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CITIZEN'S ARREST OR POLICE ARREST? DEFINING THE SCOPE OF ALASKA'S DELEGATED CITIZEN'S ARREST DOCTRINE

Lael Harrison

Abstract: When a citizen witnesses the commission of a misdemeanor, Alaska law allows that citizen to arrest the offender on the spot. A citizen making such an arrest may request assistance from a police officer rather than physically subduing the offender alone. However, Alaska law does not clearly define how much assistance police may give before the citizen's arrest becomes a warrantless police arrest. That distinction is particularly important in misdemeanor arrests because Alaska follows the common law rule that citizens and officers may make warrantless misdemeanor arrests only for those misdemeanors committed in their presence. Officers may not make warrantless misdemeanor arrests merely upon citizen crime reports. Therefore, when a citizen witnesses a misdemeanor and an officer does not, only the citizen may legally arrest the offender on the spot. Nonetheless, the Alaska Court of Appeals in *Moxie v. State* adopted the "delegated citizen's arrest" doctrine, holding that a citizen making an arrest may "delegate" the task of taking an offender into custody to a police officer who did not witness the misdemeanor. The court expressed agreement with California's delegated citizen's arrest doctrine and endorsed the California courts' reasoning. However, the *Moxie* decision itself did not expressly define the scope of such delegation, leaving it unclear when a delegated citizen's arrest becomes an illegal warrantless police arrest. This Comment analyzes *Moxie* and relevant California law, and argues that Alaska should apply California's limits to delegated citizen's arrests. Applying such limits is consistent with the policy behind delegated citizen's arrests and ensures the integrity of Alaska's warrant requirement in such situations.

A woman sees a strange man walking out of her garage. She asks who he is and what he is doing there.¹ He gives her his name, says he used to live there, and leaves. After he has left, she calls the police and reports what she saw, providing them with the trespasser's name. The police arrive and she signs a "citizen's arrest form." Forty-five minutes after the offense, the police find the trespasser in a store five miles away from the woman's home. The police arrest the suspect without a warrant and take him to jail. Meanwhile, in another part of town, employees of a store witness a customer shoplifting.² They apprehend him and escort

1. This example has been adapted from a police report of a delegated citizen's arrest made in Alaska in 2006. JUNEAU POLICE DEP'T, POLICE REPORT [hereinafter *Trespasser Fact Pattern*] (on file with author; all potentially identifying information and details have been removed). Criminal trespass is a misdemeanor in Alaska. ALASKA STAT. § 11.46.320 (2006) (first degree criminal trespass); *id.* § 11.46.330 (second degree criminal trespass).

2. This example has been adapted from a separate police report of a delegated citizen's arrest

him to the front of the store. He shoves one of the employees and runs off. They call the police and report that he has run to a building across the street. A police officer arrives, chases the suspect through the building, catches him, and takes him back to the store where the employees identify him as the shoplifter. The officer asks the employees to sign a citizen arrest form, then takes him to jail.

Although both cases were treated as citizen's arrests, certain features distinguish the two arrests. In the arrest of the trespasser, a great deal of time passed between the commission of the crime and the eventual arrest. The witnessing citizen did not participate in the arrest beyond reporting the crime. In the arrest of the shoplifter, by contrast, the citizen witnesses were actively involved in the arrest, having attempted to physically restrain the offender. They directed the actions of the police and allowed no unreasonable delay between the crime and the arrest.

This Comment analyzes Alaska law in order to clarify when such arrests are legal citizen's arrests, and when they are illegal warrantless police arrests. The police in these examples could not legally have arrested either offender without a warrant,³ but they proceeded to make the arrests under the "delegated citizen's arrest" doctrine. Although Alaska law allows citizens making arrests to "delegate" certain responsibilities to police officers,⁴ the scope of the delegated citizen's arrest doctrine remains ill-defined. In particular, Alaska law does not state what responsibilities a citizen may delegate before the officer's involvement renders the citizen's arrest indistinguishable from an illegal police arrest.

Delegated citizen's arrests occur when the citizen has the authority to arrest without a warrant and the officer does not.⁵ In Alaska, police may make warrantless misdemeanor arrests only for those misdemeanors committed in their presence.⁶ The same restriction applies to citizen's

made in Alaska in 2006. JUNEAU POLICE DEP'T, POLICE REPORT [hereinafter Shoplifter Fact Pattern] (on file with author; all potentially identifying information and details have been removed). Shoplifting is a misdemeanor in Alaska. ALASKA STAT. § 11.46.150 (theft in the fourth degree).

3. See ALASKA STAT. § 12.25.030.

4. See *Moxie v. State*, 662 P.2d 990, 991 (Alaska Ct. App. 1983).

5. See *id.* (holding a delegated citizen's arrest legal where the citizen had authority to arrest without a warrant and the officer did not). Rather than making a warrantless arrest under the delegated citizen's arrest doctrine, an officer wishing to arrest for a misdemeanor that he or she did not witness may obtain an arrest warrant or, alternatively, issue the offender a citation. ALASKA STAT. § 12.25.180.

6. See ALASKA STAT. § 12.25.030. Certain enumerated misdemeanors are exempted in this section from the requirement for police arrests. *Id.* § 12.25.030(b).

arrests.⁷ Consequently, when a citizen witnesses the commission of a misdemeanor but an officer does not, a citizen's arrest is legal but a warrantless police arrest is not.⁸ Furthermore, unnecessary delay will render both officer and citizen arrests invalid.⁹

In *Moxie v. State*,¹⁰ the Alaska Court of Appeals held that an otherwise legal citizen's arrest was valid even though an officer without independent arrest authority assisted the citizen in taking the offender into custody.¹¹ The officer had not witnessed the misdemeanor, and therefore could not have made the warrantless arrest himself.¹² Nevertheless, the court held the arrest was legal, reasoning that the citizen had made the arrest and delegated the task of taking the offender into custody to the police officer.¹³

In justifying its holding in *Moxie*, the court relied exclusively on California delegated citizen's arrest case law¹⁴ but did not explicitly define the scope of delegated citizen's arrests in Alaska.¹⁵ Neither the Alaska judiciary nor legislature have clarified the doctrine since *Moxie* was decided in 1983. Despite this lack of clarity, police currently make warrantless misdemeanor arrests in a wide variety of situations.¹⁶

The California Court of Appeals defined the scope and limits of California's delegated citizen's arrest doctrine before *Moxie* was decided.¹⁷ California applies the common law delay prohibition to delegated citizen's arrests. The common law requires that citizens making arrests act promptly and without unnecessary delay after witnessing the crime.¹⁸ In addition, citizens are required to show intent

7. See *id.* at § 12.25.030(a)(1).

8. See *id.*

9. See *Herrin v. State*, 449 P.2d 674, 677–78 (Alaska 1969).

10. 662 P.2d 990 (Alaska Ct. App. 1983).

11. *Id.* at 991.

12. See ALASKA STAT. § 12.25.030.

13. See *Moxie*, 662 P.2d at 991.

14. See *id.* ("We agree with the position taken by the California Court of Appeals: in this situation, a peace officer must be regarded as an agent of the person making the arrest.").

15. See *id.* at 990–91.

16. See *Trespasser Fact Pattern*, *supra* note 1; *Shoplifter Fact Pattern*, *supra* note 2; see also JUNEAU POLICE DEP'T, REGULATIONS AND PROCEDURES, Pt. 3, Ch. "Arrest—Citizen's Arrest" (1993) (instructing officers to assist citizens invoking authority to arrest).

17. See *People v. Richards*, 140 Cal. Rptr. 158, 160 (Cal. Ct. App. 1977); see also *Moxie*, 662 P.2d at 991; *infra* Part III.

18. See, e.g., *People v. Sjosten*, 68 Cal. Rptr. 832, 836 (Cal. Ct. App. 1968) ("Promptness . . . is the only remaining requirement of a valid citizen's arrest for a misdemeanor without a warrant.").

to arrest by taking substantial action to further the arrest and giving specific information to the assisting officer.¹⁹ A citizen who calls the police to report witnessing a misdemeanor and then leaves the police to act independently when they arrive is considered merely a witness, having shown insufficient intent to be an arresting citizen.²⁰

This Comment argues that Alaska should impose the same limits on delegated citizen's arrests as the California courts.²¹ Without such limitations, police may make warrantless arrests for misdemeanors based on citizen reports alone, undermining Alaska's warrant requirement. Specifically, Alaska should require that citizens act with intent, and without unnecessary delay, to make valid delegated citizen's arrests. California's standards for delay and intent are consistent with *Moxie* and underlying policy concerns that citizens should be able to ensure their own safety by delegating the physically dangerous aspects of arrest to an officer.

Part I of this Comment discusses the common law rule, followed in Alaska, that police officers and private citizens may only make warrantless arrests for misdemeanors committed in their presence by acting without delay. Part II examines Alaska's adoption of the delegated citizen's arrest doctrine in *Moxie v. State* and the California case law on which it relies. Part III analyzes the limits California courts have placed on delegated citizen's arrests. Finally, Part IV argues that Alaska should apply California's limits on delegated citizen's arrests as they preserve the warrant requirement and are consistent with *Moxie's* holding and underlying policy concerns.

19. See, e.g., *People v. Johnson*, 176 Cal. Rptr. 684, 686 (Cal. Ct. App. 1981) (holding a delegated citizen's arrest legal where the citizen observed an offense, called the police, followed and located the offender, and told the police where to find him).

20. See *Richards*, 140 Cal. Rptr. at 160.

21. Although courts do not expressly refer to "delegated citizen's arrests," for clarity and expediency this Comment will use that term when referring to the type of arrests at issue in this Comment: arrests in which an arresting citizen witnesses a misdemeanor, reports it to the police, and an officer who did not witness the offense takes physical custody of the offender. When addressing this type of arrest, courts use the verb "delegate" most consistently, although they also refer to police "aiding" citizens and to police as "agents" of citizens. See, e.g., *Moxie*, 662 P.2d at 991 (Alaska Ct. App. 1983) (using all three terms). This Comment uses the term "delegated citizen's arrest" to distinguish such arrests from other police-assisted citizen's arrests in which an officer also saw the offense and, with the citizen, took custody of the offender.

I. ALASKA FOLLOWS THE "IN THE PRESENCE" RULE FOR WARRANTLESS MISDEMEANOR ARRESTS

Alaska follows the common law rule that police and citizens may only make warrantless arrests for misdemeanors committed in their presence.²² Both the state legislature and courts have demonstrated a commitment to preserving the "in the presence" rule for most misdemeanors in Alaska.²³ Alaska also follows the common law rule that a person wishing to make a warrantless misdemeanor arrest must make the arrest without unnecessary delay.²⁴

A. *Warrantless Misdemeanor Arrests Generally Require that the Misdemeanor Be Committed in the Presence of the Arresting Person*

Alaska follows the long-standing common law rule that police officers and private citizens may only make warrantless arrests for those misdemeanors committed in their presence.²⁵ As the U.S. Supreme Court has thus far declined to rule on whether the "in the presence" requirement is mandated by the Fourth Amendment of the U.S. Constitution,²⁶ states are currently free to adopt or reject it. Most states, like Alaska, have codified some form of the rule.²⁷

Although the Alaska Legislature and courts have created some exceptions to the "in the presence rule," they have nevertheless

22. ALASKA STAT. § 12.25.030(a)(1) (2006); *see also* 6A C.J.S. *Arrest* § 13 (2004) ("Ordinarily, a private person may arrest without a warrant one committing a misdemeanor or a breach of the peace in his or her presence."); *id.* § 18 (2004) ("A peace officer may make a warrantless arrest of a person who, in the officer's presence, is committing a misdemeanor.").

23. *See infra* text accompanying notes 28–32.

24. *See* *Herrin v. State*, 449 P.2d 674, 677–78 (Alaska 1969) ("In order to justify a delay, there should be a continued attempt on the part of the officer or person apprehending the offender to make the arrest; he cannot delay for any purpose which is foreign to the accomplishment of the arrest." (quoting *Jackson v. Superior Court*, 219 P.2d 879, 882 (Cal. Ct. App. 1950)); *see also* 5 AM. JUR. 2D *Arrest* § 55 (1995) ("The arrest must be made at the time the offense, or some part of it, is being committed, or within a prompt and reasonable time after its commission, or upon fresh and immediate pursuit of the offender.").

25. *See* ALASKA STAT. § 12.25.030; *see also* William A. Schroeder, *Warrantless Misdemeanor Arrests and the Fourth Amendment*, 58 MO. L. REV. 771, 788 (1993) (citing *Regina v. Tooley*, 92 Eng. Rep. 349 (1710)).

26. *See* *Atwater v. City of Lago Vista*, 532 U.S. 318, 340 n.11 (2001) ("We need not, and thus do not, speculate whether the Fourth Amendment entails an 'in the presence' requirement for purposes of misdemeanor arrests.").

27. *See id.* at 355–60 (Appendix to Opinion of the Court).

preserved the rule for the majority of misdemeanors. Alaska courts have never squarely decided whether the Alaska Constitution requires the “in the presence” rule.²⁸ However, Alaska courts have indicated that statutory exceptions to the rule for certain misdemeanors are constitutional where the legislature finds “hardship” or “exigent circumstances.”²⁹ Within this authorization, the Alaska Legislature has created limited exceptions to the “in the presence” rule for misdemeanor-level drunk driving, domestic violence, and violation of prisoner release conditions.³⁰ The brief legislative history on these statutory exceptions indicates that the legislature determined that the potential danger to the public posed by these particular misdemeanors warranted an exception to the “in the presence” rule, but intended to preserve the rule generally.³¹

B. Alaska Follows the Common Law Rule that Unnecessary Delay Invalidates Otherwise Valid Warrantless Arrests

Alaska also follows the common law requirement that warrantless “in the presence” misdemeanor arrests take place without unnecessary delay.³² Delay after witnessing a misdemeanor for purposes unrelated to making an arrest invalidates the power to arrest without a warrant.³³ The Alaska Supreme Court has indicated that delay for matters corollary to

28. See *Proctor v. State*, 643 P.2d 5, 7 (Alaska Ct. App. 1982) (declining to consider whether the federal or Alaska constitutions require “in the presence” rule).

29. See *Layland v. State*, 535 P.2d 1043, 1050 n.34 (Alaska 1975) (advising the Legislature, before passage of a DUI exception: “[i]n other drunk driving cases, if the arrest requirement works a hardship, Alaska’s arrest laws could be modified, as has been done in other states”); see also *Proctor*, 643 P.2d at 7 (upholding DUI exception statute and noting “[w]e conclude that the legislature has determined that exigent circumstances exist where there is probable cause to believe a suspect is driving while intoxicated”).

30. See ALASKA STAT. §§ 12.25.030, 12.25.033 (2006).

31. See Minutes of Alaska House Judiciary Committee (May 19 & 22, 1975) (discussing Alaska Senate Bill 182, indicating concern regarding the potential for “abuse” of the DUI exception, and eventually amending the proposed blanket exception to a limited eight-hour window after the offense). The eight-hour window limitation is still in effect. See ALASKA STAT. §12.25.033.

32. See *Herrin v. State*, 449 P.2d 674, 677–78 (Alaska 1969) (“In order to justify a delay, there should be a continued attempt on the part of the officer or person apprehending the offender to make the arrest; he cannot delay for any purpose which is foreign to the accomplishment of the arrest.” (quoting *Jackson v. Superior Court*, 219 P.2d 879, 882 (Cal. Ct. App. 1950))).

33. See *Herrin*, 449 P.2d at 677–78; *State v. Warren*, 709 P.2d 194, 201 (N.M. 1985) (citing the common law rule and holding that delay for the sake of “convenience” is unnecessary and thus invalid).

the arrest, such as securing the area or chasing a fleeing offender, is necessary delay that does not destroy the authority to arrest.³⁴

Although the Alaska Supreme Court has not considered a case of delay in citizen's arrest, at common law the prohibition on unnecessary delay applies to citizen's arrests as well as police arrests.³⁵ Generally, courts have held that a delay by a citizen making an arrest to seek and wait for assistance does not invalidate an otherwise legal citizen's arrest.³⁶ However, the citizen's attention must be focused solely on making the arrest throughout the delay.³⁷ Although the Alaska Supreme Court has never directly considered delay in a citizen's arrest, it has held that the delay prohibition applies to police arrests and indicated that it also applies to citizen's arrests.³⁸

In sum, Alaska follows the common law "in the presence" rule for almost all misdemeanors. Although neither the U.S. Supreme Court nor the Alaska Supreme Court has ever decided whether this rule is a constitutional mandate, the Alaska Legislature and courts have preserved the rule. Alaska also follows the common law prohibition against unnecessary delay for warrantless arrest by an officer, and has indicated that it will do so for citizen's arrests as well.

34. See *Herrin*, 449 P.2d at 677–78 (holding that short delay by officer to remove another woman from the building for her safety and to wait for reinforcements was reasonable and did not invalidate the arrest); see also *id.* at 678 n.16 (“[T]here may be justification for delay, as for instance, when the interval between the commission of the offense and the actual arrest is spent by the officer in pursuing the offender, or in summoning assistance where such may reasonably appear to be necessary.” (quoting *Smith v. State*, 87 So. 2d 917, 919 (Miss. 1956))).

35. See 6A C.J.S. § 13 (2004) (“If a private person fails to make an arrest immediately after commission of the offense, his or her power to do so is extinguished and a subsequent arrest is illegal.”).

36. See, e.g., *Hill v. Levy*, 256 P.2d 622, 624 (Cal. Ct. App. 1953) (finding short delay reasonable during which the arresting citizen confronted and argued with the offender, sought help from an uncooperative hotel manager, and then sought help from the police); *Ogulin v. Jeffries*, 263 P.2d 75, 77–78 (Cal. Ct. App. 1953).

37. See *Herrin*, 449 P.2d at 678.

38. See *id.* (noting that the rule prohibiting unnecessary delay applied to the “officer or person apprehending the offender” (emphasis added)).

II. THE *MOXIE* COURT AGREED WITH CALIFORNIA CASE LAW WHEN IT ADOPTED THE DELEGATED CITIZEN'S ARREST DOCTRINE

In 1983, the Alaska Court of Appeals adopted the delegated citizen's arrest doctrine in *Moxie v. State*.³⁹ The underlying facts of *Moxie* were simple, and the court reached its holding in a short opinion with little discussion.⁴⁰ Relying exclusively on California case law, which expressed policy concerns about citizen safety,⁴¹ the court held in *Moxie* that an arresting citizen may "delegate" the task of taking physical custody of an offender to a police officer.⁴² However, *Moxie* did not define the scope of the newly-created delegated citizen's arrest doctrine. Alaska courts have not addressed any of the ambiguities created by *Moxie*, yet police in the state continue to rely on the delegated citizen's arrest doctrine in arresting misdemeanor offenders in a wide variety of situations.⁴³

A. *Moxie* Adopted the Delegated Citizen's Arrest Doctrine in a Short Opinion Based on Simple Underlying Facts

In *Moxie*, the Alaska Court of Appeals filed a brief opinion adopting the delegated citizen's arrest doctrine.⁴⁴ Mr. Moxie challenged his conviction for resisting arrest, arguing that he had been arrested illegally because the police officer who took him into custody did not witness him commit the misdemeanor.⁴⁵ While acknowledging that the police officer did not witness the misdemeanor, the court held Mr. Moxie's arrest to be a valid citizen's arrest.⁴⁶ The court found that the citizen who had witnessed the misdemeanor properly delegated the task of taking Mr. Moxie into custody to the officer.⁴⁷

39. 662 P.2d 990 (Alaska Ct. App. 1983).

40. See *id.* at 991.

41. See *id.*; *Green v. Dep't of Motor Vehicles*, 137 Cal. Rptr. 368, 371 (Cal. Ct. App. 1977); *People v. Sjosten*, 68 Cal. Rptr. 832, 835-36 (Cal. Ct. App. 1968). *Moxie* cites *Green* and *Sjosten* as examples of the California law on which it relies. *Moxie*, 662 P.2d at 991.

42. See *Moxie*, 662 P.2d at 991.

43. See *infra* Part II.D (discussing Trespasser Fact Pattern, *supra* note 1, and Shoplifter Fact Pattern, *supra* note 2).

44. See *Moxie*, 662 P.2d at 991.

45. See *id.*

46. See *id.*

47. See *id.*

The facts of *Moxie* are straightforward.⁴⁸ Mr. Moxie assaulted a hotel manager, Ms. Robinson.⁴⁹ When the police officer arrived at the hotel, Mr. Moxie had already been physically restrained.⁵⁰ Ms. Robinson informed the officer that she wanted to press charges. She signed a citizen's arrest form and asked the officer to take Mr. Moxie into custody, which he did.⁵¹

On these facts, the court held that the officer properly assisted Ms. Robinson in making a citizen's arrest.⁵² "Certainly," the court wrote, "it is not the sole responsibility of a person making a citizen's arrest to subdue, control and transport the arrestee into the formal custody of the state."⁵³ The court described the officer as an "agent" of Ms. Robinson, who had "initiated" the arrest and validly delegated the task of taking Mr. Moxie into custody to the officer.⁵⁴

B. In Adopting the Delegated Citizen's Arrest Doctrine, Moxie Appropriately Cited California Cases That Express a Policy Concern for the Safety of Arresting Citizens

The court in *Moxie* expressly agreed with the delegated citizen's arrest doctrine developed by the California appellate courts, citing four California cases to support its adoption of the doctrine.⁵⁵ These cases express a policy concern for the physical safety of the citizen making the arrest.⁵⁶ The policy concern is most apparent in those cases in which the

48. *See id.*

49. *See id.* at 990–91.

50. *See id.* at 991. Presumably, Ms. Robinson and other hotel patrons and staff restrained Mr. Moxie, although the opinion does not say.

51. *See id.*

52. *See id.*

53. *Id.*

54. *See id.*

55. *See id.* ("We agree with the position taken by the California Court of Appeals: in this situation, a peace officer must be regarded as an agent of the person making the arrest."). At the time, California was the only state with a delegated citizen's arrest doctrine. Two other states have since adopted the doctrine, citing California law with approval. *See State v. Sutherland*, 943 P.2d 62, 65 (Idaho 1997) ("We agree with the decisions of the Alaska and California courts and hold that a police officer can act as an agent of a citizen who summons assistance in aid of making a citizen's arrest."); *Burke v. State*, 125 P.3d 685, 689 (Okla. Civ. App. 2005) ("We find the reasoning of the California court persuasive . . .").

56. *See In re Roland K.*, 147 Cal. Rptr. 96 (Cal. Ct. App. 1978) (holding delegated citizen's arrest legal where private security guard detained boy after catching him throwing rocks, and then turned him over to a police officer); *Green v. Dep't of Motor Vehicles*, 137 Cal. Rptr. 368 (Cal. Ct. App. 1977) (holding delegated citizen's arrest legal where citizen followed a drunk driver until she

arresting citizen did not physically confront the offender.⁵⁷ However, all four opinions characterize the officer's role as providing physical assistance to the arresting citizen.⁵⁸

The concern is prominent in the two cases in which the citizen did not physically confront the offender.⁵⁹ Both of these cases discuss the right of an arresting citizen to ask for help.⁶⁰ They also give a common sense rationale for their holdings: a citizen should not have to wrestle an offender to the ground while the police stand by.⁶¹ One opinion notes that "[f]requently, as under the circumstances of this case, it is most prudent for a private citizen to summon a police officer to assist in making the arrest."⁶² The other opinion also considers the rationale to be uncontroversial: "Common sense and the case law both agree that the private citizen effecting an arrest may summon the police to his aid."⁶³ In the latter case, the court also notes that "[i]t would appear ludicrous to hold [the arrest illegal] because [the citizen] was afraid to drag respondent out of her car and arrest her unassisted."⁶⁴ Instead the citizen "very wisely . . . chose to enlist the aid of the police in effectuating the arrest rather than risking his own safety."⁶⁵

parked, then went in search of an officer, and returned to the scene with the officer to make the arrest); *People v. Campbell*, 104 Cal. Rptr. 118 (Cal. Ct. App. 1972) (holding delegated citizen's arrest legal where school security guard broke up fight, took victim into the school for treatment, and pointed out fleeing offender to police who then took offender into custody); *People v. Sjosten*, 68 Cal. Rptr. 832, 834-36 (Cal. Ct. App. 1968) (holding delegated citizen's arrest legal where citizen observed offense from her window, called police, continued to observe offender, and instructed police to place him in custody upon their arrival).

57. See *Green*, 137 Cal. Rptr. at 369-71; *Sjosten*, 68 Cal. Rptr. at 836 ("The fact [that the citizen] did not physically confront appellant is not significant.").

58. See *Roland K.*, 147 Cal. Rptr. at 97 (authorizing "transfer of custody" from citizen to officer (citing *Campbell*, 104 Cal. Rptr. at 118)); *Campbell*, 104 Cal. Rptr. at 121 (authorizing "delegation of the 'physical act of custody'" (quoting *Sjosten*, 68 Cal. Rptr. at 836)); *Sjosten*, 68 Cal. Rptr. at 836 (discussing the authority to delegate "the physical act" of taking an offender into custody).

59. See *Green*, 137 Cal. Rptr. at 371; *Sjosten*, 68 Cal. Rptr. at 835.

60. See *Green*, 137 Cal. Rptr. at 371; *Sjosten*, 68 Cal. Rptr. at 835.

61. See *Green*, 137 Cal. Rptr. at 371; *Sjosten*, 68 Cal. Rptr. at 835.

62. *Sjosten*, 68 Cal. Rptr. at 836.

63. *Green*, 137 Cal. Rptr. at 371.

64. *Id.*

65. *Id.*

C. *Moxie Did Not Explicitly Define the Scope of Delegated Citizen's Arrests*

Although the court in *Moxie* adopted the delegated citizen's arrest doctrine, the opinion did not clearly establish the scope of the doctrine under Alaska law. Specifically, *Moxie* does not describe how much arrest responsibility a citizen may delegate to an officer who did not witness the offense before the arrest ceases to be a valid citizen's arrest and becomes an invalid police arrest.⁶⁶ In *Moxie*, all that remained for the officer to do was to handcuff the offender.⁶⁷ These facts are so straightforward that another court considering the case might have held that the citizen's arrest was complete when Mr. Moxie was restrained before the officer arrived.⁶⁸

The court's only guidance as to the scope of the doctrine is found in its statement that "it is not the *sole* responsibility of a person making a citizen's arrest to subdue, control, and transport the arrestee into the formal custody of the state."⁶⁹ Although this guidance appears vague, all the duties listed involve danger of physical resistance by the arrestee.⁷⁰

Additionally, *Moxie* fails to explain how to distinguish between a citizen making an arrest and a citizen-witness reporting a crime.⁷¹ In *Moxie*, there was no question that Ms. Robinson had initiated the arrest

66. See *Moxie v. State*, 662 P.2d 990, 990–91 (Alaska Ct. App. 1983).

67. See *id.* at 991.

68. See, e.g., *Moll v. United States*, 413 F.2d 1233, 1235–36 (5th Cir. 1969) (holding citizen's arrest complete and legal under Florida law where woman saw man with his hand in her purse, asked what he was doing, chased him out of the building, and apprehended him with the help of bystanders before the police arrived); *People v. Harris*, 63 Cal. Rptr. 849, 851–52 (Cal. Ct. App. 1967) (holding citizen's arrest complete and legal where citizen witnessed hit-and-run, followed offender, pulled him over, and told him to wait for the police to arrive).

69. *Moxie*, 662 P.2d at 991 (emphasis added).

70. See *id.*

71. The court did not appear to consider it dispositive that the citizen in *Moxie* signed a "citizen's arrest form." See *id.* Signing a "citizen's arrest form" is unlikely to automatically turn an ordinary witness into an "arresting citizen" because Alaska law defines "arrest" as "the taking of a person into custody in order that the person may be held to answer for the commission of a crime." ALASKA STAT. § 12.25.160 (2006). Alaska courts have strictly interpreted this statute, see *Lindsay v. State*, 698 P.2d 659, 663 (Alaska Ct. App. 1985), and are unlikely to find that a citizen has "initiated" arrest without taking steps towards placing the suspect into custody. Most likely, citizen's arrest forms are used simply for police liability and record-keeping purposes. See *Johanson v. Dep't of Motor Vehicles*, 43 Cal. Rptr. 2d 42, 47 (Cal. Ct. App. 1995) (finding citizen's arrest form did not constitute dispositive evidence of the charge for which offender was arrested). It is possible that a court could also consider a signed citizen's arrest form an "express request" by a citizen that the police take an offender into custody. See *infra* note 115 and accompanying text.

because the offender had already been physically restrained.⁷² Although *Moxie* lists responsibilities a citizen may share with officers (subdue, control, and transport), it does not say what responsibilities a citizen must retain in order to make a citizen's arrest.

D. Alaska Police Currently Make Delegated Citizen's Arrests Despite Moxie's Lack of Clarity

Moxie was decided in 1983 and remains the sole guidance from the Alaska courts regarding delegated citizen's arrests. This lack of judicial review may be partially explained by the fact that misdemeanor defendants often plead guilty rather than take their cases to trial.⁷³ Of those misdemeanor defendants who do go to trial, few appeal.⁷⁴ Furthermore, an illegal arrest by itself cannot be appealed.⁷⁵

Despite *Moxie's* unclear scope, Alaskan police currently make warrantless "citizen's arrests" in a wide variety of circumstances.⁷⁶ The two examples discussed in the introduction⁷⁷ are both based on actual arrests that display the breadth of interpretation given to *Moxie* in Alaska.

In sum, in adopting the delegated citizen's arrest doctrine in Alaska, *Moxie* relied on California case law. *Moxie* and the California courts

72. See *Moxie*, 662 P.2d at 990–91.

73. See Steven Zeidman, *Police the Police: the Role of the Courts and the Prosecution*, 32 FORDHAM URB. L.J. 315, 321 (2005) (asserting that, due to the very low rate at which misdemeanor cases go to trial, "[o]nce an officer makes an arrest, it is for all intents and purposes insulated from any meaningful challenge or review"); see also Rachael King, *Bush Justice: The Intersection of Alaska Natives and the Criminal Justice System in Rural Alaska*, 77 OR. L. REV. 1, 26 (1998) (discussing possible cultural reasons for why no Alaska Native defendant ever took a misdemeanor charge to trial in the author's career as a public defender in rural Alaska); Gerard E. Lynch, *Our Administrative System of Criminal Justice*, 66 FORDHAM L. REV. 2117, 2146 (1998) ("[F]ully-adjudicated cases may be too rare to serve as a meaningful check on the executive authorities."); John B. Mitchell, *Redefining the Sixth Amendment*, 67 S. CAL. L. REV. 1215, 1228 (1994) ("[M]ost of the defender's clients will plead guilty, often at an early phase of the process.").

74. See JOHN SCALIA, U.S. DEP'T OF JUSTICE, NCJ 185055, FEDERAL CRIMINAL APPEALS, 1999 WITH TRENDS 1985–99, at 2–3 (1999) (reporting that in 1999, only five percent of misdemeanor convictions in federal courts were appealed); John L. Barkai, *Accuracy Inquiries for All Felony and Misdemeanor Pleas: Voluntary Pleas but Innocent Defendants?*, 126 U. PA. L. REV. 88, 105 (1977).

75. See *People v. Richards*, 140 Cal. Rptr. 158, 160 (Cal. Ct. App. 1977) ("An illegal arrest, alone, is utterly irrelevant.").

76. See, e.g., JUNEAU POLICE DEP'T, *supra* note 16, Pt. 3, Ch. "Arrest—Citizen's Arrest."

77. See *supra* text accompanying notes 1–2. The author has examined police reports of seven factually complex delegated citizen's arrests from Alaska, spanning a three-month period in 2006. The examples in this Comment were adapted from police reports of closed cases. These reports are on file with the author. All potentially identifying information and details have been removed.

indicate that a citizen may delegate physically dangerous arrest responsibilities to police officers when making valid citizen's arrests. The two examples presented above, based upon actual arrests, demonstrate that a wide range of misdemeanor arrests are currently justified as delegated citizen's arrests in Alaska.

III. CALIFORNIA COURTS HAVE DEFINED THE SCOPE OF DELEGATED CITIZEN'S ARRESTS

California courts have imposed two limitations on the scope of delegated citizen's arrests.⁷⁸ First, California applies the common law prohibition on unnecessary delay to delegated citizen's arrests.⁷⁹ Second, California courts also require the citizen to show intent to arrest by taking substantial action to further the arrest, summoning police, and giving specific information to the officer.⁸⁰

A. *California Courts Prohibit the Arresting Citizen from Delaying Unnecessarily Between Witnessing the Misdemeanor and Making the Arrest*

California cases indicate that the common law prohibition on unnecessary delay applies to delegated citizen's arrests in the same way it applies to other warrantless misdemeanor arrests. Two of the cases cited in *Moxie* specifically refer to the delay prohibition.⁸¹ The arrests in both cases were deemed valid even though the citizen did not immediately physically arrest the offender upon witnessing the crime.⁸²

78. See *People v. Richards*, 140 Cal. Rptr. 158, 160 (Cal. Ct. App. 1977) (holding purported delegated citizen's arrest invalid where citizen left the police to act independently when they arrived). The California Supreme Court has never ruled directly on the validity of the delegated citizen's arrest doctrine, but has upheld an arrest factually similar to a delegated citizen's arrest. See *People v. Wolfgang*, 221 P. 907, 911 (Cal. 1923).

79. See *People v. Sjosten*, 68 Cal. Rptr. 832, 836 (Cal. Ct. App. 1968).

80. See *People v. Johnson*, 176 Cal. Rptr. 684, 686 (Cal. Ct. App. 1981). *People v. Johnson*, decided two years before, was not cited in *Moxie*.

81. See *Green v. Dep't of Motor Vehicles*, 137 Cal. Rptr. 368, 371 (Cal. Ct. App. 1977) ("[H]e did secure the aid of a police officer as promptly as possible."); *Sjosten*, 68 Cal. Rptr. at 836 ("Promptness, clearly exhibited here, is the only remaining requirement of a valid citizen's arrest for a misdemeanor without a warrant.").

82. See *Green*, 137 Cal. Rptr. at 371 ("Respondent was arrested within 35 to 40 minutes of the time that [the citizen] saw her enter her driveway"); *Sjosten*, 68 Cal. Rptr. at 834-36 (describing chain of events between when the citizen witnessed the crime and when police took physical custody of the offender, and later concluding that the arrest did not violate the delay prohibition). Although *People v. Campbell* does not mention the delay prohibition specifically, the court found

The citizens in those cases delayed physical arrest to wait for the arrival of the police,⁸³ which is generally considered necessary delay.⁸⁴

The delay prohibition also forbids a citizen from going about business unrelated to the arrest before the arrest is complete.⁸⁵ In order for a delegated citizen's arrest to be valid, the citizen must remain focused on accomplishing the arrest even after seeking and receiving the help of the police.⁸⁶ In one of the California cases cited in *Moxie*, the court upheld a delegated citizen's arrest where the citizen left the scene in order to locate an officer, but rejoined the police at the scene directly afterwards.⁸⁷ In its holding, the court specifically referred to the common law delay prohibition, noting that "[t]his is not a case where the citizen observing the offense went about his other business and then later decided to effectuate an arrest."⁸⁸

B. California Courts Require that the Arresting Citizen Show Intent to Arrest by Taking Substantial Action to Further the Arrest

California courts require that, in order to effectuate a valid delegated citizen's arrest, the citizen show intent to arrest.⁸⁹ Although the California cases do not precisely define the "intent" requirement, a close reading of the case law indicates that the citizen must both engage in substantial action to further the arrest and provide certain information to the police about the offender and the offense.⁹⁰

the arrest legal despite the fact that the citizen took the victim to get medical attention before making efforts to apprehend the offender. See 104 Cal. Rptr. 118, 120 (Cal. Ct. App. 1972).

83. See *Green*, 137 Cal. Rptr. at 371; *Sjosten*, 68 Cal. Rptr. at 834–36.

84. Cf. *Herrin v. State*, 449 P.2d 674, 677–78 (Alaska 1969); see also *Ogulin v. Jeffries*, 263 P.2d 75, 77 (Cal. Ct. App. 1953).

85. Cf. *Herrin*, 449 P.2d at 677–78 ("In order to justify a delay, there should be a continued attempt on the part of the officer or person apprehending the offender to make the arrest; he cannot delay for any purpose which is foreign to the accomplishment of the arrest." (quoting *Jackson v. Superior Court*, 219 P.2d 879, 882 (Cal. Ct. App. 1950))).

86. See *Sjosten* 68 Cal. Rptr. at 834–35 (finding delegated citizen's arrest legal where citizen, after calling the police, continued to watch the offender until the police took physical custody of the offender).

87. See *Green*, 137 Cal. Rptr. at 370.

88. *Green*, 137 Cal. Rptr. at 371.

89. See *People v. Johnson*, 176 Cal. Rptr. 684, 686 (Cal. Ct. App. 1981); *People v. Richards*, 140 Cal. Rptr. 158, 159–60 (Cal. Ct. App. 1977).

90. See *Johnson*, 176 Cal. Rptr. at 686 (finding delegated citizen's arrest legal where citizen witnessed the offense, followed the offender, and then reported the offense and pointed out the offender's whereabouts to the police). Although the court in *Moxie* indicated that it "agreed" generally with California case law in this area, it did not specifically cite *Johnson* or *Richards* as

The intent requirement is twofold. First, although it is not necessary that the citizen physically confront the offender,⁹¹ the citizen must take some action towards apprehending the offender. This requirement can be satisfied by such action as verbally confronting the offender⁹² or watching and following the offender until custodial arrest by police.⁹³ Second, the citizen must summon the police to the scene and be able to identify the offender to the police, giving the offender's whereabouts if necessary.⁹⁴ The intent requirement serves to distinguish between a citizen making a delegated citizen's arrest and a citizen who merely calls the police to report witnessing a crime.⁹⁵

In sum, California requires that citizens act with intent and without delay in order to make valid delegated citizen's arrests. When the citizen simply reports a crime to the police and leaves them to act independently, the arrest is not a valid citizen's arrest. The citizen must remain focused on the arrest from start to finish, taking substantial action to further the arrest and giving specific information to the police so that they may take the offender into custody.

IV. ALASKA SHOULD APPLY CALIFORNIA'S LIMITS ON THE DELEGATED CITIZEN'S ARREST DOCTRINE

As *Moxie* agreed with California case law when it adopted the delegated citizen's arrest doctrine, and the limitations found in California case law comport with *Moxie's* legal holding and rationale, Alaska should apply California's limitations on the delegated citizen's arrest doctrine. Specifically, Alaska should apply the common law delay prohibition to delegated citizen's arrests and require that citizens show intent to arrest, rather than leaving the police to act independently. Applying these limitations supports the underlying policy rationale of citizen safety. Delegated citizen's arrests are proper where the police give physical assistance to a citizen making an otherwise valid arrest.

examples. Another case discussing intent to arrest was decided three years after *Moxie*. *Padilla v. Meese*, 229 Cal. Rptr. 310 (Cal. Ct. App. 1986).

91. See *People v. Sjosten*, 68 Cal. Rptr. 832, 836 (Cal. Ct. App. 1968).

92. See *Padilla*, 229 Cal. Rptr. at 311.

93. See *Johnson*, 176 Cal. Rptr. at 686.

94. See *id.*

95. See *Richards*, 140 Cal. Rptr. at 160 (finding insufficient evidence of intent to arrest where citizen called police to report a crime but left to the officers the decision of whether to arrest the offender). *People v. Richards*, decided six years before *Moxie*, was not cited in *Moxie*.

A. *The Citizen May Not Delay Unnecessarily or Go About Unrelated Business Between Witnessing the Misdemeanor and Completion of the Arrest*

Like California, Alaska should apply the common law prohibition on unnecessary delay to delegated citizen's arrests just as it does to all other warrantless misdemeanor arrests.⁹⁶ Both Alaska and California follow the common law rule that unless delay furthers a warrantless arrest, it invalidates it.⁹⁷ California also applies the rule to delegated citizen's arrests.⁹⁸ Alaska, which followed California law in adopting the delegated citizen's arrest doctrine, should do so as well.

Applying the delay prohibition to delegated citizen's arrests is consistent with *Moxie*, which allows citizens making valid arrests to seek police assistance.⁹⁹ Both the court in *Moxie* and the California courts intend for citizens to seek police help in potentially dangerous situations.¹⁰⁰ Courts in both states have held delay necessary when it ensures physical safety.¹⁰¹ In Alaska, like California,¹⁰² summoning and waiting for police assistance in the context of delegated citizen's arrests should be considered necessary delay.

Alaska should also apply the rule that a citizen may not go about business unrelated to the arrest even after calling the police, but must continue efforts to make the arrest with police assistance.¹⁰³ In California cases upholding delegated citizen's arrests, the citizen is focused on the arrest from the time of observing the crime through custodial arrest.¹⁰⁴

96. See *Herrin v. State*, 449 P.2d 674, 677–78 (Alaska 1969).

97. See *id.*; *Jackson v. Superior Court*, 219 P.2d 879, 882 (Cal. Ct. App. 1950).

98. See *People v. Sjosten*, 68 Cal. Rptr. 832, 836 (Cal. Ct. App. 1968).

99. See *Moxie v. State*, 662 P.2d 990, 991 (Alaska Ct. App. 1983).

100. See *id.*; *Green v. Dep't of Motor Vehicles*, 137 Cal. Rptr. 368, 371 (Cal. Ct. App. 1977) (“[The citizen] very wisely . . . chose to enlist the aid of the police in effectuating the arrest rather than risking his own safety.”); *Sjosten*, 68 Cal. Rptr. at 836.

101. See *People v. Campbell*, 104 Cal. Rptr. 118, 121 (Cal. Ct. App. 1972) (holding arrest valid where citizen helped victim before attempting to apprehend offender); see also *Herrin*, 449 P.2d at 676–78 (holding that delay to remove woman from building for her safety was necessary).

102. See *People v. Johnson*, 176 Cal. Rptr. 684, 686–87 (Cal. Ct. App. 1981) (holding arrest legal where citizen located the offender and then returned home to wait for the police to arrive); *Green*, 137 Cal. Rptr. at 370–71 (holding arrest legal where citizen left the offender at the scene to get police assistance).

103. See *Green*, 137 Cal. Rptr. at 371.

104. See, e.g., *Padilla v. Meese*, 229 Cal. Rptr. 310, 315 (Cal. Ct. App. 1986) (holding delegated citizen's arrest valid where citizen told drunk driver to pull over and waited with him for the arrival of the police).

Even in cases where the citizen is separated from the offender when the police arrive,¹⁰⁵ the citizen should be physically present when the officers take custody of the offender.¹⁰⁶ When the police arrive, the citizen should not simply go on about the citizen's business and allow the police to act independently.¹⁰⁷

The fact patterns discussed in the introduction illustrate the delay prohibition. In the first scenario, a citizen saw a trespasser on her property and called the police.¹⁰⁸ She told the police about the trespasser, and they located him forty-five minutes later¹⁰⁹ about five miles away.¹¹⁰ The police took him to jail, justifying his warrantless arrest as a "citizen's arrest."

The citizen in this example delayed unnecessarily by abandoning her efforts to make an arrest after speaking to the police. She went about other business before her citizen's arrest was complete. Although she called the police promptly, she then ceased to focus on the arrest after

105. *Johnson*, 176 Cal. Rptr. at 685–86 (holding arrest legal where, after citizen told the police where to find the suspect, the police returned the suspect to the citizen's home so that the citizen could complete the arrest); *Green*, 137 Cal. Rptr. at 370 (holding arrest legal where police returned the citizen to the suspect after the citizen had gone to look for help in order to place the suspect under arrest).

106. *See, e.g., Johnson*, 176 Cal. Rptr. at 685–86 (holding delegated citizen's arrest legal where citizen left offender to summon police but was present at custodial arrest); *Green*, 137 Cal. Rptr. at 370 (holding delegated citizen's arrest legal where citizen was separated from offender but present at the offender's custodial arrest by police). This is also true in other states. *See State v. Sutherland*, 943 P.2d 62, 65–66 (Idaho Ct. App. 1997) (holding delegated citizen's arrest valid where citizen informed police officer after fight that she wished to arrest her attacker, and accompanied both officer and attacker to the police station to make the arrest); *Burke v. State*, 125 P.3d 685, 686 (Okla. Civ. App. 2005) (holding delegated citizen's arrest valid where citizen followed drunk driver, confronted him, continued to follow him when he refused to stop driving, parked when he did, and waited in her car for the police to arrive while suspect went into a restaurant).

107. *See Sjosten*, 68 Cal. Rptr. at 834–35 (holding arrest legal where citizen continued to watch from her window from witnessing the crime, through arrival of police, until custody was complete); *Sutherland*, 943 P.2d at 65–66; *Burke*, 125 P.3d at 686.

108. *See Trespasser Fact Pattern*, *supra* note 1.

109. *See Trespasser Fact Pattern*, *supra* note 1; *cf. Johnson*, 176 Cal. Rptr. at 686–87 (holding citizen's arrest valid where "the entire sequence of events . . . consum[ed] . . . little more than 10 minutes"); *Ogulin v. Jeffries*, 263 P.2d 75, 77 (Cal. Ct. App. 1953) (holding citizen's arrest valid where "only about twenty minutes elapsed"); *Hill v. Levy*, 256 P.2d 622, 624 (Cal. Ct. App. 1953) (holding citizen's arrest valid where, according to varying testimony, between five and twenty-five minutes elapsed between the offense and custodial arrest); *cf. also Green*, 137 Cal. Rptr. at 371 (holding citizen's arrest valid where "[r]espondent was arrested within 35 to 40 minutes").

110. *Cf. Warren v. State*, Nos. 3506, A-5831, 1996 WL 685757, *1–2 (Alaska Ct. App. Nov. 27, 1996) (holding police arrest illegal where officer on his way to another scene saw offender commit misdemeanor of riding bicycle on sidewalk, but did not complete arrest until forty-five minutes later after returning from the first scene).

calling the police. In short, she behaved like a witness reporting a crime. By the time the offender was placed under arrest by the police, she had forfeited her own authority to arrest. To hold her minimal interest in the arrest sufficient to justify a citizen's arrest undermines the warrant requirement and grants the police broad authority to independently make warrantless misdemeanor arrests based only on a citizen's report of a crime.

In the arrest of the shoplifter, the delay between the crime and custody was necessary because it was spent waiting for police assistance and in fresh pursuit of the offender.¹¹¹ In that example, store employees called the police after a shoplifter whom they had escorted to the front of the store shoved past them and escaped.¹¹² The employees told the officer that the offender ran into a building across the street. The officer then chased the offender down and brought him back to the store for identification.¹¹³ The delay in this example furthers a policy of the delegated arrest doctrine implicit in *Moxie*—namely, to ensure the physical safety of a citizen engaged in a citizen's arrest. Here, the citizens promptly called the police after the offender physically resisted their attempts to take him into custody, told the police where the offender had fled, and allowed the responding officer to take over pursuit.

In sum, in order to effectuate the policy underlying the delegated citizen's arrest doctrine announced in *Moxie* and to preserve the distinction between legal citizen's arrests and illegal police arrests, Alaska should prohibit unnecessary delay on the part of the arresting citizen. Such a prohibition would forbid citizens from going about business unrelated to the accomplishment of the arrest from the time they witness the crime until police take the offender into custody. The duty to avoid delay is not extinguished by securing police assistance, and citizens must continue to focus on the arrest until it is complete. Generally speaking, citizens must both continue their involvement after

111. See Shoplifter Fact Pattern, *supra* note 2; cf. *Herrin v. State*, 449 P.2d 674, 678 (Alaska 1969).

112. Cf. *People v. Campbell*, 104 Cal. Rptr. 118, 120–21 (Cal. Ct. App. 1972) (holding arrest legal where security guard broke up fight, took victim to get medical treatment, and pointed out the fleeing offender to officers who chased the offender down).

113. Cf. *Johnson*, 176 Cal. Rptr. at 686 (holding arrest legal where citizen located offender and told police where to find him, and the police then picked up offender and returned him to the citizen's home for identification).

summoning police and be present during arrest in order to make a valid delegated citizen's arrest.

B. Alaska Should Apply California's Intent Law to Require that Arresting Citizens Take Substantial Action to Further the Arrest

Like California, Alaska should consider whether a citizen has shown intent to arrest. This requires taking substantial action to further the arrest and giving sufficient information to the police. *Moxie* did not explain how to distinguish a citizen making a delegated citizen's arrest from a citizen-witness merely reporting a misdemeanor. However the court did express approval of the California delegated citizen's arrest doctrine,¹¹⁴ which uses an intent requirement for this purpose.¹¹⁵ Furthermore, the California intent requirement is consistent with *Moxie*'s language and policy.¹¹⁶ Applying California's intent requirement in Alaska is consistent with *Moxie* and would serve to protect Alaska's warrant requirement.

California requires that citizens actively involve themselves in delegated arrests, rather than simply calling the police and leaving them to proceed independently.¹¹⁷ *Moxie* speaks of the officer "aiding" the

114. See *Moxie v. State*, 662 P.2d 990, 991 (Alaska Ct. App. 1983). *Moxie* looked to California cases to support delegated citizen's arrests generally, but did not cite as examples either *Johnson* or *Richards*, the two California cases on intent at that time. *Padilla* was decided three years after *Moxie*. *Padilla v. Meese*, 229 Cal. Rptr. 310, 316 (Cal. Ct. App. 1986).

115. See *Padilla*, 229 Cal. Rptr. at 316; *Johnson*, 176 Cal. Rptr. at 686; *People v. Richards*, 140 Cal. Rptr. 158, 160 (Cal. Ct. App. 1977). There is a difference between *Moxie* and *Johnson* that is worth mentioning. *Moxie* refers to the citizen's "express request" that the officer take the offender into custody. *Moxie*, 662 P.2d at 991. However, *Johnson* indicates that the citizen's request that the officer take the offender into custody need not be express. Instead it can be implied from the citizen's demonstrated "intent" that the offender be arrested. See *Johnson* 176 Cal. Rptr. at 686 ("The citizen's request need not, however, be express, but may be implied by the citizen's conduct . . ."); see also *Padilla* 229 Cal. Rptr. at 315-16 (holding delegated citizen's arrest legal despite the fact that the arresting citizen lacked subjective intent to arrest as he did not know he had the authority to make a citizen's arrest). In *Padilla*, the citizen stopped a drunk driver, told him to pull over and wait for police, reported the offense, and turned the driver over to police when they arrived. Although he never expressly requested that the police take the offender into custody for him, the courts found his actions sufficient to be an implied request. See *Padilla*, 229 Cal. Rptr. at 315-16. Because the citizen in *Moxie* did make an express request that the police arrest the offender, it is unclear from *Moxie*'s holding if the citizen's express request is critical to the outcome. This question may be rendered moot where the citizen completes a "citizen's arrest form," which a court could consider an "express request" that the offender be taken into custody. See *supra* note 71.

116. See *Moxie*, 662 P.2d at 991.

117. See *Richards*, 140 Cal. Rptr. at 160.

citizen and of the officer as the “agent” of the arresting citizen.¹¹⁸ This language implies that the citizen should be the decision-maker and driving force behind the arrest. *Moxie* refers to the scope of delegation in terms of physical tasks: to “subdue, control, and transport the arrestee into the formal custody of the state.”¹¹⁹ *Moxie* further notes that these duties are not the “sole responsibility of a person making a citizen’s arrest”¹²⁰ This language does not completely relieve the citizen of any arrest responsibilities nor does it allow the police to take over the situation entirely. Consistent with this language, the citizen should be required to take on responsibility for the arrest by directing the actions of the police, showing the kind of “intent” required by California courts to make a valid delegated citizen’s arrest.

This standard for intent renders results consistent with the prohibition against unnecessary delay. As described above, this prohibition requires that the citizen focus on the arrest from the time of witnessing the crime through custodial arrest of the offender.¹²¹ For example, in the trespasser fact pattern discussed above, the arrest is invalid under both the standards for delay and intent. In that case, the long delay between the crime and the arrest occurred because the citizen ceased to focus on the arrest after speaking to the police, leaving the officer to independently locate and identify the offender.¹²² After speaking to the police, the citizen could have safely followed the trespasser in her car.¹²³ Alternatively, she could have requested that he wait until the arrival of the police.¹²⁴ She did not show sufficient intent to make her an arresting citizen as defined by California case law and consistent with the purposes of *Moxie*.

To define the trespasser’s arrest a valid delegated citizen’s arrest is to effectively eliminate the common law rule, codified by statute in Alaska,

118. See *Moxie*, 662 P.2d at 991.

119. See *id.*

120. See *id.*

121. See *supra* Part IV.A.

122. See Trespasser Fact Pattern, *supra* note 1.

123. Cf., e.g., *People v. Johnson*, 176 Cal. Rptr. 684, 685 (Cal. Ct. App. 1981) (holding arrest legal where citizen saw prowler, called police, went out in his car, located the offender, and returned home to report the offender’s location to the police); *Green*, 137 Cal. Rptr. at 369–70 (holding arrest legal where citizen followed DUI suspect in her car until she parked); *Burke v. State*, 125 P.3d 685, 686 (Okla. Civ. App. 2005) (same).

124. *Padilla v. Meese*, 229 Cal. Rptr. 310, 311 (Cal. Ct. App. 1986) (arresting citizen requested that drunk driving offender pull over and park while citizen called police).

requiring the police to obtain an arrest warrant for misdemeanors they did not personally witness. It would legalize warrantless police arrests based solely on citizen reports of misdemeanor offenses, thus undercutting the warrant requirement. The exception for delegated citizen's arrests would become an exception allowing warrantless police arrest in response to any crime report by a witness.

This standard for intent also yields consistent results in the example of the shoplifter.¹²⁵ In that arrest, the citizens had confronted the offender and taken him to the front of the store at which point he escaped and ran away.¹²⁶ They then called the police and were present to identify the offender when he was taken into custody by the responding officer.¹²⁷ Unlike the citizen in the arrest of the trespasser, who left the police to act independently after calling 911, the store employees gave specific instructions to the police and were present for the custodial arrest.

C. *California's Limitations Comport with Moxie's Policy*
Underpinnings: Physical Safety of a Citizen Making an Arrest
Justifies Police Assistance

The California cases cited in *Moxie* demonstrate concern with ensuring the physical safety of the arresting citizen.¹²⁸ The California courts, and other states' courts, describe this policy concern explicitly, indicating that a citizen who wishes to make an arrest should not be prevented from doing so just because she is "afraid" to physically subdue the offender.¹²⁹ *Moxie* agreed with the California courts'

125. See Shoplifter Fact Pattern, *supra* note 2; cf. *Johnson*, 176 Cal. Rptr. at 686.

126. Cf. *People v. Campbell*, 104 Cal. Rptr. 118, 120 (Cal. Ct. App. 1972) (holding arrest legal where citizen security guard broke up fight, assisted victim, and pointed out fleeing suspect to officers who took him into custody).

127. Cf. *Johnson*, 176 Cal. Rptr. at 686 (citizen present for custodial arrest); *Green*, 137 Cal. Rptr. at 371 (same).

128. See *supra* Part II.B.

129. See *Green*, 137 Cal. Rptr. at 371 ("It would appear ludicrous to hold that appellant cannot protect the motoring public by suspending respondent's license based on the uncontradicted facts set forth above, because [the citizen] was afraid to drag respondent out of her car and arrest her unassisted."); *Burke v. State*, 125 P.3d 685, 689 (Okla. Civ. App. 2005) ("[The citizen] wished to place [the offender] under citizen's arrest, and—being understandably afraid to approach [the offender] herself—accepted the officer's assistance in notifying him of his arrest and taking him into custody.").

reasoning.¹³⁰ The language of the decision reflects this policy, referring to delegation in terms of physically dangerous duties.¹³¹

The standards for intent and delay further effectuate this policy by requiring the arresting citizen to be the driving force behind the arrest throughout, without exposing the citizen to potential physical resistance from offenders. The standards for intent and delay ensure that the citizen makes the arrest while not restricting police assistance that protects the citizen. For example, police can assist with physically dangerous tasks, such as taking over hot pursuit of a fleeing offender from a citizen,¹³² without violating these requirements. In such cases the officer's assistance makes the arrest safer for the citizen.¹³³

The prohibition on unnecessary delay and standards for intent yield results consistent with *Moxie's* policy concerns when applied to the example arrests described above. In the example of the trespasser, the offender was docile and had already left when the citizen spoke to the police. The assistance of the officers in that case did not physically protect her. She was not asking for assistance in confronting and subduing a stranger or dangerous individual.¹³⁴ She was not chasing a fleeing suspect.¹³⁵ She did not appear to have any intent to arrest the offender herself, and did not participate in the arrest at all.

In the example of the shoplifter, however, the officer's involvement made the situation safer for the citizens. In that arrest, the shoplifter was taken to the front of the store, where he pushed past an employee and ran off. The police officer, on the instruction of the citizens, subdued, controlled, and transported the offender.¹³⁶ The citizens delegated the physically dangerous aspects of the arrest to the officer, while taking full responsibility for other arrest duties throughout.

130. See *Moxie v. State*, 662 P.2d 990, 991 (Alaska Ct. App. 1983).

131. See *Moxie*, 662 P.2d at 991 ("it is not the sole responsibility of a person making a citizen's arrest to subdue, control and transport the arrestee into the formal custody of the state").

132. See *People v. Campbell*, 104 Cal. Rptr. 118, 120 (Cal. Ct. App. 1972) (finding arrest legal where officers chased down fleeing offender for citizen).

133. See *Burke*, 125 P.3d at 689.

134. Cf. *Sutherland*, 943 P.2d at 66 (describing in detail the physical danger to the citizen posed by the "irate" and "highly intoxicated" arrestee, who had already physically assaulted the citizen); *Burke*, 125 P.3d at 686 (describing the conduct of the offender when confronted by citizen on the road as "intoxicated," "yelling," and "belligerent").

135. Cf. *People v. Wolfgang*, 221 P. 907, 911 (Cal. 1923).

136. Cf. *Moxie v. State*, 662 P.2d 990, 991 (Alaska Ct. App. 1983).

V. CONCLUSION

Alaska should apply California's limits on delegated citizen's arrests. These limits protect Alaska's warrant requirement and are consistent with *Moxie*'s legal holding and policy concerns. Alaska should require citizens to act with intent and without delay in order to make a valid delegated citizen's arrests. The citizen should not merely report the crime and then allow the police to act independently.¹³⁷ Adopting these doctrines does not frustrate the policy behind the delegated citizen's arrest doctrine of making the situation safer for the arresting citizen. These limits clarify the delegated citizen's arrest doctrine in Alaska in accordance with *Moxie* and Alaska law.

137. Although not mentioned in the cases, another reason for using citizen involvement to distinguish between citizen and police arrest is that making a citizen's arrest exposes the citizen to liability for false arrest. See *Hill v. Levy*, 256 P.2d 622, 625 (Cal. Ct. App. 1953) (finding arresting citizen not liable in action for false arrest). If a citizen calls the police, and the police take over the arrest process, a citizen may think that the police have also assumed legal responsibility for the arrest. Furthermore, citizens in these cases may not fully understand that the police could make the arrest if they obtained a warrant. Although the courts do not comment on it, in a handful of cases the police have incorrectly represented to the citizen that the offender *cannot be arrested* unless the citizen makes the arrest. See *Atkins v. Alameda*, No. C-03-3566 MHP, 2006 WL 1600651, *3 (N.D. Cal. June 7, 2006) ("[The officer] told [the citizens] that the only way that plaintiff could be arrested is if they put him under citizen's arrest."); *Green*, 137 Cal. Rptr. at 370 ("The officers there told him that they did not have the power to arrest respondent and the only way she could be arrested was if [he] were to make a citizen's arrest."); *State v. Sutherland*, 943 P.2d 62, 65 (Idaho 1997) ("Officer Bauer told Goma that if she wanted Sutherland arrested for misdemeanor battery, she would have to perform a citizen's arrest."). In each cited case, the officer in fact could have arrested the offender by obtaining a warrant.

