



148 arrests are always a problem

The language of the statute is cumbersome and the DA doesn't like to file on this type of crime

Juries don't like to convict because you are the victim (BOO HOO)

148 ARRESTS AND WHY EVERYBODY HATES THEM (Except Plaintiff's Civil Rights Lawyers)

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Law Enforcement hates 148 arrests because the DA's Office never files on them. The DA's Office hates 148 arrests because they can never get a conviction. In a 148 criminal charge, the police officer is the alleged "victim" and juries have a hard time translating that into a conviction because they see it as nothing more than a "contempt of a cop" arrest. Juries believe resistance and verbal abuse is part of the job.

Penal Code section 148(a)(1) states, "Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined in Division 2.5 (commencing with section 1797) of the Health and Safety Code, in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment."

The problem with a 148 arrest begins with the officer's interpretation of what "willfully resists, delays, or obstructs" means. Let's say a person tells you to "get the hell off my property" or "screw you" after you arrive at the location where you have been dispatched for a "loud music" complaint. You might interpret this person as willfully "resisting" you, as evidenced by the use of the words "hell" and "screw," as opposed to "you are absolutely right officer, I am turning down my music immediately." You might also believe that this person is "delaying" you in the performance of your duties as you have ten other calls hanging and reports to catch up on from five days ago. This same person is most likely talking to you through a closed screen door, so he is "obstructing" you as well. Anyone making an arrest under these facts will find themselves on the wrong side of a federal civil rights lawsuit.

Let's add a few more facts to the scenario. This same person yaps at you through the screen door for fifteen minutes about how he pays taxes and your salary. As he builds up steam, he makes the mistake of opening the screen door and getting right in your face. By now you have had it with this idiot so you grab him, cuff him, and seat him on the ground while you write him a 148 ticket before letting him go. Or, instead of cuffing him, you OC (pepper spray) him or ASP him (strike him with a baton) a few times or even taser him (Edison Medicine), before you book him in jail

Oftentimes the 148 arrest is at a home and there are other issues pertaining to entry

Even a conviction for a 148 doesn't prevent the suspect from bringing suit against you for excessive force in making the arrest

on a 148. A few weeks later you catch up on your paper and submit your 148 report to the DA's Office expecting an indictment by a unanimous decision of the grand jury.

The reality is that your report was rejected two minutes after it hit the DA's desk. Not only that, the DA himself wrote on his rejection letter, "If I wasn't the DA, I would personally sue you in federal court." Unfortunately for you, this idiot's attorney has a copy of the DA's rejection letter and files a civil lawsuit against you in federal court claiming excessive force and retaliation for exercise of First Amendment right to protest the arrest.

But let us be optimistic. Let's assume that in a moment of lucidity or in the event of a clerical error the DA's Office files your 148 case. Let's assume further that the case goes to criminal trial and the idiot gets convicted! You celebrate because you believe the conviction eliminates your liability in the civil lawsuit the idiot filed against you in federal court which claims you weren't as gentle as you should have been in making the arrest. You believe that because the idiot was convicted on your 148 arrest your actions were lawful. Otherwise, how could this idiot be convicted of willfully resisting, delaying or obstructing if you were engaged in the performance of unlawful duties?

The 9th Circuit Court of Appeals and the California Supreme Court addressed this issue and ruled against you. In Smith v. Hemet 394 F.3d 689 (9th Cir.2005), the 9th Circuit said the idiot can still sue you for excessive force. Claims of excessive force are not barred even if the suspect pleads guilty to or is convicted of a violation of Penal Code section 148(a)(1). The California Supreme Court affirmed the 9th Circuit's ruling in Yount v. County of Sacramento 133 Cal.4d 1424 (2008) and the U.S. Supreme Court denied the petition to review the issue.

So what is the moral of this story? Stay away from 148 arrests if that is the only charge you have against the person. Is this always the right thing to do? Probably not. Some people should be charged with a 148 and go to jail but it should be used selectively. Before you make a 148 arrest ask yourself, "Do I really have a 148 or am I just having a bad day?" Remember that juries dislike criminal cases where officers are the "victim" of verbal abuse. Juries believe that you are paid to take verbal abuse just as citizens have the right to speak out and protest their arrest.

The Fourth Amendment prohibits warrantless entry into an individual's home unless certain emergencies exist. United States v. Santana 427 U.S. 38 (1976). The court has recognized only a few emergency conditions, known as "exigent circumstances," which justify a warrantless entry into a home. Santana (hot pursuit of a fleeing felon); Schmerber v. California 384 U.S. 757, 770 (1966) (destruction of evidence); Michigan v. Tyler 436 U.S. 499, 509 (1978) (ongoing fire). The "hot pursuit" doctrine only applies to arrests made in the home, and does not apply to misdemeanors. In Welch v. Wisconsin 466 U.S. 740 (1984) entry into a home to make a drunk driving arrest violates the Fourth Amendment. PC 148 arrests that occur at the doorway of a residence do not violate the Fourth Amendment because the doorway is considered a public place. United States v. Santana.

Remember home entries require a warrant or a valid exception

Exigent circumstances are limited

Is it really an emergency

Is it a felony or a misdemeanor

In LaLonde v. County of Riverside 204 F.3d 947 (9th Cir. 2000) everything that could go wrong at the doorway did. Deputies responded to an apartment house in the early morning hours and met with the complaining witness about a disturbance. The complaining party stated that LaLonde had a rifle and didn't like law enforcement. The deputies knocked on LaLonde's door which was opened by LaLonde's roommate. LaLonde was in his underwear and T-shirt, holding a sandwich. LaLonde was inside the apartment and the deputies were outside the residence, two to three feet from the door. The deputies asked LaLonde to step outside which he refused to do. The deputies explained why they were there and LaLonde responded it was "bullshit." As LaLonde turned away and headed toward the interior of the apartment a deputy reached inside the residence and grabbed LaLonde, ripping LaLonde's shirt. The deputy then entered the apartment and made a 148 arrest. The deputy had no "threshold" defense as no attempt to arrest was made at the doorway and no exigent circumstances existed to justify entry. The case proceeded to trial.

Bottom Line: Claims of excessive force are not barred even if the suspect pleads guilty to or is convicted of a 148 violation. If no attempt to arrest is made at the doorway, then a 148 arrest made inside the home under LaLonde's facts violates the Fourth Amendment prohibition on warrantless entry into an individual's home.

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