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Strip Searches, Reach-In Searches, Privacy and the 4th Amendment in New Mexico

The New Mexico Court of Appeals addressed the constitutionality of a "reach-in" search of a defendant on a busy street in the recent case of *State v. Williams*. The court found that the search was an unlawful invasion of privacy under the circumstances and therefore an illegal search and seizure under the 4th Amendment.

In a nutshell, there was a felony warrant outstanding on the defendant. The officer legally pulled the defendant over in his car. The officer legally placed the defendant under arrest due to the warrant. The officer then pulled out the defendant's waist-band on his pants looking in and seizing crack cocaine in the defendant's pants. The search and seizure was conducted in broad daylight on a busy city street. The defendant argued the search constituted an illegal strip. The Court disagreed that it was a strip search. However, the Court still found the search to be unreasonable under the circumstances and therefore unconstitutional.

The issue that arose was not whether the officer was entitled to search the defendant. All parties agreed that the officer had the right to search the defendant. However, the manner of the search was found to be unreasonable and unconstitutional under the 4th Amendment. The Court recognized that there are situations where the suspect's sense of modesty and privacy are overridden by exceptional circumstances. However, the cases all indicated that reasonable steps must be taken to protect the suspect's privacy. The Court stated that there must be a proper balance between the immediate need to search the suspect and the invasion of privacy and embarrassment associated with a public search.

In *State v. Williams*, the search was conducted in broad daylight during rush hour. No evidence was presented by the State showing that appropriate steps were taken to lessen the invasion of the defendant's privacy or that the situation dictated an immediate search in the manner it was conducted. In fact, according to the Court, the trial court did not consider at all the reasonableness of the location or the manner of the search.

Because the State failed to show the reasonableness of the search, or necessity under the circumstances, the search was found to be illegal and the crack cocaine was suppressed. Many will take objection to the ruling. The ruling may seem to run against common sense. However, the New Mexico courts are very protective of constitutional rights often extending protections well beyond the federal courts in similar situations. And the simple fact is the officer could have

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waited and conducted a full strip search once the suspect was taken to jail. The search as conducted simply was not necessary and some very basic steps could have protected both the defendant's right to privacy as well as the officer's seizure of evidence.

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