

THE MUNICIPAL POLICE LAW ANNOTATED

by JUAN F. RIVERA

Chief, Provincial Division, Department of the Interior, and Member,
Malacañan Special Legislative Assistance Committee.

ARRESTS AND SEIZURES

(Continued from last issue)

Same—Arrest upon information by telegraph.—Definite information by telegraph from a known peace officer will justify an arrest, but the statement of facts on which an arrest is requested should be clear and specific. The telegram should state that a warrant has been obtained, the amount of bail required for the provisional liberty of the accused and the official authorized to accept the bond.¹ Telegrams to another province requesting the arrest of anyone on a warrant issued by a justice of the peace must state that the warrant is indorsed by the judge of the Court of First Instance or, in his absence, by the Provincial Fiscal. In such cases, the warrant must be immediately forwarded by mail.² The telegrams must give a description of the person desired to be arrested and, when possible, names and addresses of friends or relatives.³

Arrest upon order of a judge.—When an offense is committed in the presence of a judge, he may, by an oral or written order, command any person immediately to arrest the offender, and may thereupon proceed as though the offender had been brought before him on a warrant of arrest.⁴

In making arrest by judicial orders of arrest, the duty of the municipal police is limited to bringing before the court the person ordered arrested, and the return to the court of the order with note of action taken.⁵

A warrant for the arrest of the defendant in a criminal case may be issued by the Justice of the Peace or the auxiliary Justice of the Peace of the municipality where the offense was committed;⁶ or in case of their absence, inability or disqualification, by the municipal mayor;⁷ or by the Justice of the Peace

of the provincial capital or municipality where the provincial jail is located, when directed by an order of the Judge of the Court of First Instance,⁸ or by the Judge of the Court of First Instance himself;⁹ without prejudice to the right of the Judge of the Court of First Instance to authorize the Justice of the Peace of the municipality nearest to that of the commission of the offense to exercise the said functions.¹⁸

Upon issuing the order of arrest, the magistrate shall ascertain the residence of the defendant, and if the latter lives beyond the territorial jurisdiction of the said magistrate, he should fix the bond and authorize the Justice of the Peace or Judge of the Court of First Instance of the municipality or province where the defendant may be found to admit him to bail.¹¹

An order of arrest, issued in the manner and form just indicated, may be served anywhere within the Philippine Islands but in order that an order of arrest issued by a Justice of the Peace may be served outside his province, it is necessary that the Judge of the Court of First Instance, or in his absence, the provincial fiscal, shall certify that in his opinion the interests of justice require such service.¹²

Arrest without warrant—When lawful.—A peace officer or a private person may without a warrant, arrest a person: (a) when the person to be arrested has committed, is actually committing, or is about to commit an offense in his presence; (b) when an offense has in fact been committed, and he has reasonable ground to believe that the person to be arrested has committed it; and (c) when the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while

being transferred from one confinement to another.¹³

Members of the police force are empowered to make arrests, without warrant, for breaches of the peace committed in their presence, or, upon reasonable suspicion, for other violations of the law of a more serious nature; but they must act in good faith and have reasonable grounds for suspicion of the guilt of the persons arrested.¹⁴ Probable cause for an arrest without warrant is such a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves as to warrant a reasonable man in believing the accused to be guilty. Besides reasonable ground of suspicion, action in good faith is another protective bulwark for the officer. Under such conditions, even if the suspected person is later found to be innocent, the peace officer is not liable. So a policeman, acting under the order of his chief who desires to put a stop to pilfering in a certain locality, who patrolled his district and, at about midnight seeing two persons in front of an uninhabited house and then entering an uninhabited *camarin*, arrested them without warrant, even though no crime had been committed, is not guilty of coercion or arbitrary detention.¹⁵ The cases hold that a peace officer might arrest and detain in prison for examination persons walking in the street at night whom there is reasonable ground to suspect of felony, although there is no proof of a felony having been committed; but the arrest would be illegal if the person so arrested was innocent and there were no reasonable grounds of suspicion to mislead the officer. The reason of the rule is apparent. Good people do not ordinarily lurk about streets and uninhabited premises at midnight. Citizens must be protected from annoyance and crime. Prevention of crime is just as commendatory as the capture of criminals. Surely the officer must not be forced to await the commission of robbery or other felony. The rule is supported by the necessities of life.¹⁶

Municipal police officers have sub-

stantially the same powers as the police officers of the City of Manila "in making arrests without warrant" and they may pursue and arrest without warrant any person found in suspicious places or under suspicious circumstances, reasonably tending to show that such person has committed or is about to commit any crime or breach of the peace, may arrest or cause to be arrested without warrant, any offender when the offense is committed in the presence of a peace officer or within his view."¹⁷ An offense is committed in the presence or within the view of an officer, within the meaning of the rule authorizing an arrest without a warrant, when the officer sees the offense, although at a distance, or hears the disturbance created thereby and proceeds at once to the scene thereof; or the offense is continuing, or has not been consummated, at the time the arrest is made.¹⁸

It would be exacting too much of police officers to require them to inform themselves as to the right or wrong of a quarrel before making an arrest. Their first duty is to restore order, and in doing so they may, in their honest judgment, act on such facts as are patent to their eyes, indicating the guilty person, and in so doing, for the purpose of suppressing present disorder, they may arrest without a warrant.¹⁹ For misdemeanors amounting to a breach of the peace, committed in the presence or within the view of a peace officer, the culprit may be arrested although without any order of arrest.²⁰ When one is legally arrested

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for an offense, whatever is found in his possession or in his control may be seized and used in evidence against him; and an officer has the right to make an arrest without a warrant of a person believed by the officer upon reasonable grounds to have committed a felony.²¹

Peace officers having prisoners in charge must take every reasonable precaution to prevent an attempt to escape. A peace officer who kills a fleeing prisoner would be held liable unless it is clear that all proper precautions had been taken to prevent any attempt to escape. He may fire upon an escaping prisoner who is guilty of a grave crime, and he is not criminally liable for homicide in the event he should kill such prisoner.²²

Same—When unlawful.—Good faith and reasonable ground do not excuse an officer making an arrest which was illegal for the reason that he had exceeded his power.²³ If the arrest was made for the reason that, as the officer put it, "I wanted to see, if he had committed a crime", the same is not a legal cause for making an arrest.²⁴ A policeman who, without a warrant, arrests for a misdemeanor a person who has not committed any misdemeanor commits the crime of coercion;²⁵ Also a policeman had no right to arrest the victim even assuming that the latter had really wounded another during the fight, since the said policeman was absent all during and immediately after the fight.²⁶ He cannot, without a warrant, in reliance on extrinsic testimony arrest for violation of a municipal ordinance a person whom he has not seen committing the offense nor can he make the arrest on that charge after the violation has ceased.²⁷

Any irregularity committed in effecting the arrest may be waived by the defendant, by giving bail, entering a plea of not guilty, and proceeding to the trial of the case.²⁸

Time of making arrest.—An arrest may be made on any day and at any day or night.²⁹ Arrests without warrant shall be made only where the ele-

ment of time is of such importance that the loss of time necessary to procure a warrant would be likely to cause the escape of a dangerous criminal, or cause damage or injury to life or property.³⁰

Whenever a member of the police force makes an arrest without warrant, he must deliver the person arrested to the proper judicial authority as soon as practicable within the period of six hours from the time of arrest.³¹ Obviously there are cases where police officers can not deliver persons under arrest to proper judicial authority within the period of six hours.³² The provisions of article 125, Revised Penal Code, as amended by Act No. 3940, should not, therefore, be interpreted literally. In *People v. Acasio, et al.*,³³ where the Chief of Police of Tudela, Misamis Occidental, accused of Arbitrary Detention for having arrested two persons at about 8 o'clock at night and detained until the following morning, the Supreme Court held "that the detention was in fact for a longer period than six hours and, if the article referred to should be literally applied the appellant was undoubtedly rightly convicted. But it will be noted that the arrest was effected about or shortly after eight o'clock at night, and the individuals arrested were released at about six the next morning. During this interval no judicial officer was accessible to whom the arrested persons could be delivered, and it was not incumbent on the appellant to disturb any person for the purpose of making delivery. If the arrested persons had been held until official hour and detained unduly after that time, conviction would have been proper. The judgment appealed from must be reversed and the appellant will be absolved from the complaint."

Method of arrest—By virtue of Warrant.—When making an arrest by virtue of a warrant the officer shall inform the person to be arrested of the cause of the arrest and of the fact that a warrant has been issued for his arrest, except when he flees or forcibly

resist before the officer has opportunity so to inform him, or when the giving of such information will imperil the arrest. The officer need not have the warrant in his possession at the time of the arrest but after the arrest, if the person arrested so requires, the warrant shall be shown to him as soon as practicable.³⁴

Same — Without warrant.— When making an arrest without a warrant, the officer shall inform the person to be arrested of his authority and the cause of the arrest, unless the person to be arrested is then engaged in the commission of an offense, or is pursued immediately after its commission or after an escape, or flees or forcibly resists before the officer has opportunity so to inform him, or when the giving of such information will imperil the arrest.³⁵

If a person lawfully arrested escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and retake him without a warrant at any time and in any place within the Philippines. To retake the person escaping or rescued, the person from whose custody he escaped who is lawfully pursuing may use the same means as are authorized for an arrest. Any person making arrest for legal ground shall, without unnecessary delay and within the time prescribed in the Revised Penal Code, take the person arrested to the proper court or judge for such action as they may deem proper to take.³⁶

Same—Rights of arresting officer.
—A peace officer armed with lawful

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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.³⁷ 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.³⁸ If the person accused of a grave crime refuses to be arrested and continues his flight, the peace officer has the right to kill the escaping accused if he cannot otherwise take him. This right does not exist in cases of minor offenses. A peace officer is never justified in killing in order to effect an arrest for a minor offense, even though there be no other way to prevent his escape. 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. But 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.³⁹ In determining the probability of an attempt to avoid arrest or to escape due consideration should be given to the gravity of the offense charged and the character, reputation, and station in life of the accused.⁴⁰

An officer, in order to make an arrest by virtue of a warrant, or when authorized to make such an arrest for an offense without a warrant, may break open a door or window of any building in which the person to be arrested is or is reasonably believed to be, if he is refused admittance thereto, after he has announced his authority and purpose. Such officer may break open a door or window of the building, if detained therein, when necessary for the purpose of liberating himself. He may break open a door or window of any building when necessary for the purpose of liberating a person who entered the building to make an arrest and is detained therein.⁴¹

Any officer making a lawful arrest may orally summon as many persons as he deems necessary to aid him in making the arrest. Every person so summoned by an officer shall aid him in the making of such arrest, when he can render such aid without detriment to himself.⁴² A private person when making an arrest shall inform the person to be arrested of the intention to

arrest him and the cause of the arrest, unless the person to be arrested is then engaged in the commission of an offense, or is pursued immediately after its commission or after an escape, or flees or forcibly resists before the person making the arrest has opportunity so to inform him, or when the giving of such information will imperil the arrest.⁴³

1. Par. 134, State Police Regulations.
2. Par. 135, *id.*
3. Par. 136, *id.*
4. Sec. 5, Rule 109, Rules of Court.
5. Par. 131, State Police Regulations.
6. Act No. 194-1.
7. Act 194-3; Act 2711-2197.
8. Act 1627-37.
9. Act 1627-37.
10. Act 2711-211; *Magbanua v. Tordesillas*, 39 Phil. 187.
11. Act 3042-1.
12. Act 1627-30; *Torrente v. Grove et al.*, 5 Phil. 451.
13. Sec. 6, Rule 109, Rules of Court.
14. Par. 102, State Police Regulations; Par. 100, Manual for the Municipal Police.
15. U. S. v. Santos, 36 Phil. 853.
16. *Id.*, citing *Miles v. Weston*, 60 Ill., 361.
17. U. S. v. Batallones, *et al.*, 23 Phil. 47.
18. U. S. v. Samonte, 16 Phil. 517.
19. U. S. v. Burguete *et al.*, 10 Phil. 189.
20. U. S. v. Vallejo, 11 Phil. 193; U. S. v. Santos, *supra*.
21. *Alvero v. Dizon et al.*, G. R. No. L-342, May 4, 1946.
22. Pars. 118 & 119, State Police Regulations.
23. U. S. v. Alexander, 8 Phil. 29.
24. U. S. v. Hochaw, 21 Phil. 514.
25. U. S. v. Alexander, *supra*, following U. S. v. Ventura, 6 Phil. 385.
26. *People v. Daus*, C.A. G.R. No. 3062, Feb. 28, 1940.
27. U. S. v. Alexander, *supra*.
28. U. S. v. Grant, *et al.*, 18 Phil., 122.
29. Sec. 7, Rule 109, Rules of Court.
30. Par. 103, State Police Regulations; par. 101, Manual for the Municipal Police.
31. Art. 125, R.P.C., as amended by Act 3940; par. 104, State Police Regulations.
32. Par. 105, State Police Regulations.
33. G. R. No. 40472.
34. Sec. 8, Rule 109, Rules of Court.
35. Sec. 9, Rule 109, Rules of Court.
36. Secs. 15-17, *id.*
37. Par. 113, State Police Regulations.
38. Par. 114, *id.*
39. Pars. 115-116, *id.*
40. Par. 117, *id.*
41. Secs. 12 to 14, Rule 109 Rules of Court.
42. Sec. 11, *id.*
43. Sec. 10, *id.*

(To be continued)

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