

## **NMDPS - BATTERY-RESIST (TWO COUNTS)**

A Las Cruces Police Officer saw a vehicle traveling 80 to 90 miles per hour in a 30 mile-per-hour zone. The officer stopped the vehicle but the defendant took off running. Suddenly, the Defendant turned around and punched the officer twice in the face. Defendant ran away, the officer in hot pursuit after him.

The Defendant stopped again. He turned, facing the officer in an aggressive manner. This time the officer was ready and wacked him with his baton. Defendant took off running. As he was attempting to climb a chain link fence, the officer wacked him repeatedly with his baton. He was taken into custody. Defendant was convicted of battery on a peace officer and resisting.

Defendant argued he should have been convicted of resisting only (he admitted running away) and that battery was part of the resisting. Sometimes battery and resisting are part of one incident and do merge together. But a change in behavior or intent can result in charges of both battery and resisting.

Court of Appeals held that Defendant's conduct in turning around and punching the officer was significantly different from Defendant's resistance and supported both battery and resisting. Hitting or spitting or kicking an officer is a fourth degree felony. State v. Lopez (2008). - - - ADA Elliott, Law Enforcement Academy



**Yeah Sarge, like I need one more  
thing to put on my gun belt!**