

## **People v. Schofield**

(July 19, 2001) \_\_ Cal.App.4<sup>th</sup> \_\_

### **ISSUE**

Under what circumstances may an officer make a warrantless DUI arrest when the crime was not committed in the officer's presence?

### **FACTS**

At about 2:30 p.m., Atascadero police and fire responded to a 9-1-1 report that a man was passed out near the side entrance to a liquor store. The first officer on the scene spoke with the liquor store clerk who said the man who had passed out had just driven off in a car.

The clerk said he spoke with the man just before he drove off and noticed "a strong odor of alcohol" on his breath. Based, apparently, on the odor and the man's shaky physical condition, the clerk told the officer he believed the man was "too intoxicated to drive." In fact, the clerk was so certain the man was intoxicated that he tried, unsuccessfully, to remove the keys from the ignition.

The clerk provided the officer with a description of the man, his car and its license number. The officer quickly traced to car to a home in Atascadero and went there to investigate. As he arrived, he saw the car described by the clerk parked in the driveway; the hood over the engine was still warm.

The defendant, Schofield, answered the door and spoke with the officer. He admitted he was the man who had passed out at the liquor store, but said he didn't know what had caused it. He also admitted driving home. The officer noticed that Schofield's breath smelled strongly of alcohol, his eyes were bloodshot and watery, and his balance was impaired.

The officer then asked Schofield if he would step outside and perform some FST's. Schofield said okay and walked outside, swaggered noticeably and, at one point, lost his balance. He then attempted the FST's but did "poorly" and was arrested for DUI. (Schofield submitted to a blood test but the court did not give the results.)

### **DISCUSSION**

As a general rule, officers may not make a warrantless arrest for a misdemeanor that did not occur in the officer's presence.<sup>1</sup> There are, however, exceptions to this rule. Schofield contended that none of the exceptions applied to his case and, therefore, his arrest was unlawful. The court disagreed.

One of the exceptions to the "in the presence" requirement applies when the arrest is for DUI and any of the following circumstances existed:<sup>2</sup>

- (a) The arrestee was involved in a traffic accident.
- (b) The arrested was observed in or about a vehicle that was obstructing a roadway.

- (c) The arrestee would not be apprehended unless he was immediately arrested.
- (d) The arrestee may cause injury to himself or damage property unless immediately arrested.
- (e) The arrestee may destroy or conceal evidence of the crime unless immediately arrested.

The People contended that subdivision (e) applied to the facts of this case because alcohol in the bloodstream is constantly being eliminated, which is essentially the same as being “destroyed.” Schofield disagreed, claiming that subdivision (e) applies only to the willful destruction or concealment of evidence, not its natural elimination.

The court concluded it makes no difference whether evidence is naturally eliminated or intentionally destroyed. In either case, it becomes useless. Consequently, the court ruled that an officer, having probable cause to believe a person was driving under the influence, can reasonably believe that unless the driver is arrested immediately, evidence of the crime—namely, a determination of the amount of alcohol in the driver’s blood—would be “destroyed.” Thus, the arrest is lawful even if the crime did not occur in the officer’s presence.

#### **DA’s COMMENT**

Three things should be noted about this decision. First, the court was careful to point out that nothing in its ruling should be interpreted as authorizing officers to forcibly enter the home of a DUI suspect to make a misdemeanor arrest pursuant to subsection (e). This was not an issue in *Schofield* because the officer did not enter the home, he simply obtained Schofield’s consent to step outside.

Second, *Schofield* would probably not apply to arrests that occurred so long after the driving was observed that a blood-alcohol test would not provide meaningful evidence of the driver’s blood-alcohol level at the time of the offense.

Third, Schofield’s arrest might also have been upheld as a citizen’s arrest. As we explained in the article on citizen’s arrests in the Fall 2000 edition, a citizen who has probable cause to arrest may delegate to an officer his authority to do so.

Although the liquor store clerk did not say he wanted to make a citizen’s arrest, an intent to do so has been implied when two circumstances existed:

- (1) The citizen notified police of a crime.
- (2) The citizen took steps to keep the suspect on the scene or learn the suspect’s whereabouts.<sup>3</sup>

In *Schofield*, it appears that both of these requirements were met. As noted, the liquor store clerk notified officers that he believed Schofield was DUI. He also obtained the license number of Schofield’s car and gave the number to the officer. Moreover, he attempted to remove the keys from Schofield’s car, which appears to have been an attempt to prevent Schofield from leaving.

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<sup>1</sup> See Penal Code § 836.

<sup>2</sup> See Vehicle Code § 40300.5.

<sup>3</sup> 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.”]; *People v. Johnson* (1981) 123 Cal.App.3d 495, 499 ; *Green v. DMV* (1977) 68 Cal.App.3d 536; *People v. Harris* (1967) 256 Cal.App.2d 455, 458-9; *People v. Sjosten* (1968) 262 Cal.App.2d 539, 544-5.