

ADA ELLIOTT - DWI (PHYSICAL CONTROL)

Aztec police located defendant in a Dodge truck on private property. He was in the driver's seat. The keys were in the ignition but engine wasn't running. He had been drinking, all right; his blood alcohol test (BAT) results were .34, .35. But is this DWI?

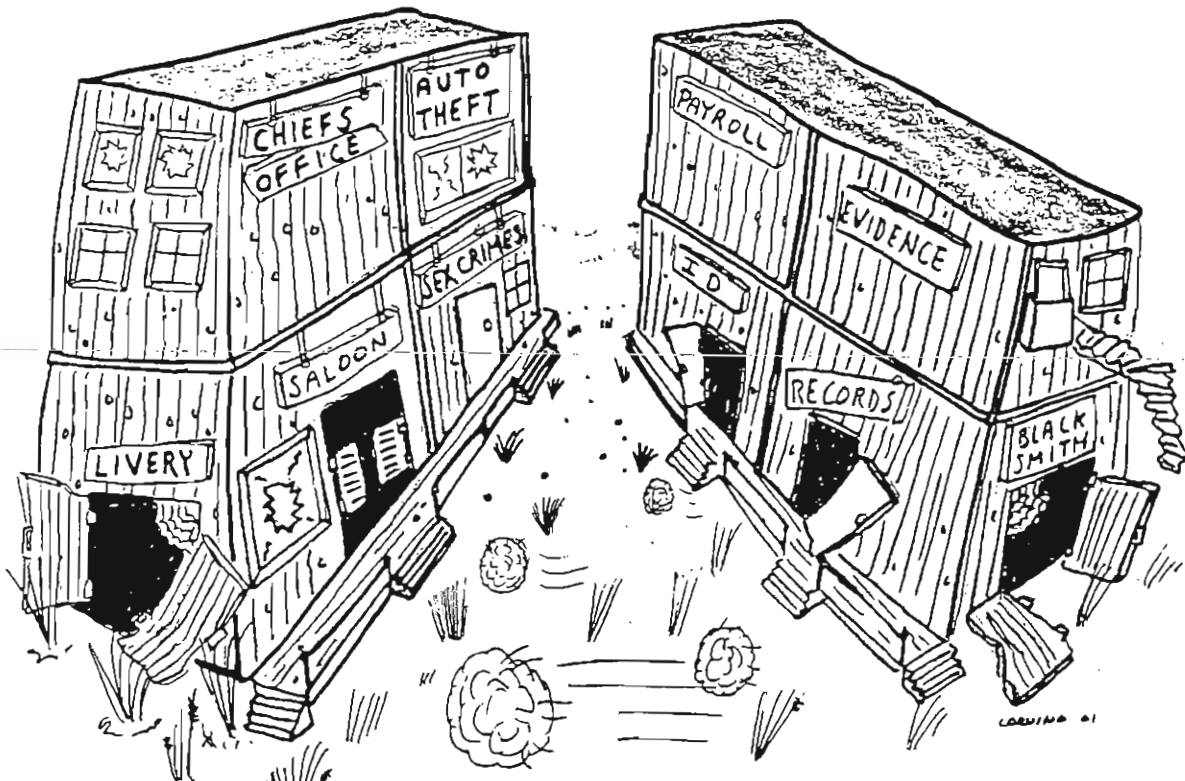
Supreme Court of New Mexico said yes. There is no public/private property distinction for DWI. NMSA 1978, Section 66-8-102 states: "it is unlawful for any person who is under the influence . . . to drive any vehicle within this state." Section 66-7-2 (B) states this "shall apply upon highways and elsewhere throughout the state."

But where is the driving? Previous cases have held that one who is in "actual physical control" of a vehicle may be guilty of DWI. A person is in actual physical control over a vehicle when he or she exercises direct influence over the vehicle.

Which of the following is DWI? Defendant is . . .

- *unconscious or asleep at wheel of his car, in the front yard of his house, engine running.
- *in a vehicle that had broken down and wouldn't start, asleep at the wheel, key in ignition, engine not running.
- *unconscious or asleep at the wheel of the automobile, engine running, but the front and back tires were blocked by bricks.

The Supreme Court and Court of Appeals have held that all of the above are DWI. State v. Johnson (2000).



THE "MAIN" POLICE BUILDING
400 ROMA NW
ON FRIDAY AFTERNOONS