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THE PRIVATE PERSON'S DUTY TO ASSIST THE POLICE IN ARREST

The Wyoming statute on the private person's duty to assist the police in arrest provides that a fine of one hundred dollars (\$100.00) may be imposed against a citizen who, without valid cause, refuses or neglects to aid an officer in the execution of his duty.¹ The common law obligation of citizens to respond when summoned to assist in making an arrest² is thus part of the statute law of Wyoming.

The ancient English law, however, required more of the citizen than Wyoming's present statute in regard to his duty to assist in policing the community. To make law enforcement more effective, a private person was required by statute to provide himself, according to his wealth, with a breast-plate of iron, a sword, a knife, and a horse, the use of which would be at the command of the village reeve to assist him in maintaining public order.³

Other than Section 9-635 mentioned above, there is no legislative expression in Wyoming outlining the extent to which a private person may be ordered to give assistance to the police. The Supreme Court of Wyoming has not interpreted the statute or otherwise passed on the question. Statutes in most states make the refusal to assist in an arrest punishable by fine or imprisonment. Several states have legislation comparable to Wyoming,⁴ and a number of cases arising under such statutes illustrate the extent to which a citizen must assist an officer in the execution of an arrest.

In *Babington v. Yellow Taxi Corporation*,⁵ a policeman had commandeered the plaintiff's husband's cab and ordered the husband to chase another automobile in order to arrest its occupant. During the chase a collision with a trolley car caused the death of the cab driver. Death benefits were awarded the plaintiff under the New York Workmen's Compensation Act on the premise that the defendant-employer knew or was chargeable with knowledge that the car and driver alike would have to respond to the call of an officer when there was need of hot pursuit. Chief Justice Cardozo, writing for the majority of the New York Court of Appeals stated:

Still, as in the days of Edward I, the citizenry may be called upon to enforce the justice of the state, not faintly and with lagging steps, but honestly and bravely and with whatever implements and facilities are convenient and at hand.⁶

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1. Wyo. Comp. Stat. § 9-635 (1945). "Whoever, when required by any sheriff or his deputy, or by any coroner, constable or any conservator of the peace, to assist him in the execution of his office, or in the service of any process, refuses or neglects to render such assistance without having a valid cause for so refusing or neglecting, shall be fined not more than one hundred dollars (\$100.00)."
 2. Maitland and Montague, *A Sketch of English Legal History*, 66 (1915).
 3. Statute of Winchester, 1285, c. 6.
 4. E.g., Burns Ind. Stat. § 10-1006 (1956); Mich. Comp. Laws § 750.983 (1948); Baldwin's Ohio Rev. Code § 2917.32 (1953).
 5. 250 N.Y. 14, 164 N.E. 726, 61 A.L.R. 1351 (1928).
 6. *Id.* at 15, 164 N.E. at 727.

One limit has been expressed by the Alabama Supreme Court⁷ which reversed a conviction for refusing to aid in an officer in making an arrest. Here a deputy sheriff was in pursuit of a fleeing thief. The thief ran into a store which was being tended by the defendant. The store was crowded with persons who showed a disposition to defend and assist the thief. The defendant refused to obey the command to assist, given by the deputy sheriff, and was subsequently convicted for his failure to assist. In reversing this conviction, the Supreme Court of Alabama found that the officer's command, if followed, would have exposed the defendant to a futile attempt. However, it is of no consequence that the action leading to the arrest is dangerous, provided the arrest can be effected. The fact that there is danger involved is the very thing which calls for and makes obedience a duty.

In Wyoming a citizen must assist an officer in arrest unless he has "valid cause" to refuse. The legislature, by the use of the words "valid cause," has not provided the citizen a standard he may apply in determining what would relieve him of a duty to respond. To avoid an attack that the statute is void for vagueness, the legislature should provide a guide whereby a citizen would know, for example, if a physical disability, reasonable apprehension of harm, or probable futility of an attempt would be valid cause for refusing to assist. As it now stands, its constitutionality is open to serious question.

It is interesting to compare the crime of misprision of felony⁸ with the citizen's duty to do whatever is necessary to assist in arrest when properly summoned. At common law a person was punished when he, knowing a felony to have been committed and knowing who committed it, failed to report the crime to the proper authorities. He was punished for merely remaining silent.⁹

The crime of misprision of felony and the crime of refusing to assist an officer are comparable in that both rest on the principle of omission to perform a duty imposed by law. But less action is demanded of the citizen in order to avoid guilt of misprision than is required in assisting an officer in making an arrest. One element of the crime of misprision of felony is knowledge of the felonious act of another. Scienter is not an element of the crime of refusing to assist an officer. It is the lawful command of a conservator of the peace which, when ignored, brings down the penalty upon the citizen.¹⁰

The Wyoming statute requires a private citizen to assist an officer when so ordered.¹¹ This same language is found in Ohio legislation¹²

7. *Dougherty v. State*, 106 Ala. 63, 17 So. 392 (1895).

8. Act of June 25, 1948, c. 645, § 1, 62 Stat. 684, 18 U.S.C. § 4 (1952 ed.).

9. *State v. Wilson*, 80 Vt. 249, 67 Atl. 533 (1907).

10. *State v. Ditmore*, 177 N.C. 592, 99 S.E. 368 (1919).

11. Wyo. Comp. Stat. § 9-635 (1945).

12. Balwin's Ohio Rev. Code § 2917.32 (1953).

and has been interpreted as giving a law enforcement officer the right to summon a citizen only in cases of emergency.¹³

An example of an emergency is found in *Mitchell v. Industrial Commission of Ohio*,¹⁴ a case in which the court determined that a deputy sheriff was faced with an emergency when called to arrest a drunken man who was known to be dangerous when intoxicated. Under these circumstances the officer was authorized to call upon another person to assist in making the arrest. And in *Blackman v. City of Cincinnati*¹⁵ a police officer was on foot and the person whom he was attempting to arrest was fleeing in an automobile. The officer ordered a bystander to assist by driving his own car in pursuit of the fleeing person. An emergency existed, because, without the citizen's help, the law violator would have escaped.

The Supreme Court of New York found that an officer was faced with an emergency where those violating the public peace had dispersed themselves, making it impossible for the officer acting alone to effect an arrest.¹⁶ Such an emergency warranted the summoning of a private citizen to assist in the arrest. Similarly, an officer deemed it necessary to remove several disorderly persons from a dance hall.¹⁷ By acting alone, the officer in all probability would not have been able to eject the intruders, but through the assistance of a summoned citizen, the public peace was preserved.

It therefore appears that an officer has a right to command assistance where an arrest could not be made by him acting alone. That the citizen is subjected to danger appears immaterial.

However, in *Industrial Commission of Ohio v. Turek*¹⁸ a traffic patrolman asked a private citizen, Turek, to accompany him on his patrol of the city streets. Turek joined the officer and was subsequently injured. Turek sought damages on the theory that he had been lawfully commanded by the officer and was therefore entitled to compensation. The court denied his claim by asserting that the officer did not have the right to assistance in performing routine investigative work, which the officer could have done alone.

When an officer finds it necessary to rely on a private person for assistance, no particular formality is required to place a duty on the person to respond.¹⁹ No precise words of command are required so long as the command is evident from the language employed. In *State v. Bertchey*²⁰ the court determined that the words "catch the thief" were sufficient to enlist the aid of a private citizen. There is no requirement set out in the

13. *Blackman v. City of Cincinnati*, 66 Ohio App. 495, 35 N.E.2d 164 (1941).

14. 57 Ohio App. 319, 13 N.E.2d 736 (1936).

15. 66 Ohio App. 495, 35 N.E.2d 164 (1941).

16. *Riker v. City of New York*, 204 Misc. 878, 126 N.Y.S.2d 229 (1953).

17. *Shawano County v. Industrial Commission*, 219 Wis. 513, 263 N.W. 590 (1935).

18. 129 Ohio St. 545, 196 N.E. 382 (1935).

19. *Supra* note 17.

20. 77 N.J.L. 640, 73 Atl. 524 (1909).

Wyoming law that a citizen must be formally and specifically called to the assistance of the officer. By the very nature of the circumstances in which the command is given, an officer should not be required to utter some particular formality. The exigencies of the immediate surroundings should dictate what is required to place a citizen under a duty to aid an officer.

When the bystander has submitted himself to the command of an officer to aid in making an arrest, the question arises whether a person unlawfully arrested has a cause of action for false arrest or false imprisonment against the citizen who is assisting the officer.

The question was answered in an early Vermont decision.²¹ The court determined that a citizen who made an illegal arrest was not liable for false imprisonment after being commanded by an officer to make the arrest. The defendant was required by the officer to assist him in arresting the plaintiff for assault with the intent to commit rape. The defendant was not at liberty to refuse, as it was his statutory duty to yield immediate obedience. Therefore, the wrongful arrest made by the private citizen was justified.

In a recent Oklahoma case,²² the court said the only circumstance in which the private citizen should be liable would be where he acts wantonly, maliciously or beyond what he is required to do. The general rule on which the Oklahoma court based its decision is stated in *Firestone v. Rice*,²³ a case in which the defendant faced charges of false imprisonment and assault and battery as a result of obeying an order of a sheriff who acted with an improper warrant. In finding the private citizen not liable, the court stated that one summoned to assist is liable to imprisonment or fine if he refuses to help and, therefore, one so summoned is not required at his peril to ascertain whether the sheriff has a proper warrant.

There is authority contrary to the foregoing which supports the contrasting view that a citizen has no greater immunity from liability than the officer has. The New York case of *Elder v. Morrison*²⁴ followed the theory that if the officer is a trespasser, so are those that aid him. The court reasoned that if the officer is proceeding unlawfully, there can be no justification for those who aid him, and since the officer had no power to command others to do an unlawful act, they are not bound to do such an act, and they do it at their peril.

In evaluating the relative merits of these conflicting views, we must remember that the citizen is under a statutory duty to respond immediately to the command of an officer. The officer may issue this command only when faced with an emergency or a situation with which he cannot cope by himself. Under these circumstances, there is no time for the

21. *McMahan v. Green*, 34 Vt. 72 (1861).

22. *Moyer v. Meier*, 205 Okla. 405, 238 P.2d 338 (1951).

23. 71 Mich. 377, 38 N.W. 885 (1888).

24. 10 Wend. 128 (N.Y. 1833).

citizen to determine whether the officer is acting unlawfully. Thus the "assist at your own peril" rule seems unjust and therefore undesirable. Citizens should be encouraged to co-operate in law enforcement rather than be penalized for doing so. It is a strange legal anomaly to punish a citizen for obeying the command of an officer, vested with lawful authority to command, and at the same time subject him to punishment if he refuses or neglects to obey.²⁵

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CIVIL RIGHTS IN WYOMING

Recent United States Supreme Court decisions demonstrate that the Court is showing heightened interest in the civil rights area. This is true particularly in connection with the Negro race, although not restricted to that race.

The much publicized 1954 decision in *Brown v. Board of Education of Topeka*¹ dealt with the admission of Negro children to a white school in Topeka, Kansas. Three other cases, from South Carolina, Virginia and Delaware, were consolidated with the *Brown* case for hearing by the Supreme Court. In each case Negro children were denied admission to white schools under laws requiring² or permitting³ school districts to establish separate schools for Negroes. In each of the cases, except the Delaware decision, the federal district courts had denied relief to the parents of the Negro children under the "separate but equal" doctrine announced by the United States Supreme Court in *Plessy v. Ferguson*,⁴ which held that equality of treatment is accorded when the races are provided substantially equal facilities, even though these facilities be separate. The Supreme Court of Delaware upheld that doctrine but ordered that the children be admitted because of inequality of the schools.⁵

The *Plessy* case involved not education, but transportation, and the *Brown* case was the first one that presented the question of whether the doctrine should be applied to education. In denying the applicability of the "separate but equal" doctrine, the Court stated:

In the field of public education, the doctrine of "separate but equal has not place. Separate educational facilities are inherently unequal.⁶

The Court reached this conclusion through a discussion of the develop-

25. *Supra* note 21.

1. 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954).

2. South Carolina, Virginia, and Delaware.

3. Kansas.

4. 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896).

5. *Supra* note 1.

6. *Supra* note 1 at 347 U.S. 495.