ALAN WILSON
ATTORNEY GENERAL

May 11, 2021

Chief Jarrod Goldman
Town of Salley Police Department
PO Box 484
Salley, SC 29137

Dear Chief Goldman:

We received your request seeking clarification on past opinions regarding when certain charging documents must be delivered following an arrest without a warrant. This opinion sets out our Office's understanding of your question and our response.

Issue (as quoted from your letter):

You are "requesting clarification [as] to the amount of time for delivering charging documents to a person who is taken into custody on a warrantless arrest of a felony(ies), pending warrants." You reference two prior opinions of this Office which discuss S.C. Code § 22-5-510 and the US Supreme Court cases of Gerstein v. Pugh, 420 U.S. 103 (1975) and Riverside v. McLaughlin, 500 U.S. 44 (1991). You also discuss how magistrates are applying this law in your experience. Your letter concludes:

> I am asking for a current clarification and opinion under the aforementioned [law] whether 24 hours until a bond hearing is an absolute as stated in the magistrate handbook or do we have up to 48 hours on a warrantless, felony arrest to obtain and serve warrants when a defendant is booked into the detention center on a hold?

Law/Analysis:

Because your letter requests clarification of prior opinions of this Office, this opinion will focus squarely on the result of those opinions without repeating all the reasoning that supports them. For a full discussion, see Op. S.C. Att'y Gen., 1998 WL 940269 (October 12, 1998), which we refer to here as the "1998 opinion." In fact, that 1998 opinion you reference addressed possible confusion surrounding the question here. The key to these opinions is to understand that they discuss two distinct components of pretrial criminal procedure: the judicial determination of probable cause and the bond hearing. Our prior opinions focus on the outer legal limits of each component, even though they often are intertwined as a practical matter. See id.

First, as to the judicial determination of probable cause, the South Carolina Code mandates that "[w]hen an arrest is made by a deputy sheriff without a warrant pursuant to § 23-13-60 the person so arrested shall be forthwith carried before a magistrate and a warrant of arrest procured and disposed of as the magistrate shall direct." S.C. Code Ann. § 22-5-200 (2007) (emphasis added). The Code section here does not set a definite outer time limit, except to use the term "forthwith," which our Office has interpreted to mean "within a reasonable period of time." Op. S.C. Att'y Gen., 1998 WL940269 (October 12, 1998). Id. However, in County of Riverside v. McLaughlin, the US Supreme Court "establishe[d] that the 4th Amendment sets 48 hours as the general constitutional parameter to be followed for a probable cause determination." Op. S.C. Att'y Gen., 1998 WL 940269 (October 12, 1998) (citing & discussing County of Riverside v. McLaughlin, 500 U.S. 44, 54, 114 L.Ed.2d 49, 61 (1991)). We refer the reader to our 1998 opinion for a fuller discussion of the Riverside case.

Second, as to the bond hearing, the South Carolina Code mandates that "[a] person charged with a bailable offense must have a bond hearing within twenty-four hours of his arrest. . . ." S.C. Code Ann. § 22-5-510 (2007). Our 1998 opinion noted that "a judicial determination on the arrest warrant and the bond hearing will occur virtually simultaneously, in many instances." Op. S.C. Att'y Gen., 1998 WL 940269 (October 12, 1998). But that opinion went on to state:

> However, we are not able, based upon the statutory language, to advise that 22-5-510 absolutely requires in every instance that there **must** be a probable cause determination made by a judicial officer within twenty-four hours of arrest. Indeed, Riverside emphasizes that such a hard and fast rule is **not constitutionally required**. Moreover, there is no indication that the 24 hour period specified in 22-5-510 relates to anything other **than the determination of bail**, and, therefore, we must construe that provision literally. Section 22-5-510 thus must be interpreted according to the express language contained therein and together with 22-5-200, which requires that probable cause be determined by a magistrate "forthwith" following arrest.

Id.

Finally, we reiterate that as a practical matter, the presence of a warrant often is intertwined with a bond hearing: "[A]s the State statute requires, an individual incarcerated, is entitled to a timely bond hearing and as to those situations where a warrant or other charging document is lacking, such may prevent access to that required bond hearing." Op. S.C. Att'y Gen., 2004 WL 1879682 (August 17, 2004). This also was discussed in our 1998 opinion. See Op. S.C. Att'y Gen., 1998 WL 940269 (October 12, 1998) & discussion supra. It may be that pragmatic considerations require the presence of a warrant well within the 48 hours

contemplated by the Supreme Court in County of Riverside v. McLaughlin. The prior opinions you reference simply focus on the outer limits that the law imposes.

Conclusion:

In conclusion, we clarify that the prior opinions of this Office discuss two distinct components of pretrial criminal procedure: the judicial determination of probable cause and the bond hearing. See, e.g., Op. S.C. Att'y Gen., 1998 WL 940269 (October 12, 1998). While these often are intertwined as a practical matter, our prior opinions focus on the outer limits that the law imposes. Id.

As to the judicial determination of probable cause, our prior opinions interpret section 22-5-200 consistent with the opinion of the US Supreme Court in County of Riverside v. McLaughlin, 500 U.S. 44, 54, 114 L.Ed.2d 49, 61 (1991), which "establishes that the 4th Amendment sets 48 hours as the general constitutional parameter to be followed for a probable cause determination." Op. S.C. Att'y Gen., 1998 WL 940269 (October 12, 1998).

As to the bond hearing, section 22-5-510 sets the outer time limit for this hearing at 24 hours. S.C. Code Ann. § 22-5-510(B) (2007). Our prior opinions conclude that this limit only applies to the requirement of a speedy bond hearing as a matter of law. Op. S.C. Att'y Gen., 1998 WL 940269 (October 12, 1998).

Our prior opinions also are careful to point out that these are outer legal limits, and pragmatic considerations should not be ignored:

> It is my understanding that, as a practical matter, many magistrates rely upon the arrest warrant to serve as the basis, or even the "charging document" for the bond hearing. Typically, I am advised, where an individual is arrested without a warrant, the magistrate will shortly thereafter issue a warrant, most often based upon information provided by the arresting officer. Many times, the arrestee will then be served with the warrant at the bond hearing or even earlier. . . .
>
> Even though I do not read 22-5-510 as absolutely requiring in every instance that there be a probable cause determination within 24 hours of arrest by a judicial officer with respect to persons arrested without warrant, certainly nothing prohibits such from being done, whenever possible. We understand that many magistrates do so, issuing the arrest warrant and conducting the bond hearing promptly and virtually simultaneously with each other. The Riverside case, which generally sets the constitutional requirement for a probable cause

> determination with respect to arrest -- technically, distinct from the bond determination -- should obviously be followed and adhered to.

Op. S.C. Att'y Gen., 1998 WL 940269 (October 12, 1998) (internal citations omitted); see also Op. S.C. Att'y Gen., 2004 WL 1879682 (August 17, 2004) ("[A]s the State statute requires, an individual incarcerated, is entitled to a timely bond hearing and as to those situations where a warrant or other charging document is lacking, such may prevent access to that required bond hearing.").

This opinion is issued only as an explanation of prior opinions of this Office. We refer the reader to those opinions for a fuller discussion of the substantive issues discussed therein. See Op. S.C. Att'y Gen., 1998 WL 940269 (October 12, 1998).

Sincerely,

David S. Jones
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General