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Office of the Attorney General

State of South Carolina

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*1 Family Court Judges in South Carolina have the authority to issue warrants for arrest. These warrants have state wide validity, and must be executed by the law enforcement officers of the county in which the person sought to be arrested is found. It is the duty of the arresting officer to make such disposition of the arrested person as the process may direct, but custom and legislative policy indicate that law enforcement officers of the county issuing the arrest warrant should arrange for transportation of the prisoner to that county.

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Sheriff

QUESTION PRESENTED

Can a Family Court Judge of one county legally order a law enforcement officer of another county to apprehend a person and transport him to that Judge's Court?

AUTHORITIES CITED:

§ 15-1095.30 Code of Laws of South Carolina;

§ 15-1095.45 Code of Laws of South Carolina;

§ 15-1095.24(b)(15) Code of Laws of South Carolina;

§ 15-1727 Code of Laws of South Carolina;

§ 53-197 Code of Laws of South Carolina;

§ 17-251 Code of Laws of South Carolina;

§ 17-252 Code of Laws of South Carolina;

§ 17-253 Code of Laws of South Carolina;

§ 4-413 Code of Laws of South Carolina;

§ 15-1095.31 Code of Laws of South Carolina;

§ 15-1095.41 Code of Laws of South Carolina;

6A C.J.S. 'Arrest' § 103.

DISCUSSION:

Section 15-1095.30 of the 1962 Code of Laws of South Carolina (as amended) (hereafter cited as Code) specifically grants to Family Court Judges the power and authority to issue arrest warrants in situations where ‘it shall appear: (1) That the Summons or Rule To Show Cause cannot be served; or (2) That the respondent has failed to obey the Summons or Rule To Show Cause; or (3) That the respondent is likely to leave the jurisdiction; or (4) That a Summons or Rule To Show Cause would be ineffectual; or (5) That the safety of the petitioner is endangered; or (6) That a respondent on bond or on probation has failed to appear . . .’ This section goes on to declare that Family Court arrest warrants shall be valid throughout the state. Code § 15-1095.45 permits the issuance of an arrest warrant for refusal to obey a Family Court Order.

Family Court bench warrants are also given statute wide validity through another section of the Code. Code § 15-1095.24(b)(15) grants to Family Courts the power ‘to send processes or any other mandates in any matter in which it has jurisdiction into any county of the State for service or execution in like manner and with the same force and effect as similar processes or mandates of the circuit courts, as provided by law.’ Code § 15-1727 empowers Clerks of General Sessions Court to issue bench warrants, so it would follow that Clerks of Family Court may also issue valid bench warrants.

Code § 53-197 places upon sheriffs the duty to ‘arrest all persons against whom process for that purpose shall issue from any competent authority commanding such person to be taken into custody . . .’ Following the reasoning above, a Family Court Judge would be such ‘competent authority,’ and properly issued arrest warrants from his court would be valid in any county in the state.

*2 Code § 15-1095.24(b)(15) cited above gives ‘processes or mandates’ of Family Courts the same validity as those of Circuit Courts. The question then arises whether or not a Family Court may order a warrantless arrest. There are four sections of the South Carolina Code which set forth situations in which an officer or individual may arrest a person without a warrant. Three of these sections, Code § 17-251 through § 17-253, are in the Criminal Procedure section of the Code and deal with arrest upon the commission of a felony or misdemeanor. The fourth section, Code § 4-413, deals with violation of liquor laws. Since none of these sections deal with court ordered arrest, it may be assumed that for an arrest order from any Court in the state to be valid, whether it be a Circuit Court or a Family Court, there must be issued an arrest warrant.

Although Code § 15-1095.31 gives a form to be used by Family Courts for arrest warrants, it is stated that the warrant ‘may be substantially’ in the form given. It is not mandatory that this form be used.

The second part of the question presented, whether or not a Family Court Judge in one county can order law enforcement officers of another county to transport a person arrested under that Judge’s warrant to that Judge’s Court, is not dealt with in the South Carolina Code, nor is there any case law directly on point. At common law, however, an arresting officer is obligated to carry out the mandates of the process which he is executing. ‘Where arrest in a civil action is authorized, it is the duty of the arresting officer to make such lawful disposition of the person arrested as the process may direct.’ 6A C. J. S. ‘Arrest’ § 103 at 201. This would indicate that the arresting officer must deliver his prisoner to whatever place the court issuing the warrant chooses to indicate.

Code § 15-1095.41 states that ‘[i]t is made the duty of every county, town or municipal official or department to render such assistance and cooperation within his or its jurisdictional power to further the objects of’ the Family Court Act. Law enforcement officers’ ‘jurisdictional power’ includes both the arrest and transportation of prisoners. The policy enunciated in this section indicates the intention of the legislature that all public officials and departments cooperate fully with the Family Courts, and this applies to the officers of the County in which the Family Court is sitting as well as to the officers of any county to which an arrest warrant might be sent for execution. Thus, although the common law places the primary duty for disposition of a prisoner on the arresting officer and county, the policy of the legislature as expressed

in the above quoted code section indicates that the various county officials should cooperate not only with the Family Court, but with each other in carrying out its orders. It would seem that the county benefiting from the arrest should bear the expense and inconvenience of transporting the prisoner from the county of the arrest to the county ordering the arrest, as is now the custom among county law enforcement departments of this state.

CONCLUSION:

*3 Family Court Judges have the authority to order the arrest of anyone anywhere within the state, but for the arrest order to be valid an arrest warrant must be issued. It is the duty of the arresting officer to dispose of his prisoner as he is directed by the process, but in view of established custom between county law enforcement officials and the legislative policy of cooperation for the furtherance of the aims of the Family Court Act, the law enforcement officials of the County issuing the arrest warrant should arrange for transportation of the prisoner to their county, since it is their county which benefits from the arrest.

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