

NMDPS - ARREST - JURISDICTION

A Deputy Marshal from the Town of Mesilla was driving in the adjoining City of Las Cruces when he observed Defendant make a wide turn, brake a few times, and then weave left of the center lane. Thinking it might be a DWI (it was 1:30 a.m.), he stopped the vehicle. He called for assistance and a Dona Ana County Sheriff's deputy arrived. After doing his own investigation, the deputy sheriff booked Defendant for DWI.

But was the stop justified? What about jurisdiction? A municipal police officer may not enforce the motor vehicle code outside his or her jurisdiction unless the officer is in fresh pursuit of a defendant fleeing the jurisdiction or has been cross-commissioned with such authority. Given that none of these exceptions applied, the district court held there was no jurisdiction for the stop and suppressed the evidence.

On appeal another possibility was considered. Any person in New Mexico may arrest another person upon good faith, reasonable grounds that a felony or breach of the peace is being committed in the person's presence. A DWI is considered a breach of the peace.

The Court of Appeals noted that a law enforcement officer acting outside his or her jurisdiction has the same authority to arrest as a private citizen. Actually, this was even less intrusive than a citizen's arrest; the deputy marshal merely detained the Defendant and in fact it was the Sheriff's deputy who made the arrest based upon his own observations. Court of Appeals held this was a good stop. State v. Arroyos (2005)

- - - ADA Elliott

