

ALBUQUERQUE CRIMINAL LAWYER BLOG

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Search & Seizure Rights Greater Under New Mexico Law than 4th Amendment

The New Mexico Supreme Court once again reaffirms the greater protections afforded under the New Mexico Constitution than under the United States Constitution.

The ruling came in a case involving illegal search and seizure. The Court in *State v. Erica Rivera* readily acknowledged that the search and seizure would have passed muster under the 4th Amendment and federal case-law. However, the Court stated that Article II, Section 10 of the New Mexico Constitution provided greater protections against unlawful search and seizure.

The facts of the case are interesting. Marijuana was shipped to the defendant in Albuquerque via El Paso-Los Angeles Limousine Express bus service. Unfortunately for Ms. Rivera, her package ended up in Denver. Bus employees found the package suspicious and opened it to find marijuana. The bus employees then reported it to a DEA agent who requested that the package be forwarded to Albuquerque. The bus employees complied resealing and shipping the package. Upon arrival, the DEA agent and bus employee in Albuquerque reopened the package. Ms. Riveras was charged with possession of a controlled substance with intent to distribute

First, the Court noted the well established principle that 4th Amendment search and seizure rules do not apply to searches conducted by private parties. As such, the actions of the bus employees in opening the package did not give rise to a violation of the 4th Amendment. The Court further recognized the "private search doctrine" which allows a private search to be replicated by law enforcement.

The Court recognized that the search in this case would have met the requirements of the private search doctrine set forth in the 1984 U.S. Supreme Court case of *United States v. Jacobsen*. In so doing the court restated *Jacobsen*: "The rationale for this doctrine is that by conducting a search subsequent to the private search, the agent is not learning anything that he did not already know as a result of what was disclosed by the private search."

However, the Court stated that Article II, Section 10 of the New Mexico Constitution has a very strong preference for a search warrant. There are a number of recognized exceptions to the warrant requirement: "exigent circumstances,

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consent, searches incident to arrest, plain view, inventory searches, open field, and hot pursuit." The court found that none of these exceptions were present in the *Rivera* case. The court could find no legitimate reason under the facts for the failure of the DEA agent to obtain a search warrant.

The court ruled that the evidence was rightfully suppressed by the trial court under Article II, Section 10 stating: "If the State conducts a search without a warrant and without sufficient grounds for an exception to the warrant requirement, we will suppress the evidence to effectuate in the pending case the constitutional right of the accused to be free from unreasonable search and seizure." The Court recognized throughout that the results would have been much different under federal law and the 4th Amendment.

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