

1975 WL 29625 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 26, 1975

***1 In Re: Seven Arrest Warrants, Validity of**

Honorable Frank Powell
Sheriff
Richland County
1400 Huger Street
Columbia, South Carolina

Dear Sheriff Powell:

You have inquired as to the validity of seven arrest warrants issued by Magistrate Ray Durham of Richland County against two Columbia City Police Officers, John Earl Dennis and B. T. Galvin, charging conspiracy, subornation of perjury, and obstruction of justice.

It is noted that in six of the seven arrest warrants the affiant, Kenneth Edward Love, in the affidavit supporting the warrants, states that the defendant(s) did commit certain criminal acts with respect to other persons, viz. Kay Mangum and Ronald Mangum, but Love does not reveal the source(s) of his information. He does not even state that the Mangums gave the information to him.

In the seventh warrant issued by Magistrate Durham, charging Dennis and Galvin with criminal conspiracy, the affidavit contains only conclusory allegations entirely unsupported by any fact. It is manifestly invalid on its face.

The issuance of a criminal arrest warrant is a very serious matter. It subjects the defendant named therein to summary arrest wherever he is found, and to being carried before the magistrate, or being placed in the common jail until application for bond or bail can be made and approved. Because the liberty of every citizen is of such great value, to the individual and to society, our Constitutions require that due process of law be followed strictly when anyone makes application for the issuance of an arrest warrant that will deprive another person of that liberty. Of substantial but secondary importance is the consideration that the dignity of and general public respect for our courts should be maintained at all times. Promiscuous issuance of arrest warrants without deliberate and careful inspection of the demonstrable facts upon which issuance is sought is not consistent with due process safeguards.

The fact that the defendants named in the seven arrest warrants are police officers should not affect the situation one way or another. If the warrants are valid, they should be executed; if they are not valid, the defendants should not be subjected to unlawful arrest.

Without attempting to set forth in full all that the issuing magistrate in these cases could have done, it is glaringly obvious that the subject warrants should not have been issued unless and until the Mangums, who allegedly had personal knowledge of facts supporting the charges, were examined by the magistrate under oath and it was ascertained that they were reliable. Instead, the magistrate had only the sworn statement of another person, Love, who had no personal knowledge of any fact insofar as his affidavit reveals.

It is not sufficient that an affidavit supporting an arrest warrant recite that the acts charged took place; the affiant must explain in his sworn statement how he came to his conclusion, i.e. the facts upon which he bases such charges.

*2 The affidavits upon which the subject arrest warrants are based do not set forth sufficient probable cause, and the warrants are, therefore, not valid.

Very truly yours,

Joseph C. Coleman
Deputy Attorney General

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