



# Roll Call Reporter

July 2017

LEGAL UPDATE FOR MARYLAND LAW ENFORCEMENT OFFICERS

## Arrests Outside of Jurisdiction

**Question:** If an officer violates a territorial-limitation statute in making an arrest, does that arrest automatically violate the Fourth Amendment?

**Answer:** No. The touchstone of the Fourth Amendment is reasonableness, and the fact that an arrest may have violated a territorial-limitation statute is merely a fact to consider when deciding whether the Fourth Amendment has been violated.

**Case:** *United States v. Oscar Hernandez-Ayala*  
U.S. District Court, District of Md.  
Decided June 21, 2017 (Unpublished)

## The Traffic Stop, the Field Sobriety Test, and the DUI Arrest

At midnight on April 24, 2016, United States Park Police (“USPP”) Officer John Zarate was parked on the right shoulder of the ramp from the Baltimore-Washington Parkway (“the Parkway”) to Riverdale Road. At that time, Officer Zarate was standing outside his cruiser assisting another officer with a traffic stop. While he was assisting the other officer, Officer Zarate observed a blue jeep pass his location. He observed another vehicle directly behind the jeep. The second vehicle stopped at

Officer Zarate’s location. The driver of the vehicle identified himself as an off-duty police officer and advised Officer Zarate that the driver of the jeep may be a drunk driver. Officer Cephas, the off-duty police officer, was on his phone with USPP communications when he stopped to alert Officer Zarate. Officer Zarate observed the jeep at the end of the ramp turn westbound onto Riverdale Road, which is outside the federal jurisdiction.

Officer Zarate got into his cruiser, drove up the ramp, and then proceeded westbound on Riverdale Road to catch up to the jeep. Officer Cephas followed. While he was still trying to catch up, Officer Zarate observed the jeep strike the left curb of the center median. At that point, Officer Zarate activated his emergency equipment and pulled the jeep over. The distance traveled by Officer Zarate from the ramp to the location of the stop was slightly less than a half mile.

After the stop, Officer Zarate approached the jeep and learned that the driver was Oscar Hernandez-Ayala (“Ayala”). He asked Ayala for his license and registration and, as he did so, he noticed a strong odor of alcohol coming from the jeep. Officer Zarate asked Ayala to exit the jeep. He then administered the horizontal-gaze nystagmus test on Ayala. Officer Zarate did not administer any other field sobriety test on Ayala because the passenger in the jeep advised Ayala not to perform any other tests.

Officer Cephas had followed Officer Zarate to the location of the stop. He engaged the passenger while Officer Zarate engaged Ayala. Officer Cephas told Officer Zarate that Ayala had cut him off on the Parkway, driven on the shoulder, and nearly hit a stone wall. That was when Officer Cephas had called 911 and was connected to the USPP. Officer Zarate then arrested Ayala.

Ayala was transported to the police station, where he refused a chemical test. After a telephonic warrant to obtain a blood sample for chemical testing was obtained, two samples of Ayala's blood revealed a blood-alcohol concentration of .26. Ayala was charged with federal-based driving offenses.

### The Motion to Suppress Raising the Jurisdictional Issue and the Trial Court's Ruling

Ayala moved to suppress the evidence obtained by the USPP because Officer Zarate had made the arrest outside of the National Park System in which he had jurisdiction. USPP officers may make warrantless arrests only within the Park System or if the arrestee is fleeing from the Park System to avoid arrest. Ayala argued that he was not in the Park System when he was arrested and that he had not fled from it to avoid arrest. Therefore, Officer Zarate's traffic stop, arrest, and recovery of evidence violated the Fourth Amendment.

The trial court denied Ayala's motion. The court found that Officer Zarate had reasonable articulable suspicion to make the traffic stop based upon his own observations and what he had been told by Officer Cephas prior to the stop. And, although Officer Zarate lacked the statutory authority to arrest Ayala outside the Parkway because Ayala was not fleeing from him, the court ruled that "an extraterritorial arrest is not a *per se* (by itself) violation of the Fourth Amendment." The court ruled that for an officer to arrest an obviously intoxicated driver just outside that officer's territorial jurisdiction, after a lawful traffic stop, is

not remotely similar to the invasions of privacy that might call for the exclusion of evidence under the Fourth Amendment. In other words, so long as the arrest itself is based upon probable cause, it is constitutionally permissible. In sum, the underlying command of the Fourth Amendment is one of reasonableness, no more, no less. Here, since the stop was based on reasonable suspicion and the arrest on probable cause, there was no Fourth Amendment violation.

**Note:** Unless authorized to do so by a State or federal statute, or by common law, an officer has limited authority to exercise traditional police powers, including the power of arrest, outside of his or her sworn jurisdiction. Even today, it is not uncommon to find officers who assert that they have been trained to act if they see a criminal act anywhere in the State. This mindset, while understandable, is not in keeping with Maryland law. All county and municipal officers must be aware that, unless authorized by a specific State or federal statute, police officers acting outside of the geographical confines of their sworn jurisdictions are generally without authority to exercise traditional police powers, including the power to arrest. The Attached Appendix (first published in 2007) to this Roll Call Reporter identifies the Maryland statutes and other authority that authorize the expansion of a county or municipal officer's territorial authority and the circumstances under which such expansion is allowed.

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