



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

August 5, 1996

A. G. Dantzler, Director
Department of Public Safety
City of Cayce
Post Office Box 2004
Cayce, South Carolina 29171-2004

Re: Informal Opinion

Dear Mr. Dantzler:

You note that pursuant to S.C. Code Ann. Section 16-25-70, police officers may arrest for domestic violence when they respond to a domestic call and possess probable cause to believe an assault has taken place. You further state:

[t]hey may make the arrest even if the victim does not wish to prosecute. In recent years many suspects have come to realize, if they leave before the police arrive they will not be arrested by the police and the victim is not likely to pursue charges at a later date. This type of violation has become chronic with some violators.

Your question, therefore, is whether "an officer in the type situations described above [can] cause a warrant to be issued for Criminal Domestic Violence with the officer as the affiant, so the defendant may be arrested at a later time?"

Section 16-25-10 et seq. prohibits Criminal Domestic Violence and determines the penalties and procedures therefor. Section 16-25-70 provides in pertinent part as follows:

- (A) 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, 16-25-50, or 16-25-65 even if the act did not take place in the presence of the officer. The officer may, if necessary, verify the existence of an order of protection by telephone or radio communication with the appropriate police department.

- (B) A law enforcement officer must arrest, with or without a warrant, a person at the person's place of residence or elsewhere if physical manifestations of injury to the alleged victim are present and 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, 16-25-50, or 16-25-65 even if the act did not take place in the presence of the officer. The officer may, if necessary, verify the existence of an order of protection by telephone or radio communication with the appropriate police department.
- (C) In effecting a warrantless arrest under this section, a law enforcement officer may enter the residence of the person to be arrested in order to effect the arrest where the officer has probable cause to believe that the action is reasonably necessary to prevent physical harm or danger to a family or household member.
- (D) If a law enforcement receives complaints of domestic or family violence from two or more household members involving an incident of domestic or family violence, the officer shall evaluate each complaint separately to determine who was the primary aggressor. If the officer determines that one person was the primary physical aggressor, the officer need not arrest the other person believed to have committed domestic or family violence. In determining whether a person is the primary aggressor, the officer shall consider:

Mr. Dantzler
Page 3
August 5, 1996

- (1) prior complaints of domestic or family violence;
- (2) the relative severity of the injuries inflicted on each person;
- (3) the likelihood of future injury to each person; and
- (4) whether one of the persons acted in self-defense.

(emphasis added).

In an Op. Atty. Gen., Op. No. 93-74 (November 4, 1993), this Office addressed the issue of who may be an affiant on an arrest warrant. We noted that

[i]t is generally stated that

[a]ny citizen who has reasonable grounds to believe that the law has been violated has the right to cause the arrest of a person who he honestly and in good faith believes to be the offender.

22 C.J.S., Criminal Law, Section 326, p. 392. The probable cause expressed in the affidavit of an arrest warrant may be based on personal knowledge or hearsay. Opin. of the Atty. Gen. dated March 18, 1980. The affiant to an arrest warrant must be able to satisfy an inquiring magistrate that sufficient facts and information exist to support the warrant which determination is entirely within the magistrate's judgment. The penalty for perjury attaches to the facts alleged in the affidavit.

Therefore, as to your question as to who may serve as the affiant on the warrant, any individual who can meet the requirements as to providing probable cause as set forth above may serve in that capacity.

Mr. Dantzler
Page 4
August 5, 1996

Moreover, in another opinion, dated October 1, 1979, we commented upon the timeliness of an arrest warrant. There, we stated:

[t]his Office in a previous opinion ... dated October 26, 1978, stated in part that "... once an arrest warrant is issued, such warrant does not 'grow stale' by virtue of an inability to immediately execute it." Therefore, all reasonable attempts should be made to serve any arrest warrant previously issued. However, of course, if it appears that upon the face of the warrant that service is no longer justified or if any additional facts are brought to your attention which would indicate that service is no longer proper, service should not be made. This is a determination that would have to be made as to each individual arrest warrant.

Section 16-25-70 appears to be consistent with these principles of law. Section 16-25-70 (A) provides that a "law enforcement officer, may arrest with or without a warrant, at the person's place of residence or elsewhere ...". (emphasis added). Thus, the statute does not restrict the place of arrest. Nor is there any limitation contained in the statute to the effect that the warrant must be served within any particular time. As noted in the above-referenced opinion, an arrest warrant does not "grow stale" merely because it is not immediately executed. So long as the warrant is served within a reasonable period of time, such service would be valid.

It is true that the statute speaks in terms of an arrest upon probable cause to believe that the person is committing or has committed a misdemeanor or felony under Section 16-25-20, 16-25-50 or 16-25-65 even if the act did not take place in the presence of the officer." However, in my judgment, this is merely a restatement of the general common law rule relating to arrests for misdemeanors. It is, of course, a fundamental rule of law in South Carolina "that, in order to arrest for a misdemeanor not committed in the officer's presence, either a warrant must be obtained or there must be probable cause that the offense had been freshly committed." Op. Atty. Gen., February 14, 1995. I do not believe this statute limits arrests for domestic violence by warrant, however.

Of course, the primary purpose in statutory construction is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Words used in a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 207, 403 S.E.2d 660 (1991). Courts have held that a remedial statute should be

Mr. Dantzler
Page 5
August 5, 1996

liberally construed to effectuate its purpose. S.C. Dept. of Mental Health v. Hanna, 270 S.C. 210, 241 S.E.2d 563 (1978).

Accordingly, based upon the foregoing I see no prohibition upon an officer being an affiant upon a warrant for Criminal Domestic Violence which is executed at a later date at another place.

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.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/an