

# ALBUQUERQUE CRIMINAL LAWYER BLOG

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## **Police Questioning Must Stop When Basis for Traffic Stop Found Lacking But...**

In *U.S. v. Pena-Montes*, the 10th Circuit Court of Appeals addressed the legality of questioning under the 4th Amendment of an individual following a traffic stop. The case involved the prosecution of the defendant Jose Luis Pena-Montes for illegal reentry into the United States following his arrest following the traffic stop.

During the course of the traffic stop based upon the officer's belief that the car in which Pena-Montes was a passenger lacked dealer plates. Upon further investigation, the officer determined that the car did have dealer plates.

However, he wrongfully believed that the use of dealer plates was restricted to certain times of day. Because there had been auto thefts from Albuquerque car dealers in the recent past, he suspected that the vehicle was stolen.

Due to his suspicions, he continued to question the driver. He then turned his questioning to Pena-Montes questioning him on his identity. Pena-Montes gave false and misleading answers regarding his identify. Due to the false identity provided by Pena-Montes, the officer arrested him for concealing identity.

Upon arrest, Pena-Montes was transported to and identified by Albuquerque Police identification. Upon identification, it was determined through the NCIC national database that he had previously been convicted of a felony in California and subsequently deported.

Based upon these findings, Pena-Montes was indicted on one count of illegal reentry of a removed alien following a felony conviction in violation of 8 U.S.C. §1326(a) and (b). Pena-Montes moved for suppression of all evidence derived from the traffic stop, including his identity. The district court denied his Motion finding that the questioning following the stop was not illegal under the 4th Amendment.

The Court of Appeals reversed the District Court holding that the officer had violated the 4th Amendment by continuing to question the occupants of the vehicle once the basis for the stop, illegal plates, was found to be missing. The Court provided an excellent analysis of search and seizure law in New Mexico

The court began by citing the 2008 10th Circuit case of *United States v. Rodriguez-Rodriguez* for the assertion that "A routine traffic stop is indisputably a seizure within the meaning of the Fourth Amendment." Citing *United States v. Winder* (10th Cir. 2009), the Court set forth the requirements under *Terry v. Ohio* that the stop must be justified at its inception and the resulting detention must be reasonably related to the basis for the stop.

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Under this standard, the Court found that the continuing questioning of both the driver and Pena-Montes did violate the 4th amendment prohibitions against illegal search & seizure since questioning continued following the determination that the basis for the stop proved to be lacking. Unfortunately, this may not have saved Pena-Montes as will be seen in part II of this blog.

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