

SEARCH & SEIZURE IN NEW MEXICO

ONLINE

THIS OUTLINE HAS THREE PARTS:

SEARCH & SEIZURE WITHOUT A WARRANT

SEARCH WARRANTS - PART 1

SEARCH WARRANTS - PART 2

PRESENTED BY:

DPS – Law Enforcement Academy
Santa Fe, New Mexico

Date: _____

SEARCH & SEIZURE WITHOUT A WARRANT

GOALS

- Students will have an understanding of Fourth Amendment case law.
- Students will be able to apply case law and concepts to practical police work.
- Students will understand how Fourth Amendment applies to arrests and seizures.
- Students will know the exceptions to a requirement for a search warrant.

OBJECTIVES

Upon completion of this course, students will be able to:

- Know the legal difference between a search and a seizure.
- Understand the impact of the exclusionary rule on law enforcement
- Explain how state constitutional decisions can give more rights than federal decisions.
- Understanding the exceptions to a requirement for a search warrant.
- Identify circumstances where consent to a search is applicable.
- Know what is necessary to make evidence seized by third party consent admissible.
- Identify circumstances where an inventory search is applicable.
- Know the circumstances to make evidence by the plain view exception admissible.
- Explain what is needed to do a vehicle search without a warrant.
- Understand the use of dogs in a vehicle search.

SOURCES

- New Mexico Criminal and Traffic Manual.
- New Mexico Statutes Annotated.
- State and federal case law.

ESTIMATED TIME Fifteen hours

PREPARED BY

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DATE APPROVED _____

ACCREDITATION NUMBER _____

INTRODUCTION

- The Fourth Amendment, also known as the Search & Seizure Amendment, requires a search warrant. We will first discuss the Fourth Amendment.
- Next, we will discuss exceptions to the requirement for a search warrant

THE FOURTH AMENDMENT

The right of the people to be secure in their persons, houses, papers, 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.

Case law interpreting the Fourth Amendment goes back over 200 years. The most important thing to remember may be the warrant requirement.

- It takes a Judge independent of the police to issue a warrant.
- A warrant must be obtained unless the facts fit one of the exceptions established by case law.
- Before we discuss these exceptions, we need to understand the definition of search and seizure.

DEFINITIONS OF SEARCH & SEIZURE

SEARCH

LOOKING FOR EVIDENCE OR A PERSON INVOLVED IN A CRIME BY A LAW ENFORCEMENT OFFICER IN A PLACE WHERE THEY HAVE A REASONABLE EXPECTATION OF PRIVACY.

SEIZURE

TAKING POSSESSION OF A PERSON OR OBJECT BY A LAW ENFORCEMENT OFFICER OR AGENT.

CONTRABAND - Any item the possession of which is prohibited by law.

APPLIES TO A LAW ENFORCEMENT OFFICER OR AGENT

- Fourth Amendment applies to law enforcement officers only.
- Does not apply to private citizens or security guards.
- However, if law enforcement asks a private citizen to search or seize something, we now have a Fourth Amendment issue. However, police can use the findings of a private citizen search even though what they did was illegal.

FACTS:

Coronado Mall in Albuquerque. Security guards, responding to reports of a fight, handcuffed Defendant after a brief struggle. They reached inside his pocket, removed a pill bottle, and found cocaine. Soon afterward, Albuquerque Police officers arrested him. Will the evidence (cocaine) be admissible?

If a police officer had reached into his pocket, the evidence would be inadmissible because it didn't follow Fourth Amendment (stop and frisk) guidelines. The Fourth Amendment, however, doesn't apply to private citizens. And so it comes down to an interesting question: is a private security guard a private citizen or a police officer? State v. Santiago (2009).

Answer:

Generally, for search and seizure purposes, a security guard is a private citizen. But there are exceptions, especially if a security guard is an agent or acting on behalf of law enforcement. An off duty officer, for example, may be viewed by the courts as being an agent for law enforcement. The security guards in this case were not off duty officers.

Supreme Court of New Mexico reviewed the facts and held these security guards were not agents for law enforcement. APD officers were not present during the search or before, and nothing indicates they encouraged the search. The fact that officers accepted the cocaine doesn't mean they supported the guards' conduct. Evidence was admissible.

FACTS:

A sealed package, shipped by bus from Texas to Albuquerque, was misdirected to Denver. Bus company personnel received more than a dozen calls from Defendant. She claimed the package contained jerky. Suspecting more, they opened the package which held bundles wrapped in brown plastic. This was permissible; the fourth amendment does not apply to private searches.

They couldn't see beyond the brown plastic but notified DEA. The package was sent to Albuquerque. The DEA agent concluded he had probable cause to believe the bundles contained marijuana. He cut open a bundle which confirmed his suspicion of marijuana. Defendant was arrested when she came to retrieve the package. Admissible? (no) State v. Rivera (2010).

Answer:

Under federal law, had the case been heard in federal court, it would have been a good search. But the case was heard in state court. The Supreme Court of New Mexico reviewed the case using the higher standard of the state constitution.

They held that unless there is an exception, the government must get a warrant before exceeding the scope of a private search. No exception applied here. Once the private citizen opened the package, the agent had the right to see the same thing the private citizen saw. But cutting the bundle open was an improper extension of the private search.

FOURTH AMENDMENT AND THE EXCLUSIONARY RULE

- What happens if an officer seizes an item but fails to get a search warrant as required?
- The Constitution - the Fourth Amendment - does not address this issue. The Courts have designed their own remedy which is known as the exclusionary rule.
- Evidence seized illegally will be suppressed and inadmissible in court.

A DIFFERENCE BETWEEN FEDERAL AND STATE COURTS

- Not only does the United States have a Constitution but each state has one as well. State courts may interpret their own Constitution to provide more protection for their citizens than the United States Supreme Court but they cannot interpret their Constitution to provide less protection.
- Since New Mexico has a tendency to give more protection for citizens, we will generally be citing New Mexico case law.
- For example, the US Supreme Court might allow evidence improperly seized under the good faith exception. The New Mexico Supreme Court, however, has held the exclusionary rule is not a rule of evidence or designed to deter police conduct. When evidence is illegally seized, even in good faith, it will be suppressed. State v. Gutierrez (1993).

REASONABLE EXPECTATION OF PRIVACY

Reasonable expectation of privacy is the guiding force behind search and seizure. If a person has a reasonable expectation of privacy, we will need a search warrant, unless the facts fall under one of the exceptions to the search warrant requirement.

FACTS:

A DA investigator ran a license plate of a vehicle parked in the DA's parking lot in Taos, New Mexico. The plate came back to another vehicle. He noticed a handgun in the vehicle and questioned the driver of the vehicle. Upon determining the driver was a convicted felon, an inventory search was done. Cocaine was found. Good search? Or should there have been a search warrant prior to running the plate? State v. Herrera (2009).

Answer:

Court of Appeals held this wasn't a search because a person doesn't have an expectation of privacy in a license plate number. License plates are out in the open, in plain view, and running a plate is not intrusive since a driver is not even aware a check is being done. An officer does not need a reason to run a license plate number.

Court of Appeals also noted a federal case (Ninth Circuit) where an officer checked the license plate of a truck in front of him and discovered that the vehicle's registered owner had a suspended license. As a result, the officer stopped the vehicle and arrested the vehicle's registered owner for driving with a suspended license. In that case, the federal court said the stop was good. United States v. Diaz-Castaneda (2007).

FACTS:

Three men were arrested for commercial burglary. An Albuquerque police officer handcuffed them and placed them in the back seat of the officer's patrol car. The officer secretly turned on a tape recorder which was lying on the front seat of the patrol car. The officer left the men alone while he inventoried their car.

When the officer returned to the patrol car he told the three men, "You might want to listen to this tape," and played part of the tape for them. Is it okay to secretly run a tape recorder in a police car? Do offenders in a police car have an expectation of privacy?

ANSWER:

Court of Appeals held that defendants, sitting in a patrol car, have no reasonable expectation of privacy. Their statements were admissible. State v. Lucero (1981).

FACTS:

While in the booking area of the Hobbs City Jail, Defendant made a telephone call which implicated him in criminal activity. There was no notice that the call was monitored or recorded. The Abuse of Privacy Act prohibits "taking or copying any . . . communication . . . intended for another . . . by telephone . . . without the consent of a sender or intended recipient . . ." NMSA 1978, Section 30-12-1 (C). State v. Templeton (2007).

- Does an inmate have an expectation of privacy when making telephone calls in a jail? (yes)

ANSWER:

Court of Appeals noted that prison inmates have a diminished right of privacy while in prison. But the Abuse of Privacy Act, applying as it does to telephone conversations, includes prison inmates. The issue is whether the inmate gave consent, express or implied. Since the inmate didn't give consent, the recording was suppressed.

If notice is given, such as a recording before a call is placed that it is being recorded and monitored, and an inmate continues talking anyway, the recording will be admissible.

Strip searches and the expectation of privacy

A strip search is very intrusive and should be used with caution.

The following cases involved corrections facilities in New Mexico that did strip searches on persons that were incarcerated. In 2006 Santa Fe County paid out approximately **eight million dollars** for illegal strip searches in a legal settlement. Other lawsuits followed:

News item: Dona Ana to pay \$5M in Suit

Dona Ana County has agreed to pay **\$5 million dollars** to settle a lawsuit by former inmates who allege they were illegally strip-searched while being booked into the county jail. Albuquerque Journal, September 27, 2007.

News item: Hidalgo to Settle Suit for \$1 Million

Hidalgo County (Lordsburg) has agreed to a **\$1 million** settlement in a federal class-action lawsuit alleging that certain detainees at the county detention center were routinely strip-searched without a legal basis. Allbusiness.com/legal (January 22, 2009).

News item: Valencia Co. Strip-Search Suit Settled for \$3.3 Million

A federal judge last month approved a preliminary settlement in a class-action suit against Valencia County regarding unlawful strip searches at the jail. County to pay **\$2.145 million**, jail operators the rest. Albuquerque Journal, March 20, 2009.

News item: \$2.99M Deal Brokered in Strip Search Lawsuit (Guadalupe County-Santa Rosa)

Proposed settlement covers Santa Rosa jail, 5 others in 3 states. The settlement is one of a half-dozen class action lawsuits against county jails in NM based on a blanket policy to strip-search individuals.

Bob Rothstein, whose Santa Fe-based firm filed five of the strip-search lawsuits, said a memo surfaced after the first one was filed in Santa Fe. It was from the New Mexico Association of Counties, warning counties to review their strip-search policies to prevent the kind of litigation Santa Fe was then facing.

“They didn't,” he said. Albuquerque Journal, July 20, 2010.

Note:

In 2012, the United States Supreme Court held jailers do not need reasonable suspicion to strip search people arrested for minor offenses. States, however, may give more (not less) rights to citizens. In New Mexico, to do a strip search of someone, reasonable suspicion is required.

- Law enforcement officers should use reasonable suspicion for strip searches.

Some strip searches involve police departments:

News item: City loses strip search suit

For a cash-strapped municipality like Flint, Michigan, the \$900,000 payment to settle a court case couldn't come at a worse time. A federal judge approved the settlement to be split among roughly 100 people who alleged they were strip-searched during a raid on a Flint dance club. The plaintiffs were represented by the ACLU. American Police Beat (February, 2010).

If a department doesn't have a policy on strip searches, it is recommended that approval be obtained from an attorney before doing one.

EXCEPTIONS TO THE REQUIREMENT FOR A SEARCH WARRANT

A question often asked by police officers is: Do we need a search warrant? The answer is yes unless . . . the facts fit one of the exceptions.

. We will be looking at court cases to get a better understanding of these exceptions. Some of them are:

- Abandoned property.
- Community Caretaker (includes emergency assistance doctrine).
- Consent (includes third party consent).
- Exigent (or emergency) circumstances.
- Inventory search.
- Open fields.
- Plain View.
- Protective sweep
- Search Incident to Arrest.

NOTE: School searches will be discussed in Juvenile Law.
Vehicle searches will be discussed in this outline.

There is no “murder scene” exception to the Fourth Amendment. Mincey v. Arizona (1978).

A word of caution

It takes hours to get a warrant. It follows that it would be helpful if one can find an exception, a way to avoid having to get a warrant. However, if you are unclear whether a warrant is necessary or not, recommend getting a warrant. The reason is that a search without a warrant is presumed unreasonable and the state has to justify why a warrant wasn't obtained.

EXCEPTION: ABANDONED PROPERTY

When a person abandons property, that person is voluntarily giving up their interest, their privacy expectation, in their property. In determining whether property has been abandoned, it is necessary to look at the intent of the person.

FACTS:

A trash container located in an alley behind Defendant's residence contained sealed garbage bags. Lea County Drug Task Force agents seized the bags and found items consistent with drug trafficking. These items were used to get a search warrant which led to illegal drugs being found in Defendant's house. State v. Granville (2006).

- Does a person have an expectation of privacy in garbage left on the curb?

ANSWER:

New Mexico Court of Appeals, unlike the United States Supreme Court, held citizens do have an expectation of privacy in garbage. A person putting garbage bags on the curb believes the garbage company will collect it and no one else. Items in garbage can reflect intimate and private affairs conducted within the home, the most protected of places.

The possibility that another person may go through the garbage does not negate the reasonable expectation of privacy. Public access to garbage placed curbside for collection is no different from public access to a letter placed in a curbside mailbox for the postal carrier.

EXCEPTION: CONSENT

- May be the most used exception. Even in the absence of probable cause or a search warrant, a search will generally be upheld if the person searched has given a voluntary consent. But the consent cannot be a result of coercion; where there is coercion there cannot be consent. Coercion means “police overreaching that overcomes the will of the defendant.” State v. Chapman (1999).

FACTS:

A state police officer received a tip that marijuana was growing in the backyard of a residence in Bosque Farms. He went there, saw marijuana, and asked for consent to search. “Do you have a warrant?” “No, but I believe I have enough to get one and the residence will be

secured in the meantime. You're free to come and go. Have a nice day." He advised that if consent was given, and marijuana found, no arrests would be made but if a warrant was obtained and marijuana found, arrests would be made. State v. Shaulis-Powell (1999).

- Can an officer advise what he or she is going to do or is that coercion?
- Consent was given but was it voluntary?

ANSWER:

Court of Appeals noted that the officer's explanation that he believed that he had enough for a warrant, and if no consent was forthcoming the premises would be secured while one was obtained, was a reasonable explanation of the process that would be followed. As long as there is probable cause to support a warrant, the officer can inform the suspect of what he or she is going to do.

His proposal to forego arrest if defendants consented was a lawful incentive for their cooperation. He gave defendants a legal choice and they chose to cooperate rather than wait for a warrant. No coercion, no duress. Consent was voluntary.

Scope of consent

Once consent has been given, there are limits as to how far (scope) the search can go. If the person hasn't set limits, the scope of the search is based upon what a reasonable person would understand from the person's consent.

But what if you ask the person for consent to search and the person says no?

The person saying no has a right to say no. Other evidence may exist to justify a search without a warrant or we may have to get a warrant. But a refusal to give consent – even though it seems suspicious – doesn't give us probable cause to do a search.

What if during the search the person changes his or her mind about giving consent?

Consent can be revoked at any time after the search has been initiated.

Is there any particular way to ask for consent to search?

Unlike Miranda, there are no set rules for getting verbal consent. Depending upon department policy, a written consent form may be used.

FACTS:

A popular procedure for narcotics agents is called "knock and talk." Agents from the Pecos Valley Drug Task Force (Eddy County) arrested a person for trafficking cocaine. The person said Defendant was his source of cocaine. Agents went to Defendant's home. In plain clothes, badges on chains around their necks, guns at their sides, they asked Defendant for consent to search his house. Defendant agreed and they found cocaine and a scale.

Defendant argued in court that the consent to search his house was invalid because he had not been advised of his right to refuse consent. Will the contraband be admissible?
State v. Flores (2008).

ANSWER:

A person's consent must be voluntary, without duress or coercion. But police are not required to advise someone that consent may be refused before obtaining consent. This also applies when agents want to search a house when doing a "knock and talk" investigation.

FACTS:

Farmington Police officer stopped a vehicle for a traffic violation. Upon making contact with the driver, a juvenile, the officer noticed a very strong odor of marijuana from inside the car. After getting consent to search the vehicle, he found clear plastic baggies of marijuana.

Should an officer be required to advise juveniles (something they don't have to do for adults) that they can refuse consent when asking for consent? State v. Carlos A. (2012)

ANSWER:

When there is a Fifth Amendment interrogation, the Children's Code and case law does give more rights to juveniles. But this was a vehicle search, under the Fourth Amendment. Court of Appeals declined to provide an additional right that would require officers seeking consent from juveniles to advise them they could refuse consent. Marijuana was admissible.

What per cent of the people asked actually give consent?

Usually the majority of people, even those with something to hide, will give consent. Why? It may be reverse psychology or the feeling that an officer will conduct a search anyway. As long as consent is voluntary, the motive of why someone gives consent is not important.

Consent must be voluntary

Officers need to be cautious when seeking consent from mentally retarded people, highly intoxicated people, and children.

EXCEPTION: THIRD PARTY CONSENT

This occurs when another person (third party) gives consent to search someone's property or residence. We need to be careful that the party giving consent has authority to give consent.

FACTS:

Deputies in Lea County responded to a domestic dispute. They first met defendant who was standing on the porch with a suitcase. She had been locked out of the house by her husband who would not let her back in. Concerned, the deputies went inside to speak with her husband. He was upset about his wife's drug problem. Money that he had given her to buy Christmas gifts had been used to buy drugs instead.

Drugs? Where? He volunteered that her drugs were in a cosmetics pouch in the bedroom and showed the pouch to the deputies. With his permission, they unzipped it, and looked inside. Based on what they saw, defendant was convicted of possession of cocaine.

- Do we need a search warrant for the cosmetics pouch? (no)

- Will third party consent assist us here? (yes)

ANSWER:

What permits this exception is that people in the same residence, especially married people, have mutual use and access to the property of another. One who has common access and authority can normally give consent to search where both people have mutual access. One party cannot consent, however, if the other party has exclusive access to an item or an area to be searched.

Since there was no showing that the defendant had exclusive access to the pouch, the husband's consent was valid. Court of Appeals affirmed conviction. State v. Cline (1998).

How would you handle the following situations?

FACTS:

An owner-manager of a motel is aware of drug activity in room #7. He is a good citizen and even has a sign in the lobby, WE COOPERATE WITH LOCAL POLICE. He calls the police. The police arrive, knock repeatedly on the door of #7, but no one answers. The owner-manager gets a room key, opens the door, and the police immediately see all kinds of drugs. Do we have a good search?

ANSWER:

No. A person who rents a motel room for a night has an expectation of privacy in that room. The motel manager or employees can go into the room if there is an emergency or the check-out time has passed. Otherwise, the motel room is the same as if the person was in their own house or apartment.

FACTS:

An apartment manager has high standards. On the contract that tenants sign is a paragraph stating that illegal drugs are grounds for eviction. She notices a lot of different people going to a certain apartment, knocking on the door, and entering. These people stay only a few minutes and leave. She suspects drug activity and calls the police. They knock on the door, no one answers, and she uses a key to enter the apartment. Cocaine and heroin are found in plain view. Good search?

ANSWER:

Not a good search. The tenant has an expectation of privacy in an apartment. The landlord cannot give peace officers permission to search for evidence. Most landlords, if they want to enter an apartment to fix something, will give a tenant advance notice. If there is an emergency – water flooding – the landlord can enter an apartment.

FACTS:

Defendant rented two rooms in a home which he shared with the landlords. He used their refrigerator and bathroom because he didn't have one; landlords, in turn, did laundry in Defendant's kitchen area and the husband kept some tools in Defendant's apartment. Although there was some overlapping, the landlords treated his apartment as a private residence.

Acting on information of a possible meth lab, two Albuquerque Police Officers went to the house. The landlord gave permission to search the house. They opened the door to Defendant's room and found a meth lab. State v. Monteleone (2005).

- Is the third party consent of the landlord sufficient? (no)

ANSWER:

It would be if the landlord had common authority over Defendant's apartment. But even though they shared things, there was no common authority. The landlords treated Defendant's apartment as a private residence; the defendant had a "superior privacy interest." Court of Appeals held the search was invalid and the evidence was suppressed.

Lesson Learned:

A roommate or third party can give consent to search only if he or she has mutual access to the room or item to be searched. In these situations, we need to consider the expectation of privacy.

Third party consent and Apparent Authority

FACTS:

A crime stoppers tip indicated drugs had been delivered to a trailer home in Alamogordo, New Mexico. The owner of the trailer home, who also lived there, allowed others to stay there. He was not present when officers arrived. A female, who was not an owner or regular occupant, invited the officers in. She said only she and her two children were there. She opened the door to one bedroom and the children were observed sleeping.

The officers saw a light under the door of the back bedroom and asked consent to search. It was given and they found two people with drugs. State v. Wright (1995).

- The officers felt the lady had authority to give consent to search. Will the drugs be admissible? If not, why not?

ANSWER:

At issue was whether an individual who has apparent authority to consent to search may give lawful consent to law enforcement officers to enter and search the premises by another. Court of Appeals said no, declining to recognize an "apparent authority" exception for third party consent. Evidence was suppressed.

Lesson Learned

Although the United States recognizes a "good faith" exception, New Mexico does not.

Mutual Consent – One party disagrees with another

- A tenant may give consent to enter a home, but law enforcement cannot enter if a co-occupant of equal authority is present and objects to entry. US Supreme Court. Georgia v. Randolph (2006).

- If probable cause exists, recommend securing the scene and getting a search warrant.

EXCEPTION: COMMUNITY CARETAKER

FACTS:

Officers were dispatched to a possible suicide attempt. Defendant opened the door to her home, very distraught and emotional. She tried to shut the door but the officer stuck his foot in the opening. She yelled at officers to “f----- leave me alone.” Officers, concerned about her safety, forced their way in. Defendant, still sobbing and emotional, continued to ask them to leave. She then committed Battery on a Peace Officer. State v. Nemeth (2001)

- Did the officers need a warrant to enter the residence?

ANSWER:

Of all things protected by the Fourth Amendment, a house or residence has the highest protection. Officers should not enter a house or even open a door unless there is an exception. One exception is community caretaker. Another exception, to be discussed shortly, is exigent (emergency) circumstances.

Court of Appeals held that an officer can enter a private residence if an officer has a reasonable and articulable belief that a person is in need of immediate aid or assistance or protection from serious harm. It must be a specific, articulable concern for the safety of another that does not involve a law enforcement purpose.

The officers (Aztec police and San Juan County Sheriff’s department) acted properly in their community caretaker function. Conviction for Battery Upon a Peace Officer upheld.

EXCEPTION: EMERGENCY ASSISTANCE DOCTRINE

- This category falls under the community caretaker exception.

FACTS:

In Eddy County, an employer became concerned when Defendant missed work for two days. Arriving at Defendant’s home, he saw the company truck in the driveway, keys inside, with windows rolled down. Through others he learned that defendant had been sleeping for two days, possibly caused by a drug overdose. A police officer met defendant’s aunt at the house and helped her force entry. Once inside, he observed drugs nearby. State v. Baca (2006).

- Will seizure of drugs fall under the emergency assistance doctrine?

ANSWER:

One exception for officers to enter a house without a warrant is the emergency assistance doctrine. It’s used when there is an emergency, a perception that a person within the house is in need of immediate aid or in imminent danger.

The Court of Appeals held there was no emergency and ordered the drugs suppressed. There was nothing to suggest Defendant required immediate assistance. There were no screams, or threats of violence, and the need for immediate intervention was not apparent.

The Court of Appeals suggested an alternative: the officer should have waited outside while the Aunt entered the residence. That way a civilian, not an officer, would be making entry.

Lesson learned:

Even when we use the community caretaker exception (emergency assistance doctrine) to enter a residence, there must be an emergency.

EXCEPTION: EXIGENT CIRCUMSTANCES

FACTS:

Two deputy sheriffs from Curry County assisted CYFD (Children, Youth & Families Department) on a “child welfare check.” CYFD wanted to investigate suspected truancy and poor nutrition of a child. The Child’s mother, however, refused entry and said the deputies needed a warrant to enter. Deputies pushed the door open, entered, and after a struggle arrested the mother. Chavez v. Curry County (2001).

- Were the deputies justified in entering the residence without a warrant? (no)
- Can peace officers in a child abuse or neglect investigation enter a residence without a warrant in the absence of an emergency situation? (no)

ANSWER:

“Exigent circumstances” allows an officer to do an entry without a warrant if immediate action is necessary to safeguard a child from imminent harm or injury. But the deputies did not see children who appeared in distress or danger. It is well established that officers in a child abuse or neglect investigation cannot enter a home without a warrant in the absence of an emergency situation.

Court of Appeals concluded this wasn’t an emergency situation requiring immediate entry. The jury charged one deputy \$5,000 and the other deputy \$2,500 for violation of civil rights. The State must also pay attorney’s fees and costs.

- In 1761, James Otis of Massachusetts, said, “A man’s house is his castle; and while he is quiet, he is as well guarded as a prince in his castle.”
- In 1763, William Pitt, a member of the English Parliament, said, “The poorest man may, in his cottage, bid defiance to all the forces of the Crown. It may be frail, its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England may not enter; all his forces dare not cross the threshold of the ruined tenement.”

Lesson Learned: Going into a house without a warrant is a last resort. Officers need probable cause and exigent (emergency) circumstances.

FACTS:

Standing on the porch of a residence, Albuquerque police officers noticed the chemical odor of a possible meth lab. Defendants refused consent to enter. Concerned, the officers called for a sergeant who arrived within half an hour. While waiting, neither party was restrained. One party entered the residence to use a restroom.

The officers didn't know if this was a meth lab in operation – an active cook. They felt, however, that a possible meth lab presented a danger – exigent circumstances – and entered the residence. Once inside, they saw a meth lab and used this information to get a search warrant. State v. Trudelle (2007).

- Does a possible meth lab justify entry without a warrant? (no)

ANSWER:

Court of Appeals said no and suppressed the evidence. To enter a house – even to secure it – we need probable cause and exigent circumstances. Yes, meth labs are dangerous, but that does not automatically translate into an emergency. We need to show particularized information that the residence in front of us, the one we want to enter, presents exigent circumstances.

Based on the facts here, no emergency existed. And if there isn't an emergency, if there isn't consent, a search warrant is needed to enter the home.

FACTS:

An Estancia, New Mexico police sergeant smelled the odor of ammonia. He knew it's used to make meth and traced the odor to Defendant's garage. A loud banging sound could be heard within. As he was looking through a crack in the garage door, he was hit in the face with ammonia vapors which burned his eyes and lungs.

Defendant's mobile home was thirty to forty feet away. Defendant, who had just walked out of the trailer, was detained. His brother, who had just left the garage, was also detained. Officers immediately searched the garage. This was a good search because exigent circumstances existed. They also search the mobile home, without protective gear, with the Defendant and his brother nearby. Good search? State v. Moore (2008).

ANSWER:

There must be specific reasons to enter a particular residence. But consider the trailer home: the officers did not wear protective gear when searching it and defendant and his brother were detained in the area while officers did the search. Court of Appeals held no exigent circumstances existed to enter the trailer. Evidence suppressed.

FACTS:

Two shoplifters in Valencia County stole antifreeze. A deputy saw the suspect's vehicle

near a mobile home. Defendant was outside the mobile home. While talking to Defendant, a female he knew came out of the mobile home. She advised the deputy “there was an active meth lab in the house.” The deputy noticed what appeared to be meth in Defendant’s pocket.

Based upon her statement, deputies quickly entered the mobile home. They encountered a strong chemical smell. They began coughing and their eyes began to burn. Seeing indicators of a meth lab (including antifreeze), they got a search warrant. State v. Allen (2010).

- Did exigent circumstances exist to justify the warrantless entry of the mobile home? (yes)

ANSWER:

Court of Appeals held that the statement of the witness, who had just left the mobile home, was sufficient information for exigent circumstances to support entry without a warrant. Evidence seized was admissible.

Difference between community caretaker and exigent circumstances exception:

Exigent circumstances apply when officers are justified to enter a residence without a warrant for law enforcement purposes. Community caretaker differs in that the officer is not concerned about violations of the law but about the safety of the individual only.

Lesson Learned:

These cases show that only in extraordinary cases should officers enter a residence or the curtilage (surrounding premises) without a warrant.

Code Enforcement . . . but are there exigent circumstances?

It’s a familiar situation: police officers serve search warrants at the same motel or apartment complex, over and over again, but the owner or manager doesn’t care. Stolen goods are taken to the same flea market but the owner says, “It’s not my problem.”

People with this attitude have never heard of code enforcement, an effective tool for people with this kind of attitude. It’s a civil lawsuit, similar to public nuisance. It has helped shut down numerous motels in Albuquerque. But law enforcement needs to work within limits:

News item: Zoning Crackdown May Cost City \$1.7 million dollars

Code enforcement officers would red-tag a room for a drug violation, evicting people without a court order. This was done although there were no emergency (exigent) circumstances to justify a warrantless search or seizure. In response to a class action lawsuit, Albuquerque has agreed to pay \$1.7 million dollars. One policy change would require the city to provide a hearing before evicting someone from their property. Albuquerque Journal, April 17, 2012.

Loud Music Call

Loud music dispatch

There can be confusion in something as minor as a loud music dispatch. Suppose the person doesn't come to the door. Every effort is made to get their attention – we know they're in there – but they still do not come to the door. What should an officer do?

Recommendation:

Do not open the door – even if only to announce your presence – unless there is an emergency. This may mean having dispatch call the residence or banging on the door until the person appears. Only in an emergency should an officer enter a residence.

911 Hang-up Call

News item: Judge Tosses Evidence in Child Molestation Case

Bernalillo County Sheriff's deputies went to Tijeras in response to a 911 hang-up call. No one answered the door but a door was unlocked. Deputies entered and saw a number of pictures, including one of defendant performing sex acts on a boy of about 8.

A federal judge held that the deputies illegally entered the house. Accordingly, prosecutors could not use a confession, tapes, photos and other items taken from the house. Albuquerque Journal, February 26, 2010.

Some of the charges went to state court. The state court judge ruled the same way as the federal Judge:

News item: Molester Suspect Evidence Barred

A Tijeras man accused of raping an 8-year-old boy and filming it while the child tried to get away is one step closer to freedom. A state district court judge found there were no exigent circumstances nor was anyone in immediate need of assistance.

A DA spokesman said the opinion could have a chilling effect on police response to 911 calls, and create the possibility that someone in desperate need of help won't get it. All evidence seized was suppressed. Albuquerque Journal, April 1, 2011.

Federal Court of Appeals support federal district judge:

News item: Court Upholds Evidence Suppression

A federal appeals court for the 10th circuit said a federal trial judge properly suppressed evidence in a 911 static call. A 2006 case had a different outcome when the court found exigent circumstances. In that case there was a call to a dispatcher followed by silence and a quick disconnect. Police arrived and could see a person inside who wouldn't answer the door. Albuquerque Journal, July 13, 2011.

Lesson learned: Need probable cause **and exigent circumstances** to enter a residence.

There are three ways in which law enforcement officers can gain lawful presence inside a home. The first is with a warrant, the second is with consent, and the third is under exigent

(emergency) circumstances. We need to make sure, however, that we have an emergency.

Is a search warrant needed to draw blood?

FACTS:

The driver of a vehicle, highly intoxicated, caused a crash which resulted in the death of another. His blood is losing its alcohol content – exigent circumstances. He refuses to give a breath or blood test. Do we need to get a search warrant?

ANSWER:

Yes. Even though we have probable cause and exigent circumstances, a warrant is needed to draw blood.

Can an officer get a search warrant for blood in a misdemeanor DWI?

ANSWER:

No. A search warrant for blood can only be obtained in felony cases. NMSA 1978, Section 66-8-111.

What if the driver is unconscious?

ANSWER:

Any person who is dead, unconscious or otherwise in a condition rendering him or her incapable of refusal shall be deemed to have given consent to a blood/breath test. NMSA 1978, Section 66-8-107, Section 66-8-108.

- Although not legally required, it is highly recommended that an officer get written consent or record an oral consent to search for blood. Consider the following:

News item: Man gets \$580,000 in Hobbs case

A federal jury found two Hobbs police officers conducted an illegal search when they obtained a blood sample from Jimmie Marshall without permission and without a warrant following a traffic stop.

Officers maintained that Jimmie Marshall agreed to provide a blood sample for drug testing but refused to give written consent. The suspect sued in federal court, stating he never agreed, orally or in writing, to give a blood sample. He now lives in Ruidoso. Albuquerque Journal, August 24, 2004.

News item: City Settles Arrest Suit for \$812,500

The city of Albuquerque has agreed to pay \$812,500 to a mentally disabled man who served two days in jail after he was arrested for suspicion of drunk driving. His blood alcohol level was 0.0.

The Judge held that the blood draw violated the defendant's right to be free from an unlawful search. Albuquerque police made the arrest. Albuquerque Journal, April 9, 2010.

EXCEPTION: INVENTORY SEARCH

FACTS:

Defendant was arrested for a domestic disturbance and taken to the Dona Ana County Detention Facility. The booking officer searched defendant's cigarette packet and found cocaine. No warrant was obtained. Was a search warrant needed? Is this a good search?

- An "inventory search" is an exception to the requirement for a search warrant. It is constitutional if three requirements are met:
 - 1) The object of the search is in the custody or control of the police.
 - 2) The inventory search is made pursuant to established police regulations,
 - 3) The search is reasonable.
- The first two requirements were easily met. But was the inventory search reasonable? To be reasonable, a search has to be made in furtherance of any one of three purposes:
 - 1) to protect the arrestee's property while it remains in police custody,
 - 2) to protect the police against claims of lost or stolen property, or
 - 3) to protect the police from potential danger.

ANSWER:

Court of Appeals said this was a good inventory search. It was reasonable because it was made in furtherance of both the protection of the arrestee's property and to protect the police against false claims. State v. Shaw (1993).

FACTS:

A Dona Ana sheriff's deputy arrested defendant for driving on a suspended license and did an inventory search. During the search a report came over the police radio that defendant was possibly involved with narcotics. Although he did not normally call a canine unit when doing an inventory of a vehicle, he did so now.

The dog, Sparky, arrived in approximately ten minutes. Sparky quickly alerted to a plastic bag containing cocaine. Sparky did not prolong the inventory search nor did Sparky go anywhere that the officers had not previously inspected. Drugs were located in the console. No warrant was obtained. Was a warrant needed? Was this a good search?

- All three requirements of an inventory search must be met including the search being made pursuant to established police regulations.

- Did the officer follow a routine procedure established by police regulations?

ANSWER:

Court of Appeals ordered the evidence suppressed. Because the officers did not follow police regulations, the use of Sparky could not be justified under the inventory search exception. State v. Ramzy (1993).

Lesson Learned:

If we seize a vehicle for the purposes of looking for evidence, we need to get a search warrant.

FACTS:

A Clovis Police officer arrested Defendant for driving with a revoked license. He and another officer did an inventory search of Defendant's vehicle. In the center console they discovered a cell phone case. They opened it and inside saw a glass pipe wrapped in a napkin. In the pipe was a white powdery substance.

It was immediately apparent to the officers that the pipe was being used for illegal purposes. The pipe was seized. Defendant was convicted of possession of a controlled substance and possession of drug paraphernalia. Good search? Good seizure? State v. Lopez (2009).

Answer:

Court of Appeals looked at the search first. They noted that an officer, in an inventory search, can open compartments and closed containers (such as a center console or a cell phone case). The inventory search was good.

What about the seizure of the pipe? Once the pipe was discovered, it was properly seized under the guidelines of the plain view doctrine. Convictions affirmed.

Lesson learned:

As part of an inventory search, an officer can open compartments and closed containers.

EXCEPTION: OPEN FIELDS

- The Fourth Amendment protects a person's house and surrounding curtilage because of an expectation of privacy in it. What is curtilage? It would be someone's residential yard or property surrounding the house they own.
- For example, a person may have a fence around their backyard. That backyard, in terms of expectation of privacy, is similar to their residence.
- "Open fields" are those areas beyond the curtilage which a person owns. It may be property next to his but he doesn't own it. He decides to grow marijuana there. Under this exception, police do not need a warrant to seize the marijuana.
- Another example happens when a person on public lands (a state park, national

forest) grows marijuana. It could also be an empty lot in town where someone is hiding contraband. The person who grows marijuana in an “open field” has no expectation of privacy.

- Defendant grew marijuana in a field approximately 100-140 yards from his cabin. Open fields or curtilage? Court of Appeals said open fields. The growing of crops does not make an area “occupied” or “developed” under the open fields exception. State v. Sutton (1991).

EXCEPTION: PLAIN VIEW

Some officers believe that if they see something (in plain view), they can seize it. This is not correct. The plain view exception has guidelines that must be followed:

- 1) the officer is lawfully in a place from which the evidence can be plainly viewed,
- 2) the item’s incriminating character is immediately apparent, and
- 3) the officer has a lawful right of access to the object itself.

FACTS:

A San Juan County Sheriff’s detective noticed footprints in the sandy ground near the victim’s body. When the primary suspect came to his office, the detective observed the soles of defendant’s shoes and felt they matched the footprints at the crime scene. The detective, without a warrant, took the shoes into evidence. State v. Williams (1994).

- Was a warrant needed to take the shoes? (no)

ANSWER:

Supreme Court of New Mexico held the three parts of the plain view exception were met. Under the “immediately apparent” language, the officer is not required to ‘know’ that certain items are contraband or evidence of a crime. Rather, the officer need only have probable cause to associate evidence with criminal activity.

FACTS:

A young man is growing marijuana in his fenced-in backyard. An officer is invited to a second story apartment next door. From his vantage point, he can see the marijuana plants. When he tells the young man what he has seen, the young man tells him to get a warrant. The officer says, “I don’t need a warrant. I can see the marijuana in plain view.” The marijuana is seized.

Will it be admissible?

ANSWER:

No. The first two parts of the exception have been met: (1) the officer was lawfully in a place when he saw the marijuana, and (2) its incriminating nature was immediately apparent. However, the third part of the exception was not met: the officer did not have lawful right of access to the marijuana. The marijuana was not admissible in court.

EXCEPTION: PROTECTIVE SWEEP EXCEPTION

FACTS:

State police officers, while flying in a helicopter over a remote area of Rio Arriba County, saw marijuana plants in a greenhouse attached to defendant's residence. They landed and met defendant. They entered the house over defendant's objections.

Once inside, the officers conducted a search of the entire residence. They discovered several weapons, the marijuana plants, and heroin. About one hour after evidence was seized, defendant was arrested. State v. Valdez (1990).

- A "protective sweep" has been defined as "a quick and limited search of the premises, incident to an arrest and conducted to protect the safety of police officers or others."
- It's done when officers have a concern that the person arrested or others who may be in hiding pose a danger.
- Was this a good search? Was a warrant needed?

ANSWER:

The evidence was wrongfully seized. Court of Appeals noted that the search was done before the officers arrested defendant and therefore did not fall under this exception.

Some requirements of a protective sweep:

1. There must be a reasonable suspicion the area to be swept harbors an individual posing a danger.
2. It is not designed to be a full search of the premises. Officers should look only in places where persons can be located.
3. The protective sweep should last no longer than is necessary to dispel the reasonable suspicion of danger.

EXCEPTION: SEARCH INCIDENT TO ARREST

- When an arrest is made, it is reasonable for the arresting officer to search the person arrested to remove weapons that might be used to resist or escape. It is also reasonable for an arresting officer to search and seize evidence on the arrestee's person to prevent its destruction. Chimel v. California (1969)
- The search can be on the arrestee's person and the area within his or her immediate control.

FACTS:

A Taos police officer stopped Defendant for speeding in the parking lot of Taos High School. Upon seeing drugs in plain view, Defendant was handcuffed and arrested. On the way to the patrol car, Defendant advised the officer of a shotgun in the back seat of his car. Without a warrant, the shotgun was seized from the car. State v. Rowell (2008).

- Was this a good seizure? Was a warrant needed?

ANSWER:

Supreme Court of New Mexico held that an arrest of a person, handcuffed and removed from a vehicle, does not give officers the right to use this exception to search a vehicle. The suspect's ability to reach evidence or a weapon is eliminated or significantly reduced. Other exceptions – consent, exigent circumstances – would have to be used.

FACTS:

On a traffic stop, an Albuquerque police officer observed defendant appear to be “fumbling around” with an object. When the defendant got out of his vehicle, his pants were unzipped and his belt unbuckled. He was arrested. The officer, believing he was hiding something, pulled the waistband of suspect's pants and underpants outward six to eight inches.

Looking down, he saw, among other things, a plastic bag. With a gloved hand, he removed the bag which contained contraband. Did the officer go too far?

ANSWER:

To do an under-clothing search, an officer has to have a particularized reasonable suspicion an arrestee is concealing a weapon or contraband under his or her clothing. Supreme Court held the officer's under-clothing search was justified.

Even though the search was on the side of a road, the officer acted to ensure public view was blocked. He also limited the search to where a weapon or contraband could be found. Evidence was admissible. State v. Williams (2011).

We have discussed a number of exceptions to the requirement for a search warrant. The important thing to remember is that unless we find an exception - plain view, consent, inventory search, etc., we need to get a search warrant.

VEHICLE SEARCHES

We have discussed search and seizure of persons and houses. One category which we will discuss separately involves vehicle searches.

PREVIOUS LAW REGARDING VEHICLE SEARCHES

- **PROBABLE CAUSE ALONE WAS SUFFICIENT**

For many years probable cause alone was enough to search a vehicle. For example, you might stop a vehicle and see marijuana in plain view. Your observation alone was enough to do a complete search of the vehicle.

That is still federal law and known as the Carroll doctrine. The Carroll doctrine

allows an officer to search a vehicle and containers within on probable cause alone.

NEW MEXICO LAW REGARDING VEHICLE SEARCHES

- In 1997, the Supreme Court of New Mexico decided to give defendants more rights as far as the automobile exception is concerned. Probable cause, even though you see it in plain view, is not enough to search a vehicle without a warrant.

PROBABLE CAUSE AND EXIGENT CIRCUMSTANCES

- The Supreme Court adds, “. . . if there is no reasonable basis for believing an automobile will be moved or its search will otherwise be compromised by delay, then a warrant is required.”
- The Supreme Court strongly believes in officers getting warrants unless an exception exists. State v. Gomez (1997).
- In 2008 the Supreme Court helped clarify what to do when an officer sees contraband in a vehicle.

FACTS:

Farmington police officers stopped Defendant for a traffic violation. One officer noticed a plastic baggie in the gap between the two front seats and immediately recognized it contained meth. The officer reached in and seized the baggie. State v. Bomboy (2008)

- Do we have probable cause and exigent circumstances here?

ANSWER:

Supreme Court of New Mexico upheld the seizure of the contraband. But what about searching the rest of the vehicle? In New Mexico, unless we have exigent circumstances, a warrant is required to search the rest of the vehicle or containers within.

- An officer is allowed, as noted in the previous cases on consent, to advise the offender that he or she has probable cause to get a warrant and will get one. This should be done in a matter-of-fact way and it means we need to get a warrant if the offender refuses to give consent.

Lesson Learned:

One thing to note is that someone was in the vehicle when the officer seized the item. Had the vehicle been unoccupied – a vehicle parked on a street – a warrant would have been required to enter the vehicle to seize the contraband.

Dog Search and Vehicles

FACTS:

It just wasn't defendant's day. Early in the morning, he approached a Border Patrol checkpoint approximately thirty miles south of Alamogordo, New Mexico. Right away he began giving evasive answers. The agent observed that he was nervous and that his hands were shaking. He was given consent to look in the trunk. A canine unit came by and "alerted" on the open trunk. Thanks to the dog, a more thorough search uncovered drugs and paraphernalia. State v. Van Cleve (2001).

- A dog sniffing around the exterior of a vehicle. Is this admissible? (yes)

ANSWER:

Supreme Court found no expectation of privacy and held a "dog sniff" was not a search. The odor was in the open air. This applies to many situations. For example, courts have held that no search occurs when peace officers use dogs on vehicles in a motel parking lot. Other examples: on luggage passing through an airport, in the luggage rack of a stopped bus, etc.

FACTS:

A one-car accident on I-10 near Las Cruces. The car had considerable damage and was inoperative; even the trunk wouldn't close. The car was taken to a nearby tow yard. And then defendant remembered – he had at least a pound of cocaine hidden in the trunk!

Defendant went to the tow yard and told the tow truck driver he would give him \$2,000 if he would help him. The tow truck driver, instead, advised state police about the cocaine in the trunk. State police arrived with a narcotics dog named Trax. One officer removed the glass-laden carpet from the trunk. Trax jumped into the trunk and alerted for possible narcotics. Three and a half pounds of cocaine was recovered. State v. Warsaw (1998).

- A dog jumping into the interior of a vehicle. Is this admissible? (no)

ANSWER:

Did this individual have an expectation of privacy? He certainly did; he was doing everything possible to hide his cocaine.

In New Mexico, to search inside a vehicle without a warrant, even with a dog, an officer needs probable cause and exigent circumstances. No exigent circumstances existed here. Court of Appeals held that the cocaine seized was inadmissible.

ADDITIONAL ISSUES

PROBATION AND PAROLE OFFICERS

What about searches by probation officers?

A probation officer in Albuquerque received a tip that Defendant was selling drugs from his home. Investigation revealed that Defendant was living above his means. Accompanied by two APD detectives, a warrantless probation search of Defendant's residence resulted in the seizure of cocaine and over \$19,000. Good search? State v. Baca (2004).

ANSWER:

Yes. Court of Appeals found reasonable suspicion existed and the warrantless search was good. A person on probation usually signs a contract giving up certain rights. A probation officer who wants to search the house of a person on probation needs reasonable suspicion, not the higher standard of probable cause.

What about searches by parole officers?

A parole officer in Curry County (Clovis) observed Defendant driving a car. A short time later, the parole officer went to Defendant's house for a routine visit. The same car was parked nearby. He knocked and announced, saw curtains and blinds moving in Defendant's room, but Defendant refused to open the door.

This was a violation of the parole agreement. Police backup was called and arrived twenty minutes later. Defendant still had not come to the door. Upon kicking the door open, they found Defendant cowering under the bed. He was taken outside and the search continued. Meth was found near the bed. State v. Benavidez (2010).

- Was a warrant required in this situation? (no)

ANSWER:

The Court of Appeals held the entry was good. For parole or probation, there is less expectation of privacy, and only reasonable suspicion is required. It can be reasonable suspicion of criminal activity or a violation of parole/probation.

Defendant committed a violation of parole – refusing to open the door – which gave the parole officer the right to enter the house without a warrant.

When police officers ask probation officers for assistance

Police officers in Portales had recently seen Defendant, who was on probation, with a person they had a warrant for. In an effort to locate this person, they contacted Defendant's probation officer for assistance. Together, police officers and the probation officer went to Defendant's home.

Defendant said she didn't know where the other person was. Thinking she might have been using drugs, police officers asked her about it. She admitted using drugs and tested positive. Some contraband was found nearby. The police officer got a warrant, found more drugs, and charged Defendant with trafficking and conspiracy. State v. Bolin (2010).

- Will the evidence (drugs) be admissible? (no)

ANSWER:

Court of Appeals held this was an improper use of a probation officer. This was not a probation visit; the probation officer had not intended to see Defendant that day. When Defendant was unable to assist them, officers should have ended their inquiry. Court of Appeals suppressed contraband seized by police officers.

Lesson learned:

A probation officer may call police officers for assistance and police officers may be present or involved in a search. However, police officers may not use probation officers (or parole officers) as a tool for their investigation.

HANDGUN IN POLICE CUSTODY

FACTS:

Shots were fired at a vehicle and residence. Three days later defendant was arrested on unrelated charges. Two handguns were seized and placed in evidence Defendant was a suspect in the shooting. A test compared one of the guns with the evidence recovered at victim's house. The test results were used at trial and defendant was convicted of felony criminal damage to property.

ISSUE:

Does a person have a reasonable expectation of privacy in the identifying characteristics of a handgun lawfully in police custody? **Court of Appeals said no and held there was no violation of fourth amendment rights.**

FORFEITURE POLICY

FACTS:

Tucumcari police stopped a vehicle for speeding. The officer, given conflicting answers, became suspicious, and asked for consent to search. He found \$104,999 in the trunk. The stepfather of one of the occupants said the money was his and came from a legitimate business. The money was seized pending proof of ownership. State v. \$104,999 (2000).

The seizure of money was based upon the Controlled Substances Act, NMSA 1978, Section 30-31-34 which provides for forfeiture of "narcotics paraphernalia or money which is a fruit or instrumentality of a crime." Good seizure?

ANSWER:

No. Court of Appeals held forfeitures must be related to the commission of drug offenses. Since that couldn't be proven here, the money was returned to the Defendant.

News item: Judge Rules Against Bernalillo County Sheriff's Office

A state district court judge said BCSO did an end-run around state law by using more lenient federal forfeiture procedures to seize money, especially at traffic stops. The deputies were part of an interagency task force that included federal and state officers.

The City of Albuquerque settled a similar lawsuit for **\$882,000** in 2009. A hearing will decide damages against Bernalillo County. Albuquerque Journal, September 8, 2010.

News item: County to pay \$3 million

A state Judge has ordered Bernalillo County to pay more than **\$3 million** in damages to individuals whose cash was seized by law enforcement officers.

Cash seizures were referred to federal court, which has less stringent forfeiture requirements than NM courts. In many cases, charges were never filed. Albuquerque Journal, March 5, 2011.

Lesson learned:

Officers need to know the law regarding forfeitures.

When vehicle forfeitures are permitted

Drive-by shootings:

NMSA 1978, Section 30-8.1. Seizure and forfeiture of motor vehicle; procedure.

- A. A motor vehicle shall be subject to seizure and forfeiture when the vehicle is used or intended for use in the commission of the offense of shooting at or from a motor vehicle . . .
- B. The provisions of the Forfeiture Act (NMSA 1978, Section 31-27-1) apply to the seizure, forfeiture and disposal of a motor vehicle subject to forfeiture pursuant to Subsection A of this section.

DWI:

Some cities have ordinances permitting the seizure of vehicles upon a DWI conviction.

TOWING POLICY

What about towing vehicles?

Normally this is not included in discussions of search and seizure. But consider the following:

News article: City to Pay for Unlawful Seizures

Juries found that the city illegally seized vehicles in two court cases in two weeks. The judgments are relatively modest, about \$58,000 each. Because the federal action was a civil rights complaint, the attorney will ask the city to pay legal fees as well.

One person was stopped for drag racing by the Albuquerque Police Department. He disputed the ticket and became sarcastic. APD towed his vehicle. The jury felt the sergeant retaliated against the person for exercising his First Amendment rights.

In a second case, APD officers went to Albuquerque Auto Crushers. Police officers of the auto theft unit, who didn't have a warrant, were told to leave the property. They seized a car crusher and a tire loader and kept it for two weeks. Albuquerque Journal, September 12, 2005.

Lesson learned

Officers need to know towing policies prior to seizing or impounding vehicles.

CONCLUSION

- The law on search and seizure is complex and constantly changing. We should not forget, however, what the Fourth Amendment is all about . . . the right of the people to be free from unreasonable search and seizure.

