

## DUI NOTES



By  
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# An Achiever's Guide to Law Enforcement Jurisdiction in Florida

**Walter Sobchak:** OVER THE LINE!

**Smokey:** Huh?

**Walter Sobchak:** I'm sorry, Smokey. You were over the line, that's a foul.

**Smokey:** Bullshit. Mark it 8, Dude.

**Walter Sobchak:** Uh, excuse me. Mark it zero. Next frame.

When John Goodman's character in *The Big Lebowski*<sup>1</sup> insisted his worthy opponent, Smokey, be penalized for foot-faulting over the bowling lane foul line, who knew the scene would be used to explain the jurisdictional limits of law enforcement officers? But it makes sense. In fact, when the Coen brothers created that scene they must have had law enforcement jurisdiction in DUI cases in mind. Just look at the name they assigned to the foot-faulting offender, "Smokey."

Anyone who grew up in the '70s when CB radios were in knows that the word "smokey" is the preferred nomenclature for law enforcement officers who make traffic stops. Am I wrong? Not only that scene but as will be readily apparent, the movie *The Big Lebowski* really ties this article on police jurisdiction together. So if you feel like you are

out of your element when confronted by an issue involving police jurisdiction or you have not seen *The Big Lebowski*, than read on.



**The Dude:** Walter, ya know, it's Smokey, so his toe slipped over the line a little. Big deal. It's just a game, man.

In jurisdictional controversies involving police officers crossing out of their jurisdiction without authority, some prosecutors may, like The Dude, argue that the officer was not that far out of his jurisdiction when he arrested your client, so it's really of no great consequence. If so, you should counter by first explaining the importance of boundary lines. We define our lives by borders and lines. From our nation to the states, counties, cities and towns we live in, all are marked by borders that are legally created and recognized.

Our professional careers are subject to boundary lines as well. We are licensed to practice law in Florida and cannot venture into other states without authorization. Our personal lives are also subject to boundaries. Property lines are drawn around the houses we live in.

There is no question that the law recognizes and respects all of these lines. As such, the concept that police officers are legally bound by jurisdictional lines makes perfect sense. Walter knew how

important it is to honor these lines and further explained to Smokey and The Dude what happens when you cross them even just a little.

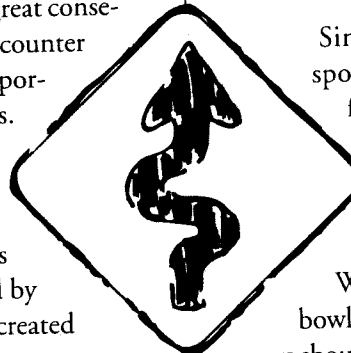
**Walter Sobchak:** Dude, this is a league game, this determines who enters the next round robin. Am I wrong? Am I wrong?

**Smokey:** Yeah, but I wasn't over. Gimme the marker Dude, I'm marking it 8.

**Walter Sobchak:** [pulls out a gun] Smokey, my friend, you are entering a world of pain.

**The Dude:** Walter...

**Walter Sobchak:** You mark that frame an 8, and you're entering a world of pain.



Since bowling is actually a sport, let's also consider the fact that sports are played on fields, courses and courts. All have some sort of boundary lines written into the rules of the game. Walter expected the rules of bowling to be followed. Similarly we should expect jurisdictional rules to be followed on the street or if not than to be recognized in the courtroom. In fact, in a courtroom we are always in a league game.

Therefore if we discover a police jurisdictional violation we must raise the issue and if proven a penalty should be assessed by the court. That is why Walter's reaction to Smokey's foot fault is not so outrageous. Interestingly, what often occurs in the legal arena would probably cause Walter to pull

out his piece and quite possibly pull the trigger.

**Walter Sobchak:** [shouting] *Has the whole world gone crazy? Am I the only one around here who gives a shit about the rules? Mark it zero!*

The fact is, Walter is correct. Although we defend people who are accused of breaking the law we expect police to have to follow the rules in getting our clients into the courtroom. In determining the jurisdictional rules it is important to understand that municipal police officers are limited to policing the specific city that employs them.<sup>2</sup> Alternatively, county sheriffs and their deputies are bonded and permitted to police the entire county that employs them.<sup>3</sup> Importantly, municipal officers and sheriff's deputies are required to adhere to the boundaries that mark the respective jurisdictions in which they are sworn.

Within their jurisdiction police officers and deputies are empowered to make arrests. However, when they cross out of their jurisdiction without authority the concept of a penalty should be universally accepted by our judicial system. Nevertheless, sometimes the idea of penalizing the prosecution gets blurred with the desire to exact punishment on the accused regardless of what the law states. If that occurs than it is important to know the rules to ensure you have perfected the record for appeal, if necessary.

**Walter Sobchak:** *Smokey, this is not 'Nam. This is bowling. There are rules.*

Indeed the rules in bowling that pertain to crossing the foul line are similar to the rules that pertain to police jurisdiction. In bowling the rule is you cannot cross the foul line. If you do, then mark it zero. The rule for police is they cannot cross their jurisdictional boundary lines. Otherwise every officer in every county and city would be authorized to police the entire state of Florida. Thus they are limited to their

respective jurisdictions. If they cross over the line to make an arrest it can result in suppression. However, there are exceptions to the rule.

**Malibu Police Chief:** *Stay out of Malibu Lebowski, stay out of Malibu!*

OK, so Malibu is not in Florida, but Malibu is a California beach community and Florida has beach communities, too, so give me some poetic license here. The point is when the Malibu police chief issues this warning to The Dude he obviously understands that his jurisdiction does not extend past Malibu. He could not very well have warned The Dude to stay out of Carmel since he has no authority there.

This scene therefore demonstrates that although a police chief may understand his department's jurisdictional limitations, officers on the street may not. As we will see in the cases analyzed herein there are consequences when officers on the street do not abide by their jurisdictional limitations.<sup>4</sup> As you can expect, in law there are always exceptions to the rule. Those exceptions include fresh pursuit, citizen arrests, and mutual aid agreements.

## FRESH PURSUIT

**Brandt:** *We've been frantically trying to reach you, Dude.*

Florida Statute 901.25<sup>5</sup> authorizes officers who are chasing a suspect to cross out of their jurisdiction and into another. This statute makes sense since it would be a big problem for law enforcement if a suspect merely had to reach the county or municipal line in order to make his getaway even if an officer was hot on his tail. The term "fresh pursuit" suggests some type of emergency response or an ongoing chase. One concurring opinion in an extra-jurisdictional arrest case describes fresh pursuit as follows:

"The fresh pursuit doctrine requires that the officer begin the chase in his or her own jurisdiction and continue it until the

suspect is caught. If the crime is committed outside the jurisdiction of the arresting officer, then the doctrine does not apply....

A fresh pursuit must be continuous and uninterrupted, but continuous surveillance of the suspect or uninterrupted knowledge of the suspect's whereabouts is not necessary.

The critical elements characterizing fresh pursuit are its continuity and its immediacy rather than merely the rate of speed at which the pursuit is made.... Although the pursuit does not imply a fender-smashing Hollywood-style chase scene, it does connote something more than mere casual following.

The most obvious example would be a police officer attempting to stop a fleeing suspect. Hot pursuit also must originate in the officer's jurisdiction. This exception does not allow for an officer to begin a chase out of his or her jurisdiction and then fall back on the hot pursuit exception."<sup>6</sup>

## CITIZEN ARRESTS

**The Big Lebowski:** *Are you employed, sir?*

**The Dude:** *Employed?*

There are times when an officer stops a suspect in a municipality other than the one he or she works for. In those circumstances officers can be deemed to have made a citizen's arrest. This is because the officer is not employed by the municipality where the stop occurs. Nevertheless, it has been deemed acceptable for officers to make an arrest for DUI outside his or her jurisdiction if the suspect has committed the functional equivalent of a breach of peace.<sup>7</sup> In such situations the focus will be on the driving pattern. Specifically, the driving pattern must be so egregious that it is considered more than a traffic violation. In most cases, the driving pattern must be such that it is deemed to have created a

public safety concern. Proof of breach of peace in DUI cases relies on the officer's credible and articulable description of the driving.

## MUTUAL AID AGREEMENTS

**Auto Circus Cop:** Leads, yeah, sure. I'll just check with the boys down at the crime lab, they've got four more detectives working on the case. They got us working in shifts!

Mutual Aid Agreements, or MAAs if your into the whole brevity thing, were the legislature's method of providing law enforcement agencies the benefit of working together in times of emergency or crisis.<sup>8</sup> The statute enacted provides for three types of MAAs. The first is the Voluntary Aid Agreement which allows for law enforcement agencies to contract with each other to provide assistance in routine law enforcement and specific joint law enforcement efforts such as drug interdiction and traffic enforcement task forces.

The second is the Operational Assistance Agreement which provides for emergency joint law enforcement operations in situations arising from civil disturbances and natural disasters. The third is the combination voluntary and operational agreement that would seemingly allow officers from one jurisdiction to enter into another to provide assistance for specific enforcement operations and in the event of a disaster or riot. The statute provides law enforcement with the authority to cross city and county lines within the written terms of the agreement. To that end, there are limitations since courts have recognized that the MAA statute was not designed to expand a municipal officer's jurisdiction to that of a sheriff's deputy.

[Maude shows the porn video starring Bunny to the Dude]

**Sherry in 'Logjammin':** [on video] You must be here to fix the cable.

**Maude Lebowski:** Lord. You can imagine where it goes from here.

**The Dude:** He fixes the cable?

So, where does this go from here? Well, now that we know that an officer cannot police out of his jurisdiction unless he is in fresh pursuit or is making the equivalent of a citizen's arrest for breach of peace or is acting in accordance with a written MAA, we can all rest assured that the police will follow the rules and "fix the cable" right? OK, no need to ask rhetorical questions to this crowd. We all know that regardless of the rules what happens on the street is what creates case law. So, let's take a look at what the courts have done with this issue.

## FRESH PURSUIT CASES

In 2000 the 4th DCA decided *Porter v. State*<sup>9</sup> and affirmed the trial court's denial of a motion to suppress based on fresh pursuit. The Court cited three factors to consider: 1) that the police act without unnecessary delay; 2) that the pursuit be continuous and uninterrupted; and 3) that there be a close temporal relationship between the commission of the offense and the commencement of the pursuit and apprehension of the suspect.

This decision was followed by the 3rd DCA in 2003 in *State v. Gelin*.<sup>10</sup> Both *Porter* and *Gelin* factually involved robberies that had recently occurred. In response, BOLOs had been issued. The stopping officers had been acting pursuant to the BOLO and as such they were held to have been in compliance with FS 901.25 since they were found to be in fresh pursuit of the suspects.

In *DHSMV v. Leonard*<sup>11</sup> the 5th DCA held that fresh pursuit authorized a municipal officer to stop a vehicle outside his jurisdiction for suspicion of DUI based on fresh pursuit. In that case one municipal officer witnessed the suspect driving erratically within the city limits and followed the suspect while radioing for assistance from another municipal officer. Both officers stopped the vehicle outside city limits. The 5th DCA ruled that the described driving pattern justified the extra-jurisdictional stop based on FS 901.25 since the officer

was in fresh pursuit. Importantly, the driving was initially witnessed by the first officer within the city limits and the driving was articulably described on the record.

These holdings provide a definition for fresh pursuit as well as factors that must be considered in determining the issue of fresh pursuit in extra-jurisdictional cases. Importantly, the decisions also turn on specific facts in determining whether an officer was indeed in fresh pursuit.

In one such case, *State v. Rose*,<sup>12</sup> the court rejected the argument that the arresting officer was in fresh pursuit. In *Rose* the arresting officer was from Davie. He stopped a black Mercedes that was pulling out of a parking lot and almost caused an accident in Cooper City. The officer was in the process of looking for a black Mercedes based on a BOLO that resulted from an anonymous tip about a black Mercedes driving recklessly.

Among other things the trial court had found that this was not an emergency, the officer had not witnessed erratic driving and had failed to follow the MAA extra-jurisdictional procedures. The trial court also noted that the tip was anonymous and black Mercedes cars were very common. The Circuit Appellate Court agreed and held that the facts of the case were not the equivalent of fresh pursuit as outlined in *Porter* and *Gelin*.

Therefore as indicated above it is important to flesh out all the facts in order that the record clearly details the exact facts that are relied upon in determining fresh pursuit. If proof does not exist that supports the basis of fresh pursuit than the extra-jurisdictional arrest may lead to the suppression of evidence as long as the other exceptions are not applicable either.

## CITIZEN ARRESTS / BREACH OF PEACE CASES

The concept that police are acting as everyday citizens when they make an arrest outside their jurisdiction is hard to imagine. Nevertheless, this analysis has been employed in a number of cases.

Most often such cases involve felonies; however, at common law it was contemplated that citizens have the power to arrest when a felony or breach of peace occurs in their presence. The 4th DCA and The 1st DCA extended this breach of peace analysis to DUI arrests when the driving pattern calls for it.<sup>13</sup> The analysis has thus been considered in other lower court cases.

In *Gouge v. DHSMV*, 8 FLW Supp 683a (10th Judicial Circuit 2001) an officer with the Lakeland Police Department began following Gouge based on a driving pattern that included swerving, weaving and other descriptions consistent with DUI. The officer called for a DUI unit but did not attempt to stop Gouge. Gouge then drove out of the Lakeland city limits and into the Polk County Sheriff's Office jurisdiction. Gouge stopped at a residence and the Lakeland officer stopped and made contact with Gouge. By this time another Lakeland city officer arrived on the scene followed by two deputies from the Polk County Sheriff's Office.

The Polk County deputies decided that the Lakeland city officers should handle the DUI investigation and arrest through the MAA since the Lakeland officers had made all the observations of the driving and of Gouge. The Lakeland officers made the arrest.

At Gouge's DMV formal review hearing Gouge argued that the original officer was off duty and out of his jurisdiction and therefore the arrest was illegal. The DMV hearing officer upheld the suspension and Gouge appealed. The Court held that FS 901.25 which allows for officers to arrest outside their jurisdiction if the officer was in fresh pursuit did not apply to the facts of this case because there was no claim of fresh pursuit. Therefore the Lakeland officer was deemed to be a private citizen who under the circumstances was only authorized to make an arrest for breach of peace.

The Court therefore had to establish whether the facts of the case amounted to a breach of peace. The driving pattern in this case was severe enough for the court

to draw that inference and thus the stop and arrest were upheld.<sup>14</sup>

Alternatively, in 2004 this issue of an officer acting outside his jurisdiction arose when a City of West Miami police sergeant stopped and arrested a DUI suspect in the city of Miami. In *State v. Alcorn*, 12 FLW Supp 156c (11th Judicial Circuit 2004) the court analyzed the extra territorial police action in terms of a citizen's arrest. For that purpose the court had to determine if the driving pattern amounted to a breach of peace. The court looked to *Pipkin v DHSMV*, 11 FLW Supp 788a (11th Cir 2004)<sup>15</sup> in concluding that a breach of peace must involve more than a traffic infraction.

The court concluded that, "...to rule otherwise would award carte blanche enforcement powers to officers outside their jurisdiction." In deciding the case the court in *Alcorn* looked to the driving pattern testified to by the West Miami police sergeant which included weaving, stopping between lanes and crossing over double yellow lines and held it was insufficient to establish a breach of peace.

Of importance was the fact that the sergeant was impeached as to certain descriptions of the driving pattern and failed to articulate facts regarding the driving which caused concern for the court. Thus the court could not find that the driving pattern as described amounted to more than traffic infractions. Without such proof no breach of peace was proven and the extra-jurisdictional stop was ruled illegal.

Thus a police officer sometimes is deemed to have no more power than the average citizen if he is outside his jurisdictional limits. If so, than the analysis changes from the statutes that provide officers the power to arrest to the conduct of the person arrested. In the event the driving pattern is not significant enough to constitute more than a traffic infraction than this citizen arrest/breach of peace analysis will not provide justification for an extra-jurisdictional stop. That leaves the last exception.

## MUTUAL AID ASSISTANCE AGREEMENTS CASES

The Florida Mutual Aid Act, Florida Statute 23.1225, sets forth the powers, privileges and immunities for officers acting outside their jurisdiction. As previously discussed there are three types of MAA. One is the voluntary cooperation agreement the second is an operational assistance agreement and the third is a combined voluntary and operational agreement. Of importance here is that these agreements were contemplated to allow joint policing operations in times of emergency.

However, the written terms between agencies can in some circumstances expand the powers to standard law enforcement. If so, than the terms of the agreement must be strictly construed by the courts. Otherwise the concept of jurisdictional boundaries is meaningless.

In *State v. Davis*, 1 FLW Supp 463b (20th Judicial Circuit, 1993) the County Court granted a motion to suppress in a DUI checkpoint arrest because the arresting officer was not authorized to arrest based on the specifics of the operational assistance agreement. This case exemplifies the difference between an operational assistance agreement and a voluntary cooperation agreement. In *Davis* various law enforcement agencies supplied officers to man a sobriety checkpoint in Cape Coral.

Davis was stopped at the checkpoint by a Fort Myers police department officer who detained Davis. Davis was then turned over to a Naples police department officer to conduct field sobriety exercises. After the FSEs, Davis was next processed by a Collier County deputy sheriff. The DUI citation and other documents were prepared by the Fort Myers officer who first detained Davis.

The issue for the Court was whether the arrest of Davis in Cape Coral by a series of officers who were not sworn within that jurisdiction was legal. The Court looked to Florida Statute 30.09 which sets forth the qualifications for and powers of a special deputy sheriff. Florida Statute 30.09(4)<sup>16</sup> enumerates

the law enforcement activities a special deputy is authorized to perform and found that the arrest in this case did not fall under those requirements.

The Court next looked at FS 23.1225. Specifically, in this case the Court found that what was in place was an operational assistance agreement which was in place between the various law enforcement agencies for natural disasters, terrorist activities, civil disturbances, hostage situations and emergency situations. Nothing in that agreement authorized DUI checkpoints.

The Court therefore concluded that the arrest was illegal. The Court noted a distinction between the FS 23.1225(2) operation assistance agreement in place and that of a voluntary cooperation agreement authorized by FS 23.1225(1).

In *Ball v. State*, 14 FLW Supp 131a (11th Judicial Circuit App., 2006) the MAA required the extra-jurisdictional officer to notify the other agency where the offense occurred and turn the offender over to that agency for arrest. The arresting officer failed to act in conformity with the MAA by not following this procedure. Therefore the appellate court reversed the conviction and instructed the trial court to grant the motion to suppress. This concept of strict conformity with the MAA terms has also led to suppression in *State v. Windau*, 8 FLW Supp 572d (14th Judicial Circuit 2001); *State v. Gillespie*, 12 FLW Supp. 159b (15th Judicial Circuit, 2004) and *State v. Meza*, 14 FLW Supp. 487a (11th Judicial Circuit 2007).

Alternatively, in multi-agency DUI task force cases extra-jurisdictional arrests were deemed lawful. *State v. Cypreste*, 4 FLW Supp 102a (7th Judicial Circuit 1996); *Delgatto v. DHSMV*, 14 FLW Supp 437b (7th Judicial Circuit, 2007). In another series of cases it has been held that the failure to enter the MAA into evidence is fatal to the contention that the officer had extra-jurisdictional authority based on the MAA. *Laclaire v. DHSMV*, 2 FLW Supp 179a (7th Judicial

Circuit App. 1994); *McCabe v. DHSMV*, 9 FLW Supp 6a (7th Judicial Circuit App 2001) and *State v. Oliver*, 14 FLW Supp (7th Judicial Circuit 2006) and *Lewis v. DHSMV*, 13 FLW Supp. 963a (15th Judicial Circuit App. 2006).

The next line of cases concern extra-jurisdictional policing by university police officers. The first cases originated from DUI arrests of suspects by Florida State University Police officers in the city limits of Tallahassee but not on university property. *State v. Barborini*, 13 FLW Supp 1200a (2nd Judicial Circuit, 2006); *State v. Beltran*, 13 FLW Supp 1194a (2nd Judicial Circuit, 2006); *State v. McKay and Lundgen*, 13 FLW Supp 1197a (2nd Judicial Circuit, 2006) and *State v. Rogan*, 14 FLW Supp 72a (2nd Judicial Circuit, 2006).

All these cases concern similar facts where an FSU police officer stopped and arrested a suspect for DUI outside their jurisdiction based on an MAA in force between the university police and City of Tallahassee police department.

These cases did not involve hot pursuit from the university into the city which would encompass FS 316.640(a)(1) that authorizes university officers to pursue traffic offenders off campus when the infraction was committed on campus. The authority relied upon therefore was limited to the MAA in force at the time. The MAA in force was a combination voluntary cooperation agreement and an operational assistance agreement pursuant to FS 23.1225(1)(c).

The courts interpreted the terms of the MAA and rejected the State's contention that the MAA conferred extra-territorial power to the university officers. Of importance here was the language that looked at the intent of Chapter 23 in creating the MAA. Specifically the courts held that the Florida Mutual Aid Act was to provide extra-jurisdictional law enforcement in times of emergency and natural disaster. In the above cases the university officers were merely on routine patrol.

In so holding, the courts cited to

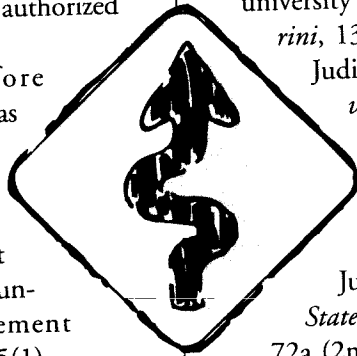
*Allen v. State*, 790 So. 2d 1122 (Fla. 2nd DCA 2001). Allen held that a voluntary cooperation agreement cannot extend police powers beyond the specific authority granted by the legislature. As such the intent of enacting chapter 23 was not to confer police powers to municipal officers that are coextensive with county sheriffs.

Interestingly, when FSU's police department was being hemmed in by Leon County courts, UF's police department was apparently not paying attention. In a recently decided appellate circuit court case from Gainesville the court reviewed the denial of motions to suppress by the trial courts involving extra-jurisdictional DUI arrests by UFPD. The underlying DUI cases all had similar facts where UFPD officers stopped suspects on streets that border the University of Florida.

In this case the court looked at FS 1012.97 which provides universities the authority to establish police departments to enforce law violations that occur on property under control of the university. The Court however also looked at FS 316.640 which deals directly with a university police department's enforcement of traffic laws on or about property under control of the university. This statute also provides for the hot pursuit exception when the enforcement of traffic laws requires a UFPD officer to leave university property to pursue and stop a suspect for a traffic violation that occurred on university property.

The concern for the court was the conflict between these statutes caused by the term on or about in the later which seemingly expands the UFPD's jurisdiction to areas not necessarily within the confines of university property. However, the court deemed the term ambiguous as used in FS 316.640 since it was not clear what the legislature intended by the term. This was because the same statute used the term adjacent to in hot pursuit exception language leading the court to conclude that on or about did not necessarily mean adjacent to.

Moreover, the staff analysis of the bill that preceded the statute provided



additional insight into the legislative intent of the statute. Specifically, the staff analysis suggested that the phrase on or about was provided in the statutory language to allow university officers to enforce traffic laws on city and county roads within university property.

Therefore the court concluded that the term on or about was more appropriately interpreted as covering roads that cut through university property "not roads abutting or adjacent to campus" This interpretation of the statute reconciles the two statutes as well as the hot pursuit exception to the UFPD's jurisdiction contained in 316.640. The holding thereby decided the jurisdiction of the UFPD as limited to university property unless the UFPD officer is in hot pursuit.

## CONCLUSION

So where does this leave us when we are confronted by this extra-jurisdictional situation. First a determination as to the particular law enforcement agency's jurisdiction must be determined. If the officer is employed by a municipality or a university then their jurisdiction ends at the city or university border. If the officer acted outside his jurisdiction a determination must be made as to whether the exceptions apply.

If it is fresh pursuit than the focus is factually on where the alleged offense occurred, where the pursuit began and whether the pursuit was continuous and uninterrupted and if the police acted without unnecessary delay. Radio transmissions may be significant in determining exactly what happened, so order the tapes as soon as possible. If the officer claims to have made a citizen's arrest for breach of peace based on the driving pattern then you must determine if the driving pattern can be characterized as no more than traffic infractions.

Finally, if the officer based his extra-jurisdictional arrest on a MAA than the specific language of the MAA will be of importance to the determination. Additionally, a challenge to the MAA is always available since it can be argued that chapter 23 was not enacted to provide law

enforcement officers with the authority to contractually agree to allow each other to exceed their jurisdictional boundaries for non emergency situations.

In the event the MAA is deemed acceptable than the exact terms of the agreement should be reviewed to determine if the officers acted in accordance with the MAA. Strict compliance with the MAA terms is required to justify an officer's extra-jurisdictional arrest.

Hopefully, now when you come across a situation where an officer has conducted an extra jurisdictional arrest you will be in a better position to analyze your client's position in court. And when deciding this issue we can only hope that, like the dude... the court abides.

So now you see how *The Big Lebowski* is actually a lesson in law enforcement jurisdiction. Am I wrong?

**Walter Sobchak:** Well, there isn't a literal connection, Dude.

**The Dude:** Walter, face it, there isn't any connection. OK, so maybe I was wrong. Nevertheless, we can all agree on one thing.

**The Big Lebowski:** The bums will always lose!

## EPILOGUE

One last question you may have is what happens when federal armed forces officers act in a law enforcement capacity on non-federal property. This can occur when the MP is off the Navy or Airforce base and on his way to the store in your hometown and sees something suspicious. The answer to that is simple.

I SAID POSSE!

The Posse Comitatus Act, 18 USC, §1385, prohibits most members of the federal armed services from exercising state law enforcement police or peace officer powers on non-federal property (states, counties and municipalities).

The statute generally prohibits federal military personnel and the National Guard under federal authority from acting in a law enforcement capacity within the United States, except where expressly authorized by the consti-

tution or congress.

The Posse Comitatus Act substantially limits the powers of the federal government to use the military for law enforcement within the United States.

Unfortunately, we don't have enough space to break that down in this issue so that discussion will have to wait. ■

<sup>1</sup> The Big Lebowski is a 1998 American comedy film written and directed by Joel and Ethan Coen. Jeff Bridges plays Jeffrey Lebowski, a burned-out, unemployed Los Angeles slacker, who calls himself the "Dude." After he is mistaken for a millionaire with the same name (David Huddleston), Lebowski must turn to the help of his best friend Walter (John Goodman) and others to make things right. Steve Buscemi, Philip Seymour Hoffman, Julianne Moore and Tara Reid also star in the film.

<sup>2</sup> Generally, a municipal officer has no power or authority to act as a police officer in any part of the state outside the corporate limits of the city in which the officer is employed. *State v. Gelin*, 844 So. 2d 659 (Fla. 3d DCA 2003); *Porter v. State*, 765 So. 2d 76 (Fla. 4th DCA 2000); Op. At'y Gen. Fla. 2005-26; Op. At'y Gen. Fla. 99-22. It follows that, generally, an officer does not have any official power to make an arrest outside the officer's jurisdiction. *Gelin*, 844 So. 2d at 661.

<sup>3</sup> §30.15. Powers, duties, and obligations:

(1) Sheriffs, in their respective counties, in person or by deputy, shall:

(a) Execute all process of the Supreme Court, circuit courts, county courts, and boards of county commissioners of this state, to be executed in their counties.

(b) Execute such other writs, processes, warrants, and other papers directed to them, as may come to their hands to be executed in their counties.

(c) Attend all terms of the circuit court and county court held in their counties.

(d) Execute all orders of the boards of county commissioners of their counties, for which services they shall receive such compensation, out of the county treasury, as said boards may deem proper.

(e) Be conservators of the peace in their counties.

(f) Suppress tumults, riots, and unlawful assemblies in their counties with force and strong hand when necessary.

(g) Apprehend, without warrant, any person disturbing the peace, and carry that person before the proper judicial officer, that further proceedings may be had against him or her according to law.

(h) Have authority to raise the power of the county and command any person to assist them, when necessary, in the execution of the duties of their office; and, whoever, not being physically incompetent, refuses or neglects to render such assistance, shall be punished by imprisonment in jail not exceeding 1 year, or by fine not exceeding \$500.

(i) Be, ex officio, timber agents for their counties.

(j) Perform such other duties as may be imposed upon them by law.

This scene has also been used by police agencies across the nation to demonstrate the proper technique involved in throwing a coffee cup at a suspect who is not paying attention.

§901.25. Fresh pursuit; arrest outside jurisdiction:

(1) The term "fresh pursuit" as used in this act shall include fresh pursuit as defined by the common law and also the pursuit of a person who has committed a felony or who is reasonably suspected of having committed a felony. It shall also include the pursuit of a person suspected of having committed a supposed felony, though no felony has actually been committed, if there is reasonable ground for believing that a felony has been committed. It shall also include the pursuit of a person who has violated a county or municipal ordinance or chapter 316 or has committed a misdemeanor.

(2) Any duly authorized state, county, or municipal arresting officer is authorized to arrest a person outside the officer's jurisdiction when in fresh pursuit. Such officer shall have the same authority to arrest and hold such person in custody outside his or her jurisdiction, subject to the limitations hereafter set forth, as has any authorized arresting state, county, or municipal officer of this state to arrest and hold in custody a person not arrested in fresh pursuit.

(3) If an arrest is made in this state by an officer outside the county within which his or her jurisdiction lies, the officer shall immediately notify the officer in charge of the jurisdiction in which the arrest is made. Such officer in charge of the jurisdiction shall, along with the officer making the arrest, take the person so arrested before a trial court judge of the county in which the arrest was made without unnecessary delay.

<sup>6</sup>Porter v. State, 765 So. 2d 76 (Fla. 4th DCA 2000)

<sup>7</sup>Since this is DUI Notes the focus is on DUI cases. There are offenses other than breach of peace that can be included in this analysis.

§23.1225. Mutual aid agreements:

(1) The term "mutual aid agreement," as used in this part, refers to one of the following types of agreement:

(a) A voluntary cooperation written agreement between two or more law enforcement agencies, which agreement permits voluntary cooperation and assistance of a routine law enforcement nature across jurisdictional lines. The agreement must specify the nature of the law enforcement assistance to be rendered, the agency or entity that shall bear any liability arising from acts undertaken under the agreement, the procedures for requesting and for authorizing assistance, the agency or entity that has command and supervisory responsibility, a time limit for the agreement, the amount of any compensation or reimbursement to the assisting agency or entity, and any other terms and conditions necessary to give it effect. Examples of law enforcement activities that may be addressed in a voluntary cooperation written agreement include, but are not limited to, establishing a joint city-county task force on narcotics smuggling, authorizing school safety officers to enforce laws in an area within 1,000 feet of a school or school board property, or establishing a joint city-county traffic enforcement task force.

(b) A requested operational assistance written agreement between two or more law enforcement agencies, which agreement is for the rendering of assistance in a law enforcement emergency. The agreement must specify the nature of the law enforcement assistance to be rendered, the agency or entity that shall bear any liability arising from acts undertaken under the agreement, the procedures for requesting and for authorizing assistance, the agency or entity that has command and supervisory responsibility, a time limit for the agreement, the amount of any compensation or reimbursement to the assisting agency or entity, and any other terms and conditions necessary to give it effect. An example of the use of a requested operational assistance written agreement is to meet a request for assistance due to a civil disturbance or other emergency as defined in s. 252.34.

(c) A combination of the agreements described in paragraphs (a) and (b).

(d) As used in this section, the term "law enforcement agency" means any agency or unit of government that has authority to employ or appoint law enforcement officers, as defined in s. 943.10(1).

(2) A mutual aid agreement may allow for discretion by the parties as to when, whether, and to what extent assistance will be available.

(3) A mutual aid agreement may be entered into by a law enforcement agency through a written agreement executed by the chief executive officer of the agency, who is authorized to contractually bind the agency.

(4) A copy of a mutual aid agreement must be filed with the Department of Law Enforcement within 14 days after it is signed.

(5) In the event of a disaster or emergency such that a state of emergency is declared by the Governor pursuant to chapter 252, the requirement that a requested operational assistance agreement be a written agreement for rendering of assistance in a law enforcement emergency may be waived by the participating agencies for a period of up to 90 days from the declaration of the disaster.

(a) When a law enforcement agency lends assistance pursuant to this subsection, all powers, privileges, and immunities listed in s. 23.127, except with regard to interstate mutual aid agreements, apply to the agency or entity, if the law enforcement employees rendering services are being requested and coordinated by the affected local law enforcement executive in charge of law enforcement operations.

(b) A listing of such agencies or entities and the officers and employees of such agencies or entities rendering assistance pursuant to this subsection must be maintained by the agency or entity

requesting such assistance and filed at the end of the 90-day period with the Florida Department of Law Enforcement.

<sup>9</sup>765 So. 2d 76 (Fla. 4th DCA 2000)

<sup>10</sup>844 So. 2d 659 (Fla. 3rd DCA 2003)

<sup>11</sup>DHSMV v. Leonard, 718 So. 2d 314 (5th DCA 1998)

<sup>12</sup>13 FLW Supp. 447a (17th Judicial Circuit Appellate 2006)

<sup>13</sup>Edwards v. State, 462 So. 2d 581 (Fla. 4th DCA 1985); State v. Furr, 723 So. 2d 842 (Fla. 1st DCA 1998)

<sup>14</sup>There is no discussion as to why the MAA was not applicable but it is likely that the MAA was never entered into evidence so the appellate court had no record to base its decision on the MAA.

<sup>15</sup>Upheld on appeal DHSMV v. Pipkin, 927 So. 2d 901 (Fla. 3rd DCA 2005)

<sup>16</sup>(4)EXCEPTIONS. This section does not apply to the appointment of special deputy sheriffs appointed by the sheriff:

(a) To attend elections on election days.

(b) To perform undercover investigative work.

(c) For specific guard or police duties in connection with public sporting or entertainment events, not to exceed 30 days; or for watch or guard duties, when serving in such capacity at specified locations or areas only.

(d) For special and temporary duties, without power of arrest, in connection with guarding or transporting prisoners.

(e) To aid in preserving law and order, or to give necessary assistance in the event of any threatened or actual hurricane, fire, flood, or other natural disaster, or in the event of any major tragedy such as an act of local terrorism or a national terrorism alert, an airplane crash, a train or automobile wreck, or a similar accident.

(f) To raise the power of the county, by calling bystanders or others, to assist in quelling a riot or any breach of the peace, when ordered by the sheriff or an authorized general deputy.

(g) To serve as a parking enforcement specialist pursuant to s. 316.640(2).

The appointment of a special deputy sheriff in any such circumstance, except with respect to paragraph (g), may be made with full powers of arrest when the sheriff considers such appointment reasonable and necessary in the execution of the duties of his or her office. Except under circumstances described in paragraphs (a), (e), (f), and (g), the appointees must possess at least the minimum requirements established for law enforcement officers by the Criminal Justice Standards and Training Commission. The appointment of any such special deputy sheriff must be recorded in a register maintained for such purpose in the sheriff's office, showing the terms and circumstances of such appointment.

*Mitch Stone is board certified in criminal trial law. He has represented defendants in DUI cases for the past 18 years and has tried over 100 DUI jury trials to verdict. Before that he worked as an Assistant State Attorney where he tried over 20 DUI trials to verdict. He is the senior partner and sole egomaniac of Stone, Taylor & Associates, P.A. a law firm in Jacksonville Florida that exclusively represents the criminally accused. When not memorizing lines from obscure movies he can be found practicing law at 1830 Atlantic Blvd. Jacksonville, Florida, 32207. He can be reached at 904/396-3335 or at mstone@jacksonvilledefense.com.*