Wyoming Law Journal

Volume 7 | Number 2 Article 3

December 2019

Power of Peace Officers to Arrest without Warrant in Wyoming

Ward A. White

the court in *Adams v. New York* cited Greenleaf with approval, to the effect that the admissibility of documentary evidence tending to establish the guilt of an accused of the offense charged is not affected because it was obtained in violation of the constitutional prohibition against unreasonable search and seizure.[54]

In more than one instance Section 605 has been held not to apply to prosecutions in state courts.[55] Although the Wyoming statute forbidding wire tapping is located in a chapter of the state code dealing with crimes labelled "Offences Against Public Utilities," it has been held in other states[56] having statutes similar to that of Wyoming, that such statutes are designed to protect the secrecy of communications and the subscriber's right of privacy. In Arizona, where a statute[57] similar to that of Wyoming is operative, a state court held that the use of a dictograph to overhear conversations spoken into a telephone receiver does not violate the wire-tapping law.[58] If argument by analogy can have any validity, then the Arizona decision should at least serve as a stepping stone for the Wyoming Supreme Court. It should be noted that disclosure is not absolutely forbidden in the Wyoming statute;[59] but instead, it is only an unauthorized use of wire tapped information which is prohibited. Would a reasonable construction of the Wyoming statute allow wire tapped information to be used in the courts, or exempt state public officials? The Wyoming Supreme Court has never had occasion to enterpret the statute. Whatever interpretation may be given the statute, one thing is certain: the language of the Wyoming statute is most awkward and would be extremely difficult to apply to the modern scientific means used by eavesdroppers.[60]

GEORGE M. APOSTOLOS

POWER OF PEACE OFFICERS TO ARREST WITHOUT WARRANT IN WYOMING

The question of whether or not an arrest is lawful may be raised in a variety of ways.[1] The arrested person may apply for release from custody by writ of habeaus corpus, or bring a civil action for damages resulting

54. People v. Adams, 176 N.Y. 351, 68 N.E. 636, 638 (1903); See also Hubin v. State, 180 Md. 279, 23 A.2d 706 (1942).
55. Rowan v. State, 175 Md. 547, 3 A. 2d 753, 758 (1939); Leon v. State, 180 Md. 279, 23 A. 2d 706, 709 (1942); People v. Vertlieb, 22 Cal. 2d 193, 137 P. 2d 437, 438 (1943); People v. Kelly, 22 Cal. 2d 169, 137 P. 2d 1, 4 (1943).
56. People v. Trieber, 28 Cal. 2d 657, 171 P. 2d 1, 4 (1946).
57. Ariz. Code Ann. 1939 secs. 43-5403, 43-5405.
58. State v. Behringer, 19 Ariz. 502, 172 Pac. 660 (1918).
59. Several states, notably New York, have laws which permit the use of wire tapping pursuant to court order under a procedure similar to that required for a search warrant. New York Constitution Art. I, Sec. 12; Code of Crim. Procedure, sec. 813a.
60. For an excellent visual illustration of the use of these mechanical, electrical, and video devices by the Federal Bureau of Investigation, see the movie entitled, "Walk East on Beacon," which is currently showing nation-wide.

1. Waite, The Law of Arrest, 24 Texas L. Rev. 279 (1946).

from false arrest or imprisonment. In both of these situations there is a direct attack on the legality of the arrest. But it may be attacked collaterally, as well. Thus, if force was used in making or resisting the arrest, the injured party (either the arrestee or arresting officer) might bring a civil action for assault and battery. In either instance the outcome of the case will depend upon whether or not the arrest was lawful. The problem might also arise by a prosecution for criminal assault based upon the use of force in making an unlawful arrest, or resisting a lawful one. The latter would constitute, as well, the crime of resisting arrest. Finally, in those jurisdictions which do not admit evidence obtained by an unlawful arrest, the legality of the arrest may be brought to issue by objection to the use of evidence obtained as a result thereof.

The modern law of arrset is, quite naturally, derived from the common law. Policemen and other law enforcement officers are the modern equivalents of watchmen, sheriffs, constables, and like officers at common law, and have succeeded to the powers of arrest conferred on the latter officers by common law.[2]

A peace officer, under common law, has power to arrest without a warrant, for felonies, in the following situations:[3] to prevent the commission of a felony (and he has a duty to interfere to prevent an attempted felony when he has reasonable grounds to believe it is about to be committed); where the felony is being committed in the officer's presence; where the person arrested has in fact committed a felony, though not in the officer's presence; where a felony has been committed and the officer has reasonable grounds to believe the arrestee is the offender, although he is in fact innocent; where the officer reasonably suspects a felony has been committed, and that the arrested person committed it, although in fact no felony has been committed.

At common law an officer can arrest without a warrant, for a misdemeanor, only if it is committed in the officer's presence, and amounts to a breach of the peace.[4] This often presents a problem as to what constitutes being in the officer's presence,[5] as well as what constitutes a breach of the peace.

Of course the common law rules are subject to statutory changes.[6] For example, most states expressly allow officers to arrest for all misdemeanors committed in their presence, regardless of whether or not the offense constitutes a breach of the peace.[7]

2. Shanley v. Wells, 71 Ill. 78 (1873).
3. 1 Stephen, History of the Criminal Law of England 193 (1883); Blackstone, Commentaries on the Laws of England, Book IV, sec. 292 (from 19th London ed., Philadelphia 1897); Wilgus, Arrest Without a Warrant, 22 Mich. L. Rev. 673 (1924); Fomans v. State: 32 J. Crim. L. & Criminology 439 (1941).
4. Ibid.
5. Hughes v. State, 145 Tenn. 544, 238 S.W. 588, 20 A. L. R. 639 (1922).
6. A. L. I. Code of Criminal Procedure 148 (Tent. Draft No. 1 1928) complies the statutes and groups them according to their character.
7. Id. at 149.

Wyoming has six statutes defining the powers of peace officers to arrest,[8] which we shall now discuss in some detail. These seem in general to limit, rather than to expand, the common law rules, and they are unlike most statutes found in the United States today.[9]

Neither of the two statutes[10] which seem to be the main sources of power for Wyoming peace officers makes any distinction between misdemeanors and breaches of the peace; in this respect Wyoming enlarges on the common law and allows arrest without warrant for any misdemeanor committed in the presence of the officer. The cases support this construction.[11]

On a more important point, however, these two statutes seem to limit the powers that officers possessed at common law, for each gives power to arrest only those who are "found violating" the law. It would appear quite difficult to enterpret these words as allowing an officer to arrest in any situation other than the one in which the crime is committed in his presence. If so, the officers' common law power to arrest for felonies is greatly restricted in Wyoming.

Perhaps one of the other statutes[12] mitigates the restrictive effect just noted, by making it the duty of constables "to apprehend, on view or warrant, and bring to justice, all felons, and . . . violators of the criminal laws of this state. . . ." While the meaning of this quoted language is not too clear, it does not foreclose the possibility of arrests without warrant, by constables, of those who have committed a felony, though not in the presence of the officer. Marshals and policemen have the duty to "arrest all offenders against the laws of the state, or of the city, . . . in the same manner as a sheriff or constable. . . ."[13] If our interpretation of Sec. 13-406 is permissible, there is a statutory conflict on the circumstances under which arrests without warrants for felonies may be made.

From this examination it appears that the Wyoming statutes restrict arrest without warrant for felonies to those situations in which the persons arrested actually committed the crime, and exclude a right to arrest solely on reasonable belief the arrestee committed a felony.

The case law, however, has brought Wyoming nearer to the common law as to felonies ,which would seem a desirable extension. In the only case directly in point,[14] it was held that arrest of the person who had committed a felony, on reasonable belief of the officer that he had done so, was lawful. This lends authority to our conjecture supra as to the extent

8. Wyo. Comp. Stat. 1945, secs. 10-301,10-2502, 13-406, 29-226, 29-443 and 29-444.
9. This is disclosed by a study of the various classes into which the statutes are grouped by A. L. I. Code of Criminal Procedure, supra note 6.
10. Wyo. Comp. Stat. 1945, secs. 10-301 and 10-2502.
11. State v. Young, 40 Wyo. 508, 281 Pac. 17 (1929); State v. Rotolo, 39 Wyo. 181, 270 Pac. 665 (1928).
12. Wyo. Comp. Stat. 1945, sec. 13-406.
13. Id., 29-226.
14. State v. George, 32 Wyo. 223, 231 Pac. 683 (1924).

of the statutory power to arrest in such situation. Curiously, the case failed to refer to any of the statutes, although all were in force at the time. The court merely stated that, "according to the general rule, which we have no reason to doubt is in force in this state, a peace officer may arrest, without a warrant, one whom he has reasonable or probable grounds to suspect of having committed the felony." While this was only dictum, (due to the fact the person arrested had actually committed the felony) if it is the law in Wyoming it would mean that officers may arrest a person on the reasonable belief he had committed a felony, though in fact he had not.

There is nothing in either statutes or cases to authorize arrest in Wyoming to *prevent* commission of a felony, nor anything covering the situation in which the officer has reason to believe a felony was committed by the arrestee, when in fact there has been no felony committed at all.

Just what the Wyoming law is in these situations consequently depends on whether the statutes are construed as in derogation of,[15] or merely supplementary to, the common law. The Indiana court, construing one of the few statutes which, like Wyoming's confers power to arrest those persons "found violating" the law,[16] stated that it "evidently intended to give, by statute, a right which, as to some of the officers named, already existed at common law."[17]

Indiana has also been of help in a few other specific situations, having stated with reference to the same statute that it is part of the duty of a peace officer to prevent a crime.[18] In another case the Indiana court held that "a peace officer has a right to arrest without a warrant on information, where he has reasonable or probable cause to believe that a felony has been committed . . . and in no case is he bound to establish the guilt of the party arrested."[19] The case, however, failed to make it clear whether a felony had actually been committed by anyone.

The net result is that in several situations in which efficient law enforcement requires that officers be empowered to arrest without warrant, only very questionable authority can be found authorizing such arrest by Wyoming peace officers. These situations are arrest to prevent the commission of a felony, and arrest where the officer reasonably believes the arrestee committed a felony, but it was in fact committed by someone else, or was not committed at all. In addition, there is not clear authority for arrest of a person who committed a felony when no officer was present. It is not inconceivable that in the future a criminal whose apprehension is very desirable might force his release from custody by successfully challenging the legality of his arrest in one of the doubtful situations. To

15. Heath v. Boyd, 141 Tex. 569, 175 S.W. 2d 214 (1943).
16. Ind. Stat. 1934, c. 4, sec. 2157.
17. Hopewell v. State, 22 Ind. App. 489, 54 N.E. 127 (1899).
18. Wiltse v. Holt, 95 Ind. 469 (1884).
19. Doering v. State, 49 Ind. 56, 19 Am. Rep. 669 (1874).

prevent such a case from arising and to further the cause of justice in Wyoming the statutes should undergo considerable revision.

On this there must be a word of caution. Naturally the more extensive the power to arrest, the easier it is to apprehend criminals. But any statute extending the power to arrest too far beyond the common law is in danger of being declared unconstitutional, as being a deprivation of due process. It might also be determined to be an unreasonable search and seizure , for the reason that the constitutional provision on this applies to the person, as well as to the property of the citizen, and to seizures as well as to searches, of either the person or property; and that an arrest of the person is a seizure of the person.[20]

For this reason it might be well to modify the statutes to the extent of granting clear authority to arrest for felonies in all those situations covered by common law rules, making them in effect a codification of the common law. As previously pointed out, the statute covering right to arrest for misdemeanors without a warrant appears sufficient without any revision.

WARD A. WHITE

THE OPERATION OF WYOMING STATUTES ON PROBATION AND PAROLE

State statutes are often the objects of much criticism because of their ambiguity, indefiniteness or antiquity. The laws of Wyoming, like those of any other state, are not invulnerable to these attacks. It is therefore a satisfaction to note that the Wyoming statutes on probation and parole are, on the whole, clearly written and in step with modern developments in this field.

This article deals particularly with that portion of the law devoted to treatment of an accused criminal, both before and after trial, but prior to the time when sentence is imposed. In the orthodox sense this treatment is known as probation; however, there is no legal distinction between that term and "parole." Both terms are used interchangeably when referring to probation procedures, and in this article there will be no intended reference to the parole of a prisoner after he has served a portion of his sentence.

The Wyoming Probation Acts, Sections 10-1801 through 10-1805, and Sections 10-1901 through 10-1906, Wyo. Comp. Stat., 1945, adopt some of the most advanced conceptions of the treatment of criminals, and tend to "make the punishment fit the criminal" rather than the crime. Under

20. Ex Parte Rhodes, 202 Ala. 68, 79 So. 462, 1 A. L. R. 568 (1918); see annotation, 1 A. L. R. 585 (1919).