

MEMORANDUM OF LAW

DATE: July 31, 1986

TO: Sgt. M. D. Stanley, Northern Division, San
Diego Police Department
VIA: Commander, Northern Division, San Diego Police
Department
FROM: City Attorney
SUBJECT: Proximity Requirements for Citizen's Arrest

You forwarded a question to this office as to whether a citizen can make an arrest if not at the scene or close proximity of a suspect. You used an example in which an individual commits various misdemeanors against the persons and property of his ex-girlfriend, her present boyfriend and her family, then flees. Later he is detained by officers but the victims are too frightened of him to make a citizen's arrest in his presence. The circumstances indicate that custody, as opposed to a misdemeanor field citation, is appropriate (Department Instruction 6.13, II E.2.f.). We have researched this question and conclude that there need not be a face-to-face meeting between citizen and arrestee in order for a valid citizen's arrest to be made, but the arrest must be at least observed by the citizen.

The statutory law governing citizen's arrests is contained in Part 2, Chapter 5 of the Penal Code. Section 834 defines arrest: "An arrest is taking a person into custody, in a case and in the manner authorized by law. An arrest may be made by a peace officer or by a private person." Section 837 provides the authority for a private person to arrest another. Section 839 provides that "any person making an arrest may orally summon as many persons as he deems necessary to aid him therein." Section 841, which prescribes formalities for an arrest, provides that "the person making the arrest must inform the person to be arrested of the intention to arrest him, of the cause of the arrest, . . . the authority to make it, . . . (and) must, on request . . . of the offense for which he is being arrested." Finally, section 847 requires "(a) private person who has

arrested another for the commission of a public offense must, without unnecessary delay, take the person arrested before a magistrate, or deliver him to a peace officer."

The statutory law thus implies a requirement for physical confrontation by a citizen in making an arrest. Several cases, however, indicate some flexibility exists in the law. In

People v. Sjosten, 262 Cal.App.2d 539 (1968), a private citizen called the police after observing a prowler in her neighborhood. When an officer arrived she looked out her window, pointed out the suspect, and, as she was dressed only in her nightclothes, asked the officer to execute the arrest for her. She watched as the officer took custody of the defendant. On appeal, the court held that section 839 ". . . impliedly authorizes the delegation of the physical act of taking an offender into custody. Frequently . . . it is most prudent for a private citizen to summon a police officer to assist in making the arrest." (Id. at 544). The court further held that: "The fact that she did not physically confront appellant is not significant. It is sufficient that she directed the officer to make the arrest and observed him doing so from her window." (Id. at 544-545, emphasis added). It can be inferred that the court saw the procedure as the supervised action of an agent of the private citizen. See also, Green v. Department of Motor Vehicles, 68 Cal.App.3d 536, 542 (1977) (police acting as agents in effectuating citizen's arrest).

A case with similar results was People v. Johnson, 271 Cal.App.2d 51 (1969). In Johnson the victim of a misdemeanor hit-and-run contacted police then searched for and located the suspect vehicle. He again contacted police officers then led them to the scene and pointed out the vehicle. While the victim remained in his own vehicle 20-30 feet away, the police had the suspect driver get out and, after being requested to do so by the victim, executed the citizen's arrest. (Id. 51-52). In other cases where the officer made the physical arrest on behalf of the citizen, the citizen was present. People v. Harris, 256 Cal.App.2d 455 (1967) (detention by citizen for hit-and-run); People v. Johnson, 123 Cal.App.3d 495 (1981) (prowler detained and transported to citizen's home); Packer v. Sillas, 57 Cal.App.3d 206 (1976) (citizen and police search residential area for DUI vehicle).

In summary it appears that the courts will accept as valid a citizen's arrest made by a police officer at the request of the citizen and observed by the citizen. In the example provided in your question it would not be necessary to transport the suspect to a face-to-face proximity of the victim. It would only be

necessary to transport the suspect (or the victim) to such location as the victim could see the suspect clearly enough to recognize him, then request that the police execute her citizen's arrest and observe it being done. The citizen should, of course, sign the "citizen's arrest" section of the arrest report.

JOHN W. WITT, City Attorney

By
Grant Richard Telfer
Deputy City Attorney

GRT:ls:520.1(x043.2)

cc: Deputy Chief Guaderrama
Field Operations

ML-86-87