

Crossing the Line: The Jurisdictional Limits of Police Authority in Maryland

Many police officers believe that they have the ability to enforce Maryland's criminal laws, including motor vehicles laws, anywhere within the state. This belief is subjective, based upon an officer's understanding or interpretation of state law as seen through the lens of academy training and/or departmental directive or practice. This subjective belief, despite its origin(s) and noble intentions, is rejected by Maryland's courts. For this reason, it is critically important for officers to not only recognize the territorial limits of their authority, but also to understand when, and under what limitations, they can act outside their sworn jurisdictions.

The Historical Perspective - Maryland Common Law

Historically, under Maryland common (non-statutory) law, a municipal or county police officer had *no* authority to act officially, at least for the purpose of making an arrest, outside the boundaries of the political subdivision by which the officer was employed. In 1980, the Maryland Court of Appeals said:

“Generally, a peace officer’s authority to make an arrest is limited, in the absence of statutory authority expanding it, to the confines of the geographical unit of which he is an officer.” [Thus], a peace officer who makes an arrest while in another jurisdiction does so as a private person, and may only act beyond his [jurisdiction] to the extent that the law of the place of arrest authorizes such individuals to do so.”¹

In 1999, the United States District Court for the District of Maryland worded it this way: “An officer acting outside of his jurisdiction loses his cloak of authority.”²

The Exceptions in Common Law: Fresh Pursuit and Citizen’s Arrest

Two exceptions to the rule developed under Maryland common law: (1) fresh pursuit of a suspected felon, and (2) acting with the authority of a private citizen to make an arrest. As originally developed “fresh pursuit” enabled an officer who either observed a felony committed in his jurisdiction or who developed probable cause in his jurisdiction that the suspect had committed a felony therein, to pursue the suspect and to make a legally binding arrest in another jurisdiction. At common law, fresh pursuit was limited to felony arrests only and did not extend, in any form, to misdemeanors.

¹ Stevenson v. Maryland, 287 Md. 504, 413 A. 2d 1340 (1980).

² Horn v. Seat Pleasant, 57 F. Supp. 2d 219 (D. Md. 1999).

The second exception at common law, the authority to make a “citizen’s arrest,” enables an officer, and, for that matter, any other person, to make an arrest: (1) if a felony is committed in his presence, or (2) if a felony has in fact been committed whether or not in the person’s presence, and he has reasonable grounds (probable cause) to believe that the person arrested committed it, or (3) if a misdemeanor constituting a “breach of the peace” is committed in the arrester’s presence. Breach of the peace is defined as “disorderly dangerous conduct disruptive of private peace.” In this regard, a simple traffic violation does not constitute a breach of the peace. However, traffic offenses egregious enough to threaten disaster or pose a potentially perilous public risk may constitute a breach of the peace. Such offenses could include driving while impaired, if the person’s driving is sufficiently dangerous, reckless, or erratic.

The Common Law as Originally Modified by Maryland Statutes

Through legislative enactment of numerous statutes, such as the now superseded § 594B of Article 27 of the Maryland Code and much later the Drug Kingpin Act of 1989 (§ 298(f) of Article 27), the strict and limited framework established at common law was expanded. For example, the Drug Kingpin Act enabled local law enforcement officers to enforce the controlled dangerous substance laws throughout Maryland to the same extent as police employees of the Maryland State Police. However, to do so, officers were required to act in accordance with regulations adopted by the Superintendent of the Maryland State Police. Among other things, the law also provided that any officer exercising extra-territorial authority under the statute had to give notice to the police chief, or counterpart, of the outside jurisdiction.

The former § 594B authorized police officers in Maryland “to make arrests, conduct investigations and otherwise enforce the laws of [the] State throughout the State without limitations as to jurisdiction.” If one stopped reading at that point, at least one reason for officers’ confusion as to their extra-jurisdictional authority could be understood. But the statute didn’t stop after its broad beginning. It continued by limiting an officers’ extra- territorial authority to instances where the officer: (1) is *participating in a joint investigation* with officials from any other State, federal or local law enforcement agency, at least one of which has local jurisdiction; (2) is *rendering assistance to a police officer*; (3) is *acting at the request of a local police official or a State Police officer*; or (4) is responding to an “*emergency*.” Despite the basis for the officer’s response, he must be acting in accordance with regulations adopted by the officer’s employing agency. In its original form, § 594B, there was no limitation with respect to the types of offenses that officers could investigate or types of criminal laws that officers could enforce out of their home jurisdiction.

In its original and amended forms, § 594B defined “emergency” as “a sudden or unexpected happening or an unforeseen combination of circumstances that calls for immediate action to protect the health, safety welfare, or property of an individual from actual or threatened harm or from an unlawful act.” In 1993, an amendment of critical importance was made. That amendment *prevented local police officers from enforcing the provisions of the Maryland Vehicle Law beyond the officer’s sworn jurisdiction*. This amendment, which obviously was deliberate, was a clear reflection of the legislature’s intent to prevent officers from enforcing the Motor Vehicle Laws outside of their home jurisdictions.

The Modern Perspective - Maryland's Current Statutes

As to the current posture of police extra-territorial authority, a number of new statutes have been enacted and a number of older statutes have been amended since the mid to late 1990s. Each of these statutes, new and amended, will be examined in turn.

§ 2-102 (Criminal Procedure Article) (the former Article 27, § 594B) (Authority of Police Officers)

The former Article 27, § 594B, now codified at § 2-102 of the Criminal Procedure Article, generally sets forth the authority of police officers. The statute still prevents local officers from enforcing the Maryland Vehicle Law beyond their sworn jurisdictions, *unless the officer is acting under a mutual aid agreement authorized under § 2-105 of the Criminal Procedure Article*. Also, the statute is still limited to situations where the officer is: acting as part of a “joint investigations,” rendering assistance to another police officer, acting at the request of a police officer or State Police officer; or acting in the event of an emergency. The notification requirements are also still in place and the definition of “emergency” is unchanged. Interpreting the term “emergency” too broadly is a mistake. An “emergency” is triggered only by “a sudden or unexpected happening or an unforeseen combination of circumstances” that calls for “immediate action” essentially to preserve life and/or property. An example could include seeing someone setting fire to a residence or physically attacking a person or group of persons.

§ 2-103 (Criminal Procedure Article) (Service of Arrest Warrants)

This statute authorizes police officers to arrest a person “throughout the State without limitations as to jurisdiction if: (1) a warrant has been issued against the person; (2) the police officer is participating in a joint operation created by an agreement between the primary law enforcement officers (essentially all chiefs of police or sheriffs); (3) the arrest occurs within one of the participating jurisdictions in accordance with the agreement; and (4) the police officer is acting in accordance with his departmental regulations.

§ 2-105 (Criminal Procedure Article) (Mutual Aid Agreements)

This statute enables counties and municipalities, by means of the regular routine for legislative enactment, to enter into agreements that “determine the circumstances under which the police officers ... may lawfully go or be sent beyond the boundaries of the county or municipal corporation to any place within or outside the State.” These agreements have become popular and are the means to enable officers from one jurisdiction to enforce the Maryland Vehicle Law in another.

§ 2-301(Criminal Procedure Article) (Fresh Pursuit-In State)

The common law doctrine of fresh pursuit has long been found in statutory form. In its current form, fresh pursuit authorizes a law enforcement officer to engage in fresh pursuit of a person who: (1) has committed or is reasonably believed by the law enforcement officer to have committed a felony in the jurisdiction in which the law enforcement officer has the power of arrest; or (2) has committed a misdemeanor (including a violation of the Maryland Vehicle Law) *in the presence of the officer in the jurisdiction in which the law enforcement officer has the power of arrest*. An arrest made pursuant to this statute enables the arresting officer to arrest the suspect anywhere in the State and hold the suspect in custody. Thus, the common law doctrine

of fresh pursuit has been expanded to include misdemeanors, including traffic violations, committed in the presence of the officer within the officer's sworn jurisdiction.

§ 5-802 (Criminal law Article) (Statewide jurisdiction for officers) (controlled dangerous substance laws)

The Drug Kingpin Act of 1989 has undergone amendment over the years, as have all of Maryland's laws relating to controlled dangerous substances. The statute granting extra-territorial authority to law enforcement in their enforcement is now found in § 5-802 of the Criminal Law Article. As did its predecessor, Section 5-802 allows law enforcement officers to enforce the State's drug laws without regard to jurisdiction if, and only if, the officer acts in accordance with regulations that the Secretary of State Police has adopted. In other words, the local officer must be acting in tandem with the Maryland State Police. The statute further requires that notification of an investigation or enforcement action taken under the statute be made to the chief of police (or designee) of a municipality, the chief of police or designee of a county police department, or the sheriff or designee in a county without a county police department.

Conclusion

From the above, it remains obvious that the subject of extra-territorial police authority remains a complex one for judges, lawyers, and police officers. However, complexity allows none of us to ignore the subject. Officers who exercise police authority outside of their sworn jurisdictions must do so in accordance with the law. Officers who violate the law in this regard imperil criminal prosecutions and expose themselves to civil, including personal, liability and administrative sanction. Consequently, officers, or, more aptly, their departments and supervisors, must make every effort to keep the issue of extra-territorial authority at the forefront of police training and departmental regulation.

For additional information regarding this issue, please see the following link:
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