CHAPTER 13

Arrest, Process, Searches and Seizures

**SECTION 17‑13‑10.** Circumstances when any person may arrest a felon or thief.

Upon (a) view of a felony committed, (b) certain information that a felony has been committed or (c) view of a larceny committed, any person may arrest the felon or thief and take him to a judge or magistrate, to be dealt with according to law.

HISTORY: 1962 Code Section 17‑251; 1952 Code Section 17‑251; 1942 Code Section 907; 1932 Code Section 907; Cr. P. ‘22 Section 1; Cr. C. ‘12 Section 1; Cr. C. ‘02 Section 1; G. S. 2616; R. S. 1; 1866 (13) 406; 1898 (22) 809.

CROSS REFERENCES

Arrests by inspectors of law enforcement department of public service commission, see Section 58‑3‑370.

Arrests by magistrates, see Section 22‑5‑110 et seq.

Military personnel not being subject to certain arrests, see Section 25‑3‑120.

Unlawful searches and seizures, see SC Const, Art I, Section 10.

Library References

Arrest 63.2, 64.

Westlaw Topic No. 35.

C.J.S. Arrest Sections 11 to 13, 15.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arrest Section 11, Felony Arrest Upon “Certain Information”.

S.C. Jur. Arrest Section 17, Relationship of Misdemeanor Rule to the Common Law.

S.C. Jur. False Imprisonment Section 3, False Arrest.

S.C. Jur. Private Detectives and Private Security Businesses Section 29, Violation of Statutes.

Treatises and Practice Aids

Drinking/Driving Litigation: Criminal and Civil 2d Section 5:9, Citizen’s Arrest.

LAW REVIEW AND JOURNAL COMMENTARIES

Search and Seizure. 25 S.C. L. Rev. 348.

Attorney General’s Opinions

A private security guard has only the powers of a private citizen when patrolling and protecting a public school. S.C. Op.Atty.Gen. (July 13, 2015) 2015 WL 4497733.

Discussion of whether a citizen, employed in a business in any capacity other than a security guard, can make a citizen’s arrest for shoplifting. S.C. Op.Atty.Gen. (March 24, 2003) 2003 WL 21043496.

Even if not on duty, jailers, as do private citizens, have the power to arrest anywhere in the State for any crime covered by either Section 17‑13‑10 or 17‑13‑20. S.C. Op.Atty.Gen. (Nov. 14, 2001) 2001 WL 1736766.

Officer was without the authority to cite the defendant for conduct observed outside of his jurisdiction. S.C. Op.Atty.Gen. (Sept. 15, 2000) 2000 WL 1478796.

Discussion of misdemeanor arrests when the arresting officer has not yet obtained a warrant. S.C. Op.Atty.Gen. (Aug. 1, 2000) 2000 WL 1205935.

Discussion of the authority of class 3 officers to detain suspects. S.C. Op.Atty.Gen. (April 14, 2000) 2000 WL 655478.

Members of General Assembly are not entitled to privilege or constitutional immunity from arrest or from prosecution and conviction for speeding or any other traffic or criminal offense. 1993 Op Atty Gen No 93‑7 (February 17, 1993) 1993 WL 720078.

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 is within the individual magistrate’s discretion. 1978 Op Atty Gen, No 78‑15, p 28 (January 26, 1978) 1978 WL 22501.

NOTES OF DECISIONS

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1. In general

Where municipal police officer was outside municipality’s city limits when he first observed defendant, whom officer suspected of driving under influence, officer had no police authority to detain defendant, but was authorized to arrest defendant if private citizen could have done so. State v. McAteer (S.C. 2000) 340 S.C. 644, 532 S.E.2d 865. Automobiles 349(12)

Where a dangerous wound is inflicted, a peace officer need not wait to ascertain whether the injured person dies, and may arrest the offender without a warrant, if he in good faith believes that the wound is such that a felony will likely result from it through the injured person’s death, and his belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise. State v. Swilling (S.C. 1967) 249 S.C. 541, 155 S.E.2d 607, certiorari denied 88 S.Ct. 806, 389 U.S. 1055, 19 L.Ed.2d 853. Arrest 63.4(5)

Assuming, without deciding, that the statute embodies the requirement that a lay person who effects an arrest must, after turning the arrested person over to the police, procure a warrant as soon as possible, it could not be determined from the pleadings whether the duty, if any, to seek such warrant was on the arrestor or on the police authorities. Thomas v. Colonial Stores, Inc. (S.C. 1960) 236 S.C. 95, 113 S.E.2d 337.

Statute was applied to situation at bar. State v. Miller (S.C. 1947) 211 S.C. 306, 45 S.E.2d 23.

The statute has no application to one who kills in assisting another. State v. Cook (S.C. 1906) 78 S.C. 253, 59 S.E. 862, 125 Am.St.Rep. 788, 13 Am.Ann.Cas. 1051.

A private person may arrest without a warrant, under this section [Code 1962 Section 17‑251], a fugitive from justice from a sister state on showing that prima facie a felony or some crime, punishable either capitally or by imprisonment for one year or upwards in a State prison, was in fact committed and the prisoner was the perpetrator. State v. Whittle (S.C. 1901) 59 S.C. 297, 37 S.E. 923.

A private person has no right under section to arrest without warrant for simple petit larceny. State v. Davis (S.C. 1897) 50 S.C. 405, 27 S.E. 905, 62 Am.St.Rep. 837.

2. Purpose

It is reasonable to suppose that this section [Code 1962 Section 17‑251] was intended to change existing law. This section [Code 1962 Section 17‑251] would not have this effect unless it is construed as enabling the party making the arrest to act upon information, although it might not be true, provided it was of such nature as to convince a reasonable man that the act had been committed from which the law presumed the felony by the person arrested. Burton v. McNeill (S.C. 1941) 196 S.C. 250, 13 S.E.2d 10, 133 A.L.R. 603.

3. Constitutional issues

The Fourth Amendment proscription against warrantless searches and seizures does not apply to searches by private individuals not acting as agents of the state. State v. Cooney (S.C. 1995) 320 S.C. 107, 463 S.E.2d 597, rehearing denied. Searches And Seizures 33

4. Certain information

The word “certain” is used in the sense of trustworthy, capable of being depended upon, credible, positive, or reliable, and has reference to the evidence or information upon which the person making the arrest is allowed to act, and not to the actual fact that a felony has been committed. When the information is certain, in the sense hereinbefore mentioned, any person has as much right to make the arrest as if acting by virtue of a warrant issued by a regularly authorized officer of the law, and it is the corresponding duty of the person supposed to have committed the felony to submit to the arrest. Burton v McNeill (1941) 196 SC 250, 13 SE2d 10, 133 ALR 603. State v Swilling (1967) 249 SC 541, 155 SE2d 607, cert den 389 US 1055, 19 L Ed 2d 853, 88 S Ct 806.

The “certain information” referred to in this section [Code 1962 Section 17‑251] means the existence of reasonable grounds to suspect the party arrested may be guilty of a felony. State v. Swilling (S.C. 1967) 249 S.C. 541, 155 S.E.2d 607, certiorari denied 88 S.Ct. 806, 389 U.S. 1055, 19 L.Ed.2d 853. Arrest 63.4(1)

Where owner arrested respondent who was found in owner’s house, the owner being sued for false arrest, it was held that the owner had the right to arrest respondent if he was acting “upon certain information that a felony had been committed,” it being unnecessary as an actual fact that a felony had been committed in order to permit him, as a private citizen, to arrest respondent and take him before the proper officer of the law. Burton v. McNeill (S.C. 1941) 196 S.C. 250, 13 S.E.2d 10, 133 A.L.R. 603. False Imprisonment 7(3)

Where owner whose house had been broken into several times arrested persons found in his house on information from a twelve‑year‑old boy who told him he had heard an awful noise in his house, it was held that owner acted on information within the meaning of this section [Code 1962 Section 17‑251]. Burton v. McNeill (S.C. 1941) 196 S.C. 250, 13 S.E.2d 10, 133 A.L.R. 603.

Under this section [Code 1962 Section 17‑251], a private person may arrest one because of a supposed felony committed, on such information as to convince a reasonable man that the felony has been committed, even though the information be false. State v. Griffin (S.C. 1906) 74 S.C. 412, 54 S.E. 603. Arrest 64

5. View of larceny committed

The statute permitting warrantless misdemeanor arrests for any “view of a larceny committed” is the only circumstance when a citizen can make a daytime misdemeanor arrest. State v. McAteer (S.C. 2000) 340 S.C. 644, 532 S.E.2d 865. Arrest 64

6. Requirement that arrestee be taken before judge or magistrate

Under this section [Code 1962 Section 17‑251], upon arresting the defendant without a warrant, officers are required to take him before a judge or magistrate within a reasonable length of time thereafter. However, the failure of the officers to do so does not warrant reversal of defendant’s conviction unless such failure has deprived the defendant of a fair trial. State v. Swilling (S.C. 1967) 249 S.C. 541, 155 S.E.2d 607, certiorari denied 88 S.Ct. 806, 389 U.S. 1055, 19 L.Ed.2d 853. Criminal Law 1166(7)

If there was a lawful arrest made in good faith, subsequent unreasonable delay in taking the person before a magistrate will not affect the legality of the arrest, although it will subject the offending person to liability for so much of the imprisonment as occurs after the period of necessary or reasonable delay. Thomas v. Colonial Stores, Inc. (S.C. 1960) 236 S.C. 95, 113 S.E.2d 337. Arrest 70(2); False Imprisonment 8

There is a sufficient compliance with this section [Code 1962 Section 17‑251] is the person arrested is taken to police headquarters to be dealt with according to law. Thomas v. Colonial Stores, Inc. (S.C. 1960) 236 S.C. 95, 113 S.E.2d 337.

A private person can only arrest for the purpose of taking the arrested party to the proper official to be dealt with according to law, and this must be done within a reasonable time. Thomas v. Colonial Stores, Inc. (S.C. 1960) 236 S.C. 95, 113 S.E.2d 337.

Where owner of house took person caught in his house to police headquarters and delivered him to chief of detectives of city police department, it would be quibbling to hold for all practical purposes and the intent of this section [Code 1962 Section 17‑251] that owner did not comply with this section, permitting him to make an arrest, by not taking respondent before a judge or magistrate to be dealt with according to law. Burton v. McNeill (S.C. 1941) 196 S.C. 250, 13 S.E.2d 10, 133 A.L.R. 603.

In action for false imprisonment this section [Code 1962 Section 17‑251] was not available to defendant who had forced an eleven‑year‑old boy into a room and, without taking him to a judge or magistrate, questioned him for one and one‑half hours concerning theft of defendant’s money. He must, without unreasonable delay, either take him before a magistrate or a judge to be dealt with according to law. Westbrook v. Hutchison (S.C. 1940) 195 S.C. 101, 10 S.E.2d 145.

7. Common law

While there appears to be no substantial difference between the right of an officer to arrest for a felony under this section [Code 1962 Section 17‑251] and under the common law, such right of an officer existed at common law, and was unaffected by the statute. Bushardt v United Inv. Co. (1922) 121 SC 324, 113 SE 637, 35 ALR 637. State v Swilling (1967) 249 SC 541, 155 SE2d 607, cert den 389 US 1055, 19 L Ed 2d 853, 88 S Ct 806.

There is no common law right to make warrantless citizen’s arrests of any kind, and such rights as exist are created by statute. State v. McAteer (S.C. 2000) 340 S.C. 644, 532 S.E.2d 865. Arrest 64

It cannot be held to be in derogation of the common‑law right of a peace officer to arrest in felony cases. Bushardt v. United Inv. Co. (S.C. 1922) 121 S.C. 324, 113 S.E. 637, 35 A.L.R. 637.

8. Probable cause

Where an officer, in good faith, believes that a person is guilty of a felony, and his belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise, he has such probable cause for his belief as will justify him in arresting without a warrant. State v. Swilling (S.C. 1967) 249 S.C. 541, 155 S.E.2d 607, certiorari denied 88 S.Ct. 806, 389 U.S. 1055, 19 L.Ed.2d 853. Arrest 63.4(2)

9. Use of deadly force

A law enforcement officer may use whatever force is necessary to effect the arrest of a felon, including deadly force. Sheppard v. State (S.C. 2004) 357 S.C. 646, 594 S.E.2d 462. Arrest 68.1(4)

Section 17‑13‑10, allowing a citizen’s arrest of a felon or thief, does not authorize the use of deadly force. State v. Cooney (S.C. 1995) 320 S.C. 107, 463 S.E.2d 597, rehearing denied.

The holding of Tennessee v Garner, 471 U.S. 1, 105 S.Ct. 1694 (1986) regarding the use of deadly force by police officers does not apply to seizures by private persons not acting as agents of the State, and does not change the State’s criminal law with respect to citizens using force in apprehending a fleeing felon. State v. Cooney (S.C. 1995) 320 S.C. 107, 463 S.E.2d 597, rehearing denied. Arrest 64

In order to invoke the defense of justifiable killing in apprehending a fleeing felon, the assailant at a minimum must show that he had certain information that a felony had been committed, and that he used reasonable means to effect the arrest. State v. Cooney (S.C. 1995) 320 S.C. 107, 463 S.E.2d 597, rehearing denied.

In determining the reasonableness of killing a fleeing felon in an attempt to apprehend him, the determination of reasonableness depends upon the facts of the case and is a question for the jury unless there is no evidence to support a finding of reasonableness; consequently, the trial judge erred in finding that killing an unarmed fleeing suspect was per se unreasonable, and in failing to charge the jury on the common law of citizen’s arrest and the use of reasonable force. State v. Cooney (S.C. 1995) 320 S.C. 107, 463 S.E.2d 597, rehearing denied.

In the prosecution of a defendant who shot and killed the victim while allegedly trying to make a citizen’s arrest, the trial court did not err in excluding evidence tending to show that the victim committed a burglary; such evidence was irrelevant since actual guilt of the suspect is not required to justify a citizen’s arrest. State v. Cooney (S.C. 1995) 320 S.C. 107, 463 S.E.2d 597, rehearing denied.

10. Instructions

Proposed instruction, that a citizen’s arrest upon viewing commission of a felony or larceny must be made with use of reasonable force, was not warranted in capital murder prosecution arising from defendant’s gun battle with guard during robbery of armored car; defendant’s acts as initiator of crime put guard directly in danger, and there was no evidence guard was attempting an arrest rather than simply trying to protect himself. State v. Shuler (S.C. 2001) 344 S.C. 604, 545 S.E.2d 805, rehearing denied, certiorari denied 122 S.Ct. 404, 534 U.S. 977, 151 L.Ed.2d 306, habeas corpus dismissed 2006 WL 490126, affirmed 209 Fed.Appx. 224, 2006 WL 3611810, certiorari denied 127 S.Ct. 2429, 550 U.S. 958, 167 L.Ed.2d 1132. Criminal Law 814(8)

It is error to charge jury as to right of arrest without distinguishing larceny that is misdemeanor from larceny that is felony. State v. Davis (S.C. 1897) 50 S.C. 405, 27 S.E. 905, 62 Am.St.Rep. 837.

11. Directed verdict

The defendants were entitled to a directed verdict on a charge of assault and battery of a high and aggravated nature against one who was attempting to make a citizen’s arrest where (1) the assault victim’s belief that the defendants had slashed the top of his daughter’s convertible was based on her statement, not on his personal knowledge, (2) such crime was a misdemeanor, not a felony, and (3) the assault victim grabbed one defendant without prior warning or notice that he was making a citizen’s arrest; thus, the attempted citizen’s arrest by the assault victim was not lawful. State v. Nall (S.C.App. 1991) 304 S.C. 332, 404 S.E.2d 202.

**SECTION 17‑13‑20.** Additional circumstances when citizens may arrest; means to be used.

A citizen may arrest a person in the nighttime by efficient means as the darkness and the probability of escape render necessary, even if the life of the person should be taken, when the person:

(a) has committed a felony;

(b) has entered a dwelling house without express or implied permission;

(c) has broken or is breaking into an outhouse with a view to plunder;

(d) has in his possession stolen property; or

(e) being under circumstances which raise just suspicion of his design to steal or to commit some felony, flees when he is hailed.

HISTORY: 1962 Code Section 17‑252; 1952 Code Section 17‑252; 1942 Code Section 908; 1932 Code Section 908; Cr. P. ‘22 Section 2; Cr. C. ‘12 Section 2; Cr. C. ‘02 Section 2; G. S. 2617; R. S. 2; 1866 (13) 406; 1995 Act No. 53, Section 1.

CROSS REFERENCES

Military personnel not being subject to certain arrests, see Section 25‑3‑120.

Library References

Arrest 64, 67.

Westlaw Topic No. 35.

C.J.S. Arrest Sections 11 to 13, 54.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arrest Section 17, Relationship of Misdemeanor Rule to the Common Law.

S.C. Jur. False Imprisonment Section 3, False Arrest.

S.C. Jur. Private Detectives and Private Security Businesses Section 29, Violation of Statutes.

Treatises and Practice Aids

Drinking/Driving Litigation: Criminal and Civil 2d Section 5:9, Citizen’s Arrest.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: criminal law: arrest, search and seizure. 28 S.C. L. Rev. 290.

Attorney General’s Opinions

A private security guard has only the powers of a private citizen when patrolling and protecting a public school. S.C. Op.Atty.Gen. (July 13, 2015) 2015 WL 4497733.

Discussion of whether a citizen, employed in a business in any capacity other than a security guard, can make a citizen’s arrest for shoplifting. S.C. Op.Atty.Gen. (March 24, 2003) 2003 WL 21043496.

Even if not on duty, jailers, as do private citizens, have the power to arrest anywhere in the State for any crime covered by either Section 17‑13‑10 or 17‑13‑20. S.C. Op.Atty.Gen. (Nov. 14, 2001) 2001 WL 1736766.

Discussion of the authority of class 3 officers to detain suspects. S.C. Op.Atty.Gen. (April 14, 2000) 2000 WL 655478.

NOTES OF DECISIONS

In general 1

Instructions 3

Use of deadly force 2

1. In general

Officers of sheriff’s department did not have authority to effectuate a citizen’s arrest of defendant in another county, and therefore arrest was unlawful and subsequent confessions were inadmissible as fruit of the poisonous tree in burglary prosecution, where officer’s only observed defendant commit offense of indecent exposure, a misdemeanor, and officers observed defendant throwing items from his vehicle, but it would have been pure speculation to identify items as stolen and thus giving officers statutory basis to effectuate citizen’s arrest. State v. Boswell (S.C. 2011) 391 S.C. 592, 707 S.E.2d 265, rehearing denied. Arrest 64; Criminal Law 413.12

There is no common law right to make warrantless citizen’s arrests of any kind, and such rights as exist are created by statute. State v. McAteer (S.C. 2000) 340 S.C. 644, 532 S.E.2d 865. Arrest 64

This section [Code 1962 Section 17‑252] applies only to arrests in the nighttime, and under the circumstances named. State v. Davis (S.C. 1897) 50 S.C. 405, 27 S.E. 905, 62 Am.St.Rep. 837.

2. Use of deadly force

The holding of Tennessee v Garner, 471 U.S. 1, 105 S.Ct. 1694 (1986) regarding the use of deadly force by police officers does not apply to seizures by private persons not acting as agents of the State, and does not change the State’s criminal law with respect to citizens using force in apprehending a fleeing felon. State v. Cooney (S.C. 1995) 320 S.C. 107, 463 S.E.2d 597, rehearing denied. Arrest 64

In order to invoke the defense of justifiable killing in apprehending a fleeing felon, the assailant at a minimum must show that he had certain information that a felony had been committed, and that he used reasonable means to effect the arrest. State v. Cooney (S.C. 1995) 320 S.C. 107, 463 S.E.2d 597, rehearing denied.

In determining the reasonableness of killing a fleeing felon in an attempt to apprehend him, the determination of reasonableness depends upon the facts of the case and is a question for the jury unless there is no evidence to support a finding of reasonableness; consequently, the trial judge erred in finding that killing an unarmed fleeing suspect was per se unreasonable, and in failing to charge the jury on the common law of citizen’s arrest and the use of reasonable force. State v. Cooney (S.C. 1995) 320 S.C. 107, 463 S.E.2d 597, rehearing denied.

In the prosecution of a defendant who shot and killed the victim while allegedly trying to make a citizen’s arrest, the trial court did not err in excluding evidence tending to show that the victim committed a burglary; such evidence was irrelevant since actual guilt of the suspect is not required to justify a citizen’s arrest. State v. Cooney (S.C. 1995) 320 S.C. 107, 463 S.E.2d 597, rehearing denied.

This section [Code 1962 Section 17‑252] does not justify a killing, where deceased failed to answer upon being hailed in the nighttime upon premises of the defendant. State v. Jones (S.C. 1916) 104 S.C. 141, 88 S.E. 444.

3. Instructions

Failure to instruct that before citizen is justified in attempting to arrest one suspected of possessing stolen property suspicion must be reasonably grounded held prejudicial error as to accused charged with murder. State v. Irby (S.C. 1932) 166 S.C. 430, 164 S.E. 912. Homicide 1486

**SECTION 17‑13‑30.** Officers may arrest without warrant for offenses committed in view.

The sheriffs and deputy sheriffs of this State may arrest without warrant any and all persons who, within their view, violate any of the criminal laws of this State if such arrest be made at the time of such violation of law or immediately thereafter.

HISTORY: 1962 Code Section 17‑253; 1952 Code Section 17‑253; 1942 Code Section 909; 1932 Code Section 909; Cr. P. ‘22 Section 3; Cr. C. ‘12 Section 3; Cr. C. ‘02 Section 3; 1898 (22) 808.

CROSS REFERENCES

Arrests by magistrates to preserve the peace, see Section 22‑5‑140.

Military personnel not being subject to certain arrests, see Section 25‑3‑120.

Library References

Arrest 63.4(13).

Westlaw Topic No. 35.

C.J.S. Arrest Section 25.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arrest Section 14, Misdemeanor Rule Generally.

S.C. Jur. Arrest Section 16, When a Warrantless Misdemeanor Arrest May be Made.

S.C. Jur. False Imprisonment Section 3, False Arrest.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Criminal Law: Warrantless Arrest for Misdemeanor. 33 S.C. L. Rev. 69, August 1981.

United States Supreme Court Annotations

Searches and seizures, warrant requirement, search incident to arrest exception, arrest for driving with a suspended license, search of vehicle, defendant handcuffed in patrol car, see Arizona v. Gant, U.S.Ariz.2009, 129 S.Ct. 1710, 556 U.S. 332, 173 L.Ed.2d 485.

Attorney General’s Opinions

State and local officers are authorized to arrest for violations of the criminal laws of the state but these officers are not empowered to enforce federal law nor may they may interfere with or otherwise impede federal law enforcement officers as they perform their lawful duties. S.C. Op.Atty.Gen. (January 28, 2013) 2013 WL 482680.

Discussion of whether South Carolina’s state and local law enforcement officers possess authority independently to enforce federal law concerning illegal immigrants. S.C. Op.Atty.Gen. (March 6, 2002) 2002 WL 399643.

Discussion of misdemeanor arrests when the arresting officer has not yet obtained a warrant. S.C. Op.Atty.Gen. (Aug. 1, 2000) 2000 WL 1205935.

There appears to be no authority for individual licensed as private security guard to provide security for moving individual. Licensed private security guard is only authorized to provide security for property he is hired to protect or guard; away from such property he only has power of arrest of private citizen. 1984 Op Atty Gen, No 84‑80, p 199 (August 04, 1987) 1987 WL 245481.

An officer making an arrest for driving under the influence when said offense was not committed within his view must obtain a warrant prior to the arrest. 1969‑70 Ops Atty Gen, No 2897, p 141 (May 7, 1970) 1970 WL 12180.

NOTES OF DECISIONS

In general 1

Probable cause 2

1. In general

Even if defendant were title owner of home in which his father was residing, police officers acted within the scope of their power when they arrested defendant without a warrant for trespass after notice when defendant refused to leave father’s residence after being asked to do so; statute did not exclude an owner from class of persons who may be convicted of trespass after notice. State v. Tyndall (S.C.App. 1999) 336 S.C. 8, 518 S.E.2d 278, rehearing denied. Arrest 63.1; Trespass 81

Person is lawfully arrested for offense of driving motor vehicle while under influence of intoxicants where officer arriving at scene finds two cars, each damaged by other, and admitted driver of one car is highly intoxicated; special circumstances dictate that arrest be immediately made where intoxicated person, who has just been in accident and still has opportunity to operate vehicle, presents clear and present danger to community. State v. Martin (S.C. 1980) 275 S.C. 141, 268 S.E.2d 105.

A game warden has the power and authority to arrest any person without warrant for an offense committed in his presence. Prosser v. Parsons (S.C. 1965) 245 S.C. 493, 141 S.E.2d 342. Arrest 63.3

An arrest for a misdemeanor not committed in view of the officer is unlawful if without warrant. Percival v. Bailey (S.C. 1904) 70 S.C. 72, 49 S.E. 7.

This section [Code 1962 Section 17‑253] is not limited to offenses committed in sight of the officer to the exclusion of those committed within his hearing. State v. Williams (S.C. 1892) 36 S.C. 493, 15 S.E. 554.

2. Probable cause

Police officers had probable cause to arrest defendant for committing misdemeanor offense of trespass after notice, and thus defendant was not entitled to dismissal of resisting arrest charge based on officers’ failure to obtain arrest warrant, where friend drove defendant to his father’s residence for a visit, friend contacted police to report an escalating altercation between defendant and his father, police went to father’s residence, father told police to ask defendant to leave, and defendant refused to leave when officers asked him to. State v. Tyndall (S.C.App. 1999) 336 S.C. 8, 518 S.E.2d 278, rehearing denied. Arrest 63.4(17); Obstructing Justice 126(4)

Even though defendant was not arrested until after he made custodial statement following execution of search warrant, police had probable cause to arrest defendant prior to execution of search warrant, and thus defendant’s custodial statement was admissible even if search warrant had not been valid, in prosecution for computer crimes, where co‑defendant gave a series of statements to police implicating defendant in forgery and credit card conspiracy, gave a complete description of defendant and his wife to police, knew that defendant was employed at a particular bank, and gave details of meetings at defendant’s home. State v. Robinson (S.C.App. 1999) 335 S.C. 620, 518 S.E.2d 269. Criminal Law 413.12

When determining the constitutional validity of an arrest, a court must consider whether, at the moment the arrest was made, the officers had probable cause to make it, meaning that whether, at that moment, the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the arrestee had committed an offense. State v. Robinson (S.C.App. 1999) 335 S.C. 620, 518 S.E.2d 269. Arrest 63.4(4)

Whether probable cause exists for arrest depends upon the totality of the circumstances surrounding the information at the officers disposal. State v. Robinson (S.C.App. 1999) 335 S.C. 620, 518 S.E.2d 269. Arrest 63.4(2)

Probable cause to believe that motorist had freshly committed crime of DUI, justifying warrantless arrest on misdemeanor charge committed before police arrived, existed when officers observed scene of single car accident, arrived at motorist’s residence 20 minutes later, motorist admitted driving wrecked car, and motorist was obviously impaired, even though officers did not observe accident and car was inoperable. Fradella v. Town of Mount Pleasant (S.C.App. 1997) 325 S.C. 469, 482 S.E.2d 53, rehearing denied, certiorari denied. Automobiles 349(6)

Rule that officer can arrest for misdemeanor not committed in officer’s presence when facts and circumstances observed by officer give probable cause to believe that crime has been freshly committed is satisfied as long as facts and circumstances observed or perceived by officer justify conclusion that crime has been freshly committed; officer need not observe all facts and circumstances at crime scene. Fradella v. Town of Mount Pleasant (S.C.App. 1997) 325 S.C. 469, 482 S.E.2d 53, rehearing denied, certiorari denied. Arrest 63.4(6)

Evidence of a pretrial identification of a defendant convicted of distributing cocaine was admissible, despite the fact that the arrest warrant failed to name the person to be arrested, where the information provided to the arresting officer by the undercover agent included (1) a detailed description of the defendant, (2) factual information to establish probable cause, and (3) an identification of the defendant by the name of “Hippy”; thus, adequate probable cause was established for a warrantless arrest. State v. Thompson (S.C.App. 1991) 304 S.C. 85, 403 S.E.2d 139, certiorari denied.

Presence of truck containing marijuana in large quantity on defendant’s property, ostensibly under his control, together with fact officers were there to search premises for illegal narcotics, gave officers sufficient probable cause to arrest defendant without warrant. State v. Hammond (S.C. 1978) 270 S.C. 347, 242 S.E.2d 411. Arrest 63.4(2)

**SECTION 17‑13‑40.** Law enforcement officer jurisdiction when in pursuit of offender; authority, rights, privileges and immunities extended.

(A) When the police authorities of a town or city are in pursuit of an offender for a violation of a municipal ordinance or statute of this State committed within the corporate limits, the authorities may arrest the offender, with or without a warrant, at a place within the corporate limits, at a place within the county in which the town or city is located, or at a place within a radius of three miles of the corporate limits.

(B) When the police authorities of a county are in pursuit of an offender for a violation of a county ordinance or statute of this State committed within the county, the authorities may arrest the offender, with or without a warrant, at a place within the county, or at a place within an adjacent county.

(C) When a law enforcement officer’s jurisdiction is expanded pursuant to this section, the authority, rights, privileges, and immunities, including coverage under the workers’ compensation laws, and tort liability coverage obtained pursuant to the provisions of Chapter 78, Title 15, that are applicable to an officer within the jurisdiction in which he is employed are extended to and include the expanded areas of jurisdiction granted pursuant to this section.

HISTORY: 1962 Code Section 17‑254; 1952 Code Section 17‑254; 1942 Code Section 910; 1932 Code Section 910; Cr. P. ‘22 Section 4; Cr. C. ‘12 Section 4; 1908 (25) 1089; 1970 (56) 2560; 1998 Act No. 265, Section 1; 1999 Act No. 9, Section 1.

CROSS REFERENCES

Military personnel not being subject to certain arrests, see Section 25‑3‑120.

Library References

Arrest 63.3, 66(3).

Westlaw Topic No. 35.

C.J.S. Arrest Sections 16 to 18, 55.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. False Imprisonment Section 3, False Arrest.

Attorney General’s Opinions

Section 17‑13‑40(C) permits law enforcement officers engaging in the extraterritorial pursuit or apprehension of an individual believed to have committed a criminal offense within the officer’s territorial jurisdiction with the authority to charge such an individual for additional offenses observed during the course of an extraterritorial pursuit and stop so long as the factual predicate for the initial exercise of extraterritorial jurisdiction continues to exist. S.C. Op.Atty.Gen. (August 7, 2015) 2015 WL 4977737.

Discussion of whether a municipality may contract with a School District to provide law enforcement services for a High School, which is approximately 1.5 miles outside the Corporate limits. S.C. Op.Atty.Gen. (May 28, 2002) 2002 WL 1340424.

Discussion of whether it is legal for a municipal officer to go into the County and assist probation and parole agents with the service of a warrant if the residence is in the county and not in the city. S.C. Op.Atty.Gen. (Oct. 31, 2001) 2001 WL 1397509.

Discussion of the amendment to this section by 1998 Act No. 265. S.C. Op.Atty.Gen. (July 9, 1998) 1998 WL 746097, 1998 WL 746095.

Discussion of the enforcement of the City of Florence’s Ordinance concerning Careless Operation of a Vehicle. S.C. Op.Atty.Gen. (Jan. 20, 1998) 1998 WL 62945.

Discussion of enforcement of traffic laws in the City of Florence on roads that are partially in the city limits. S.C. Op.Atty.Gen. (Jan. 19, 1998) 1998 WL 62946.

Discussion of police jurisdiction between two municipalities. S.C. Op.Atty.Gen. (Jan. 19, 1998) 1998 WL 61839.

Officer may serve warrants on college campuses provided he has jurisdiction within county. There is no legal requirement that courtesy measures be adhered to. 1984 Op Atty Gen, No 84‑3, p 18 (July 02, 1996) 1996 WL 494710.

Whether or not a city police officer could exercise law enforcement authority outside the city limits and assist in the investigation of accidents and the control of traffic instant to a traffic accident at an intersection located just outside the city limits would depend on whether the officer was in pursuit of an offender or whether an agreement between jurisdictions pursuant to one of the referenced statutory provisions existed by which an officer was specifically authorized to act outside his jurisdiction. However, if a city police officer should answer a call outside his municipal jurisdiction, exclusive of such situations, the officer’s actions outside his jurisdiction would be limited to those of a non‑legal nature. Any actions beyond such could subject a municipality to liability and, thus, should be avoided. 1986 Op Atty Gen, No 86‑79, p 248 (July 11, 1986) 1986 WL 192037.

When a municipal police officer acts outside the corporate limits or the extension there of in cases of pursuit his actions are as a private citizen with such powers and liabilities as a private citizen would have under the circumstances. 1969‑70 Op Atty Gen, No 2845, p 77 (Feb. 28, 1970) 1970 WL 12136.

Where an officer arrested an individual beyond the territorial boundaries of the town for a misdemeanor that was committed in the presence of the officer but outside the municipal limits, and the offender had not been pursued by the officer, nor had he offered flight, the arrest was illegal. 1963‑64 Op Atty Gen, No 1693, p 149 (June 30, 1964) 1964 WL8317.

Where there has been neither flight by the offender nor pursuit by the officer, this section [Code 1962 Section 17‑254] does not confer upon a municipal police officer the right to make an arrest without a warrant. 1963‑64 Op Atty Gen, No 1693, p 149 (June 30, 1964) 1964 WL 8317.

NOTES OF DECISIONS

In general 1

Directed verdict 2

1. In general

Where municipal police officer was outside municipality’s city limits when he first observed defendant, whom officer suspected of driving under influence, officer had no police authority to detain defendant, but was authorized to arrest defendant if private citizen could have done so. State v. McAteer (S.C. 2000) 340 S.C. 644, 532 S.E.2d 865. Automobiles 349(12)

This section [Code 1962 Section 17‑254] does not give an officer power to search a person where there has been no flight by the person nor pursuit by the officer. Town of Blacksburg v. Beam (S.C. 1916) 104 S.C. 146, 88 S.E. 441.

2. Directed verdict

Officers’ testimony that they initiated the attempted traffic stop inside the city limits, standing alone, constituted sufficient evidence to defeat defendant’s motion for a directed verdict of acquittal on the charge of failure to stop for a blue light due to the lack of jurisdiction on the part of the pursuing officers. State v. Padgett (S.C.App. 2003) 354 S.C. 268, 580 S.E.2d 159, rehearing denied, certiorari denied. Criminal Law 753.2(3.1)

**SECTION 17‑13‑45.** Response to distress calls or requests for assistance in adjacent jurisdictions; extension of rights, privileges and immunities.

When a law enforcement officer responds to a distress call or a request for assistance in an adjacent jurisdiction, the authority, rights, privileges, and immunities, including coverage under the workers’ compensation laws, and tort liability coverage obtained pursuant to the provisions of Chapter 78, Title 15, that are applicable to an officer within the jurisdiction in which he is employed are extended to and include the adjacent jurisdiction.

HISTORY: 1997 Act No. 105, Section 1.

Library References

Municipal Corporations 189.

Westlaw Topic No. 268.

C.J.S. Municipal Corporations Sections 620 to 622, 640 to 646, 657, 660.

Attorney General’s Opinions

It would not be a violation of the prohibition against dual office holding for the Richland County Sheriff to enter into a management contract with the City of Columbia to turn over the full, complete and entire responsibility for law enforcement within the City of Columbia to the Sheriff. S.C. Op Atty Gen (Sept. 10, 2010) 2010 WL 3896166.

Discussion of the authority of municipal police officers to act outside their jurisdiction. S.C. Op.Atty.Gen. (Feb. 26, 2009) 2009 WL 580559.

Discussion of police departments making traffic cases outside their territorial jurisdictions. S.C. Op.Atty.Gen. (Sept. 14, 2006) 2006 WL 2849809.

Discussion of whether an off‑duty officer responding to a distress call must respond in uniform and drive a marked vehicle. S.C. Op.Atty.Gen. (Feb. 26, 2004) 2004 WL 439318.

Discussion of jurisdictional limitations on a municipal police officer responding to a distress call, and whether a municipal police officer may respond to a distress call or call for assistance from a central dispatch. S.C. Op.Atty.Gen. (Feb. 4, 2004) 2004 WL 323937.

Discussion of mutual aid agreements among law enforcement agencies. S.C. Op.Atty.Gen. (May 17, 2001) 2001 WL 790259.

Discussion of police jurisdiction between two municipalities. S.C. Op.Atty.Gen. (Jan. 19, 1998) 1998 WL 61839.

**SECTION 17‑13‑47.** Arrest in State by officer from Georgia or North Carolina; procedure for determining lawfulness of arrest; extradition.

(A) A law enforcement officer from Georgia or North Carolina who enters this State in fresh pursuit of a person has the same authority to arrest and hold in custody the person within this State as a law enforcement officer of this State has to arrest and hold in custody a person for committing a criminal offense in this State.

(B)(1) When an arrest is made in this State by a law enforcement officer of another state pursuant to subsection (A), the law enforcement officer must, without unnecessary delay, take the person arrested before a judicial official of this State.

(2) The judicial official must conduct a hearing for the limited purpose of determining whether the arrest meets the requirements of this section unless the person arrested executes a written waiver of his right to a hearing under this section. If the judicial official determines that the arrest was unlawful, he must discharge the person arrested. If the judicial official determines that the arrest was lawful, he must commit the person arrested to imprisonment for twenty days as provided in Section 17‑9‑10. Once the person is imprisoned pursuant to this section, the provisions of Title 17, Chapter 9 govern the extradition and return of the person to the state in which the criminal offense was committed.

(C) For the purpose of this section:

(1) “Law enforcement officer” means an appointed officer or employee who is hired by and regularly on the payroll of a state or any political subdivision, who is granted the statutory authority to enforce all or some of the criminal, traffic, or penal laws of their respective state, and who is granted or possesses with respect to those laws, the power to effect arrests for offenses committed or alleged to have been committed.

(2) “Fresh pursuit” means a pursuit by a law enforcement officer of a person who is in the immediate and continuous flight from the commission of a criminal offense.

(D) The authority granted by this section is limited to criminal offenses of the pursuing state that also are criminal offenses under the laws of this State and that are punishable by death or imprisonment in excess of one year under the laws of the pursuing state.

(E) This section applies only to a law enforcement officer from Georgia or North Carolina if the officer’s employing or appointing state has enacted a provision similar to this section relating to the arrest and custody of a person pursued into a neighboring state.

HISTORY: 2006 Act No. 230, Section 1, eff February 17, 2006.

Library References

Arrest 63.3, 66(3).

Westlaw Topic No. 35.

C.J.S. Arrest Sections 16 to 18, 55.

**SECTION 17‑13‑50.** Right to be informed of ground of arrest; consequences of refusal to answer or false answer.

(A) A person arrested by virtue of process or taken into custody by an officer in this State has a right to know from the officer who arrests or claims to detain him the true ground on which the arrest is made. It is unlawful for an officer to:

(1) refuse to answer a question relative to the reason for the arrest;

(2) answer the question untruly;

(3) assign to the person arrested an untrue reason for the arrest; or

(4) neglect on request to exhibit to the person arrested or any other person acting in his behalf the precept by virtue of which the arrest is made.

(B) An officer who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both.

HISTORY: 1962 Code Section 17‑255; 1952 Code Section 17‑255; 1942 Code Section 993; 1932 Code Section 993; Cr. P. ‘22 Section 80; Cr. C. ‘12 Section 74; Cr. C. ‘02 Section 47; G. S. 2447; R. S. 46; 1993 Act No. 184, Section 53.

Library References

Arrest 68.1(1).

Municipal Corporations 190.

Westlaw Topic Nos. 35, 268.

C.J.S. Municipal Corporations Sections 620 to 622, 655, 657, 660.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arrest Section 27, Right to be Informed of Grounds for Arrest.

NOTES OF DECISIONS

In general 1

1. In general

Where judge charged this section [Section 17‑255, 1952 Code] as stating that every person arrested has right to know from arresting officer the ground on which arrest was made, and patrolman testified that he told defendant he was arresting him for reckless driving, and defendant admitted he was speeding, and that he knew he was under arrest, there was no prejudice from judge’s handling of the issue. State v. DeBerry (S.C. 1967) 250 S.C. 314, 157 S.E.2d 637, certiorari denied 88 S.Ct. 1857, 391 U.S. 953, 20 L.Ed.2d 867.

**SECTION 17‑13‑60.** Circumstances when persons are not to be arrested but may be served process.

No person shall be arrested while actually engaged in or attending military or militia duty or going to or returning from such duty, nor while attending, going to or returning from any court, as party or witness or by order of the court, except for treason, felony or breach of the peace. But in any such case process may be served without actual arrest of body or goods.

HISTORY: 1962 Code Section 17‑256; 1952 Code Section 17‑256; 1942 Code Section 3522; 1932 Code Section 3522; Civ. C. ‘22 Section 2065; Civ. C. ‘12 Section 1172; Civ. C. ‘02 Section 847; G. S. 662; R. S. 727; 1839 (11) 41.

CROSS REFERENCES

Exemption of volunteer and militia forces from arrest, see SC Const, Art XIII, Section 2.

South Carolina State Guard personnel not subject to certain arrests, see Section 25‑3‑120.

Library References

Arrest 60.

Westlaw Topic No. 35.

C.J.S. Arrest Sections 4 to 5.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arrest Section 20, Military Duty and Attendance at Court.

Attorney General’s Opinions

This section provides immunity from arrest via bench warrant when the individual subject to such an arrest is attending, going to, or returning from any court, whether as a party, a witness or by court order. 2014 S.C. Op.Atty.Gen. (April 17, 2015) 2015 WL 1881429.

This section does not prohibit arrest warrants from being served on individuals who appear in court for matters unrelated to the allegations in the outstanding warrants. 2014 S.C. Op.Atty.Gen. (April 17, 2015) 2015 WL 1881429.

Discussion of the arrest of persons while they are actually appearing in criminal and civil court. S.C. Op.Atty.Gen. (July 19, 2002) 2002 WL 1925755.

There is no specific immunity from arrest for an individual at his place of business. Therefore, a warrant charging an individual with a fraudulent check offense may be executed at the individual’s place of business. 1992 Op Atty Gen No 92‑71 (November 17, 1992) 1992 WL 575677.

NOTES OF DECISIONS

In general 1

1. In general

Witnesses in attendance on court are not privileged from arrest when charged with indictable offenses. Ex parte Levi, 1886, 28 F. 651. Arrest 60

State may not offer one defendant’s out‑of‑court confession in order to implicate codefendant and limiting instruction does not correct such defect; there is no error in failing to sever trial of codefendants where confession of codefendant was orally quoted by police officer who was admonished to carefully avoid any reference to defendant which might be prejudicial; defendant was not deprived of fair trial by prosecutor’s closing arguments which referred to evidence that codefendant said to defendant at scene of robbery that someone was coming, that they departed in hurry, jumped into cab, and split money, where basis of prosecutor’s argument was statement by witness, not statement of codefendant. State v. Nelson (S.C. 1979) 273 S.C. 380, 256 S.E.2d 420.

Nonresident witness or party attending court in this State is exempt from service. Breon v. Miller Lumber Co. (S.C. 1909) 83 S.C. 221, 65 S.E. 214, 137 Am.St.Rep. 803.

**SECTION 17‑13‑70.** Warrant authorizing breaking open gambling rooms.

The mayor, any of the aldermen or the sheriff of the city of Charleston or the mayor, intendant or any alderman, warden or recorder of any incorporated city or town of this State or any judge residing in any such city or town, on information by oath of any credible witness that any of the criminal laws against gambling is being violated, may grant his warrant, under his hand and seal, to break open and enter any closed door or room within such city or town, wherever such offense is alleged to prevail.

HISTORY: 1962 Code Section 17‑257; 1952 Code Section 17‑257; 1942 Code Sections 947, 957; 1932 Code Sections 947, 957; Cr. P. ‘22 Sections 43, 61; Cr. C. ‘12 Sections 60, 708; Cr. C. ‘02 Section 510; G. S. 1719; R. S. 395; 1816 (6) 28; 1904 (24) 500.

Library References

Gaming 60.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 110 to 112.

**SECTION 17‑13‑80.** Service of process on domestic and foreign corporations.

Whenever a warrant has been issued against a corporation under the provisions of Section 22‑3‑750 or an indictment has been returned against it under the provisions of Section 17‑19‑70, a copy of the warrant or indictment, accompanied in the case of an indictment by a notice to such corporation of the term of the court of general sessions at which such case shall be tried, shall be served upon such corporation in the manner provided by law for the service of process in civil actions. And when there is no agent or officer of the company within the county the service shall be made upon such person as is in charge of the property of the corporation and, if no such person can be found, it shall be served upon the Secretary of State, who shall transmit a copy of the warrant or indictment and notice by mail to the last known residence of the managing officer of the corporation, directed to such officer; provided, that in the case of a foreign corporation if such foreign corporation have no agent or other officer within the county in which the offense, or some part thereof, has been committed then process shall be served on the person appointed by such corporation to receive service of process as now required by law regulating foreign corporations or upon the Director of the Department of Insurance when by law service of process in civil actions may be made upon the Director of the Department of Insurance and such service shall be made in the same manner provided by law for service of summons in civil actions against such corporations.

HISTORY: 1962 Code Section 17‑258; 1952 Code Section 17‑258; 1942 Code Section 989; 1932 Code Section 989; Civ. C. ‘22 Section 4297; Civ. C. ‘12 Section 2830; 1911 (27) 39; 1960 (51) 1646; 1993 Act No.181, Section 277.

Library References

Corporations and Business Organizations 2539.

Westlaw Topic No. 101.

C.J.S. Corporations Sections 791, 802 to 814.

**SECTION 17‑13‑90.** Service of criminal process on Sunday.

Criminal process may be served on Sunday, as on any other day of the week, for all crimes, felonies, and misdemeanors alike. However, only law enforcement officers under bond shall be permitted to execute a search warrant.

HISTORY: 1962 Code Section 17‑259; 1952 Code Section 17‑259; 1942 Code Section 3523; 1932 Code Section 3523; Civ. C. ‘22 Section 2066; Civ. C. ‘12 Section 1173; Civ. C. ‘02 Section 848; G. S. 663; R. S. 728; 1931 (37) 78; 1954 (48) 1759; 1970 (56) 2414; 1973 (58) 126; 1994 Act No. 343, Section 1.

Library References

Sunday 30(4).

Westlaw Topic No. 369.

C.J.S. Sunday Sections 66, 80 to 81.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arrest Section 24, Sunday Service.

Attorney General’s Opinions

Criminal process may be served on Sunday where there is violation of provision of order of protection which enjoins respondent from abusing, threatening to abuse, or molesting petitioner. Whether service of criminal process on Sunday is authorized for violations of any other provision of such order is questionable. 1984 Op Atty Gen, No 84‑122, p 276 (October 10, 1984) 1984 WL 159928.

City police officers are not required by statute to be bonded. Blanket bond covering city police officers is sufficient to meet requirements of Section 17‑13‑90 pertaining to execution of search warrants. 1984 Op Atty Gen, No 84‑62, p 156 (May 29, 1984) 1984 WL 159869.

This section [Code 1962 Section 17‑259] requires that all search warrants be served by bonded officers. 1971‑72 Ops Atty Gen, No 3280, p 84 (March 10, 1972) 1972 WL 20424.

Arrest of a misdemeanant may be made on Sunday if offense is committed in the presence of the arresting officer and the arrest is effected during commission of the offense or immediately thereafter. 1967‑68 Ops Atty Gen, No 2487, p 159 (August 08, 1968) 1968 WL 8885.

An arrest warrant for assault and battery may be served on Sunday because it is an offense within the class of offenses to which the term breach of peace applies. 1966‑67 Ops Atty Gen, No 2331, p 154 (October 25, 1967) 1967 WL 8641.

Search warrants for illegal liquor, whether stamped or unstamped may be executed on Sunday. 1963‑64 Ops Atty Gen, No 1739, p 235 (October 09, 1964) 1964 WL 8359.

NOTES OF DECISIONS

In general 1

1. In general

Code 1962 Section 16‑105 was enacted to preserve the public peace and a violation of the section would be an offense against the peace, thus a warrant of arrest charging a violation of Code 1962 Section 16‑105 could be legally served on Sunday. State v. Poinsett (S.C. 1967) 250 S.C. 293, 157 S.E.2d 570.

The term “breach of the peace” is a generic one embracing a great variety of conduct destroying or menacing public order and tranquility. State v. Poinsett (S.C. 1967) 250 S.C. 293, 157 S.E.2d 570.

A breach of peace is a violation of public order, a disturbance of the public tranquility, by any act or conduct inciting to violence, which includes any violation of any law enacted to preserve peace and good order. State v. Poinsett (S.C. 1967) 250 S.C. 293, 157 S.E.2d 570. Disorderly Conduct 106; Disorderly Conduct 127

**SECTION 17‑13‑100.** Escaped prisoners may be retaken on Sunday.

It shall be lawful for the sheriff, deputy sheriff or jailer to retake on Sunday, as on any other day, and at court, muster or any other place any prisoner who has escaped.

HISTORY: 1962 Code Section 17‑260; 1952 Code Section 17‑260; 1942 Code Section 3524; 1932 Code Section 3524; Civ. C. ‘22 Section 2067; Civ. C. ‘12 Section 1174; Civ. C. ‘02 Section 849; G. S. 664; R. S. 729; 1839 (11) 45.

Library References

Sunday 30(4).

Westlaw Topic No. 369.

C.J.S. Sunday Sections 66, 80 to 81.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arrest Section 25, Escaped Prisoner Exception.

**SECTION 17‑13‑110.** Confinement in industrial communities.

Any police officer or deputy sheriff in any industrial community may confine in such prison or building as the president, treasurer or other executive officer having the management of any industrial corporation may provide in any such community any person who may be arrested charged with violation of law until such arrested person can be conveniently carried before a magistrate; provided, however, that:

(1) Such police officer or deputy sheriff shall not detain any arrested person in such prison longer than eighteen hours, except a person arrested on Saturday and then not over forty‑two hours; and

(2) Such police officer or deputy sheriff shall provide water and food and shall also furnish such arrested person with sufficient bedding or clothing to make him comfortable in cold weather.

HISTORY: 1962 Code Section 17‑261; 1952 Code Section 17‑261; 1942 Code Section 920; 1932 Code Section 920; Cr. P. ‘22 Section 13; Cr. C. ‘12 Section 14; 1910 (26) 765.

Library References

Arrest 70.

Westlaw Topic No. 35.

C.J.S. Arrest Sections 58 to 61.

**SECTION 17‑13‑120.** Persons shall not be removed from one prison to another without cause.

If any person, a citizen of this State, shall be committed to any prison or in custody of any officer whatsoever for any criminal or supposed criminal matter such person shall not be removed from such prison and custody into the custody of any other officer, unless it be:

(1) By habeas corpus or some other legal writ;

(2) When the prisoner is delivered to a constable or other inferior officer, to carry such prisoner to some common jail;

(3) When any person is sent, according to law, to any common workhouse of correction;

(4) When the prisoner is removed from one place or prison to another within the same county for his trial or discharge in due course of law;

(5) In case of sudden fire, infection or other necessity; or

(6) When brought into court as a witness in some matter or cause as provided by law.

HISTORY: 1962 Code Section 17‑262; 1952 Code Section 17‑262; 1942 Code Section 1063; 1932 Code Section 1063; Cr. P. ‘22 Section 150; Cr. C. ‘12 Section 132; Cr. C. ‘02 Section 105; G. S. 2338; R. S. 105; 1679 (1) 120.

Library References

Prisons 224.

Westlaw Topic No. 310.

C.J.S. Prisons and Rights of Prisoners Sections 128 to 136.

NOTES OF DECISIONS

In general 1

1. In general

This section applies to pretrial detainees and not to convicted prisoners who have been committed to the discretion of the Department of Corrections. Vice v. Harvey (D.C.S.C. 1978) 458 F.Supp. 1031.

Where question was not raised in court below and any question as to jurisdiction over defendant’s person was clearly waived, the Supreme Court, assuming without deciding that this section [Code 1962 Section 17‑262] was applicable, stated that it would presume that a proper order was issued for defendant’s remand from the State Penitentiary for trial in Greenville. State v. Orr (S.C. 1954) 225 S.C. 369, 82 S.E.2d 523, certiorari denied 75 S.Ct. 74, 348 U.S. 848, 99 L.Ed. 669.

Removal of accused from one prison to another in violation of this section [Code 1962 Section 17‑262] did not render his alleged confession inadmissible. State v. Brown (S.C. 1948) 212 S.C. 237, 47 S.E.2d 521, certiorari denied 69 S.Ct. 22, 335 U.S. 834, 93 L.Ed. 386. Criminal Law 413.22

**SECTION 17‑13‑130.** Penalty for signing warrant for illegal removal of prisoner.

If any person shall, after such commitment aforesaid, make out and sign or countersign any warrant for such removal aforesaid, contrary to the provisions of this chapter or Chapter 17 of this Title, as well he that makes or signs or countersigns such warrant as the officer that obeys or executes it shall suffer and incur the pains and forfeitures mentioned in Sections 17‑17‑150 and 17‑17‑170.

HISTORY: 1962 Code Section 17‑263; 1952 Code Section 17‑263; 1942 Code Section 1064; 1932 Code Section 1064; Cr. C. ‘22 Section 151; Cr. C. ‘12 Section 133; Cr. C. ‘02 Section 106; 1679 (1) 120.

**SECTION 17‑13‑140.** Issuance, execution and return of search warrants for property connected with the commission of crime; inventory of property seized.

Any magistrate or recorder or city judge having the powers of magistrates, or any judge of any court of record of the State having jurisdiction over the area where the property sought is located, may issue a search warrant to search for and seize (1) stolen or embezzled property; (2) property, the possession of which is unlawful; (3) property which is being used or has been used in the commission of a criminal offense or is possessed with the intent to be used as the means for committing a criminal offense or is concealed to prevent a criminal offense from being discovered; (4) property constituting evidence of crime or tending to show that a particular person committed a criminal offense; (5) any narcotic drugs, barbiturates, amphetamines or other drugs restricted to sale, possession, or use on prescription only, which are manufactured, possessed, controlled, sold, prescribed, administered, dispensed or compounded in violation of any of the laws of this State or of the United States. Narcotics, barbiturates or other drugs seized hereunder shall be disposed of as provided by Section 44‑53‑520.

The property described in this section, or any part thereof, may be seized from any place where such property may be located, or from the person, possession or control of any person who shall be found to have such property in his possession or under his control.

A warrant issued hereunder shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record establishing the grounds for the warrant. If the magistrate, municipal judge, or other judicial officer abovementioned is satisfied that the grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. In the case of a warrant issued by a magistrate or a judge of a court of record, it shall be directed to any peace officer having jurisdiction in the county where issued, including members of the South Carolina Law Enforcement Division, and shall be returnable to the issuing magistrate. In case of a warrant issued by a judge of a court of record, it shall be returnable to a magistrate having jurisdiction of the area where the property is located or the person to be searched is found. If any warrant is issued by any municipal judicial officer to municipal police officers, the return shall be made to the issuing municipal judicial officer. Any warrant issued shall command the officer to whom it is directed to forthwith search the person or place named for the property specified.

Any warrant issued hereunder shall be executed and return made only within ten days after it is dated. The officer executing the warrant shall make and deliver a signed inventory of any articles seized by virtue of the warrant, which shall be delivered to the judicial officer to whom the return is to be made, and if a copy of the inventory is demanded by the person from whose person or premises the property is taken, a copy of the inventory shall be delivered to him.

This section is not intended to and does not either modify or limit any statute or other law regulating search, seizure, and the issuance and execution of search warrants in circumstances for which special provision is made.

HISTORY: 1962 Code Section 17‑271; 1964 (53) 1821; 1966 (54) 2268; 1969 (56) 217.

CROSS REFERENCES

Constitutional provision regarding searches and seizures and invasions of privacy, see SC Const, Art I, Section 10.

Proof of insurance and financial responsibility in vehicle, penalties, see Section 56‑10‑225.

Library References

Searches and Seizures 101 to 150.

Westlaw Topic No. 349.

C.J.S. Searches and Seizures Sections 77 to 78, 172 to 275.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Affidavits Section 26, Statutory Requirements.

S.C. Jur. Affidavits Section 29, Search Warrants.

S.C. Jur. Arrest Section 28, Search and Seizure.

S.C. Jur. Criminal Sexual Conduct Section 55, Judicial Authorization for Compelled Nontestimonial Evidence from a Non‑Victim Witness.

Forms

Am. Jur. Pl. & Pr. Forms Searches and Seizures Section 1 , Introductory Comments.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law, criminal law. 42 S.C. L. Rev. 55 (Autumn 1990).

Search and Seizure. 25 S.C. L. Rev. 348.

United States Supreme Court Annotations

Requirement, under Federal Constitution, that person issuing warrant for arrest or search be neutral and detached magistrate—Supreme Court cases. 32 L Ed 2d 970.

Search and seizure: observation of objects in “plain view”—Supreme Court cases. 29 L Ed 2d 1067.

Searches and seizures, Warrant generally required for search of digital information on an arrestee’s cell phone, see Riley v. California, U.S.Cal.2014, 134 S.Ct. 2473, 189 L.Ed.2d 430. Arrest 71.1(6)

Sufficiency of information provided by anonymous informant to provide probable cause for federal search warrant—cases decided after Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317, 76 L Ed 2d 527 (1983). 178 ALR Fed 487.

Supreme Court’s views as to constitutionality of inventory searches. 109 L Ed 2d 776.

What constitutes “seizure” within meaning of Federal Constitution’s Fourth Amendment—Supreme Court cases. 100 L Ed 2d 981.

When is evidence which is obtained after unconstitutional search or seizure sufficiently remote from such search or seizure so as not to be tainted by, and not to be inadmissible as fruit of, such search or seizure—Supreme Court cases. 109 L Ed 2d 787.

Attorney General’s Opinions

A search or arrest warrant is not rendered invalid solely by virtue of the fact that it was signed or issued by a municipal judge from his or her residence located outside the territorial limits of the municipality he or she is employed by. S.C. Op.Atty.Gen. (August 20, 2013) 2013 WL 4778503.

In the absence of statutory authorization for warrants in association with fire investigations, a fire authority continues to use the search warrant process in situations where such is appropriate. S.C. Op Atty Gen (March 3, 2011) 2011 WL 1444711.

Until a court so rules in this State, or there is specific authority for a fire inspector who is not a commissioned law enforcement officer or who does not possess any law enforcement authority generally, a fire inspector would not be authorized to sign, as an affiant, a criminal search warrant. S.C. Op Atty Gen (Jan. 14, 2010) 2010 WL 440999.

Discussion of the enforcement of city housing enforcement by obtaining a search warrant for the inspection of residences. S.C. Op.Atty.Gen. (Dec. 15, 2006) 2006 WL 3877512.

It is questionable whether inspection warrant authorized by Child Fatality Review and Prevention Act would authorize seizure of items from home for further investigation. 1993 Op Atty Gen No 93‑79 (December 07, 1993) 1993 WL 560530.

It is permissible to search any building, dwelling, or otherwise, for stolen goods during the night time, provided a proper warrant is obtained in accordance with Section 17‑13‑140. 1983 Op Atty Gen, No 83‑6, p 16 (March 22, 1983) 1983 WL 142677.

Search and Arrest Warrants for the illegal sale of alcoholic liquors and beer may be executed on Sunday. 1978 Op Atty Gen, No 78‑137, p 172 (July 16, 1978) 1978 WL 22605.

The statutory requirement is that the magistrate (or other judicial officer explicitly noted) shall issue a warrant upon sworn affidavit establishing probable cause. Nowhere is a police officer authorized to sign the name of the magistrate. Therefore, a warrant is properly issued only when signed by the magistrate and only upon a sworn affidavit. 1976‑77 Op Atty Gen, No 77‑370, p 295 (November 18, 1977) 1977 WL 28852.

Section 27‑A of Act No. 1648 of 1968 is constitutional and the Supreme Court of South Carolina does have the power to confer and impose county‑wide duties and jurisdiction on each county magistrate, notwithstanding local acts limiting territorial jurisdiction. 1976‑77 Op Atty Gen, No 77‑301, p 228 (September 26, 1977) 1977 WL 24641.

An officer making an arrest must have a search warrant before he may lawfully enter a dwelling to search for the person who is the object of the arrest. 1974‑75 Op Atty Gen, No 3944, p 22 (January 27, 1975) 1975 WL 22242.

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1. In general

In order to justify the issuance of a search warrant, probable cause must be shown. State v Williams (1974) 262 SC 186, 203 SE2d 436, cert den 419 US 835, 42 L Ed 2d 61, 95 S Ct 61. State v Ellis (1974) 263 SC 12, 207 SE2d 408.

Court order issued pursuant to statute governing search warrants for property connected with commission of crime that allows the government to procure evidence from a person’s body must comply with constitutional and statutory guidelines. State v. Baccus (S.C. 2006) 367 S.C. 41, 625 S.E.2d 216, habeas corpus dismissed 2007 WL 1468700, appeal dismissed 241 Fed.Appx. 973, 2007 WL 2720408, certiorari denied 128 S.Ct. 1717, 552 U.S. 1286, 170 L.Ed.2d 524, appeal dismissed 454 Fed.Appx. 221, 2011 WL 5822217, certiorari denied 129 S.Ct. 733, 555 U.S. 1074, 172 L.Ed.2d 735, habeas corpus dismissed 2011 WL 3794232, appeal dismissed 453 Fed.Appx. 391, 2011 WL 5822123. Searches And Seizures 101

The primary benefit of Section 17‑13‑140 is to the person arrested or searched, and one contesting the legality of a search because of a defect under the statute need only show that the state is attempting to introduce evidence against him. State v. McKnight (S.C. 1987) 291 S.C. 110, 352 S.E.2d 471. Criminal Law 392.41

When searching apartment of defendant who was confined in jail, police officers need not seek out defendant and serve a copy of search warrant. State v. Chandler (S.C. 1976) 267 S.C. 138, 226 S.E.2d 553. Searches And Seizures 141

The purpose of the statute requiring that a warrant be issued only upon affidavit is to provide for timely recording of facts presented to a judicial officer. State v. Sachs (S.C. 1975) 264 S.C. 541, 216 S.E.2d 501. Searches And Seizures 12

2. Constitutional issues

The Fourth Amendment to the Constitution of the United States, and SC Const, Art 1, Section 16 (now Art 1, Section 10), proscribe unreasonable searches and seizures in identical language, and prohibit the issuance of warrants except “upon probable cause, supported by oath or affirmation.” State v York (1967) 250 SC 30, 156 SE2d 326 (ovrld on other grounds State v Sachs, 264 SC 541, 216 SE2d 501).

Issue of whether defendant had privacy interest in his historical cell site location data was irrelevant, where affidavits in support of search warrants established probable cause for search. State v. Drayton (S.C. 2015) 415 S.C. 43, 780 S.E.2d 902. Telecommunications 1475

South Carolina’s general search warrant statute contains requirements different from those mandated by the Fourth Amendment, and is in some ways “more strict” than the federal Constitution. State v. Covert (S.C. 2009) 382 S.C. 205, 675 S.E.2d 740. Searches And Seizures 123.1

An order issued pursuant to statute governing search warrants for property connected with commission of crime that allows the government to procure evidence from a person’s body constitutes a search and seizure under the Fourth Amendment. State v. Baccus (S.C. 2006) 367 S.C. 41, 625 S.E.2d 216, habeas corpus dismissed 2007 WL 1468700, appeal dismissed 241 Fed.Appx. 973, 2007 WL 2720408, certiorari denied 128 S.Ct. 1717, 552 U.S. 1286, 170 L.Ed.2d 524, appeal dismissed 454 Fed.Appx. 221, 2011 WL 5822217, certiorari denied 129 S.Ct. 733, 555 U.S. 1074, 172 L.Ed.2d 735, habeas corpus dismissed 2011 WL 3794232, appeal dismissed 453 Fed.Appx. 391, 2011 WL 5822123. Searches And Seizures 14

An affidavit, which would satisfy the stricter‑than‑constitutional requirements for a finding of probable cause supporting search warrant found in state statute, satisfies the minimal constitutional requirements that probable cause be supported by an “oath or affirmation.” State v. Dunbar (S.C.App. 2004) 361 S.C. 240, 603 S.E.2d 615, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 371 S.C. 594, 641 S.E.2d 435. Searches And Seizures 107

Abandoned property had no protection from either the search or seizure provisions of the Fourth Amendment. State v. Dupree (S.C. 1995) 319 S.C. 454, 462 S.E.2d 279, certiorari denied 116 S.Ct. 951, 516 U.S. 1131, 133 L.Ed.2d 875.

The constitutional prohibition against the issuance of a warrant except “upon probable cause supported by oath or affirmation” is not a grant of power. It is part and parcel of the historic provision securing the people against unreasonable searches and seizures and its only office is to prescribe minimum standards for the issuance of a warrant. The requirement of an affidavit complies with these standards and is a procedural detail, clearly within the competence of the legislature. State v. York (S.C. 1967) 250 S.C. 30, 156 S.E.2d 326. Searches And Seizures 113.1

3. Affidavit—In general

The evidence need not be sufficient to support a conviction, or a verdict of guilty, or to establish guilt beyond a reasonable doubt; nor need the proof be positive, it being enough if it is such as to induce in the mind of the issuing officer an honest belief that the facts set forth exist, or as would lead a man of prudence to believe that the offense has been committed. State v Williams (1974) 262 SC 186, 203 SE2d 436, cert den 419 US 835, 42 L Ed 2d 61, 95 S Ct 61. State v Ellis (1974) 263 SC 12, 207 SE2d 408.

The affidavit for a search warrant must set forth particular facts and circumstances underlying the existence of probable cause to allow the magistrate to make an independent evaluation of the matter. State v. Woods (S.C.App. 2007) 376 S.C. 125, 654 S.E.2d 867, rehearing denied, certiorari denied. Searches And Seizures 113.1

Order to obtain search warrant was defective on its face; officer approached judge in chambers for order to take samples of defendant’s hair, blood, and saliva and, although judge found probable cause to issue order based on his conversation with officer, there was no affidavit from officer to support court order, and officer failed to make statement under oath as required by statute governing issuance of search warrants. State v. Woods (S.C.App. 2007) 376 S.C. 125, 654 S.E.2d 867, rehearing denied, certiorari denied. Searches And Seizures 107

A court order issued in place of a search warrant must be supported by a sworn oath or affirmation to be admissible at trial. State v. Woods (S.C.App. 2007) 376 S.C. 125, 654 S.E.2d 867, rehearing denied, certiorari denied. Searches And Seizures 105.1

The magistrate’s task in determining whether to issue the search warrant is to make a practical, common‑sense decision whether, given all the circumstances set forth in the affidavit before him, there is a fair probability that contraband or evidence of a crime will be found in a particular place. State v. Rutledge (S.C.App. 2007) 373 S.C. 312, 644 S.E.2d 789, rehearing denied. Searches And Seizures 113.1

An affidavit differs from an oath in that an “affidavit” consists of statements of fact which is sworn to as the truth, while an “oath” is a pledge. State v. Dunbar (S.C.App. 2004) 361 S.C. 240, 603 S.E.2d 615, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 371 S.C. 594, 641 S.E.2d 435. Affidavits 1; Oath 1

Affidavit submitted to obtain a search warrant must contain sufficient underlying facts and information upon which the magistrate may make a determination of probable cause. State v. Dupree (S.C.App. 2003) 354 S.C. 676, 583 S.E.2d 437. Searches And Seizures 111

The magistrate’s task in determining whether to issue a search warrant is to make a practical, common sense decision concerning whether, under the totality of the circumstances set forth in the affidavit, there is a fair probability that evidence of a crime will be found in the particular place to be searched; this decision includes consideration of the veracity of the person supplying the information and the basis of his or her knowledge. State v. Robinson (S.C.App. 1999) 335 S.C. 620, 518 S.E.2d 269. Searches And Seizures 113.1

Affidavit in support of request for search warrant must contain sufficient underlying facts and information upon which the magistrate can make a probable cause determination; mere conclusory statements which give the magistrate no basis to make a judgment regarding probable cause are insufficient. State v. Robinson (S.C.App. 1999) 335 S.C. 620, 518 S.E.2d 269. Searches And Seizures 111

Reliability of affidavit showing probable cause to issue search warrant which affidavit is based on information supplied by informant may be supported not only on establishment of informant’s past reliability but also by independent verification of facts. State v. Viard (S.C. 1981) 276 S.C. 147, 276 S.E.2d 531.

In order for affidavit in support of search warrant to show probable cause, it must state facts so closely related to time of issuance of warrant as to justify finding of probable cause at that time; affidavit which fails altogether to state time of occurrence of facts alleged is insufficient. State v. Winborne (S.C. 1979) 273 S.C. 62, 254 S.E.2d 297. Searches And Seizures 121.1

In determining whether there is sufficient evidence to sustain a finding of probable cause, each case stands on its own facts. State v. Ellis (S.C. 1974) 263 S.C. 12, 207 S.E.2d 408.

This section [Code 1962 Section 17‑271] provides that a search warrant for unlawful drugs shall be issued upon affidavit establishing the grounds for the warrant and sufficient facts must be stated in the affidavit to form the basis of a judgment by the issuing officer that probable cause exists. State v. Williams (S.C. 1974) 262 S.C. 186, 203 S.E.2d 436, certiorari denied 95 S.Ct. 61, 419 U.S. 835, 42 L.Ed.2d 61.

The statutory requirement that an affidavit on information and belief must set forth the sources of affiant’s information is to the end that the magistrate may judicially weigh not only the information, but the source thereof, in determining whether or not there is probable cause for the issuance of the warrant. State v. York (S.C. 1967) 250 S.C. 30, 156 S.E.2d 326. Searches And Seizures 111

The requirement of an affidavit as the basis of a search warrant is common to both Code 1962 Section 4‑414 and this section [Code 1962 Section 17‑271]. Although their verbiage is not identical, in the light of the constitutional provision which they implement, both statutes must be construed to require that sufficient facts be stated in the affidavit to form the basis of a judgment by the issuing officer that probable cause exists. State v. York (S.C. 1967) 250 S.C. 30, 156 S.E.2d 326.

Where the affidavit did not disclose anything which the issuing officer could consider in arriving at a determination of whether there was probable cause for the issuance of the warrant, which, in effect, left the determination of probable cause to the judgment and discretion of the police officer, rather than to the issuing officer, under these circumstances, the affidavit was totally insufficient and the warrant issued thereupon was a nullity. State v. York (S.C. 1967) 250 S.C. 30, 156 S.E.2d 326.

4. —— Good faith

There was no good faith effort to comply with Section 17‑13‑140 where the 2 officers seeking the warrant were aware of the requirement for an affidavit to support the search warrant, but made no effort to comply with the statute. State v. McKnight (S.C. 1987) 291 S.C. 110, 352 S.E.2d 471. Criminal Law 392.38(12)

Where affiant attempted to set forth the facts supporting a search warrant in an affidavit, but erroneously stated that a certain package had been delivered to defendant, while in fact the package had not been delivered at the time the affidavit was executed, such an error was a necessary hazard encountered when federal and state authorities searched in a joint effort, thus the transaction qualified as a good faith attempt to comply with the statute requiring that such warrant be issued only upon affidavit. State v. Sachs (S.C. 1975) 264 S.C. 541, 216 S.E.2d 501. Searches And Seizures 112

5. —— Oral testimony

In determining probable cause for a search warrant, magistrate’s consideration of affidavit supplemented by unrecorded sworn oral testimony did not offend Section 17‑13‑140 where affidavit stated merely that confidential and reliable informant had recently seen narcotics in suspect’s residence, but affiant police officer’s sworn oral testimony included details of narcotics purchase set up between confidential informant and suspect. U.S. v. Clyburn, 1992, 806 F.Supp. 1247, affirmed 24 F.3d 613, certiorari denied 115 S.Ct. 274, 513 U.S. 907, 130 L.Ed.2d 192.

Magistrate’s consideration of sworn oral testimony to bolster a search warrant affidavit, insufficient on its face to establish probable cause, does not offend the statute. U.S. v. Clyburn, 1992, 806 F.Supp. 1247, affirmed 24 F.3d 613, certiorari denied 115 S.Ct. 274, 513 U.S. 907, 130 L.Ed.2d 192.

Oral testimony may be used to supplement search warrant affidavits. State v. Rutledge (S.C.App. 2007) 373 S.C. 312, 644 S.E.2d 789, rehearing denied. Searches And Seizures 108

Affidavit in support of search warrant, which was insufficient on its face to establish probable cause, was properly supplemented by sworn oral testimony, where officer that requested search warrant testified that he verbally informed magistrate about the basis for probable cause to search defendant’s residence, including information about co‑defendant’s reliability and veracity, after which he filled out warrant and affidavit and submitted warrant for magistrate’s signature, at which time he swore that information contained in affidavit and the information presented in his oral statements were true. State v. Robinson (S.C.App. 1999) 335 S.C. 620, 518 S.E.2d 269. Searches And Seizures 108

An affidavit supplemented by sworn oral testimony before a magistrate supported the magistrate’s probable cause determination and issuance of a search warrant where the affidavit stated that a confidential reliable informant had recently seen marijuana at the defendant’s residence and that the defendant had stated his intent to move it, and a sheriff’s deputy told the magistrate the informant’s name, that he had met with the informant, both alone and with another “drug officer,” that the other officer vouched for the informant’s credibility and reliability by stating that the informant’s past tips had led to criminal convictions, that the informant believed the defendant held approximately 40 pounds of marijuana in his house, that the informant stated that the marijuana was hidden beneath a trap door in the defendant’s bedroom, that the defendant had told the informant on the same day the affidavit was submitted that the defendant intended to move the marijuana to another location, and that the deputy had sent the informant with another officer to have the informant point out and confirm which house the defendant occupied. State v. Crane (S.C. 1988) 296 S.C. 336, 372 S.E.2d 587.

A search warrant affidavit which itself is insufficient to establish probable cause may be supplemented before the magistrate by sworn oral testimony but, sworn oral testimony, standing alone, does not satisfy the requirement of Section 17‑13‑140. State v. McKnight (S.C. 1987) 291 S.C. 110, 352 S.E.2d 471. Searches And Seizures 108

A search warrant affidavit insufficient in itself to establish probable cause may be supplemented by sworn oral testimony; however, sworn oral testimony, standing alone, does not satisfy statutory requirement that a search warrant shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record. State v. Dunbar (S.C.App. 2003) 354 S.C. 479, 581 S.E.2d 840, rehearing denied, certiorari granted, vacated in part 356 S.C. 138, 587 S.E.2d 691, on remand 361 S.C. 240, 603 S.E.2d 615. Searches And Seizures 108

Officer’s oral statements to magistrate over telephone did not serve to supplement an otherwise inadequate search warrant affidavit, and thus affidavit was insufficient to support issuance of search warrant, where magistrate used officer’s oral statements to draft affidavit which was subsequently signed by a second officer who did not supply magistrate with any facts. State v. Dunbar (S.C.App. 2003) 354 S.C. 479, 581 S.E.2d 840, rehearing denied, certiorari granted, vacated in part 356 S.C. 138, 587 S.E.2d 691, on remand 361 S.C. 240, 603 S.E.2d 615. Searches And Seizures 108

6. —— Sufficiency

Affidavit in support of search warrant for residence leading to defendant’s arrest for possession of marijuana demonstrated sufficient probable cause to issue warrant; affidavit stated that police received tip from anonymous informant that defendant and two other men were selling marijuana at the address of the residence, the electric bill for the residence was in defendant’s name, defendant had two prior convictions for possession of marijuana, and police found marijuana seeds and stalks in trash can on the street in front of the residence. State v. Rutledge (S.C.App. 2007) 373 S.C. 312, 644 S.E.2d 789, rehearing denied. Controlled Substances 148(4)

Affidavit in support of search warrant for residence leading to defendant’s arrest for possession of marijuana did not overstate evidence of ongoing illegal activity, although affidavit failed to state that marijuana was found in trash can at curb outside residence, rather than in residence itself, and failed to include dates and severity of defendant’s prior marijuana convictions; affidavit did not state that marijuana was found in the residence, oral testimony in support of warrant stated exactly how and where officers found marijuana, and contention of ongoing illegal activity was supported by anonymous tip. State v. Rutledge (S.C.App. 2007) 373 S.C. 312, 644 S.E.2d 789, rehearing denied. Controlled Substances 147

The portion of the search warrant affidavit relating to the investigative surveillance, stop, and seizure of illegal drugs from defendant’s car, standing alone, set forth sufficient information to support a probable cause finding and issuance of warrant; affidavit outlined the investigative surveillance of defendant’s home, the officers’ observation of defendant’s vehicle as it left the residence, the lawful stop, and discovery of marijuana, and it also appeared from a reading of the affidavit that the officers maintained visual contact with defendant from the time he left his residence until he was stopped. State v. Keith (S.C.App. 2003) 356 S.C. 219, 588 S.E.2d 145. Controlled Substances 146

A search warrant affidavit articulated sufficient probable cause for the issuance of a warrant to search the defendant’s home for cocaine and related paraphernalia, where the affidavit stated that investigators who were holding an arrest warrant for the defendant observed the defendant leaving his residence, a subsequent stop of the defendant revealed him to be in possession of in excess of 20 grams of cocaine, and the investigators had visual contact with the defendant from the time he left his residence until the time of the stop. State v. Scott (S.C.App. 1991) 303 S.C. 360, 400 S.E.2d 784, certiorari denied, grant of post‑conviction relief affirmed 334 S.C. 248, 513 S.E.2d 100.

A search warrant affidavit containing information allegedly supplied by a confidential informant stated facts sufficient to establish probable cause where, according to the affidavit, the informant actually saw crack cocaine on the premises to be searched, the affidavit characterized the informant as “reliable” in that the informant had worked with law enforcement in the past and had furnished information on previous occasions which led to an arrest. Additionally, the fact that the informant may have seen the cocaine as long as 10 days before the warrant was issued did not render the information invalid as to the basis for the warrant. Since the affidavit stated that the informant observed crack cocaine stored on the premises, and not merely present there, the magistrate was justified in concluding that there was at least a fair probability that the crack cocaine observed 10 days earlier was still there at the time the warrant was issued. The existence of probable cause cannot be determined by simply counting the number of days between the occurrence of the facts relied upon and the issuance of the warrant; the nature of the unlawful activity must also be considered. State v. Clifton (S.C.App. 1990) 302 S.C. 431, 396 S.E.2d 831, certiorari dismissed 305 S.C. 85, 406 S.E.2d 337.

An affidavit in support of a search warrant authorizing the search of a suspect’s motel room for a weapon and clothes used in a robbery, was defective on its face where the affidavit set forth no facts as to why the police believed that the suspect had committed the robbery in question; although the record revealed that the police had relied upon information from an informant, there was no indication that this fact was made known to the magistrate who issued the warrant, or that the magistrate made any determination of the informant’s reliability. An affidavit must contain sufficient underlying facts and information upon which a magistrate may make a determination of probable cause. Mere conclusory statements which give the magistrate no basis to make a judgment regarding probable cause are insufficient; a magistrate’s action cannot be “a mere ratification of the bare conclusions of others.” State v. Smith (S.C. 1990) 301 S.C. 371, 392 S.E.2d 182.

Affidavit in support of warrant application was sufficient where it stated affiant police officer had been approached by confidential informer, who stated he had seen use and sale of drugs at named location within last 48 hours, and further stated officer had known informer for three years and that informer had furnished information in past leading to arrest and conviction of other drug dealers. State v. Hammond (S.C. 1978) 270 S.C. 347, 242 S.E.2d 411. Controlled Substances 148(4)

Pursuant to statutory requirements for issuance of search warrants, affidavit was insufficient to support issuance of search warrant, and thus evidence seized pursuant to search warrant required suppression, where first officer recited facts over the telephone to magistrate, magistrate drafted affidavit, and second officer, who offered no facts to establish probable cause, signed affidavit. State v. Dunbar (S.C.App. 2003) 354 S.C. 479, 581 S.E.2d 840, rehearing denied, certiorari granted, vacated in part 356 S.C. 138, 587 S.E.2d 691, on remand 361 S.C. 240, 603 S.E.2d 615. Searches And Seizures 105.1

7. —— Probable cause

The term “probable cause” does not import absolute certainty. State v Williams (1974) 262 SC 186, 203 SE2d 436, cert den 419 US 835, 42 L Ed 2d 61, 95 S Ct 61. State v Ellis (1974) 263 SC 12, 207 SE2d 408.

A search warrant may issue only upon a finding of probable cause. State v. Rutledge (S.C.App. 2007) 373 S.C. 312, 644 S.E.2d 789, rehearing denied; State v. Bellamy (S.C. 1999) 336 S.C. 140, 519 S.E.2d 347, rehearing denied.

Search warrant affidavit provided magistrate judge with probable cause to believe that evidence related to murder would be found at defendant’s residence, under totality of circumstances, notwithstanding inaccurate information in affidavit that defendant retrieved gun from residence and that defendant had driven to residence, when in fact defendant had only driven to that general area; codefendant had told law enforcement that defendant was shooter, that he had fled scene in one car, switched getaway vehicles, that he had obtained murder weapon from his wife, affidavit contained statement that law enforcement believed defendant transported murder weapon back to residence and that law enforcement believed weapon might still be at residence or in one of vehicles at residence, and detective gave oral testimony to supplement inaccurate information that defendant’s cell phone “pinged” to general area where residence was located. State v. Wright (S.C.App. 2016) 416 S.C. 353, 785 S.E.2d 479. Searches and Seizures 112; Searches and Seizures 114

Search warrant application provided probable cause to issue warrant to search defendant’s parents’ home for evidence of drug trafficking, even though affidavit failed to set forth information as to the veracity, reliability or basis of knowledge of several of the informants referenced; individuals previously supplied cocaine by defendant were named, drug transaction involving another nonconfidential informant had occurred within two days preceding issuance of warrant, transactions indicated a habit of defendant’s delivering cocaine to his buyers’ homes, some part of information supplied by informant was witnessed by authorities, yet another named informant stated that defendant was being supplied large quantities of cocaine at his parents’ address, defendant was observed at that address just prior to his deliveries of cocaine, and defendant had been observed engaging in a monetary exchange pursuant to a drug transaction within a day of issuance of the warrant. State v. Thompson (S.C.App. 2015) 413 S.C. 590, 776 S.E.2d 413, rehearing denied, reversed 419 S.C. 250, 797 S.E.2d 716. Controlled Substances 148(3)

Warrant affidavit established probable cause necessary for issuance of warrant to search residence for drugs and items related to the purchase and distribution of drugs; independently, each fact set forth in the search warrant affidavit supported a mere suspicion of drug activity, but the totality of the circumstances, namely, the numerous tips indicating drug activity was probably present at the address and the subsequent surveillance of the residence during which seemingly drug‑related behavior was observed, established probable cause. State v. Kinloch (S.C. 2014) 410 S.C. 612, 767 S.E.2d 153. Controlled Substances 146

Affidavit that was submitted in support of issuance of search warrant to enter residence of suspect in homicide investigation failed to set forth particular facts and circumstances underlying existence of probable cause; affidavit failed to set forth any facts as to why police believed that suspect committed crime. State v. Baccus (S.C. 2006) 367 S.C. 41, 625 S.E.2d 216, habeas corpus dismissed 2007 WL 1468700, appeal dismissed 241 Fed.Appx. 973, 2007 WL 2720408, certiorari denied 128 S.Ct. 1717, 552 U.S. 1286, 170 L.Ed.2d 524, appeal dismissed 454 Fed.Appx. 221, 2011 WL 5822217, certiorari denied 129 S.Ct. 733, 555 U.S. 1074, 172 L.Ed.2d 735, habeas corpus dismissed 2011 WL 3794232, appeal dismissed 453 Fed.Appx. 391, 2011 WL 5822123. Searches And Seizures 114

Affidavit that is submitted in support of issuance of search warrant must set forth particular facts and circumstances underlying the existence of probable cause to allow the magistrate to make an independent evaluation of the matter. State v. Baccus (S.C. 2006) 367 S.C. 41, 625 S.E.2d 216, habeas corpus dismissed 2007 WL 1468700, appeal dismissed 241 Fed.Appx. 973, 2007 WL 2720408, certiorari denied 128 S.Ct. 1717, 552 U.S. 1286, 170 L.Ed.2d 524, appeal dismissed 454 Fed.Appx. 221, 2011 WL 5822217, certiorari denied 129 S.Ct. 733, 555 U.S. 1074, 172 L.Ed.2d 735, habeas corpus dismissed 2011 WL 3794232, appeal dismissed 453 Fed.Appx. 391, 2011 WL 5822123. Searches And Seizures 113.1

Court order issued pursuant to statute governing search warrants for property connected with commission of crime, which stands in place of a search warrant, should only be issued upon a finding of probable cause, which is supported by oath or affirmation. State v. Baccus (S.C. 2006) 367 S.C. 41, 625 S.E.2d 216, habeas corpus dismissed 2007 WL 1468700, appeal dismissed 241 Fed.Appx. 973, 2007 WL 2720408, certiorari denied 128 S.Ct. 1717, 552 U.S. 1286, 170 L.Ed.2d 524, appeal dismissed 454 Fed.Appx. 221, 2011 WL 5822217, certiorari denied 129 S.Ct. 733, 555 U.S. 1074, 172 L.Ed.2d 735, habeas corpus dismissed 2011 WL 3794232, appeal dismissed 453 Fed.Appx. 391, 2011 WL 5822123. Searches And Seizures 113.1

Search warrant for motel room where defendant was staying was not supported by probable cause supported by oath or affirmation; affiant had no firsthand knowledge of events leading to defendant’s arrest, but signed warrant without speaking either to defendant or confidential informant, and without relaying any information to the magistrate himself, and arresting officer was not under oath when he spoke by phone with magistrate who issued warrant. State v. Dunbar (S.C.App. 2004) 361 S.C. 240, 603 S.E.2d 615, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 371 S.C. 594, 641 S.E.2d 435. Searches And Seizures 118

The portion of the search warrant affidavit relating to the investigative surveillance, stop, and seizure of illegal drugs from defendant’s car, standing alone, set forth sufficient information to support a probable cause finding and issuance of warrant; affidavit outlined the investigative surveillance of defendant’s home, the officers’ observation of defendant’s vehicle as it left the residence, the lawful stop, and discovery of marijuana, and it also appeared from a reading of the affidavit that the officers maintained visual contact with defendant from the time he left his residence until he was stopped. State v. Keith (S.C.App. 2003) 356 S.C. 219, 588 S.E.2d 145. Controlled Substances 146

The determination of probable cause to issue a search warrant requires the magistrate to make a practical, common‑sense decision of whether, given the totality of the circumstances set forth in the affidavit, including the veracity and basis of knowledge of persons supplying information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. State v. King (S.C.App. 2002) 349 S.C. 142, 561 S.E.2d 640. Searches And Seizures 113.1

Magistrate had substantial basis for concluding that probable cause existed to issue warrant for search of apartment, even though affidavit was weak on element of in‑custody informant’s reliability; informant was witness to events described in affidavit, those events, which involved guns and drugs, were described with great specificity, and in addition to its specificity, affidavit was confirmed to extent that weapons described by informant matched those that had been stolen from police department just days earlier. State v. Bellamy (S.C. 1999) 336 S.C. 140, 519 S.E.2d 347, rehearing denied. Controlled Substances 148(3)

A search warrant affidavit established probable cause for issuance of the warrant where the affidavit stated that the investigating officer had been told by an informant that the defendant’s residence contained illegal drugs, that the informant had seen the drugs in the defendant’s residence within 72 hours of the swearing of the affidavit, that the informant had provided the sheriff’s department with information in the past and that this information had proven true and led to arrests and convictions. State v. Williams (S.C. 1989) 297 S.C. 404, 377 S.E.2d 308. Controlled Substances 149

Searches and seizures that may be made on spot at time of arrest may legally be conducted later when accused arrives at place of detention and where officer’s observations corroborate minute and detailed facts contained in warrant; probable cause belief that one or more of occupants of car had committed felony is supported and search in cold and rain is not required. State v. Ferrell (S.C. 1980) 274 S.C. 401, 266 S.E.2d 869, certiorari denied 100 S.Ct. 2942, 446 U.S. 965, 64 L.Ed.2d 824. Arrest 71.1(8)

The determination of whether or not there is probable cause must be made by the officer empowered to issue the search warrant, and not by a police officer or other individual who seeks the warrant. State v. York (S.C. 1967) 250 S.C. 30, 156 S.E.2d 326. Searches And Seizures 109

8. Non‑testimonial identification evidence

Regardless of admissibility of first palm print, circuit court’s order requiring defendant to submit to second palm print was proper as the State established probable cause for the acquisition of the palm print evidence by satisfying the three‑prong test for acquiring nontestimonial identification evidence; based on other inculpatory evidence and testimony, probable cause existed to show defendant committed the robbery, defendant’s palm print was needed to determine whether his palm print matched the palm print lifted from stolen vehicle, and thus, it was necessary, material, and relevant evidence, and finally, the method used to procure his palm print was safe and reliable, and it was the least intrusive means of obtaining the evidence. State v. Simmons (S.C.App. 2009) 384 S.C. 145, 682 S.E.2d 19. Searches And Seizures 114

The state could require unarrested suspects to provide samples of their blood, saliva, head hair, and pubic hair pursuant to the state search warrant statute, Section 17‑13‑140, since the statute covers the issuance of search warrants for “property constituting evidence of crime or tending to show that a particular person committed a criminal offense,” and thus “property” may encompass non‑testimonial identification evidence. In re Snyder (S.C. 1992) 308 S.C. 192, 417 S.E.2d 572.

The state may order that non‑testimonial identification evidence, such as blood and hair samples, be involuntarily provided by unarrested suspects under the state search warrant statute, Section 17‑13‑140, even though the statute contains no guidelines or procedures for acquiring such evidence, since guidelines and procedures for the taking of such samples have already been promulgated under case law. In re Snyder (S.C. 1992) 308 S.C. 192, 417 S.E.2d 572.

9. Informants

Search warrant affidavit that contained false statements about a confidential informant personally observing drug purchases from home did not support a finding of probable cause once the false statements were removed, where informant stayed in a car down the road from home, and therefore her knowledge hinged on the reliability of a third party whose credibility had not been established. State v. Robinson (S.C. 2016) 415 S.C. 600, 785 S.E.2d 355, rehearing denied. Controlled Substances 147; Controlled Substances 148(4)

Search warrant affidavit for a residential search contained false statements that were made knowingly and intentionally in violation of Franks, where affidavit stated that a confidential informant personally made drug purchases out of home, but informant did not make or witness drug purchases from home. State v. Robinson (S.C. 2016) 415 S.C. 600, 785 S.E.2d 355, rehearing denied. Controlled Substances 147

Search warrant affidavit, on its face, had sufficient information to establish reliability of confidential informant, where affidavit stated that informant was a reliable informant who worked for police department, that informant purchased a quantity of off white powder substance represented as being cocaine and field‑testing positive for cocaine attributed from the occupants of house identified as the “home” in search warrant application, and that informant’s ability to make recent continuous purchases of illegal drugs from home led to affiant’s belief that there was the possibility there could be more illegal drugs located at home. State v. Robinson (S.C. 2016) 415 S.C. 600, 785 S.E.2d 355, rehearing denied. Controlled Substances 148(4)

Information supplied by an informant, and relied on to establish probable cause to search the defendant’s home, was not stale, even though 60 days had lapsed between the time the informant had seen the items in the home and the time the officers obtained the search warrant, where (1) the defendant’s house was under surveillance in connection with further suspected criminal activity, which the execution of a warrant might have interfered with, and (2) the items sought consisted of clothing items which in themselves were not particularly incriminating, and thus it was likely that they would remain in place. State v. Corns (S.C.App. 1992) 310 S.C. 546, 426 S.E.2d 324.

Evidence should be seen by informant within reasonable time before issuance of warrant; time should be sufficiently short to justify conclusion that evidence is likely still at place where it was seen; where there was no evidence from which magistrate or court could determine how long ago evidence was seen, affidavit of informant that he had seen illicit drugs in possession of defendant was defective and evidence should be suppressed. State v. Winborne (S.C. 1979) 273 S.C. 62, 254 S.E.2d 297.

10. Warrant, generally

South Carolina Law Enforcement Division (SLED) search warrant, obtained by facsimile, was valid; language of search warrant statute did not state affidavit had to be sworn in person and only required affidavit be sworn, officer, who prepared affidavit, was sworn over telephone by Magistrate, and officers made a good faith attempt to comply with affidavit procedures. State v. Herring (S.C. 2009) 387 S.C. 201, 692 S.E.2d 490, rehearing denied, habeas corpus dismissed 2012 WL 952855, appeal dismissed 475 Fed.Appx. 922, 2012 WL 3570999. Searches And Seizures 107; Searches And Seizures 110

A search warrant can be validly amended prior to execution by a sworn oral communication to the issuing magistrate. State v. Workman (S.C. 1978) 272 S.C. 146, 249 S.E.2d 779. Searches And Seizures 128

Search warrant was not invalid by reason of fact that place to be searched was outside jurisdiction of officer applying for warrant, where magistrate was empowered by statute to issue warrants for county in which place to be searched was located. State v. Hammond (S.C. 1978) 270 S.C. 347, 242 S.E.2d 411.

There was no error in handling of search warrant, and search warrant was valid for purposes used, where police officer obtained information from reliable informant, went before ministerial recorder, and made affidavit as basis for procuring a search warrant, which was issued, whereupon police, before searching premises covered by warrant, were given consent by defendant to search automobile not covered by warrant, in which automobile subject marijuana was found; it was not error for judge to limit cross‑examination of police officer relative to confidential informant, such cross‑examination having been conducted within the sphere of the judge’s discretion. State v. Durham (S.C. 1976) 266 S.C. 263, 222 S.E.2d 768.

Search warrant directed to named occupant of residence and mentioning “other persons and occupants” was sufficient as a description to sustain the warrant, when taken in connection with an affidavit describing the size, color, and location of the residence to be searched. State v. Ellis (S.C. 1974) 263 S.C. 12, 207 S.E.2d 408.

11. Description in warrant

Officer’s movement of laptop computer to view its serial number while executing arrest warrant in defendant’s house constituted a search under the Fourth Amendment; officer’s action exceeded the scope of his lawful purpose of being at the house. State v. Edwards (S.C.App. 2016) 415 S.C. 401, 782 S.E.2d 124. Searches and Seizures 13.1

Drug defendant’s unsupported assertion that description of premises to be searched on search warrant was required to specifically refer back to detailed description of premises on affidavit was insufficient to require finding that warrant was invalid, especially in light of language in warrant referencing affidavit. State v. Cheeks (S.C.App. 2012) 400 S.C. 329, 733 S.E.2d 611, rehearing denied, affirmed as modified 408 S.C. 198, 758 S.E.2d 715. Controlled Substances 143

Search warrant adequately described premises to be searched, where affidavit showing requisite particularity was attached to warrant at time it was served. State v. Cheeks (S.C.App. 2012) 400 S.C. 329, 733 S.E.2d 611, rehearing denied, affirmed as modified 408 S.C. 198, 758 S.E.2d 715. Searches and Seizures 126

Search warrant was not invalid because it authorized the search of defendant’s “person,” given statute providing that property described in warrant may be seized from any place where such property may be located, or from the person, possession or control of any person who shall be found to have such property in his possession or under his control. State v. Thompson (S.C.App. 2005) 363 S.C. 192, 609 S.E.2d 556, rehearing denied. Searches And Seizures 126

The description in a search warrant of property to be seized as “any illegal drugs” stated with sufficient particularity the property to be seized. State v. Williams (S.C. 1989) 297 S.C. 404, 377 S.E.2d 308.

A concurrent reading of a warrant and affidavit is permissible to establish the identification of the property to be seized. State v. Williams (S.C. 1989) 297 S.C. 404, 377 S.E.2d 308.

A search warrant authorizing a search only for marijuana and other drugs also authorized police seizure of letters, photographs, and envelopes which tended to establish that the defendant resided at the address and possessed the marijuana. State v. McGuinn (S.C. 1977) 268 S.C. 112, 232 S.E.2d 229.

Evidence not described in a search warrant may be seized if there is a nexus between the items seized and some criminal behavior. State v. McGuinn (S.C. 1977) 268 S.C. 112, 232 S.E.2d 229.

Since it was unnecessary for the warrant to specify the time for the search, there was no prejudicial error to defendant when the warrant specified a time for search different from the time the search took place. State v. Shupper (S.C. 1974) 263 S.C. 53, 207 S.E.2d 799.

Where warrant was issued under authority of statute providing for issuance of warrants by magistrates and other judicial officers to search for, among other things, contraband drugs upon probable cause, without distinction between searches made in the day and those made at night, it was unnecessary for the warrant to specify the time for the search, thus such a direction could be disregarded as surplusage. State v. Shupper (S.C. 1974) 263 S.C. 53, 207 S.E.2d 799.

12. Bodily intrusion

To secure a warrant for the acquisition of DNA evidence, the State must establish the following elements: (1) probable cause to believe the suspect committed the crime; (2) a clear indication that relevant evidence will be found; and (3) the method used to secure it is safe and reliable; a magistrate must also consider the seriousness of the crime and the importance of the evidence to the investigation, weighing the necessity for acquiring involuntary nontestimonial identification evidence against constitutional safeguards prohibiting unreasonable bodily intrusions, searches, and seizures. State v. Jenkins (S.C.App. 2012) 398 S.C. 215, 727 S.E.2d 761, certiorari granted, reversed 412 S.C. 643, 773 S.E.2d 906. Searches and Seizures 111; Searches and Seizures 114

Considerations for determining whether there exists probable cause to permit the acquisition of evidence from a person’s body as identification evidence include the following elements: (1) probable cause to believe the suspect has committed the crime; (2) a clear indication that relevant material evidence will be found; and (3) the method used to secure it is safe and reliable. State v. Chisholm (S.C.App. 2011) 395 S.C. 259, 717 S.E.2d 614, habeas corpus dismissed 2016 WL 128149. Searches and Seizures 113.1

There was substantial basis for probable cause to issue order to collect defendant’s DNA in investigation of criminal sexual conduct (CSC) with a minor; defendant was found by victim’s mother in bed with victim with his penis in his hand, victim’s underwear was pulled down, and analysis of underwear found victim’s blood as well as unknown male DNA. State v. Chisholm (S.C.App. 2011) 395 S.C. 259, 717 S.E.2d 614, habeas corpus dismissed 2016 WL 128149. Searches and Seizures 114

Court order compelling blood sample from suspect, who was arrested for homicide, violated constitutional and statutory requirements concerning issuance of search warrants; order was issued without a finding of probable cause supported by oath or affirmation. State v. Baccus (S.C. 2006) 367 S.C. 41, 625 S.E.2d 216, habeas corpus dismissed 2007 WL 1468700, appeal dismissed 241 Fed.Appx. 973, 2007 WL 2720408, certiorari denied 128 S.Ct. 1717, 552 U.S. 1286, 170 L.Ed.2d 524, appeal dismissed 454 Fed.Appx. 221, 2011 WL 5822217, certiorari denied 129 S.Ct. 733, 555 U.S. 1074, 172 L.Ed.2d 735, habeas corpus dismissed 2011 WL 3794232, appeal dismissed 453 Fed.Appx. 391, 2011 WL 5822123. Searches And Seizures 114

A search warrant allowing a bodily intrusion must comply with statutory requirements governing issuance of a such a warrant and requires the following: (1) a finding there is a clear indication that material evidence of guilt will be found; (2) a finding the method used to secure the evidence is safe and reliable; and (3) a balancing of the seriousness of the crime, the importance of the evidence, and the unavailability of less obtrusive means against the right to be free from bodily intrusion. Gantt v. State (S.C. 2003) 354 S.C. 183, 580 S.E.2d 133, rehearing denied. Searches And Seizures 126

Where a warrant authorizing a bodily intrusion into a potential witness is sought, the state must show (1) that there is probable cause to believe that a crime has been committed by a particular suspect, (2) a clear indication that material evidence relevant to the question of the suspect’s guilt will be found, and (3) that the method used to secure this evidence is safe and reliable; once the state has made a sufficient showing, the court must then balance the seriousness of the crime, the importance of the evidence to the investigation, and the unavailability of an alternative, less intrusive means of obtaining the evidence. State v. Register (S.C. 1992) 308 S.C. 534, 419 S.E.2d 771. Searches And Seizures 114

13. Signature of magistrate

Absence of magistrate’s signature on search warrant when search warrant was served rendered the search warrant invalid under state’s general search warrant statute. State v. Covert (S.C. 2009) 382 S.C. 205, 675 S.E.2d 740. Searches And Seizures 123.1

14. Return requirements

State’s failure to produce return on search warrant for defendant’s vehicle within ten days after date of warrant, as required by statute, was a ministerial error that did not void warrant, as defendant did not show that he was prejudiced by state’s failure to comply with return requirement. State v. Weaver (S.C. 2007) 374 S.C. 313, 649 S.E.2d 479, rehearing denied. Searches And Seizures 150

Search warrant will be invalidated for failure to observe the statutory ten‑day requirement for the execution and return of a warrant only if defendant can show he was prejudiced by the failure. State v. Weaver (S.C. 2007) 374 S.C. 313, 649 S.E.2d 479, rehearing denied. Searches And Seizures 150

Failure to observe the statutory ten‑day requirement for the execution and return of a search warrant, a ministerial requirement, does not necessarily void the warrant. State v. Weaver (S.C. 2007) 374 S.C. 313, 649 S.E.2d 479, rehearing denied. Searches And Seizures 150

Failure to observe the requirement that search warrants be executed and return made within 10 days after the date of the warrant does not necessarily void the warrant; because the statutory return requirement is ministerial in nature, any purported noncompliance only provides grounds for exclusion upon a showing of prejudice. State v. Weaver (S.C.App. 2004) 361 S.C. 73, 602 S.E.2d 786, rehearing denied, certiorari granted, affirmed as modified 374 S.C. 313, 649 S.E.2d 479. Criminal Law 392.16(5); Searches And Seizures 145.1

State’s failure to comply with 10 day return requirement for execution and return of search warrant relating to defendant’s vehicle did not prejudice defendant, where all evidence acquired from vehicle fit within purview of automobile exception to Fourth Amendment exclusionary rule. State v. Weaver (S.C.App. 2004) 361 S.C. 73, 602 S.E.2d 786, rehearing denied, certiorari granted, affirmed as modified 374 S.C. 313, 649 S.E.2d 479. Searches And Seizures 150

It was impossible for the trial judge to determine, as a matter of law, that a search warrant was legally proper when he, the judge who issued the warrant, had no recollection of receiving or signing the original return, was never provided with a sufficient explanation concerning the location of the original warrant, and never had the opportunity to review the original return. State v. Freeman (S.C.App. 1995) 319 S.C. 110, 459 S.E.2d 867.

The failure to list all of the items seized, on the return of a search warrant, or the failure to make a return in 10 days, is a ministerial error that does not require the suppression of evidence obtained pursuant to the search warrant unless the defendant was prejudiced by the error. State v. Mollison (S.C.App. 1995) 319 S.C. 41, 459 S.E.2d 88, rehearing denied, certiorari denied. Criminal Law 392.16(5)

The failure of the State to return a search warrant did not require the suppression of the evidence seized, even though the State offered no explanation for the failure, where the defendants did not argue that they were prejudiced in any way by the defect. State v. Mollison (S.C.App. 1995) 319 S.C. 41, 459 S.E.2d 88, rehearing denied, certiorari denied. Criminal Law 392.16(5)

A search warrant was not invalidated because the return was not made within 10 days after it was dated and because the controlled substance which formed the basis of the defendant’s conviction was not listed on the return, both of which were required under Section 17‑13‑140, since the defendant failed to show any prejudice resulting therefrom. State v. Corns (S.C.App. 1992) 310 S.C. 546, 426 S.E.2d 324. Searches And Seizures 150

Although a search warrant was not returned to the issuing magistrate within the ten day period prescribed by law, the state’s failure to fulfill a ministerial requirement did not void the warrant where defendant failed to show that he was prejudiced by the delay. State v. Wise (S.C. 1979) 272 S.C. 384, 252 S.E.2d 294. Searches And Seizures 150

The dual purpose of state warrant statute and Federal Rule 41 is record‑keeping and notification to the accused; thus, in a joint federal‑state search situation where the federal return failed to list all of the drugs seized but the state warrant did contain such a list, the dual purpose was fulfilled. State v. Sachs (S.C. 1975) 264 S.C. 541, 216 S.E.2d 501.

An obvious typographical error in the date of a search warrant did not affect the validity of the search warrant despite statute requiring execution and return of warrants within 10 days after they are dated, in that the search actually occurred within an hour or two after issuance of warrant. State v. Shupper (S.C. 1974) 263 S.C. 53, 207 S.E.2d 799. Searches And Seizures 123.1

15. Justiciability

Each defendant against whom seized evidence is offered has standing to object to the validity of the search where the search warrant is defective under Section 17‑13‑140. State v. Freeman (S.C.App. 1995) 319 S.C. 110, 459 S.E.2d 867. Searches And Seizures 164

When a search warrant is defective under Section 17‑13‑140, each of the defendants against whom seized evidence is offered has a standing to object to the validity of the search. State v. McKnight (S.C. 1987) 291 S.C. 110, 352 S.E.2d 471.

16. Admissibility of evidence

Trial court’s error of admitting evidence obtained as result of improperly issued search warrant and court order compelling blood sample was harmless in prosecution for murder and first‑degree burglary; blood evidence was cumulative. State v. Baccus (S.C. 2006) 367 S.C. 41, 625 S.E.2d 216, habeas corpus dismissed 2007 WL 1468700, appeal dismissed 241 Fed.Appx. 973, 2007 WL 2720408, certiorari denied 128 S.Ct. 1717, 552 U.S. 1286, 170 L.Ed.2d 524, appeal dismissed 454 Fed.Appx. 221, 2011 WL 5822217, certiorari denied 129 S.Ct. 733, 555 U.S. 1074, 172 L.Ed.2d 735, habeas corpus dismissed 2011 WL 3794232, appeal dismissed 453 Fed.Appx. 391, 2011 WL 5822123. Criminal Law 1169.1(8)

Some deficiencies in search warrants are so substantial that they require exclusion of the evidence; however, failure to comply with inconsequential ministerial requirements of the statute does not require suppression in the absence of prejudice to the defendant. State v. Mollison (S.C.App. 1995) 319 S.C. 41, 459 S.E.2d 88, rehearing denied, certiorari denied. Criminal Law 392.16(1)

When the state is unable to demonstrate a good faith attempt to comply with Section 17‑13‑140, exclusion of the evidence seized in the search is the proper remedy. State v. McKnight (S.C. 1987) 291 S.C. 110, 352 S.E.2d 471. Criminal Law 392.38(1)

The good faith exception to the federal exclusionary rule is inapplicable to a search warrant in violation of Section 17‑13‑140. State v. McKnight (S.C. 1987) 291 S.C. 110, 352 S.E.2d 471.

Overwhelming proof of guilt, based on other evidence and testimony, rendered harmless admission of evidence alleged to have been improperly seized under federal warrant for another offense, even if evidence had not been found to be properly admissible. State v. Allen (S.C. 1977) 269 S.C. 233, 237 S.E.2d 64.

Where items involved in burglary and seized pursuant to federal bank robbery warrant were relevant and there was sufficient nexus between them and criminal activity of armed robbery to sustain their seizure under federal warrant, discretion of state trial judge was properly exercised in admitting items into evidence in state burglary trial. State v. Allen (S.C. 1977) 269 S.C. 233, 237 S.E.2d 64. Criminal Law 392.16(5); Criminal Law 404.25

Before evidence resulting from an arrest or search authorized by warrant upon affirmation may be admitted, the state must demonstrate a good faith attempt to comply with the statute requiring that a warrant be issued only upon affidavit. State v. Sachs (S.C. 1975) 264 S.C. 541, 216 S.E.2d 501. Criminal Law 392.16(5)

Where a federal warrant and supporting affidavit were introduced into evidence over the objection of defendant, but the question of the introduction of evidence was not raised by either side on appeal, the propriety of the search and the introduction of evidence resulting therefrom would be before the court upon any grounds appearing in the record. State v. Sachs (S.C. 1975) 264 S.C. 541, 216 S.E.2d 501.

17. Review

Defendant failed to preserve for review claim that his confession was subject to suppression on grounds that his arrest warrant was unsupported by probable cause, where defendant did not argue before the trial court that the arrest warrant affidavit was insufficient to establish probable cause for his arrest or that his confession should be suppressed on such basis. State v. Thompson (S.C.App. 2015) 413 S.C. 590, 776 S.E.2d 413, rehearing denied, reversed 419 S.C. 250, 797 S.E.2d 716. Criminal Law 1031(1)

Court of Appeals would remand case in which DNA evidence collected from defendant pursuant to an invalid search warrant was erroneously admitted at trial, to allow trial court to determine if inevitable discovery doctrine applied to search, where State did not need to present evidence at trial as to inevitable discovery doctrine and, thus, Court of Appeals did not have a record on which to determine if doctrine applied. State v. Jenkins (S.C.App. 2012) 398 S.C. 215, 727 S.E.2d 761, certiorari granted, reversed 412 S.C. 643, 773 S.E.2d 906. Criminal Law 1181.5(7)

Duty of appellate court reviewing the decision to issue a search warrant is to ensure that the magistrate had a substantial basis for concluding that probable cause existed, and this review, like the determination by the magistrate, is governed by the totality of the circumstances test. State v. Keith (S.C.App. 2003) 356 S.C. 219, 588 S.E.2d 145. Searches And Seizures 191

In deciding whether to issue a search warrant, the task of the magistrate is to make a practical, common sense decision whether, under the totality of the circumstances set forth in the affidavit, including the veracity of the person supplying the information and the basis of his or her knowledge, there is a fair probability that evidence of a crime will be found in a particular place. The task of a court reviewing a decision to issue a search warrant is simply to decide whether the issuing magistrate had a substantial basis for concluding that probable cause existed. State v. Clifton (S.C.App. 1990) 302 S.C. 431, 396 S.E.2d 831, certiorari dismissed 305 S.C. 85, 406 S.E.2d 337.

**SECTION 17‑13‑141.** Records to be kept by judiciary officers authorized to issue search warrants; penalty.

(A) Every judiciary official authorized to issue search warrants in this State shall keep a record along with a copy of the returned search warrant and supporting affidavit and documents for a period of three years from the date of issuance of each warrant. The records shall be on a form prescribed by the Attorney General and reflect as to each warrant:

(1) Date and exact time of issuance.

(2) Name of person to whom warrant issued.

(3) Name of person whose property is to be searched or, if unknown, description of person and address of property to be searched.

(4) Reason for issuing warrant.

(5) Description of article sought in the search.

(6) Date and time of return.

(B) Any person who alters or fails to keep for the prescribed period of time the records, warrants, and documents as provided for in subsection (a) shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed one hundred dollars or by imprisonment not to exceed thirty days.

HISTORY: 1976 Act No. 454 Sections 1, 2.

Library References

Criminal Law 1226(1).

Westlaw Topic No. 110.

C.J.S. Criminal Law Section 2412.

United States Supreme Court Annotations

What constitutes “seizure” within meaning of Federal Constitution’s Fourth Amendment—Supreme Court cases. 100 L Ed 2d 981.

NOTES OF DECISIONS

In general 1

1. In general

The state’s failure to fulfill a ministerial requirement only voids the search warrant if the defendant demonstrates prejudice; therefor, because the defendants failed to demonstrate any prejudice resulting from the failure to comply with recordkeeping requirements, the defendants’ request to suppress the evidence on this ground is denied. U.S. v. Clyburn, 1992, 806 F.Supp. 1247, affirmed 24 F.3d 613, certiorari denied 115 S.Ct. 274, 513 U.S. 907, 130 L.Ed.2d 192.

State’s failure to fulfill ministerial record‑keeping duties as mandated under Section 17‑13‑141 did not void search warrant where defendants did not demonstrate any prejudice resulting from non‑compliance with certain record‑keeping requirements. U.S. v. Clyburn, 1992, 806 F.Supp. 1247, affirmed 24 F.3d 613, certiorari denied 115 S.Ct. 274, 513 U.S. 907, 130 L.Ed.2d 192. Searches And Seizures 107

**SECTION 17‑13‑150.** Person served search warrant shall be furnished copy of warrant and supporting affidavit.

When any person is served with a search warrant, such person shall be furnished with a copy of the warrant along with the affidavit upon which such warrant was issued.

HISTORY: 1975 (59) 69.

Library References

Searches and Seizures 141.

Westlaw Topic No. 349.

C.J.S. Searches and Seizures Sections 246 to 247, 250 to 251, 253 to 255, 272, 274.

LAW REVIEW AND JOURNAL COMMENTARIES

Search and Seizure. 25 S.C. L. Rev. 348.

**SECTION 17‑13‑160.** Form of arrest warrants and search warrants shall be prescribed by Attorney General.

Notwithstanding any other provision of law, effective September 1, 1975, all arrest warrants and search warrants issued by the State or any political subdivision thereof shall be in a form as prescribed by the Attorney General and the Attorney General’s office shall prescribe such forms to all law enforcement agencies.

HISTORY: 1975 (59) 333.

Library References

Searches and Seizures 123.

Westlaw Topic No. 349.

C.J.S. Searches and Seizures Sections 173 to 174, 204 to 205, 225 to 243.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Affidavits Section 30, Arrest Warrants.

S.C. Jur. Attorney General Section 15, Miscellaneous.

Forms

Am. Jur. Pl. & Pr. Forms Searches and Seizures Section 1 , Introductory Comments.

LAW REVIEW AND JOURNAL COMMENTARIES

Search and Seizure. 25 S.C. L. Rev. 348.

United States Supreme Court Annotations

Searches and seizures, exclusionary rule, invalid recalled arrest warrant, police record keeping error, suppression of drugs and firearm found in search incident to arrest, see Herring v. U.S., 2009, 129 S.Ct. 695, 555 U.S. 135, 172 L.Ed.2d 496, rehearing denied 129 S.Ct. 1692, 556 U.S. 1161, 173 L.Ed.2d 1052.

Attorney General’s Opinions

Administrative inspection warrants issued pursuant to Sections 44‑53 1390, 44‑53‑500, and 48‑1‑50(24) are distinguishable from search warrants, and, therefore, are not required to conform to search warrant forms as approved by the State Attorney General’s Office pursuant to Section 17‑13‑160 of the Code. 1987 Op Atty Gen, No 87‑29, p 47 (April 13, 1987) 1987 WL 245438.

A bench warrant is not required to be in the form prescribed for arrest warrants. 1978 Op Atty Gen, No 78‑179, p 207 (October 31, 1978) 1978 WL 22647.

**SECTION 17‑13‑170.** Law enforcement authorization to determine immigration status; reasonable suspicion; procedures; data collection on motor vehicle stops.

(A) If a law enforcement officer of this State or a political subdivision of this State lawfully stops, detains, investigates, or arrests a person for a criminal offense, and during the commission of the stop, detention, investigation, or arrest the officer has reasonable suspicion to believe that the person is unlawfully present in the United States, the officer shall make a reasonable effort, when practicable, to determine whether the person is lawfully present in the United States, unless the determination would hinder or obstruct an investigation.

(B)(1) If the person provides the officer with a valid form of any of the following picture identifications, the person is presumed to be lawfully present in the United States:

(a) a driver’s license or picture identification issued by the South Carolina Department of Motor Vehicles;

(b) a driver’s license or picture identification issued by another state;

(c) a picture identification issued by the United States, including a passport or military identification; or

(d) a tribal picture identification.

(2) It is unlawful for a person to display, cause or permit to be displayed, or have in the person’s possession a false, fictitious, fraudulent, or counterfeit picture identification for the purpose of offering proof of the person’s lawful presence in the United States. A person who violates the provisions of this item:

(a) for a first offense, is guilty of a misdemeanor, and, upon conviction, must be fined not more than one hundred dollars or imprisoned not more than thirty days; and

(b) for a second offense or subsequent offenses, is guilty of a felony, and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than five years.

(3) If the person cannot provide the law enforcement officer with any of the forms of picture identification listed in this subsection, the person may still be presumed to be lawfully present in the United States, if the officer is able to otherwise verify that the person has been issued any of those forms of picture identification.

(4) If the person is operating a motor vehicle on a public highway of this State without a driver’s license in violation of Section 56‑1‑20, the person may be arrested pursuant to Section 56‑1‑440.

(5) If the person meets the presumption established pursuant to this subsection, the officer may not further stop, detain, investigate, or arrest the person based solely on the person’s lawful presence in the United States.

(6) This section does not apply to a law enforcement officer who is acting as a school resource officer for any elementary or secondary school.

(C)(1) If the person does not meet the presumption established pursuant to subsection (B), the officer shall make a reasonable effort, when practicable, to verify the person’s lawful presence in the United States by at least one of the following methods:

(a) contacting the Illegal Immigration Enforcement Unit within the South Carolina Department of Public Safety;

(b) submitting an Immigration Alien Query through the International Justice and Public Safety Network;

(c) contacting the United States Immigration and Customs Enforcement’s Law Enforcement Support Center; or

(d) contacting the United States Immigration and Customs Enforcement’s local field office.

(2) The officer shall stop, detain, or investigate the person only for a reasonable amount of time as allowed by law. If, after making a reasonable effort, the officer is unable to verify the person’s lawful presence in the United States by one of the methods described in item (1), the officer may not further stop, detain, investigate, or arrest the person based solely on the person’s lawful presence in the United States.

(3) If the officer verifies that the person is lawfully present in the United States, the officer may not further stop, detain, investigate, or arrest the person based solely on the person’s lawful presence in the United States.

(4) If the officer determines that the person is unlawfully present in the United States, the officer shall determine in cooperation with the Illegal Immigration Enforcement Unit within the South Carolina Department of Public Safety or the United States Immigration and Customs Enforcement, as applicable, whether the officer shall retain custody of the person for the underlying criminal offense for which the person was stopped, detained, investigated, or arrested, or whether the Illegal Immigration Enforcement Unit within the South Carolina Department of Public Safety or the United States Immigration and Customs Enforcement, as applicable, shall assume custody of the person. The officer is not required by this section to retain custody of the person based solely on the person’s lawful presence in the United States. The officer may securely transport the person to a federal facility in this State or to any other point of transfer into federal custody that is outside of the officer’s jurisdiction. The officer shall obtain judicial authorization before securely transporting a person to a point of transfer that is outside of this State.

(D) Nothing in this section must be construed to require a law enforcement officer to stop, detain, investigate, arrest, or confine a person based solely on the person’s lawful presence in the United States. A law enforcement officer may not attempt to make an independent judgment of a person’s lawful presence in the United States. A law enforcement officer may not consider race, color, or national origin in implementing this section, except to the extent permitted by the United States or South Carolina Constitution. This section must be implemented in a manner that is consistent with federal laws regulating immigration, protecting the civil rights of all persons, and respecting the privileges and immunities of United States citizens.

(E) Except as provided by federal law, officers and agencies of this State and political subdivisions of this State may not be prohibited or restricted from sending, receiving, or maintaining information related to the immigration status of any person or exchanging that information with other federal, state, or local government entities for the following purposes:

(1) determining eligibility for any public benefit, service, or license provided by the federal government, this State, or a political subdivision of this State;

(2) verifying any claim of residence or domicile, if determination of residence or domicile is required under the laws of this State or a judicial order issued pursuant to a civil or criminal proceeding in this State;

(3) determining whether an alien is in compliance with the federal registration laws prescribed by Chapter 7, Title II of the federal Immigration and Nationality Act; or

(4) pursuant to 8 U.S.C. Section 1373 and 8 U.S.C. Section 1644.

(F) Nothing in this section must be construed to deny a person bond or from being released from confinement when such person is otherwise eligible for release. However, pursuant to the provisions of Section 17‑15‑30, a court setting bond shall consider whether the person charged is an alien unlawfully present in the United States.

(G) No official, agency, or political subdivision of this State may limit or restrict the enforcement of this section or federal immigration laws.

(H) This section does not implement, authorize, or establish, and shall not be construed to implement, authorize, or establish the federal Real ID Act of 2005.

(I) Any time a motor vehicle is stopped by a state or local law enforcement officer without a citation being issued or an arrest being made, and the officer contacts the Illegal Immigration Enforcement Unit within the Department of Public Safety pursuant to this section, the officer who initiated the stop must complete a data collection form designed by the Department of Public Safety, which must include information regarding the age, gender, and race or ethnicity of the driver of the vehicle. This information may be gathered and transmitted electronically under the supervision of the Department of Public Safety, which shall develop and maintain a database storing the information collected. The Department of Public Safety must promulgate regulations with regard to the collection and submission of the information gathered. In addition, the Department of Public Safety shall prepare a report to be posted on the Department of Public Safety’s website regarding motor vehicle stops using the collected information. The General Assembly shall have the authority to withhold any state funds or federal pass‑through funds from any state or local law enforcement agency that fails to comply with the requirements of this subsection.

HISTORY: 2011 Act No. 69, Section 6, eff January 1, 2012.

Validity

For validity of this section, see U.S. v. South Carolina, 840 F.Supp.2d 898 (D.S.C. December 22, 2011).

Federal Aspects

Communication between Government agencies and the Immigration and Naturalization Service, see 8 U.S.C.A. Section 1373.

Communication between State and local government agencies and Immigration and Naturalization Service, see 8 U.S.C.A. Section 1644.

REAL ID Act of 2005, Pub.L. 109‑13, Div. B, May 11, 2005, 119 Stat. 302, see 8 U.S.C.A. Section 1778.

The Immigration and Nationality Act is codified as 8 U.S.C.A Section 1101, et seq.

Library References

Arrest 60.2(20).

Automobiles 349(17).

Westlaw Topic Nos. 35, 48A.

C.J.S. Motor Vehicles Sections 1515, 1517, 1519 to 1524.

RESEARCH REFERENCES

ALR Library

75 ALR 6th 541 , Preemption of State Statute, Law, Ordinance, or Policy With Respect to Law Enforcement or Criminal Prosecution as to Aliens.

174 ALR 549 , Interest Necessary to Maintenance of Declaratory Determination of Validity of Statute or Ordinance.

Encyclopedias

S.C. Jur. Aliens and Foreign Representatives Section 82, Custody Pending Exclusion or Deportation.

S.C. Jur. Aliens and Foreign Representatives Section 88, Civil Penalties for Document Fraud.

United States Supreme Court Annotations

Deportation or removal, federal law preempts most of Arizona immigration law, see Arizona v. U.S., 2012, 132 S.Ct. 2492, 567 U.S. 387, 183 L.Ed.2d 351, on remand 689 F.3d 1132. Aliens, Immigration, and Citizenship 103; States 18.43

Attorney General’s Opinions

Section 6 of 2011 Act No. 69 does not permit officers to prolong the original stop based upon the officer’s inquiry into or based on a determination, suspicion, or admission concerning a person’s immigration status. S.C. Op.Atty.Gen. (March 3, 2014) 2014 WL 2538227.

Section 7 of 2011 Act No. 69 does not authorize prolonging the detention of a person in jail or prison simply to determine the person’s immigration status. S.C. Op.Atty.Gen. (March 3, 2014) 2014 WL 2538227.

NOTES OF DECISIONS

Constitutional issues 1

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1. Constitutional issues

In light of restrictions on state authority set forth in Arizona v. United States, and state’s new and unequivocal statement that it could not detain or transport to a federal facility any person for alleged unlawful presence without express federal supervision and authorization, South Carolina statute governing detention of individuals based on immigration status pending and during transfer to federal custody could be interpreted and enforced in a manner consistent with federal law. U.S. v. South Carolina, 2012, 906 F.Supp.2d 463, affirmed 720 F.3d 518. Aliens, Immigration, And Citizenship 771; States 18.43

South Carolina’s statutory provisions, making it a state misdemeanor for a person eighteen years or older not to carry an alien registration card and making it unlawful for any person to possess “false, fictitious, fraudulent or counterfeit identification” for purposes of offering proof of one’s lawful presence in the United States were preempted by federal law; area of alien registration was field preempted from state regulation. U.S. v. South Carolina, 2012, 906 F.Supp.2d 463, affirmed 720 F.3d 518.

Immigration and Nationality Act (INA) provisions and federal regulations preempted provisions of newly‑adopted South Carolina immigration law directing local law enforcement officers to determine whether person whom officers have stopped, detained, investigated, or arrested was lawfully present in United States if officers had “reasonable suspicion” that person may be unlawfully present, where federal regulation of immigration enforcement was pervasive and comprehensive and left no room for state supplementation, states had not traditionally regulated in that area, and South Carolina law burdened limited federal immigration enforcement resources and infringed on federal government’s control of foreign affairs. U.S. v. South Carolina, 2011, 840 F.Supp.2d 898, modified in part 906 F.Supp.2d 463, affirmed 720 F.3d 518. Aliens, Immigration, And Citizenship 103; States 18.43

Immigration and Nationality Act (INA) provisions and federal regulations preempted provisions of newly‑adopted South Carolina immigration law related to alien registration documents and making, selling, and possession of counterfeit identification materials by persons unlawfully present in United States, where federal regulation of immigration was pervasive and comprehensive, alien registration and counterfeit identification materials were not areas traditionally regulated by states, South Carolina’s registration provision subjected persons lawfully present in United States to potential arrest, prosecution, and incarceration, and such arrests and prosecutions had potential to generate tensions with foreign nations. U.S. v. South Carolina, 2011, 840 F.Supp.2d 898, modified in part 906 F.Supp.2d 463, affirmed 720 F.3d 518. Aliens, Immigration, And Citizenship 103; States 18.43

2. Justiciability

Various immigration rights groups and individuals lacked standing to bring their constitutional challenge to section of newly‑adopted South Carolina immigration law that required verification of immigration status of any person incarcerated or detained in jail facility and provided for potential delivery of incarcerated persons to federal facilities if they were determined to be unlawfully present in United States, even though section appeared to expose some plaintiffs to concrete and particularized potential injury by operation of other sections that could have led to plaintiffs being arrested and detained at local or state prison facilities, where, in light of preliminarily injunction to enjoin enforcement of those other sections, injuries stemming from verification section were too remote and speculative. U.S. v. South Carolina, 2011, 840 F.Supp.2d 898, modified in part 906 F.Supp.2d 463, affirmed 720 F.3d 518. Constitutional Law 695

3. Injunctive relief

Preliminary injunction against enforcement of South Carolina statute pertaining to a law enforcement officer’s conduct of an immigration status check during the course of an authorized, lawful detention was not warranted at pretrial stage where no determination had been made as to whether statute could be interpreted and applied to avoid unconstitutional detentions; however, dissolution of prior injunction regarding the status‑checking provisions did not foreclose a future as‑applied challenge based upon subsequent factual and legal developments. U.S. v. South Carolina, 2012, 906 F.Supp.2d 463, affirmed 720 F.3d 518. Injunction 1496

Having found that federal immigration regulations preempted South Carolina’s newly‑adopted immigration law provision creating state crime for possessing or attempting to use fraudulent identification documents for purposes of establishing legal presence in United States, preliminary injunction was warranted to enjoin enforcement of state’s law, where state law created independent scheme of prosecution and judicial enforcement independent of already‑existing federal regulations that exclusively regulated area, therefore affecting foreign relations, balance of equities tipped decidedly in federal government’s and subject groups’ and individuals’ favor, and public interest was served by preliminary injunctive relief. U.S. v. South Carolina, 2011, 840 F.Supp.2d 898, modified in part 906 F.Supp.2d 463, affirmed 720 F.3d 518. Injunction 1496

Having found that federal immigration regulations preempted South Carolina’s newly‑adopted immigration law provisions mandating that every law enforcement encounter with any person be infused with consideration of person’s legal status in United States, preliminary injunction was warranted to enjoin enforcement of state’s law, where such state‑mandated scrutiny vastly expanded persons targeted for immigration enforcement action, burdened limited immigration enforcement resources, and raised significant foreign relations problems, balance of equities tipped decidedly in federal government’s and subject groups’ and individuals’ favor, and public interest was served by preliminary injunctive relief. U.S. v. South Carolina, 2011, 840 F.Supp.2d 898, modified in part 906 F.Supp.2d 463, affirmed 720 F.3d 518. Injunction 1496