

# ALBUQUERQUE CRIMINAL LAWYER BLOG

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## DWI Passenger Held Accountable for Vehicular Homicide

A recent New Mexico Court of Appeals case portends possible targeting of DWI/DUI passengers for prosecution in DWI/DUI cases, particularly those involving accidents with injuries.

In *State v. Patrick Marquez*, the defendant was charged with and pleaded to 2 counts of homicide by vehicle and 3 counts of injury by vehicle. Remarkably, Mr. Marquez was not the driver of the car but the passenger. Mr. Marquez entered a conditional plea filing an appeal on whether or not there was any such crime as accessory to homicide by vehicle. The Court in *Marquez* found that there was.

The facts are pretty straightforward. Mr. Marquez and his friend Leo Lucero spent the night drinking together going from one bar to the next as bars successively refused service due to their high levels of intoxication. Finally, Mr. Marquez purchased a 12 pack of beer and the two took to the road to continue their evening of drinking. Mr. Lucero plowed into the back of a passenger van killing 2 and badly injuring 5 of the occupants of the van.

DWI/DUI resulting in death or injury has always carried possible charges for homicide by vehicle or great bodily harm by vehicle. However, this is the first case that has reached the appellate court where a passenger has been charged as an accessory under the Motor Vehicle Code §66-8-120 which reads in part:

"Every person who commits, attempts to commit, conspire to commit or aids or abets in the commission of any act declared herein to be a crime, whether individually or in connection with one or more persons or as a principal, agent or accessory, shall be guilty of such offense..."

It remains to be seen whether this case spells a trend for prosecution of DWI/DUI passengers in cases of injuries or death. The scope of §66-8-120 is also unclear. The facts in this case and the behavior of the defendant were pretty egregious. However, the basic fact pattern is not that uncommon with a passenger knowingly getting into a vehicle with an intoxicated driver. The language of §66-8-120 does not limit its scope to cases of death or great bodily harm. Instead, the language says that a passenger who knowingly gets in a car with a drunken driver is guilty of all offenses under the Motor Vehicle code committed by the driver. This could arguably include the simple DWI/DUI charge even in the absence of an accident.

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In a state where prosecutors and police formerly charged drivers for DWI while they were sleeping in their vehicles prior to intervention of the New Mexico Supreme Court, it might be expected that there will be prosecutors that push the bounds of this ruling. Until we hear from the Supreme Court on this case or the legislature places some limitations on the language of §66-8-120, would be passengers to a DWI would be well advised to find alternate transportation and to encourage their drunken friend to do the same. As a matter of fact, that might just be a good policy generally.

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