

1978 S.C. Op. Atty. Gen. 28 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-15, 1978 WL 22501

Office of the Attorney General

State of South Carolina

Opinion No. 78-15

January 26, 1978

*1 TO: Mr. Neal Forney
Assistant Director
South Carolina Court Administration

QUESTION:

May a minor sign an affidavit for an arrest warrant?

AUTHORITIES:

[State v. Green](#), 267 S.C. 599, 230 S.E.2d 618 (1976);

[Wheeler v. U.S.](#), 159 U.S. 523, 16 S.C. 93, 40 L.Ed. 244 (1895):

97 C.J.S., [Witnesses](#), Sec. 58, p. 449.

DISCUSSION:

In issuing an arrest warrant, the magistrate's duty is to make an independent judicial determination as to probable cause for arrest based on the information provided him from witnesses under oath. Although our research has disclosed no applicable statutes or case law, it is our opinion that a magistrate may issue a warrant based on an affidavit signed by a minor, so long as the affiant is capable of taking and understanding the oath.

A recent South Carolina Supreme Court case involving the competency of a six-year old boy to testify as a witness in a murder trial provides guidance to the magistrate in determining the competency of a minor affiant. In [State v. Green](#), 267 S.C. 599, 230 S.E.2d 618 (1976), the Court stated that '[t]here is no fixed age which an individual must attain in order to be competent to testify as a witness.' [Wheeler v. U.S.](#), 159 U.S. 523, 16 S.C. 92, 40 L.E. 244 (1895).

Accordingly, a child may be a competent witness where he has sufficient capacity to understand the solemnity of an oath and to comprehend the obligation it imposes and where he has sufficient intelligence to receive just impressions as to the facts of which he is to testify and to relate them correctly. 97 C.J.S., [Witnesses](#), Sec. 58, p. 449.

CONCLUSION:

Therefore, it is the opinion of this Office that a minor may sign an affidavit for an arrest warrant provided he is capable of understanding the oath and is competent to testify, the determination of which factors, of course, is within the individual magistrate's discretion.

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