

Opinion No. 65-166

August 30, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Paul A. Shaver, Chief of Police, City of Albuquerque, Albuquerque, New Mexico

QUESTION

QUESTION

If police officers have reason to believe that the occupants of a described automobile have committed a felony, may they stop and search all vehicles in the area that fit the description?

CONCLUSION

See analysis.

OPINION

{*278} ANALYSIS

Persons in New Mexico are protected from unreasonable searches and seizures by reason of the Constitution of the United States, Amendment XIV (1) as well as the Constitution of New Mexico, Article II, Section 10. The broad statement may be made that these provisions permit search and seizure only upon a warrant except in certain classes of cases where search and seizure may follow upon probable or reasonable cause. Since the facts presented show no warrant, a determination must be made if this is a proper case for proceeding on probable cause only, and, if so, whether such probable cause existed.

Searches and seizures involving motor vehicles have generally been placed in a class apart from searches and seizures involving buildings and other stationary objects. The reason for this is found in the easily moveable nature of a motor vehicle with an attendant high possibility of movement of the vehicle from the jurisdiction before a search warrant can be obtained.

"Since an automobile may readily be moved from place to place, its search without a warrant is not unreasonable if the officer has reasonable cause to believe it is carrying contraband." **People v. Gale**, 46 Cal. 2d 253, 255 [1], 294 P.2d 13, 15.

New Mexico follows the standard doctrine on search and seizure involving motor vehicles laid down in **Carroll v. United States**, 267 U.S. 132, 45 S. Ct. 280, 69 L. Ed.

543. In the only reported New Mexico case in this area the Supreme Court of New Mexico said:

". . . a warrant is not required for search of a moveable vehicle if officers have reasonable cause to believe that it contains contraband or stolen goods." **State v. Lucero**, 70 N.M. 268, 275, 372 P. 2d 837, 842, Citing **U.S. v. Haith**, (U.S.C.A., 4th Cir. 1961), 297 F.2d 65; **Carroll v. United States**, supra, **People v. Brajevich**, 174 Cal. App. 2d 438, 344 P. 2d 815.

Reasonable or probable cause in these cases has been defined as consisting of facts and circumstances known to the police officer which would justify him in believing the defendant was guilty of a felony or that the suspected automobile was carrying contraband. **Carroll v. United States**, supra, **This is always a question of fact**. In the case of **State v. Lucero**, supra, the arresting officer saw the defendant in an automobile in the parking lot of a building where an attempted burglary had just been reported. The officer pulled up next to defendant's automobile to speak to him and defendant drove rapidly away. A chase followed at speeds up to 70 miles per hour, and then defendant stopped the automobile, ran from it and hid behind a wall. The court held a search of defendant's automobile after such conduct was not violative of defendant's constitutional rights. On this point a California court said:

"In analyzing the question of the presence or lack of reasonable or probable cause, the court must weigh and consider all of the circumstances apparent to the officer at the time he is required to act." **People v. Brajevich**, 174 Cal. App. 2d 438, 444 [7], 344 P. 2d 815, 819.

On the facts in the case presented these tests must be applied. There is no indication that the police officers searching for the automobile answering the description had probable cause to believe that **any one specific automobile searched** contained contraband or guns. It is to be noted that the results of a search without a warrant, {*279} considered alone, cannot justify the fact of search or any arrest based upon what was discovered. **People v. Mills**, 148 C.A. 2d 392, 306 P.2d 1005, certiorari denied 78 S. Ct. 55, 355 U.S. 841, 2 L.Ed. 2d 46, rehearing denied 78 S. Ct. 147, 355 U.S. 886, 2 L.Ed 2d 116.

The conclusion reached is that mere generalized suspicion is not the kind of knowledge which will justify search of an automobile without a warrant. There must be specific knowledge concerning a specific vehicle, and this knowledge must justify a reasonable man in believing the occupant(s) of the specific vehicle has committed a felony or that contraband or other illegal devices are actually in the automobile before the search may begin.

This is not to say that automobiles of the description may not be stopped and the occupants questioned in the regular course of investigation. If knowledge is gained amounting to probable cause as a result of such questioning then the search may be made. Moreover, it has been held that a police officer is not undertaking an illegal

search if he merely looks into the automobile in the regular course of investigation and happens to see contraband or guns; furthermore, he is justified in searching the vehicle upon gaining this knowledge. **Busby v. United States** (1961, CA 9 Cal) 296 F.2d 328, 8 L. Ed. 2d 278, 82 S. Ct. 1147; **Gaskins v. State**, 89 So. 2d 867.