



State, The (Columbia, SC)

1995-09-04

Section: METRO/REGION

Edition: FINAL

Page: B1

**CITIZEN'S ARREST NOT WELL-DEFINED
HIGH COURT RULING DOES NOT OPEN DOOR**
MARGARET N. O'SHEA, Senior Writer

It's not hard to envision the dense woods near Seneca where Tom Cooney and his father-in-law found the hidden copper tubing, stolen a burglary from their plumbing business, and waited for the thief to return to the stash.

There would be tall pines, scrub oaks, dogwoods thriving in the shade, and underbrush, thick with briars and honeysuckle vines. The suspected burglar, Carlton Williams, bled to death where he fell in the brush, shot in both hips with hollow-point bullets. Such dramas have played on similar stages throughout the state many times since 1866, when the South Carolina Legislature passed the law that allows citizens such as Cooney to arrest somebody when the police are not around, even to kill a suspected criminal who "flees when he is hailed." The 129-year-old law was cited last week in a state Supreme Court ruling overturning Cooney's conviction for murder.

It is, after all, a time-honored notion that people have a right to protect what's theirs, a common fantasy to be the hero who stops a bad guy while the community cheers.

"The truth of the matter is that the law of citizen's arrest is pretty filled with peril. I certainly think that Tom Cooney, who never intended to get into this situation, would be the first to warn anyone to call the police and leave law enforcement to the professionals," said Columbia attorney David Bruck, who handled Cooney's appeal and considers him and his family "salt-of-the-earth people."

"His life has been turned inside out," Bruck said. An Oconee County jury found Cooney guilty in January 1993, although his father-in-law, James Clinton Hale, was inexplicably spared. Both men admitted firing their pistols when Williams fled, but said they didn't mean to hurt him and didn't know they had. In fact, both men said, they believed Williams had gotten away unscathed when he disappeared from their view into the trees. They found his body the next day when they returned to the woods.

Cooney served eight months in prison before a judge granted appeal bond two years ago. His successful appeal does not mean he is off the hook; if he is retried, a new jury should be more informed about the law of citizen's arrest, which allows "reasonable force." The judge in Cooney's trial decided on his own that the force used against Williams was not justified. But that was a question the jury should have answered, the court said.

"A citizen uses deadly force at his peril, and when the smoke clears, you have to be able to prove the circumstances really were as you say they were and you had no other alternative," Bruck said. "The fact that South Carolina still adheres to very old-fashioned rules concerning use of deadly force should not encourage anyone to try it. You can find yourself serving a life sentence as Tom Cooney did."

Old fashioned justice. South Carolina's statute allowing citizens' arrests is a striking example of how laws evolve to fit the perceived needs of a world that will inevitable change.

The Legislature that enacted the citizen's arrest law tried to meet the needs of a state that was reeling from the Civil War. It was a world full of folks who some felt the need to shoot - carpetbaggers ready to take what wealth remained, scalawags who resented the wealth other whites had attained, and newly freed blacks.

There remains today a pervasive interest in that concept.

"The questions I am most frequently asked about home security concern citizen's arrest and the use of force by a private citizen to prevent a crime or protect property," Lexington County Sheriff James Metts said in a recent column.

"Self-reliance is a hallmark of the American spirit and self-protection is a right, but I would urge caution to anyone who is thinking about trying to take on the role of law enforcement themselves," Metts said.

Columbia attorney Dick Harpootlian said he also learned, when he was 5th Circuit solicitor, to expect the question at every speaking engagement, every public forum and almost every foray onto public streets. "I've had people ask it in ways that really startled me," Harpootlian said. "Like, 'If somebody is coming in the window of my house, do I have to wait until they get all the way before I shoot them?' or 'If I kill somebody that's breaking into my house, should I drag them inside before I call the police?' "

No blueprint. Ordinary citizens do have more leeway than police do when it comes to use of deadly force. The U.S. Supreme Court ruled in a 1985 Tennessee case that the use of deadly force by police to apprehend a suspect is not justified if the suspect possess no immediate threat to the arresting officer and others.

That ruling was based on the Fourth Amendment, which prohibits warrantless searches and seizures - an amendment that doesn't apply to plain folks who are acting as agents of the state, South Carolina's Supreme Court said in the Cooney opinion.

"We've always had a distinction historically between the duties and responsibilities of a citizen as opposed to a law enforcement officer," said Columbia attorney **Jack Swerling**, author of a defense lawyer's bible.

"Law enforcement officers are supposed to be highly trained in investigation and in firearms and how to effect an arrest. You would assume also that a police officer would not have the heightened sense of fear that a private citizen would have under the same circumstances.

"Historically, the courts have not held citizens to as high a standard for those reasons, although those are all pretty good reasons for a citizen not to try to do a policeman's job if he

can help it."

The standard that a citizen is held to involves "reasonableness," **Swerling** said. Was the amount of force that was used necessary to effect the arrest? And if the force used was deadly, the citizen might have to show he acted in self defense.

"I've tried probably 100 self-defense cases," **Swerling** said, "and no two factual situations are the same. You cannot outline for people under what conditions they can use deadly force. That's dangerous. There is no blueprint. What you can say is that your actions must be reasonable and would have to be judged by a jury."

There is some difference between defending one's home and trying to effect a citizen's arrest on some other turf. But the paramount issue is that people believe they have a right to defend themselves, their property and their families, **Swerling** said.

In the Cooney case, the jury decided that Cooney went too far.

It's not clear whether a new trial, including the concept of citizen's arrest and what it entails, would make any difference.

Tenth Circuit Solicitor George M. Ducworth has not said when or if Cooney will be tried anew. He was not available for an interview.

But when the case was first tried at Walhalla, Ducworth made his views clear:

"You saw in this cases the worst example of what can happen when people decide they are above the law," Ducworth said. "We've got to be a nation of laws, but we've got to abide by those laws."

Seneca attorney Daniel Day, who represented Cooney in that trial, told jurors that what he and his father did "wasn't all that smart, but it wasn't illegal."



Visit other Real Cities sites

[News](#) | [Business](#) | [Sports](#) | [Entertainment](#) | [Living](#) | [Shop Local](#) | [Classifieds](#) | [Jobs](#) | [Cars](#) | [Real Estate](#)

[About TheState.com](#) | [About the Real Cities Network](#) | [About the McClatchy Company](#)
[Terms of Use](#) | [Privacy Policy](#) | [Copyright](#)