

ALBUQUERQUE CRIMINAL LAWYER BLOG

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Misdemeanor Arrest Rule in New Mexico DWI Cases

The New Mexico Supreme Court recently addressed the applicability of the misdemeanor arrest rule to DWI/DUI arrests in *City of Santa Fe v. Martinez*. The case involved a tip from a mall employee who observed the defendant attempting to unlock several different vehicles in the mall parking lot before he finally ventured upon his own vehicle and drove away. The mall employee contacted the police providing the defendant's drivers license number.

A Santa Fe police officer traced the license to the defendant's home. The police officer went to the defendant's home where he found the defendant inside extremely intoxicated. The defendant voluntarily opened the door and allowed the officer into the home. He admitted drinking and having driven the vehicle earlier.

Based upon the defendant's statements, his visible intoxication, the smell of alcohol and other indicators of intoxication, the officer arrested the defendant. The defendant refused the breath alcohol test which resulted in charges for aggravated DWI.

The defendant moved to dismiss the charges for violation of the misdemeanor arrest rule which the court denied in Santa Fe Municipal Court. The defendant appealed to district court where the conviction was set aside. The City of Santa Fe appealed and the case made its way to the Supreme Court.

The misdemeanor arrest rule is a long standing rule requiring that an officer actually observe the misdemeanor offense in order to make a warrantless arrest. There is no such rule for felony arrest. The rule derived from the fact that misdemeanors are typically not as serious as felony crimes and pose a much lower risk to public safety.

The New Mexico Supreme Court determined that the misdemeanor arrest rule should not apply to DWI/DUI arrests. The court reasoned that unlike most misdemeanor offenses, DWI/DUI pose a very real, immediate and significant risk to public safety stating, "Given the compelling public interest in eradicating DWI occurrences and the potentially deadly consequences, the crime of DWI should be treated as a felony for purposes of warrantless arrests."

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In addition, delay in investigation and arrest on DWI results in the loss of evidence of intoxication as the person begins to sober up. The court indicated that the misdemeanor arrest rule represents a balance between the rights of the accused and public safety. In the case of DWI, the balance according to the Court falls on the side of waiver of the misdemeanor arrest rule in DWI/DUI cases.

This is a significant development in DWI/DUI enforcement. It remains to be seen how this will play out in future DWI/DUI enforcement. The rule may impact the DWI police team concept as well as the need for both the stopping officer and DWI investigating officer at trial. It is likely that there will be future activity surrounding these issues as this case is incorporated into DWI enforcement practices.

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