

## **NMDPS - ACCESSORY – PROBABLE CAUSE**

Defendant sat in the backseat of a parked vehicle in Curry County. The driver got out, entered a nearby vehicle, and sold drugs. Bad move on the driver's part: the buyer was an undercover police officer. Eight officers quickly surrounded the two vehicles.

Defendant, in the nearby vehicle, was handcuffed and searched. He had over \$500 cash and meth in his pocket. Officers charged him as an accessory to distribution of drugs and also possession. Question: was there probable cause to arrest Defendant as an accessory for distribution of drugs?

Mere presence by itself is not enough. The state must show Defendant had knowledge of what was going on. Next, the state must show Defendant had intent to distribute drugs. But there was no evidence that Defendant knew the driver was going to sell drugs when he left the vehicle. There was no evidence he saw a drug deal or aided or conspired with the driver.

Court of Appeals held there weren't enough facts to support probable cause to arrest. More facts might have changed the outcome. For example, what was Defendant's demeanor? What did Defendant say to the officer? What did the Driver say? Because there was no probable cause, everything found on the Defendant was suppressed. State v. Morales (2008). --- ADA Elliott, Law Enforcement Academy



**Whew,... didn't spill a drop!**