



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

December 6, 2004

The Honorable B. Lee Miller
Municipal Court Judge
Post Office Box 40
Greenwood, South Carolina 29648

Dear Judge Miller:

In a letter to this office you referenced the situation where a defendant is arrested for criminal domestic violence. As a condition of the bond imposed, he is to have no contact or attempted contact with the victim. You indicate that law enforcement officers are present at the time the bond is imposed and are familiar with the condition of no contact with the victim. After the defendant is released, he then goes to the location where the victim is and attempts to talk with the victim. Law enforcement is called to the location.

In such situation, you have asked whether law enforcement can arrest the defendant for violation of a condition of the bond that was imposed inasmuch as they have knowledge of such conviction. You particularly referenced the authority of a law enforcement officer to arrest for a freshly committed offense. See, e.g., State v. Martin, 275 S.C. 141, 268 S.E.2d 105 (1980).

This office has indicated in a prior opinion dated October 21, 1996 that "(w)here a defendant fails to perform a condition required of him by a bond, the bonding judge may bring the defendant back before him for further action. Such is typically done by virtue of a bench warrant." That opinion commented further that

I know of no reason why the issuance of a bench warrant would not be the appropriate procedural mechanism to bring the defendant back generally before the court where he or she has violated a special condition of his or her bond...(Citing People ex rel. Shaw v. Lombard, 408 N.Y.S.2d 664 (1978))...it has been generally stated that "the proper procedure is to require the defendant to appear before the court, by a bench warrant if necessary, in order for the court to review its release of the defendant on recognizance or bail."...Such is consistent with Section 17-15-40 stating that "a warrant for the person's arrest will be issued immediately" upon violation of a condition of release.

Consistent with such opinion, a bench warrant could be issued for a defendant violating a condition of a bond. I do not know of any authority for a law enforcement officer to arrest for violation of a condition of a bond committed in his presence. Of course, such conduct as described above by a defendant may give rise to possible other criminal violations for which an arrest may be made at the location, such as disorderly conduct, assault, or other relevant offense depending upon the circumstances. In particular, S.C. Code Ann. § 16-25-20 (2003) provides that "(i)t is unlawful to (1) cause physical harm or injury to a person's own household member; or (2) offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril."

Also, in the situation of a criminal domestic violence case, an order of protection could have been issued by magistrate. Pursuant to S.C. Code Ann. § 20-4-30 (Supp. 2003) a family court has jurisdiction generally in protection from domestic abuse cases. However, such provision further states that "...during nonbusiness hours or at other times when the court is not in session, the petition may be filed with a magistrate. The magistrate may issue an order of protection granting only the relief provided by Section 20-4-60(a)(1)." That provision states that

(a) Any order of protection granted under this chapter shall be to protect the petitioner or the abused person or persons on whose behalf the petition was filed and may include:

(1) Temporarily enjoining the respondent from abusing, threatening to abuse, or molesting the petitioner or the person or persons on whose behalf the petition was filed.

A violation of an order of protection is a criminal offense punishable by thirty days in jail or a fine of two hundred dollars or may constitute contempt of court punishable by up to one year in jail and/or a fine not to exceed fifteen hundred dollars. See: S.C. Code Ann. § 20-4-60 (1985).

Pursuant to S.C. Code Ann. § 16-25-70 (Supp. 2003),

A law enforcement officer may arrest, with or without a warrant, a person at the person's place of residence or elsewhere if the officer has probable cause to believe that the person is committing or has freshly committed a misdemeanor or felony under the provisions of Section 16-25-20(A)...(causing or attempting to cause physical harm or injury to a person's own household member¹)...or (E)...(a violation

¹Pursuant to S.C. Code Ann. § 16-25-10 (Supp. 2003), the term "household member" is defined as spouses, former spouses, persons who have a child in common, and a male and female who are cohabiting or who have formerly cohabited.

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of the terms of an order of protection)...or 16-25-65 (CDV of a high and aggravated nature)...even if the act did not take place in the presence of the officer.

Therefore, an officer may arrest without a warrant an individual who causes or offers or attempts to cause physical harm or injury to a household member or who violates an order of protection. Such would be one remedy for circumstances where an individual has contact with or attempts to contact a victim.

The October, 1996 opinion further stated that

...accused's violation of a condition of release is a legitimate reason to impose additional or more restrictive conditions, to increase the amount of bail or recognizance, even if the condition breached was imposed for a reason other than assuring accused's appearance at trial....

As to your question as to the proper charge, the charge is violation of a condition of a bond and the defendant is arrested for such by a bench warrant. I know of no basis for a uniform traffic ticket to be used in such circumstances. See: S.C. Code Ann. § 56-7-10 (Supp. 2003) (offenses for which a traffic ticket may be issued). Of course, if circumstances permit an arrest for other types of conduct outside the violation of a condition of a bond, S.C. Code Ann. § 56-7-15 (Supp. 2003) provides that a uniform traffic ticket "...may be used by law enforcement officers to arrest a person for an offense committed in the presence of a law enforcement officer if the punishment is within the jurisdiction of magistrate's court or municipal court."

As to your question of when a bench warrant is issued, what is the proper charge, again the bench warrant would be issued for violation of a condition of a bond. S.C. Code Ann. § 17-15-40 (2003) provides that:

On releasing the person on any of the foregoing conditions, the court shall issue a brief order containing a statement of the conditions imposed, informing the person of the penalties for violation of the conditions of release and stating that a warrant for the person's arrest will be issued immediately upon any such violation.....

I am unaware of any absolute basis for citing contempt of court. S.C. Code Ann. § 17-15-100(B) (2003) provides that "(n)othing contained in §§ 17-15-10 through 17-15-60 shall affect the power of any court of the State to punish for contempt." However, pursuant to S.C. Code Ann. § 14-25-45 (Supp. 2003), a municipal court generally has "...all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates...(and has)...the power to punish for contempt of court by imposition of sentences up to the limits imposed on municipal courts."

A magistrate's general statutory contempt authority is provided by S.C. Code Ann. § 22-3-950 (Supp. 2003) which states that

Every magistrate shall have power to enforce the observance of decorum in his court while holding the same and for that purpose he may punish for contempt any person who, in the presence of the court, shall offer an insult to the magistrate or a juror or who is wilfully guilty of an undue disturbance of the proceedings before the magistrate while sitting officially. A magistrate shall have the power to punish for contempt of court by imposition of sentences up to the limits imposed on magistrates' courts in Section 22-3-550.

(emphasis added). In State v. Harper, 297 S.C. 257, 258, 376 S.E.2d 272 (1989), the State Supreme Court determined that "(c)ontempt is an extreme measure and the power to adjudge in contempt is not to be lightly asserted." The Court cited Section 22-3-950 as a magistrate's authority to punish for contempt. See also: Dean v. Shirer, 547 F.2d 227, 230 (4th Cir. 1976) (The Court cited Section 22-3-950 as the contempt authority for magistrate's courts and stated that "(t)he contempt power under the South Carolina statute is thus limited to instances where the contempt is committed in the presence of the court, or where the party is wilfully guilty of an undue disturbance of the proceedings before the magistrate while sitting officially."). Additionally, in State v. Applegate, 13 S.C.L. 110 (1822), the Constitutional Court of Appeals of South Carolina explained as to justices of the peace, a forerunner of the magistrates courts,:

Although justices of the peace have judicial power, yet they possess a very inferior jurisdiction...To commit for a contempt done in the face of a court is essential to preserve the order necessary for the convenient discharge of business. Such a power is incident to all judicial tribunals...But to commit for a contempt done out of court, is in no respect necessary for the discharge of the Justices' duties. Such a power is perhaps the greatest prerogative allowed to courts of the highest jurisdiction, and how inconsistent would the practice of this prerogative be in the hands of a justice, when we consider that even after a regular judgment given, a justice of the peace cannot take the body of a defendant, nor levy upon his lands, and can issue execution against his goods and chattels only....

Therefore, an argument exists as to whether a municipal court judge may cite an offender for contempt for violation of the condition of a bond. But see: Curlee v. Howle, 277 S.C. 377, 382, 287 S.E.2d 915 (1982) where the Supreme Court stated that "(t)he power to punish for contempt is inherent in all courts. Its existence is essential to the preservation of order in judicial proceedings and to the enforcement of the judgments, orders and writs of the courts, and consequently to the administration of justice."; State v. Kennerly, 237 S.C. 619, 620, 524 S.E.2d 837 (1999) ("South Carolina courts have always taken a liberal and expansive view of the 'presence' and 'court'

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requirements. This State's courts have held the 'presence of the court' extends beyond the mere physical presence of the judge or the courtroom to encompass all elements of the system.").

Where a defendant is brought back before the court for violation of the condition of a bond, the bond may be revoked or new, additional conditions may be imposed. As stated at 8 C.J.S. Bail Section 83, p. 105, "(a)ccused's violation of a condition of release is a legitimate reason to impose additional or more restrictive conditions, to increase the amount of bail, or to revoke release on bail or recognizance...Whether to revoke bail or to impose more restrictive conditions is discretionary with the judicial officer." Of course, in order for bail to be revoked, the defendant must be provided notice and an opportunity to be heard. Ibid. As stated at S.C. Code Ann. § 17-15-50 (2003), "(t)he court may, at any time after notice and hearing, amend the order to impose additional or different conditions of release."

As to your question of what is the maximum time that a person could stay in jail prior to trial, I am unaware of any absolute answer to the amount of time. If the bond is revoked, and the defendant is ordered to jail, then it appears that the case would fall under the usual speedy trial restrictions. In such instance, it would be necessary for the defendant to move for a speedy trial. Of course, the judge may decide to impose a new bond with new, additional restrictions, such as new conditions or increased amount of bond.

Sincerely,



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Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
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