

# ALBUQUERQUE CRIMINAL LAWYER BLOG

PUBLISHED BY  
**COLLINS & COLLINS, P.C.**  
ATTORNEYS AT LAW

August 14, 2010

## More on Misdemeanor Arrest Rule in New Mexico DWI Cases

The New Mexico Court of Appeals addressed the misdemeanor arrest rule in the context of a DWI arrest in *State v. Reger*. The misdemeanor arrest rule requires that the misdemeanor actually occur in the presence of the officer with the arrest based upon the officer's own observations. The rule is meant to protect individuals from warrantless searches based upon information from third parties. The rule raises significant challenges in DWI cases where drunk drivers are often called in on DWI tip lines.

The facts are somewhat similar to the those of the New Mexico Supreme Court case of *City of Santa Fe v. Marcos Martinez*. In *Martinez*, an anonymous caller identified the defendant and his driver's license number. The police officer traced the license to Mr. Martinez residence where the officer found him extremely intoxicated inside his home. *Reger* also involved an anonymous tip. *Reger* was found in a parking lot next to his vehicle with the hood open. In both *Reger* and *Martinez*, the defendants admitted to drinking and having driven their vehicles. Like the Supreme Court in *Martinez*, the Court of Appeals in *Reger* found that the misdemeanor arrest rule did not apply.

The court cited *State v. Ochoa* as follows:

In these circumstances, the officer's personal perceptions include observation of the circumstances surrounding the presence of the defendant and the vehicle, observation and smells evidencing the defendant's intoxication, and hearing what the defendant and others say. What the officer perceives supplies sufficient "facts and circumstances occurring within [the officer's] presence in connection with what, under the circumstances, may be considered common knowledge, [to] give [the officer] probable cause to believe or reasonable grounds to suspect that a crime has occurred."

The Court stated further, "We see no point in ignoring the obvious in cases where overly technical applications of the misdemeanor arrest rule could supply a tiny crack for the case to fall into." The rulings in both *Martinez* and *Reger* seem to follow common sense. In both cases, the defendants admitted to drinking and driving. Forbidding arrest in these situations would lead to rather absurd outcomes once the officer leaves the scene leaving the intoxicated driver free to go on his merry drunken way.

Main Office:  
400 Gold Ave. SW  
Suite 500  
Albuquerque, NM 87102  
(505) 242-5958

<http://www.albuquerquecriminallawyerblog.com/>