

# ALBUQUERQUE CRIMINAL LAWYER BLOG

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## **Police Officers Not Qualified to Give Statistical Testimony**

The New Mexico Supreme Court addressed expert testimony given by police officer in DWI/DUI trials in *State v. Marquez*. The case involved an Albuquerque police officer who gave testimony regarding the statistical correlations between a suspect's performance on field sobriety tests and the probability of a blood alcohol score over .08.

The defendant's attorney had argued that the officer was not qualified as an expert to testify on statistical probabilities under the U.S. Supreme Court case of *Daubert v. Merrell Dow Pharmaceuticals*. Interestingly, the State conceded that the testimony given by the officer was improperly admitted. Instead, the State argued that the admission of the evidence was harmless because there was sufficient legally admitted evidence for the conviction.

The case of *State v. Marquez* is interesting because the New Mexico Supreme Court found that the testimony was unnecessary for the conviction. The Court cited New Mexico Uniform Jury Instruction 14-4501 along with the well established New Mexico case law suggesting that the true standard is whether the defendant's ability to drive was impaired to the slightest degree.

The testimony of the officer undoubtedly would have established this without the statistical testimony. The officer testified that she saw the defendant stumble out of a bar, get in his car, almost strike another vehicle as he backed out of his parking space, and then back 60 feet into oncoming traffic on a congested and dangerous street. In addition, the officer testified that the defendant was slow to respond to questions, fumbled with his identification, was slow getting out of his vehicle, had to brace himself against his vehicle for balance and generally performed poorly on the field sobriety tests.

In light of impaired to the slightest degree standard, the statistical evidence was hardly necessary. However, the prosecutor got a little greedy perhaps and solicited the testimony anyway over the objection of the defense attorney. Basically, the officer gave testimony on statistical studies suggesting that poor performance on the field sobriety tests correlates to a high probability that the defendant's breath score exceeded the .08 limit.

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The Court recognized that because of the impaired to the slightest degree standard, the breath alcohol score is not necessary for a DWI/DUI conviction in New Mexico. The Court further recognized that it is common knowledge that a breath score of over .08 is an indication of impairment. Thus, the testimony of the Albuquerque police officer, though unnecessary for a conviction, could have confused and misled the jury. In short, the testimony may have distracted the jury from its role of weighing properly admitted evidence by undue attention to the wrongfully admitted statistical evidence. In essence, the statistical evidence improperly undermined the credibility of the defendant.

Because the evidence was improperly admitted and could have confused or distracted the jury, the defendant's DWI conviction was reversed. The case was remanded for a new trial. In light of the evidence available to the State, and the Court's ruling that the breath alcohol score is unnecessary, the outcome of the new trial is likely to be the same as the first.

The case is somewhat paradoxical that the Court further restricts the bounds of admissible DWI evidence while at the same time reiterating its position that such evidence is unnecessary anyway. However, the case should prove important in cases where the evidence of intoxication is not so overwhelming as was the case here.

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