

ALBUQUERQUE CRIMINAL LAWYER BLOG

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Prescription Drugs and Driving: Standards are Needed

The presumptive breath alcohol level for driving is .08. A driver who blows over .08 is presumed to be DWI. There are no such levels established for drugs and driving. This issue is becoming more prevalent with increasing trends by Albuquerque and Rio Rancho police to arrest drivers who are on prescription medication.

The problem has made headlines recently with DUI charges against Ron Bell, a well known local Albuquerque attorney. Ron Bell was arrested for the use of prescription methylphenidate, Ritalin, which is commonly used for the treatment of ADHD. In fact, studies show that treatment of ADHD actually reduces driving risks so any policy that would deter ADHD drivers from taking their prescription medications will actually put New Mexico drivers and their families at risk.

The trend toward arresting drivers on prescription medications is problematic for any number of reasons. First, the medications may be necessary for the individual to function, i.e. go to school or work. Second, many of the medications for which drivers are being charged do not impair driving ability at therapeutically prescribed levels. Finally, and most importantly, there are no standards for when an officer can make an arrest. The arrest decision is left entirely up to the officer.

The problem resembles the "impaired to the slightest degree" standard used in DWI to convict drivers at breath alcohol levels well below .08. The "impaired to the slightest degree" standard and the complete lack of standards for prescription drug use leads to some interesting due process issues. So how do you know when a driver is impaired? Arriving at the answer to that is pretty straightforward. In a bench trial without the benefit of a jury the answer is easy. Though, there may be some theatrics and a few procedural protocols, it comes down to the prosecutor and the judge asking the cop what he or she thinks. If the cop says you are impaired, you are impaired unless your attorney can convince the judge otherwise. Juries are much more discriminating. Unfortunately, first time DWI's are not eligible for a jury trial.

There are many that take the position that any alcohol, no matter how little, is too much for driving. There are others that cry that any drugs and driving are unacceptable. Its more than a little ironic that Ron Bell fit into the first group as the self-anointed punisher of drunk drivers and now falls prey to the second. Both those in the first group, like Mr.

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Bell, and those in the second might want to consider the implications for both due process and their family's safety when getting behind what appears to be a trending policy toward arresting drivers for prescription medication use without the benefit of any standards to protect against wrongful conviction.

Most officers are honest and professional. But even honest officers could have problems here. There simply are no standards forcing officers to err on the side of caution. This may be fine for most endeavors but not criminal justice. The standard for conviction is "beyond a reasonable doubt." How is this standard of proof applied to a crime that has no definition?

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