Administrative Office of the Courts

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Supreme Court resolves dispute over Hobbs man charged in altercation with police

SANTA FE – The state Supreme Court today reiterated a legal rule that a defendant cannot respond violently to a wrongful arrest by police if officers are performing their official duties and not acting in bad faith or using unreasonable force.

In a unanimous opinion, New Mexico's highest court rejected a Hobbs man's arguments that his charges of battery and assault on a peace officer and resisting, evading or obstructing an officer should have been dismissed pretrial.

Kentoine Penman conditionally pleaded no contest to the three charges, as well as charges of possession of marijuana and pedestrian on a roadway. He received a conditional discharge and 18 months of probation.

On appeal, Penman contended that his initial stop by Hobbs police in 2018 was illegal because officers lacked reasonable suspicion that he had violated the law prohibiting pedestrians on roadways. Penman was standing in the middle of a road – not walking on it – in a residential neighborhood of Hobbs. Penman argued that the officer who arrested him was not lawfully discharging his duties. Under his legal interpretation, it did not matter whether the officer acted reasonably and in good faith.

The Court rejected his view of the law and adhered to a decades-old legal precedent on the issue established by a decision in a previous case.

"Defendant has not articulated any persuasive reason that we should depart from this well-established approach whereby officers acting within the scope of their employment receive protection from statutes aimed at punishing those who attack, resist, or threaten them," the Court wrote in an opinion by Justice Julie J. Vargas. "We reiterate that an officer is lawfully discharging their duties when they are acting within the scope of what the officer is employed to do."

The Court further explained that under the longstanding legal precedent "an officer is not lawfully discharging their duties when on a personal frolic, acting in bad faith, or using unreasonable force."

In Penman's case, Officer Juan Jaimes testified that he approached Penman to investigate a potential violation of the pedestrian on roadways law. An onlooker objected and two other officers turned their attention to that man. Officer Jaimes told Penman to "hang on" while he assisted the other police.

Penman used his cell phone to record what was happening and was a "few inches away" from one officer who was attempting to handcuff the onlooker. Officer Jaimes told Penman to step back and he eventually complied. But as police were taking the handcuffed onlooker to a patrol car, Penman approached one of the officers from behind. The officer turned around and told Penman he would be arrested. Penman pushed the officer and tried to run away as the officer attempted to grab his wrist. Penman stopped, assumed a fighting stance and then an officer tackled him and arrested him. Police found plastic bags containing drugs either near Penman or in the patrol car where he was detained.

On appeal, the state Court of Appeals ruled that the charge of pedestrian on a roadway should be dismissed because standing in the road does not violate the law, but the court left the other charges intact. Penman took the case to the Supreme Court, who agreed with the Court of Appeals that the charges of assault and battery on a peace officer and resisting an officer should remain in place along with the marijuana possession charge.

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To read the decision in *State v. Penman*, No. S-1-SC-39487, please visit the New Mexico Compilation Commission's website using the following link:

https://nmonesource.com/nmos/nmsc/en/item/530457/index.do