

CRIMINAL LAW: Validity of warrant of arrest immaterial after conviction.

March 21, 1939

Mr. Donald B. Dawson
Prosecuting Attorney
Bates County
Butler, Missouri



Dear Mr. Dawson:

We have your request of March 16th for an opinion as to the legality of the return made on a warrant of arrest issued in Bates County where the defendant was arrested in Jackson County. It appears that the defendant was arrested in Jackson County and was placed in jail in Bates County for an offense committed in Bates County. Subsequent thereto, a warrant was issued for the arrest of the defendant, and the sheriff made a return that he had served the warrant in Jackson County, when as a matter of fact, the defendant was then in jail and at no time had the warrant been endorsed and certified by the county clerk of Bates County. It also appears from your letter that the defendant waived a preliminary hearing and has subsequently been tried in the circuit court, and is now under sentence of four years in the penitentiary, but that one of the assignments in the motion for new trial alleges that the warrant for defendant's arrest was void and that the defendant was improperly arrested and illegally held.

The legality of an arrest is determined from the particular facts in the case and the ultimate question is, did the officer have the authority to make the arrest? State vs. Padgett 289 S. W. 954.

It appears that the arrest of the defendant on a felony charge is now immaterial. We may assume that the warrant was void, and that the case stands as though no warrant was ever issued. It is of no consequence now for at least three reasons:

- (1) no warrant is necessary for the arrest of

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a felon , Section 3492, R. S. Mo. 1929;

- (2) any person arrested without a warrant may be legally held for twenty (20) hours, Section 3952, R. S. Mo. 1929;
- (3) the defendant was accorded a preliminary hearing and waived it, and since that time his detention has been under and by virtue of a commitment by the justice of the peace. Section 3483 R. S. Mo. 1929.

We have carefully examined Stubbs vs. Mulholland 168 Mo. 47, and State vs. Doley 121 Mo. 591, and find that neither are in point on this matter. In the Stubbs case, the court merely held that an arrest under an invalid warrant is evidence of malice in an action for malicious prosecution. In the Doley case, the court merely held that a warrant issued in Lafayette County could not be served in Saline County without an endorsement thereon by either the county clerk of Lafayette County, or by a magistrate in Saline County. The court also held that the officers had no right to seize certain horses under a warrant to arrest one Price.

It is, therefore, the opinion of this office that the question of defendant's arrest is now immaterial since the defendant is being held under and by virtue of first, a commitment issued by the justice of the peace and second, under a conviction in the circuit court.

Respectfully submitted,

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General
FER:RT