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Criminal Law -- Arrest without Warrant for Misdemeanor

Robert L. Grubb Jr.

court in which it is held that evidence tending to show that a bystander was a friend of the perpetrator and the perpetrator was aware of his presence and nothing more is sufficient to support a conviction."[18] Yet there is language to that very effect in *State v. Jarrell* in which it is stated that when the bystander is a friend of the perpetrator presence alone may be regarded as encouraging.

In *State v. Holland*,[19] after discussing the law concerning aiding and abetting, the court concluded that "the evidence here taken in its light most favorable to the state, as is the rule of motion of non-suit, is sufficient to justify a finding that the defendant's presence amounted to active encouragement of his friend in the commission of the felonious assault shown to have been committed. Full evidence here is laregly circumstantial but even so such evidence is a recognized and accepted instrumentality in the ascertaining of the truth and here the series of incriminating facts taken in its entirety makes out a prima facie case."[20]

It should be pointed out that the writer finds no argument with the rule of law that mere presence at the scene of the crime is insufficient to constitute one an aider and abettor, but the unfortunate aspect of the instant case is that by the Court's dismissal of the case with only a statement that mere presence at the scene of the crime is insufficient to constitute one an aider and abettor, the impression is given that the Court has failed to recognize other circumstances which, coupled with presence, have been held to constitute aiding and abetting.

THOMAS C. CREASY, JR.

Criminal Law—Arrest without Warrant for Misdemeanor

In *State v. Mobley*[1] it was held that without a warrant an officer could not arrest a peaceful drunk, if he was not committing or about to commit a breach of the peace. The only authority a peace officer had to arrest one committing a misdemeanor was that given to all persons by the common law, and codified in the North Carolina General Statutes,[2] that "Every person present at any riot, rout, affray or other breach of the peace, shall endeavor to suppress and prevent the same, and if necessary for that purpose shall arrest the offenders." There are, however, exceptions created by statutes which conferred upon peace officers the right to arrest without warrant one violating the motor vehicles laws in his presence[3] or one violating the liquor laws when the officer has absolute personal knowledge that the accused is transporting illegal liquor.[4]

[18] State v. Ham, 238 N. C. 94, 97, 76 S. E. 2d 346, 348 (1953).
[19] 234 N. C. 354, 67 S. E. 2d 272 (1951).
[20] *Id.* at 356, 67 S. E. 2d at 273.

[1] 240 N. C. 476, 83 S. E. 2d 100 (1954).
[2] N. C. GEN. STAT. § 15-39 (1953).
[3] N. C. GEN. STAT. § 20-183 (1953).
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To remedy this situation Mr. Justice Johnson suggested in *State v. Mobley*[5] that the legislature enact a single statewide statute authorizing any peace officer to arrest without warrant (1) when a misdemeanor or other criminal offense is committed in his presence, or (2) when he has reasonable ground to believe that the person to be arrested has committed a criminal offense and will evade arrest if not immediately taken into custody. In response the 1955 Legislature enacted a statute[6] which reads in part: "A peace officer may without warrant arrest a person: (a) when the person to be arrested has committed a felony or misdemeanor in the presence of the officer, or when the officer has *reasonable grounds to believe* that the person to be arrested has committed a felony or misdemeanor in his presence. . . ." (Emphasis added.) It may be surmised that the legislature, by adding "reasonable grounds to believe" to the statute, intended to protect an officer from liability for false arrest in instances where he clearly sees the offense committed in his presence but the jury fails to convict. Nevertheless, the addition of this clause may have enlarged substantially the authority of peace officers to arrest without warrant for misdemeanors. It is with this possibility that the note will deal.

"Reasonable grounds to believe" has by judicial construction been given a fairly well defined meaning. It is more than mere suspicion.[7] There must be such facts and circumstances as would cause ordinary men to believe. Whether one does in fact believe is somewhat immaterial. The courts, in determining "reasonable grounds to believe," are concerned with the apparent facts within the knowledge of the officer at the time, and with what such facts would make an *ordinary* observer think, not with what are eventually shown to be the actual facts, or with what one observer did, in fact, believe.[8] Reliable information has been held sufficient to give one reasonable grounds to believe.[9] A tip from an anonymous citizen obviously would not be reliable enough to give an officer reasonable grounds to believe, while information from a known upstanding citizen probably would. Thus an officer may learn of facts through his own observation, word of another officer, or from information given him by a private citizen that would give the officer reasonable grounds to believe the accused is committing a crime. Thus, it is apparent that the information sufficient to constitute reasonable grounds to

[5] 240 N. C. at 488, 83 S. E. 2d at 108.
[6] N. C. GEN. STAT. § 15-41 (Supp. 1955).
[7] Dittberner v. State, 155 Tenn. 102, 291 S. W. 839 (1927).
[8] MACHEN, THE LAW OF ARREST, p. 49 (1950).
[9] People v. Filas, 369 Ill. 78, 15 N. E. 2d 718 (1938). Information that a tall slim man driving a Ford coupé, with a tan top, bearing license number 988-216, had been sticking up oil stations gave the officer reasonable grounds to believe that the driver of the described automobile was implicated in crime.

believe may be derived solely from sources other than the arresting officer's personal knowledge.

However the statute does not merely state that an officer can arrest without warrant on reasonable grounds to believe. It says that an officer must have reasonable grounds to believe that the accused is committing a felony or misdemeanor *in his presence.* This presents the question of just how much the words "in his presence" limit the officer's power of arrest without warrant when he has reasonable grounds to believe that the accused has committed a crime.

For a crime to be in the officer's presence, the officer must have more than reliable information or a reasonable belief of its commission.[10] He must actually perceive the offense. The acts constituting the offense must become known to him at the time they are committed through his sense of sight or through his other senses.[11] A Georgia court stated that the words "in his presence" were synonymous with the words "within his immediate knowledge," and that the officer need not see the act which constitutes the crime if by any of his senses, he has personal knowledge of its commission.[12] Thus information, however reliable and even if based on the informant's own personal observation, is not sufficient to cause a crime to be in the officer's presence.[13] The officer must personally observe some part of the offense[14] or at least enough to let him know what is happening.[15] If, however, the officer is suspicious of a person, he may inquire whether the person is committing a crime. Then if that person voluntarily admits that he is committing a crime, the officer may arrest him.[16]

It will be observed that some offences, such as carrying a concealed weapon or transporting illegal liquor, could not be in the officer's presence as concealment is part of the offense. Where a sheriff heard shots in a road, and on investigation found that defendent had been one of the persons standing in the road, the fact that there was a bulge in defendent's pocket was not sufficient to cause it to be a crime committed in the sheriff's presence.[17] But in a case in which an officer could see an imprint in defendent's coat clearly enough to know that it was a gun, it was held a crime in his presence. Yet it was still a concealed weapon because an ordinary man would not detect it.[18]

Thus we have a combination in our arrest statute of two somewhat

[10] State v. DeHerrodora, 192 N. C. 749, 136 S. E. 6 (1926); Catching v. Commonwealth, 203 Ky. 151, 261 S. W. 1107 (1924).
[11] State v. Pluth, 157 Minn. 145, 151, 195 N. W. 789, 791 (1923).
[12] Piedmont Hotel Co. v. Henderson, 9 Ga. App. 672, 72 S. E. 51 (1911).
[13] People v. Johnson, 86 Mich. 175, 48 N. W. 870 (1891).
[14] State v. Lutz, 85 W. Va. 330, 334, 101 S. E. 434, 439 (1919).
[15] Hughes v. Commonwealth, 19 Ky. 479, 41 S. W. 294 (1897).
[16] Campbell v. Commonwealth, 203 Ky. 151, 261 S. W. 1107 (1924).
[17] Banks v. Commonwealth, 202 Ky. 726, 261 S. W. 262 (1924).
[18] Robinson v. Commonwealth, 207 Ky. 53, 268 S. W. 840 (1925).

mutually exclusive terms. "Reasonable grounds to believe" can consist of information derived from others, and the officer need not have personal knowledge of the crime. "In his presence," on the other hand, must consist of immediate knowledge gained through the senses. Our Court has not yet construed the new statute. Only one other state, New Hampshire, has a statute[19] similar to that of North Carolina, but no cases have been found construing the New Hampshire statute. Therefore, in the absence of any definitive interpretation of the statute, the writer will attempt an analysis of the statute in terms of constructions which might be made.

If an officer is acting on a tip, information, or hearsay, however reliable, the offense is clearly not one committed in his presence. Nor should the addition to the statute of "reasonable grounds to believe" alter the result in these cases in which the officer's knowledge is gained through reports and not the use of his senses, since sensory perception is a *sine qua non* for an offense to be in the officer's presence.

There is more difficulty, however, where the officer has perceived through his senses enough facts and circumstances to give him "reasonable grounds to believe" that a crime is being committed. This may be no more than a well grounded belief, but he has gained his knowledge through his senses. For example, in the case in which the sheriff heard shots in the road, and later found one of the persons who had been in the road, with a bulge in his coat. This was not a crime in the sheriff's presence as he did not have immediate knowledge of the commission of the crime. However, the sheriff did have reasonable grounds to believe that the person was carrying a concealed weapon, and he gained his information through the use of his senses. Though this was not a crime in the sheriff's presence, it could be argued that the facts were sufficient to constitute "reasonable grounds to believe" that the offense was committed in the sheriff's presence since the facts were detected through the use of his senses.

Allowing an officer to arrest under these circumstances would also have far reaching effects on the law of search and seizure. It would create an indirect way to circumvent the requirements for search without a warrant, by allowing an officer to make an arrest under the above circumstances and then make a lawful search incident to such arrest;[20]

[19] N. H. RSA § 594-10.

[20] Mr. Justice Clarkson has suggested that if an officer has a reasonable belief that a person may be arrested and held until a warrant could be obtained, or that illegal goods may be seized without a warrant. However, these suggestions aren't helpful because there is no question but that an officer may search incident to a lawful arrest and does not need to hold the person until a warrant can be obtained. Nor can an officer seize illegal goods without a warrant unless he either has arrested the person accused or has absolute personal knowledge of the possession of the illegal goods by the accused. (State v. Jenkins, 195 N. C. 747, 143 S. E. 538 (1928) and State v. Hickey, 198 N. C. 45, 150 S. E. 615 (1929).)

for it is well settled that an officer making an arrest has authority to search the place of arrest of his prisoner and to take from him any dangerous weapons or anything that he may deem necessary to his own or to the public safety, to prevent escape, or which he believes to be connected with the offense charged or may give a clue as to the commission of the crime.[21]

The section of the North Carolina General Statutes[22] dealing with illegal transportation of liquor states that an officer must have absolute personal knowledge that such vehicle or baggage contains illegal liquor in order to search the same without a warrant. Absolute personal knowledge was defined in *State v. Godette*[23] as knowledge acquired through the sense of seeing, hearing, smelling, tasting, or touching. The court there also said that it is not necessary that the officer should see the contraband, but he must have direct personal knowledge through his hearing or other senses of the commission of the crime.

North Carolina apparently follows this rule of absolute personal knowledge in the search without warrant of a vehicle or baggage for contraband other than liquor.[24] Contrasted with North Carolina's position on this point is the "probable cause" rule which obtains in the Federal Courts. "Probable cause is a belief reasonably arising out of the circumstances known to the seizing officer, that an automobile or other vehicle contains that which is subject to seizure and destruction."[25] Thus it seems that under the Federal rule an officer could, without warrant, search an automobile when he has reliable information or a well grounded belief that the automobile is transporting contraband, while in North Carolina an officer must have absolute personal knowledge through his senses that the vehicle contains contraband in order to search it without a warrant. To allow an officer to arrest for a misdemeanor of which he does not have "absolute personal knowledge," but of which he has "reasonable grounds to believe" gained through his senses, would give the officer the right to make a search incident to such arrest. This indirect method of search would be a circumvention of the requirement of absolute personal knowledge requisite for search without a warrant in North Carolina, and would appear to be somewhat of a compromise between an adoption of the Federal rule of "probable cause," and North Carolina's rule of absolute personal knowledge.

It is doubtful that the legislature intended for a construction to be placed on the arrest statute which indirectly would so broaden an officer's

[21] Smith v. State, 52 Okla. Crim. 333, 4 P. 2d 1076 (1931); People v. Chaigles, 237 N. Y. 193, 142 N. E. 583 (1923).
[22] N. C. GEN. STAT. § 18-6 (1953).
[23] 188 N. C. 497, 125 S. E. 24 (1924).
[24] MACHEN, THE LAW OF SEARCH AND SEIZURE, p. 61 (1950).
[25] Carroll v. United States, 267 U. S. 132 (1925).

power to search without a warrant. It seems that the legislature intended to keep the requirement of absolute personal knowledge for an officer to search without a warrant because the same legislature rejected an amendment to G. S. § 18-6 which read "Provided that nothing in this section shall be construed to authorize any officer to search any vehicle or baggage of any person without a search warrant duly issued except where the officer has reasonable grounds to believe that there is intoxicating liquor in such vehicle."[26] This rejected amendment would grant broader power to search without warrant than would the above construction of the arrest statute as the rejected amendment would allow an officer to search without warrant on reliable information gained from others. However, in the line of cases in which the officer has gained his information *through the use of his senses,* the suggested construction might broaden the officer's powers more than the rejected amendment, because the latter has some precautionary measures which aren't present in the arrest statute.

Thus it seems that the legislature intended that for an officer to arrest without a warrant, he must have more than reasonable grounds to believe that a crime is being committed, even if he gained his reasons for this belief through his senses. As has been pointed out, "in his presence" often is treated synomymously with "within his immediate knowledge." Therefore for one to have reasonable grounds to believe that a crime is being committed "in his presence," he must have reasonable grounds to believe that it is within his immediate knowledge. He must have knowledge through his senses, of such facts and circumstances as would lead a reasonable man to believe that he had observed some part of the commission of the crime. Thus if an officer happened to make a mistake, and though he had actual knowledge through his senses of such facts and circumstances as would cause a reasonable man to believe that he had observed the commission of a crime, when in fact no crime was being committed, the clause "reasonable grounds to believe a crime is committed in his presence" would relieve the officer from any liability for his mistakes.

Other states have reached a similar result by judicial interpretation of "in his presence." In *Snyder v. United States,*[27] circuit Judge Woods, dissenting on the particular facts, agreed with the proposition of the majority on the requirements of "in his presence," saying ". . . an officer must have personal knowledge acquired at the time through his hearing, sight, or other senses of the present commission of the crime by the accused. *But this does not preclude the idea that the requisite knowledge may be based on a practically certain inference drawn by a*

[26] Proposed House Bill, number 569, reported unfavorably April 7, 1955.
[27] 285 Fed. 1, 4 (4th Cir. 1922).

reasonable mind from the testimony of the senses." (Emphasis added.) In *LeFaivre v. State*,[28] the Maryland court stated "... an offense is committed in his presence or view if, through his senses he had knowledge of facts or circumstances sufficient to justify a sincere belief that accused is committing the misdemeanor in his presence." The New York court stated in *People v. Esposito*,[29] "If a police officer is in bodily reach of a person then and there engaged in the commission of a misdemeanor, and perceiving indications of the commission of the offense sufficient to induce reasonable belief of the fact, acting in good faith, intending performance of duty, proceeds to arrest such person, the arrest is lawful as for the commission of a crime in the officer's presence." This seems to be what the legislature intended by adding the clause "reasonable grounds to believe that it is committed in his presence." Nor does it seem that the legislature intended our statute to be broader than these interpretations.

Thus the test would seem to be: Has the officer observed enough facts and circumstances through his senses or personal observation as should reasonably cause him to believe that he is presently observing the commission of the crime.

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Eminent Domain in North Carolina—A Case Study

Eminent domain, a term attributable to the famous seventeenth century jurist, Hugo Grotius, means the right of the state or of a person acting for the state to use, alienate, or destroy property of a citizen for the ends of public utility.[1] This right, also called the power of condemnation, belongs to every independent government as an incident of its sovereignty and needs no constitutional recognition.[2] The right is founded upon the fact that such property is to be used only for the benefit of the general public,[3] and it is allowed only so far as it is necessary for the proper construction and use of the improvement for which it is taken.[4] The policy underlying the authority to condemn is to prevent an owner aware of the necessity of the taker from making the most of such necessity and demanding an outrageously high price.[5] With the upsurge in the development of super highways and hydroelectric dams and the redevelopment of urban areas, eminent domain is an area of the law that is gaining in importance in this state and elsewhere. Thus it seems worth-

[28] 208 Md. 52, 56, 116 A. 2d 368, 369 (1955), case reversed on lack of evidence in 118 A. 2d 639 (1955).
[29] 118 Misc. 867, 194 N. Y. Supp. 326, 332 (Sp. Sess. 1922).

[1] Wissler v. Yadkin River Power Co., 158 N. C. 465, 74 S. E. 2d 460 (1912).
[2] Jeffress v. Town of Greenville, 154 N. C. 490, 70 S. E. 2d 919 (1911).
[3] Sparrow v. Dixie Leaf Tobacco Co., 232 N. C. 589, 61 S. E. 2d 700 (1950).
[4] Spencer v. Willis, 179 N. C. 175, 178, 102 S. E. 275, 277 (1920) (dictum).
[5] Nantahala Power & Light Co. v. Moss, 220 N. C. 200, 17 S. E. 2d 10 (1941).