13-10 - People v Burton-Misdemeanor Arrests

Los Angeles County Sheriff's Department
NEWSLETTER
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PEOPLE V. BURTON - MISDEMEANOR ARRESTS

In a recently published opinion, the California Court of Appeal considered whether a warrantless misdemeanor arrest violated the constitution because the offense did not occur in the presence of the arresting officer. The court determined in *People v. Burton* that there is no "in the presence" requirement established by the constitution. The only requirement for a constitutional arrest is probable cause, whether it is a felony, misdemeanor, or infraction.

However, the court also noted that "the States are free to enact more restrictive statutes than those required by the Fourth Amendment." California Penal Code Section 836 establishes a more restrictive arrest requirement than the Fourth Amendment. Penal Code Section 836 states (emphasis added):

> 836. (a) A peace officer may arrest a person in obedience to a warrant, or, pursuant to the authority granted to him or her by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, without a warrant, may arrest a person whenever any of the following circumstances occur:
>
> (1) **The officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence**.
>
> (2) The person arrested has committed a felony, although not in the officer's presence.
>
> (3) The officer has probable cause to believe that the person to

be arrested has committed a felony, whether or not a felony, in fact,

has been committed.

When arresting an adult person for a misdemeanor not committed in the deputy's presence, deputies shall follow the Department's policy regarding private person's arrest. There are some exceptions to this rule which can be found in Penal Code Section 836 and Vehicle Code Section 40300.5.

Information regarding the content of this newsletter may be directed to Field Operations Support Services.

References:

People v. Burton, 219 Cal. App. 4th Supp. 9 (2013).

Penal Code, Section 836

Vehicle Code, Section 40300.5

MPP, Section 4-04/080.00, Arrests

FOD 02-06, Private Person's Arrest Procedures