

Recent Case Report

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People v. Bloom

(2010) 185 Cal.App.4th 1496

Issue

Did a police dispatcher make a lawful citizen's arrest of a man for making annoying or harassing 911 calls?

Facts

Craig Bloom liked to make annoying phone calls to the 911 operators in Palm Springs. He would phone repeatedly, scream into the phone and call the operators obscene names. It got so bad that they wouldn't answer the phone when his home phone number appeared on their monitors. So he started using pay telephones.

Although Bloom was violating the law, officers could not arrest him because his crime (Pen. Code § 653x) was a misdemeanor and, under California law, officers cannot ordinarily arrest a person for a misdemeanor unless the crime was committed in their presence.¹

One night, after Bloom had called over 40 times, one of the operators decided to take matters into her own hands. So she dispatched officers to the location of Bloom's most recent call and told them to arrest him because she was hereby making a citizen's arrest. When the officers arrived, Bloom resisted arrest and was charged with, among other things, battery on a peace officer in the performance of his duties. In the trial court, Bloom argued that, for reasons discussed below, the officers were not acting in the performance of their duties. But the court disagreed, and Bloom eventually pled guilty.²

Discussion

Bloom appealed the court's ruling, arguing that his arrest was unlawful because, (1) his calls to 911 did not occur in the presence of the arresting officers, and (2) the 911 operator did not comply with the legal requirements for making citizens' arrests.

"IN THE PRESENCE": As noted, officers may not ordinarily arrest a person for a misdemeanor without a warrant unless they have probable cause to believe that the arrestee committed the crime "in their presence."³ This requirement also applies to citizens' arrests for misdemeanors,⁴ which means that the officers must have had probable cause to believe that Bloom's crimes were committed in the operator's presence.

Because Bloom committed his crimes in public phone booths that were probably miles away from the police station, he argued that his crimes were not committed in the "presence" of the 911 operator. But the court disagreed, ruling that the term "presence"

¹ **NOTE**: There are several exceptions to this requirement, such as arrests for juveniles, certain DUI offense, and domestic violence. See Welf. & Inst. Code § 625; Veh. Code § 40300.5; and Pen. Code §§ 243.5, 12031(a)(3), 836(e), § 836.

² **NOTE**: Bloom pled guilty after the judge reduced the crimes to misdemeanors per Pen. Code § 17(b). The Court of Appeal noted that the "more appropriate procedure would have been to reduce the felonies to misdemeanors after the defendant entered his guilty plea . . ."

³ See Pen. Code § 836(a)(1).

⁴ Pen. Code § 837.1.

does not require “physical proximity.” Instead, it simply means the crime must have been “apparent to the senses” of the citizen. And because hearing is a “sense,” Bloom’s 911 calls were committed in the operator’s “presence.” Said the court, “Here, the misdemeanor offense of making annoying and harassing calls to 911 was made in the dispatcher’s presence because she was personally engaged in the telephone calls.”

CITIZEN’S ARREST REQUIREMENTS: Bloom also argued that his arrest was unlawful because he was not taken into custody by the citizen who was making the arrest; i.e., the operator. It is settled, however, that a citizen who has probable cause to arrest a person may delegate to officers his or her right to take physical custody.⁵ It is also settled that such a delegation need not be formal (“I hereby delegate . . .”) but will be implied if the citizen promptly notified officers that the crime had just been committed, and if the citizen stated that he or she wanted to arrest the suspect.

An intent to delegate will also be implied if the citizen took steps to keep the suspect on the scene, follow him, identify him, or learn his whereabouts—as any of these actions reasonably indicates that the citizen wanted the officers to take him into custody.⁶ As the 9th Circuit explained, “A private person making a citizen’s arrest need not physically take the suspect into custody, but may delegate that responsibility to an officer, and the act of arrest may be implied from the citizen’s act of summoning an officer, reporting the offense, and pointing out the suspect.”⁷

Consequently, the court ruled that the arrest of Bloom was lawful because, (1) the 911 operator had probable cause to arrest him, (2) the crimes were committed in her presence, and (3) she immediately notified officers of her decision to arrest him.

“STALE” MISDEMEANOR: Finally, Bloom argued that his arrest was unlawful because the crime was a “stale” misdemeanor. The courts seem to be in agreement that an arrest for a “stale” misdemeanor is unlawful, and that a misdemeanor becomes “stale” if the officer or citizen delayed making the arrest for an unreasonable period of time after developing probable cause.⁸ As the court in *Bloom* explained, this essentially means that “the arrestor must proceed as soon as possible to make the arrest, and if instead of doing so he goes about other matters unconnected with the arrest, the right to make the arrest ceases.” This was not, however, an issue in *Bloom* because the operator’s request to arrest Bloom was made immediately after his last call. POV

⁵ See *Padilla v. Meese* (1986) 184 Cal.App.3d 1022, 1030 [“[The citizen] may delegate the act of taking the suspect into physical custody.”]; *People v. Sjosten* (1968) 262 Cal.App.2d 539, 544 [“[T]he authority of Officer Smith to make the arrest at the request of Mrs. Morales is well established.”].

⁶ See *Padilla v. Meese* (1986) 184 Cal.App.3d 1022, 1030 [“[T]he delegation of the physical act of arrest need not be express, but may be implied from the citizen’s act of summoning an officer, reporting the offense, and pointing out the suspect.”].

⁷ *Meyers v. Redwood City* (9th Cir. 2005) 400 F.3d 765, 772.

⁸ See *People v. Craig* (1907) 152 Cal. 42, 47 [“It seems to be generally held that an arrest for a misdemeanor without a warrant cannot be justified if made after the occasion has passed, though committed in the presence of the arresting officer.”]; *Hill v. Levy* (1953) 117 CA2 667, 671 [“It does not appear that he went about other matters unconnected with the arrest”]; *Green v. DMV* (1977) 68 CA3 536, 541 [“the arrest must be effected in fresh pursuit of the offender or within a reasonable time after the offense is committed”]; *P v. Hampton* (1985) 164 CA3 27, 30 [“Such an arrest must be made at the time of the offense or within a reasonable time thereafter.”].