

ALBUQUERQUE CRIMINAL LAWYER BLOG

PUBLISHED BY
COLLINS & COLLINS, P.C.
ATTORNEYS AT LAW

June 9, 2010

Sleeping While Intoxicated No Longer a Crime in New Mexico!

The New Mexico Supreme Court reversed the Courts of Appeals ruling from last year which legitimated DWI/DUI charges against individuals who were sleeping in their vehicles effectively taking the driving out of drinking and driving. The Supreme Court in *State v. Simms* recognized the absurdity of the prior ruling.

The New Mexico Court of Appeals in *State v. Simms* had found that a defendant was in control of the vehicle and therefore subject to charges of DWI/DUI. The court found this despite the fact that the defendant was asleep in the vehicle and the keys were not in the ignition. The court reasoned that the defendant could have awoken and drove the car at any time. The court ignored the fact that he had gone to sleep for the very purpose of avoiding driving while intoxicated.

The prior ruling had a number of problems for both well intentioned drivers and the public at large. First, there was no intent requirement to show that the driver in fact had the intention to drive the vehicle. To the contrary, the facts suggested the opposite that the driver was sleeping off the alcohol to avoid driving. This raises the more important point which is that the law as construed by the district court and the appellate court actually had the affect of encouraging drinking and driving. After all, the risks of being detected and arrested in a bar parking lot while sleeping in a vehicle are exponentially higher than the odds of getting pulled over while drinking and driving. In addition, the prior interpretation could have disastrous consequences during the New Mexico winters when a driver is forced with the decision of sleeping outside the vehicle or driving home intoxicated. The prior interpretation and execution of the law was ludicrously opposed to public safety.

The Supreme Court in *State v. Simms* stated that there must be intent to drive. In effect, there can no longer be a generalized intent to drive as evidenced by proximity to the vehicle. Neither can the issue be couched entirely in the terms of control of the vehicle. Instead, it must be shown that the driver intended to drive the vehicle while intoxicated. The Court in essence adopted the public policy rationale of allowing drivers to sleep off their intoxication. The court stated that the DWI/DUI laws did not have the intention of prohibiting people from simply entering their vehicles. This is particularly the case when a driver is taking shelter from the elements and from the risks of driving intoxicated.

Main Office:
400 Gold Ave. SW
Suite 500
Albuquerque, NM 87102
(505) 242-5958

<http://www.albuquerquecriminallawyerblog.com/>