



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

October 25, 1995

The Honorable Johnny Mack Brown
Sheriff, Greenville County
4 McGee Street
Greenville, South Carolina 29601

Re: Informal Opinion

Dear Sheriff Brown:

You have noted that private security guards are empowered with certain arrest powers upon the private property where security personnel are assigned or contract to protect. Further, you have noted that private security guards are not allowed to transport arrestees to local detention facilities. You further state that there

are occasions when members of this Office receive requests to transport individuals arrested by private security guards. I am sure you can understand that we are hesitant to comply. When a Deputy Sheriff does not effect the arrest, we cannot be certain that probable cause did actually exist. This Office does not want to assume any liability for improper or wrongful arrests by private security.

I would be grateful to receive an opinion as to our true responsibility, if any, in these situations. We want to be supportive of other agencies in upholding the law, but I do not want to compromise the Sheriff's Office unnecessarily.

Your question was addressed at considerable length in an Opinion of this Office, dated September 8, 1980. A copy of that Opinion is enclosed for your review.

The Honorable Johnny Mack Brown

Page 2

October 25, 1995

In the 1980 opinion, we noted that "a private security guard, having lawfully arrested a defendant on property to which he is assigned and upon which he is empowered to make arrests, should then deliver the defendant to the proper authorities without leaving the assigned property." As to the law enforcement officer's liability for any unlawful arrest made by the security guard, we concluded that, generally speaking, the officer "transporting a prisoner lawfully arrested by a private security guard" would be immune from liability if he immediately transported the prisoner to jail or to a committing magistrate." We further noted:

[t]he law enforcement officer's duty in transporting a prisoner arrested by a citizen to the committing magistrate or to jail terminates upon the officer's turning custody of the prisoner over to the magistrate or to the jailer if no magistrate is immediately available. Generally, a person who is neither active himself in the commission of the false imprisonment or false arrest, nor responsible for the acts of others who are active in the commission of the tort, is not liable for false imprisonment. 23 Am.Jur.2d, False Imprisonment, Section 30 at pages 94-95. Thus, if the law enforcement officer was not active in the commission of an unlawful arrest on the part of a security guard or citizen, and has no reason to believe that the arrest of his prisoner was unlawful, he is not liable to the prisoner for the improper acts of the arresting guard or citizen. Likewise, the officer who takes a prisoner immediately to a committing magistrate or to jail, and who is not active in some subsequent delay in securing the release of the prisoner, is not liable to the prisoner for the subsequent conduct of others. The law enforcement officer who properly transports the prisoner from the place of his arrest by a citizen to a committing magistrate or to jail for imprisonment pending his release by a judicial officer is not liable for the actions of any other during the course of the prisoner's arrest and subsequent imprisonment. 32 Am.Jur.2d False Imprisonment, Section 30, supra; see also Plummer v. Northern Pacific Railway Company, 79 Mont. 82, 255 P. 18.

The opinion went on to state that "[i]t must be remembered, that the law enforcement officer's belief in the legality of his actions must be reasonable." Examples given where such belief would not be reasonable were such as where a private citizen had arrested without a warrant for a misdemeanor committed in his presence. See, State v. Nall, _____

The Honorable Johnny Mack Brown

Page 3

October 25, 1995

S.C. _____, 404 S.E.2d 202 (S.C. App. 1991) [private person can arrest for misdemeanor committed in presence of breach of peace, but has no authority to arrest for misdemeanor committed out of presence.] On the other hand, we indicated that if the police officer possessed no reason to believe that the arresting individual was without the authority or power to arrest,

... he is likewise under no duty to investigate the circumstances surrounding the arrest but may simply provide transportation of that prisoner to jail or to the committing magistrate to be dealt with according to law.

I see no reason to conclude that this opinion does not still adequately summarize the law in this area. Since the opinion was written, the United States Supreme Court decided the case of Harlow v. Fitzgerald, 457 U.S. 800, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982), which held that a public official cannot be liable for money damages pursuant to 42 U.S.C. § 1983 unless he violates a person's clearly established constitutional rights. As the Court stated in Harlow,

government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.

457 U.S. at 818. See also, Washington v. Whitaker, _____ S.C. _____, 451 S.E.2d 894 (1995); Caldwell v. K-Mart Corp., 306 S.C. 27, 410 S.E.2d 21 (1992) [defense to false imprisonment if acting reasonably]; Jones v. City of Columbia, 301 S.C. 62, 389 S.E.2d 662 (1990) [belief by ordinarily prudent and cautious man that a person is guilty of a crime is probable cause and a defense to false imprisonment]; Manley v. Manley, 291 S.C. 325, 353 S.E.2d 312 (1987) [peace officer's taking an individual into custody pursuant to judicial order renders officer immune from liability].

And in People v. Taylor, 222 Cal.App.3d 612, 271 Cal.Reptr. 785 (1990), the Court held that the arrest by private security guards did not constitute "state action" for purposes of the Fourth Amendment and thus the State could not be held liable under federal law for the actions of the security guards; see also, State v. Adams, 738 P.2d 988, 991 (Or. App. 1987) [even where security guard delayed in calling sheriff's deputy for an unreasonable length of time in violation of statute, the statutory violation "was the act of a private citizen; it was not the result of any state action."] By contrast, in Thompson v. Smith, 289 S.C. 334, 345 S.E.2d 500 (1986), the Court held that the

The Honorable Johnny Mack Brown

Page 4

October 25, 1995

question of reasonableness included whether a police officer had acted reasonably upon learning that a prisoner was in fact innocent. Thus, the law still appears to be in accord with that stated in the 1980 opinion. Unless the police officer assuming custody from a security guard has reason to know or believe that the guard's arrest of a prisoner was unlawful, such police officer generally cannot be held liable for any previous unlawful conduct of the security guard merely by assuming custody of and transporting the prisoner to jail.

Of course, it goes without saying that once the deputy takes custody of the prisoner for purposes of transporting the prisoner, that officer is responsible for the prisoner's well-being during such transportation. As was stated in Chadwick v. Stewart, 94 Ga.App. 329, 94 S.E.2d 502 (1956),

[a] deputy sheriff transporting a prisoner in his custody from one place to another owes the prisoner the duty to exercise ordinary care while driving the vehicle in which the prisoner is required to ride. While transporting a prisoner in an automobile a deputy sheriff has dominion over the prisoner and control of the vehicle.

94 S.E.2d at 503.

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
Enclosure