Amendment

The Fourth Amendment is composed of two clauses: the Reasonableness Clause, which guarantees freedom from unreasonable searches and seizures, and the Warrant Clause, which specifies the form and content of warrants and sets forth the conditions necessary for issuing warrants.<sup>12</sup> As a result, two interpretations of the Fourth Amendment have emerged: the rational basis model and the warrant preference rule.<sup>13</sup> The rational basis model provides "that the clauses of the amendment are independent declarations."<sup>14</sup> Read in this way, the Fourth Amendment does not always require a judicial warrant for searches and seizures to be reasonable.<sup>15</sup>

6. *Id.* at 156, 870 P.2d at 118.

7. The procedure of the lower court is set out in *Campos*, 117 N.M. at 157, 870 P.2d at 119.

8. *Id.*

9. *Id.* at 159, 870 P.2d at 122.

10. U.S. CONST. amend. IV ("The right of the people to be secure in their persons, houses, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.").

11. *See Mapp v. Ohio*, 367 U.S. 643 (1961).

12. *Id.*

13. *See Tracey Maclin, The Central Meaning of the Fourth Amendment*, 35 WM. & MARY L. REV. 197, 202-07 (1993). Maclin points out that during the twentieth century a debate has grown regarding the relationship between the two clauses. The warrant preference rule grew in popularity in the late 1960s and early 1970s, but consensus for this rule never existed among the justices. Justice White and Justice Rehnquist challenged the warrant preference rule, and in the 1990s the rational basis model became the constitutional test for judging government intrusions. *Id.* at 204-07 and nn.27-32.

14. *Id.* at 202.

15. *Id.* (citing *United States v. Rabinowitz*, 339 U.S. 56 (1950), and *Harris v. United States*, 331 U.S. 145 (1947)).

If a court adheres strictly to the rational basis model, it will most likely not presume that warrants are necessary for a valid search or arrest. If a court follows the warrant preference rule, which maintains that "the Warrant Clause modifies the first clause," the clauses operate together. Consequently, the court will presume that, absent a compelling reason, a warrant is a necessary prerequisite to a valid search or seizure because a warrantless search or seizure is presumptively unreasonable.<sup>16</sup>

By requiring exigent circumstances for warrantless public arrests, the New Mexico Supreme Court followed the warrant preference rule, affirming its adherence to the warrant requirement.<sup>17</sup>

## 2. Federal Case Law

In *United States v. Rabinowitz*, the United States Supreme Court stated the basic principle of the rational basis model.<sup>18</sup> In the same case, Justice Frankfurter's dissenting opinion asserted the principle of the warrant preference rule.<sup>19</sup>

Similarly, the opinion and dissent in *United States v. Watson*<sup>20</sup> illustrate the two divergent interpretations of the Fourth Amendment.<sup>21</sup> In *Watson*, the defendant was convicted of possessing stolen mail in the form of credit cards.<sup>22</sup> The Ninth Circuit Court of Appeals reversed on the grounds that the arrest was unconstitutional because the postal inspector failed to obtain an arrest warrant, although he had time to do so.<sup>23</sup> The United States Supreme Court reversed the appellate court.<sup>24</sup> Justice White, writing for the majority, held that warrantless public arrests could be based on probable cause alone<sup>25</sup> and did not require the existence of exigent circumstances, which he claimed would lead to endless litigation.<sup>26</sup> The Court reasoned that, under the common law, warrantless arrests for felonies did not require exigent circumstances and could be made based

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16. *Harris*, 331 U.S. at 162 (Frankfurter, J., dissenting) ("[W]ith minor and severely confined exceptions . . . every search and seizure is unreasonable when made without a magistrate's authority expressed through a validly issued warrant.").

17. See *Campos*, 117 N.M. at 159, 870 P.2d at 121 (stating that principles of warrant requirement are firmly rooted in the New Mexico Constitution) (citing *State v. Cordova*, 109 N.M. 211, 216, 784 P.2d 30, 35 (1989)).

18. 339 U.S. 56, 60 (1950) ("[T]he Constitution does not say that the right of the people to be secure in their persons should not be violated without a search warrant if it is practicable for the officers to procure one. The mandate of the Fourth Amendment is that people shall be secure against unreasonable searches.").

19. *Id.* at 83 (Frankfurter, J., dissenting) ("What is the test of reason which makes a search reasonable? . . . There must be a warrant to permit search, barring only inherent limitations upon that requirement when there is a good excuse for not getting a warrant . . .").

20. 423 U.S. 411 (1976).

21. See *supra* note 13 and accompanying text.

22. 423 U.S. at 414.

23. *Id.*

24. *Id.* at 425.

25. Probable cause exists if an officer has reasonable cause to believe that the person to be arrested has committed a felony, or has committed a misdemeanor or petty misdemeanor in the officer's presence. *United States v. Watson*, 423 U.S. 411, 422 (1976).

26. *Id.* at 423-24.

only upon probable cause.<sup>27</sup> The Court further noted that the warrantless arrest in question was statutorily authorized and was, therefore, presumptively reasonable.<sup>28</sup>

In his dissent, Justice Marshall criticized the majority's reasoning, arguing that "a felony at common law and a felony today bear only slight resemblance . . . ." <sup>29</sup> Marshall asserted that even though a presumption of reasonableness exists for Acts of Congress, the Court's "obligation is to the Constitution, not the Congress."<sup>30</sup> Justice Marshall argued that the two clauses of the Fourth Amendment should be read together because, with some exceptions, a search of private property without consent is unreasonable unless authorized by a valid search warrant.<sup>31</sup> Justice Marshall concluded that, as a result of the holding of *Watson*, "the preference for an arrest warrant, which the Court has conceded is the optimal method to protect our citizens from the affront of an unlawful arrest, will remain only an ideal, one that the Court will espouse but not enforce."<sup>32</sup>

In 1980, however, the United States Supreme Court carved out an exception to *Watson's* holding that warrantless public arrests could be based on probable cause alone.<sup>33</sup> In *Payton v. New York*, the court held that both probable cause and exigent circumstances are required for a warrantless arrest made in a person's home.<sup>34</sup> This distinction was based on the premise that people in their homes have a legitimate expectation of privacy, but people in public places do not.<sup>35</sup> Writing for the majority, Justice Stevens stated that the zone of privacy the Fourth Amendment protects is nowhere "more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home . . . . [T]he Fourth Amendment has drawn a firm line at the entrance to the house."<sup>36</sup>

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27. *Id.* at 418.

28. *Id.* at 415-16. The Court stated that 18 U.S.C. § 3061(a)(3) authorized employees "performing duties related to the inspection of postal matters" to "make arrests without warrant for felonies cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony." *Id.* at 415 (quoting 18 U.S.C. § 3061(a)(3)).

29. *Id.* at 438.

30. *Id.* at 443.

31. *Id.* at 444 (stating that warrantless searches without consent are presumptively unreasonable) (citing *Camara v. Municipal Court*, 387 U.S. 523, 528-29 (1967)).

32. *Id.* at 456. Justice Marshall commented that there would now be only two incentives for police officers to seek warrants at all: 1) a suggestion by the Court that a stronger showing of probable cause may be necessary for a warrantless arrest than if a warrant had been obtained and 2) the desire of a police officer to have a magistrate's sanction of probable cause. *Id.* at 456, n.22. He also noted that the holding of *Watson* was not warranted by the facts of the case because "*Watson's* warrantless arrest was valid under the recognized exigent-circumstances exception." *Id.* at 435.

33. See *United States v. Watson*, 423 U.S. at 423 (holding that warrantless arrests in public places did not require exigent circumstances).

34. 445 U.S. 573, 589 (1980).

35. See *Katz v. United States*, 389 U.S. 347 (1967) (Harlan, J., concurring) (stating that the Fourth Amendment applies in situations where a person has an actual and reasonable expectation of privacy).

36. *Payton*, 445 U.S. at 589-90.

In order to protect this zone of privacy, the Court required exigent circumstances for warrantless arrests in an individual's dwelling.<sup>37</sup> Despite *Payton's* exception to the warrantless arrest rule, *Watson's* ruling that exigent circumstances are unnecessary for warrantless public arrests underscores the view that the Court has "relegated [the Fourth Amendment] to a deferred position."<sup>38</sup>

### B. Other Jurisdictions

Following the ruling in *Watson*, other jurisdictions require only probable cause for warrantless public arrests.<sup>39</sup> Those same jurisdictions also recognize the distinction between warrantless public and private arrests and follow *Payton v. New York*, which requires exigent circumstances for warrantless arrests in an individual's dwelling.<sup>40</sup> This public-private distinction, however, has not proven to be a very helpful guide, and the courts have split on this issue.

In *Kansas v. Riddle*,<sup>41</sup> police officers were given the name of the defendant by the victim, who claimed the defendant had abducted and sexually attacked her.<sup>42</sup> One of the victim's friends gave the police the defendant's address, and the police went to his house without an arrest warrant.<sup>43</sup> The police officers met the defendant at the door of his house, asked him to step outside, and then arrested him. The court held that this was a valid arrest because the police officers had probable cause and arrested the defendant in a public place—outside his house.<sup>44</sup>

Massachusetts, in contrast, has suggested that when a defendant has been lured out of a dwelling to be arrested, that arrest may be invalid because "[a]rguably . . . the use of . . . [a] ruse constitutes a kind of verbal 'entry' by the police that implicates the same privacy interests protected by the holding in *Payton*."<sup>45</sup>

Further confusion arises when defendants are arrested in their doorways. In *New York v. Min Chul Shin*, the New York Supreme Court ruled that doorway arrests require only probable cause because doorways are public places.<sup>46</sup> In contrast, *New Hampshire v. Morse* held that the

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37. *Id.* at 583.

38. *Brinegar v. United States*, 338 U.S. 160, 180 (1949) (Jackson, J., dissenting). See also Maclin, *supra* note 13, at 238 (stating that the Fourth Amendment, unlike other provisions in the Bill of Rights, has become "a second-class right" because the Court sees "the typical Fourth Amendment claimant as a second-class citizen, and sees the typical police officer as being overwhelmed with the responsibilities and duties of maintaining law and order in our crime-prone society.").

39. See, e.g., *Georgia v. McBride*, 401 S.E.2d 484, 487 (Ga. 1991) (requiring only probable cause for a warrantless public arrest); *Utah v. Deitman*, 739 P.2d 616, 618 (Utah 1987) (requiring probable cause for a warrantless public arrest); *Washington v. Herzog*, 867 P.2d 648, 658 (Wash. 1994) (holding that a warrantless arrest in a public place must be supported by probable cause).

40. 445 U.S. 573.

41. 788 P.2d 266 (Kan. 1990).

42. *Id.* at 267.

43. *Id.*

44. *Id.* at 270.

45. *Massachusetts v. Bradshaw*, 431 N.E.2d 880, 887 (Mass. 1982).

46. 607 N.Y.S.2d 369 (N.Y. App. Div.).

warrantless arrest of a defendant when he appeared at the doorway of his motel room was invalid absent exigent circumstances because doorways are private places.<sup>47</sup>

Apart from the confusion about where to draw the line between a public and a private place, confusion exists about exactly what constitutes a private place. In *Florida v. Perry*, for example, an undercover agent negotiated with the defendant to buy marijuana in the defendant's home.<sup>48</sup> Once inside the house, the agent signalled to other officers who entered the house and arrested the defendant without a warrant. The court held that because the residence was being used for the transaction of unlawful business, it had become a public place, and the defendant's right to privacy was waived.<sup>49</sup> Likewise, in *Patterson v. Kentucky*, the Kentucky Court of Appeals ruled that a warrantless arrest was valid when the defendant was arrested while talking on the telephone in the apartment of his downstairs neighbor.<sup>50</sup> These rulings suggest that the zone of privacy the Supreme Court defined in *Payton* is not clear.

### C. *New Mexico Law*

#### 1. Constitutional Analysis of the Search and Seizure Provision of the New Mexico Constitution

In a recent series of cases, the New Mexico Supreme Court has shown its willingness to interpret the search and seizure provision of the New Mexico Constitution<sup>51</sup> differently from the way in which the United States Supreme Court has interpreted the Fourth Amendment, although the search and seizure provisions are almost identical.<sup>52</sup> In requiring more structure in the way "reasonableness" is determined for warrantless searches and arrests, New Mexico law affords more protection to its citizens than does the Fourth Amendment.<sup>53</sup>

##### a. *Cordova, Gutierrez, and Attaway: New Mexico Case Law Supports a High Standard of Protection Against Unreasonable Searches and Arrests*

In 1989, in *State v. Cordova*,<sup>54</sup> the New Mexico Supreme Court marked its first departure from federal Fourth Amendment jurisprudence by

47. 480 A.2d 183, 186 (N.H. 1984).

48. 398 So. 2d 959, 960 (Fla. Dist. Ct. App. 1981).

49. *Id.* at 961.

50. 630 S.W.2d 73, 74-75 (Ky. Ct. App. 1981).

51. Article II, Section 10 of the New Mexico Constitution provides that:

The people shall be secure in their persons, papers, homes and effects from unreasonable searches and seizures, and no warrant shall issue without describing the place to be searched, or the persons or things to be seized nor without a written showing of probable cause, supported by oath or affirmation.

N.M. CONST. art. II, § 10.

52. *See, e.g., State v. Attaway*, 117 N.M. 141, 870 P.2d 103 (1994); *State v. Gutierrez*, 116 N.M. 431, 863 P.2d 1052 (1993); *State v. Cordova*, 109 N.M. 211, 784 P.2d 30 (1989). *See also* notes 10 and 51, *supra*, for comparison.

53. *Id.*

54. 109 N.M. 211, 784 P.2d 30 (1989).

refusing to apply the *Gates* test, which eroded the standard of probable cause under the Fourth Amendment.<sup>55</sup> Instead, the *Cordova* court continued to apply the two-prong *Aguilar-Spinelli* test,<sup>56</sup> formally adopting it as the standard by which to determine probable cause.<sup>57</sup>

The two-prong *Aguilar-Spinelli* test requires that when an application for a search warrant is based on an affidavit, the affidavit must contain sufficient facts to enable the magistrate to make an independent determination of probable cause.<sup>58</sup> In order to make this determination, the magistrate must determine both the credibility of the informant *and* the reliability of the informant's information.<sup>59</sup> In *Gates*, however, the United States Supreme Court stated that the two prongs of the *Aguilar-Spinelli* test would not be determinative of probable cause, but merely factors to consider.<sup>60</sup> The Court stated that some lower courts were applying the two-prong test in a rigid and technical manner and so adopted a "totality of the circumstances" test,<sup>61</sup> which it reasoned was more consistent with the fluid concept of probable cause.<sup>62</sup>

In *Cordova*, the New Mexico Supreme Court held that the search warrant rule requires a warrant affidavit to meet a two-prong test, setting forth 1) a substantial basis for believing the informant, and 2) a substantial basis for concluding the informant gathered the information of illegal activity in a reliable fashion.<sup>63</sup> In refusing to adopt the "totality of the circumstances" test, the New Mexico Supreme Court stated that the two-prong test has not proven too rigid in New Mexico courts. Instead, the *Cordova* court found that the two-prong test provides "structure for the inquiry into whether probable cause has been demonstrated."<sup>64</sup> By taking this position, the court provided a higher and more objective standard for probable cause than federal law requires under *Gates*.

In a recent case, *State v. Gutierrez*,<sup>65</sup> the New Mexico Supreme Court declared "a willingness to undertake independent analysis of our state

55. See *Illinois v. Gates*, 462 U.S. 213, 230-31 (1983) (holding that the two prongs of the *Aguilar-Spinelli* test would no longer be determinative of probable cause, but only factors to consider).

56. The two-prong test was developed in *Aguilar v. Texas*, 378 U.S. 108 (1964), and in *Spinelli v. United States*, 393 U.S. 410 (1969).

57. See *Cordova*, 109 N.M. at 217, 784 P.2d at 36.

58. *Id.* at 213, 784 P.2d at 32.

59. *Id.* (citing *Aguilar v. Texas*, 378 U.S. at 114).

60. See *Gates*, 462 U.S. at 230-31.

61. The Court stated:

The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

*Gates*, 462 U.S. at 238.

62. *Id.* at 230-31.

63. 109 N.M. at 214, 784 P.2d at 33. The court also noted that in referring to reliability, the *Aguilar* court meant that "the magistrate must be informed of some of the underlying circumstances from which the informant concluded that [the facts were as] he claimed they were, and some of the underlying circumstances from which the officer concluded that the informant . . . was 'credible' or his informant 'reliable.'" *Id.* at 111, 784 P.2d at 32 (citing *Aguilar*, 378 U.S. at 114).

64. *Id.* at 216, 784 P.2d at 35.

65. 116 N.M. 431, 863 P.2d 1052 (1993).

constitutional guarantees when federal law begins to encroach on the sanctity of those guarantees.”<sup>66</sup> In *Gutierrez*, the defendants were charged with possession of a controlled substance with intent to distribute, conspiracy to commit possession of controlled substance with intent to distribute, and possession of drug paraphernalia.<sup>67</sup> The defendants moved to suppress the evidence recovered from their apartment during the search, asserting that the search was based on an invalid warrant and was, therefore, unconstitutional.<sup>68</sup>

Unlike the United States Supreme Court,<sup>69</sup> the New Mexico Supreme Court held that a “good faith” exception to the federal exclusionary rule is incompatible with the constitutional protections found under Article II, Section 10 of the New Mexico Constitution.<sup>70</sup> The “good faith” rule provides that the exclusion of evidence is not necessary when an officer relies in good faith on a warrant that is later invalidated.<sup>71</sup> The court reasoned that under the New Mexico Constitution, the only way the court can effectuate the constitutional right to be free from unreasonable search and seizure is to deny the government the use of evidence obtained pursuant to an unlawful search.<sup>72</sup> Consequently, the court held that the good-faith exception is incompatible with the exclusionary rule.<sup>73</sup> Once again, the court appeared to be seeking a more objective standard with which to interpret the Fourth Amendment.

Recently, in *State v. Attaway*,<sup>74</sup> the New Mexico Supreme Court held that in the execution of a search warrant, officers must comply with the announcement rule<sup>75</sup> unless exigent circumstances are present.<sup>76</sup> In that case, the defendant appealed from a conviction of distributing a controlled substance, arguing that the police officers failed to comply with the knock-and-announce rule, rendering the search unconstitutional.<sup>77</sup>

The court reasoned that the knock-and-announce rule is a constitutional requirement because it objectively determines what is reasonable under Article II, Section 10 of the New Mexico Constitution.<sup>78</sup> In requiring

66. *Id.* at 440, 863 P.2d at 1061.

67. *Id.* at 432, 863 P.2d at 1054.

68. *Id.*

69. See *United States v. Leon*, 468 U.S. 897 (1984) (adopting a “good-faith” exception to the exclusionary rule).

70. *State v. Gutierrez*, 116 N.M. 431, 447, 863 P.2d 1052, 1068 (1993).

71. *Id.*

72. *Id.* at 445, 863 P.2d at 1066.

73. *Id.* at 447, 863 P.2d at 1068.

74. 117 N.M. 141, 870 P.2d 103 (1994).

75. *Attaway* reports that the common-law rule of announcement was first articulated in *Semayne*<sup>7</sup> Case, 77 Eng. Rep. 194 (1603):

In all cases when the King is party, the sheriff (if the doors be not open) may break the party's house, either to arrest him, or to do other execution of the K[ing]'s process, if otherwise he cannot enter. But before he breaks it, he ought to signify the cause of his coming, and to make request to open doors . . . . *Id.* at 195 (footnotes omitted).

*Attaway*, 117 N.M. at 146, 870 P.2d at 108.

76. *Id.* at 150, 870 P.2d at 112.

77. *Id.* at 143-44, 870 P.2d at 105-06.

78. *Id.* at 149-51, 870 P.2d at 111-13.

some objective clarification of reasonableness, the New Mexico Supreme Court supported Justice Frankfurter's view that the Warrant Clause is an objective clarification of the Reasonableness Clause.<sup>79</sup>

These decisions reveal the New Mexico Supreme Court's desire to interpret the search and seizure provision of the New Mexico Constitution to provide more protection than the Fourth Amendment. By requiring objective tests for reasonableness rather than a "totality of the circumstances" standard, New Mexico has gone beyond federal standards in order to protect its citizens from unreasonable searches and arrests. It is in this context that the New Mexico Supreme Court decided *Campos*.

## 2. Case Law Requirements for Warrantless Public Arrests

The issue considered in *Campos v. State*—whether New Mexico requires exigent circumstances in addition to probable cause for warrantless public arrests—was one of first impression.<sup>80</sup> The court of appeals followed the holding of *United States v. Watson* and held that only probable cause was necessary for a warrantless public arrest.<sup>81</sup> The supreme court reversed the appellate decision, holding that although most New Mexico cases expressly require only that warrantless arrests must be supported by probable cause, "some evidence of exigency [in those cases] has been found or could be implied to support the warrantless arrest."<sup>82</sup>

In 1966, the New Mexico Supreme Court upheld a warrantless arrest and search in which there were exigent circumstances.<sup>83</sup> In *State v. Delentre*, a void search warrant had been issued to the police officer.<sup>84</sup> As the officer approached the defendant's apartment, he was informed that the defendant was rolling marijuana into cigarettes inside his apartment.<sup>85</sup> When the officer announced his presence, he heard sounds of running from inside the apartment.<sup>86</sup> Although the *Delentre* court did not directly address the issue of whether exigent circumstances existed, the facts implied such circumstances. The probability that evidence would be destroyed before a warrant could be obtained constitutes exigent circumstances.

Similarly, in *State v. Kaiser*, the New Mexico Court of Appeals held that a warrantless arrest of a defendant in a railroad Pullman car was valid.<sup>87</sup> The fact that the train was about to leave satisfied the exigency requirement because the suspect's flight was imminent. In *Rodriguez v.*

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79. See *United States v. Rabinowitz*, 339 U.S. at 83 (Frankfurter, J., dissenting).

80. 117 N.M. at 158, 870 P.2d at 120.

81. 113 N.M. 421, 427, 827 P.2d 136, 142 (Ct. App. 1991), *rev'd* by *Campos v. State*, 117 N.M. 155, 870 P.2d 117 (1994).

82. *Campos*, 117 N.M. at 159, 870 P.2d at 121. The court also noted that at least one New Mexico case has held that both probable cause and exigent circumstances are required for a warrantless arrest. See *State v. Martinez*, 94 N.M. 436, 440, 612 P.2d 228, 232, *cert. denied*, 449 U.S. 959 (1980).

83. See *State v. Delentre*, 77 N.M. 497, 424 P.2d 782 (1966).

84. *Id.* at 499, 424 P.2d at 783.

85. *Id.*

86. *Id.* at 500, 424 P.2d at 784.

87. 91 N.M. 611, 613, 577 P.2d 1257, 1259 (Ct. App.), *cert. denied*, 576 P.2d 297 (1978).

*State*, officers were called to a house in which they had been informed the occupants were discussing taking drugs.<sup>88</sup> As the officers approached the house, they became aware that there were several individuals with a rifle inside the house.<sup>89</sup> The New Mexico Supreme Court held that "the circumstances . . . allowed the officers to lawfully enter upon the defendant's property in order to inquire as to the welfare" of one of the occupants.<sup>90</sup> The presence of the rifle provided the exigency necessary for the warrantless entry.

Finally, in *State v. Martinez*,<sup>91</sup> a patrolling officer received a radio dispatch to be on the lookout for a vehicle that had just been involved in a robbery.<sup>92</sup> Shortly after receiving the dispatch, the officer spotted the vehicle and arrested the suspects.<sup>93</sup> In holding that the arrest was valid, the court stated that "the radio dispatch upon which a warrantless arrest or search is based must contain as high a standard showing probable cause and reliability as that required to support a warrant, *in addition to exigent circumstances* which would justify proceeding without a warrant."<sup>94</sup>

Without explicitly saying so, New Mexico courts have relied on the presence of exigent circumstances before upholding warrantless public arrests. As Chief Justice Ransom noted in *Campos v. State*, in all these cases, "some evidence of exigency has been found or could be implied to support the warrantless arrest."<sup>95</sup>

#### IV. RATIONALE OF THE CAMPOS COURT

In reaching its decision, the *Campos* court first considered whether a warrantless arrest was consistent with the Controlled Substances Act.<sup>96</sup> Under this act, officers can make warrantless arrests for offenses committed in their presence, or when they have probable cause to believe that a crime violating the act is or has been committed.<sup>97</sup> The court concluded that there was statutory authority for the warrantless arrest because the officers had probable cause to believe that Campos was in possession of a controlled substance.<sup>98</sup>

88. 91 N.M. 700, 701, 580 P.2d 126, 127 (1978), *overruled on other grounds*, *State v. Martinez*, 94 N.M. 436, 439, 612 P.2d 228, 231 (1980).

89. *Id.*

90. *Id.* at 129, 580 P.2d at 703.

91. 94 N.M. 436, 612 P.2d 228 (1980).

92. *Id.* at 437, 612 P.2d at 229.

93. *Id.* at 437-38, 612 P.2d at 229-30.

94. *Id.* at 440, 612 P.2d at 232 (emphasis added).

95. 117 N.M. at 159, 870 P.2d at 121.

96. New Mexico statutory law authorizes an officer to: "make arrests without warrant for any offense under the Controlled Substances Act committed in his presence, or if he has probable cause to believe that the person to be arrested has committed or is committing a violation of the Controlled Substances Act which may constitute a felony . . ." N.M. STAT. ANN. §§ 30-31-1 to -41 (Repl. Pamp. 1989).

97. *Id.*

98. *Campos*, 117 N.M. at 157-58, 870 P.2d at 119-20.

However, the court also held that statutory provisions authorizing warrantless arrests must be considered *in pari materia* with Article II, Section 10 of the New Mexico Constitution, which requires that warrants be reasonable.<sup>99</sup>

In its opinion, the New Mexico Supreme Court asserted its responsibility as “the prime interpreters of [the New Mexico] constitution.”<sup>100</sup> The court acknowledged the *Watson* court’s statement that statutory authority gives a presumption of reasonableness,<sup>101</sup> but added that the presumption of reasonableness may be rebutted by the court’s interpretation of what is constitutional.<sup>102</sup>

The court also cited its recent decisions in which the search and seizure provision of the New Mexico Constitution granted more protection than the Fourth Amendment.<sup>103</sup> Following this precedent, the court declined to adopt the blanket federal rule in *Watson* regarding warrantless arrests, stating that in New Mexico the definition of what is reasonable depends upon factual context.<sup>104</sup> By asserting its own constitutional authority, the New Mexico Supreme Court was able to reject the reasoning of the majority in *Watson* and instead apply the reasoning of Justice Marshall, who believed that it is the responsibility of the Supreme Court “to grapple with the warrant requirement [of the search and seizures provision of the Constitution] and the cases construing it.”<sup>105</sup>

After examining the facts of cases in which warrantless public arrests were valid, the New Mexico Supreme Court concluded that for warrantless arrests to be valid in New Mexico, an officer must justify his failure to obtain a warrant with a showing of exigent circumstances.<sup>106</sup> Consequently, after *Campos*, a warrantless search or arrest, whether in a public or a private place, is reasonable only if there are both probable cause and exigent circumstances.

## V. ANALYSIS AND IMPLICATIONS

By requiring exigent circumstances and probable cause for both public and private warrantless arrests, the New Mexico Supreme Court interpreted the search and seizure provision of the New Mexico Constitution in accordance with the Warrant Preference rule.<sup>107</sup> Consistent with its recent decisions involving search and seizure,<sup>108</sup> the *Campos* court has now

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99. *Id.* at 158, 870 P.2d at 120.

100. *Id.*

101. 423 U.S. at 416.

102. *Campos*, 117 N.M. at 158, 870 P.2d at 120.

103. *Id.* at 158, 870 P.2d at 120 (citing *State v. Attaway*, 117 N.M. 141, 870 P.2d 103 (1994); *State v. Gutierrez*, 116 N.M. 431, 863 P.2d 1052 (1993); *State v. Cordova*, 109 N.M. 211, 784 P.2d 30 (1989)).

104. *Campos*, 117 N.M. at 158, 870 P.2d at 120.

105. *Watson*, 423 U.S. at 443 (Marshall, J., dissenting).

106. *Campos*, 117 N.M. at 159, 870 P.2d at 121.

107. See Maclin, *supra* note 13, at 204.

108. See *supra* notes 51-78 and accompanying text.

provided a higher and more objective standard of "reasonableness" for valid warrantless arrests in New Mexico than exists under federal law.

The high standard both clarifies the law in New Mexico and reinforces the guarantee of the search and seizure provision of the New Mexico Constitution as a first-class right.<sup>109</sup> As the *Campos* court noted, "[o]ur constitution preserves 'the fundamental notion that every person in this state is entitled to be free from unwarranted governmental intrusions.'"<sup>110</sup> The court's decision in *Campos* has reinforced the constitutional mandate.

The confusion in other jurisdictions—over how to determine whether a warrantless arrest is made in public or in private, and thus whether exigent circumstances are required—underscores the importance of this decision.<sup>111</sup> When what constitutes a "reasonable or legitimate expectation of privacy" varies from case to case, the phrase ceases to have meaning. By holding that exigent circumstances in addition to probable cause are required for valid warrantless public arrests, the issue of whether a warrantless arrest is made in a public or a private place is now moot in New Mexico. In New Mexico, the right to be free from warrantless arrests does not depend on where a person is standing. A person in her home, in her doorway, or on the street has the same reasonable expectation of privacy and thus the same protection from unreasonable searches and seizures.

This decision will doubtless be controversial with those involved in law enforcement, who will probably agree with Justice Powell that "a constitutional rule permitting felony arrests only with a warrant or in exigent circumstances could severely hamper effective law enforcement."<sup>112</sup> Nevertheless, the concern that the police should be able arrest people in public based only on probable cause, should not outweigh the right of people to be free from unreasonable arrests.

In the future, the legal debate will probably focus on what constitutes an exigency. On this issue the *Campos* court provides some guidance. The court stated that the fact that Campos was driving an automobile was not a sufficient exigency for a warrantless arrest.<sup>113</sup> By so stating, the court has, perhaps, forestalled future confusion over the role cars play in creating exigencies.

## VI. CONCLUSION

*Campos* interpreted Article II, Section 10 of the New Mexico Constitution to require the existence of *both* probable cause *and* exigent circumstances for warrantless public arrests. With this ruling, the New Mexico Supreme Court continued a brave trend it began in *Cordova*, analyzing the guarantees of the New Mexico Constitution independently

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109. *Campos*, 117 N.M. at 159, 870 P.2d at 121.

110. *Id.* (citing *Gutierrez*, 116 N.M. at 444, 863 P.2d at 1065).

111. See *supra* notes 18-50 and accompanying text.

112. *Watson*, 423 U.S. at 431 (Powell, J., concurring).

113. *Campos*, 117 N.M. at 160, 870 P.2d at 122.

from federal law when federal law appears to favor efficiency over freedom. At a time when fear of crime has become the prime concern of many Americans, it would have been easy for the supreme court to expand the ability of the police to intrude into the affairs of private individuals by construing the New Mexico Constitution liberally. Such a construction, however, would not resolve the crime rate in New Mexico, but only violate the constitutional right that everyone be free from unreasonable searches and seizures. The *Campos* decision should be praised for providing clear guidance as to the standards necessary for a reasonable warrantless arrest in New Mexico and abandoning the distinction between private and public places.

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