

NMDPS - BATTERY – RESISTING

Three officers in Lordsburg were attempting to arrest one person when Defendant approached them. Defendant came within inches of them, yelling and shaking his fists. Ordered to leave, he refused, and was told he was under arrest. He began to pull his arms away and struggled to loosen their grip. When they tried to put handcuffs on him, he kicked one of the officers in the knee.

Court of Appeals upheld his conviction for Battery Upon a Peace Officer, NMSA 1978, Section 30-22-24, but dismissed Resisting, Evading or Obstructing an Officer, NMSA 1978, Section 30-22-1.

It felt he was being punished twice (double jeopardy) for the same conduct. Both acts occurred as a result of his arrest: one right after he was told he was under arrest (the struggling) and the second (the kick) as he was being handcuffed. The two acts were similar, close in time and space, and could be considered as one incident. His conviction for Assault Upon a Peace Officer was also upheld. NMSA 1978, Section 30-22-1.

The difference between verbal and physical abuse

Some people feel an officer getting kicked “comes with the territory.” But there is a difference between verbal and physical abuse. Verbal abuse against officers (unless it’s threatening behavior) is tolerated. That’s why people are not charged with disorderly conduct against officers. But physical abuse, as a number of cases and the legislature have made clear, is taken seriously. One kick against an officer, as happened here, was properly charged as a felony offense. State v. Ford (2007) - - - ADA Elliott



Let's see, maybe dis goes
on his wrist.