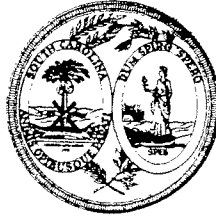


6971 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

November 14, 2000

Captain B.V. Strickland
City of North Myrtle Beach
1015 Second Avenue South
North Myrtle Beach, S.C. 29582

Re: Informal Opinion

Dear Captain Strickland:

Thank you for your letter requesting an opinion from this office. In your correspondence, you pose the following:

Under the Criminal Domestic Violence Act, an officer enters [sic] the residence, makes an arrest for CDV, does a search, and finds contraband. Can the defendant be charged for the contraband?

In 1984, the General Assembly enacted the Criminal Domestic Violence Act (hereinafter Act). This Act defined what constitutes "criminal domestic violence" as well as provided the circumstances under which law enforcement may arrest an alleged perpetrator. For example, under S.C. Code Ann. § 16-25-70 (A), a law enforcement officer may arrest a person, with a warrant or without a warrant, at the person's place of residence or elsewhere, as long as the officer has probable cause to believe the person is committing, or has "freshly committed," a misdemeanor or felony prohibited under the provisions of the Act, even if the officer did not witness the incident. The Act further provides under S.C. Code Ann. § 16-25-70 (H) the following:

No evidence other than evidence of violations of this article found as a result of a warrantless search is admissible in a court of law.

Therefore, if an officer responds to a complaint under the authority of this Act, and in conducting a warrantless search of the alleged perpetrator, finds evidence of other crimes, such evidence is inadmissible unless the evidence relates to a violation of the Criminal Domestic Violence Act.

Two recent cases provide further insight into the question you pose. These cases explain § 16-25-70 (H) more clearly by way of exception. A recent decision by the Supreme Court of South Carolina demonstrates an instance in which § 16-25-70 (H) does not apply. See State v. Cannon, 520 S.E.2d

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317 (1999). In Cannon, a police officer responding to a domestic violence complaint entered the defendant's mother's home **at her invitation** (emphasis added). After the defendant was arrested for criminal domestic violence, the police searched him and found crack cocaine in his pocket. The South Carolina Supreme Court concluded that since the officer did not enter the defendant's home under the authority of the Act, but rather upon invitation of the defendant's mother, § 16-25-70 (H) did not apply. The evidence seized as a result of the lawful search was therefore properly admitted in the trial court. *Id.*

Another instance is illustrated by State v. Roberts, 530 S.E.2d 899 (2000). The police officers in Roberts were not initially responding to a report of Criminal Domestic Violence, but to a report of a general disturbance. The officers intended to charge the defendant with public drunkenness and disorderly conduct and only learned of the domestic violence incident after further investigation into the disturbance. Crack cocaine was found on the defendant during a search at the detention center. The Court of Appeals in this instance reasoned that since the officers did not rely upon the authority of the Act to arrest the defendant or conduct the search, Section 16-25-70 (H) did not apply. The Court of Appeals also offered an explanation into the policy behind Section 16-25-70 (H) by stating the following:

... the ostensible purpose behind section 16-25-70 (H) is to promote victims' access to protection from domestic violence unimpeded by the fear that unrelated criminal charges may result from summoning police assistance. State v. Roberts, 530, S.E.2d 899, 900 (2000).

The goal of this policy would be thwarted if the police were allowed to admit evidence of other crimes found in response to a domestic violence incident. However, nothing in the Act prevents law enforcement from using evidence seized pursuant to a warrant or prohibits the police from making other "lawful arrests." S.C. Code Ann. § 16-25-80.

I hope the information provided herein proves helpful. This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/an