

NMDPS - CHILD ABUSE – DWI - NON MOVING VEHICLE

In Farmington, State police officers approached a pickup truck parked outside of a residence. Defendant was in the driver's seat, his wife in the middle, and his four-year-old child on the other end of the front bench seat. The keys were in his hand but the vehicle was not running. He said they had just stepped out of the house and he was getting ready to drive.

Unfortunately, he was intoxicated, testing at .15, .15. Using the DWI by actual physical control theory (he had the intent to drive), he was convicted of DWI and Child Abuse by Endangerment. NMSA 1978, Section 30-6-1(D). His DWI conviction was upheld. What about the child abuse (placing a child in a situation of danger) charge?

As a third degree felony, the statute is meant for children placed in dangerous situations, not potential or possible situations of danger. Courts often uphold child abuse by endangerment when a DWI occurs in a moving vehicle.

But here the child was sitting in a vehicle. The child could have been in danger but that's not the standard. Based on these facts, the child in a non moving vehicle, the conviction was reversed. A few moments later, had he been driving, his conviction probably would have been upheld. State v. Etsitty (2012).

- - - ADA Elliott Guttman, Law Enforcement Academy



**I'm gonna get some more beer and
yes, my kid is completely safe!**