

1976 WL 30661 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 11, 1976

*1 Hearsay evidence may be used at preliminary examinations to establish the existence of probable cause.

Solicitor
Thirteenth Judicial Circuit

QUESTION PRESENTED:

May hearsay evidence be used at preliminary examinations to establish the existence of probable cause?

STATUTE INVOLVED:

Section 43-232 of the 1962 Code of Laws of South Carolina.

DISCUSSION OF ISSUE:

A preliminary examination, as provided by Section 43-232, serves the purpose of determining whether the State can show the existence of probable cause. [State v. White](#), 243 S.C. 238, 133 S.E.2d 320 (1963). If such a showing is not made to the satisfaction of the magistrate, the defendant is released from custody until indicted by the Grand Jury. [Williams v. South Carolina](#), 237 F. Supp. 360 (EDSC 1965), vacated and remanded in [Morris v. South Carolina](#), 356 F.2d 432 (4th Cir. 1966). The requisite showing at a preliminary hearing is the same as that required to support the issuance of a warrant by a magistrate or of an indictment by the Grand Jury. In that showing the State is not required to produce all of its evidence, but only enough to establish probable cause to believe the defendant guilty of the offense charged. 1970 Op. A.G. No. 2869, page 106. It is in no way a miniature trial, though the defendant has the rights both to cross-examine all witnesses presented and to be represented by counsel if desired. [State v. White](#), supra; [Coleman v. Alabama](#), 399 U.S. 1, 90 S.Ct. 1999, 26 L.Ed.2d 387 (1970).

You have asked if in a preliminary examination the State may use hearsay evidence. The point appears to be so well established in this State that our research has disclosed no statutes or cases directly on the point. However, the South Carolina Supreme Court has said that an indictment based upon hearsay testimony violates no constitutional right of the defendant. [State v. Williams](#), 263 S.C. 290, 210 S.E.2d 298 (1974). Likewise, it is recognized that hearsay may be used to establish probable cause for the issuance of a warrant where there is a substantial basis for crediting of a warrant where testimony. [Jones v. United States](#), 362 U.S. 257, 80 S.Ct. 725, 4 L.Ed.2d 697 (1960). It would indeed be incongruous for hearsay evidence to be appropriate in warrant and Grand Jury proceedings but not at preliminary examinations. Since the burden of proof at each is identical, it follows that the evidentiary standards involved would likewise be the same.

CONCLUSION:

Hearsay evidence, as you note, is customarily used in this State to establish probable cause at preliminary examinations. Since there appears to be no rational basis for imposing a higher standard at preliminary hearings, absent statute or case law, it is our opinion that hearsay evidence may be used to establish the existence of probable cause at preliminary examinations.

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