

1980 WL 121252 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 29, 1980

***1 SUBJECT: Arrest-Juveniles**

(1) When a law enforcement officer has a right to make an arrest, he may only use whatever force is reasonably necessary to apprehend the offender or effect the arrest.

Officer John Johnson
Honea Path Police Department

QUESTION:

1. What is the degree of force a law enforcement officer may utilize in effecting the arrest of a juvenile?

STATUTES AND CASES:

[State v. Moultrie](#), Opinion No. 21032, filed August 16, 1979; [State v. Weaver](#), 265 S. C. 130, 217 S. E. 2d (1975); [State v. Payne](#), 213 N. C. 719, 197 S. E. 573 (1938); [State v. Franklin](#), 80 S. C. 332, 338, 60 S. E. 953, 955 (1908), Aff'd 218 U. S. 161, 30 S. Ct. 640, 54 L. Ed. 980 (1909).

DISCUSSION:

1. It has been stated that an officer, in effecting a lawful arrest 'represents the majesty of the law and that such may override all resistance'. [State v. Franklin](#), 80 S. C. 332, 338, 60 S. E. 953, 955 (1908), Aff'd 218 U. S. 161 (1909). The Opinion went on to state: 'No more responsible position is assumed by a peace officer than the right to make an arrest under the authority of a mandate of the law. The object is to carry into execution what the peace of society may demand.' It is consequently the duty of an individual to submit to a lawful arrest once the intentions of the law enforcement officer have been properly and reasonably revealed to the subject in question.

Under the law of South Carolina, when an officer has a right to make an arrest, he may use only whatever force is reasonably necessary to apprehend the offender or effect the arrest. [State v. Moultrie](#), Opinion No. 21032, Filed August 16, 1979; [State v. Weaver](#), 265 S. C. 130, 217 S. E. 2d 31 (1975).

The standard of the aforementioned cases is applied upon a case by case basis, according to the factual circumstances of each case. This is particularly true when a subject attempts to resist the lawful effecting of an arrest made by a law enforcement officer. What is a reasonable use of force will thus in part depend upon the conduct of the subject who is the object of the arrest. If such subject uses force in an effort to resist arrest, a law enforcement officer may be able to utilize corresponding reasonable force to effect such arrest. One who resists a lawful arrest is in a difficult position to subsequently allege that a law enforcement officer utilized an excess amount of force.

'When a man puts himself in a state of resistance, and openly defies the officers of the law, he is not allowed to take advantage of his own wrong, if his life is thereby endangered, and to set up the excuse of self-defense.' 40 Am. Jur. 2d, [Homicide](#), § 109, p. 404, citing [State v. Payne](#), 213 N. C. 719, 197 S. E. 573 (1938).

There is one important caveat which must be kept in mind, however, in determining what is a proper and reasonable use of force under a given circumstance. The issue of whether an officer's use of force in effecting an arrest is a question of fact, and consequently, a determination to be made by the jury. An officer's view of what is reasonable and a jury's view of what is reasonable are not one and the

*2 This is particularly true with respect to the effecting of arrests of juveniles. Although juveniles are subject to the same reasonableness standard as are adults with respect to the use of force involved in effecting a lawful arrest, the question of the degree of such force, and the reasonableness thereof is generally viewed by a jury in a different light. There is a tendency for a jury to be more understanding of the conduct of children. Therefore, it is submitted that although juveniles are subject to the same standard of reasonableness as are adults with respect to the question of use of force in effecting a lawful arrest, law enforcement officers should exercise caution and make certain that their use of force is reasonable with respect to effecting an arrest of a juvenile.

Such caution should be exercised primarily for two reasons:

1. The determination of what constitutes a reasonable use of force is made by the jury, and this body may find many kinds of force utilized against juveniles to be unreasonable.
2. If a jury determines that a law enforcement officer's conduct is unreasonable, the officer involved may be subject to civil liability under [42 U. S. C. A. § 1983](#) for violation of an individual's civil rights.

CONCLUSION:

1. When a law enforcement officer has a right to make an arrest, he may utilize only whatever force is reasonably necessary to apprehend the offender or effect the arrest. *State v. Moultrie*, Opinion No. 21032, Filed August 16, 1979; [State v. Weaver, 265 S. C. 130, 217 S. E. 2d 31 \(1975\)](#). With respect to the arrest of juveniles, caution should be utilized by law enforcement officials in regards to the degree of force utilized to effect the arrest, given the possibility that juries may sympathize with a juvenile and find, under given situations, the conduct of law enforcement to be unreasonable. The fact that a juvenile is the subject of an arrest is a factor a jury may consider in determining whether or not a law enforcement officer's use of force was reasonable or unreasonable.

Sincerely,

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