July 31, 2008

Robert L. McCurdy, Staff Attorney
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Dear Mr. McCurdy:

You have asked several questions regarding the amendment to S.C. Code Ann. § 22-5-110 as set forth in Act No. 346 of 2008. Such provision adds subsection (B) to the statute and states that

> [n]otwithstanding another provision of law, a person charged with any misdemeanor offense requiring a warrant signed by nonlaw enforcement personnel to ensure the arrest of a person must be given a courtesy summons.

Your letter references the fact that the courtesy summons was created by Act No. 348 of 2002. This Act added S.C. Code Ann. § 22-5-115, which states as follows:

> [n]otwithstanding any other provision of law, a summary court or municipal judge may issue a summons to appear for trial instead of an arrest warrant, based upon a sworn statement of an affiant who is not a law enforcement officer investigating the case, if the sworn statement establishes probable cause that the alleged crime was committed. The summons must express adequately the charges against the defendant. If the defendant fails to appear before the court, he may be tried in his absence or a bench warrant may be issued for his arrest. <u>The summons must be served personally upon the defendant.</u> (emphasis added).

Although your letter raises a number of questions, the issue which has prompted most attention is whether a courtesy summons must be countersigned for service in another county. Such question is raised in part due to the provisions of S.C. Code Ann. § 22-5-190 which expressly

provides the procedure for service of an arrest warrant outside the county where the offense occurs. In this instance, service is effectuated by means of an endorsement process. Section 22-5-190 provides in pertinent part as follows:

> (A) [a] magistrate may endorse a warrant issued by a magistrate of another county when the person charged with a crime in the warrant resides in or is in the county of the endorsing magistrate. When a warrant is presented to a magistrate for endorsement, as provided in this section, the magistrate shall authorize the person presenting it or any special constable to execute it within his county...
>
> (C)...whenever a warrant is issued by an intendant, mayor, recorder, judge, or other proper judicial officer of any municipality of this State, requiring the arrest of anyone charged with the violation of a municipal ordinance, or of a state statute within the trial jurisdiction of the municipal authorities, and the person sought to be arrested cannot be found within the municipal limits but is within the State, the officer issuing the warrant may send it to the magistrate having jurisdiction over the area in which the person may be found, which magistrate may endorse the warrant, which shall then be executed by the magistrates' constable or the sheriff of the county of the endorsing magistrate....

It is well recognized that a magistrate has no jurisdiction or authority beyond his or her county. See: S.C. Code Ann. § 22-3-520; Allendale County Sheriff's Office v. Two Chess Challenge II, 361 S.C. 581, 606 S.E.2d 471 (2004); Op. S.C. Atty. Gen., September 16, 1980. In previous opinions, we have recognized that in order for an arrest warrant to be executed outside the county of the issuing magistrate, it must be endorsed for service by a magistrate of the county in which the warrant is to be executed. See, e.g., Ops. Atty. Gen. dated October 18, 1995 and January 7, 1991.

No similar provision for endorsement is contained in § 22-5-115 or in Act No. 346 of 2008. However, it is our opinion that such a procedure may be fairly implied from the language of Section 22-5-115. As § 22-5-115 requires, a courtesy summons "...must be served personally upon the defendant." It is a rule of statutory construction that it must be presumed that the General Assembly did not intend a futile act, but rather, statutes must be deemed to accomplish something. See: Ops. Atty. Gen. dated October 24, 2007 and October 29, 1992. The personal service mandated by Section 22-5-115 can only be effectuated through endorsement by a magistrate with jurisdiction over the area where the defendant is located. If the statute is not so construed, the result would be to leave the victim who seeks a courtesy summons without a remedy to obtain service where the defendant is outside the area where the summons is issued. Such would be a futile act which the General Assembly is presumed not to have intended.

Our construction is supported by the common law, which long ago found a remedy to insure valid service of an arrest warrant where a defendant is beyond the magistrate's jurisdiction. As referenced in People v. LaFontaine, 235 A.D. 93, 103, 664 N.Y.S.2d 587, 594 (N.Y. 1997),

> [a]t English common law, arrest warrants were of two types, either Kings Bench warrants, which were kingdom-wide in scope, or, more typically, warrants issued by a Justice of the Peace, which were limited to the county of issuance. In order to address the likelihood that suspects might flee to another county, common law early evolved a method of dovetailing the initial warrant with extraterritorial effect by the procedure of "backing", by which the justice of another county affirmatively would endorse the back of the original warrant, giving it original effect in that other county. The authority of a law enforcement official to execute an arrest warrant was limited by the political authority of the magistrate who issued the warrant, and by the geographical reach of the political unit by which he was employed...The doctrine of jurisdictional limitations on arrest warrants imposed by the borders of the authorizing political units was imbedded in the common law underpinnings of American law....

Similarly, our own Supreme Court stated in State v. Rabens, 70 S.C. 542, 60 S.E. 442, 443 (1908) that the process of endorsement "is not indeed a new warrant, but it is such a modification of the warrant as issued to make it proper for the defendant to be brought before the indorsing magistrate ..." The common law has now been codified in various endorsement statutes throughout the country, including South Carolina's § 22-5-190.

Based upon the foregoing, it is our opinion that § 22-5-115 should be read to impliedly authorize endorsement by a magistrate if the summons issued in one county or municipality by a magistrate or municipality is to be served outside the county or municipal limits. In circumstances involving a summons issued by a magistrate, the summons would be endorsed by the magistrate of the county where the defendant is located. In the case of summons issued within the limits of a municipality, the summons would be similarly endorsed by a magistrate having jurisdiction over the area in which the defendant is located.

Conclusion

Consistent with the common law procedure of "backing" a warrant, while there is no express authorization of the endorsement of a courtesy summons, it is our opinion that the General Assembly necessarily implied an endorsement process for service outside the territorial jurisdiction where the summons is issued. Therefore, in our opinion, a courtesy summons issued consistent with subsection (B) of Section 22-5-110 may be and must be endorsed for service outside the area where the summons is issued, such as where a defendant is located in another county. This construction would

provide a remedy to the victim of a crime where the defendant is located in a county other than where the offense occurred.[1]

Yours very truly,

Henry McMaster

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[1] In light of the intense interest in this question, we have decided to issue this opinion at the present time. We will be respond to your other questions by a separate opinion as soon as those questions are resolved.