

## **NMDPS: DWI – PAST IMPAIRED DRIVING**

In Hobbs, New Mexico, deputies were investigating a possible domestic incident in a van parked on the roadside. The van was not running, and the keys were not in the ignition. They saw Defendant in the driver's seat and his girlfriend in the passenger's seat. Her lip was bleeding. Both Defendant and passenger were intoxicated.

When asked if he had consumed any alcohol, Defendant responded that he had consumed twenty-four ounces of beer about one hour earlier. He failed the field tests, refused the breath test, and was arrested for Aggravated DWI. It looked like a clear-cut, slam dunk case.

Wrong!! Yes, there was evidence Defendant was impaired when the deputies saw him. Yes, he admitted drinking one hour earlier. But did he drink first and then drive? Or did he park the van and then drink? There was no evidence he drove while impaired. To assume driving while impaired would be speculation. Court of Appeals reversed his conviction. State v. Cotton (2011). - - - ADA Elliott Guttman, Law Enforcement Academy

We can learn from this case. Officers typically ask if a person has been drinking and how much. Additional questions are encouraged, including:

- Where were you drinking?
- When did you have your last drink?



**I ain't drinking and driving,  
I drove first and NOW I'm drinking!**