If you are placed under citizen's arrest

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What if a person, who is not a law enforcement officer, places you under citizen's arrest, can you resist the arrest or do you have to comply with it by law? How would you even know if the arrest is legitimate in the first place? In past few issues I have talked about placing your attacker under citizen's arrest, but what if the tables were turned? What if someone thinks you are the law breaker and they want to arrest you? What are your options? Can I use my self-defense skills to get away?

What is an arrest?

An "arrest" is the taking of a person into *official* custody in order to answer to a criminal charge. Making an arrest requires *probable cause* and *authority*. In other words, a legitimate arrest of a person, more specifically a *seizure* of a person, has to be made by an "official" agent of the government (this falls under the Fourth Amendment of the United States Constitution). Yet, a private citizen is not an agent of the government. The Fourth Amendment was designed to protect the citizens from the government, and does not address citizens arresting citizens.

Now, let's say that somebody came up to me and accused me of a crime, and forced me to stay there until the police arrived. Do I have to stay there? The answer is YES and No. If I'm just walking down the street and somebody wrongfully accuses me of robbing a store, there is no law that says I have to submit to them. Even if a police officer comes up to me and just wants to "talk" to me, I don't have to talk to him if I do not want to. Yet, if the police officer tells me that I am not free to leave, then by law I have to submit to his *authority*; it becomes a lawful order. But a private citizen does not have *authority.* On the other hand, if I was involved in a traffic accident, there are State laws that say that I cannot leave the scene of an accident without identifying myself to the involved parties, and in the cases of an accident involving injuries; I must report it to the authorities. So, going back to the first example, if a person was accusing me of robbery and wanting to hold me against my will, and I knew I had nothing to do with the crime, I'm leaving. I will even protect myself physically if an attempt is made to stop me. This applies to public places.

Private property

Let's look at another example. If I am in a department store, and a loss prevention officer comes up to me and accuses me of stealing something, most likely he will attempt to *detain* me until the police arrive. That is the key word – detain. Now, I could just tell him to "pound sand" and keep walking. Of course, if I am innocent the wise thing to do would be to submit to the detention, show him that I didn't steal anything, and go on my way. However, if a person has actually committed a theft, say shoplifting, and they physically resist the detention, the crime of theft now becomes robbery because the theft is now enhanced by the act of force or fear.

If you find yourself "accidentally" trespassing on somebody's property, and they hold you there at gun point until the police arrive, the police will most likely find you at fault

and that the detention was legal. This brings us to our main point. Does the person doing the "citizen's arrest" or "detention" have a legal basis for doing so? If you are clearly violating a law, then the law will protect the citizen seizing you. So, yes. On the other hand, if there is no legal basis for your seizure, they are violating the law.

Resisting a bogus arrest

In our society we cannot help but think about those who pose as police officers, only to end up be a rapist, a home invasion robber, or someone else with evil intentions. Unless I know that I have clearly violated a law or that the peace officers are indeed legitimate, then I'm not going to trust anyone attempting to put me under arrest. I would be even more suspicious of a citizen trying to restrict my freedom. If I have not committed a crime, a fellow citizen does not have the *authority* to restrict my freedom. In other words, they cannot hold me against my will. If they do, and I was indeed found innocent, I can turn right around and request that they be charged with false imprisonment. And, if they used any kind of force against me, then I can even lay on assault charges. However, if the person acted in *good faith*, and actually believed that I was a suspect based on the *totality of circumstances*, the whole thing will most likely be dismissed by the District Attorney's Office.

Ultimately, if someone does place me under citizen's arrest, the arriving police must determine if a crime has indeed taken place, and whether I am indeed connected to it or not. If the police find that there is not enough evidence, or the facts to not support the accusation, then you'll be set free. If the police feel that there is *probable cause (PC)*, then the officer will accept the citizen's arrest (by way of a verbal or signed declaration) if the offense was a misdemeanor not committed in the officer's presence. Probable cause is information that would lead an objectively reasonable law enforcement officer to believe that a crime *probably* has been committed, or was about to be committed, and that a particular suspect *probably* committed the crime.

Reasonable force

No matter who attempts to arrest you, be it the police or a private citizen, everyone must exercise *reasonable force* (the amount of force used should be no more than that which is reasonably necessary to assure compliance). Things that must be taken into consideration is the seriousness of the accusation, the number of people involved, whether that person believes you are armed and dangerous, or even by your actions and the amount of resistance you demonstrate. It is reasonable for a gas station attendant to block your path if you are trying to drive away without paying for the gas, but it would be unreasonable if he tried to take you down and hold you to the ground, when all he has to do is remember your face, take down your license plate, and report it to the police. It is a minor offense that requires minor action. The police can always make the arrest later, even if the offender gets away.

Several years ago a group of citizens recognized satanic murderer Richard Ramirez in Los Angeles. They held him down and even injured him when he resisted them. When the police arrived they took him into custody. The police and the District Attorney determined, based on the situation, that the actions of the citizens were reasonable.

The bottom Line

If someone attempts to place you under citizen's arrest, you have to determine if it is legitimate or being done in good faith. On the other hand, if you think it is a trick, then take the appropriate action. If there is any doubt about your own actions, once you get to a secure location call the police and tell them that someone attempted to place you under citizen's arrest. If you had felt that you had no choice but to resist, state that to them. For me personally, unless I see a uniformed police officer, and a marked police vehicle, I don't trust anyone until I can verify their employment. Likewise, I may (and I use the word *may* loosely) submit to a detention by a security guard who is obviously in the scope of his or her employment, but I would not trust anyone off the street trying to seize me. Since I don't break the law, my options will be clearer.

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