

The Felony-Misdemeanor Distinction In The Maryland Law Of Arrest - Robinson v. State

Follow this and additional works at: <http://digitalcommons.law.umaryland.edu/mlr>



Part of the [Criminal Procedure Commons](#)

Recommended Citation

The Felony-Misdemeanor Distinction In The Maryland Law Of Arrest - Robinson v. State, 29 Md. L. Rev. 72 (1969)

Available at: <http://digitalcommons.law.umaryland.edu/mlr/vol29/iss1/8>

This Casenotes and Comments is brought to you for free and open access by the Academic Journals at DigitalCommons@UM Carey Law. It has been accepted for inclusion in Maryland Law Review by an authorized administrator of DigitalCommons@UM Carey Law. For more information, please contact smccarty@law.umaryland.edu.

The Felony-Misdemeanor Distinction In The Maryland Law Of Arrest

*Robinson v. State*¹

During a routine patrol on the afternoon of July 4, 1965, an officer of the Prince George's County Police Department discovered a severed lock on a fence surrounding a storehouse. He entered the grounds and observed that a door to the storehouse had been broken. Inside the building he saw four men who fled when they saw him. Two of the men ran out the door and escaped over the fence. The officer returned to his patrol car and radioed a "lookout" for the four men, describing the clothes of the two who had jumped the fence. Officer Donahue of the Bladensburg Police heard a broadcast of the lookout about ten minutes later. He saw the defendant and another man walking along the railroad tracks about three quarters of a mile from the storehouse. He testified: "I observed the defendant and then I saw that he was running, his pants were all raggedy and torn up and he matched the

1. 4 Md. App. 515, 243 A.2d 879 (1968).

description that the lookout was put out for."² The men came out onto the road "hitch-hiking." A car stopped to pick them up, but Officer Donahue arrived and ordered the two men out of the car at gun point. The men were returned to the storehouse and searched; an automobile registration card was seized which led the officers to a white Cadillac car parked nearby. The car was photographed, and a search of the car disclosed a pair of bolt cutters which were also seized. The defendant was charged with storehouse breaking with an intent to steal goods of the value of \$100.00 or more, grand larceny and receiving stolen goods. At the trial, photographs of the Cadillac were introduced; the car was identified as that in which the bolt cutters were found. The bolt cutters were marked for identification and displayed on a table in the courtroom, but were never offered in evidence. The evidence was received in the presence of the jury. The defendant objected to testimony concerning the Cadillac and to the reception of the photographs into evidence. He moved for a mistrial upon the display of the bolt cutters. These objections and motions were all denied. At the close of all the evidence the trial court reconsidered and granted a motion to quash all evidence as to the bolt cutters, the car and the pictures of it, and the \$205 that Officer Donahue had seized from the defendant, on the ground that such evidence was seized as the result of an illegal arrest. Nevertheless, the jury convicted the defendant on the grand larceny and storehouse breaking counts.³

The Maryland Court of Special Appeals reversed defendant's conviction for grand larceny on the ground of insufficiency of the evidence, but upheld the lower court's judgment with respect to storehouse breaking. The court first addressed itself to the defendant's argument that the trial court had violated Maryland Rule 729 by hearing defendant's objection to the admissibility of the state's evidence in the presence of the jury.⁴ Although the rule was not yet in effect at the time of defendant's trial, the court found that the substance of the rule was preferred Maryland procedure even before its adoption.⁵ The court concluded that the trial court had committed error by permitting the jury to hear its consideration of the admissibility of the challenged evidence, but found that the error was not sufficiently prejudicial to require reversal.

2. *Id.* at 518-19, 243 A.2d at 882.

3. The trial court granted a motion for acquittal as to the charge of receiving stolen goods. The Court of Special Appeals held that the evidence was insufficient to sustain the charge of grand larceny and reversed the conviction. The court might have avoided making its decision by upholding Robinson's arrest on the ground that the officer receiving the lookout had probable cause to believe a felony, grand larceny, had been committed. *See* Lamot v. State, 2 Md. App. 378, 384 n.1, 234 A.2d 615, 619 n.1 (1967).

4. Md. R.P. 729d(2): ". . . If the case is being tried before a jury the hearing on the motion, or on an objection to the introduction of evidence alleged to have been obtained by an unlawful search or seizure, shall be out of the presence of the jury." The obvious purpose of the rule is to prevent prejudice to a defendant by a display of evidence, which is later ruled inadmissible, before the jury.

5. Rule 729 has been in effect only since September 1, 1967, but its substance was firmly entrenched in prior case law. *See, e.g.,* Farrow v. State, 233 Md. 526, 197 A.2d 434 (1964).

The crucial factor in the appellate court's determination that the violation of Rule 729 was not prejudicial was its finding that the defendant's arrest, and, thus, the accompanying search, were lawful. A search accompanying and incident to a lawful arrest has been upheld as not "unreasonable" within the prohibition of the fourth amendment to the United States Constitution,⁶ and, therefore, evidence seized during such a search is properly admissible at trial. Thus the legality of the search and consequent admissibility of the seized evidence is tested and determined in such a case by the legality of the arrest.

The law governing arrests derives from ancient common law. In some states the law of arrest is now entirely regulated by statute,⁷ although many of these statutes merely codify the common law. In Maryland the common law rules are in force, except for some minor statutory provisions.⁸ At common law, the lawfulness of an arrest depends largely on whether the crime for which a person is arrested is a felony or a misdemeanor. The distinction between these two degrees of crime has become extremely hazy; indeed, the only valid general proposition is that a felony is usually considered a more serious crime than a misdemeanor. This vagueness stems, basically, from the evolution of the old English common law. At common law, a felony conviction resulted in total forfeiture of either lands or goods. The "felony" classification, with its accompanying forfeiture remedy, was reserved for the most serious crimes.⁹ In this country the penalty of forfeiture as punishment for a crime is unknown, but the distinctive terms have continued. In some states "felony" is used to describe an offense that carries a penitentiary sentence.¹⁰ However, most crimes now carry with them the possibility of penitentiary terms. In the federal jurisdictions any crime which can carry a sentence of more than one year's imprisonment is a felony.¹¹ In Maryland, the "felony" label is applied only to crimes "which were such at common law, or

6. *United States v. Rabinowitz*, 339 U.S. 56 (1950). Article 26 of the Declaration of Rights of the Maryland Constitution forbids searches without warrants, but has been held not to preclude warrantless searches incidental to valid arrests. *See Mulcahy v. State*, 221 Md. 413, 158 A.2d 80 (1960); *Callahan v. State*, 163 Md. 298, 162 A. 856 (1932). An arrest may not, however, be used merely as a pretext to search for evidence. *See United States v. Lefkowitz*, 285 U.S. 452 (1932); *Musgrove v. State*, 1 Md. App. 540, 232 A.2d 272 (1967).

7. Illinois and California have recently enacted comprehensive statutes. CAL. PENAL CODE §§ 834-51 (West 1956 & Supp. 1968). ILL. ANN. STAT ch. 38, § 107 (Smith-Hurd 1964).

8. MD. ANN. CODE art. 65, § 51 (1968) (exemption for member of organized militia from civil arrest while on duty); MD. ANN. CODE art. 27, § 620 (1967) (exempting persons coming into the state in obedience to a summons to testify in a Maryland court and persons passing through the state in obedience to a summons to testify in another state).

9. The common law felonies were murder, manslaughter, robbery, rape, burglary, larceny (distinction between grand and petit larceny being a later statutory creation), arson, sodomy and mayhem. L. HOCHHEIMER, CRIMINAL LAW § 4, at 22-23 (2d ed. 1904).

10. *See, e.g., Lashley v. State*, 236 Ala. 1, 180 So. 717 (1938).

11. 18 U.S.C. § 1 (1964). This definition may result in the same crime being both a felony and a misdemeanor. For example, under the National Prohibition Act of 1919, ch. 85, tit. II, § 29, 41 Stat. 305, transportation of illicit liquor was a misdemeanor the first or second time it was committed, but a felony when the third offense occurred because the violator could be sentenced to more than a year in prison. *See Carroll v. United States*, 267 U.S. 132, 154-56 (1925).

have been so declared by statute."¹² As a result, many serious crimes of more recent origin are only misdemeanors.

The arbitrary and imprecise nature of the felony-misdemeanor distinction would be only a matter of curiosity if it were not such a critical factor in the law of arrest. The rule in Maryland has long been that any police officer has a right to arrest, without first obtaining a warrant, any person committing *any* crime in the officer's presence or view.¹³ When the crime is not committed in the officer's presence or view, he can arrest the person without first obtaining a warrant only if he has probable cause to believe that a *felony* has been committed, and that the person he is arresting is the felon. Existence of probable cause, thus, will protect the police officer from a charge of false arrest even if no crime has been committed.¹⁴ "Probable cause exists 'where the facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed."¹⁵ While probable cause must be judged in each case on its particular facts, it is clear that it is a broader concept than "in the presence or view of the officer," the standard for misdemeanor arrests.¹⁶ The broader scope of the power to arrest for a felony is justified on the ground that public safety and the due apprehension of criminals charged with heinous offenses require that such arrests should be made at once, without a warrant. Flight

12. *Bowser v. State*, 136 Md. 342, 345, 110 A. 854, 855 (1920); *Dutton v. State*, 123 Md. 373, 378, 91 A. 417, 420 (1914).

13. See Kauffman, *The Law of Arrest in Maryland*, 5 MD. L. REV. 125, 155 (1941). This article contains a comprehensive discussion of the subject of arrest in Maryland, and is still the leading authority on the subject. Its broad scope covers arrests with warrants, arrests by private persons and forcible entry of buildings, areas not treated in this Note. So far as the authority of the police officer is concerned, Maryland follows the common law: 1) A police officer may arrest without a warrant a person who commits a felony in his presence or view, *id.*; 2) a police officer may arrest without a warrant when a felony has in fact been committed, whether or not in his presence or view, when he has reasonable ground to believe the arrestee has committed it, *e.g.*, *Brish v. Carter*, 98 Md. 445, 57 A. 210 (1904); *but see* note 14 *infra*; 3) a peace officer may arrest without a warrant for any misdemeanor committed in his presence or view, *Robinson v. State*, 200 Md. 128, 88 A.2d 310 (1952); *but see* notes 23, 25 *infra*; and 4) a police officer may not without a warrant arrest a person whom he reasonably suspects of having committed a misdemeanor, if that misdemeanor was not committed in his presence or view, *Scarlett v. State*, 201 Md. 310, 93 A.2d 753, *cert. denied*, 345 U.S. 955 (1953); *Wynkoop v. Mayor and City Council*, 159 Md. 194, 150 A. 447 (1930). See 21 OP. ATT'Y GEN. 296 (1936).

14. See *Samuel Kirk & Son v. Garrett*, 84 Md. 383, 35 A. 1089 (1896). See also *Price v. State*, 227 Md. 28, 175 A.2d 11 (1961). However, because a warrantless arrest for a misdemeanor can take place only when the offense has been committed in the officer's presence or view, acquittal of the crime charged has sometimes been held to conclusively show an illegal arrest for the purpose of precluding the use of evidence obtained in any accompanying search. See *Parrott v. Commonwealth*, 287 S.W.2d 440 (Ky. 1956).

15. *Brinegar v. United States*, 338 U.S. 160, 175-76 (1949), quoting *Carroll v. United States*, 267 U.S. 132, 162 (1925); *Edwards v. State*, 196 Md. 233, 237, 76 A.2d 132, 134 (1950).

16. Most importantly, perhaps, probable cause allows an officer to arrest for past felonies. See Kauffman, *The Law of Arrest in Maryland*, 5 MD. L. REV. 125, 152-54 (1941). Kauffman points out that "presence" and "view" are not synonymous. One can view a crime from a tall building and later make a valid arrest, although legally the crime is not committed in the arrestor's presence.

and escape of a misdemeanor were deemed only minor dangers to the public safety.

Probable cause may be furnished by information imparted to the officer by someone else,¹⁷ by the knowledge of the police officer himself,¹⁸ or by a combination of the two.¹⁹ In *Jones v. State*,²⁰ a woman was assaulted and her pocketbook taken. She described her assailant as a colored male, approximately five feet eight, wearing a plaid shirt. Other witnesses at the scene described the assailant's car as a red sports model with a black top. A radio lookout containing this information was issued, and defendant was arrested as a result of this broadcast. The court held that the arresting officer had probable cause to believe a felony, in this case robbery, had been committed because he heard it on his radio, and that the officer had cause to arrest the defendant as the perpetrator because both his general appearance and the car he was driving matched the description in the lookout. In *Mulcahy v. State*,²¹ a police officer was informed that a safe had been stolen from a warehouse, that more than one person was involved, that three of the suspects were wearing coats and jackets of specific colors and descriptions, and that a two-tone blue and white Buick had been seen in the vicinity of the warehouse from which the safe had been taken. The officer knew that the defendant owned an automobile of that description and, later that night, spotted the defendant and three other men in the car. They were stopped and subsequently arrested. A search of the car disclosed burglar's tools; the stolen safe was found in another car owned by the defendant. The court concluded that the officer's own knowledge of the defendant's past "conduct, character and reputation" could properly be considered along with the lookout information in determining whether probable cause existed. It held that the officer had probable cause to believe that a felony, grand larceny, had been committed and that defendant had committed it. These cases indicate that probable cause may be described, basically, as reasonable suspicion, with special emphasis on the word "reasonable."²² The probable cause standard is intended to strike a balance between effective protection of the public from serious crime and unwarranted interference with the liberty of private persons.

In the case of misdemeanors, the public interest in being protected from outlawed behavior is not so compelling as it is with felonies.

17. See *Jones v. United States*, 362 U.S. 257 (1960); *Draper v. United States*, 358 U.S. 307 (1959). These were cases in which police officers received "tips" from informers they knew to be reliable. However, mere anonymous tips may not constitute probable cause. *Wong Sun v. United States*, 371 U.S. 471 (1963); *Contee v. United States*, 215 F.2d 324 (D.C. Cir. 1954).

18. See *Carroll v. United States*, 267 U.S. 132 (1925); *Mulcahy v. State*, 221 Md. 413, 158 A.2d 80 (1960).

19. *Brinegar v. United States*, 338 U.S. 160 (1949); *McRae v. State*, 3 Md. App. 388, 239 A.2d 607 (1968).

20. 242 Md. 95, 218 A.2d 7 (1966).

21. 221 Md. 413, 158 A.2d 80 (1960).

22. "Probable cause", "reasonable cause", "reasonable grounds" and "reasonable suspicion" are variant phrasings which seek to convey substantially the same idea. See *United States v. Keown*, 19 F. Supp. 639 (W.D. Ky. 1937). The reasonable man of negligence fame is sometimes employed in this area: probable cause exists if the "facts and circumstances known to the officer warrant a prudent man in believing that the offense had been committed." *Henry v. United States*, 361 U.S. 98, 102 (1959).

Accordingly, unwarranted police interference with a private person's liberty is necessarily more offensive and more to be guarded against. At common law, no police officer could arrest a person committing a misdemeanor in his presence unless he first procured a warrant or unless that misdemeanor amounted to a breach of the peace.²³ This rule was so rigorous, in part, because in the days before organized police forces were common, arrest was often a pretext for shanghaiing or kidnapping. As the fear of fictitious arrest diminished and the morally unhealthy aspects of permitting many crimes to go unchecked became recognized, the requirement of a breach of the peace was gradually dropped. In some states this change was effected by statute;²⁴ in Maryland the requirement was eliminated by judicial implication.²⁵ A police officer may now arrest, without a warrant, any person committing a misdemeanor in his presence or view.

In Maryland there is a well-developed body of law surrounding the felony-misdemeanor distinction because of the Bouse Act.²⁶ This Act, passed in 1929, provided that evidence illegally seized, with certain specified exceptions,²⁷ could not be admitted in a trial for a misdemeanor. The reasoning behind the legislation was that while illegal activity by the police was to be discouraged, it should not be discouraged at the expense of exposing the public to felons freed on evidentiary technicalities. Under the Bouse Act, it was common to appeal misdemeanor convictions on the ground that the appellant's arrest was illegal and, thus, that any evidence seized was improperly admitted. Because of the superfluity of such cases, judicial construction of the phrase "in the presence or view" has been extensive. "Presence" or "view" connotes not only what is seen by the officer but also what is perceived by any of his other senses. Thus, where officers were in the outer room of a lodge hall and heard remarks from another room indicating the commission of an offense involving obscenity and lewdness, the officers were justified in entering that room, arresting those inside and seizing obscene films, on the ground that an offense was being committed in their presence.²⁸ Many of the cases decided under this Act involved gambling offenses, either bookmaking or lottery.

23. 4 W. BLACKSTONE, COMMENTARIES *292; 10 HALSBURY, LAWS OF ENGLAND § 632, at 342-45 (3d ed. 1955). As to this requirement, Maryland has not followed common law. See note 13 *supra* and note 25 *infra*.

24. ARIZ. REV. STAT. § 13-1403 (1956); ARK. STAT. ANN. § 26-210 (1962); CAL. PENAL CODE § 836 (West. Supp. 1968); FLA. STAT. § 901.15 (Supp. 1969); KY. REV. CODE ANN. § 2470 (1942); N.D. CEN. CODE § 29-06-15 (Supp. 1967).

25. Maryland seems to have assumed that no distinction exists in a police officer's power over breach of peace and other types of misdemeanors. As a result, the courts have not formally decided this question. See *Baltimore & O. R.R. v. Cain*, 81 Md. 87, 31 A. 801 (1895) (dealing with a private person's power to arrest and limiting it to misdemeanors that amounted to a breach of the peace); *Roddy v. Finnegan*, 43 Md. 490 (1876); *Mitchell v. Lemon*, 34 Md. 176 (1870).

26. MD. ANN. CODE art. 35, § 5 (1965).

27. When the Act was passed, illegally seized evidence was admissible in Maryland. The Act precluded its consideration in all misdemeanor trials, except those for carrying a concealed weapon, violating the narcotics laws and, in some counties, gambling. *Mapp v. Ohio*, 367 U.S. 643 (1961), of course, superseded this Act and made the felony-misdemeanor distinction immaterial in this context.

28. *Bass v. State*, 182 Md. 486, 35 A.2d 155 (1943).

Possession of gambling or lottery equipment is itself a crime,²⁹ but the evidence may be easily concealed or disposed of. In *Silverstein v. State*,³⁰ a detail of policemen was sent to investigate a gambling offense. One of the officers entered the premises and observed a gambling operation in progress. The detail entered, and the officer who had seen the operation described it to the sergeant in charge, who thereupon arrested the defendant. The court held that it was immaterial which member of the detail actually arrested the defendant so long as his offense had actually occurred in the presence of one of them.

The court in *Robinson* was faced with a situation where the arresting officer was not aware of the commission of a crime through any of his own senses. He had the radioed report of a crime,³¹ but he was almost a mile from the scene of the crime, at least ten minutes traveling time. The court assumed that the defendant was arrested for storehouse breaking, a misdemeanor,³² and properly concluded that the arrest would be valid without a warrant only if the crime were committed in the presence or view of the arresting officer. The court reviewed the authorities and found two cases involving radio reports in which the arrests were upheld. In the first case,³³ a police officer in Baltimore City had probable cause to believe that defendant had committed a rape, and broadcast a description of defendant and his automobile, together with a statement that defendant was wanted for rape and other crimes. Later the defendant was arrested by Anne Arundel County Police. The court held:

The officers in Anne Arundel County who made the arrest knew nothing about the probable cause but they had received a "look out" for the defendant from a responsible source and we think that is sufficient. If the police team working on the particular case had accumulated sufficient information to furnish probable cause for a reasonable man to believe that the alleged crime had been committed and that there was probable cause to believe that the defendant was involved therein, there was sufficient cause for his arrest.³⁴

In the second case,³⁵ the defendants were arrested after they had been stopped as a result of a lookout. The men had been observed rifling a hardware store. They were convicted of storehouse breaking, the same misdemeanor involved in the *Robinson* case. The court found

29. MD. ANN. CODE art. 27, §§ 240 (gambling and bookmaking), 362 (lottery) (1967).

30. 176 Md. 533, 6 A.2d 465 (1939).

31. Under some circumstances the actual commission of a crime can be heard through the use of an electronic device so as to make it occur within the listening officer's presence. See *People v. Burgess*, 170 Cal. App. 2d 36, 338 P.2d 524 (1959) (investigators heard bribe offered over two-way radio).

32. Storehouse breaking was a misdemeanor on July 4, 1965, the time the offense in *Robinson* was allegedly committed. It was made a felony by a 1966 legislative enactment which is not applicable to crimes committed before June 1, 1966. Ch. 628, § 33, [1966] Md. Laws 1125. This act "upgraded" many other crimes.

33. *Farrow v. State*, 233 Md. 526, 197 A.2d 434 (1963).

34. *Id.* at 531-32.

35. *Lamot v. State*, 2 Md. App. 378, 234 A.2d 615 (1967).

that the description of the crime gave the officers receiving the lookout probable cause to believe that the felony of grand larceny had been committed, and held that the evidence seized at the time of arrest was admissible.

Using these two *felony* cases, and citing the fact situation in *Silverstein*, the court in the *Robinson* case concluded:

We think it is a proper extension of the rationale of *Silverstein* that when a misdemeanor is committed in the presence of a police officer and information is promptly placed on the police radio that the misdemeanor has been committed and a description of the misdemeanor given, as was done here, the arrest of the misdemeanant by another police officer within a reasonable time of the receipt of the broadcast information is valid.³⁶

The troublesome distinction between arrests for a misdemeanor and arrests for a felony is one the courts have been aware of for a considerable time. In *Oden v. State*³⁷ the court made reference to a *Maryland Law Review* article on the subject,³⁸ but stated that the problems raised therein could be dealt with only by legislative action. In that case it was held that although the defendant may have been legally arrested, he did not have standing to invoke the protection of the Bouse Act because he was only a passenger and not the owner of the car in which burglar's tools were found.

In *Goad v. State*,³⁹ a private watchman observed two men fleeing from the area of a warehouse where a burglar alarm had gone off. The only description he could give was that one of the men was wearing a black three quarter length coat. They had fled in the direction of a stream. This information was broadcast, and officers cruising the area stopped defendant about half an hour later. His clothing was wet; a search of his person disclosed items that were identified at the trial as coming from the warehouse. At the trial one of the arresting officers testified that defendant was arrested because "there was a felony committed in the area." He was asked what felony, and replied, "Breaking and Entering."⁴⁰ The court held that defendant

36. 4 Md. App. at 528, 243 A.2d at 887.

37. 222 Md. 325, 329, 159 A.2d 867, 869 (1960).

38. Kauffman, *The Law of Arrest in Maryland*, 5 MD. L. REV. 125 (1941).

39. 239 Md. 345, 211 A.2d 337 (1965).

40. *Id.* at 348, 211 A.2d at 339. The defendant in *Goad* was convicted of a violation of MD. ANN. CODE art. 27, § 33 (1967), which is substantially similar to the crime involved in *Robinson*, but which requires a larceny of goods as well as a breaking and entering. See *Graczyk v. State*, 233 Md. 245, 196 A.2d 469 (1964). *Goad* illustrates one of the difficulties with the *Robinson* rationale. The officers arrested Goad as the result of a "lookout" broadcast over the police radio. They did not know that the information contained in the broadcast was given by a private person. The selfsame information would, under *Robinson*, have made the arrest valid if a policeman rather than a private watchman had surprised the defendant in the act. While *Lamot* and *Farrow* rightly considered radio reports a basis for probable cause, it is questionable whether radio reports can constitute "presence." See *Stanley v. State*, 230 Md. 188, 186 A.2d 478 (1962); 38 NOTRE DAME LAWYER 751 (1963). In *Stanley*, Maryland officers arrested defendants as a result of a police radio broadcast. The broadcast was issued by New York federal officers who did not witness the crime. The court held that the arrest and subsequent search for narcotics in defendants possession, a Maryland misdemeanor, was illegal and reversed the conviction.

was arrested for a misdemeanor not committed in the presence or view of the officers and that evidence seized by the officers as a result of this arrest was inadmissible. The conviction was reversed. The *Goad* case, while it appears on its face to contradict the *Robinson* holding, is distinguishable from the *Robinson* factual situation. In *Goad*, the misdemeanor was committed in the presence of a private person — no police officer witnessed the crime. In *Robinson*, however, a member of the police "team" actually observed the commission of the misdemeanor.

The problems created by the felony-misdemeanor distinction, both in Maryland and in other jurisdictions, are well known.⁴¹ They have been noted time and time again, but legislative response has been slow.⁴² A meaningful step was taken, however, when the General Assembly passed, in its latest session, a bill which will permit a police officer to arrest without a warrant persons that he has probable cause to believe have committed certain serious misdemeanors.⁴³ Such an arrest may be made under the new bill only where the officer has reason to believe that the suspect, unless he is immediately arrested, may not be apprehended, may cause further injury to property or person or may tamper with or dispose of evidence. While this bill does remedy some of the evils which attend the felony-misdemeanor distinction in Maryland, the peculiar solution offered by the bill only complicates the already confused legal framework of the law of arrest. A police officer, under the new law, must decide not only whether the crime committed is a felony or misdemeanor but must also, if he concludes that a misdemeanor has occurred, determine whether or not the misdemeanor fits into one of the eight rather comprehensive classes of misdemeanors for which a warrantless arrest, based on probable cause, is permitted. If he decides that the crime is covered by the new bill and that he has probable cause to arrest the suspect, he must then make the extremely close policy determination concerning the probability of the suspect's future apprehension, the danger of future injury and the possibility of the destruction of evidence. A mistake in any of these decisions by an officer who must make the decisions often in a matter of seconds may cost the state a conviction.

41. See Kauffman, *The Law of Arrest in Maryland*, 5 MD. L. REV. 125 (1941); Wilgus, *Arrest Without a Warrant*, 22 MICH. L. REV. 673 (1924); Note, *Notice of Cause of Arrest*, 25 MD. L. REV. 48, 55-56 (1965); Note, *Admissibility of Evidence Obtained by Unlawful Search and Seizure*, 2 MD. L. REV. 147 (1938); Note, *Error in Charging a Misdemeanor as a Felony*, 2 MD. L. REV. 284 (1938); 25 S. CAL. L. REV. 449 (1952); 13 SYR. L. REV. 320 (1961); 21 WASH. & LEE L. REV. 249 (1964).

42. The General Assembly has moved to correct some of the most glaring inconsistencies. For example, before 1949, assault with intent to rape, although carrying a possible death sentence, was a misdemeanor; the crime was given felony status in ch. 196, [1949] Md. Laws 546, now codified as MD. ANN. CODE art. 27, § 12 (1967). The recent upgrading of numerous crimes to felonies, see note 32 *supra*, is a step in the direction of rational classification, but with the confusing structure of the present Article 27 of the Maryland Annotated Code, the Article on Crimes, it is still piecemeal work.

43. MD. H.B. 3, 1969 Sess. The explanation for the bill states, "Subsection (d) and (e) undertakes to expand the power of police officers to arrest without a warrant for some offenses which are classified as misdemeanors, but constitute serious offenses in that they involve intent to do great bodily harm." 1 LEGISLATIVE COUNCIL OF MARYLAND, REPORT TO THE GENERAL ASSEMBLY OF 1969 8.

The new bill, while it is motivated by a legitimate desire to increase the arresting officer's power over persons who commit certain of the more serious misdemeanors, only serves to further muddle the already obscure felony-misdemeanor distinction.

It appears, then, that the task of achieving some equitable and practical treatment of the problem has, by default, passed to the judicial arm. In *Price v. State*,⁴⁴ the Court of Appeals held that an arrest on probable cause for an attempted burglary, although technically a misdemeanor, would still constitute a good arrest. *Robinson v. State* appears to be another example of judicial revision.⁴⁵ In an age where the problems of crime control and prevention are becoming ever more complex, it seems clear that arrest law created for the uses of Elizabethan England is an unnecessary burden. When a police officer sees a person who, because of a "lookout," he reasonably suspects of having committed a crime, he should not have to ascertain at his peril⁴⁶ if the crime committed is a felony or a misdemeanor. A case can be made for distinguishing between types of crimes for the purpose of determining how much interference with personal liberty should be permitted. However, while it may not be in the best public interest to apply uniform arrest treatment to all crimes, that interest clearly will not be served by blindly following a judicially created doctrine which has been extended beyond the limits of its legitimate purpose.⁴⁷ Where a state has, like Maryland, little rational justification behind its classification of crimes, it makes little sense to adhere to rules which presuppose such a rational classification. The *Robinson* decision will make law enforcement work easier, but, because it perpetuates the arbitrary felony-misdemeanor distinction, it may be a disservice in the long run.⁴⁸

44. 227 Md. 28, 175 A.2d 11 (1961).

45. The court in *Robinson*, however, claimed that its decision did not change existing law. 4 Md. App. at 528, 243 A.2d at 888.

46. Where the arrest is unlawful, the arresting officer faces a possible civil suit for false arrest, and the suspect is entitled to physically resist. See, e.g., *Commonwealth v. Crotty*, 92 Mass. (10 Allen) 403 (1865); *Craft v. State*, 202 Miss. 43, 30 So. 2d 414 (1947). An interview with the Education and Training Division of the Baltimore City Police Department reveals that in a police trainee's course of fourteen weeks, some fifteen classroom hours are devoted to the law of arrest. The policemen are expected to know the distinction between felony and misdemeanor and to be able to apply it. The *Robinson* decision is now being taught there.

47. For a discussion of judicial strictness and liberality in interpreting the "presence" doctrine, see 37 ST. JOHN'S L. REV. 367 (1963); *Agnello v. United States*, 290 F. 671, 678-79 (2d Cir. 1923).

48. Another danger lies in the fact that there are many misdemeanors that are truly trivial. MD. ANN. CODE art. 27, §§ 70-70B (1967) makes it a misdemeanor in certain Maryland counties to allow female dogs "in heat" to run at large. Police arrest on "constructive presence" for these offenses would be intolerable. Also, no time or space limitations other than mere "reasonableness" are imposed in *Robinson*. In *Farrow*, the defendant was arrested in another county. These considerations make it desirable that *Robinson* be rather strictly limited to its facts.

