

ALBUQUERQUE CRIMINAL LAWYER BLOG

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Proposed New Jury Instruction to Address Sleeping While Intoxicated

There are proposed new jury instructions to address the anomalies DWI/DUI arrests and prosecution for sleeping while impaired. The new proposed New Mexico Uniform Jury Instruction §14-4512 more precisely defines the physical control of a vehicle necessary for a DWI/DUI charge. The new proposed jury instruction follows the recent New Mexico Supreme Court case of *State v. Simms* where it was found that someone sleeping in their vehicle without the keys in the ignition lacked the control or the intent to drive the vehicle necessary for a DWI charge.

The New Mexico Supreme Court in *Simms* stated that there must not only be control over the vehicle but also an intent to drive. The Court stated that generalized intent was insufficient. It is no longer sufficient for the prosecutor to argue that the individual might have woken up and decided to drive. The new jury instruction sets forth a number of factors for the determination of both the control and intent necessary to charge a parked driver with DWI including: 1) whether the vehicle was running, 2) whether the ignition was in the "on" position, 3) where the key was located, 4) where the driver was located, 5) whether the person was asleep, 6) whether the headlights were on, 7) where the vehicle was stopped, 8) whether the driver had voluntarily pulled off the road, 9) the time of day, 10) the weather conditions, 11) whether the heater or A/C was on, 12) whether the windows were up or down, 13) whether the vehicle was operable, and 14) any reasonable explanations justified by the circumstances.

The clear intent of the new jury instruction is to avoid the arrest and prosecution of individuals who have chosen to act responsibly by avoiding drunken driving. It is also clear that the instruction attempts to avoid abuse of the new *Simms* ruling by shrewd drivers who may attempt to feign circumstances to avoid arrest for DWI. It remains to be seen how the new *Simms* ruling will be implemented and how a jury will view these factors in consideration of DWI/DUI cases.

It is unfortunate that *Simms* and the new jury instruction come too late for many who were unjustly prosecuted for DWI when they were simply trying to do the right thing. There were many such individuals particularly in Albuquerque where DWI enforcement on occasion seems to defy logic or reason. Those like Fidencio Francia, a Vietnam war veteran, who was arrested for trying to sleep off a night of drinking in his car prior to the *Simms* decision will not benefit from the newly enlightened jury instruction.

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On the other hand, the new *Simms* ruling along with the new jury instruction if adopted should avoid future such unfortunate and misguided prosecution thereby allowing drivers to act responsibly. Albuquerque streets will be made a little safer as a result of the *Simms* case. No longer will folks like Mr. Francia be encouraged to drive drunk to avoid arrest for sleeping in their vehicle.

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