

March 11, 2011

## **New Mexico's Impaired to the Slightest Degree DWI Standard Has to Go!**

House Bill 392 has been re-introduced this year. It has been introduced twice in the past with no success. After reading, please contact your legislators to encourage passage of this bill.

The bill does a couple of things. First, it gets rid of the "impaired to the slightest degree" standard for DWI convictions. I have written plenty in the past with the many problems associated with this amazingly vague standard. Suffice it to say, you can toss all you ever believed about the .08 breath alcohol standard. Instead, a driver is impaired if the officer says so whether or not below the limits and it is then the burden of the driver to prove in court at great legal expense that he or she was not impaired.

This brings us to the second part of the bill, and the recent Ron Bell case. The bill states that it is not a crime to take medication in the lawfully prescribed dosage where there is no FDA prohibition or warning against driving while on the prescription medication. One would have assumed that this was always the case. It is not.

Ron Bell was arrested for prescription Adderall. Adderall, like Ritalin, is a commonly prescribed medication for ADD/ADHD both for children and adults. Of note, there are no driving prohibitions while on Ritalin or Adderall. In fact, research shows that the medication improves driving. This makes perfect sense since the medication is prescribed for attention deficit disorder. What does not make sense is to institutionalize distracted driving by discouraging the use of these medications.

But this is exactly what the Ron Bell case suggests. The same impaired to the slightest degree standard applies to prescription drug use. There is no other established standard. In fact, there are no established levels for safe driving for most prescription drugs, including Adderall and Ritalin. Again, it comes down to the officer's judgment. In short, any admission to prescription medication may get you a tour through the criminal justice system.

There is a much glee surrounding Ron Bell's conviction. The press is replete with gloating headlines regarding the high profile lawyer that sues drunk drivers getting convicted for DWI. Once the gloating stops, one might consider his or her own medicine cabinet. One might consider the teenage driver in the family that must take Adderall or Ritalin to function normally.

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Now consider the other prescription drugs in your cabinet and what the State might say about those. If the State will argue that a drug like Adderall or Ritalin, scientifically formulated and proven to improve focus, impairs one's driving to the "slightest degree," what about your anti-anxiety or anti-depression medication? Or how about how that allergy medicine that makes you a little bit drowsy (it says so right on the label)?

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