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RESISTING AN UNLAWFUL ARREST



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Can You Resist an Unlawful Arrest in Pennsylvania?

The instinct to pull away from an arrest you believe is illegal is human — and in Pennsylvania it is also a crime. The remedy for an unlawful arrest lives in a courtroom, not on the street.

The short answer is no. In Pennsylvania there is no right to forcibly resist an arrest you know is being made by a peace officer, even when the arrest is unlawful. The law channels the illegal-arrest grievance into a courtroom, where it can be won, and away from the street, where resistance only manufactures a second and far worse offense. A single narrow exception survives — defense against an officer's unlawful, deadly force — and it is narrower than most people assume.

The intuition the law rejects

It feels like it should be otherwise. If an arrest is illegal, why must a free person submit to it? The intuition runs deep, and the common law of an earlier era partly indulged it. Pennsylvania has since rejected it, for a practical reason: no one standing on a sidewalk — not the officer, not the arrestee — can reliably adjudicate probable cause in the heat of the moment. Letting each citizen decide, by force, whether his own arrest is lawful would turn every contested stop into a brawl, with the question of legality settled by who is stronger. The law prefers a judge.

The statute closes the door

Pennsylvania's self-defense statute does not leave the matter to inference. The Crimes Code provides that the use of force in self-protection is not justifiable "to resist an arrest which the actor knows is being made by a peace officer, although the arrest is unlawful." [18 Pa.C.S. § 505\(b\)\(1\)\(i\)](#). Read that clause closely. It does not say resistance is unjustified when the arrest is lawful — it says resistance is unjustified "although the arrest is unlawful." The Legislature anticipated the very case the arrestee wants to press and foreclosed it by name.

The Supreme Court could not have been clearer

If the statute leaves a sliver of doubt, the Pennsylvania Supreme Court removed it. In [Commonwealth v. Biagini](#), 540 Pa. 22, 655 A.2d 492 (1995), the Court held flatly that "there does not exist in Pennsylvania a right to resist arrest, under any circumstances." It added the corollary that controls everything else: "The lawfulness of the arrest must be decided after the fact." The legality of the arrest is not a question to be answered with your hands at the moment of seizure; it is a question reserved for a tribunal afterward.

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The Court explained why the forum matters. Whether "a police officer placed an individual under arrest without probable cause is a legal determination; it is an issue to be resolved in a courtroom, not on a street corner." That sentence is the whole doctrine in miniature. Probable cause is a legal judgment, made by a court on a developed record — not a referendum conducted curbside between an officer and the person he is handcuffing.

Winning the resisting charge is not winning the fight

Here the law contains a genuine subtlety, and it cuts in two directions. A "lawful arrest" is an element of the crime of resisting arrest. Under [18 Pa.C.S. § 5104](#), "[a] person commits a misdemeanor of the second degree if, with the intent of preventing a public servant from effecting a lawful arrest or discharging any other duty," he creates a substantial risk of bodily injury or employs means requiring substantial force to overcome. Because lawfulness is an element, an arrest without probable cause can defeat a resisting-arrest conviction.

That sounds like vindication. It is not. The Biagini defendants did defeat their resisting counts because their arrests lacked probable cause — yet the Court affirmed their convictions for aggravated assault on the officers. The illegal arrest excused the resisting charge; it did not excuse the violence. The lesson is exact: beating the resisting-arrest count does not give you license to strike the officer, and the assault charges that follow a struggle do not evaporate merely because the underlying arrest was flawed.

The trap. An unlawful arrest may defeat a resisting-arrest charge — but the same struggle can support an aggravated-assault charge that an unlawful arrest does *not* defeat. Resisting an illegal arrest tends to convert a strong suppression argument into a new, independent crime.

The one real exception, and how narrow it is

Self-defense against the police is not abolished; it is confined to the extreme. Quoting *Commonwealth v. French*, 531 Pa. 42, 611 A.2d 175 (1992), the Biagini Court recognized that "an arrestee's use of force in self protection is justified when the arrestee reasonably believes that such force is immediately necessary to protect against an arresting officer's use of unlawful and deadly force." The trigger is not illegality, and not roughness — it is unlawful and deadly force, the kind capable of causing death or serious bodily injury.

The boundary is policed strictly. Excessive force short of that threshold does not authorize a physical response. As French put it, "[a]n arresting officer's use of excessive force capable of causing less than serious bodily injury or death can be vindicated by recourse to subsequent legal remedies." Translated: if an officer is unlawfully rough, the answer is a complaint, a suppression motion, and a civil suit — not a counterpunch.

Only when the force threatens death or serious bodily injury does the law return to the arrestee the right to defend himself.

What it means for you

If you are convinced an arrest is illegal, the worst thing you can do is fight it where it happens. Say clearly that you do not consent, then submit. Preserve everything — names, badge numbers, witnesses, video — and bring the grievance to a courtroom, where an unlawful arrest can be a powerful weapon: suppressed evidence, dismissed charges, even civil liability. Resist instead, and you hand the Commonwealth a new charge that your illegal-arrest argument cannot touch. Reserve physical defense for the rare moment of deadly force, and call a lawyer the instant you are able.

Authorities Cited

1. 18 Pa.C.S. § 505(b)(1)(i) — <https://law.justia.com/codes/pennsylvania/2022/title-18/chapter-5/section-505/>
 2. Commonwealth v. Biagini, 540 Pa. 22, 655 A.2d 492 (1995) — <https://law.justia.com/cases/pennsylvania/supreme-court/1995/540-pa-22-1.html>
 3. 18 Pa.C.S. § 5104 — <https://law.justia.com/codes/pennsylvania/2022/title-18/chapter-51/section-5104/>
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