



FROM THE DESK OF THE D.A.

By District Attorney Jason J. Legg

A few weeks ago, this column addressed a situation where an off-duty uniformed EMT asked an intoxicated driver to pull over and then took the keys from the driver so that he could not get away before the police arrived. The driver argued that his rights had been violated because the stop was illegal as the EMT had no authority to detain him, but the Superior Court rejected this argument by simply noting that there had been no constitutional violation as the EMT was not a “state actor.” In response to this column, I received a number of requests to define the parameters of a citizen’s arrest and whether the EMT had made a lawful citizen’s arrest.

The authority to effectuate a citizen’s arrest arises from our common law traditions. Under the common law, a private citizen could make an arrest for a felony offense or for a breach of peace that occurred in the citizen’s presence. With relation to the felony offense, the private citizen would need to demonstrate that probable cause existed for the arrest, i.e., reasonable information to believe that it was more likely than not that the defendant committed a felony. Most private citizens are not versed in the Crimes Code and, as such, have little knowledge as to whether a particular offense constitutes a felony, misdemeanor or summary offense. To complicate things further, the courts have been clear that a citizen cannot make an arrest for a summary offense even where the offense is disturbing the peace. Thus, a citizen must now differentiate between a felony, misdemeanor, and a summary offense to determine whether a lawful arrest may be made.

For instance, in *Commonwealth v. Corley*, the defendant robbed someone at gunpoint in a department store, shot the person, and was then running out of the store when he was observed by the security guard. The security guard had received some information by radio when he observed the defendant with the gun in his hand. The defendant then concealed the weapon in a pocket of his jacket. The security guard arrested the defendant. The defendant argued that his arrest had been unlawful. The Superior Court concluded that the security guard did not have probable cause to believe a felony had been committed because there was no information on the record as to what the security guard heard over the radio. On the other hand, the Superior Court noted that the defendant was running through a public store with a handgun which the defendant then concealed. The Superior Court determined that the security officer’s observations created sufficient probable cause to believe a breach of the peace had been committed, and that arrest was deemed lawful.

In the case of the EMT officer, a DUI offense is not a felony offense. It is a misdemeanor. As such, the EMT officer could not rely upon the common law rule authorizing a citizen’s arrest for a felony offense. Thus, the question becomes whether or not a citizen’s arrest was lawful on the grounds that the EMT officer personally observed a breach of peace. The courts have described a breach of peace as constituting a misdemeanor offense, not a summary offense. Thus, it would appear that the EMT officer could have effectuated a lawful citizen’s arrest provided he had probable cause to believe that a DUI offense was occurring.

There are not many cases addressing the authority of citizens to make arrests for DUI offenses observed in their presence. In 1972, the Court of Common Pleas of Adams County, in *Commonwealth v. Giles*, specifically held that a private citizen may effectuate an arrest of a drunk driver for a breach of the public peace. In doing so, the court quoted an 1899 decision of the Pennsylvania Superior Court which concluded that “driving in such a manner as to endanger other persons is unquestionably a breach of the peace.” Thus, there is some limited authority to support the proposition that a private citizen has the power to arrest a drunk driver for a breach of peace occurring within the citizen’s presence.

In the recent decision, the Superior Court likely avoided this issue entirely, except for Judge Bender’s dissent, which expressed the concern of vigilantes riding around searching for drunk drivers. A private citizen is not specially trained to recognize drunk drivers – and likely would have a difficult time explaining to a jury or a judge the reasons he believed a DUI offense was occurring. Private citizens simply lack the expertise necessary to demonstrate that their actions were justified. Simply put, while the law may recognize the ability of private citizens to make an arrest of a drunk driver, the better policy is simply to report the matter to law enforcement and allow the professionals to handle it.

Please submit any questions, concerns, or comments to Susquehanna County District Attorney’s Office, P.O. Box 218, Montrose, Pennsylvania 18801 or at www.SusquehannaCounty-DA.org.