

CRIMINAL LAW:

CRIMES AGAINST PUBLIC PEACE

ONLINE

PRESENTED BY:

DPS – Law Enforcement Academy
Santa Fe, New Mexico

Date: _____

GOALS

- Students will gain knowledge of a number of crimes that affect the public peace.
- Students will appreciate how certain offenses – disorderly conduct, resisting, obstructing – can escalate to “contempt of cop” charges.
- Understanding of bribery, including bribery of a police officer.
- An awareness of the seriousness of intimidation or retaliation against a witness.

OBJECTIVES

Upon completion of this course, students will be able to:

- Explain and give examples of disorderly conduct.
- Distinguish what happens when the victim of disorderly conduct is a police officer.
- Explain whether to charge battery or public affray when two people are fighting.
- Know circumstances of when it is appropriate to charge unlawful assembly.
- Know whom to charge when the offense of Loitering of Minors applies.
- Explain what circumstances are necessary to charge resisting or evading an officer.
- State when aggravated fleeing applies.
- State which groups are exempt from the charge of harboring a felon.
- Provide examples of when intimidation or retaliation against a witness applies.
- Give examples of bribery of a police officer.

SOURCES

- New Mexico Criminal and Traffic Manual.
- New Mexico Statutes Annotated.
- State and federal case law.

ESTIMATED TIME Included in a ten hour block on Criminal Law.

PREPARED BY

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Department of Public Safety
Law Enforcement Academy
Santa Fe, New Mexico

DATE APPROVED _____

ACCREDITATION NUMBER _____

INTRODUCTION

We are going to discuss the major offenses in Article 20 which affect Public Peace. After that, we will discuss additional offenses in other articles that have an impact on the field officer and that also affect public peace. These include the so-called “contempt of cop” charges such as resisting and obstructing. We will also discuss bribery charges.

NMSA 1978, Section 30-20-1. DISORDERLY CONDUCT

Disorderly Conduct consists of:

- A. engaging in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct which tends to disturb the peace; or
- B. maliciously disturbing, threatening or, in an insolent manner, intentionally touching any house occupied by any person.

Whoever commits disorderly conduct is guilty of a petty misdemeanor

- *a few observations*
- Almost all cases are concerned with section A.
- Burglary and robbery are specific intent crimes and easy to define; offenses such as disorderly conduct are more difficult to define.
- The statute on disorderly conduct gives us a baseline to work with; however, we need to review case law to gain a better understanding of what disorderly conduct is.

FACTS:

- Officers provided security for a wedding reception at the Tucumcari Convention Center. Defendant became increasingly intoxicated as the evening progressed. One officer heard the defendant talking loudly and using profanity.
- A woman walked against the wall to avoid defendant. She made eye contact with the officer, looked at defendant, then looked back at the officer. The officer understood the woman’s actions to mean the defendant was bothering her. He was arrested for disorderly conduct. The woman was not located or identified. State v. Salas (1999). Do we have disorderly conduct here?

Answer:

The standard is whether defendant’s conduct tends to disturb the peace. The officer heard

defendant yelling and the woman appeared to be nervous and uncomfortable. The Court of Appeals noted defendant had disturbed a member of the public and upheld the conviction.

FACTS:

- Officers in Hobbs saw driver go through a red light. He was apprehended several minutes later in defendant's backyard. Defendant yelled at officer, "This is not a "f-----" crack house. Get out of my f----- yard." Workers, installing a swimming pool in Defendant's backyard, were amused as they heard Defendant's statements. Was there disorderly conduct as far as the police officers are concerned? Was there disorderly conduct as far as the civilians are concerned?
State v. Hawkins (1999).

Answer:

Court of Appeals noted the difference between police officers and private citizens when it comes to disorderly conduct. Police officers, by the nature of their training, are expected to have a higher tolerance for offensive conduct and language. The remarks directed at the police officer did not rise to disorderly conduct.

But what of the workers at the pool? The remarks may have been loud and offensive but their reaction was one of amusement. This was not disorderly conduct. Conviction reversed.

Reminder:

Verbal abuse against a police officer is not disorderly conduct.

News item: Las Cruces Must Pay \$255k to person arrested

A \$255,000 settlement has been reached for a Las Cruces man arrested after he used a word (sounds like "witch") when another driver took his parking space at Target.

He was looking for a parking space when he spotted a vehicle pulling out of a parking space. Before he could pull into the space, an unidentified woman whipped into the space and parked. A police officer on duty and in the parking lot overheard him use the profanity. Criminal charge of disorderly conduct was dismissed. Albuquerque Journal, October 5, 2008.

NMSA 1978, Section 30-20-2. **PUBLIC AFFRAY**

Public affray consists of two or more persons voluntarily or by agreement engaging in any fight or using any blows or violence toward each other in an angry or quarrelsome manner in any public place, to the disturbance of others.

Whoever commits public affray is guilty of a petty misdemeanor.

- This is a good charge for a fight in public in front of others.

- A fight, however, doesn't automatically mean we have a public affray. For example, one person may be hitting another and the second person is acting in self-defense. The charge would be battery against the first person. Public affray is used when both people voluntarily engage in a fight.

NMSA 1978, Section 30-20-3. **UNLAWFUL ASSEMBLY**

Unlawful assembly consists of three or more people assembling together with intent to do any unlawful act with force or violence against the person or property of another, and who shall make any overt act to carry out such unlawful purpose.

Whoever commits unlawful assembly is guilty of a petty misdemeanor.

NMSA 1978, Section 30-20-10. **LOITERING OF MINORS**

Loitering of **minors** consists of the owner or operator of any **saloon** permitting a person under the age of twenty-one years to attend, frequent or **loiter** in or about such premises without being accompanied by the parent or guardian of the person.

Note:

Notice the word **saloon**. We're not talking about just any licensed liquor establishment (a convenience store, restaurant, etc.) but a saloon.

Notice the word **loitering**. It doesn't apply to the people under twenty one hanging around the saloon; it applies to the owner or operator who permits them to loiter around the saloon.

NMSA 1978, Section 30-20-12. **USE OF TELEPHONE TO TERRIFY, INTIMIDATE, THREATEN, HARASS, ANNOY OR OFFEND**

- The elements listed in the title are self-explanatory.
 - This also applies when a telephone is used to attempt to extort something of value from another.
 - A conversation does not necessarily have to ensue; it could, for example, be repeated hang up calls.
- Jurisdiction. The offense shall be deemed to have been committed at either the place where the telephone call or calls originated or at the place where the telephone call or calls were received.
- Penalty
 - 1st offense - Misdemeanor
 - 2nd offense - Fourth degree felony

NMSA 1978, Section 30-20-16. **BOMB SCARES UNLAWFUL**

- Making a bomb scare consists of falsely and maliciously stating to another that a bomb or other explosive has been placed in such a position that property or persons are likely to be injured or destroyed.

Whoever makes a bomb scare is guilty of a fourth degree felony.

NMSA 1978, Section 30-20-18. **INTERFERENCE WITH ATHLETIC EVENT**

- Interference with athletic event consists of intentionally throwing any objects on or across the field of play or an athletic event with the intent to interfere with the normal conduct of that event while the contestants of that event are on the field.
- As used in this section, “athletic event” means a scheduled sports event for which an admission fee is charged to the public. Petty misdemeanor.

CONCLUSION

These are the major charges in Article 20: Crimes Against Public Peace. Additional charges that relate to disturbance or interference with police officers will now be discussed.

- Some of these offenses – disorderly conduct, resisting, obstructing – are referred to as “contempt of cop” charges.

ARTICLE 22 INTERFERENCE WITH LAW ENFORCEMENT

NMSA 1978, Section 30-22-1 **RESISTING, EVADING OR OBSTRUCTING AN OFFICER**

Resisting, evading or obstructing an officer consists of:

- A. knowingly obstructing, resisting or opposing any officer . . . attempting to serve . . . any order . . . of any of the courts of this state . . .
- B. intentionally fleeing, attempting to evade or evading an officer of this state when the person committing the act of fleeing, attempting to evade or evasion has knowledge that the officer is attempting to apprehend or arrest him;
- C. willfully refusing to bring a vehicle to a stop when given a visual or audible signal to stop, whether by hand, voice, emergency light, flashing light, siren or other signal, by a uniformed officer in an appropriately marked police vehicle; or
- D. resisting or abusing any . . . police officer in the lawful discharge of his or her duties. Penalty is a misdemeanor.

IS THERE ENOUGH TO ARREST FOR RESISTING IN THE FOLLOWING CASE?

FACTS:

- A victim of a restraining order advised a Clovis police officer of recent violations by her boyfriend. Officer, in police uniform and patrol car, saw defendant's truck. Observing a man fitting the victim's description getting out of the truck, the officer advised him he needed to talk with him. Defendant ran but was soon caught. State v. Gutierrez (2007).
- The officer didn't have probable cause to arrest but did have reasonable suspicion to detain and question the offender. Defendant argued that because the officer wasn't trying to arrest him, he couldn't be charged with evading or eluding. To defendant, apprehend and arrest meant the same thing. Do we have resisting arrest?

Answer:

The Supreme Court held that "apprehend" wasn't the same thing as "arrest." It is a broader term which permits evading or eluding to be charged when a person walks away from an officer who has reasonable suspicion and wants to briefly detain that person for questioning.

FACTS:

- 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. State v. Ford (2007) Battery Upon a Peace Officer or resisting or both? What would you charge?

Answer:

Court of Appeals upheld the battery upon peace officer charge but dismissed the resisting charge. It felt Defendant 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 - battery) and the second (the kick - resisting) as he was being handcuffed. The two acts were similar, close in time and space, and could be considered as one punishment.

FACTS:

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 was taken into custody. He was convicted of battery on a peace officer and resisting. Good charges? State v. Lopez (2008).

Answer:

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 charges

NMSA 1978, Section 30-22.1.1 **AGGRAVATED FLEEING LAW ENFORCEMENT**

- Enacted in 2003.
- Consists of willfully and carelessly driving a vehicle in a manner that endangers the life of another person after being given a visual or audible signal to stop . . . by a uniformed law enforcement officer . . . in a marked . . . vehicle.

Note:

For aggravated fleeing, where careless driving puts other people in danger, the penalty is a felony.

Contempt of Cop

Where did the expression "contempt of cop" come from? It comes from charges such as Disorderly Conduct, Resisting or Obstructing which give officers a lot of discretion to charge. The following headlines show how the Albuquerque Police Department changed their policy in response to perceived abuse of a city ordinance, Refusal to Obey.

News item:

A cameraman was standing **outside** a crime scene in Albuquerque. An APD officer asked him to move but apparently he didn't move as far as the officer wanted. The cameraman was handcuffed and put in the back of a police car for over an hour. He was cited for Refusal to Obey, a local ordinance.

The Judge dismissed the charge. The Judge noted that a person has a right to be on a public street. Albuquerque Journal, July 2, 2008

News item: Brother, Sister Face Charges after traffic stop escalates

Their vehicle was pulled over for not having headlights on. The Albuquerque Police Officer asked the passenger, Deborah Baca, to put her cigarette out. She wanted to take one last drag of the cigarette. The officer said, "Don't you dare."

The officer told them cigarettes can sometimes be used as weapons. Note: in New Mexico a person can have weapons in their vehicle. NMSA 1978, Section 30-7-2.

She put out the cigarette. She and her brother began yelling at the officer. The situation escalated and she went to jail and her brother spent the weekend in the hospital. She was charged with refusal to obey. Albuquerque Journal, October 29, 2008

News item: You're Under Arrest for Contempt of Cop

In 2007, Metro Judges dismissed 70 percent of the refusing to obey charges in 517 arrests. Albuquerque Journal, June 29, 2008.

News item: Chief Reins in 'Contempt of Cop' Arrests

Albuquerque Police announced a new policy instructing officers not to charge someone with "refusing to obey" unless that person has already been arrested for another crime or is physically keeping the officer from carrying out duties.

It instructs officers not to arrest because of something the person said with the exception of "fighting words" that threaten the officer. Albuquerque Journal, November 25, 2008.

Recommendation:

When an arrest is going to be made for refusal to obey or obstructing justice, officers need to make sure that it really is a lawful order.

NMSA 1978, Section 30-22-3. **CONCEALING IDENTITY**

- This topic is covered in the Laws of Arrest class.

NMSA 30-22-4. **HARBORING OR AIDING A FELON**

- Harboring or aiding a felon consists of any person who knowingly conceals any offender or gives such offender any other aid, knowing that he or she has committed a felony, with the intent that he or she escape or avoid arrest, trial, conviction or punishment.

FACTS:

Police go to the front door of a house and advise the wife that her husband has a felony warrant. She denies he is there. Within minutes, however, the husband runs out the back door and is apprehended. The wife clearly knew he was in the house. Can we charge her with harboring a felon?

Answer:

No. Certain categories of people, if related by consanguinity or affinity to the felon, are exempt:

1. Husband or wife (live-in boyfriend/girlfriend is not enough)
2. Parent or grandparent
3. Child or grandparent
4. Brother or sister

Note:

The rationale for this is that the state shouldn't force witnesses to testify against their immediate relatives.

ARTICLE 24 BRIBERY

NMSA 1978, Section 30-24-3. Bribery or intimidation of a witness; retaliation against a witness

- Intimidation of a witness usually happens before trial; retaliation against a witness normally happens after trial.

FACTS:

- Defendant worked part-time as a loss prevention officer in a shopping mall in Albuquerque. He was convicted of embezzlement when another Loss Prevention Officer testified against him at trial. Eighteen months later Defendant saw the witness at the same shopping mall and said, “There’s the son a b----- right there. I should kill that mother f-----.” Defendant did not stop walking nor did he have any physical contact with the witness. State v. Estrada (2001).
Do we have retaliation of a witness?

Answer:

Defendant asserted he never intended to carry out the threat to actually kill the witness. The Court of Appeals noted, however, that “criminal liability . . . does not depend on whether Defendant intended to carry out his threat to kill the victim.” The retaliation occurred when the threat, to upset or frighten a witness, was made. Physical contact or violence was not required.

FACTS:

- A victim was raped and beaten by Defendant at her residence in Albuquerque. Defendant went to prison. He told a corrections officer that “as soon as he saw that b---- (victim) he was going to kill her for what she did, and that he should have killed her the first time . . .” The corrections officer felt Defendant was serious when he made the threat. State . Warsop (1997).

Is an indirect threat, one not communicated directly to the witness, sufficient?

Answer:

Court of Appeals held it is when it is reasonable to expect that the person who hears the threat would inform the witness of the threat in some way. Conviction upheld.

FACTS:

In Chaves County, Defendant grabbed his wife and threw her to the ground. She took off running but he caught her and kept hitting her. As police arrived, he became fearful:

“I better not go to jail. If I go to jail, Kathy, I swear to God I will f----- kill you, do you hear me?” “And if you say anything, I’ll kill your kids . . . I swear to God if I go back to prison, when I get out, I will f----- kill you. You better say we were wrestling.”

She testified she felt intimidated and was hesitant to come to trial for her children’s safety. Is this enough for intimidation of a witness? State v. Clements (2009).

Answer:

He pled guilty to aggravated battery on a household member (a misdemeanor). At trial he was found guilty of intimidation of a witness (a third degree felony). Court of Appeals upheld both convictions.

Note: In domestic violence cases, officers should remember to ask questions to determine if intimidation of a witness (a third degree felony) exists.

NMSA 1978 30-24-1. Bribery of public officer of public employer (third degree felony)

NMSA 30-24-2. Demanding or receiving bribe by public officer or public employee.

- A third degree felony.

Sometimes the right side of the law is on the wrong side of the law:

FACTS: Ex-Deputy Loses Conviction Appeal

Santa Fe - The state Court of Appeals upheld a former Dona Ana County sheriff's deputy for asking women to expose their breasts in exchange for not ticketing them. Carlos Salano of Santa Teresa pled guilty to two counts of bribery and was sentenced to six years in prison. Albuquerque Journal, November 3, 2005.

FACTS: Ex-police officers guilty of tampering with records

Las Cruces, N.M. A former Las Cruces police officer who tore up a woman's traffic citation in exchange for a kiss and a phone number has been convicted of tampering with public records. Anthony Coble told the woman who ran a stop sign that he wanted "what every man wants" in exchange for tearing up the citation. There was a hung jury on the bribery charge but prosecutor Susan Riedel said he would be retried on that charge.

Channel 13 – Albuquerque, N.M., January 23, 2006.

FACTS: Ex-Deputy Accepts Plea Deal

Las Vegas, N.M. A Mora County sheriff's deputy was dispatched to a domestic violence situation. The female asked, "What can be done to make this go away?" The deputy pointed to his penis. She performed oral sex and he left.

As part of a plea agreement, the criminal sexual penetration charge was dismissed. He pled to one count of accepting a bribe by a witness, a felony. Mora County paid \$104,000 to the female. The deputy was given eighteen months probation.

Albuquerque Journal – Santa Fe, May 6, 2008.

ARTICLE 39 FALSE REPORT

- It is unlawful for any person to intentionally make a report to a law enforcement agency or official, which report he or she knows to be false at the time of making it, alleging a violation by another person of the provisions of the Criminal Code. NMSA 1978, Section 30-39-1.
- PENALTY: Misdemeanor

FACTS:

- The Eternal Triangle. Police officers were dispatched to the scene of a shooting in Albuquerque. A female and her present boyfriend were there, along with the

victim who was her former boyfriend. She stated she shot the victim in self-defense. She said the victim threatened to kill her and her boyfriend and then attempted to enter the house where the two of them had spent the previous night.

- Later, she admitted she had not done the shooting and said her present boyfriend had done it. State v. Gardner (1991). Is false report a good charge?

ANSWER:

No. Court of Appeals noted that the false reporting statute only prohibits the false accusation of another. It does not apply to situations where an individual falsely assumes the blame for another.

CONCLUSION

- We have discussed the following:
- Article 20: Crimes Against Public Peace.
- Article 22: Interference with Law Enforcement.
- Article 24: Bribery.
- Article 39: False Report.

We have also discussed “contempt of cop” cases and bribery charges. Understanding these articles will assist us to confront difficult cases in law enforcement.

