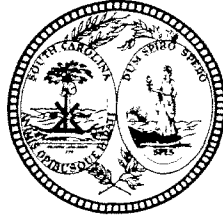


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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

February 3, 1997

Sam S. Strickland, Patrol Officer  
Horry County Police Department  
2560 North Main Street, Suite 7  
Conway, South Carolina 29526

Re: Informal Opinion

Dear Officer Strickland:

You note that while on patrol recently, you encountered a situation involving the handcuffing of a person for temporary detention. You state that you

... stopped a car for a traffic violation and when the driver exited the vehicle he threw a small plastic package on the ground. We were located in a gas station parking lot and there were other people around. I needed to investigate the package as quickly as possible and also deal with the driver's traffic violations. I immediately hand-cuffed the driver, told him he was being detained, that he was not under arrest at this moment, and sat him in the back seat of my patrol car. I then walked over to the package, which was clear plastic, and found what later tested to be cocaine. The driver was then informed that he was being arrested and handled as such from there on.

You further advise that the Assistant Solicitor told you that you could "not put handcuffs on anyone without the probable cause to arrest and charge them with a criminal violation, regardless of the totality of the circumstances."

It is of course, the policy of this Office generally to defer to the local Solicitor in any prosecution decision with respect to a case the Solicitor is handling. As we stated in Op. Atty. Gen., Op.No. 89-70 (July 11, 1989).

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... this Office can only set forth the general law ... in the abstract. As with any prosecutorial decision made by the Circuit Solicitor, the judgment call as to whether to prosecute a particular individual or whether a specific prosecution is warranted, or is on sound legal ground in an individual case, remains a matter within [the Solicitor's] exclusive discretion and jurisdiction.

Thus, as to any specific case or specific factual circumstances, we do not "second guess" the Solicitor.

At best, therefore, I am able to enclose a number of cases which I have gathered which relate to the use of handcuffs. State v. Pannell, 127 Idaho 420, 901 P.2d 1321 (Ida.1995), in particular outlines in the area where the use of handcuffs is applied in an investigatory stop as opposed to an arrest situation. The Court in that case concluded that placing the defendant in handcuffs and seating him in a patrol car constituted a warrantless arrest subsequent to an investigatory stop. The evidence that any threat posed to the officers was not sufficient to the threshold necessary to justify the use of handcuffs, led the Court to conclude that the arrest was unlawful, and, the search of the vehicle was conducted as incident to an unlawful arrest, thereby resulting in the suppression of the evidence.

The Court cited an earlier case, State v. Johns, 112 Idaho 873, 736 P.2d 1327 (1987) as representing the typical situation where handcuffs would be justified in an investigatory stop situation. In Johns, the "use of handcuffs was [deemed] a reasonable precaution for the officer's safety." 736 P.2d at 1332. There, the officer realized the suspect had a knife and when the officer attempted to remove the knife, the suspect resisted. Thus, the Court in Pannell concluded that Johns "was an extraordinary case where the substantial risk of imminent violence was readily apparent and justified the officer's use of 'reasonable force' to maintain the 'status quo'." In contrast to Johns, the situation in Pannell was less menacing to the officer and Pannell noted that "when faced with the same question and a less compelling suggestion of imminent danger, other courts have held that the use of handcuffs to restrain a suspect exceeded the bounds of an investigatory detention and amounted to an arrest." [See cases referenced in Pannell, 901 P.2d at pp. 1323-1324]. Thus, Pannell held that

[w]hile we acknowledge that there was some evidence in this case suggesting that Pannell might have posed a threat to the officers' safety, we believe that the evidence was not suffi-

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cient to meet the high threshold needed to justify the use of handcuffs as part of an investigative detention.

901 P.2d at 1325.

And in United States v. Ortiz, 835 F.Supp. 824 (E.D.Pa.1993), the Court concluded that the handcuffing of a suspect on a jetway as he disembarked from flight from Florida was not a reasonable investigatory stop. Said the Court, "... even regarded as an investigatory stop, the jetway handcuffing was an unreasonable seizure, and therefore an unlawful one under the Fourth Amendment." Id. at 829.

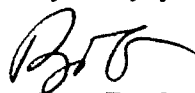
The United States Supreme Court has stated that "[d]etermining whether the force used to effect a particular seizure is reasonable under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing government interests at stake." Graham v. Connor, 490 U.S. 386, 396, 109 S.Ct. 1865, 1871, 104 L.Ed.2d 443 (1989).

In short, the question of use of handcuffs in an investigatory stop situations must be evaluated upon the basis of the need to protect the officer's security. Typically, courts have concluded that the use of handcuffs turn the situation into an arrest and if there is no probable cause, the arrest is deemed invalid. There are situations, however, when the use of handcuffs has been deemed valid in an investigatory stop situation where the officer's safety was threatened. Each case must be viewed upon its own merit depending upon all the facts. This Office, however, defers to the Solicitor's judgment in evaluating whether a particular case will be prosecuted.

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/ph  
Enclosures