

# ALBUQUERQUE CRIMINAL LAWYER BLOG

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## **Proximity to Alleged Crime Alone Does Not Justify Search & Seizure in New Mexico**

The New Mexico Court of Appeals draws the parameters of investigatory stops in *State v. Eric K.* An anonymous call was made to 911 reporting that a female had pulled a gun and took the caller's money during an apparent drug transaction. A police officer went to the area where the alleged crime had occurred to investigate. Upon arrival, he noticed two male youths that he believed looked a little bit nervous but "nothing real suspicious."

Based upon the 911 report and his belief that the two youths looked nervous, the officer initiated contact with the youths. As the officer approached, the youths began to enter a laundromat. The officer called for them to come over to speak with him. During the conversation, the officer instructed one of the children to remove his hands from his pockets. At that time, one side of the child's coat hung lower than the other prompting the officer to pat down the child. A gun, drugs and drug paraphernalia were discovered in the pat down search. The child moved to suppress all of the evidence as fruits of an illegal search & seizure. The trial court denied the motion to suppress. The New Mexico Court of Appeals reversed.

An officer is always free to initiate a voluntary encounter with a citizen. However, once the circumstances are such that a reasonable person would not feel free to leave, the encounter turns into a seizure for which there must be reasonable suspicion. Mere proximity to a reported crime does not constitute reasonable suspicion. Nor does looking a little nervous. Instead, the court reiterated the well-established rule that there must be "individualized, articulable, reasonable suspicion" at the time of the seizure which the court found in this case to be when the officer ordered the child to remove his hands from his pockets.

The 4th Amendment provides significant protection against illegal search and seizure. This includes cases where officers without reasonable suspicion, but merely on a hunch or perhaps simply in the process of fishing for evidence, initiate a non-voluntary investigative encounter with a citizen. The 4th Amendment attempts to balance individual rights against community and officer safety.

This case points out the tension between these interests. On the one hand, the child had a gun, an illegal act and perhaps a danger to the community. On the other, the officer had no basis for investigating the child. It is a difficult balance for law enforcement and the courts as the interests on both sides are extremely important. However, the 4th

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Amendment right against unlawful search and seizure must not be compromised on a case by case basis where an officer just happens upon a crime through an illegal investigation. To allow the end result of an illegal investigation to justify the unlawful police conduct would render the 4th Amendment meaningless. As much as a case like this rattles our insecurities, the alternative is far worse.

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