

## Ask the Lawyer: DUI While Sleeping in Car?

By Mathew B. Tully  
Question: A couple of weeks ago I was out with my buddies and had a few drinks. Instead of taking a cab home, I decided to take a nap in my parked car until I sobered up. The next thing I know an officer is knocking on my window, giving me a sobriety test, and arresting me for a DUI. My keys were in the ignition because I was listening to the radio, but the engine wasn't turned on. How can I be charged with a DUI if I wasn't even driving?

Although many assume that DUI or "driving under the influence" only involves driving, it also applies where someone is operating a vehicle — in this case, using the radio. If you're drunk and sitting inside the vehicle by yourself and the key is in the ignition, it doesn't matter if the engine is on or off; this is still considered a DUI because you are "operating" the vehicle. Going even further, if the key is located within your reach or

if you have a keyless ignition (push or remote start), as long as you are in a position to turn the car on, you can still be charged with a DUI. While you may have been charged with a DUI — the circumstances are much different than a typical case where someone, for example, is pulled over while driving down Wilson Boulevard. In any criminal or DUI case, the facts and circumstances of your particular situation will be taken into consideration in determining the severity of the penalty. In a complicated situation like the one you've described, it's important not to try and talk your way out of trouble because anything you say can be used against you. It's best to consult with an attorney who understands DUI laws to avoid digging yourself into an even deeper hole.  
Question: I was recently pulled over going 78 in a 55 zone on I-66 East. This is apparently considered "reckless driving" in Virginia. I moved to Northern Virginia from Rhode Island a few weeks ago- if I'm found guilty, will I have points on my new Va. license and will the ticket show up on a background check?

Although the meaning of the offense varies from state to state, in Virginia, "reckless driving" has nothing to do with your driving behavior apart from driving 20 mph over the speed limit. It counts for 6 points on a Virginia driver's license and shows up as a Class 1 misdemeanor on record. Since you haven't switched your license over from R.I. to Va. yet, the number of points you may or may not receive really depends on R.I. laws. If you apply and receive a Va. license before the conviction and processing of the charge, 6 points will

be issued on your Va. driver's license. When it comes to the background check, it depends on the kind of background check being performed. It is always safer to report violations such as these, especially if you're dealing with a security clearance or immigration application. Failure to report something like this often has more serious consequences than just reporting the offense to begin with. If you have received a speeding or other traffic ticket, contact an attorney. In addition to showing up on your record, a reckless driving charge could increase your insurance premiums. A traffic ticket attorney can help you explore all of your options and may be able to demonstrate your otherwise responsible driving behavior.  
Mathew B. Tully is the Founding Partner of Tully Rinckey PLLC. Located in Arlington, Va. and Washington, D.C., Tully Rinckey PLLC's attorneys practice criminal defense, matrimonial and family law, federal employment law and military law. To speak with an attorney, call 703-525-4700 or to learn more visit [1888law4life.com](http://1888law4life.com)

