

# ALBUQUERQUE CRIMINAL LAWYER BLOG

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## **Puncturing Gas Tank to Steal Gas Charged as Felony Auto Burglary in New Mexico**

Puncturing a car's gasoline tank to steal gas may be charged as burglary under New Mexico Law. By statute, burglary of an automobile is a 4th degree felony punishable by up to 18 months in prison and \$5000 fine.

In *State v. Muqqddin*, the defendant used a nail to puncture a gas tank and steal the gasoline from what he believed was an abandoned vehicle. The facts showed that the vehicle had been parked in an alley for 6 months. However, the owner of the vehicle indicated that he had not abandoned the vehicle but rather was going to donate it to charity or sell it for salvage.

Mr. Muqqddin was convicted of burglary. He appealed the conviction on two grounds. First, he argued that puncturing the gas tank did not fall within the definition of burglary. Second, he argued that he believed the vehicle was abandoned and therefore he lacked the requisite intent necessary for a burglary conviction.

The New Mexico Court of Appeals upheld the conviction. Though sympathetic to Mr. Muqqddin's arguments, the Court noted that the act of puncturing the gasoline tank to steal gasoline clearly fell within the statutory definition of burglary. The statute defined burglary as "the unauthorized entry of any vehicle, watercraft, aircraft, dwelling or other structure, movable or immovable, with the intent to commit any felony or theft therein."

The Court analogized to past cases in New Mexico. In the 1984 New Mexico Court of Appeals case of *State v. Rodriguez*, it was found that reaching into the back of a pickup bed to steal a toolbox. In the 1990 Court of Appeals case of *State v. Reynolds*, the defendant was convicted of burglary for reaching into the engine compartment from underneath the vehicle to steal the starter.

The more interesting aspect of the appeal was in Muqqddin's challenge to the finding of intent by the jury. The 1952 United States Supreme Court case of *Morrisette v. United States* established that abandoned property belongs to nobody and therefore may be "appropriated by the first taker." Mr. Muqqddin arguably believed that the vehicle had been abandoned. The evidence seemed to show that this was not an irrational conclusion.

The Court of Appeals did express sympathy for Mr. Muqqddin's situation. However, the Court refused to reverse the jury's factual finding of intent stating that it would not substitute's the Court's own finding for the finding of the jury.

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