

Questioning During Traffic Stop Limited to Basis for the Stop under New Mexico Law

By Collins & Collins

August 4, 2011

In the recent case of *State v. Olson*, the New Mexico Court of Appeals addressed a police officer's authority to question a person about unrelated crimes after pulling him over for a traffic violation. The Court concluded, consistent with recent New Mexico Supreme Court search and seizure case-law, that questioning following a traffic stop must be limited in scope to issues related to the traffic stop itself.

A little after midnight on December 2007, the subject officer was parked in his patrol car in an alley behind a convenience store in Albuquerque. He then saw the defendant, Gunnar Olson, drive his car into the alley, then back out and continue driving. The officer found the behavior suspicious "giv[ing him] the impression like, oh no, the police." The officer followed Olson and pulled him over for a traffic stop based on an expired temporary tag.

Upon approaching the vehicle, the officer found that Olson had a male transvestite known to be a prostitute by the officer. The officer asked Olson to exit the vehicle to question him about the passenger. Olson admitted the passenger was a prostitute but stated that he was just giving him/her a ride. While questioning Olson, the officer noticed and began questioning him on his fanny pack. The officer then ordered Olson to place the fanny pack on the hood of the car. Upon request by the officer and as Olson was retrieving his ID from his fanny pack, the officer asked if he could take a look into the pack to make sure there were no weapons. Upon inspection, the officer found several crack pipes. Finally, the officer asked Olson where his crack was and Olson admitted it was in his front pocket.

Olson was charged with possession of a controlled substance. He moved for suppression of the evidence as an unlawful search and seizure under the 4th Amendment and Article II, Section 10 of the New Mexico Constitution.

The Court applied the two-part test set forth in the recent 2011 New Mexico Supreme Court Case *State v. Leyva* to determine the reasonableness of the officer's questioning during a traffic stop. First, the stop must be justified from its inception (expired tags in this case.) Second, all questions asked during the investigation of a traffic stop must be "reasonably related to the initial reason for the stop." There are few and limited exceptions to this requirement. Citing *Leyva*, the Court stated that "[u]nrelated questions are permissible when supported by independent reasonable suspicion, for reasons of officer safety, or if the interaction has developed into a consensual encounter."

DISCLAIMER

Main Office:
500 4th St. NW, Suite 405
Albuquerque, NM 87102
Phone: (505) 242-5958/Fax: (505) 242-5968

<http://www.albuquerquecriminallawyerblog.com/>

The court further wrote that to allow a police officer "carte blanche ... to stop any vehicle late at night whenever he saw a driver and a known prostitute in the vehicle, to require the driver to exit the vehicle, and to question the driver and the passenger regarding their relationship" would be "tantamount to a seizure of a driver based on the mere presence of a passenger known to have committed a past criminal act ... such a seizure ... or extended detention ... is closer to arbitrary or harassing police conduct than to society's need for reasonable law enforcement investigative activity."

The Court, as in *Leyva*, recognized that Article II, Section 10 of the New Mexico Constitution provides greater protections than does the federal law under the 4th Amendment. It was admitted by the officer that the stop was based upon the expired tags. Though interesting, it was thus unnecessary to address the issue of stopping every person in the presence of a known prostitute, or any other criminal for that matter. Questioning about the prostitute was well beyond the scope of the initial stop, the expired tags. So the State does not get to the officer safety justification of searching the fanny pack as this followed upon the heels of illegal questioning.

DISCLAIMER

Main Office:
500 4th St. NW, Suite 405
Albuquerque, NM 87102
Phone: (505) 242-5958/Fax: (505) 242-5968

<http://www.albuquerquecriminallawyerblog.com/>