

Supreme Court Precedents Regarding the Arrest of Citizens

LIBERTY- Freedom; (Black's Law Dictionary -Third Edition)

Exemption from extraneous control. The power of the will to follow the dictates of its unrestricted choice, & to direct the external acts of the individual without restraint, coercion, or control from other persons.

Pursuant to The Constitution of the United States of America specific to the Bill of Rights Articles I, IV, V, VI, VIII, and XI, an arrest must be compliant to all aspects of due process of law which include, but are not limited to the following:

- 1) A lawful warrant issued and authorized by a lawfully positioned Officer of the Court supported by their Oath of Office and affidavit of truth noting that the charge(s) are Constitutionally valid and compliant specific to due process of law and the Bill of Rights, so attesting under the pains and penalties of perjury. (see Articles IV and V specific to the Bill of Rights).
- 2) This must be supported by a lawful Grand Jury Indictment and/or a complaint of some citizen's claim supported by signed and notarized affidavit so attesting under the pains and penalties of perjury.

Put in layman's terms

- 1) No victim - no crime - no lawful grounds for arrest.
 - 2) No lawful warrant - no lawful grounds for arrest.
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John Bad Elk v. U.S., 177 U.S. 529.

" Supreme Court has held that the officer has no right (to arrest a Citizen) unless certain procedures (constitutional protections) are adhered to...Where the officer is killed in the course of the disorder which naturally accompanies an attempted arrest that is resisted, the law looks with very different eyes upon the transaction, when the officer had the right to make the arrest, from what it does if the officer had no right. What may be murder in the first case might be nothing more than manslaughter in the other, or the facts might show that no offense had been committed."

Town of Blacksburg v. Bean 104 S.C. 146. 88 S.E. 441 (1916

"Common as the event may be, it is a serious thing to arrest a citizen, and it is a more serious thing to search his person; and he who accomplishes it, must do so in conformity to the law of the land. There are two reasons for this; one to avoid bloodshed, and the other to preserve the liberty of the citizen. Obedience to the law is the bond of society, and the officers set to enforce the law are not exempt from its mandates.") **see also: Allen v. State, 197 N.W. 808, 810-11 (Wis 1924)**

State v. Robinson, 145 ME. 77, 72 ATL. 260.

"An illegal arrest is an assault & battery. The person so attempted to be restrained of his liberty has the same right to use force in defending himself as he would in repelling any other assault & battery."

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Runyan v. State, 57 Ind. 80;

"When a person, being without fault, is in a place where he has a right to be, is violently assaulted, he may, without retreating, repel by force, and, if in the reasonable exercise of his right of self defense, his assailant is killed, he is justified." see also: Miller v. State, 74 Ind. 1

Housh v. People, 75 Ill. 491

"An arrest made with a defective warrant, or one issued without affidavit, or one that fails to allege a crime is within jurisdiction, and one who is being arrested, may resist arrest and break away. If the arresting officer is killed by one who is so resisting, the killing will be no more than an involuntary manslaughter." ; reaffirmed & quoted in State v. Leach, 7 Conn. 452; State v. Gleason, 32 Kan. 245; Ballard v. State, 43 Ohio 349; State v. Rousseau, 241 P. 2d 447; State v. Spaulding, 34 Minn. 3621.

Adams v. State, 121 Ga. 16, 48 S.E. 910

"One may come to the aid of another being unlawfully arrested, just as he may where one is being assaulted, molested, raped or kidnapped. Thus it is not an offense to liberate one from the unlawful custody of an officer, even though he may have submitted to such custody, without resistance."

Jones v. State, 26 Tex. App. 1

These principles apply as well to an officer attempting to make an arrest, who abuses his authority & transcends the bounds thereof by the use of unnecessary force and violence, as they do to a private individual who unlawfully uses such force & violence." ; see also Beaverts v. State, 4 Tex. App. 1 75; Skidmore v. State, 43 Tex. 93, 903.

Wharton's Criminal & Civil Procedure, 12th Ed., Vol.2:)

State v. Mobley, 240 N.C. 476, 83 S.E. 2d 100.

Each person has the right to resist an unlawful arrest. In such a case, the person attempting the arrest stands in the position of a wrongdoer and may be resisted by the use of force, as in self-defense."

Plummer v. State, 136 Ind. 306.

"Citizens may resist unlawful arrest to the point of taking an arresting officer's life if necessary." This premise was upheld by the Supreme Court of the United States in this case:

"Story affirmed the right of self-defense by persons held illegally. In his own writings, he had admitted that a situation could arise in which the checks-&-balances principle ceased to work & the various branches of government concurred in a gross usurpation.' There would be no usual remedy by changing the law or passing an amendment to the Constitution, should the oppressed party be a minority. Story concluded, If there be any remedy at all ... it is a remedy never provided for by human institutions.' That was the ultimate right of all human beings in extreme cases to resist oppression, and to apply force against ruinous injustice.'" (From "Mutiny on the Amistad" by Howard Jones, Oxford Univ. Press, 1987, an account of the reading of the decision in the case by Justice Joseph Story of the Supreme Court.

Judy v. Lashley, 5 W. Va. 628, 41 S.E. 197

"The carrying of arms in a quiet, peaceable, & orderly manner, concealed on or about the person, is not a breach of the peace. Nor does such an act of itself, lead to a breach of the peace."

State v. Rousseau, 40 Wash. 2nd, 92, 241 P. 2nd, 447, 449 (1952)

"It is the law that a person illegally arrested by an officer may resist that arrest, even to the extent of

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the taking of life, if his own life or any great bodily harm is threatened. see also: Porter v. State, 124 Ga. 297, 52 S.E. 283, 287 (1905); see also State v. Mobley, 240 N.C. 476, 83 S.E. 2nd 100, 102 (1954); Wilkinson v. State, 143 Miss. 324, 108 So. 711, 712-13 (1926); American Jurisprudence, 2nd Ed., "Arrest", Section 94, pp. 778-780; Thomas v. State, 91 Ga. 204, 18 S.E. 305 (1892); Presley v. State, 75 Fla. 434, 78 So. 532, 534 (1918); Burkhard v. State, 83 Tex. Crim. 228, 202 S.W. 513; Mullins v. State, 196 Ga. 569, 27 S.E. 2nd. 91 (1943); Owens v. State, 58 Tex. Crim. 261, 125 S.W. 405 (1910); Caperton v. Commonwealth, 189 Ky. 652, 655, 225 S.W. 481, 481 (1920)

"The United States Supreme Court, and every other court in the past deciding upon the matter, has recognized that "at common Law", a person had the right to "resist the illegal attempt to arrest him." John Bad Elk v. United States, 177 U.S. 529, 534-35 (1899). State v. Robinson, 145 Me 77, 72 Alt. 2d 260, 262 (1950). State v. Gum, 68 W. Va. 105. State v. Rousseau, 40 Wash. 2d. 92, 241, 242 P.2d 447, 449 (1952). State v. Mobley, 240 N.C. 446, 83 S.E., 2d 100, 102 (1954). Wilkinson v. State, 143 Miss. 324, 108 So. 711. Thomas v. State, 91 Ga. 204, 18 SE 305 Presley v. State, 75 Fla. 434, 78 So. 523. Burkhardt v. State, 83 Tex Crim 228, 202 S.W. 513 Mullis v. State, 196 Ga. 569, 27 SE 2d 91 (1943). Owen v. State, 58 Tex Crim 261, 125 S.W. 405 (1910). Franklin, 118 Ga. 860, 45 S.E. 698 (1903). Graham v. State, 143 Ga. 440 85 S.E. 328, 331 City of Columbus v. Holmes, 152 N.W. 2d, 301, 306 (Ohio App. 1058). Adams v. State, 121 Ga 163, 48 S.E. 910 (1904). Robertson v. State, 198 S. W2d 633, 635-36 Tenn. (1947). Roberts v. Dean, 187 So. 571, 575 Fla. 1939. The State of Connecticut against Leach, 7 Conn. Rep. 452 (1829) Housh v. The People, 75 ILL Rep. 487, 491 (1874). Plummer v. The State, 135 Ind. 308, 313, 334 N.E. 968 (1893). People v. Hevern, 127 Misc. Rep. 141, 215 NY Supp 412. U.S. v. Cerciello, 86 NJL 309, 90 Atl.1112, (1914). U.S. v. Kelly, 51 Fed 2d 263 (1931) Bednarik v. Bednarik, 16 A 2d, 80, 90, 18 NJ Misc. 633 (1948). State v. Height, 117 Iowa 650, 91 NW 935. People v. Corder, 244 Mich. 274, 221 NW 309. Boyd v. U.S., 116 U.S. 616. State v. Newcomb, 220 Mo 54 119 SW 405. Town of Blacksburg v. Bean, 104 S.C. 146, 88 S.E. 441 (1916) Allen v. State, 197 N.W. 808, 810-11(Wis 1924). Adarns v. State, 121 Ga 163, 48 S.E. 910 (1904) Green v. Kennedy, 48 N.Y. Rep. 653, 654 (1871). Hicks v. Matthews, 266 S.W. 2nd. 846, 849 (Tex. 1954). Porter v. State, 124 Ga. 297, 52 S.E. 283, 287 (1905). Mullins v. State, 196 Ga. 569, 27 S.E. 2nd. 91 (1943). Caperton v. Commonwealth, 189 Ky. 652, 655, 225 S.W. 481, 481 (1920)

Penal Code, § 9.31 (C), reads as follows:

§ 9.31 (C) *The use of force to resist arrest or search is justified:*

- (1) If, before the actor offers any resistance, the peace officer (or person acting at his direction) uses or attempts to use greater force than necessary to make the arrest; &*
- (2) when & to the degree the actor reasonably believes the force is immediately necessary to protect himself against the peace officer's (or other person's) use or attempted use of greater force than necessary.*