

NMDPS - DOMESTIC VIOLENCE – AT THE SCENE

At the State Fair parking lot in Albuquerque, Defendant kicked his girlfriend. Within minutes, APD officers found him in a store across the street. Upon his arrest for DV battery, cocaine was found. Question: was the arrest lawful? Within the DV statute there is some surprising (and restrictive) language found nowhere else in the criminal code.

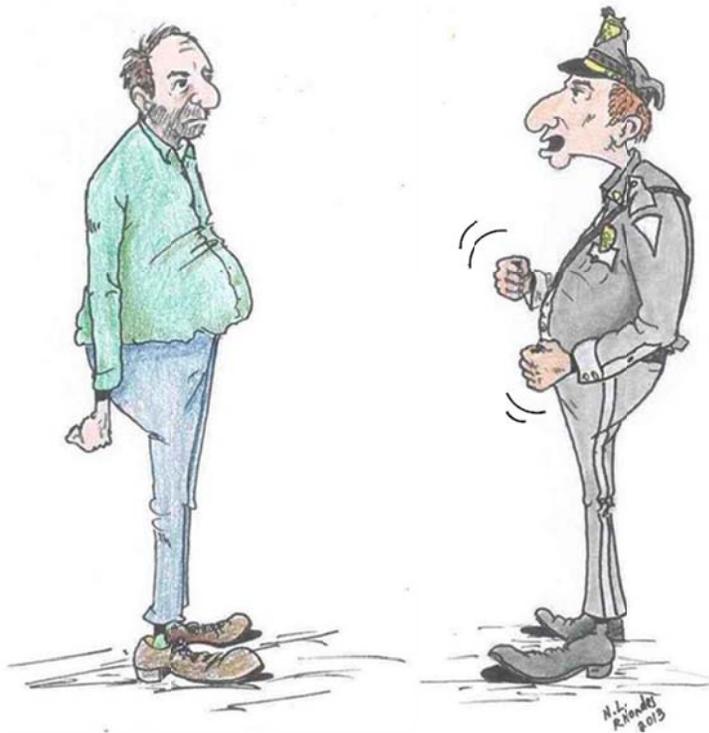
NMSA 1978, Section 31-1-7 states: (this applies to misdemeanors only)

. . . a peace officer may arrest a person and take that person into custody without a warrant when the officer is at the scene of a domestic disturbance and has probable cause to believe that the person has committed an assault or a battery upon a household member.

What does “at the scene” mean? For some, it’s the exact location where the disturbance occurred. Supreme Court, looking at legislative intent, chose to broaden this, but ever so slightly: an arrest has to be in “close proximity” of where a battery occurs, both in time (evidence of violence is still fresh) and distance (aggressor close enough to reinitiate violence.) Because Defendant was close by, his arrest was lawful.

There will be times when an officer is not going to get a warrant. Legislators, aware of this, added the following in Section C: “Whether or not an arrest is made pursuant to this section, a peace officer may remain with the victim and (among other things) assist the victim in getting to a shelter or receiving proper medical attention.” State v. Almanzar (2013).

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You say you can't be arrested unless yer caught at the scene of the fight? Well, this is gonna be the scene of the fight.