

1938

## ARREST - STOPPING AND QUESTIONING AS AN ARREST - REASONABLE SUSPICION FROM FACTS DISCLOSED BY QUESTIONING AS JUSTIFICATION

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### Recommended Citation

Robert Meisenholder, *ARREST - STOPPING AND QUESTIONING AS AN ARREST - REASONABLE SUSPICION FROM FACTS DISCLOSED BY QUESTIONING AS JUSTIFICATION*, 37 MICH. L. REV. 311 (1938). Available at: <https://repository.law.umich.edu/mlr/vol37/iss2/10>

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ARREST — STOPPING AND QUESTIONING AS AN ARREST — REASONABLE SUSPICION FROM FACTS DISCLOSED BY QUESTIONING AS JUSTIFICATION — After arrest of the defendant on mere suspicion without probable cause, the arresting officers on searching the car in which he was driving found two guns. The defendant complained on appeal, after conviction for carrying concealed weapons in an automobile, of the denial of his motion before trial to suppress the evidence. *Held*, it was error to refuse to suppress the guns as evidence because, the arrest being unlawful, the subsequent search and seizure was unlawful. Had the officers stopped and questioned the defendant, and had such questioning disclosed facts to establish a reasonable suspicion that the defendant was engaged in, or had been guilty of a criminal offense, an arrest made as a result of such suspicion would have been legal. *People v. Henneman*, 367 Ill. 151, 10 N. E. (2d) 649 (1937).

The statement of the court that stoppage and interrogation of a suspect does not constitute an arrest is a suggestion which will help the law enforcement officer avoid unlawful arrests. Generally it is held that any restraint or deprivation of the liberty of a person is an arrest.<sup>1</sup> Thus where one is detained by an officer by force,<sup>2</sup> threat of force,<sup>3</sup> fear of consequences,<sup>4</sup> or submits to the officer's control,<sup>5</sup> he is held to have been arrested. And to justify an arrest, the general rule is that an officer must have reasonable grounds to believe or suspect that the arrestee has committed a felony.<sup>6</sup> There is no general rule determining what constitutes such reasonable grounds for suspicion, and in every case the officer acts at his peril.<sup>7</sup> In view of these rules, the officer has a difficult situation to face. If he arrests the suspect at once, the arrest may be held unlawful because it was made on mere suspicion. If he uses force, threat of force, or the badge of his authority to stop and question the suspect, and the suspect submits to his authority, it may be held that there is an unlawful restraint of liberty and thus an unlawful arrest. Yet the officer has a positive duty to arrest for violations of the law.<sup>8</sup> It is submitted that the instant case points to a partial solution of this problem in law enforcement, for rather than allow the suspect to go freely on his way, or take a chance on the lawfulness of an arrest made upon doubtful grounds of suspicion, the officer could at least stop and question him, and on the basis of additional facts elicited, if any, arrest him. In *State v. Hatfield*,<sup>9</sup> one of the few cases directly in point, stopping a citizen for purposes of identification and questioning is held lawful. In the course of its decision the court says, "A law abiding citizen cannot have a valid objection to the inconvenience of being stopped, so long as he is accorded courteous treatment."<sup>10</sup>

<sup>1</sup> VOORHEES, *THE LAW OF ARREST*, 2d ed., 59 (1915); *People v. Esposito*, 118 Misc. 867, 194 N. Y. S. 326 (1922); *Turney v. Rhodes*, 42 Ga. App. 104, 155 S. E. 112 (1930); *Wilson v. Orr*, 210 Ala. 93, 97 So. 133 (1923).

<sup>2</sup> *Great Atlantic & Pacific Tea Co. v. Billups*, 253 Ky. 126, 69 S. W. (2d) 5 (1934); *Johnson v. Norfolk & W. Ry.*, 82 W. Va. 692, 97 S. E. 189 (1918).

<sup>3</sup> *Burk v. Knott*, 20 Ala. App. 316, 101 So. 811 (1924); *People v. Mirbelle*, 276 Ill. App. 533 (1934).

<sup>4</sup> *Rhodes v. Jordan*, (La. App. 1934) 157 So. 811.

<sup>5</sup> *Thompson v. Boston Publishing Co.*, 285 Mass. 344, 189 N. E. 210 (1934); *Stancill v. Underwood*, 188 N. C. 475, 124 S. E. 845 (1924).

<sup>6</sup> *Cunningham v. Baker*, 104 Ala. 160, 16 So. 68 (1894); *Ballard v. State*, 43 Ohio St. 340, 1 N. E. 76 (1885). The matter is usually covered by statute. Note that the instant case is decided under the Illinois statute which says, "An arrest may be made . . . by an officer, when a criminal offense has in fact been committed, and he has reasonable ground for believing that the person to be arrested has committed it." Ill. Rev. Stat. (1937), c. 38, § 657. "Criminal offense" is interpreted to include misdemeanors. *People v. Scalisi*, 324 Ill. 131, 154 N. E. 715 (1926).

<sup>7</sup> It is generally held that each case must depend on its own facts. *People v. Humphreys*, 353 Ill. 340, 187 N. E. 446 (1933); *Dittberner v. State*, 155 Tenn. 102, 291 S. W. 839 (1927). For an interesting discussion of the position the officer is placed in as a result of this rule, see 23 MICH. L. REV. 390 (1925).

<sup>8</sup> *Edwards v. State*, 190 Wis. 229, 208 N. W. 876 (1926).

<sup>9</sup> *State v. Hatfield*, 112 W. Va. 424, 164 S. E. 518 (1932).

<sup>10</sup> *State v. Hatfield*, 112 W. Va. 424 at 427, 164 S. E. 518 (1932).

However, although the courts rarely discuss the question, whether stopping and questioning is an arrest seems to be decided on the basis of whether any restraint of personal liberty is involved. Thus, where force or threat of force is used and the suspect submits to the authority of the officer for questioning, an arrest occurs.<sup>11</sup> On the other hand, where the officer merely approaches or accosts the suspect and asks him questions, there is no arrest because there is no restraint of the person.<sup>12</sup> Still other courts hold that merely stopping a traveler on the highway is an arrest.<sup>13</sup> Because stopping and questioning may be held to be an arrest, resulting in uncertainty as to what constitutes an arrest in this situation, it is submitted that the officer, as suggested by the court in the instant case, should be clearly given the right to stop and question. This would enable him to meet the complicated problem of unlawful arrest pointed out above. If the suspect admits the commission of a misdemeanor in the officer's presence, there would then be sufficient cause for an arrest;<sup>14</sup> or further facts might be obtained by the officer to make more certain and definite his suspicion that the suspect has committed a felony.<sup>15</sup>

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<sup>11</sup> *Ramirez v. State*, 123 Tex. Cr. 254, 58 S. W. (2d) 829 (1933), officers stopped car by forcing it to side of road; *People v. Scalisi*, 324 Ill. 131, 154 N. E. 715 (1926), officers approached defendants with drawn guns; *People v. Mirbelle*, 276 Ill. App. 533 (1934), officers drew gun on defendant; *Bonatz v. State*, 85 Tex. Cr. 292, 212 S. W. 494 (1919), officers questioned the defendant and would not have let him escape; *State v. Dunnivan*, 217 Mo. App. 548, 267 S. W. 415 (1925), officer called to defendant to halt and ran after him.

<sup>12</sup> In *State v. Gulczynski*, 2 W. W. Harr. (32 Del.) 120, 120 A. 88 (1922), the court said, "But we do not think the mere fact that an officer in uniform walks up to a person on the street and asks him what he has in his package or on his person is enough to constitute an arrest." *Johnson v. State*, 118 Tex. Cr. 293, 42 S. W. (2d) 421 (1931), officers drove up in car alongside the defendant walking down the street and questioned him; *Pena v. State*, 111 Tex. Cr. 218, 12 S. W. (2d) 1015 (1928), officer followed defendant and overtaking him asked a question; *Campbell v. Commonwealth*, 203 Ky. 151, 261 S. W. 1107 (1924), officer approached defendant and asked her questions. See also *Giske v. Sanders*, 9 Cal. App. 13, 98 P. 43 (1908), and *State v. Zupan*, 155 Wash. 80, 283 P. 671 (1929), where the courts hold that a policeman can make inquiries of persons on his beat for purposes of identification without arresting them.

<sup>13</sup> *Dittberner v. State*, 155 Tenn. 102, 291 S. W. 839 (1927); *Travis v. Bacherig*, 7 Tenn. App. 638 (1928); *Carrol v. United States*, 267 U. S. 132, 45 S. Ct. 280 (1924); *People v. Roache*, 237 Mich. 215, 211 N. W. 742 (1927).

<sup>14</sup> *Ryan v. State*, 89 Ind. App. 109, 165 N. E. 772 (1929); *United States v. Valisio*, (D. C. N. Y. 1930) 41 F. (2d) 294; *Campbell v. Commonwealth*, 203 Ky. 151, 261 S. W. 1107 (1924); *Patterson v. Commonwealth*, 206 Ky. 258, 267 S. W. 160 (1924); *Hale v. Commonwealth*, 197 Ky. 214, 246 S. W. 787 (1923); *Drake v. State*, 201 Ind. 235, 165 N. E. 757 (1929); contra, *Allen v. State*, 183 Wis. 323, 197 N. W. 808 (1924).

<sup>15</sup> Information obtained by the party making the arrest from the appearance, conduct, or statements of the arrested party may be sufficient grounds for reasonable suspicion to justify an arrest for a felony. 25 C. J. 472 (1921).