

Expectation of Privacy in Garbage in New Mexico Even in a Motel Dumpster!

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The recent New Mexico Court of Appeals case of *State v. Crane* illustrates the high level of protection against unlawful search and seizure afforded those in New Mexico under the New Mexico Constitution, Article II, Section 10.

The case involved a meth lab set up in a motel room. The police received an anonymous call presumably from another guest complaining of a chemical smell emanating from the defendant's room. Two agents from the Clovis drug task force went to the motel to investigate.

Upon approaching the room, neither officer could detect a chemical odor coming from the room. While conducting surveillance of the room, the agents saw one of the residents taking garbage to the motel dumpster. The agent looked into the dumpster to view an open box with latex gloves. No other contraband was detected. However, as the agent was searching the contents of the open box behind the dumpster, an unidentified resident dumped several sealed garbage bags into the dumpster.

Without first obtaining a warrant, the agents opened the sealed garbage bags finding a variety of meth production tools and materials. The residents of the room, including Crane, were charged with trafficking methamphetamine and possession of drug paraphernalia.

The defendant moved to suppress the evidence under the 4th Amendment and Article II, Section 10 of the New Mexico Constitution. The trial court agreed with the defendant suppressing the evidence for illegal search and seizure under Article II, Section 10.

The Court from the outset noted that Article II, Section 10 provides greater protection than the 4th Amendment under federal law. The Court cited the divergence of the New Mexico Courts from the 1988 U.S. Supreme Court decision in *California v. Greenwood*

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where the Court found that there is no expectation of privacy in garbage. The New Mexico Court of Appeals in the 2006 case of *State v. Granville* rejected the argument in *Greenwood* that there is no reasonable expectation of privacy in garbage which is "readily accessible to any member of the public."

The Court in *Granville* found that "individual's garbage reveals evidence of a person's most private traits and intimate affairs." The court in *Granville* found that when a person places garbage in a sealed opaque bag protecting it from view, there is a reasonable expectation of privacy.

Notably, the *Granville* decision dealt with garbage disposed of at a private residence, not a motel. The Court in *State v. Crane* refused the State's argument that motel guest have a lessened expectation of privacy in garbage dumped in the motel dumpster.

The State argued that this garbage was particularly vulnerable to intrusion by other motel guests and/or vagrants and homeless people. The court flatly rejected this reasoning stating, "There is a difference between a homeless person scavenging for food and clothes, and an officer of the [s]tate scrutinizing the contents of a garbage bag for incriminating materials."

The Court in *Crane* cited the 1964 U.S. Supreme Court case of *Stoner v. California* which long ago recognized that motel guests do not forfeit their privacy rights by virtue of checking into a motel. The Court in *Stoner* held that motel and hotel guests have privacy interests comparable to those in the home.

In short, motel guests are entitled to privacy as are any other citizens. In addition, contrary to federal law, private residents and motel guests alike in New Mexico have an expectation of privacy over their garbage. Thus, law enforcement must obtain a warrant prior to searching sealed garbage bags, whether at a person's home or at a motel. To do otherwise, will as here result in a suppression of the State's evidence.

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