

DWI Roadblocks Growing in Frequency in New Mexico and are Difficult to Challenge

By Collins & Collins

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DWI roadblocks or sobriety checkpoints have become commonplace in New Mexico, particularly in Albuquerque. Those caught in the roadblock often have questions regarding the legality of the roadblock.

The 4th Amendment protects citizens from unlawful searches and seizures without probable cause of a crime. Clearly, everybody traveling through a roadblock is not under suspicion of having committed a crime. These roadblocks are clearly trolling for DWI drivers.

From a 4th Amendment perspective, these roadblocks just do not sit well with those concerned with the right to privacy and the right against unlawful search and seizure. As objectionable as the DWI roadblocks might be, the constitutionality of roadblocks under the 4th Amendment search and seizure provisions has long been established.

The legal precedent governing this area of law is complicated and expansive. There are a number of United States Supreme Court cases that have addressed the issue, *Michigan v. Sitz*, *Indianapolis v. Edmond*, and *Illinois v. Lidster*. These cases, in order to skirt the issue of trolling for criminal activities simply reframed the argument. The common thread coming from the cases is that roadblocks intended to fish for criminal activity are unconstitutional. However, the court ruled that it was not unconstitutional if the roadblock was not simply a means of detecting criminal activity but a means to promote public safety.

In short, roadblocks are legal despite the fact that they are clearly intended to detect criminal activity. Of course, there is a public safety argument but the same could be argued for any random search of a citizen. After all, if by chance a criminal is caught

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during random searches, whether on the road, in the mall, or door to door, then the community is slightly safer.

The New Mexico courts have ruled consistently that roadblocks are not unconstitutional. The seminal New Mexico case of *Las Cruces v. Betancourt* (NMCA 1987), has long established the legality of DWI roadblocks in New Mexico. Betancourt and its progeny have established acceptable purposes and and procedures necessary for a legal roadblock. Suffice it it to say that it is not a high bar for law enforcement. However, there are minimal procedural requirements that must be met. In the absence of these procedural protections, the roadblock will be rendered unconstitutional.

Challenging a roadblock is no trivial matter. It takes a lot of work and investigation to determine whether the police followed all of the procedural safeguards. The fact is that for the most part they do. However, there are those rare occasions where they did not and it is worth the effort to find out. Invalidation of the roadblock will typically result in a dismissal of the DWI charges unless there were some other grounds for the traffic stop.

Again, it is relatively rare that a roadblock is found unconstitutional. Roadblocks are growing in frequency around New Mexico as is the seriousness with which DWI is treated. Don't drink and drive and you will not have to worry about either. If you do get caught and arrested for DWI in a roadblock, consult with a DWI attorney immediately.

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