

THE MUNICIPAL POLICE LAW ANNOTATED

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(Continued from 1st & 2nd issues)

ARRESTS AND SEIZURES

Definition.—Arrest is the taking of a person into custody in order that he may be forthcoming to answer for the commission of an offense.¹

Arrest—how made.—An arrest is made by an actual restraint of the person to be arrested, or by his submission to the custody of the person making the arrest. No unnecessary or unreasonable force shall be used in making an arrest, and the person arrested shall not be subject to any greater restraint before the judge or before some other person in authority who issued the warrant as directed therein.²

Arrests shall be made as quietly as possible, and all unnecessary harshness and violence will be avoided.³ A peace officer armed with lawful warrant, or when making a lawful arrest without a warrant, has a right, and it is his duty to use every necessary means to effect the arrest.⁴ If no resistance is offered, the peace officer has no right, rudely or with violence, to lay hands on the arrested person.⁵ If resistance is offered to an arrest, a peace officer may use such force as is necessary to overcome the resistance. However, violence which will probably result in the death of a person to be arrested may only be used when the peace officer is in extreme danger, and when such force is necessary for his self-protection.⁶

A peace officer arresting a person who is accused of a grave crime, and who refuses to stop when so required, and continues his flight, has a right to kill to prevent the escape of the accused, if he can not otherwise take him. This right does not exist in cases of minor offenses, and such means to prevent the escape should only be resorted to when the crime is of a grave character, and the guilt of

the person fleeing is evident and clear.⁷ A peace officer is never justified in killing in order to effect an arrest for a minor offense, even though the person refuses to stop when so required, and continues his flight, and even though there be no other way to prevent his escape. No matter what offense a prisoner may have committed, a peace officer is not justified in killing him, if there is any other way of preventing his escape.⁸

An officer should use discretion and caution in effecting arrests. He should be humane. He can not use violence when no resistance is offered, or use force or violence disproportionate to the extent of the resistance offered if there is any. If he uses unnecessary and excessive force or acts wantonly or maliciously, he may be criminally liable. A chief of police who with a shotgun repeatedly cudgels a person being arrested when the latter is already held by three policemen, thereby inflicting several wounds, is guilty of the crime of physical injuries, the force used being manifestly unnecessary.⁹

Execution of warrant.—It shall be the duty of an officer to whom the warrant of arrest is delivered to arrest the defendant and without unnecessary delay take the person arrested before the judge or before some other person in authority who issued the warrant as directed therein.¹⁰

Warrant of arrest, legal upon its face and issued by a competent authority, is a complete justification and protection to the peace officer making an arrest.¹¹ A peace officer to whom a warrant is delivered for service must take notice of its contents and see that upon its face it appears to have been issued by the judge of a court having jurisdiction of the subject matter upon the legal cause shown and is for a person whose name appears or who is particularly described therein.¹² The peace

officer making the arrest shall exhibit the warrant to the person arrested and explain its contents; if the arrest is made without a warrant, the person arrested shall be so informed, and shall be told why no warrant was obtained.¹³

Care will be taken to avoid unnecessary publicity or the humiliation of the person arrested. It is not the function of the police to impose punishment. This is for the courts of justice; an arrested person is presumably innocent until pronounced guilty by a court.¹⁴

Execution of warrant outside of the province.—Warrant of arrest issued by the justice of the peace cannot be served or executed outside his province, unless the judge of the Court of First Instance of the district or, in his absence, the provincial fiscal shall certify that in his opinion the interest of justice requires such service. Warrant issued by the judge of the Court of First Instance or of any other superior court may be secured or executed anywhere within the Philippines.¹⁵

While members of the local police forces are authorized to make arrests, it is understood that they can exercise such authority only within the territorial limits of the municipality of which they are peace officers. To allow them to exercise police authority beyond their jurisdiction, as in this case, would create not only misunderstanding between the municipal authorities that they represent and the authorities of the other municipality wherein they unlawfully exercise such authority, but would also be detrimental to the orderly processes of government. In cases where offenders of the law are found outside the jurisdiction of a municipality, the proper procedure to be followed in such cases is to report the matter, through the Provincial Governor, to the Provincial Commander of the Constabulary, so that appropriate steps may be taken to secure a warrant of arrest directed to any member of the Constabulary who is authorized under the law to effect arrest anywhere throughout the Philippines.¹⁶

1. Sec. 1, Rule 109, Rules of Court.
2. Sec. 2, id.
3. Par. 108, Manual for the Municipal Police; Par. 109, State Police Regulations.
4. Par. 113, State Police Regulations.
5. Par. 110, id.; Par. 109, Manual for the Municipal Police.
6. Par. 114, id.; Par. 113, id.
7. Par. 115, id.; Par. 116, id.
8. Par. 116, id.; Par. 117, id.
9. *People v. Fandino*, CA—G. R. No. 5865 Aug. 22, 1940.
10. Sec. 3, Rule 109, Rules of Court.
11. Par. 106, State Police Regulations; par. 105, Manual for the Mpl. Police.
12. Par. 107, id.; par. 106, id.
13. Par. 108, id.; par. 107, id.
14. Par. 112, id.; par. 111, id.
15. Sec. 4, Rule 109, Rules of Court.
16. Letter dated Oct. 11, 1946 of Sec. of the Int. to the Prov. Gov. of Pampanga, 612.6 Pampanga, Angeles.

(To be continued)

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