You Decide

12.1 Charles Franklin Rogers was intoxicated when two police officers found him asleep or passed out in the driver's seat of his Cadillac Escalade. The vehicle was parked outside an Elks Lodge at about 2 a.m. in Fayetteville, Arkansas. The engine was running with exhaust visible from the tailpipe; the headlights and taillights were on. It was a very cold night, well below freezing. Officers tapped on the window and awakened Rogers from sleep. His foot appeared to the officers to be on the brake pedal. Rogers turned the vehicle off and exited to speak to the officers. The officers testified that the vehicle keys were recovered from the front passenger area of the vehicle, although the officers could not recall the precise location. Rogers had been taken by a friend to the Elks Lodge where they listened to music and drank. Later in the evening, Rogers and his friend went to a bar where Rogers "drank too much." The friend drove Rogers back to the lodge where Rogers remote-started the Escalade. After his vehicle had warmed for a few minutes, he promised his friend that he would enter his Escalade and sleep until he was safe to drive. Rogers testified that once he entered his Escalade, the keys were never in the ignition but rather were on the floorboard.

The electronics technician who installed the remote start said that the remote start turns on the headlights and taillights and makes the auto's accessories such as the radio, heat, and air conditioning available. The technician explained that when in remote start an individual cannot drive the vehicle because the steering is locked and the gearshift is locked. "The only way to actually move the car is to put the keys into the ignition and turn the ignition to the run position, then brake and shift into gear." Arkansas Code Annotated Section 5-65-103(a) (Supp. 2005) provides that "[i]t is unlawful and punishable as provided in this act for any person who is intoxicated to operate or be in actual physical control of a motor vehicle."

Would you convict Rogers of DWI? See *Rogers v. State*, 224 S.W.3d 564 (Ark. 2006).

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