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ARREST WITHOUT WARRANT IN MISDEMEANOR CASES

ERNEST W. MACHEN, JR.*

The North Carolina legislature may soon be called upon to re-examine the law defining the power of peace officers to arrest without a warrant in misdemeanor cases. The need for such re-examination has long existed, but this fact only recently has been brought dramatically to the attention of officials and the public as a result of the North Carolina Supreme Court's decision in *State v. Mobley*.¹

The over-all problem of determining what authority agents of the executive branch of the government should have in making arrests on their own initiative, without an order from an official of the judicial branch, is very complex. It involves the consideration of many factors important in keeping the machinery for the administration of justice in delicate balance with respect to the rights of individuals and the needs of the state.² It is not appropriate that this article should discuss these factors, though they should be weighed carefully in any plan to rewrite the basic law of arrest.³ Rather the purpose here will be to discuss only those problems raised by the *Mobley* decision, and to suggest additional areas where uncertainties exist in this important field.

The essential facts of the case can be stated briefly. The chief of police of the town of Dallas, North Carolina, undertook to arrest the defendant without a warrant, on the ground that the defendant was committing the offense of public drunkenness in the police officer's presence. Defendant denied that he was drunk, resisted the arrest, and struck the officer a blow on the head before being subdued and carried to jail. Subsequently he was brought to trial, charged with public drunkenness, resisting arrest, and assault. The jury returned a verdict

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¹ 240 N. C. 476, 83 S. E. 2d 100 (1954).

² See, POUND, *CRIMINAL JUSTICE IN AMERICA* (New York: Holt, 1945).

³ Numerous articles have appeared in recent years, containing various suggestions for modernizing the law of arrest. See, e.g., Hall, *The Law of Arrest in Relation to Contemporary Social Problems*, 3 U. OF CHI. L. REV. 345 (1936); Warner, *The Uniform Arrest Act*, 28 VA. L. REV. 315 (1942); Warner, *Modern Trends in the American Law of Arrest*, 21 CAN. B. REV. 192 (1943); Warner, *Investigating the Law of Arrest*, 26 A. B. A. J. 151 (1940), reprinted in 31 J. CRIM. L. AND CRIMINOLOGY 111 (1940); Waite, *Some Inadequacies in the Law of Arrest*, 29 MICH. L. REV. 448 (1931); Waite, *The Law of Arrest*, 23 TEXAS L. REV. 279 (1946); Potts, *The Law of Arrest*, 1 BAYLOR L. REV. 397 (1949); Comment, *Some Proposals for Modernizing the Law of Arrest*, 39 CALIF. L. REV. 96 (1951). Unfortunately, some of the suggestions are concerned only with expediency in law enforcement, and perhaps give insufficient consideration to the other factors involved.

of guilty on the two latter charges, but found the defendant not guilty of public drunkenness.

It is settled law in this jurisdiction that a person may use reasonable force to resist an illegal arrest.⁴ Consequently, the defendant on appeal urged: (1) that public drunkenness is not a breach of the peace, so that the officer had no authority to arrest defendant without a warrant for this offense, and (2) that if an officer does have authority to arrest for misdemeanors committed in his presence other than breaches of the peace, it is within the province of the jury to determine whether the officer had sufficient reason to believe defendant was publicly drunk when arrested, and that the trial judge erred in instructing the jury, in effect, that the officer was the sole judge as to the reasonableness of this belief.⁵

The State challenged the first of these contentions, citing in its brief several cases wherein the North Carolina court had approved arrests without warrant for public drunkenness.⁶ As to the second, the argument was strongly made (and supported by various authority) that even though the jury subsequently found that the defendant was not in fact guilty of that offense, nevertheless the arrest would be justified if the officer had reason to believe, from observing the defendant, that he was publicly drunk.⁷

The Supreme Court of North Carolina held: first, that with certain exceptions not here applicable, an officer has no authority to arrest without a warrant in misdemeanor cases unless the misdemeanor amounts to a breach of the peace; second, that public drunkenness alone is not a breach of the peace; and third, that the officer's good faith in believing he had the authority to arrest is immaterial. Therefore, since the arrest was unauthorized, the defendant could not properly be convicted of resisting and assault, there being no showing that he used excessive force.

The "breach of the peace limitation." There is no question but that at common law a peace officer had no power to arrest without a warrant for a misdemeanor, except when a breach of the peace had been committed in his presence, or when he had reasonable grounds to believe that a breach of the peace was about to be committed or renewed in his presence.⁸

⁴ *State v. Allen*, 166 N. C. 265, 80 S. E. 1075 (1914). This rule has been criticized on the ground that the legality of the arrest should not be settled by fighting it out on the street. The rule was established in an era when jails were so unsanitary that many persons died there while awaiting trial. See Warner, *Investigating the Law of Arrest*, 26 A. B. A. J. 151, 152 (1940); Comment, 39 CALIF. L. REV. 96, 111-112 (1951).

⁵ Brief for Appellant, pp. 9-12, *State v. Mobley*, 240 N. C. 476, 83 S. E. 2d 100 (1954), quoting from *State v. McNinch*, 90 N. C. 695 (1884).

⁶ Brief for the State, pp. 3-6, *State v. Mobley*, *supra* note 5.

⁷ *Id.* at 6-13.

⁸ 9 HALSBURY'S LAWS OF ENGLAND, § 612 (1909); *State v. Belk*, 76 N. C. 10,

In recent years, however, there has been a gradual breaking down of this rule, particularly with respect to the breach of the peace limitation. The change has been worked largely, as might be expected, by direct legislative action, but the courts too have played their part. Not many have undertaken by judicial fiat to discard the limitation outright,⁹ but several have sought to enlarge the officer's power of arrest by classifying as a breach of the peace conduct which actually falls somewhat short of that concept.¹⁰

More than seventy years ago, the North Carolina court employed a similar approach when, in *State v. Freeman*,¹¹ Justice Ashe announced that "we can see no reason why [a person] may not upon view be arrested for public drunkenness; for when open and exposed to public view, it becomes a nuisance."¹² In subsequent decisions, the breach of the peace limitation was gradually lost sight of, at first in reliance on this novel idea that an officer might arrest for any "nuisance" (which seemed to embrace most minor offenses, especially those prohibited by town ordinance) committed in his presence,¹³ and later, through inadvertence in the frequent reiteration of the rules of arrest in general terms.¹⁴

The court in *State v. Mobley*, however, chose not to continue this innovation, and specifically overruled that portion of *State v. Freeman*, as well as the holdings and dicta in subsequent cases which had failed to state the rule in its common law form. In doing so, the court pointed first to the fact that the authority relied on in the *Freeman* case was erroneous, and second, to the fact that the power of arrest in North Carolina has since 1869 been defined and limited by statute.¹⁵

13-14 (1877); *Commonwealth v. Gorman*, 288 Mass. 294, 192 N. E. 618 (1934). Authorities are collected in Bohlen & Shulman, *Arrest With and Without a Warrant*, 75 U. OF PA. L. REV. 485, 486 n. 2 and 3 (1927).

⁹ The A. L. I. CODE OF CRIMINAL PROCEDURE 232-233 (1931) listed several cases, but Bohlen & Shulman, *supra* note 8, at 486 n. 4-6, had earlier demonstrated that only one was a direct holding.

¹⁰ See, e.g., *State ex rel. Thompson v. Reichman*, 135 Tenn. 653, 188 S. W. 225 (1916) (selling liquor); *Hughes v. State*, 145 Tenn. 544, 238 S. W. 588 (1922) (possessing and transporting liquor); *Miles v. State*, 30 Okla. Cr. 302, 236 Pac. 57 (1925) (possessing liquor); *Haynes v. State*, 71 Fla. 585, 72 So. 180 (1916) (carrying concealed weapon); *State v. Gorham*, 288 Mass. 294, 192 N. E. 618 (1934) (driving while intoxicated). Public drunkenness, however, was not so classified: *State v. Mullins*, 135 W. Va. 60, —, 62 S. E. 2d 562, 566 (1950), and cases cited in *State v. Mobley*, 240 N. C. 476, 482, 83 S. E. 2d 100, 104 (1954).

¹¹ 86 N. C. 683 (1882).

¹² *Id.* at 685.

¹³ See *State v. McNinch*, 87 N. C. 567 (1882); *Brewer v. Wynne*, 163 N. C. 319, 79 S. E. 629 (1913).

¹⁴ See cases cited in Brief for the State, pp. 5-6, *State v. Mobley*, 240 N. C. 476, 83 S. E. 2d 100 (1954), which were disapproved by the court. *Id.* at 486, 83 S. E. 2d at 107. See also, *State v. Campbell*, 182 N. C. 911, 110 S. E. 86 (1921) and *State v. Jenkins*, 195 N. C. 747, 143 S. E. 538 (1928).

¹⁵ And once the law is codified "an arrest without warrant except as authorized by statute is illegal." *State v. Mobley*, 240 N. C. 476, 480, 83 S. E. 2d 100, 103

With respect to arrests without warrant in cases of felony, North Carolina General Statute 15-40 (hereafter referred to as G.S.) states the power of private persons, and G.S. 15-41 the power of peace officers. But G.S. 15-39, said the court, "confers on peace officers and private persons, on equal terms, the power of arrest without warrant in certain misdemeanor cases," all of which involve breaches of the peace. It might be noted in passing that G.S. 15-39 does not by its terms apply to peace officers. There is room for argument that it was designed to apply only to private persons, and that the officer's power to arrest in misdemeanor cases was to be left where it was at common law.¹⁶ However, the result is nearly the same, since G.S. 15-39 comes rather close to stating the common law rule.¹⁷

That this portion of the *Mobley* decision corrects an error in the North Carolina cases and clarifies the law on this point can hardly be denied. Whether the law as we have it is what it should be is indeed another matter, as the court itself hastened to emphasize. It would be appropriate for the legislature, wrote Justice Johnson, to determine whether the law has kept pace with the exigencies of the times in conferring adequate powers of arrest on peace officers.¹⁸

Most states have long since entirely abolished the breach of the peace limitation by direct legislative action. The typical statute provides: "A peace officer may, without a warrant, arrest a person for a public offense committed or attempted in his presence."¹⁹ Other statutes authorize such arrests for any "offense,"²⁰ any "indictable offense,"²¹ any "crimi-

(1954). This may be, where the statute purports to cover the entire field; see, e.g., LA. REV. STAT. § 15:59 (1950). However, if this is true in North Carolina, we are in need of more legislation. E.g., N. C. GEN. STAT. §§ 15-43, 45 (1953) mention arrest to prevent a felony, but no such power is directly given an officer by statute, though this power existed at common law.

¹⁶ Note that sections applicable to private persons begin, as does G. S. 15-39, with the words "Every person" (G. S. 15-40, 15-45), whereas sections applicable to officers indicate the officers to whom they apply (G. S. 15-41, 15-44).

¹⁷ Close, but not quite. G. S. 15-39 provides: "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." If read literally, an officer (if it applies to him) could not arrest for a breach of the peace *already completed* or discontinued prior to arrest, since an arrest would not be necessary to suppress and prevent the same. At common law, an officer was not so limited; see note 8 *supra*.

¹⁸ The Judicial Council has under consideration proposals to liberalize the present statutes, and will make its recommendations to the 1955 General Assembly.

¹⁹ CAL. PEN. CODE § 836 (1949); IDAHO CODE ANN. c. 6, § 19-603 (1948); IOWA CODE c. 755, § 755.4 (1954); MINN. STAT. § 629.34 (1949); MONT. REV. CODE: ANN. § 94-6003 (1947); NEV. COMP. LAWS § 10751 (1929); N. D. REV. CODE § 29-0615 (1943); OKLA. STAT. tit. 22, § 196 (1951); S. D. CODE § 34.1609 (1939); UTAH CODE ANN. § 77-13-3 (1953). Similar statutes are found in ALA. CODE tit. 15, § 154 (1940), and TENN. CODE ANN. § 11536 (Williams 1934) ("for a public offense committed or a breach of the peace threatened in his presence"). ARK. STAT. ANN. § 43-403 (1947) is the same except that it omits reference either to offenses attempted or breaches of the peace threatened.

²⁰ CONN. GEN. STAT. § 465 (1949) *as amended by* CONN. GEN. STAT. § 150c

nal offense,"²² any "crime,"²³ any "misdemeanor,"²⁴ or for the violation of "any law"²⁵ or "any criminal law"²⁶ committed in the officer's presence. The variations in these terms might at first appear to be purely formal, and indeed, in some instances there is little to indicate that any thought was given to the significance of the particular phrase chosen. When we consider, however, the difficulties often encountered by the courts in determining such questions as whether the violation of every law is a "crime," whether the word "misdemeanor" embraces every offense below felony, whether the violation of a town ordinance or a rule of an administrative board constitutes a "crime," then the importance of selecting a phrase which exactly describes the type of misconduct to be included in the officer's power of arrest without warrant becomes quite apparent.²⁷

But whatever the specific scope of the statutes, it is clear that the vast majority of the states have already taken action to broaden the officer's power of arrest without warrant to include virtually all misdemeanors committed in his presence, so that no more than half a dozen states now have as their basic law, applicable to peace officers generally, the common law rule.²⁸

It has been a common practice in virtually all of the states to enact statutes authorizing particular classes of officers, or peace officers gen-

(Supp. 1953); GA. CODE ANN. § 27-207 (1953); KAN. GEN. STAT. §§ 13-623, 625 (1949) (police of first class cities); see also, §§ 14-819, 820 (police of second class cities), § 15-601 (marshals of third class cities), and § 80-704 (constables); N. MEX. STAT. ANN. § 14-1606 (1941) (municipal peace officers). United States marshals and their deputies are given this power by 18 U. S. C. § 3053 (1952). In 1951 like powers were extended to agents of the F. B. I., 18 U. S. C. § 3052 (1952). See also D. C. CODE ANN. § 4-140 (1951).

²¹ MISS. CODE ANN. § 2470 (1942). For some purposes, the phrase "indictable offence" has been deemed not to include misdemeanors. Apparently the Mississippi court has not so treated it in this connection. See *Paramount-Richards Theatres, Inc. v. City of Hattiesburg*, 210 Miss. 271, 282, 49 So. 2d 574, 579 (1950).

²² ILL. REV. STAT., c. 38, §§ 655, 657 (1953).

²³ N. Y. CRIM. C. § 177.

²⁴ ARIZ. CODE ANN. § 44-124 (1939); DEL. CODE ANN. tit. 11, § 1906 (1953); FLA. STAT. § 901.15 (1953); LA. REV. STAT. § 15:60 (1950); MICH. COMP. LAWS § 764.15 (1948); N. H. REV. LAWS c. 423, § 25 (1942); R. I. PUB. LAWS 1941, c. 982, § 68, cl. 5; VA. CODE ANN. § 19-73 (Cum. Supp. 1954); WIS. STAT. § 354.03 (1949).

²⁵ IND. STAT. ANN. § 9-1024 (Burns 1942); ME. REV. STAT., c. 134, § 4 (1944); MO. REV. STAT. § 85.230 (1949) (municipal peace officers); NEB. REV. STAT. § 29-401 (1948); OHIO GEN. CODE ANN. § 13432-1 (1939); PA. STAT. ANN. tit. 71, § 252 (Supp. 1953) (state police); WYO. COMP. STAT. ANN. §§ 10-301, 10-2502, and 13-406 (constables) (1945). See also, N. Y. EXEC. LAW § 223 (state police outside of municipalities).

²⁶ ILL. REV. STAT. c. 24, § 9-93 (1953) (municipal officers); KAN. GEN. STAT. § 80-704 (1949) (constables); S. C. CODE ANN. § 17-253 (1952) (sheriff and deputies); W. VA. CODE ANN. § 6291a (1949) (sheriff and deputies).

²⁷ A sound caution against provisions embracing every petty offense was voiced by Bohlen & Schulman, *supra* note 8, at 490-492.

²⁸ No general statutes to the contrary were found for Colorado, Kentucky, Massachusetts, New Jersey, North Carolina, and Texas.

erally, to arrest on sight without warrant persons offending against a particular law. For example, this has been done in North Carolina with respect to violations of the 1937 Motor Vehicle Law, the illegal transportation of liquor, and a variety of other offenses. Conspicuous omissions from this list include such crimes as petit larceny,²⁹ carrying a concealed weapon, malicious injury to property, certain offenses against morality (including prostitution), delaying or obstructing an officer in the performance of his duty, violation of lottery and gambling laws, public drunkenness, and vagrancy. The act of committing any one of these offenses may be effected in such a way as also to breach the peace, but in the absence of that possibility, as the law now stands, an officer is without power in North Carolina to arrest for any of these offenses committed in his presence.

Yet, prior to the *Mobley* decision, not only were arrests for these offenses being made daily without warrant by officers who believed themselves to be properly executing their solemn duty, but had an officer had the temerity to decline to do so, he would undoubtedly have incurred the wrath of his superior, and members of the by-standing public as well.

When the law thus lags far behind accepted practice, there is a strong incentive to ignore the law because it is "technical." But disregard of the law by officers charged with its enforcement is a dangerous habit to allow to develop in a democratic society, as "it breeds contempt for law; it invites every man to be a law unto himself."³⁰ If the law relating to police authority is unreasonably restrictive, it should be changed, and when changed, scrupulously observed.

The officer arrests without warrant at his peril. Having found that the officer had no authority to arrest for the offense of public drunkenness even though committed in his presence, the court in the *Mobley* case would ordinarily have had no occasion to go further. However, as pointed out above, the State had proceeded with its argument in the belief that the officer did have such power, and accordingly anticipated this further question: Was the officer required to determine at his peril whether the accused actually was drunk in public, or would the arrest be justified if, after observing the defendant's conduct, the officer had reasonable grounds so to believe? Apparently in response to the State's argument on this issue, the court remarked that "a person making an

²⁹ Larceny was originally included along with felony in G. S. 15-40, and G. S. 15-41, but was dropped by the editors of the Revisals of 1905, apparently because N. C. PUB. LAWS 1895, c. 285 (now G. S. 14-72) made some larcenies a misdemeanor. Failure to drop the word larceny from G. S. 15-45 was evidently inadvertent. Recently, Massachusetts included all larceny in its statute on arrest without warrant, MASS. ANN. LAWS c. 276 § 28 (Supp. 1953).

³⁰ Dissenting opinion of Mr. Justice Brandeis in *Olmstead v. United States*, 277 U. S. 438, 485 (1928).

arrest under the authority of G.S. 15-39 must determine, at his peril, preliminary to proceeding without a warrant, whether an offense arrestable under the statute is being committed."³¹

Law enforcement agencies throughout the state immediately indicated grave concern over the possible implications of this statement. They feared it might have the effect of rendering every arrest without warrant in misdemeanor cases illegal in the event the accused is subsequently acquitted of the charge for which the arrest was made.³² The paralyzing effect which this rule would have on all patrolling activity is obvious. Law enforcement would soon be reduced to a process of gathering evidence and serving warrants.

Whether or not the court intended to go this far, it certainly gave that impression by the language used, and by its action in disapproving certain pronouncements in earlier cases.³³ Yet, all that the court was called upon to hold in this regard was that there are certain misdemeanors over which an officer has no power of arrest without a warrant, even when the offense is actually committed in his presence, and if he assumes to arrest for one of these, good faith will not justify his action.

What, then, is the extent of this rule that an officer arrests without a warrant in misdemeanor cases at his peril? To begin with, there are four elements that might be required in all such arrests: first, the existence of a valid criminal law prohibiting specific conduct; second, conduct on the part of the arrestee which (apparently) violates that law; third, the presence of the officer at the time and his awareness, through his own senses, that the arrestee is engaged in such conduct; and fourth, in states such as North Carolina, authority in the officer to arrest on view, without a warrant, for that particular type of offense. Will the officer be permitted any reasonable margin of error as to the existence of any of these elements, or must he, at his peril, determine that all are present?

That he will be permitted no error as to the first element seems settled in this jurisdiction by *State v. Hunter*,³⁴ the case principally relied on for the statement in the *Mobley* decision quoted above. There the officer in good faith arrested a citizen on the street, without a warrant, for conduct prohibited by a local ordinance. The officer was later convicted of false imprisonment, and the court affirmed on the ground that the ordinance which the citizen had violated was unconstitutional

³¹ *State v. Mobley*, 240 N. C. 476, 483, 83 S. E. 2d 100, 105 (1954).

³² See Opinion of Attorney General of North Carolina to Commissioner of Motor Vehicles, August 13, 1954.

³³ *State v. Mobley*, *supra* note 31, at 486-7, 83 S. E. 2d at 107-8. Indeed, in disapproving the passage from *State v. McNinch*, 90 N. C. 695 (1884), the court went further than defendant, who, in his brief, relied upon that very passage as authority for his contention set forth *supra* text at note 5.

³⁴ 106 N. C. 796, 11 S. E. 366 (1890).

and void. Thus, the officer must determine at his peril, when proceeding without a warrant (or for that matter, with a warrant, according to some cases),³⁵ that the statute or ordinance which the arrestee is violating is a valid one.

Next, skipping for the moment to the third element, there are literally scores of cases holding that an arrest without a warrant is illegal, even though the arrestee is in fact committing a misdemeanor at the time, if the officer acts on suspicion and does not in fact see, or otherwise perceive with his own senses, acts which themselves indicate a violation.³⁶ Many cases reciting the "arrest at his peril" doctrine are actually concerned only with this point, which really does nothing more than enforce the requirement that the officer must view the offense itself as distinguished from conduct which only arouses his suspicion that an offense may be in progress.³⁷

State v. Mobley stands at least for the proposition that an officer will be permitted no error as to the fourth element. Thus, when an officer's power to arrest without warrant in cases less than felony is limited (as it is in this state by G.S. 15-39 and other statutes) to some but not all misdemeanors, the officer must determine at his peril before proceeding without a warrant, that the misdemeanor for which the arrest is to be made is one falling within, and not without, that limitation.

As to the second element, however, the majority of courts³⁸ have not held the officer to a standard of infallibility as to whether the accused is in fact guilty of the offense which the officer observed. Since guilt or innocence is a matter for the court and jury to determine through the trial process, the most that need be required of the arresting officer is that he observe conduct which, to all intents and purposes, constitutes an offense.

It might be said that permitting an arrest on "reasonable belief" is appropriate only in felony cases, where the offense does not usually occur in the officer's presence, and that in misdemeanor cases, where it must occur in his presence, the officer either sees an offense or he does

³⁵ See *Crawford v. Huber*, 215 Mich. 564, 184 N. W. 594 (1921); but the usual holding is otherwise, *Rush v. Buckley*, 100 Me. 322, 61 Atl. 774 (1905).

³⁶ See, e.g., cases collected in Coates, *The Law of Arrest in North Carolina*, 15 N. C. L. REV. 101, 109-110 (1937); Perkins, *The Tennessee Law of Arrest*, 2 VAND. L. REV. 509, 564-566 (1949); Note, 44 A. L. R. 132 (1926).

³⁷ See *State v. McAfee*, 107 N. C. 812, 12 S. E. 435 (1890); *Adair v. Williams*, 24 Ariz. 422, 210 Pac. 853 (1922); *Fitzpatrick v. Commonwealth*, 210 Ky. 385, 275 S. W. 819 (1925).

³⁸ *Coverstone v. Davis*, 38 Cal. 2d 315, 239 P. 2d 876 (1952), Note, 25 So. CAL. L. REV. 449 (1952); *Goodwin v. State*, 148 Tenn. 682, 257 S. W. 79 (1924); *State v. Mullins*, 135 W. Va. 60, —, 62 S. E. 2d 562, 568 (1950); *Kroger Grocery & Baking Co. v. Waller*, 208 Ark. 1063, 189 S. W. 2d 361 (1945); *Doak v. Springstead*, 284 Mich. 459, 279 N. W. 898 (1938); and cases collected in Brief for the State, p. 13, *State v. Mobley*, 240 N. C. 476, 83 S. E. 2d 100 (1954); Perkins, *supra* note 32, at 566; *Stone, Arrest Without Warrant* [1939] Wis. L. REV. 385, 387-388.

not, and there is no room for speculation as to whether he thought he saw one.³⁹ This argument loses most of its force when we consider (1) the fact that not all defendants who actually do violate the law in an officer's presence are ultimately convicted, and (2) that it is not always easy to determine as a matter of law what constitutes an offense, for example, an assault.⁴⁰

Because of the possible uncertainty raised by the *Mobley* decision on this point, the North Carolina legislature might well consider the advisability of inserting the "reasonable grounds to believe" phrase in statutes, which confer upon officers the power of arrest without warrant in misdemeanor cases. This has already been done in a number of jurisdictions,⁴¹ and it probably would not encroach unduly upon individual liberty, provided, of course, the reasonableness of the officer's action is kept subject to close judicial scrutiny.

³⁹ Historically, the "reasonable belief" phrase was omitted when stating the rule for arrest in misdemeanor cases only because it was not thought necessary; see Warren, *Modern Trends in the American Law of Arrest*, 21 CAN. B. REV. 192, 200-201 (1943).

⁴⁰ See, e.g., *State v. McIver*, 231 N. C. 197, 56 S. E. 2d 604 (1949) and *State v. Ingram*, 237 N. C. 197, 74 S. E. 2d 532 (1953).

⁴¹ DEL. CODE ANN. tit. 11, § 1906 (1953); IOWA CODE, c. 755, 755.4 (1954); N. H. REV. LAWS, c. 423, § 25 (1942); R. I. PUB. LAWS 1941, c. 982, § 68, cl. 5; VA. CODE ANN. § 19-78.1 (1950); WIS. STAT. § 354.03 (1949); D. C. CODE ANN. § 23-306 (1951). See also, ILL. REV. STAT., c. 38, § 657 (1953) (certainty as to offense; probable cause as to offender); MICH. COMP. LAWS § 764.15 (1948) (as to escaped convicts, parole violators, etc.); MISS. CODE ANN. § 2474 (1942) (specifically saves arrester from civil or criminal liability notwithstanding innocence of arrestee); TEX. CODE CRIM. PROC. § 214 (Vernon 1948).