

OP. NO. 04-015

CRIMINAL PROCEDURE: ARREST — MAGISTRATES.

No requirement that law-enforcement officer bring arrestee to nearest magistrate's office.

The Honorable Danny R. Fox
Sheriff for Mecklenburg County
April 13, 2004

Issue Presented

You ask whether § 19.2-80 requires a law-enforcement officer to transport an arrested person to the closest magistrate's office located in your county.

Response

It is my opinion that, under the circumstances described, a law-enforcement officer is not required to bring an arrested person to the nearest magistrate's office.

Background

You state that Mecklenburg County has four magistrates' offices.¹ Although the offices are not open twenty-four hours a day, you relate that each office has an "on-call" magistrate who is available as needed. You further note that one of the offices is located at the county jail.

You relate that your office requires the arresting officer to bring each arrestee to the county jail for fingerprinting. You further state that the jail has installed a "Live Scan" fingerprint system that is not available at the other magistrate locations. Finally, since all arrestees are transported to the jail, you note that it is more convenient to access the magistrate's office at the jail rather than the office closest to the arrest location.

Applicable Law and Discussion

Section 19.2-80 requires "a law-enforcement officer making an arrest under a warrant or *capias* [to] bring the arrested person *without unnecessary delay* before a judicial officer" for a bail hearing. (Emphasis added.) Other statutory and constitutional issues, however, are relevant to your inquiry. When a person is arrested without a warrant, § 19.2-82 requires that the arresting officer bring the individual "*forthwith* before a magistrate or other [judicial officer]" for a probable cause determination. (Emphasis added.) Should the judicial officer determine there is probable cause, he issues an arrest warrant or a summons.²

The terms "forthwith" and "without unnecessary delay," as used in §§ 19.2-80 and 19.2-82, are synonymous.³ Such terms are broad enough to allow for the "realities of law enforcement,"⁴ including issues related to transportation and

processing, as well as the availability of a magistrate.⁵ Assuming that the "on-call" magistrate at the jail is able to respond promptly, it is my opinion that a law-enforcement officer may transport an arrestee to such magistrate without violating the statutory or constitutional provisions applicable to arrest. Generally speaking, Article I, § 10 of the Constitution of Virginia provides protections similar to those under the Constitution of the United States.⁶ Nonetheless, I caution that any "unreasonable" delay in bringing an individual before a magistrate or other judicial officer would comprise a constitutional and statutory violation.⁷

Finally, for the purposes of this opinion, I have confined my comments and analysis to the statutory and constitutional issues regarding an arrest. Other factors, beyond the scope of the facts and the question you present may affect the ability to use a particular magistrate's office. For example, a standing court order, which requires individuals arrested in certain areas to appear before the magistrate in that location, would require compliance with that order. Section 19.2-35 provides that the chief judge of the circuit court has "supervisory authority" over the magistrate system in that circuit. Thus, the judge has the inherent authority to manage the logistics of the operations of the magistrates' offices.⁸

Conclusion

Accordingly, it is my opinion that, under the circumstances described, a law-enforcement officer is not required to bring an arrested person to the nearest magistrate's office.

¹Mecklenburg County is responsible for providing quarters for the magistrates. See Va. Code Ann. § 19.2-48.1(A) (Michie Repl. Vol. 2000). A county may maintain multiple offices within the county whenever it is necessary for "the efficient administration of justice." Section 19.2-48.1(B).

²See § 19.2-82 (LexisNexis Supp. 2003). Once a warrant or a summons is issued, a magistrate may address the issue of bail. See § 19.2-45(3) (Michie Repl. Vol. 2000).

³See 1986-1987 Op. Va. Att'y Gen. 176, 177.

⁴County of Riverside v. McLaughlin, 500 U.S. 44, 53 (1991)

⁵See *id.* at 52-59 (citing *Gerstein v. Pugh*, 420 U.S. 103 (1975) (holding that state must provide fair, reliable determination of probable cause as prerequisite for any extended restraint of liberty following arrest; such determination by judicial officer must be made before or promptly after arrest); *cited in* *Bell v. Commonwealth*, 264 Va. 172, 187, 563 S.E.2d 695, 706 (2002); *Wilson v. Commonwealth*, 34 Va. App. 25, 30, 537 S.E.2d 608, 610-11 (2000); *McGuire v. Commonwealth*, 31 Va. App. 584, 597, 525 S.E.2d 43, 50 (2000) (holding that probable cause finding within forty-eight hours of arrest generally will satisfy promptness requirement of *Gerstein*).

⁶*Cf.* U.S. Const. amend. IV (providing for warrants to conduct search and seizure, "upon probable cause"); see *also* *Lowe v. Commonwealth*, 230 Va. 346, 348 n.1, 337 S.E.2d 273, 274 n.1 (1985) (noting that Fourth Amendment is substantially same as Article I, § 10 of Virginia Constitution).

⁷See *Mullins v. Sanders*, 189 Va. 624, 629, 54 S.E.2d 116, 119 (1949) (interpreting former § 5070n, which is similar to §§ 19.2-80 and 19.2-82, requiring person arrested without warrant to be taken before judicial officer "with all practicable speed" (quoting § 5070n)). "It is uniformly held that unreasonable delay in failing to comply with such statutory mandate constitutes false imprisonment." *Id.* at 630, 54 S.E.2d at 120. *Accord* *Pearson v. Commonwealth*, 221 Va. 936, 942 n.1, 275 S.E.2d 893, 897 n.1 (1981) (noting that purpose of § 19.2-80 "is to safeguard a defendant's constitutional rights by proscribing unnecessary delay between arrest and arraignment").

⁸The chief circuit judge may delegate this authority to the chief general district court judge. See § 19.2-35 (LexisNexis Supp. 2003). The supervisory authority, however, is limited to "ministerial" functions and does not extend to "discretionary" functions, such as determining whether to issue a warrant. See 1985-1986 Op. Va. Att'y Gen. 133, 134.

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